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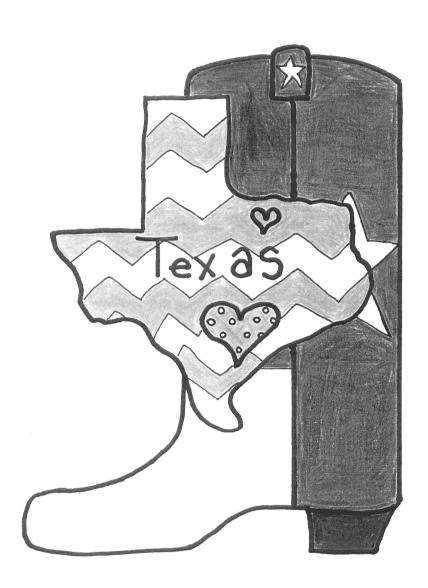
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As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional

information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Proclamation 41-4086

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, fourteen proposed amendments to the Constitution of Texas were voted on in the Constitutional Amendment Special Election held on November 7, 2023; and

WHEREAS, on the 4th day of December, 2023, I, Greg Abbott, Governor of the State of Texas, did certify the tabulation prepared by the Secretary of State; and

WHEREAS, the tabulation and total of the votes cast for and against each proposed amendment established that the voters of the State of Texas adopted the following thirteen proposed amendments by a majority vote, to wit:

STATE OF TEXAS PROPOSITION 1, as submitted by House Joint Resolution No. 126, protecting the right to engage in farming, ranching, timber production, horticulture, and wildlife management.

STATE OF TEXAS PROPOSITION 2, as submitted by Senate Joint Resolution No. 64, authorizing a local option exemption from ad valorem taxation by a county or municipality of all or part of the appraised value of real property used to operate a child-care facility.

STATE OF TEXAS PROPOSITION 3, as submitted by House Joint Resolution No. 132, prohibiting the imposition of an individual wealth or net worth tax, including a tax on the difference between the assets and liabilities of an individual or family.

STATE OF TEXAS PROPOSITION 4, as submitted by House Joint Resolution No. 2, to authorize the legislature to establish a temporary limit on the maximum appraised value of real property other than a residence homestead for ad valorem tax purposes; to increase the amount of the exemption from ad valorem taxation by a school district applicable to residence homesteads from \$40,000 to \$100,000; to adjust the amount of the limitation on school district ad valorem taxes imposed on the residence homesteads of the elderly or disabled to reflect increases in certain exemption amounts; to except certain appropriations to pay for ad valorem tax relief from the constitutional limitation on the rate of growth of appropriations; and to authorize the legislature to provide for a four-year term of office for a member of the board of directors of certain appraisal districts.

STATE OF TEXAS PROPOSITION 5, as submitted by House Joint Resolution No. 3, relating to the Texas University Fund, which provides funding to certain institutions of higher education to achieve national prominence as major research universities and drive the state economy.

STATE OF TEXAS PROPOSITION 6, as submitted by Senate Joint Resolution No. 75, creating the Texas water fund to assist in financing water projects in this state.

STATE OF TEXAS PROPOSITION 7, as submitted by Senate Joint Resolution No. 93, providing for the creation of the Texas energy fund to support the construction, maintenance, modernization, and operation of electric generating facilities.

STATE OF TEXAS PROPOSITION 8, as submitted by House Joint Resolution No. 125, creating the broadband infrastructure fund to expand high-speed broadband access and assist in the financing of connectivity projects.

STATE OF TEXAS PROPOSITION 9, as submitted by House Joint Resolution No. 2, authorizing the 88th Legislature to provide a cost-of-living adjustment to certain annuitants of the Teacher Retirement System of Texas.

STATE OF TEXAS PROPOSITION 10, as submitted by Senate Joint Resolution No. 87, to authorize the legislature to exempt from ad valorem taxation equipment or inventory held by a manufacturer of medical or biomedical products to protect the Texas healthcare network and strengthen our medical supply chain.

STATE OF TEXAS PROPOSITION 11, as submitted by Senate Joint Resolution No. 32, authorizing the legislature to permit conservation and reclamation districts in El Paso County to issue bonds supported by ad valorem taxes to fund the development and maintenance of parks and recreational facilities.

STATE OF TEXAS PROPOSITION 12, as submitted by House Joint Resolution No. 134, providing for the abolition of the office of county treasurer in Galveston County.

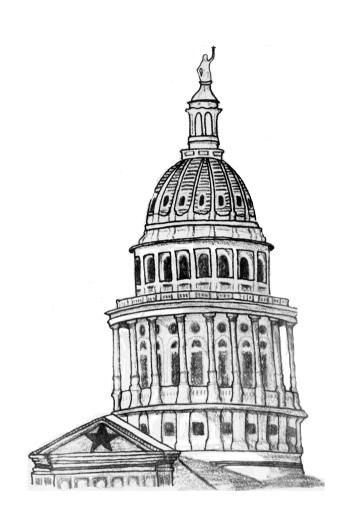
STATE OF TEXAS PROPOSITION 14, as submitted by Senate Joint Resolution No. 74, providing for the creation of the centennial parks conservation fund to be used for the creation and improvement of state parks.

IN TESTIMONY WHEREOF, I have hereto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 4th day of December, 2023.

Greg Abbott, Governor

TRD-202304570

*** * ***



THE ATTORNEYThe Texas Regis

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

An index to the full text of these documents is available on the Attorney General's website at https://www.texas.attorneygeneral.gov/attorney-general-opinions. 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: https://www.texasattorneygeneral.gov/attorney-general-opinions.)

Requests for Opinions

RO-0523-KP

Requestor:

Mr. R. Scott Kesner

Chair

Texas Real Estate Commission

P.O. Box 12188

Austin, Texas 78711-2188

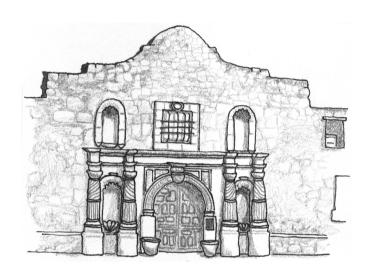
Re: Whether a person who negotiates a lease of property for the development of a wind power project on behalf of another, for compensation,

is required to hold a license issued by the Texas Real Estate Commission (RQ-0523-KP)

Briefs requested by January 3, 2024

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

TRD-202304550 Justin Gordon General Counsel Office of the Attorney General Filed: December 5, 2023



TEXAS ETHICS.

The Texas Ethics Commission is authorized by the Government Code, \$571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the

Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39. Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Ethics Advisory Opinion Request

Whether the Chapter 572 of the Government Code revolving door provisions apply to a former State Board of Education member's appearing the Texas Education Agency, the Texas Commissioner of Education, or the Texas Permanent School Fund Corporation. (AOR 685.)

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800 or opinions@ethics.state.tx.us.

Issued in Austin, Texas, on December 5, 2023.

TRD-202304519
James Tinley
General Counsel
Texas Ethics Commission
Filed: December 5, 2023

Whether expenditures made by a former legislator for general administration of his own campaign account are "direct campaign expendi-

tures" that trigger the Section 253.007 two-year waiting period before engaging in activity that would require registration as a lobbyist. (AOR 692.)

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800 or opinions@ethics.state.tx.us.

Issued in Austin, Texas, on December 5, 2023.

TRD-202304521 James Tinley General Counsel Texas Ethics Commission Filed: December 5, 2023 Whether certain communications with a member of the legislative or executive branch to engender goodwill are communications to "influence legislative or administrative action." (AOR 694.)

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800 or opinions@ethics.state.tx.us.

Issued in Austin, Texas, on December 5, 2023.

TRD-202304525 James Tinley General Counsel Texas Ethics Commission Filed: December 5, 2023

Whether a former state employee may provide consulting services to company with which he participated in a procurement during his state service without violating Section 572.069 of the Government Code. (AOR 695.)

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800 or opinions@ethics.state.tx.us.

Issued in Austin, Texas, on December 5, 2023.

TRD-202304533
James Tinley
General Counsel
Texas Ethics Commission
Filed: December 5, 2023

Whether Chapter 572 of the Government Code prohibits a former employee of a regulatory agency from accepting certain employment. (AOR 696.)

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800 or opinions@ethics.state.tx.us.

Issued in Austin, Texas, on December 5, 2023.

TRD-202304535 James Tinley General Counsel Texas Ethics Commission

Filed: December 5, 2023

How various provisions of title 15 of the Texas Election Code apply to a Texas "purpose trust" formed under Section 112.121, Texas Property Code. (AOR 697.)

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800 or opinions@ethics.state.tx.us.

Issued in Austin, Texas, on December 5, 2023.

TRD-202304537 James Tinley General Counsel Texas Ethics Commission Filed: December 5, 2023

48 TexReg 7244 December 15, 2023 Texas Register

PROPOSED.

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 <u>underlined text</u>. [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 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 106. GUIDELINES FOR THE ASSESSMENT OF ADMINISTRATIVE FINES

7 TAC §106.1

The Texas State Securities Board proposes an amendment to §106.1, concerning Guidelines for the Assessment of Administrative Fines, to update the statutory reference to the Texas Securities Act in the rule to refer to the codified version of the Texas Securities Act, which became effective January 1, 2022. The nonsubstantive amendment is being made pursuant to the Agency's periodic review of its rules.

Travis J. Iles, Securities Commissioner; Clint Edgar, Deputy Securities Commissioner; Tommy Green, Director, Inspections and Compliance Division; Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division; and Joseph Rotunda, Director, Enforcement Division, have determined that for the first five-year period the proposed amendment is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed amendment.

Mr. Iles, Mr. Edgar, Mr. Green, Ms. Diaz, Mr. Yarroll, and Mr. Rotunda have also determined that for each year of the first five years the proposed amendment is in effect the public benefit expected as a result of adoption of the proposed amendment will be improved statutory compliance by ensuring the rule is current and accurate and that it conforms to the codified version of the Act which would promote transparency and efficient regulation. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed amendment will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed. There is no anticipated impact on local employment.

Mr. Iles, Mr. Edgar, Mr. Green, Ms. Diaz, Mr. Yarroll, and Mr. Rotunda have also determined that for the first five-year period the proposed amendment is in effect: it does not create or eliminate a government program; it does not require the creation or elimination of existing employee positions; it does not require an increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to this agency; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or negatively affect the state's economy. Additionally, the proposed amendment does not create a new regulation, or expand, limit, or repeal an existing regulation.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed section in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The amendment is proposed under the authority of the Texas Government Code, §4002.151. Section 4002.151 provides the Board with the authority to adopt rules as necessary to implement the provisions of the Texas Securities Act, including rules governing registration statements, applications, notices, and reports; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The proposed amendment affects Texas Government Code §4007.106.

§106.1. Guidelines for the Assessment of Administrative Fines.

For the purpose of determining the amount of an administrative fine assessed against a person or company under The Securities Act, §4007.106 [§23-1], the Securities Commissioner shall consider the following factors:

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

Filed with the Office of the Secretary of State on December 1, 2023.

TRD-202304437

Travis J. Iles

Securities Commissioner

State Securities Board

Earliest possible date of adoption: January 14, 2024 For further information, please call: (512) 305-8303

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CHAPTER 107. TERMINOLOGY

7 TAC §107.1, §107.2

The Texas State Securities Board proposes amendments to §107.1, concerning General; and §107.2, concerning Definitions, to update the statutory references to the Texas Securities Act in the rules to refer to the codified version of the Act, which became effective January 1, 2022. Section 107.1 would also be

amended to capitalize the word "Board" to conform terminology. Other amendments would be made to existing definitions in §107.2, which would be relocated; repealed because they are no longer used in the Act or elsewhere in the Board Rules; or amended to conform to terms now used in the Act or in the rules. New definitions would also be added for the terms "NASAA," and "CFR," so those definitions that appear elsewhere in the rules can be eliminated. These nonsubstantive amendments are being made pursuant to the Agency's periodic review of its rules.

Travis J. Iles, Securities Commissioner; Clint Edgar, Deputy Securities Commissioner; Tommy Green, Director, Inspections and Compliance Division; Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division; and Joseph Rotunda, Director, Enforcement Division, have determined that for the first five-year period the proposed amendments are in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Mr. Iles, Mr. Edgar, Mr. Green, Ms. Diaz, Mr. Yarroll, and Mr. Rotunda have also determined that for each year of the first five vears the proposed amendments are in effect the public benefits expected as a result of adoption of the proposed amendments will be (1) improved readability and clarity; (2) defined terms that are no longer used will be removed; and (3) statutory compliance by ensuring the rules are current and accurate and that they conform to the codified version of the Act, which would promote transparency and efficient regulation. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed amendments will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a requlatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed. There is no anticipated impact on local employment.

Mr. Iles, Mr. Edgar, Mr. Green, Ms. Diaz, Mr. Yarroll, and Mr. Rotunda have also determined that for the first five-year period the proposed amendments are in effect: they do not create or eliminate a government program; they do not require the creation or elimination of existing employee positions; they do not require an increase or decrease in future legislative appropriations to this agency; they do not require an increase or decrease in fees paid to this agency; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or negatively affect the state's economy. Additionally, the proposed amendments do not create a new regulation, or expand, limit, or repeal an existing regulation.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed sections in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The amendments are proposed under the authority of the Texas Government Code, §4002.151. Section 4002.151 provides the Board with the authority to adopt rules as necessary to implement the provisions of the Texas Securities Act, including rules governing registration statements, applications, notices, and reports; defining terms; classifying securities, persons, and mat-

ters within its jurisdiction; and prescribing different requirements for different classes.

The proposed amendments affect the Texas Securities Act, Texas Government Code, §§4001.001-4008.105.

§107.1. General.

All of the terms used in these rules have the same meaning as defined in Texas Government Code, Chapter 4001, Subchapter B [section 4] of the Texas Securities Act. In addition, the Board [board] may from time to time define and interpret certain terms, whether or not used in the Act, insofar as the definition and interpretation are not inconsistent with the purpose fairly intended by the policy and provisions of the Act.

§107.2. Definitions.

The following words and terms, when used in Part 7 of this title (relating to the State Securities Board), shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Act or Securities Act or Texas Securities Act--The Texas Securities Act, located in Title 12 of the Texas Government Code, Chapters 4001 through 4008 [Texas Revised Civil Statutes, Article 581-1 et seq.-], as amended.
 - (2) (6) (No change.)
- (7) CFR--The Code of Federal Regulations [Code or Internal Revenue Code -The Internal Revenue Code of 1986], as amended.
 - (8) (11) (No change.)
- (12) Qualified institutional buyer--An entity described in Rule 144A, as promulgated by the SEC under the Securities Act of 1933 (17 CFR §230.144A, as amended) [Detailed statement showing all assets and liabilities--A balance sheet].
 - (13) (33) (No change.)
- (34) Securities Exchange Act of 1934 or Federal Securities Exchange Act of 1934--The federal statute of that name, as amended, 15 United States Code §78a, *et seq.*
 - (35) (36) (No change.)
- (37) NASAA--The North American Securities Administrators Association, Inc. [Statement to reflect the financial condition--A balance sheet.]
- (38) Telephone or telegram--For purposes of the Texas Securities Act, §4003.103 [§7.C(2)(e)], includes any means of electronic transmission such as, but not limited to, telephone, telegraph, wireless, email, graphic scanning, modem, or facsimile; provided, however, that the office of the State Securities Board has the necessary equipment to accept such a transmission.
 - (39) Within this state or in this state--
- (A) A person is a "dealer" who engages "within this state" or "in this state" in one or more of the activities set out in the Texas Securities Act, §4001.056 [§4.C], if either the person or the person's agent is present in this state or the offeree/purchaser or the offeree/purchaser's agent is present in this state at the time of the particular activity. A person can be a dealer in more than one state at the same time.
- (B) Likewise, a person is an "agent" who engages "within this state" or "in this state" in one or more of the activities set out in the Texas Securities Act, §4001.052 [§4.D], whether by direct act or through subagents except as otherwise provided, if either the agent or the agent's subagent is present in this state or the offeree/purchaser or the offeree/purchaser is present in this state at the

time of the particular activity. A person can be an agent in more than one state at the same time.

(C) (No change.)

(40) - (43) (No change.)

(44) EFD System--The Electronic Filing Depository system provided by NASAA [the North American Securities Administrators Association (NASAA)] that is used for making an electronic filing with the Securities Commissioner of Form D and such other filings as permitted by Board rule.

[(45) Qualified institutional buyer—An entity described in Rule 144A, as promulgated by the SEC under the Securities Act of 1933 (17 CFR §230.144A, as amended).]

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

Filed with the Office of the Secretary of State on December 1, 2023

TRD-202304440
Travis J. Iles
Securities Commissioner
State Securities Board

Earliest possible date of adoption: January 14, 2024 For further information, please call: (512) 305-8303



CHAPTER 113. REGISTRATION OF SECURITIES

7 TAC §113.1

The Texas State Securities Board proposes the repeal of §113.1, concerning Qualification of Securities. The text of this section is concurrently proposed to be relocated to existing §113.2, which would be renamed to reflect the added relocated text. A new §113.1, concerning Definitions, has also been concurrently proposed which would add a new definitions section to this chapter. The repeal and the related concurrent proposals are being made pursuant to the Agency's periodic review of its rules and make no substantive changes.

Clint Edgar, Deputy Securities Commissioner; and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division, have determined that for the first five-year period the proposed repeal is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed repeal.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for each year of the first five years the proposed repeal is in effect the public benefit expected as a result of the repealed section will be the text can be relocated to another rule as part of the reorganization of the chapter to improve clarity and readability.

There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed repeal will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for the first five-year period the proposed repeal is in effect: it does not create or eliminate a government program; it does not require the creation or elimination of existing employee positions; it does not require an increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to this agency; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or negatively affect the state's economy. Additionally, the proposed repeal does not create a new regulation; and it does not limit or expand an existing regulation. The proposal would repeal an existing rule so that a new definitions section can be added to the chapter in its place, but the existing text of this rule would be relocated to another rule.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed repeal in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The repeal is proposed under the authority of the Texas Government Code, §4002.151. Section 4002.151 provides the Board with the authority to adopt rules as necessary to implement the provisions of the Texas Securities Act, including rules governing registration statements, applications, notices, and reports; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The repeal affects the following sections of the Texas Securities Act: Texas Government Code Chapter 4003, Subchapters A, B, and C.

§113.1. Qualification of Securities.

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

Filed with the Office of the Secretary of State on December 1, 2023.

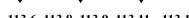
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Travis J. Iles

Securities Commissioner

State Securities Board

Earliest possible date of adoption: January 14, 2024 For further information, please call: (512) 305-8303



7 TAC §§113.1 - 113.6, 113.8, 113.9, 113.11 - 113.14

The Texas State Securities Board proposes a new rule and amendments to eleven rules in this chapter to make nonsubstantive changes. Specifically, the Board proposes new §113.1, concerning Definitions; and proposes amendments to §113.2, concerning Registration by Coordination; §113.3, concerning Fair, Just, and Equitable Standards; §113.4, concerning Application for Registration; §113.5, concerning Financial Statements; §113.6, concerning Renewal Update; §113.8; concerning Notification of Status in Other States; §113.9, concerning Securities Underlying Transferable Warrants and Employee Stock Options;

§113.11, concerning Shelf Registration of Securities; §113.12, concerning Applicability of Statements of Policy to Exempt Offerings; §113.13, concerning Multijurisdictional Disclosure System--MJDS Offerings; and §113.14, concerning Statements of Policy. The existing §113.1, concerning Qualification of Securities, is concurrently proposed for repeal. The new rule and amendments are being made pursuant to the agency's periodic review of its rules and make no substantive changes.

New §113.1, concerning Definitions, would add a new definitions section to this chapter. The text of existing §113.1 of this title (relating to Qualification of Securities), would be relocated to existing §113.2 of this title (relating to Registration by Coordination), which would be renamed to reflect the relocated text.

The references to sections of the Texas Securities Act in §§113.2, 113.3, 113.5, 113.6, 113.8, 113.9, 113.11, 113.12, 113.13, and 113.14 would be updated to refer to the correct sections in the codified version of the Act in the Texas Government Code, which became effective January 1, 2022, or to the newly defined terms in proposed new §113.1, as applicable.

Sections 113.2, 113.11, and 113.13 would be amended to remove references to the "Securities and Exchange Commission" and language that defines this term as the "SEC" since this term is already defined in §107.2 of this title (relating to Definitions) as "SEC."

Section 113.4 would also be amended in (d)(2) to allow the Registration Division to send notices required by this section by methods other than regular mail, such as by email, and to remove the definition of the Texas Securities Act, as this term is already defined in §107.2 of this title (relating to Definitions). Language in §113.4(e) concerning registration of excess securities that duplicates text from the Act would be replaced with references to the applicable statutory provisions.

Section 113.5 would also be amended to reflect that an exemption referenced in this rule has been repealed by adding the word "former" to such reference.

Section 113.8 would also be amended for clarity and to improve readability.

Section 113.9 would also be amended to divide it into three subsections for clarity and to improve readability.

Section 113.11(a)(1) and (b)(1) would also be amended to revise the references to the "Code of Federal Regulations" in this subsection to "CFR." Rule 107.2 of this title (relating to Definitions) is concurrently proposed for amendment to add "CFR" as a defined term.

Section 113.13(b), (c), and (e) would also be amended to remove a reference to an obsolete SEC form and to revise the cross reference to §113.2 to state its proposed new caption, and subsection (e) would also be amended to conform terminology.

Section 113.14(a) would also be amended to remove the definition of the term "NASAA." Rule 107.2 of this title (relating to Definitions) is concurrently proposed for amendment to add "NASAA" as a defined term. Subsection (c) would be revised to remove the reference to "print" copies to allow for the requestor's preferred format (most likely electronic).

Clint Edgar, Deputy Securities Commissioner; and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division, have determined that for the first five-year period the proposed new rule and amendments are in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed new rule and amendments.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for each year of the first five years the proposed new rule and amendments are in effect the public benefits expected as a result of adoption of the proposed new rule and amendments will be (1) statutory compliance by ensuring the rules are current and accurate, that they conform to the codified version of the Act and that they accurately coordinate with federal standards and requirements; (2) improved clarity and readability; and (3) with respect to the proposed amendment to §113.4, applicants receiving timelier notice of a possible abandonment of their registration applications.

There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed new rule and amendments will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the proposed new rule and amendments. There is no anticipated impact on local employment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for the first five-year period the proposed new rule and amendments are in effect: they do not create or eliminate a government program; they do not require the creation or elimination of existing employee positions; they do not require an increase or decrease in future legislative appropriations to this agency; they do not require an increase or decrease in fees paid to this agency; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or negatively affect the state's economy. Additionally, the proposed new rule and amendments do not create a new regulation, or expand, limit, or repeal an existing regulation. Although the rulemaking involves the creation of a new rule, there would be no new regulation created since the net effect is to merely add definitions to the chapter to improve readability, while leaving the scope and content of the current regulations unchanged.

Comments on the proposed new rule and amendments must be in writing and will be accepted for 30 days following publication of the proposed sections in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The new section and amendments are proposed under the authority of the Texas Government Code, §4002.151. Section 4002.151 provides the Board with the authority to adopt rules as necessary to implement the provisions of the Texas Securities Act, including rules governing registration statements, applications, notices, and reports; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. The amendment to §113.5 is also proposed under the authority of Texas Government Code §4003.004(b), which provides the Board with the authority to define and provide requirements for small business issuers permitted to submit reviewed financial statements.

The new section and proposed amendments affect the following sections of the Texas Securities Act: Texas Government Code Chapter 4003, Subchapters A, B, and C.

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

- (2) Registration by Coordination--Refers to Subchapter C of Chapter 4003 of the Texas Securities Act.
- (3) Registration by Qualification--Refers to Subchapter A of Chapter 4003 of the Texas Securities Act.
- (4) Registration Sections--Refers to Subchapters A, B, and C of Chapter 4003 of the Texas Securities Act.
- §113.2. Registration by Qualification or Coordination.
- (a) Registration by Qualification. A Regulation "A" filing with the SEC is a form of exemption and cannot be the basis for a filing for Registration by Coordination with the State Securities Board. Such a registration should meet the requirements as outlined in the sections of the Act concerning Registration by Qualification or, if federal covered securities, the requirements in §114.4 of this title (relating to Filings and Fees).
- [(a) Time to file. Applications for registration under the Texas Securities Act, §7.C, should be filed contemporaneously with the Securities and Exchange Commission ("SEC") registration application. Delayed filings will jeopardize coordination effectiveness. Applications filed after effectiveness with the SEC are not eligible to use §7.C.]
 - (b) Registration by Coordination.
- (1) Time to file. Applications for Registration by Coordination should be filed contemporaneously with the SEC registration application. Delayed filings will jeopardize coordination effectiveness. Applications filed after effectiveness with the SEC are not eligible to use Registration by Coordination.
- (2) Who should file. Applications to register securities of open-end investment companies and unit investment trusts subject to the provisions of the Investment Company Act of 1940, the Securities Act of 1933, and the Securities Exchange Act of 1934, will be considered and treated as applications for Registration by Coordination, if the securities are not federal covered securities as that term is defined in §107.2 of this title (relating to Definitions). Filings and fees relating to federal covered securities are addressed in Chapter 114 of this title (relating to Federal Covered Securities).
- [(b) Who should file. Applications to register securities of open-end investment companies and unit investment trusts subject to the provisions of the Investment Company Act of 1940, the Securities Act of 1933, and the Securities Exchange Act of 1934, will be considered and treated as applications to register securities by coordination, if the securities are not federal covered securities as that term is defined in §107.2 of this title (relating to Definitions). Filings and fees relating to federal covered securities are addressed in Chapter 114 of this title (relating to Federal Covered Securities).]

§113.3. Fair, Just, and Equitable Standards.

The following factors, among others, will usually be considered in determining whether or not a securities issue is fair, just, and equitable.

(1) General meaning. "Fair, just, and equitable" as used in the Texas Securities Act, §4003.006 and §4003.103 [§7-C and §10-A], means fair, just, and equitable to the new investors. It does not relate to customers or competitors of the business as such and does not apply to other business relationships of the issuer, promoter, or business. The words "fair, just, and equitable" are accorded their generally recognized meanings and are not used in any narrow, technical sense.

- (2) (No change.)
- §113.4. Application for Registration.
 - (a) (c) (No change.)
 - (d) Abandonment of application.
 - (1) (No change.)
- (2) Except for good cause shown, the application for registration of securities that fails to meet registration requirements within one year of the filing date of the application will expire and become null and void. A copy of this rule will be <u>provided</u> [mailed] to an applicant at least 60 days prior to the expiration of the application.
- (e) Sales in excess of amount registered. [An offeror who sells securities in this state in excess of the amount of securities registered may do the following.]
- (1) An offeror who sells securities in this state in excess of the amount of securities registered may take the actions described in and pay the fee or fees, as applicable, as required under and prescribed by the Act, \$4006.151(a).
 - [(1) If the registration is still in effect an offeror may:]
- [(A) apply to register the excess securities by paying three times the difference between the initial fee paid and the fee required under the Texas Securities Act (Act), §35, for the securities sold to persons in this state; and]
- [(B) pay the amendment fee prescribed by the Act, $\S35.A(1)$.]
- (2) Registration of the excess securities, if granted, shall be effective as provided in the Act, §4006.151(b). [If the registration is no longer in effect an offeror may:]
- [(A) apply to register the excess in accordance with paragraph (1)(A) of this subsection, plus interest on the amount of fees owed computed at the rate of 6.0% from the date the registration was no longer in effect until the date the subsequent application is filed; and
- [(B) pay the amendment fee prescribed by the Act, §35.A(1).]
- [(3) Registration of the excess securities, if granted, shall be effective retroactively to the effective date of the initial registration for the offering.]
- (3) [(4)] As an alternative to paragraph (1) [or (2)] of this subsection, the offeror may issue letters of rescission to persons who bought excess securities and include a statement in the prospectus admitting the error, or show sales of unregistered securities as a contingent liability.
- §113.5. Financial Statements.
- (a) Audited financial statements. Except as provided in subsection (b) of this section, all financial statements submitted to the Securities Commissioner pursuant to the Texas Securities Act, §§4003.002, 4003.003 or 4003.004 [§7.A.(1)(f)] (including all financial statements of the issuer and any entity that is being taken over by an issuer which has not been operating) must be audited, and an opinion must be expressed by an independent certified public accountant or an independent public accountant. Such opinion shall be one acceptable to the Commissioner.
 - (b) (No change.)
- (c) Small business issuer. For purposes of subsection (b) of this section, the term "small business issuer" shall mean any corporation.

- (1) that has not previously sold securities by means of an offering involving public solicitation or advertising unless such offering was made in compliance with:
- (A) <u>former</u> §139.25 of this title (relating to Intrastate Crowdfunding Exemption);
 - (B) (E) (No change.)
 - (F) the Texas Securities Act, §4005.011 [§5.H];
 - (2) (7) (No change.)
 - (d) (e) (No change.)

§113.6. Renewal Update.

It is the responsibility of the applicant for renewal to see that all exhibits and information required to be filed with the Securities Commissioner for an original registration pursuant to the <u>Registration Sections [Texas Securities Act, §7,]</u> are maintained current with the Commissioner for the issuer whose registration is renewed under the Act, [§10-B,] so long as the permit is outstanding. Whenever there are material changes, the prospectus must be amended and filed with the Commissioner.

§113.8. Notification of Status in Other States.

Any issuer with an application for Registration by Coordination pending must file [under the Texas Securities Act, §7.C, in addition to filing] with the Securities Commissioner the original list of other states where filing has been made or is expected to be made as required by the Act, §4003.102(1)(B) [§7.C(1)(e)], and must make a timely report of the names of any states where such an application is subsequently made, withdrawn, or denied (together with the reasons for any withdrawal or denial).

- §113.9. Securities Underlying Transferable Warrants and Employee Stock Options.
- (a) When equity securities underlying transferable warrants or employee stock options are registered under the Registration Sections [Texas Securities Act, §7], those equity securities shall thereafter be deemed to be properly registered in Texas regardless of the time at which the warrants are exercised by warrant or option holders. Continuous registration (or annual renewal of registration) of the underlying equity securities during the life of the warrants or options shall not be required solely because of the existence of outstanding warrants or options.
- (b) Once the distribution process is completed pursuant to the registration, the issuer or dealer who sold such registered securities is not required to remain continuously registered pursuant to the Texas Securities Act, §4004.051, [§12] solely because of the existence of outstanding warrants or options. However, if the issuer or dealer solicits the holders to exercise their warrants or options, the issuer or dealer must be registered as a securities dealer if the transaction does not fall within an exemption other than this section.
- (c) This section is adopted pursuant to the authority granted by the Texas Securities Act, \$4004.001 and \$4005.024 [\$5.T].
- §113.11. Shelf Registration of Securities.
 - (a) Applicability.
- (1) This section shall apply to the <u>Registration</u> [registration] by <u>Coordination</u> [eoordination] in Texas of securities registered with the <u>SEC</u> [Securities and Exchange Commission (SEC)] for offer and sale on a delayed or continuous basis under SEC Rule 415 (17 CFR §230.415, as amended) [(17 Code of Federal Regulations §230.415)].
 - (2) (3) (No change.)
 - (b) Certain debt offerings by substantial issuers.

- (1) This subsection (b) applies to the registration of debt securities of issuers eligible to use SEC Form S-3 (17 CFR §239.13, as amended) [(17 Code of Federal Regulations §239.13)], to register debt securities with the SEC under SEC Rule 415.
 - (2) (3) (No Change.)
- §113.12. Applicability of Statements of Policy to Exempt Offerings. This chapter and the statements of policy listed in §113.14 of this title (relating to Statements of Policy) do not apply to offerings made pursuant to an exemption under the Exemptions Sections [either the Texas Securities Act, §5 or §6], or an exemption by Board rule pursuant to the Texas Securities Act, §4005.024 [§5.T], or to an offering of federal covered securities, as that term is defined in §107.2 of this title (relating to Definitions).
- §113.13. Multijurisdictional Disclosure System-MJDS Offerings.
- (a) This section shall apply to the <u>Registration</u> [registration] by <u>Coordination</u> [ecordination] in Texas of securities registered with the <u>SEC</u> [Securities and Exchange Commission (SEC)] in accordance with the multijurisdictional disclosure system (MJDS) adopted in SEC Release Number 33-6902.
- (b) For purposes of the sections in the Act concerning Registration by Coordination [Texas Securities Act, §7.C], MJDS offerings filed on SEC Form F-7, Form F-8, [Form F-9] or Form F-10, shall become effective the later of three days after filing, or the effective date with the SEC, as long as the application for registration is filed contemporaneously with the SEC registration application in accordance with subsection (b) of §113.2 of this title (relating to Registration by Qualification or Coordination).
- (c) Financial statements and financial information for offerings filed under subsection (b) of this section shall comply with instructions provided with SEC Form F-7, Form F-8, [Form F-9,] or Form F-10.
 - (d) (No change.)
- (e) After the SEC has declared effective an issuer's Form F-8 [5, Form F-9] or Form F-10 registration statement, a non-issuer transaction in any class of the issuer's securities is exempt from registration, whether or not the transaction is effected through a broker-dealer [broker dealer].
- §113.14. Statements of Policy.
- (a) The Securities Commissioner, where applicable, will utilize the criteria contained in the NASAA [North American Securities Administrators Association, Inc. (NASAA)] Statements of Policy set forth in subsection (b) of this section for offerings registering pursuant to the Registration Sections [Texas Securities Act, §7]. While applications not conforming to a statement of policy shall be looked upon with disfavor, where good cause is shown or to protect investors, certain provisions may be modified or waived by the Commissioner.
 - (b) (No change.)
- (c) Copies of the NASAA Statements of Policy are available online at the NASAA web site (www.nasaa.org) and the Texas State Securities Board web site (www.ssb.texas.gov). Copies [Print eopies] may be obtained by contacting the Texas State Securities Board, P.O. Box 13167, Austin, Texas 78711, or by calling (512) 305-8300.

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

Filed with the Office of the Secretary of State on December 1, 2023.

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Travis J. Iles

Securities Commissioner

State Securities Board

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CHAPTER 114. FEDERAL COVERED SECURITIES

7 TAC §§114.1, 114.2, 114.4

The Texas State Securities Board proposes amendments to §114.1, concerning Introduction; §114.2, concerning Definitions; and §114.4, concerning Filings and Fees. These nonsubstantive amendments are being made pursuant to the Agency's periodic review of its rules.

The references to sections of the Texas Securities Act in §§114.1, 114.2, and 114.4 would be updated to refer to either a newly defined term in §114.2, or to the correct sections in the codified version of the Act in the Texas Government Code, which became effective January 1, 2022.

Section 114.2 would also be amended to add a definition for "Exemptions Sections," and §114.1 would also be amended to refer to this new defined term.

Definitions of the "Act" and the "SEC" would be removed from §114.2, since they are already defined in Rule 107.2 of this title.

Section 114.4 would also be amended to remove language in subsection (a)(3) defining the "Act," since this term is already defined in Rule 107.2 of this title.

Language in §114.4(a)(3), (b)(1)(B), and (b)(4)(C) concerning fees that replicates language in the Act would be replaced with references to the applicable statutory provisions.

Additionally, the period in §114.4(d)(1) preceding "the following" language would be replaced with a colon to improve accuracy, consistency, and readability; and the words "a year" would be added after "6%" in §114.4(d)(1)(B)(i) and (d)(2)(B) to better track the applicable language in Section 302.002 of the Texas Finance Code.

Clint Edgar, Deputy Securities Commissioner; and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division, have determined that for the first five-year period the proposed amendments are in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for each year of the first five years the proposed amendments are in effect the public benefits expected as a result of adoption of the proposed amendments will be (1) improved clarity by changing punctuation and adding an additional definition; and

(2) statutory compliance by ensuring the rules are current and accurate and that they conform to the codified version of the Act which would promote transparency and efficient regulation. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed amendments will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required.

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

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for the first five-year period the proposed amendments are in effect: they do not create or eliminate a government program; they do not require the creation or elimination of existing employee positions; they do not require an increase or decrease in future legislative appropriations to this agency; they do not require an increase or decrease in fees paid to this agency; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or negatively affect the state's economy. Additionally, the proposed amendments do not create a new regulation, or expand, limit, or repeal an existing regulation.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed sections in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The amendments are proposed under the authority of the Texas Government Code, §§4002.151 and 4005.024. Section 4002.151 provides the Board with the authority to adopt rules as necessary to implement the provisions of the Texas Securities Act, including rules governing registration statements, applications, notices, and reports; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 4005.024 provides that the Board may prescribe new exemptions by rule.

The proposed amendments affect the following sections of the Texas Securities Act: Texas Government Code, Chapter 4005, Subchapters A and B; and Chapter 4006.

§114.1. Introduction.

- (a) (No change.)
- (b) Availability of a corresponding state exemption. Except as otherwise provided herein, the filing and fee requirements detailed in this chapter do not apply to federal covered securities that are exempt from registration pursuant to the Exemptions Sections [Texas Securities Act, §5 or §6], or by Board rule pursuant to the Texas Securities Act, §4005.024 [§5.T]. Transactions in federal covered securities may be exempt under any other Board rule or section of the Texas Securities Act; however, nothing in this chapter shall act as an election. Should for any reason, the offer and sale of federal covered securities fail to comply with all of the conditions in this chapter, a person may claim the availability of any other applicable exemption. A person, claiming an exemption outside this chapter, must comply with all conditions associated with that exemption.

§114.2. Definitions.

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

(1) Exemptions Sections--Refers to Subchapters A and B of Chapter 4005 of the Texas Securities Act [Act or Securities Act or Texas Securities Act.-The Texas Securities Act, Texas Civil Statutes, Article 581-1, et seq., as amended].

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

[(4) SEC--The United States Securities and Exchange Commission.]

§114.4. Filings and Fees.

- (a) Generally. Unless otherwise provided in subsection (b) of this section, prior to the initial offer of the federal covered securities in this state, the issuer shall provide to the Securities Commissioner:
 - (1) (2) (No change.)
- (3) the fees [fee] provided for in the Texas Securities Act [(Aet)], §4006.001(1) and §4006.055 [§35.A(1) plus one-tenth of 1.0% of the aggregate amount of federal covered securities proposed to be sold to persons located within this state based on the price at which such securities are to be offered to the public, as provided in the Act, §35.B(2)].
 - (b) Special circumstances.
- (1) SEC Regulation D, Rule 506 offerings. In connection with an offering described in both §109.13(k) of this title (relating to Limited Offering Exemptions) and SEC Regulation D, Rule 506, at the time the Form D is filed with the SEC, but no later than 15 days after the first sale of the federal covered securities in this state, the issuer shall provide to the Securities Commissioner:
 - (A) (No change.)
- (B) the [a] fee [of one-tenth of 1.0% of the aggregate amount of federal covered securities described as being offered for sale, but in no ease more than \$500,] as provided in the Texas Securities Act, $$4006.052 \ [\$35.B(7)]$.
 - (C) (No change.)
 - (2) (3) (No change.)
- (4) Secondary trading. A registered dealer or issuer that chooses to comply with the Texas Securities Act, $\S4005.019(b)(9)(B)$ [$\S5.O(9)$], by filing a form, shall provide to the Securities Commissioner, prior to the sale of the securities in this state:
 - (A) (B) (No change.)
- (C) the [a] fee [of \$500,] as provided in the Act, $\S4006.051$ [$\S35.B(6)$]; and
 - (D) (No change.)
- (5) SEC Regulation A, Tier 2. Prior to the initial offer of the federal covered securities in this state, the issuer shall provide to the Securities Commissioner:
 - (A) (B) (No change.)
- (C) the fees [fee] provided for in the Act, $\S4006.001(1)$ and $\S4006.055$ [$\S35.A(1)$, plus one-tenth of 1.0% of the aggregate amount of federal covered securities proposed to be sold to persons located within this state based on the price at which such securities are to be offered to the public, as provided in the Act, $\S35.B(2)$].
 - (c) (No change.)
 - (d) Excess sales.
- (1) Except as provided in paragraph (2) of this subsection, an offeror who sells securities in this state in excess of the amount of federal covered securities authorized may do the following:[-]
 - (A) If the authorization is still in effect an offeror may:
- (i) request authorization for the excess securities by paying three times the difference between the initial fee paid and one-tenth of 1.0% of the aggregate amount of the securities sold to per-

- sons in this state, as provided in the Texas Securities Act, $\S4006.055$ $\S\$35.B(2)$ and $\S4006.151$ [35-1.A]; and
- (ii) pay the amendment fee provided for in the Texas Securities Act, \$4006.001(1) [\$35.A(1)].
- $\begin{tabular}{ll} (B) & If the authorization is no longer in effect an offeror may: \end{tabular}$
- (i) request authorization of the excess securities in accordance with subparagraph (A)(i) of this paragraph, plus interest on the amount of fees owed computed at the rate of 6.0% <u>a year</u> from the date the authorization was no longer in effect until the date the subsequent request is made; and
- (ii) pay the amendment fee provided for in the Texas Securities Act, $\S4006.001(1)$ [$\S35.A(1)$].
 - (C) (No change.)
- (2) An offeror in an SEC Regulation D, Rule 506 offering, who paid less than the maximum fee prescribed in subsection (b)(1) of this section and offered a greater amount of federal covered securities than authorized may do the following:
 - (A) (No change.)
- (B) pay three times the difference between the initial fee paid and the fee which should have been paid, plus interest on the fee owed computed at the rate of 6.0% a year from the date the original Form D was received by the Securities Commissioner until the date the amended notice is received by the Securities Commissioner, as provided in the Texas Securities Act, §4006.152 [§35-1.B].
 - (C) (No change.)
 - (3) (No change.)
 - (e) (No change.)
 - (f) Period of effectiveness.
 - (1) (3) (No change.)
- (4) The renewal of an authorization for federal covered securities under this chapter may be renewed for additional periods of one year if the notice filing and renewal fees are received prior to the expiration date of the existing authorization. Failure to tender the renewal fee prior to the expiration date may subject the issuer to higher fees, pursuant to the Texas Securities Act, §§4006.151, 4006.152, or 4006.153 [§§35-1 or 35-2].
 - (5) (No change.)
 - (g) (i) (No change.)

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

Filed with the Office of the Secretary of State on December 1, 2023.

TRD-202304453

Travis J. Iles

Securities Commissioner

State Securities Board

Earliest possible date of adoption: January 14, 2024 For further information, please call: (512) 305-8303

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CHAPTER 115. SECURITIES DEALERS AND AGENTS

7 TAC §115.18

The Texas State Securities Board proposes an amendment to §115.18, concerning Special Provisions Relating to Military Applicants. The amendment is proposed, in part, to implement the requirements of Senate Bill 422, passed in the 2023 Texas Legislative Session, which amended §55.0041 of the Texas Occupations Code, effective September 1, 2023.

Related forms are being concurrently proposed as are comparable amendments to the corresponding rule for investment advisers and investment adviser representatives.

To reflect the statutory changes, the proposed amendment would expand out-of-state occupational license recognition to include military service members, as long as certain criteria are met. The time period for which verification of good standing occurs would also be modified from "as soon as practicable" to no later than 30 days. The proposed amendment would also address the term of the recognition in situations of divorce or other events impacting the military spouse's status. Finally, a statement of purpose would be added to the rule to make it clear that this rule addresses the requirements provided under Chapter 55, Texas Occupations Code, and not federal law.

The proposed rulemaking also would make some nonsubstantive changes to conform terminology, and the references to sections of the Texas Securities Act in the rule would also be updated to refer to the correct sections in the codified version of the Act in the Texas Government Code, which became effective January 1, 2022.

Clint Edgar, Deputy Securities Commissioner; Tommy Green, Director, Inspections and Compliance Division; and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division, have determined that, for the first five-year period the proposed amendment is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed amendment. The fiscal note to Senate Bill 422 also reflected that no significant fiscal implication to the State is anticipated.

Mr. Edgar, Mr. Green, Ms. Diaz, and Mr. Yarroll have also determined that, for each year of the first five years the proposed amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be consistency with the applicable statutory requirements, as well as improved readability, clarity, and statutory compliance by ensuring the rules are current and accurate and that they conform to the codified version of the Act which would promote transparency and efficient regulation.

Mr. Edgar, Mr. Green, Ms. Diaz, and Mr. Yarroll have also determined that there will be no adverse economic effect on microor small businesses or rural communities. Since the proposed amendment will have no adverse economic effect on microor small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Mr. Green, Ms. Diaz, and Mr. Yarroll have also determined that, except as noted below, for the first five-year period

the proposed amendment is in effect: it does not create or eliminate a government program; it does not require the creation or elimination of existing employee positions; it does not require an increase or decrease in future legislative appropriations to this agency; it does do not require an increase or decrease in fees paid to this agency; it does not increase or decrease the number of individuals subject to the rule's applicability; it does not positively or negatively affect the state's economy; and it does not create a new regulation, or limit, or repeal an existing regulation. The proposed substantive changes required by SB 422 will increase the number of individuals subject to the rule's applicability.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed section in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The amendment is proposed under the authority of the Texas Government Code, §4002.151. Section 4002.151 provides the Board with the authority to adopt rules as necessary to implement the provisions of the Texas Securities Act, including rules governing registration statements, applications, notices, and reports; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. The amendment is also proposed under §55.0041 of the Texas Occupations Code, as amended by SB 422, which requires state agencies that issue licenses to adopt rules for the recognition of out-of-state licenses for military applicants.

The proposal affects the following sections of the Texas Securities Act, Texas Government Code: §§4006.001 and 4007.105; and Chapter 4004, Subchapters B through F.

§115.18. Special Provisions Relating to Military Applicants.

- (a) (No change.)
- (b) Expedited review of an application submitted by a military applicant as authorized by Occupations Code, §§55.004, 55.005, and [-] 55.006.
 - (1) (No change.)
- (2) If the military applicant is not registered within five days of submitting an application, the military applicant may request special consideration of his or her application for registration by filing Form 133.4, Request for Consideration of a Registration Application by a Military Applicant, with the Securities Commissioner [("Commissioner")]. Within five business days of receipt of the completed Form 133.4, the military applicant will be notified in writing of the reason(s) for the pending or deficient status assigned to the application.
- (3) In addition to the waivers of examination requirements set out in §115.3 of this title (relating to Examination), the Commissioner in his or her discretion is authorized by the Board to grant full or partial waivers of the examination requirements of the Texas Securities Act, §4004.151 [Section 13.D], on a showing of alternative demonstrations of competency to meet the requirements for obtaining the registration sought.

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

- (c) (No change.)
- (d) Registration of persons with military experience as authorized by Occupations Code, §55.007.
 - (1) (No change.)
- (2) The procedure authorized by this subsection is not available to a military service member or military veteran who:
 - (A) (No change.)
- (B) has been convicted of a crime that could be the basis for denial of the registration pursuant to the Texas Securities Act, §4007.105 [§14.A].
- (e) Renewals by military service members, as authorized by Occupations Code, §55.002 and §55.003. If a military service member's registration is not renewed in a timely manner, the military service member may renew the registration pursuant to this subsection.
 - (1) (6) (No change.)
 - (f) (g) (No change.)
- (h) Recognition of out-of-state license or registration of <u>an individual who is either a military service member or</u> a military spouse as authorized by Occupations Code, §55.0041.
- (1) An individual who is a resident of Texas and who is either a military service member or a [A] military spouse may use the procedure set out in this subsection if the individual [he or she] holds a current registration in another jurisdiction;
- (2) The period covered by this subsection is only for the time during which the military service member [to whom the military spouse is married] is stationed at a military installation in Texas. Notwithstanding, if the individual is a military spouse, in the event of a divorce or other event that affects the individual's status as a military spouse, the recognition period covered by this subsection may continue, but for all individuals using the procedure set out in this subsection, this recognition [This] period may not exceed three years from the date the individual [military spouse]:
 - (A) (B) (No change.)
- (3) Option 1: registration in Texas with waiver or refund of the initial registration and renewal fees. If the individual [military spouse] is registered in Texas, for all or part of the period set out in paragraph (2) of this subsection, the individual [he or she] may request a waiver or refund of a fee previously paid.
 - (A) (No change.)
- (B) A renewal fee may be waived by submitting Form 133.22, Waiver or Refund Request by a Military Service Member or Military Spouse for a Renewal Fee, at the time the renewal is submitted. A refund of a renewal fee that was paid in error, is requested by submitting Form 133.22 within four years from the date the fee was collected or received.
- (4) Option 2: notification and authorization of activity without registration. Upon confirmation under subparagraph (C) or (D) of this paragraph, the individual [military spouse] will be considered to be notice filed in Texas. Such notice filing expires at the end of the calendar year.
- (A) An individual [A military spouse] may engage in activity without a license or registration under the authority of Occupations Code, §55.0041, and this paragraph, only for the period specified in paragraph (2) of this subsection.

- (B) An individual [A military spouse] who becomes ineligible under Occupations Code, §55.0041, or paragraph (1) or (2) of this subsection prior to the three year period identified in paragraph (2) of this subsection, must notify the Securities Commissioner of such ineligibility within 30 days and immediately cease activity until such time as the individual [he or she] is registered in the appropriate capacity to conduct activity in Texas.
- (C) Before engaging in an activity requiring registration in Texas, the individual [military spouse] must initially:
- (i) provide notice of the individual's [his or her] intent to engage in activity in Texas and specify the type of activity by filing with the Securities Commissioner:
- (1) Form 133.23, Request for Recognition of Out-Of-State License or Registration Pursuant to Occupations Code §55.0041 [by a Military Spouse];
- (II) proof of the individual's [his or her] residency in Texas (a permanent change of station (PCS) order may serve as proof of residency [for spouses of active military service members]); and
- (III) a copy of $\underline{\text{the individual's}}$ [his or her] military identification card.
 - (ii) receive confirmation that the Registration Divi-

sion:

(I) has verified the individual's license in another jurisdiction, which the Registration Division shall complete such verification no later than the 30th day after the date the individual provides the notice and submits the information required by subparagraph (C)(i) of this paragraph; and

(II) (No change.)

(D) To continue to conduct business in Texas without registration under Option 2, after the expiration of the initial confirmation under subparagraph (C)(ii) of this paragraph, the individual [military spouse] must renew annually on the same schedule as renewals of registration. This enables the Registration Division to determine that the individual [military spouse] remains eligible under Occupations Code, §55.0041, to continue to conduct securities activities in Texas without being registered.

(i) (No change.)

(ii) A renewal is not effective until the individual [military spouse] receives confirmation that the Registration Division:

(i) The purpose of this section is to establish procedures authorized by Texas Occupations Code, Chapter 55, and is not intended to modify or alter rights that may be provided under federal law.

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

Filed with the Office of the Secretary of State on December 1, 2023.

TRD-202304460

Travis J. Iles

Securities Commissioner

State Securities Board

Earliest possible date of adoption: January 14, 2024 For further information, please call: (512) 305-8303

CHAPTER 116. INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTA-TIVES

7 TAC §116.18

The Texas State Securities Board proposes an amendment to §116.18, concerning Special Provisions Relating to Military Applicants. The amendment is proposed, in part, to implement the requirements of Senate Bill 422, passed in the 2023 Texas Legislative Session, which amended §55.0041 of the Texas Occupations Code, effective September 1, 2023.

Related forms are being concurrently proposed as are comparable amendments to the corresponding rule for dealers and agents.

To reflect the statutory changes, the proposed amendment would expand out-of-state occupational license recognition to include military service members, as long as certain criteria are met. The time period for which verification of good standing occurs would also be modified from "as soon as practicable" to no later than 30 days. The proposed amendment would also address the term of the recognition in situations of divorce or other events impacting the military spouse's status. Finally, a statement of purpose would be added to the rule to make it clear that this rule addresses the requirements provided under Chapter 55, Texas Occupations Code, and not federal law.

The proposed rulemaking also would make some nonsubstantive changes to conform terminology, and the references to sections of the Texas Securities Act in the rule would also be updated to refer to the correct sections in the codified version of the Act in the Texas Government Code, which became effective January 1, 2022.

Clint Edgar, Deputy Securities Commissioner; Tommy Green, Director, Inspections and Compliance Division; and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division, have determined that, for the first five-year period the proposed amendment is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed amendment. The fiscal note to Senate Bill 422 also reflected that no significant fiscal implication to the State is anticipated.

Mr. Edgar, Mr. Green, Ms. Diaz, and Mr. Yarroll have also determined that, for each year of the first five years the proposed amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be consistency with the applicable statutory requirements, as well as improved readability, clarity, and statutory compliance by ensuring the rules are current and accurate and that they conform to the codified version of the Act which would promote transparency and efficient regulation.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that there will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed amendment will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Mr. Green, Ms. Diaz, and Mr. Yarroll have also determined that, except as noted below, for the first five-year period the proposed amendment is in effect: it does not create or eliminate a government program; it does not require the creation or elimination of existing employee positions; it does not require an increase or decrease in future legislative appropriations to this agency; it does do not require an increase or decrease in fees paid to this agency; it does not increase or decrease the number of individuals subject to the rule's applicability; it does not positively or negatively affect the state's economy; and it does not create a new regulation, or limit, or repeal an existing regulation. The proposed substantive changes required by SB 422 will increase the number of individuals subject to the rule's applicability.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed section in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The amendment is proposed under the authority of the Texas Government Code, §4002.151. Section 4002.151 provides the Board with the authority to adopt rules as necessary to implement the provisions of the Texas Securities Act, including rules governing registration statements, applications, notices, and reports; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. The amendment is also proposed under §55.0041 of the Texas Occupations Code, as amended by SB 422, which requires state agencies that issue licenses to adopt rules for the recognition of out-of-state licenses for military applicants.

The proposal affects the following sections of the Texas Securities Act, Texas Government Code: §§4006.001 and 4007.105; and Chapter 4004, Subchapters B through G.

§116.18. Special Provisions Relating to Military Applicants.

- (a) (No change.)
- (b) Expedited review of an application submitted by a military applicant as authorized by Occupations Code, §§55.004, 55.005, and [-] 55.006.
 - (1) (No change.)
- (2) If the military applicant is not registered within five days of submitting an application, the military applicant may request special consideration of his or her application for registration by filing Form 133.4, Request for Consideration of a Registration Application by a Military Applicant, with the Securities Commissioner [("Commissioner")]. Within five business days of receipt of the completed Form 133.4, the military applicant will be notified in writing of the reason(s) for the pending or deficient status assigned to the application.
- (3) In addition to the waivers of examination requirements set out in §116.3 of this title (relating to Examination), the Commissioner in his or her discretion is authorized by the Board to grant full or partial waivers of the examination requirements of the Texas Securities Act, §4004.151 [§13.D], on a showing of alternative demonstrations of competency to meet the requirements for obtaining the registration sought.

- (4) (5) (No change.)
- (c) (No change.)
- (d) Registration of persons with military experience as authorized by Occupations Code, §55.007.
 - (1) (No change.)
- (2) The procedure authorized by this subsection is not available to a military service member or military veteran who:
 - (A) (No change.)
- (B) has been convicted of a crime that could be the basis for denial of the registration pursuant to the Texas Securities Act, §4007.105 [§14.A].
- (e) Renewals by military service members, as authorized by Occupations Code, §55.002 and §55.003. If a military service member's registration is not renewed in a timely manner, the military service member may renew the registration pursuant to this subsection.
 - (1) (6) (No change.)
 - (f) (g) (No change.)
- (h) Recognition of out-of-state license or registration of <u>an individual</u> who is either a military service member or a military spouse as authorized by Occupations Code, §55.0041.
- (1) An individual who is a resident of Texas and who is either a military service member or a [A] military spouse may use the procedure set out in this subsection if the individual [he or she] holds a current registration in another jurisdiction;
- (2) The period covered by this subsection is only for the time during which the military service member [to whom the military spouse is married] is stationed at a military installation in Texas. Notwithstanding, if the individual is a military spouse, in the event of a divorce or other event that affects the individual's status as a military spouse, the recognition period covered by this subsection may continue, but for all individuals using the procedure set out in this subsection, this recognition [This] period may not exceed three years from the date the individual [military spouse]:
 - (A) (B) (No change.)
- (3) Option 1: registration in Texas, or a notice filing made pursuant to §116.1(b)(2) of this chapter, with waiver or refund of the initial filing fee and renewal fees. If the individual [military spouse] is registered or notice filed in Texas, for all or part of the period set out in paragraph (2) of this subsection, the-individual [he or she] may request a waiver or refund of a fee previously paid.
 - (A) (No change.)
- (B) A renewal fee may be waived by submitting Form 133.22, Waiver or Refund Request by a Military Service Member or Military Spouse for a Renewal Fee, at the time the renewal is submitted. A refund of a renewal fee that was paid in error, is requested by submitting Form 133.22 within four years from the date the fee was collected or received.
- (4) Option 2: notification and authorization of activity without registration, or notice filing pursuant to §116.1(b)(2) of this chapter. Upon confirmation under subparagraph (C) or (D) of this paragraph, the individual [military spouse] will be considered to be notice filed in Texas. Such notice filing expires at the end of the calendar year.
- (A) An individual [A military spouse] may engage in activity without a license or registration under the authority of Occupa-

- tions Code, §55.0041, and this paragraph, only for the period specified in paragraph (2) of this subsection.
- (B) An individual [A military spouse] who becomes ineligible under Occupations Code, §55.0041, or paragraph (1) or (2) of this subsection prior to the three year period identified in paragraph (2) of this subsection, must notify the Securities Commissioner of such ineligibility within 30 days and immediately cease activity until such time as the individual [he or she] is registered in Texas, or makes a notice filing pursuant to §116.1(b)(2) of this chapter, in the appropriate capacity to conduct activity in Texas.
- (C) Before engaging in an activity in Texas requiring registration [im Texas], or a notice filing pursuant to §116.1(b)(2) of this chapter, [im Texas,] the individual [military spouse] must initially:
- (i) provide notice of the individual's [his or her] intent to engage in activity in Texas and specify the type of activity by filing with the Securities Commissioner:
- (1) Form 133.23, Request for Recognition of Out-Of-State License or Registration Pursuant to Occupations Code §55.0041 [by a Military Spouse];
- (II) proof of the individual's [his or her] residency in Texas (a permanent change of station (PCS) order may serve as proof of residency [for spouses of active military service members]); and
- (III) a copy of the individual's [his or her] military identification card.
- (ii) receive confirmation that the Registration Division:
- (I) has verified the individual's license in another jurisdiction, which the Registration Division shall complete such verification no later than the 30th day after the date the individual provides the notice and submits the information required by subparagraph (C)(i) of this paragraph; and

(II) (No change.)

(D) To continue to conduct business in Texas without registration [in Texas], or a notice filing pursuant to $\S116.1(b)(2)$ of this chapter, under Option 2, after the expiration of the initial confirmation under subparagraph (C)(ii) of this paragraph, the individual [military spouse] must renew annually on the same schedule as renewals of registration. This enables the Registration Division to determine that the individual [military spouse] remains eligible under Occupations Code, $\S55.0041$, to continue to conduct securities activities in Texas without being registered.

(i) (No change.)

(ii) A renewal is not effective until the <u>individual</u> [military spouse] receives confirmation that the Registration Division:

(i) The purpose of this section is to establish procedures authorized by Texas Occupations Code, Chapter 55, and is not intended to modify or alter rights that may be provided under federal law.

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

Filed with the Office of the Secretary of State on December 1, 2023.

TRD-202304462

Travis J. Iles Securities Commissioner State Securities Board

Earliest possible date of adoption: January 14, 2024 For further information, please call: (512) 305-8303



CHAPTER 123. ADMINISTRATIVE GUIDELINES FOR REGISTRATION OF OPEN-END INVESTMENT COMPANIES

7 TAC §123.3

The Texas State Securities Board proposes an amendment to §123.3, concerning Conditional Exemption for Money Market Funds. The nonsubstantive amendment is being made pursuant to the Agency's periodic review of its rules.

The references to sections of the Texas Securities Act in the rule would be updated to refer to the correct sections in the codified version of the Act in the Texas Government Code, which became effective January 1, 2022. The rule would also be amended to replace a reference to a Securities and Exchange Commission Release found in subsection (b)(2) with a reference to a cite to the SEC rule in the Code of Federal Regulations, and to update terminology in subsections (b)(7) and (q).

Clint Edgar, Deputy Securities Commissioner; and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division, have determined that for the first five-year period the proposed amendment is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed amendment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for each year of the first five years the proposed amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be (1) improved readability and clarity by updating terminology and references; and (2) statutory compliance by ensuring the rules are current and accurate and that they conform to the codified version of the Act which would promote transparency and efficient regulation. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed amendment will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for the first five-year period the proposed amendment is in effect: it does not create or eliminate a government program; it does not require the creation or elimination of existing employee positions; it does not require an increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to this agency; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or negatively affect the state's economy. Additionally, the proposed amendment does not create a new regulation, or expand, limit, or repeal an existing regulation.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed sec-

tion in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The amendment is proposed under the authority of the Texas Government Code, §§4002.151 and 4005.024. Section 4002.151 provides the Board with the authority to adopt rules as necessary to implement the provisions of the Texas Securities Act, including rules governing registration statements, applications, notices, and reports; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 4005.024 provides that the Board may prescribe new exemptions by rule.

The proposed amendment affects the following sections of the Texas Securities Act: Texas Government Code, Chapter 4003, Subchapters A, B, and C; Chapter 4005, Subchapter A; and Chapter 4006.

§123.3. Conditional Exemption for Money Market Funds.

(a) Introduction.

(1) Certain open-end investment companies commonly known as money market funds have investment characteristics and sales patterns materially different from other types of mutual funds and other securities. These funds, defined in subsection (b) of this section, are designed to attract a large volume of comparatively short-term investments by purchasers. As early redemptions are contemplated by both purchaser and seller, and because these funds continuously offer to repurchase their own securities and issue new securities to new and repeat investors, an excessive amount of fees may be paid under the Texas Securities Act, §4006.055 [§35.B(2)], for the securities issued. Therefore, pursuant to the Act, §4005.024 [§5.T], the State Securities Board conditionally exempts from the fee provisions of the Texas Securities Act certain investment company securities defined herein provided all the requirements of this section are satisfied.

(2) (No change.)

(b) Definition. In this section, a "money market fund" or "fund" is an open-end investment company which must meet all of the following conditions.

(1) (No change.)

(2) The fund must hold itself out to be a money market fund or an equivalent to a money market fund and must be in compliance with the Investment Company Act of 1940, Rule 2a-7 (17 CFR §270.2a-7, as amended) [3 as revised in Securities and Exchange Commission Release Number IC-31166].

(3) - (6) (No change.)

(7) A currently authorized fund which has been granted money market status is not required to comply with this subsection until the fund files its Year-End [Year End] Report of Sales of Federal Covered Securities by a Money Market Fund on Form 133.27, but it is required to comply with the subsection as it was in effect at the time that the fund was designated a money market fund for purposes of this section

(c) Request for determination.

- (1) (No change.)
- (2) If the request is made after the issuance of the fund's original authorization, an amendment fee as prescribed by the Texas

Securities Act, §4006.001(1) [§35.A(1)] will be required. Additional sales information will be required since only the federal covered securities authorized and sold after the date the Securities Commissioner determines that the issuer is a money market fund will be subject to the reduced fees under subsection (d) of this section.

(d) Conditional exemption. Subject to the other provisions of this section, federal covered securities issued by money market funds are exempt from the fee imposed by the Texas Securities Act, §4006.055 [§35.B(2)], provided all of the following requirements are satisfied at the time of sale of the federal covered securities.

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

(3) For each filing of an original, renewal, or amended authorization under the conditional exemption provided by this section, the applicant has paid the filing fee required by the Act, §4006.001(1) [§35.A(1)], in addition to the reduced fee imposed by paragraph (5) of this subsection.

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

(e) Oversales. The reduced authorization fee schedule imposed by subsection (d)(5) of this section shall not apply to any federal covered securities authorized under the Act, $\S4006.151$ [$\S35-1$]. All fees paid for authorization of federal covered securities of money market funds pursuant to $\S4006.151$ [$\S35-1$] shall be computed as set forth in the Act, $\S\S4006.001(1)$ [$\S\$35.A(1)$], 4006.055 [35.B(2)], and 4006.151 [35-1].

(f) (No change.)

- (g) Year end reports. To qualify for the reduced fees accorded to a fund granted money market fund status pursuant to this section, the fund must file a year end report of sales on Form 133.27 of this title (relating to Year-End [Year End] Report of Sales of Federal Covered Securities by a Money Market Fund) in January of each year which reflects the amount of federal covered securities sold in the previous year, the balance of fees paid for authorization of any unsold balance in the previous year and the recalculated balance of authorized federal covered securities at the beginning of the current year. In calculating fees applied to sales during the previous year, fees will first be applied at the higher rates specified in the reduced fee schedule in subsection (d)(5) of this section, and then at more reduced rates as sales volume increases, and not vice versa. Funds should consult Form 133.27 in determining how to compute fees.
- (h) Effect of noncompliance. If at any time the business or plan of business of any fund has been altered so that it is no longer a money market fund within subsection (b) of this section, such an issuer shall not be entitled to any reduction of fees as provided in subsection (d)(5) of this section. Such fund shall not be entitled to any reduction in fees as provided in subsection (d)(5) of this section for any sales of its securities from the time at which it ceases to comply with subsection (b) of this section until the Securities Commissioner redetermines in a subsequent calendar year that the issuer is again a money market fund as defined in subsection (b) of this section, and instead fees shall be calculated for such issuer as provided in the Act, Chapter 4006, Subchapters A, B, and D [§35 and §35-1].
- (i) Appeals. If any person should take exception to an action of the Securities Commissioner in making, failing to make, or revoking a determination whether that person is a money market fund, the aggrieved person may appeal the decision of the Securities Commissioner as provided in the Act, §4007.107 [§24].
 - (j) (No change.)

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

Filed with the Office of the Secretary of State on December 1,

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Travis J. Iles

Securities Commissioner

State Securities Board

Earliest possible date of adoption: January 14, 2024 For further information, please call: (512) 305-8303

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CHAPTER 127. MISCELLANEOUS

7 TAC §§127.1, 127.3, 127.4

The Texas State Securities Board proposes amendments to §127.1, concerning Enforcement; §127.3, concerning Seal of the State; and §127.4, concerning Prosecutorial Assistance to County or District Attorneys. These nonsubstantive amendments are being made pursuant to the Agency's periodic review of its rules.

The references to sections of the Texas Securities Act in §§127.1, 127.3, and 127.4 would be updated to refer to the correct sections in the codified version of the Act in the Texas Government Code, which became effective January 1, 2022. Section 127.1 would also be amended to remove the statutory quotations to the Act in subsection (b) and revised to improve readability. Section 127.1 would also be amended to capitalize the term "Commissioner" in subsections (a) and (b) for consistency.

Travis J. Iles, Securities Commissioner; Clint Edgar, Deputy Securities Commissioner; Tommy Green, Director, Inspections and Compliance Division; Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division; and Joseph Rotunda, Director, Enforcement Division, and have determined that for the first five-year period the proposed amendments are in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Mr. Iles, Mr. Edgar, Mr. Green, Ms. Diaz, Mr. Yarroll, and Mr. Rotunda have also determined that for each year of the first five years the proposed amendments are in effect the public benefits expected as a result of adoption of the proposed amendments will be improved readability, clarity, and statutory compliance by ensuring the rules are current and accurate and that they conform to the codified version of the Act which would promote transparency and efficient regulation. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed amendments will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed. There is no anticipated impact on local employment.

Mr. Iles, Mr. Edgar, Mr. Green, Ms. Diaz, Mr. Yarroll, and Mr. Rotunda have also determined that for the first five-year period the proposed amendments are in effect: they do not create or

eliminate a government program; they do not require the creation or elimination of existing employee positions; they do not require an increase or decrease in future legislative appropriations to this agency; they do not require an increase or decrease in fees paid to this agency; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or negatively affect the state's economy. Additionally, the proposed amendments do not create a new regulation, or expand, limit, or repeal an existing regulation.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed sections in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The amendments are proposed under the authority of the Texas Government Code, §4002.151. Section 4002.151 provides the Board with the authority to adopt rules as necessary to implement the provisions of the Texas Securities Act, including rules governing registration statements, applications, notices, and reports; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. The amendment to §127.4 is also proposed under the authority of Texas Government Code §4007.001(g). Section 4007.001(g) requires the Board to establish by rule a process to enable the Commissioner to determine whether to provide any requested assistance to the appropriate prosecuting attorney following referral of a case, and, if so, the appropriate amount of such assistance.

The proposed amendment to §127.1 affects the Texas Government Code, §§4007.001 and 4007.053. The proposed amendment to §127.3 affects the Texas Government Code, §4001.154(c). The proposed amendment to §127.4 affects Texas Government Code, §4007.001.

§127.1. Enforcement.

- (a) Complaints signed by investigators. Investigators or other members of the staff, on instructions from the <u>Commissioner</u> [eommissioner], may sign complaints before appropriate district or county attorneys where there is sufficient evidence of a violation of the penal section of the Act and where no complaint of such violation has been made by any other person.
- (b) Disclosure of [section 28] testimony taken during an investigation. A deposition and [The language ". - .that] all information received in connection with an investigation under §4007.053 of the Securities Act and all internal notes, memoranda, reports, or communications made in connection with an investigation under that section are [of every kind and nature contained therein shall be] treated as confidential by §4007.056 of the Securities Act. The provisions in the Securities Act against disclosure of confidential investigatory information prohibit [the Commissioner and shall not be disclosed to the public except under order of court; but nothing in this section shall be interpreted to prohibit or limit the publication of rulings or decisions of the Commissioner nor shall this limitation apply to hearings provided for in sections 24 and 25 of this Act - - - ," in section 28 of the Securities Act prohibits] the Commissioner [commissioner] and staff from permitting a witness in an investigative proceeding under §4007.053 [section 28] to have a copy of his or her own statement [and from permitting the distribution or dissemination of testimony to anyone except under order of court], or permitting [tape] recorders or private court reporters to

be present at any hearing or investigation. The Commissioner may not disclose confidential investigatory information in the Commissioner's possession except as authorized by the Securities Act and Board rule. This section may not be interpreted to prohibit or limit the publication of rulings or decisions of the Commissioner.

§127.3. Seal of the State.

The term "state seal" as used in the Securities Act, §4001.154 [§30], includes the official seal of the State Securities Board.

- §127.4. Prosecutorial Assistance to County or District Attorneys.
- (a) Prior to referring a case to a county or district attorney for prosecution pursuant to the Texas Securities Act, §4007.001 [Section 3.A], the Commissioner shall make a determination of:
 - (1) (2) (No change.)
- (b) In making the determination in subsection (a) of this section, the Commissioner must consider:
- (1) whether resources are available after taking into account any ongoing Board investigations, investigations under §4007.053 [§28] of this Act, and criminal prosecutions for which assistance is being provided;

(c) (No change.)

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

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Travis J. Iles

Securities Commissioner

State Securities Board

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CHAPTER 131. GUIDELINES FOR CONFIDENTIALITY OF INFORMATION

7 TAC §131.1

The Texas State Securities Board proposes an amendment to §131.1, concerning Information Sharing, to update the statutory reference to the Texas Securities Act in the rule to refer to the codified version of the Texas Securities Act, which became effective January 1, 2022. The nonsubstantive amendment is being made pursuant to the Agency's periodic review of its rules.

Travis J. Iles, Securities Commissioner; Clint Edgar, Deputy Securities Commissioner; Tommy Green, Director, Inspections and Compliance Division; Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division; and Joseph Rotunda, Director, Enforcement Division, have determined that for the first five-year period the proposed amendment is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed amendment.

Mr. Iles, Mr. Edgar, Mr. Green, Ms. Diaz, Mr. Yarroll, and Mr. Rotunda have also determined that for each year of the first five years the proposed amendment is in effect the public benefit expected as a result of adoption of the proposed amendment will

be improved statutory compliance by ensuring the rule is current and accurate and that it conforms to the codified version of the Act, which would promote transparency and efficient regulation. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed amendment will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed. There is no anticipated impact on local employment.

Mr. Iles, Mr. Edgar, Mr. Green, Ms. Diaz, Mr. Yarroll, and Mr. Rotunda have also determined that for the first five-year period the proposed amendment is in effect: it does not create or eliminate a government program; it does not require the creation or elimination of existing employee positions; it does not require an increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to this agency; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or negatively affect the state's economy. Additionally, the proposed amendment does not create a new regulation, or expand, limit, or repeal an existing regulation.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed section in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The amendment is proposed under the authority of the Texas Government Code, §§4002.151 and 4002.161. Section 4002.151 provides the Board with the authority to adopt rules as necessary to implement the provisions of the Texas Securities Act, including rules governing registration statements, applications, notices, and reports; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 4002.161 provides that the Board approve governmental and regulatory authorities and associations of governmental and regulatory authorities to which the Commissioner may disclose confidential information at the Commissioner's discretion.

The proposed amendment affects the Texas Government Code, §§4002.161 and 4007.056.

§131.1. Information Sharing.

(a) The Board recognizes the need for cooperative law enforcement among agencies responsible for the prevention, detection, and prosecution of white collar crime, for the regulation and policing of persons who offer and sell securities, and for the regulation of offerings of securities. Pursuant to the authority given the Board under the Texas Securities Act, §4002.161 and §4007.056 [§28], the Board authorizes the Securities Commissioner in his or her discretion to supply any confidential information in the Commissioner's possession to:

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

(b) (No change.)

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

Filed with the Office of the Secretary of State on December 1, 2023.

TRD-202304456

Travis J. Iles

Securities Commissioner

State Securities Board

Earliest possible date of adoption: January 14, 2024 For further information, please call: (512) 305-8303



CHAPTER 133. FORMS

7 TAC §133.22, §133.23

The Texas State Securities Board proposes the repeal of two rules, concerning forms adopted by reference. Specifically, the State Securities Board proposes the repeal of §133.22, a form concerning Waiver or Refund Request by a Military Spouse for a Renewal Fee; and §133.23, a form concerning Request for Recognition of Out-Of-State License or Registration by a Military Spouse.

The two sections proposed for repeal adopt by reference forms that implement portions of §115.18 and §116.18. New forms §133.22 and §133.23 are being concurrently proposed to implement amendments to §115.18 and §116.18, which are also being concurrently proposed and implement the requirements of Senate Bill 422, passed in the 2023 Texas Legislative Session. Senate Bill 422 amended the Texas Occupations Code §55.0041 to expand this section to apply to eligible military service members, in addition to eligible military spouses.

Existing form §133.22, which would be repealed, allows an eligible military spouse falling within the provisions of Texas Occupations Code §55.0041 to apply for a waiver or refund of a renewal fee pursuant to §115.18 or §116.18. Senate Bill 422 amended Texas Occupations Code §55.0041 to expand this section to apply to eligible military service members. Therefore, new Form §133.22 concurrently proposed would allow either a military service member or military spouse falling within the provisions of Texas Occupations Code §55.0041 to apply for a waiver or refund of a renewal fee pursuant to proposed amendments to §115.18 or §116.18, which are being concurrently proposed for amendment.

Existing Form 133.23, which would be repealed, may be filed by a military spouse eligible for non-registration under Texas Occupations Code §55.0041, to provide the Agency with information needed to determine eligibility for such treatment. New Form 133.23 would perform the same function as the existing form to be repealed but would be filed by either a military service member or military spouse eligible for non-registration under Texas Occupations Code §55.0041.

Clint Edgar, Deputy Securities Commissioner; Tommy Green, Director, Inspections and Compliance Division; and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division, have determined that for the first five-year period the proposed repeals are in effect, there will be no foreseeable fiscal implications for state or local government as a result of administering the proposed repeals.

Mr. Edgar, Mr. Green, Ms. Diaz, and Mr. Yarroll have also determined that for each year of the first five years the proposed repeals are in effect the public benefit expected as a result of adoption of the proposed repeals will be that current forms can

be replaced with new forms that comply with new statutory requirements. There will be no adverse economic effect on microor small businesses or rural communities. Since the proposed repeals will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Mr. Green, Ms. Diaz, and Mr. Yarroll have also determined that for the first five-year period the proposed repeals of the rules adopting by reference the forms are in effect: they do not create or eliminate a government program; they do not require the creation or elimination of existing employee positions; they do not require an increase or decrease in future legislative appropriations to this agency; they do not require an increase or decrease in fees paid to this agency; they do not increase or decrease the number of individuals subject to the rules' applicability; they do not positively or negatively affect the state's economy; and they do not create a new regulation, or expand or limit an existing regulation. The rulemaking involves repealing two existing forms to replace them with two new forms that are being concurrently proposed, as part of the implementation of Senate Bill 422.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed repeals in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The repeals are proposed under the authority of the Texas Government Code, §4002.151. Section 4002.151 provides the Board with the authority to adopt rules as necessary to implement the provisions of the Texas Securities Act, including rules governing registration statements, applications, notices, and reports; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. The repeals are also proposed under §55.0041 of the Texas Occupations Code, as amended by SB 422, which requires state agencies that issue licenses to adopt rules for the recognition of out-of-state licenses for military applicants.

The proposal affects the following sections of the Texas Securities Act, Texas Government Code: §§4006.001 and 4007.105; and Chapter 4004, Subchapters B through G.

§133.22. Waiver or Refund Request by a Military Spouse for a Renewal Fee.

§133.23. Request for Recognition of Out-Of-State License or Registration by a Military Spouse.

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

Filed with the Office of the Secretary of State on December 1, 2023.

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Travis J. Iles Securities Commissioner State Securities Board

Earliest possible date of adoption: January 14, 2024 For further information, please call: (512) 305-8303



7 TAC §133.22, §133.23

The Texas State Securities Board proposes new §133.22, a form concerning Waiver or Refund Request by a Military Service Member or Military Spouse for a Renewal Fee; and new §133.23, a form concerning Request for Recognition of Out-Of-State License or Registration Pursuant to Texas Occupations Code §55.0041. The new sections would adopt by reference forms that are created to implement amendments to §115.18 and §116.18, which are being concurrently proposed and implement the requirements of Senate Bill 422, passed in the 2023 Texas Legislative Session, which amended §55.0041 to the Texas Occupations Code.

Existing forms §133.22 and §133.23 are being concurrently proposed for repeal.

Existing form §133.22 allows an eligible military spouse falling within the provisions of Texas Occupations Code §55.0041 to apply for a waiver or refund of a renewal fee pursuant to §115.18 or §116.18. Senate Bill 422 amended Texas Occupations Code §55.0041 to expand this section to apply to eligible military service members. Therefore, new Form §133.22 would allow either a military service member or military spouse falling within the provisions of Texas Occupations Code §55.0041 to apply for a waiver or refund of a renewal fee pursuant to §115.18 or §116.18, which are being concurrently proposed for amendment.

Existing Form 133.23 may be filed by a military spouse eligible for non-registration under Texas Occupations Code §55.0041, to provide the Agency with information needed to determine eligibility for such treatment. New Form 133.23 would perform the same function as the existing form but would be filed by either a military service member or military spouse eligible for non-registration under Texas Occupations Code §55.0041. The form would need to be resubmitted annually during the period that the individual qualifies for unique treatment under Texas Occupations Code §55.0041. Upon issuance of the confirmation by the Registration Division for the initial or a renewal filing, the individual would be considered to be notice filed for purposes of recordkeeping and certification.

Clint Edgar, Deputy Securities Commissioner; Tommy Green, Director, Inspections and Compliance Division; and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division, have determined that for the first five-year period the proposed forms are used there will be no foreseeable fiscal implications for state or local government as a result of using the proposed forms.

Mr. Edgar, Mr. Green, Ms. Diaz, and Mr. Yarroll have also determined that for each year of the first five years the proposed forms are used the public benefit expected as a result of adoption of the proposed forms will be that an eligible military service member can complete the forms to either obtain a waiver or refund of renewal fees or to practice securities business in Texas without being registered. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed forms will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an

economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to use the forms as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Mr. Green, Ms. Diaz, and Mr. Yarroll have also determined that for the first five-year period the proposed rules adopting by reference the forms are in effect: they do not create or eliminate a government program; they do not require the creation or elimination of existing employee positions; they do not require an increase or decrease in future legislative appropriations to this agency; they do not require an increase or decrease in fees paid to this agency; they do not increase or decrease the number of individuals subject to the rules' applicability; they do not positively or negatively affect the state's economy; and they do not create a new regulation, or expand, limit or repeal an existing regulation. Although the rulemaking involves the creation of new forms, the forms are created as part of the implementation of Senate Bill 422.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed sections in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The new rules are proposed under the authority of the Texas Government Code, §4002.151. Section 4002.151 provides the Board with the authority to adopt rules as necessary to implement the provisions of the Texas Securities Act, including rules governing registration statements, applications, notices, and reports; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. The new rules are also proposed under §55.0041 of the Texas Occupations Code, as amended by SB 422, which requires state agencies that issue licenses to adopt rules for the recognition of out-of-state licenses for military applicants.

The proposal affects the following sections of the Texas Securities Act, Texas Government Code: §§4006.001 and 4007.105; and Chapter 4004, Subchapters B through G.

§133.22. Waiver or Refund Request by a Military Service Member or Military Spouse for a Renewal Fee.

This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 and at www.ssb.texas.gov.

§133.23. Request for Recognition of Out-Of-State License or Registration Pursuant to Occupations Code §55.0041.

This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 and at www.ssb.texas.gov.

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

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Travis J. Iles
Securities Commissioner
State Securities Board
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For further information, please call: (512) 305-8303



CHAPTER 135. INDUSTRIAL DEVELOP-MENT CORPORATIONS AND AUTHORITIES

7 TAC §135.1

The Texas State Securities Board proposes an amendment to §135.1, concerning Exemption, to update the statutory reference to the Texas Securities Act in the rule to refer to the codified version of the Texas Securities Act, which became effective January 1, 2022. The nonsubstantive amendment is being made pursuant to the Agency's periodic review of its rules.

Clint Edgar, Deputy Securities Commissioner; and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division, have determined that for the first five-year period the proposed amendment is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed amendment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for each year of the first five years the proposed amendment is in effect the public benefit expected as a result of adoption of the proposed amendment will be statutory compliance by ensuring the rule is current and accurate and that it conforms to the codified version of the Act which would promote transparency and efficient regulation. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed amendment will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for the first five-year period the proposed amendment is in effect: it does not create or eliminate a government program; it does not require the creation or elimination of existing employee positions; it does not require an increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to this agency; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or negatively affect the state's economy. Additionally, the proposed amendment does not create a new regulation, or expand, limit, or repeal an existing regulation.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed section in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The amendment is proposed under the authority of the Texas Government Code, §§4002.151 and 4005.024. Section

4002.151 provides the Board with the authority to adopt rules as necessary to implement the provisions of the Texas Securities Act, including rules governing registration statements, applications, notices, and reports; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 4005.024 provides that the Board may prescribe new exemptions by rule.

The proposed amendment affects the following sections of the Texas Securities Act: Texas Government Code, Chapter 4003, Subchapters A, B, and C; Chapter 4005, Subchapter A; and Texas Local Government Code, Title 12, Subtitle C1, particularly Local Government Code §501.203.

§135.1. Exemption.

The State Securities Board, pursuant to the Texas Securities Act, §4005.024 [§5.T], exempts from the securities registration requirements of the Act, securities issued pursuant to the Development Corporation Act, Texas Local Government Code, Title 12, Subtitle C1.

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

Filed with the Office of the Secretary of State on December 1, 2023.

TRD-202304457

Travis J. Iles Securities Commissioner State Securities Board

Earliest possible date of adoption: January 14, 2024 For further information, please call: (512) 305-8303



CHAPTER 137. ADMINISTRATIVE GUIDELINES FOR REGULATION OF OFFERS

7 TAC §§137.1 - 137.3, 137.6

The Texas State Securities Board proposes amendments to §137.1, concerning Application; §137.2, concerning Filing Requirements; 137.3, concerning Preliminary Prospectus; and §137.6, concerning Standards for Supplemental Advertising. These nonsubstantive amendments are being made pursuant to the Agency's periodic review of its rules.

The references to sections of the Texas Securities Act in §§137.1, 137.2, and 137.3 would be updated to refer to the correct sections in the codified version of the Act in the Texas Government Code, which became effective January 1, 2022. The rest of the amendments would make other nonsubstantive and cleanup changes.

Section 137.1 would also be amended to subdivide the text into subsections by subject.

Sections 137.2 and 137.6 would also be amended to capitalize the term "Commissioner" for consistency.

Subsection 137.2(c) would also be amended to correct a reference to a Securities and Exchange Commission rule.

The reference to the term "Securities and Exchange Commission" in Section 137.3 would be replaced with "SEC," which is already defined in §107.2 of this title. The section would also be amended to abbreviate a cite to the Code of Federal Regula-

tions. Rule 107.2 of this title, concerning Definitions, is concurrently proposed for amendment to add "CFR" as a defined term.

Subsection 137.6(e) would also be amended to update outdated terminology.

Clint Edgar, Deputy Securities Commissioner; and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division, have determined that for the first five-year period the proposed amendments are in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for each year of the first five years the proposed amendments are in effect the public benefits expected as a result of adoption of the proposed amendments will be improved readability, clarity, and statutory compliance by ensuring the rules are current and accurate and that they conform to the codified version of the Act, which would promote transparency and efficient regulation. There will be no adverse economic effect on microor small businesses or rural communities. Since the proposed amendments will have no adverse economic effect on microor small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for the first five-year period the proposed amendments are in effect: they do not create or eliminate a government program; they do not require the creation or elimination of existing employee positions; they do not require an increase or decrease in future legislative appropriations to this agency; they do not require an increase or decrease in fees paid to this agency; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or negatively affect the state's economy. Additionally, the proposed amendments do not create a new regulation, or expand, limit, or repeal an existing regulation.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed sections in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The amendments are proposed under the authority of the Texas Government Code, §4002.151. Section 4002.151 provides the Board with the authority to adopt rules as necessary to implement the provisions of the Texas Securities Act, including rules governing registration statements, applications, notices, and reports; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The proposed amendments affect Chapter 4003, Subchapter E, of the Texas Government Code.

§137.1. Application.

(a) This chapter relates to offers to sell securities which must be filed with the Commissioner under the Texas Securities Act, <u>Chapter</u> 4003, Subchapter E [§22].

- (b) This chapter does not apply to advertising for sales made in reliance upon exemptions contained in the Act, Chapter 4005, Subchapters A or B [§5 or §6], including exemptions by rule adopted by the State Securities Board pursuant to the Texas Securities Act, §4005.024 [§5.T].
- (c) This chapter does not require the filing of any offering documents, prepared by or on behalf of the issuer, in connection with the offer of federal covered securities, as that term is defined in §107.2 of this title (relating to Definitions).
- (d) The <u>Texas Securities</u> Act [, §§29, 32, and 33], prohibits fraud or fraudulent practices in connection with the purchase or sale of any security, whether exempt or not. The Agency has jurisdiction to investigate and bring enforcement actions with respect to fraud or deceit, or unlawful conduct by a dealer or agent, in connection with any securities subject to the Texas Securities Act, including federal covered securities or transactions involving federal covered securities.

§137.2. Filing Requirements.

- (a) Written or printed offers required to be filed with the <u>Commissioner</u> [eommissioner] pursuant to the Securities Act, §4003.203(1) [§22.A(1)], must be received by the <u>Commissioner</u> [eommissioner] within 10 days after the date of their first use in Texas, including distribution of the offers to dealers; provided this shall not apply to offers by preliminary or final prospectus or to tombstone ads. Material filed under this section may be used unless expressly prohibited by the Commissioner [eommissioner].
- (b) Draft copies of material, galley proofs, and scripts of film or slide presentations may be submitted to the <u>Commissioner</u> [eommissioner] to satisfy the filing requirement of §4003.203(1) [§22.A(1)], but true, final copies of any such material or filmed presentation must be provided to the <u>Commissioner</u> [eommissioner], and adequate equipment or facilities made available to actually view the material or presentation, within 10 days after the date of their first use in Texas.
- (c) "Generic" advertisements, which under SEC Rule 135a (17 CFR $\S 230.135a$, as amended) [Rule 135A of the SEC] are not deemed to offer any security for sale, need not be filed pursuant to this section.
- (d) If with respect to any issues of securities which are part of a series of offerings of similar nature, an advertisement is proposed to be used in substantially the same form for more than one issue of securities in the series, the offeror or sponsor may file within 10 days after the date of its first use in Texas a final copy of each such advertisement with the Commissioner [commissioner].

§137.3. Preliminary Prospectus.

The language adopted by the <u>SEC</u> [Securities and Exchange Commission] in paragraph (b)(10) of Item 501 of Regulation S-K (17 CFR §229.501, as amended) [(17 Code of Federal Regulations §229.501)] meets the requirements of the Texas Securities Act, §4003.203(4)(B) [§22.A(4)(b)], and is approved for use on preliminary prospectuses in Texas.

§137.6. Standards for Supplemental Advertising.

(a) Advertising or sales material, other than tombstone ads, must be consistent with and conform to disclosures contained in the prospectus. Advertising and sales materials which depict predominately the positive elements of an offering and exclude such negative elements as are required to be disclosed in the offering prospectus may be found by the Commissioner [commissioner] to be false, misleading, and likely to deceive a reader thereof. Sales materials which refer to specific issuers of securities by name must be accompanied by or preceded by a prospectus. Sales materials that include comparisons

to other investment vehicles or indexes which are unwarranted or not fully explained may be considered misleading.

- (b) (d) (No change.)
- (e) Any bonus, prize, gift, or similar consideration which is offered to investors as an inducement to buy securities or offered to dealers or agents [salesmen] as an inducement to sell a specific offering or issue of securities (but not as an inducement in connection with general public relations or goodwill-building activities unrelated to the sale of a specific issue) must be fully disclosed to investors and to the Commissioner [eommissioner].

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

Filed with the Office of the Secretary of State on December 1, 2023.

TRD-202304458

Travis J. Iles

Securities Commissioner

State Securities Board

Earliest possible date of adoption: January 14, 2024 For further information, please call: (512) 305-8303

*** * ***

TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER I. TRANSMISSION AND DISTRIBUTION

DIVISION 1. OPEN-ACCESS COMPARABLE TRANSMISSION SERVICE FOR ELECTRIC UTILITIES IN THE ELECTRIC RELIABILITY COUNCIL OF TEXAS

16 TAC §25.195

The Public Utility Commission of Texas (commission) proposes amendments to 16 Texas Administrative Code (TAC) §25.195, relating to Terms and Conditions for Transmission Service.

This proposed rule will implement Public Utility Regulatory Act (PURA) §35.004(d) as revised and (d-1) through (d-3) as enacted by House Bill 1500, Section 9 during the Texas 88th Regular Legislative Session. The amended rule will establish an allowance for interconnection costs incurred by a transmission service provider (TSP) to interconnect generation resources at transmission voltage to the transmission system within the ERCOT power region.

Growth Impact Statement

The agency provides the following governmental growth impact statement for the proposed rule, as required by Texas Government Code §2001.0221. The agency has determined that for

each year of the first five years that the proposed rule is in effect, the following statements will apply:

- (1) the proposed rule will not create a government program and will not eliminate a government program;
- (2) implementation of the proposed rule will not require the creation of new employee positions and will not require the elimination of existing employee positions;
- (3) implementation of the proposed rule will not require an increase and will not require a decrease in future legislative appropriations to the agency;
- (4) the proposed rule will not require an increase and will not require a decrease in fees paid to the agency;
- (5) the proposed rule will not create a new regulation;
- (6) the proposed rule will not expand, limit, or repeal an existing regulation;
- (7) the proposed rule will not change the number of individuals subject to the rule's applicability; and
- (8) the proposed rule will not affect this state's economy.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed rule. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

Takings Impact Analysis

The commission has determined that the proposed rule will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

Fiscal Impact on State and Local Government

Mariah Benson, Economist, Market Analysis has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

Public Benefits

Ms. Benson has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be incentivizing new generation to more economically site interconnections within the ERCOT region. There will be no probable economic cost to persons required to comply with the rule under Texas Government Code §2001.024(a)(5).

Local Employment Impact Statement

For each year of the first five years the proposed section is in effect, there should be no effect on a local economy; therefore, no local employment impact statement is required under Texas Government Code §2001.022.

Costs to Regulated Persons

Texas Government Code §2001.0045(b) does not apply to this rulemaking because the commission is expressly excluded under subsection §2001.0045(c)(7).

Public Hearing

The commission staff will conduct a public hearing on this rule-making if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by December 21, 2023. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by January 4, 2024. Reply comments must be filed by January 18, 2024. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to modify the proposed rule on adoption. All comments should refer to Project Number 55566.

Each set of comments should include a standalone executive summary as the last page of the filing. This executive summary must be clearly labeled with the submitting entity's name and should include a bulleted list covering each substantive recommendation made in the comments. Initial comments should be limited to ten pages, excluding the executive summary, and any attached redlines. Reply comments should be limited to five pages, excluding the executive summary and any attached redlines.

Statutory Authority

The amendment is proposed under Public Utility Regulatory Act (PURA) §14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; §14.002, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; and §35.004, which relates to the provision of wholesale transmission service and the establishment of a transmission-level generation interconnection allowance within the ERCOT region.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001; 14.002; 35.004.

- §25.195. Terms and Conditions for Transmission Service.
- (a) Applicability. This section applies to transmission service providers (TSPs) in the Electric Reliability Council of Texas (ER-COT) region providing transmission service to transmission service customers. [Transmission service requirements. As a condition to obtaining transmission service, a transmission service customer that owns electrical facilities in the ERCOT region shall execute interconnection agreements with the transmission service providers (TSP) to which it is physically connected. The commission-approved standard generation interconnection agreement (SGIA) for the interconnection of new generating facilities shall be used by power generation companies, exempt wholesale generators, and TSPs. A standard agreement may be modified by mutual agreement of the parties to address specific facts presented by a particular interconnection request as long as the modifications do not frustrate the goal of expeditious, nondiscriminatory interconnection and are not otherwise inconsistent with the principles underlying the SGIA.]
- (b) Definitions. The following terms have the following meanings unless context indicates otherwise.
- (1) Generation resource--a transmission service customer that sells generation at wholesale, is interconnected to a TSP's system at

a voltage above 60 kilovolts (kV), and is required to execute a standard generation interconnection agreement (SGIA) under this section.

- (2) Transmission system upgrade--any additional transmission facilities or modifications beyond what is required to interconnect a transmission service customer to the transmission system, and which provide benefits to other customers that are independent of the benefit provided by interconnecting the transmission service customer alone.
- (c) Interconnection agreement. As a condition of obtaining transmission service, a transmission service customer that owns electrical facilities in the ERCOT region must execute an interconnection agreement with the TSP to which it is physically interconnected. The commission-approved SGIA must be used for the interconnection of a new transmission service customer. The SGIA may be modified by mutual agreement of the parties to address specific facts presented by a particular interconnection request provided that the modifications do not frustrate the goal of expeditious, nondiscriminatory interconnection and are not otherwise inconsistent with the principles underlying the commission-approved SGIA.
- (d) [(b)] Transmission service provider responsibilities. The TSP must [will] plan, construct, operate, and maintain its transmission system in accordance with good utility practice [in order] to provide transmission service customers with transmission service over its transmission system in accordance with Division 1 of this subchapter (relating to Open-Access Comparable Transmission Service for Electric Utilities in the Electric Reliability Council of Texas). The TSP must [shall], consistent with good utility practice, endeavor to construct and place into service sufficient transmission capacity to ensure adequacy and reliability of the network to deliver power to transmission service customer loads. The TSP must [will] plan, construct, operate, and maintain facilities that are needed to relieve transmission constraints, as recommended by ERCOT and approved by the commission, in accordance with Division 1 of this subchapter. The construction of facilities requiring commission issuance of a certificate of convenience and necessity is subject to such commission approval.
- (e) [(e)] Construction of new facilities. If new [additional] transmission facilities or interconnections between TSPs are needed to provide transmission service in response to [pursuant] a request for such service, the TSPs must [where the constraint exists shall] construct or acquire transmission [the] facilities necessary to provide [permit] the transmission service [to be provided] in accordance with good utility practice, unless ERCOT identifies an alternative means of providing the transmission service that is less costly, is operationally sound, and is [relieves the transmission constraint at least] as effective [effectively] as the new [would additional] transmission facilities would be at providing the requested transmission service.
- [(1) When an eligible transmission service customer requests transmission service for a new generating source that is planned to be interconnected with a TSP's transmission network, the transmission service customer shall be responsible for the cost of installing step-up transformers to transform the output of the generator to a transmission voltage level and protective devices at the point of interconnection capable of electrically isolating the generating source owned by the transmission service customer. The TSP shall be responsible, pursuant to paragraph (2) of this subsection, for the cost of installing any other interconnection facilities that are designed to operate at a transmission voltage level and any other upgrades on its transmission system that may be necessary to accommodate the requested transmission service.]
- (1) [(A)] An affected TSP may require the transmission service customer to pay a reasonable deposit or provide another means of security, to cover the costs of planning, licensing, and constructing any

- new transmission facilities that will be required in order to provide the requested service.
- (A) [(B)] If the new transmission service customer's interconnection [generating source] is completed [and the transmission service customer begins to take the requested transmission service], the TSP must [shall] return the deposit or security to the transmission service customer.
- (B) If the new transmission service customer's interconnection [generating source] is not completed and the new transmission facilities are not required, the TSP may retain as much of the deposit or security as is required to cover the costs the TSP [it] incurred in planning, licensing, and construction activities related to the planned new transmission facilities. Any repayment of a cash deposit must [shall] include interest at a commercially reasonable rate based on that portion of the deposit being returned.
- (2) If the TSP's acquisition or construction of the new transmission facilities would impair the tax-exempt status of obligations issued by the TSP then the TSP may require a contribution in aid to construction from the transmission service customer to cover all or part of the cost of acquiring and constructing the new transmission facilities. [A transmission service eustomer that is requesting transmission service, including transmission service at distribution voltage, may be required to make a contribution in aid of construction to cover all or part of the cost of acquiring or constructing additional facilities, if the acquisition of the additional facilities would impair the tax-exempt status of obligations issued by the provider of transmission services.]
- (3) For a transmission service customer that is not a generation resource, the TSP is responsible for the cost of installing any new transmission facilities, other than those described in paragraph (2) of this subsection.
- (4) For a generation resource, the costs of installing new transmission facilities must be borne in accordance with subsection (f) of this section.
- $\underline{\text{(f)} \quad \text{Cost responsibilities to interconnect generation resources}} \ \underline{\text{at transmission voltage}}.$
- (1) A new generation resource seeking interconnection to a TSP's transmission network is responsible for the cost of installing step-up transformers and protective devices at the point of interconnection capable of electrically isolating the generation resource.
- (2) If the SGIA between the generation resource and the TSP is executed on or before December 31, 2025, then the TSP is responsible for the cost of installing any new transmission facilities.
- (3) If the SGIA between a generation resource and TSP is executed after December 31, 2025, then the interconnecting generation resource is responsible for all costs of installing interconnection facilities that are incurred by the TSP that exceed the allowance established in accordance with this paragraph. The TSP is responsible for the costs of installing any transmission system upgrades deemed necessary by the TSP and ERCOT that are made concurrently with the installation of the interconnection facilities.
- (A) The allowance will be calculated by the commission as follows:
- (i) For a generation resource interconnecting at a transmission voltage of 138 kV or less, the allowance beginning on January 1, 2026, is based on the 2023 amount of \$12,000,000 adjusted for subsequent years consistent with clause (ii) of this subparagraph. For a generation resource interconnecting at a transmission voltage higher than 138kV, the allowance beginning on January 1, 2026, is

based on the 2023 amount of \$22,500,000 adjusted for subsequent years consistent with clause (ii) of this subparagraph.

- (ii) Beginning on January 1, 2025, the commission will increase or decrease the allowance prescribed by clause (i) of this subparagraph annually on or before January 1 of each calendar year. Annually, no later than September 1, 2024, the commission will publish the new values of the allowance to be used in the subsequent calendar year.
- (I) The annual adjustment will be proportional to the change from the corresponding 2023 value reflected in the National Income and Product Accounts (NIPA) Seasonally Adjusted Price Index for Private Fixed Investment-Nonresidential Structures for Power and Communication published by the United States Department of Commerce, Bureau of Economic Analysis.
- (II) The executive director may designate a substitute index to be used as a reference for adjustments under this clause if the index referenced by subclause (I) of this clause becomes unavailable.
- (B) A generation resource that seeks to interconnect an energy storage resource is only eligible to receive the allowance described under this subsection and not additional allowances provided to interconnect load, such as may be provided under a tariff.
- (C) The amount of the allowance that a generation resource is provided to complete the interconnection is the amount that was in effect on the date the notice to proceed was issued by the generation resource to the TSP in accordance with the executed SGIA. A TSP's costs to construct, design, and upgrade interconnection facilities that exceed the allowance must be directly billed to and collected from the generation resource that caused the costs to be incurred by the TSP. The TSP may collect such costs as a contribution in aid to construction prior to procuring, designing, and constructing the interconnection facilities.
- (D) Notwithstanding any payments made by a generation resource under this section, an interconnecting TSP retains ownership and control of its transmission facilities.
- (E) The responsibility of costs incurred by a TSP for new or upgraded interconnection facilities due to modifications made by a generation resource will be borne in accordance with this subparagraph.
- (i) For the ten calendar years following the date of energization for the initial interconnection of the generation resource:
- (I) To the extent that the costs of the interconnection facilities exceed the remainder of the allowance calculated under paragraph (f)(3) of this section, the current owner of the interconnected generation resource is responsible for the interconnection costs incurred by the TSP, where:
- (-a-) the allowance is the amount that was in effect on the date the notice to proceed with the initial interconnection was issued in accordance with the executed SGIA; and
- (-b-) the remainder is the difference between the allowance described under subclause (I) of this clause and the actual costs that a TSP incurred to construct, design, and upgrade interconnection facilities to initially interconnect the generation resource.
- eration resource is determined in accordance with the most recently executed SGIA for that generation resource.
- (ii) After ten calendar years from the date of energization for the initial interconnection of the generation resource, the

TSP is responsible for the costs of new or upgraded interconnection facilities.

- (g) [(d)] Curtailment of service. In an emergency situation, as determined by ERCOT and at its direction, a TSP [TSPs] may interrupt transmission service on a non-discriminatory basis, if necessary, to preserve the stability of the transmission network and service to customers. Such curtailments must [shall] be carried out in accordance with §25.200 of this title (relating to Load Shedding, Curtailments, and Redispatch) and in accordance with ERCOT protocols.
- (h) [(e)] Filing of contracts. A TSP must [Electric utilities shall] file with the commission each [all] new, and all amendments to, interconnection agreements within 30 days of [their] execution, including a cover letter explaining any deviations from the commission-approved SGIA. An interconnection agreement is [These interconnection agreements shall be filed for the commission's information. Interconnection agreements are] subject to commission review and approval upon request by any party to the agreement. Appropriate [Upon showing a good eause, appropriate] portions of the filings [required under this subsection] may be filed confidentially and be subject to provisions of confidentiality to protect competitively sensitive commercial or financial information.
- (i) ERCOT must, in consultation with commission staff, develop protocols to regularly publish a report that includes the generation interconnection costs for each generation resource interconnection.

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 November 30, 2023.

TRD-202304407
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: January 14, 2024
For further information, please call: (512) 936-7322

TED G WHOLEGALE MADIZE

SUBCHAPTER S. WHOLESALE MARKETS

16 TAC §25.510

The Public Utility Commission of Texas (commission) proposes new 16 Texas Administrative Code (TAC) §25.510 relating to the Texas Energy Fund In-ERCOT Generation Loan Program. This new rule will implement Public Utility Regulatory Act (PURA) §34.0104 as enacted by Senate Bill (SB) 2627 during the Texas 88th Regular Legislative Session. The proposed rule will establish procedures for applying for a loan for construction of dispatchable electric generation facilities within the ERCOT region, evaluation criteria, and terms for repayment. The proposed rule also specifies a performance standard that an electric generating facility must achieve to obtain a loan.

Growth Impact Statement

The agency provides the following governmental growth impact statement for the proposed rule, as required by Texas Government Code §2001.0221. The agency has determined that, for each year of the first five years that the proposed rule is in effect, the following statements will apply:

- (1) the proposed rule will not create a government program and will not eliminate a government program;
- (2) implementation of the proposed rule will require the creation of new employee positions but will not require the elimination of existing employee positions;
- (3) implementation of the proposed rule will not require an increase in legislative appropriations because Texas Constitution article III, §49-q provides that "money in the Texas energy fund may be administered and used, without further appropriation . . .";
- (4) implementation of the proposed will not require a decrease in future legislative appropriations to the agency;
- (5) the proposed rule will not require an increase and will not require a decrease in fees paid to the agency;
- (6) the proposed rule will create a new regulation;
- (7) the proposed rule will not expand, limit, or repeal an existing regulation;
- (8) the proposed rule will not change the number of individuals subject to the rule's applicability; and
- (9) the proposed rule will not affect this state's economy.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed rule. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

Takings Impact Analysis

The commission has determined that the proposed rule will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

Fiscal Impact on State and Local Government

David Gordon, Executive Counsel, Executive Director Division, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

Public Benefits

Mr. Gordon has determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated as a result of enforcing the section will be increased construction of dispatchable electric generating facilities in the state. There will be no probable economic cost to persons required to comply with the rule under Texas Government Code §2001.024(a)(5) because the rule is designed to offer low-interest loans to qualifying electric generating facilities.

Local Employment Impact Statement

For each year of the first five years the proposed section is in effect, there should be no effect on a local economy; therefore, no local employment impact statement is required under Texas Government Code §2001.022.

Costs to Regulated Persons

Texas Government Code §2001.0045(b) does not apply to this rulemaking because the commission is expressly excluded under subsection §2001.0045(c)(7).

Public Hearing

The commission staff will conduct a public hearing on this rule-making if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by December 22, 2023. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website or by submitting a paper copy to Central Records, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326. Austin, Texas 78711-3326. Comments must be filed by January 5, 2024. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to modify the proposed rule on adoption. All comments should refer to Project Number 55826.

In addition to comments on the text of the proposed rule, the commission invites interested persons to address the following questions related to eligibility requirements of the proposed rule:

- 1. Should the rule require registration as a power generation company with the commission as a condition for eligibility to receive a loan? Why or why not?
- 2. Should the rule require registration as a Generation Resource with ERCOT as a condition for eligibility to receive a loan? Why or why not?
- 3. How should the commission evaluate PURA §34.0106(b)'s prohibition against providing a loan to an electric generating facility that will be used primarily to serve an industrial load or private use network?
- a. Should the commission prescribe a percentage of total energy output that an electric generating facility must achieve to be eligible for a loan? If so, what percentage should the commission prescribe?
- b. Should the commission employ another method to ensure that an electric generating facility primarily serves the ERCOT grid? If so, what method is appropriate and why?

Each set of comments should include a standalone executive summary as the last page of the filing. This executive summary must be clearly labeled with the submitting entity's name and should include a bulleted list covering each substantive recommendation made in the comments. Comments should be limited to 12 pages, excluding the executive summary, and any attached redlines.

Statutory Authority

The rule is proposed under Public Utility Regulatory Act (PURA) §14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; §14.002, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; §34.0104, which authorizes the commission to adopt and enforce rules reasonably required in the

rizes the commission to use money in the Texas Energy Fund to provide loans to finance upgrades to or new construction of electric generating facilities in the ERCOT region; §34.0106(c), which requires the commission to adopt performance standards that electric generating facilities must meet to obtain a loan; and §34.0110, which authorizes the commission to establish procedures for the application and award of a grant or loan under PURA chapter 34, subchapter A.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001, 14.002, 34.0104; 34.0106(c), and 34.0110.

- §25.510. Texas Energy Fund In-ERCOT Generation Loan Program.
- (a) Purpose. The purpose of this section is to implement Public Utility Regulatory Act (PURA) §34.0104, which establishes requirements and terms for loans to finance dispatchable electric generating facilities within the ERCOT region.
- (b) Definitions. The following words and terms, when used in this section, have the following meanings unless the context indicates otherwise.
- (1) Borrower--An applicant to the Texas Energy Fund who is successfully awarded a loan under this section.
- (2) Commercial operations date--The date on which the electric generating facility has completed all qualification testing administered by ERCOT and is approved for participation in the ERCOT market, as identified by ERCOT in the applicable monthly generator interconnection status report.

(c) Eligibility.

- (1) An electric utility other than a river authority is not eligible for a loan under this section.
- (A) New construction of an electric generating facility capable of generating at least 100 megawatts (MW) of capacity with an output that can be controlled primarily by forces under human control.
- (B) Upgrades to existing electric generating facilities that result in a net increase of at least 100 MW of capacity for each facility with an output that can be controlled primarily by forces under human control.
 - (3) In addition, a proposed facility must:
- (A) be designed to interconnect and provide power to the ERCOT power region;
- $\underline{\text{(B)} \quad \text{be designed to participate in the ERCOT wholesale}}$ $\underline{\text{market; and}}$
- (C) be eligible to interconnect to the ERCOT region based on the attributes of the owners of the facility, according to the requirements in the Lone Star Infrastructure Protection Act (codified at Texas Business and Commerce Code \$117.002).
- (4) The following activities are not eligible for a loan under this section:
- (A) Construction or operation of an electric energy storage facility.
- (B) Construction or operation of a natural gas transmission pipeline.
- (C) Any planned facility that met the planning model requirements necessary to be included in the capacity, demand, and reserves report issued by ERCOT before June 1, 2023.

- (D) Operation that primarily serves an industrial load or private use network.
 - (d) Notice of intent to apply.
- (1) At least 60 days before submitting an application under this section, an applicant must submit a notice of intent to apply in the manner prescribed by the commission. Information submitted to the commission as part of the notice of intent to apply is confidential and not subject to disclosure under Chapter 552, Government Code. The notice of intent to apply must include:
- (A) The applicant's corporate name and the name of the electric generating facility for which it seeks a loan;
- (B) The anticipated generation capacity of each electric generating facility proposed to be financed with a loan under this section;
- (C) The anticipated commercial operations date of each electric generating facility;
 - (D) The amount of the loan requested;
- (E) For each electric generating facility, information demonstrating that the applicant is capable of financing project-related costs not supported by a loan awarded under this section.
- (2) Concurrent with the notice of intent to apply, the applicant must separately file a letter with the commission stating the applicant's corporate name and the MW capacity that the requested loan amount will finance.
- (e) Application requirements and process. A loan application must be submitted in the form and in the manner prescribed by the commission. Information submitted to the commission as part of the loan application process is confidential and not subject to disclosure under Chapter 552, Government Code. An application must include each of the requirements detailed in this subsection. An applicant may withdraw an application at any time while under commission review.
- (1) The applicant's corporate name and the name of the electric generating facility for which it requests a loan.
 - (2) Amount of the loan requested.
- (3) The anticipated generation capacity of the electric generating facility proposed to be financed with a loan under this section.
 - (4) Applicant information.
- (A) A copy of any information submitted to ERCOT regarding the applicant's attestation of market participant citizenship, ownership, or headquarters;
- (B) Evidence of the applicant's prior experience with siting, permitting, financing, constructing, commissioning, operating, and maintaining dispatchable electric generating facilities to provide reliable electric service in competitive energy markets;
- (C) Evidence of the applicant's creditworthiness, including:
- (i) An equity commitment letter demonstrating the ability to fund the necessary project equity (40 percent of the remaining estimated cost of construction) plus the required three percent construction escrow deposit amount.
- (ii) Financial statements, including statements of the applicant's total assets, total liabilities, net worth, and credit ratings issued by major credit rating agencies.
 - (5) Project information.

- (A) A narrative explanation that details how the facility will contribute to reliably meeting peak winter and summer load in the ERCOT region, including the project's plans for ensuring adequate fuel supplies and preparations for compliance with §25.55 of this title (relating to Weather Emergency Preparedness);
- (B) Demonstration of the project's eligibility under subsection (c) of this section;
- (C) Project-specific information that will allow the commission to determine and evaluate the viability and attributes of the electric generating facility, including:
- (i) A table with the resource operation attributes, including nameplate capacity, seasonal net maximum sustainable ratings during winter and summer, cold and hot temperature start times, and the original equipment manufacturer's estimated equivalent availability factor (EAF) calculation in North American Electric Reliability Corporation (NERC's) generating availability data system (GADS);
- (ii) A statement indicating whether the electric generating facility will serve an industrial load or private use network, and if so, a description of how the electric generating facility will primarily serve and benefit the ERCOT bulk power system given its relationship to an industrial load or private use network, and whether full generation output would be available to the ERCOT bulk power system during any Energy Emergency Alert, and a copy of any information submitted to ERCOT regarding private use network net generation capacity availability;
- (iii) A one-line diagram of the proposed project, if available;
- (iv) Evidence of site control, consistent with applicable ERCOT planning guide requirements;
- (v) An up-to-date phase 1 environmental site assessment, conducted in accordance with standards identified in 40 C.F.R. Part 312;
- (vi) A description of the electrical interconnection plan, including evidence that the proposed project is in the interconnection queue with ERCOT and has completed the ERCOT screening study; a copy of the full interconnection study with the interconnecting transmission service provider, if completed; and a copy of the executed standard generation interconnection agreement;
- (vii) A description of the fuel and water supply arrangements, including copies of applicable fuel and water supply agreements, if available, and evidence of receipt of necessary water rights and applicable permits;
- (viii) A description of the operations and maintenance staffing plan, organizational structure, and operating programs and procedures for the proposed project, including copies of operations and maintenance agreements, if available, and organizational charts;
- (ix) A list of all required environmental, construction, and operating permits with current approval status;
- (x) A description of the air emissions compliance plan, including evidence of receipt of any required air emissions credits;
- (xi) A detailed financial forecast of cash available for debt service, covering a period equal to the repayment period of the loan, including sources of revenue and an annual operating and maintenance budget; and
- (xii) A proposed project schedule with anticipated dates for major project milestones, such as execution of the standard

- generation interconnection agreement, completion of the full interconnection study, start date for the engineering of the project, construction start date, submission of applicable registration documents with ERCOT and the commission, energization (backfeed date), initial synchronization and parallel operation with the ERCOT grid, and commercial operations date.
- (6) Estimated cost. A description of estimated project costs, which includes:
- (A) Development, construction, and capital commitments required for the project to reach completion;
 - (B) Permitting-related costs;
 - (C) Development fees;
 - (D) Land acquisition and lease costs;
 - (E) Legal fees;
 - (F) Up-front fees;
 - (G) Commitment fees;
 - (H) Interest rate protection;
 - (I) Ancillary credit facility fees;
 - (J) Title insurance; and
 - (K) Interconnection costs.
- (f) Evaluation Criteria. The commission will approve or deny an application on the criteria and evaluation outlined in this subsection.
- (1) The commission will evaluate an application under this section based on:
 - (A) The applicant's:
- (i) Quality of services and management, as shown by the applicant's prior history of electricity generation in this state and this country and proposed organizational structure for the project for which the applicant seeks a loan;
- (ii) Efficiency of operations, as shown by the applicant's existing generation resources and proposed operational attributes of the project for which the applicant seeks a loan;
- (iii) History of electricity generation operations in this state and this country;
- (iv) Resource operation attributes, including fuel type and heat rate, seasonal net maximum sustainable rating, resource ramp rate, and capacity factor;
 - (v) Ability to address regional and reliability needs;
- (vi) Access to resources essential for operating the facility for which the loan is requested, such as land, water, and reliable infrastructure, as applicable;
- (vii) Evidence of creditworthiness and ability to repay the loan on the terms established in the loan agreement; and
- (B) The nameplate generation capacity and total estimated costs of the facility for which the loan is requested.
- (2) The commission may also consider the following criteria:
- (A) The suitability of the facility site to support the construction, operation, and maintenance of the proposed facility and to provide sufficient access to utilities;

- (B) The sufficiency of the various construction and equipment supply contracts necessary to construct the facility;
- (C) The outcomes of planned tests of the resource's operating capabilities;
- (D) The commercial feasibility of the facility's construction schedule;
- (E) The facility's proposed environmental permits and commitments;
- (F) The reasonableness of the applicant's forecast of non-fuel operating and maintenance costs;
- (G) The methodology used to construct the facility's financial forecast of projected net revenues;
- (H) The sufficiency of the applicant's proposed sources of equity to cover the costs of the facility not funded through a loan provided under this section;
- (I) Whether the facility can achieve the applicant's long-term EAF and capacity projections; and
- (g) Loan Structure. An approved loan will have the following characteristics:
- (1) Consist of no more than 60 percent of the estimated cost of the electric generating facility to be completed;
- (2) Be the senior debt secured by the electric generating facility to be completed;
 - (3) Have a repayment term of 20 years;
- (4) Be payable on a pro rata basis starting on the third anniversary of the estimated commercial operations date of the electric generating facility as stated on the application; and
- (5) Be structured as senior debt secured by a first lien security interest in the assets and revenues of the project.
- (h) Loan Terms and Agreements. A borrower must enter into one or more agreements with the commission that includes the terms of this section.
- (1) Credit agreement—the primary agreement between the borrower and the commission that will govern the terms and conditions under which the commission will loan funds to the borrower. The credit agreement will include the following key terms:
- (A) Performance covenant--the electric generating facility financed by the loan must meet an EAF performance of 50 for all hours during the term of the loan. EAF is the fraction of a given operating period in which a generating unit is available to produce electricity without any outages or equipment deratings.
- (B) Construction and term loan facility--a senior secured first lien construction and term loan facility will be advanced to the borrower in one or more drawings upon the closing date of the credit agreement and will continue until the project achieves commercial operation and the construction loan is converted to a term loan. Amounts repaid during the term of the construction loan, if any, may not be re-borrowed by the borrower following the construction loan's conversion to a term loan.
- (i) Upon initial closing of the credit agreement, the borrower may request an initial loan disbursement for up to 60 percent of qualifying and documented incurred expenses that are part of the

- total estimated cost of construction for the project, as verified by the commission.
- (ii) During the term of the construction loan, the borrower may request loan disbursements for up to 60 percent of the documented incurred project construction and commissioning costs. The borrower will contribute the required equity commitment of no less than 40 percent to such construction and commissioning costs as the borrower makes draws during the construction loan period.
- (iii) For all loan disbursements, the borrower will be required to submit a construction drawdown certificate in the form specified by the commission. The commission will review the construction drawdown certificate and, upon approval, will instruct the Texas Treasury Safekeeping Trust Company to disburse funds.
- (iv) Upon the commercial operations date of the facility and fulfillment of any other conditions precedent, the construction loan will convert to an amortizing term loan applicable to the total disbursements to the borrower.
- (C) Equity capital contributions--the commission will verify the borrower's required equity capital contributions (40 percent of the estimated capital cost of the project).
- (D) Interest--interest on the loan amounts disbursed under the credit agreement will accrue at a fixed annual rate of three percent.
- (E) Voluntary prepayment--the borrower may voluntarily prepay the total loan amount under the credit agreement in whole or in part at any time without premium or penalty.
- (F) Collateral--to secure the indebtedness under the credit agreement, the borrower will grant the commission a first priority security interest in all of its existing and after-acquired real and personal property related to the facility and in all of the outstanding equity interests of the borrower in the facility.
- (G) Change of ownership and control--a change of ownership and control occurs if greater than 50 percent of the equity interest in the project is sold to a third party. The borrower and the third party must submit an application for change of ownership and control that meets the requirements of subsections (c) and (e) of this section. A change of ownership and control will require the commission's approval.
- (H) Compliance and audit covenants--the credit agreement will include debt covenants requiring the borrower to meet all statutory requirements for loan application eligibility and a debt covenant requiring that the borrower submit annual financial audits, credit assessments, and electric generating facility performance assessments throughout the term of the loan. If the borrower also serves an industrial load or private use network, the borrower must also submit an annual accounting showing that the majority of the output of the electric generating facility served the ERCOT bulk power system during the performance year.
- (2) Depositary agreement--an agreement between the borrower and commission that will give the commission, as lender, control over the borrower's deposit accounts and securities accounts to perfect the commission's security interest in those accounts.
- (3) Security agreement--an agreement between the borrower and the commission that will give the commission, as lender, the right to take control of and transfer all material project assets in the event of a default on the credit agreement, subject to the applicable procedures and approvals identified in PURA §34.0108.

- (4) Pledge agreement--an agreement between the borrower and the commission that will create a security interest in the equity interests of the project in favor of the commission as the senior secured party.
- (5) Deposit agreement--an agreement between the borrower and the commission in which the borrower will agree to a deposit described in subsection (i) of this section.
- (6) Events of default--the borrower must agree to specified events of default, which include:
 - (A) Failure to pay principal, interest, or other amounts
 - (B) Breach of covenants in any agreement;
 - (C) Inaccuracy of representations in any agreement;
 - (D) Bankruptcy or insolvency of the borrower; and
 - (E) Abandonment.
- (7) Remedies for events of default--the borrower must agree to the remedies described in PURA §34.0108 following an event of default.

(i) Deposits.

due;

- (1) The borrower must deposit in an escrow account held by the Texas Comptroller of Public Accounts an amount equal to three percent of the estimated cost of the project for which the loan is provided. The borrower must deposit the required funds before the initial loan amount is disbursed.
- (2) The borrower may not withdraw the deposit from the escrow account unless authorized by the commission.
- (A) For deposits related to the construction of new facilities, subject to commission authorization, the borrower may withdraw the deposit funds from the escrow account if the facility for which the loan was provided is interconnected in the ERCOT region:
- (i) before the fourth anniversary of the date the initial loan funds were disbursed; or
- (ii) after the fourth anniversary but before the fifth anniversary of the date the initial loan funds were disbursed, if the commission finds that extenuating circumstances caused the delay.
- (B) For deposits related to upgrades to existing facilities, subject to commission authorization, the borrower may withdraw the deposit funds from the escrow account if the facility for which the loan was provided is completed:
- (i) before the third anniversary of the date the initial loan funds were disbursed; or
- (ii) after the third anniversary but before the fourth anniversary of the date the initial loan funds were disbursed, if the commission finds that extenuating circumstances caused a delay in the completion of the project.
- (C) For the purpose of this subsection, interconnection occurs when the electric generating facility is physically connected and able to inject energy into the ERCOT region.
- (3) Upon the occurrence of an event that entitles the borrower to withdraw its deposit, the borrower will file a notice of satisfaction with the commission stating that the borrower requests the return of the deposit. The notice must state:

- (B) The date of interconnection or initial loan disbursement, as applicable; and
- (C) A detailed statement of extenuating circumstances, if any, that support the borrower's request for a later withdrawal of the deposit.
- (4) The commission will evaluate each notice of satisfaction to determine whether the borrower is entitled to withdraw its deposit. If the borrower demonstrates that it has satisfied the requirements for withdrawal, then the commission will instruct the comptroller to return the deposit to the borrower. If the commission determines that withdrawal is not authorized, then it will instruct the comptroller to transfer the deposit to the Texas Energy Fund.
- (j) No Contested Case or Appeal. Neither an application for a loan nor a request for withdrawal of a deposit is a contested case. Commission decisions on a loan application or request for withdrawal of deposit are not subject to motions for rehearing or appeal.
 - (k) Expiration. This section expires September 1, 2050.

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 November 30, 2023.

TRD-202304403

Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: January 14, 2024

For further information, please call: (512) 936-7322



16 TAC §25.511

The Public Utility Commission of Texas (commission) proposes new 16 Texas Administrative Code (TAC) §25.511, relating to the Texas Energy Fund Completion Bonus Grant program. This new rule will implement Public Utility Regulatory Act (PURA) §34.0105 as enacted by Senate Bill (SB) 2627 during the Texas 88th Regular Legislative Session. The proposed rule will establish procedures for applying for a completion bonus grant award as well as terms for an applicant to request an annual grant payment. The proposed rule also specifies performance standards that an electric generating facility must achieve to obtain a completion bonus grant payment.

Growth Impact Statement

The agency provides the following governmental growth impact statement for the proposed rule, as required by Texas Government Code §2001.0221. The agency has determined that for each year of the first five years that the proposed rule is in effect, the following statements will apply:

- (1) the proposed rule will not create a government program and will not eliminate a government program;
- (2) implementation of the proposed rule will require the creation of new employee positions and will not require the elimination of existing employee positions;
- (3) implementation of the proposed rule will not require an increase in legislative appropriations because Texas Constitution article III, §49-q provides that "money in the Texas energy fund

may be administered and used, without further appropriation . . $\mbox{\tt "}.$

- (4) implementation of the proposed will not require a decrease in future legislative appropriations to the agency;
- (5) the proposed rule will not require an increase and will not require a decrease in fees paid to the agency;
- (6) the proposed rule will create a new regulation;
- (7) the proposed rule will not expand, limit, or repeal an existing regulation;
- (8) the proposed rule will not change the number of individuals subject to the rule's applicability; and
- (9) the proposed rule will not affect this state's economy.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed rule. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

Takings Impact Analysis

The commission has determined that the proposed rule will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

Fiscal Impact on State and Local Government

David Gordon, Executive Counsel, Executive Director Division, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

Public Benefits

Mr. Gordon has determined that for each year of the first five years the proposed rule is in effect the public benefit anticipated as a result of implementing the section will be increased construction of dispatchable electric generating facilities in the state. There will not be any significant, probable economic cost to persons required to comply with the rule under Texas Government Code §2001.024(a)(5) because the rule is designed to deliver grant money to qualifying electric generating facilities.

Local Employment Impact Statement

For each year of the first five years the proposed section is in effect, there should be no effect on a local economy; therefore, no local employment impact statement is required under Texas Government Code §2001.022.

Costs to Regulated Persons

Texas Government Code §2001.0045(b) does not apply to this rulemaking because the commission is expressly excluded under subsection §2001.0045(c)(7).

Public Hearing

The commission staff will conduct a public hearing on this rule-making if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by December 22, 2023. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website or by submitting a paper copy to Central Records, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326. Austin, Texas 78711-3326. Comments must be filed by January 5, 2024. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to modify the proposed rules on adoption. All comments should refer to Project Number 55812.

In addition to comments on the text of the proposed rule, the commission invites interested persons to address the following questions related to eligibility requirements of the proposed rule:

- 1. Should the rule require registration as a power generation company with the commission as a condition for eligibility to receive a completion bonus grant award? Why or why not?
- 2. Should the rule require registration as a Generation Resource with ERCOT as a condition for eligibility to receive a completion bonus grant award? Why or why not?
- 3. How should the commission evaluate PURA §34.0106(b)'s prohibition against providing a completion bonus grant award to an electric generating facility that will be used primarily to serve an industrial load or private use network?
- a. Should the commission prescribe a percentage of total energy output that an electric generating facility must achieve to be eligible for a completion bonus grant award? If so, what percentage should the commission prescribe?
- b. Should the commission employ another method to ensure that an electric generating facility primarily serves the ERCOT grid? If so, what method is appropriate and why?

Each set of comments should include a standalone executive summary as the last page of the filing. This executive summary must be clearly labeled with the submitting entity's name and should include a bulleted list covering each substantive recommendation made in the comments. Comments should be limited to 12 pages, excluding the executive summary, and any attached redlines.

Statutory Authority

The rule is proposed under Public Utility Regulatory Act (PURA) §14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; §14.002, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; §34.0105(i), which requires the commission to adopt a system for determining the amount by which the commission will discount an annual grant payment based on facility performance; and §34.0110, which authorizes the commission to establish procedures for the application and award of a grant or loan under PURA chapter 34, subchapter A.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001, 14.002, 34.0105(i), and 34.0110.

§25.511. Texas Energy Fund Completion Bonus Grant Program.

- (a) Purpose. The purpose of this section is to implement Public Utility Regulatory Act (PURA) §34.0105 and establish:
- (1) procedures for submitting an application to be eligible for a completion bonus grant award;
- (2) terms for an applicant to request an annual grant payment; and
- (3) performance standards for electric generating facilities for which an applicant seeks a completion bonus grant payment.
- (b) Definitions. The following words and terms, when used in this section, have the following meanings unless the context indicates otherwise.
- (1) Commercial operations date -- means the date on which the electric generating facility completes ERCOT's commissioning process and is approved for participation in the ERCOT market, as identified by ERCOT in the applicable monthly generator interconnection status report.
- (2) Performance year -- means the one-year period that ends on an electric generating facility's most recent anniversary of its commercial operations date.
- (c) Eligibility. To be eligible for a completion bonus grant award under this section, an applicant's electric generating facility must:
- (A) The construction of new dispatchable electric generating facilities providing power for the ERCOT region; or
- (B) The addition of new dispatchable electric generating facilities at an existing location providing power for the ERCOT region;
- (2) Be a dispatchable electric generating facility with an output that can be controlled primarily by forces under human control that is not an electric energy storage facility;
- (3) Interconnect and provide electricity to the ERCOT region;
 - (4) Participate in the ERCOT wholesale market;
- (5) Meet the planning model requirements necessary to be included in an ERCOT capacity, demand, and reserves report for the ERCOT region after June 1, 2023;
- (6) Operate in such a manner that the electric generating facility serves a greater output of electricity to the ERCOT bulk power system than it serves to an industrial load or private use network; and
- (7) Meet the interconnection deadlines described in subsection (e) of this section.
- (d) Determination of eligibility for completion bonus grant award.
- (1) Eligibility application. No later than 180 days after the commercial operations date of the electric generating facility for which an applicant requests a completion bonus grant award, an applicant must submit an electronic application in the form and manner prescribed by the commission. The application must include:
- (A) The applicant's corporate name and the name of the electric generating facility for which it seeks a completion bonus grant award;

- (B) Information describing the applicant's quality of services and management;
- (C) Information describing the applicant's efficiency of operations;
- (D) A record of the applicant's history of electric generation operations in this state, including information demonstrating the applicant's prior experience with operating and maintaining dispatchable electric generating facilities;
- (E) A description of the operational attributes of the electric generating facility, including the manner in which it will serve an associated private use network or industrial load, if any, along with a description of how the electric generating facility primarily serves and benefits the ERCOT bulk power system given its relationship to a private use network or industrial load, and whether full generation output would be available to the ERCOT bulk power system during any Energy Emergency Alert;
- (F) A description of the electric generating facility's ability to address regional and reliability needs;
- (G) For electric generating facilities not yet interconnected to the ERCOT region:
- (i) A proposed project schedule with anticipated dates for completion of construction, submission of registration documents with ERCOT and the commission, and anticipated commercial operations date;
- (ii) The anticipated capacity of the electric generating facility when commercial operations begin; and
- (iii) The estimated construction costs of the electric generating facility.
- (H) For electric generating facilities already interconnected to the ERCOT region:
- (i) The actual new construction costs of the electric generating facility;
- (ii) The commercial operations date of the newly constructed electric generating facility;
- (iii) The total increase in capacity of the electric generating facility; and
- (iv) The name of the electric generating facility on ERCOT's market participant list.
- (I) A statement describing when the electric generating facility met the planning model requirements necessary to be included in an ERCOT capacity, demand, and reserves report with an identification of the first instance of the electric generating facility's inclusion in an ERCOT capacity, demand, and reserves report;
- (J) A statement of whether the applicant applied for a loan under 16 TAC §25.510, relating to Texas Energy Fund In-ERCOT Generation Loan Program, as well as the commission's determination on the loan application; and
- (K) If applicable, a statement asserting that extenuating circumstances support the extension of any deadline described in subsection (e) of this section, including the facts surrounding those extenuating circumstances.
- (2) The commission will evaluate the information provided in an application to determine whether an applicant is deemed eligible to receive a completion bonus grant award. Determination of eligibility to receive a completion bonus grant award does not entitle an applicant to a grant payment.

- (A) For applicants deemed eligible to receive a completion bonus grant award, the commission will file a notice of eligibility applicable to the electric generating facility. The notice of eligibility will state the completion bonus grant award amount based on the capacity of the electric generating facility and its interconnection date.
- (B) A notice of eligibility will authorize an applicant to request and obtain data from ERCOT showing the electric generating facility's equivalent availability factor (EAF) performance during the 100 hours with the least quantity of operating reserves during a performance year. A notice of eligibility will automatically expire 45 days after the tenth anniversary of the electric generating facility's commercial operations date.
- (3) Information submitted to the commission in a completion bonus grant application is confidential and not subject to disclosure under Chapter 552 of the Texas Government Code.
- (4) Applicants must separately file a statement indicating that an application for a completion bonus grant award has been presented to the commission for review with the date of application submission.
- (e) Completion bonus grant award amount. The amount of a completion bonus grant award is based on the capacity and interconnection date of the electric generating facility for which an applicant requests a completion bonus grant award. Unless the commission determines that extenuating circumstances justify extension of the deadlines under this subsection, the commission may approve a completion bonus grant award for an applicant deemed eligible to receive a completion bonus grant award in an amount not to exceed:
- (1) \$120,000 per MW of capacity for an electric generating facility that is interconnected to the ERCOT region before June 1, 2026; or
- (2) \$80,000 per MW of capacity for an electric generating facility that is interconnected to the ERCOT region before June 1, 2029.

(f) Grant payment request.

- (1) For each performance year, the commission will disburse a grant payment to an applicant eligible to receive a completion bonus grant award. A grant payment is one-tenth of an applicant's total completion bonus grant award, subject to the performance standards and discount methodology prescribed under subsections (g) and (h) of this section.
- (2) No later than 45 days after each anniversary of the electric generating facility's commercial operations date, an applicant may submit a request for grant payment in the form and manner prescribed by the commission. The request for grant payment must include the following information:
- (A) A statement that the applicant is eligible to receive a completion bonus grant award with reference to the commission's notice of eligibility for a completion bonus grant award for the electric generating facility;
- (B) The electric generating facility's commercial operations date and the performance year for which the applicant requests a grant payment;
- (C) The amount of the grant payment requested based on the applicant's notice of eligibility and the electric generating facility's EAF performance rating during the performance year;
- (D) The electric generating facility's EAF performance record during the performance year with accompanying data from ERCOT to support the electric generating facility's EAF; and

- (E) If an electric generating facility also serves a private use network or industrial load, an accounting showing that the majority of the output of the electric generating facility served the ERCOT bulk power system during the performance year.
- (4) The commission will evaluate a request for grant payment to determine whether an electric generating facility meets the performance standards to receive a grant payment for the performance year requested, including whether to discount or withhold a grant payment. Upon determining that an electric generating facility is approved to receive a grant payment in the amount requested, the commission will instruct the Texas Treasury Safekeeping Trust Company to disburse the grant payment to the applicant.
- (g) Performance standards. An electric generating facility's performance is based on EAF during the performance year for which an applicant requests a grant payment. EAF is the fraction of a given operating period in which a generating unit is available to produce electricity without any outages or equipment deratings during the 100 hours with the least quantity of operating reserves during a performance year. A grant payment may be discounted based on the formula prescribed subsection (h) of this section. The performance standards for any performance year are as follows:
- (1) Optimal performance is an EAF of 95 during the 100 hours with the least quantity of operating reserves for the performance year.
- (2) Median performance is an EAF of 50 during the 100 hours with the least quantity of operating reserves for the performance year.
- (h) Grant payment discount formula. A grant payment equals one tenth of an applicant's completion bonus grant award as stated in the applicant's notice of eligibility, subject to discount or withholding. The formula for any discount of an annual grant payment is as follows: Figure: 16 TAC \$25.511(h)
 - (1) Discount or withholding of payment.
- (A) The commission will not apply any discount to a grant payment if the facility meets or exceeds the optimal performance standard established under subsection (g)(1) of this section.
- (B) The commission will disburse a discounted grant payment if the performance of the electric generating facility for which the grant was provided is above the median performance standard established under subsection (g)(2) of this section but less than an optimal performance standard established under subsection (g)(1) of this section.
- (C) The commission will withhold a grant payment if the EAF performance of the facility is equal to or below the median performance standard established under subsection (g)(2) of this section.
- (2) Example. An applicant would receive the following grant payments for hypothetical performance years 1, 2, and 3 based on a \$12,000,000 completion bonus grant award described in a notice of eligibility for a 100 MW electric generating facility interconnected on March 1, 2026.

Figure: 16 TAC §25.511(h)(2)

- (i) No Contested Case or Appeal. Neither an application for a completion bonus grant award nor a request for grant payment is a contested case. Commission decisions on completion bonus grant award eligibility or whether to disburse a grant payment are not subject to motions for rehearing or appeal.
 - (j) Expiration. This section expires December 1, 2040.

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 November 30, 2023.

TRD-202304404 Adriana Gonzales Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: January 14, 2024 For further information, please call: (512) 936-7322

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 102. EDUCATIONAL PROGRAMS SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING EARLY CHILDHOOD EDUCATION PROGRAMS

19 TAC §102.1003

The Texas Education Agency (TEA) proposes an amendment to §102.1003, concerning high-quality prekindergarten programs. The proposed amendment would address requirements for teachers of prekindergarten classes provided by an entity with which a school district contracts to provide prekindergarten as required by House Bill (HB) 2729, 88th Texas Legislature, Regular Session, 2023. The proposed amendment would also make technical edits for clarification and to update the rule to align with updated prekindergarten guidelines and current research.

BACKGROUND INFORMATION AND JUSTIFICATION: Texas Education Code (TEC), §29.167, as amended by HB 2729, 88th Texas Legislature, Regular Session, 2023, adds two new options to the list of additional qualifications for prekindergarten program teachers. The bill eliminates until September 1, 2029, the requirement that prekindergarten partnership classroom teachers possess a certification under TEC, Chapter 21, and outlines the alternate qualifications for these teachers.

To implement HB 2729, the following changes would be made.

The proposed amendment to §102.1003(d) would add an associate or baccalaureate degree in early childhood education or a related field and at least eight years of experience teaching in a Texas Rising Star Program to the list of additional qualifications for prekindergarten program teachers.

New §102.1003(e) would be added to identify specific requirements for teachers of prekindergarten classes provided by an entity with which a school district contracts to provide prekindergarten.

New §102.1003(f) would require a teacher of a bilingual or English as a second language class provided by an entity with which a school district contracts to provide prekindergarten to be appropriately certified to align with other requirements in state law.

New §102.1003(g) would identify the requirements for supervisors in programs provided by entities with which a school district contracts to provide prekindergarten.

In addition, the following changes would be made to the rule.

The proposal would amend §102.1003(a)(6) to add children who reside in Texas and were in foster care in another state or territory to the eligibility requirements for public prekindergarten.

The proposal would remove references to 2015 related to the Texas Prekindergarten Guidelines to align the rule with updated guidelines. References to language and literacy throughout the rule would be clarified as emergent literacy language and communication.

Subsection (c) would be amended to add a requirement that progress monitoring be conducted in the middle of the school year.

In re-lettered subsection (h), requirements related to family engagement plans would be amended to include the requirement for the inclusion of a primary point of contact and contact information

In re-lettered subsection (i), progress monitoring requirements would be updated to include a requirement that school districts and charter schools plan for data-driven program improvements annually by using information from the district's or charter school's program evaluation to ensure the district's or charter school's prekindergarten program is meeting all high-quality prekindergarten requirements.

Additional technical edits would update the rule to provide clarification and align with current research.

FISCAL IMPACT: Monica Martinez, associate commissioner of standards and programs, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and openenrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand an existing regulation by adding options to the list of additional qualifications for prekindergarten program teachers, identifying specific requirements for teachers of prekindergarten classes provided by an entity with which a school district contracts to provide prekindergarten, expanding eligibility for public prekindergarten, and adding to requirements for family engagement.

The proposed rulemaking would not create a new regulation; would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not limit or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Martinez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to implement the statutory requirements for teachers of prekindergarten classes provided by an entity with which a school district contracts to provide prekindergarten and would clarify various components of the rule and align with current research. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK RE-QUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins December 15, 2023, and ends January 22, 2024. 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 December 15, 2023. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education Rules/.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §29.167(a), which requires a school district to select and implement a curriculum for a prekindergarten program that includes the Texas Prekindergarten Guidelines, measures the progress of students in meeting the recommended learning outcomes, and does not use national curriculum standards developed by the Common Core State Standards Initiative; TEC, §29.167(b), as amended by House Bill (HB) 2729, 88th Texas Legislature, Regular Session, 2023, which establishes the qualifications an individual must possess to teach a public school prekindergarten class; TEC, §29.167(b-1), as added by HB 2729, 88th Texas Legislature, Regular Session, 2023, which establishes requirements, including qualifications an individual must possess to teach a prekindergarten class provided by an entity with which a school district contracts to provide a prekindergarten program; TEC, §29.167(b-2), as added by HB 2729, 88th Texas Legislature, Regular Session, 2023, which permits a supervisor of a prekindergarten program provided by an entity with which a school district contracts to supervise multiple prekindergarten classrooms to ensure programmatic compliance and support classroom instruction, the developmental needs of students, and continuous quality improvement; and TEC, §29.168, which requires the Texas Education Agency to collaborate with other state agencies to establish prioritized family engagement strategies to be included in a school district's family engagement plan. The engagement strategies must be based on empirical research, proven to demonstrate significant positive short-term and long-term outcomes for early childhood education, and include programs and interventions that engage a family in supporting a student's learning at home.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §29.167, as amended by House Bill 2729, 88th Texas Legislature, Regular Session, 2023, and §29.168.

§102.1003. High-Quality Prekindergarten Program.

- (a) School districts and open-enrollment charter schools providing a prekindergarten program must provide high-quality educational services established under [the] Texas Education Code (TEC), Chapter 29, Subchapter E-1, to qualifying students. A student is qualified to participate in a high-quality prekindergarten program if the student is four years of age on September 1 of the year the student begins the program and:
- $\qquad \qquad (1) \quad \mbox{is unable to speak and comprehend the English language;}$
 - (2) is educationally disadvantaged;
- (3) is a homeless child, as defined by 42 United States Code §11434a, regardless of the residence of the child, of either parent of the child, or of the child's guardian or other person having lawful control of the child:
- (4) is the child of an active duty member of the armed forces of the United States, including the state military forces or a reserve component of the armed forces, who is ordered to active duty by proper authority;
- (5) is the child of a member of the armed forces of the United States, including the state military forces or a reserve component of the armed forces, who was injured or killed while serving on active duty;
- (6) is or ever has been in the conservatorship of the Department of Family and Protective Services following an adversary hearing held as provided by [the] Texas Family Code, §262.201, or foster care in another state or territory, if the child resides in Texas; or
- (7) is the child of a person eligible for the Star of Texas Award as:
- (A) a peace officer under Texas Government Code, §3106.002;
- (B) a firefighter under Texas Government Code, $\S3106.003$; or
- (C) an emergency medical first responder under Texas Government Code, §3106.004.
- (b) A school district or an open-enrollment charter school shall implement a curriculum for a high-quality prekindergarten program that addresses the [2015] Texas Prekindergarten Guidelines in the following domains:
 - (1) social and emotional development;
 - (2) emergent literacy language and communication;
 - (3) emergent literacy reading;
 - (4) emergent literacy writing;
 - (5) mathematics;
 - (6) science;

- (7) social studies;
- (8) fine arts;
- (9) physical development and health; and
- (10) technology.
- (c) A school district or an open-enrollment charter school shall measure:
- (1) at the beginning, <u>middle</u>, and end of the school year, the progress of each student in meeting the recommended end of prekindergarten year outcomes identified in the [2015] Texas Prekindergarten Guidelines using a progress monitoring tool included on the commissioner's list of approved prekindergarten instruments that measures:
- (A) social and emotional development, which may be referred to as "health and wellness" in a progress monitoring tool;
 - (B) emergent literacy language and communication;
 - (C) emergent literacy reading;
 - (D) emergent literacy writing; and
 - (E) mathematics; and
- (2) the preparation of each student for kindergarten using a commissioner-approved multidimensional kindergarten instrument during the first 60 days of school for reading and at least three developmental skills, including literacy, as described in TEC, §28.006.
- (d) Each teacher of record in a high-quality prekindergarten program <u>class</u> must be certified under [the] TEC, Chapter 21, Subchapter B, and have one of the following additional qualifications:
 - (1) a Child Development Associate (CDA) credential;
- (2) a certification offered through a training center accredited by Association Montessori Internationale or through the Montessori Accreditation Council for Teacher Education;
- (3) at least eight years' experience [ef] teaching in a nationally accredited child care program or a Texas Rising Star Program;
- (4) <u>an associate or baccalaureate</u> [a graduate or undergraduate] degree in early childhood education or early childhood special education or a non-early childhood education degree with a documented minimum of 15 units of coursework in early childhood education;
- (5) documented completion of the Texas School Ready Training Program (TSR Comprehensive); or
- (6) be employed as a prekindergarten teacher in a school district that has ensured that:
- (A) prior to assignment in a prekindergarten class, the teacher [teachers] who provides [provide] prekindergarten instruction has [have] completed at least 150 cumulative hours of documented professional development addressing the [2015] Texas Prekindergarten Guidelines in addition to other relevant topics related to high-quality prekindergarten over a consecutive five-year period;
- (B) <u>a teacher [teachers]</u> who <u>has [have]</u> not completed training required in subparagraph (A) of this paragraph prior to assignment in a prekindergarten class <u>completes [shall complete]</u>:
- (i) the first 30 hours of 150 cumulative hours of documented professional development before the beginning of the next school year. The professional development shall address topics relevant to high-quality prekindergarten and may include:
 - (I) the [2015] Texas Prekindergarten Guidelines;

- (II) the use of student progress monitoring results to inform classroom instruction;
- (III) improving the prekindergarten classroom environment to enhance student outcomes; and
- (IV) improving the effectiveness of teacher interaction with students as determined by an evaluation tool; and
- (ii) the additional hours in the subsequent four years in order to continue providing instruction in a high-quality prekindergarten classroom; and
- (C) at least half of the hours required by subparagraph (A) or (B) of this paragraph [shall] include experiential learning, practical application, and direct interaction with specialists in early childhood education, mentors, or instructional coaches.
- (e) Each teacher in a high-quality prekindergarten program class provided by an entity with which a school district contracts to provide a prekindergarten program must be supervised by a person who meets the requirements under subsection (d) of this section and must have one of the following additional qualifications:
- (1) at least two years' experience teaching in a nationally accredited child care program or a Texas Rising Star Program and:
- (A) a CDA credential or another early childhood education credential approved by the Texas Education Agency (TEA); or
- (B) a certification offered through a training center accredited by Association Montessori Internationale or through the Montessori Accreditation Council for Teacher Education;
- (2) an associate or baccalaureate degree in early childhood education or early childhood special education or a non-early childhood education degree with a documented minimum of 15 units of coursework in early childhood education;
- (3) at least eight years' experience teaching in a nationally accredited child care program or a Texas Rising Star Program; or
- (4) be employed as a prekindergarten teacher in a partnership program that has ensured that:
- (A) prior to assignment in a prekindergarten class, the teacher has completed at least 150 cumulative hours of documented professional development addressing the Texas Prekindergarten Guidelines in addition to other relevant topics related to high-quality prekindergarten over a consecutive five-year period;
- (B) a teacher who has not completed the training required in subparagraph (A) of this paragraph prior to assignment in a prekindergarten class completes:
- (i) the first 30 hours of 150 cumulative hours of documented professional development before the beginning of the next school year. The professional development shall address topics relevant to high-quality prekindergarten and may include:
 - (I) the Texas Prekindergarten Guidelines;
- (II) the use of student progress monitoring results to inform classroom instruction;
- $\underline{\textit{(III)}} \quad \text{improving the prekindergarten classroom} \\ \underline{\text{environment to enhance student outcomes; and}}$
- (IV) improving the effectiveness of teacher interaction with students as determined by an evaluation tool; and
- (ii) the additional hours in the subsequent four years in order to continue providing instruction in a high-quality prekindergarten classroom; and

- (C) at least half of the hours required by subparagraph (A) or (B) of this paragraph include experiential learning, practical application, and direct interaction with specialists in early childhood education, mentors, or instructional coaches.
- (f) A teacher of a bilingual or English as a second language (ESL) program class provided by an entity with which a school district contracts to provide a prekindergarten program must be appropriately certified for the grade and content and with the appropriate supplemental certification (either bilingual or ESL).
 - (g) A prekindergarten partnership supervisor:
- (1) shall meet the requirements under subsection (d) of this section;
- (2) may supervise multiple prekindergarten classrooms; and
- (3) shall ensure programmatic compliance and support classroom instruction, the developmental needs of students, and continuous quality improvement, including professional development.
- (h) [(e)] A school district or an open-enrollment charter school shall develop, implement, and make available on the district, charter, or campus website by November 1 of each school year [5] a family engagement plan to assist the district in achieving and maintaining high levels of family involvement and positive family attitudes toward education. The family engagement plan shall include a primary point of contact and contact information. An effective family engagement plan creates a foundation for the collaboration of mutual partners, embraces the individuality and uniqueness of families, and promotes a culture of learning that is child centered, age appropriate, and family driven.
- (1) The following terms, when used in this section, shall have the following meanings.
- (A) Family--Adults responsible for the child's care and children in the child's life who support the early learning and development of the child.
- (B) Family engagement--The mutual responsibility of families, schools, and communities to build relationships to support student learning and achievement and to support family well-being and the continuous learning and development of children, families, and educators. Family engagement is fully integrated in the child's educational experience and supports the whole child and is both culturally responsive and linguistically appropriate.
 - (2) The family engagement plan shall:
- (A) facilitate family-to-family support using strategies such as:
- (i) creating a safe and respectful environment where families can learn from each other as individuals and in groups;
- (ii) inviting former program participants, including families and community volunteers, to share their education and career experiences with current families; and
- (iii) ensuring opportunities for continuous participation in events designed for families by families such as training on family leadership;
- (B) establish a network of community resources using strategies such as:
 - (i) building strategic partnerships;
 - (ii) leveraging community resources;

- (iii) monitoring and evaluating policies and practices to stimulate innovation and create learning pathways;
- (iv) establishing and maintaining partnerships with businesses, faith-based organizations, and community agencies;
- (v) identifying support from various agencies, including mental and physical health providers;
- (vi) partnering with local community-based organizations and early learning programs to create a family-friendly transition plan for students arriving from early childhood settings;
- (vii) providing and facilitating referrals to family support or educational groups based on family interests and needs;
- (viii) communicating short- and long-term program goals to all stakeholders; and
- (ix) identifying partners to provide translators and culturally relevant resources reflective of the home language;
- (C) increase family participation in decision making using strategies such as:
- (i) developing and supporting a family advisory council:
- (ii) developing, adopting, and implementing identified goals within the annual campus/school improvement plan targeting family engagement;
- (iii) developing and supporting leadership skills for family members and providing opportunities for families to advocate for their children/families;
- (iv) collaborating with families to develop strategies to solve problems and serve as problem solvers;
- (v) engaging families in shaping program activities and cultivating the expectation that information must flow in both directions to reflect two-way communication;
- (vi) developing, in collaboration with families, clearly defined goals, outcomes, timelines, and strategies for assessing progress;
- (vii) providing each family with an opportunity to review and provide input on program practices, policies, communications, and events in order to ensure the program is responsive to the needs of families; and
- (viii) using appropriate tools such as surveys or focus groups to gather family feedback on the family engagement plan;
- (D) equip families with tools to enhance and extend learning using strategies such as:
- (i) providing families with updates at least three times a year that specify student progress in health and wellness, language and communication, emergent literacy reading, emergent literacy writing, and mathematics;
- (ii) designing or implementing existing home educational resources to support learning at home while strengthening the family/school partnership;
- (iii) providing families with information and/or training on creating a home learning environment connected to formal learning opportunities;
- (iv) equipping families with resources and skills to support their children through the transition to school and offering opportunities for families and children to participate in parent/child learn-

ing sessions and visit the school in advance of the prekindergarten school year;

- (v) providing complementary home learning activities for families to engage in at home with children through information presented in newsletters, online technology, social media, parent/family-teacher conferences, or other school- or center-related events;
- (vi) providing families with information, best practices, and training related to age-appropriate developmental expectations;
- (vii) emphasizing benefits of positive family practices such as attachment and nurturing that complement the stages of children's development;
- (viii) collaborating with families to appropriately respond to children's behavior in a non-punitive, positive, and supportive way;
- (ix) encouraging families to reflect on family experiences and practices in helping children; and
- (x) assisting families to implement best practices that will help achieve the goals and objectives identified to meet the needs of the child and family;
- (E) develop staff skills in evidence-based practices that support families in meeting their children's learning benchmarks using strategies such as:
- (i) providing essential professional development for educators in understanding communication and engagement with families, including training on communicating with families in crisis;
- (ii) promoting and developing family engagement as a core strategy to improve teaching and learning among all educators and staff; and
- (iii) developing staff skills to support and use culturally diverse, culturally relevant, and culturally responsive family engagement strategies; and
- (F) evaluate family engagement efforts and use evaluations for continuous improvement using strategies such as:
- (i) conducting goal-oriented home visits to identify strengths, interests, and needs;
- (ii) developing data collection systems to monitor family engagement and focusing on engagement of families from specific populations to narrow the achievement gap;
- (iii) using data to ensure alignment between family engagement activities and district/school teaching and learning goals and to promote continuous family engagement;
- (iv) ensuring an evaluation plan is an initial component that guides action;
- (v) using a cyclical process to ensure evaluation results are used for continuous improvement and adjustment; and
- (vi) ensuring teachers play a role in the family engagement evaluation process.
- (1) report the curriculum used in the high-quality prekindergarten program classes as required by subsection (b) of this section;

(2) report a description and the beginning- and end-of-year results of each commissioner-approved prekindergarten instrument used in the high-quality prekindergarten program classes as required by subsection (c) of this section;

(3) report:

- (A) a description of each commissioner-approved multidimensional kindergarten readiness instrument used in the district or charter school to measure the effectiveness of the district's or charter school's high-quality prekindergarten program classes as required by subsection (c) of this section; and
- (B) the results for at least 95% of the district's or charter school's kindergarten students on the commissioner-approved multidimensional kindergarten readiness instrument by the end of the TEA-determined assessment collection window;
- (4) report additional teacher qualifications described in subsection (d) of this section;
- (5) report the family engagement plan URL/website link described in subsection (h) [(e)] of this section; and
 - (6) report the prekindergarten program evaluation type.
- (\underline{j}) $[\underline{(g)}]$ A school district or an open-enrollment charter school shall:
- (1) select and implement appropriate methods for evaluating the district's or charter school's high-quality prekindergarten program by using data from a [measuring] student progress monitoring instrument from the commissioner's list of approved prekindergarten instruments; [and]
- (2) make data from the results of program evaluations available to parents; and [-]
- (3) plan for data-driven program improvements annually by using information from the district's or charter school's program evaluation to ensure the district's or charter school's prekindergarten program is meeting all high-quality prekindergarten indicators.
- (k) [(h)] A school district or an open-enrollment charter school must attempt to maintain an average ratio in any prekindergarten program class of not less than one certified teacher or teacher's aide for every 11 students.
- (1) [(i)] A school district or an open-enrollment charter school shall maintain locally and provide at [the] TEA's request the necessary documentation to ensure fidelity of high-quality prekindergarten program implementation.

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

Filed with the Office of the Secretary of State on December 4, 2023.

TRD-202304477

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: January 14, 2024 For further information, please call: (512) 475-1497



TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 111. STANDARDS FOR PRESCRIBING CONTROLLED SUBSTANCES AND DANGEROUS DRUGS

22 TAC §111.5

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §111.5, concerning electronic prescribing waivers. The proposed amendment removes the requirement that a dentist must submit a written statement and supporting documentation describing the circumstances necessitating a waiver, and instead requires a dentist to attest to the circumstances necessitating a waiver. This amendment will make it less burdensome on the dentist when submitting a waiver request to the Board, and it will make the Board's waiver process more efficient.

FISCAL NOTE: Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: Casey Nichols has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IM-PACT STATEMENT: Casey Nichols has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule does not expand an existing regulation; (6) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state's economy.

COST TO REGULATED PERSONS: This proposed rule does not impose a cost on a regulated person and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed amendment may be submitted to Casey Nichols, Executive Director, 1801 Congress Avenue, Suite 8.600, Austin, Texas 78701, by fax to (512) 649-2482, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by

the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is 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.

No statutes are affected by this proposed rule.

- §111.5. Electronic Prescribing Waivers.
- (a) Effective January 1, 2021, the Board shall issue an electronic prescribing waiver to dentists who submit a waiver request form.
- (b) The dentist must demonstrate circumstances necessitating a waiver from the electronic prescribing requirement, which include:
- (1) economic hardship. Economic hardship shall be determined on a case by case basis, taking into account factors including:
- (A) any special situational factors affecting either the cost of compliance or the ability to comply;
- $\begin{tabular}{ll} (B) & the likely impact of compliance on profitability or viability; and \end{tabular}$
- (C) the availability of measures that would mitigate the economic impact of compliance;
- (2) technological limitations not reasonably within the control of the dentist; or
- (3) other exceptional circumstances demonstrated by the dentist. Exceptional circumstances include, but are not limited to, prescribing fewer than twenty-five prescriptions per year.
- (c) The dentist must attest to [submit a written statement and supporting documentation describing] the circumstances necessitating a waiver as described in subsection (b) of this section.
- (d) The waiver shall be issued for a period of one year. A dentist may reapply for a subsequent waiver not earlier than the 30th day before the date the waiver expires if the circumstances that necessitated the waiver continue.

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

Filed with the Office of the Secretary of State on December 1, 2023.

TRD-202304423

Lauren Studdard

General Counsel

State Board of Dental Examiners

Earliest possible date of adoption: January 14, 2024 For further information, please call: (512) 305-8910

1001, please call. (312) 303-091

CHAPTER 114. EXTENSION OF DUTIES OF AUXILIARY PERSONNEL--DENTAL ASSISTANTS

22 TAC §114.8

The State Board of Dental Examiners (Board) proposes this new rule 22 TAC §114.8, concerning the retired status of a dental assistant registration. This rule will allow registered dental assis-

tants to apply to the Board to retire their registrations and also to reinstate their retired registrations.

FISCAL NOTE: Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: Casey Nichols has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IM-PACT STATEMENT: Casey Nichols has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the rule does not create or eliminate a government program: (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does require an increase in fees paid to the agency by requiring a registered dental assistant to pay a fee for reinstating a retired registration; (5) the proposed rule does create a new regulation in that it requires registered dental assistants to apply to the Board to retire their registrations or to reinstate their retired registrations; (6) the proposed rule does not expand an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state's economy.

COST TO REGULATED PERSONS: The Board finds that the provisions of Texas Government Code Section 2001.0045(b) do not apply to the proposal because the estimated costs associated with the proposal are necessary to protect the health, safety, and welfare of the people of Texas, as provided in Section 2001.045(c)(6).

Comments on the proposed amendment may be submitted to Casey Nichols, Executive Director, 1801 Congress Avenue, Suite 8.600, Austin, Texas 78701, by fax to (512) 649-2482, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or emailed by midnight on the last day of the comment period.

This rule is 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.

No statutes are affected by this proposed rule.

§114.8. Retired Registration Status.

(a) Application.

- (1) A holder of a valid and current Texas dental assistant registration may apply to the Board to have the registration placed on retired status.
- (2) A registered dental assistant must apply to the Board for retired status, on a form prescribed by the Board, before the expiration date of the person's Texas registration.
- (3) The Board shall deny a request to place a registration on retired status if there are any current or pending complaints or disciplinary actions against the registered dental assistant.
- (b) Reinstatement. The Board may reinstate a retired Texas dental assistant registration to active status, provided the registered dental assistant submits an application for reinstatement on a form prescribed by the Board, pays the appropriate fees due at the time application is made, and meets the requirements of this subsection.
- (1) A registered dental assistant who, at the time of application for reinstatement, is practicing as a registered dental assistant in another state, or territory outside of the United States, or had practiced as a registered dental assistant actively within the two years immediately preceding the date of application, shall provide:
- (A) verification of registration and disciplinary history from all state board(s) of dentistry where the registered dental assistant has held a registration;
- (B) proof of active practice within the two years preceding the application;
- (C) proof that the registered dental assistant has taken and passed the Texas jurisprudence assessment administered by the Board or an entity designated by the Board within one year immediately prior to application;
- (D) proof of successful completion of a current hands-on course in basic life support;
- (E) proof of completion of 6 hours of continuing education, taken within the 12 months preceding the date the application is received by the Board. All hours shall be taken in accordance with the requirements for continuing education as mandated by §114.12 of this chapter (relating to Continuing Education for Certificate Holders); and
- (F) proof of submission of fingerprints for the retrieval of criminal history record information.
- (2) A registered dental assistant who has not actively practiced for at least two years immediately preceding the request for reinstatement of a retired registration shall provide:
- (A) verification of registration and disciplinary history from all state board(s) of dentistry where the registered dental assistant has held a registration;
- (B) proof that the registered dental assistant has taken and passed the Texas jurisprudence assessment administered by the Board or an entity designated by the Board within one year immediately prior to application;
- (C) proof of successful completion of a current hands-on course in basic life support;
- (D) proof of completion of 12 hours of continuing education, of which a minimum of 6 hours must be clinical (hands-on). All hours must have been taken within the 12 months preceding the date the application is received by the Board and shall be taken in accordance with the requirements for continuing education as mandated by §114.12 of this chapter; and

- (E) proof of submission of fingerprints for the retrieval of criminal history record information.
- (3) A registered dental assistant who applies to reenter active practice must comply with all other applicable provisions of the Dental Practice Act and Board rules.
- (4) A registered dental assistant who applies to reenter active practice must have been in compliance or satisfied all conditions of any Board order that may have been in effect at the time retired status was granted.
- (5) The Board may, in its discretion as necessary to safeguard public health and safety, require compliance with other reasonable conditions in considering a request to reenter active practice.

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

Filed with the Office of the Secretary of State on December 1, 2023.

TRD-202304422
Lauren Studdard
General Counsel
State Board of Dental Examiners
Earliest possible date of adoption: January 14, 2024
For further information, please call: (512) 305-8910

22 TAC §114.13

The State Board of Dental Examiners (Board) proposes this new rule 22 TAC §114.13, concerning the reinstatement of a cancelled registration. This rule will allow registered dental assistants to apply to the Board to reinstate a cancelled registration.

FISCAL NOTE: Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: Casey Nichols has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IM-PACT STATEMENT: Casey Nichols has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the proposed rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does require an increase in fees paid to the agency by requiring a registered dental assistant to pay a fee for reinstating a

cancelled registration; (5) the proposed rule does create a new regulation in that it requires a registered dental assistant to apply to the Board to reinstate a cancelled registration; (6) the proposed rule does not expand an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state's economy.

COST TO REGULATED PERSONS: The Board finds that the provisions of Texas Government Code Section 2001.0045(b) do not apply to the proposal because the estimated costs associated with the proposal are necessary to protect the health, safety, and welfare of the people of Texas, as provided in Section 2001.045(c)(6).

Comments on the proposed rule may be submitted to Casey Nichols, Executive Director, 1801 Congress Avenue, Suite 8.600, Austin, Texas 78701, by fax to (512) 649-2482, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is 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.

No statutes are affected by this proposed rule.

§114.13. Reinstatement of a Cancelled Registration.

The Board may reinstate a cancelled Texas dental assistant registration to active status, provided the registered dental assistant submits an application for reinstatement on a form prescribed by the Board, pays the appropriate fees due at the time application is made, and meets the requirements of this section.

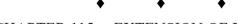
- (1) An applicant who, at the time of application for reinstatement, is practicing as a registered dental assistant in another state, or territory outside of the United States, and has practiced as a registered dental assistant actively within the two years immediately preceding the date of application, shall provide:
- (A) verification of registration and disciplinary history from all state board(s) of dentistry where the registered dental assistant has held a registration;
- (B) proof of active practice within the two years preceding the application;
- (C) proof that the registered dental assistant has taken and passed the Texas jurisprudence assessment administered by the Board or an entity designated by the Board within one year immediately prior to application;
- (D) proof of successful completion of a current hands-on course in basic life support;
- (E) proof of completion of 12 hours of continuing education, taken within the 12 months preceding the date the application is received by the Board. All hours shall be taken in accordance with the requirements for continuing education as mandated by §114.12 of this chapter (relating to Continuing Education for Certificate Holders); and
- (F) proof of submission of fingerprints for the retrieval of criminal history record information.

- (2) An applicant whose registration has been expired for one year or more, who has not actively practiced for at least two years immediately preceding the request for reinstatement of a cancelled registration, must submit proof that the applicant:
- (A) has taken and passed a course of instruction and an examination approved by the Board or its designated agent; or
- (B) if the applicant is certified as a dental assistant by the Dental Assisting National Board (DANB), has taken and passed a jurisprudence examination administered by the Board or its designated agent.
- (3) An applicant who applies to reinstate a cancelled registration must comply with all other applicable provisions of the Dental Practice Act and Board rules.
- (4) An applicant who applies to reinstate a cancelled registration must have been in compliance or satisfied all conditions of any Board order that may have been in effect at the time the registration was cancelled.
- (5) The Board may, in its discretion as necessary to safeguard public health and safety, require compliance with other reasonable conditions in considering a request to reinstate a cancelled registration.

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

Filed with the Office of the Secretary of State on December 1, 2023.

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Lauren Studdard
General Counsel
State Board of Dental Examiners
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For further information, please call: (512) 305-8910



CHAPTER 115. EXTENSION OF DUTIES OF AUXILIARY PERSONNEL--DENTAL HYGIENE 22 TAC §115.10

The State Board of Dental Examiners (Board) proposes new rule 22 TAC §115.10, concerning the administration of local infiltration anesthesia by a dental hygienist. The proposed new rule pertains to the certification and standards for the administration of a local anesthetic agent by a dental hygienist as set out in House Bill 3824 of the 88th Texas Legislature, Regular Session (2023), and codified at Sections 258.001 and 262.002 of the Texas Occupations Code.

FISCAL NOTE: Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: Casey Nichols has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IM-PACT STATEMENT: Casey Nichols has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the proposed rule does not create or eliminate a government program;

(2) implementation of the proposed rule may require the creation of an additional employee position. The Board may need to hire an additional full-time license and permit specialist to process applications for certificates issued pursuant to this proposal; (3) the implementation of the proposed rule may require an increase in future appropriations if the agency needs to hire an additional full-time license and permit specialist; (4) the proposed rule does require an increase in fees paid to the agency for the initial certification fee; (5) the proposed rule does create a new regulation; (6) the proposed rule does not expand an existing regulation; (7) the proposed rule does increase the number of individuals subject to the rule's applicability by including dental hygienists who were not previously approved to administer local infiltration anesthesia; and (8) the proposed rule does not positively or adversely affect the state's economy.

COST TO REGULATED PERSONS: The Board finds that the provisions of Texas Government Code Section 2001.0045(b) do not apply to the proposal because the estimated costs associated with the proposal implement statutory requirements and are necessary to protect the health, safety, and welfare of the people of Texas, as provided in Section 2001.045(c)(6) and (9).

Comments on the proposed rule may be submitted to Casey Nichols, Executive Director, 1801 Congress Avenue, Suite 8.600, Austin, Texas 78701, by fax to (512) 649-2482, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is 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.

This proposed rule implements the amendments to Sections 258.001 and 262.002 of the Texas Occupations Code as set out in House Bill 3824 of the 88th Texas Legislature, Regular Session (2023).

- §115.10. Administration of Local Infiltration Anesthesia.
- (a) "Local infiltration anesthesia" means the deposition of a local anesthetic solution meant for the elimination of the sensation of pain by local injection of a drug near the terminal nerve endings of teeth and supporting tissues.
 - (b) General Provisions.

- (1) A Texas-licensed dentist may delegate the administration of local infiltration anesthesia to a licensed dental hygienist, if the dental hygienist works under the direct supervision of the licensed dentist.
- (2) The dental hygienist must hold a current local infiltration anesthesia certificate in accordance with the requirements of this section.
 - (c) Standard of Care Requirements.
- (1) Administration of local infiltration anesthesia must be in accordance with the minimum standard of care and limited to a procedure the dental hygienist is authorized to perform on a patient who must be:
 - (A) at least 18 years of age; and
- (B) not sedated, or is sedated using only nitrous oxide-oxygen inhalation.
- (2) Informed consent must be obtained in accordance with §108.7 and §108.8 of this title (relating to Minimum Standard of Care, General; and Records of the Dentist respectively). In addition, the informed consent must include the risks and complications with the administration of local anesthesia and vasoconstrictors, and the delegating dentist and provider of local infiltration anesthesia must be clearly disclosed.
- (d) Requirements for Initial Certification. To receive a dental hygiene local infiltration anesthesia certificate from the Board, a dental hygienist must:
 - (1) apply on an application form approved by the Board;
 - (2) pay an application fee set by Board rule;
- (3) submit proof to the Board of the successful completion of a current course in Basic Life Support (BLS) for Healthcare Providers;
- (4) submit proof to the Board that he or she has fulfilled at least one of the following qualifications:
- (A) completed a minimum of 12 hours of clinical and 20 hours of didactic education in the administration of local infiltration anesthesia taken in a classroom setting at an educational institution accredited by the Commission on Dental Accreditation of the American Dental Association (CODA). The education must fulfill the requirements in subsection (e) of this section;
- (B) during the preceding year of initial application, was authorized to administer a local anesthetic agent by:
 - (i) a branch of the United States armed forces; or
- (ii) another state with clinical and didactic requirements substantially equivalent to the requirements of a course as described under subparagraph (A) of this paragraph, and have practiced for a minimum of three out of five years immediately preceding application to the Board; or
- (C) successful completion of a CODA-accredited dental hygiene program that fulfills the requirements of subparagraph (A) of this paragraph.
- (5) passed a Board-approved certification examination relating to the administration of a local anesthetic agent as described in subsection (e)(4) of this section. A "Board-approved certification examination" means an examination provided by a CODA-accredited course.
 - (e) Education and Examination Requirements.

- (1) The education program must be overseen by a Texaslicensed dentist who is a member of the CODA-accredited education institution and who has experience teaching the administration of local infiltration anesthesia.
- (2) Didactic component. The program must include at least 20 hours of didactic instruction relating to the administration of local infiltration anesthesia in the practice of dental hygiene. Such education may be completed using an on-demand video course and must include:
- (A) Texas State Board of Dental Examiners laws and regulations;
 - (B) physiology and neurophysiology;
 - (C) head, neck, and oral anatomy;
- (D) adult respiratory and circulatory physiology and related anatomy;
 - (E) emergency procedures;
- (F) recognition and management of local complications associated with local anesthetic injections;
- (G) recognition and management of systemic local anesthetic toxicity related to the administration of local anesthetics;
 - (H) medical history and evaluation procedures;
 - (I) considerations for medically complex patients;
 - (J) behavior context and dental patient management;
- (K) definitions and descriptions of physiological and psychological aspects of anxiety and pain;
- (L) pharmacology of agents used in local anesthetics and vasoconstrictors, including drug interactions and incompatibilities;
- (M) indications and contraindications for use of local anesthetic and vasoconstrictors;
- (N) recommended dosages of local anesthetic and vasoconstrictors;
- (O) patient monitoring through observation, with particular attention to vital signs and reflexes related to consciousness;
- (P) selection and preparation of the armamentaria and record keeping for administrating local anesthetic agents via infiltration;
- (Q) safety and infection control procedures with regard to local infiltration anesthetic techniques and proper disposal of sharps; and
 - (R) post-operative care and instructions to patients.
- (3) Clinical component. The program must include at least 12 hours of clinical instruction relating to the administration of local infiltration anesthesia in the practice of dental hygiene. Such education must include:
- (A) selection and preparation of the armamentaria for administering local anesthetic agents;
- (B) demonstration of proper infection control techniques regarding local anesthetic agents and proper disposal of sharps;
- (C) demonstration of proper evaluation of the patient's health status, taking and assessing vital signs and monitoring the patient's physical status while under the effects of local anesthetic;

- (D) demonstration of the proper techniques for the administration of local infiltration anesthesia on a live patient or hands-on simulation:
 - (i) basic technique;
 - (ii) aspiration;
 - (iii) slow rate of injection; and
 - (iv) minimum effective dosage; and
- (E) clinical experience demonstrating the successful use of local infiltration anesthesia on a minimum of 5 live patient experiences appropriate for dental hygiene treatment. At a minimum, each student must demonstrate clinical competency in 4 different quadrants that includes at least 3 teeth. A hands-on simulation competency component must be demonstrated prior to treating the live patients. The live patient or hands-on simulation clinical experiences required must be performed under the direct supervision of a Texas-licensed dentist associated with the course.

(4) Examination.

- (A) Each student must pass a competency examination on the material covered in the didactic section of the training course with a minimum passing score of 75% before continuing to the clinical section of the course. Students who do not pass the didactic competency examination may be offered remediation before the start of the clinical experience.
- (B) Each student must pass a clinical competency examination including a demonstration of satisfactorily performing local anesthetic infiltration injections.

(f) Continuing Education.

- (1) A dental hygienist with a local infiltration anesthesia certificate must complete no less than 6 hours of continuing education every two years in the administration of, or medical emergencies associated with, local anesthesia specific to the procedures to be performed by the dental hygienist administering the local anesthesia. These 6 hours of continuing education may be used to satisfy the technical or scientific requirements of §104.1 of this title (relating to Requirement).
- (2) The continuing education must be provided by an educational course provider recognized by the Board.
- (3) Dental hygienists must maintain documentation of the satisfactory completion of the required continuing education courses.
- (g) Ineligibility. Applicants of an administration of local infiltration certificate are ineligible if they are in violation of a Board order at the time of application.
- (h) A dental hygienist must submit a written report to the Board as provided below:
- (1) The death of a dental patient which may have occurred as a consequence of the receipt of local infiltration anesthesia from the reporting hygienist must be reported within 72 hours of the death, or such time as the hygienist becomes aware or reasonably should have become aware of the death.
- (2) The hospitalization of a dental patient, as a possible consequence of receiving local infiltration anesthesia from the reporting hygienist, must be reported within 30 days of the hospitalization or such time as the hygienist becomes aware of or reasonably should have become aware of the hospitalization. For purposes of this subsection, "hospitalization" shall be defined as an examination at a hospital or emergency medical facility that results in an in-patient admission for the purpose(s) of treatment and/or monitoring.

(3) In the evaluation of sedation/anesthesia morbidity or mortality, the Board shall consider the standard of care necessary to be that applicable to the patient's state of consciousness during the procedure.

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

Filed with the Office of the Secretary of State on December 1, 2023.

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Lauren Studdard
General Counsel
State Board of Dental Examiners
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For further information, please call: (512) 305-8910

PART 11. TEXAS BOARD OF NURSING

CHAPTER 217. LICENSURE, PEER ASSISTANCE, AND PRACTICE

22 TAC §217.5

The Texas Board of Nursing (Board) proposes amendments to 22 Texas Administrative Code §217.5, relating to Temporary License and Endorsement. The amendment is being proposed under the authority of the Occupations Code §301.151 and Senate Bill 422, effective September 1, 2023.

Background.

In 2019, the Texas Legislature passed S.B. 1200 which created §55.0041, Occupations Code, to recognize out-of-state occupational licenses for a spouse of a military service member. This allows the portability of a license for the spouse of a service member, so the spouse does not have to redo any curriculum and testing from one state to another when the service member changes duty station. In 2021, during the 87th Regular Legislative Session, the Legislature enacted HB 139 that further amended §55.0041 requiring that a state agency that issues a license that has a residency requirement for license eligibility to adopt rules regarding the documentation necessary for a military spouse applicant to establish residency, including by providing to the agency a copy of the permanent change of station order for the military service member to whom the spouse is married.

Senate Bill 422 again amends §55.0041 and extends this occupational licensing reciprocity to military members who often must station in states outside of where they originally obtained their license, but who still wish to provide valuable services some of which the state is experiencing workforce shortages, such as nursing. The bill adds military service members as persons for whom the state will recognize an out-of-state business or occupational license for a period not to exceed three years and requires that a state agency that issues business or occupational licenses determine within a 30-day period whether the jurisdiction of licensure for a military service member or military spouse applying for licensure pursuant to §55.0041. The revised law also provides that a military spouse licensed pursuant to §55.0041 may retain the license for the full three-year period notwithstanding a divorce or similar event affecting the license holder's status as a spouse.

Section by Section Overview. 22 Texas Administrative Code §217.5(h) relates to out-of-state licensure of military spouse applicants. The proposed amendment to §217.5(h) adds "service member" as an eligible applicant along with the previously covered military spouse. Further §217.5(h) is amended to add provisions that a license application under the rule will not be charged a fee, that the licensure determination by the Board will be made within 30 days upon showing of residency and licensure in good standing in the out of state jurisdiction, and finally that a licensed issued under §54.0041 may continue until the third anniversary of issuance regardless of divorce or similar event.

Fiscal Note. Dr. Kristin Benton, Executive Director, has determined that for each year of the first five years the proposed amendment will be in effect, there will be no change in the revenue to state government as a result of the enforcement or administration of the proposal.

Public Benefit/Cost Note. Dr. Benton has also determined that for each year of the first five years the proposed amendment is in effect, the anticipated public benefit will be the adoption of rules that comply with SB 422, remove any unnecessary impediments to single state licensure in Texas for military service member applicants, and clarify the applicability of the rule. There are no anticipated costs of compliance with the proposal. The proposal only applies to military service members along with previously cover military spouse applicants applying for licensure in Texas. For these applicants, the proposed amendment removes any unnecessary requirement related to proof of residency, unreasonable delay, or application fees in order to obtain single state licensure in Texas.

Costs Under the Government Code §2001.0045. The Government Code §2001.0045 prohibits agencies from adopting a rule that imposes costs on regulated persons unless the agency repeals a rule that imposes a total cost on regulated persons that is equal to or greater than the total cost imposed on regulated persons by the proposed rule or amends a rule to decrease the total cost imposed on regulated persons by an amount that is equal to or greater than the cost imposed on the persons by the proposed rule. Pursuant to §2001.0045(c)(9), this prohibition does not apply to a rule that is necessary to implement legislation, unless the legislature specifically states §2001.0045 applies to the rule. There are no anticipated costs of compliance with the proposal, and the proposal is necessary for consistency with the statutory requirements of SB 422.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses and Rural Communities. The Government Code §2006.002(c) and (f) require, that if a proposed rule may have an economic impact on small businesses, micro businesses, or rural communities, state agencies must prepare, as part of the rulemaking process, an economic impact statement that assesses the potential impact of the proposed rule on these businesses and communities and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. Because there are no anticipated costs of compliance associated with the proposal, an economic impact statement and regulatory flexibility analysis is not required.

Government Growth Impact Statement. The Board is required, pursuant to Government Code §2001.0221 and 34 Texas Administrative Code §11.1, to prepare a government growth impact statement. The Board has determined for each year of the first five years the proposed amendments will be in effect: (i) the proposal does not create or eliminate a government program; (ii) the proposal is not expected to have an effect on current agency

positions; (iii) implementation of the proposal does not require an increase or decrease in future legislative appropriations to the Board; (iv) the proposal does not affect the fees paid to the Board; (v) the proposal amends an existing regulation for consistency with the statutory requirements of SB 422 and makes changes that result in less restrictive and clear rules; (vi) the proposal does not expand, limit, or repeal an existing regulation; (vii) the proposal does not extend to new entities not previously subject to the rule; and (viii) the proposal will not affect the state's economy.

Takings Impact Assessment. The Board has determined that no private real property interests are affected by this proposal 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, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Request for Public Comment. To be considered, written comments on this proposal should be submitted to Hemant Maken, Director of Operations and James W. Johnston, General Counsel, Texas Board of Nursing, 1801 Congress, Suite 10-200, Austin, Texas 78701, or by e-mail to Hemant.Maken@bon.texas.gov and Dusty.Johnston@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The amendment is proposed under the authority of the Occupations Code §301.151 and SB 422, which amends the Occupations Code §55.004.

Section 301.151 addresses the Board's rulemaking authority. Section 55.004 addresses license eligibility for military service members and military spouse applicants and provides instruction for appropriate rule adoption.

Cross Reference to Statute. The following statutes are affected by this proposal: the Occupations Code §301.151 and §55.004.

- §217.5. Temporary License and Endorsement.
 - (a) (g) (No change.)
 - (h) Out-of-State Licensure of Military Spouse.
- (1) Pursuant to Texas Occupations Code §55.0041, a military service member or military spouse is eligible to practice nursing in Texas if the member or [military] spouse:
- (A) holds an active, current license to practice nursing in another state or territory:
- (i) that has licensing requirements, including education requirements, that are determined by the Board to be substantially equivalent to the requirements for nursing licensure in Texas; and
- (ii) is not subject to any current restriction, eligibility order, disciplinary order, probation, suspension, or other encumbrance;
- (B) submits a copy of the <u>member's or</u> spouse's military identification card;
- (C) notifies the Board of the <u>member's or [military]</u> spouse's intent to practice nursing in Texas on a form prescribed by the Board; and
- (D) meets the Board's fitness to practice and eligibility criteria set forth in §213.27 (relating to Good Professional Character),

§213.28 (relating to Licensure of Individuals with Criminal History), and §213.29 (relating to Fitness to Practice) of this title.

- (2) If a military service member or military spouse meets the criteria set forth in this subsection, the Board will issue a license to the member or [military] spouse to practice nursing in Texas. The member or spouse will not be charged a fee for the issuance of the license. A license issued under this subsection is valid through [expires no later than] the third anniversary of the date of the issuance of the license; thereafter, the license is subject to the Board's standard renewal cycle. [and may not be renewed. The military spouse will not be charged a fee for the issuance of the license.]
- (3) A military service member or military spouse who is unable to meet the criteria set forth in this subsection remains eligible to seek licensure in Texas, as set forth in \$217.2 (relating to Licensure by Examination for Graduates of Nursing Education Programs Within the United States, its Territories, or Possessions), \$217.4 (relating to Requirements for Initial Licensure by Examination for Nurses Who Graduate from Nursing Education Programs Outside of United States' Jurisdiction), \$221.3 (relating to APRN Education Requirements for Licensure), \$221.4 (relating to Licensure as an APRN) [APRN], \$213.30 (relating to Declaratory Order of Eligibility for Licensure), or the other remaining subsections of this section.
- (4) For a military service member or military spouse applying for licensure under this subsection, the Board will: [While practicing nursing in Texas, the military spouse must comply with all laws and regulations applicable to the practice of nursing in Texas.]
- (A) determine whether the jurisdiction in which the member or spouse is licensed has licensure requirements substantially equivalent to the requirements for the type of license in this state; and
- (B) not later than 30 days after the date the member or spouse provides notice of intent to practice in this state and a copy of the military identification card, verify whether the member or spouse is licensed in good standing in the jurisdiction in which the member or spouse is licensed.
- (5) While practicing nursing in Texas, the military service member or spouse must comply with all laws and regulations applicable to the practice of nursing in Texas.
- (6) A military spouse issued a license under this section may continue to practice under the license until the third anniversary of its issuance regardless of the occurrence before that date of divorce or a similar event affecting the license holder's status as a military spouse.

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

Filed with the Office of the Secretary of State on December 4, 2023.

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James W. Johnston
General Counsel
Texas Board of Nursing
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For further information, please call: (512) 305-6879

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 283. LICENSING REQUIREMENTS FOR PHARMACISTS

22 TAC §283.9

The Texas State Board of Pharmacy proposes amendments to §283.9, concerning Fee Requirements for Licensure by Examination, Score Transfer and Reciprocity. The amendments, if adopted, clarify how the board calculates the fee for failing to timely submit the initial renewal application and license fee for a license to practice pharmacy and correct grammatical errors.

Daniel Carroll, Pharm.D., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Dr. Carroll has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide clear and grammatically correct regulations that more accurately reflect the board's procedures for calculating a fee. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Dr. Carroll has determined the following:

- (1) The proposed amendments do not create or eliminate a government program;
- (2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;
- (3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;
- (4) The proposed amendments do not require an increase or decrease in fees paid to the agency;
- (5) The proposed amendments do not create a new regulation;
- (6) The proposed amendments do not limit or expand an existing regulation;
- (7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and
- (8) The proposed amendments do not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Eamon D. Briggs, Deputy General Counsel, Texas State Board of Pharmacy, 1801 Congress Avenue, Suite 13.100, Austin, Texas, 78701-1319, FAX (512) 305-8061. Comments must be received by 5:00 p.m., January 30, 2024.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

- §283.9. Fee Requirements for Licensure by Examination, Score Transfer and Reciprocity.
- (a) The fees for licensure by examination, score transfer, and reciprocity shall include one exam administration. The fees are as follows:
- (1) Examination Fee. The fee to submit an application for licensure by examination will include:
- (A) An examination processing fee of \$103, which is to be paid to the Texas State Board of Pharmacy and includes the processing of the Texas application.
- (B) NAPLEX administrative and examination fees as determined by NABP, which are to be paid to NABP in accordance with NABP policy.
- (C) MPJE administrative and examination fees as determined by NABP, which are to be paid to NABP in accordance with NABP policy.
- (2) Reciprocity Fee. The fee to submit an application for licensure by reciprocity will include:[-]
- (A) A reciprocity fee of \$255, which is to be paid to the Texas State Board of Pharmacy.
- (B) MPJE administrative and examination fees as determined by NABP, which are to be paid to NABP in accordance with NABP policy.
- (C) A license verification fee as determined by NABP, which is to be paid to NABP in accordance with NABP policy.
- (3) Score Transfer Fee. The fees to transfer a score to Texas, using the NAPLEX Score Transfer system will include:
- (A) An examination processing fee of \$103, which is to be paid to the Texas State Board of Pharmacy and includes the processing of the Texas application.
- (B) MPJE administrative and examination fees as determined by NABP, which are to be paid to NABP in accordance with NABP policy.
- (C) A score transfer fee as determined by NABP, which is to be paid to NABP in accordance with NABP policy.
- (b) If an applicant fails an examination or is required to take an examination by the Board, the application fee is \$103 for each examination the applicant is required to take.
 - (c) Rescheduling or canceling an examination appointment.
- (1) Refunds for fees charged by NABP for the administration of the NAPLEX and MPJE are in accordance with NABP policy. Rescheduling of an examination appointment shall be in accordance with NABP policy.
- (2) The Board may refund fifty percent of an examination fee paid to the Board by an applicant if the applicant:
- (A) provides advance notice of their inability to take the examination prior to the board providing authorization to take the examination; or
- (B) is unable to take the examination due to an emergency situation including but not limited to a manmade or natural disaster, documented serious medical illness, or other circumstance deemed an emergency by the Executive Director of the Board.
- (d) A person who takes the NAPLEX or [and/or the] Texas Pharmacy Jurisprudence Examination will be notified of the results of the examination(s) within two weeks of receipt of the results of the

examination(s) from the testing service. If both the NAPLEX and [the] Texas Pharmacy Jurisprudence Examination are taken, the applicant will not be notified until the results of both examinations have been received. Such notification will be made within two weeks after receipt of the results of both examinations.

- (e) Once an applicant has successfully completed all requirements of licensure, the applicant will be notified of licensure as a pharmacist and of his or her pharmacist license number and the following is applicable.
- (1) An initial license will be issued by the board authorizing [The notice letter shall serve as authorization for] the person to practice pharmacy in Texas for a period of 30 days [from the date of the notice letter].
- (2) The applicant shall complete a pharmacist license application and pay the initial license fee [one pharmacist licensee fee as] specified in §295.5 of this title (relating to Pharmacist License or Renewal Fees).
- [(3) The provisions of §295.7 of this title (relating to Pharmacist License Renewal) apply to the timely receipt of an application and licensure fee.]
- (3) [(4)] If application and payment of the <u>initial</u> [pharmacist] license fee are not received by the board within 30 days from the <u>initial license was issued</u> [date of the notice letter], the person's license to practice pharmacy shall expire. A person may not practice pharmacy with an expired license. The license may be renewed according to the following schedule.
- (A) If the <u>initial license</u> [notice letter] has been expired for 90 days or less, the person may become licensed by making application and paying to the board one <u>initial</u> license fee and a fee that is one-half of a renewal fee [the examination fee for the license].
- (B) If the <u>initial license</u> [notice letter] has been expired for more than 90 days but less than one year, the person may become licensed by making application and paying to the board <u>one initial license fee</u> [all <u>unpaid renewal fees</u>] and a fee that is equal to <u>a renewal fee</u> [the examination fee for the license].
- (C) If the <u>initial license</u> [notice letter] has been expired for one year or more, the person shall apply for a new license.

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

Filed with the Office of the Secretary of State on December 4, 2023.

TRD-202304480

Daniel Carroll, Pharm.D.

Executive Director

Texas State Board of Pharmacy

Earliest possible date of adoption: January 14, 2024 For further information, please call: (512) 305-8033

CHAPTER 315. CONTROLLED SUBSTANCES 22 TAC §315.9

The Texas State Board of Pharmacy proposes amendments to §315.9, concerning Pharmacy Responsibility - Out-of-State Practitioner - Effective September 1, 2016. The amendments, if adopted, clarify that the requirements for dispensing a Schedule

II controlled substance prescription issued by a practitioner in another state apply to an electronic prescription and remove the effective date from the short title.

Daniel Carroll, Pharm.D., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Dr. Carroll has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide consistency between state law and Board rules. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Dr. Carroll has determined the following:

- (1) The proposed amendments do not create or eliminate a government program;
- (2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;
- (3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;
- (4) The proposed amendments do not require an increase or decrease in fees paid to the agency;
- (5) The proposed amendments do not create a new regulation;
- (6) The proposed amendments do limit an existing regulation in order to be consistent with state law;
- (7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and
- (8) The proposed amendments do not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Eamon D. Briggs, Deputy General Counsel, Texas State Board of Pharmacy, 1801 Congress Avenue, Suite 13.100, Austin, Texas, 78701-1319, FAX (512) 305-8061. Comments must be received by 5:00 p.m., January 30, 2024.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

- §315.9. Pharmacy Responsibility Out-of-State Practitioner[Effective September 1, 2016].
- (a) A Schedule II controlled substance prescription issued by a practitioner in another state [not on the board's official prescription form] may be dispensed if:
- (1) the practitioner is authorized by the other state to prescribe the substance;

- (2) the pharmacy has a plan approved by and on file with the board allowing the activity; and
- (3) the pharmacy processes and submits the prescription according to the reporting requirements approved in the plan.
- (b) The pharmacy may dispense a prescription for a Schedule III through V controlled substance issued by a practitioner in another state if the practitioner is authorized by the other state to prescribe the substance.

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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Daniel Carroll, Pharm.D.

Executive Director

Texas State Board of Pharmacy

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For further information, please call: (512) 305-8033



TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 115. CONTROL OF AIR POLLUTION FROM VOLATILE ORGANIC COMPOUNDS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to 30 Texas Administrative Code (TAC) §§115.10, 115.110 - 115.112, 115.114 - 115.119, 115.121 - 115.123, 115.125 - 115.127, 115.129, 115.131, 115.132, 115.135 - 115.137, 115.139, 115.142, 115.144, 115.146, 115.147, 115.149, 115.161, 115.162, 115.164 - 115.167, 115.169 - 115.172, 115.177, 115.183, 115.211 - 115.214, 115.216, 115.217, 115.219, 115.221, 115.222, 115.224, 115.226, 115.227, 115.229, 115.234, 115.235, 115.237, 115.239, 115.311, 115.312, 115.315, 115.316, 115.319, 115.352 - 115.357, 115.359, 115.410 - 115.413, 115.416, 115.419, 115.420, 115.422, 115.423, 115.425 - 115.427, 115.429 -115.432, 115.435, 115.436, 115.439 - 115.443, 115.445, 115.446, 115.449 - 115.451, 115.453, 115.458 - 115.461, 115.463, 115.465, 115.468 - 115.471, 115.473, 115.475, 115.478, 115.479, 115.510, 115.512, 115.515 - 115.517, 115.519, 115.531, 115.532, 115.534 - 115.537, 115.539, 115.901, and 115.911. TCEQ also proposes to repeal §115.173; and simultaneously proposes new §115.173.

The amended sections will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the State Implementation Plan (SIP).

Background and Summary of the Factual Basis for the Proposed Rules

These proposed rules would address federal Clean Air Act (FCAA) reasonably available control technology (RACT) requirements for Bexar County under the 2015 eight-hour ozone

National Ambient Air Quality Standard (NAAQS) of 0.070 parts per million (ppm) as well as FCAA RACT and SIP contingency requirements for the Dallas-Fort Worth (DFW) and Houston-Galveston-Brazoria (HGB) nonattainment areas under the 2008 eight-hour ozone NAAQS of 0.075 ppm. The proposed rulemaking would also amend previously adopted rules that addressed EPA's 2016 Control Techniques Guidelines for the Oil and Natural Gas Industry in the DFW and HGB 2008 ozone NAAQS nonattainment areas (Rule Project No. 2020-038-115-AI, adopted June 30, 2021).

The following portion of the Background and Summary addresses the RACT update for Bexar County.

Effective November 7, 2022, the EPA reclassified nonattainment areas under the 2015 eight-hour ozone NAAQS (87 Federal Register (FR) 60897). Bexar County was reclassified from marginal to moderate nonattainment with a 2023 attainment year and an attainment deadline of September 24, 2024. Ozone nonattainment areas classified as moderate and above are required to meet the mandates of FCAA under §172(c)(1) and §182(b)(2). According to the EPA's Implementation of the 2015 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements: Final Rule (2015 eight-hour ozone standard SIP requirements rule) published in the Federal Register (83 FR 62998), states containing areas classified as moderate ozone nonattainment or higher must submit a SIP revision to fulfill RACT requirements for all source categories addressed by control techniques guidelines (CTG) or alternative control techniques (ACT) as well as any non-ACT/CTG category sources that are classified as major stationary sources of nitrogen oxides (NO^x) or volatile organic compounds (VOC) (83 FR 62998). Specifically, the SIP revision must contain adopted RACT regulations, certifications where appropriate that existing provisions are RACT, and/or negative declarations that there are no sources in the nonattainment area covered by a specific CTG source category (80 FR 12264).

Bexar County's reclassification to moderate ozone nonattainment triggered emission control evaluation, emission reduction quantification, rule writing, and submission requirements for attainment demonstration (AD) and reasonable further progress (RFP) SIP revisions. However, neither EPA's reclassification schedule nor its SIP requirements submittal deadline of January 1, 2023 provided sufficient time to implement new VOC emission reduction controls prior to the beginning of ozone season in Bexar County, which is March 1, 2023. The portions of this proposed rulemaking affecting Bexar County, along with the concurrently proposed Bexar County RACT Update SIP Revision (Non-rule Project No. 2023-132-SIP-NR), are intended to address the emission control and RACT analysis requirements.

On October 12, 2023, Texas Governor Greg Abbott signed and submitted a letter to EPA to reclassify the Bexar County, DFW, and HGB moderate 2015 eight-hour ozone NAAQS nonattainment areas to serious. On October 18, 2023, the EPA published a finding of failure to submit the required moderate AD SIP revisions for all three areas. The commission is proceeding with this rulemaking that address RACT in Bexar County since RACT is required for both moderate and serious nonattainment classifications. RACT analyses for the DFW and HGB moderate nonattainment areas were proposed for public comment by the commission on May 31, 2023. The analyses for both areas found that no additional rulemaking was needed to satisfy RACT. The RACT analyses for the DFW and HGB moderate nonattainment

areas may be submitted to the EPA at a future date, subject to adoption by the commission.

All Bexar County VOC emission source categories addressed by CTG and ACT documents were evaluated. 30 TAC Chapter 115 or other approved regulations were developed to update and fulfill RACT requirements. RACT requirements are fulfilled for all non-CTG and non-ACT major VOC emission sources" those for which VOC controls are technologically and economically feasible" by proposed new, updated, or existing 30 TAC Chapter 115 rules and other federally enforceable measures, as documented in the concurrently proposed SIP revision.

The rule revisions to update RACT requirements in Bexar County are proposed in 19 divisions of Chapter 115. Subchapter B, Division 1 Storage of Volatile Organic Compounds, Division 2 Vent Gas Control, Division 3 Water Separation, Division 4 Industrial Wastewater, Division 6 Batch Processes, and Division 7 Oil and Natural Gas Service in Ozone Nonattainment Areas contain proposed revisions. Subchapter C contains proposed revisions in Division 1 Loading and Unloading of Volatile Organic Compounds, Division 2 Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities, and Division 3 Control of Volatile Organic Compound Leaks from Transport Vessels. Subchapter D contains proposed revisions in Division 1 Process Unit Turnaround and Vacuum-Producing Systems in Petroleum Refineries, and Division 3 Fugitive Emission Control in Petroleum Refining, Natural Gas/Gasoline Processing, and Petrochemical Processes in Ozone Nonattainment Areas. In Subchapter E, proposed revisions are in Division 2 Surface Coating Processes, Division 3 Flexographic and Rotogravure Printing, Division 4 Offset Lithographic Printing, Division 5 Control Requirements for Surface Coating Processes, Division 6 Industrial Cleaning Solvents, and Division 7 Miscellaneous Industrial Adhesives. Subchapter F, Division 1 Cutback Asphalt, and Division 2 Pharmaceutical Manufacturing Facilities contain proposed revisions. In these divisions, applicability and compliance provisions for existing RACT rules are amended to add provisions for Bexar County. Proposed changes are also made in Subchapter A, Definitions, and Subchapter J, Division 1 Alternative Means of Control to implement these RACT updates in Bexar County. Revisions to Subchapter B, Division 1 in the DFW area implement major source RACT at the lower 25 tpy major source threshold of the severe nonattainment classification and in Bexar County at the 100 tpy threshold for moderate areas. Likewise, Subchapter B, Division 2 revisions implement RACT for bakery vents at the major source thresholds in DFW and Bexar County. In all other divisions, Bexar County is added to rule provisions with the most stringent requirements for RACT implementation. All proposed regulations in have a compliance date of January 1, 2025.

In addition to the proposed rules to address RACT for the Bexar County 2015 ozone NAAQS moderate nonattainment area, the proposed rulemaking would address RACT requirements for the DFW 2008 ozone NAAQS severe nonattainment area and contingency requirements for the DFW and HGB 2008 ozone NAAQS severe nonattainment areas. Effective November 7, 2022, the EPA reclassified nonattainment areas under the 2008 ozone NAAQS (87 FR 60926). A 10-county DFW area (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties) and an eight-county HGB area (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties) were reclassified from serious to severe nonattainment with a 2026 attainment year and an attainment deadline of July 20, 2027. Reclassification

to severe nonattainment triggers emission control evaluation, emission reduction quantification, rule writing, and SIP submission requirements for the DFW and HGB 2008 ozone NAAQS nonattainment areas that must be submitted to the EPA by May 7, 2024, the deadline established in EPA's reclassification action for the 2008 ozone NAAQS. This proposed rulemaking would amend Subchapter B, Division 1 VOC Storage Tank provisions to address RACT in the DFW 2008 ozone NAAQS severe nonattainment area and would amend rules in Subchapters E and F to address SIP contingency requirements for the DFW and HGB 2008 ozone NAAQS nonattainment areas.

The proposed rulemaking would add provisions for six measures to be implemented if needed for SIP contingency purposes in the DFW and/or HGB 2008 ozone NAAQS nonattainment areas. Contingency measures are control requirements that would take effect and result in emissions reductions if an area fails to attain a NAAQS by the applicable attainment date or fails to demonstrate RFP. Requirements for SIP contingency are established under FCAA, §172(c)(9) and §182(c)(9). Requirements for five contingency measures are proposed in Subchapter E: degreasing contingency rules are proposed in Division 1; industrial maintenance coatings and traffic marking coatings contingency rules are proposed in Division 5; industrial cleaning solvents contingency rules are proposed in Division 6: and industrial adhesives contingency rules are proposed in Division 7. A sixth contingency measure is proposed in Subchapter F, Division 6 for emulsified asphalt paving in the DFW and/or HGB 2008 ozone NAAQS severe nonattainment areas. Proposed contingency measures would apply independent of each other and separately for the DFW and/or HGB 2008 ozone NAAQS severe nonattainment areas. Implementation of a contingency measure would be triggered upon EPA publication of a notice in the Federal Register that the specified area(s) failed to attain the applicable ozone NAAQS by the applicable attainment date or failed to demonstrate RFP, and the commission's subsequent publication in the Texas Register that compliance with the contingency measures is required. Affected sources would be required to comply with the contingency rules by no later than nine months after Texas Register publication.

In addition to proposed amendments to address SIP contingency requirements for the DFW and HGB 2008 ozone NAAQS nonattainment areas, to address RACT requirements for the Bexar County 2015 ozone NAAQS moderate nonattainment area, and to address RACT requirements for the DFW 2008 ozone NAAQS severe nonattainment area, this proposed rulemaking would also amend Subchapter B, Division 7 to clarify provisions adopted June 30, 2021 (Project No. 2020-038-115-AI) to implement the EPA's 2016 Control Techniques Guidelines for the Oil and Natural Gas Industry. The proposed amendments would also delete rule provisions triggered by Wise County no longer being designated as nonattainment under the 2008 ozone NAAQS. This action will not occur because the petition for review seeking reversal of the nonattainment designation was denied on June 2, 2015, by the U.S. Court of Appeals for the District of Columbia Circuit (Mississippi v. EPA, 790 F.3d. 138). Similarly, the proposed amendments would delete rule provisions triggered by reclassification of the DFW area to severe nonattainment for the 1997 eight-hour ozone NAAQS because the 1997 eight-hour ozone NAAQS was revoked when the 2015 ozone NAAQS was promulgated.

Demonstrating Noninterference under Federal Clean Air Act, §110(I)

Under FCAA, §110(I), the EPA cannot approve a SIP revision if it "would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of [the FCAA]." The commission provides the following information to demonstrate why the proposed changes to the Subchapter B, Division 7 rules and associated Chapter 115 VOC control requirements will not: negatively impact the status of the state's progress towards attainment, interfere with control measures, or prevent reasonable further progress toward attainment of the ozone NAAQS in the HGB, DFW, or Bexar County nonattainment areas.

On June 30, 2021, the commission adopted rules in 30 TAC §115.170 through §115.183 (Rule Project No. 2020-038-115-AI) to implement the EPA's 2016 Control Techniques Guidelines for the Oil and Natural Gas Industry. These adopted rules in Chapter 115 concerning RACT requirements for sources covered by the 2016 oil and gas CTG became effective on July 21, 2021, and they were approved by the EPA as a revision to the SIP on August 15, 2023, with an effective date of September 14, 2023 (88 FR 55379). The 2016 oil and gas CTG required covered sources in the DFW and HGB ozone nonattainment areas to comply with specified emissions limitations and control requirements for the oil and natural gas industry sector by January 1, 2023. The Chapter 115 rules currently applicable to oil and gas industry operations in the HGB and DFW nonattainment areas inadvertently omit three CTG recommended exemptions, consolidate control provisions in a format that could be interpreted to deviate from EPA's centrifugal and reciprocating compressor CTG RACT guidance and fail to include a CTG recommended incentive to maintain good fugitive monitoring performance. The proposed 30 TAC Chapter 115, Subchapter B, Division 7 revisions would add §115.172 CTG recommended exemptions, clarify §115.173 compressor control requirements, and amend §115.177 fugitive emission monitoring provisions to establish rule language that more accurately reflects EPA's 2016 CTG rule guidelines RACT requirements.

The commission proposes a §115.172(a)(9) exemption for fugitive components in heavy liquid service from routine §115.177 instrument monitoring requirements provided they are monitored weekly by a visual, audio, and olfactory (OVA) survey as the CTG recommends. The OVA monitoring surveys would identify heavy liquid service leaks quicker than instrument monitoring, because they occur more frequently and typically document leak evidence before an instrument reading above the 10,000 ppm leak definition is observed. Therefore, the proposed §115.172(a)(9) exemption would enable heavily liquid service fugitive component leaks to be identified and repaired sooner to reduce natural gas processing plant VOC emissions.

In §115.172(a)(10), the commission proposes a similar CTG recommended exemption from routine instrument monitoring for natural gas plant light liquid service fugitive components that route potential VOC leaks through a closed vent system to a control device, process or fuel gas system provided weekly OVA survey are conducted. The higher potential emissions from light liquid service components and §115.172(a)(10) control requirement would result in potential VOC emission reductions that are an order of magnitude or larger than produced by the proposed §115.172(a)(9) heavy liquid service exemption.

The commission proposes to exempt wellhead(s)-only sites from instrument monitoring provisions under new §115.172(a)(11), since they have very limited quantities of fugitive components and associated VOC emissions. Any insignificant VOC

emissions increase that may result from the proposed CTG recommended wellhead-only exemption would be more than offset by VOC emission reductions from the new implementation of more frequent olfactory, visual and auditory (OVA) monitoring provisions proposed in §115.172(a)(9) and (10). The addition of new §115.172(a)(9) - (11) exemptions would not produce a net increase in VOC emissions or negatively impact the status of the state's progress towards attainment.

The commission inadvertently combined CTG recommended centrifugal and reciprocating compressor classification specific control provisions and created unnecessary confusion over the requirements that apply to each compressor type. The commission's proposed revisions to §115.173 would place the centrifugal and reciprocating compressor control provisions in separate §115.173(a) and §115.173(b) subsections, respectively, with the individual compressor type control provisions specified for each compressor type as recommended in the CTG. The proposed updates would clarify each compressor type's specific control requirements to more precisely conform to CTG RACT guidance. The reformatting of §115.173 compressor control requirements according to compressor type would not increase CTG RACT baseline VOC emissions or negatively impact the status of the state's progress towards attainment.

The commission's existing §115.177 fugitive emission monitoring provisions require natural gas plant fugitive components that include light liquid service valves to be initially instrument monitored on a monthly basis and provide an option for quarterly monitored components with good monitoring and repair histories to be monitored less frequently in accordance with CTG recommendations. An oversight in the commission's regulatory language does not currently provide a pathway for fugitive emission components to transition from a monthly to a quarterly monitoring schedule as the CTG recommends as an incentive to encourage good leak repair performance that would reduce VOC emissions. The commission proposes to restore the CTG recommended monitoring schedule pathway as an incentive for industry to expedite the location and repair fugitive component leaks to qualify for pathway access. the commission anticipates that the proposed monitoring schedule pathway requirement to implement and maintain the "good monitoring program practices" would reduce VOC emissions below the current rule's baseline level as a result of the expedited detection and repair practices needed to satisfy qualification criteria. The proposed §115.177 fugitive monitoring pathway language would not produce an increase in VOC emissions or negatively impact the status of the state's progress towards attainment.

The applicability of Subchapter B, Division 7 revisions would be limited to the Bexar County, DFW, and HGB areas. The commission's proposed regulatory updates would more precisely incorporate CTG RACT recommendations, increase RACT rule effectiveness and result in net VOC emission reductions for the HGB and DFW nonattainment areas. The proposed Subchapter B, Division 7 amendments would also implement VOC RACT in Bexar County, which is a requirement of the FCAA and intended to help the area reach attainment, and not affect Chapter 115 requirements for other areas in Texas. The proposed rulemaking would not negatively impact the state's progress towards attainment of the 2008 and 2015 eight-hour ozone NAAQS, reasonable further progress toward attainment, or any other applicable requirement of the FCAA.

Section by Section Discussion

In addition to the information provided above for a background and summary of the proposed rules, including a demonstration of noninterference with §110(I) of the federal Clean Air Act (FCAA), the commission also proposes 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, September 2020. The specific substantive changes are discussed in greater detail in this Section by Section Discussion in the corresponding portions related to the affected rule sections.

Regarding the divisions of 30 Texas Administrative Code (TAC) §115 (Chapter 115) that include proposed amendments, the commission additionally proposes to replace the term "Houston-Galveston" with the term "Houston-Galveston-Brazoria." The latter term reflects how the eight-county nonattainment area is commonly referred to in other parts of Chapter 115, by regulated entities, and the commission. Other existing references to "Houston-Galveston" in parts of Chapter 115 that are not included in this proposed rulemaking will be addressed in a future rule project. For purposes of being consistent with other formatting styles of Chapter 115, the commission proposes to replace "/" with "-" in "Beaumont/Port Arthur," "Dallas/Fort Worth." and "Houston/Galveston." respectively. matting updates are made in all affected sections included in this proposed rulemaking and are not further discussed in the Section by Section Discussion.

SUBCHAPTER A: DEFINITIONS

§115.10 Definitions

The commission proposes to amend the introductory paragraph of §115.10 to update a reference to the Texas Clean Air Act and make other non-substantive wording changes to be more precise and consistent.

The commission proposes to insert a new definition for the Bexar County area in §115.10(3) to establish the affected area for the proposed Bexar County nonattainment rules. Former §115.10(3) and subsequent definitions would be renumbered accordingly but would not otherwise be revised, with the exception of the definitions for covered attainment counties currently in §115.10(10) and Dallas-Fort Worth (DFW) area currently in §115.10(11). For the definition of covered attainment counties, the commission proposes to insert "before January 1, 2025" immediately after "Bexar" to make it clear that Bexar County is subject to applicable covered attainment county rules before January 1, 2025, which is the compliance date for the proposed rules applicable in the Bexar County ozone nonattainment area to implement RACT. For the definition of DFW area, the commission proposes to remove a definition of the DFW area currently in §115.10(11)(B)(iii) that excludes Wise County and applies to Flexographic and Rotogravure Printing in Subchapter E, Division 3. Removal of this definition is necessary to allow the rules in Subchapter E, Division 3 for flexographic and rotogravure printing to apply in Wise County. The clauses in subparagraph (B) of the definition would be renumbered accordingly.

SUBCHAPTER B: GENERAL VOLATILE ORGANIC COMPOUND SOURCES

DIVISION 1: STORAGE OF VOLATILE ORGANIC COMPOUNDS

§115.110 Applicability and Definitions

To switch Bexar County's applicability under the volatile organic compounds (VOC) storage rules in Subchapter B, Division 1, the commission proposes to add applicability for the Bexar County area as new proposed §115.110(a)(2) to signify its status as a nonattainment area for which VOC storage rules for nonattainment areas would apply. Bexar County is currently listed along with other attainment counties for which VOC storage rules for attainment counties apply. Subsequent definitions would be renumbered.

The commission proposes to append "as defined for covered attainment counties in §115.10 of this title (relating to Definitions)" to the end of the current §115.110(a)(5) language and renumbering it as §115.110(a)(6) to specify that Bexar County would be removed from this attainment county applicability list on January 1, 2025 when the area would be required to comply with the newly proposed nonattainment county storage tank rules.

§115.111 Exemptions

The commission proposes to apply exemptions in §115.111(a) to the Bexar County ozone nonattainment area on the compliance date for the rules in Subchapter B. Division 1. The exemptions are for proposed nonattainment rules and not existing covered attainment county regulations. Specifically, the commission proposes to apply the existing exemptions in paragraphs (2), (4), (6), and (7) to affected sources in the Bexar County area. Upon the compliance date for the proposed rules in Division 1 that apply in Bexar County, the commission proposes to add the Bexar County area for the following exemptions: in paragraph (2), an exemption from Division 1 requirements for tanks with a capacity less than 210,000 gallons that store crude oil or condensate prior to custody transfer; in paragraph (4), an exemption from the requirement to retrofit with a rim-mounted secondary seal under specific circumstances for welded storage tanks with a mechanical shoe primary seal that have a shoe-mounted secondary seal; in paragraph (6), an exemption from any external floating roof secondary seal requirement under specific circumstances for welded storage tanks storing VOC with a true vapor pressure less than 4.0 pounds per square inch absolute (psia); and in paragraph (7), an exemption from any external floating roof secondary seal requirement under specific circumstances for welded storage tanks storing crude oil with a true vapor pressure equal to or greater than 4.0 psia and less than 6.0 psia.

The commission proposes to revise §115.111(a)(10) to update regulatory references, remove a severe nonattainment reclassification scenario (since DFW has already been reclassified as severe nonattainment) and add a November 7, 2025 expiration date when the DFW area must comply with severe nonattainment requirements and may no longer use this exemption.

The commission proposes to insert a November 7, 2025 start date in place of "the date specified in §115.119(b)(1)(C)" to activate the §115.111(a)(11) DFW exemption to appropriately reflect its recent severe nonattainment redesignation and not the prior serious nonattainment compliance date. The commission proposes to update the §115.111(a)(11) exemption requirement reference to the more appropriate §115.112(e)(4)(B) since prior §115.112(e)(4)(B)(ii) control requirement is also proposed to be removed, as discussed elsewhere in this Section by Section Discussion.

The commission proposes to update the \$115.111(a)(12) exemption requirement reference from \$115.112(e)(4)(C) to 115.112(e)(4)(C)(i).

The commission proposes to revise existing §115.111(a)(13) to exempt Wise County condensate storage tanks and tank batteries with 12-month throughputs greater than 3,000 barrels (126,000 gallons) from §115.112(e)(4)(C) flash gas control requirements for the period July 20, 2021 until November 7, 2025 if the owner demonstrates the aggregate 12-month rolling storage tank VOC emissions are less the 50 tons per year (tpy).

The commission proposes to add new §115.111(a)(14) requirements that would exempt Wise County condensate storage tanks and tank batteries with 12-month throughputs greater than 1,500 barrels (63,000 gallons) from §115.112(e)(4)(D) flash gas control requirements, on and after November 7, 2025, if the owner demonstrates the aggregate 12-month rolling storage tank VOC emissions are less the 25 tpy.

The commission proposes to add new §115.111(a)(15) requirements that would exempt Bexar County condensate storage tanks and tank batteries with 12-month throughputs greater than 6,000 barrels (252,000 gallons) from §115.112(e)(4)(E) flash gas control requirements, on and after January 1, 2025, if the owner demonstrates the aggregate 12-month rolling storage tank VOC emissions are less the 100 tpy.

The commission proposes to revise the exemption in existing §115.111(a)(14), proposed to be renumbered to §115.111(a)(16), to add Bexar County tanks that store crude oil or condensate and that are also subject to Subchapter B, Division 7 compliance requirements. The commission proposes to remove reference to the January 1, 2023 compliance date for the DFW and HGB areas to comply with Division 7 requirements and replace it with a reference to the initial compliance schedules for Division 7 rules provided in §115.183. This revision is proposed because the January 1, 2023 compliance date is only applicable in the DFW and HGB areas and not in the Bexar County area. Referring to the initial compliance dates in §115.183 provides an appropriate source for determining the status of this exemption by area.

The commission proposes to add a second sentence to current §115.111(c) stating that the Bexar County exemptions in this subsection no longer apply after December 31, 2024 when affected Bexar County storage tanks would be required to meet §115.111(a) provisions to qualify for an exemption.

§115.112 Control Requirements

The commission proposes to add language to §115.112(c) to specify that Bexar County area storage tanks would only be subject to these requirements through December 31, 2024. On and after January 1, 2025, affected Bexar County storage tanks would be required to comply with proposed §115.112(e) RACT requirements instead of §115.112(c).

The commission proposes to add the Bexar County area in §115.112(e) so that Bexar County must comply with current Dallas-Fort Worth and Houston-Galveston-Brazoria RACT requirements beginning on January 1, 2025. To clarify the applicability transition from subsection (e) requirements to those in Division 7 for crude oil and condensate storage tanks, the commission proposes to remove the reference to the January 1, 2023 compliance date for Division 7 and replace it with a reference to the compliance schedule provisions for Division 7 in §115.183. This change is required because Bexar County sources have a later Division 7 compliance date than DFW and HGB.

The commission proposes new §115.112(e)(3)(A)(iv) for the Bexar County area to designate the same minimum RACT

efficiency for control devices in the Bexar County area as the Houston-Galveston-Brazoria and Dallas-Fort Worth nonattainment areas.

The commission proposes revisions in §115.112(e)(4)(B) and (C) and a new §115.112(e)(4)(D) to lower the throughput flow rate that triggers fixed roof condensate storage tank flash gas control requirements in the DFW area to 1,500 barrels (or 63,000 gallons) per year by November 7, 2025. This throughput is consistent with the severe nonattainment 25 ton major source threshold when using the default VOC content for condensate. Each monthly throughput for the 12 calendar months immediately before any date that a fixed roof condensate storage tank is potentially subject to flash gas control requirements shall be added together to derive the appropriate 12-month value for comparison with the throughput limit. To accomplish this, the provision in existing §115.112(e)(4)(B)(i) that established the current 3,000 barrels flash gas control throughput limit for condensate storage tanks prior to custody transfer is consistent with the serious nonattainment 50 ton major source threshold and would be moved under subparagraph (B) with an end date before November 7. 2025.

The before November 7, 2025 end date would also be added to existing §115.112(e)(4)(C)(ii), which established the current 3,000 barrel limit for Wise County. The commission's proposed Wise County rules in §115.112(e)(4)(C)(ii) specify the last period where the current 3,000 barrel throughput limit would be applicable as the 12 whole calendar months immediately before November 7, 2025 (November 2024 through October 2025). The throughput data are adjusted to the start of the month because production and disposition data covering a calendar month are reported to the Railroad Commission of Texas.

Proposed §115.112(e)(4)(D) would reduce the existing 3,000 barrel 12-month rolling average throughput limit requiring flash gas controls on fixed roof condensate storage tanks prior to custody transfer to 1,500 barrels in the entire DFW area on November 7, 2025. To account for how data are reported, compliance with this limit is to be determined using throughput data beginning November 1, 2025.

The commission proposes to make additional adjustments to $\S115.112(e)(4)(B)(ii)$ and $\S115.112(e)(4)(C)(i)$. The provision in $\S115.112(e)(4)(B)(ii)$ would be removed because the DFW area will not be reclassified to severe for the 1997 ozone standard, which has been revoked. The provision in $\S115.112(e)(4)(C)(i)$ would be amended to specify the end date for the previous 6,000 barrel 12-month rolling average throughput limit for Wise County, which was July 20, 2021.

Proposed §115.112(e)(4)(D) would reduce the existing 3,000 barrel 12-month rolling average throughput limit requiring flash gas controls on fixed roof condensate storage tanks prior to custody transfer to 1,500 barrels in the entire DFW area on November 7, 2025.

The commission proposes new §115.112(e)(4)(E) that would require compliance with flash gas emission vapor control system requirements beginning January 1, 2025 for Bexar County area fixed roof tanks with an annual throughput greater than 252,000 gallons that store condensate prior to custody transfer.

The commission proposes revisions in §115.112(e)(5) concerning the VOC emission control trigger levels for a fixed roof tank or tank batteries that store crude oil or condensate prior to custody transfer or at a pipeline breakout station to add a Bexar County trigger level and to revise the DFW area trigger level on Novem-

ber 7, 2025 to coincide with the 25-ton major source threshold for severe nonattainment areas.

The commission proposes to consolidate the existing emission trigger level for the DFW area except Wise County into §115.112(e)(5)(B) after moving the 50-ton limit in deleted clause (i) into (5)(B) and deleting clause (ii) which can no longer be applicable due to revocation of the 1997 NAAQS. The trigger in revised §115.112(e)(5)(B) lasts until November 7, 2025. The commission also proposes specifying a November 7, 2025 end date for the same 50-ton limit in §115.112(e)(5)(C)(ii) and also specifying the end date for the previous 100-ton limit in Wise County, which was July 20, 2021.

The commission proposes new §115.112(e)(5)(D) to lower rolling 12-month uncontrolled VOC emission control trigger levels for a fixed roof tank or tank batteries that store crude oil or condensate prior to custody transfer or at a pipeline breakout station in the DFW area to 25 tons. This unifies the control requirements across the DFW area into one provision beginning November 7, 2025.

The commission proposes new §115.112(e)(5)(E) that would require a flash gas emission vapor control system for Bexar County area fixed roof tanks or tank batteries with uncontrolled annual emissions greater than or equal to 100 tpy at a pipeline breakout station or that store crude oil prior to custody transfer.

The commission proposes to add the Bexar County area to the existing §115.112(e)(7) DFW area and HGB area compliance provisions so that on and after January 1, 2025 affected Bexar County area fixed roof tanks that store condensate or crude oil prior to custody transfer must route vapors to a vapor recovery unit, in accordance with manufacturer instructions or industry standards consistent with good engineering practices.

§115.114 Inspection and Repair Requirements

The commission proposes to revise §115.114(a) to apply the inspection requirements in that subsection to affected sources located in the Bexar County area. The compliance date for these new Bexar County requirements would be January 1, 2025.

The commission proposes to add the Bexar County area to existing inspection requirements for fixed roof storage tanks subject to the requirements of §115.114(a)(5). Affected sources located in the Bexar County area would become subject to these inspection and repair requirements starting January 1, 2025.

The commission proposes to revise §115.114(c) to remove Bexar County area applicability for the storage tank inspection and repair obligations as a covered attainment county on January 1, 2025.

§115.115 Monitoring Requirements

The commission proposes to add the Bexar County area to the monitoring requirements in §115.115(a). The requirements would apply in Bexar County beginning January 1, 2025.

§115.116 Testing Requirements

The commission proposes to add the Bexar County area to the current Beaumont-Port Arthur (BPA), Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria area VOC emission test requirements in §115.116(a). As specified in proposed §115.119(g), the requirements would apply in Bexar County beginning January 1, 2025.

§115.117 Approved Test Methods

The commission proposes to add the Bexar County area to the list of areas for which the test methods in §115.117 apply.

§115.118 Recordkeeping Requirements

The commission proposes to add the Bexar County area to the list of areas for which the recordkeeping requirements in §115.118 apply. The Bexar County area would also be included with the areas for which additional records must be kept to comply with §115.118(a)(6). These proposed requirements would apply in Bexar County beginning January 1, 2025. Finally, a proposed provision would be added to §115.118(a)(7) to require maintenance of applicable records in Bexar County for at least five years, beginning January 1, 2025.

§115.119 Compliance Schedules

For sources subject to the requirements in Subchapter B, Division 1, the commission proposes to establish a compliance schedule for Bexar County to transition from existing requirements that currently apply to Bexar County as a covered attainment county to RACT requirements that apply to the Bexar County 2015 ozone NAAQS nonattainment area. Likewise, the commission proposed to establish a compliance schedule for the DFW area to transition from RACT requirements that currently establish a level of control for an ozone NAAQS nonattainment area classified as serious to a level of control required for a severe ozone NAAQS nonattainment area. The commission also proposes to remove §115.119(b)(1)(C) because the compliance requirements it references are also proposed to be removed due to revocation of the 1997 ozone NAAQS.

The commission proposes to revise §115.119(e) to clarify that Bexar County is no longer subject to the compliance schedule for storage tank requirements in attainment counties beginning January 1, 2025, at which time, the compliance schedule in a proposed new §115.119(g) would apply. Proposed new §115.119(g) would specify a compliance date that is no later than January 1, 2025 for the new Bexar County nonattainment area storage tank requirements, and existing §115.119(g) and (h) would be renumbered accordingly.

The commission proposes to revise §115.119(f) to specify November 7, 2025 as the compliance date for storage tanks in Wise County. Existing compliance requirements continue, and new control requirements are in proposed new §115.112(e)(4)(D) and (5)(D).

DIVISION 2: VENT GAS CONTROL

§115.121 Emission Specifications

The commission proposes to revise §115.121(a) to specify that sources with affected vent gas streams located in the Bexar County area would become subject to the existing emissions specifications of the subsection, which address VOC vent gas control RACT requirements. Owners or operators of affected vent gas streams located in the Bexar County 2015 ozone NAAQS nonattainment area would be required to comply with the emission specifications in the subsection beginning January 1, 2025, the proposed compliance date specified in proposed new §115.129(g).

The commission proposes to revise §115.121(a)(3) to specify that bakeries with affected vent gas streams located in the Bexar County area would be subject to the existing control requirements under §115.122(a)(3).

The commission proposes to revise §115.121(c) to clarify that the emission specifications for vent gas control applicable in at-

tainment counties, which currently includes Bexar County, would no longer apply in Bexar County beginning January 1, 2025. Instead, the emissions specifications in subsection (a) would apply to affected sources located in the Bexar County area beginning January 1, 2025.

§115.122 Control Requirements

The commission proposes to revise the vent gas control requirements in §115.122(a) to incorporate nonattainment area VOC RACT requirements for the Bexar County area as well as the DFW 2008 ozone NAAQS severe nonattainment area. The Bexar County area would be added to the list of areas for which the control requirements in §115.122(a) apply to ensure that sources in the Bexar County area would become subject to RACT requirements for VOC from affected vent gas streams. The commission proposes to subject Bexar County area bakeries with bakery oven vent gas streams affected by §115.121(a)(3) to the existing control requirements in §115.122(a)(3) so the Bexar County area would be added to the list of areas for which §115.122(a)(3) applies.

The commission also proposes to revise §115.122(a)(3) to address severe ozone classification requirements for the DFW 2008 ozone NAAQS nonattainment area. §115.122(a)(3)(B) would be amended to establish that the existing control requirements for affected bakery oven vent gas streams located in the DFW area, which were established to meet serious classification requirements, would continue to apply through November 6, 2025. Beginning November 7, 2025, each bakery oven with an affected vent gas stream located in the DFW 2008 ozone NAAQS severe nonattainment area would be required to control uncontrolled VOC emissions by at least 80%. This change would be necessary to address sources that become new major sources in the DFW area due to the change in major source threshold as a result of the reclassification from serious to severe nonattainment for ozone. On the compliance date for these proposed severe area RACT provisions, affected sources in the entire DFW 2008 ozone NAAQS nonattainment area, including Wise County, would become subject to the proposed severe RACT requirements in §115.122(a)(3)(B).

Existing §115.122(a)(3)(C) would be amended to make clear that the requirement to reduce uncontrolled VOC emissions by at least 30% from an affected bakery's 1990 emission inventory, for those sources located in the DFW area with uncontrolled VOC emissions equal to or greater than 25 tons per calendar year and less than 50 tons per calendar year, would no longer apply to those affected sources beginning November 7, 2025. This existing requirement is less stringent than the proposed severe RACT requirements in §115.122(a)(3)(B).

A proposed new provision for the Bexar County area would be added as a new subparagraph to establish a 100 tpy RACT uncontrolled bakery oven VOC emission rate trigger that would require Bexar County sources to reduce VOC emissions by a minimum of 80%. The proposed new subparagraph would be added as §115.122(a)(3)(E), and the provision currently in §115.122(a)(3)(E) would be renumbered to subparagraph (F). Proposed new §115.122(a)(3)(E) would establish control requirements for affected vent gas streams from affected bakery ovens located in the Bexar County area similar to the control requirements for sources located in the HGB and DFW areas, provided in §115.122(a)(3)(A) and (B).

Concerning proposed renumbered §115.122(a)(3)(F), the commission proposes to make clear that VOC emission reductions in

the 30% to 90% range would continue to not be creditable for purposes of 30 Texas Administrative Code (TAC) Chapter 101, Subchapter H, Division 1 for those bakeries located in the DFW area that have uncontrolled VOC emissions equal to or greater than 50 tons per calendar year through November 6, 2025, an emission control trigger that would transition to 25 tons per calendar year beginning November 7, 2025. This proposed change would address the reclassification from serious to severe ozone nonattainment for sources located in the DFW 2008 ozone NAAQS severe nonattainment area and the change in major source threshold from 50 to 25 tons per year of VOC.

Proposed renumbered §115.122(a)(3)(F) would also be amended to add new clause (iv) to establish a 100 tpy VOC uncontrolled bakery oven emission control trigger for sources in the Bexar County area. This proposed change would be necessary to address newly affected sources located in the Bexar County area and to specify that these sources would be subject to the same prohibition on creditable VOC emission reductions as those located in other ozone nonattainment areas.

The commission proposes to revise §115.122(c) to stipulate that vent gas control requirements applicable in attainment counties would continue to apply in Bexar County through December 31, 2024. Beginning January 1, 2025, sources located in the Bexar County area with affected vent gas streams would be required to comply with the requirements of §115.122(a).

§115.123 Alternate Control Requirements

The commission proposes to make the existing nonattainment area alternate vent gas control VOC RACT requirements in §115.123(a) applicable in the Bexar County area. The commission also proposes to amend §115.123(c) to specify that the alternate methods in that subsection would no longer be available to persons in Bexar County beginning January 1, 2025, the date the provisions in existing §115.123(a) would be applicable in the Bexar County 2015 ozone NAAQS nonattainment area. Though the alternate control requirements for vent gas streams that would be provided for sources located in the Bexar County area under proposed revised §115.123(a) are similar to those in §115.123(c), the proposed change is necessary to transition the provisions applicable in Bexar County from those associated with ozone attainment counties to those required for ozone nonattainment areas.

§115.125 Testing Requirements

The commission proposes to add the Bexar County area in the existing flare performance test requirements in §115.125(3)(C) and the vapor combustor performance test requirements in §115.125(3)(D). These requirements would apply for sources in Bexar County beginning January 1, 2025.

§115.126 Monitoring and Recordkeeping Requirements

The commission proposes to amend the requirements in §115.126 to reflect Bexar County's transition from an attainment county to an ozone NAAQS nonattainment area. This would include removing Bexar County from the list of attainment counties subject to the requirements of the section and adding the Bexar County area to the list of nonattainment areas subject to the requirements of the section. Additionally, owners or operators of vapor control systems for affected sources located in the Bexar County area would be subject to the requirements in §115.126(1), including the existing requirements for continuous monitoring and recording under subparagraph (A) and the existing requirements for flares under subparagraph (B). Owners or

operators of vapor control systems for affected sources located in the Bexar County area would be required to comply beginning January 1, 2025.

§115.127 Exemptions

The commission proposes to revise §115.127(a) to apply the exemptions in the subsection to the Bexar County ozone nonattainment. Section 115.127(c), which currently applies to persons in Bexar County, would be amended to apply only in Aransas, Calhoun, Matagorda, San Patricio, and Travis Counties. Persons located in Bexar County who own or operate the streams identified in §115.127(c) would no longer qualify for the exemptions listed in the subsection beginning January 1, 2025, the proposed compliance date for affected sources in the Bexar County ozone nonattainment area.

§115.129 Counties and Compliance Schedules

Existing §115.129(a) specifies that the compliance date for the attainment counties listed in the subsection, which includes Bexar County, has passed and that the owner or operator of an affected source must continue to comply with the existing provisions of Division 2. Subsection (a) is proposed to be revised to include a reference to proposed new §115.129(g), which would provide compliance dates for owners or operators of affected sources in the Bexar County 2015 ozone NAAQS nonattainment area, to make clear that owners or operators of affected sources in Bexar County would be required to continue to demonstrate compliance with the applicable provisions for attainment counties of Subchapter B, Division 2 through December 31, 2024. To address RACT requirements that would be applied to newly affected sources in the Bexar County 2015 ozone NAAQS nonattainment area, owners or operators of affected sources would be required to demonstrate compliance with all applicable requirements of Division 2 by no later than January 1, 2025.

The commission proposes to add Bexar County to the list of counties in existing §115.129(f) to specify that for an owner or operator of an affected vent gas stream that becomes subject to the vent gas control requirements on or after their compliance date specified in proposed new §115.129(g) for sources located in the Bexar County area, the owner or operator would be required to comply with the requirements of the division as soon as practicable but no later than 60 days of becoming subiect. Additionally, a new subsection would be added to establish a January 1, 2025 compliance date in the Bexar County area for owners or operators of vent gas sources that would become subject to the requirements in Subchapter B, Division 2. The proposed compliance schedule would specify that affected entities in Bexar County would comply with existing Division 2 provisions applicable for attainment counties through December 31, 2024, and by no later than January 1, 2025, affected entities would comply with all proposed Division 2 provisions applicable in the Bexar County 2015 ozone NAAQS nonattainment area. The Bexar County area compliance date provision is proposed as §115.129(g), and the provision currently in §115.129(g) would be removed as obsolete since Wise County's nonattainment status has been resolved.

DIVISION 3: WATER SEPARATION

§115.131 Emission Specifications

The commission proposes to revise §115.131(a) to include the Bexar County area to apply RACT for VOC water separators to affected sources located in the Bexar County ozone nonat-

tainment area. This proposed change would subject affected sources located in the area to the existing emission specifications of the subsection beginning January 1, 2025, which is the proposed compliance date for the Bexar County area specified in proposed new §115.139(e).

The commission proposes to revise §115.131(c) to make clear that VOC water separation attainment county requirements under existing subsection (c) would remain in effect for sources in Bexar County through December 31, 2024. On January 1, 2025, the emission specifications provided for under subsection (a) would apply in the Bexar County 2015 ozone nonattainment area.

§115.132 Control Requirements

The commission proposes to add the Bexar County area to the list of areas subject to the control requirements in §115.132(a). This change is necessary to apply ozone nonattainment area RACT requirements for VOC water separators in the Bexar County 2015 ozone NAAQS nonattainment area.

Because owners or operators of affected sources would be required to comply with the control techniques to satisfy RACT specified in §115.132(a)(1) - (4) by the compliance date specified in proposed new §115.139(e), the commission proposes adding language to §115.132(c) to make clear that compliance with the control requirements of that subsection for attainment counties would no longer be required for sources located in Bexar County beginning January 1, 2025. The commission proposes to amend punctuation throughout the subsection. These proposed changes would not alter the meaning or intent of the existing rules in §115.132(c) and are proposed only to clarify meaning with appropriate sentence structure and punctuation.

§115.135 Testing Requirements

The commission proposes to add the Bexar County area to the list of areas subject to §115.135(a). This is to make clear that the Bexar County area would be subject to the existing testing requirements that currently exist for other ozone nonattainment areas under Subchapter B, Division 3. Affected sources located in the Bexar County area would become subject to the testing requirements of Division 3 beginning January 1, 2025, at which time, owners or operators of these sources would be required to begin using these methods and procedures.

§115.136 Monitoring and Recordkeeping Requirements

The commission proposes to add the Bexar County area to the list of areas subject to §115.136(a). This is to make clear that sources in the Bexar County area would be subject to the VOC water separation monitoring and recordkeeping requirements that currently exist for other ozone nonattainment areas under Subchapter B, Division 3. Owners or operators of affected sources in the affected ozone nonattainment area would be required to conduct the appropriate monitoring and develop and maintain the appropriate records beginning January 1, 2025, as specified in proposed new §115.139(e).

§115.137 Exemptions

The commission proposes to add the Bexar County area to the list of areas subject to §115.137(a). This proposed change would apply the exemptions that currently exist for other ozone nonattainment areas covered by Subchapter B, Division 3 to affected sources located in the Bexar County 2015 ozone NAAQS nonattainment area. Owners or operators of affected sources in the nonattainment area would be able to claim the existing exemp-

tions under subsection (a) for their affected sources beginning January 1, 2025. These exemptions are already available for affected sources located in other ozone nonattainment areas subject to Subchapter B, Division 3 requirements.

The commission proposes to revise §115.137(c) to clarify that beginning January 1, 2025, the exemptions identified in that subsection, which are associated with attainment counties, would no longer apply in Bexar County.

§115.139 Counties and Compliance Schedules

Existing §115.139(a) specifies that the compliance date for the attainment counties listed in the subsection, which includes Bexar County, has passed and that the owner or operator of an affected source must continue to comply with the existing provisions of Division 3. Subsection (a) is proposed to be revised to include a reference to proposed new §115.139(e), which would provide compliance dates for owners or operators of affected sources in the Bexar County 2015 ozone NAAQS nonattainment area, to make clear that owners or operators of affected sources in Bexar County would be required to continue to demonstrate compliance with the applicable provisions for attainment counties of Subchapter B, Division 3 through December 31, 2024. To address RACT requirements that would be applied to newly affected sources in the Bexar County 2015 ozone NAAQS nonattainment area, owners or operators of affected sources would be required to demonstrate compliance with all applicable requirements of Division 3 by no later than January 1, 2025.

The commission proposes to add Bexar County to the list of counties specified in existing §115.139(d) to specify that for an owner or operator of an affected water separator in the Bexar County area who becomes subject to the water separation requirements on or after the compliance date specified in proposed new §115.139(e), the owner or operator would be required to comply with the requirements of the division as soon as practicable but no later than 60 days after becoming subject. Additionally, new subsection (e) is proposed to establish a January 1, 2025 compliance date in the Bexar County area for owners or operators of water separator sources subject to the requirements in Subchapter B, Division 3. The Bexar County area compliance date provision is proposed as new §115.139(e), and the provision currently in §115.139(e) would be removed as obsolete since Wise County's nonattainment status has been resolved. Proposed new §115.139(e) would specify that the owner or operator of each VOC water separator subject to Subchapter B. Division 3 in the Bexar County nonattainment area would be reguired to comply with the requirements of existing §115.131(c), §115.132(c), and §115.137(c) through December 31, 2024. Beginning January 1, 2025, owners or operators of affected VOC water separators would be required to comply with all other applicable requirements of Division 3.

DIVISION 4: INDUSTRIAL WASTEWATER

§115.142 Control Requirements

The commission proposes to amend §115.142 to add the Bexar County area to the list of areas subject to the industrial wastewater control requirements in the section. This proposed change would require an owner or operator of an affected source category in the Bexar County ozone nonattainment area to control VOCs pursuant to the methods and techniques specified in the section, to the performance levels specified in the section, or both, as applicable.

In §115.142(1)(D)(ii), the commission proposes to add the Bexar County area to the list of areas subject to the requirements in §115.142(1)(D)(ii)(I) and (II). This proposed change is necessary to specify that the Bexar County area would be subject to the existing VOC industrial wastewater system requirements for junction boxes and vented covers that currently exist for nonattainment areas. These control requirements would apply to sources located in the Bexar County area beginning January 1, 2025.

In existing §115.142(3), the commission proposes to include the Bexar County area. This proposed change is necessary to specify that the Bexar County area would become subject to the existing VOC industrial wastewater system requirements for biotreatment units that currently exist for the other ozone nonattainment areas. These control requirements would apply to sources located in the Bexar County area beginning January 1, 2025.

§115.144 Inspection and Monitoring Requirements

The commission proposes to add the Bexar County area in §115.144. This proposed change would ensure that owners or operators of affected sources in the Bexar County area would follow the same inspection and monitoring requirements that apply for sources in other ozone nonattainment areas covered by the division to demonstrate compliance with VOC industrial wastewater RACT requirements. These monitoring and inspection requirements would apply to sources located in the Bexar County area beginning January 1, 2025.

Paragraph (4) would be revised to add the Bexar County area to the list of areas subject to the compliance measurement and inspection requirements in §115.144(4) for industrial wastewater systems. This change would be necessary to apply requirements related to RACT to newly affected sources located in the Bexar County area.

§115.146 Recordkeeping Requirements

The commission proposes to revise existing §115.146 to add the Bexar County area. Beginning January 1, 2025, an owner or operator of an affected source located in the Bexar County area would be required to compile and maintain records demonstrating compliance with the applicable requirements of Subchapter B, Division 4. These requirements currently exist for other ozone nonattainment areas subject to Subchapter B, Division 4.

§115.147 Exemptions

The commission proposes to revise existing §115.147 to provide operators in the Bexar County area with an option to claim an exemption from the control requirements that would otherwise be applicable to affected sources under industrial wastewater rule requirements. These exemptions are currently available for other ozone nonattainment areas under Subchapter B, Division 4 RACT rules. Owners or operators of affected sources located in the Bexar County area would be able to claim these same exemptions, if applicable, beginning January 1, 2025.

§115.149 Counties and Compliance Schedules

The commission proposes new §115.149(c) to establish a compliance date of January 1, 2025 for affected sources in the Bexar County area to comply with the applicable revised industrial wastewater rules in Subchapter B, Division 4.

DIVISION 6: BATCH PROCESSES

§115.161 Applicability

The commission proposes to add the Bexar County area to the existing applicability provisions in §115.161(a). Affected vent

gas streams at batch process operations in the Bexar County area would become subject to the applicable requirements of Subchapter B, Division 6 beginning January 1, 2025.

§115.162 Control Requirements

The commission proposes to revise existing §115.162 to add the Bexar County area to the list of areas subject to the control requirements in the section to specify that affected sources located in the area would be subject to the existing VOC RACT control requirements for batch process operation. Beginning January 1, 2025, affected sources would be required to comply with the requirements for process vents, aggregate streams within a process, and once-in-always-in criteria as applicable.

§115.164 Determination of Emissions and Flow Rates

The commission proposes to revise §115.164 to specify that Bexar County area affected sources would be required to comply with the determination and estimation methods of §115.164 for batch process operations. These requirements for affected sources in the Bexar County area would begin on January 1, 2025.

§115.165 Approved Test Methods and Testing Requirements

The commission proposes to revise §115.165 to apply the specified test methods and testing requirements of the section to affected sources located in the Bexar County area. The same test methods and testing requirements to assess batch process rule compliance apply for other ozone nonattainment areas subject to Subchapter B, Division 6. For the Bexar County area, these requirements would apply beginning January 1, 2025.

§115.166 Monitoring and Recordkeeping Requirements

The commission proposes to revise existing §115.166 to specify that affected sources located in the Bexar County area would be required to monitor and keep records for at least five years at the affected source to demonstrate compliance with the applicable requirements of Subchapter B, Division 6. These monitoring and recordkeeping requirements already apply in other ozone nonattainment areas covered by the division for vapor control systems and process vents.

§115.167 Exemptions

The commission proposes to add a new §115.167(1)(C) to exempt Bexar County area batch process operations that have total VOC emissions, determined before control but after the last recovery device, of less than 100 tpy from all otherwise applicable batch process requirements of the division, except for §115.161(b) and §115.161(c). These exemptions already apply in the BPA ozone maintenance area and the HGB ozone nonattainment area, and these exemptions would apply to affected sources located in the Bexar County area with the VOC emissions threshold on January 1, 2025.

§115.169 Counties and Compliance Schedules

The commission proposes to add a new §115.169(d) that would establish a compliance date of January 1, 2025, for affected Bexar County area batch process operations that become newly subject to the requirements of Subchapter B, Division 6.

DIVISION 7: OIL AND NATURAL GAS SERVICE IN OZONE NONATTAINMENT AREAS

§115.170 Applicability

The commission proposes to add "the Bexar County area" to the applicability section of existing §115.170 of Subchapter B, Divi-

sion 7. This proposed change would make existing applicable equipment in the Bexar County ozone nonattainment area subject to existing RACT requirements for sources covered by the United States Environmental Protection Agency (EPA)'s 2016 oil and gas control techniques guidelines (CTG). Newly affected sources in the Bexar County area would be subjected to the existing control requirements in the division beginning January 1, 2025.

§115.171 Definitions

The commission proposes to revise the definition for heavy liquid service in §115.171(6) to match the criteria for heavy liquid in §115.10, which establishes a maximum combined VOC true vapor pressure limit of 0.044 pounds per square inch absolute (psia). This revision would allow for consistency between the definitions in §115.10 and §115.171(6) and exemption provisions proposed in new §115.172(a)(9). The commission proposes to add new definition as in §115.171(17) to clarify the meaning of "wellhead" in alignment with the Control Techniques Guidelines for the Oil and Natural Gas Industry 2016 (EPA-453/B-16-0012016/10).

§115.172 Exemptions

The commission proposes new §115.172(a)(9)(A) - (D) to add an instrument monitoring exemption for heavy liquids components for affected equipment in the areas listed in proposed §115.170. The EPA's 2016 Oil and Natural Gas Industry CTG recommended including a heavy liquids service exemption, but this exemption was inadvertently excluded from the 2021 rulemaking to establish rules to implement the CTG (2020-038-115-AI).

The commission proposes new §115.172(a)(10)(A) - (D) to add a monitoring exemption for pressure relief devices. This exemption would align with the EPA's 2016 Oil and Natural Gas CTG and provide an exemption for light liquid service devices that are routed through a closed vent system to a control device, process or fuel gas system from the instrument monitoring requirements in §115.177(b) if the components are inspected by audio, visual, and/or olfactory means according to the inspection schedules and procedures in §115.177(b) and repairs to detected leaks are made according to proposed new subparagraphs (A) - (D) of §115.172(a)(9).

The commission proposes new §115.172(e) to add an instrument monitoring exemption for well sites that only contain one or more wellheads and no other additional equipment. The EPA's 2016 Oil and Natural Gas Industry CTG recommended including a fugitive monitoring exemption for these limited well sites, but this exemption was inadvertently excluded from the 2021 rule-making that added Chapter 115, Subchapter B, Division 7 requirements (2020-038-115-AI).

The commission proposes new §115.172(f) to exempt pressure relief valves that are vented to a process or to a fuel gas system, and those that are equipped with a closed vent system routed to a control device that meets the requirements of §115.172(2) and (4) of Subchapter B, Division 7, from the monitoring requirements of §115.177. This exemption aligns with the EPA's 2016 CTG for the oil and natural gas industry. Adding this new exemption is proposed to correct an error of omission in Rule Project No.: 2020-038-115-AI. For closed vent systems to qualify under this proposed new subsection (f), the closed vent system must be monitored according to the requirements of §115.177.

§115.173 Compressor Control Requirements

The commission proposes to repeal and simultaneously adopt new §115.173 to separate centrifugal and reciprocating compressor control requirements that were recommended in the 2016 EPA Oil and Natural Gas Industry CTG. The purpose of this proposed change is to organize the requirements in a format that makes them easier to identify and less likely to be misinterpreted. The commission proposes reformatting this rule for clarification and correction purposes and is not proposing any changes to the existing requirements that are not recommended by the CTG. All existing control requirements specific to centrifugal compressors are proposed as new §115.173(a)(1) - (2). All existing control requirements specific to reciprocating compressor control requirements are proposed as new §115.173(b)(1) - (3). The reformatted compressor control device options and requirements are proposed as new §115.173(c)(1) - (5).

As noted in the preceding §115.170 applicability discussion, affected sources in the Bexar County area would become subject to the compressor control requirements beginning January 1, 2025. With the exception of the phrase "or rod packing" the provisions from current §115.173(1) are proposed as new §115.173(a) (1). The provisions from current §115.173(2) are proposed as new §115.173(a) (2).

The provisions from current $\S115.173(3)(A)$ are proposed as new $\S115.173(c)$. The provisions from current $\S115.173(3)(A)(i)$ are proposed as new $\S115.173(c)(1)$. The provisions from current $\S115.173(3)(A)(ii)$ are proposed as new $\S115.173(c)(2)$. The provisions from current $\S115.173(c)(3)$. The provisions from current $\S115.173(c)(3)$. The provisions from current $\S115.173(3)(C)$ are proposed as new $\S115.173(c)(4)$.

The provisions from current §115.173(3)(D) are proposed as new §115.173(b)(1). The provisions of current §115.173(3)(E) are proposed as new §115.173(b)(2). The commission proposes a new paragraph (3) in proposed new subsection (b) to specify that owners or operators of reciprocating compressors must route VOC gases, vapors, and fumes from the equipment through a closed vent system under negative pressure at the inlet for vapors to a control device that meets the requirements of proposed new subsection (c), if the owner or operator elects to use this method as opposed to replacing the rod packing. This option is already provided for reciprocating compressors in existing §115.173(3) and is in-line with the existing requirements for routing VOC emissions to a control device or to a process under existing §115.173(1).

The provisions from current §115.173(4) are proposed as new §115.173(c)(5). The provisions from current §115.173(4)(A) are proposed as new §115.173(c)(5)(A). The provisions from current §115.173(4)(B) are proposed as new §115.173(c)(5)(B).

With these proposed changes, the commission is making clear that for both centrifugal and reciprocating compressors subject to the requirements of Subchapter B, Division 7, control of VOC emissions must employ the use of a closed vent system that is designed and operated to route all gases, vapors, and fumes from the applicable equipment to the control device under normal operation and further operated under negative pressure at the inlet for all gases, vapors, and fumes.

§115.177 Fugitive Emission Component Requirements

The commission proposes to revise §115.177(b)(7) and allow a valve, subject to Subchapter B, Division 7 EPA Method 21 initial fugitive emission monitoring requirements and found not leaking during the most recent two successive monitoring sur-

veys, to be subsequently monitored on a quarterly rather than monthly basis. Monitoring on a quarterly basis would begin in the first month of the next quarter. However, if the same valve were found to be leaking after initiation of monitoring on a quarterly basis, the component would have to return to its original monthly monitoring schedule and would be required to stay on this schedule until it was determined to not be leaking again for two successive months using EPA Method 21. This would establish a pathway for a less frequent monitoring schedule based on good performance. This pathway was recommended in the 2016 EPA Oil and Natural Gas Industry CTG and was intended to be included in the rules for this section adopted June 30, 2021 (2020-038-115-AI); however, the provision was inadvertently excluded from that rulemaking.

The commission proposes to codify an owner's or operator's option to satisfy the §115.177(b)(7) 2-year monitoring data requirement of the skip period request with valid historical monitoring data in accordance with the original rule's intent. It would be wasteful and unduly burdensome on regulated entities to disregard up to two years of valid data and require an additional two years of monitoring data when sufficient valid data is already available. This rulemaking also includes §115.177(b)(7) updates to clarify that EPA Method 21 must be used to qualify for a less frequent monitoring schedule in existing subparagraphs (A) and (B), aligning them with recommendations in the 2016 EPA Oil and Natural Gas Industry CTG.

§115.183 Compliance Schedules

The compliance schedule provisions in §115.183 were originally adopted without reference to applicable areas because only the DFW and HGB areas were subject to the rules in Division 7. Affected entities in both areas were required to comply by no later than January 1, 2023. With the proposed addition of the Bexar County area as subject to Subchapter B, Division 7 requirements, the compliance provisions must differentiate between the existing compliance schedules for the DFW and HGB areas and the proposed compliance schedule for the Bexar County area. The commission proposes to amend subsections (a), (b), (d), and (e) to specify that these provisions apply in only the DFW and HGB areas. The compliance schedule for the Bexar County area would be added as new subsection (g) to specify that affected Bexar County area equipment would be required to comply with Subchapter B, Division 7 requirements no later than January 1, 2025.

No changes are proposed in subsections (c) and (f) because the existing compliance provisions, as written, would apply to affected sources located in the Bexar County area. An owner or operator who becomes subject to the requirements of the division on or after the date specified for proposed new subsection (g) would be required to comply with the requirements of Division 7 no later than 60 days after becoming subject. Demonstration of compliance with the recordkeeping required under existing §115.180(8) would be required no later than 30 days after compliance with Division 7 is achieved. Finally, upon the date an owner or operator could no longer claim the exceptions in existing §115.174(e), the owner or operator would be required to comply with the appropriate control requirement within 60 days.

SUBCHAPTER C: VOLATILE ORGANIC COMPOUND TRANSFER OPERATIONS

DIVISION 1: LOADING AND UNLOADING OF VOLATILE ORGANIC COMPOUNDS

§115.211 Emission Specifications

The commission proposes to add the Bexar County area to the list of areas subject to the emissions specifications in §115.211. The commission also proposes to add the Bexar County area to the list of areas subject to §115.211(1) requirements specifying a 0.09 pounds VOC per 1,000 gallons of gasoline loaded into transport vessel emission specifications, which represent current RACT.

The commission proposes to add language to §115.211(2) referencing the definition of covered attainment counties in §115.10. This proposed addition is intended to indicate that Bexar County is not subject to the 0.17 pounds per 1,000 gallons of gasoline loaded emission specification once it is no longer defined as an attainment county, after December 31, 2024. At that time, beginning January 1, 2025 the more stringent 0.09 pounds per 1,000 gallons emission specification for the Bexar County 2015 ozone NAAQS nonattainment area would be required.

§115.212 Control Requirements

The commission proposes to add the Bexar County area to the list of areas subject to §115.212 loading and unloading control requirements.

The commission proposes to add language to §115.212(b) referencing the definition of covered attainment counties in §115.10. This proposed addition is intended to indicate that once Bexar County is no longer defined as an attainment county, after December 31, 2024. The commission proposes to add language to §115.212(b)(1) to indicate that existing less stringent control requirements in paragraph (1) of subsection (b) are no longer applicable in Bexar County beginning January 1, 2025. At that time, the more stringent control requirements in subsection (a) would apply in the Bexar County 2015 ozone NAAQS nonattainment area.

§115.213 Alternate Control Requirements

The commission proposes to add the Bexar County area to the list of areas subject to existing §115.213(b) requirements.

Owners and operators of loading operations in the Beaumont-Port Arthur, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria ozone nonattainment areas have complied with these minimum 90% overall efficient VOC loading alternative control requirements for many years. This supports the commission's determination that the minimum 90% overall efficient alternate control requirement is presumed to represent current RACT for affected Bexar County area VOC loading sources.

The commission proposes to end the overall control option in §115.213(c) for Bexar County on January 1, 2025 when sources in the county transition from compliance with §115.212(b)(1) to §115.212 (a)(1).

§115.214 Inspection Requirements

The commission proposes to add the Bexar County area to the list of areas subject to existing §115.214(a) inspection requirements. Additionally, the commission proposes to add language to §115.214(b) and §115.214(b)(1) referencing the definition of covered attainment counties in §115.10. These proposed additions are intended to indicate that once Bexar County is no longer defined as an attainment county, after December 31, 2024, it will no longer be subject to the inspection requirements in subsection (b). At that time, beginning January 1, 2025, the inspection requirements in subsection (a) would apply in the Bexar County 2015 ozone NAAQS nonattainment area.

The commission proposes to state in §115.214(b)(1) that the inspection requirements no longer apply in Bexar County beginning January 1, 2025.

§115.216 Monitoring and Recordkeeping Requirements

The commission proposes to add the Bexar County area to existing §115.216 monitoring and recordkeeping requirements. Bexar County is currently subject to this section as an attainment county, but it will no longer be defined as an attainment county after December 31, 2024.

§115.217 Exemptions

The commission proposes to add the Bexar County area to the list of areas subject to §115.217(a) exemptions. Additionally, the commission proposes to add language to §115.217(b) referencing the definition of covered attainment counties in §115.10. This proposed addition is intended to indicate that once Bexar County is no longer defined as an attainment county, after December 31, 2024, it will no longer be subject to the exemptions in subsection (b). At that time, beginning January 1, 2025, the exemptions in subsection (a) would apply in the Bexar County 2015 ozone NAAQS nonattainment area.

The commission also proposes to add a clarifying statement in §115.217(b)(1) to indicate that Bexar County is no longer included in the exception from the covered attainment county exemption beginning January 1, 2025.

§115.219 Counties and Compliance Schedules

The commission proposes to renumber current §115.219(f) as §115.219(g) with proposed language revisions and insert new §115.219(f) that specifies affected sources in the Bexar County area must be in compliance with proposed Subchapter C, Division 1 VOC transfer operations, transport vessel and marine transfer equipment requirements no later than January 1, 2025. The proposed §115.219 revisions would maintain the Bexar County compliance schedule for currently affected sources until January 1, 2025, when affected Bexar County sources would need to comply with the new proposed §115.219(f) provisions.

The commission proposes to replace current §115.219(g), which is no longer a potential scenario, with a compliance schedule for sources that become subject to VOC loading and unloading provisions on or after the designated Subchapter C, Division 1 compliance date. Proposed §115.219(g) would provide a maximum 60 days for affected sources, which become subject to Subchapter C, Division 1 on or after their appropriate §115.219 compliance date, to comply with these VOC transfer operation requirements.

DIVISION 2: FILLING OF GASOLINE STORAGE VESSELS (STAGE I) FOR MOTOR VEHICLE FUEL DISPENSING FACILITIES

§115.221 Emission Specifications

The commission proposes to add the Bexar County area to the list of areas subject to Stage I Motor Vehicle Fuel Dispensing Facilities RACT specifications in §115.221.

§115.222 Control Requirements

The commission proposes to add the Bexar County area to the list of areas subject to VOC control requirements during gasoline transfer specified in §115.222(5). These control requirements already apply to existing affected sources located in other ozone nonattainment areas covered by Subchapter C, Division 2.

The commission also proposes to add the Bexar County area to the list of areas subject to the VOC control requirements for storage tanks in §115.222(9). Additionally, the commission proposes to add language to §115.222(10) indicating that the requirements in that paragraph, which applies in attainment counties, would no longer apply in Bexar County after December 31, 2024. This proposed addition is intended to indicate that once Bexar County is no longer defined as an attainment county, it will no longer be subject to the control requirements in paragraph (10) for attainment counties.

§115.224 Inspection Requirements

The commission proposes to add the Bexar County area to the list of areas subject to the inspection requirements in §115.224. This amendment would ensure the area would remain subject to the Stage I inspection requirements after Bexar County ceases to be defined as a covered attainment county.

§115.226 Recordkeeping Requirements

The commission proposes to add the Bexar County area to the list of areas subject to the recordkeeping requirements in §115.226. This amendment would ensure the area would remain subject to the Stage I recordkeeping requirements after Bexar County ceases to be defined as a covered attainment county.

§115.227 Exemptions

The commission proposes to add the Bexar County area to the listed areas to which in §115.227(1) applies. This would provide Bexar County owners and operators with an option to claim exemptions from Stage I nonattainment rules, which are already available in the Beaumont-Port Arthur, Dallas-Fort Worth, El Paso and Houston-Galveston-Brazoria nonattainment areas.

The commission proposes to amend §115.227(4) to clarify that affected owners and operators in Bexar County area have the option to claim the current exemption until they must comply with Stage I RACT rules on January 1, 2025.

§115.229 Counties and Compliance Schedules

The commission proposes to add language to existing §115.229(c) to specify that Bexar County is no longer subject to the attainment county compliance schedule in the subsection beginning January 1, 2025, the date by which affected sources in the Bexar County 2015 ozone NAAQS nonattainment area must instead comply with the nonattainment area RACT requirements in Division 2.

The commission proposes to remove existing §115.229(f) that contains obsolete language (since Wise County's nonattainment status has been resolved) and insert new §115.229(f) language with a deadline no later than January 1, 2025 for affected sources in the Bexar County area to comply with the proposed Stage I moderate nonattainment rule requirements.

DIVISION 3: CONTROL OF VOLATILE ORGANIC COMPOUND LEAKS FROM TRANSPORT VESSELS

§115.234 Inspection Requirements

The commission proposes to add the Bexar County area to the listed areas subject to §115.234(a). This would implement RACT and make affected sources in the Bexar County area subject to existing transport vessel VOC leak inspection requirements currently applicable in the BPA, DFW, El Paso, and HGB areas.

§115.235 Approved Test Methods

The commission proposes to add the Bexar County area to the testing requirements in §115.235(a) to mandate test methods required by that subsection when conducting annual vapor-tightness tests on affected Bexar County area transport vessels. Bexar County is among the covered attainment counties required to use the test methods of §115.235(b), but this will change on January 1, 2025 when it is no longer listed in the covered attainment county definition. The test methods are the same for §115.235(a) and (b) so affected sources will be able to use the same test methods under each subsection.

§115.237 Exemptions

The commission proposes to add the Bexar County area to the exemption provisions in §115.237(a) to provide the opportunity for affected Bexar County area sources to claim the same transport vessel leak inspection exemptions provided in this subsection. Bexar County is among the covered attainment counties whose exemptions are listed in §115.237(b), but this will change on January 1, 2025 when it is no longer listed in the covered attainment county definition.

§115.239 Counties and Compliance Schedules

The commission proposes new §115.239(e) to establish January 1, 2025 as the date by which owners and operators of transport vessels in the Bexar County area must comply with proposed Subchapter C, Division 3 rules. Current §115.239(e) is proposed to be deleted because the status of Wise County nonattainment classification has been decided.

SUBCHAPTER D: PETROLEUM REFINING, NATURAL GAS PROCESSING AND PETROCHEMICAL PROCESSES

DIVISION 1: PROCESS UNIT TURNAROUND AND VACUUM-PRODUCING SYSTEMS IN PETROLEUM REFINERIES

§115.311 Emission Specifications

The commission proposes to add the Bexar County area to §115.311(a) VOC RACT emission specifications for process unit turnaround and vacuum-producing systems.

§115.312 Control Requirements

The commission proposes to add the Bexar County area to §115.312(a) VOC RACT emission control requirements for process unit turnaround and vacuum-producing systems. These same control requirements to satisfy RACT also apply for affected sources located in other ozone nonattainment areas currently covered by Subchapter D, Division 1. The commission also proposes to add a reference to §115.10, relating to Definitions, for the listed areas subject to subsection (a).

§115.315 Testing Requirements

The commission proposes to add the Bexar County area to existing §115.315(a) testing requirements. These same testing requirements apply for affected sources located in other ozone nonattainment areas currently covered under Subchapter D, Division 1.

§115.316 Monitoring and Recordkeeping Requirements

The commission proposes to add the Bexar County area to existing §115.316(a) monitoring and recordkeeping requirements. Beginning January 1, 2025, the proposed compliance date for the Bexar County ozone nonattainment area as specified in proposed new §115.139(c), owners or operators of affected sources in the area would be required to conduct the appropriate monitoring and develop and maintain sufficient records to demonstrate

compliance with all applicable requirements of Subchapter D, Division 1.

§115.319 Counties and Compliance Schedules

The commission proposes new §115.319(c) to establish a compliance schedule for affected entities in the Bexar County 2015 ozone NAAQS nonattainment area. Compliance with the proposed Subchapter D, Division 1 rules would be required for affected Bexar County sources by no later than January 1, 2025.

DIVISION 3: FUGITIVE EMISSION CONTROL IN PETRO-LEUM REFINING, NATURAL GAS/GASOLINE PROCESSING, AND PETROCHEMICAL PROCESSES ON OZONE NONAT-TAINMENT AREAS

§115.352 Control Requirements

The commission proposes to add the Bexar County area to §115.352 VOC RACT control requirements for fugitive emissions.

§115.353 Alternate Control Requirements

The commission proposes to add the Bexar County area to existing §115.353(a) nonattainment area alternate control requirements

§115.354 Monitoring and Inspection Requirements

The commission proposes to add the Bexar County area to existing §115.354 VOC RACT monitoring and inspection provisions.

§115.355 Approved Test Methods

The commission proposes to add the Bexar County area to existing §115.355 petroleum refining, natural gas/gasoline processing and petrochemical processes approved test methods in determining compliance with Subchapter D, Division 3 provisions.

§115.356 Recordkeeping Requirements

The commission proposes to add the Bexar County area to existing in §115.356 petroleum refining, natural gas/gasoline processing and petrochemical processes recordkeeping requirements.

§115.357 Exemptions

The commission proposes to add the Bexar County area to existing §115.357 exemptions for petroleum refining, natural gas/gasoline processing, and petrochemical process sources that are able to meet specified conditions.

The commission proposes to revise §115.357(15) to extend this exemption to Bexar County sources and ensure that affected sources that comply with one division of Chapter 115 regulations would not be required to comply with duplicative requirements from other Chapter 115 divisions. The paragraph would reference the Subchapter B, Division 7 compliance schedules in §115.183 and remove the current reference to the January 1, 2023, compliance date for the Subchapter B, Division 7 rules adopted in 2021 (2020-038-115-AI). The commission additionally proposes to add language indicating an affected operation must be subject to and must comply with the requirements in Subchapter B, Division 7 to be exempt from the requirements in Subchapter D, Division 3.

§115.359 Counties and Compliance Schedules

The commission proposes to add a new subsection §115.359(e) and establish a compliance schedule for affected sources in the Bexar County area. Under new subsection §115.359(e), Bexar

County sources subject to proposed Subchapter D, Division 3 requirements would need to comply with no later than January 1, 2025. By adding Bexar County to §115.359(d) sources newly subject after January 1, 2025 would have 60 days to come into compliance. Additionally, the commission proposes to remove current §115.359(e) because Wise County's nonattainment status has been resolved.

SUBCHAPTER E: SOLVENT USING PROCESSES

DIVISION 1: DEGREASING PROCESSES

Contingency Measure: Degreasing VOC Limit

The commission proposes to amend Subchapter E, Division 1 to establish a new limit for VOC-containing solvent for cold solvent degreasing processes, open-top vapor degreasing processes, and conveyorized degreasing processes. The proposed limit would be implemented in the DFW and/or HGB 2008 ozone NAAQS nonattainment areas when triggered for SIP contingency purposes.

§115.410 Applicability and Definitions

New language is proposed to be added to the applicability requirements in §115.410(a) to indicate that the contingency requirements in Division 1 would not apply until the commission publishes notice in the *Texas Register* that the contingency measure is triggered and subsequently applies for affected sources located in the DFW area, the HGB area, or both the DFW and HGB areas. The existing control requirements of §115.412(b) would be triggered for and apply to affected sources in the DFW ozone nonattainment area upon publication in the *Texas Register* by the commission as provided in proposed renumbered §115.419(f). The existing control requirements of §115.412(c) would be triggered for and apply to affected sources in the HGB ozone nonattainment area upon publication in the *Texas Register* by the commission as provided in proposed new §115.419(g).

Bexar County is proposed to be moved from the list of individual counties to the list of nonattainment areas. This change is necessary to include the Bexar County area in the list of current nonattainment areas for ozone subject to the requirements of Subchapter E, Division 1 due to the area's designation under the 2015 ozone NAAQS.

§115.411 Exemptions

The commission proposes to add a new subsection (b) to §115.411, to move existing rule requirements of §115.411 under a proposed new §115.411(a). This change is proposed to distinguish between the existing requirements of the section and the proposed new requirements under proposed new subsection (b) of §115.411. The existing rule requirements of §115.411 that would be moved to proposed new subsection (a) would also be revised to add the Bexar County ozone nonattainment area to the list of ozone nonattainment areas currently covered under Subchapter E, Division 1. This change is necessary due to the area's designation of nonattainment under the 2015 ozone NAAQS. Further, Bexar County would be removed from the list of individual covered attainment counties in the existing provisions of §115.411, now proposed as new §115.411(a). The existing exemptions under §115.411, now proposed as new §115.411(a), for Bexar County as a covered attainment county would continue to apply in the Bexar County 2015 ozone NAAQS nonattainment area.

The existing rules in subsection (a) would also be revised to indicate that the exemptions in that subsection would no longer be

available for affected sources and operations subject to the requirements of §115.412(b) in the DFW area, of §115.412(c) in the HGB area, or of both §115.412(b) and (c) in the DFW and HGB areas, respectively, upon the compliance schedules for contingency measures specified in proposed renumbered §115.419(f), for the DFW area, or in proposed new §115.419(g), for the HGB area.

Under proposed new subsection (a)(1), the existing reference to §115.412(1)(B) is proposed as §115.412(a)(1)(B). Similarly in proposed new subsection (a)(2), the existing reference to §115.412(1)(E) is proposed as §115.412(a)(1)(E). Under proposed new §115.411(a)(3), the existing reference to §115.412(3)(A) is proposed as §115.412(a)(3)(A). Finally, the existing reference to §115.412(1) is proposed as §115.412(a)(1) in proposed new §115.411(a)(4). See the discussion for §115.412 for similar restructuring of existing rule provisions.

Proposed new subsection (b) would add exemptions that would apply under a triggered SIP contingency requirement. If adopted and triggered, these would apply instead of the exemptions under existing §115.411, now proposed as new §115.411(a), in the DFW, the HGB, or both the DFW and HGB 2008 ozone NAAQS nonattainment areas. The exemptions proposed in new §115.411(b)(1) - (3) are consistent with the existing exemptions in §115.411(1) - (2) and (4), now proposed as new §115.411(a)(1) - (2) and (4), with the exception that, as of the compliance date in proposed renumbered §115.419(f) or in proposed new §115.419(g), or both, operations would be required to use a solvent with a VOC content of 25 grams per liter (g/l) or less. Additional minor formatting and reference revisions are proposed to align the proposed rules with the revised structure of the section.

§115.412 Control Requirements

The commission proposes to add new subsections (b) and (c) to §115.412, to move existing rule requirements of §115.412 (under a proposed new §115.412(a). This change is proposed to distinguish between the existing requirements of the section and the proposed new requirements under subsections (b) and (c) of §115.412. The existing rule requirements of §115.412 that would be moved to proposed new subsection (a) would also be revised to add the Bexar County ozone nonattainment area to the list of ozone nonattainment areas currently covered under Subchapter E, Division 1. This change is necessary due to the area's designation of nonattainment under the 2015 ozone NAAQS. Further, Bexar County would be removed from the list of individual covered attainment counties in the existing provisions of §115.412, now proposed as new §115.412(a). The existing control requirements under §115.412, now proposed as new §115.412(a), for Bexar County as a covered attainment county would continue to apply in the Bexar County 2015 ozone NAAQS nonattainment area. Newly affected sources located in the Bexar County ozone nonattainment area would be required to demonstrate compliance with the control requirements of this section beginning January 1, 2025.

Proposed new subsection (b) would establish a VOC content limit of 25 g/l for solvent used in cold solvent cleaning, opentop vapor degreasing, and conveyorized degreasing for operations in the DFW area according to the compliance schedule in proposed renumbered §115.419(f). Proposed new subsection (c) would establish the same requirements for contingency purposes in the HGB area according to the compliance schedule in proposed new §115.419(g). The new control requirements proposed under subsections (b) and (c), respectively, would apply

in addition to existing control measures in §115.412, now proposed as §115.412(a), if adopted and triggered for contingency purposes. Additional minor formatting and reference revisions are proposed to align the proposed rules with the existing structure of the section and to make non-substantive formatting corrections.

§115.413 Alternate Control Requirements

The commission proposes to add a new exception to the existing alternate control requirements in §115.413 to allow for proposed new alternate control requirements to apply in the DFW area and/or HGB area if the contingency measure for degreasing operations under Subchapter E, Division 1, if also adopted is triggered. Additionally, the Bexar County ozone nonattainment area would be added to the list of ozone nonattainment areas currently covered under Subchapter E, Division 1. Further, Bexar County would also be removed from the list of individual covered attainment counties in existing §115.413. These alternate control requirements for owners or operators of affected sources located in the Bexar County ozone nonattainment area would take effect beginning January 1, 2025. Since only the DFW and/or HGB areas would be subject to the proposed new alternate control requirement provisions in proposed new paragraph (4), proposed language is added to §115.413 excepting paragraph (4) from applicability to all the areas subject to the section.

Pursuant to changes for the restructuring of existing rule provisions under §115.412, the commission proposes to revise the reference to existing §115.412(1) to §115.412(a)(1) under existing paragraph (2) of §115.413. The existing references to §115.412(2)(D) and §115.412(3)(A) in existing paragraph (3) of §115.413 are proposed as §115.412(a)(2)(D) and (a)(3)(A), respectively.

To address SIP contingency control-related requirements proposed under new subsections (b) and (c) of §115.412, the commission proposes a new paragraph (4) under §115.413 to specify alternate control requirements applicable in the DFW area, the HGB area, or both the DFW and HGB areas if an affected in one or both of the areas becomes subject to the control requirements in proposed new §115.412(b) and/or (c), respectively. The proposed alternate contingency control requirements would allow the use of an airless/air-tight or other alternate cleaning system approved by the EPA under specified conditions if it achieves equivalent emissions reductions and is approved by the executive director of the commission.

Conditions for use of the alternate method are added under proposed new §115.413(4)(A) - (E) and relate to equipment operation, waste storage, spill cleanup, and equipment maintenance. Additional minor formatting and reference revisions are proposed to align the proposed rules with the existing structure of the section.

§115.415 Testing Requirements

To address the Bexar County area's designation as nonattainment for ozone under the 2015 ozone NAAQS, the commission proposes to include the Bexar County area in the list of ozone nonattainment areas currently subject to Subchapter E, Division 1. This change is necessary to subject affected sources located in the Bexar County area to the existing testing requirements of §115.415 for owners or operators to demonstrate compliance with the RACT requirements of the division. Bexar County would be removed from the list of current attainment counties in the introductory paragraph of §115.415. There would be no change to

testing requirements for owners or operators of affected sources located in the Bexar County ozone nonattainment area.

The existing reference to §115.412(1) in existing paragraph (1) of the section would be revised to §115.412(a)(1). The existing references to §115.412(2)(D)(iv) and (3)(A)(ii) would also be revised to §115.412(a)(2)(D)(iv) and (a)(3)(A)(ii), respectively, in existing paragraph (2) of §115.415. These changes are proposed to align with the restructuring of other rule sections under Subchapter E, Division 1.

New testing provisions are proposed to establish VOC-content testing requirements to demonstrate compliance with the SIP contingency control requirements proposed in new §115.412(b) and (c). The proposed new test methods are EPA's Method 24 or alternative procedures described in 40 Code of Federal Regulations (CFR) §60.446. The proposed new test methods would be added as §115.415(3), and existing paragraph (3) would be renumbered to paragraph (4). Owners or operators of affected sources located in the DFW area, the HGB area, or both the DFW and HGB areas would be required to comply with these new testing requirements to verify compliance with new contingency measures, if adopted and triggered.

§115.416 Recordkeeping Requirements

To ensure compliance with the RACT requirements of Subchapter E, Division 1 for affected sources located in the Bexar County ozone nonattainment area, the commission proposes to include the Bexar County area in the list of ozone nonattainment areas currently covered under Subchapter E, Division 1 recordkeeping requirements. Bexar County is proposed to be removed from the current list of covered attainment counties concerning record-keeping requirements for those attainment counties. Owners or operators of affected sources located in the Bexar County ozone nonattainment area would be required to demonstrate compliance the recordkeeping requirements of the section beginning January 1, 2025.

In existing paragraph (2), the commission proposes to add a reference to proposed new paragraph (3) of §115.415. The existing reference to §115.411(5) in existing paragraph (3) of the section is proposed as §115.411(a)(5).

§115.419 Counties and Compliance Schedules

Bexar County is currently subject to Subchapter E, Division 1 requirements as an attainment county. The existing requirements for Bexar County as a covered attainment county would continue to apply in the Bexar County 2015 ozone NAAQS nonattainment area. The commission proposes to make administrative changes to the compliance schedules in §115.419 to address Bexar County's change in status from a covered attainment county to an ozone nonattainment area. The existing reference to Bexar County in §115.419(b) would be removed to make clear that the area would no longer be part of the covered attainment counties that are listed in that subsection. Bexar County would be added to the list in §115.419(a) of counties within ozone nonattainment and maintenance areas. Existing §115.419(a) specifies that the compliance date for the counties listed in that subsection has passed and that the owner or operator of an affected source must continue to comply with the existing provisions of Division 1. Including Bexar County in subsection (a) would ensure there is no gap in compliance for affected sources in Bexar County during the transition time from covered attainment county to ozone nonattainment area. The compliance obligations in Bexar County would not be expected to change, only the area's status listing in the section.

This proposed rulemaking would remove existing §115.419(f) because Wise County's attainment status has been resolved as described elsewhere in the section by section discussion. The commission proposes new subsections (f) and (g) to establish the compliance schedules for the contingency requirements for degreasing operations applicable in the DFW area, the HGB area, or both the DFW and HGB areas.

Proposed new subsections (f) and (g) provide that applicable operations in the affected area(s) must comply with the contingency control requirements, if adopted and triggered, for degreasing operations by no later than nine months after the commission publishes notification in the *Texas Register* that the contingency measure is necessary. Proposed new subsection (f) would apply in the DFW area and proposed new subsection (g) would apply in the HGB area.

The proposed rulemaking would also add a new subsection (h) to specify that an owner or operator of an affected source in the Bexar County area that becomes subject to the requirements of the division would be required to demonstrate compliance with all applicable requirements of the division but no later than 60 days after triggering applicability to the requirements this division.

DIVISION 2: SURFACE COATING PROCESSES

§115.420 Applicability and Definitions

The commission proposes to include the Bexar County area in §115.420(a) to make certain Division 2 surface coating process RACT requirements applicable to affected sources in the Bexar County area. Bexar County owners or operators would be required to comply with these requirements beginning January 1, 2025. The commission proposes to add "Bexar County" to the applicability designations in §115.420(a)(3), (5) - (7), (9), and §115.420(a)(11) - (15). Bexar County sources would be required to comply with the following current Division 2 VOC RACT surface coating categories that are not addressed in current Subchapter E, Division 5: Coil coating, Fabric coating, Vinyl coating, Can coating, Vehicle refinishing coating (body shops), Factory surface coating of flat wood paneling, Aerospace coating, Mirror backing coating, Wood parts and products coating, and Wood manufacturing coating. TCEQ was unable to confirm that applicable sources do not exist in Wise County because sources above the CTG applicability threshold may be small enough to not require registered air permits or emission inventory reporting.

The commission proposes to remove the exceptions for Wise County in §115.420(a)(9), (10), and (13) - (15). This would make Wise County subject to the same vehicle refinishing coating (body shops), miscellaneous metal parts and products coating, mirror backing coating, wood parts and products coating, and wood manufacturing coating VOC RACT surface coating requirements as the other DFW 2008 ozone NAAQS nonattainment area counties.

§115.422 Control Requirements

The commission proposes to add the Bexar County area to §115.422 to make these current surface coating VOC RACT control requirements applicable to affected sources in the Bexar County 2015 ozone NAAQS nonattainment area. The proposed rulemaking would add the Bexar County area to §115.422(6) to make these current surface coating VOC RACT control requirements applicable to affected sources in the Bexar County area.

The commission also proposes to add the Bexar County area to §115.422(7) to make these current VOC RACT control require-

ments applicable to paper surface coating lines, which incorporate work practices to limit VOC emissions, applicable to affected sources in the Bexar County 2015 ozone NAAQS nonattainment area

Owners or operators of affected sources located in the Bexar County ozone nonattainment area would be required to demonstrate compliance with the control requirements for surface coating processes beginning January 1, 2025. The RACT control requirements of §115.422 already exist for other ozone nonattainment areas currently covered under Subchapter E, Division 2

§115.423 Alternate Control Requirements

The commission proposes to add the Bexar County area in §115.423 to make these existing surface coating VOC RACT alternate control requirements available to affected sources in the Bexar County ozone nonattainment area beginning January 1, 2025.

The commission proposes to add the Bexar County area in §115.423(3)(B) to make these current surface coating efficiency testing requirements applicable to affected sources in the Bexar County ozone nonattainment area.

§115.425 Testing Requirements

The commission proposes to add the Bexar County area to §115.425 and make these current surface coating testing and test method requirements applicable to affected sources in the Bexar County area. These testing requirements currently apply to other ozone nonattainment areas and include specified test methods, test methods for demonstrating compliance with the alternate control requirements of §115.423(3), and test methods for demonstrating compliance with the alternate emission limits of §115.421(11). Owners or operators of affected sources located in the Bexar County ozone nonattainment area would be required to comply beginning January 1, 2025.

The commission proposes to add the Bexar County area to existing paragraph (4) which currently applies to other ozone nonattainment areas covered under Subchapter E, Division 2. The proposed revision would apply existing procedures and testing requirements for determining capture efficiency to affected sources in the Bexar County ozone nonattainment area. The commission proposes to amend §115.425(4)(C)(ii) to add a compliance schedule for initial capture efficiency testing for the Bexar County area of 180 days prior to the proposed compliance deadline for the Bexar County ozone nonattainment area in proposed new §115.429(f). This would make the effective deadline for affected facilities in the Bexar County 2015 ozone NAAQS nonattainment to complete such capture efficiency testing July 1, 2024, six months prior to the proposed rulemaking compliance deadline of January 1, 2025.

§115.426 Monitoring and Recordkeeping Requirements

The commission proposes to add the Bexar County area to §115.426 and make these current surface coating monitoring and recordkeeping requirements applicable to affected sources in the Bexar County ozone nonattainment area. These requirements already apply in other ozone nonattainment areas covered under Subchapter E, Division 2 and would be necessary for owners or operators to demonstrate compliance with the VOC RACT requirements of the division for affected sources.

§115.427 Exemptions

The commission proposes to add Bexar County to §115.427 to clarify that Bexar County is now a defined ozone nonattainment area. The commission proposes to add Bexar County to §115.427(1)(B), and §115.427(3) to provide newly affected sources in the Bexar County ozone nonattainment area with the existing surface coating exemptions that are currently available in other ozone nonattainment areas covered under Subchapter E, Division 2. The commission proposes to delete ", except in Wise County," in §115.427(9) and provide owners or operators of affected sources in Wise County with the option to claim an exemption that is currently available to the other Dallas-Fort Worth area counties with the same ozone nonattainment classification.

§115.429 Counties and Compliance Schedules

The commission proposes a new subsection to establish a compliance schedule for the new Bexar County ozone nonattainment area. The proposed new subsection would specify that an owner or operator of an affected surface coating process in the Bexar County area would be required to demonstrate compliance with all applicable requirements of the division by no later than January 1, 2025. The proposed new subsection would also specify that the owner or operator of a surface coating process in the Bexar county ozone nonattainment area that becomes subject to the requirements of Subchapter E, Division 2 on or after the proposed compliance date of January 1, 2025 would be required to comply with all applicable requirements of the division as soon as practicable but no later than 60 days after triggering applicability to the rules of the division. The commission also proposes to remove current §115.429(f) because Wise County's nonattainment designation under the 2008 ozone NAAQS has been resolved. The new subsection applicable for the Bexar County area would be added as proposed new §115.429(f).

DIVISION 3: FLEXOGRAPHIC AND ROTOGRAVURE PRINTING

§115.430 Applicability and Definitions

The commission proposes to add the Bexar County area to §115.430(a) to make flexographic and rotogravure printing process VOC RACT requirements under Subchapter E, Division 3 applicable to affected sources in the Bexar County area that would become newly subject to the division beginning January 1, 2025.

§115.431 Exemptions

The commission proposes to add the Bexar County area to §115.431(a) to provide owners and operators in the Bexar County area with an option to claim exemptions from flexographic and rotogravure printing process ozone nonattainment area regulations that would otherwise apply to newly affected sources upon triggering applicability under proposed revised §115.430. These exemptions currently exist for owners or operators of affected sources located in other ozone nonattainment areas currently covered by Subchapter E, Division 3. The proposed rulemaking would also add the DFW 2008 ozone NAAQS severe nonattainment area to §115.431(a)(2) to lower the 10-county DFW area exemption limit to its new 25 tpy major source threshold for a severe nonattainment area. This change would be necessary to address the change in the area's major source threshold of VOC from 50 to 25 tpy based on the area's reclassification from serious to severe ozone nonattainment under the 2008 ozone NAAQS.

The commission proposes to apply the exemption in §115.431(a)(3) to the Bexar County area to provide owners or

operators of affected sources in the Bexar County area with an option to exempt all flexible package printing lines and associated cleaning operations, that would have a combined weight of total actual VOC emissions for all coatings less than 3.0 tpy, from the existing control requirements of §115.432(c) and (d). This exemption is available for other ozone nonattainment areas with affected sources subject to the control requirements of Subchapter E, Division 3.

The commission proposes to apply the exemption in §115.431(a)(4) to the Bexar County area to provide owners or operators the option to exempt affected sources in the Bexar County area from the existing control requirements of §115.432(c). These newly affected sources in the Bexar County area would have an uncontrolled maximum potential to emit VOC for all coatings of less than 25 tpy from newly subject flexible package printing lines. This exemption is available for other affected sources located in other ozone nonattainment areas covered under Subchapter E, Division 3.

§115.432 Control Requirements

The commission proposes to add the Bexar County area to §115.432(a) and make these current publication and packaging rotogravure and flexographic printing process VOC RACT control requirements applicable to affected sources in the Bexar County area.

The commission proposes to include the Bexar County area to §115.432(c) and make these current flexible packaging printing process VOC RACT control requirements applicable to affected sources in the Bexar County area. Owners or operators of affected sources in the Bexar County area would be required to comply with these existing control requirements, which currently apply for affected sources located in other ozone nonattainment areas covered under Subchapter E, Division 3, beginning on the proposed compliance date specified in proposed revised §115.439. To be consistent with a rule start date in existing subsection (c) for other ozone nonattainment areas subject to the requirements of the subsection, the commission proposes a start date of January 1, 2025 for when the control requirements of the subsection would begin to apply for the Bexar County area.

§115.435 Testing Requirements

The commission proposes to add the Bexar County area to §115.435(a) and make the current testing and test method requirements of the section applicable to affected sources in the Bexar County area. This change is necessary to ensure that affected sources in the Bexar County ozone nonattainment area would be able to demonstrate compliance with the existing flexographic and rotogravure printing process VOC RACT requirements of the division.

These requirements exist for other ozone nonattainment areas currently covered by Division 3.

§115.436 Monitoring and Recordkeeping Requirements

The commission proposes to make the current flexographic and rotogravure printing line monitoring and recordkeeping requirements in §115.436(a) applicable to affected sources in the Bexar County area by including the Bexar County area in §115.436(a).

The commission proposes to make the current flexible package printing line monitoring and recordkeeping requirements in §115.436(c) applicable to affected sources in the Bexar County area by including the Bexar County area in §115.436(c). This change is necessary to ensure that owners or operators of af-

fected sources, specifically flexible package printing lines, in the Bexar County area would be required to conduct appropriate and sufficient monitoring and to develop and maintain appropriate and sufficient records of such actions to ensure compliance with the existing flexographic and rotogravure printing process VOC RACT requirements of Subchapter E, Division 3. Compliance would be required beginning January 1, 2025.

These requirements exist for other ozone nonattainment areas currently covered by Division 3.

§115.439 Counties and Compliance Schedules

The commission proposes to add "Bexar County" in §115.439(d) to make clear that the owner or operator of an affected source that becomes subject to the requirements of Subchapter E, Division 3 on or after its applicable compliance date must demonstrate compliance with the requirements of Division 3 as soon as practicable but no later than 60 days after the source becomes subject to the division. For affected sources in the other ozone nonattainment areas covered under Subchapter E, Division 3, the applicable compliance date of March 1, 2013 has passed. and owners or operators of sources in these other areas that become newly subject would have up to 60 days to demonstrate compliance with the division. For newly affected sources in the Bexar County area, the proposed compliance date is specified in proposed new subsection (e). Similarly, owners or operators of sources in the Bexar County area that become newly subject to the requirements of Division 3 on or after the date specified in proposed new §115.439(e) would have up to 60 days to demonstrate compliance with the division.

The commission proposes a new §115.439(e) to establish a compliance schedule for affected sources that would become newly subject to the new Bexar County ozone nonattainment area rules. Owners or operators of flexographic or rotogravure printing processes in the Bexar County area that become subject to the requirements of Division 3 would be required to comply with the applicable requirements no later than January 1, 2025.

DIVISION 4. OFFSET LITHOGRAPHIC PRINTING

§115.440 Applicability and Definitions

The commission proposes to add the Bexar County area to §115.440(a) to make offset lithographic printing process VOC RACT requirements under Subchapter E, Division 4 applicable to affected sources in the Bexar County area that would become newly subject to the division beginning January 1, 2025.

The commission proposes to revise §115.440(b)(8)(A) by lowering the amount of VOC emissions in the definition for major printing sources for Dallas-Fort Worth counties, except Wise County, from the current 50 tpy threshold to a 25 tpy threshold. This proposed decrease in the uncontrolled emission threshold for affected major printing sources in the DFW area excluding Wise County would take effect on November 7, 2025. This change would be necessary to address the area's severe ozone nonattainment reclassification from serious ozone nonattainment under the 2008 ozone NAAQS. The threshold of 50 tpy for purposes of subparagraph (A) would continue to apply through November 6, 2025 after which the threshold of 25 tpy would apply.

The commission proposes to revise §115.440(b)(8)(C) by lowering the amount of VOC emissions in the definition for major printing sources in Wise County to a 25 tpy threshold. This proposed decrease in the uncontrolled emission threshold for major printing sources in Wise County would require compliance on

November 7, 2025. This change would be necessary to align the major source threshold for Wise County with the rest of the DFW area. The threshold of 100 tpy for purposes of subparagraph (C) would continue to apply through November 6, 2025 after which the threshold of 25 tpy would apply.

To address the Bexar County area's designation of nonattainment for the 2015 ozone NAAQS, the commission also proposes to add a new §115.440(b)(8)(D) that would establish a major printing source threshold of 100 tons of VOC per calendar year for affected sources located in the Bexar County ozone nonattainment area. This applicability threshold for sources in the area would apply beginning on January 1,2025.

The commission proposes to revise §115.440(b)(9)(A) by lowering the amount of VOC emissions in the definition for minor printing sources for Dallas-Fort Worth counties, except Wise County, from the current threshold of less than 50 tpy to a threshold of less than 25 tpy. This proposed decrease in the uncontrolled emission threshold for affected minor printing sources in the DFW area excluding Wise County would take effect on November 7, 2025. This change would be necessary to address the area's severe ozone nonattainment reclassification from serious ozone nonattainment under the 2008 ozone NAAQS. The threshold of less than 50 tpy for purposes of subparagraph (A) of paragraph (9) would continue to apply through November 6, 2025 after which the threshold of less than 25 tpy would apply.

The commission proposes to revise §115.440(b)(9)(C) by lowering the amount of VOC emissions in the definition for minor printing sources in Wise County to a threshold of less than 25 tpy. This proposed decrease in the uncontrolled emission threshold for minor printing sources in Wise County would require compliance on November 7, 2025. This change would be necessary to align the major source threshold for Wise County with the rest of the DFW area. The threshold of less than 100 tpy for purposes of subparagraph (C) of paragraph (9) would continue to apply through November 6, 2025 after which the threshold of less than 25 tpy would apply.

To address the Bexar County area's designation of nonattainment for the 2015 ozone NAAQS, the commission also proposes to add a new §115.440(b)(9)(D) that would establish a minor printing source threshold at less than 100 tons of VOC per calendar year for affected sources located in the Bexar County ozone nonattainment area. This applicability threshold for sources in the area would apply beginning on January 1, 2025.

§115.441 Exemptions

The commission proposes to add in the Bexar County area to §115.441(a) and provide owners or operators of affected sources in the Bexar County area with an option to exempt all offset lithographic printing lines, with combined VOC emissions for all coatings of less than 3.0 tons per year, when uncontrolled, from the existing monitoring and recordkeeping requirements of §115.446 for offset lithographic printing processes. This exemption is available for affected sources located in other ozone nonattainment areas currently covered by Subchapter E, Division 4.

The commission proposes to add in the Bexar County area to §115.441(b) to allow owners or operators of minor printing sources in the Bexar County area to claim exemptions from otherwise applicable control requirements under §115.442(c). These same exemptions currently exist for similar affected sources located in other ozone nonattainment areas that are also covered by Subchapter E, Division 4. Owners or operators

of affected sources located in the Bexar County area would be able to claim these exemptions beginning January 1, 2025.

§115.442 Control Requirements

The commission proposes to add the Bexar County area to §115.442(b) to specify that the major source offset lithographic printing process VOC RACT control requirements would apply to affected sources in the Bexar County area that would become newly subject to the requirements of the division after triggering applicability under §115.440. This change would be necessary to include the newly designated Bexar County ozone nonattainment area for purposes of the 2015 ozone NAAQS.

The commission proposes to add the Bexar County area to §115.442(c) to specify that the minor source offset lithographic printing process material VOC limits would apply to affected sources in the Bexar County area upon those sources triggering applicability under §115.440 and becoming newly subject to the requirements of Division 4. This change would be necessary to include the newly designated Bexar County ozone nonattainment area for purposes of the 2015 ozone NAAQS.

These control requirements would begin to apply to owners or operators of affected sources in the Bexar County area subject to the requirements of the division on January 1, 2025.

§115.443 Alternate Control Requirements

The commission proposes to add the Bexar County area to §115.443 and enable affected sources in the Bexar County area to comply with lithographic printing process alternative control requirements approved by the executive director. This offset lithographic printing alternative control requirement compliance option is already available for affected sources located in other ozone nonattainment areas covered under Subchapter E, Division 4. These alternate control provisions would apply beginning January 1, 2025.

§115.445 Approved Test Methods

The commission proposes to add the Bexar County area to §115.445 to make the current testing and test method requirements of the section applicable to affected sources in the Bexar County area. This change is necessary to ensure that affected sources in the Bexar County ozone nonattainment area would be able to demonstrate compliance with the existing offset lithographic printing process VOC RACT requirements of the division.

These requirements exist for other ozone nonattainment areas currently covered by Division 4. Owners or operators would be required to use these methods and procedures beginning January 1, 2025.

§115.446 Monitoring and Recordkeeping Requirements

The commission proposes to add the Bexar County area to §115.446(b) to specify that owners or operators of affected sources in the Bexar County area would be required to conduct monitoring and develop and maintain records according to the existing requirements of §115.446(b). This proposed change would be necessary to ensure compliance with the existing offset lithographic printing process VOC RACT requirements of Subchapter E, Division 4. The monitoring and recordkeeping requirements are already applicable to other affected offset lithographic printing sources in other ozone nonattainment areas covered under Division 4.

Compliance with these requirements for the Bexar County area would begin January 1, 2025.

§115.449 Compliance Schedules

The commission proposes to add a new subsection to establish a compliance schedule for the Bexar County 2015 ozone NAAQS nonattainment area that would require compliance with applicable requirements of Subchapter E, Division 4 by no later than January 1, 2025. This proposed new subsection would be added as subsection (h), and existing subsection (h) would be renumbered to subsection (i). The compliance schedule in proposed renumbered §115.449(i) would be revised to add Bexar County to the list of counties subject to the compliance provisions for affected sources that become subject to the requirements of Subchapter E, Division 4 on or after the applicable compliance date. The reference in proposed renumbered subsection (i) to §115.449 subsections covered under that provision would be revised to include the proposed new subsection (h) compliance schedule for Bexar County. Existing §115.449(i), which currently provides for the publication in the Texas Register by the commission and the litigation concerning Wise County for the 2008 Eight-Hour Ozone NAAQS, would be removed since the Wise County litigation has been resolved and this provision is no longer relevant.

DIVISION 5. CONTROL REQUIREMENTS FOR SURFACE COATING PROCESSES

The commission proposes to amend Subchapter E, Division 5 to establish new traffic marking coating provisions that would be implemented in the DFW and/or HGB 2008 ozone NAAQS nonattainment areas when triggered for SIP contingency purposes. The commission proposes to make the current surface coating process VOC RACT requirements in this division applicable to affected sources in the Bexar County area.

§115.450 Applicability and Definitions

The commission proposes to add the Bexar County area in §115.450(a) and §115.450(a)(6) to expand these current surface coating process VOC RACT requirements in this division to affected sources in the Bexar County area. Owners or operators of affected sources in the Bexar County ozone nonattainment area would be required to comply with the applicable requirements of the division beginning January 1, 2025.

Two exceptions are proposed in subsection (a) of §115.450 to allow for the potential applicability of contingency control measures for sources that meet either of the new specific surface coating definitions that are proposed in §115.450(c) for industrial maintenance coatings and traffic marking coatings. These contingency measures would be applicable in either or both the DFW and HGB areas. The proposed applicability provisions are added as new §115.450(a)(7) for industrial maintenance coatings and as §115.450(a)(8) for traffic marking coatings. Proposed formatting adjustments would be made to subsection (a) for clarity purposes.

No general definitions are proposed for subsection (b), but two new specific surface coating definitions are proposed for subsection (c). A proposed definition for industrial maintenance coating would be added as §115.450(c)(3) to apply for the proposed industrial maintenance coating contingency measure in Subchapter E, Division 5, and a proposed definition for traffic marking coating would be added as §115.450(c)(10) to apply for the proposed traffic marking coating contingency measure in Subchapter E, Division 5. The proposed new definitions reflect the defi-

nitions used in national rules and the rules of other states. The existing definitions would be renumbered to accommodate the proposed new definitions.

§115.451 Exemptions

Revisions are proposed to the exemptions in §115.451 to accommodate the two contingency control requirements proposed in Subchapter E, Division 5. An exception is proposed in subsection (a) to allow for the potential that the current exemptions would not apply under a contingency scenario, and new paragraphs (4) and (5) are proposed to stipulate that exemptions in existing §115.451(a)(1) - (3) would no longer apply for industrial maintenance coatings and traffic marking coatings, respectively, once either or both contingency measures are applicable in either or both the DFW and HGB areas. Additionally, a revision is proposed for the exemption for aerosol coatings in §115.451(I) to remove that exemption for the industrial maintenance and traffic marking coatings because many of the industrial maintenance and traffic marking coatings are available in both aerosol and non-aerosol forms and the aerosol forms are commonly above the VOC limit.

For owners or operators of affected sources in the Bexar County ozone nonattainment area that become newly subject to the requirements of Subchapter E, Division 5, affected persons would be able to claim applicable exemptions beginning January 1, 2025.

§115.453 Control Requirements

Revisions are proposed to the control requirements in §115.453 to accommodate the two contingency control requirements proposed in Division 5. A provision is added to existing subsection (a) to clarify that the two proposed contingency control requirements in proposed new §115.453(f) - (i) would apply in addition to those in subsection (a) upon the compliance date specified in proposed new §115.459(e) - (h). Emissions limits for industrial maintenance coatings are proposed as new subsections (f) and (g), and emissions limits for traffic marking coatings are proposed as new subsections (h) and (i), to establish control requirements for contingency purposes applicable to certain surface coating processes in Subchapter E, Division 5.

The contingency control requirement for industrial maintenance coatings would set a VOC limit of 2.1 pounds per gallon or 250 grams per liter of coating (minus water and exempt solvent) to be met by applying low-VOC coatings. The limits of 2.1 pounds per gallon and 250 grams per liter are considered to be equivalent. The contingency control requirement for traffic marking coatings would set a VOC content limit of 100 grams of VOC per liter of coating (minus water and exempt solvent) to be met by applying low-VOC coatings. Proposed new subsection (f) would set the industrial maintenance coatings limit for the DFW area, and proposed new subsection (g) would set the industrial maintenance coatings limit for the HGB area. Likewise, proposed new subsection (h) would set the traffic marking coatings limit for the DFW area, and proposed new subsection (i) would set the traffic marking coatings limit for the HGB area. The proposed limits, if either or both are necessary, would help achieve required emissions reductions for SIP contingency purposes.

The existing control requirements in §115.453 apply to the areas listed in the applicability provisions in §115.450, which would be amended to include the Bexar County area. As such, owners or operators of affected sources in the Bexar County ozone nonattainment area would be required to comply with the applicable control requirements in §115.453 beginning January 1, 2025.

§115.458 Monitoring and Recordkeeping Requirements

Under the monitoring and recordkeeping requirements for surface coating processes in §115.458, references to the contingency control requirements in proposed new §115.453(f) - (i) are proposed in §115.458(b)(1), recordkeeping requirements. The references are added to require that records must demonstrate compliance with the applicable VOC limits, whether the existing limits or those applicable if either or both contingency measures are triggered in either or both the DFW and HGB areas.

The existing monitoring and recordkeeping requirements in §115.458 apply to the areas listed in the applicability provisions in §115.450, which would be amended to include the Bexar County area. As such, owners or operators of affected sources in the Bexar County ozone nonattainment area would become subject to the monitoring and recordkeeping requirements in §115.458 beginning January 1, 2025.

§115.459 Compliance Schedules

This proposed rulemaking would amend subsection (a) to clarify that compliance with the contingency measures in proposed new §115.453(f) - (i) would not be required until the commission published notification in the *Texas Register* of its determination that a contingency rule was necessary.

The proposed rulemaking would also revise existing subsection (b), for Wise County, to clarify that the compliance date in that subsection would not apply for the proposed new contingency requirements under proposed new subsections (f) through (i) of proposed revised §115.453.

The commission proposes to add a new subsection to establish a compliance schedule for the Bexar County 2015 ozone NAAQS nonattainment area that would require compliance with applicable requirements of Subchapter E, Division 5 by no later than January 1, 2025. This proposed new subsection would be added as subsection (c), and existing subsection (c) would be renumbered to subsection (d).

Proposed revisions would remove existing §115.459(d) because Wise County's attainment status has been resolved, and Wise County remains designated nonattainment for the 2008 eighthour ozone NAAQS.

Proposed new subsections (e) - (h) are added to establish the compliance schedules for the industrial maintenance coating and traffic marking coating contingency requirements that would be applicable, if adopted and triggered, in the DFW area, the HGB area, or both areas.

Proposed new subsections (e) and (f) provide that surface coating processes in the DFW area must comply with the industrial maintenance coating and/or traffic marking coating contingency control requirements, respectively, by no later than nine months after the commission publishes notification in the *Texas Register* that one or both of the contingency measures are necessary.

Proposed new subsections (g) and (h) provide that surface coating processes in the HGB area must comply with the industrial maintenance coating and/or traffic marking coating contingency control requirements, respectively, by no later than nine months after the commission publishes notification in the *Texas Register* that one or both of the contingency measures are necessary.

DIVISION 6. INDUSTRIAL CLEANING SOLVENTS

The commission proposes to amend Subchapter E, Division 6 to establish a new limit for industrial cleaning solvents to

be implemented in the either the DFW or HGB or both 2008 ozone NAAQS nonattainment areas when triggered for SIP contingency purposes.

The commission also proposes to make the current surface coating process VOC RACT requirements in this division applicable to affected sources in the Bexar County area.

§115.460 Applicability and Definitions

The commission proposes to add the Bexar County area in §115.460(a) to make these current VOC RACT requirements for industrial cleaning solvents applicable to affected sources in the Bexar County area. Owners or operators of affected sources in the Bexar County ozone nonattainment area would be required to comply with the applicable requirements of the division beginning January 1, 2025.

Proposed language is added to the contingency rule definitions in §115.460(b) to clarify and support new industrial cleaning solvent contingency rule provisions. Proposed revisions to existing §115.460(b) would contain new and amended definitions for the following: application device; application line; blanket; blanket wash; cured coating, cured ink, or cured adhesive; electronic component, electron beam ink; facility; grams of VOC per liter of material; graphic arts; gravure printing; high precision optic; hot-line tool; letterpress printing; liquid-tight food container; lithographic printing; maintenance cleaning; manufacturing process; medical device; medical or pharmaceutical work surface; non-absorbent container; on-press component; on-press screen cleaning; packaging printing; pharmaceutical product; photocurable resin; printing; removable press component; repair cleaning; repair process; roller wash; scientific instrument; screen printing; solvent cleaning operation; solvent flushing; specialty flexographic printing; stereolithography; stripping; surface preparation; and ultraviolet ink.

The proposed new definition for medical device is a replacement of the previous version to improve readability. The proposed revised definition for electrical and electronic components includes new language specifying how electronic component and electrical component are defined differently for the purpose of the contingency measure provisions of the division. This allows continued use of the existing definition for existing uses while specifying a different definition as used in the rules of other states when describing use in the contingency measure portions of this division. The term solvent cleaning operation also receives additional proposed phrasing in its definition that is applicable only in the context of the contingency measure provisions to harmonize with its use in the rules of other states.

§115.461 Exemptions

The commission proposes to renumber the existing §115.461(e) aerosol can exemption as §115.461(f) and concurrently propose a new subsection (e) that would specify exemption provisions that would become applicable to affected sources or activities in the DFW area, the HGB area, or both, if the contingency requirements of Subchapter E, Division 6 were triggered as provided for in proposed new §115.469(d), for the DFW area, in §115.469(e) for the HGB area.

Upon triggering of the contingency requirements under proposed new §115.463(e), these new exemptions under proposed new §115.461(e) would replace those in existing §115.461(a) - (d). The commission makes clear that the provisions of proposed new subsection (e) would apply if contingency requirements were triggered and proposed renumbered (f) would also

continue to apply; otherwise, the existing provisions of subsections (a) - (d), and now proposed renumbered (f), would apply. Proposed revisions to the last sentence of existing §115.461(a) would reflect that industrial cleaning solvent emissions currently exempted under existing §115.461(b) - (d) and (e), which is concurrently proposed as renumbered (f), would continue to not count towards the 3.0 tons of VOC per calendar year exemption limit under §115.461(a).

Proposed new subsection (e)(1) specifies the types of cleaning that would be exempt in the DFW area, through proposed new subparagraphs (A) - (L), and proposed new subsection (e)(2) specifies the types of cleaning that would be exempt in the HGB area, through proposed new subparagraphs (A) - (L).

For owners or operators of affected sources in the Bexar County ozone nonattainment area that become newly subject to the requirements of Subchapter E, Division 6, affected persons would be able to claim applicable exemptions beginning January 1, 2025.

§115.463 Control Requirements

Current §115.463(a)(1) and (2) provisions limit the industrial cleaning solvent VOC content to 0.42 pounds per gallon (lb VOC/gal), which is equivalent to 50 grams/liter (g/l) or a composite partial pressure of 8.0 millimeters of mercury (mmHg) at 20 degrees Celsius, respectively.

The proposed rulemaking would add a new §115.463(e) to include new requirements concerning SIP contingency measures and requirements. Proposed new §115.463(e) would contain new VOC content limits listed in proposed new Figure: 30 TAC §115.463(e) that would become effective upon EPA publication of a notice in the *Federal Register* that the specified area(s) failed to attain the applicable ozone NAAQS by the attainment date or failed to demonstrate RFP, and the commission's subsequent publication in the *Texas Register* confirming that compliance with the DFW and/or HGB contingency measures is required. Compliance would be required nine months after *Texas Register* publication as stated in §115.469 Compliance Schedules,

Owners or operators of affected sources in the Bexar County ozone nonattainment area would be required to comply with the applicable control requirements of this division beginning January 1, 2025.

§115.465 Approved Test Methods and Testing Requirements

Minor revisions are proposed in §115.465 to update the section references to align with the structure of proposed Subchapter E, Division 6. Existing test methods and requirements in §115.465 are proposed to incorporate test methods and testing requirements for the industrial cleaning solvent contingency control measure. This includes industrial cleaning solvent VOC content and vapor pressure test methods.

These requirements exist for other ozone nonattainment areas currently subject to Subchapter E, Division 6. Owners or operators of affected sources in the Bexar County 2015 ozone NAAQS nonattainment area would be required to use these methods and procedures beginning January 1, 2025.

§115.468 Monitoring and Recordkeeping Requirements

Revisions to the existing monitoring and recordkeeping requirements in §115.468 are proposed to incorporate recordkeeping requirements for the industrial cleaning solvents contingency control measure. The recordkeeping requirements in §115.468(b)(1) would be amended to specify that records

must be kept that demonstrate continuous compliance with the applicable new §115.463(e) requirements.

Owners or operators of affected sources in the Bexar County ozone nonattainment area would become subject to the monitoring and recordkeeping requirements of this division beginning January 1, 2025.

§115.469 Compliance Schedules

The commission proposes to combine existing §115.469(a) and (b) under proposed §115.469(a) to clarify that compliance requirements that are applicable to Wise County are identical to the requirements that are applicable to the nonattainment counties comprising the 10-County DFW nonattainment area for the 2008 severe ozone NAAQS. These same compliance requirements for the 10-county DFW 2008 ozone NAAQS severe nonattainment area are also identical to the requirements that are applicable to the eight-county HGB 2008 ozone NAAQS severe nonattainment area. In all these counties, the compliance date has passed, and compliance is required, except for the proposed contingency measures, as stated in proposed new subsections (d) and (e) of this section.

The commission proposes a new §115.469(b) that would establish a compliance schedule for newly affected sources located in the Bexar County ozone nonattainment area that would become subject to the requirements of Subchapter E, Division 6 on January 1, 2025. Owners or operators of newly affected sources subject to the industrial cleaning solvent requirements of the division would be required to comply with all applicable requirements of the division no later than January 1, 2025.

This proposed rulemaking would remove existing §115.469(d) because Wise County's attainment status has been resolved, and Wise County remains designated nonattainment for the 2008 eight-hour ozone NAAQS.

The commission proposes new §115.469(d) and (e) that would establish the compliance schedules for the SIP contingency requirements concerning industrial cleaning solvents that, if adopted and triggered, would be applicable in the DFW and/or HGB area. Proposed new subsection (d) and proposed new subsection (e) would specify that applicable operations in the affected area(s) would be required to comply with the new contingency control requirements proposed in new §115.463(e) for industrial cleaning solvents by no later than nine months after the commission publishes notification in the *Texas Register* that the contingency measure is necessary. Proposed new subsection (d) would apply in the DFW area, and proposed new subsection (e) would apply in the HGB area.

DIVISION 7. MISCELLANEOUS INDUSTRIAL ADHESIVES

The commission proposes to amend Subchapter E, Division 7 to establish a new limit for industrial adhesives to be implemented in the DFW and/or HGB 2008 ozone NAAQS nonattainment areas when triggered for SIP contingency purposes.

The commission also proposes to make the current surface coating process VOC RACT requirements in this division applicable to affected sources in the Bexar County area beginning January 1, 2025.

§115.470 Applicability and Definitions

The commission proposes to add the Bexar County area in §115.450(a) to make these current industrial adhesives VOC RACT requirements applicable to affected sources in the Bexar County area beginning January 1, 2025.

Proposed language is added to expand applicability from application processes in §115.473(a) to all of §115.473 with the proposed revision of the citation in §115.470(a) from §115.473(a) to §115.473. This expansion allows applicability to be extended to the proposed new adhesives contingency measure, if triggered. Also, under §115.470, a new term and definition are proposed as §115.470(b)(43) for specialty adhesives, and the existing definitions are renumbered accordingly.

§115.471 Exemptions

Exceptions are proposed to the existing exemptions in §115.471(a) - (c) to allow for the potential that existing exemptions would not apply under a contingency scenario, and the term "applicable" would be added to existing subsection (c) to clarify that the appropriate VOC content limit must be considered to determine whether an adhesive application process qualifies for exemption. Proposed new §115.471(d) is added to stipulate that the exemptions in §115.471(a) - (c) would no longer be available under a contingency scenario in either the DFW or HGB area, or both areas, and to allow exemptions for applicable processes if the adhesives contingency control requirements apply. Proposed exemptions are listed in new paragraphs (1) and (2) of proposed new §115.471(d) and include an exemption in new paragraph (1) from all but the applicable monitoring and recordkeeping requirements if it can be demonstrated that the total volume of noncompliant products is less than 55 gallons per calendar year. Proposed new paragraph (1) also stipulates that the paragraph may not be used to exclude noncompliant adhesives used in architectural applications; contact adhesives; special purpose contact adhesives; adhesives used on porous substrates; rubber vulcanization adhesives, and top and trim adhesives. Finally, proposed new paragraph (2) provides exemptions for 10 adhesive application processes if the adhesives contingency control requirements apply.

§115.473 Control Requirements

Proposed contingency control requirements are added to §115.473 for adhesive application processes. To allow for the contingency control requirements to apply, a proposed provision is added to the existing subsection (a) requirements to clarify that the requirements in that subsection would be replaced by the contingency requirements in proposed new subsections (e) or (f) if they are required for contingency purposes in the DFW area or HGB area, respectively. Proposed emissions limits for contingency are added as subsection (e) for the DFW area and (f) for the HGB area. The proposed contingency control requirements are the same for both areas and would establish VOC emissions limits for application processes specified in the tables in proposed §115.473(e) and §115.473(f) for which adhesives and adhesive primers are used. The proposed control requirements would also specify that the limits must be met by applying low-VOC adhesives or adhesive primers.

§115.475 Approved Test Methods and Testing Requirements

Revisions to the existing test methods and requirements in §115.475 are proposed to incorporate test methods and testing requirements for the adhesives contingency control measure. This includes test methods for reactive adhesives, subparagraph (B), and all other applicable adhesives, paragraph (1).

§115.478 Monitoring and Recordkeeping Requirements

Revisions to the existing monitoring and recordkeeping requirements in §115.468 are proposed to incorporate recordkeeping requirements for the miscellaneous industrial adhesives con-

tingency control measure. The recordkeeping requirements in §115.478(b)(1) would be amended to specify that records must be kept that demonstrate continuous compliance with the applicable new §115.473(e) - (f) requirements.

§115.479 Compliance Schedules

The commission proposes to remove existing subsection (b) and add Wise County to the list of counties covered under existing subsection (a) to further specify that the compliance date for all listed counties has passed, and compliance is required, except for the proposed contingency measures, as stated in proposed new subsections (c) and (d) of this section. Existing subsection (c) is concurrently proposed to be renumbered as subsection (b).

This proposed rulemaking would remove existing §115.479(d) because Wise County's attainment status has been resolved, and Wise County remains designated nonattainment for the 2008 eight-hour ozone NAAQS. The removal of this language allows for greater clarity in the rules for this division and removes any doubt concerning the nonattainment status of Wise County.

Proposed new subsections (c) and (d) are added to establish the compliance schedules for the adhesives contingency requirements that, if adopted and triggered as contingency, would be applicable in the DFW area, the HGB area, or both areas. Proposed new subsections (c) and (d) provide that applicable operations in the affected area(s) must comply with the adhesives contingency control requirements by no later than nine months after the commission publishes notification in the *Texas Register* that the contingency measure is required. Proposed new subsection (c) would apply in the DFW area, and proposed new subsection (d) would apply in the HGB area.

The commission proposes a new §115.479(e) rule to establish a compliance schedule for the new Bexar County area industrial adhesives nonattainment rules. Owners or operators of affected sources that become subject to the applicable requirements of Subchapter E, Division 7 would be required to demonstrate compliance with all applicable requirements of the division beginning January 1, 2025.

SUBCHAPTER F. MISCELLANEOUS INDUSTRIAL SOURCES.

DIVISION 1. USE OF ASPHALT

Division Title

The commission proposes to amend Subchapter F, Division 1 to change the name from "Cutback Asphalt" to "Use of Asphalt." Since its inception, the division has contained requirements pertaining to the use of both cutback and emulsified asphalt, not just cutback asphalt. This name change brings the division title in line with its content and alleviates confusion with its applicability to the production of various types of asphalt.

Contingency Measure: Emulsified Asphalt

The commission proposes to amend Subchapter F, Division 1 to define and establish a new contingency rule limit for emulsified asphalt in the DFW and/or HGB 2008 ozone nonattainment areas that trigger SIP contingency requirements.

§115.510 Cutback Asphalt Definitions

The commission proposes to delete "Cutback Asphalt" and "Cutback" from the title and first line of proposed §115.510, respectively, to clarify that both cutback and emulsified, asphalt materials are subject to the commission's proposed Subchapter F, Division 1 requirements. The commission proposes to insert "Use of" immediately after "relating to" in the first line of pro-

posed §115.510 for clarification purposes. The commission also proposes to refine the asphalt emulsion definition in proposed §115.510(1) to include emulsified asphalt as an interchangeable term for clarification purposes.

§115.512 Control Requirements

The commission proposes to divide §115.512 into subsections (a) and (b) that would contain existing control provisions and new contingency control requirements, respectively.

The commission proposes to add the Bexar County area to §115.512(a) and make these existing cutback asphalt VOC RACT control requirements applicable to affected sources in the Bexar County area.

Additionally, the commission proposes to add the Bexar County area to §115.512(a)(2) and make these existing cutback asphalt VOC RACT control requirements applicable to affected sources in the Bexar County area.

The commission also proposes new language at the beginning of §115.512(a)(3) to clarify that the existing rule emulsified asphalt VOC content limits no longer apply when a VOC contingency rule is triggered. Finally, non-substantive changes are proposed in §115.512(a)(3)(B) - (D) to align terms in the existing asphalt emulsion VOC limits with industry standard terminology and with terms used in the proposed contingency measure subsection §115.512(b).

The commission proposes new subsection (b) language to establish and differentiate more stringent contingency rule control requirements from existing §115.512(a) VOC content limits during the local ozone season. Proposed new §115.512(b) language specifies that the asphalt contingency rule VOC content limits are applicable when the commission publishes notification in the Texas Register. Newly proposed §115.512(b)(1) and (2) provisions establish an emulsified asphalt 0.5% by volume VOC contingency limit in the DFW and HGB areas during their unique ozone season, respectively. The non-ozone season emulsified asphalt limits for the DFW area are the same as §115.512(a)(3) and are repeated in §115.512(b)(1) as new subparagraphs (A) - (D) for clarity. The non-ozone season limits include the same industry standard terminology updates proposed in §115.512(a)(3)(B) - (D). Since the HGB area has a year-round ozone season, there is no need to specify non-ozone season limits. The DFW area ozone season is March 1 through November 30. This is a change from the applicability period for the current non-contingency cutback asphalt regulations of April 15 to September 15. This change is necessary to align applicability of the two limits and to update the DFW ozone season to the current EPA definition.

§115.515 Testing Requirements

The commission proposes to divide §115.515 into subsections (a) and (b) that would contain current test method language updates and new contingency test methods, respectively. Subsection (a) would contain clarification language for existing test methods and renumber current paragraph (3), which allows minor test method modifications approved by the executive director, to paragraph (4). Existing paragraph (3) would be replaced with language allowing the use of additional test methods validated by 40 CFR 63, Appendix A, Test Method 301 and approved by the executive director.

The commission proposes new §115.515(b) to establish test methods for the contingency measure in this division. These new contingency test methods are specified in proposed

§115.515(b)(1), (2), and (3). Use of American Association of State Highway and Transportation Officials (AASHTO) Test Method AASHTO T 59 is proposed because it is used in state and local emulsified asphalt specifications to quantify VOC content by volume percent.

§115.516 Recordkeeping Requirements

The commission proposes to add the Bexar County area to §115.516 and make the current cutback asphalt or asphalt emulsion recordkeeping requirements applicable to affected sources in the Bexar County area. The requirements are already applicable to affected cutback asphalt or asphalt emulsion sources in the Nueces, Bastrop, Caldwell, Hays, Travis, and Williamson Counties and the Beaumont-Port Arthur, Dallas-Fort Worth, El Paso, and Houston-Galveston areas under current VOC RACT rules.

§115.517 Exemptions

The commission proposes to add the Bexar County area to §115.517 and provide affected sources in the Bexar County area with the exemptions that are already applicable to affected asphalt sources located in other ozone nonattainment areas currently covered under Subchapter F, Division 1.

§115.519 Counties and Compliance Schedules

The commission proposes to consolidate some passed DFW area RACT compliance schedules, delete outdated subsections and language, insert Bexar County RACT, and add new contingency rule compliance schedules to §115.519, to harmonize the section title with the standard form used in other divisions of this chapter.

The proposed rulemaking clarifies in §115.519(a) that control requirements for cutback asphalt remain in place if a contingency measure is triggered. Compliance requirements for all ozone nonattainment counties for which the compliance date has passed are consolidated into revised §115.519(a) by adding Ellis, Johnson, Kaufman, Parker, and Rockwall Counties from current §115.519(c) and Wise County from current §115.519(d). The proposed rulemaking would remove current §115.519(c) and (d) as part of the proposed consolidation.

This proposed rulemaking would also remove existing §115.519(e) because Wise County's attainment status has been resolved, and Wise County remains designated nonattainment for the 2008 eight-hour ozone NAAQS. The removal of this language allows for greater clarity in the rules for this division and removes any doubt concerning the nonattainment status of Wise County.

Proposed new subsections (c) and (d) are added to establish the compliance schedules for the emulsified asphalt contingency requirements applicable in the DFW and/or HGB areas. Proposed subsections (c) and (d) provide that applicable operations in the affected area(s) must comply with the emulsified asphalt contingency control requirements by no later than nine months after the commission publishes notification in the *Texas Register* that the contingency measure is necessary. Proposed new subsection (c) would apply in the DFW area and proposed new subsection (d) would apply in the HGB area.

The commission proposes a new §115.519(e) to establish a compliance schedule for the new Bexar County area asphalt nonattainment rules. The new compliance schedule requires compliance with the division by no later than January 1, 2025.

The commission proposes a new §115.519(f) to establish a compliance schedule for persons newly subject to the division after the applicable compliance date. Such persons have 60 days to achieve compliance after becoming subject to this division. This provision, is proposed to be consistent with compliance schedule provisions in the other divisions of this subchapter.

DIVISION 2. PHARMACEUTICAL MANUFACTURING FACILITIES

§115.531 Emissions Specifications

The commission proposes to add Bexar County to §115.531(a) and require affected sources in the Bexar County area to meet emission specifications applicable to synthesized pharmaceutical manufacturing facilities. These same emission specifications currently apply to similar facilities located in other ozone nonattainment areas covered by Subchapter F, Division 1 to satisfy VOC RACT requirements.

§115.532 Control Requirements

The commission proposes to add Bexar County in §115.532(a) and make affected Bexar County sources subject to current nonattainment area pharmaceutical manufacturing facility VOC RACT control requirements beginning January 1, 2025.

§115.534 Inspection Requirements

The commission proposes to add Bexar County to §115.534(a) and make affected sources in the Bexar County area subject to existing inspection requirements of the subsection. These requirements currently apply to affected sources located in other ozone nonattainment areas covered by the division. This proposed change is necessary to ensure that owners or operators of affected sources in the Bexar County area use the appropriate procedures necessary to show compliance with the applicable emission specifications and control requirements of the division.

§115.535 Testing Requirements

The commission proposes to add Bexar County in §115.535(a) and make affected sources in the Bexar County area subject to existing nonattainment area pharmaceutical manufacturing facility VOC RACT testing requirements.

§115.536 Monitoring and Recordkeeping Requirements

The commission proposes to add Bexar County to §115.536(a) and require an owner or operator of an affected source located in the Bexar County ozone nonattainment area to conduct the appropriate monitoring and to develop and maintain the appropriate records necessary to demonstrate compliance with applicable emission specifications and control requirements of Subchapter F, Division 2. These same requirements apply to affected sources located in other ozone nonattainment areas covered by the division.

§115.537 Exemptions

The commission proposes to add Bexar County to §115.537(a) and make the pharmaceutical manufacturing facility exemptions available to affected sources located in the Bexar County ozone nonattainment area. These same exemptions are currently available to affected sources located in other ozone nonattainment areas covered under Subchapter F, Division 2.

§115.539 Counties and Compliance Schedules

The commission proposes a new §115.539(c) rule to establish a compliance schedule for the proposed Bexar County area pharmaceutical manufacturing facility requirements that would

be added to this division. The new §115.539(c) requires affected persons in Bexar County to comply with requirements in Subchapter F, Division 2 as soon as practicable, but no later than January 1, 2025.

SUBCHAPTER J. ADMINISTRATIVE PROVISIONS

DIVISION 1. ALTERNATE MEANS OF CONTROL

§115.901 Insignificant Emissions

The commission proposes to insert "as defined in §115.10 of this title (relating to Definitions)" immediately after "Travis Counties" in §115.901 and specify that this section no longer applies in Bexar County after December 31, 2024 when it no longer meets the definition of a covered attainment county. This would clarify that proposed §115.901, which authorizes the executive director to provide an exemption for certain insignificant emissions, no longer applies in Bexar County once Bexar County is required to comply with the 2015 ozone NAAQS moderate nonattainment area VOC requirements.

§115.911 Criteria for Approval of Alternate Means of Control Plans

The commission proposes to add a reference to the definitions in §115.10 after each specific ozone nonattainment area reference in §115.911(3) for clarification purposes. The commission proposes to increase the appropriate applicable emission reduction factor in §115.911(3)(B) to 1.3, since the Dallas-Fort Worth area has been reclassified as severe nonattainment for ozone under the 2008 standard. The commission proposes to renumber existing §115.911(3)(E) as §115.911(3)(F) and insert a new §115.911(3)(E) provision that specifies the appropriate Bexar County area 1.15 emission reduction factor for a moderate ozone nonattainment area.

Fiscal Note: Costs to State and Local Government

Kyle Girten, Analyst in the Budget and Planning Division has determined that for the first five-year period the proposed rules are in effect, no costs are anticipated for the agency or for other units of state government as a result of administration or enforcement of the proposed rule.

Fiscal implications are anticipated for local governmental entities in Bexar County that use asphalt. The rulemaking would make the requirements of Subchapter F, Division 1 applicable to Bexar County, and result in additional testing and recordkeeping costs estimated at \$15,000 per year for each entity.

Public Benefits and Costs

Mr. Girten determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated will be compliance with federal law and continued protection of the environment and public health and safety combined with efficient and fair administration of VOC emission standards for Bexar County, HGB counties, and DFW counties.

The proposed rulemaking would not adopt specific fees that were not already authorized. Additional compliance costs would be incurred for affected businesses operating in Bexar County for implementation of requirements applicable to RACT. The proposed rules would also lower the DFW nonattainment area major source threshold from 50 tons per year VOC to 25 tons per year VOC and potentially subject existing condensate storage tank, bakery, and lithographic printing sources to additional RACT compliance requirements. However, no additional costs are anticipated as a result of this threshold change. For both

the DFW and HGB areas, additional costs are only anticipated if SIP contingency requirements are triggered for failing to meet a nonattainment milestone or required ozone standard.

Proposed rulemaking in Subchapter B, Division 1 would change requirements that are applicable to Bexar County. This would include entities in Bexar County with VOC storage tanks, such as refineries, chemical plants, oil and gas producers, and manufacturers. It is estimated that there are over 200 VOC tanks in Bexar County, and there would be increased costs of approximately \$30,000 to \$45,000 annually per tank to meet new requirements related to testing, seal inspections, and recordkeeping. A small number of tanks with capacities greater than 40,000 gallons and that store VOCs with a true vapor pressure between 1.5 and 11 psia would incur additional costs, primarily capital costs of over \$100,000 in the first year to meet the secondary seal requirement of the rule.

Proposed rulemaking in Subchapter B, Division 1 would lower the major source threshold for the DFW nonattainment area from 50 tons per year VOC to 25 tons per year VOC for condensate tanks. More stringent control requirements in Subchapter B, Division 7 already apply to these condensate tanks so no additional costs would be incurred.

Proposed rulemaking in Subchapter B. Division 2 would change requirements that are applicable to Bexar County. This would include entities in Bexar County that generate vent gas streams in quantities at or above 100 tons per year VOC, including a variety of sources from different industries such as commercial bakeries, refineries, gas plants, cement plants, and manufacturers. Businesses which do not have 98% efficient controls for vent gas streams would be responsible for costs associated with implementing controls and meeting other requirements. For example, it is estimated that costs for implementing controls and associated monitoring, testing, and recordkeeping would be approximately \$500,000 in total for two commercial bakeries in the first year and \$75,000 annually in years two through five. Sources which already have 98% efficient controls would not incur additional costs associated with implementing new controls, though these entities may be required to conduct additional emissions testing or performance tests, and these costs could range from an estimated \$5,000 to \$10,000 annually.

Proposed rulemaking in Subchapter B, Division 2 would lower the major source threshold for the DFW nonattainment area from 50 tons per year VOC to 25 tons per year VOC for bakeries. A source threshold does not apply to other entities subject to Subchapter B, Division 2 requirements. Three bakeries were identified in the TCEQ emissions inventory that would be affected. However, these bakeries are not expected to incur additional compliance costs because they each already have combustion controls which are expected to meet control requirements in the rulemaking.

Proposed rulemaking in Subchapter B, Division 3 would change requirements that are applicable to Bexar County. This subchapter is applicable to refineries, terminals, and entities that conduct oil and gas exploration and processing. These entities would now be required to control water separator vent gas VOC from separators to a maximum true partial pressure of 0.5 psia instead of the current requirement of 1.5 psia. There are likely fewer than five such entities in Bexar County. It is anticipated that control, monitoring, testing, costs per entity would total approximately \$150,000 in the first year and over \$40,000 per each year in years two through five.

Proposed rulemaking in Subchapter B, Division 4 would change requirements that are applicable to Bexar County. This subchapter applies to VOC wastewater streams with specific industry categories in the organic chemicals, plastics, and synthetic fiber manufacturing industry, the pesticides manufacturing industry, the petroleum refining industry, the pharmaceutical manufacturing industry, and hazardous waste treatment, storage, and disposal facilities industry. One refinery in Bexar County was identified that would be affected by this rulemaking, and it is estimated that the rulemaking would result in costs for inspections, monitoring, testing, and recordkeeping that total over \$60,000 per year in the first year and over \$30,000 per each year in years two through five.

Proposed rulemaking in Subchapter B, Division 6 would change requirements that are applicable to Bexar County. This subchapter applies to batch process VOC streams with specific industry categories in the plastic resins and materials, medicinals and botanicals, pharmaceutical preparations, gum and wood chemicals, cyclic crudes and intermediates, certain industrial organic chemicals, and certain agricultural chemicals industries. It is not anticipated any businesses in Bexar County would be subject to this portion of the rulemaking, and therefore no costs are estimated. In the event a batch process becomes subject to these rules, it is anticipated that costs would be under \$40,000 in the first year, and \$5,000 per each year in years two through five.

Proposed rulemaking in Subchapter B, Division 7 would change requirements that are applicable to Bexar County. This subchapter applies to oil and natural gas service. Data from the Texas Railroad Commission indicates that Bexar County has 2,350 active and producing oil wells, one natural gas plant, and no active and producing natural gas wells. This rulemaking would require owners or operators of affected facility compressors, tanks, pneumatic pumps, pneumatic controllers, and fugitive components to comply with new recordkeeping, exemption, and compliance schedule requirements. No costs are anticipated for compressors, tanks, or pneumatic pumps for Bexar County. Total costs for Bexar County, as applicable to pneumatic controllers, fugitive components, monitoring, instrumentation and tagging, and recordkeeping requirements, are estimated at \$2.1 million in the first year and \$1.7 million each year for years two through five.

Proposed rulemaking in Subchapter C, Division 1 would change requirements that are applicable to Bexar County. This rulemaking would require businesses in Bexar County with VOC transfer operations such as gasoline terminals, refineries, chemical plants, and fuel related industries materials with VOCs are transferred from or to a tank and into a transport vessel. Entities would need to meet more stringent emission specifications, and control, monitoring, and recordkeeping requirements. The total cost estimate for Bexar County totals over \$800,000 control and testing, and \$10,000 each year for annual monitoring in years two through five.

Proposed rulemaking in Subchapter C, Division 2 relates to gasoline storage vessels, and no changes are made that would result in costs for entities in Bexar County or HGB and DFW areas.

Proposed rulemaking in Subchapter C, Division 3 would change requirements of the rule that are applicable to Bexar County. This rulemaking would require that Bexar County sources carrying non-gasoline VOC with a vapor pressure over 0.5 psia to pass annual leak-tight tests. It is anticipated that most tank trucks in Bexar County are already getting this leak testing. The

cost estimate for any vehicles which are not already getting this testing is \$1,000 per test annually. Assuming there are ten trucks which would require this testing, the total annual cost estimate for this compliance testing is \$10,000.

Proposed rulemaking in Subchapter D, Division 1 would change requirements of the rule that are applicable to Bexar County. This subchapter would apply emission specifications and control, monitoring, and recordkeeping requirements to owners or operators of refinery process turnaround and vacuum-producing systems. One such refinery was identified in Bexar County, and there would be additional monitoring, testing, and recordkeeping requirements for this facility totaling approximately \$30,000 in the first year, and approximately \$20,000 each year for years two through five.

Proposed rulemaking in Subchapter D, Division 3 would change requirements of the rule that are applicable in Bexar County. The rulemaking would apply new emission control, monitoring, inspection, and recordkeeping requirements on owners or operators of petroleum refining, natural gas/gasoline processing, and petrochemical processes. Three entities were identified in Bexar County, and there would be additional monitoring, inspection, tagging, and recordkeeping totaling an estimated \$400,000 in the first year in sum for these entities, and approximately \$340,000 each year for years two through five.

Proposed rulemaking in Subchapter E, Division 1 would incorporate contingency control provisions for DFW and HGB areas. The subchapter would apply to businesses using cold solvent degreasing processes, open-top vapor degreasing processes, and conveyorized degreasing processes, and would limit degreaser cold solvent VOC content to 25 g/L if contingency requirements are triggered. Should contingency requirements in both DFW and HGB triggered, it is estimated that the total cost would be approximately \$2.3 million in the first year for all companies that would need to replace their degreasers as necessary to meet targeted VOC emissions reductions. This value is inclusive of capital and compliance costs. It is estimated that annualized compliance costs would be over \$430,000 each year in years two through five.

Proposed rulemaking in Subchapter E, Division 2 would change requirements of the rule that are applicable in Bexar County. This subchapter relates to certain surface coating operations. Businesses were identified in Bexar County that conduct fabric coating and aerospace coating, and no costs are anticipated in association with meeting the requirements related to the control of VOC content for these entities. It is estimated that there would be increased testing and recordkeeping costs for entities which do not rely on manufacturer formulations of surface coating, and total costs are estimated at \$70,000 in the first year, and over \$40,000 each year in years two through five.

Proposed rulemaking in Subchapter E, Division 3 would change requirements of the rule that are applicable in Bexar County. This subchapter relates to flexographic and rotogravure printing operations, and it would require sources with a potential to release annual uncontrolled VOC of at least 3.0 tons VOC to install vapor controls, use high solids solvent-borne ink, or limit the printing ink VOC content. It is estimated that compliance costs would total \$130,000 per entity to meet these requirements. The number of affected entities in Bexar County cannot be estimated, though no such entities could be identified.

Proposed rulemaking in Subchapter E, Division 4 would change requirements of the rule that are applicable in Bexar County. This subchapter relates to lithographic printing operations, and it would require sources with a potential to release annual uncontrolled VOC of at least 3.0 tons VOC to meet more stringent control requirements including VOC content limits for printing and cleaning materials. It is estimated that control and recordkeeping costs would total approximately \$20,000 per year per entity to meet these requirements. It is unlikely that any business in Bexar County would be affected.

Proposed rulemaking in Subchapter E, Division 4 would lower the major source threshold for the DFW nonattainment area from 50 tons per year VOC to 25 tons per year VOC for lithographic printing sources. Newly affected entities would be required to use lower VOC and alcohol materials. No additional costs are anticipated because such materials are understood to cost the same as other higher VOC and alcohol materials that would otherwise be used.

Proposed rulemaking in Subchapter E, Division 5 would change requirements of the rule that are applicable in Bexar County. This subchapter relates to control processes for surface coating operations for a variety of surface coating operations. Affected coating processes may be required to limit the VOC content of coatings, install or increase add-on control efficiency, and/or maintain minimum coating application transfer efficiency. One business was that performs automobile and light-duty truck assembly coatings, and it is estimated that the annual cost for testing, monitoring, and recordkeeping compliance costs would total approximately \$70,000 in the first year and over \$40,000 each year in years two through five. Fifty-three emission points at three sites were identified related to miscellaneous metal parts and products (MMPP) coatings. Assuming entities opt to meet VOC content requirements by diluting already existing materials, the cost estimate for each site is approximately \$5,000 to \$10,000 in the first year, and approximately \$4,000 each year in years two through five as related to the purchase, set up, and maintenance of recordkeeping systems. Costs would be incurred for industrial maintenance coating and traffic marking coating firms in Bexar County, and there are an unknown number of these businesses. The cost estimate for each facility to purchase, set up, and maintain a recordkeeping system is approximately \$5,000 in the first year, and approximately \$4,000 each year in years two through five. Costs would be incurred for large appliance, metal furniture, miscellaneous plastic parts and products, coil, vinyl, can, paper, film, flat wood paneling, mirror backing, wood furniture, pleasure craft, foil or woods parts and products entities that conduct surface coating. If any such businesses are in Bexar County, costs for each entity to purchase, set up, and maintain a recordkeeping system are estimated at \$5,000 in the first year, and approximately \$4,000 each year in years two through five.

Proposed rulemaking in Subchapter E, Division 5 would also incorporate contingency control provisions for DFW and HGB areas. No costs are estimated for these sources, even if contingency requirements were triggered.

Proposed rulemaking in Subchapter E, Division 6 would change requirements of the rule that are applicable in Bexar County. This subchapter relates to industrial cleaning solvents, and it would apply to sources from a variety of industry sectors with actual VOC emissions equal or greater to three tons per year. The number of such sources could include more than 100 facilities, though it is not possible to provide a specific estimate. Costs for the purchase, set up, and maintenance of a recordkeeping system are estimated at \$5,000 in the first year, and approximately \$4,000 each year in years two through five.

Proposed rulemaking in Subchapter E, Division 6 would also incorporate contingency control provisions for DFW and HGB areas. No costs are estimated for these sources, even if contingency requirements were triggered.

Proposed rulemaking in Subchapter E, Division 7 would change requirements of the rule that are applicable in Bexar County. This subchapter relates to adhesives, and it would apply to manufacturers with actual VOC emissions equal to or greater than three tons per year that use adhesives during any of the specified application processes in §115.473 of the rule. No sources were identified with VOC emissions over ten tons, though it is possible that sources exist that emit between three and ten tons per year. A conservative estimate for sources for capital, operating, testing, and monitoring expenditures is approximately \$900,000 per year in total for all sources in Bexar County as necessary to achieve VOC emission reductions of an estimated 461.1 tons VOC per year.

Proposed rulemaking in Subchapter E, Division 7 would also incorporate contingency control provisions for DFW and HGB areas. Should contingency requirements be triggered in both DFW and HGB areas, the annual additional cost estimated cost for capital, operating, testing, monitoring, and recordkeeping is conservatively estimated at \$2.3 million annually for all sources in DFW and \$2.2 million annually for HGB as necessary to achieve VOC emission reductions of 1,208 and 1,139 tons VOC per year for DFW and HGB, respectively. The annual reductions for the DFW area are based on an ozone season that is year-round, or 365 days, and a reduction estimation of approximately 3.31 tons per day. The annual reductions for the HGB area are based on an ozone season that is year-round, or 365 days, and a reduction estimation of approximately 3.12 tons per day.

Proposed rulemaking in Subchapter F, Division 1 would change requirements of the rule that are applicable in Bexar County. This subchapter relates to VOC content in asphalt used for roads, driveways, and parking lots. The number of affected entities is not known. No costs are anticipated for businesses as it relates to limiting VOC content. Costs to meet testing and recordkeeping requirements are estimated at \$15,000 per entity each year for years one through five.

Proposed rulemaking in Subchapter F, Division 1 would also incorporate contingency control provisions for DFW and HGB areas. No costs are anticipated for these entities should contingency requirements be triggered because costs for alternative materials would not be increased and entities in DFW and HGB areas are already subject to testing and recordkeeping requirements.

Proposed rulemaking in Subchapter F, Division 2 would change requirements of the rule that are applicable in Bexar County. This subchapter relates to pharmaceutical manufacturing entities. No entities were identified that would definitively be impacted by this rulemaking, though an estimation for a representative entity would total approximately \$500,000 in the first year and approximately \$150,000 in each year for years two through five for control, inspection and testing, monitoring, and recordkeeping activities.

Proposed rulemaking in Subchapter J, Division 1 would change requirements of the rule that are applicable in Bexar County. This subchapter would provide for alternative means of control that could result in cost savings for entities in Bexar County. No specific estimates for cost savings could be determined.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a significant way for the first five years that the proposed rule is in effect.

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments are specific to sources in Bexar County and DFW and HGB counties. These areas have large urban populations, though there are some communities in these counties which are rural. The amendments would not disproportionately affect rural communities.

Small Business and Micro-Business Assessment

Fiscal implications are anticipated for some small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rules are in effect. Many businesses that conduct surface coating, degreasing, industrial solvent cleaning, use industrial adhesives or conduct asphalt paving may be small businesses or micro-businesses.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect. This rulemaking incorporates RACT and contingency requirements which factors in technological and economic feasibility, and small businesses are required to comply with the same criteria and provisions as larger firms to satisfy FCAA requirements. It is ultimately anticipated that the effects of the proposed rules on small businesses or micro-businesses are largely proportional to their effects on larger businesses.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking amends an existing regulation, and it does not increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rulemaking does not meet the definition of a major environmental rule as defined in that statute, and in addition, if it did meet the definition, would not be subject to the requirement to prepare a regulatory impact analysis. A major environmental rule means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of

the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Additionally, the proposed rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Tex. Gov't Code Ann., § 2001.0225(a). Section 2001.0225 of the Texas Government Code 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 specific intent of these proposed rules is to comply with federal requirements for the implementation of control strategies necessary to attain and maintain the National Ambient Air Quality Standards (NAAQS) for ozone mandated by 42 United States Code (USC), 7410, Federal Clean Air Act (FCAA), §110, and required to be included in operating permits by 42 USC, §7661a, FCAA, §502, as specified elsewhere in this preamble. The proposed rule addresses contingency measure requirements for the DFW and HGB 2008 eight-hour ozone nonattainment areas, RACT requirements for the Bexar County 2015 eight-hour ozone nonattainment area, and clarifications to rules previously adopted to address EPA's 2016 control techniques guidelines for oil and gas sources, as discussed elsewhere in this preamble. States are required to adopt State Implementation Plans (SIPs) with enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the FCAA. As discussed in the FISCAL NOTE portion of this preamble, the proposed rules are not anticipated to add any significant additional costs to affected individuals or businesses, beyond what is necessary to attain the ozone NAAQS, on the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

If a state does not comply with its obligations under 42 USC, §7410, FCAA, §110 to submit SIPs, states are subject to discretionary sanctions under 42 USC, §7410(m) or mandatory sanctions under 42 USC, §7509, FCAA, §179; as well as the imposition of a federal implementation plan (FIP) under 42 USC, §7410, FCAA, §110I. Under 42 USC, §7661a, FCAA, §502, states are required to have federal operating permit programs that provide authority to issue permits and assure compliance with each applicable standard, regulation, or requirement under the FCAA, including enforceable emission limitations and other control measures, means, or techniques, which are required under 42 USC, §7410, FCAA, §110. Similar to requirements in 42 USC, §7410, FCAA, §110, states are not free to ignore requirements in 42 USC, §7661a, FCAA, §502 and must develop and submit programs to provide for operating permits for major sources that include all applicable requirements of the FCAA. Lastly, states are also subject to the imposition of sanctions under 42 USC, §7661a(d) and (i), FCAA, §502(d) and (i) for failure to submit an operating permits program, the disapproval of any operating permits program, or failure to adequately administer and enforce the approved operating permits program.

The requirement to provide a fiscal analysis of regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th legislative session in 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 that concluded "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 rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law. Because of the ongoing need to meet federal requirements, the commission routinely proposes and adopts rules incorporating or designed to satisfy specific federal requirements. The legislature is presumed to understand this federal scheme. If each rule proposed by the commission to meet a federal requirement was considered to be a major environmental rule that exceeds federal law. then each of those rules would require the full regulatory impact analysis (RIA) contemplated by SB 633. Requiring a full RIA for all federally required rules 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 that the intent of SB 633 was only to require the full RIA for rules that are extraordinary in nature. While the proposed rules may have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA, and in fact creates no additional impacts since the proposed rules do not impose burdens greater than required to demonstrate attainment of the ozone NAAQS as discussed elsewhere in this preamble. For these reasons, the proposed rules fall under the exception in Texas Government Code, §2001.0225(a), because they are required by, and do not exceed, 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 RIA 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" (Texas Government Code, §2001.035).

The legislature specifically identified Texas Government Code, §2001.0225 as falling under this standard.

As discussed in this analysis and elsewhere in this preamble, the commission has substantially complied with the requirements of Texas Government Code, §2001.0225. The proposed rules implement the requirements of the FCAA as discussed in this analysis and elsewhere in this preamble. The proposed rules were determined to be necessary to attain the ozone NAAQS and are required to be included in permits under 42 USC, §7661a, FCAA, §502, and will not exceed any standard set by state or federal law. These proposed rules are not an express requirement of state law. The proposed rules do not exceed a requirement of a delegation agreement or a contract between state and federal government, as the proposed rules, if adopted by the commission and approved by EPA, will become federal law as part of the approved SIP required by 42 U.S.C. §7410, FCAA, §110. The proposed rules were not developed solely under the general powers of the agency but are authorized by specific sections of Texas Health and Safety Code, Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code, which are cited in the STATUTORY AUTHORITY section of this preamble. including Texas Health and Safety Code, §§382.011, 382.012, and 382.017. Therefore, this proposed rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invites public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), taking means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or §17 or §19, Article I, Texas Constitution; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. The commission completed a takings impact analysis for the proposed rulemaking action under the Texas Government Code, §2007.043.

The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to meet federal requirements for the implementation of control strategies necessary to attain and maintain the National Ambient Air Quality Standards (NAAQS) for ozone mandated by 42 United States Code (USC), 7410, Federal Clean Air Act (FCAA), §110, and required to be included in operating permits by 42 USC, §7661a, FCAA, §502. The proposed rule addresses contingency measure requirements for the DFW and HGB 2008 eight-hour ozone nonattainment areas, RACT requirements for the Bexar County 2015 eight-hour ozone nonattainment area, and clarifications to rules

previously adopted to address EPA's 2016 control techniques guidelines for oil and gas sources, as discussed elsewhere in this preamble.

States are required to adopt State Implementation Plans (SIPs) with enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the FCAA. If a state does not comply with its obligations under 42 USC, §7410, FCAA, §110 to submit SIPs, states are subject to discretionary sanctions under 42 USC, §7410(m) or mandatory sanctions under 42 USC, §7509, FCAA, §179; as well as the imposition of a FIP under 42 USC, §7410, FCAA, §110(c). Under 42 USC, §7661a, FCAA, §502, states are required to have federal operating permit programs that provide authority to issue permits and assure compliance with each applicable standard, regulation, or requirement under the FCAA, including enforceable emission limitations and other control measures, means, or techniques, which are required under 42 USC, §7410, FCAA, §110. Similar to requirements in 42 USC, §7410, FCAA, §110, regarding the requirement to adopt and implement plans to attain and maintain the national ambient air quality standards, states are not free to ignore requirements in 42 USC, §7661a, FCAA, \$502 and must develop and submit programs to provide for operating permits for major sources that include all applicable requirements of the FCAA. Lastly, states are also subject to the imposition of sanctions under 42 USC, §7661a(d) and (i), FCAA, §502(d) and (i) for failure to submit an operating permits program, the disapproval of any operating permits program, or failure to adequately administer and enforce the approved operating permits program.

The proposed rules will not create any additional burden on private real property beyond what is required under federal law, as the proposed rules, if adopted by the commission and approved by EPA, will become federal law as part of the approved SIP required by 42 U.S.C. §7410, FCAA, §110. The proposed rules will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 et seq., and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and found the proposed rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to the proposed rulemaking is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(I)). The CMP policy applicable to the proposed rulemaking is the policy that commission rules comply with federal regulations in 40 CFR, to protect and enhance air quality in the coastal areas (31 TAC §501.32). The proposed rulemaking would not increase emissions of air

pollutants and is therefore consistent with the CMP goal in 31 TAC §501.12(1) and the CMP policy in 31 TAC §501.32. Promulgation and enforcement of these rules would not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed rules are consistent with these CMP goals and policies and because these rules do not create or have a direct or significant adverse effect on any coastal natural resource areas. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies. Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Effect on Sites Subject to the Federal Operating Permits Program

Chapter 115 is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program. If the proposed rules are adopted, owners or operators of affected sites subject to the federal operating permit program must, consistent with the revision process in Chapter 122, upon the effective date of the rulemaking, revise their operating permit to include the new Chapter 115 requirements.

Announcement of Hearing

The commission will offer public hearings on this proposal in San Antonio on January 9, 2024 at 7:00 p.m. in the Alamo Area Council of Governments (Board Room) at 2700 NE Loop 410, Suite 101, San Antonio, Texas 78217; in Houston on January 4, 2024 at 7:00 p.m. in the Houston-Galveston Area Council, at 3555 Timmons Lane, Houston, Texas 77027; and in Arlington on January 11, 2024 at 7:00 p.m. at 101 W. Abrams Street, Arlington, Texas 76010. The hearings are structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to fax4808@tceq.texas.gov. Electronic comments may be submitted at: https://tceq.commentinput.com/comment/search. File size restrictions may apply to comments being submitted via the TCEQ Public Comments system. All comments should reference Rule Project Number 2023-116-115-Al. The comment period closes on January 16, 2024. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at https://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact John Lewis, P.E., Air Quality Planning Section, and (512) 239-4922 or john.lewis@tceq.texas.gov, Stationary Source Programs Team, 12100 Park 35 Circle, Bldg. F, Austin, Texas 78753, Mail: MC-206, P.O. Box 13087, Austin Texas 78711-3087.

SUBCHAPTER A. DEFINITIONS

30 TAC §115.10

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; and THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air.

The proposed amendments implement TWC, §§5.102, 5.103, 5.105 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.017.

§115.10. Definitions.

Unless specifically defined in the Texas Clean Air Act [Texas Health and Safety Code, Chapter 382 (also known as the Texas Clean Air Act) or in the rules of the commission], the terms in this chapter [used by the commission] have the meanings commonly used [ascribed to them] in the field of air pollution control. Additionally [Im addition to the terms which are defined by the Texas Clean Air Act], the following meanings apply [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) Bexar County or Bexar County area--An area consisting of Bexar County.
- (4) [(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.
- (5) [(4)] Carbon adsorption system--A carbon adsorber with an inlet and outlet for exhaust gases and a system to regenerate the saturated adsorbent.
 - (6) [(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.
- (7) [(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.
- (8) [(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.
- (9) [(8)] Connector--A flanged, screwed, or other joined fitting used to connect two pipelines or a pipeline 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.
- (10) [(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.
- (11) [(10)] Covered attainment counties--Anderson, Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bell, Bexar (before January 1, 2025), 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, and Wood Counties.
 - (12) [(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);]
- (iii) [(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.

- (13) [(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.
 - (14) [(13)] El Paso area--El Paso County.
- (15) [(14)] Emergency flare--A flare that only receives emissions during an upset event.
- (16) [(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.
- (17) [(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.
- (18) [(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.
- (19) [(18)] Gasoline dispensing facility--A location that dispenses gasoline to motor vehicles and includes retail, private, and commercial outlets.
- (20) [(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.
- (21) [(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).
- (22) [(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.
- (23) [(22)] Houston-Galveston or Houston-Galveston-Brazoria area--Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties.
- (24) [(23)] Incinerator--For the purposes of this chapter, an enclosed control device that combusts or oxidizes volatile organic compound gases or vapors.
- (25) [(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.
- (26) [(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.
- (27) [(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.
- (28) [(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.
- (29) [(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.
- (30) [(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.
- (31) [(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.
- (32) [(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.
- (33) [(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.
- (34) [(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.
- (35) [(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.

- (36) [(35)] Polymer or resin manufacturing process--A process that produces any of the following polymers or resins: polyethylene, polypropylene, polystyrene, and styrenebutadiene latex.
- (37) [(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.
- (38) [(37)] Printing line--An operation consisting of a series of one or more printing processes and including associated drying areas.
- (39) [(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.
- (40) [(39)] Process unit--The smallest set of process equipment that can operate independently and includes all operations necessary to achieve its process objective.
- (41) [(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.
- (42) [(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.
- (43) [(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.
- (44) [(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.
- (45) [(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).
- (46) [(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.
- (47) [(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.
- (48) [(47)] True partial pressure--The absolute aggregate partial pressure of all volatile organic compounds in a gas stream.
- (49) [(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.
- (50) [(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.
- (51) [(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.
- (52) [(54)] Waxy, high pour point crude oil--A crude oil with a pour point of 50 degrees Fahrenheit (10 degrees Celsius) or higher as determined by the American Society for Testing and Materials Standard D97-66, "Test for Pour Point of Petroleum Oils."

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

Filed with the Office of the Secretary of State on December 4, 2023.

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Charmaine Backens

Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-2678

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SUBCHAPTER B. GENERAL VOLATILE ORGANIC COMPOUND SOURCES DIVISION 1. STORAGE OF VOLATILE ORGANIC COMPOUNDS

30 TAC §§115.110 - 115.112, 115.114 - 115.119

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and

Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The proposed amendments implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

§115.110. Applicability and Definitions.

- (a) Applicability. Except as specified in §115.111 of this title (relating to Exemptions), this division applies to any storage tank in which volatile organic compounds are placed, stored, or held that is located in:
- (1) the Beaumont-Port Arthur area, as defined in §115.10 of this title (relating to Definitions);
- (2) the Bexar County area, as defined in §115.10 of this title;
- (3) [(2)] the Dallas-Fort Worth area, as defined in §115.10 of this title;
 - (4) [(3)] the El Paso area, as defined in §115.10 of this title;
- (5) [(4)] the Houston-Galveston-Brazoria area, as defined in §115.10 of this title; and
- (6) the Bexar County area, as defined in §115.10 of this title; and
- (7) [(5)] Aransas, Bexar, Calhoun, Gregg, Matagorda, Nueces, San Patricio, Travis, and Victoria Counties, as defined for covered attainment counties in §115.10 of this title (relating to Definitions).
- (b) Definitions. Unless specifically defined in the Texas Clean Air Act (Texas Health and Safety Code, Chapter 382) or in §§3.2, 101.1, or 115.10 of this title (relating to Definitions, respectively), the terms in this division have the meanings commonly used in the field of air pollution control. In addition, the following meanings apply in this division unless the context clearly indicates otherwise.
- (1) Closure device--A piece of equipment that covers an opening in the roof of a fixed roof storage tank and either can be temporarily opened or has a component that provides a temporary opening. Examples of closure devices include, but are not limited to, thief hatches, pressure relief valves, pressure-vacuum relief valves, and access hatches.
- (2) Deck cover--A device that covers an opening in a floating roof deck. Some deck covers move horizontally relative to the deck (i.e., a sliding cover).
- (3) Flexible enclosure system--A system that includes all of the following: a flexible device that completely encloses the slotted guidepole and eliminates the hydrocarbon vapor emission pathway from inside the tank through the guidepole slots to the outside air; a guidepole cover at the top of the guidepole; and a well cover positioned at the top of the guidepole well that seals any openings between the well cover and the guidepole (e.g., pole wiper), any openings between the well cover and any other objects that pass through the well cover, and any other openings in the top of the guidepole well.

- (4) Incompatible liquid--A liquid that is a different chemical compound, a different chemical mixture, a different grade of liquid material, or a fuel with different regulatory specifications provided that the chemical compound, chemical mixture, grade of liquid material, or fuel would be unusable for its intended purpose due to contamination from the previously stored liquid.
- (5) Internal sleeve emission control system--An emissions control system that includes all of the following: an internal guidepole sleeve that eliminates the hydrocarbon vapor emission pathway from inside the tank through the guidepole slots to the outside air; a guidepole cover at the top of the guidepole; and a well cover positioned at the top of the guidepole well that seals any openings between the well cover and the guidepole (e.g., pole wiper), any openings between the well cover and any other objects that pass through the well cover, and any other openings in the top of the guidepole well.
- (6) Pipeline breakout station--A facility along a pipeline containing storage vessels used to relieve surges or receive and store crude oil or condensate from the pipeline for reinjection into the pipeline and continued transportation by pipeline or to other facilities.
- (7) Pole float--A float located inside a guidepole that floats on the surface of the stored liquid. The rim of the float has a wiper or seal that extends to the inner surface of the pole.
- (8) Pole sleeve--A device that extends from either the cover or the rim of an opening in a floating roof deck to the outer surface of a pole that passes through the opening. The sleeve must extend into the stored liquid.
- (9) Pole wiper--A seal that extends from either the cover or the rim of an opening in a floating roof deck to the outer surface of a pole that passes through the opening.
- (10) Slotted guidepole--A guidepole or gaugepole that has slots or holes through the wall of the pole. The slots or holes allow the stored liquid to flow into the pole at liquid levels above the lowest operating level.
- (11) Storage capacity--The volume of a storage tank as determined by multiplying the internal cross-sectional area of the tank by the average internal height of the tank shell.
- (12) Storage tank--A stationary vessel, reservoir, or container used to store volatile organic compounds. This definition does not include: components that are not directly involved in the containment of liquids or vapors; subsurface caverns or porous rock reservoirs; or process tanks or vessels.
- (13) Tank battery--A collection of equipment used to separate, treat, store, and transfer crude oil, condensate, natural gas, and produced water. A tank battery typically receives crude oil, condensate, natural gas, or some combination of these extracted products from several production wells for accumulation and separation prior to transmission to a natural gas plant or petroleum refinery. A collection of storage tanks at a pipeline breakout station, petroleum refinery, or petrochemical plant is not considered to be a tank battery.
- (14) Vapor recovery unit--A device that transfers hydrocarbon vapors to a fuel liquid or gas system, a sales liquid or gas system, or a liquid storage tank.

§115.111. Exemptions.

(a) The following exemptions apply in the Beaumont-Port Arthur, <u>Bexar County</u>, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas as defined in §115.10 of this title (relating to Definitions), except as noted in paragraphs (2), (4), (6), (7), and (9) - (11) of this subsection.

- (1) Except as provided in §115.118 of this title (relating to Recordkeeping Requirements), a storage tank storing volatile organic compounds (VOC) with a true vapor pressure less than 1.5 pounds per square inch absolute (psia) is exempt from the requirements of this division.
- (2) A storage tank with storage capacity less than 210,000 gallons storing crude oil or condensate prior to custody transfer in the Beaumont-Port Arthur, <u>Bexar County</u>, or El Paso areas, is exempt from the requirements of this division. This exemption no longer applies in the Dallas-Fort Worth area beginning March 1, 2013.
- (3) A storage tank with a storage capacity less than 25,000 gallons located at a motor vehicle fuel dispensing facility is exempt from the requirements of this division.
- (4) A welded storage tank in the Beaumont-Port Arthur, Bexar County, El Paso, and Houston-Galveston-Brazoria areas with a mechanical shoe primary seal that has a secondary seal from the top of the shoe seal to the tank wall (a shoe-mounted secondary seal) is exempt from the requirement for retrofitting with a rim-mounted secondary seal if the shoe-mounted secondary seal was installed or scheduled for installation before August 22, 1980.
- (5) An external floating roof storage tank storing waxy, high pour point crude oils is exempt from any secondary seal requirements of §115.112(a), (d), and (e) of this title (relating to Control Requirements).
- (6) A welded storage tank in the Beaumont-Port Arthur, Bexar County, El Paso, and Houston-Galveston-Brazoria areas storing VOC with a true vapor pressure less than 4.0 psia is exempt from any external floating roof secondary seal requirement if any of the following types of primary seals were installed before August 22, 1980:
 - (A) a mechanical shoe seal;
 - (B) a liquid-mounted foam seal; or
 - (C) a liquid-mounted liquid filled type seal.
- (7) A welded storage tank in the Beaumont-Port Arthur, Bexar County, El Paso, and Houston-Galveston-Brazoria areas storing crude oil with a true vapor pressure equal to or greater than 4.0 psia and less than 6.0 psia is exempt from any external floating roof secondary seal requirement if any of the following types of primary seals were installed before December 10, 1982:
 - (A) a mechanical shoe seal;
 - (B) a liquid-mounted foam seal; or
 - (C) a liquid-mounted liquid filled type seal.
- (8) A storage tank with storage capacity less than or equal to 1,000 gallons is exempt from the requirements of this division.
- (9) In the Houston-Galveston-Brazoria area, a storage tank or tank battery storing condensate, as defined in §101.1 of this title (relating to Definitions), prior to custody transfer with a condensate throughput exceeding 1,500 barrels (63,000 gallons) per year on a rolling 12-month basis is exempt from the requirement in §115.112(d)(4) or (e)(4)(A) of this title, to control flashed gases if the owner or operator demonstrates, using the test methods specified in §115.117 of this title (relating to Approved Test Methods), that uncontrolled VOC emissions from the individual storage tank, or from the aggregate of storage tanks in a tank battery, are less than 25 tons per year on a rolling 12-month basis.
- (10) In the Dallas-Fort Worth area, except Wise County, a storage tank or tank battery storing condensate prior to custody transfer with a condensate throughput exceeding 3,000 barrels (126,000 gal-

- lons) per year on a rolling 12-month basis is exempt from the requirement in §115.112(e)(4)(B) [§115.112(e)(4)(B)(i)] of this title, to control flashed gases if the owner or operator demonstrates, using the test methods specified in §115.117 of this title, that uncontrolled VOC emissions from the individual storage tank, or from the aggregate of storage tanks in a tank battery, are less than 50 tons per year on a rolling 12-month basis. This exemption no longer applies on November 7, 2025. [15 months after the date the commission publishes notice in the *Texas Register* as specified in §115.119(b)(1)(C) of this title (relating to Compliance Schedules) that the Dallas-Fort Worth area has been reclassified as a severe nonattainment area for the 1997 Eight-Hour Ozone National Ambient Air Quality Standard]
- (11) In the Dallas-Fort Worth area, except in Wise County, on or after November 7, 2025 [the date specified in §115.119(b)(1)(C) of this title], a storage tank or tank battery storing condensate prior to custody transfer with a condensate throughput exceeding 1,500 barrels (63,000 gallons) per year on a rolling 12-month basis is exempt from the requirement in §115.112(e)(4)(B)(ii) of this title, to control flashed gases if the owner or operator demonstrates, using the test methods specified in §115.117 of this title, that uncontrolled VOC emissions from the individual storage tank, or from the aggregate of storage tanks in a tank battery, are less than 25 tons per year on a rolling 12-month basis
- (12) In Wise County, prior to July 20, 2021, a storage tank or tank battery storing condensate prior to custody transfer with a condensate throughput exceeding 6,000 barrels (252,000 gallons) per year on a rolling 12-month basis is exempt from the requirement in §115.112(e)(4)(C)(i) [§115.112(e)(4)(C)] of this title, to control flashed gases if the owner or operator demonstrates, using the test methods specified in §115.117 of this title, that uncontrolled VOC emissions from the individual storage tank, or from the aggregate of storage tanks in a tank battery, are less than 100 tons per year on a rolling 12-month basis.
- (13) In Wise County until November 7, 2025 [on or after July 20, 2021], a storage tank or tank battery storing condensate prior to custody transfer with a condensate throughput exceeding 3,000 barrels (126,000 gallons) per year on a rolling 12-month basis is exempt from the requirement in §115.112(e)(4)(C)(ii) [§115.112(e)(4)(C)] of this title, to control flashed gases if the owner or operator demonstrates, using the test methods specified in §115.117 of this title, that uncontrolled VOC emissions from the individual storage tank, or from the aggregate of storage tanks in a tank battery, are less than 50 tons per year on a rolling 12-month basis.
- (14) In Wise County beginning November 7, 2025, a storage tank or tank battery storing condensate prior to custody transfer with a condensate throughput exceeding 1,500 barrels (63,000 gallons) per year on a rolling 12-month basis is exempt from the requirement in \$115.112(e)(4)(D) of this title, to control flashed gases if the owner or operator demonstrates, using the test methods specified in \$115.117 of this title, that uncontrolled VOC emissions from the individual storage tank, or from the aggregate of storage tanks in a tank battery, are less than 25 tons per year on a rolling 12-month basis.
- (15) In the Bexar County area beginning January 1, 2025 a storage tank or tank battery storing condensate prior to custody transfer with a condensate throughput exceeding 6,000 barrels (252,000 gallons) per year on a rolling 12-month basis is exempt from the requirement in §115.112(e)(4)(E) of this title, to control flashed gases if the owner or operator demonstrates, using the test methods specified in §115.117 of this title, that uncontrolled VOC emissions from the individual storage tank, or from the aggregate of storage tanks in a tank battery, are less than 100 tons per year on a rolling 12-month basis. of this title, to control flashed gases if the owner or operator demon-

strates, using the test methods specified in §115.117 of this title, that uncontrolled VOC emissions from the individual storage tank, or from the aggregate of storage tanks in a tank battery, are less than 100 tons per year on a rolling 12-month basis.

- (16) [(14)] In the Bexar County, Dallas-Fort Worth, and Houston-Galveston-Brazoria areas, beginning when compliance is achieved with Division 7 of this subchapter (relating to Oil and Natural Gas Service in Ozone Nonattainment Areas) but no later than its initial §115.183 compliance deadline [January 1, 2023], a storage tank storing crude oil or condensate that is subject to the compliance requirements of Division 7 of this subchapter is exempt from all requirements in this division.
- (b) The following exemptions apply in Gregg, Nueces, and Victoria Counties.
- (1) Except as provided in §115.118 of this title, a storage tank storing VOC with a true vapor pressure less than 1.5 psia is exempt from the requirements of this division.
- (2) A storage tank with storage capacity less than 210,000 gallons storing crude oil or condensate prior to custody transfer is exempt from the requirements of this division.
- (3) A storage tank with storage capacity less than 25,000 gallons located at a motor vehicle fuel dispensing facility is exempt from the requirements of this division.
- (4) A welded storage tank with a mechanical shoe primary seal that has a secondary seal from the top of the shoe seal to the tank wall (a shoe-mounted secondary seal) is exempt from the requirement for retrofitting with a rim-mounted secondary seal if the shoe-mounted secondary seal was installed or scheduled for installation before August 22, 1980.
- (5) An external floating roof storage tank storing waxy, high pour point crude oils is exempt from any secondary seal requirements of §115.112(b) of this title.
- (6) A welded storage tank storing VOC with a true vapor pressure less than 4.0 psia is exempt from any external secondary seal requirement if any of the following types of primary seals were installed before August 22, 1980:
 - (A) a mechanical shoe seal;
 - (B) a liquid-mounted foam seal; or
 - (C) a liquid-mounted liquid filled type seal.
- (7) A welded storage tank storing crude oil with a true vapor pressure equal to or greater than 4.0 psia and less than 6.0 psia is exempt from any external secondary seal requirement if any of the following types of primary seals were installed before December 10, 1982:
 - (A) a mechanical shoe seal;
 - (B) a liquid-mounted foam seal; or
 - (C) a liquid-mounted liquid filled type seal.
- (8) A storage tank with storage capacity less than or equal to 1,000 gallons is exempt from the requirements of this division.
- (c) The following exemptions apply in Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties. <u>The exemptions in this subsection no longer apply in Bexar County beginning January 1, 2025.</u>
- (1) A storage tank storing VOC with a true vapor pressure less than 1.5 psia is exempt from the requirements of this division.

- (2) Slotted guidepoles installed in a floating roof storage tank are exempt from the provisions of \$115.112(c) of this title.
- (3) A storage tank with storage capacity between 1,000 gallons and 25,000 gallons is exempt from the requirements of \$115.112(c)(1) of this title if construction began before May 12, 1973.
- (4) A storage tank with storage capacity less than or equal to 420,000 gallons is exempt from the requirements of \$115.112(c)(3) of this title.
- (5) A storage tank with storage capacity less than or equal to 1,000 gallons is exempt from the requirements of this division.

§115.112. Control Requirements.

- (a) The following requirements apply in the Beaumont-Port Arthur, Dallas-Fort Worth, and El Paso areas, as defined in §115.10 of this title (relating to Definitions). The control requirements in this subsection no longer apply in the Dallas-Fort Worth area beginning March 1, 2013.
- (1) No person shall place, store, or hold in any storage tank any volatile organic compounds (VOC) unless the storage tank is capable of maintaining working pressure sufficient at all times to prevent any vapor or gas loss to the atmosphere or is in compliance with the control requirements specified in Table I(a) of this paragraph for VOC other than crude oil and condensate or Table II(a) of this paragraph for crude oil and condensate.

Figure: 30 TAC §115.112(a)(1) (No change.)

- (2) For an external floating roof or internal floating roof storage tank subject to the provisions of paragraph (1) of this subsection, the following requirements apply.
- (A) All openings in an internal floating roof or external floating roof except for automatic bleeder vents (vacuum breaker vents) and rim space vents must provide a projection below the liquid surface or be equipped with a cover, seal, or lid. Any cover, seal, or lid must be in a closed (i.e., no visible gap) position at all times except when the device is in actual use.
- (B) Automatic bleeder vents (vacuum breaker vents) must be closed at all times except when the roof is being floated off or landed on the roof leg supports.
- (C) Rim vents, if provided, must be set to open only when the roof is being floated off the roof leg supports or at the manufacturer's recommended setting.
- (D) Any roof drain that empties into the stored liquid must be equipped with a slotted membrane fabric cover that covers at least 90% of the area of the opening.
- (E) There must be no visible holes, tears, or other openings in any seal or seal fabric.
- (F) For an external floating roof storage tank, secondary seals must be the rim-mounted type (the seal must be continuous from the floating roof to the tank wall). The accumulated area of gaps that exceed 1/8 inch in width between the secondary seal and storage tank wall may not be greater than 1.0 square inch per foot of tank diameter.
- (3) Vapor control systems, as defined in §115.10 of this title, used as a control device on any storage tank must maintain a minimum control efficiency of 90%. If a flare is used, it must be designed and operated in accordance with 40 Code of Federal Regulations §60.18(b) (f) (as amended through December 22, 2008 (73 FR 78209)) and be lit at all times when VOC vapors are routed to the flare.
- (b) The following requirements apply in Gregg, Nueces, and Victoria Counties.

- (1) No person shall place, store, or hold in any storage tank any VOC, unless the storage tank is capable of maintaining working pressure sufficient at all times to prevent any vapor or gas loss to the atmosphere or is in compliance with the control requirements specified in Table I(a) in subsection (a)(1) of this section for VOC other than crude oil and condensate or Table II(a) in subsection (a)(1) of this section for crude oil and condensate. If a flare is used as a vapor recovery system, as defined in §115.10 of this title, it must be designed and operated in accordance with 40 Code of Federal Regulations §60.18(b) -(f) (as amended through December 22, 2008 (73 FR 78209)) and be lit at all times when VOC vapors are routed to the flare.
- (2) For an external floating roof or internal floating roof storage tank subject to the provisions of paragraph (1) of this subsection, the following requirements apply.
- (A) All openings in an internal floating roof or external floating roof, except for automatic bleeder vents (vacuum breaker vents) and rim space vents, must provide a projection below the liquid surface or be equipped with a cover, seal, or lid. Any cover, seal, or lid must be in a closed (i.e., no visible gap) position at all times, except when the device is in actual use.
- (B) Automatic bleeder vents (vacuum breaker vents) must be closed at all times except when the roof is being floated off or landed on the roof leg supports.
- (C) Rim vents, if provided, must be set to open only when the roof is being floated off the roof leg supports or at the manufacturer's recommended setting.
- (D) Any roof drain that empties into the stored liquid must be equipped with a slotted membrane fabric cover that covers at least 90% of the area of the opening.
- (E) There must be no visible holes, tears, or other openings in any seal or seal fabric.
- (F) For an external floating roof storage tank, secondary seals must be the rim-mounted type (the seal shall be continuous from the floating roof to the tank wall). The accumulated area of gaps that exceed 1/8 inch in width between the secondary seal and tank wall may not be greater than 1.0 square inch per foot of tank diameter.
- (c) The following requirements apply in Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties. The control requirements of this subsection no longer apply for sources located in Bexar County beginning January 1, 2025.
- (1) No person may place, store, or hold in any storage tank any VOC, other than crude oil or condensate, unless the storage tank is capable of maintaining working pressure sufficient at all times to prevent any vapor or gas loss to the atmosphere or is in compliance with the control requirements specified in Table I(b) of this paragraph for VOC other than crude oil and condensate. Figure: 30 TAC §115.112(c)(1) (No change.)
- (2) For an external floating roof or internal floating roof storage tank subject to the provisions of paragraph (1) of this subsection, the following requirements apply.
- (A) There must be no visible holes, tears, or other openings in any seal or seal fabric.
- (B) All tank gauging and sampling devices must be vapor-tight except when gauging and sampling is taking place.
- (3) No person in Matagorda or San Patricio Counties shall place, store, or hold crude oil or condensate in any storage tank unless the storage tank is a pressure tank capable of maintaining working pressures sufficient at all times to prevent vapor or gas loss to the

- atmosphere or is equipped with one of the following control devices, properly maintained and operated:
- (A) an internal floating roof or external floating roof. as defined in §115.10 of this title. These control devices will not be allowed if the VOC has a true vapor pressure of 11.0 pounds per square inch absolute (psia) or greater. All tank-gauging and tank-sampling devices must be vapor-tight, except when gauging or sampling is taking place; or
- (B) a vapor control system as defined in §115.10 of this title.
- (d) The following requirements apply in the Houston-Galveston-Brazoria area, as defined in §115.10 of this title. The requirements in this subsection no longer apply beginning March 1, 2013.
- (1) No person shall place, store, or hold in any storage tank any VOC unless the storage tank is capable of maintaining working pressure sufficient at all times to prevent any vapor or gas loss to the atmosphere or is in compliance with the control requirements specified in either Table I(a) of subsection (a)(1) of this section for VOC other than crude oil and condensate or Table II(a) of subsection (a)(1) of this section for crude oil and condensate.
- (2) For an external floating roof or internal floating roof storage tank subject to the provisions of paragraph (1) of this subsection, the following requirements apply.
- (A) All openings in an internal floating roof or external floating roof as defined in §115.10 of this title except for automatic bleeder vents (vacuum breaker vents), and rim space vents must provide a projection below the liquid surface. All openings in an internal floating roof or external floating roof except for automatic bleeder vents (vacuum breaker vents), rim space vents, leg sleeves, and roof drains must be equipped with a deck cover. The deck cover must be equipped with a gasket in good operating condition between the cover and the deck. The deck cover must be closed (i.e., no gap of more than 1/8 inch) at all times, except when the cover must be open for access.
- (B) Automatic bleeder vents (vacuum breaker vents) and rim space vents must be equipped with a gasketed lid, pallet, flapper, or other closure device and must be closed (i.e., no gap of more than 1/8 inch) at all times except when required to be open to relieve excess pressure or vacuum in accordance with the manufacturer's design.
- (C) Each opening into the internal floating roof for a fixed roof support column may be equipped with a flexible fabric sleeve seal instead of a deck cover.
- (D) Any external floating roof drain that empties into the stored liquid must be equipped with a slotted membrane fabric cover that covers at least 90% of the area of the opening or an equivalent control that must be kept in a closed (i.e., no gap of more than 1/8 inch) position at all times except when the drain is in actual use. Stub drains on an internal floating roof storage tank are not subject to this requirement.
- (E) There must be no visible holes, tears, or other openings in any seal or seal fabric.
- (F) For an external floating roof storage tank, secondary seals must be the rim-mounted type (the seal must be continuous from the floating roof to the tank wall with the exception of gaps that do not exceed the following specification). The accumulated area of gaps that exceed 1/8 inch in width between the secondary seal and storage tank wall may not be greater than 1.0 square inch per foot of storage tank diameter.

- (G) Each opening for a slotted guidepole in an external floating roof storage tank must be equipped with one of the following control device configurations:
- (i) a pole wiper and pole float that has a seal or wiper at or above the height of the pole wiper;
 - (ii) a pole wiper and a pole sleeve;
 - (iii) an internal sleeve emission control system;
 - (iv) a retrofit to a solid guidepole system;
 - (v) a flexible enclosure system; or
 - (vi) a cover on an external floating roof tank.
- (H) The external floating roof or internal floating roof must be floating on the liquid surface at all times except as specified in this subparagraph. The external floating roof or internal floating roof may be supported by the leg supports or other support devices, such as hangers from the fixed roof, during the initial fill or refill after the storage tank has been cleaned or as allowed under the following circumstances:
 - (i) when necessary for maintenance or inspection;
- (ii) when necessary for supporting a change in service to an incompatible liquid;
- (iii) when the storage tank has a storage capacity less than 25,000 gallons or the vapor pressure of the material stored is less than 1.5 psia;
- (iv) when the vapors are routed to a control device from the time the floating roof is landed until the floating roof is within ten percent by volume of being refloated;
- (v) when all VOC emissions from the tank, including emissions from roof landings, have been included in a floating roof storage tank emissions limit or cap approved under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification); or
- (vi) when all VOC emissions from floating roof landings at the regulated entity, as defined in §101.1 of this title (relating to Definitions), are less than 25 tons per year.
- (3) Vapor control systems, as defined in §115.10 of this title, used as a control device on any storage tank must maintain a minimum control efficiency of 90%.
- (4) For a storage tank storing condensate, as defined in §101.1 of this title, prior to custody transfer, flashed gases must be routed to a vapor control system if the liquid throughput through an individual tank or the aggregate of tanks in a tank battery exceeds 1,500 barrels (63,000 gallons) per year.
- (5) For a storage tank storing crude oil or condensate prior to custody transfer or at a pipeline breakout station, flashed gases must be routed to a vapor control system if the uncontrolled VOC emissions from an individual storage tank, or from the aggregate of storage tanks in a tank battery, equal or exceed 25 tons per year on a rolling 12-month basis. Uncontrolled emissions must be estimated by one of the following methods; however, if emissions determined using direct measurements or other methods approved by the executive director under subparagraph (A) or (D) of this paragraph are higher than emissions estimated using the default factors or charts in subparagraph (B) or (C) of this paragraph, the higher values must be used.
- (A) The owner or operator may make direct measurements using the measuring instruments and methods specified in §115.117 of this title (relating to Approved Test Methods).

- (B) The owner or operator may use a factor of 33.3 pounds of VOC per barrel (42 gallons) of condensate produced or 1.6 pounds of VOC per barrel (42 gallons) of oil produced.
- (C) For crude oil storage only, the owner or operator may use the chart in Exhibit 2 of the United States Environmental Protection Agency publication *Lessons Learned from Natural Gas Star Partners: Installing Vapor Recovery Units on Crude Oil Storage Tanks*, October 2003, and assuming that the hydrocarbon vapors have a molecular weight of 34 pounds per pound mole and are 48% by weight VOC.
- (D) Other test methods or computer simulations may be allowed if approved by the executive director.
- (e) The control requirements in this subsection apply in the Bexar County, Houston-Galveston-Brazoria, and Dallas-Fort Worth areas, except as specified in §115.119 of this title (relating to Compliance Schedules) and in paragraph (3) of this subsection. Beginning on the applicable compliance date specified in §115.183 of this title (relating to Compliance Schedules), [January 1, 2023] the requirements in this subsection no longer apply to storage tanks storing crude oil or condensate that are subject to Division 7 of this subchapter (relating to Oil and Natural Gas Service in Ozone Nonattainment Areas).
- (1) No person shall place, store, or hold VOC in any storage tank unless the storage tank is capable of maintaining working pressure sufficient at all times to prevent any vapor or gas loss to the atmosphere or is in compliance with the control requirements specified in Table 1 of this paragraph for VOC other than crude oil and condensate or Table 2 of this paragraph for crude oil and condensate.

 Figure: 30 TAC §115.112(e)(1) (No change.)
- (2) For an external floating roof or internal floating roof storage tank subject to the provisions of paragraph (1) of this subsection, the following requirements apply.
- (A) All openings in an internal floating roof or external floating roof must provide a projection below the liquid surface. Automatic bleeder vents (vacuum breaker vents) and rim space vents are not subject to this requirement.
- (B) All openings in an internal floating roof or external floating roof must be equipped with a deck cover. The deck cover must be equipped with a gasket in good operating condition between the cover and the deck. The deck cover must be closed (i.e., no gap of more than 1/8 inch) at all times, except when the cover must be open for access. Automatic bleeder vents (vacuum breaker vents), rim space vents, leg sleeves, and roof drains are not subject to this requirement.
- (C) Automatic bleeder vents (vacuum breaker vents) and rim space vents must be equipped with a gasketed lid, pallet, flapper, or other closure device and must be closed (i.e., no gap of more than 1/8 inch) at all times except when required to be open to relieve excess pressure or vacuum in accordance with the manufacturer's design.
- (D) Each opening into the internal floating roof for a fixed roof support column may be equipped with a flexible fabric sleeve seal instead of a deck cover.
- (E) Any external floating roof drain that empties into the stored liquid must be equipped with a slotted membrane fabric cover that covers at least 90% of the area of the opening or an equivalent control that must be kept in a closed (i.e., no gap of more than 1/8 inch) position at all times except when the drain is in actual use. Stub drains on an internal floating roof storage tank are not subject to this requirement.
- $\ensuremath{(F)}$ There must be no visible holes, tears, or other openings in any seal or seal fabric.

- (G) For an external floating roof storage tank, secondary seals must be the rim-mounted type. The seal must be continuous from the floating roof to the tank wall with the exception of gaps that do not exceed the following specification. The accumulated area of gaps that exceed 1/8 inch in width between the secondary seal and storage tank wall may not be greater than 1.0 square inch per foot of storage tank diameter.
- (H) Each opening for a slotted guidepole in an external floating roof storage tank must be equipped with one of the following control device configurations:
- (i) a pole wiper and pole float that has a seal or wiper at or above the height of the pole wiper;
 - (ii) a pole wiper and a pole sleeve;
 - (iii) an internal sleeve emission control system;
 - (iv) a retrofit to a solid guidepole system;
 - (v) a flexible enclosure system; or
 - (vi) a cover on an external floating roof tank.
- (I) The external floating roof or internal floating roof must be floating on the liquid surface at all times except as allowed under the following circumstances:
- (i) during the initial fill or refill after the storage tank has been cleaned;
- (ii) when necessary for preventive maintenance, roof repair, primary seal inspection, or removal and installation of a secondary seal, if product is not transferred into or out of the storage tank, emissions are minimized, and the repair is completed within seven calendar days;
- (iii) when necessary for supporting a change in service to an incompatible liquid;
- $(\ensuremath{\textit{iv}})$ when the storage tank has a storage capacity less than 25,000 gallons;
- (v) when the vapors are routed to a control device from the time the storage tank has been emptied to the extent practical or the drain pump loses suction until the floating roof is within 10% by volume of being refloated;
- (vi) when all VOC emissions from the storage tank, including emissions from floating roof landings, have been included in an emissions limit or cap approved under Chapter 116 of this title prior to March 1, 2013; or
- (vii) when all VOC emissions from floating roof landings at the regulated entity are less than 25 tons per year.
- (3) A control device used to comply with this subsection must meet one of the following conditions at all times when VOC vapors are routed to the device.
- (A) A control device, other than a vapor recovery unit or a flare, must maintain the following minimum control efficiency:
- (i) 90% in the Houston-Galveston-Brazoria area until the date specified in clause (ii) of this subparagraph;
- (ii) 95% in the Houston-Galveston-Brazoria area beginning July 20, 2018; [and]
 - (iii) 95% in the Dallas-Fort Worth area; and [-]
 - (iv) 95% in the Bexar County area.

- (B) A vapor recovery unit must be designed to process all vapor generated by the maximum liquid throughput of the storage tank or the aggregate of storage tanks in a tank battery and must transfer recovered vapors to a pipe or container that is vapor-tight, as defined in \$115.10 of this title.
- (C) A flare must be designed and operated in accordance with 40 Code of Federal Regulations §60.18(b) (f) (as amended through December 22, 2008 (73 FR 78209)) and be lit at all times when VOC vapors are routed to the flare.
- (4) For a fixed roof storage tank storing condensate prior to custody transfer, flashed gases must be routed to a vapor control system if the condensate throughput of an individual tank or the aggregate of tanks in a tank battery exceeds; [÷]
- (A) in the Houston-Galveston-Brazoria area, 1,500 barrels (63,000 gallons) per year on a rolling 12-month basis;
- (B) in the Dallas-Fort Worth area, except Wise County, 3,000 barrels (126,000 gallons) per year on a rolling 12-month basis until November 7, 2025, upon which date, the requirements in subparagraph (D) of this paragraph apply;
- f(i) 3,000 barrels (126,000 gallons) per year on a rolling 12-month basis; or
- f(ii) 15 months after the date the commission publishes notice in the Texas Register as specified in §115.119(b)(1)(C) of this title that the Dallas-Fort Worth area has been reclassified as a severe nonattainment area for the 1997 Eight-Hour Ozone National Ambient Air Quality Standard, 1,500 barrels (63,000 gallons) per year on a rolling 12-month basis; and]
 - (C) in Wise County:
- (i) 6,000 barrels (252,000 gallons) per year on a rolling 12-month basis, until July 20, 2021 [the date specified in elause (ii) of this subparagraph]; and
- (ii) 3,000 barrels (126,000 gallons) per year on a rolling 12-month basis until November 7, 2025, upon which date, the requirements in subparagraph (D) of this paragraph apply; [beginning July 20, 2021, as specified in §115.119(f) of this title.]
- (D) in the Dallas-Fort Worth area, 1,500 barrels (63,000 gallons) per year on a rolling 12-month basis beginning November 7, 2025, as specified in §115.119(f) of this title; and
- (E) in the Bexar County area beginning January 1, 2025, 6,000 barrels (252,000 gallons) per year on a rolling 12-month basis.
- (5) For a fixed roof storage tank storing crude oil or condensate prior to custody transfer or at a pipeline breakout station, flashed gases must be routed to a vapor control system if the uncontrolled VOC emissions from an individual storage tank, or from the aggregate of storage tanks in a tank battery, or from the aggregate of storage tanks at a pipeline breakout station, equal or exceed:
- (A) in the Houston-Galveston-Brazoria area, 25 tons per year on a rolling 12-month basis;
- (B) in the Dallas-Fort Worth area, except Wise County: 50 tons per year on a rolling 12-month basis until November 7, 2025, upon which date, the requirements in subparagraph (D) of this paragraph apply;
 - f(i) 50 tons per year on a rolling 12-month basis; or
- f(ii) 15 months after the date the commission publishes notice in the *Texas Register* as specified in §115.119(b)(1)(C) of

this title that the Dallas-Fort Worth area has been reclassified as a severe nonattainment area for the 1997 Eight-Hour Ozone National Ambient Air Quality Standard, 25 tons per year on a rolling 12-month basis; and

- (C) in Wise County:
- (i) 100 tons per year on a rolling 12-month basis, until July 20, 2021 [the date specified in clause (ii) of this subparagraph]; [and]
- (ii) 50 tons per year on a rolling 12-month basis beginning July 20, 2021, as specified in §115.119(f) of this title, until November 7, 2025, upon which date, the requirements in subparagraph (D) of this paragraph apply;
- (D) in the Dallas-Fort Worth area, 25 tons per year on a rolling 12-month basis beginning November 7, 2025 as specified in §115.119(f) of this title; and
- (E) in the Bexar County area 100 tons per year on a rolling 12-month basis.
- (6) Uncontrolled emissions from a fixed roof storage tank or fixed roof storage tank battery storing crude oil or condensate prior to custody transfer or at a pipeline breakout station must be estimated by one of the following methods. However, if emissions determined using direct measurements or other methods approved by the executive director under subparagraph (A) or (B) of this paragraph are higher than emissions estimated using the default factors or charts in subparagraph (C) or (D) of this paragraph, the higher values must be used.
- (A) The owner or operator may make direct measurements using the measuring instruments and methods specified in §115.117 of this title.
- (B) The owner or operator may use other test methods or computer simulations approved by the executive director.
- (C) The owner or operator may use a factor of 33.3 pounds of VOC per barrel (42 gallons) of condensate produced or 1.6 pounds of VOC per barrel (42 gallons) of oil produced.
- (D) For crude oil storage only, the owner or operator may use the chart in Exhibit 2 of the United States Environmental Protection Agency publication *Lessons Learned from Natural Gas Star Partners: Installing Vapor Recovery Units on Crude Oil Storage Tanks*, October 2003, and assuming that the hydrocarbon vapors have a molecular weight of 34 pounds per pound mole and are 48% by weight VOC.
- (7) Fixed roof storage tanks in the <u>Bexar County area</u>, Dallas-Fort Worth area, and Houston-Galveston-Brazoria area storing crude oil or condensate prior to custody transfer or at a pipeline breakout station for which the owner or operator is required by this subsection to control flashed gases must be maintained in accordance with manufacturer instructions. All openings in the fixed roof storage tank through which vapors are not routed to a vapor recovery unit or other vapor control device must be equipped with a closure device maintained according to the manufacturer's instructions and operated according to this paragraph. If manufacturer instructions are unavailable, industry standards consistent with good engineering practice can be substituted.
- (A) Each closure device must be closed at all times except when normally actuated or required to be open for temporary access or to relieve excess pressure or vacuum in accordance with the manufacturer's design and consistent with good air pollution control practices. Such opening, actuation, or use must be limited to minimize vapor loss.
- $\begin{tabular}{ll} (B) & Each closure device must be properly sealed to minimize vapor loss when closed. \end{tabular}$

- (C) Each closure device must either be latched closed or, if designed to relieve pressure, set to automatically open at a pressure that will ensure all vapors are routed to the vapor recovery unit or other vapor control device under normal operating conditions other than gauging the tank or taking a sample through an open thief hatch.
- (D) No closure device may be allowed to have a VOC leak for more than 15 calendar days after the leak is found unless delay of repair is allowed. For the purposes of this subparagraph, a leak is the exuding of process gasses from a closed device based on sight, smell, or sound. If parts are unavailable, repair may be delayed. Parts must be ordered promptly and the repair must be completed within five days of receipt of required parts. Repair may be delayed until the next shutdown if the repair of the component would require a shutdown that would create more emissions than the repair would eliminate. Repair must be completed by the end of the next shutdown.
- §115.114. Inspection and Repair Requirements.
- (a) The following inspection requirements apply in the Beaumont-Port Arthur, <u>Bexar County</u>, 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 <u>Bexar County</u>, Dallas-Fort Worth and Houston-Galveston-Brazoria areas, 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 $\S115.112(b)(2)(F)$ 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. <u>The inspection and repair requirements of this subsection no longer apply for sources located in Bexar County beginning January 1, 2025.</u>

- (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.

§115.115. Monitoring Requirements.

- (a) The following monitoring requirements apply in the Beaumont-Port Arthur, <u>Bexar County</u>, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, as defined in §115.10 of this title (relating to Definitions). An affected owner or operator shall install and maintain monitors to measure operational parameters of any of the following control devices installed to meet applicable control requirements. Such monitors must be sufficient to demonstrate proper functioning of those devices to design specifications.
- (1) For a direct-flame incinerator, the owner or operator shall continuously monitor the exhaust gas temperature immediately downstream of the device.
- (2) For a condensation system, the owner or operator shall continuously monitor the outlet gas temperature to ensure the temperature is below the manufacturer's recommended operating temperature for controlling the volatile organic compounds (VOC) vapors routed to the device.
- (3) For a carbon adsorption system or carbon adsorber, as defined in §101.1 of this title (relating to Definitions), the owner or operator shall:
- (A) continuously monitor the exhaust gas VOC concentration of a carbon adsorption system that regenerates the carbon bed directly to determine breakthrough. For the purpose of this paragraph,

breakthrough is defined as a measured VOC concentration exceeding 100 parts per million by volume above background expressed as methane; or

- (B) switch the vent gas flow to fresh carbon at a regular predetermined time interval for a carbon adsorber or carbon adsorption system that does not regenerate the carbon directly. The time interval must be less than the carbon replacement interval determined by the maximum design flow rate and the VOC concentration in the gas stream vented to the carbon adsorption system or carbon adsorber.
- (4) For a catalytic incinerator, the owner or operator shall continuously monitor the inlet and outlet gas temperature.
- (5) For a vapor recovery unit used to comply with §115.112(e)(3) of this title (relating to Control Requirements), the owner or operator shall continuously monitor at least one of the following operational parameters:
- (A) run-time of the compressor or motor in a vapor recovery unit;
 - (B) total volume of recovered vapors; or
- (C) other parameters sufficient to demonstrate proper functioning to design specifications.
- (6) For a control device not listed in this subsection, the owner or operator shall continuously monitor one or more operational parameters sufficient to demonstrate proper functioning of the control device to design specifications.
- (b) In Victoria County, the owner or operator shall monitor operational parameters of any of the emission control devices listed in this subsection installed to meet applicable control requirements.
- (1) For a direct-flame incinerator, the owner or operator shall continuously monitor the exhaust gas temperature immediately downstream of the device.
- (2) For a condensation system or catalytic incinerator, the owner or operator shall continuously monitor the inlet and outlet gas temperature.
- (3) For a carbon adsorption system or carbon adsorber, the owner or operator shall continuously monitor the exhaust gas VOC concentration to determine if breakthrough has occurred. The owner or operator may conduct this monitoring using Method 21, as specified in §115.117 of this title, if the monitoring is conducted once every seven calendar days.

§115.116. Testing Requirements.

- (a) The testing requirements in this subsection apply in the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, Houston-Galveston-Brazoria, [Beaumont-Port Arthur,] and El Paso areas, as defined in §115.10 of this title (relating to Definitions).
- (1) For a vapor control system, other than a vapor recovery unit or a flare, used to comply with the control requirements in §115.112(a)(3) and (e)(3)(A) of this title (relating to Control Requirements), an initial control efficiency test must be conducted in accordance with the approved test methods in §115.117 of this title (relating to Approved Test Methods). If the vapor control system is modified in any way that could reasonably be expected to decrease the control efficiency, the device must be retested within 60 days of the modification.
- (2) A flare used to comply with the control requirements in §115.112(a)(3) and (e)(3)(C) of this title must meet the design verification test requirements in 40 Code of Federal Regulations §60.18(f) (as amended through December 22, 2008 (73 FR 78209)).

- (b) The testing requirements in this subsection apply in Gregg, Nucces, and Victoria Counties.
- (1) For a vapor control system, other than a vapor recovery unit or a flare, compliance with the control requirements in §115.112(b) of this title must be demonstrated in accordance with the approved test methods in §115.117 of this title.
- (2) A flare must meet the design verification test requirements in 40 Code of Federal Regulations §60.18(f) (as amended through December 22, 2008 (73 FR 78209)).

§115.117. Approved Test Methods.

For the Beaumont-Port Arthur, <u>Bexar County</u>, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, as defined in §115.10 of this title (relating to Definitions) and Gregg, Nueces, and Victoria Counties, compliance with the requirements in this division must be determined by applying the following test methods, as appropriate:

- (1) Methods 1 4 (40 Code of Federal Regulations (CFR) Part 60, Appendix A) for determining flow rates, as necessary;
- (2) Method 18 (40 CFR Part 60, Appendix A) for determining gaseous organic compound emissions by gas chromatography;
- (3) Method 21 (40 CFR Part 60, Appendix A-7) for determining volatile organic compounds concentrations for the purposes of determining the presence of leaks and determining breakthrough on a carbon adsorption system or carbon adsorber. If the owner or operator chooses to conduct a test to verify a vapor-tight requirement, Method 21 is acceptable;
- (4) Method 22 (40 CFR Part 60, Appendix A) for determination of visible emissions from flares;
- (5) Method 25 (40 CFR Part 60, Appendix A) for determining total gaseous nonmethane organic emissions as carbon;
- (6) Methods 25A or 25B (40 CFR Part 60, Appendix A) for determining total gaseous organic concentrations using flame ionization or nondispersive infrared analysis;
- (7) test method described in 40 CFR §60.113a(a)(1)(ii) (effective April 8, 1987) for measurement of storage tank seal gap;
- (8) true vapor pressure must be determined using standard reference texts or ASTM International Test Method D323, D2879, D4953, D5190, D5191, or D6377 for the measurement of Reid vapor pressure, adjusted for actual storage temperature in accordance with American Petroleum Institute Publication 2517. For the purposes of temperature correction, the owner or operator shall use the actual storage temperature. Actual storage temperature of an unheated storage tank may be determined using the maximum local monthly average ambient temperature as reported by the National Weather Service. Actual storage temperature of a heated storage tank must be determined using either the measured temperature or the temperature set point of the storage tank;
- (9) mass flow meter, positive displacement meter, or similar device for measuring the volumetric flow rate of flash, working, breathing, and standing emissions from crude oil and condensate over a 24-hour period representative of normal operation. For crude oil and natural gas production sites, volumetric flow rate measurements must be made while the producing wells are operational;
- (10) test methods referenced in paragraphs (2), (5), and (6) of this section or Gas Processors Association Method 2286, Tentative Method of Extended Analysis for Natural Gas and Similar Mixtures by Temperature Programmed Gas Chromatography, to measure the concentration of volatile organic compounds in flashed gases from crude oil and condensate storage;

- (11) test methods other than those specified in this section may be used if validated by 40 CFR Part 63, Appendix A, Test Method 301 and approved by the executive director; or
- (12) minor modifications to these test methods approved by the executive director.

§115.118. Recordkeeping Requirements.

- (a) The following recordkeeping requirements apply in the Beaumont-Port Arthur, <u>Bexar County</u>, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, as defined in §115.10 of this title (relating to Definitions).
- (1) The owner or operator of storage tank claiming an exemption in §115.111 of this title (relating to Exemptions) shall maintain records sufficient to demonstrate continuous compliance with the applicable exemption criteria. Where applicable, true vapor pressure, volatile organic compounds (VOC) content type, or a combination of the two must be recorded initially and at every change of service or when the storage tank is emptied and refilled.
- (2) The owner or operator of an external floating roof storage tank that is exempt from the requirement for a secondary seal in accordance with §115.111(a)(1), (6), and (7) of this title and is used to store VOC with a true vapor pressure greater than 1.0 pounds per square inch absolute (psia) shall maintain records of the type of VOC stored and the average monthly true vapor pressure of the stored liquid.
- (3) The owner or operator shall maintain records of the results of inspections required by §115.114(a) of this title (relating to Inspection and Repair Requirements). For secondary seal gaps that are required to be physically measured during inspection, these records must include a calculation of emissions for all secondary seal gaps that exceed 1/8 inch where the accumulated area of such gaps is greater than 1.0 square inch per foot of tank diameter. These calculated emissions inventory reportable emissions must be reported in the annual emissions inventory submittal required by §101.10 of this title (relating to Emissions Inventory Requirements). The emissions must be calculated using the following equation.

Figure: 30 TAC §115.118(a)(3) (No change.)

- (4) The owner or operator shall maintain records of any operational parameter monitoring required in §115.115(a) of this title (relating to Monitoring Requirements). Such records must be sufficient to demonstrate proper functioning of those devices to design specifications and must include, but are not limited to, the following.
- (A) For a direct-flame incinerator, the owner or operator shall continuously record the exhaust gas temperature immediately downstream of the device.
- (B) For a condensation system, the owner or operator shall continuously record the outlet gas temperature to ensure the temperature is below the manufacturer's recommended operating temperature for controlling the VOC vapors routed to the device.
- (C) For a carbon adsorption system or carbon adsorber, the owner or operator shall:
- (i) continuously record the exhaust gas VOC concentration of any carbon adsorption system monitored according to $\S115.115(a)(3)(A)$ of this title; or
- (ii) record the date and time of each switch between carbon containers and the method of determining the carbon replacement interval if the carbon adsorption system or carbon adsorber is switched according to §115.115(a)(3)(B) of this title.
- (D) For a catalytic incinerator, the owner or operator shall continuously record the inlet and outlet gas temperature.

- (E) For a vapor recovery unit, the owner or operator shall maintain records of the continuous operational parameter monitoring required in §115.115(a)(5) of this title.
- (F) For any other control device not listed in this paragraph, the owner or operator shall maintain records of the continuous operational parameter monitoring required in §115.115(a)(6) of this title sufficient to demonstrate proper functioning of the control device to design specifications.
- (5) The owner or operator shall maintain the results of any testing conducted in accordance with §115.116 of this title (relating to Testing Requirements) or §115.117 of this title (relating to Approved Test Methods) at an affected site. Results may be maintained at an off-site location if made available for review within 24 hours.
- (6) In the Houston-Galveston-Brazoria and Dallas-Fort Worth areas, and in the Bexar County area beginning January 1, 2025, the owner or operator shall maintain the following additional records.
- (A) The owner or operator of a fixed roof storage tank that is not required in §115.112(d)(1) or (e)(1) of this title (relating to Control Requirements) to be equipped with an external floating roof, internal floating roof, or vapor control system shall maintain records of the type of VOC stored, the starting and ending dates when the material is stored, and the true vapor pressure at the average monthly storage temperature of the stored liquid. This requirement does not apply to a storage tank with storage capacity of 25,000 gallons or less storing VOC other than crude oil or condensate, or to a storage tank with storage capacity of 40,000 gallons or less storing crude oil or condensate.
- (B) The owner or operator of any storage tank that stores crude oil or condensate prior to custody transfer or at a pipeline breakout station and is not equipped with a vapor control system shall maintain records of the estimated uncontrolled emissions from the storage tank on a rolling 12-month basis. The records must be made available for review within 72 hours upon request by authorized representatives of the executive director, the United States Environmental Protection Agency, or any local air pollution control agency with jurisdiction.
- (C) The owner or operator of an external floating roof or internal floating roof storage tank meeting the extended compliance date in §115.119(a)(1)(A) or (b)(1)(A) of this title (relating to Compliance Schedules) shall maintain records of the date of the last time the storage tank was emptied and degassed.
- (D) The owner or operator of any storage tank that stores crude oil or condensate prior to custody transfer or at a pipeline breakout station is required by §115.112(e) of this title to control flash emissions shall maintain records of the manufacturer or industry standard instructions used to maintain the storage tanks and tank closure devices in use.
- (E) The owner or operator of any storage tank that stores crude oil or condensate prior to custody transfer or at a pipeline breakout station shall maintain records of the results of each inspection and repair required in §115.112(e)(7) or §115.114(a)(5) of this title, including the following items:
 - (i) the date of the inspection;

and

- (ii) the status of the device during inspection;
- (iii) the amount of time a closure device was open since the last inspection for reasons not allowed in §115.112(e)(7)(A) of this title;
 - (iv) the date repair was attempted and completed;

- (v) the list of closure devices awaiting delayed repair as allowed by \$115.112(e)(7)(D) of this title.
- (7) All records must be maintained for two years and be made available for review upon request by authorized representatives of the executive director, the United States Environmental Protection Agency, or any local air pollution control agency with jurisdiction. In the Dallas-Fort Worth area, any records created on or after March 1, 2011, must be maintained for at least five years. In the Houston-Galveston-Brazoria area, any records created on or after January 1, 2017 must be maintained for at least five years. In the Bexar County area, beginning January 1, 2025, any records created must be maintained for at least five years.
- (b) The following recordkeeping requirements apply in Gregg, Nucces, and Victoria Counties.
- (1) The owner or operator of an external floating roof storage tank that is exempt from the requirement for a secondary seal in accordance with §115.111(b)(1), (6), and (7) of this title and used to store VOC with a true vapor pressure greater than 1.0 psia shall maintain records of the type of VOC stored and the average monthly true vapor pressure of the stored liquid.
- (2) The owner or operator shall record the results of inspections required by §115.114(b) of this title.
- (3) In Victoria County, the owner or operator shall continuously record operational parameters of any of the following emission control devices installed to meet applicable control requirements in §115.112 of this title. Such records must be sufficient to demonstrate proper functioning of those devices to design specifications, including:
- (A) the exhaust gas temperature immediately down-stream of a direct-flame incinerator;
- (B) the inlet and outlet gas temperature of a condensation system or catalytic incinerator; and
- (C) the exhaust gas VOC concentration of any carbon adsorption system or carbon adsorber, to determine if breakthrough has occurred.
- (4) The owner or operator shall maintain records of the results of any testing conducted in accordance with §115.117 of this title at an affected site.
- (5) All records must be maintained for two years and be made available for review upon request by authorized representatives of the executive director, the United States Environmental Protection Agency, or any local air pollution control agency with jurisdiction.
- §115.119. Compliance Schedules.
- (a) In Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties, the compliance date has 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)(1) (6) of this title. Section 115.112(e)(3)(A)(i) of this title no longer applies beginning July 20, 2018.
- (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 \$\\$15.112(e)(1) (6), 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. Section 115.112(e)(3)(A)(i) of this title no longer applies beginning July 20, 2018. Prior to July 20, 2018, the owner or operator of a storage tank subject to \$115.112(e)(3)(A)(i) of this title shall continue to comply with \$115.112(e)(3)(A)(i) of this title until compliance has been demonstrated with the requirements of \$115.112(e)(3)(A)(ii) of this title. After July 20, 2018, the owner or operator of a storage tank is subject to \$115.112(e)(3)(A)(ii) 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 these requirements no later than March 1, 2013, regardless if compliance with these requirements would require emptying and degassing of the storage tank.
- (3) The affected owner or operator shall comply with §§115.112(e)(3)(A)(ii), 115.112(e)(7), 115.118(a)(6)(D) and (E), and 115.114(a)(5) of this title (relating to Inspection and Repair Requirements) as soon as practicable, but no later than July 20, 2018.
- (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 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) Except as specified in subsection (g) of this section, in [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 was required to be in compliance with this division by January 1, 2017, and shall continue to comply with this division, except that compliance with §115.112(e)(4)(D) and (5)(D) by [§115.111(a)(13) and §115.112(e)(4)(C)(ii) and (5)(C)(ii) of this title is required as soon as practicable, but] no later than November 7, 2025 [July 20, 2021].
- (g) The owner or operator of each storage tank in the Bexar County area subject to the requirements of this division shall comply with the requirements of §115.112(c) and §115.114(c) through December 31, 2024 and all other applicable requirements of this division no later than January 1, 2025.
- (h) [(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.
- (i) [(h)] In Brazoria, Chambers, Collin, Dallas, Denton, Ellis, Fort Bend, Galveston, Harris, Johnson, Kaufman, Liberty, Montgomery, Parker, Rockwall, Tarrant, Waller, and Wise Counties, the owner or operator of a storage tank storing crude oil or condensate shall continue to comply with the requirements in this division until compliance with the requirements in Division 7 of this subchapter (relating to Oil and Natural Gas Service in Ozone Nonattainment Areas) is achieved or until December 31, 2022, whichever is sooner.

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

Filed with the Office of the Secretary of State on December 4, 2023.

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Texas Commission on Environmental Quality
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DIVISION 2. VENT GAS CONTROL 30 TAC §§115.121 - 115.123, 115.125 - 115.127, 115.129

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The proposed amendments implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

§115.121. Emissions Specifications.

- (a) For all persons in the Beaumont-Port Arthur, <u>Bexar County</u>, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, as defined in §115.10 of this title (relating to Definitions), the following emission specifications shall apply.
- (1) No person may allow a vent gas stream containing volatile organic compounds (VOC) to be emitted from any process vent, unless the vent gas stream is controlled properly in accordance with §115.122(a)(1) of this title (relating to Control Requirements). Vent gas streams include emissions from compressor rod packing that are contained and routed through a vent, except from compressors subject to Division 7 of this subchapter (relating to Oil and Natural Gas in Ozone Nonattainment Areas), and emissions from a glycol dehydrator still vent.
- (2) No person may allow a vent gas stream to be emitted from the following processes unless the vent gas stream is controlled properly in accordance with §115.122(a)(2) of this title:

- (A) any synthetic organic chemical manufacturing industry reactor process or distillation operation;
- (B) any air oxidation synthetic organic chemical manufacturing process;
- (C) any liquid phase polypropylene manufacturing process;
- (D) any liquid phase slurry high-density polyethylene manufacturing process; or
 - (E) any continuous polystyrene manufacturing process.
- (3) In the <u>Bexar County</u>, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, as defined in §115.10 of this title, VOC emissions from bakery ovens, shall be controlled properly in accordance with §115.122(a)(3) of this title.
- (4) Any vent gas stream in the Houston-Galveston-Brazoria area which includes a highly-reactive volatile organic compound, as defined in §115.10 of this title, is subject to the requirements of Subchapter H of this chapter (relating to Highly-Reactive Volatile Organic Compounds) in addition to the applicable requirements of this division.
- (b) In Nueces and Victoria Counties, no person may allow a vent gas stream to be emitted from any process vent containing one or more of the following VOC or classes of VOC, unless the vent gas stream is controlled properly in accordance with §115.122(b) of this title:
- (1) emissions of ethylene associated with the formation, handling, and storage of solidified low-density polyethylene;
- (2) emissions of the following specific VOC: ethylene, butadiene, isobutylene, styrene, isoprene, propylene, methylstyrene; and
- (3) emissions of specified classes of VOC, including aldehydes, alcohols, aromatics, ethers, olefins, peroxides, amines, acids, esters, ketones, sulfides, and branched chain hydrocarbons (C8 and above).
- (c) For persons in Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties, the following emission specifications shall apply. The emission specifications of this subsection no longer apply for sources located in Bexar County beginning January 1, 2025.
- (1) No person may allow a vent gas stream to be emitted from any process vent containing one or more of the following VOC or classes of VOC, unless the vent gas stream is controlled properly in accordance with §115.122(c)(1) of this title:
- (A) emissions of ethylene associated with the formation, handling, and storage of solidified low-density polyethylene;
- (B) emissions of the following specific VOC: ethylene, butadiene, isobutylene, styrene, isoprene, propylene, and methylstyrene; and
- (C) emissions of specified classes of VOC, including aldehydes, alcohols, aromatics, ethers, olefins, peroxides, amines, acids, esters, ketones, sulfides, and branched chain hydrocarbons (C_s and above).
- (2) No person may allow a vent gas stream to be emitted from any catalyst regeneration of a petroleum or chemical process system, basic oxygen furnace, or fluid coking unit into the atmosphere, unless the vent gas stream is properly controlled in accordance with §115.122(c)(2) of this title.
- (3) No person may allow a vent gas stream to be emitted from any iron cupola into the atmosphere, unless the vent gas stream is properly controlled in accordance with §115.122(c)(3) of this title.

- (4) Vent gas streams from blast furnaces shall be controlled properly in accordance with §115.122(c)(4) of this title.
- §115.122. Control Requirements.
- (a) For all persons in the Beaumont-Port Arthur, <u>Bexar</u> <u>County</u>, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, the following control requirements shall apply.
- (1) Any vent gas streams affected by §115.121(a)(1) of this title (relating to Emission Specifications) must be controlled properly with a control efficiency of at least 90% or to a volatile organic compound (VOC) concentration of no more than 20 parts per million by volume (ppmv) (on a dry basis corrected to 3.0% oxygen for combustion devices):
- (A) in a direct-flame incinerator at a temperature equal to or greater than 1,300 degrees Fahrenheit;
- (B) in a smokeless flare that is lit at all times when VOC vapors are routed to the flare; or
- (C) by any other vapor control system, as defined in §115.10 of this title (relating to Definitions). A glycol dehydrator reboiler burning the vent stream from the still vent is a vapor control system.
- (2) Any vent gas streams affected by §115.121(a)(2) of this title must be controlled properly with a control efficiency of at least 98% or to a VOC concentration of no more than 20 ppmv (on a dry basis corrected to 3.0% oxygen for combustion devices):
- (A) in a smokeless flare that is lit at all times when VOC vapors are routed to the flare; or
- (B) by any other vapor control system, as defined in §115.10 of this title.
- (3) For the <u>Bexar County</u>, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, VOC emissions from each bakery with a bakery oven vent gas stream(s) affected by §115.121(a)(3) of this title shall be reduced as follows.
- (A) Each bakery in the Houston-Galveston-Brazoria area with a total weight of VOC emitted from all bakery ovens on the property, when uncontrolled, equal to or greater than 25 tons per calendar year shall ensure that the overall emission reduction from the uncontrolled VOC emission rate of the oven(s) is at least 80%.
- (B) Through November 6, 2025, each [Each] bakery in the Dallas-Fort Worth area, except in Wise County, with a total weight of VOC emitted from all bakery ovens on the property, when uncontrolled, equal to or greater than 50 tons per calendar year, shall ensure that the overall emission reduction from the uncontrolled VOC emission rate of the oven(s) is at least 80%. Beginning November 7, 2025, each bakery in the Dallas-Fort Worth area, including Wise County, with a total weight of VOC emitted from all bakery ovens on the property, when uncontrolled, equal to or greater than 25 tons per calendar year, shall ensure that the overall emission reduction from the uncontrolled VOC emission rate of the oven(s) is at least 80%.
- (C) Each bakery in the Dallas-Fort Worth with a total weight of VOC emitted from all bakery ovens on the property, when uncontrolled, equal to or greater than 25 tons per calendar year, but less than 50 tons per calendar year, shall reduce total VOC emissions by at least 30% from the bakery's 1990 emissions inventory in accordance with the schedule specified in §115.129(d) of this title (relating to Counties and Compliance Schedules). The requirements of this subparagraph no longer apply beginning November 7, 2025.
- (D) Each bakery in the El Paso area with a total weight of VOC emitted from all bakery ovens on the property, when uncon-

- trolled, equal to or greater than 25 tons per calendar year shall reduce total VOC emissions by at least 30% from the bakery's 1990 emissions inventory in accordance with the schedule specified in §115.129(e) of this title.
- (E) Each bakery in the Bexar County area with a total weight of VOC emitted from all bakery ovens on the property, when uncontrolled, equal to or greater than 100 tons per calendar year, shall ensure that the overall emission reduction from the uncontrolled VOC emission rate of the oven(s) is at least 80%.
- (F) [(E)] Emission reductions in the 30% to 90% range are not creditable under Chapter 101, Subchapter H, Division 1 of this title (relating to Emission Credit Program) for the following bakeries:
- (i) each bakery in the Houston-Galveston-Brazoria area with a total weight of VOC emitted from all bakery ovens on the property, when uncontrolled, equal to or greater than 25 tons per calendar year;
- (ii) each bakery in the Dallas-Fort Worth area with a total weight of VOC emitted from all bakery ovens on the property, when uncontrolled, equal to or greater than 50 tons per calendar year through November 6, 2025 and 25 tons per calendar year beginning November 7, 2025;
- (iii) each bakery in the El Paso area with a total weight of VOC emitted from all bakery ovens on the property, when uncontrolled, equal to or greater than 50 tons per calendar year; and [-]
- (iv) each bakery in the Bexar County area with a total weight of VOC emitted from all bakery ovens on the property, when uncontrolled, equal to or greater than 100 tons per calendar year.
- (4) Any vent gas stream that becomes subject to the provisions of paragraphs (1), (2), or (3) of this subsection by exceeding provisions of §115.127(a) of this title (relating to Exemptions) shall remain subject to the provisions of this subsection, even if throughput or emissions later fall below the exemption limits unless and until emissions are reduced to no more than the controlled emissions level existing before implementation of the project by which throughput or emission rate was reduced to less than the applicable exemption limits in §115.127(a) of this title; and:
- (A) the project by which throughput or emission rate was reduced is authorized by any permit or permit amendment or standard permit or permit by rule required by Chapter 116 or Chapter 106 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification; and Permits by Rule). If a permit by rule is available for the project, compliance with this subsection must be maintained for 30 days after the filing of documentation of compliance with that permit by rule; or
- (B) if authorization by permit, permit amendment, standard permit, or permit by rule is not required for the project, the owner or operator has given the executive director 30 days' notice of the project in writing.
- (b) For all persons in Nueces and Victoria Counties, any vent gas streams affected by §115.121(b) of this title must be controlled properly with a control efficiency of at least 90% or to a VOC concentration of no more than 20 ppmv (on a dry basis corrected to 3.0% oxygen for combustion devices):
- (1) in a direct-flame incinerator at a temperature equal to or greater than 1,300 degrees Fahrenheit;
- (2) in a smokeless flare that is lit at all times when VOC vapors are routed to the flare; or

- (3) by any other vapor control system, as defined in \$115.10 of this title.
- (c) For all persons in Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties, the following control requirements shall apply. The control requirements of the subsection no longer apply for sources located in Bexar County beginning January 1, 2025.
- (1) Any vent gas streams affected by $\S115.121(c)(1)$ of this title must be controlled properly:
- (A) in a direct-flame incinerator at a temperature equal to or greater than 1,300 degrees Fahrenheit;
- (B) in a smokeless flare that is lit at all times when VOC vapors are routed to the flare; or
- (C) by any other vapor control system, as defined in §115.10 of this title, with a control efficiency of at least 90% or to a VOC concentration of no more than 20 ppmv (on a dry basis corrected to 3.0% oxygen for combustion devices).
- (2) Any vent gas streams affected by $\S115.121(c)(2)$ of this title must be controlled properly:
- (A) in a direct-flame incinerator or boiler at a temperature equal to or greater than 1,300 degrees Fahrenheit; or
- (B) by any other vapor control system, as defined in §115.10 of this title, with a control efficiency of at least 90% or to a VOC concentration of no more than 20 ppmv (on a dry basis corrected to 3.0% oxygen for combustion devices).
- (3) Any vent gas streams affected by \$115.121(c)(3) of this title must be controlled properly:
- (A) at a temperature equal to or greater than 1,300 degrees Fahrenheit in an afterburner having a retention time of at least one-fourth of a second, and having a steady flame that is not affected by the cupola charge and relights automatically if extinguished; or
- (B) by any other vapor control system, as defined in §115.10 of this title, with a control efficiency of at least 90% or to a VOC concentration of no more than 20 ppmv (on a dry basis corrected to 3.0% oxygen for combustion devices).
- (4) Any vent gas streams affected by $\S115.121(c)(4)$ of this title must be controlled properly:
- (A) in a smokeless flare that is lit at all times when VOC vapors are routed to the flare or in a combustion device used in a heating process associated with the operation of a blast furnace; or
- (B) by any other vapor control system, as defined in §115.10 of this title, with a control efficiency of at least 90% or to a VOC concentration of no more than 20 ppmv (on a dry basis corrected to 3.0% oxygen for combustion devices).
- §115.123. Alternate Control Requirements.
- (a) The alternate control requirements for vent gas streams in the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria [Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston] areas are as follows.
- (1) Alternate methods of demonstrating and documenting continuous compliance with the applicable control requirements or exemption criteria in this division (relating to Vent Gas Control) may be approved by the executive director in accordance with §115.910 of this title (relating to Availability of Alternate Means of Control) if emission reductions are demonstrated to be substantially equivalent.

- (2) The owner or operator of a synthetic organic chemical manufacturing industry (SOCMI) reactor process or distillation operation in which vent gas stream emissions are controlled by a control device with a control efficiency of at least 90% which was installed before December 3, 1993 may request an alternate reasonably available control technology (ARACT) determination. The executive director may approve the ARACT if it is determined to be economically unreasonable to replace the control device with a new control device meeting the requirements of §115.122(a)(2) of this title (relating to Control Requirements). Each ARACT approved by the executive director shall include a requirement that the control device be operated at its maximum efficiency. Each ARACT shall only be valid until the control device undergoes a replacement, a modification as defined in 40 Code of Federal Regulations (CFR) §60.14 (October 17, 2000), or a reconstruction as defined in 40 CFR §60.15 (December 16, 1975), at which time the replacement, modified, or reconstructed control device shall meet the requirements of §115.122(a)(2) of this title. Any request for an ARACT determination shall be submitted to the executive director in writing no later than May 31, 1994. The executive director may direct the holder of an ARACT to reapply for an ARACT if it is more than ten years since the date of installation of the control device and there is good cause to believe that it is now economically reasonable to meet the requirements of §115.122(a)(2) of this title. Within three months of an executive director request, the holder of an ARACT shall reapply for an ARACT. If the reapplication for an ARACT is denied, the holder of the ARACT shall meet the requirements of §115.122(a)(2) of this title as soon as practicable, but no later than two years from the date of the executive director's written notification of denial.
- (b) For all persons in Nueces and Victoria Counties, alternate methods of demonstrating and documenting continuous compliance with the applicable control requirements or exemption criteria in this division may be approved by the executive director in accordance with §115.910 of this title if emission reductions are demonstrated to be substantially equivalent.
- (c) For all persons in Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties, alternate methods of demonstrating and documenting continuous compliance with the applicable control requirements or exemption criteria in this division may be approved by the executive director in accordance with §115.910 of this title if emission reductions are demonstrated to be substantially equivalent. The alternate methods of demonstrating continuous compliance available under this subsection no longer apply for sources located in Bexar County beginning January 1, 2025.

§115.125. Testing Requirements.

Compliance with the emission specifications, vapor control system efficiency, and certain control requirements and exemption criteria of §§115.121 - 115.123 and 115.127 of this title (relating to Emission Specifications; Control Requirements; Alternate Control Requirements; and Exemptions) shall be determined by applying one or more of the following test methods and procedures, as appropriate, when specifically required within this division, when required by the executive director under §101.8 of this title (relating to Sampling), or when the owner or operator elects to conduct testing of one or more vent gas streams.

- (1) Flow rate. Test Methods 1-4 (40 Code of Federal Regulations (CFR) Part 60, Appendix A) are used for determining flow rates, as necessary.
 - (2) Concentration of volatile organic compounds (VOC).
- (A) Test Method 18 (40 CFR Part 60, Appendix A) is used for determining gaseous organic compound emissions by gas chromatography.

- (B) Test Method 21 (40 CFR Part 60, Appendix A-7) for determining VOC concentrations for the purpose of determining breakthrough on a carbon adsorption system or carbon adsorber.
- (C) Test Method 25 (40 CFR Part 60, Appendix A) is used for determining total gaseous nonmethane organic emissions as carbon.
- (D) Test Methods 25A or 25B (40 CFR Part 60, Appendix A) are used for determining total gaseous organic concentrations using flame ionization or nondispersive infrared analysis.
- ${\bf (3)} \quad \text{Performance requirements for flares and vapor combustors.}$
- (A) For flares, Test Method 22 (40 CFR Part 60, Appendix A) is used for visual determination of fugitive emissions from material sources and smoke emissions.
- (B) For flares, additional test method requirements are described in 40 CFR §60.18(f), unless the United States Environmental Protection Agency (EPA) or the executive director has granted a waiver from such testing requirements.
- (C) Flares in the Beaumont-Port Arthur, <u>Bexar County</u>, Dallas-Fort Worth, and Houston-Galveston-Brazoria areas shall comply with the performance test requirements of 40 CFR §60.18(b), unless EPA or the executive director has granted a waiver from such testing requirements.
- (D) For vapor combustors, the owner or operator may consider the unit to be a flare. Each vapor combustor in Victoria County and the Beaumont-Port Arthur, <u>Bexar County</u>, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas which the owner or operator elected to consider as a flare shall meet the performance test requirements of 40 CFR §60.18(b) in lieu of any testing under paragraphs (1) and (2) of this section.
- (E) Compliance with the requirements of 40 CFR $\S60.18(b)$ will be considered to demonstrate compliance with the emission specifications and control efficiency requirements of $\S115.121$ and $\S115.122$ of this title.
- (4) Minor modifications. Minor modifications to these test methods may be used, if approved by the executive director.
- (5) Alternate test methods. Test methods other than those specified in paragraphs (1) (3) of this section may be used if validated by 40 CFR 63, Appendix A, Test Method 301. For the purposes of this paragraph, substitute "executive director" each place that Test Method 301 references "administrator."
- §115.126. Monitoring and Recordkeeping Requirements.
- The owner or operator of any facility which emits volatile organic compounds (VOC) through a stationary vent in Aransas, [Bexar,] Calhoun, Matagorda, Nueces, San Patricio, Travis, and Victoria Counties or in the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas shall maintain the following information at the facility for at least five years. The owner or operator shall make the information available upon request to representatives of the executive director, the United States Environmental Protection Agency, or any local air pollution control agency having jurisdiction in the area.
- (1) Vapor control systems. For vapor control systems used to control emissions in Victoria County and in the Beaumont-Port Arthur, <u>Bexar County</u>, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, from vents subject to the provisions of §115.121 of this title (relating to Emission Specifications), records of appropriate parameters to demonstrate compliance, including:

- (A) continuous monitoring and recording of:
- (i) the exhaust gas temperature immediately down-stream of a direct-flame incinerator:
- (ii) the inlet and outlet gas temperatures of a catalytic incinerator or chiller;
- (iii) the exhaust gas temperature immediately downstream of a vapor combustor. Alternatively, the owner or operator of a vapor combustor may consider the unit to be a flare and meet the requirements specified in 40 Code of Federal Regulations (CFR) §60.18(b) and Chapter 111 of this title (relating to Control of Air Pollution from Visible Emissions and Particulate Matter) for flares; and
- (iv) for a carbon adsorption system or carbon adsorber, as defined in §101.1 of this title (relating to Definitions), the owner or operator shall:
- (I) continuously monitor the exhaust gas VOC concentration of a carbon adsorption system that regenerates the carbon bed directly to determine breakthrough. For the purpose of this subclause, breakthrough is defined as a measured VOC concentration exceeding 100 parts per million by volume above background expressed as methane; and
- (II) switch the vent gas flow to fresh carbon at a regular predetermined time interval for a carbon adsorber or carbon adsorption system that does not regenerate the carbon directly. The time interval must be less than the carbon replacement interval determined by the maximum design flow rate and the VOC concentration in the gas stream vented to the carbon adsorption system or carbon adsorber.
- (B) in the Beaumont-Port Arthur, <u>Bexar County</u>, Dallas-Fort Worth, and Houston-Galveston-Brazoria areas, the requirements specified in 40 CFR §60.18(b) and Chapter 111 of this title for flares; and
- (C) for vapor control systems other than those specified in subparagraphs (A) and (B) of this paragraph, records of appropriate operating parameters.
- (2) Test results. A record of the results of any testing conducted in accordance with §115.125 of this title (relating to Testing Requirements).
- (3) Records for exempted vents. Records for each vent exempted from control requirements in accordance with §115.127 of this title (relating to Exemptions) shall be sufficient to demonstrate compliance with the applicable exemption limit, including the following, as appropriate:
- (A) the pounds of ethylene emitted per 1,000 pounds of low-density polyethylene produced;
- (B) the combined weight of VOC of each vent gas stream on a daily basis;
- (C) the concentration of VOC in each vent gas stream on a daily basis;
- (D) the maximum design flow rate or VOC concentration of each vent gas stream exempt under $\S115.127(a)(4)(C)$ of this title; and
- (E) the total design capacity of process units exempt under 115.127(a)(4)(B) of this title.
- (4) Alternative records for exempted vents. As an alternative to the requirements of paragraph (3)(B) and (C) of this section, records for each vent exempted from control requirements in accordance with \$115.127 of this title and having a VOC emission rate or

concentration less than the applicable exemption limits at maximum actual operating conditions shall be sufficient to demonstrate continuous compliance with the applicable exemption limit. These records shall include complete information from either test results or appropriate calculations which clearly documents that the emission characteristics at maximum actual operating conditions are less than the applicable exemption limit. This documentation shall include the operating parameter levels that occurred during any testing, and the maximum levels feasible (either VOC concentration or mass emission rate) for the process.

- (5) Bakeries. For bakeries subject to §115.122(a)(3)(A) (B) of this title (relating to Control Requirements), the following additional requirements apply.
- (A) The owner or operator of each bakery in the Houston-Galveston-Brazoria area with a total weight of VOC emitted from all bakery ovens on the property, when uncontrolled, equal to or greater than 25 tons per calendar year, shall submit a control plan no later than March 31, 2001, to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction. The plan shall demonstrate that the overall emission reduction from the uncontrolled VOC emission rate of the oven(s) will be at least 80% by December 31, 2001. At a minimum, the control plan shall include the emission point number (EPN) and the facility identification number (FIN) of each bakery oven and any associated control device, a plot plan showing the location, EPN, and FIN of each bakery oven and any associated control device, and the 2000 VOC emission rates (consistent with the bakery's 2000 emissions inventory). The projected 2002 VOC emission rates shall be calculated in a manner consistent with the 2000 emissions inventory.
- (B) All representations in control plans become enforceable conditions. It shall be unlawful for any person to vary from such representations if the variation will cause a change in the identity of the specific emission sources being controlled or the method of control of emissions unless the owner or operator of the bakery submits a revised control plan to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction within 30 days of the change. All control plans shall include documentation that the overall emission reduction from the uncontrolled VOC emission rate of the bakery's oven(s) continues to be at least the specified percentage reduction. The emission rates shall be calculated in a manner consistent with the most recent emissions inventory.
- (6) Bakeries (contingency measures). For bakeries subject to §115.122(a)(3)(C) and (D) of this title, the following additional requirements apply.
- (A) No later than six months after the commission publishes notification in the *Texas Register* as specified in §115.129(d) or (e) of this title (relating to Counties and Compliance Schedules), the owner or operator of each bakery shall submit an initial control plan to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction which demonstrates that the overall reduction of VOC emissions from the bakery's 1990 emissions inventory will be at least 30%. At a minimum, the control plan shall include the EPN and the FIN of each bakery oven and any associated control device, a plot plan showing the location, EPN, and FIN of each bakery oven and any associated control device, and the 1990 VOC emission rates (consistent with the bakery's 1990 emissions inventory). The projected VOC emission rates shall be calculated in a manner consistent with the 1990 emissions inventory.
- (B) In order to document continued compliance with §115.122(a)(3) of this title, the owner or operator of each bakery shall

- submit an annual report no later than March 31 of each year to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction which demonstrates that the overall reduction of VOC emissions from the bakery's 1990 emissions inventory during the preceding calendar year is at least 30%. At a minimum, the report shall include the EPN and FIN of each bakery oven and any associated control device, a plot plan showing the location, EPN, and FIN of each bakery oven and any associated control device, and the VOC emission rates. The emission rates for the proceeding calendar year shall be calculated in a manner consistent with the 1990 emissions inventory.
- (C) All representations in control plans and annual reports become enforceable conditions. It shall be unlawful for any person to vary from such representations if the variation will cause a change in the identity of the specific emission sources being controlled or the method of control of emissions unless the owner or operator of the bakery submits a revised control plan to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction within 30 days of the change. All control plans and reports shall include documentation that the overall reduction of VOC emissions from the bakery's 1990 emissions inventory continues to be at least 30%. The emission rates shall be calculated in a manner consistent with the 1990 emissions inventory.
- (7) Additional flare requirements. The owner or operator of a facility that uses a flare to meet the requirements of §115.122(a)(2) of this title shall install, calibrate, maintain, and operate according to the manufacturer's specifications, a heat-sensing device, such as an ultraviolet beam sensor or thermocouple, at the pilot light to indicate continuous presence of a flame.

§115.127. Exemptions.

- (a) For all persons in the Beaumont-Port Arthur, <u>Bexar County</u>, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, the following exemptions apply. In cases where vent gas streams emanating from multiple process locations are combined, compliance with the exemptions of this section is determined after the combination of the streams but prior to the combined stream entering a control device, if present.
- (1) A vent gas stream from a low-density polyethylene plant is exempt from the requirements of §115.121(a)(1) of this title (relating to Emission Specifications) if no more than 1.1 pounds of ethylene per 1,000 pounds of product are emitted from all the vent gas streams associated with the formation, handling, and storage of solidified product.
- (2) The following vent gas streams are exempt from the requirements of §115.121(a)(1) of this title:
- (A) a vent gas stream having a combined weight of volatile organic compounds (VOC) equal to or less than 100 pounds in any continuous 24-hour period;
- (B) a vent gas stream specified in §115.121(a)(1) of this title with a concentration of VOC less than 612 parts per million by volume (ppmv);
- (C) a vent gas stream which is subject to $\S115.121(a)(2)$ or (3) of this title; and
- (D) a vent gas stream which qualifies for exemption under paragraphs (3), (4)(B), (4)(C), (4)(D), (4)(E), or (5) of this subsection.
- (3) The following vent gas streams are exempt from the requirements of $\S115.121(a)(2)(B)$ (E) of this title:

- (A) a vent gas stream having a combined weight of VOC equal to or less than 100 pounds in any continuous 24-hour period;
- (B) a vent gas stream from any air oxidation synthetic organic chemical manufacturing process with a concentration of VOC less than 612 ppmy; and
- (C) a vent gas stream from any liquid phase polypropylene manufacturing process, any liquid phase slurry high-density polyethylene manufacturing process, and any continuous polystyrene manufacturing process with a concentration of VOC less than 408 ppmv.
- (4) For synthetic organic chemical manufacturing industry (SOCMI) reactor processes and distillation operations, the following exemptions apply.
- (A) Any reactor process or distillation operation that is designed and operated in a batch mode is exempt from the requirements of §115.121(a)(2)(A) of this title. For the purposes of this subparagraph, batch mode means any noncontinuous reactor process or distillation operation which is not characterized by steady-state conditions, and in which the addition of reactants does not occur simultaneously with the removal of products.
- (B) Any reactor process or distillation operation operating in a process unit with a total design capacity of less than 1,100 tons per year, for all chemicals produced within that unit, is exempt from the requirements of §115.121(a)(2)(A) of this title.
- (C) Any reactor process or distillation operation vent gas stream with a flow rate less than 0.388 standard cubic feet per minute or a VOC concentration less than 500 ppmv is exempt from the requirements of §115.121(a)(2)(A) of this title.
- (D) Any distillation operation vent gas stream which meets the requirements of 40 Code of Federal Regulations (CFR) §60.660(c)(4) or §60.662(c) (concerning Subpart NNN--Standards of Performance for VOC Emissions From SOCMI Distillation Operations, December 14, 2000) is exempt from the requirements of §115.121(a)(2)(A) of this title.
- (E) Any reactor process vent gas stream which meets the requirements of 40 CFR §60.700(c)(2) or §60.702(c) (concerning Subpart RRR--Standards of Performance for VOC Emissions From SOCMI Reactor Processes, December 14, 2000) is exempt from the requirements of §115.121(a)(2)(A) of this title.
- (5) Bakeries are exempt from the requirements of §115.121(a)(3) and §115.122(a)(3) of this title (relating to Emission Specifications and Control Requirements) if the total weight of VOC emitted from all bakery ovens on the property, when uncontrolled, is less than 25 tons per calendar year.
- (6) A vent gas stream is exempt from this division if all of the VOCs in the vent gas stream originate from a source(s) for which another division within Chapter 115 (for example, Storage of Volatile Organic Compounds) has established a control requirement(s), emission specification(s), or exemption(s) which applies to that VOC source category in that county.
- (7) A combustion unit exhaust stream is exempt from this division provided that the unit is not being used as a control device for any vent gas stream which is subject to this division and which originates from a non-combustion source.
- (8) As an alternative to complying with the requirements of this division (or, in the case of bakeries, as an alternative to complying with the requirements of §115.121(a)(1) and §115.122(a)(1) of this title) for a source that is addressed by a Chapter 115 contingency

- rule (i.e., one in which Chapter 115 requirements are triggered for that source by the commission publishing notification in the *Texas Register* that implementation of the contingency rule is necessary), the owner or operator of that source may instead choose to comply with the requirements of the contingency rule as though the contingency rule already had been implemented for that source. The owner or operator of each source choosing this option shall submit written notification to the executive director and any local air pollution control program with jurisdiction. When the executive director and the local program (if any) receive such notification, the source will then be considered subject to the contingency rule as though the contingency rule already had been implemented for that source.
- (b) For all persons in Nueces and Victoria Counties, the following exemptions apply. In cases where vent gas streams emanating from multiple process locations are combined, compliance with the exemptions of this subsection is determined after the combination of the streams, but prior to the combined stream entering a control device, if present.
- (1) A vent gas stream from a low-density polyethylene plant is exempt from the requirements of §115.121(b)(1) of this title if no more than 1.1 pounds of ethylene per 1,000 pounds of product are emitted from all the vent gas streams associated with the formation, handling, and storage of the solidified product.
- (2) The following vent gas streams are exempt from the requirements of §115.121(b) of this title:
- (A) a vent gas stream having a combined weight of the VOC or classes of compounds specified in §115.121(b)(2) and (3) of this title equal to or less than 100 pounds in any continuous 24-hour period; and
- (B) a vent gas stream with a concentration of the VOC or classes of compounds specified in §115.121(b)(2) and (3) of this title less than 30,000 ppmv.
- (3) A vent gas stream is exempt from this division if all of the VOCs in the vent gas stream originate from a source(s) for which another division within Chapter 115 (for example, Storage of Volatile Organic Compounds) has established a control requirement(s), emission specification(s), or exemption(s) which applies to that VOC source category in that county.
- (4) A combustion unit exhaust stream is exempt from this division provided that the unit is not being used as a control device for any vent gas stream which is subject to this division and which originates from a non-combustion source.
- (c) For all persons in Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties, the following exemptions apply. In cases where vent gas streams emanating from multiple process locations are combined, compliance with the exemptions of this subsection is determined after the combination of the streams, but prior to the combined stream entering a control device, if present. The provisions of this subsection no longer apply for sources located in Bexar County beginning January 1, 2025.
- (1) The following vent gas streams are exempt from the requirements of $\S115.121(c)(1)$ of this title:
- (A) a vent gas stream from a low-density polyethylene plant provided that no more than 1.1 pounds of ethylene per 1,000 pounds of product are emitted from all the vent gas streams associated with the formation, handling, and storage of solidified product;
- (B) a vent gas stream having a combined weight of the VOC or classes of compounds specified in §115.121(c)(1)(B) (C) of

this title equal to or less than 100 pounds in any continuous 24-hour period; and

- (C) a vent gas stream having a concentration of the VOC specified in §115.121(c)(1)(B) and (C) of this title less than 30,000 ppmv.
- (2) A vent gas stream specified in $\S115.121(c)(2)$ of this title which emits less than or equal to five tons of total uncontrolled VOC in any one calendar year is exempt from the requirements of $\S115.121(c)(2)$ of this title.
- (3) A vent gas stream is exempt from this division if all of the VOCs in the vent gas stream originate from a source(s) for which another division within Chapter 115 (for example, Storage of Volatile Organic Compounds) has established a control requirement(s), emission specification(s), or exemption(s) which applies to that VOC source category in that county.
- (4) A combustion unit exhaust stream is exempt from this division provided that the unit is not being used as a control device for any vent gas stream which is subject to this division and which originates from a non-combustion source.
- §115.129. Counties and Compliance Schedules.
- (a) Except as specified in subsection (g) of this section, in [Im] Aransas, Bexar, Brazoria, Calhoun, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Matagorda, Montgomery, Nueces, Orange, San Patricio, 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 existing provisions in 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 Record-keeping 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 Bexar, Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties that becomes subject to a new requirement of 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) The owner or operator of each vent gas stream in the Bexar County area subject to the requirements of this division shall comply with the requirements of §115.121(c), §115.122(c), §115.123(c), and §115.127(c) through December 31, 2024 and all other applicable requirements of this division by no later than January 1, 2025.
- [(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 proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 4, 2023.

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Charmaine Backens

Deputy Director, Environmental Law Division Texas Commission on Environmental Quality Earliest possible date of adoption: January 14, 2024 For further information, please call: (512) 239-2678



DIVISION 3. WATER SEPARATION 30 TAC §§115.131, 115.132, 115.135 - 115.137, 115.139

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The proposed amendments implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

§115.131. Emission Specifications.

- (a) For all persons in the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria [Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston] areas as defined in §115.10 of this title (relating to Definitions), any volatile organic compound (VOC) water separator equipped with a vapor recovery system in order to comply with §115.132(a) of this title (relating to Control Requirements) shall reduce emissions such that the true partial pressure of the VOC in vent gases to the atmosphere will not exceed a level of 0.5 psia (3.4 kPa).
- (b) For all persons in Gregg, Nueces, and Victoria Counties, any VOC water separator equipped with a vapor recovery system in order to comply with §115.132(b) of this title (relating to Control Requirements) shall reduce emissions such that the partial pressure of the VOC in vent gases to the atmosphere will not exceed a level of 1.5 psia (10.3 kPa).
- (c) For all persons in Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties, any VOC water separator equipped with a vapor recovery system in order to comply with §115.132(c) of this title shall reduce emissions such that the true partial pressure of the VOC in vent gases to the atmosphere will not exceed a level of 1.5 psia (10.3 kPa). The emission specifications of this subsection no longer apply for sources located in Bexar County beginning January 1, 2025.

§115.132. Control Requirements.

- (a) For the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria [Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston] areas, no person shall use any single or multiple compartment volatile organic compound (VOC) water separator which separates materials containing VOC obtained from any equipment which is processing, refining, treating, storing, or handling VOC, unless each compartment is controlled in one of the following ways:
- (1) the compartment totally encloses the liquid contents and has all openings (such as roof seals and access doors) sealed such that the separator can hold a vacuum or pressure without emissions to the atmosphere, except through a pressure relief valve. All gauging and sampling devices shall be vapor-tight except during gauging or sampling. The pressure relief valve must be designed to open only as necessary to allow proper operation, and must be set at the maximum possible pressure necessary for proper operation, but such that the valve will not vent continuously;
- (2) the compartment is equipped with a floating roof or internal floating cover which will rest on the surface of the contents and be equipped with a closure seal or seals to close the space between the roof edge and tank wall. All gauging and sampling devices shall be vapor-tight except during gauging or sampling;
- (3) the compartment is equipped with a vapor recovery system which satisfies the provisions of §115.131(a) of this title (relating to Emission Specifications);
- (4) any water separator that becomes subject to the provisions of paragraphs (1), (2), or (3) of this subsection by exceeding provisions of §115.137(a) of this title (relating to Exemptions) will remain subject to the provisions of this subsection, even if throughput or emissions later fall below the exemption limits unless and until emissions are reduced to no more than the controlled emissions level existing before implementation of the project by which throughput or emission rate was reduced to less than the applicable exemption limits in §115.137(a) of this title; and
- (A) the project by which throughput or emission rate was reduced is authorized by any permit or permit amendment or standard permit or permit by rule required by Chapter 116 or Chapter 106

- of this title (relating to Control of Air Pollution by Permits for New Construction or Modification; and Permits by Rule. If a permit by rule is available for the project, compliance with this subsection must be maintained for 30 days after the filing of documentation of compliance with that permit by rule; or
- (B) if authorization by permit, permit amendment, standard permit, or permit by rule is not required for the project, the owner/operator has given the executive director 30 days' notice of the project in writing.
- (b) For Gregg, Nueces, and Victoria Counties, no person shall use any single or multiple compartment VOC water separator which separates materials containing VOC obtained from any equipment which is processing, refining, treating, storing, or handling VOC, unless each compartment is controlled in one of the following ways:
- (1) the compartment totally encloses the liquid contents and has all openings (such as roof seals and access doors) sealed such that the separator can hold a vacuum or pressure without emissions to the atmosphere, except through a pressure relief valve. All gauging and sampling devices shall be vapor-tight except during gauging or sampling. The pressure relief valve must be designed to open only as necessary to allow proper operation, and must be set at the maximum possible pressure necessary for proper operation, but such that the valve will not vent continuously:
- (2) the compartment is equipped with a floating roof or internal floating cover which will rest on the surface of the contents and be equipped with a closure seal or seals to close the space between the roof or cover edge and tank wall. All gauging and sampling devices shall be vapor-tight, except during gauging or sampling;
- (3) the compartment is equipped with a vapor recovery system which satisfies the provisions of §115.131(b) of this title.
- (c) For Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties, no person shall use any single or multiple compartment VOC water separator which separates materials containing VOC obtained from any equipment which is processing, refining, treating, storing, or handling VOC, unless each compartment is controlled in one of the following ways. The control requirements of this subsection no longer apply for sources located in Bexar County beginning January 1, 2025.[:]
- (1) The [the] compartment totally encloses the liquid contents and has all openings (such as roof seals and access doors) sealed such that the separator can hold a vacuum or pressure without emissions to the atmosphere, except through a pressure relief valve. All gauging and sampling devices shall be vapor-tight except during gauging or sampling. The pressure relief valve must be designed to open only as necessary to allow proper operation, and must be set at the maximum possible pressure necessary for proper operation, but such that the valve will not vent continuously.[;]
- (2) The [the] compartment is equipped with a floating roof or internal floating cover which will rest on the surface of the contents and be equipped with a closure seal or seals to close the space between the roof or cover edge and tank wall. All gauging and sampling devices shall be vapor-tight except during gauging or sampling.[;]
- (3) The [the] compartment is equipped with a vapor recovery system which satisfies the provisions of \$115.131(c) of this title.
- §115.135. Testing Requirements.
- (a) For the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria [Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston] areas, compliance with §115.131(a), §115.132(a), and §115.137 of this title

(relating to Emission Specifications; Control Requirements; and Exemptions) shall be determined by applying the following test methods, as appropriate:

- (1) Test Methods 1-4 (40 Code of Federal Regulations 60, Appendix A) for determining flow rate, as necessary;
- (2) Test Method 18 (40 Code of Federal Regulations 60, Appendix A) for determining gaseous organic compound emissions by gas chromatography;
- (3) Test Method 25 (40 Code of Federal Regulations 60, Appendix A) for determining total gaseous nonmethane organic emissions as carbon;
- (4) Test Methods 25A or 25 B (40 Code of Federal Regulations 60, Appendix A) for determining total gaseous organic concentrations using flame ionization or nondispersive infrared analysis;
- (5) determination of true vapor pressure at actual storage temperature using American Society for Testing Materials (ASTM) Test Methods D323-89, D2879, D4953, D5190, or D5191; using API Publication 2517, Third Edition, 1989 or standard reference texts to convert from Reid vapor pressure to true vapor pressure, where applicable; or
- (6) minor modifications to these test methods approved by the executive director.
- (b) For Gregg, Nueces, and Victoria Counties, compliance with §115.131(b), §115.132(b), and §115.137(b) of this title shall be determined by applying the following test methods, as appropriate:
- (1) Test Methods 1-4 (40 Code of Federal Regulations 60, Appendix A) for determining flow rate as necessary;
- (2) Test Method 18 (40 Code of Federal Regulations 60, Appendix A) for determining gaseous organic compound emissions by gas chromatography;
- (3) Test Method 25 (40 Code of Federal Regulations 60, Appendix A) for determining total gaseous nonmethane organic emissions as carbon;
- (4) Test Methods 25A or 25B (40 Code of Federal Regulations 60, Appendix A) for determining total gaseous organic concentrations using flame ionization or nondispersive infrared analysis;
- (5) determination of true vapor pressure at actual storage temperature using ASTM Test Methods D323-89, D2879, D4953, D5190, or D5191; and using API Publication 2517, Third Edition, 1989 or standard reference texts to convert from Reid vapor pressure to true vapor pressure, where applicable; or
- (6) minor modifications to these test methods approved by the executive director.
- §115.136. Monitoring and Recordkeeping Requirements.
- (a) For the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria[Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston] areas, the following recordkeeping requirements shall apply.
- (1) Any person who operates a single or multiple compartment volatile organic compound (VOC) water separator without the controls specified in §115.132(a) of this title (relating to Control Requirements) shall maintain complete and up-to-date records sufficient to demonstrate continuous compliance with the applicable exemption criteria including, but not limited to, the names and true vapor pressures of all such materials stored, processed, or handled at the affected property, and any other necessary operational information.

- (2) Affected persons shall install and maintain monitors to continuously measure and record operational parameters of any emission control device installed to meet applicable control requirements. Such records must be sufficient to demonstrate proper functioning of those devices to design specifications, including:
- (A) the exhaust gas temperature immediately down-stream of any direct-flame incinerator;
- (B) the gas temperature immediately upstream and downstream of any catalytic incinerator or chiller; and
- (C) the VOC concentration of any carbon adsorption system exhaust gas to determine if breakthrough has occurred.
- (3) Affected persons shall maintain the results of any testing conducted in accordance with the provisions specified in §115.135(a) of this title (relating to Testing Requirements).
- (4) All records shall be maintained at the affected facility for at least two years and be made available upon request to representatives of the executive director, EPA, or any local air pollution control agency having jurisdiction in the area.
- (b) For Gregg, Nueces, and Victoria Counties, the following recordkeeping requirements shall apply.
- (1) Any person who operates a single or multiple compartment VOC water separator without the controls specified in §115.132(b) of this title shall maintain complete and up-to-date records sufficient to demonstrate continuous compliance with the applicable exemption criteria including, but not limited to, the names and true vapor pressures of all such materials stored, processed, or handled at the affected property, and any other necessary operational information.
- (2) In Victoria County, affected persons shall install and maintain monitors to continuously measure and record operational parameters of any emission control device installed to meet applicable control requirements. Such records must be sufficient to demonstrate proper functioning of those devices to design specifications, including:
- (A) the exhaust gas temperature immediately downstream of any direct-flame incinerator;
- (B) the gas temperature immediately upstream and downstream of any catalytic incinerator or chiller; and
- (C) the exhaust gas VOC concentration of any carbon adsorption system, as defined in §115.10 of this title (relating to Definitions), to determine if breakthrough has occurred.
- (3) Affected persons shall maintain the results of any testing conducted in accordance with the provisions specified in §115.135(b) of this title.
- (4) All records shall be maintained at the affected facility for at least two years and be made available upon request to representatives of the executive director, EPA, or any local air pollution control agency having jurisdiction in the area.
- §115.137. Exemptions.
- (a) For the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria [Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston] areas, the following exemptions shall apply.
- (1) Any volatile organic compound (VOC) water separator used exclusively in conjunction with the production of crude oil or condensate is exempt from §115.132(a) of this title (relating to Control Requirements) if the emissions from the separator have a combined weight of VOC equal to or less than 100 pounds (45.4 kg) in any continuous 24-hour period. When emissions from multiple sources

(including, but not limited to, VOC water separators, treaters, storage tanks, and saltwater disposal tanks) are routed through a common vent, the calculation of VOC emissions for purposes of this exemption shall be based upon the total of all emission sources which are routed to the common vent. It is unacceptable to disconnect any of the multiple sources routed through a common vent for purposes of complying with this exemption.

- (2) Any single or multiple compartment VOC water separator which separates materials having a true vapor pressure of VOC less than 0.5 pounds per square inch absolute (psia) (3.4 kPa) obtained from any equipment is exempt from §115.132(a) of this title.
- (3) Any single or multiple compartment VOC water separator which is designed solely to capture stormwater, spills, or exterior surface cleanup waters is exempt from this division (relating to Water Separation), provided that the separator is fully covered. These separators are not required to be equipped with pressure/vacuum vents or vapor control systems.
- (b) For Gregg, Nueces, and Victoria Counties, the following exemptions shall apply.
- (1) VOC water separators used exclusively in conjunction with the production of crude oil or condensate are exempt from §115.132(b) of this title.
- (2) Any single or multiple compartment VOC water separator which separates less than 200 gallons (757 liters) a day of materials containing VOC obtained from any equipment is exempt from \$115.132(b) of this title.
- (3) Any single or multiple compartment VOC water separator which separates materials having a true vapor pressure of VOC less than 1.5 psia (10.3 kPa) obtained from any equipment is exempt from §115.132(b) of this title.
- (4) In Gregg County, any single or multiple compartment VOC water separator which separates materials obtained from any equipment in a facility other than a petroleum refinery is exempt from §115.132(b) of this title.
- (5) Any single or multiple compartment VOC water separator which is designed solely to capture stormwater, spills, or exterior surface cleanup waters is exempt from this division, provided that the separator is fully covered. These separators are not required to be equipped with pressure/vacuum vents or vapor control systems.
- (c) For Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties, the following exemptions shall apply. The exemptions provided in this subsection no longer apply for sources located in Bexar County beginning January 1, 2025.
- (1) VOC water separators used exclusively in conjunction with the production of crude oil or condensate are exempt from §115.132(c) of this title.
- (2) Any single or multiple compartment VOC water separator which separates less than 200 gallons (757 liters) a day of materials containing VOC obtained from any equipment is exempt from §115.132(c) of this title.
- (3) Any single or multiple compartment VOC water separator which separates materials having a true vapor pressure of VOC less than 1.5 psia (10.3 kPa) obtained from any equipment is exempt from §115.132(c) of this title.
- (4) Any single or multiple compartment VOC water separator which is designed solely to capture stormwater, spills, or exterior surface cleanup waters is exempt from this division, provided that

the separator is fully covered. These separators are not required to be equipped with pressure/vacuum vents or vapor control systems.

§115.139. Counties and Compliance Schedules.

- (a) Except as specified in subsection (e) of this section, in [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 Bexar, 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) The owner or operator of each VOC water separator in the Bexar County area subject to the requirements of this division shall comply with the requirements of §§115.131(c), 115.132(c), and 115.137(c) through December 31, 2024, and all other applicable requirements of this division by no later than January 1, 2025.
- [(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 proposal and found it to be within the state agency's legal authority to adopt.

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Charmaine Backens

Deputy Director, Environmental Law Division Texas Commission on Environmental Quality Earliest possible date of adoption: January 14, 2024

For further information, please call: (512) 239-2678



DIVISION 4. INDUSTRIAL WASTEWATER 30 TAC §§115.142, 115.144, 115.146, 115.147, 115.149

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the

provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The proposed amendments implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

§115.142. Control Requirements.

The owner or operator of an affected source category within a plant in the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria [Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, as defined in §115.10 of this title (relating to Definitions), shall comply with the following control requirements. Any component of a wastewater storage, handling, transfer, or treatment facility, if the component contains an affected volatile organic compounds (VOC) wastewater stream, shall be controlled in accordance with either paragraph (1) or (2) of this section, except for properly operated biotreatment units which shall meet the requirements of paragraph (3) of this section. In the Dallas-Fort Worth [Dallas/Fort Worth] and El Paso areas, and until December 31, 2002 in the Houston-Galveston-Brazoria [Houston/Galveston] area, the control requirements apply from the point of generation of an affected VOC wastewater stream until the affected VOC wastewater stream is either returned to a process unit or is treated to remove VOC so that the wastewater stream no longer meets the definition of an affected VOC wastewater stream. In the Beaumont-Port Arthur and the Bexar County areas [Beaumont/Port Arthur area], and after December 31, 2002 in the Houston-Galveston-Brazoria [Houston/Galveston area], the control requirements apply from the point of generation of an affected VOC wastewater stream until the affected VOC wastewater stream is either returned to a process unit, or is treated to reduce the VOC content of the wastewater stream by 90% by weight and also reduce the VOC content of the same VOC wastewater stream to less than 1,000 parts per million by weight. For wastewater streams which are combined and then treated to remove VOC, the amount of VOC to be removed from the combined wastewater stream shall be at least the total amount of VOC that would be removed to treat each individual affected VOC wastewater stream so that they no longer meet the definition of affected VOC wastewater stream, except for properly operated biotreatment units which shall meet the requirements of paragraph (3) of this section. For this division, a component of a wastewater storage, handling, transfer, or treatment facility shall include, but is not limited to, wastewater storage tanks, surface impoundments, wastewater drains, junction boxes, lift stations, weirs, and oil-water separators.

 $\begin{tabular}{ll} (1) & The was tewater component shall meet the following requirements. \end{tabular}$

- (A) All components shall be fully covered or be equipped with water seal controls. For any component equipped with water seal controls, the only acceptable alternative to water as the sealing liquid in a water seal is the use of ethylene glycol, propylene glycol, or other low vapor pressure antifreeze, which may be used only during the period of November through February. For any process drain not equipped with water seal controls, the process drain shall be equipped with a gasketed seal, or a tightly-fitting cap or plug.
- (B) All openings shall be closed and sealed, except when the opening is in actual use for its intended purpose or the component is maintained at a pressure less than atmospheric pressure.
 - (C) All liquid contents shall be totally enclosed.
- (D) For junction boxes and vented covers, the following requirements apply.
- (i) In the <u>Dallas-Fort Worth</u> [Dallas/Fort Worth] and El Paso areas, and until December 31, 2002 in the <u>Houston-Galveston-Brazoria</u> [Houston/Galveston] area, if any cover, other than a junction box cover, is equipped with a vent, the vent shall be equipped with either a vapor control system which maintains a minimum control efficiency of 90% or a closed system which prevents the flow of VOC vapors from the vent during normal operation. Any junction box vent shall be equipped with a vent pipe at least 90 centimeters (cm) (36 inches (in.)) in length and no more than 10.2 cm (4.0 in.) in diameter.
- (ii) In the Beaumont-Port Arthur and Bexar County [Beaumont/Port Arthur] areas [area], and after December 31, 2002 in the Houston-Galveston-Brazoria [Houston/Galveston] area, the following requirements apply.
- (I) If any cover or junction box cover, except for junction boxes described in subclause (II) of this clause, is equipped with a vent, the vent shall be equipped with either a vapor control system which maintains a minimum control efficiency of 90% or a closed system which prevents the flow of VOC vapors from the vent during normal operation.
- (II) Any junction box that is filled and emptied by gravity flow (i.e., there is no pump) or is operated with no more than slight fluctuations in the liquid level may be vented to the atmosphere, provided it is equipped with:
- (-a-) a vent pipe at least 90 cm (36 in.) in length and no more than $10.2~\rm cm$ (4.0 in.) in diameter; and
- (-b-) water seal controls which are installed and maintained at the wastewater entrance(s) to or exit from the junction box restricting ventilation in the individual drain system and between components in the individual drain system.
- (E) All gauging and sampling devices shall be vaportight except during gauging or sampling.
- (F) Any loading or unloading to or from a portable container by pumping shall be performed with a submerged fill pipe.
- (G) All seals and cover connections shall be maintained in proper condition. For purposes of this paragraph, "proper condition" means that covers shall have a tight seal around the edge and shall be kept in place except as allowed by this division, that seals shall not be broken or have gaps, and that sewer lines shall have no visible gaps or cracks in joints, seals, or other emission interfaces.
- (H) If any seal or cover connection is found to not be in proper condition, a first attempt at repair shall be made no later than five calendar days after the leak or improper condition is found. The repair or correction shall be completed as soon as possible but no later than 15 calendar days after detection, unless the repair or correction is technically infeasible without requiring a process unit shutdown, in

which case the repair or correction shall be made at the next process unit shutdown. Test Method 21 must be used to confirm that a leak or improper condition is repaired, and the following records shall be maintained:

- (i) the date on which a leak or improper condition is discovered;
- (ii) the date on which a first attempt at repair was made to correct the leak or improper condition;
- (iii) the date on which a leak or improper condition is repaired; and
- (iv) the date and instrument reading of the recheck procedure after a leak or improper condition is repaired.
- (2) If a wastewater component is equipped with an internal or external floating roof, it shall meet the following requirements.
- (A) All openings in an internal or external floating roof except for automatic bleeder vents (vacuum breaker vents) and rim space vents shall provide a projection below the liquid surface or be equipped with a cover, seal, or lid. Any cover, seal, or lid shall be in a closed (i.e., no visible gap) position at all times except when the opening is in actual use for its intended purpose.
- (B) Automatic bleeder vents (vacuum breaker vents) shall be closed at all times except when the roof is being floated off or landed on the roof leg supports.
- (C) Rim vents, if provided, shall be set to open only when the roof is being floated off the roof leg supports or at the manufacturer's recommended setting.
- (D) Any roof drain that empties into the stored liquid shall be provided with a slotted membrane fabric cover that covers at least 90% of the area of the opening.
- (E) There shall be no visible holes, tears, or other openings in any seal or seal fabric.
- (F) For external floating roof storage tanks, the secondary seals shall be the rim-mounted type (i.e., the seal shall be continuous from the floating roof to the tank wall). The accumulated area of gaps that exceed 1/8 in. (0.32 cm) in width between the secondary seal and tank wall shall be no greater than 1.0 in.² per foot (21 cm²/meter) of tank diameter.
- (3) In the Beaumont-Port Arthur and Bexar County [Beaumont/Port Arthur] areas [area], and after December 31, 2002 in the Houston-Galveston-Brazoria [Houston/Galveston] area, each properly operated biotreatment unit shall meet the following requirements.
- (A) The VOC content of the wastewater shall be reduced by 90% by weight; and
- (B) The average concentration of suspended biomass maintained in the aeration basin of the biotreatment unit shall equal or exceed 1.0 kilogram per cubic meter (kg/m³), measured as total suspended solids.
- (4) Any wastewater component that becomes subject to this division by exceeding the provisions of §115.147 of this title (relating to Exemptions) or an affected VOC wastewater stream as defined in §115.140 of this title (relating to Industrial Wastewater Definitions) will remain subject to the requirements of this division, even if the component later falls below those provisions, unless and until emissions are reduced to no more than the controlled emissions level existing prior to the implementation of the project by which

throughput or emission rate was reduced to less than the applicable exemption levels in §115.147 of this title; and

- (A) the project by which throughput or emission rate was reduced is authorized by any permit or permit amendment or standard permit or permit by rule required by Chapter 116 or Chapter 106 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification; and Permits by Rule). If a permit by rule is available for the project, compliance with this division must be maintained for 30 days after the filing of documentation of compliance with that permit by rule; or
- (B) if authorization by permit, permit amendment, standard permit, or permit by rule is not required for the project, the owner or operator has given the executive director 30 days' notice of the project in writing.

§115.144. Inspection and Monitoring Requirements.

The owner or operator of an affected source category within a plant in the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria [Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston] areas_shall comply with the following inspection and monitoring requirements.

- (1) All seals and covers used to comply with §115.142(1) of this title (relating to Control Requirements) shall be inspected according to the following schedules to ensure compliance with §115.142(1)(G) and (H) of this title:
- (A) initially and semiannually thereafter to ensure compliance with $\S115.142(1)(G)$ of this title; and
- (B) upon completion of repair to ensure compliance with §115.142(1)(G) and (H) of this title.
- (2) Floating roofs and internal floating covers used to comply with §115.142(2) of this title shall be subject to the following requirements. All secondary seals shall be inspected according to the following schedules to ensure compliance with §115.142(2)(E) and (F) of this title.
- (A) If the primary seal is vapor-mounted, the secondary seal gap area shall be physically measured annually to ensure compliance with §115.142(2)(F) of this title.
- (B) If the tank is equipped with a mechanical shoe or liquid-mounted primary seal, compliance with §115.142(2)(F) of this title may be determined by visual inspection.
- (C) All secondary seals shall be visually inspected semiannually to ensure compliance with §115.142(2)(E) and (F) of this title.
- (3) Monitors shall be installed and maintained as required by this section to measure operational parameters of any emission control device or other device installed to comply with §115.142 of this title. Such monitoring and parameters shall be sufficient to demonstrate proper functioning of those devices to design specifications, and include the monitoring and parameters listed in subparagraphs (A) (H) of this paragraph, as applicable. In lieu of the monitoring and parameters listed in subparagraphs (A) (H) of this paragraph, other monitoring and parameters may be approved or required by the executive director:
- (A) for an enclosed non-catalytic combustion device (including, but not limited to, a thermal incinerator, boiler, or process heater), continuously monitor and record the temperature of the gas stream either in the combustion chamber or immediately downstream before any substantial heat exchange;

- (B) for a catalytic incinerator, continuously monitor and record the temperature of the gas stream immediately before and after the catalyst bed;
- (C) for a condenser (chiller), continuously monitor and record the temperature of the gas stream at the condenser exit;
- (D) for a carbon adsorber, continuously monitor and record the VOC concentration of exhaust gas stream to determine if breakthrough has occurred. If the carbon adsorber does not regenerate the carbon bed directly in the control device (e.g., a carbon canister), the exhaust gas stream shall be monitored daily or at intervals no greater than 20% of the design replacement interval, whichever is greater, or as an alternative to conducting monitoring, the carbon may be replaced with fresh carbon at a regular predetermined time interval that is less than the carbon replacement interval that is determined by the maximum design flow rate and the VOC concentration in the gas stream vented to the carbon adsorber;
- (E) for a flare, meet the requirements specified in 40 Code of Federal Regulations §60.18(b) and Chapter 111 of this title (relating to Control of Air Pollution from Visible Emissions and Particulate Matter);
- (F) for a steam stripper, continuously monitor and record the steam flow rate, the wastewater feed mass flow rate, the wastewater feed temperature, and condenser vapor outlet temperature;
- (G) for a vapor combustor, continuously monitor and record the exhaust gas temperature either in the combustion chamber or immediately downstream before any substantial heat exchange. Alternatively, the owner or operator of a vapor combustor may consider the unit to be a flare and meet the requirements of subparagraph (E) of this paragraph; and
- (H) for vapor control systems other than those specified in subparagraphs (A) (G) of this paragraph, continuously monitor and record the appropriate operating parameters.
- (4) In the Beaumont-Port Arthur, Bexar County, and Houston-Galveston-Brazoria [Beaumont/Port Arthur and Houston/Galveston] areas, units used to comply with §115.142(3) of this title shall:
- (A) initially demonstrate a 90% reduction in VOCs by using the methods in §115.145 of this title (relating to Approved Test Methods); and
- (B) measure on a weekly basis the total suspended solids in the aeration basin of the biotreatment unit.
- (5) All water seal controls shall be inspected weekly to ensure that the water seal controls are effective in preventing ventilation, except that daily inspections are required for those seals that have failed three or more inspections in any 12-month period. Upon request by the executive director, EPA, or any local program with jurisdiction, the owner or operator shall demonstrate (e.g., by visual inspection or smoke test) that the water seal controls are properly designed and restrict ventilation.
- (6) All process drains not equipped with water seal controls shall be inspected monthly to ensure that all gaskets, caps, and/or plugs are in place and that there are no gaps, cracks, or other holes in the gaskets, caps, and/or plugs. In addition, all caps and plugs shall be inspected monthly to ensure that they are tightly-fitting.

§115.146. Recordkeeping Requirements.

The owner or operator of an affected source category within a plant in the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria Beaumont/Port Arthur, Dallas/Fort

- Worth, El Paso, and Houston/Galveston] areas shall comply with the following recordkeeping requirements.
- (1) Complete and up-to-date records shall be maintained as needed to demonstrate compliance with §115.142 and §115.143 of this title (relating to Control Requirements; and Alternate Control Requirements) which are sufficient to demonstrate the characteristics of wastewater streams and the qualification for any exemptions claimed under §115.147 of this title (relating to Exemptions).
- (2) Records shall be maintained of the results of any inspection or monitoring conducted in accordance with §115.144 of this title (relating to Inspection and Monitoring Requirements). Records shall be sufficient to demonstrate proper functioning of applicable control equipment to design specifications to ensure compliance with §115.142 and §115.143 of this title.
- (3) Records shall be maintained of the results of any testing conducted in accordance with §115.145 of this title (relating to Approved Test Methods).
- (4) All records shall be maintained at the plant for at least two years and be made available upon request to representatives of the executive director, EPA, or any local air pollution control agency having jurisdiction in the area.

§115.147. Exemptions.

The following exemptions apply in the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria [Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston] areas.

- (1) Any plant with an annual volatile organic compounds (VOC) loading in wastewater, as determined in accordance with §115.148 of this title (relating to Determination of Wastewater Characteristics), less than or equal to ten megagrams (Mg) (11.03 tons) is exempt from the control requirements of §115.142 of this title (relating to Control Requirements).
- (2) At any plant with an annual VOC loading in wastewater, as determined in accordance with §115.148 of this title greater than ten Mg (11.03 tons), any person who is the owner or operator of the plant may exempt from the control requirements of §115.142 of this title one or more affected VOC wastewater streams for which the sum of the annual VOC loading in wastewater for all of the exempted streams is less than or equal to ten Mg (11.03 tons).
- (3) Unless specifically required by this division (relating to Industrial Wastewater), any piece of equipment of a wastewater storage, handling, transfer, or treatment facility to which the control requirements of §115.142 of this title apply is exempt from the requirements of any other division of this chapter. This paragraph does not apply to pieces of equipment or components which are subject to the requirements of Subchapter D, Division 3, and/or Subchapter H of this chapter (relating to Fugitive Emission Control in Petroleum Refining, Natural Gas/Gasoline Processing, and Petrochemical Processes in Ozone Nonattainment Areas; and Highly-Reactive Volatile Organic Compounds).
- (4) If compliance with the control requirements of §115.142 of this title would create a safety hazard in a component of a wastewater storage, handling, transfer, or treatment facility, the owner or operator may request the executive director to exempt that component from the control requirements of §115.142 of this title. The executive director shall approve the request if justified by the likelihood and magnitude of the potential injury and if the executive director determines that reducing or eliminating the hazard is technologically or economically unreasonable based on the emissions reductions that would be achieved.

- (5) Wet weather retention basins are exempt from the requirements of this division.
- (6) Petroleum refineries in the <u>Beaumont-Port Arthur</u> [Beaumont/Port Arthur] area are exempt from the requirements of this division.
- (7) The following exemptions apply to petroleum refineries in the Houston-Galveston-Brazoria [Houston/Galveston] area.
- (A) Petroleum refineries are exempt from the requirement in §115.142 of this title that after December 31, 2002, the control requirements apply from the point of generation of an affected VOC wastewater stream until the affected VOC wastewater stream is either returned to a process unit, or is treated to reduce the VOC content of the wastewater stream by 90% by weight and also reduce the VOC content of the same VOC wastewater stream to less than 1,000 parts per million by weight, provided that petroleum refineries continue to apply the requirement in §115.142 of this title that the control requirements apply from the point of generation of an affected VOC wastewater stream until the affected VOC wastewater stream is either returned to a process unit, or is treated to remove VOC so that the wastewater stream no longer meets the definition of an affected VOC wastewater stream.
- (B) Junction boxes are exempt from the requirements of \$115.142(1)(D)(ii) of this title, provided that after December 31, 2002 they continue to comply with the requirements of \$115.142(1)(D)(i) of this title.
- (C) Properly operated biotreatment units are exempt from the requirements of §§115.142(3), 115.144(4), and 115.145(7) and (8) of this title (relating to Control Requirements; Inspection and Monitoring Requirements; and Approved Test Methods).
- §115.149. Counties and Compliance Schedules.
- (a) The owner or operator of each affected source category within a plant in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties shall continue to comply with this division (relating to Industrial Wastewater) as required by §115.930 of this title (relating to Compliance Dates).
- (b) The owner or operator of each affected source category within a plant 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 category in the Bexar County area subject to the requirements of this division shall comply with the requirements of this division by no later than January 1, 2025.

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

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DIVISION 6. BATCH PROCESSES

30 TAC §§115.161, 115.162, 115.164 - 115.167, 115.169

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The proposed amendments implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

§115.161. Applicability.

- (a) The provisions of §§115.162 115.167 of this title (relating to Control Requirements; Alternate Control Requirements; Determination of Emissions and Flow Rates; Approved Test Methods and Testing Requirements; Monitoring and Recordkeeping Requirements; and Exemptions) apply to vent gas streams at batch process operations in the Beaumont-Port Arthur, Bexar County, and Houston-Galveston-Brazo- $\frac{1}{1} \frac{\text{Beaumont/Port Arthur and Houston/Galveston}}{1} \text{ areas, as defined in }$ \$15.10 of this title (relating to Definitions), under the following Standard Industrial Classification (SIC) codes:
 - (1) 2821 (plastic resins and materials);
 - (2) 2833 (medicinals and botanicals);
 - (3) 2834 (pharmaceutical preparations);
 - (4) 2861 (gum and wood chemicals);
 - (5) 2865 (cyclic crudes and intermediates);
- (6) 2869 (industrial organic chemicals, not elsewhere classified); and
 - (7) 2879 (agricultural chemicals, not elsewhere classified).
- (b) Any batch process operation that is exempt under §115.167(1) or (2)(A) of this title is subject to the requirements of Division 2 of this subchapter (relating to Vent Gas Control).
- (c) Any batch process in the <u>Houston-Galveston-Brazoria</u> [Houston/Galveston] area in which a highly-reactive volatile organic compound, as defined in §115.10 of this title, is a raw material, intermediate, final product, or in a waste stream is subject to the requirements of Subchapter H of this chapter (relating to Highly-Reactive Volatile Organic Compounds) in addition to the applicable

requirements of either this division (relating to Batch Processes) or Division 2 of this subchapter, whichever of these two divisions applies.

§115.162. Control Requirements.

The owner or operator of each batch process operation in the Beaumont-Port Arthur, Bexar County, and Houston-Galveston-Brazoria [Beaumont/Port Arthur and Houston/Galveston] areas, shall comply with the following control requirements.

- (1) Reasonable available control technology (RACT) equations. The volatile organic compounds (VOC) mass emission rate from individual process vents or for process vent streams in aggregate within a batch process shall be reduced by 90% if the actual average flow rate value (in standard cubic feet per minute (scfm)) is below the flow rate (FR) value calculated using the applicable RACT equation for the volatility range (low, moderate, or high) of the material being emitted when the annual mass emission total (AE, in pounds per year) are input. The RACT equations, specific to volatility, are as follows:
 - (A) Low volatility: FR = 0.07(AE) 1821;
 - (B) Moderate volatility: FR = 0.031(AE) 494;
 - (C) High volatility: FR = 0.013(AE) 301.
- (2) Successive ranking scheme. For aggregate streams within a process, the control requirements must be evaluated with the following successive ranking scheme until control of a segment of unit operations is required or until all unit operations have been eliminated from the process pool.
- (A) If, for the process vent streams in aggregate, the value of FR calculated using the applicable RACT equation in paragraph (1) of this section is negative (i.e., less than zero), then the process is exempt from the 90% control requirements, and the successive ranking scheme of subparagraph (F) of this paragraph does not apply. This would occur if the mass annual emission rates are below the lower limits specified in §115.167(2)(A) of this title (relating to Exemptions).
- (B) If, for the process vent streams in aggregate, the actual average flow rate value (in scfm) is below the value of FR calculated using the applicable RACT equation in paragraph (1) of this section, then the overall emissions from the batch process must be reduced by 90%, and the successive ranking scheme of subparagraph (F) of this paragraph does not apply. The owner or operator has the option of selecting which unit operations are to be controlled and to what levels, provided that the overall control meets the specified level of 90%. Single units that qualify for exemption under §115.167(2)(B) of this title do not have to be controlled even if all units should qualify for this exemption.
- (C) If, for the process vent streams in aggregate, the actual average flow rate value (in scfm) is greater than the value of FR calculated using the applicable RACT equation in paragraph (1) of this section (and the calculated value of FR is a positive number), then the control requirements must be evaluated with the successive ranking scheme of subparagraph (F) of this paragraph until control of a segment of unit operations is required or until all unit operations have been eliminated from the process pool. Single units that qualify for exemption under §115.167(2)(B) of this title do not have to be included in the rankings and do not have to be controlled.
- (D) Sources that are required to be controlled to the level specified by RACT (i.e., 90%) will have an average flow rate that is below the flow rate specified by the applicable RACT equation in paragraph (1) of this section (when the source's annual emission total is input). The applicability criterion is implemented on a two-tier basis. First, single pieces of batch equipment corresponding to distinct unit

- operations shall be evaluated over the course of an entire year, regardless of what materials are handled or what products are manufactured in them. Second, equipment shall be evaluated as an aggregate if it can be linked together based on the definition of a process.
- (E) To determine applicability of a RACT option in the aggregation scenario, all the VOC emissions from a single process shall be summed to obtain the annual mass emission total, and the weighted average flow rate from each process vent in the aggregation shall be used as the average flow rate.
- (F) All unit operations in the batch process, as defined for the purpose of determining RACT applicability, shall be ranked in ascending order according to their ratio of annual emissions (pounds per year) divided by average flow rate (in scfm). Sources with the smallest ratios shall be listed first. This list of sources constitutes the "pool" of sources within a batch process. The annual emission total and average flow rate of the pool of sources shall then be compared against the RACT equations in paragraph (1) of this section to determine whether control of the pool is required.
- (i) If control is not required after the initial ranking, unit operations having the lowest annual emissions/average flow rate ratio shall then be eliminated one by one, and the characteristics of annual emission and average flow rate for the remaining pool of equipment must be evaluated with each successive elimination of a source from the pool.
- (ii) Control of the unit operations remaining in the pool to the specified level (i.e., 90%) shall be required once the aggregated characteristics of annual emissions and average flow rate have met the specified cutoffs. The owner or operator has the option of selecting which unit operations are to be controlled and to what levels, provided that the overall control meets the specified level of 90%.
- (3) Once-in, always-in. Any batch process operation that becomes subject to the provisions of this division by exceeding provisions of §115.167 of this title will remain subject to the provision of this division, even if throughput or emissions later fall below exemption limits, unless and until emissions are reduced to no more than the controlled emissions level existing before implementation of the project by which throughput or emission rate was reduced to less than the applicable exemption limits in §115.167 of this title; and
- (A) the project by which throughput or emission rate was reduced is authorized by any permit or permit amendment or standard permit or permit by rule required by Chapter 116 or Chapter 106 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification; and Permits by Rule). If a permit by rule is available for the project, compliance with this division must be maintained for 30 days after the filing of documentation of compliance with that permit by rule; or
- (B) if authorization by permit, permit amendment, standard permit, or permit by rule is not required for the project, the owner/operator has given the executive director 30 days' notice of the project in writing.
- §115.164. Determination of Emissions and Flow Rates.
- The owner or operator of each batch process operation in the Beaumont-Port Arthur, Bexar County, and Houston-Galveston-Brazoria [Beaumont/Port Arthur and Houston/Galveston] areas shall determine the mass emissions and flow rates as follows.
- (1) Determination of Uncontrolled Annual Emission Total. The owner or operator shall determine the annual mass emissions total by using engineering estimates of the uncontrolled emissions from a process vent or group of process vents within a batch process train and multiplying by the potential or permitted number of batch

cycles per year. Engineering estimates must follow the guidance contained in EPA's Control of Volatile Organic Compound Emissions from Batch Processes - Alternative Control Techniques Information Document (EPA-453/R-93-020, February 1994). Alternatively, if an emissions measurement is used to measure vent emissions, the measurement must conform with the requirements of measuring incoming mass flow rate of volatile organic compounds as specified in §115.165 of this title (relating to Approved Test Methods and Testing Requirements).

(2) Determination of Average Flow Rate. To obtain a value for average flow rate, the owner or operator may choose to measure the flow rates or to estimate the flow rates using the estimation methods contained in EPA's Control of Volatile Organic Compound Emissions from Batch Processes - Alternative Control Techniques Information Document (EPA-453/R-93-020, February 1994). For existing manifolds, the average flow rate may be the flow rate that was assumed in the design.

§115.165. Approved Test Methods and Testing Requirements.

The owner or operator of each batch process operation in the Beaumont-Port Arthur, Bexar County, and Houston-Galveston-Brazoria [Beaumont/Port Arthur and Houston/Galveston] areas, shall comply with the following.

- (1) Performance testing conditions. For the purpose of determining compliance with the control requirements of this division (relating to Batch Processes), the process unit shall be run at a scenario that represents maximum batch rates (e.g., three batches per day, 1,000 lbs per batch, etc.) during any performance test.
- (2) Test methods. The owner or operator of each batch process operation shall use the following methods to determine compliance with the percent reduction efficiency requirement of §115.162 of this title (relating to Control Requirements).

(A) Flow rate.

- (i) Test Methods 1 or 1A (40 Code of Federal Regulations (CFR) 60, Appendix A) as appropriate, shall be used for selection of the sampling sites if the flow rate measuring device is a rotameter. No traverse is necessary when the flow measuring device is an ultrasonic probe. The control device inlet sampling sites for determination of vent stream volatile organic compounds (VOC) composition reduction efficiency shall be before the control device and after the control device.
- (ii) Test Methods 2, 2A, 2C, or 2D (40 CFR 60, Appendix A) as appropriate, shall be used for determination of gas stream volumetric flow rate. Flow rate measurements shall be made continuously.
- (B) Concentration of VOC. Test Method 18 (40 CFR 60, Appendix A) (gas chromatography) or Test Method 25A (40 CFR 60, Appendix A) (flame ionization) shall be used to determine the concentration of VOC in the control device inlet and outlet.
- (i) The sampling time for each run shall be the entire length of the batch cycle, during which readings shall be taken:
 - (I) continuously if Method 25A is used; or
- (II) as often as is possible using Method 18, with a maximum of one-minute intervals between measurements throughout the batch cycle.
- (ii) The emission rate of the process vent or inlet to the control device shall be determined by combining continuous concentration and flow rate measurements at simultaneous points throughout the batch cycle.

- (iii) The mass flow rate of the control device outlet shall be determined by combining continuous concentration and flow rate measurements at simultaneous points throughout the batch cycle.
- (iv) The efficiency of the control device shall be determined by integrating the mass flow rates obtained in clauses (ii) and (iii) of this subparagraph over the time of the batch cycle, and dividing the difference in inlet and outlet mass flow totals by the inlet mass flow total
- (C) Performance requirements for flares and vapor combustors.
- (i) For flares, the performance test requirements of 40 CFR 60.18(b) shall apply.
- (ii) For vapor combustors, the owner or operator may consider the unit to be a flare and meet the performance test requirements of 40 CFR 60.18(b).
- (iii) Compliance with the requirements of 40 CFR 60.18(b) will be considered to represent 98% control of the VOC in the flare inlet.
- (D) Minor modifications. Minor modifications to these test methods may be used, if approved by the executive director.
- (E) Alternate test methods. Test methods other than those specified in subparagraphs (B) and (C) of this paragraph may be used if validated by 40 CFR 63, Appendix A, Test Method 301 (effective December 29, 1992). For the purposes of this paragraph, substitute "executive director" each place that Test Method 301 references "administrator."

§115.166. Monitoring and Recordkeeping Requirements.

The owner or operator of each batch process operation in the Beaumont-Port Arthur, Bexar County, and Houston-Galveston-Brazoria [Beaumont/Port Arthur and Houston/ Galveston] areas shall maintain the following information for at least five years at the plant, as defined by its air quality account number, except that the five-year record retention requirement does not apply to records generated before December 31, 2000. The owner or operator shall make the information available upon request to representatives of the executive director, EPA, or any local air pollution control agency having jurisdiction in the area:

- (1) Vapor control systems. For vapor control systems used to control emissions from batch process operations, records of appropriate parameters to demonstrate compliance, including:
 - (A) continuous monitoring and recording of:
- (i) for a direct-flame incinerator, the exhaust gas temperature in the firebox or in the ductwork immediately downstream of the firebox before any substantial heat exchange. The temperature monitoring device shall have an accuracy of ± 0.5 degrees Celsius, or alternatively, $\pm 1.0\%$;
- (ii) for a catalytic incinerator, the exhaust gas temperature immediately before and after the catalyst bed. The temperature monitoring device shall have an accuracy of ± 0.5 degrees Celsius, or alternatively, $\pm 1.0\%$;
 - (iii) for an absorber, either:
- (I) the scrubbing liquid temperature. The temperature monitoring device shall have an accuracy of $\pm 1.0\%$ of the temperature being monitored in degrees Celsius, or alternatively, ± 0.02 specific gravity unit; or

- (II) the concentration level of volatile organic compounds (VOC) exiting the recovery device based on a detection principle such as infrared, photoionization, or thermal conductivity;
 - (iv) for a condenser or refrigeration system, either:
- (I) the condenser exit temperature. The temperature monitoring device shall have an accuracy of $\pm 1.0\%$ of the temperature being monitored in degrees Celsius, or alternatively, ± 0.5 degrees Celsius; or
- (II) the concentration level of VOC exiting the recovery device based on a detection principle such as infrared, photoionization, or thermal conductivity;
- (v) for a carbon adsorption system, as defined in §101.1 of this title (relating to Definitions), either:
- (I) steam flow (using an integrating steam flow monitoring device) and the carbon bed temperature. The steam flow monitor shall have an accuracy of $\pm 10\%$. The temperature monitor shall have an accuracy of $\pm 1.0\%$ of the temperature being monitored in degrees Celsius, or ± 0.5 degrees Celsius, whichever is greater; or
- (II) the concentration level of VOC exiting the recovery device based on a detection principle such as infrared, photoionization, or thermal conductivity;
- (vi) for a pressure swing adsorption unit that is the final recovery device, the temperature of the bed near the inlet and near the outlet. The temperature monitoring device shall have an accuracy of $\pm 1.0\%$ of the temperature being monitored in degrees Celsius, or ± 0.5 degrees Celsius; and
- (vii) for a vapor combustor, the exhaust gas temperature in the firebox or in the ductwork immediately downstream of the firebox before any substantial heat exchange. The temperature monitoring device shall have an accuracy of ± 0.5 degrees Celsius, or alternatively, $\pm 1.0\%$. Alternatively, the owner or operator of a vapor combustor may consider the unit to be a flare and meet the requirements of subparagraph (B) of this paragraph;
- (B) for flares, the requirements specified in 40 Code of Federal Regulations §60.18(b) and Chapter 111 of this title (relating to Control of Air Pollution from Visible Emissions and Particulate Matter); and
- (C) for vapor control systems other than those specified in subparagraphs (A) and (B) of this paragraph, records of appropriate operating parameters.
- (2) Process vents. A record of the following emission stream parameters for each process vent contained in the batch process:
- (A) the annual mass emission total and documentation verifying these values. If emission estimate equations are used, the documentation shall be the calculations coupled with the expected or permitted (if available) number of emission events per year; and
- (B) the average flow rate in standard cubic feet per minute and documentation verifying these values.
- (3) Performance test monitoring parameters. Records of the following parameters required to be measured during a performance test required under §115.165 of this title (relating to Approved Test Methods and Testing Requirements) and required to be monitored under paragraph (1) of this section:
- (A) where an owner or operator seeks to demonstrate compliance with §115.162 of this title (relating to Control Requirements) through use of either a direct-flame or catalytic incinerator, the

- average firebox temperature of the incinerator (or the average temperature upstream and downstream of the catalyst bed for a catalytic incinerator), measured continuously and averaged over the same time period as the performance test;
- (B) where an owner or operator seeks to demonstrate compliance with §115.162 of this title through use of a smokeless flare, the flare design (i.e., steam-assisted, air-assisted, or nonassisted), all visible emissions readings, heat content determinations, flow rate measurements, and exit velocity determinations made during the performance test; continuous flare pilot flame monitoring; and all periods of operations during which the pilot flame is absent; and
- (C) where an owner or operator seeks to demonstrate compliance with §115.162 of this title:
- (i) with an absorber as the final control device, the exit specific gravity (or alternative parameter which is a measure of the degree of absorbing liquid saturation, if approved by the executive director) and average exit temperature of the absorbing liquid measured continuously and averaged over the same time period as the performance test (both measured while the vent stream is routed normally);
- (ii) with a condenser as the control device, the average exit (product side) temperature measured continuously and averaged over the same time period as the performance test while the vent stream is routed normally;
- (iii) with a carbon adsorption system as the control device, the total steam mass flow measured continuously and averaged over the same time period as the performance test (full carbon bed cycle), temperature of the carbon bed after regeneration (and within 15 minutes of completion of any cooling cycle(s)), and duration of the carbon bed steaming cycle (all measured while the vent stream is routed normally);
- (iv) the concentration level or reading indicated by an organic monitoring device at the outlet of the absorber, condenser, or carbon adsorption system, measured continuously and averaged over the same time period as the performance test while the vent stream is routed normally; and
- (v) with a pressure swing adsorption unit as the final recovery device, the temperature of the bed near the inlet and near the outlet. The temperature monitoring device shall have an accuracy of $\pm 1.0\%$ of the temperature being monitored in degrees Celsius, or ± 0.5 degrees Celsius.

§115.167. Exemptions. The following exemptions apply.

[-]

- (1) Batch process operations at an account that has total volatile organic compound (VOC) emissions (determined before control but after the last recovery device) of less than the following rates from all stationary emission sources included in the account are exempt from the requirements of this division (relating to Batch Processes), except for §115.161(b) and (c) of this title (relating to Applicability):
- (A) 50 tons per year (tpy) in the Beaumont-Port Arthur area; [and]
 - (B) 25 tpy in the Houston-Galveston-Brazoria area; and

(C) 100 tpy in the Bexar County area.

(2) The following are exempt from the requirements of this division, except for §§115.161(b) and (c), 115.164, and 115.166(2) and (3) of this title (relating to Applicability; Determination of Emissions and Flow Rates; and Monitoring and Recordkeeping Requirements).

- (A) Combined vents from a batch process train that have the following annual mass emissions total. Figure: 30 TAC \$115.167(2)(A) (No change.)
- (B) Single unit operations that have an annual mass emissions total of 500 pounds per year or less.
- *§115.169. Counties and Compliance Schedules.*
- (a) The owner or operator of each batch process operation in Hardin, Jefferson, and Orange Counties at an account that has total volatile organic compound (VOC) emissions (determined before control but after the last recovery device) of 100 tons per year or more shall continue to comply with this division (relating to Batch Processes) as required by §115.930 of this title (relating to Compliance Dates).
- (b) The owner or operator of each batch process operation in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties shall demonstrate compliance with this division as soon as practicable, but no later than December 31, 2002. All batch process operations subject to this division in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties must continue to comply with the requirements of Division 2 of this subchapter (relating to Vent Gas Control) until these batch process operations are in compliance with the requirements of this division.
- (c) The owner or operator of each batch process operation in Hardin, Jefferson, and Orange Counties at an account that has total VOC emissions (determined before control but after the last recovery device) of 50 tons per year or more but less than 100 tons per year shall demonstrate compliance with this division as soon as practicable, but no later than December 31, 2006. All batch process operations subject to this division in Hardin, Jefferson, and Orange Counties must continue to comply with the requirements of Division 2 of this subchapter until these batch process operations are in compliance with the requirements of this division.
- (d) The owner or operator of each batch process operation in the Bexar County area at an account that has total VOC emissions (determined before control but after the last recovery device) of 100 tons per year or more shall demonstrate compliance with the requirements of this division no later January 1, 2025.

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

Filed with the Office of the Secretary of State on December 4, 2023.

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Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
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DIVISION 7. OIL AND NATURAL GAS SERVICE IN OZONE NONATTAINMENT AREAS

30 TAC §§115.170 - 115.173, 115.177, 115.183 Statutory Authority

The amended and new rules are proposed under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The amended and new rules are proposed amendments implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

§115.170. Applicability.

The requirements in this division apply to the following equipment in the Bexar County, Dallas-Fort Worth, and Houston-Galveston-Brazoria areas as defined in §115.10 of this title (relating to Definitions):

- (1) any centrifugal compressor with wet seals and any reciprocating compressor located between the wellhead, but not including the well site, and point of custody transfer to a natural gas transmission or storage operation;
- (2) any pneumatic controller located from the wellhead to a natural gas processing plant, including the natural gas processing plant, or point of custody transfer to a crude oil pipeline;
- (3) any pneumatic pump located at a well site or a natural gas processing plant;
- (4) any storage tank located from the well site to the point of custody transfer to an oil pipeline or to the point of natural gas distribution; and
- (5) any fugitive emission component in volatile organic compounds service located at a crude oil or natural gas production well site, natural gas processing plant, or gathering and boosting station.

§115.171. Definitions.

Unless specifically defined in the Texas Clean Air Act (Texas Health and Safety Code, Chapter 382) or in §§3.2, 101.1, or 115.10 of this title (relating to Definitions, respectively), the terms in this division have the meanings commonly used in the field of air pollution control. The following meanings apply in this division unless the context clearly indicates otherwise.

(1) Centrifugal compressor--A piece of equipment for raising the pressure of natural gas by drawing in low-pressure natural gas

and discharging significantly higher-pressure natural gas by means of mechanical rotating vanes or impellers. Screw, sliding vane, and liquid ring compressors are not centrifugal compressors.

- (2) Closure device--A piece of equipment that covers an opening in the roof of a fixed roof storage tank and either can be temporarily opened or has a component that provides a temporary opening. Examples of closure devices include, but are not limited to, thief hatches, pressure relief valves, pressure-vacuum relief valves, and access hatches.
- (3) Difficult-to-monitor--Equipment that cannot be inspected without elevating the inspecting personnel more than two meters above a support surface.
- (4) Fugitive emission components--Except for vents as defined in §101.1 of this title (relating to Definitions) and sampling systems, equipment as defined in subparagraphs (A) and (B) of this paragraph that has the potential to leak volatile organic compounds (VOC) emissions.
- (A) At a natural gas processing plant, equipment considered fugitive components include, but are not limited to, any pump, pressure relief device, open-ended valve or line, valve, flange, or other connector that is in VOC service or wet gas service, and any closed vent system or control device not subject to another section in this division that specifies one or more instrument monitoring requirements for the system or device. A compressor or sampling connection system that is exempt from the fugitive monitoring requirements in §115.352 and §115.354 of this title (relating to Fugitive Emission Control in Petroleum Refining, Natural Gas/Gasoline Processing, and Petrochemical Processes in Ozone Nonattainment Areas) on or before December 31, 2022 is excluded as a fugitive monitoring component under this subparagraph.
- (B) At a well site or gathering and boosting station from equipment considered fugitive emissions components include, but are not limited to, valves, compressors, connectors, pressure relief devices, open-ended lines, flanges, instruments, meters, or other openings that are not on a storage tank subject to §115.175 of this title (relating to Storage Tank Control Requirements), and any closed vent system or control device not subject to another section in this division that specifies one or more instrument monitoring requirements for the system or device. A compressor seal at a gathering and boosting station that is addressed in §115.173 of this title (relating to Compressor Control Requirements) is not included as a fugitive emission component.
- (5) Gathering and boosting station--Any permanent combination of one or more compressors that collects natural gas from well sites and moves the natural gas at increased pressure into gathering pipelines to a natural gas processing plant or into the pipeline. The combination of one or more compressors located at a well site, or located at an onshore natural gas processing plant, is not a gathering and boosting station.
- (6) Heavy liquid service-- Equipment is in heavy liquid service if the heavy liquid process fluid contains VOC having a true vapor pressure equal to or less than 0.044 pounds per square inch absolute (psia) (0.3 kiloPascals) at 68 degrees Fahrenheit (20 degrees Celsius). [An equipment is in heavy liquid service if the weight percent evaporated is 10.0% or less at 302 degrees Fahrenheit (150 degrees Celsius) as determined by ASTM Method D86-96.]
- (7) Light liquid service--A piece of equipment contains a liquid that meets the following conditions.
- (A) The vapor pressure of one or more of the organic components is greater than 1.2 inches water at 68 degrees Fahrenheit (0.3 kiloPascals at 20 degrees Celsius).

- (B) The total concentration of the pure organic components having a vapor pressure greater than 1.2 inches water at 68 degrees Fahrenheit (0.3 kiloPascals at 20 degrees Celsius) is equal to or greater than 20.0% by weight.
 - (C) The fluid is a liquid at operating conditions.
- (D) An equipment is in light liquid service if the weight percent evaporated is greater than 10.0% at 302 degrees Fahrenheit (150 degrees Celsius) as determined by ASTM Method D86-96.
- (8) Natural gas processing plant--any processing site engaged in the extraction of natural gas liquids from field gas, fractionation of mixed natural gas liquids to natural gas products, or both. A Joule-Thompson valve, a dew point depression valve, or an isolated or standalone Joule-Thompson skid is not a natural gas processing plant.
- (9) Pneumatic controller--An automated instrument that is actuated by a compressed gas and is used to maintain a process condition such as liquid level, pressure, pressure differential and temperature. When actuated by natural gas, pneumatic controllers are characterized primarily by their emission characteristics.
- (A) Continuous bleed pneumatic controllers receive a continuous flow of pneumatic natural gas supply and are used to modulate flow, liquid level, or pressure. Gas is vented continuously at a rate that may vary over time. Continuous bleed controllers are further subdivided into two types based on their bleed rate, which for the purposes of this section means the rate at which natural gas is continuously vented from a pneumatic controller and measured in standard cubic feet per hour (scfh):
- (i) low bleed controllers have a bleed rate of less than or equal to 6.0 scfh; and
- (ii) high bleed controllers have a bleed rate of greater than 6.0 scfh.
- (B) Intermittent bleed or snap-acting pneumatic controllers release natural gas only when they open or close a valve or as they throttle the gas flow.
- (C) Zero-bleed pneumatic controllers do not bleed natural gas to the atmosphere. These pneumatic controllers are self-contained devices that release gas to a downstream pipeline instead of to the atmosphere.
- (10) Pneumatic pump--A positive displacement pump powered by pressurized natural gas that uses the reciprocating action of flexible diaphragms in conjunction with check valves to pump a fluid.
- (11) Reciprocating compressor--A piece of equipment that increases the pressure of a natural gas by positive displacement, employing linear movement of the driveshaft.
- (12) Rod packing--A series of flexible rings in machined metal cups that fit around the reciprocating compressor piston rod to create a seal limiting the amount of compressed natural gas that escapes to the atmosphere, or other mechanism that provides the same function.
 - (13) Route to a process--The emissions are:
- (A) conveyed via a closed vent system to any enclosed portion of a process where it is predominantly recycled or consumed in the same manner as a material that fulfills the same function in the process or is transformed by chemical reaction into materials that are not regulated materials or incorporated into a product; or
 - (B) recovered.

- (14) Storage tank--A tank, stationary vessel, or a container that contains an accumulation of crude oil, condensate, intermediate hydrocarbon liquids, or produced water, and that is constructed primarily of non-earthen materials.
- (15) Unsafe-to-monitor--Equipment that exposes monitoring personnel to an imminent or potential danger as a consequence of conducting an inspection.
- (16) Vapor recovery unit--A device that transfers hydrocarbon vapors to a fuel liquid or gas system, a sales liquid or gas system, or a liquid storage tank.
- valves protruding above the earth's surface for an oil and/or natural gas well. The wellhead ends where the flow line connects to a wellhead valve. The wellhead does not include other equipment at the well site except for any conveyance through which gas is vented to the atmosphere.
- (18) [(17)] Well site--A parcel of land with one or more surface sites, which means sites with any combination of one or more graded pad sites, gravel pad sites, foundations, platforms, or the immediate physical location upon which equipment is physically affixed, that are constructed for the drilling and subsequent operation of one or more oil, natural gas, or injection wells. The meaning of "site" and "sites" in this definition is limited to this division.
- (19) [(18)] Wet gas service--A piece of equipment which contains or contacts the field gas before the extraction step at a gas processing plant process unit.

§115.172. Exemptions.

- (a) The following exemptions apply to the equipment specified in §115.170 of this title (relating to Applicability) that is subject to this division. Records to support exemption qualification must be kept in accordance with the requirements in §115.180 of this title (relating to Recordkeeping Requirements). Additional requirements apply where specified.
- (1) Boilers and process heaters are exempt from the testing requirements of §115.179 of this title (relating to Approved Test Methods and Testing Requirements) and the monitoring requirements of §115.178 of this title (relating to Monitoring and Inspection Requirements) if:
- (A) a vent gas stream from equipment subject to this division is introduced with the primary fuel or is used as the primary fuel; or
- (B) the boiler or process heater has a design heat input capacity equal to or greater than 44 megawatts or 149.6 million British thermal units per hour.
- (2) Any pneumatic pump at a well site that operates fewer than 90 days per calendar year is exempt from the requirements of this division.
- (3) Except for the control requirements in §115.175(b) or (c) of this title (relating to Storage Tank Control Requirements), any storage tank that meets one of the following conditions is exempt from the requirements in this division:
- (A) a storage tank with the potential to emit of less than 6.0 tons per year of volatile organic compounds (VOC) emissions, which must be calculated in accordance with §115.175(c)(2) of this title;
- (B) a storage tank with uncontrolled actual VOC emissions of less than 4.0 tons per year, which must be calculated in accordance with §115.175(c)(1) of this title;

- (C) a process vessel such as a surge control vessel, bottom receiver, or knockout vessel;
- (D) a pressure vessel designed to operate in excess of 29.7 pounds per square inch absolute and designed to operate without emissions to the atmosphere; and
- (E) a vessel that is skid-mounted or permanently attached to something that is mobile (such as trucks, railcars, barges, or ships) and is intended to be located at a site for less than 180 consecutive days.
- (4) Fugitive emission components at a natural gas processing plant that contact a process fluid that contains less than 1.0% VOC by weight are exempt from the requirements of this division.
- (5) All pumps and compressors, other than those specified in §115.173 and §115.174 of this title (relating to Compressor Control Requirements and Pneumatic Controller and Pump Controller Requirements, respectively), that are equipped with a shaft sealing system that prevents or detects emissions of VOC from the seal are exempt from the fugitive monitoring requirements of §115.177 of this title (relating to Fugitive Emission Component Requirements). These seal systems may include, but are not limited to, dual pump seals with barrier fluid at higher pressure than process pressure, seals degassing to vent control systems kept in good working order, or seals equipped with an automatic seal failure detection and alarm system.
- (6) At a natural gas processing plant, components that are insulated, making them inaccessible to monitoring with a hydrocarbon gas analyzer, are exempt from the hydrocarbon gas analyzer monitoring requirements of §115.177 and §115.178 of this title. Inspections using audio, visual, and olfactory means must still be conducted in accordance with the appropriate requirements of §115.177 and §115.178 of this title.
- (7) At a natural gas processing plant, sampling connection systems, as defined in 40 Code of Federal Regulations (CFR) §63.161 (as amended January 17, 1997 (62 FR 2788)), that meet the requirements of 40 CFR §63.166(a) and (b) (as amended June 20, 1996 (61 FR 31439)) are exempt from the requirements of this division, except from the recordkeeping requirement in §115.180(2) of this title.
- (8) Fugitive emission components located at a well site with one or more wells that produce on average 15-barrel equivalents or less per day are exempt from the requirements of this division, except from the recordkeeping requirement in §115.180(2) of this title.
- (9) Natural gas processing plant pump, valve and connector fugitive components that contact a heavy liquid process fluid containing VOC having a true vapor pressure equal to or less than 0.044 pounds per square inch absolute (psia) (0.3 kiloPascals) at 68 degrees Fahrenheit (20 degrees Celsius) are exempt from the instrument monitoring (with a hydrocarbon gas analyzer) requirements of §115.177(b) of this title (relating to Monitoring and Inspection Requirements) if the components are inspected by visual, audio, and/or olfactory means according to the minimum inspection schedules specified in §115.177(b) of this title and the following procedures are followed when the inspection indicates that a leak may be present.
- (A) The owner or operator shall monitor the heavy liquid service component within five days by the method specified in 115.177(b) and shall comply with the requirements of subparagraphs (B) through (D) of this paragraph.
- (B) The owner or operator shall eliminate the visual, audible, olfactory, or other indication of a potential leak within five calendar days of detection.

- (C) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.
- (i) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in §115.177(b).
- (ii) The first attempt at repair shall be made no later than 5 calendar days after each leak is detected.
- (D) First attempts at repair include, but are not limited to, the best operating practices described under 40 CFR $\S60.482-2a(c)(2)$ and $\S60.482-7a(c)$.
- (10) Natural gas processing plant pressure relief devices routed through a closed vent system to a control device, process or fuel gas system are exempt from the instrument monitoring (with a hydrocarbon gas analyzer) requirements of §115.177(b) of this title (relating to Monitoring and Inspection Requirements) if the components are inspected by visual, audio, and/or olfactory means according to the minimum inspection schedules specified in §115.177(b) of this title and the procedures specified in §115.172(a)(10)(A), (B), (C) and (D).
- (A) The owner or operator shall monitor the light liquid service component within five days by the method specified in 115.177(b) and shall comply with the requirements of paragraphs (B) through (D) of this subsection.
- (B) The owner or operator shall eliminate the visual, audible, olfactory, or other indication of a potential leak within five calendar days of detection.
- (C) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.
- (i) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in 115.177(b).
- (ii) The first attempt at repair shall be made no later than 5 calendar days after each leak is detected.
- (D) First attempts at repair include, but are not limited to, the best operating practices described under 40 CFR $\S60.482-2a(c)(2)$ and $\S60.482-7a(e)$.
- (b) Equipment used only for materials outside the product stream from a crude oil or natural gas production well or after the point of custody transfer to a crude oil or natural gas distribution or storage segment is exempt from the requirements of this division.
- (c) After the appropriate compliance date in §115.183 of this title (relating to Compliance Schedules) and upon the date that the wet seals on a centrifugal compressor subject to subsection (a) of this section are retrofitted with a dual mechanical or other equivalent dry seal control system, the compressor no longer meets the applicability of this division.
- (d) After the appropriate compliance date in §115.183 of this title, if changes are made to a pneumatic pump or controller are such that the pump or controller does not meet the appropriate definitions in this division, the requirements of §115.174(a) or (b) of this title no longer apply. The change in applicability status must be documented in accordance with the recordkeeping requirements in §115.180 of this title. For example, a pneumatic controller converted to a solar-powered controller no longer meets the applicability of a pneumatic controller regulated by this division.
- (e) Well sites that only contain one or more wellheads and do not contain additional equipment are exempt from the monitoring requirements of §115.177.

- (f) Pressure relief valves vented to a process, fuel gas system, or equipped with a closed vent system routed to a control device that meet the requirements of §115.175(2) and (4) are exempt from the monitoring requirements of §115.177, provided the closed vent system is monitored in accordance with §115.177.
- §115.173. Compressor Control Requirements.
- (a) Owners or operators of centrifugal compressors with wet seal fluid degassing systems must comply with the following requirements.
- (1) Vapors must be routed from the wet seal fluid degassing system through a closed vent system that is designed and operated under normal operations to route all gases, vapors, and/or fumes from the wet seal fluid degassing system to a control device that meets the requirements of subsection (c) of this section. The closed vent system must operate under negative pressure at the inlet for vapors.
- (2) The compressor must be equipped with a seal cover that forms a continuous impermeable barrier over the entire liquid surface area, and the cover must remain in a sealed position (e.g., covered by a gasketed lid or cap) except during periods necessary to inspect, maintain, repair, or replace equipment.
- (b) Owners or operators of reciprocating compressors must comply with paragraph (1), (2) or (3) of this subsection.
- (1) Replace the compressor rod packing on or before the compressor has operated for 26,000 hours from the most recent rod packing replacement. The number of hours the compressor operates must be continuously recorded beginning on the appropriate compliance date in §115.183 of this title (relating to Compliance Schedule).
- (2) Replace the compressor rod packing within 36 months from the most recent rod packing replacement beginning from the appropriate compliance date in §115.183 of this title.
- (3) Operate a closed vent system under negative inlet pressure that captures and routes rod packing vapor to a control device that meets the requirements of subsection (c) of this section.
- (c) A control device, other than a device specified in paragraphs (3) or (4) of this subsection, may be used and must maintain a VOC control efficiency of at least 95% or a VOC concentration of equal to or less than 275 parts per million by volume (ppmv), as propane, on a wet basis corrected to 3% oxygen. The 95% VOC control efficiency and 275 ppmv VOC concentration are calculated from the gas stream at the control device outlet.
- (1) The control device must be operated at all times when gases, vapors, or fumes are vented from the closed vent system to the control device. For a boiler or process heater used as the control device, the vent gas stream must be introduced into the flame zone of the boiler or process heater. Multiple vents may be routed to the same control device. Control devices and closed vent systems must comply with §115.178 of this title (relating to Monitoring and Inspection Requirements) and §115.179 of this title (relating to Approved Test Methods and Testing Requirements).
- (2) Control devices must operate with no visible emissions, as determined through a visible emissions test conducted according to United States Environmental Protection Agency (EPA) Method 22, 40 Code of Federal Regulations (CFR) Part 60, Appendix A-7, Section 11, except for periods not to exceed a total of one minute during any 15-minute observation period.
- (3) A flare may be used and must be designed and operated in accordance with 40 CFR §60.18(b) (f) (as amended through December 22, 2008 (73 FR 78209)). The flare must be lit at all times

when VOC vapors are routed to the flare. Multiple vents may be routed to the same control device.

- (4) VOC emissions may be routed to a process if the emissions are compatible with the process and would be retained within the process. Routing to a process is considered equivalent to a 95% control efficiency.
- (5) A bypass installed on a closed vent system able to divert any portion of the flow from entering a control device or routing to a process must be in compliance with subparagraphs (A) or (B) of this paragraph.
- (A) A flow indicator must be installed, calibrated, and maintained at the inlet of each bypass. The flow indicator must take a reading at least once every 15 minutes and initiate an alarm notifying operators to take prompt remedial action when bypass flows are present.
- (B) Each bypass valve must be secured in the non-diverting position using a car-seal or a lock-and-key type configuration.
- §115.177. Fugitive Emission Component Requirements.
- (a) The owner or operator of equipment with fugitive emission components shall create a written plan and maintain such plan in accordance with §115.180 of this title (relating to Recordkeeping Requirements) that details information about the site subject to this section including, but not limited to, the following:
- (1) the identification of each fugitive emission component grouping required to be monitored;
- (2) the fugitive emission component designated as unsafeto-monitor or difficult-to-monitor;
- (3) the exemptions or exceptions that apply to any fugitive emission component;
 - (4) the method of monitoring; and
- (5) the monitoring survey schedules of the fugitive emission components in paragraph (1) or (2) of this subsection.
- (b) The owner or operator shall monitor each affected fugitive emission component and calibrate the hydrocarbon gas analyzer instrumentation in accordance with procedures specified by the United States Environmental Protection Agency (EPA) Method 21 in 40 Code of Federal Regulations (CFR) Part 60, Appendix A-7. The owner or operator may elect to use the alternative work practice in §115.358 of this title (relating to Alternative Work Practice) for any fugitive emission component, as specified in paragraph (11) of this subsection.
- (1) Except as provided in paragraph (5)(C) of this subsection, no component at a natural gas processing plant is allowed to have a volatile organic compounds (VOC) leak for more than five calendar days without a first attempt at repair after the leak is detected and must be repaired no later than 15 calendar days after the leak is found that meets the following:
- (A) for pump seals in light-liquid service, a leak definition of 5,000 parts per million by volume (ppmv) for a pump used for any polymerizing monomer and 2,000 ppmv for all other pumps;
- (B) for valves, flanges, connectors, pressure relief devices, pumps in heavy-liquid service, sampling connections, and process drains, a leak definition of 500 ppmv; and
- (C) for compressors, a leak definition of 10,000 ppmv or exuding of process fluid based on sight, smell, or sound.
- (2) Except as provided in paragraph (5)(C) of this subsection, no fugitive emission component at a well site or gathering and

- boosting station is allowed to have a VOC leak of equal to or greater than 500 ppmv for more than five calendar days without a first attempt at repair after the leak is detected and must be repaired no later than 15 calendar days after the leak is found.
- (3) Except as specified in subsection (c) of this section, the owner or operator shall conduct monitoring according to the following schedules.
- (A) The owner or operator of a natural gas processing plant shall monitor annually to detect leaks of VOC emissions from all connectors.
- (B) Except as provided in subparagraph (E) of this paragraph, the owner or operator shall monitor to detect leaks of VOC emissions from all:
- (i) fugitive emission components at gathering and boosting stations quarterly; and
- (ii) fugitive emission components at well sites semiannually.
- (C) The owner or operator shall monitor quarterly to detect VOC emissions leaks from all:
- (i) pump seals at a natural gas processing plant that are not in light-liquid service; and
- (ii) fugitive emission components at a natural gas processing plant not specified elsewhere in this paragraph.
- (D) The owner or operator shall monitor monthly to detect leaks of VOC emissions at a natural gas processing plant from all:
 - (i) pressure relief valves in gaseous service;
 - (ii) pump seals in light-liquid service; and
- (iii) accessible fugitive emission components in gas/vapor and light-liquid service, except for connectors.
- (E) In addition to monitoring in subparagraphs (B)(i), (B)(ii), and (D)(i) of this paragraph, the owner or operator shall monitor pressure relief valves within 24 hours of a release.
- (F) At a natural gas processing plant, the owner or operator shall visually inspect for indications of dripping liquid each pump in light liquid service weekly. If evidence of a leak is found, the owner or operator shall monitor each leaking pump in accordance with Method 21 in 40 CFR Part 60, Appendix A-7 or the alternative work practice in §115.358 of this title within five calendar days after the leak is detected.
- (4) Upon the detection of a leaking fugitive emission component, the owner or operator shall affix to the leaking component a weatherproof and readily visible tag, bearing an identification number and the date the leak was detected. This tag must remain in place, or be replaced if damaged, until the leaking component is repaired. Tagging of difficult-to-monitor leaking components may be done by reference tagging. The reference tag should be located as close as possible to the leaking component and should clearly identify the leaking component and its location.
- (5) When a leak or defect is detected from a fugitive emission component, the owner or operator shall repair the leak or defect as soon as practicable.
- (A) A first attempt at repair must be made no later than five calendar days after the leak is detected.
- (B) A repair must be completed no later than 15 calendar days after the leak is detected.

- (C) If an owner or operator determines and documents that a repair is technically infeasible without a shutdown, vent blowdown at a well site or gathering and boosting station, well shut-in, would be unsafe to repair during operation of the unit, or that emissions resulting from immediate repair would be greater than the total fugitive emissions likely to result from a delay of repair, then the repair is not required to be completed until the end of the next shutdown, vent blowdown at a well site or gathering and boosting station, well shut-in, or unplanned blowdown. Any repair under this subparagraph at a well site or gathering and boosting station must be made within two years after the leak is detected.
- (D) For the owner or operator using the alternative work practice in §115.358 of this title to monitor fugitive emission components, repair is complete once a monitoring survey using EPA Method 21 in 40 CFR Part 60, Appendix A-7 or the alternative work practice in §115.358 of this title shows no leaking. For the owner or operator using Method 21 in 40 CFR Part 60, Appendix A-7 or audio, visual, or olfactory means to monitor fugitive emission components, repair is complete once the monitoring required under this section shows no leaking. At a well site or gathering and boosting station, this monitoring survey to check that the leak is fixed must be done within 30 days of the repair attempt. At a natural gas processing plant, if a shutdown is needed as specified in subparagraph (C) of this paragraph, the monitoring survey to check that the leak is fixed must be done within 15 days of startup of the process unit.
- (6) If the executive director determines that the number of leaks in a process area is excessive, the monitoring schedule in this subsection may be modified to require an increase in the frequency of monitoring in a given process area.
- (7) Any fugitive component that is monitored monthly in accordance with EPA Method 21 to comply with §115.177(b)(3)(D) and not found leaking for two successive monthly monitoring periods may be monitored quarterly, beginning with the first month of the next quarter until a leak is detected. Any component found to be leaking must be returned to its original monthly monitoring schedule until it does not show evidence of a leak for two successive months. After completion of the required [monthly] valve monitoring in this subsection for a period of at least two years, the owner or operator of a natural gas processing plant may request in writing to the appropriate regional office that the valve monitoring schedule be revised based on the percent of valves leaking. Valid historical monitoring data may be used to satisfy the initial 2-year data collection period requirement. The percent of valves leaking must be determined by dividing the sum of valves leaking during the current monitoring period and valves for which repair has been delayed by the total number of valves subject to monitoring requirements. The revised monitoring schedule is not effective until a response is received from the executive director. This request must include all data that have been developed to justify the following modifications in the monitoring schedule.
- (A) After two consecutive quarterly leak detection periods with the percent of valves leaking equal to or less than 2.0% using EPA Method 21, an owner or operator may begin to skip one of the quarterly leak detection periods for the valves in gas/vapor and light liquid service.
- (B) After five consecutive quarterly leak detection periods with the percent of valves leaking equal to or less than 2.0% using EPA Method 21, an owner or operator may begin to skip three of the quarterly leak detection periods for the valves in gas/vapor and light liquid service.
- (8) All component monitoring must occur when the component is in contact with process material and the process unit is in

- service. If a unit is not operating during the required monitoring period but a component in that unit is in contact with process fluid that is circulating or under pressure, then that component is considered to be in service and is required to be monitored. Valves must be in gaseous or light liquid service to be considered in the total valve count for alternate valve monitoring schedules of paragraph (7) of this subsection.
- (9) Monitored screening concentrations must be recorded for each component in gaseous or light liquid service. Notations such as "pegged," "off scale," "leaking," "not leaking," or "below leak definition" may not be substituted for hydrocarbon gas analyzer results. For readings that are higher than the upper end of the scale (i.e., pegged) even when using the highest scale setting or a dilution probe, a default pegged value of 100,000 ppmv must be recorded. This requirement does not apply to monitoring using an optical gas imaging instrument, which makes emissions visible that may otherwise be invisible to the naked eye, in accordance with §115.358 of this title.
- (10) The owner or operator shall check all new connectors for leaks within 30 days of being placed in VOC service by monitoring with a hydrocarbon gas analyzer for components in light-liquid and gas service and by using visual, audio, and/or olfactory means for components in heavy-liquid service. Components that are unsafe-to-monitor or inspect are exempt from this requirement if they are monitored or inspected as soon as possible during times that are safe to monitor.
- (11) For any fugitive emission component for which the owner or operator elects to use the alternative work practice in §115.358 of this title, the following provisions apply.
- (A) At a natural gas processing plant, the frequency for monitoring components listed in this section must be the frequency determined according to §115.358 of this title. At a well site or gathering and boosting station, the frequency for monitoring components using optical gas imaging is the frequency in paragraph (3) of this subsection.
- (B) The alternative monitoring schedules allowed under paragraph (7) of this subsection are not allowed.
- (C) At a well site or gathering and boosting station, the requirements in §115.358 of this title, except for the requirements in §115.358(e) and (f) of this title, apply in addition to the appropriate requirements in this section. At a natural gas processing plant, the requirements in §115.358 of this title apply in addition to the applicable requirements in this section.
- (D) The owner or operator may still classify a component as unsafe-to-monitor as allowed under subsection (c) of this section if the component cannot safely be monitored using either a hydrocarbon gas analyzer or the alternative work practice. The owner or operator may use either EPA Method 21 in 40 CFR Part 60, Appendix A-7 or the alternative work practice at the monitoring frequency specified in paragraph (3) of this subsection. Any component classified as unsafe-to-monitor under the alternative work practice must be identified as such in the list required in §115.180(7) of this title.
- (E) If the executive director determines that there is an excessive number of leaks in any given process area for which the alternative work practice in §115.358 of this title is used, the executive director may require an increase in the frequency of monitoring under the alternative work practice in that process area.
- (c) An owner or operator is not required to comply with monitoring frequencies in subsection (b) of this section for any fugitive emission component designated as unsafe-to-monitor or difficult-to-monitor.
- (1) Any component, except closed vent systems, designated difficult-to-monitor must be monitored at least once per calendar

year. Difficult-to-monitor closed vent system components must be monitored at least once every five years.

- (2) Any component designated unsafe-to-monitor must be monitored as frequently as practicable during a time when it is safe-to-monitor, not to exceed the monitoring frequency in subsection (b) of this section.
- (3) The number of components designated as difficult-tomonitor may not exceed 3% of total affected components in the same classification (e.g., pumps, valves, flanges, connectors etc.) at the site.
- (4) The owner or operator shall inspect all flanges weekly by audio, visual, and olfactory means, excluding flanges that are monitored at least once each calendar year using EPA Method 21 in 40 CFR Part 60, Appendix A-7 and flanges that are difficult-to-monitor and unsafe-to-monitor. Flanges that are difficult-to-monitor and unsafe-to-monitor must be identified in a list made available upon request. If a difficult-to-monitor or an unsafe-to-monitor flange is not considered safe to inspect within the required weekly time frame, then it must be inspected as soon as possible during a time that it is safe to inspect.
- (5) Relief valves that are designated as unsafe-to-monitor must be monitored as soon as possible during times that are safe to monitor after any release event. Relief valves that are designated as difficult-to-monitor must be monitored within 15 days after a release.

§115.183. Compliance Schedules.

- (a) In the Dallas-Fort Worth and Houston-Galveston-Brazoria areas, the [The] owner or operator of a piece of equipment that meets the applicability in §115.170 of this title (relating to Applicability) and is subject to a requirement of this division shall be in compliance as soon as practicable, but no later than January 1, 2023.
- (b) For an owner or operator in the Dallas-Fort Worth and Houston-Galveston-Brazoria areas subject to this division as of January 1, 2023, the recordkeeping required by §115.180(8) of this title (relating to Recordkeeping Requirements) must be completed no later than March 31, 2023.
- (c) An owner or operator who becomes subject to the requirements of this division on or after the date specified in the applicable subsection of this section shall comply with the requirements in this division no later than 60 days after becoming subject. Recordkeeping required under §115.180(8) of this title must be complied with no later than 30 days after compliance with the division is achieved.
- (d) The owner or operator of a storage tank in the Dallas-Fort Worth and Houston-Galveston-Brazoria areas subject to the requirements in Division 1 of this subchapter (relating to the Storage of Volatile Organic Compounds) shall remain subject to that division until compliance with the requirements in this division are achieved, but not later than January 1, 2023.
- (e) The owner or operator of a fugitive emission component at a natural gas processing plant in the Dallas-Fort Worth and Houston-Galveston-Brazoria areas as defined in §115.10 of this title (relating to Definitions), subject to the requirements of Subchapter D, Division 3 of this chapter (relating to Fugitive Emission Control in Petroleum Refining, Natural Gas/Gasoline Processing, and Petrochemical Processes in Ozone Nonattainment Areas) shall remain subject to that division until compliance with the requirements in this division are achieved, but not later than January 1, 2023.
- (f) Upon the date the owner or operator can no longer claim the exceptions in §115.174(e) of this title (relating to Pneumatic Controller and Pump Control Requirements), the owner or operator shall comply with the appropriate control requirement within 60 days.

(g) The owner or operator of a piece of equipment in the Bexar County area subject to the requirements of this division shall comply with the requirements of this division no later than January 1, 2025.

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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Charmaine Backens

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Texas Commission on Environmental Quality

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30 TAC §115.173

Statutory Authority

The repealed rule is proposed under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The repealed rule is also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The repealed rule implements TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

§§115.173. Compressor Control Requirements.

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 C. VOLATILE ORGANIC COMPOUND TRANSFER OPERATIONS DIVISION 1. LOADING AND UNLOADING OF VOLATILE ORGANIC COMPOUNDS

30 TAC §§115.211 - 115.214, 115.216, 115.217, 115.219

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The proposed amendments implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

§115.211. Emission Specifications.

The owner or operator of each gasoline terminal in the covered attainment counties and in the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria [Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston] areas, as defined in §115.10 of this title (relating to Definitions), shall ensure that volatile organic compound (VOC) emissions from the vapor control system vent at gasoline terminals do not exceed the following rates:

- (1) in the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria [Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston] areas, 0.09 pound per 1,000 gallons (10.8 mg/liter) of gasoline loaded into transport vessels.
- (2) in the covered attainment counties, <u>as defined in §115.10 of this title (relating to Definitions)</u>, 0.17 pound per 1,000 gallons (20 mg/liter) of gasoline loaded into transport vessels.

- §115.212. Control Requirements.
- (a) The owner or operator of each volatile organic compound (VOC) transfer operation, transport vessel, and marine vessel in the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria [Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston] areas, shall comply with the following control requirements.
- (1) General VOC loading. At VOC loading operations other than gasoline terminals, gasoline bulk plants, and marine terminals, vapors from the transport vessel caused by the loading of VOC with a true vapor pressure greater than or equal to 0.5 psia under actual storage conditions must be controlled by:
- (A) a vapor control system which maintains a control efficiency of at least 90%; or
- (B) a vapor balance system, as defined in §115.10 of this title (relating to Definitions); or
 - (C) pressurized loading.
- (2) Disposal of transported vapors. After unloading, transport vessels must be kept vapor-tight until the vapors in the transport vessel are returned to a loading, cleaning, or degassing operation and discharged in accordance with the control requirements of that operation.
- (3) Leak-free requirements. All land-based VOC transfer to or from transport vessels shall be conducted such that:
 - (A) All liquid and vapor lines are:
- (i) equipped with fittings which make vapor-tight connections that close automatically when disconnected; or
- (ii) equipped to permit residual VOC after transfer is complete to discharge into a recovery or disposal system which routes all VOC emissions to a vapor control system or a vapor balance system. After VOC transfer, if necessary to empty a liquid line, the contents may be placed in a portable container, which is then closed vapor-tight and disposed of properly.
- (B) There are no VOC leaks, as defined in §101.1 of this title (relating to Definitions), when measured with a hydrocarbon gas analyzer, and no liquid or vapor leaks, as detected by sight, sound, or smell, from any potential leak source in the transport vessel and transfer system (including, but not limited to, liquid lines, vapor lines, hatch covers, pumps, and valves, including pressure relief valves).
- (C) All gauging and sampling devices are vapor-tight except for necessary gauging and sampling. Any nonvapor-tight gauging and/or sampling shall:
- (i) be limited in duration to the time necessary to practicably gauge and/or sample; and
 - (ii) not occur while VOC is being transferred.
- (D) Any openings in a transport vessel during unloading are limited to minimum openings which are sufficient to prevent collapse of the transport vessel.
- (E) If VOC is loaded through the hatches of a transport vessel, then pneumatic, hydraulic, or other mechanical means shall force a vapor-tight seal between the loading arm's vapor collection adapter and the hatch. A means shall be provided which prevents liquid drainage from the loading device when it is removed from the hatch of any transport vessel, or which routes all VOC emissions to a vapor control system. After VOC transfer, if necessary to empty a liquid line, the contents may be placed in a portable container, which is then closed vapor-tight and disposed of properly.

- (4) Gasoline terminals. The following additional control requirements apply to the transfer of gasoline at gasoline terminals.
- (A) A vapor control system must be used to control the vapors from loading each transport vessel.
- (B) Vapor control systems and loading equipment at gasoline terminals shall be designed and operated such that gauge pressure does not exceed 18 inches of water and vacuum does not exceed six inches of water in the gasoline tank-truck.
- (C) Each gasoline terminal shall be equipped with sensors and other equipment designed and connected to monitor the status of the control device. If the control device malfunctions or is not operational, the system shall automatically stop gasoline transfer to the transport vessel(s) immediately.
- (D) As an alternative to subparagraph (C) of this paragraph, the following requirements apply to gasoline terminals which have a variable vapor space holding tank design that can process the vapors independent of transport vessel loading. Such gasoline terminals shall be equipped with sensors and other equipment designed and connected to monitor the status of the control device. If the variable vapor space holding tank serving the loading rack(s) does not have the capacity to store additional vapors for processing by the control device at a later time and the control device malfunctions or is not operational, the system shall automatically stop gasoline transfer to the transport vessel(s) immediately.
- (5) Gasoline bulk plants. The following additional control requirements apply to transfer of gasoline at gasoline bulk plants.
- (A) A vapor balance system must be used between the storage tank and transport vessel. Alternatively, a vapor control system which maintains a control efficiency of at least 90% may be used to control the vapors.
 - (B) While filling a transport vessel from a storage tank:
- (i) the transport vessel, if equipped for top loading, must use a submerged fill pipe; and
- (ii) gauge pressure must not exceed 18 inches of water and vacuum must not exceed six inches of water in the gasoline tank-truck tank.
- (6) Marine terminals. The following control requirements apply to marine terminals in the <u>Houston-Galveston-Brazoria</u> [Houston/Galveston] area.
- (A) VOC emissions shall not exceed 0.09 pound from the vapor control system vent per 1,000 gallons (10.8 mg/liter) of VOC loaded into the marine vessel, or the vapor control system shall maintain a control efficiency of at least 90%. Alternatively, a vapor balance system or pressurized loading may be used to control the vapors.
- (B) Only leak-free marine vessels, as defined in §115.10 of this title, shall be used for loading operations.
- (C) All gauging and sampling devices shall be vaportight except for necessary gauging and sampling. Any nonvapor-tight gauging and/or sampling shall:
- (i) be limited in duration to the time necessary to practicably gauge and/or sample; and
 - (ii) not occur while VOC is being transferred.
- (D) When non-dedicated loading lines are used to load VOC with a true vapor pressure less than 0.5 psia (or a flash point of 150 degrees Fahrenheit or greater) and the preceding transfer through these lines was VOC with a true vapor pressure equal to or greater than

- 0.5 psia, the residual VOC vapors from this preceding transfer must be controlled by the vapor control system, vapor balance system, or pressurized loading as specified in subparagraph (A) of this paragraph.
- (7) Once-in-always-in. Any loading or unloading operation that becomes subject to the provisions of this subsection by exceeding provisions of §115.217(a) of this title (relating to Exemptions) will remain subject to the provision of this subsection, even if throughput or emissions later fall below exemption limits unless and until emissions are reduced to no more than the controlled emissions level existing before implementation of the project by which throughput or emission rate was reduced to less than the applicable exemption limits in §115.217(a) of this title; and
- (A) the project by which throughput or emission rate was reduced is authorized by any permit or permit amendment or standard permit or permit by rule required by Chapter 116 or Chapter 106 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification; and Permits by Rule). If a permit by rule is available for the project, compliance with this subsection must be maintained for 30 days after the filing of documentation of compliance with that permit by rule; or
- (B) if authorization by permit, permit amendment, standard permit, or permit by rule is not required for the project, the owner/operator has given the executive director 30 days' notice of the project in writing.
- (b) The owner or operator of each land-based VOC transfer operation and transport vessel in the covered attainment counties as defined by §115.10 of this title (relating to Definitions) shall comply with the following control requirements.
- (1) General VOC loading in Aransas, Bexar, Calhoun, Gregg, Matagorda, Nueces, San Patricio, Travis, and Victoria Counties. The requirements of this paragraph no longer apply in Bexar County beginning January 1, 2025. At VOC loading operations other than gasoline terminals and gasoline bulk plants, vapors from the transport vessel caused by the loading of VOC with a true vapor pressure greater than or equal to 1.5 psia under actual storage conditions must be controlled by:
- (A) a vapor control system which maintains a control efficiency of at least 90%;
- (B) a vapor balance system, as defined in $\S115.10$ of this title; or
 - (C) pressurized loading.
- (2) Disposal of transported vapors. After unloading, transport vessels must be kept vapor-tight until the vapors in the transport vessel are returned to a loading, cleaning, or degassing operation and discharged in accordance with the control requirements of that operation.
- (3) Leak-free requirements. All land-based VOC transfer to or from transport vessels shall be conducted such that:
 - (A) all liquid and vapor lines are:
- (i) equipped with fittings which make vapor-tight connections and that close automatically when disconnected; or
- (ii) equipped to permit residual VOC after transfer is complete to discharge into a recovery or disposal system which routes all VOC emissions to a vapor control system or a vapor balance system. After VOC transfer, if necessary to empty a liquid line, the contents may be placed in a portable container, which is then closed vapor-tight and disposed of properly.

- (B) there are no VOC leaks, as defined in §101.1 of this title, when measured with a hydrocarbon gas analyzer, and no liquid or vapor leaks, as detected by sight, sound, or smell, from any potential leak source in the transport vessel and transfer system (including, but not limited to, liquid lines, vapor lines, hatch covers, pumps, and valves, including pressure relief valves);
- (C) all gauging and sampling devices are vapor-tight except for necessary gauging and sampling. Any nonvapor-tight gauging and/or sampling shall:
- (i) be limited in duration to the time necessary to practicably gauge and/or sample; and
 - (ii) not occur while VOC is being transferred;
- (D) any openings in a transport vessel during unloading are limited to minimum openings which are sufficient to prevent collapse of the transport vessel;
- (E) if VOC is loaded through the hatches of a transport vessel, then pneumatic, hydraulic, or other mechanical means shall force a vapor-tight seal between the loading arm's vapor collection adapter and the hatch. A means shall be provided which prevents liquid drainage from the loading device when it is removed from the hatch of any transport vessel, or which routes all VOC emissions to a vapor control system. After VOC transfer, if necessary to empty a liquid line, the contents may be placed in a portable container, which is then closed vapor-tight and disposed of properly.
- (4) Gasoline terminals. The following additional control requirements apply to gasoline transfer at gasoline terminals.
- (A) A vapor control system must be used to control the vapors from loading the transport vessel.
- (B) Vapor control systems and loading equipment at gasoline terminals shall be designed and operated such that gauge pressure does not exceed 18 inches of water and vacuum does not exceed six inches of water in the gasoline tank-truck.
- (C) Each gasoline terminal shall be equipped with sensors and other equipment designed and connected to monitor the status of the control device. If the control device malfunctions or is not operational, the system shall automatically stop gasoline transfer to the transport vessel(s) immediately.
- (D) As an alternative to subparagraph (C) of this paragraph, the following requirements apply to gasoline terminals which have a variable vapor space holding tank design that can process the vapors independent of transport vessel loading. Such gasoline terminals shall be equipped with sensors and other equipment designed and connected to monitor the status of the control device. If the variable vapor space holding tank serving the loading rack(s) does not have the capacity to store additional vapors for processing by the control device at a later time and the control device malfunctions or is not operational, the system shall automatically stop gasoline transfer to the transport vessel(s) immediately.
- (5) Gasoline bulk plants. The following additional control requirements apply to gasoline transfer at gasoline bulk plants.
- (A) A vapor balance system must be used between the storage tank and transport vessel. Alternatively, a vapor control system which maintains a control efficiency of at least 90% may be used to control the vapors.
 - (B) While filling a transport vessel from a storage tank:
- (i) the transport vessel, if equipped for top loading, must use a submerged fill pipe; and

- (ii) gauge pressure must not exceed 18 inches of water and vacuum must not exceed six inches of water in the gasoline tank-truck tank.
- §115.213. Alternate Control Requirements.
- (a) Alternate means of control. Alternate methods of demonstrating and documenting continuous compliance with the applicable control requirements or exemption criteria in this division (relating to Loading and Unloading of Volatile Organic Compounds) may be approved by the executive director in accordance with §115.910 of this title (relating to Availability of Alternate Means of Control) if emission reductions are demonstrated to be substantially equivalent.
- (b) General volatile organic compound (VOC) loading--90% overall control option in the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria [Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston] areas. As an alternative to §115.212(a)(1) of this title (relating to Control Requirements), VOC loading operations other than gasoline terminals, gasoline bulk plants, and marine terminals may elect to achieve a 90% overall control of emissions at the account from the loading of VOC (excluding loading into marine vessels and loading at gasoline terminals and gasoline bulk plants) with a true vapor pressure equal to or greater than 0.5 psia, but less than 11 psia, under actual storage conditions, provided that the following requirements are met.
- (1) To qualify for the control option available under this subsection after December 31, 1996, the owner or operator of a VOC loading operation for which a control plan was not previously submitted shall submit a control plan to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction which demonstrates that the overall control of emissions at the account from the loading of VOC with a true vapor pressure greater than or equal to 0.5 psia, but less than 11 psia, under actual storage conditions will be at least 90%. Any control plan submitted after December 31, 1996, must be approved by the executive director before the owner or operator may use the control option available under this subsection for compliance. For each loading rack and any associated control device at the account, the control plan shall include the emission point number (EPN), the facility identification number (FIN), the throughput of VOC with a true vapor pressure greater than or equal to 0.5 psia, but less than 11 psia, under actual storage conditions for the preceding calendar year, a plot plan showing the location, EPN, and FIN of each loading rack and any associated control device, the controlled and uncontrolled emission rates for the preceding calendar year, and an explanation of the recordkeeping procedure and calculations which will be used to demonstrate compliance.
- (2) The owner or operator of the VOC loading operation shall submit an annual report no later than March 31 of each year to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction which demonstrates that the overall control of emissions at the account from the loading of VOC with a true vapor pressure greater than or equal to 0.5 psia, but less than 11 psia, under actual storage conditions during the preceding calendar year is at least 90%. For each loading rack and any associated control device at the account, the report shall include the EPN, the FIN, the throughput of VOC with a true vapor pressure greater than or equal to 0.5 psia, but less than 11 psia, under actual storage conditions for the preceding calendar year, a plot plan showing the location, EPN, and FIN of each loading rack and any associated control device, and the controlled and uncontrolled emission rates for the preceding calendar year.
- (3) The owner or operator of the VOC loading operation shall submit an updated report no later than 30 days after the instal-

lation of an additional loading rack(s) or any change in service of a loading rack(s) from loading VOC with a true vapor pressure less than 0.5 psia to loading VOC with a true vapor pressure greater than or equal to 0.5 psia, or vice versa. The report shall be submitted to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction and shall demonstrate that the overall control of emissions at the account from the loading of VOC with a true vapor pressure greater than or equal to 0.5 psia, but less than 11 psia, under actual storage conditions continues to be at least 90%.

- (4) All representations in control plans and annual reports become enforceable conditions. It shall be unlawful for any person to vary from such representations if the variation will cause a change in the identity of the specific emission sources being controlled or the method of control of emissions unless the owner or operator of the VOC loading operation submits a revised control plan to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction no later than 30 days after the change. All control plans and reports shall demonstrate that the overall control of emissions at the account from the loading of VOC with a true vapor pressure greater than or equal to 0.5 psia, but less than 11 psia, under actual storage conditions continues to be at least 90%. The emission rates shall be calculated in a manner consistent with the most recent emissions inventory.
- (5) The loading of VOC with a true vapor pressure greater than or equal to 11 psia under actual storage conditions must be controlled by:
 - (A) pressurized loading;
- (B) a vapor control system which maintains a control efficiency of at least 90%; or
- (C) a vapor balance system, as defined in §115.10 of this title (relating to Definitions).
- (6) A VOC loading operation which, under the 90% control option of this subsection, is not required to control vapors caused by loading VOC into a transport vessel is likewise not required to comply with:
 - (A) §115.212(a)(3)(A) and (C) of this title; or
- (B) $\S115.214(a)(1)(A)(ii)$ and (iii) and (C) of this title (relating to Inspection Requirements).
- (c) General VOC loading--90% overall control option in Aransas, Bexar, Calhoun, Gregg, Matagorda, Nueces, San Patricio, Travis, and Victoria counties. This control option is no longer available in Bexar County beginning January 1, 2025. As an alternative to §115.212(b)(1) of this title, VOC loading operations other than gasoline terminals, gasoline bulk plants, and marine terminals may elect to achieve a 90% overall control of emissions at the account from the loading of VOC (excluding loading into marine vessels and loading at gasoline terminals and gasoline bulk plants) with a true vapor pressure greater than or equal to 1.5 psia, but less than 11 psia, under actual storage conditions.
- (1) Each VOC loading operation using this control option shall meet the requirements of subsection (b)(1)-(5) of this section, except that 1.5 psia shall be substituted for 0.5 psia in these paragraphs.
- (2) A VOC loading operation which, under the 90% control option of this subsection, is not required to control vapors caused by loading VOC into a transport vessel is likewise not required to comply with:
 - (A) §115.212(b)(3)(A) and (C) of this title; or
 - (B) §115.214(b)(1)(A)(ii) and (iii) and (C) of this title.

- (d) Marine vessel loading--90% control option. As an alternative to §115.212(a)(6)(A) of this title, marine terminals may elect to achieve a 90% overall control of emissions at the marine terminal from the loading of VOC with a true vapor pressure greater than or equal to 0.5 psia, but less than 11 psia, under actual storage conditions into marine vessels, provided that the following requirements are met.
- (1) To qualify for the control option available under this subsection after December 31, 1996, the owner or operator of a marine terminal for which a control plan was not previously submitted shall submit a control plan to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction which demonstrates that the overall control of emissions at the marine terminal from the loading of VOC with a true vapor pressure greater than or equal to 0.5 psia, but less than 11 psia, under actual storage conditions into marine vessels will be at least 90%. Any control plan submitted after December 31, 1996 must be approved by the executive director before the owner or operator may use the control option available under this subsection for compliance. For each marine loading facility and any associated control device at the marine terminal, the control plan shall include the EPN, the FIN, the throughput of VOC with a true vapor pressure greater than or equal to 0.5 psia, but less than 11 psia, under actual storage conditions for the preceding calendar year, a plot plan showing the location, EPN, and FIN of each marine loading facility and any associated control device, the controlled and uncontrolled emission rates for the preceding calendar year, and an explanation of the recordkeeping procedure and calculations which will be used to demonstrate compliance.
- (2) The owner or operator of the marine terminal shall submit an annual report no later than March 31 of each year to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction which demonstrates that the overall control of emissions at the marine terminal from the loading of VOC with a true vapor pressure greater than or equal to 0.5 psia, but less than 11 psia, under actual storage conditions into marine vessels during the preceding calendar year is at least 90%. For each marine loading facility and any associated control device at the account, the report shall include the EPN, the FIN, the throughput of VOC with a true vapor pressure greater than or equal to 0.5 psia, but less than 11 psia, under actual storage conditions for the preceding calendar year, a plot plan showing the location, EPN, and FIN of each marine loading facility and any associated control device, and the controlled and uncontrolled emission rates for the preceding calendar year.
- (3) All representations in control plans and annual reports become enforceable conditions. It shall be unlawful for any person to vary from such representations if the variation will cause a change in the identity of the specific emission sources being controlled or the method of control of emissions unless the owner or operator of the marine terminal submits a revised control plan to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction no later than 30 days after the change. All control plans and reports shall demonstrate that the overall control of emissions at the marine terminal from the loading into marine vessels of VOC with a true vapor pressure greater than or equal to 0.5 psia, but less than 11 psia, under actual storage conditions continues to be at least 90%. The emission rates shall be calculated in a manner consistent with the most recent emissions inventory.
- (4) The loading of VOC with a true vapor pressure greater than 11 psia under actual storage conditions must be controlled by:
 - (A) pressurized loading;
- (B) a vapor control system which maintains a control efficiency of at least 90%; or

- $\ensuremath{\text{(C)}}$ a vapor balance system, as defined in §115.10 of this title.
- (5) A marine loading operation which, under the 90% control option of this subsection, is not required to control vapors caused by loading VOC into a marine vessel is likewise not required to comply with:
 - (A) $\S115.212(a)(6)(B)-(D)$ of this title; or
- (B) \$115.214(a)(3)(A), (B)(ii) and (iii), and (D) of this title.

§115.214. Inspection Requirements.

- (a) The owner or operator of each volatile organic compound (VOC) transfer operation in the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, Houston-Galveston-Brazoria [Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston] areas, shall comply with the following inspection requirements.
 - (1) Land-based VOC transfer to or from transport vessels.
- (A) During each VOC transfer, the owner or operator of the transfer operation or of the transport vessel shall inspect for:
 - (i) visible liquid leaks;
 - (ii) visible fumes; and
 - (iii) significant odors.
- (B) VOC loading or unloading through the affected transfer lines shall be discontinued immediately when a leak is observed and shall not be resumed until the observed leak is repaired.
- (C) All tank-truck tanks being filled with or emptied of gasoline, or being filled with non-gasoline VOC having a true vapor pressure greater than or equal to 0.5 pounds per square inch absolute under actual storage conditions, shall have been leak tested within one year in accordance with the requirements of §§115.234 115.237 of this title (relating to Control of Volatile Organic Compound Leaks From Transport Vessels) as evidenced by prominently displayed certification affixed near the United States Department of Transportation certification plate.
- (D) Subparagraphs (A) and (B) of this paragraph do not apply to fumes from hatches or vents if the fumes result from:
- (i) a VOC transfer which is exempt from §115.211 or §115.212(a)(1) of this title (relating to Emission Specifications; and Control Requirements) under §115.217(a) of this title (relating to Exemptions); or
- (ii) a VOC loading operation which, under the 90% control option in §115.213(b) of this title (relating to Alternate Control Requirements), is not required to control vapors caused by loading VOC.
- (2) Gasoline terminals-additional inspection. The owner or operator of each gasoline terminal shall perform a monthly leak inspection of all equipment in gasoline service. Each piece of equipment shall be inspected during the loading of gasoline tank-trucks. For this inspection, detection methods incorporating sight, sound, and smell are acceptable. Alternatively, a hydrocarbon gas analyzer may be used for the detection of leaks, by meeting the requirements of §§115.352 115.357 of this title (relating to Fugitive Emission Control in Petroleum Refining, Natural Gas/Gasoline Processing, and Petrochemical Processes in Ozone Nonattainment Areas). Every reasonable effort shall be made to repair or replace a leaking component within 15 days after a leak is found. If the repair or replacement of a leaking component would re-

- quire a unit shutdown, the repair may be delayed until the next scheduled shutdown.
- (3) Marine terminals. For marine terminals in the <u>Houston-Galveston-Brazoria</u> [Houston/Galveston] area, the following inspection requirements apply.
- (A) Before loading a marine vessel with a VOC which has a vapor pressure equal to or greater than 0.5 pounds per square inch absolute under actual storage conditions, the owner or operator of the marine terminal shall verify that the marine vessel has passed an annual vapor tightness test as specified in §115.215(7) of this title (relating to Approved Test Methods). If no documentation of the annual vapor tightness test is available, one of the following methods may be substituted.
- (i) VOC shall be loaded into the marine vessel with the vessel product tank at negative gauge pressure.
- (ii) Leak testing shall be performed during loading using Test Method 21. The testing shall be conducted during the final 20% of loading of each product tank of the marine vessel and shall be applied to any potential sources of vapor leaks on the vessel.
- (iii) Documentation of leak testing conducted during the preceding 12 months as described in clause (ii) of this subparagraph shall be provided.
- (B) During each VOC transfer, the owner or operator of the marine terminal or of the marine vessel shall inspect for:
 - (i) visible liquid leaks;
 - (ii) visible fumes; and
 - (iii) significant odors.
- (C) If a liquid leak is detected during VOC transfer and cannot be repaired immediately (for example, by tightening a bolt or packing gland), then the transfer operation shall cease until the leak is repaired.
- (D) If a vapor leak is detected by sight, sound, smell, or hydrocarbon gas analyzer during the VOC loading operation, then a "first attempt" shall be made to repair the leak. VOC loading operations need not be ceased if the first attempt to repair the leak, as defined in §101.1 of this title (relating to Definitions), to less than 10,000 parts per million by volume (ppmv) or 20% of the lower explosive limit, is not successful provided that the first attempt effort is documented by the owner or operator of the marine vessel as soon as practicable and a copy of the repair log made available to a representative of the marine terminal. No additional loadings shall be made into the cargo tank until a successful repair has been completed and an inspection conducted under 40 Code of Federal Regulations 61.304(f) or 63.565(c).
- (E) The intentional bypassing of a vapor control device during marine loading operations is prohibited.
- (F) All shore-based equipment is subject to the fugitive emissions monitoring requirements of §§115.352 115.357 of this title. For the purposes of this paragraph, shore-based equipment includes, but is not limited to, all equipment such as loading arms, pumps, meters, shutoff valves, relief valves, and other piping and valves between the marine loading facility and the vapor control system and between the marine loading facility and the associated land-based storage tanks, excluding working emissions from the storage tanks.
- (G) Subparagraphs (B) and (D) of this paragraph do not apply to fumes from hatches or vents if the fumes result from:
- (i) a VOC transfer which is exempt from §115.212(a)(6)(A) of this title under §115.217(a)(5) of this title; or

- (ii) a VOC loading operation which, under the 90% control option in §115.213(d) of this title, is not required to control vapors caused by loading VOC.
- (b) The owner or operator of each VOC transfer operation in the covered attainment counties as defined in §115.10 of this title (relating to Definitions) shall comply with the following inspection requirements.
- (1) Land-based VOC transfer to or from transport vessels. The requirements of this paragraph apply at [At all] VOC transfer operations in Aransas, Bexar, Calhoun, Gregg, Matagorda, Nueces, San Patricio, Travis, and Victoria Counties, and at gasoline terminals and gasoline bulk plants in the covered attainment counties. These requirements no longer apply in Bexar County beginning January 1, 2025. [:]
- (A) During each VOC transfer, the owner or operator of the transfer operation or of the transport vessel shall inspect for:
 - (i) visible liquid leaks;
 - (ii) visible fumes; and
 - (iii) significant odors.
- (B) VOC loading or unloading through the affected transfer lines shall be discontinued immediately when a leak is observed and shall not be resumed until the observed leak is repaired.
- (C) All tank-truck tanks being filled with or emptied of gasoline shall have been leak tested within one year in accordance with the requirements of §§115.234 115.237 of this title as evidenced by prominently displayed certification affixed near the United States Department of Transportation certification plate.
- (D) Subparagraphs (A) and (B) of this paragraph do not apply to fumes from hatches or vents if the fumes result from:
- (i) a VOC transfer which is exempt from §115.211 or §115.212(b)(1) of this title under §115.217(b) of this title; or
- (ii) a VOC loading operation which, under the 90% control option in §115.213(c) of this title, is not required to control vapors caused by loading VOC.
- (2) Gasoline terminals-additional inspection. The owner or operator of each gasoline terminal shall perform a monthly leak inspection of all equipment in gasoline service. Each piece of equipment shall be inspected during the loading of gasoline tank-trucks. For this inspection, detection methods incorporating sight, sound, and smell are acceptable. Alternatively, a hydrocarbon gas analyzer may be used for the detection of leaks, by meeting the requirements of §§115.352 115.357 of this title. Every reasonable effort shall be made to repair or replace a leaking component within 15 days after a leak is found. If the repair or replacement of a leaking component would require a unit shutdown, the repair may be delayed until the next scheduled shutdown.

§115.216. Monitoring and Recordkeeping Requirements.

The owner or operator of each volatile organic compound (VOC) loading or unloading operation in the covered attainment counties or in the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria [Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston] areas, shall maintain the following information for at least two years at the plant, as defined by its air quality account number. The owner or operator shall make the information available upon request to representatives of the executive director, EPA, or any local air pollution control agency having jurisdiction in the area.

- (1) Vapor control systems. For vapor control systems used to control emissions from VOC transfer operations, records of appropriate parameters to demonstrate compliance, including:
 - (A) continuous monitoring and recording of:
- (i) the exhaust gas temperature immediately downstream of a direct-flame incinerator;
- (ii) the inlet and outlet gas temperature of a chiller or catalytic incinerator;
- (iii) the exhaust gas VOC concentration of a carbon adsorption system, as defined in §101.1 of this title (relating to Definitions); and
- (iv) the exhaust gas temperature immediately downstream of a vapor combustor. Alternatively, the owner or operator of a vapor combustor may consider the unit to be a flare and meet the requirements of subparagraph (B) of this paragraph;
- (B) the requirements specified in 40 Code of Federal Regulations §60.18(b) and Chapter 111 of this title (relating to Control of Air Pollution from Visible Emissions and Particulate Matter) for flares; and
- (C) for vapor control systems other than those specified in subparagraphs (A) and (B) of this paragraph, records of appropriate operating parameters.
- (2) Test results. A record of the results of any testing conducted in accordance with §115.215 of this title (relating to Approved Test Methods).
 - (3) Land-based VOC transfer to or from transport vessels.
 - (A) A daily record of:
- (i) the identification number of each tank-truck tank for which annual leak testing is required under §115.214(a)(1)(C) or (b)(1)(C) of this title (relating to Inspection Requirements);
- (ii) the quantity of VOC loaded into each transport vessel; and
- (iii) the date of the last leak testing of each tank-truck tank as required by §115.214(a)(1)(C) or (b)(1)(C) of this title.
- (B) A record of the type and vapor pressure of each VOC transferred (excluding gasoline). Vapor pressure records are not required if the total volume of VOC loaded into transport vessels is less than 20,000 gallons per day (averaged over each consecutive 30-day period).
- (C) The owner or operator of any plant, as defined by its air quality account number, at which all VOC transferred has a true vapor pressure at actual storage conditions less than 0.5 pounds per square inch, absolute (psia) as specified in §115.217(a)(1) of this title (relating to Exemptions) or 1.5 psia as specified in §115.217(b)(1) of this title, is not required to keep the records specified in subparagraph (A) of this paragraph.
- (D) The owner or operator of any plant, as defined by its air quality account number, that is exempt under \$115.217(a)(2)(A) or (B), or \$115.217(b)(3)(A) or (B) of this title based upon gallons per day transferred shall maintain a daily record of the total throughput of gasoline or of VOC equal to or greater than 0.5 or 1.5 psia vapor pressure, as appropriate, loaded into transport vessels at the plant.
- (E) For gasoline terminals, records of the results of the fugitive monitoring and maintenance program required by §115.214(a)(2) and (b)(2) of this title:

- (i) a description of the types, identification numbers, and locations of all equipment in gasoline service;
 - (ii) the date of each monthly inspection;
 - (iii) the results of each inspection;
- (iv) the location, nature, severity, and method of detection for each leak:
- (v) the date each leak is repaired and explanation if repair is delayed beyond 15 days;
- (vi) a list identifying those leaking components which cannot be repaired or replaced until a scheduled unit shutdown; and
 - (vii) the inspector's name and signature.
- (4) Marine terminals. For marine terminals in the <u>Houston-</u>Galveston-Brazoria [<u>Houston/Galveston</u>] area:
- (A) a daily record of all marine vessels loaded at the affected terminal, including:
- (i) the name, registry of the marine vessel, and the legal owner or operator of the marine vessel;
- $(ii) \quad \text{the chemical name and amount of VOC cargo loaded; and } \\$
- (i.e., cleaned, crude oil washed, gas freed, etc.) and the prior cargo carried by the marine vessel;
- (B) a copy of each marine vessel's vapor tightness test documentation or records documenting compliance with the alternate methods specified in §115.214(a)(3)(A) of this title;
- (C) a copy of each marine vessel's first attempt repair log required by §115.214(a)(3)(D) of this title;
- (D) records of the results of the fugitive monitoring and maintenance program required by §115.214(a)(3)(F) of this title, including appropriate dates, test methods, instrument readings, repair results, and corrective action taken. Records of flange inspections are not required unless a leak is detected.

§115.217. Exemptions.

- (a) The following exemptions apply in the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria [Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston] areas.
- (1) Vapor pressure (at land-based operations). All land-based loading and unloading (to or from transport vessels) of volatile organic compounds (VOC) with a true vapor pressure less than 0.5 pounds per square inch, absolute (psia) under actual storage conditions is exempt from the requirements of this division (relating to Loading and Unloading of Volatile Organic Compounds), except for:
- (A) §115.212(a)(2) of this title (relating to Control Requirements);
- (B) §115.214(a)(1)(A)(i) and (B) of this title (relating to Inspection Requirements);
- (C) \$115.215(4) of this title (relating to Approved Test Methods); and
- (D) §115.216(2) and (3)(B) of this title (relating to Monitoring and Recordkeeping Requirements).
 - (2) Throughput.

- (A) Loading operations at any plant, as defined by its air quality account number, excluding gasoline bulk plants, which loads less than 20,000 gallons of VOC into transport vessels per day (averaged over each consecutive 30-day period) with a true vapor pressure greater than or equal to 0.5 psia under actual storage conditions are exempt from the requirements of this division, except for:
 - (i) $\S 115.212(a)(2)$ of this title;
 - (ii) §115.214(a)(1)(A)(i) and (B) of this title;
 - (iii) §115.215(4) of this title; and
 - (iv) §115.216(2), (3)(B), and (3)(D) of this title.
- (B) Gasoline bulk plants which load less than 4,000 gallons of gasoline into transport vessels per day (averaged over each consecutive 30-day period) are exempt from the requirements of this division, except for:
 - (i) $\S 115.212(a)(2)$ of this title;
 - (ii) §115.214(a)(1)(A)(i) and (B) of this title; and
 - (iii) §115.216(3)(D) of this title.
- (3) Liquefied petroleum gas. All loading and unloading of liquefied petroleum gas is exempt from the requirements of this division, except for:
 - (A) $\S115.212(a)(2)$ of this title;
 - (B) $\S115.214(a)(1)(A)(i)$ and (B) of this title; and
 - (C) §115.216(3) of this title.
- (4) Motor vehicle fuel dispensing facilities. Motor vehicle fuel dispensing facilities, as defined in §101.1 of this title (relating to Definitions), are exempt from the requirements of this division.
- (5) Marine vessels. The following marine vessel transfer exemptions apply.
- (A) The following marine vessel transfer operations are exempt from this division:
- (i) all loading and unloading of marine vessels in ozone nonattainment areas other than the <u>Houston-Galveston-Brazoria</u> [Houston/Galveston] area; and
- (ii) transfer of VOC from one marine vessel to another marine vessel ("lightering"), provided that the VOC transfer does not use loading arm(s), pump(s), meter(s), valve(s), or piping that are part of a marine terminal.
- (B) The following marine vessel transfer operations are exempt from the requirements of §§115.212(a), 115.214(a), and 115.216 of this title, except as noted:
- (i) all unloading of marine vessels, except for $\S115.214(a)(3)(B)(i)$ and (C) and $\S115.216(2)$ of this title;
- (ii) marine terminals with uncontrolled marine loading VOC emissions less than 100 tons per year, except for §115.214(a)(3)(B)(i) and (C) and §115.216(2) of this title. Emissions from marine vessel loading operations which were routed to a control device that was installed as of November 15, 1993, are excluded from this calculation. Compliance with this exemption shall be demonstrated through the recordkeeping and reporting requirements of the annual emissions inventory submitted by the owner or operator of the marine terminal;
- (iii) all throughput of VOC with a vapor pressure less than 0.5 psia loaded into marine vessels, except for

- $\S\S115.212(a)(6)(D)$, 115.214(a)(3)(B)(i) and (C), and 115.216(2) of this title; and
- (iv) all throughput of VOC with a flash point of 150 degrees Fahrenheit or greater loaded into marine vessels, except for §§15.212(a)(6)(D), 115.214(a)(3)(B)(i) and (C), and 115.216(2) of this title.
- (b) The following exemptions apply in the covered attainment counties as defined in 115.10 of this title (relating to Definitions).
- (1) General VOCs (non-gasoline). Except in Aransas, Bexar, Calhoun, Gregg, Matagorda, Nueces, San Patricio, Travis, and Victoria Counties, all loading and unloading of VOC other than gasoline (to or from transport vessels) is exempt from the requirements of this division. This exception no longer applies in Bexar County after December 31, 2024.
- (2) Vapor pressure (at land-based operations). All land-based loading and unloading of VOC with a true vapor pressure less than 1.5 psia under actual storage conditions is exempt from the requirements of this division, except for:
 - (A) §115.212(b)(2) of this title;
 - (B) $\S115.214(b)(1)(A)(i)$ and (B) of this title;
 - (C) §115.215(4) of this title; and
 - (D) §115.216(2) and (3)(B) of this title.
 - (3) Throughput.
- (A) Loading operations at any plant, as defined by its air quality account number, excluding gasoline bulk plants, which loads less than 20,000 gallons of VOC into transport vessels per day (averaged over each consecutive 30-day period) with a true vapor pressure greater than or equal to 1.5 psia under actual storage conditions are exempt from the requirements of this division, except for:
 - (i) §115.212(b)(2) of this title;
 - (ii) §115.214(b)(1)(A)(i) and (B) of this title;
 - (iii) §115.215(4) of this title; and
 - (iv) $\S115.216(2)$, (3)(B), and (3)(D) of this title.
- (B) Gasoline bulk plants which load less than 4,000 gallons of gasoline into transport vessels per day (averaged over each consecutive 30-day period) are exempt from the requirements of this division, except for:
 - (i) §115.212(b)(2) of this title;
 - (ii) §115.214(b)(1)(A)(i) and (B) of this title; and
 - (iii) §115.216(3)(D) of this title.
- (4) Crude oil, condensate, and liquefied petroleum gas. All loading and unloading of crude oil, condensate, and liquefied petroleum gas is exempt from the requirements of this division, except for:
 - (A) §115.212(b)(2) of this title;
 - (B) §115.214(b)(1)(A)(i) and (B) of this title; and
 - (C) §115.216(3) of this title.
- (5) Motor vehicle fuel dispensing facilities. Motor vehicle fuel dispensing facilities, as defined in §101.1 of this title, are exempt from the requirements of this division.
- (6) Marine vessels. All loading and unloading of marine vessels is exempt from this division.
- §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. Bexar County is only subject to this division's covered attainment requirements in accordance with this compliance schedule until January 1, 2025, when the area must comply with nonattainment area requirements in accordance with subsection (f) of this section and is no longer required to meet the covered attainment requirements.
- (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 each volatile organic compound (VOC) transfer operation, transport vessel, and marine vessel in the Bexar County area shall be in compliance with the nonattainment area requirements in this division no later than January 1, 2025.
- [(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) The owner or operator of an affected source 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 proposal and found it to be within the state agency's legal authority to adopt.

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DIVISION 2. FILLING OF GASOLINE STORAGE VESSELS (STAGE I) FOR MOTOR VEHICLE FUEL DISPENSING FACILITIES

30 TAC §§115.221, 115.222, 115.224, 115.226, 115.227, 115.229

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The proposed amendments implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

§115.221. Emission Specifications.

No person in the Beaumont-Port Arthur, <u>Bexar County</u>, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, or in the covered attainment counties, as defined in §115.10 of this title (relating to Definitions), shall transfer, or allow the transfer of, gasoline from any tank-truck tank into a stationary storage container which is located at a gasoline dispensing facility, unless the displaced vapors from the gasoline storage container are controlled by one of the following:

(1) a vapor control system which reduces the emissions of VOC to the atmosphere to not more than 0.8 pound per 1,000 gallons (93 mg/liter) of gasoline transferred; or

(2) a vapor balance system which is operated and maintained in accordance with the provisions of §115.222 of this title (relating to Control Requirements).

§115.222. Control Requirements.

A vapor balance system will be assumed to comply with the specified emission limitation of §115.221 of this title (relating to Emission Specifications) if all of the following conditions are met. [÷]

- (1) The [the] container is equipped with a submerged fill pipe as defined in §101.1 of this title (relating to Definitions). The path through the submerged fill pipe to the bottom of the tank must not be obstructed by a screen, grate, or similar device whose presence would preclude the determination of the submerged fill pipe's proximity to the tank bottom while the submerged fill tube is properly installed.[;]
- (2) \underline{A} [a] vapor-tight return line is connected before gasoline can be transferred into the storage container.[;]
- (3) No[no] avoidable gasoline leaks, as detected by sight, sound, or smell, exist anywhere in the liquid transfer or vapor balance systems. [$\frac{1}{2}$]
- (4) The [the] vapor return line's cross-sectional area is at least one-half of the product drop line's cross-sectional area. [;]
- (5) In [in] the Beaumont-Port Arthur, <u>Bexar County</u>, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas and in the covered attainment counties, as defined in §115.10 of this title (relating to Definitions), the only atmospheric emission during gasoline transfer into the storage container is through a storage container vent line equipped with a pressure-vacuum relief valve set to open at a pressure of no more than eight ounces per square inch (3.4 kiloPascals (kPa)).[;]
- (6) After [after] unloading, the tank-truck tank is kept vapor-tight until the vapors in the tank-truck tank are returned to a loading, cleaning, or degassing operation and discharged in accordance with the control requirements of that operation. [;]
- (7) The [the] gauge pressure in the tank-truck tank does not exceed 18 inches of water (4.5 kPa) or vacuum exceed six inches of water (1.5 kPa). [;]
- (8) No [no] leak, as defined in §101.1 of this title, exists from potential leak sources when measured with a hydrocarbon gas analyzer. [;]
- (9) In [in] the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, any storage tank installed after November 15, 1993, which is required to install Stage I control equipment must be equipped with a dual-point vapor balance system, as defined in §115.10 of this title. In addition, any modification to a storage tank existing prior to November 15, 1993, requiring excavation of the top of the storage tank must be equipped with a dual-point vapor balance system, even if the original installation utilized coaxial Stage I connections. $[\frac{1}{2}]$
- (10) In [in] the covered attainment counties, any storage tank installed after December 22, 1998, which is required to install Stage I control equipment must be equipped with a dual-point vapor balance system, as defined in §115.10 of this title. In addition, any modification to a storage tank existing prior to December 22, 1998, requiring excavation of the top of the storage tank must be equipped with a dual-point vapor balance system, even if the original installation utilized coaxial Stage I connections. The control requirements in this paragraph no longer apply to affected storage tanks located in the Bexar County area beginning January 1, 2025. [; and]

(11) Any [any] gasoline dispensing facility that no longer meets an exemption in §115.227 of this title (relating to Exemptions) because of an increase in throughput shall have 120 days to come into compliance with the provisions of this section and will remain subject to the provisions of this section, even if its gasoline throughput later falls below exemption limits. However, if gasoline throughput exceeds the exemption limit due to a natural disaster or emergency condition for a period not to exceed one month, upon written request, the executive director may grant a facility continued exempt status.

§115.224. Inspection Requirements.

In the Beaumont-Port Arthur, <u>Bexar County</u>, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, and in the covered attainment counties, as defined in §115.10 of this title (relating to Definitions), the following inspection requirements shall apply.

- (1) Inspections for liquid leaks, visible vapors, or significant odors resulting from gasoline transfer shall be conducted at gasoline dispensing facilities. Gasoline transfer shall be discontinued immediately when any liquid leaks, visible vapors, or significant odors are observed and shall not be resumed until the observed issue is repaired.
- (2) The gasoline tank-truck tank must have been inspected for leaks within one year in accordance with the requirements of §§115.234 115.237 of this title (relating to Inspection Requirements; Approved Test Methods; Recordkeeping Requirements; and Exemptions, respectively), as evidenced by a prominently displayed certification affixed near the United States Department of Transportation certification plate.

§115.226. Recordkeeping Requirements.

The owner or operator of each gasoline dispensing facility in the Beaumont-Port Arthur, <u>Bexar County</u>, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, and in the covered attainment counties, as defined in §115.10 of this title (relating to Definitions) shall maintain the following records and during an inspection make the records available at the site upon request to representatives of the executive director, the United States Environmental Protection Agency, or any local air pollution control program with jurisdiction. The owner or operator shall:

- (1) maintain a record at the facility site of the dates on which gasoline was delivered to the dispensing facility and the identification number and date of the last leak testing, required by §115.224(2) of this title (relating to Inspection Requirements), of each tank-truck tank from which gasoline was transferred to the facility. The records shall be kept for a period of two years; and
 - (2) maintain for a period of two years:
- (A) a record of the results of any testing conducted at the gasoline dispensing facility in accordance with the provisions specified in §115.225 of this title (relating to Testing Requirements); and
- (B) a record of the gasoline throughput for a 24-month rolling calendar period beginning January 1, 1991. The records must contain the calendar month and year, and the total facility gasoline throughput for each calendar month.

§115.227. Exemptions.

The following exemptions apply:

(1) In the Beaumont-Port Arthur, <u>Bexar County</u>, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, transfers to stationary storage tanks located at a gasoline dispensing facility which has dispensed no more than 10,000 gallons of gasoline in any

- calendar month after January 1, 1991, and for which construction began prior to November 15, 1992, are exempt from the requirements of this division, except for:
- (A) §115.222(3) of this title (relating to Control Requirements) as it applies to liquid gasoline leaks, visible vapors, or significant odors;
 - (B) §115.222(6) of this title;
- (C) §115.224(1) of this title (relating to Inspection Requirements) as it applies to liquid gasoline leaks, visible vapors, or significant odors; and
- (D) $\S115.226(2)(B)$ of this title (relating to Record-keeping Requirements).
- (2) In the covered attainment counties, as defined in §115.10 of this title (relating to Definitions), stationary gasoline storage containers with a nominal capacity less than or equal to 1,000 gallons at gasoline dispensing facilities are exempt from the requirements of this division, except for:
- (A) §115.222(3) of this title as it applies to liquid gasoline leaks, visible vapors, or significant odors;
 - (B) §115.222(6) of this title; and
- (C) §115.224(1) of this title as it applies to liquid gasoline leaks, visible vapors, or significant odors.
- (3) Except as specified in paragraph (6) of this section, in [In] the covered attainment counties other than Bexar, Comal, Guadalupe, Wilson, Bastrop, Caldwell, Hays, Travis, and Williamson, transfers to stationary storage tanks located at a gasoline dispensing facility which has dispensed less than 100,000 gallons of gasoline in any calendar month after October 31, 2014 are exempt from the requirements of this division, except for:
- (A) §115.222(3) of this title as it applies to liquid gasoline leaks, visible vapors, or significant odors;
 - (B) §115.222(6) of this title;
- (C) §115.224(1) of this title as it applies to liquid gasoline leaks, visible vapors, or significant odors; and
 - (D) §115.226(2)(B) of this title.
- (4) In Bexar County until January 1, 2025, and in [5] Comal, Guadalupe, Wilson, Bastrop, Caldwell, Hays, Travis, and Williamson Counties, transfers to stationary storage tanks located at a gasoline dispensing facility which has dispensed no more than 25,000 gallons of gasoline in any calendar month after December 31, 2004 are exempt from the requirements of this division, except for:
- (A) $\S115.222(3)$ of this title as it applies to liquid gasoline leaks, visible vapors, or significant odors;
 - (B) §115.222(6) of this title;
- (C) §115.224(1) of this title as it applies to liquid gasoline leaks, visible vapors, or significant odors; and
 - (D) §115.226(2)(B) of this title.
- (5) Transfers to the following stationary receiving containers are exempt from the requirements of this division:
- (A) containers used exclusively for the fueling of implements of agriculture; and
- (B) storage tanks equipped with external floating roofs, internal floating roofs, or their equivalent.

(6) Bexar County is no longer a covered attainment county, as defined in §115.10 of this title (relating to Definitions), after December 31, 2024.

§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. Affected sources in Bexar County are no longer subject to this subsection beginning January 1, 2025.
- (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) The owner or operator of each affected source in the Bexar County area shall comply with all other applicable requirements of this division as soon as practicable, but no later than January 1, 2025.
- [(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 proposal and found it to be within the state agency's legal authority to adopt.

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DIVISION 3. CONTROL OF VOLATILE ORGANIC COMPOUND LEAKS FROM TRANSPORT VESSELS

30 TAC §§115.234, 115.235, 115.237, 115.239

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The proposed amendments implement Texas Water Code, §§5.102, 5.103 and 7.002; and Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

§115.234. Inspection Requirements.

- (a) No person in the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria [Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston] areas, as defined in §115.10 of this title (relating to Definitions), shall allow a tank-truck tank to be filled with or emptied of gasoline at any facility subject to §115.214(a)(1)(C) or §115.224(2) of this title (relating to Inspection Requirements), or filled with non-gasoline volatile organic compounds (VOC) having a true vapor pressure greater than or equal to 0.5 pounds per square inch absolute under actual storage conditions at any facility subject to §115.214(a)(1)(C) of this title, unless the tank-truck tank has passed a leak-tight test within the past year as evidenced by a prominently displayed certification affixed near the United States Department of Transportation certification plate which:
- (1) shows the date the tank-truck tank last passed the leaktight test required by §115.235 of this title (relating to Approved Test Methods); and
 - (2) shows the identification number of the tank-truck tank.
- (b) No person in the covered attainment counties, as defined in §115.10 of this title, shall allow a gasoline tank-truck tank to be filled or emptied at any facility subject to §115.214(b)(1)(C) or §115.224(2) of this title unless the tank-truck tank has passed a leak-tight test within the past year as evidenced by a prominently displayed certification affixed

near the United States Department of Transportation certification plate which:

- (1) shows the date the gasoline tank-truck tank last passed the leak-tight test required by §115.235 of this title; and
- (2) shows the identification number of the tank-truck tank. *§115.235.* Approved Test Methods.
- (a) In the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria [Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston] areas, the following testing requirements apply.
- (1) The owner or operator of any tank-truck which is filled with or emptied of gasoline at any facility subject to §115.214(a)(1)(C) or §115.224(2) of this title (relating to Inspection Requirements), or which is filled with non-gasoline volatile organic compounds (VOC) at any facility subject to §115.214(a)(1)(C) of this title shall cause each such tank to be tested annually to ensure that the tank is vapor-tight.
- (2) Any tank failing to meet the testing criteria of paragraph (1) of this subsection shall be repaired and retested within 15 days.
- (3) Testing required in paragraph (1) of this subsection shall be conducted in accordance with the following test methods, as appropriate:
- (A) Test Method 27 (40 Code of Federal Regulations (CFR) 60, Appendix A) for determining vapor-tightness of gasoline delivery tank using pressure-vacuum test such that the pressure in the tank must change no more than three inches of water (0.75 kPa) in five minutes when pressurized to a gauge pressure of 18 inches of water (4.5 kPa) and when evacuated to a vacuum of six inches of water (1.5 kPa); or
- (B) minor modifications to these test methods approved by the executive director.
- (4) For tank-truck tanks which are filled with non-gasoline VOC at a facility subject to §115.214(a)(1)(C) of this title, annual testing using the leakage test method described in 49 CFR 180.407(h) for specification cargo tanks is an acceptable alternative to Test Method 27 (40 CFR 60, Appendix A).
- (b) In the covered attainment counties, the following testing requirements shall apply.
- (1) The owner or operator of any tank-truck which is filled or emptied at any facility subject to §115.214(b)(1)(C) or §115.224(2) of this title shall cause each such tank to be tested annually to ensure that the tank is vapor-tight.
- (2) Any tank failing to meet the testing criteria of paragraph (1) of this subsection shall be repaired and retested within 15 days.
- (3) Testing required in paragraph (1) of this subsection shall be conducted in accordance with the following test methods, as appropriate:
- (A) Test Method 27 (40 CFR 60, Appendix A) for determining vapor tightness of gasoline delivery tank using pressure-vacuum test such that the pressure in the tank must change no more than three inches of water (0.75 kPa) in five minutes when pressurized to a gauge pressure of 18 inches of water (4.5 kPa) and when evacuated to a vacuum of six inches of water (1.5 kPa); or
- (B) minor modifications to these test methods approved by the executive director.

§115.237. Exemptions.

- (a) The following exemptions apply in the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria [Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston] areas.
- (1) Any tank-truck tank which is used exclusively to transport volatile organic compounds (VOC) with a true vapor pressure less than 0.5 pounds per square inch absolute under actual storage conditions is exempt from the requirements of this division (relating to Control of Volatile Organic Compound Leaks From Transport Vessels).
- (2) Transport vessels other than tank-trucks are exempt from the requirements of this division (relating to Control of Volatile Organic Compound Leaks From Transport Vessels).
- (3) Any tank-truck tank that is a portable tank, as defined in 49 Code of Federal Regulations 171.8, is exempt from the requirements of this division (relating to Control of Volatile Organic Compound Leaks from Transport Vessels).
- (b) In the covered attainment counties, transport vessels other than tank-trucks are exempt from the requirements of this division (relating to Control of Volatile Organic Compound Leaks From Transport Vessels).
- §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) The owner or operator of each tank-truck in the Bexar County area shall comply with the applicable requirements of this division as soon as practicable, but no later than January 1, 2025.
- [(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 proposal and found it to be within the state agency's legal authority to adopt.

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Charmaine Backens

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SUBCHAPTER D. PETROLEUM REFINING, NATURAL GAS PROCESSING, AND PETROCHEMICAL PROCESSES DIVISION 1. PROCESS UNIT TURNAROUND AND VACUUM-PRODUCING SYSTEMS IN PETROLEUM REFINERIES

30 TAC §§115.311, 115.312, 115.315, 115.316, 115.319

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The proposed amendments implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

§115.311. Emission Specifications.

- (a) For all affected persons in the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria [Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston] areas, as defined in §115.10 of this title (relating to Definitions), the following emission specifications on vacuum-producing systems shall apply.
- (1) No person may be allowed to emit any volatile organic compound (VOC) from a steam ejector or mechanical vacuum pump in a petroleum refinery unless the vent stream is controlled properly in accordance with §115.312(a)(2) of this title (relating to Control Requirements).
- (2) No person may be allowed to emit any VOC from a hotwell with a contact condenser unless the hotwell is covered and

the vapors from the hotwell are controlled properly in accordance with \$115.312(a)(2) of this title.

- (b) For all affected persons in Gregg, Nueces, and Victoria Counties, the following emission specifications on vacuum-producing systems shall apply.
- (1) No person may be allowed to emit any VOC from a steam ejector or mechanical vacuum pump in a petroleum refinery, unless the vent stream is controlled properly in accordance with §115.312(b)(2) of this title.
- (2) No person may be allowed to emit any VOC from a hotwell with a contact condenser, unless the hotwell is covered and the vapors from the hotwell are controlled properly in accordance with §115.312(b)(2) of this title.

§115.312. Control Requirements.

- (a) For all affected persons in the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria [Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston] areas, as defined in §115.10 of this title (relating to Definitions), the following control requirements shall apply.
- (1) Volatile organic compound (VOC) emissions from petroleum refineries shall be controlled during process unit shutdown or turnaround with the following procedure:
- (A) recover and store all pumpable or drainable liquid;

and

- (B) reduce vessel gas pressure to 5.0 pounds per square inch gauge (psig) (34.5 kPa gauge) or less by recovery or combustion before venting to the atmosphere.
- (2) Vent gas streams affected by §115.311(a) of this title (relating to Emission Specifications) must be controlled properly with a control efficiency of at least 90% or to a VOC concentration of no more than 20 parts per million by volume (ppmv) (on a dry basis corrected to 3.0% oxygen for combustion devices):
- (A) in a direct-flame incinerator at a temperature equal to or greater than 1,300 degrees Fahrenheit (704 degrees Celsius);
 - (B) in a smokeless flare; or
- (C) by any other vapor control system, as defined in §115.10 of this title (relating to Definitions).
- (3) In the <u>Houston-Galveston-Brazoria</u> [Houston/Galveston] area, the following are subject to the requirements of Subchapter H of this chapter (relating to Highly-Reactive Volatile Organic Compounds) in addition to the applicable requirements of this division (relating to Process Unit Turnaround and Vacuum-Producing Systems in Petroleum Refineries):
- (A) any vent gas stream which is subject to \$115.311(a) of this title and which includes a HRVOC, as defined in \$115.10 of this title; and
- (B) any process unit shutdown or turnaround of a unit in which a HRVOC is a raw material, intermediate, final product, or in a waste stream.
- (b) For all affected persons in Gregg, Nueces, and Victoria Counties, the following control requirements shall apply.
- (1) VOC emissions from petroleum refineries shall be controlled during process unit shutdown or turnaround with the following procedure:
- (A) recover and store all pumpable or drainable liquid; and

- (B) reduce vessel gas pressure to five psig (34.5 kPa gauge) or less by recovery or combustion before venting to the atmosphere.
- (2) Vent gas streams affected by §115.311(b) of this title must be controlled properly with a control efficiency of at least 90% or to a VOC concentration of no more than 20 ppmv (on a dry basis corrected to 3.0% oxygen for combustion devices):
- (A) in a direct-flame incinerator at a temperature equal to or greater than 1,300 degrees Fahrenheit (704 degrees Celsius);
 - (B) in a smokeless flare; or
- (C) by any other vapor control system, as defined in §115.10 of this title.

§115.315. Testing Requirements.

- (a) For all affected persons in the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria [Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston] areas, compliance with §115.311(a) of this title (relating to Emission Specifications) and §115.312(a) of this title (relating to Control Requirements) shall be determined by applying the following test methods, as appropriate:
- (1) Test Method 22 (40 Code of Federal Regulations 60, Appendix A) for visual determination of fugitive emissions from material sources and smoke emissions from flares;
- (2) additional control device requirements for flares described in 40 Code of Federal Regulations §60.18(f);
- (3) Test Methods 1-4 (40 Code of Federal Regulations 60, Appendix A) for determining flow rate, as necessary;
- (4) Test Method 18 (40 Code of Federal Regulations 60, Appendix A) for determining gaseous organic compound emissions by gas chromatography;
- (5) Test Method 25 (40 Code of Federal Regulations 60, Appendix A) for determining gaseous nonmethane organic emissions as carbon;
- (6) Test Methods 25A or 25B (40 Code of Federal Regulations 60, Appendix A) for determining total gaseous organic concentrations using flame ionization or nondispersive infrared analysis; or
- (7) minor modifications to these test methods approved by the executive director.
- (b) For all affected persons in Gregg, Nueces, and Victoria Counties, compliance with §115.311(b) of this title (relating to Emission Specifications) and §115.312(b) of this title (relating to Control Requirements) shall be determined by applying the following test methods, as appropriate:
- (1) Test Method 22 (40 Code of Federal Regulations 60, Appendix A) for visual determination of fugitive emissions from material sources and smoke emissions from flares;
- (2) additional control device requirements for flares described in 40 Code of Federal Regulations 60.18(f);
- (3) Test Methods 1-4 (40 Code of Federal Regulations 60, Appendix A) for determining flow rate, as necessary;
- (4) Test Method 18 (40 Code of Federal Regulations 60, Appendix A) for determining gaseous organic compound emissions by gas chromatography;

- (5) Test Method 25 (40 Code of Federal Regulations 60, Appendix A) for determining total gaseous nonmethane organic emissions as carbon;
- (6) Test Methods 25A or 25B (40 Code of Federal Regulations 60, Appendix A) for determining total gaseous organic concentrations using flame ionization or nondispersive infrared analysis; or
- (7) minor modifications to these test methods approved by the executive director.
- §115.316. Monitoring and Recordkeeping Requirements.
- (a) For all affected persons in the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria [Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston] areas, as defined in §115.10 of this title, the following recordkeeping requirements shall apply.
- (1) Any person who operates a vacuum-producing system affected by §115.311(a) of this title (relating to Emission Specifications) shall keep the following records:
- (A) continuous monitoring of the exhaust gas temperature immediately downstream of a direct-flame incinerator;
- (B) continuous monitoring of temperatures upstream and downstream of a catalytic incinerator or chiller; and
- (C) continuous monitoring of the exhaust gas volatile organic compound (VOC) concentration of any carbon adsorption system, as defined in §115.10 of this title (relating to Definitions), to determine breakthrough.
- (2) Any person who conducts a process unit turnaround affected by §115.312(a) of this title (relating to Control Requirements) shall keep the following records:
- (A) the date of process unit shutdown and subsequent start-up following turnaround;
- (B) the type of process unit involved in the turnaround; and
- (C) an estimation of the concentration and total emissions of VOC emissions released to the atmosphere during the process turnaround.
- (3) The results of any testing conducted in accordance with the provisions specified in §115.315(a) of this title (relating to Testing Requirements) shall be maintained at the affected facility.
- (4) All records shall be maintained for two years and be made available for review upon request by authorized representatives of the executive director, EPA, or local air pollution control agencies.
- (b) For all affected persons in Victoria County, the following recordkeeping requirements shall apply.
- (1) Any person who operates a vacuum-producing system affected by §115.311(b) of this title shall keep the following records:
- (A) continuous monitoring of the exhaust gas temperature immediately downstream of a direct-flame incinerator;
- (B) continuous monitoring of temperatures upstream and downstream of a catalytic incinerator or chiller; and
- (C) continuous monitoring of the exhaust gas VOC concentration of any carbon adsorption system, as defined in §115.10 of this title, to determine breakthrough.
- (2) Any person who conducts a process unit turnaround affected by §115.312(b) of this title shall keep the following records:

- (A) the date of process unit shutdown and subsequent start-up following turnaround;
- $\mbox{(B)} \quad \mbox{the type of process unit involved in the turn$ $around;} \label{eq:B}$ and
- (C) an estimation of the concentration and total emissions of VOC emissions released to the atmosphere during the process turnaround.
- (3) The results of any testing conducted in accordance with the provisions specified in §115.315(b) of this title shall be maintained at the affected facility.
- (4) All records shall be maintained for two years and be made available for review upon request by authorized representatives of the executive director, EPA, or local air pollution control agencies.
- §115.319. Counties and Compliance Schedules.
- (a) All affected persons in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Gregg, Hardin, Harris, Jefferson, Liberty, Montgomery, Nueces, Orange, Tarrant, Victoria, and Waller Counties shall continue to comply with this division (relating to Process Unit Turnaround and Vacuum-Producing Systems in Petroleum Refineries) as required by §115.930 of this title (relating to Compliance Dates).
- (b) All affected persons in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties shall comply with this division as soon as practicable, but no later than March 1, 2009.
- (c) All affected persons in the Bexar County area subject to the requirements of this division shall comply with the requirements of this division no later than January 1, 2025.

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

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DIVISION 3. FUGITIVE EMISSION CONTROL IN PETROLEUM REFINING, NATURAL GAS/GASOLINE PROCESSING, AND PETROCHEMICAL PROCESSES IN OZONE NONATTAINMENT AREAS

30 TAC §§115.352 - 115.357, 115.359

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code

within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The proposed amendments implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

§115.352. Control Requirements.

For the Beaumont-Port Arthur, <u>Bexar County</u>, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, as defined in §115.10 of this title (relating to Definitions), no person shall operate a petroleum refinery; a synthetic organic chemical, polymer, resin, or methyl-tertbutyl ether manufacturing process; or a natural gas/gasoline processing operation, as defined in §115.10 of this title, without complying with the following requirements.

- (1) Except as provided in paragraph (2) of this section, no component may be allowed to have a volatile organic compound (VOC) leak for more than 15 calendar days after the leak is found that meets the following:
- (A) for all components except pump seals and compressor seals, a screening concentration greater than 500 parts per million by volume (ppmv) above background as methane, or the dripping or exuding of process fluid based on sight, smell, or sound;
- (B) for pump seals and compressor seals, a screening concentration greater than 10,000 ppmv above background as methane, or the dripping or exuding of process fluid based on sight, smell, or sound; and
- (C) if the owner or operator elects to use the alternative work practice in §115.358 of this title (relating to Alternative Work Practice), any leak detected as defined in §115.358 of this title, including any leak detected using the alternative work practice on a component that is subject to the requirements of this division (relating to Fugitive Emission Control in Petroleum Refining, Natural Gas/Gasoline Processing, and Petrochemical Processes in Ozone Nonattainment Areas) but not specifically selected for alternative work practice monitoring.
- (2) A first attempt at repair must be made no later than five calendar days after the leak is found and the component must be repaired no later than 15 calendar days after the leak is found, unless the repair of the component would require a unit shutdown that would create more emissions than the repair would eliminate. A component in gas/vapor or light liquid service is considered to be repaired when it is monitored with an instrument using Method 21 in 40 Code of Federal Regulations (CFR) Part 60, Appendix A-7 (October 17, 2000) and shown to no longer have a leak after adjustments or alterations to the component. A component in heavy liquid service is considered to be

repaired when it is inspected by audio, visual, and olfactory means and shown to no longer have a leak after adjustments or alterations to the component. For any component that the owner or operator monitors using the alternative work practice in §115.358 of this title, the component is considered repaired when the component is demonstrated to no longer have a leak after adjustments or alterations to the component by either screening using an optical gas imaging instrument as specified in §115.358 of this title or by the normal monitoring method required under this division. If the repair of a component within 15 days after the leak is detected would require a process unit shutdown that would create more emissions than the repair would eliminate, the repair may be delayed until the next scheduled process unit shutdown.

- (A) Delay of repair beyond a process unit shutdown will be allowed for a component if that component is isolated from the process and does not remain in VOC service.
- (B) Valves that can be safely repaired without a process unit shutdown may not be placed on the shutdown list.
- (C) Delay of repair will be allowed for pumps, compressors, or agitators if the repair is completed as soon as practicable, but not later than six months after the leak was detected, and the repair requires replacing the existing seal design with:
- (i) a dual mechanical seal system that includes a barrier fluid system;
- (ii) a system that is designed with no externally actuated shaft penetrating the housing; or
- (iii) a closed-vent system and control device that meets the requirements of §115.122(a)(2) of this title (relating to Control Requirements).
- (3) All leaking components, as defined in paragraph (1) of this section, that cannot be repaired until a process unit shutdown must be identified for such repair by tagging. The executive director may require an early process unit shutdown or other appropriate action based on the number and severity of tagged leaks awaiting a process unit shutdown.
- (4) No valves may be installed or operated at the end of a pipe or line containing VOC unless the pipe or line is sealed with a second valve, a blind flange, or a tightly-fitting plug or cap. The sealing device may be removed only while a sample is being taken or during maintenance operations, and when closing the line, the upstream valve must be closed first.
- (5) Construction of new and reworked piping, valves, and pump and compressor systems must conform to applicable American National Standards Institute, American Petroleum Institute, American Society of Mechanical Engineers, or equivalent codes.
- (6) New and reworked underground process pipelines must contain no buried valves such that fugitive emission monitoring is rendered impractical.
- (7) To the extent that good engineering practice will permit, new and reworked components must be so located to be reasonably accessible for leak-checking during plant operation. A difficult-to-monitor component is a component that cannot be inspected without elevating the monitoring personnel more than two meters above a permanent support surface or that requires a permit for confined space entry as defined in 29 CFR §1910.146 (December 1, 1998). Difficult-to-monitor components must be identified in a list to be made available upon request as specified in §115.356(5) of this title (relating to Recordkeeping Requirements).

- (8) New and reworked piping connections must be welded, flanged, or consist of pressed and permanently formed metal-to-metal seals. Screwed connections are permissible only on new piping smaller than two inches in diameter.
- (9) For pressure relief valves installed in series with a rupture disk, pin, second relief valve, or other similar leak-tight pressure relief component, a pressure gauge or an equivalent device or system must be installed between the relief valve and the other pressure relief component to monitor for leakage past the first component. When leakage is detected past the first component, that component must be repaired or replaced at the earliest opportunity, but no later than the next process unit shutdown. Equivalent devices or systems must be identified in a list to be made available upon request as specified in §115.356(5) of this title and must have been approved by the methods required by §115.353 of this title (relating to Alternate Control Requirements).
- (10) Any petroleum refinery; synthetic organic chemical, polymer, resin, or methyl-tert-butyl ether manufacturing process; or natural gas/gasoline processing operation in the Houston-Galveston-Brazoria area in which a highly-reactive volatile organic compound, as defined in §115.10 of this title, is a raw material, intermediate, final product, or in a waste stream is subject to the requirements of Subchapter H of this chapter (relating to Highly-Reactive Volatile Organic Compounds) in addition to the applicable requirements of this division.

§115.353. Alternate Control Requirements.

- (a) For all affected persons in the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, as defined in §115.10 of this title (relating to Definitions), any alternate methods of demonstrating and documenting continuous compliance with the applicable control requirements or exemption criteria in this division (relating to Fugitive Emission Control in Petroleum Refining, Natural Gas/Gasoline Processing, and Petrochemical Processes in Ozone Nonattainment Areas) may be approved by the executive director in accordance with §115.910 of this title (relating to Availability of Alternate Means of Control) if emission reductions are demonstrated to be substantially equivalent.
- (b) The owner or operator of a site subject to the requirements of this division may use the alternative work practice in §115.358 of this title (relating to Alternative Work Practice) as an optional alternative to hydrocarbon gas analyzer monitoring required under this division.
- §115.354. Monitoring and Inspection Requirements.
 All affected persons in the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, as defined in §115.10 of this title (relating to Definitions), shall conduct a monitoring and inspection program consistent with the following provisions.
- (1) Monitor yearly (with a hydrocarbon gas analyzer) the emissions from all:
- (A) process drains that receive or contact affected volatile organic compound wastewater streams as defined in Subchapter B, Division 4 of this chapter (relating to Industrial Wastewater);
- (B) difficult-to-monitor components as identified in §115.352(7) of this title (relating to Control Requirements) that would otherwise be subject to more frequent monitoring under paragraph (2) of this section; and
- (C) unsafe-to-monitor components that would otherwise be subject to more frequent monitoring. An unsafe-to-monitor component is a component that the owner or operator determines is

unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of conducting the monitoring. Components that are unsafe to monitor must be identified in a list made available upon request as specified in §115.356(5) of this title (relating to Recordkeeping Requirements). If an unsafe-to-monitor component is not considered safe to monitor within a calendar year, then it must be monitored as soon as possible during times that are safe to monitor.

- (2) Monitor each calendar quarter (with a hydrocarbon gas analyzer) the screening concentration from all:
 - (A) compressor seals;
 - (B) pump seals;
 - (C) accessible valves; and
 - (D) pressure relief valves in gaseous service.
- (3) Inspect weekly, by visual, audio, and/or olfactory means, all flanges, excluding flanges that are monitored at least once each calendar year using Method 21 in 40 Code of Federal Regulations Part 60, Appendix A-7 (October 17, 2000) and excluding flanges that are unsafe to inspect. Flanges that are unsafe to inspect must be identified in a list made available upon request. If an unsafe-to-inspect flange is not considered safe to inspect within the required weekly time frame, then it must be inspected as soon as possible during a time that it is safe to inspect.
- (4) Monitor (with a hydrocarbon gas analyzer) emissions from any relief valve that has vented to the atmosphere within 24 hours of the release, excluding relief valves that are unsafe to monitor or difficult to monitor. Relief valves that are unsafe to monitor must be monitored as soon as possible after relieving during times that are safe to monitor. Relief valves that are difficult to monitor must be monitored within 15 days after a release.
- (5) Upon the detection of a leaking component, affix to the leaking component a weatherproof and readily visible tag, bearing an identification number and the date the leak was detected. This tag must remain in place until the leaking component is repaired. Tagging of difficult-to-monitor leaking components may be done by reference tagging. The reference tag should be located as close as possible to the leaking component and should clearly identify the leaking component and its location.
- (6) The monitoring schedule of paragraphs (1) (3) of this section may be modified to require an increase in the frequency of monitoring in a given process area if the executive director determines that there is an excessive number of leaks in that process area.
- (7) After completion of the required quarterly valve monitoring for a period of at least two years, the operator of a petroleum refinery; synthetic organic chemical, polymer, resin, or methyl-tert-butyl ether manufacturing process; or a natural gas/gasoline processing operation, as defined in §115.10 of this title, may request in writing to the executive director that the valve monitoring schedule be revised based on the percent of valves leaking. The percent of valves leaking must be determined by dividing the sum of valves leaking during the current monitoring period and valves for which repair has been delayed (including valves that have been classified as non-repairable under §115.357(8) of this title (relating to Exemptions)) by the total number of valves subject to the requirements. This request must include all data that have been developed to justify the following modifications in the monitoring schedule.
- (A) After two consecutive quarterly leak detection periods with the percent of valves leaking equal to or less than 2.0%, an owner or operator may begin to skip one of the quarterly leak detection periods for the valves in gas/vapor and light liquid service.

- (B) After five consecutive quarterly leak detection periods with the percent of valves leaking equal to or less than 2.0%, an owner or operator may begin to skip three of the quarterly leak detection periods for the valves in gas/vapor and light liquid service.
- (8) Alternate monitoring schedules approved before November 15, 1996, under §§115.324(a)(8)(A), 115.334(3)(A), and 115.344(3)(A) of this title (relating to Inspection Requirements), as in effect December 3, 1993, are approved monitoring schedules for the purposes of paragraph (7) of this section.
- (9) All component monitoring must occur when the component is in contact with process material and the process unit is in service. If a unit is not operating during the required monitoring period but a component in that unit is in contact with process fluid that is circulating or under pressure, then that component is considered to be in service and is required to be monitored. Valves must be in gaseous or light liquid service to be considered in the total valve count for alternate valve monitoring schedules of paragraph (7) of this section.
- (10) Monitored screening concentrations must be recorded for each component in gaseous or light liquid service. Notations such as "pegged," "off scale," "leaking," "not leaking," or "below leak definition" may not be substituted for hydrocarbon gas analyzer results. For readings that are higher than the upper end of the scale (i.e., pegged) even when using the highest scale setting or a dilution probe, record a default pegged value of 100,000 parts per million by volume. This requirement does not apply to monitoring using an optical gas imaging instrument in accordance with §115.358 of this title (relating to Alternative Work Practice).
- (11) All new connectors must be checked for leaks within 30 days of being placed in volatile organic compound service by monitoring with a hydrocarbon gas analyzer for components in light liquid and gas service and by using visual, audio, and/or olfactory means for components in heavy liquid service. Components that are unsafe to monitor or inspect are exempt from this requirement if they are monitored or inspected as soon as possible during times that are safe to monitor.
- (12) All exemptions for valves with a nominal size of two inches or less expired on July 31, 1992 (final compliance date).
- (13) For any components that the owner or operator elects to use the alternative work practice in §115.358 of this title, the following provisions apply.
- (A) The frequency for monitoring any components listed in this section must be the frequency determined according to §115.358 of this title, except as specified in subparagraph (C) of this paragraph.
- (B) The alternative monitoring schedules allowed under paragraphs (7) and (8) of this section are not allowed.
- (C) If the owner or operator elects to use the alternative work practice in §115.358 of this title to satisfy the hydrocarbon gas analyzer monitoring requirements of paragraphs (4) or (11) of this section, the time limitations specified in paragraphs (4) and (11) of this section on performing the monitoring continue to apply.
- (D) If the component is within a class of equipment (e.g., valves, flanges, etc.) that the owner or operator has elected to use the alternative work practice in §115.358 of this title and the component meets all other conditions specified in §115.358 of this title for acceptable use of the alternative work practice, then the component may not be classified as difficult to monitor under §115.352(7) of this title unless in order to image the component as required by §115.358 of this title the monitoring personnel would have to be elevated more than

two meters above a permanent support surface or would require a permit for confined space entry as defined in 29 Code of Federal Regulations §1910.146 (December 1, 1998). If the component does qualify as difficult to monitor using the alternative work practice, the owner or operator may use either Method 21 or the alternative work practice at the monitoring frequency specified in paragraph (1) of this section. Any components classified as difficult to monitor under the alternative work practice must be identified as such in the list required in §115.352(7) of this title.

- (E) The owner or operator that elects to use the alternative work practice in §115.358 of this title may still classify a component as unsafe to monitor as allowed under paragraph (1)(C) of this section if the component cannot be safely monitored using either a hydrocarbon gas analyzer or the alternative work practice. The owner or operator may use either Method 21 or the alternative work practice at the monitoring frequency specified in paragraph (1) of this section. Any components classified as unsafe to monitor under the alternative work practice must be identified as such in the list required in paragraph (1)(C) of this section.
- (F) If the executive director determines that there is an excessive number of leaks in any given process area that the alternative work practice in §115.358 of this title is used, the executive director may require an increase in the frequency of monitoring under the alternative work practice in that process area.

§115.355. Approved Test Methods.

For all affected persons in the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, as defined in §115.10 of this title (relating to Definitions), compliance with this division (relating to Fugitive Emission Control in Petroleum Refining, Natural Gas/Gasoline Processing, and Petrochemical Processes in Ozone Nonattainment Areas) must be determined by applying the following test methods, as appropriate:

- (1) Method 21 in 40 Code of Federal Regulations Part 60, Appendix A-7 (October 17, 2000) for determining volatile organic compound leaks;
- (2) determination of true vapor pressure using American Society for Testing and Materials Test Methods D323, D2879, D4953, D5190, or D5191 for the measurement of Reid vapor pressure, adjusted for 68 degrees Fahrenheit (20 degrees Celsius) in accordance with American Petroleum Institute Publication 2517, Third Edition, 1989;
- (3) the alternative work practice in §115.358 of this title (relating to Alternative Work Practice);
- (4) minor modifications to these test methods approved by the executive director; or
- (5) equivalent determinations using published vapor pressure data or accepted engineering calculations.

§115.356. Recordkeeping Requirements.

All affected persons in the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, as defined in §115.10 of this title (relating to Definitions), shall maintain the following records, either electronically or in hard copy form, except for any video records required by paragraph (4) of this section, which must be maintained electronically.

(1) The owner or operator shall maintain records identifying each process unit subject to fugitive monitoring in accordance with this division (relating to Fugitive Emission Control in Petroleum Refining, Natural Gas/Gasoline Processing, and Petrochemical Processes

in Ozone Nonattainment Areas) including, at a minimum, the following information:

- (A) the name of each process unit;
- (B) a scale plot plan showing the location of each process unit;
- (C) process flow diagrams for each process unit showing the general process streams and major equipment on which the components are located; and
- (D) the expected volatile organic compound emissions if the process unit is shut down for repair of components or other equipment, including:
 - (i) the total emissions;
 - (ii) the calculations used; and
 - (iii) engineering assumptions applied.
- (2) The owner or operator shall maintain records on components and process areas that contain, at a minimum, the following data:
- (A) the name of the process unit where the component is located;
- (B) the type of component (e.g., pump, compressor, valve, pressure relief valve, etc);
- (C) all data collected in accordance with the monitoring and inspection requirements of §115.354 of this title (relating to Monitoring and Inspection Requirements) for each component required to be monitored with a hydrocarbon gas analyzer;
 - (D) the calibration of the monitoring instrument;
 - (E) if a component is found leaking, if applicable:
- (i) the component identification and method of leak determination (Method 21 in 40 Code of Federal Regulations Part 60, Appendix A-7 (October 17, 2000), the alternative work practice in §115.358 of this title (relating to Alternative Work Practice), sight/sound/smell, or inert gas or hydraulic testing);
 - (ii) the date that a leaking component is discovered;
- (iii) the date that a first attempt at repair was made to a leaking component;
 - (iv) the date that a leaking component is repaired;
- (v) the date and instrument reading of the recheck procedure after a leaking component is repaired;
- (vi) the date that the leaking component is placed on the shutdown list; and
- (vii) the date that the leaking component was taken out of service; and
- (F) records of any audio, visual, and olfactory inspections of connectors, but only if a leak is detected.
- (3) The owner or operator shall maintain records by process unit identifying and justifying each:
- (A) unsafe-to-monitor component and unsafe-to-in-spect flange;
 - (B) difficult-to-monitor component; and
- (C) exemption by component claimed under §115.357 of this title (relating to Exemptions). The components may be identified by one or more of the following methods:

- (i) a plant site plan;
- color coding;
- (iii) a written or electronic database;
- (iv) designation of process unit boundaries;
- some form of weatherproof identification; or
- (vi) process flow diagrams that exhibit sufficient detail to identify major pieces of equipment, including major process flows to, from, and within a process unit. Major equipment includes, but is not limited to, columns, reactors, pumps, compressors, drums, tanks, and exchangers.
- (4) If an owner or operator elects to use the alternative work practice in §115.358 of this title, the following records must be maintained in addition to the records required by paragraphs (1) - (3) of this section.
- (A) The owner or operator shall maintain a list of all components that are monitored according to the alternative work practice in §115.358 of this title.
- (B) The owner or operator shall maintain records of the detection sensitivity level selected from the table in §115.358(e)(1) of this title.
- (C) The owner or operator shall maintain records of the analysis to determine the component in contact with the lowest mass fraction of chemicals that are detectable, as required by the daily instrument check procedure referenced in §115.358(c)(2) of this title.
- (D) The owner or operator shall maintain records of the technical basis for the mass fraction of detectable chemicals used for daily instrument check procedure referenced in §115.358(c)(2) of this title.
- (E) The owner or operator shall maintain records of each daily instrument check required by §115.358(c)(2) of this title. These records include:
- (i) the flow meter reading of the leak used in the daily instrument check and the distance from which the leak was imaged;
- (ii) a video record, with a date and time stamp, of the daily instrument check for each configuration and operator of the optical gas imaging instrument used during monitoring; and
- (iii) the name of each operator performing the daily instrument check.
- (F) The owner or operator shall maintain records of the leak survey results as follows for all components that the owner or operator monitors using the alternative work practice in §115.358 of this title.
- (i) A video record must be used to document the leak survey results and the results of the recheck to verify the leak has been repaired, if the alternative work practice in §115.358 of this title is used to perform the recheck. The video record must meet the following requirements.
- (I) The video record must include a time and date stamp for each monitoring event.
- (II) Each component must be identifiable in the video record.
- (ii) The records must include the name of each operator performing the leak survey for each monitoring event.

- (G) The owner or operator shall maintain records of the annual Method 21 screening required by §115.358(f) of this title, including:
 - the components screened according to Method

the concentration measured according to

Method 21;

the date and time of the Method 21 screening;

- (iv) the calibrations required by Method 21.
- (H) The owner or operator shall maintain records of the training required by §115.358(h) of this title.
- (I) The owner or operator shall maintain records of the optical gas imaging instrument manufacturer's operating parameters.
- (5) The owner or operator shall maintain all monitoring records for at least five years and make them available for review upon request by authorized representatives of the executive director. United States Environmental Protection Agency, or local air pollution control agencies with jurisdiction, except that the five-year record retention requirement does not apply to records generated before December 31, 2000.

§115.357. Exemptions.

21;

and

For all affected persons in the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, as defined in §115.10 of this title (relating to Definitions), the following exemptions apply.

- (1) Components that contact a process fluid containing volatile organic compounds (VOC) having a true vapor pressure equal to or less than 0.044 pounds per square inch absolute (psia) (0.3 kiloPascals) at 68 degrees Fahrenheit (20 degrees Celsius) are exempt from the instrument monitoring (with a hydrocarbon gas analyzer) requirements of §115.354(1) and (2) of this title (relating to Monitoring and Inspection Requirements) if the components are inspected by visual, audio, and/or olfactory means according to the inspection schedules specified in §115.354(1) and (2) of this title.
- (2) Conservation vents or other devices on atmospheric storage tanks that are actuated either by a vacuum or a pressure of no more than 2.5 pounds per square inch gauge (psig), pressure relief valves equipped with a rupture disk or venting to a control device, components in continuous vacuum service, and valves that are not externally regulated (such as in-line check valves) are exempt from the requirements of this division, except that each pressure relief valve equipped with a rupture disk must comply with §115.352(9) and §115.356(3)(C) of this title (relating to Control Requirements and Recordkeeping Requirements).
- (3) Compressors in hydrogen service are exempt from the requirements of §115.354 of this title if the owner or operator demonstrates that the percent hydrogen content can be reasonably expected to always exceed 50.0% by volume.
- (4) All pumps and compressors that are equipped with a shaft sealing system that prevents or detects emissions of VOC from the seal are exempt from the monitoring requirement of §115.354 of this title. These seal systems may include, but are not limited to, dual pump seals with barrier fluid at higher pressure than process pressure, seals degassing to vent control systems kept in good working order, or seals equipped with an automatic seal failure detection and alarm system. Submerged pumps or sealless pumps (including, but not limited

to, diaphragm, canned, or magnetic driven pumps) may be used to satisfy the requirements of this paragraph.

- (5) Reciprocating compressors and positive displacement pumps used in natural gas/gasoline processing operations are exempt from the requirements of this division except §115.356(3)(C) of this title.
- (6) Components at a petroleum refinery or synthetic organic chemical, polymer, resin, or methyl-tert-butyl ether manufacturing process, that contact a process fluid that contains less than 10% VOC by weight and components at a natural gas/gasoline processing operation that contact a process fluid that contains less than 1.0% VOC by weight are exempt from the requirements of this division except §115.356(3)(C) of this title.
- (7) Plant sites covered by a single account number with less than 250 components in VOC service are exempt from the requirements of this division except §115.356(3)(C) of this title.
- (8) Components in ethylene, propane, or propylene service, not to exceed 5.0% of the total components, may be classified as non-repairable beyond the second repair attempt at 500 parts per million by volume (ppmv). These components will remain in the fugitive monitoring program and be repaired no later than 15 calendar days after the concentration of VOC detected via Method 21 in 40 Code of Federal Regulations (CFR) Part 60, Appendix A-7 (October 17, 2000) exceeds 10,000 ppmv. For the purposes of this division, components that contact a process fluid with greater than 85% ethylene, propane, or propylene by weight are considered in ethylene, propane, or propylene service, respectively. If the owner or operator elects to use the alternative work practice in §115.358 of this title (relating to Alternative Work Practice), this exemption may not be claimed for any component that is monitored according to the alternative work practice unless the owner or operator demonstrates the leak concentration does not exceed 10,000 ppmv using Method 21 and the owner or operator continues to monitor the component using both the alternative work practice and Method 21 according to the frequency specified in §115.358 of this title.
- (9) The following valves are exempt from the requirements of \$115.352(4) of this title:
 - (A) pressure relief valves;
- (B) open-ended valves or lines in an emergency shutdown system that are designed to open automatically in the event of an emissions event:
- (C) open-ended valves or lines containing materials that would autocatalytically polymerize or would present an explosion, serious overpressure, or other safety hazard if capped or equipped with a double block and bleed system; and
 - (D) valves rated greater than 10,000 psig.
- (10) Instrumentation systems, as defined in 40 CFR §63.161 (January 17, 1997), that meet 40 CFR §63.169 (June 20, 1996) are exempt from the requirements of this division except §115.356(3)(C) of this title.
- (11) Sampling connection systems, as defined in 40 CFR §63.161 (January 17, 1997), that meet the requirements of 40 CFR §63.166(a) and (b) (June 20, 1996) are exempt from the requirements of this division except §115.356(3)(C) of this title.
- (12) Components that are insulated, making them inaccessible to monitoring with a hydrocarbon gas analyzer, are exempt from the monitoring requirements of §115.354(1), (2), and (4) of this title.

- (13) Components/systems that contact a process fluid containing VOC having a true vapor pressure equal to or less than 0.002 psia at 68 degrees Fahrenheit are exempt from the requirements of this division except §115.356(3)(C) of this title.
- (14) In the Houston-Galveston-Brazoria area, the requirements of Subchapter H of this chapter (relating to Highly-Reactive Volatile Organic Compounds) may apply to components that qualify for one or more of the exemptions in paragraphs (1) (11) of this section at any petroleum refinery; synthetic organic chemical, polymer, resin, or methyl-tert-butyl ether manufacturing process; or natural gas/gasoline processing operation in which a highly-reactive volatile organic compound, as defined in §115.10 of this title (relating to Definitions), is a raw material, intermediate, final product, or in a waste stream.
- (15) Beginning on the compliance date in §115.183 [January 1, 2023], any natural gas/gasoline processing operation that is subject to and complies with the compliance requirements of Subchapter B, Division 7 of this chapter (relating to Oil and Natural Gas in Ozone Nonattainment Areas) in the Bexar County, Dallas-Fort Worth, or Houston-Galveston-Brazoria areas [area] is exempt from all requirements in this division.
- §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 Bexar, 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) and (e) of this section shall comply with the requirements in this division no later than 60 days after becoming subject.
- (e) The owner or operator of an affected source in the Bexar County area subject to the requirements of this division shall comply with the requirements of this division as soon as practicable, but no later than January 1, 2025.
- [(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.]

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 E. SOLVENT-USING PROCESSES DIVISION 1. DEGREASING PROCESSES

30 TAC §§115.410 - 115.413, 115.415, 115.416, 115.419

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The proposed amendments implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

§115.410. Applicability and Definitions.

- (a) Applicability. The provisions of this division apply in the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas as defined in §115.10 of this title (relating to Definitions) and in Bastrop, [Bexar,] Caldwell, Comal, Gregg, Guadalupe, Hays, Nueces, Travis, Victoria, Williamson, and Wilson Counties to all persons using volatile organic compound-containing solvent for cold solvent degreasing processes, open-top vapor degreasing processes, and conveyorized degreasing processes. The provisions in §115.412(b) of this title (relating to Control Requirements) do not apply in the Dallas-Fort Worth area until the commission publishes notice in the Texas Register, as provided in §115.419(t) of this title (relating to Compliance Schedules), and the provisions of §115.412(c) of this title do not apply in the Houston-Galveston-Brazoria area until the commission publishes notice in the Texas Register, as provided in §115.419(g) of this title.
- (b) Definitions. Unless specifically defined in the Texas Clean Air Act (Texas Health and Safety Code, Chapter 382) or in §§3.2, 101.1, or 115.10 of this title (relating to Definitions), the terms in this

division have the meanings commonly used in the field of air pollution control.

§115.411. Exemptions.

- (a) The following exemptions apply in the Beaumont-Port Arthur, Bexar County, 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. The exemptions in this subsection are no longer available for an operation subject to §115.412(b) of this title (relating to Control Requirements) in the Dallas-Fort Worth area or §115.412(c) of this title in the Houston-Galveston-Brazoria area as of the compliance date specified in §115.419(f) or §115.419(g), respectively.
- (1) Any cold solvent cleaning system is exempt from the provisions of §115.412(a)(1)(B) [§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 $\S115.412(a)(1)(E) [\S115.412(1)(E)]$ 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 (ft²) (2 square meters (m²)) of air/vapor interface is exempt from the requirement of §115.412(a)(3)(A) [§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 (in²) (100 square centimeters (cm²)) and who properly disposes of waste solvent in enclosed containers is exempt from §115.412(a)(1) [§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 (VOC) less than 550 pounds in any consecutive 24-hour period are exempt from the provisions of §115.412 of this title.
- (b) If the commission publishes notice in the *Texas Register*, as provided in §115.419(f) of this title for the Dallas-Fort Worth area and/or §115.419(g) of this title for the Houston-Galveston-Brazoria area, to require compliance with the contingency measure control requirements of §115.412(b) of this title for the Dallas-Fort-Worth area and/or §115.412(c) of this title for the Houston-Galveston-Brazoria area, then the following exemptions apply in the applicable area as of the compliance date specified in §115.419(f) or (g) of this title.
- (1) Any cold solvent cleaning system is exempt from the provisions of §115.412(a)(1)(B) of this title and may use an external drainage facility in place of an internal type drainage system if the VOC content of the solvent is less than or equal to 25 grams per liter (g/l) or if a cleaned part cannot fit into an internal drainage facility.
- (2) The following are exempt from the requirements of §115.412(a)(1)(E) of this title:

- (A) a cold solvent cleaning system for which the VOC content of the solvent is less than or equal to 25 g/l; and
 - (B) remote reservoir cold solvent cleaners.
- (3) An owner or operator who operates a remote reservoir cold solvent cleaner that uses solvent with a VOC content that is less than or equal to 25 g/l and that has a drain area less than 16 (in²) (100 (cm²)) and who properly disposes of waste solvent in enclosed containers is exempt from §115.412(a)(1) of this title.

§115.412. Control Requirements.

- (a) In the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria [In the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston] areas as defined in §115.10 of this title (relating to Definitions) and in Gregg, Nueces, Victoria, [Bexar,] Comal, Guadalupe, Wilson, Bastrop, Caldwell, Hays, Travis, and Williamson Counties, the following control requirements shall apply.
- (1) Cold solvent cleaning. No person shall own or operate a system utilizing a volatile organic compound (VOC) for the cold solvent cleaning of objects without the following controls.
- (A) A cover shall be provided for each cleaner which shall be kept closed whenever parts are not being handled in the cleaner. The cover shall be designed for easy one-handed operation if any of the following exists:
- (i) the true vapor pressure of the solvent is greater than 0.3 psia (2 kPa) as measured at 100 degrees Fahrenheit (38 degrees Celsius);
 - (ii) the solvent is agitated; or
 - (iii) the solvent is heated.
- (B) An internal cleaned-parts drainage facility, for enclosed draining under a cover, shall be provided for all cold solvent cleaners.
- (C) A permanent label summarizing the operating requirements in subparagraph (F) of this paragraph shall be attached to the cleaner in a conspicuous location near the operator.
- (D) If a solvent spray is used, it must be a solid fluid stream (not a fine, atomized, or shower-type spray) and at an operating pressure of ten psig or less as necessary to prevent splashing above the acceptable freeboard.
- (E) The system shall be equipped with a freeboard that provides a ratio equal to or greater than 0.7, or a water cover (solvent must be insoluble in and heavier than water). To determine the freeboard ratio, the freeboard height measurement is taken from the top of the degreaser to the top of the air/solvent level. This number is then divided by the smallest width measurement. The width measurement is taken at the smallest interior dimension. This dimension could be located at any point, from the top or opening of the unit to the air/solvent level.
 - (F) The operating procedures shall be as follows.
- (i) Waste solvent shall not be disposed of or transferred to another party such that the waste solvent can evaporate into the atmosphere. Waste solvents shall be stored only in covered containers.
- (ii) The degreaser cover shall be kept closed whenever parts are not being handled in the cleaner.
- (iii) Parts shall be drained for at least 15 seconds or until dripping ceases.

- (iv) Porous or absorbent materials, such as cloth, leather, wood, or rope, shall not be degreased.
- (2) Open-top vapor degreasing. No person shall own or operate a system utilizing a VOC for the open-top vapor degreasing of objects without the following controls:
- (A) a cover that can be opened and closed easily without disturbing the vapor zone;
- (B) the following devices which will automatically shut off the sump heat:
- (i) a condenser coolant flow sensor and thermostat which will detect if the condenser coolant is not circulating or if the condenser coolant temperature exceeds the solvent manufacturer's recommendations:
- (ii) a solvent level sensor which will detect if the solvent level drops below acceptable design limits; and
- (iii) a vapor level sensor which will detect if the vapor level rises above acceptable design limits;
- (C) a spray safety switch which will shut off the spray pump to prevent spraying above the vapor level;
 - (D) one of the following controls:
- (i) a freeboard that provides a ratio equal to or greater than 0.75 and, if the degreaser opening is greater than 10 ft² (1m²), a powered cover. To determine the freeboard ratio, the freeboard height measurement is taken from the top of the degreaser to the top of the air/vapor level. This number is then divided by the smallest width measurement. The width measurement is taken at the smallest interior dimension. This dimension could be located at any point, from the top or opening of the unit to the air/vapor level;
- (ii) a properly sized refrigerated chiller capable of achieving 85% or greater control of VOC emissions;
- (iii) an enclosed design where the cover or door opens only when the dry part is actually entering or exiting the degreaser; or
- (iv) a carbon adsorption system with ventilation equal to or greater than 50 cfm/ft2 (15m 3 /min per m²) of air/vapor area (with the cover open) and exhausting less than 25 ppm of solvent by volume averaged over one complete adsorption cycle;
- (E) a permanent, conspicuous, label summarizing the operating procedures listed in subparagraph (F) of this paragraph; $\underline{\text{and}}$
 - (F) the following operating procedures:
- (i) the cover shall be closed at all times except when processing work loads through the degreaser;
- (ii) parts shall be positioned so that complete drainage is obtained;
- (iii) parts shall be moved in and out of the degreaser at less than 11 ft/min (3.3 m/min);
- (iv) the work load shall be retained in the vapor zone at least 30 seconds or until condensation ceases;
- (v) any pools of solvent on the cleaned parts shall be removed by tipping the part before withdrawing it from the vapor zone;
- (vi) parts shall be allowed to dry within the degreaser freeboard area for at least 15 seconds or until visually dry;
- (vii) porous or absorbent materials, such as cloth, leather, wood, or rope, shall not be degreased;

- (viii) work loads shall not occupy more than half of the degreaser open top surface area;
- (ix) solvent shall not be sprayed above the vapor level;
- (x) solvent leaks shall be repaired immediately, or the degreaser shall be shut down until repairs are made;
- (xi) waste solvent shall not be disposed of or transferred to another party such that the waste solvent will evaporate into the atmosphere. Waste solvent shall be stored only in covered containers:
- (xii) exhaust ventilation for systems other than those which vent to a major control device shall not exceed 65 cfm per ft 2 (20 m³ /min per m²) of degreaser open area, unless necessary to meet Occupational Safety and Health Administration (OSHA) requirements or unless a carbon adsorption system is installed as a major control device. Ventilation fans or other sources of air agitation shall not be used near the degreaser opening; and
- (xiii) water shall not be visibly detectable in the solvent exiting the water separator.
- (3) Conveyorized degreasing. No person shall own or operate a system utilizing a VOC for the conveyorized cleaning of objects without the following controls:
 - (A) one of the following major control devices:
- (i) a properly sized refrigerated chiller capable of achieving 85% or greater control of VOC emissions; or
- (ii) a carbon adsorption system with ventilation equal to or greater than 50 cfm/ft2 (15 m 3 /min/m²) of air/vapor area (when downtime covers are open) and exhausting less than 25 ppm of solvent by volume averaged over one complete adsorption cycle;
- (B) a drying tunnel or other means, such as rotating (tumbling) basket if space is available, to prevent solvent liquid or vapor carry-out;
- (C) a condenser flow switch and thermostat which will shut off sump heat if the condenser coolant is not circulating or if the condenser coolant discharge temperature exceeds the solvent manufacturer's recommendation;
- (D) a spray safety switch which will shut off the spray pump if the vapor level drops more than four inches (ten cm);
- (E) a vapor level control thermostat which will shut off the sump heat when the vapor level rises above the designed operating level;
- (F) entrances and exits which silhouette work loads so that the average clearance (between parts and edge of the degreaser opening) is either less than four inches (ten cm) or less than 10% of the width of the opening;
- (G) downtime covers which close off the entrance and exit during nonoperating hours;
- (H) a permanent, conspicuous label near the operator summarizing the operating requirements in subparagraph (I) of this paragraph; and
 - (I) the following operating procedures:
- $\it (i)$ exhaust ventilation for systems other than those which vent to a major control device shall not exceed 65 cfm/ft² (20 $\rm m^3/min/m^2)$ of degreaser opening, unless necessary to meet OSHA requirements or unless a carbon adsorption system is installed as a major

- control device. Ventilation fans shall not be used near the degreaser opening;
- (ii) parts shall be positioned so that complete drainage is obtained;
- (iii) vertical conveyor speed shall be maintained at less than 11 ft/min (3.3 m/min);
- (iv) waste solvent shall not be disposed of, or transferred to another party, such that the waste solvent can evaporate into the atmosphere. Waste solvent shall be stored only in covered containers:
- (v) leaks shall be repaired immediately or the degreaser shall be shut down until repairs are made;
- (vi) water shall not be visibly detectable in the solvent exiting the water separator;
- (vii) downtime covers shall be placed over entrances and exits of conveyorized degreasers immediately after the conveyor and exhaust are shut down and removed just before they are started up; and
- (viii) porous or absorbent materials, such as cloth, leather, wood, or rope, shall not be degreased.
- (b) In accordance with the compliance schedule for contingency requirements in §115.419(f) of this title (relating to Counties and Compliance Schedules), and in addition to the requirements of subsection (a) of this section, no person in the Dallas-Fort Worth area shall own or operate a system for the cold solvent cleaning, open-top vapor degreasing, or conveyorized degreasing of objects using a solvent with a VOC content greater than 25 grams per liter (g/l).
- (c) In accordance with the compliance schedule for contingency requirements in §115.419(g) of this title, and in addition to the requirements of subsection (a) of this section, no person in the Houston-Galveston-Brazoria area shall own or operate a system for the cold solvent cleaning, open-top vapor degreasing, or conveyorized degreasing of objects using a solvent with a VOC content greater than 25 g/l.
- §115.413. Alternate Control Requirements.
- Except as specified in paragraph (4) of this section, the [The] alternate control requirements for degreasing processes in the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria [Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston] areas and in Gregg, Nucces, Victoria, [Bexar,] Comal, Guadalupe, Wilson, Bastrop, Caldwell, Hays, Travis, and Williamson Counties are as follows.
- (1) Alternate methods of demonstrating and documenting continuous compliance with the applicable control requirements or exemption criteria in this division may be approved by the executive director in accordance with §115.910 of this title (relating to Availability of Alternate Means of Control) if emission reductions are demonstrated to be substantially equivalent.
- (2) An alternative capture and control system for cold solvent cleaners with a demonstrated overall volatile organic compound (VOC) emission reduction efficiency of 65% or greater may be used in lieu of the requirements of §115.412(a)(1) [§115.412(1)] of this title (relating to Control Requirements), if approved by the executive director
- (3) An alternate capture and control system for open-top vapor or conveyorized degreasers with a demonstrated overall VOC emission reduction efficiency of 85% or greater may be used in lieu of the requirements of §115.412(a)(2)(D) or (a)(3)(A) [§115.412(2)(D) or (3)(A)] of this title, if approved by the executive director.

- (4) The owner or operator of a cold cleaning solvent, open-top vapor degreasing, or conveyorized degreasing system that becomes subject to §115.412(b) or (c) of this title may use an airless/air-tight batch cleaning system or an alternative cleaning system approved by the United States Environmental Protection Agency (EPA) that achieves equivalent emission reductions, provided that all of the following applicable requirements are met:
- (A) the equipment is operated in accordance with the manufacturer's specifications and operated with a door or other pressure sealing apparatus that is in place during all cleaning and drying cycles;
- (B) all waste solvents are stored in properly identified and sealed containers, and no associated pressure relief devices allow liquid solvents to drain out;
- (C) spills that occur during solvent transfer must be wiped up immediately, and the used wipe rags must be stored in closed containers that are handled in accordance with clause (ii) of this subparagraph;
- (D) the equipment is maintained in a vapor-tight, leak-free condition and any leak is a violation; and
- (E) the requirements of this paragraph are subject to approval of the executive director.

§115.415. Testing Requirements.

The testing requirements for degreasing processes in the Beaumont-Port Arthur, <u>Bexar County</u>, 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 are as follows.

- (1) Compliance with §115.412(a)(1) [§115.412(1)] of this title (relating to Control Requirements) must be determined by applying the following test methods, as applicable:
- (A) determination of true vapor pressure using ASTM International Test Method D323-89, ASTM Test Method D2879, ASTM Test Method D4953, ASTM Test Method D5190, or ASTM Test Method D5191 for the measurement of Reid vapor pressure, adjusted for actual storage temperature in accordance with American Petroleum Institute Publication 2517, Third Edition, 1989;
- (B) minor modifications to the test methods and procedures listed in subparagraph (A) of this paragraph that are approved by the executive director;
- (C) using standard reference materials for the true vapor pressure of each volatile organic compound component; or
- (D) using analytical data from the solvent supplier or manufacturer's material safety data sheet.
- (2) Compliance with §115.412(a)(2)(D)(iv) and (a)(3)(A)(ii) [§115.412(2)(D)(iv) and (3)(A)(ii)] of this title and §115.413(3) of this title (relating to Alternate Control Requirements) must be determined by applying the following test methods, as appropriate:
- (A) Test Methods 1-4 (40 Code of Federal Regulations (CFR) Part 60, Appendix A) for determining flow rates, as necessary;
- (B) Test Method 18 (40 CFR Part 60, Appendix A) for determining gaseous organic compound emissions by gas chromatography;
- (C) Test Method 25 (40 CFR Part 60, Appendix A) for determining total gaseous nonmethane organic emissions as carbon;

- (D) Test Methods 25A or 25B (40 CFR Part 60, Appendix A) for determining total gaseous organic concentrations using flame ionization or nondispersive infrared analysis; or
- (E) minor modifications to these test methods and procedures approved by the executive director.
- (3) Compliance with §115.412(b) and (c) of this title must be determined by applying the following test methods, as applicable:
 - (A) Method 24 (40 CFR Part 60, Appendix A); or
- (B) additional test procedures described in 40 CFR §60.446 (as amended through October 17, 2000 (65 Federal Register 61761)).
- (4) [(3)] Test methods other than those specified in paragraphs (1) (3) [(1) and (2)] of this section may be used if validated by 40 CFR Part 63, Appendix A, Test Method 301. For the purposes of this paragraph, substitute "executive director" each place that Test Method 301 references "administrator."

§115.416. Recordkeeping Requirements.

The owner or operator of each degreasing process in Beaumont-Port Arthur, <u>Bexar County</u>, 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 shall maintain the following records at the facility for at least two years and shall make such records available upon request to representatives of the executive director, the United States Environmental Protection Agency, or the local air pollution control agency having jurisdiction in the area:

- (1) a record of control equipment maintenance, such as replacement of the carbon in a carbon adsorption unit;
- (2) the results of all tests conducted at the facility in accordance with the requirements described in §115.415(2) and (3) of this title (relating to Testing Requirements);
- (3) for each degreasing process in Gregg, Nueces, and Victoria Counties which is exempt under §115.411(a)(5) [§115.411(5)] of this title (relating to Exemptions), records of solvent usage in sufficient detail to document continuous compliance with this exemption;
- (4) for each degreasing process in the Dallas-Fort Worth area, records sufficient to demonstrate continuous compliance with:
- (A) the vapor pressure testing described in §115.415(1)(A) (D) of this title; and
 - (B) the applicable exemptions in §115.411 of this title.
- §115.419. Counties and Compliance Schedules.
- (a) In <u>Bexar</u>, 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) All affected owners or operators of a degreasing process in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties shall be in compliance with §115.412(b) of this title (relating to Control Requirements) by no later than nine months after the commission publishes notification in the *Texas Register* of its determination that this contingency rule is necessary as a result of EPA publication of a notice in the *Federal Register* that the specified area failed to attain the applicable National Ambient Air Quality Standard for ozone by the attainment deadline or failed to demonstrate reasonable further progress as set forth in the 1990 Amendments to the Federal Clean Air Act, §172(c)(9).
- [(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.]
- (g) All affected owners or operators of a degreasing process in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties shall be in compliance with §115.412(c) of this title by no later than nine months after the commission publishes notification in the *Texas Register* of its determination that this contingency rule is necessary as a result of EPA publication of a notice in the *Federal Register* that the specified area failed to attain the applicable National Ambient Air Quality Standard for ozone by the attainment deadline or failed to demonstrate reasonable further progress as set forth in the 1990 Amendments to the Federal Clean Air Act, §172(c)(9).
- (h) The owner or operator of a degreasing process or operation in the Bexar County area subject to the requirements of this division shall comply with the requirements of this division by no later than January 1, 2025. All affected persons of a degreasing process or operation in the Bexar County area that becomes subject to this division on or after the applicable compliance date in this subsection shall comply with the requirements of this division by but no later than 60 days after becoming subject.

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

Filed with the Office of the Secretary of State on December 4, 2023.

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Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-2678

DIVISION 2. SURFACE COATING PROCESSES 30 TAC §§115.420, 115.422, 115.423, 115.425 - 115.427, 115.429

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The proposed amendments implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

- §115.420. Applicability and Definitions.
- (a) The owner or operator of a surface coating process in the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, as defined in §115.10 of this title (relating to Definitions), and in Gregg, Nueces, and Victoria Counties, 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, <u>Bexar County</u>, 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, <u>Bexar County</u>, 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, <u>Bexar County</u>, 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, <u>Bexar County</u>, 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 <u>Bexar County</u>, Dallas-Fort Worth, [area, except in Wise County, and in the] El Paso₂ 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 areas [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], Bexar County, 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, <u>Bexar County</u>, 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], Bexar County, [the] Dallas-Fort Worth [area, except in Wise County, the] El Paso [area], and [the] Houston-Galveston-Brazoria areas [area].
- (14) Wood parts and products coating. The requirements in this division apply in the Bexar County, Dallas-Fort Worth [area, except in Wise County, the] El Paso [area], and [the] Houston-Galve-ston-Brazoria areas[area].
- (15) Wood furniture manufacturing coatings. The requirements in this division apply in the Beaumont-Port Arthur [area], Bexar County, [the] Dallas-Fort Worth, [area, except Wise County, the] El Paso [area], and [the] Houston-Galveston-Brazoria areas [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) (No change.)
- (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) (No change.)

- (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 II 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 handwipe, 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 resinbound 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 pro-

tect 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) (No change.)

- (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) (No change.)
- (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) (No change.)
- (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) (No change.)
- (H) Vehicle refinishing (body shops)--The coating of motor vehicles, as defined in §114.620 of this title (relating to Def-

- initions), 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.

§115.422. Control Requirements.

In the Beaumont-Port Arthur, <u>Bexar County</u>, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, as defined in §115.10 of this title (relating to Applicability and Definitions), the following control requirements apply. In Gregg, Nueces, and Victoria Counties, the control requirements in paragraph (5) of this section apply.

- (1) The owner or operator of each vehicle refinishing (body shop) operation shall minimize volatile organic compounds (VOC) emissions during equipment cleanup by using the following procedures:
- (A) install and operate a system that totally encloses spray guns, cups, nozzles, bowls, and other parts during washing, rinsing, and draining procedures. Non-enclosed cleaners may be used if the vapor pressure of the cleaning solvent is less than 100 millimeters of mercury (mm Hg) at 20 degrees Celsius (68 degrees Fahrenheit) and the solvent is directed towards a drain that leads directly to an enclosed remote reservoir;
- (B) keep all wash solvents in an enclosed reservoir that is covered at all times, except when being refilled with fresh solvents; and
- (C) keep all waste solvents and other cleaning materials in closed containers.
- (2) Each vehicle refinishing (body shop) operation must use coating application equipment with a transfer efficiency of at least 65%, unless otherwise specified in an alternate means of control approved by the executive director in accordance with §115.910 of this title (relating to Availability of Alternate Means of Control). High-volume, low-pressure (HVLP) spray guns are assumed to comply with the 65% transfer efficiency requirement.
- (3) The following requirements apply to each wood furniture manufacturing facility subject to §115.421(15) of this title (relating to Emission Specifications).

- (A) No compounds containing more than 8.0% by weight of VOC may be used for cleaning spray booth components other than conveyors, continuous coaters and their enclosures, and/or metal filters, unless the spray booth is being refurbished. If the spray booth is being refurbished, that is, the spray booth coating or other material used to cover the booth is being replaced, no more than 1.0 gallon of organic solvent may be used to prepare the booth prior to applying the booth coating.
- (B) Normally closed containers must be used for storage of finishing, cleaning, and washoff materials.
- (C) Conventional air spray guns may not be used for applying finishing materials except under one or more of the following circumstances:
- (i) to apply finishing materials that have a VOC content no greater than 1.0 kilogram of VOC per kilogram of solids (1.0 pound of VOC per pound of solids), as delivered to the application system:
- (ii) for touch-up and repair under the following circumstances:
- (I) the finishing materials are applied after completion of the finishing operation; or
- (II) the finishing materials are applied after the stain and before any other type of finishing material is applied, and the finishing materials are applied from a container that has a volume of no more than 2.0 gallons.
- (iii) if spray is automated, that is, the spray gun is aimed and triggered automatically, not manually;
- (iv) if emissions from the finishing application station are directed to a vapor control system;
- (v) the conventional air gun is used to apply finishing materials and the cumulative total usage of that finishing material is no more than 5.0% of the total gallons of finishing material used during that semiannual period; or
- (vi) the conventional air gun is used to apply stain on a part that:
- (I) the production speed is too high or the part shape is too complex for one operator to coat the part and the application station is not large enough to accommodate an additional operator; or
- (II) the excessively large vertical spray area of the part makes it difficult to avoid sagging or runs in the stain.
- (D) All organic solvent used for line cleaning or to clean spray guns must be pumped or drained into a normally closed container.
- (E) Emissions from washoff operations must be minimized by:
 - (i) using normally closed tanks for washoff; and
- (ii) minimizing dripping by tilting or rotating the part to drain as much organic solvent as possible.
- (4) The following requirements apply to each shipbuilding and ship repair surface coating facility subject to $\S115.421(16)$ of this title.
- (A) All handling and transfer of VOC-containing materials to and from containers, tanks, vats, drums, and piping systems must be conducted in a manner that minimizes spills.

- (B) All containers, tanks, vats, drums, and piping systems must be free of cracks, holes, and other defects and remain closed unless materials are being added to or removed from them.
- (C) All organic solvent used for line cleaning or to clean spray guns must be pumped or drained into a normally closed container.
- (5) The following requirements apply to each aerospace vehicle or component coating process subject to §115.421(10) of this title.
- (A) One or more of the following application techniques must be used to apply any primer or topcoat to aerospace vehicles or components: flow/curtain coating; dip coating; roll coating; brush coating; cotton-tipped swab application; electrodeposition coating; HVLP spraying; electrostatic spraying; or other coating application methods that achieve emission reductions equivalent to HVLP or electrostatic spray application methods, unless one of the following situations apply:
- (i) any situation that normally requires the use of an airbrush or an extension on the spray gun to properly reach limited access spaces;
 - (ii) the application of specialty coatings;
- (iii) the application of coatings that contain fillers that adversely affect atomization with HVLP spray guns and that the executive director has determined cannot be applied by any of the specified application methods;
- (iv) the application of coatings that normally have a dried film thickness of less than 0.0013 centimeter (0.0005 in.) and that the executive director has determined cannot be applied by any of the specified application methods in this subparagraph;
- (v) the use of airbrush application methods for stenciling, lettering, and other identification markings;
- (vi) the use of aerosol coating (spray paint) application methods; and
 - (vii) touch-up and repair operations.
- (B) Cleaning solvents used in hand-wipe cleaning operations must meet the definition of aqueous cleaning solvent in §115.420(c)(1)(I) of this title (relating to Surface Coating Definitions) or have a VOC composite vapor pressure less than or equal to 45 mm Hg at 20 degrees Celsius, unless one of the following situations apply:
- (i) cleaning during the manufacture, assembly, installation, maintenance, or testing of components of breathing oxygen systems that are exposed to the breathing oxygen;
- (ii) cleaning during the manufacture, assembly, installation, maintenance, or testing of parts, subassemblies, or assemblies that are exposed to strong oxidizers or reducers (e.g., nitrogen tetroxide, liquid oxygen, hydrazine);
- (iii) cleaning and surface activation prior to adhesive bonding;
- (iv) cleaning of electronics parts and assemblies containing electronics parts;
- (v) cleaning of aircraft and ground support equipment fluid systems that are exposed to the fluid, including air-to-air heat exchangers and hydraulic fluid systems;
- (vi) cleaning of fuel cells, fuel tanks, and confined spaces;

- (vii) surface cleaning of solar cells, coated optics, and thermal control surfaces:
- (viii) cleaning during fabrication, assembly, installation, and maintenance of upholstery, curtains, carpet, and other textile materials used on the interior of the aircraft;
- (ix) cleaning of metallic and nonmetallic materials used in honeycomb cores during the manufacture or maintenance of these cores, and cleaning of the completed cores used in the manufacture of aerospace vehicles or components;
- (x) cleaning of aircraft transparencies, polycarbonate, or glass substrates;
- (xi) cleaning and solvent usage associated with research and development, quality control, or laboratory testing;
- (xii) cleaning operations, using nonflammable liquids, conducted within five feet of energized electrical systems. Energized electrical systems means any alternating current or direct current electrical circuit on an assembled aircraft once electrical power is connected, including interior passenger and cargo areas, wheel wells and tail sections; and
- (xiii) cleaning operations identified as essential uses under the Montreal Protocol that the United States Environmental Protection Agency (EPA) has allocated essential use allowances or exemptions in 40 Code of Federal Regulations §82.4 (as amended through May 10, 1995 (60 FR 24986)), including any future amendments promulgated by the EPA.
- (C) For cleaning solvents used in the flush cleaning of parts, assemblies, and coating unit components, the used cleaning solvent must be emptied into an enclosed container or collection system that is kept closed when not in use or captured with wipers provided they comply with the housekeeping requirements of subparagraph (E) of this paragraph. Aqueous and semiaqueous cleaning solvents are exempt from this subparagraph.
- (D) All spray guns must be cleaned by one or more of the following methods:
- (i) enclosed spray gun cleaning system provided that it is kept closed when not in use and leaks are repaired within 14 days from when the leak is first discovered. If the leak is not repaired by the 15th day after detection, the solvent must be removed and the enclosed cleaner must be shut down until the leak is repaired or its use is permanently discontinued;
- (ii) unatomized discharge of solvent into a waste container that is kept closed when not in use;
- (iii) disassembly of the spray gun and cleaning in a vat that is kept closed when not in use; or
- (iv) atomized spray into a waste container that is fitted with a device designed to capture atomized solvent emissions.
- (E) All fresh and used cleaning solvents used in solvent cleaning operations must be stored in containers that are kept closed at all times except when filling or emptying. Cloth and paper, or other absorbent applicators, moistened with cleaning solvents must be stored in closed containers. Cotton-tipped swabs used for very small cleaning operations are exempt from this subparagraph. In addition, the owner or operator shall implement handling and transfer procedures to minimize spills during filling and transferring the cleaning solvent to or from enclosed systems, vats, waste containers, and other cleaning operation equipment that hold or store fresh or used cleaning solvents. The requirements of this subparagraph are known collectively as house-keeping measures. Aqueous, semiaqueous, and hydrocarbon-based

cleaning solvents, as defined in §115.420(c)(1) of this title, are exempt from this subparagraph.

- (6) Any surface coating operation in the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas that becomes subject to §115.421 of this title by exceeding the exemption limits in §115.427 of this title (relating to Exemptions) is subject to the provisions in §115.421 of this title, even if throughput or emissions later fall below exemption limits unless emissions are maintained at or below the controlled emissions level achieved while complying with §115.421 of this title and one of the following conditions is met.
- (A) The project that caused the throughput or emission rate to fall below the exemption limits in §115.427 of this title must be authorized by a permit, permit amendment, standard permit, or permit by rule required by Chapter 116 or Chapter 106 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification; and Permits by Rule). If a permit by rule is available for the project, the owner or operator shall continue to comply with §115.421 of this title for 30 days after the filing of documentation of compliance with that permit by rule.
- (B) If authorization by permit, permit amendment, standard permit, or permit by rule is not required for the project, the owner or operator shall provide the executive director 30 days notice of the project in writing.
- (7) In the <u>Bexar County</u>, Dallas-Fort Worth, and Houston-Galveston-Brazoria areas, the owner or operator of a paper surface coating line subject to this division shall implement the following work practices to limit VOC emissions from storage, mixing, and handling of cleaning and cleaning-related waste materials.
- (A) All VOC-containing cleaning materials must be stored in closed containers.
- (B) Mixing and storage containers used for VOC-containing materials must be kept closed at all times except when depositing or removing these materials.
- (C) Spills of VOC-containing cleaning materials must be minimized.
- (D) VOC-containing cleaning materials must be conveyed from one location to another in closed containers or pipes.
- (E) VOC emissions from the cleaning of storage, mixing, and conveying equipment must be minimized.
- §115.423. Alternate Control Requirements.

The alternate control requirements for surface coating processes in the Beaumont-Port Arthur, <u>Bexar County</u>, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas and in Gregg, Nueces, and Victoria Counties are as follows.

(1) Emission calculations for surface coating operations performed to satisfy the conditions of §101.23 of this title (relating to Alternate Emission Reduction ("Bubble") Policy), §115.910 of this title (relating to Availability of Alternate Means of Control), or other demonstrations of equivalency with the specified emission limits in this division must be based on the pounds of volatile organic compounds (VOC) per gallon of solids for all affected coatings. The owner or operator shall use the following equation to convert emission limits from pounds of VOC per gallon of coating to pounds of VOC per gallon of solids:

Figure: 30 TAC §115.423(1) (No change.)

(2) Any alternate methods of demonstrating and documenting continuous compliance with the applicable control requirements or

exemption criteria in this division, such as use of improved transfer efficiency, may be approved by the executive director in accordance with §115.910 of this title if emission reductions are demonstrated to be substantially equivalent.

- (3) If a vapor control system is used to control emissions from coating operations:
- (A) the capture and abatement system must be capable of achieving and maintaining emission reductions equivalent to the emission limitations of §115.421 of this title (relating to Emission Specifications) and an overall control efficiency of at least 80% of the VOC emissions from those coatings. The owner or operator shall use the following equation to determine the minimum overall control efficiency necessary to demonstrate equivalency with the emission limitations of §115.421 of this title:

Figure: 30 TAC §115.423(3)(A) (No change.)

- (B) the owner or operator shall submit design data for each capture system and emission control device that is proposed for use to the executive director for approval. In the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, capture efficiency testing must be performed in accordance with §115.425(4) of this title (relating to Testing Requirements).
- (4) For any surface coating process or processes at a specific property, the executive director may approve requirements different from those in §115.421(8) of this title based upon his determination that such requirements will result in the lowest emission rate that is technologically and economically reasonable. When such a determination is made, the executive director shall specify the date or dates by which such different requirements must be met and shall specify any requirements to be met in the interim. If the emissions resulting from such different requirements equal or exceed 25 tons a year for a property, the determinations for that property must be reviewed every five years. Executive director approval does not necessarily constitute satisfaction of all federal requirements nor eliminate the need for approval by the United States Environmental Protection Agency in cases where specified criteria for determining equivalency have not been clearly identified in applicable sections of this chapter.

§115.425. Testing Requirements.

The testing requirements for surface coating processes in the Beaumont-Port Arthur, <u>Bexar County</u>, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas and in Gregg, Nueces, and Victoria Counties are as follows.

- (1) The owner or operator shall determine compliance with §115.421 of this title (relating to Emission Specifications) by applying the following test methods, as appropriate, except as specified in paragraph (5) of this section. Where a test method also inadvertently measures compounds that are exempt solvent, an owner or operator may exclude these exempt solvents when determining compliance with an emission standard:
- (A) Test Method 24 (40 Code of Federal Regulations (CFR) Part 60, Appendix A) with a one-hour bake;
- (B) ASTM International Test Methods D 1186-06.01, D 1200-06.01, D 3794-06.01, D 2832-69, D 1644-75, and D 3960-81;
- (C) The United States Environmental Protection Agency (EPA) guidelines series document "Procedures for Certifying Quantity of Volatile Organic Compounds (VOC) Emitted by Paint, Ink, and Other Coatings (EPA-450/3-84-019)," as in effect December, 1984;

- (D) additional test procedures described in 40 Code of Federal Regulations (CFR) §60.446; or
- (E) minor modifications to these test methods approved by the executive director.
- (2) Compliance with §115.423(3) of this title (relating to Alternate Control Requirements) must be determined by applying the following test methods, as appropriate:
- (A) Test Methods 1-4 (40 CFR Part 60, Appendix A) for determining flow rates, as necessary;
- (B) Test Method 25 (40 CFR Part 60, Appendix A) for determining total gaseous nonmethane organic emissions as carbon;
- (C) Test Method 25A or 25B (40 CFR Part 60, Appendix A) for determining total gaseous organic concentrations using flame ionization or nondispersive infrared analysis;
- (D) additional performance test procedures described in 40 CFR $\S60.044$; or
- (E) minor modifications to these test methods approved by the executive director.
- (3) Compliance with the alternative emission limits in §115.421(11) of this title must be determined by applying the following test methods, as appropriate:
- (A) Protocol for Determining the Daily VOC Emission Rate of Automobile and Light-Duty Truck Topcoat Operations (EPA 450/3-88-018); or
- (B) The procedure contained in this paragraph for determining daily compliance with the alternative emission limitation in §115.421(11) of this title for final repair. Calculation of occurrence weighted average for each combination of repair coatings (primer, specific basecoat, clearcoat) must be determined by the following procedure.
- (i) The characteristics identified below, which are represented in the following equations by the variables shown, are established for each repair material as sprayed:

Figure: 30 TAC §115.425(3)(B)(i) (No change.)

(ii) The relative occurrence weighted usage is calculated as follows:

Figure: 30 TAC §115.425(3)(B)(ii) (No change.)

(iii) The occurrence weighted average (Q) in pounds of VOC per gallon of coating (minus water and exempt solvents) as applied for each potential combination of repair coatings is calculated according to paragraph (4) of this section.

Figure: 30 TAC §115.425(3)(B)(iii) (No change.)

- (4) In the Beaumont-Port Arthur, <u>Bexar County</u>, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, the owner or operator of surface coating processes subject to §115.423(3) of this title shall measure the capture efficiency using applicable procedures outlined in 40 CFR §52.741, Subpart O, Appendix B. These procedures are: Procedure T-Criteria for and Verification of a Permanent or Temporary Total Enclosure; Procedure L-VOC Input; Procedure G.2-Captured VOC Emissions (Dilution Technique); Procedure F.1-Fugitive VOC Emissions from Temporary Enclosures; and Procedure F.2-Fugitive VOC Emissions from Building Enclosures.
- (A) Exemptions to capture efficiency testing requirements:
- (i) If a source installs a permanent total enclosure (PTE) that meets the specifications of Procedure T and directs all VOC

to a control device, then the capture efficiency is assumed to be 100%, and the source is exempted from capture efficiency testing requirements. This does not exempt the source from performance of any control device efficiency testing that may be required. In addition, a source must demonstrate all criteria for a PTE are met during testing for control efficiency.

- (ii) If a source uses a control device designed to collect and recover VOC (e.g., carbon adsorption system), an explicit measurement of capture efficiency is not necessary if the following conditions are met. The overall control of the system can be determined by directly comparing the input liquid VOC to the recovered liquid VOC. The general procedure for use in this situation is given in 40 CFR §60.433, with the following additional restrictions.
- (1) The source must be able to equate solvent usage with solvent recovery on a 24-hour (daily) basis, rather than a 30-day weighted average. This must be done within 72 hours following each 24-hour period of the 30-day period.
- (II) The solvent recovery system (i.e., capture and control system) must be dedicated to a single process line (e.g., one process line venting to a carbon adsorber system); or if the solvent recovery system controls multiple process lines, the source must be able to demonstrate that the overall control (i.e., the total recovered solvent VOC divided by the sum of liquid VOC input to all process lines venting to the control system) meets or exceeds the most stringent standard applicable for any process line venting to the control system.
- (B) The capture efficiency must be calculated using one of the following four protocols referenced. Any affected source must use one of these protocols, unless a suitable alternative protocol is approved by the executive director and the EPA.
- (i) Gas/gas method using Temporary Total Enclosure (TTE). The EPA specifications to determine whether a temporary enclosure is considered a TTE are given in Procedure T. The capture efficiency equation to be used for this protocol is:

Figure: 30 TAC §115.425(4)(B)(i) (No change.)

(ii) Liquid/gas method using TTE. The EPA specifications to determine whether a temporary enclosure is considered a TTE are given in Procedure T. The capture efficiency equation to be used for this protocol is:

Figure: 30 TAC §115.425(4)(B)(ii) (No change.)

(iii) Gas/gas method using the building or room in which the affected source is located as the enclosure (BE) and in which G and F are measured while operating only the affected facility. All fans and blowers in the BE must be operating as they would under normal production. The capture efficiency equation to be used for this protocol is:

Figure: 30 TAC §115.425(4)(B)(iii) (No change.)

(iv) Liquid/gas method using a BE in which L and F are measured while operating only the affected facility. All fans and blowers in the building or room must be operated as they would under normal production. The capture efficiency equation to be used for this protocol is:

Figure: 30 TAC §115.425(4)(B)(iv) (No change.)

- (C) The following conditions must be met in measuring capture efficiency:
- (i) Any error margin associated with a test protocol may not be incorporated into the results of a capture efficiency test.
- (ii) All affected facilities must accomplish the initial capture efficiency testing by July 31, 1992 in Brazoria, Dallas, El Paso, Galveston, Harris, Jefferson, Orange, and Tarrant Counties, and

- by July 31, 1993 in Chambers, Collin, Denton, Fort Bend, Hardin, Liberty, Montgomery, and Waller Counties, except that all mirror backing coating facilities must accomplish the initial capture efficiency testing by July 31, 1994. Affected sources in the Bexar County area must conduct initial capture efficiency testing by no later than July 1, 2024.
- (iii) During an initial pretest meeting, the executive director and the source owner or operator shall identify those operating parameters that must be monitored to ensure that capture efficiency does not change significantly over time. These parameters must be monitored and recorded initially during the capture efficiency testing and thereafter during facility operation. The executive director may require a new capture efficiency test if the operating parameter values change significantly from those recorded during the initial capture efficiency test.
- (5) The following additional testing requirements apply to each aerospace vehicle or component coating facility subject to \$115.421(10) of this title.
- (A) For coatings which are not waterborne (water-reducible), determine the VOC content of each formulation (less water and less exempt solvents) as applied using manufacturer's supplied data or Method 24 of 40 CFR Part 60, Appendix A. If there is a discrepancy between the manufacturer's formulation data and the results of the Method 24 analysis, compliance must be based on the results from the Method 24 analysis. For water-borne (water-reducible) coatings, manufacturer's supplied data alone can be used to determine the VOC content of each formulation.
- (B) For aqueous and semiaqueous cleaning solvents, manufacturers' supplied data must be used to determine the water content.
- (C) For hand-wipe cleaning solvents, manufacturers' supplied data or standard engineering reference texts or other equivalent methods shall be used to determine the vapor pressure or VOC composite vapor pressure for blended cleaning solvents.
- (D) Except for specialty coatings, compliance with the test method requirements of 40 CFR §63.750, (National Emission Standards for Aerospace Manufacturing and Rework Facilities), is considered to represent compliance with the requirements of this section.
- (6) Test methods other than those specified in paragraphs (1) (5) of this section may be used if validated by 40 CFR Part 63, Appendix A, Test Method 301. For the purposes of this paragraph, substitute "executive director" each place that Test Method 301 references "administrator."
- §115.426. Monitoring and Recordkeeping Requirements.

The following recordkeeping requirements apply to the owner or operator of each surface coating process in the Beaumont-Port Arthur, <u>Bexar County</u>, 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.

§115.427. Exemptions.

In the Beaumont-Port Arthur, <u>Bexar County</u>, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, as defined in §115.10 of this title (relating to Definitions) and in Gregg, Nueces, and Victoria Counties the following exemptions apply.

- (1) The following coating operations are exempt from the miscellaneous metal parts and products surface coating emission specifications in §115.421(8) of this title (relating to Emission Specifications):
 - (A) aerospace vehicles and components;
- (B) in the <u>Bexar County</u>, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, vehicle refinishing (body shops); and
- (C) in the Beaumont-Port Arthur and Houston-Galve-ston-Brazoria areas, ships and offshore oil or gas drilling platforms.
- (2) The following coating operations are exempt from the factory surface coating of flat wood paneling emission specifications in \$115.421(9) of this title:
 - (A) the manufacture of exterior siding;
 - (B) tile board; or
 - (C) particle board used as a furniture component.
- (3) In the Beaumont-Port Arthur, <u>Bexar County</u>, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, the following exemptions apply to surface coating processes, except for vehicle refinishing (body shops) controlled by §115.421(12) of this title. Excluded from the volatile organic compounds (VOC) emission calculations are coatings and solvents used in surface coating activities that are not addressed by the surface coating categories of §115.421(1) (16) or §115.453 of this title (relating to Control Requirements). For example, architectural coatings (i.e., coatings that are applied in the field to stationary structures and their appurtenances, to portable buildings, to pavements, or to curbs) at a property would not be included in the calculations.
- (A) Surface coating operations on a property that, when uncontrolled, will emit a combined weight of VOC of less than 3.0 pounds per hour and 15 pounds in any consecutive 24-hour period are exempt from §115.421 of this title and §115.423 of this title (relating to Alternate Control Requirements).
- (B) Surface coating operations on a property that, when uncontrolled, will emit a combined weight of VOC of less than 100 pounds in any consecutive 24-hour period are exempt from §115.421 and §115.423 of this title if documentation is provided to and approved by both the executive director and the United States Environmental Protection Agency to demonstrate that necessary coating performance criteria cannot be achieved with coatings that satisfy applicable emission specifications and that control equipment is not technically or economically feasible.
- (C) Surface coating operations on a property for which total coating and solvent usage does not exceed 150 gallons in any consecutive 12-month period are exempt from §115.421 and §115.423 of this title.
- (D) Mirror backing coating operations located on a property that, when uncontrolled, emit a combined weight of VOC less than 25 tons in one year (based on historical coating and solvent usage) are exempt from this division.
- (E) Wood furniture manufacturing facilities that are subject to and are complying with §115.421(15) of this title and §115.422(3) of this title (relating to Control Requirements) are exempt

- from §115.421(14) of this title. These wood furniture manufacturing facilities must continue to comply with §115.421(14) of this title until these facilities are in compliance with §115.421(15) and §115.422(3) of this title.
- (F) Wood furniture manufacturing facilities that, when uncontrolled, emit a combined weight of VOC from wood furniture manufacturing operations less than 25 tons per year (tpy) are exempt from §115.421(15) and §115.422(3) of this title.
- (G) In Hardin, Jefferson, and Orange Counties, wood parts and products coating facilities are exempt from §115.421(14) of this title.
- (H) In Hardin, Jefferson, and Orange Counties, ship-building and ship repair operations that, when uncontrolled, emit a combined weight of VOC from ship and offshore oil or gas drilling platform surface coating operations less than 50 tpy are exempt from §115.421(16) and §115.422(4) of this title.
- (I) In Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties, shipbuilding and ship repair operations that, when uncontrolled, emit a combined weight of VOC from ship and offshore oil or gas drilling platform surface coating operations less than 25 tpy are exempt from §115.421(16) and §115.422(4) of this title.
- (J) The following activities where cleaning and coating of aerospace vehicles or components may take place are exempt from this division: research and development, quality control, laboratory testing, and electronic parts and assemblies, except for cleaning and coating of completed assemblies.
- (4) Vehicle refinishing (body shops) in Hardin, Jefferson, and Orange Counties are exempt from §115.421(12) and §115.422(1) and (2) of this title.
- (5) The coating of vehicles at in-house (fleet) vehicle refinishing operations and the coating of vehicles by private individuals are exempt from §115.421(11)(B) and §115.422(1) and (2) of this title. This exemption is not applicable if the coating of a vehicle by a private individual occurs at a commercial operation.
- (6) Aerosol coatings (spray paint) are exempt from this division.
- (7) In Gregg, Nueces, and Victoria Counties, surface coating operations located at any property that, when uncontrolled, will emit a combined weight of VOC less than 550 pounds (249.5 kilograms) in any continuous 24-hour period are exempt from §115.421 of this title. Excluded from this calculation are coatings and solvents used in surface coating activities that are not addressed by the surface coating categories of §115.421(1) (10) of this title. For example, architectural coatings (i.e., coatings that are applied in the field to stationary structures and their appurtenances, to portable buildings, to pavements, or to curbs) at a property would not be included in the calculation.
- (8) In the Dallas-Fort Worth and Houston-Galveston-Brazoria areas, the following surface coating categories that are subject to the requirements of Chapter 115, Subchapter E, Division 5 of this title (relating to Control Requirements for Surface Coating Processes) are exempt from the requirements in this division:
 - (A) large appliance coating;
 - (B) metal furniture coating;
 - (C) miscellaneous metal parts and products coating;
- (D) each paper coating line with the potential to emit equal to or greater than 25 tpy of VOC from all coatings applied; and

(E) automobile and light-duty truck manufacturing coating.

(9) In the Dallas-Fort Worth [area, except in Wise County,] and the Houston-Galveston-Brazoria areas[area], the re-coating of used miscellaneous metal parts and products at a designated on-site maintenance shop that was exempt from \$115.421(8) of this title prior to January 1, 2012, or that begins operation on or after January 1, 2012, is exempt from all requirements in this division. The re-coating of used miscellaneous metal parts and products at a designated on-site maintenance shop that was subject to \$115.421(8) of this title prior to January 1, 2012, remains subject to this division. For purposes of this exemption, a designated on-site maintenance shop is an area at a site where used miscellaneous metal parts or products are re-coated on a routine basis. Miscellaneous metal parts and products coating processes in Wise County are not subject to this division.

§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) The owner or operator of a surface coating process in the Bexar County area subject to the requirements of this division shall comply with the requirements of this division no later than January 1, 2025. All affected persons of a surface coating process in the Bexar County area that becomes subject to this division on or after the applicable compliance date in this subsection shall comply with the requirements of 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 proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 4, 2023.

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Texas Commission on Environmental Quality
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DIVISION 3. FLEXOGRAPHIC AND ROTOGRAVURE PRINTING

30 TAC §§115.430 - 115.432, 115.435, 115.436, 115.439

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The proposed amendments implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

§115.430. Applicability and Definitions.

- (a) Applicability. The requirements in this division apply to the following flexographic and rotogravure printing processes in the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, as defined in §115.10 of this title (relating to Definitions), and in Gregg, Nueces, and Victoria Counties:
 - (1) packaging rotogravure printing lines;
 - (2) publication rotogravure printing lines;
 - (3) flexographic printing lines; and
 - (4) flexible package printing lines.

- (b) Definitions. Unless specifically defined in the Texas Clean Air Act (Texas Health and Safety Code, Chapter 382) or in §§3.2, 101.1, or 115.10 of this title (relating to Definitions), the terms in this division have the meanings commonly used in the field of air pollution control. In addition, the following meanings apply in this division unless the context clearly indicates otherwise.
- (1) Cleaning operation--The cleaning of a press, press parts, or removing dried ink from areas around a press. A cleaning operation does not include cleaning electronic components of a press; cleaning in pre-press (e.g., platemaking) or post-press (e.g., binding) operations; the use of janitorial supplies (e.g., detergents or floor cleaners) to clean areas around a press; and parts washers or cold cleaners.
- (2) Daily weighted average--The total weight of volatile organic compounds (VOC) emissions from all materials subject to the same VOC content limit in §115.432 of this title (relating to Control Requirements) divided by the total volume or weight of those materials (minus water and exempt solvent), where applicable, or divided by the total volume or weight of solids applied to each printing line per day.
- (3) Flexible package printing--Flexographic or rotogravure printing on any package or part of a package the shape of which can be readily changed including, but not limited to, bags, pouches, liners, and wraps using paper, plastic, film, aluminum foil, metallized or coated paper or film, or any combination of these materials.
- (4) Flexographic printing--A method of printing in which the image areas are raised above the non-image areas, and the image carrier is made of an elastomeric material.
- (5) Packaging rotogravure printing--Any rotogravure printing on paper, paper board, metal foil, plastic film, or any other substrate that is, in subsequent operations, formed into packaging products or labels.
- (6) Publication rotogravure printing--Any rotogravure printing on paper that is subsequently formed into books, magazines, catalogues, brochures, directories, newspaper supplements, or other types of printed materials.
- (7) Rotogravure printing--The application of words, designs, or pictures to any substrate by means of a roll printing technique that involves a recessed image area. The recessed area is loaded with ink and pressed directly to the substrate for image transfer.

§115.431. Exemptions.

- (a) In the Beaumont-Port Arthur, <u>Bexar County</u>, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, as defined in §115.10 of this title (relating to Definitions), the following exemptions apply.
- (1) In the Beaumont-Port Arthur, Dallas-Fort Worth, and El Paso areas, all rotogravure and flexographic printing lines on a property that, when uncontrolled, have a maximum potential to emit a combined weight of volatile organic compounds (VOC) less than 50 tons per year (based on historical ink and VOC solvent usage, and at maximum production capacity) are exempt from the requirements in §115.432(a) of this title (relating to Control Requirements).
- (2) In the <u>Dallas-Fort Worth and</u> Houston-Galveston-Brazoria <u>areas</u> [area], all rotogravure and flexographic printing lines on a property that, when uncontrolled, have a maximum potential to emit a combined weight of VOC less than 25 tons per year (based on historical ink and VOC solvent usage, and at maximum production capacity) are exempt from the requirements in §115.432(a) of this title.

- (3) Beginning March 1, 2013, in the Dallas-Fort Worth and Houston-Galveston-Brazoria areas, and beginning January 1, 2025 in the Bexar County area, all flexible package printing lines located on a property that have a combined weight of total actual VOC emissions less than 3.0 tons per year from all coatings, as defined in §101.1 of this title (relating to Definitions), and all associated cleaning operations are exempt from the requirements in §115.432(c) and (d) of this title.
- (4) Beginning March 1, 2013, in the Dallas-Fort Worth and Houston-Galveston-Brazoria areas, and beginning January 1, 2025 in the Bexar County area, each flexible package printing line that, when uncontrolled, has a maximum potential to emit total VOC emissions less than 25 tons per year from all coatings is exempt from the requirements in §115.432(c) of this title.
- (b) In Gregg, Nueces, and Victoria Counties, all rotogravure and flexographic printing lines on a property that, when uncontrolled, emit a combined weight of VOC less than 100 tons per year (based on historical ink and VOC solvent usage) are exempt from the requirements in §115.432(b) of this title.

§115.432. Control Requirements.

- (a) In the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, as defined in §115.10 of this title (relating to Definitions), the [following] control requirements of this subsection apply. Beginning March 1, 2013, this subsection no longer applies to flexible package printing lines in the Dallas-Fort Worth and Houston-Galveston-Brazoria areas that are required to comply with the requirements in subsection (c) of this section. In the Bexar County area, the control requirements of this subsection apply to flexographic printing lines, packaging rotogravure printing lines, and publication rotogravure printing lines, but not flexible packaging lines, which are required to comply with the requirements in subsection (c) of this section.
- (1) The owner or operator shall limit the volatile organic compounds (VOC) emissions from solvent-containing ink used on each packaging rotogravure, publication rotogravure, flexible package, and flexographic printing line by using one of the following options.
- (A) The owner or operator shall apply low solvent ink with a volatile fraction containing 25% by volume or less of VOC solvent and 75% by volume or more of water and exempt solvent.
- (B) The owner or operator shall apply high solids solvent-borne ink containing 60% by volume or more of nonvolatile material (minus water and exempt solvent).
- (C) The owner or operator shall operate a vapor control system to reduce the VOC emissions from an effective capture system by at least 90% by weight. The design and operation of the capture system for each printing line must be consistent with good engineering practice and must achieve, as demonstrated to the satisfaction of the executive director, upon request, of at least the following weight percentages:
 - (i) 75% for a publication rotogravure process;
 - (ii) 65% for a packaging rotogravure process;
 - (iii) 60% for a flexographic printing process; or
- (iv) for a flexible package printing process, the overall control efficiency in clause (ii) or (iii) of this subparagraph, depending on the type of press used.
- (2) A flexographic and rotogravure printing line that becomes subject to paragraph (1) of this subsection by exceeding the exemption limits in §115.431(a) of this title (relating to Exemptions) is subject to the provisions of this subsection even if throughput or emis-

sions later fall below exemption limits unless emissions are maintained at or below the controlled emissions level achieved while complying with paragraph (1) of this subsection and one of the following conditions is met.

- (A) The project that caused the throughput or emission rate to fall below the exemption limits in §115.431(a) of this title must be authorized by a permit, permit amendment, standard permit, or permit by rule required by Chapter 116 of this title (relating to Control of Air Pollution by Permit for New Construction or Modification) or Chapter 106 of this title (relating to Permits by Rule). If a permit by rule is available for the project, the owner or operator shall continue to comply with paragraph (1) of this subsection for 30 days after the filing of documentation of compliance with that permit by rule.
- (B) If authorization by permit, permit amendment, standard permit, or permit by rule is not required for the project, the owner or operator shall provide the executive director 30 days notice of the project in writing.
- (3) Any capture efficiency testing of the capture system must be conducted in accordance with §115.435(a) of this title (relating to Testing Requirements).
- (b) In Gregg, Nueces, and Victoria Counties, the owner or operator shall limit the VOC emissions from solvent-containing ink used on each packaging rotogravure, publication rotogravure, flexible package, and flexographic printing line by using one of the following options
- (1) The owner or operator shall apply low solvent ink with a volatile fraction containing 25% by volume or less of VOC solvent and 75% by volume or more of water and exempt solvent.
- (2) The owner or operator shall apply high solids solventborne ink containing 60% by volume or more of nonvolatile material (minus water and exempt solvent).
- (3) The owner or operator shall operate a vapor control system to reduce the VOC emissions from an effective capture system by at least 90% by weight. The design and operation of the capture system for each printing line must be consistent with good engineering practice and must achieve an overall control efficiency, as demonstrated to the satisfaction of the executive director, upon request, of at least the following weight percentages:
 - (A) 75% for a publication rotogravure process;
 - (B) 65% for a packaging rotogravure process;
 - (C) 60% for a flexographic printing process; or
- (D) for a flexible package printing process, the overall control efficiency in subparagraph (B) or (C) of this paragraph, depending on the type of press used.
- (c) Beginning March 1, 2013, in the Dallas-Fort Worth and Houston-Galveston-Brazoria areas, and beginning January 1, 2025, in the Bexar County area, the following control requirements apply to each flexible package printing line.
- (1) The owner or operator shall limit the VOC emissions from coatings, as defined in $\S101.1$ of this title (relating to Definitions), applied on each flexible package printing line by using one of the following options. These limits are based on the daily weighted average, as defined in $\S115.430(b)$ of this title (relating to Applicability and Definitions).
- (A) The owner or operator shall limit the VOC emissions from the coatings to 0.80 pound of VOC per pound of solids applied. The VOC emission limit can be met through the use of low-VOC

coatings or a combination of coatings and the operation of a vapor control system.

- (B) The owner or operator shall limit the VOC emissions from the coatings to 0.16 pound of VOC per pound of coating applied. The VOC emission limit can be met through the use of low-VOC coatings or a combination of coatings and the operation of a vapor control system.
- $\,$ (C) $\,$ The owner or operator shall operate a vapor control system that achieves an overall control efficiency of at least 80% by weight.
- (2) A flexographic and rotogravure printing line that becomes subject to paragraph (1) of this subsection by exceeding the exemption limits in §115.431(a) of this title is subject to paragraph (1) of this subsection even if throughput or emissions later fall below exemption limits unless emissions are maintained at or below the controlled emissions level achieved while complying with paragraph (1) of this subsection and one of the following conditions is met.
- (A) The project that caused the throughput or emission rate to fall below the exemption limits in §115.431(a) of this title must be authorized by a permit, permit amendment, standard permit, or permit by rule required by Chapter 116 of this title or Chapter 106 of this title. If a permit by rule is available for the project, the owner or operator shall continue to comply with paragraph (1) of this subsection for 30 days after the filing of documentation of compliance with that permit by rule.
- (B) If authorization by permit, permit amendment, standard permit, or permit by rule is not required for the project, the owner or operator shall provide the executive director 30 days notice of the project in writing.
- (3) An owner or operator applying coatings in combination with a vapor control system to meet the VOC emission limits in paragraph (1)(A) or (B) of this subsection shall use the following equation to determine the minimum overall control efficiency necessary to demonstrate equivalency. Control device and capture efficiency testing must be performed in accordance with the testing requirements in §115.435(a) of this title.

Figure: 30 TAC §115.432(c)(3) (No change.)

- (d) The owner or operator of a flexible package printing process shall implement the following work practices for cleaning materials:
- (1) keep all cleaning solvents and used shop towels in closed containers; and
- (2) convey cleaning solvents from one location to another in closed containers or pipes.

§115.435. Testing Requirements.

- (a) In the Beaumont-Port Arthur, <u>Bexar County</u>, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, as defined in §115.10 of this title (relating to Definitions), compliance with the control requirements in §115.432 of this title (relating to Control Requirements) must be determined by applying the following test methods, as appropriate:
- (1) Methods 1 4 (40 Code of Federal Regulations (CFR) Part 60, Appendix A) for determining flow rates, as necessary;
- (2) Method 24 (40 CFR Part 60, Appendix A) for determining the volatile organic compounds (VOC) content and density of printing inks and related coatings;
- (3) Method 25 (40 CFR Part 60, Appendix A) for determining total gaseous nonmethane organic emissions as carbon;

- (4) Methods 25A or 25B (40 CFR Part 60, Appendix A) for determining total gaseous organic concentrations using flame ionization or nondispersive infrared analysis;
- (5) the United States Environmental Protection Agency (EPA) guidelines series document "Procedures for Certifying Quantity of Volatile Organic Compounds Emitted by Paint, Ink, and Other Coatings," EPA-450/3-84-019, as in effect December 1984;
- (6) additional performance test procedures described in 40 CFR §60.444 (as amended through October 18, 1983 (48 FR 48375));
- (7) minor modifications to these methods and procedures approved by the executive director; and
- (8) for the capture efficiency, the applicable procedures outlined in 40 CFR §52.741, Subpart O, Appendix B (as amended through October 21, 1996 (61 FR 54559)). These procedures are: Procedure T Criteria for and Verification of a Permanent or Temporary Total Enclosure; Procedure L VOC Input; Procedure G.2 Captured VOC Emissions (Dilution Technique); Procedure F.1 Fugitive VOC Emissions from Temporary Enclosures; Procedure F.2 Fugitive VOC Emissions from Building Enclosures.
- (A) The following exemptions apply to capture efficiency testing requirements.
- (i) If a source installs a permanent total enclosure that meets the specifications of Procedure T and that directs all VOC to a control device, then the capture efficiency is assumed to be 100%, and the source is exempt from capture efficiency testing requirements. This does not exempt the source from performance of any control device efficiency testing that may be required. In addition, a source must demonstrate all criteria for a permanent total enclosure are met during testing for control efficiency.
- (ii) If a source uses a control device designed to collect and recover VOC (e.g., carbon adsorption system), an explicit measurement of capture efficiency is not necessary if the following conditions are met. The overall control of the system can be determined by directly comparing the input liquid VOC to the recovered liquid VOC. The general procedure for use in this situation is given in 40 CFR §60.433 (as amended through October 17, 2000 (65 FR 61761)) with the following additional restrictions.
- (I) The source must be able to equate solvent usage with solvent recovery on a 24-hour (daily) basis, rather than a 30-day weighted average. This verification must be done within 72 hours following each 24-hour period of the 30-day period specified in 40 CFR §60.433 (as amended through October 17, 2000 (65 FR 61761)).
- (II) The solvent recovery system (i.e., capture and control system) must be dedicated to a single process line (e.g., one process line venting to a carbon adsorption system); or if the solvent recovery system controls multiple process lines, the source must be able to demonstrate that the overall control (i.e., the total recovered solvent VOC divided by the sum of liquid VOC input to all process lines venting to the control system) meets or exceeds the most stringent standard applicable for any process line venting to the control system.
- (B) The capture efficiency must be calculated using one of the following four protocols referenced. The owner or operator of any affected source shall use one of these protocols, unless a suitable alternative protocol is approved by the executive director and the EPA.
- (i) Gas/gas method using temporary total enclosure (TTE). The EPA specifications to determine whether a temporary enclosure is considered a TTE are given in Procedure T. The following

equation must be used to determine the capture efficiency for this protocol.

Figure: 30 TAC §115.435(a)(8)(B)(i) (No change.)

(ii) Liquid/gas method using TTE. The EPA specifications to determine whether a temporary enclosure is considered a TTE are given in Procedure T. The following equation must be used to determine the capture efficiency for this protocol.

Figure: 30 TAC §115.435(a)(8)(B)(ii) (No change.)

(iii) Gas/gas method using the building or room enclosure (BE) in which the affected source is located and in which the mass of VOC captured and delivered to a control device and the mass of fugitive VOC that escapes from building enclosure are measured while operating only the affected facility. All fans and blowers in the BE must be operating as they would under normal production. The following equation must be used to determine the capture efficiency for this protocol.

Figure: 30 TAC §115.435(a)(8)(B)(iii) (No change.)

- (iv) Liquid/gas method using a BE in which the mass of liquid VOC input to process and the mass of fugitive VOC that escapes from BE are measured while operating only the affected facility. All fans and blowers in the BE must be operated as they would under normal production. The following equation must be used to determine the capture efficiency for this protocol.
- Figure: 30 TAC §115.435(a)(8)(B)(iv) (No change.)
- (C) The operating parameters selected for monitoring of the capture system for compliance with the requirements in §115.436(a) of this title (relating to Monitoring and Recordkeeping Requirements) must be monitored and recorded during the initial capture efficiency testing and thereafter during facility operation. The executive director may require a new capture efficiency test if the operating parameter values change significantly from those recorded during the initial capture efficiency test.
- (b) In Gregg, Nueces, and Victoria Counties, compliance with the requirements in this division must be determined by applying the following test methods, as appropriate:
- (1) Methods 1 4 (40 CFR Part 60, Appendix A) for determining flow rates, as necessary;
- (2) Method 24 (40 CFR Part 60, Appendix A) for determining the VOC content and density of printing inks and related coatings;
- (3) Method 25 (40 CFR Part 60, Appendix A) for determining total gaseous nonmethane organic emissions as carbon;
- (4) Methods 25A or 25B (40 CFR Part 60, Appendix A) for determining total gaseous organic concentrations using flame ionization or nondispersive infrared analysis;
- (5) the EPA guidelines series document "Procedures for Certifying Quantity of Volatile Organic Compounds Emitted by Paint, Ink, and Other Coatings," EPA-450/3-84-019, as in effect December 1984:
- (6) additional performance test procedures described in 40 CFR $\S60.444$ (as amended through October 18, 1983 (48 FR 48375)); or
- (7) minor modifications to these test methods and procedures approved by the executive director.
- (c) Methods other than those specified in subsections (a)(1) (6) and (b)(1) (6) of this section may be used if approved by the executive director and validated using Method 301 (40 CFR Part 63, Appendix A). For the purposes of this subsection, substitute "executive director" each place that Method 301 references "administrator."

- *§115.436. Monitoring and Recordkeeping Requirements.*
- (a) In the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, as defined in §115.10 of this title (relating to Definitions), the owner or operator of a rotogravure or flexographic printing line subject to this division shall:
- (1) maintain records of the volatile organic compounds (VOC) content of all inks as applied to the substrate. Additionally, records of the quantity of each ink and solvent used must be maintained. The composition of inks may be determined by the methods referenced in §115.435(a) of this title (relating to Testing Requirements) or by examining the manufacturer's formulation data and the amount of dilution solvent added to adjust the viscosity of inks prior to application to the substrate;
- (2) maintain daily records of the quantity of each ink and solvent used at a facility subject to the requirements of an alternate means of control approved by the executive director in accordance with §115.433 of this title (relating to Alternate Control Requirements) that allows the application of inks exceeding the applicable control limits. Such records must be sufficient to demonstrate compliance with the applicable emission limitation on a daily weighted average;
- (3) install and maintain monitors to continuously measure and record operational parameters of any control device installed to meet applicable control requirements. Such records must be sufficient to demonstrate proper functioning of those devices to design specifications, including:
- (A) the exhaust gas temperature of direct-flame incinerators or gas temperature immediately upstream and downstream of any catalyst bed;
- (B) the total amount of VOC recovered by a carbon adsorption or other solvent recovery system during a calendar month;
- (C) the exhaust gas VOC concentration of any carbon adsorption system, as defined in §115.10 of this title, to determine if breakthrough has occurred; and
- (D) the dates and reasons for any maintenance and repair of the required control devices and the estimated quantity and duration of VOC emissions during such activities;
- (4) maintain the results of any testing conducted at an affected facility in accordance with the provisions specified in §115.435(a) of this title;
- (5) maintain all records at the affected facility for at least two years and make such records available upon request to authorized representatives of the executive director, the United States Environmental Protection Agency (EPA), or any local air pollution agency with jurisdiction; and
- (6) maintain on file the capture efficiency protocol submitted under §115.435(a)(8) of this title. The owner or operator shall submit all results of the test methods and capture efficiency protocols to the executive director within 60 days of the actual test date. The source owner or operator shall maintain records of the capture efficiency operating parameter values on-site for a minimum of one year. If any changes are made to capture or control equipment, the owner or operator is required to notify the executive director in writing within 30 days of these changes, and a new capture efficiency or control device destruction or removal efficiency test may be required.
- (b) In Gregg, Nueces, and Victoria Counties, the owner or operator of any rotogravure or flexographic printing line shall:
- (1) maintain records of the VOC content of all inks as applied to the substrate. Additionally, records of the quantity of each ink

- and solvent used must be maintained. The composition of inks may be determined by the methods referenced in §115.435(b) of this title or by examining the manufacturer's formulation data and the amount of dilution solvent added to adjust the viscosity of inks prior to application to the substrate:
- (2) maintain daily records of the quantity of each ink and solvent used at a facility subject to the requirements of an alternate means of control approved by the executive director in accordance with §115.433 of this title that allows the application of inks exceeding the applicable control limits. Such records must be sufficient to demonstrate compliance with the applicable emission limitation on a daily weighted average;
- (3) install and maintain monitors to continuously measure and record operational parameters of any control device installed to meet applicable control requirements. Such records must be sufficient to demonstrate proper functioning of those devices to design specifications, including:
- (A) the exhaust gas temperature of direct-flame incinerators or the gas temperature immediately upstream and downstream of any catalyst bed;
- (B) the total amount of VOC recovered by a carbon adsorption or other solvent recovery system during a calendar month;
- (C) in Victoria County, the exhaust gas VOC concentration of any carbon adsorption system, as defined in §115.10 of this title, to determine if breakthrough has occurred; and
- (D) the dates and reasons for any maintenance and repair of the required control devices and the estimated quantity and duration of VOC emissions during such activities;
- (4) maintain the results of any testing conducted at an affected facility in accordance with the provisions specified in §115.435(b) of this title; and
- (5) maintain all records at the affected facility for at least two years and make such records available upon request to authorized representatives of the executive director, the EPA, or any local air pollution agency with jurisdiction.
- (c) Beginning March 1, 2013, in the Dallas-Fort Worth and Houston-Galveston-Brazoria areas, and beginning January 1, 2025, in the Bexar County area, the owner or operator of a flexible package printing line subject to this division shall comply with the following monitoring and recordkeeping requirements.
- (1) The owner or operator shall maintain records of the VOC content of all coatings, as defined in §101.1 of this title (relating to Definitions), as applied to the substrate. The composition of coatings may be determined by the methods referenced in §115.435(a) of this title or by examining the manufacturer's formulation data and the amount of dilution solvent added to adjust the viscosity of coatings prior to application to the substrate. Additionally, records of the quantity of each coating used must be maintained.
- (2) For flexible package printing lines subject to the control requirements in §115.432(c) of this title (relating to Control Requirements), the owner or operator shall maintain records of the quantity and type of each coating and solvent consumed if any of the coatings, as applied, exceed the applicable VOC content or emission limits in §115.432(c) of this title. Records must be sufficient to demonstrate compliance with the applicable VOC content or emission limit on a daily weighted average.
- (3) For flexible package printing lines subject to the control requirements in §115.432(a) of this title, the owner or operator shall

maintain daily records of the quantity of each ink and solvent used at a facility subject to the requirements of an alternate means of control approved by the executive director in accordance with §115.433 of this title that allows the application of inks exceeding the applicable control limits. Such records must be sufficient to demonstrate compliance with the applicable emission limitation in §115.432(a) of this title on a daily weighted average.

- (4) The owner or operator shall install and maintain monitors to continuously measure and record operational parameters of any control device installed to meet applicable control requirements in §115.432(a) or (c) of this title. Such records must be sufficient to demonstrate proper functioning of those devices to design specifications, including:
- (A) the exhaust gas temperature of direct-flame incinerators or gas temperature immediately upstream and downstream of any catalyst bed;
- (B) the total amount of VOC recovered by a carbon adsorption or other solvent recovery system during a calendar month;
- (C) the exhaust gas VOC concentration of any carbon adsorption system, as defined in §115.10 of this title, to determine if breakthrough has occurred; and
- (D) the dates and reasons for any maintenance and repair of the required control devices and the estimated quantity and duration of VOC emissions during such activities.
- (5) The owner or operator shall maintain the results of any testing conducted at an affected facility in accordance with the provisions specified in §115.435(a) of this title.
- (6) The owner or operator shall maintain all records at the affected facility for at least two years and make such records available upon request to authorized representatives of the executive director, the EPA, or any local air pollution agency with jurisdiction.
- (7) The owner or operator shall maintain on file the capture efficiency protocol submitted under §115.435(a)(8) of this title. The owner or operator shall submit all results of the test methods and capture efficiency protocols to the executive director within 60 days of the actual test date. The source owner or operator shall maintain records of the capture efficiency operating parameter values on-site for a minimum of one year. If any changes are made to capture or control equipment, the owner or operator is required to notify the executive director in writing within 30 days of these changes, and a new capture efficiency or control device destruction or removal efficiency test may be required.

§115.439. Counties and Compliance Schedules.

- (a) Except as specified in subsection (c) and (d) of this section, for the owner or operator of a flexographic or rotogravure printing line subject to this division in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Gregg, Hardin, Harris, Jefferson, Liberty, Montgomery, Nueces, Orange, Tarrant, Victoria, and Waller Counties the compliance date has already passed and the owner or operator shall continue to comply with applicable sections of this division.
- (b) Except as specified in subsection (c) and (d) of this section, in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties the compliance date has already passed and the owner or operator of a flexographic or rotogravure printing line subject to this division shall continue to comply with this division.
- (c) The owner or operator of a flexible package printing line in the Dallas-Fort Worth and Houston-Galveston-Brazoria areas, as defined in §115.10 of this title (relating to Definitions), shall comply with

the requirements in §115.432(c) and (d) and §115.436(c) of this title (relating to Control Requirements; and Monitoring and Recordkeeping Requirements) no later than March 1, 2013. Testing required by §115.435 of this title (relating to Testing Requirements) to demonstrate compliance with the requirements of §115.432(c) of this title must be completed, and the results submitted to the executive director no later than March 1, 2013.

- (d) The owner or operator of a flexible package printing line in the Bexar County, Dallas-Fort Worth, and Houston-Galveston-Brazoria areas that becomes subject to the requirements of this division on or after the applicable compliance date in this section [March 1, 2013,] shall comply with the requirements in this division as soon as practicable, but no later than 60 days after becoming subject.
- (e) The owner or operator of a flexographic or rotogravure printing process in the Bexar County area subject to the requirements of this division shall comply with the requirements of this division no later than January 1, 2025.

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

Filed with the Office of the Secretary of State on December 4, 2023.

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Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 14, 2024

For further information, please call: (512) 239-2678



DIVISION 4. OFFSET LITHOGRAPHIC PRINTING

30 TAC §§115.440 - 115.443, 115.445, 115.446, 115.449

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring

the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The proposed amendments implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

- §115.440. Applicability and Definitions.
- (a) Applicability. The provisions in this division apply to offset lithographic printing lines located in the Bexar County, 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 before and 25 tons of VOC per calendar year on and after November 7, 2025 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; [9f]
- (C) 100 tons of VOC per calendar year <u>before and 25</u> tons of VOC per calendar year on and after November 7, 2025 in Wise County; or[-]
- (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 before and 25 tons of VOC per calendar year on and after November 7, 2025 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; [6f]
- (C) 100 tons of VOC per calendar year before and 25 tons of VOC per calendar year on and after November 7, 2025 in Wise County[-]; or
- (D) 100 tons of VOC per calendar year on and after January 1, 2025 in the Bexar County area.
- (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 Bexar County, 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 <u>Bexar County</u>, 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 $\S115.442(c)(2)$ (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 $\S115.442(c)(2)$ of this title.

§115.442. Control Requirements.

- (a) In the El Paso area as defined in $\S115.10$ of this title (relating to Definitions), the following control requirements apply.
- (1) The owner or operator of an offset lithographic printing line that uses solvent-containing ink shall limit emissions of volatile organic compounds (VOC) as follows.
- (A) The owner or operator of a heatset web offset lithographic printing press that uses alcohol in the fountain solution shall maintain total fountain solution alcohol to 5.0% or less (by volume). Alternatively, a standard of 10.0% or less (by volume) alcohol may be

used if the fountain solution containing alcohol is refrigerated to less than 60 degrees Fahrenheit (15.5 degrees Celsius).

- (B) The owner or operator of a non-heatset web offset lithographic printing press that prints newspaper and that uses alcohol in the fountain solution shall eliminate the use of alcohol in the fountain solution. Nonalcohol additives or alcohol substitutes can be used to accomplish the total elimination of alcohol use.
- (C) The owner or operator of a non-heatset web offset lithographic printing press that does not print newspaper and that uses alcohol in the fountain solution shall maintain the use of alcohol at 5.0% or less (by volume). Alternatively, a standard of 10.0% or less (by volume) alcohol may be used if the fountain solution is refrigerated to less than 60 degrees Fahrenheit (15.5 degrees Celsius).
- (D) The owner or operator of a sheet-fed offset lithographic printing press shall maintain the use of alcohol at 10.0% or less (by volume). Alternatively, a standard of 12.0% or less (by volume) alcohol may be used if the fountain solution is refrigerated to less than 60 degrees Fahrenheit (15.5 degrees Celsius).
- (E) The owner or operator of any type of offset lithographic printing press shall be considered in compliance with the fountain solution limitations of this paragraph if the only VOC in the fountain solution are nonalcohol additives or alcohol substitutes, so that the concentration of VOC in the fountain solution is 3.0% or less (by weight). The fountain solution must not contain any isopropyl alcohol.
- (F) The owner or operator of an offset lithographic printing press shall reduce VOC emissions from cleaning solutions by one of the following methods:
- (i) using cleaning solutions with a VOC content of 50% or less (by volume, as used);
- (ii) using cleaning solutions with a VOC content of 70% or less (by volume, as used) and incorporating a towel handling program that ensures that all waste ink, solvents, and cleanup rags are stored in closed containers until removed from the site by a licensed disposal/cleaning service; or
- (iii) using cleaning solutions with a VOC composite partial vapor pressure less than or equal to 10.0 millimeters of mercury at 68 degrees Fahrenheit (20 degrees Celsius).
- (2) The owner or operator of a heatset offset lithographic printing press shall operate a control device to reduce VOC emissions from the press dryer exhaust vent by 90% by weight or maintain a maximum dryer exhaust outlet VOC concentration of 20 parts per million by volume (ppmv), whichever is less stringent when the press is in operation. The dryer air pressure must be lower than the pressroom air pressure at all times when the press is operating to ensure the dryer has a capture efficiency of 100%.
- (b) In the <u>Bexar County</u>, Dallas-Fort Worth and Houston-Galveston-Brazoria areas, the following control requirements apply to the owner or operator of a major printing source, as defined in §115.440 of this title (relating to Applicability and Definitions), in accordance with the appropriate compliance date specified in §115.449 of this title (relating to Compliance Schedules).
- (1) The owner or operator of an offset lithographic printing press shall limit the VOC content of the cleaning solution, as applied, to:
 - (A) 50.0% VOC or less by volume;
- (B) 70.0% VOC or less by volume if the facility has a towel handling program in place that ensures all waste ink, solvents,

- and cleanup rags are stored in closed containers until removed from the site by a licensed disposal or cleaning service; or
- (C) a VOC composite partial vapor pressure less than or equal to 10.0 millimeters of mercury at 68 degrees Fahrenheit (20 degrees Celsius) if the facility has a towel handling program in place that ensures all waste ink, solvents, and cleanup rags are stored in closed containers until removed from the site by a licensed disposal or cleaning service.
- (2) The owner or operator of a sheet-fed offset lithographic printing press shall limit the VOC content of the fountain solution, as applied, to:
 - (A) 5.0% alcohol or less by weight;
- (B) 8.5% alcohol or less by weight if the fountain solution is refrigerated below 60 degrees Fahrenheit (15.5 degrees Celsius); or
- $\,$ (C) $\,$ 3.0% alcohol substitutes or less by weight and no alcohol in the fountain solution.
- (3) The owner or operator of a non-heatset web offset lithographic printing press shall limit the VOC content of the fountain solution, as applied, to 3.0% alcohol substitutes or less by weight and no alcohol in the fountain solution.
- (4) The owner or operator of a heatset web offset lithographic printing press shall limit the VOC content of the fountain solution, as applied, to:
 - (A) 1.6% alcohol or less by weight;
- (B) 3.0% alcohol or less by weight if the fountain solution is refrigerated below 60 degrees Fahrenheit (15.5 degrees Celsius); or
- $\,$ (C) $\,$ 3.0% alcohol substitutes or less by weight and no alcohol in the fountain solution.
- (5) The owner or operator of a heatset offset lithographic printing press shall operate a control device to reduce VOC emissions from the press dryer exhaust vent by at least 90% by weight or maintain a maximum dryer exhaust outlet VOC concentration of 20 ppmv or less, whichever is less stringent when the press is in operation. The dryer air pressure must be lower than the pressroom air pressure at all times when the press is operating to ensure the dryer has a capture efficiency of 100%.
- (c) In the <u>Bexar County</u>, Dallas-Fort Worth and Houston-Galveston-Brazoria areas, the following control requirements apply to the owner or operator of a minor printing source, as defined in §115.440 of this title, in accordance with the appropriate compliance date specified in §115.449.
- (1) The owner or operator of an offset lithographic printing press shall limit the VOC content of the cleaning solution, as applied, to:
 - (A) 50.0% VOC or less by volume;
- (B) 70.0% VOC or less by volume if the facility has a towel handling program in place that ensures all waste ink, solvents, and cleanup rags are stored in closed containers until removed from the site by a licensed disposal or cleaning service; or
- (C) a VOC composite partial vapor pressure less than or equal to 10.0 millimeters of mercury at 68 degrees Fahrenheit (20 degrees Celsius) if the facility has a towel handling program in place that ensures all waste ink, solvents, and cleanup rags are stored in closed

containers until removed from the site by a licensed disposal or cleaning service.

- (2) The owner or operator of a sheet-fed offset lithographic printing press shall limit the VOC content of the fountain solution, as applied, to:
 - (A) 5.0% alcohol or less by weight;
- (B) 8.5% alcohol or less by weight if the fountain solution is refrigerated below 60 degrees Fahrenheit (15.5 degrees Celsius); or
- (C) 5.0% alcohol substitutes or less by weight and no alcohol in the fountain solution.
- (3) The owner or operator of a non-heatset web offset lithographic printing press shall limit the VOC content of the fountain solution, as applied, to 5.0% alcohol substitutes or less by weight and no alcohol in the fountain solution.
- (4) The owner or operator of a heatset web offset lithographic printing press shall limit the VOC content of the fountain solution, as applied, to:
 - (A) 1.6% alcohol or less by weight;
- (B) 3.0% alcohol or less by weight if the fountain solution is refrigerated below 60 degrees Fahrenheit (15.5 degrees Celsius); or
- (C) 5.0% alcohol substitutes or less by weight and no alcohol in the fountain solution.

§115.443. Alternate Control Requirements.

In the Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, as defined in §115.10 of this title (relating to Definitions), alternate methods of demonstrating and documenting continuous compliance with the applicable control requirements or exemption criteria in this division (relating to Offset Lithographic Printing) may be approved by the executive director in accordance with §115.910 of this title (relating to Availability of Alternate Means of Control) if emission reductions are demonstrated to be substantially equivalent.

§115.445. Approved Test Methods.

In the <u>Bexar County</u>, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, as defined in §115.10 of this title (relating to Definitions) compliance with the requirements in this division (relating to Offset Lithographic Printing) must be determined by applying the following test methods, as appropriate:

- (1) Test Methods 1-4 (40 Code of Federal Regulations (CFR) Part 60, Appendix A) for determining flow rates;
- (2) Test Method 24 (40 CFR Part 60, Appendix A) for determining the volatile organic compound content and density of printing inks and related coatings;
- (3) Test Method 25 (40 CFR Part 60, Appendix A) for determining total gaseous nonmethane organic emissions as carbon with the modification that the probe and filter should be heated to the gas stream temperature, typically closer to 350 degrees Fahrenheit (177 degrees Celsius) to prevent condensation;
- (4) Test Methods 25A or 25B (40 CFR Part 60, Appendix A) for determining total gaseous organic concentrations using flame ionization or nondispersive infrared analysis;
- (5) the United States Environmental Protection Agency guidelines series document "Procedures for Certifying Quantity of Volatile Organic Compounds Emitted by Paint, Ink, and Other Coatings" (EPA-450/3-84-019, effective December 1984);

- (6) additional performance test procedures described in 40 CFR \$60.444 (effective October 18, 1983);
- (7) minor modifications to these test methods if approved by the executive director; and
- (8) test methods other than those specified in this section if validated by 40 CFR Part 63, Appendix A, Test Method 301 (effective December 29, 1992) and approved by the executive director.
- §115.446. Monitoring and Recordkeeping Requirements.
- (a) In the El Paso area as defined in §115.10 of this title (relating to Definitions), the following monitoring and recordkeeping requirements apply.
- (1) The owner or operator of a heatset offset lithographic printing press shall install, calibrate, maintain, and operate a temperature monitoring device, according to the manufacturer's instructions, at the outlet of the control device. The temperature monitoring device must be equipped with a continuous recorder and must have an accuracy of ± 0.5 degrees Fahrenheit, or alternatively $\pm 1.0\%$ of the temperature being monitored.
- (2) The owner or operator of any offset lithographic printing press shall install and maintain monitors to continuously measure and record operational parameters of any emission control device installed to meet applicable control requirements on a regular basis. Such records must be sufficient to demonstrate proper functioning of those devices to design specifications, including:
- (A) the exhaust gas temperature of direct-flame incinerators or the gas temperature immediately upstream and downstream of any catalyst bed;
- (B) the total amount of volatile organic compounds (VOC) recovered by a carbon adsorption or other solvent recovery system during a calendar month; and
- (C) the exhaust gas VOC concentration of any carbon adsorption system, as defined in §115.10 of this title, to determine if breakthrough has occurred.
- (3) The dryer pressure must be maintained lower than the press room air pressure such that air flows into the dryer at all times when the offset lithographic printing press is operating. A 100% emissions capture efficiency for the dryer must be demonstrated using an air flow direction measuring device.
- (4) The owner or operator of any offset lithographic printing press shall monitor fountain solution alcohol concentration with a refractometer or a hydrometer that is corrected for temperature at least once per eight-hour shift or once per batch, whichever is longer. The refractometer or hydrometer must have a visual, analog, or digital readout with an accuracy of 0.5% VOC. A standard solution must be used to calibrate the refractometer for the type of alcohol used in the fountain. The VOC content of the fountain solution may be monitored with a conductivity meter if it is determined that a refractometer or hydrometer cannot be used for the type of VOC in the fountain solution. The conductivity meter reading for the fountain solution must be referenced to the conductivity of the incoming water.
- (5) The owner or operator of any offset lithographic printing press using refrigeration equipment on the fountain solution in order to comply with §115.442(a)(1)(A), (C), or (D) of this title (relating to Control Requirements) shall monitor the temperature of the fountain solution reservoir at least once per hour. Alternatively, the owner or operator of any offset lithographic printing press using refrigeration equipment on the fountain solution shall install, maintain, and continuously operate a temperature monitor of the fountain solution reservoir.

The temperature monitor must be attached to a continuous recording device such as a strip chart, recorder, or computer.

- (6) For any offset lithographic printing press with automatic cleaning equipment, flow meters are required to monitor water and cleaning solution flow rates. The flow meters must be calibrated so that the VOC content of the mixed solution complies with the requirements of §115.442(a)(1) of this title.
- (7) The owner or operator of any offset lithographic printing press shall maintain the results of any testing conducted at an affected facility in accordance with the provisions specified in §115.445 of this title (relating to Approved Test Methods).
- (8) The owner or operator of any offset lithographic printing press shall maintain all records at the affected facility for at least two years and make such records available upon request to authorized representatives of the executive director, the United States Environmental Protection Agency, or any local air pollution agency with jurisdiction.
- (b) In the <u>Bexar County</u>, Dallas-Fort Worth and Houston-Galveston-Brazoria areas, the following monitoring and record-keeping requirements apply in accordance with the appropriate compliance date specified in §115.449 of this title (relating to Compliance Schedules).
- (1) The owner or operator of an offset lithographic printing press claiming an exemption in §115.441 of this title (relating to Exemptions) shall maintain records sufficient to demonstrate continuous compliance with the applicable exemption criteria. For example, maintaining records of ink, cleaning solvent, and fountain solution usage may be sufficient to demonstrate compliance with the exemption provided in §115.441(a) of this title for sources located on a property with combined VOC emissions less than 3.0 tons per year when uncontrolled.
- (2) The owner or operator of an offset lithographic printing press shall use one of the following options to demonstrate compliance with the cleaning solution content limits in \$115.442(b)(1) or (c)(1) of this title.
- (A) Flow meters must be used to monitor the water and cleaning solution flow rates on a press with automatic cleaning equipment. The flow meters must be installed, maintained, and operated according to the manufacturer's instructions. The flow meters must be calibrated so that the VOC concentration of the cleaning solution complies with the requirements of §115.442(b)(1) or (c)(1) of this title. Records must be sufficient to demonstrate continuous compliance with the cleaning solution content limits in §115.442(b)(1) or (c)(1) of this title.
- (B) The VOC concentration of each batch of cleaning solution must be determined using analytical data derived from the material safety data sheet (MSDS) or equivalent information from the supplier that was derived using the approved test methods in §115.445 of this title. The concentration of all VOC used to prepare the batch and, if diluted prior to use, the proportions that each of these materials is used must be recorded for each batch of cleaning solution. Records must be sufficient to demonstrate continuous compliance with the cleaning solution content limits in §115.442(b)(1) or (c)(1) of this title.
- (3) The owner or operator of an offset lithographic printing press shall use one of the following options to demonstrate compliance with the fountain solution content limits in $\S115.442(b)(2)$ (4) or (c)(2) (4) of this title.
- (A) The VOC concentration of each batch of fountain solution must be monitored using a refractometer or a hydrometer that

- is corrected for temperature. The refractometer or hydrometer must have a visual, analog, or digital readout with an accuracy of 0.5% VOC. A standard solution must be used to calibrate the refractometer for the type of alcohol used in the fountain solution. The VOC content of the fountain solution may be monitored with a conductivity meter if it is determined that a refractometer or hydrometer cannot be used for the type of VOC in the fountain solution. The conductivity meter reading for the fountain solution must be referenced to the conductivity of the incoming water. Records must be sufficient to demonstrate continuous compliance with the fountain solution content limits in $\S115.442(b)(2)$ (4) or (c)(2) (4) of this title.
- (B) The VOC concentration of each batch fountain solution must be determined using analytical data from the MSDS or equivalent information from the supplier that was derived using the approved test methods in §115.445 of this title. The concentration of all alcohols or alcohol substitutes used to prepare the batch and, if diluted prior to use, the proportions that each of these materials is used must be recorded for each batch of fountain solution. Records must be sufficient to demonstrate continuous compliance with the fountain solution content limits in §115.442(b)(2) (4) or (c)(2) (4) of this title.
- (4) The owner or operator of an offset lithographic printing press using refrigeration equipment on the fountain solution reservoir shall monitor and record the fountain solution temperature at least once per hour. Temperature monitoring devices must be installed, maintained, and operated according to the manufacturer's specifications. Records must be sufficient to demonstrate continuous compliance with the fountain solution content limits in §115.442(b)(2) and (4) or (c)(2) and (4) of this title.
- (5) The owner or operator of a heatset web offset lithographic printing press shall comply with the following monitoring and recordkeeping requirements to demonstrate continuous compliance with the control requirements in §115.442(b)(5) of this title.
- (A) Operational parameters of any emission control device installed to comply with the requirements in §115.442(b)(5) of this title must be continuously measured and recorded. Monitors must be installed, calibrated, maintained, and operated according to the manufacturer's instructions. Temperature monitors must be equipped with a continuous recorder and have an accuracy of ± 0.5 degrees Fahrenheit or $\pm 1.0\%$ of the temperature being monitored, whichever is less stringent. Measuring and recording the operational parameters of the control device at least once every 15 minutes is sufficient to demonstrate compliance with this subparagraph. Records must be sufficient to demonstrate proper functioning of the device to design specifications and must include:
- (i) the exhaust gas temperature of direct-flame incinerators and/or the gas temperature immediately upstream and downstream of any catalyst bed;
- (ii) the total amount of VOC recovered by a carbon adsorption system or other solvent recovery system per calendar month; and
- (iii) the exhaust gas VOC concentration of any carbon adsorption system to determine if breakthrough has occurred.
- (B) An air flow direction measuring device must be used to demonstrate the dryer meets the 100% capture efficiency required in §115.442(b)(5) of this title.
- (6) The owner or operator of an offset lithographic printing press shall maintain the results of any tests conducted using the approved test methods in §115.445 of this title.

(7) The owner or operator of an offset lithographic printing press shall maintain all records for at least two years and make such records available upon request to authorized representatives of the executive director, the United States Environmental Protection Agency, or any local air pollution agency with jurisdiction.

§115.449. Compliance Schedules.

- (a) In the El Paso area, 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 a major or minor printing source, as defined in §115.440 of this title, in the Bexar County area subject to the requirements of this division shall comply with the requirements of this division no later than January 1, 2025.
- (i) [(h)] The owner or operator of an offset lithographic printing line in Brazoria, <u>Bexar</u>, 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) (h)[(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 proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 4, 2023.

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Charmaine Backens
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Texas Commission on Environmental Quality
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For further information, please call: (512) 239-2678



DIVISION 5. CONTROL REQUIREMENTS FOR SURFACE COATING PROCESSES

30 TAC §§115.450, 115.451, 115.453, 115.458, 115.459

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The proposed amendments implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

§115.450. Applicability and Definitions.

(a) Applicability. In the Bexar County, Dallas-Fort Worth, and Houston-Galveston-Brazoria areas, as defined in §115.10 of this title (relating to Definitions), the requirements in this division apply to the following surface coating processes, except as specified in paragraphs (6) - (8) [paragraph (6)] of this subsection:

- (1) large appliance surface coating;
- (2) metal furniture surface coating;
- (3) miscellaneous metal parts and products surface coating, miscellaneous plastic parts and products surface coating, pleasure craft surface coating, and automotive/transportation and business machine plastic parts surface coating at the original equipment manufacturer and off-site job shops that coat new parts and products or that re-coat used parts and products;
- (4) motor vehicle materials applied to miscellaneous metal and plastic parts specified in paragraph (3) of this subsection, at the original equipment manufacturer and off-site job shops that coat new metal and plastic parts or that re-coat used parts and products;
- (5) paper, film, and foil surface coating lines with the potential to emit from all coatings greater than or equal to 25 tons per year of volatile organic compounds (VOC) when uncontrolled; [and]
- (6) in the <u>Bexar County and</u> Dallas-Fort Worth areas [area], automobile and light-duty truck assembly surface coating processes conducted by the original equipment manufacturer and operators that conduct automobile and light-duty truck surface coating processes under contract with the original equipment manufacturer; [-]
- (7) as of the compliance date specified in §115.459(e) or (g) of this title (relating to Compliance Schedules), industrial maintenance coatings in the Dallas-Fort Worth area and/or the Houston-Galveston-Brazoria area if the commission has published notice for the applicable area in the *Texas Register*, as provided in §115.459(e) or (g) of this title, to require compliance with the applicable contingency measure control requirements of §115.453(f) or (g) of this title (relating to Control Requirements); and
- (8) as of the compliance date specified in §115.459(f) or (h) of this title, traffic marking coatings in the Dallas-Fort Worth area and/or the Houston-Galveston-Brazoria area if the commission has published notice for the applicable area in the *Texas Register*; as provided in §115.459(f) or (h) of this title, to require compliance with the applicable contingency measure control requirements of §115.453(h) or (i) of this title.
- (b) General definitions. Unless specifically defined in the Texas Clean Air Act (Texas Health and Safety Code, Chapter 382) or in §§3.2, 101.1, or 115.10 of this title (relating to Definitions), the terms in this division have the meanings commonly used in the field of air pollution control. In addition, the following meanings apply in this division unless the context clearly indicates otherwise.
- (1) Aerosol coating (spray paint)--A hand-held, pressurized, non-refillable container that expels an adhesive or a coating in a finely divided spray when a valve on the container is depressed.
- (2) Air-dried coating--A coating that is cured at a temperature below 194 degrees Fahrenheit (90 degrees Celsius). These coatings may also be referred to as low-bake coatings.
- (3) Baked <u>coating</u> [Coating]—A coating that is cured at a temperature at or above 194 degrees Fahrenheit (90 degrees Celsius). These coatings may also be referred to as high-bake coatings.
- (4) Coating application system--Devices or equipment designed for the purpose of applying a coating material to a surface. The devices may include, but are not be limited to, brushes, sprayers, flow coaters, dip tanks, rollers, knife coaters, and extrusion coaters.
- (5) Coating line--An operation consisting of a series of one or more coating application systems and associated flash-off area(s), drying area(s), and oven(s) wherein a surface coating is applied, dried,

or cured. The coating line ends at the point the coating is dried or cured, or prior to any subsequent application of a different coating.

- (6) Coating solids (or solids)--The part of a coating that remains on the substrate after the coating is dried or cured.
- (7) Daily weighted average--The total weight of volatile organic compounds (VOC) emissions from all coatings subject to the same VOC limit in §115.453 of this title (relating to Control Requirements), divided by the total volume or weight of those coatings (minus water and exempt solvent), where applicable, or divided by the total volume or weight of solids, delivered to the application system on each coating line each day. Coatings subject to different VOC content limits in §115.453 of this title may not be combined for purposes of calculating the daily weighted average.
- (8) Multi-component coating--A coating that requires the addition of a separate reactive resin, commonly known as a catalyst or hardener, before application to form an acceptable dry film. These coatings may also be referred to as two-component coatings.
- (9) Normally closed container--A container that is closed unless an operator is actively engaged in activities such as adding or removing material.
- (10) One-component coating--A coating that is ready for application as it comes out of its container to form an acceptable dry film. A thinner, necessary to reduce the viscosity, is not considered a component.
- (11) Pounds of volatile organic compounds (VOC) per gallon of coating (minus water and exempt solvent)--The basis for content limits for surface coating processes that can be calculated by the following equation:

Figure: 30 TAC §115.450(b)(11) (No change.)

- (12) Pounds of volatile organic compounds (VOC) per gallon of solids--The basis for emission limits for surface coating processes that can be calculated by the following equation: Figure: 30 TAC §115.450(b)(12) (No change.)
- (13) Spray gun--A device that atomizes a coating or other material and projects the particulates or other material onto a substrate.
- (14) Surface coating processes--Operations that use a coating application system.
- (c) Specific surface coating definitions. The following meanings apply in this division unless the context clearly indicates otherwise.
- (1) Automobile and light-duty truck manufacturing--The following definitions apply to this surface coating category.
- (A) Adhesive--Any chemical substance that is applied for the purpose of bonding two surfaces together other than by mechanical means.
- (B) Automobile and light-duty truck adhesive--An adhesive, including glass-bonding adhesive, used in an automobile or light-duty truck assembly surface coating process and applied for the purpose of bonding two vehicle surfaces together without regard to the substrates involved.
- (C) Automobile and light-duty truck bedliner--A multicomponent coating used in an automobile or light-duty truck assembly surface coating process and applied to a cargo bed after the application of topcoat and outside of the topcoat operation to provide additional durability and chip resistance.
- (D) Automobile and light-duty truck cavity wax--A coating, used in an automobile or light-duty truck assembly surface

coating process, applied into the cavities of the vehicle primarily for the purpose of enhancing corrosion protection.

- (E) Automobile and light-duty truck deadener--A coating used in an automobile or light-duty truck assembly surface coating process and applied to selected vehicle surfaces primarily for the purpose of reducing the sound of road noise in the passenger compartment.
- (F) Automobile and light-duty truck gasket/gasket sealing material--A fluid used in an automobile or light-duty truck assembly surface coating process and applied to coat a gasket or replace and perform the same function as a gasket. Automobile and light-duty truck gasket/gasket sealing material includes room temperature vulcanization seal material.
- (G) Automobile and light-duty truck glass-bonding primer--A primer, used in an automobile or light-duty truck assembly surface coating process, applied to windshield or other glass, or to body openings, to prepare the glass or body opening for the application of glass-bonding adhesives or the installation of adhesive-bonded glass. Automobile and light-duty truck glass-bonding primer includes glass-bonding/cleaning primers that perform both functions (cleaning and priming of the windshield or other glass, or body openings) prior to the application of an adhesive or the installation of adhesive-bonded glass.
- (H) Automobile and light-duty truck lubricating wax/compound--A protective lubricating material used in an automobile or light-duty truck assembly surface coating process and applied to vehicle hubs and hinges.
- (I) Automobile and light-duty truck sealer--A high viscosity material used in an automobile or light-duty truck assembly surface coating process and generally, but not always, applied in the paint shop after the body has received an electrodeposition primer coating and before the application of subsequent coatings (e.g., primer-surfacer). The primary purpose of automobile and light-duty truck sealer is to fill body joints completely so that there is no intrusion of water, gases, or corrosive materials into the passenger area of the body compartment. Such materials are also referred to as sealant, sealant primer, or caulk.
- (J) Automobile and light-duty truck trunk interior coating-A coating used in an automobile or light-duty truck assembly surface coating process outside of the primer-surfacer and topcoat operations and applied to the trunk interior to provide chip protection.
- (K) Automobile and light-duty truck underbody coating--A coating used in an automobile or light-duty truck assembly surface coating process and applied to the undercarriage or firewall to prevent corrosion or provide chip protection.
- (L) Automobile and light-duty truck weather strip adhesive-An adhesive used in an automobile or light-duty truck assembly surface coating process and applied to weather-stripping materials for the purpose of bonding the weather-stripping material to the surface of the vehicle.
- (M) Automobile assembly surface coating process-The assembly-line coating of new passenger cars, or passenger car derivatives, capable of seating 12 or fewer passengers.
- (N) Electrodeposition primer--A process of applying a protective, corrosion-resistant waterborne primer on exterior and interior surfaces that provides thorough coverage of recessed areas. Electrodeposition primer is a dip-coating method that uses an electrical field to apply or deposit the conductive coating onto the part; the object being painted acts as an electrode that is oppositely charged from the par-

ticles of paint in the dip tank. Electrodeposition primer is also referred to as E-Coat, Uni-Prime, and ELPO Primer.

- (O) Final repair--The operation(s) performed and coating(s) applied to completely assembled motor vehicles or to parts that are not yet on a completely assembled vehicle to correct damage or imperfections in the coating. The curing of the coatings applied in these operations is accomplished at a lower temperature than that used for curing primer-surfacer and topcoat. This lower temperature cure avoids the need to send parts that are not yet on a completely assembled vehicle through the same type of curing process used for primer-surfacer and topcoat and is necessary to protect heat-sensitive components on completely assembled vehicles.
- (P) In-line repair--The operation(s) performed and coating(s) applied to correct damage or imperfections in the topcoat on parts that are not yet on a completely assembled vehicle. The curing of the coatings applied in these operations is accomplished at essentially the same temperature as that used for curing the previously applied topcoat. In-line repair is also referred to as high-bake repair or high-bake reprocess. In-line repair is considered part of the topcoat operation.
- (Q) Light-duty truck assembly surface coating process--The assembly-line coating of new motor vehicles rated at 8,500 pounds gross vehicle weight or less and designed primarily for the transportation of property, or derivatives such as pickups, vans, and window vans.
- (R) Primer-surfacer--An intermediate protective coating applied over the electrodeposition primer and under the topcoat. Primer-surfacer provides adhesion, protection, and appearance properties to the total finish. Primer-surfacer is also referred to as guide coat or surfacer. Primer-surfacer operations may include other coatings (e.g., anti-chip, lower-body anti-chip, chip-resistant edge primer, spot primer, blackout, deadener, interior color, basecoat replacement coating, etc.) that are applied in the same spray booth(s).
- $\underline{(S)}$ $\underline{(T)}$ Solids turnover ratio (RT')--The ratio of total volume of coating solids that is added to the electrodeposition primer system (EDP) in a calendar month divided by the total volume design capacity of the EDP system.
- (T) [(S)] Topcoat--The final coating system applied to provide the final color or a protective finish. The topcoat may be a monocoat color or basecoat/clearcoat system. In-line repair and two-tone are part of topcoat. Topcoat operations may include other coatings (e.g., blackout, interior color, etc.) that are applied in the same spray booth(s). [Solids turnover ratio (RT')--The ratio of total volume of coating solids that is added to the electrodeposition primer system (EDP) in a calendar month divided by the total volume design capacity of the EDP system.]
- (2) Automotive/transportation and business machine plastic parts--The following definitions apply to this surface coating category.
- (A) Adhesion prime--A coating that is applied to a polyolefin part to promote the adhesion of a subsequent coating. An adhesion prime is clearly identified as an adhesion prime or adhesion promoter on its accompanying material safety data sheet.
- (B) Automotive/transportation plastic parts--Interior and exterior plastic components of automobiles, trucks, tractors, lawnmowers, and other mobile equipment.
- (C) Black coating--A coating that has a maximum lightness of 23 units and a saturation less than 2.8, where saturation equals the square root of A2 + B2. These criteria are based on Cielab color

space, 0/45 geometry. For spherical geometry, specular included, maximum lightness is 33 units.

- (D) Business machine--A device that uses electronic or mechanical methods to process information, perform calculations, print or copy information, or convert sound into electrical impulses for transmission. This definition includes devices listed in Standard Industrial Classification codes 3572, 3573, 3574, 3579, and 3661 and photocopy machines, a subcategory of Standard Industrial Classification code 3861.
- (E) Clear coating--A coating that lacks color and opacity or is transparent and that uses the undercoat as a reflectant base or undertone color.
- (F) Coating of plastic parts of automobiles and trucks-The coating of any plastic part that is or will be assembled with other parts to form an automobile or truck.
- (G) Coating of business machine plastic parts--The coating of any plastic part that is or will be assembled with other parts to form a business machine.
- (H) Electrostatic prep coat--A coating that is applied to a plastic part solely to provide conductivity for the subsequent application of a prime, a topcoat, or other coating through the use of electrostatic application methods. An electrostatic prep coat is clearly identified as an electrostatic prep coat on its accompanying material safety data sheet.
- (I) Flexible coating--A coating that is required to comply with engineering specifications for impact resistance, mandrel bend, or elongation as defined by the original equipment manufacturer.
- (J) Fog coat--A coating that is applied to a plastic part for the purpose of color matching without masking a molded-in texture. A fog coat may not be applied at a thickness of more than 0.5 mil of coating solids.
- (K) Gloss reducer--A coating that is applied to a plastic part solely to reduce the shine of the part. A gloss reducer may not be applied at a thickness of more than 0.5 mil of coating solids.
- (L) Red coating--A coating that meets all of the following criteria:
 - (i) yellow limit: the hue of hostaperm scarlet;
 - (ii) blue limit: the hue of monastral red-violet;
 - lightness limit for metallics: 35% aluminum
 - lightness limit for solids: 50% titanium dioxide
- white;
- (v) solid reds: hue angle of -11 to 38 degrees and maximum lightness of 23 to 45 units; and

flake:

- (vi) metallic reds: hue angle of -16 to 35 degrees and maximum lightness of 28 to 45 units. These criteria are based on Cielab color space, 0/45 geometry. For spherical geometry, specular included, the upper limit is 49 units. The maximum lightness varies as the hue moves from violet to orange. This is a natural consequence of the strength of the colorants, and real colors show this effect.
- (M) Resist coat--A coating that is applied to a plastic part before metallic plating to prevent deposits of metal on portions of the plastic part.
- (N) Stencil coat--A coating that is applied over a stencil to a plastic part at a thickness of 1.0 mil or less of coating solids. Stencil coats are most frequently letters, numbers, or decorative designs.

- (O) Texture coat--A coating that is applied to a plastic part which, in its finished form, consists of discrete raised spots of the coating.
- (P) Vacuum-metalizing coatings--Topcoats and basecoats that are used in the vacuum-metalizing process.
- (3) Industrial maintenance coating--A high performance maintenance coating, including primers, sealers, undercoaters, intermediate coats, and topcoats, formulated for applications to substrates, including floors, exposed to one or more of the following extreme environmental conditions
- (A) Immersion in water, wastewater, or chemical solutions (aqueous and non-aqueous solutions), or chronic exposures of interior surfaces to moisture condensation; or
- (B) Acute or chronic exposure to corrosive, caustic, or acidic agents, or to chemicals, chemical fumes, or chemical mixtures or solutions; or
- (C) Frequent exposure to temperatures above 121°C (250°F); or
- (D) Frequent heavy abrasion, including mechanical wear and frequent scrubbing with industrial solvents, cleansers, or scouring agents; or
- (E) Exterior exposure of metal structures and structural components.
- (4) [(3)] Large appliance coating--The coating of doors, cases, lids, panels, and interior support parts of residential and commercial washers, dryers, ranges, refrigerators, freezers, water heaters, dishwashers, trash compactors, air conditioners, and other large appliances.
- (A) Extreme high-gloss coating--A coating which, when tested by the American Society for Testing Material Test Method D523 adopted in 1980, shows a reflectance of 75% or more on a 60 degree meter.
- (B) Extreme performance coating--A coating used on a metal surface where the coated surface is, in its intended use, subject
- (i) chronic exposure to corrosive, caustic or acidic agents, chemicals, chemical fumes, chemical mixtures, or solutions;
- (ii) repeated exposure to temperatures in excess of 250 degrees Fahrenheit (121 degrees Celsius);
- (iii) repeated heavy abrasion, including mechanical wear and repeated scrubbing with industrial grade solvents, cleansers, or scouring agents; or
- (iv) exposure to extreme environmental conditions, such as continuous outdoor exposure.
- (C) Heat-resistant coating--A coating that must withstand a temperature of at least 400 degrees Fahrenheit (204 degrees Celsius) during normal use.
- (D) Metallic coating--A coating that contains more than 0.042 pounds of metal particles per gallon of coating as applied. Metal particles are pieces of a pure elemental metal or a combination of elemental metals.
- (E) Pretreatment coating--A coating that contains no more than 12% solids by weight and at least 0.50% acid by weight; is used to provide surface etching; and is applied directly to metal surfaces to provide corrosion resistance, adhesion, and ease of stripping.

- (F) Solar-absorbent coating-A coating that has as its prime purpose the absorption of solar radiation.
- (5) [(4)] Metal furniture coating--The coating of metal furniture including, but not limited to, tables, chairs, wastebaskets, beds, desks, lockers, benches, shelves, file cabinets, lamps, and other metal furniture products or the coating of any metal part that will be a part of a nonmetal furniture product.
- (A) Extreme high-gloss coating--A coating which, when tested by the American Society for Testing Material Test Method D523 adopted in 1980, shows a reflectance of 75% or more on a 60 degree meter.
- (B) Extreme performance coating--A coating used on a metal surface where the coated surface is, in its intended use, subject to:
- (i) chronic exposure to corrosive, caustic or acidic agents, chemicals, chemical fumes, chemical mixtures, or solutions;
- (ii) repeated exposure to temperatures in excess of 250 degrees Fahrenheit (121 degrees Celsius);
- (iii) repeated heavy abrasion, including mechanical wear and repeated scrubbing with industrial grade solvents, cleansers, or scouring agents; or
- (iv) exposure to extreme environmental conditions, such as continuous outdoor exposure.
- (C) Heat-resistant coating--A coating that must withstand a temperature of at least 400 degrees Fahrenheit (204 degrees Celsius) during normal use.
- (D) Metallic coating-A coating containing more than 5.0 grams of metal particles per liter of coating as applied. Metal particles are pieces of a pure elemental metal or a combination of elemental metals.
- (E) Pretreatment coating--A coating that contains no more than 12% solids by weight and at least 0.50% acid by weight; is used to provide surface etching; and is applied directly to metal surfaces to provide corrosion resistance, adhesion, and ease of stripping.
- (F) Solar-absorbent coating--A coating that has as its primary purpose the absorption of solar radiation.
- (6) [(5)] Miscellaneous metal and plastic parts--The following definitions apply to this surface coating category.
- (A) Camouflage coating--A coating used, principally by the military, to conceal equipment from detection.
- (B) Clear coat--A coating that lacks opacity or is transparent and may or may not have an undercoat that is used as a reflectant base or undertone color.
- (C) Drum (metal)--Any cylindrical metal shipping container with a capacity equal to or greater than 12 gallons but equal to or less than 110 gallons.
- (D) Electric-dissipating coating--A coating that rapidly dissipates a high-voltage electric charge.
- (E) Electric-insulting varnish--A non-convertible-type coating applied to electric motors, components of electric motors, or power transformers, to provide electrical, mechanical, and environmental protection or resistance.
- (F) EMI/RFI shielding--A coating used on electrical or electronic equipment to provide shielding against electromagnetic

- interference (EMI), radio frequency interference (RFI), or static discharge.
- (G) Etching filler--A coating that contains less than 23% solids by weight and at least 0.50% acid by weight and is used instead of applying a pretreatment coating followed by a primer.
- (H) Extreme high-gloss coating--A coating which, when tested by the American Society for Testing and Materials Test Method D523 adopted in 1980, shows a reflectance of 75% or more on a 60 degree meter.
- (I) Extreme performance coating--A coating used on a metal or plastic surface where the coated surface is, in its intended use, subject to one of the following conditions. Extreme performance coatings include, but are not limited to, coatings applied to locomotives, railroad cars, farm machinery, marine shipping containers, downhole drilling equipment, and heavy-duty trucks:
- (i) chronic exposure to corrosive, caustic or acidic agents, chemicals, chemical fumes, chemical mixtures, or solutions;
- (ii) repeated exposure to temperatures in excess of 250 degrees Fahrenheit (121 degrees Celsius);
- (iii) repeated heavy abrasion, including mechanical wear and repeated scrubbing with industrial grade solvents, cleansers, or scouring agents; or
- (iv) exposure to extreme environmental conditions, such as continuous outdoor exposure.
- (J) Heat-resistant coating--A coating that must withstand a temperature of at least 400 degrees Fahrenheit (204 degrees Celsius) during normal use.
- (K) High performance architectural coating--A coating used to protect architectural subsections and meets the requirements of the American Architectural Manufacturers Association's publication number AAMA 2604-05 (Voluntary Specification, Performance Requirements and Test Procedures for High Performance Organic Coatings on Aluminum Extrusions and Panels) or 2605-05 (Voluntary Specification, Performance Requirements and Test Procedures for Superior Performing Organic Coatings on Aluminum Extrusions and Panels).
- (L) High temperature coating.—A coating that is certified to withstand a temperature of 1000 degrees Fahrenheit (538 degrees Celsius) for 24 hours.
- $\begin{tabular}{ll} (M) & Mask coating--A thin film coating applied through a template to coat a small portion of a substrate. \end{tabular}$
- (N) Metallic coating--A coating containing more than 5.0 grams of metal particles per liter of coating as applied. Metal particles are pieces of a pure elemental metal or a combination of elemental metals.
- (O) Military specification coating--A coating that has a formulation approved by a United States Military Agency for use on military equipment.
- $\underline{(P)}$ $\underline{[(Q)]}$ Miscellaneous metal parts and products--Parts and products considered miscellaneous metal parts and products include:
- (i) large farm machinery (harvesting, fertilizing, and planting machines, tractors, combines, etc.);
- (ii) small farm machinery (lawn and garden tractors, lawn mowers, rototillers, etc.);
- (iii) small appliances (fans, mixers, blenders, crock pots, dehumidifiers, vacuum cleaners, etc.);

- (iv) commercial machinery (computers and auxiliary equipment, typewriters, calculators, vending machines, etc.);
- (v) industrial machinery (pumps, compressors, conveyor components, fans, blowers, transformers, etc.);
- (vi) fabricated metal products (metal-covered doors, frames, etc.); and
- (vii) any other category of coated metal products, including, but not limited to, those that are included in the Standard Industrial Classification Code major group 33 (primary metal industries), major group 34 (fabricated metal products), major group 35 (nonelectrical machinery), major group 36 (electrical machinery), major group 37 (transportation equipment), major group 38 (miscellaneous instruments), and major group 39 (miscellaneous manufacturing industries). Excluded are those surface coating processes specified in §115.420(c)(1) (8) and (10) (16) of this title (relating to Surface Coating Definitions) and paragraphs (1) (4) and (6) (8) of this subsection.
- $\underline{(Q)}$ [(R)] Miscellaneous plastic parts and products--Parts and products considered miscellaneous plastic parts and products include, but are not limited to:
 - (i) molded plastic parts;
 - (ii) small and large farm machinery;
- (iii) commercial and industrial machinery and equipment;
 - (iv) interior or exterior automotive parts;
 - (v) construction equipment;
 - (vi) motor vehicle accessories;
 - (vii) bicycles and sporting goods;
 - (viii) toys;
 - (ix) recreational vehicles;
 - (x) lawn and garden equipment;
 - (xi) laboratory and medical equipment;
 - (xii) electronic equipment; and
- (xiii) other industrial and household products. Excluded are those surface coating processes specified in $\S115.420(c)(1)$ (16) of this title and paragraphs (1) (4) and (6) (8) of this subsection.
- (R) [(P)] Mold-seal coating--The initial coating applied to a new mold or a repaired mold to provide a smooth surface that when coated with a mold release coating, prevents products from sticking to the mold.
- (S) Multi-colored coating--A coating that exhibits more than one color when applied, is packaged in a single container, and applied in a single coat.
- (T) Off-site job shop--A non-manufacturer of metal or plastic parts and products that applies coatings to such products at a site under contract with one or more parties that operate under separate ownership and control.
- (U) Optical coating--A coating applied to an optical lens.
- (V) Pail (metal)--Any cylindrical metal shipping container with a capacity equal to or greater than 1 gallon but less than 12 gallons and constructed of 29 gauge or heavier material.

- (W) Pan-backing coating--A coating applied to the surface of pots, pans, or other cooking implements that are exposed directly to a flame or other heating elements.
- (X) Prefabricated architectural component coating--A coating applied to metal parts and products that are to be used as an architectural structure.
- (Y) Pretreatment coating--A coating that contains no more than 12% solids by weight and at least 0.50% acid by weight; is used to provide surface etching; and is applied directly to metal surfaces to provide corrosion resistance, adhesion, and ease of stripping.
- (Z) Repair coating--A coating used to re-coat portions of a previously coated product that has sustained mechanical damage to the coating following normal surface coating processes.
- (AA) Safety-indicating coating--A coating that changes physical characteristics, such as color, to indicate unsafe conditions.
- (BB) Shock-free coating--A coating applied to electrical components to protect the user from electric shock. The coating has characteristics of being low-capacitance and high-resistance and having resistance to breaking down under high voltage.
- (CC) Silicone-release coating--A coating that contains silicone resin and is intended to prevent food from sticking to metal surfaces such as baking pans.
- (DD) Solar-absorbent coating--A coating that has as its primary purpose the absorption of solar radiation.
- (EE) Stencil coating--A pigmented coating or ink that is rolled or brushed onto a template or stamp in order to add identifying letters, symbols, or numbers.
- (FF) Touch-up coating--A coating used to cover minor coating imperfections appearing after the main surface coating process.
- (GG) Translucent coating--A coating that contains binders and pigment and formulated to form a colored, but not opaque, film.
- (HH) Vacuum-metalizing coating--The undercoat applied to the substrate on which the metal is deposited or the overcoat applied directly to the metal film. Vacuum metalizing or physical vapor deposition is the process whereby metal is vaporized and deposited on a substrate in a vacuum chamber.
- (7) [(6)] Motor vehicle materials--The following definitions apply to this surface coating category.
- (A) Motor vehicle bedliner--A multi-component coating used in a process that is not an automobile or light-duty truck manufacturing coating process and is applied to a cargo bed after the application of topcoat to provide additional durability and chip resistance.
- (B) Motor vehicle cavity wax--A coating used in a process that is not an automobile or light-duty truck manufacturing coating process and is applied into the cavities of the vehicle primarily for the purpose of enhancing corrosion protection.
- (C) Motor vehicle deadener--A coating used in a process that is not an automobile or light-duty truck manufacturing coating process and is applied to selected vehicle surfaces primarily for the purpose of reducing the sound of road noise in the passenger compartment.
- (D) Motor vehicle gasket/sealing material--A fluid used in a process that is not an automobile or light-duty truck manufacturing coating process and is applied to coat a gasket or replace and perform the same function as a gasket. Automobile and light-duty truck

gasket/gasket sealing material includes room temperature vulcanization seal material.

- (E) Motor vehicle lubricating wax/compound--A protective lubricating material used in a process that is not an automobile or light-duty truck manufacturing coating process and is applied to vehicle hubs and hinges.
- (F) Motor vehicle sealer--A high viscosity material used in a process that is not an automobile or light-duty truck manufacturing coating process and is generally, but not always, applied in the paint shop after the body has received an electrodeposition primer coating and before the application of subsequent coatings (e.g., primer-surfacer). The primary purpose of motor vehicle sealer is to fill body joints completely so that there is no intrusion of water, gases, or corrosive materials into the passenger area of the body compartment. Such materials are also referred to as sealant, sealant primer, or caulk.
- (G) Motor vehicle trunk interior coating--A coating used in a process that is not an automobile or light-duty truck manufacturing coating process and is applied to the trunk interior to provide chip protection.
- (H) Motor vehicle underbody coating--A coating used in a process that is not an automobile or light-duty truck manufacturing coating process and is applied to the undercarriage or firewall to prevent corrosion or provide chip protection.
- (8) [(7)] Paper, film, and foil coating--The coating of paper and pressure-sensitive tapes (regardless of substrate and including paper, fabric, and plastic film), related web coating processes on plastic film (including typewriter ribbons, photographic film, and magnetic tape), metal foil (including decorative, gift wrap, and packaging), industrial and decorative laminates, abrasive products (including fabric coated for use in abrasive products), and flexible packaging.
- (A) Paper, film, and foil coating includes the application of a continuous layer of a coating material across the entire width or any portion of the width of a paper, film, or foil web substrate to:
- (i) provide a covering, finish, or functional or protective layer to the substrate;
 - (ii) saturate the substrate for lamination; or
- (iii) provide adhesion between two substrates for lamination.
- (B) Paper, film, and foil coating excludes coating performed on or in-line with any offset lithographic, screen, letterpress, flexographic, rotogravure, or digital printing press; or size presses and on-machine coaters that function as part of an in-line papermaking system.
- (9) [(8)] Pleasure craft--Any marine or fresh-water vessel used by individuals for noncommercial, nonmilitary, and recreational purposes that is less than 65.6 feet in length. A vessel rented exclusively to, or chartered for, individuals for such purposes is considered a pleasure craft.
- (A) Antifoulant coating-A coating applied to the underwater portion of a pleasure craft to prevent or reduce the attachment of biological organisms, and registered with the United States Environmental Protection Agency as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (7 United States Code, §136).
- (B) Antifoulant sealer/tie coating--A coating applied over an antifoulant coating to prevent the release of biocides into the environment or to promote adhesion between an antifoulant coating and a primer or other antifoulants.

- (C) Extreme high-gloss coating-A coating that achieves at least 90% reflectance on a 60 degree meter when tested by American Society for Testing and Materials Method D523-89.
- (D) Finish primer-surfacer--A coating applied with a wet film thickness less than 10 mils prior to the application of a topcoat for purposes of providing corrosion resistance, adhesion of subsequent coatings, a moisture barrier, or promotion of a uniform surface necessary for filling in surface imperfections.
- (E) High-build primer-surfacer--A coating applied with a wet film thickness of 10 mils or more prior to the application of a top-coat for purposes of providing corrosion resistance, adhesion of subsequent coatings, or a moisture barrier, or promoting a uniform surface necessary for filling in surface imperfections.
- (F) High-gloss coating--A coating that achieves at least 85% reflectance on a 60 degree meter when tested by American Society for Testing and Materials Test Method D523-89.
- (G) Pleasure craft coating--A marine coating, except unsaturated polyester resin (fiberglass) coatings, applied by brush, spray, roller, or other means to a pleasure craft.
- (H) Pretreatment wash primer--A coating that contains no more than 25% solids by weight and at least 0.10% acids by weight; used to provide surface etching; and applied directly to fiberglass and metal surfaces to provide corrosion resistance and adhesion of subsequent coatings.
- (I) Repair coating-A coating used to re-coat portions of a previously coated product that has sustained mechanical damage to the coating following normal surface coating processes.
- (J) Topcoat--A final coating applied to the interior or exterior of a pleasure craft.
- (K) Touch-up coating--A coating used to cover minor coating imperfections appearing after the main surface coating process.
- (10) Traffic marking coating--A coating labeled and formulated for marking and striping streets, highways, or other traffic surfaces including, but not limited to, curbs, berms, driveways, parking lots, sidewalks, and airport runways.

§115.451. Exemptions.

- (a) The volatile organic compounds (VOC) from coatings and solvents used in surface coating processes and associated cleaning operations not addressed by the surface coating categories in §115.421(3) (7), (9), (10), and (13) (16) of this title (relating to Emission Specifications) or §115.453 of this title (relating to Control Requirements) are excluded from the VOC emission calculations for the purposes of paragraphs (1) (3) of this subsection. For example, architectural coatings applied in the field to stationary structures and their appurtenances, portable buildings, pavements, or curbs at a property would not be included in the calculations, except as specified in paragraphs (4) and (5) of this subsection.
- (1) All surface coating processes on a property that, when uncontrolled, will emit a combined weight of VOC of less than 3.0 pounds per hour and 15 pounds in any consecutive 24-hour period are exempt from all of the requirements in §115.453 of this title except §115.453(f) (i) of this title.
- (2) Surface coating processes on a property that, when uncontrolled, will emit a combined weight of VOC of less than 100 pounds in any consecutive 24-hour period are exempt from §115.453(a) of this title if documentation is provided to and approved by both the executive director and the United States Environmental Protection Agency to demonstrate that necessary coating performance

criteria cannot be achieved with coatings that satisfy applicable VOC limits and that control equipment is not technologically or economically feasible.

- (3) Surface coating processes on a property where total coating and solvent usage does not exceed 150 gallons in any consecutive 12-month period are exempt from the VOC limits in §115.453(a) of this title.
- (4) As of the applicable compliance date in §115.459(e) or (g) of this title (relating to Compliance Schedules), if the commission has published notice for the Dallas-Fort Worth and/or Houston-Galveston-Brazoria area in the *Texas Register*, as provided in §115.459(e) or (g) of this title, to require compliance for the applicable area with the industrial maintenance coatings contingency measure control requirements of §115.453(f) or (g) of this title, respectively, the exemptions in paragraphs (1) (3) of this subsection no longer apply to industrial maintenance coatings. The owner or operator of a site may continue to exclude industrial maintenance coatings from the criteria in paragraphs (1) (3) of this subsection for the purposes of determining applicability of this division for the purposes of coatings other than industrial maintenance coatings.
- (5) As of the applicable compliance date in §115.459(f) or (h) of this title, if the commission has published notice for the Dallas-Fort Worth and/or Houston-Galveston-Brazoria area in the *Texas Register*; as provided in §115.459(f) or (h) of this title, to require compliance for the applicable area with the traffic marking coatings contingency measure control requirements of §115.453(h) or (i) of this title, respectively, the exemptions in paragraphs (1) (3) of this subsection no longer apply to traffic marking coatings. The owner or operator of a site may continue to exclude traffic marking coatings from the criteria in paragraphs (1) (3) of this subsection for the purposes of determining applicability of this division for the purposes of coatings other than traffic marking coatings.
- (b) The following surface coating processes are exempt from the VOC limits for miscellaneous metal and plastic parts coatings in §115.453(a)(1)(C) (F) of this title and motor vehicle materials in §115.453(a)(2) of this title:
 - (1) large appliance surface coating;
 - (2) metal furniture surface coating;
- (3) automobile and light-duty truck assembly surface coating; and
- (4) surface coating processes specified in §115.420(a)(1) (9) and (11) (16) of this title (relating to Applicability and Definitions).
- (c) Paper, film, and foil surface coating processes are exempt from the coating application system requirements in §115.453(c) of this title and the coating use work practice requirements in §115.453(d)(1) of this title.
- (d) Automobile and light-duty truck assembly surface coating processes are exempt from the coating application system requirements in §115.453(c) of this title and the cleaning-related work practice requirements in §115.453(d)(2) of this title.
- (e) Automobile and light-duty truck assembly surface coating materials supplied in containers with a net volume of 16 ounces or less, or a net weight of 1.0 pound or less, are exempt from the VOC limits in Table 2 in §115.453(a)(3) of this title.
- (f) The following miscellaneous metal part and product surface coatings and surface coating processes are exempt from the coating application system requirements in §115.453(c) of this title:

- (1) touch-up coatings, repair coatings, and textured finishes:
 - (2) stencil coatings;
 - (3) safety-indicating coatings;
 - (4) solid-film lubricants;
 - (5) electric-insulating and thermal-conducting coatings;
 - (6) magnetic data storage disk coatings; and
 - (7) plastic extruded onto metal parts to form a coating.
- (g) All miscellaneous plastic part airbrush surface coatings and surface coating processes where total coating usage is less than 5.0 gallons per year are exempt from the coating application system requirements in §115.453(c) of this title.
- (h) The application of extreme high-gloss coatings to pleasure craft is exempt from the coating application system requirements in $\S115.453(c)$ of this title.
- (i) The following miscellaneous plastic parts surface coatings and surface coating processes are exempt from the coating VOC limits in \$115.453(a)(1)(D) of this title:
 - (1) touch-up and repair coatings;
- (2) stencil coatings applied on clear or transparent substrates;
 - (3) clear or translucent coatings;
- (4) any individual coating type used in volumes less than 50 gallons in any one year, if substitute compliant coatings are not available, provided that the total usage of all such coatings does not exceed 200 gallons per year, per property;
 - (5) reflective coating applied to highway cones;
- (6) mask coatings that are less than 0.5 mil thick dried and the area coated is less than 25 square inches;
- (7) electromagnetic interference/radio frequency interference (EMI/RFI) shielding coatings; and
- (8) heparin-benzalkonium chloride-containing coatings applied to medical devices, if the total usage of all such coatings does not exceed 100 gallons per year, per property.
- (j) The following automotive/transportation and business machine plastic part surface coatings and surface coating processes are exempt from the VOC limits in §115.453(a)(1)(E) of this title:
 - (1) texture coatings;
 - (2) vacuum-metalizing coatings;
 - (3) gloss reducers;
 - (4) texture topcoats;
 - (5) adhesion primers;
 - (6) electrostatic preparation coatings;
 - (7) resist coatings; and
 - (8) stencil coatings.
- (k) Powder coatings and ultraviolet curable coatings applied during metal and plastic parts surface coating processes specified in §115.453(a)(1)(C) (F) and (2) of this title are exempt from the requirements in this division, except as specified in §115.458(b)(5) of this title (relating to Monitoring and Recordkeeping Requirements).

- (l) Aerosol coatings (spray paint) are exempt from the requirements in this division, except for §115.453(f) (i) of this title.
- (m) Coatings applied to test panels and coupons as part of research and development, quality control, or performance testing activities at paint research or manufacturing facilities are exempt from the requirements in this division.
- (n) Pleasure craft touch-up and repair coatings supplied in containers less than or equal to 1.0 quart, are exempt from the VOC limits in §115.453(a)(1)(F) of this title provided that the total usage of all such coatings does not exceed 50 gallons per calendar year per property.
- (o) Pleasure craft surface coating processes are exempt from the VOC limits in §115.453(a)(1)(C) and (D) of this title.
- (p) Adhesives applied to miscellaneous metal and plastic parts listed in $\S115.453(a)(1)(C)$ (F) and (2) of this title that meet a specific adhesive or adhesive primer application process definition in $\S115.470$ of this title (relating to Applicability and Definitions) and are listed in Table 2 of $\S115.473(a)$ of this title (relating to Control Requirements) are not subject to the requirements in this division. Contact adhesives are not included in this exemption.

§115.453. Control Requirements.

- (a) The following control requirements apply to surface coating processes subject to this division. Except as specified in paragraph (3) of this subsection, these limitations are based on the daily weighted average of all coatings, as defined in §101.1 of this title (relating to Definitions), as delivered to the application system. Upon the compliance date specified in §115.459(d) or (e) of this title (relating to Compliance Schedules), the requirements in subsection (f) or (h) of this section apply in the Dallas-Fort Worth area in addition to this subsection, and upon the compliance date specified in §115.459(g) or (h) of this title, the requirements in subsection (g) or (i) of this section apply in the Houston-Galveston-Brazoria area in addition to this subsection.
- (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) (No change.)

- (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 Chapter [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.
- (f) In the Dallas-Fort Worth area, in accordance with the schedule specified in 115.459(e) of this title, industrial maintenance coatings must meet a VOC limit of 2.1 pounds per gallon (250 grams per liter) of coating (minus water and exempt solvent), which must be met by applying low-VOC coatings.
- (g) In the Houston-Galveston-Brazoria area, in accordance with the schedule specified in 115.459(g) of this title, industrial maintenance coatings must meet a VOC limit of 2.1 pounds per gallon (250 grams per liter) of coating (minus water and exempt solvent), which must be met by applying low-VOC coatings.
- (h) In the Dallas-Fort Worth area, in accordance with the schedule specified in §115.459(f) of this title, traffic marking coatings must meet a VOC content limit of 100 grams of VOC per liter of coating (minus water and exempt solvent), which must be met by applying low-VOC coatings.
- (i) In the Houston-Galveston-Brazoria area, in accordance with the schedule specified in §115.459(h) of this title, traffic marking coatings must meet a VOC content limit of 100 grams of VOC per liter of coating (minus water and exempt solvent), which must be met by applying low-VOC coatings.
- *§115.458. Monitoring and Recordkeeping Requirements.*

- (a) Monitoring requirements. The following monitoring requirements apply to the owner or operator of a surface coating process subject to this division that uses a vapor control system in accordance with §115.453 of this title (relating to Control Requirements). The owner or operator shall install and maintain monitors to accurately measure and record operational parameters of all required control devices to ensure the proper functioning of those devices in accordance with design specifications, including:
- (1) continuous monitoring of the exhaust gas temperature immediately downstream of direct-flame incinerators or the gas temperature immediately upstream and downstream of any catalyst bed;
- (2) the total amount of volatile organic compounds (VOC) recovered by carbon adsorption or other solvent recovery systems during a calendar month;
- (3) continuous monitoring of carbon adsorption bed exhaust; and
- (4) appropriate operating parameters for capture systems and control devices other than those specified in paragraphs (1) (3) of this subsection.
- (b) Recordkeeping requirements. The following recordkeeping requirements apply to the owner or operator of a surface coating process subject to this division.
- (1) The owner or operator shall maintain records of the testing data or the material safety data sheets (MSDS) in accordance with the requirements in §115.455(a) of this title (relating to Approved Test Methods and Testing Requirements). The MSDS must document relevant information regarding each coating and solvent available for use in the affected surface coating processes including the VOC content, composition, solids content, and solvent density. Records must be sufficient to demonstrate continuous compliance with the applicable VOC limits in §115.453(a) or (f) (i) of this title.
- (2) Records must be maintained of the quantity and type of each coating and solvent consumed during the specified averaging period if any of the coatings, as delivered to the coating application system, exceed the applicable VOC limits. Such records must be sufficient to calculate the applicable weighted average of VOC content for all coatings.
- (3) As an alternative to the recordkeeping requirements of paragraph (2) of this subsection, the owner or operator that qualifies for exemption under §115.451(a)(3) of this title (relating to Exemptions) may maintain records of the total gallons of coating and solvent used in each month and total gallons of coating and solvent used in the previous 12 months.
- (4) The owner or operator shall maintain, on file, the capture efficiency protocol submitted under §115.455(a)(4) of this title. The owner or operator shall submit all results of the test methods and capture efficiency protocols to the executive director within 60 days of the actual test date. The owner or operator shall maintain records of the capture efficiency operating parameter values on-site for a minimum of one year. If any changes are made to capture or control equipment, the owner or operator is required to notify the executive director in writing within 30 days of these changes and a new capture efficiency or control device destruction or removal efficiency test may be required.
- (5) The owner or operator claiming an exemption in §115.451 of this title shall maintain records sufficient to demonstrate continuous compliance with the applicable exemption criteria.
- (6) Records must be maintained of any testing conducted in accordance with the provisions specified in §115.455(a) of this title.

- (7) Records must be maintained a minimum of two years and be made available upon request to authorized representatives of the executive director, the United States Environmental Protection Agency, or any local air pollution agency with jurisdiction.
- §115.459. Compliance Schedules.
- (a) The owner or operator of a surface coating process 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, except as specified in §115.453(f) (i) of this title (relating to Control Requirements), 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, except as specified in §115.453(f) (i) of this title, [as soon as practicable, but] no later than January 1, 2017.
- (c) The owner or operator of a surface coating process in the Bexar County area subject to the requirements of this division shall comply with the requirements in this division no later than January 1, 2025.
- (d) [(e)] 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.]
- (e) The owner or operator of a surface coating process in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties shall comply with §115.453(f) of this title by no later than nine months after the commission publishes notification in the *Texas Register* of its determination that this industrial maintenance coating contingency rule is necessary as a result of EPA publication of a notice in the *Federal Register* that the specified area failed to attain the applicable National Ambient Air Quality Standard for ozone by the attainment deadline or failure to demonstrate reasonable further progress as set forth in the 1990 Amendments to the Federal Clean Air Act, §172(c)(9).
- (f) The owner or operator of a surface coating process in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties shall comply with §115.453(h) of this title by no later than nine months after the commission publishes notification in the *Texas Register* of its determination that this traffic marking coating contingency rule is necessary as a result of EPA publication of a notice in the *Federal Register* that the specified area failed to attain the applicable National Ambient Air Quality Standard for ozone by the attainment deadline or failure to demonstrate reasonable further progress as set forth in the 1990 Amendments to the Federal Clean Air Act, §172(c)(9).
- (g) The owner or operator of a surface coating process in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties shall be in compliance with §115.453(g) of this title by no later than nine months after the commission publishes notification in the *Texas Register* of its determination that this industrial maintenance coating contingency rule is necessary as a result of EPA publication of a notice in the *Federal Register* that the specified area failed to attain the applicable National Ambient Air Quality Standard

for ozone by the attainment deadline or failed to demonstrate reasonable further progress as set forth in the 1990 Amendments to the Federal Clean Air Act, \$172(c)(9).

(h) The owner or operator of a surface coating process in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties shall be in compliance with §115.453(i) of this title by no later than nine months after the commission publishes notification in the *Texas Register* of its determination that this traffic marking coating contingency rule is necessary as a result of EPA publication of a notice in the *Federal Register* that the specified area failed to attain the applicable National Ambient Air Quality Standard for ozone by the attainment deadline or failure to demonstrate reasonable further progress as set forth in the 1990 Amendments to the Federal Clean Air Act, §172(c)(9).

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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Texas Commission on Environmental Quality
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DIVISION 6. INDUSTRIAL CLEANING SOLVENTS

30 TAC §§115.460, 115.461, 115.463, 115.465, 115.468, 115.469

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The proposed amendments implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

- §115.460. Applicability and Definitions.
- (a) Applicability. Except as specified in §115.461 of this title (relating to Exemptions), the requirements in this division apply to solvent cleaning operations in the <u>Bexar County</u>, Dallas-Fort Worth and Houston-Galveston-Brazoria areas, as defined in §115.10 of this title (relating to Definitions). Residential cleaning and janitorial cleaning are not considered solvent cleaning operations.
- (b) Definitions. Unless specifically defined in the Texas Clean Air Act (Texas Health and Safety Code, Chapter 382) or in §§3.2, 101.1, or 115.10 of this title (relating to Definitions), the terms in this division have the meanings commonly used in the field of air pollution control. In addition, the following meanings apply in this division unless the context clearly indicates otherwise indicates otherwise.
- (1) Aerosol can--A hand-held, non-refillable container that expels pressurized product by means of a propellant-induced force.
- (2) Application device--A device used to apply adhesive, coating, ink, or polyester resin materials.
- (3) Application line--A portion of a motor vehicle assembly production line which applies surface and other coatings to motor vehicle bodies, hoods, fenders, cargo boxes, doors, and grill opening panels.
- (4) Blanket--A synthetic rubber mat used in offset-lithography to transfer or offset an image from a planographic printing plate to the paper or other substrate.
- (5) Blanket wash--A solvent used to remove ink from the blanket of a press.
- (6) Cured coating, cured ink, or cured adhesive--A coating, ink, or adhesive, which is dry to the touch.
- (7) [(2)] Electrical and electronic components--Components and assemblies of components that generate, convert, transmit, or modify electrical energy. Electrical and electronic components include, but are not limited to, wires, windings, stators, rotors, magnets, contacts, relays, printed circuit boards, printed wire assemblies, wiring boards, integrated circuits, resistors, capacitors, and transistors. Cabinets that house electrical and electronic components are not considered electrical and electronic components. In the context of the provisions in §115.461(d) and (e) of this title (relating to Exemptions) and §115.463(e) of this title (relating to Control Requirements), Electronic component is defined as that portion of an assembly, including circuit card assemblies, printed wire assemblies, printed circuit boards, soldered joints, ground wires, bus bars, and other electrical fixtures, except for the actual cabinet in which the components are housed; and Electrical component is defined as an internal component such as wires, windings, stators, rotors, magnets, contacts, relays, energizers, and connections in an apparatus that generates or transmits electrical energy including, but not limited to: alternators, generators, transformers, electric motors, cables, and circuit breakers, except for the actual cabinet in which the components are housed. Electrical components of graphic arts application equipment and hot-line tools are also included in this category.
- (8) Electron beam ink--An ink that dries by chemical reaction caused by high energy electrons.
- (9) Facility--A business or businesses engaged in solvent cleaning operations which are owned or operated by the same person or persons and are located on the same or contiguous parcels.

- (10) Grams of VOC per liter of material--The weight of VOC per volume of material and can be calculated by the following equation.
- Figure: 30 TAC §115.460(b)(10)
- (11) Graphic arts--All gravure, letterpress, flexographic, and lithographic printing processes.
- (12) Gravure printing-- An intaglio process in which the ink is carried in minute etched or engraved wells on a roll or cylinder. The excess ink is removed from the surface by a doctor blade.
- (13) High precision optic--An optical element used in an electro-optical device and is designed to sense, detect, or transmit light energy, including specific wavelengths of light energy and changes in light energy levels.
- (14) Hot-line tool--A specialized tool used primarily on the transmission systems, sub-transmission systems and distribution systems for replacing and repairing circuit components or for other types of work with electrically energized circuits.
- (15) [(3)] Janitorial cleaning--The cleaning of building or facility components including, but not limited to, floors, ceilings, walls, windows, doors, stairs, bathrooms, furnishings, and exterior surfaces of office equipment, and excludes the cleaning of work areas where manufacturing or repair activity is performed.
- (16) Letterpress printing--The method in which the image area is raised relative to the non-image area and the ink is transferred to the paper directly from the image surface.
- (17) Liquid-tight food container--A paperboard container that can hold liquid food and food products without leaking even when it is held upside-down.
- (18) Lithographic printing--A plane-o-graphic method in which the image and non-image areas are on the same plane.
- (19) [(4)] Magnet wire--Wire used in electromagnetic field application in electrical machinery and equipment such as transformers, motors, generators, and magnetic tape recorders.
- (20) [(5)] Magnet wire coating operation--The process of applying insulation coatings such as varnish or enamel on magnet wire where wire is continuously drawn through a coating applicator.
- (21) Maintenance cleaning--A solvent cleaning operation or activity carried out to keep clean general work areas where manufacturing or repair activity is performed, to clean tools, machinery, molds, forms, jigs, and equipment. This definition does not include the cleaning of coatings, adhesives, or ink application equipment.
- (22) Manufacturing process--The process of making goods or articles by hand or by machinery.
- (23) Medical device--An instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar article, including any component or accessory, that meets one of the following conditions:
- (A) it is intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease; or
- (B) it is intended to affect the structure or any function of the body; or
- (C) it is defined in the National Formulary of the United States Pharmacopeia, or any supplement to them.
- [(6) Medical device--An instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar

- article, including any component or accessory that is, intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of diseases; intended to affect the structure or any function of the body; or defined in the National Formulary or the United States Pharmacopoeia or any supplement to it.l
- (24) [(7)] Medical device and pharmaceutical preparation operations--Medical devices, pharmaceutical products, and associated manufacturing and product handling equipment and material, work surfaces, maintenance tools, and room surfaces that are subject to the United States Federal Drug Administration current Good Manufacturing/Laboratory Practice, or Center for Disease Control or National Institute of Health guidelines for biological disinfection of surfaces.
- (25) Medical or pharmaceutical work surface--An area of a medical device or pharmaceutical facility where solvent cleaning is performed on work surfaces including, but not limited to, tables, countertops, and laboratory benches. Medical or pharmaceutical work surface shall not include items defined under janitorial cleaning.
- (26) Non-absorbent container--A container made of non-porous material, which does not allow the migration of the liquid solvent through it.
- (27) On-press component--A part, component, or accessory of a press that is cleaned while still being physically attached to the press.
- (28) On-press screen cleaning--A solvent cleaning activity carried out during press runs in screen printing operation to remove excess inks and contaminants from a screen that is still attached to the press.
- (29) Packaging printing--Any lithographic, flexographic, gravure, or letterpress printing that results in identifying or beautifying paper, paperboard, or cardboard products to be used as containers, enclosures, wrappings, or boxes.
- (30) Pharmaceutical product--A preparation or compound of medicinal drugs including, but not limited to, a prescription drug, analgesic, decongestant, antihistamine, cough suppressant, vitamin, mineral and herb, and is used by humans or animals for consumption to enhance personal health.
- (31) Photocurable resin--A chemical material that solidifies upon exposure to light.
- (32) [(8)] Polyester resin operation--The fabrication, rework, repair, or touch-up of composite products for commercial, military, or industrial uses by mixing, pouring, manual application, molding, impregnating, injecting, forming, spraying, pultrusion, filament winding, or centrifugally casting with polyester resins.
- (33) [(9)] Precision optics--The optical elements used in electro-optical devices that are designed to sense, detect, or transmit light energy, including specific wavelengths of light energy and changes of light energy levels.
- (34) Printing--In the graphic arts, is any operation that imparts color, design, alphabet, or numerals on a substrate.
- (35) Removable press component—A part, component, or accessory of a press that is physically attached to the press but is disassembled and removed from the press prior to being cleaned. Rollers, blankets, metering rollers, dampening rollers, ink trays, printing plates, fountains, impression cylinders and plates shall not be considered as removable press components.
- (36) Repair cleaning--A solvent cleaning operation or activity carried out during a repair process.

- (37) Repair process-The process of returning a damaged object or an object not operating properly to good condition.
- (38) Roller wash--A solvent used to remove ink from the rollers of a press.
- (39) Scientific instrument--An instrument (including the components, assemblies, and subassemblies used in their manufacture) and associated accessories and reagents that is used for the detection, measurement, analysis, separation, synthesis, or sequencing of various compounds.
- (40) Screen printing--A process in which the printing ink passes through a web or a fabric to which a refined form of stencil has been applied. The stencil openings determine the form and dimensions of the imprint.
- (41) [(10)] Solvent--A volatile organic compound-containing liquid used to perform solvent cleaning operations.
- (42) [(41)] Solvent cleaning operation--The removal of uncured adhesives, inks, and coatings; and contaminants such as dirt, soil, oil, and grease from parts, products, tools, machinery, equipment, vessels, floors, walls, and other work production-related areas using a solvent. In the context of the provisions in §115.461(d) and (e) of this title and §115.463(e) of this title, each distinct method of cleaning in a cleaning process that consists of a series of cleaning methods shall constitute a separate solvent cleaning operation.
- (43) Solvent flushing--The use of a solvent to remove uncured adhesives, uncured inks, uncured coatings, or contaminants from the internal surfaces and passages of the equipment by flushing solvent through the equipment.
- (44) Specialty flexographic printing--Flexographic printing on polyethylene or polypropylene food packaging, fertilizer bags, or liquid-tight food containers.
- (45) Stereolithography--A type of printing process that employs a system using a light to solidify photocurable resins in a desired configuration in order to produce a 3-dimensional object.
- (46) Stripping--The removal of cured coatings, cured inks, or cured adhesives.
- (47) Surface preparation--The removal of contaminants such as dust, soil, oil, grease, etc., prior to coating, adhesive, or ink applications.
- (48) Ultraviolet ink--An ink that dries by polymerization reaction induced by ultraviolet energy.
- (49) [(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 §115.460(b)(12) (No change.)

§115.461. Exemptions.

- (a) Solvent cleaning operations located on a property with total actual volatile organic compounds (VOC) emissions of less than 3.0 tons per calendar year from all cleaning solvents, when uncontrolled, are exempt from the requirements of this division, except as specified in $\S115.468(b)(2)$ of this title (relating to Monitoring and Recordkeeping Requirements). When calculating the VOC emissions, solvents used for solvent cleaning operations that are exempt from this division under subsections (b) (d) and (f)[(b) (e)] of this section are excluded.
- (b) The owner or operator of any process or operation subject to another division of this chapter that specifies solvent cleaning oper-

- ation requirements related to that process or operation is exempt from the requirements in this division.
- (c) A solvent cleaning operation is exempt from this division if:
- the process or operation that the solvent cleaning operation is associated with is subject to another division in this chapter;
- (2) the VOC emissions from the solvent cleaning operation are controlled in accordance with an emission specification or control requirement of the division that the process or operation is subject to.
- (d) The following are exempt from the VOC limits in §115.463(a) of this title (relating to Control Requirements:
 - (1) electrical and electronic components;
 - (2) precision optics;
 - (3) numisimatic dies;
 - (4) resin mixing, molding, and application equipment;
- (5) coating, ink, and adhesive mixing, molding, and application equipment;
- (6) stripping of cured inks, cured adhesives, and cured coatings;
 - (7) research and development laboratories;
- (8) medical device or pharmaceutical preparation operations;
- (9) performance or quality assurance testing of coatings, inks, or adhesives;
- (10) architectural coating manufacturing and application operations;
 - (11) magnet wire coating operations;
 - (12) semiconductor wafer fabrication;
 - (13) coating, ink, resin, and adhesive manufacturing;
 - (14) polyester resin operations;
 - (15) flexographic and rotogravure printing processes;
 - (16) screen printing operations; and
 - (17) digital printing operations.
- (e) If the commission publishes notice in the *Texas Register*, as provided in §115.469(d) of this title (relating to Compliance Schedules) for the Dallas-Fort Worth area, or §115.469(e) of this title for the Houston-Galveston-Brazoria area, or both areas, to require compliance with the contingency measure control requirements of §115.463(e) of this title, then the exemptions in subsections (a) (d) of this section are no longer available, and the following exemptions apply in the applicable area as of the compliance date specified in §115.469(d) or (e) of this title.
- (1) In the Dallas-Fort Worth area, in accordance with the schedule specified in §115.469(d) of this title, the following types of cleaning are exempt from the VOC content limits in §115.463(e)(1) of this title:
- (A) Cleaning of solar cells, laser hardware, scientific instruments, and high-precision optics;
- (B) Cleaning conducted with performance laboratory tests on coatings, adhesives, or inks; research and development programs; and laboratory tests in quality assurance laboratories;

- (C) Cleaning of paper-based gaskets, and clutch assemblies where rubber is bonded to metal by means of an adhesive;
- (D) Cleaning of cotton swabs to remove cottonseed oil before cleaning of high-precision optics;
- (E) Medical device and pharmaceutical facilities using up to 1.5 gallons per day of solvents;
- (F) The cleaning of photocurable resins from stereolithography equipment and models;
- (G) Cleaning of adhesive application equipment used for thin metal laminating operations provided the clean-up solvent used contains no more than 950 grams of VOC per liter;
- (H) Cleaning of electronic or electrical cables provided the clean-up solvent used contains no more than 400 grams of VOC per liter;
- (I) Touch up cleaning performed on printed circuit boards where surface mounted devices have already been attached provided that the solvent used contains no more than 800 grams of VOC per liter;
- (J) Cleaning carried out in batch loaded cold cleaners, vapor degreasers, conveyorized degreasers, or motion picture film cleaning equipment;
 - (K) Janitorial cleaning, including graffiti removal; and
- (L) Stripping of cured coatings, cured ink, or cured adhesives.
- (2) In the Houston-Galveston-Brazoria area, in accordance with the schedule specified in §115.469(e) of this title, the following types of cleaning are exempt from the VOC content limits in §115.463(e)(1) of this title:
- (A) Cleaning of solar cells, laser hardware, scientific instruments, and high-precision optics;
- (B) Cleaning conducted with performance laboratory tests on coatings, adhesives, or inks; research and development programs; and laboratory tests in quality assurance laboratories;
- (C) Cleaning of paper-based gaskets, and clutch assemblies where rubber is bonded to metal by means of an adhesive;
- (D) Cleaning of cotton swabs to remove cottonseed oil before cleaning of high-precision optics;
- (E) Medical device and pharmaceutical facilities using up to 1.5 gallons per day of solvents;
- (F) The cleaning of photocurable resins from stereolithography equipment and models;
- (G) Cleaning of adhesive application equipment used for thin metal laminating operations provided the clean-up solvent used contains no more than 950 grams of VOC per liter;
- (H) Cleaning of electronic or electrical cables provided the clean-up solvent used contains no more than 400 grams of VOC per liter;
- (I) Touch up cleaning performed on printed circuit boards where surface mounted devices have already been attached provided that the solvent used contains no more than 800 grams of VOC per liter;
- (J) Cleaning carried out in batch loaded cold cleaners, vapor degreasers, conveyorized degreasers, or motion picture film cleaning equipment;

- (K) Janitorial cleaning, including graffiti removal; and
- (L) Stripping of cured coatings, cured ink, or cured ad-

hesives.

- (f) [(e)] Cleaning solvents supplied in aerosol cans are exempt from the VOC limits in §115.463(a) of this title if total aerosol use for the property is less than 160 fluid ounces per day.
- §115.463. Control Requirements.
- (a) Except as specified in subsection (e) of this section, the [The] owner or operator shall limit the volatile organic compounds (VOC) content of cleaning solutions to:
- (1) 0.42 pound of VOC per gallon of solution (lb VOC/gal solution), as applied; or
- (2) limit the composite partial vapor pressure of the cleaning solution to 8.0 millimeters of mercury at 20 degrees Celsius (68 degrees Fahrenheit).
- (b) As an alternative to subsection (a) of this section, the owner or operator shall operate a vapor control system capable of achieving an overall control efficiency of 85% by mass. Control device and capture efficiency testing must be performed in accordance with the testing requirements in §115.465 of this title (relating to Approved Test Methods and Testing Requirements).
- (c) The owner or operator of a solvent cleaning operation shall implement the following work practices during the handling, storage, and disposal of cleaning solvents and shop towels:
 - (1) cover open containers and used applicators;
- (2) minimize air circulation around solvent cleaning operations;
 - (3) properly dispose of used solvent and shop towels; and
- (4) implement equipment practices that minimize emissions (e.g. maintaining cleaning equipment to repair solvent leaks).
- (d) A solvent cleaning operation that becomes subject to subsection (a) of this section by exceeding the exemption limits in §115.461 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 §115.461 of this title must be authorized by a permit, permit amendment, standard permit, or permit by rule required by Chapter 116 or Chapter 106 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification; and Permits by Rule, 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.
- (e) If the commission has published notice in the *Texas Register*, as provided in §115.469(d) or (e) of this title (relating to Compliance Schedules), to require compliance with the contingency measure control requirements for the Dallas-Fort Worth area, the Houston-Galveston-Brazoria area, or both areas the following control requirements apply instead of subsection (a) of this section.

Figure: 30 TAC §115.463(e)

- (1) In the Dallas-Fort Worth area, in accordance with the schedule specified in §115.469(d) of this title, the limits in Table 1 of this subsection apply.
- (2) In the Houston-Galveston-Brazoria area, in accordance with the schedule specified in §115.469(e) of this title, the limits in Table 1 of this subsection apply.
- §115.465. Approved Test Methods and Testing Requirements.

The owner or operator shall demonstrate compliance with the control requirements in §115.463 of this title (relating to Control Requirements) by applying the following test methods, as appropriate.

- (1) Compliance with the volatile organic compound (VOC) limits in §115.463(a) or (e) of this title must be determined by the following methods, as applicable:
- (A) Method 24 (40 Code of Federal Regulations (CFR) Part 60, Appendix A);
- (B) American Society for Testing and Materials Method D2879, Standard Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope to demonstrate compliance with §115.463(a)(2) of this title;
- (C) using standard reference texts for the true vapor pressure of each VOC component to demonstrate compliance with §115.463(a)(2) of this title; or
- (D) using analytical data from the cleaning solvent supplier or manufacturer's material safety data sheet.
- (2) The owner or operator subject to §115.463(b) of this title shall measure the capture efficiency using applicable procedures outlined in 40 CFR §52.741, Subpart O, Appendix B (as amended through October 21, 1996 (61 FR 54559)). These procedures are: Procedure T Criteria for and Verification of a Permanent or Temporary Total Enclosure; Procedure L VOC Input; Procedure G.2 Captured VOC Emissions (Dilution Technique); Procedure F.1 Fugitive VOC Emissions from Temporary Enclosures; and Procedure F.2 Fugitive VOC Emissions from Building Enclosures.
- (A) The following exemptions apply to capture efficiency testing requirements.
- (i) If a source installs a permanent total enclosure that meets the specifications of Procedure T and that directs all VOC to a control device, then the capture efficiency is assumed to be 100%, and the source is exempted from capture efficiency testing requirements. This does not exempt the source from performance of any control device efficiency testing that may be required. In addition, a source must demonstrate all criteria for a permanent total enclosure are met during testing for control efficiency.
- (ii) If a source uses a vapor control system designed to collect and recover VOC (e.g., carbon adsorption system), an explicit measurement of capture efficiency is not necessary if the following conditions are met. The overall control of the system can be determined by directly comparing the input liquid VOC to the recovered liquid VOC. The general procedure for use in this situation is given in 40 CFR §60.433 (as amended through October 17, 2000 (65 FR 61761)), with the following additional restrictions.
- (I) The source must be able to equate solvent usage with solvent recovery on a 24-hour (daily) basis, rather than a 30-day weighted average. This verification must be done within 72 hours following each 24-hour period of the 30-day period.

- (II) The solvent recovery system (i.e., capture and control system) must be dedicated to a single process line (e.g., one process line venting to a carbon adsorber system) or if the solvent recovery system controls multiple process lines, the source must be able to demonstrate that the overall control (i.e., the total recovered solvent VOC divided by the sum of liquid VOC input to all process lines venting to the control system) meets or exceeds the most stringent standard applicable for any process line venting to the control system.
- (B) The capture efficiency must be calculated using one of the following protocols referenced. Any affected source must use one of these protocols, unless a suitable alternative protocol is approved by the executive director and the United States Environmental Protection Agency (EPA).
- (i) Gas/gas method using temporary total enclosure (TTE). The EPA specifications to determine whether a temporary enclosure is considered a TTE are given in Procedure T. The capture efficiency equation to be used for this protocol is:

Figure: 30 TAC §115.465(2)(B)(i) (No change.)

(ii) Liquid/gas method using TTE. The EPA specifications to determine whether a temporary enclosure is considered a TTE are given in Procedure T. The capture efficiency equation to be used for this protocol is:

Figure: 30 TAC §115.465(2)(B)(ii) (No change.)

(iii) Gas/gas method using the building or room enclosure (BE) in which the affected source is located and in which the mass of VOC captured and delivered to a control device and the mass of fugitive VOC that escapes from the BE are measured while operating only the affected facility. All fans and blowers in the BE must be operating as they would under normal production. The capture efficiency equation to be used for this protocol is:

Figure: 30 TAC §115.465(2)(B)(iii) (No change.)

(iv) Liquid/gas method using a BE in which the mass of liquid VOC input to process and the mass of fugitive VOC that escapes from the BE are measured while operating only the affected facility. All fans and blowers in the BE must be operated as they would under normal production. The capture efficiency equation to be used for this protocol is:

Figure: 30 TAC §115.465(2)(B)(iv) (No change.)

- (C) The operating parameters selected for monitoring of the capture system for compliance with the requirements in §115.468(a) of this title (relating to Monitoring and Recordkeeping Requirements) must be monitored and recorded during the initial capture efficiency testing and thereafter during facility operation. The executive director may require a new capture efficiency test if the operating parameter values change significantly from those recorded during the initial capture efficiency test.
- (3) In addition to the requirements of paragraph (2) of this section, the owner or operator shall determine compliance with §115.463(b) of this title by applying the following test methods, as appropriate:
- (A) Methods 1 4 (40 CFR Part 60, Appendix A) for determining flow rates, as necessary;
- (B) Method 25 (40 CFR Part 60, Appendix A) for determining total gaseous nonmethane organic emissions as carbon;
- (C) Method 25A or 25B (40 CFR Part 60, Appendix A) for determining total gaseous organic concentrations using flame ionization or nondispersive infrared analysis; and

- (D) additional performance test procedures described in 40 CFR §60.444 (as amended through October 18, 1983 (48 FR 48375)).
- (4) Minor modifications to the methods in paragraphs (1)-(3) of this section may be approved by the executive director. Methods other than those specified in paragraphs (1) (3) of this section may be used if approved by the executive director and validated using Method 301 (40 CFR Part 63, Appendix A). For the purposes of this paragraph, substitute "executive director" each place that Method 301 references "administrator."
- §115.468. Monitoring and Recordkeeping Requirements.
- (a) Monitoring requirements. The following monitoring requirements apply to the owner or operator of a solvent cleaning operation subject to this division that uses a vapor control system in accordance with §115.463(b) of this title (relating to Control Requirements). The owner or operator shall install and maintain monitors to accurately measure and record operational parameters of all required control devices, as necessary, to ensure the proper functioning of those devices in accordance with design specifications, including:
- (1) continuous monitoring of the exhaust gas temperature immediately downstream of direct-flame incinerators or the gas temperature immediately upstream and downstream of any catalyst bed;
- (2) the total amount of volatile organic compounds (VOC) recovered by carbon adsorption or other solvent recovery systems during a calendar month;
- (3) continuous monitoring of carbon adsorption bed exhaust; and
- (4) appropriate operating parameters for vapor control systems other than those specified in paragraphs (1) (3) of this subsection.
- (b) Recordkeeping requirements. The following recordkeeping requirements apply to the owner or operator of a solvent cleaning operation subject to this division.
- (1) The owner or operator shall maintain records of the testing data, the material safety data sheet, or documentation of the standard reference texts used to determine the true vapor pressure of each VOC component, in accordance with the requirements in §115.465(1) of this title (relating to Approved Test Methods and Testing Requirements). The concentration of all VOC used to prepare the cleaning solution and, if diluted prior to use, the proportions that each of these materials is used must be recorded. Records must be sufficient to demonstrate continuous compliance with the VOC limits in §115.463(a) and (e) of this title.
- (2) The owner or operator claiming an exemption in §115.461 of this title (relating to Exemptions) shall maintain records sufficient to demonstrate continuous compliance with the applicable exemption criteria.
- (3) The owner or operator claiming exemption from this division in accordance with §115.461(c) of this title shall maintain records indicating the applicable division the process or operation is subject to as specified in §115.461(c)(1) of this title and the control requirements or emission specifications used to control the VOC emissions from the solvent cleaning operation as specified in §115.461(c)(2) of this title. The owner or operator shall also comply with the applicable recordkeeping requirements from the division the process or operation is subject to sufficient to demonstrate that the VOC emissions from the solvent cleaning operation are controlled in accordance with the control requirements or emission specifications of that division.

- (4) The owner or operator shall maintain records of any testing conducted in accordance with the provisions specified in \$115.465(2) (4) of this title.
- (5) Records must be maintained a minimum of two years and be made available upon request to authorized representatives of the executive director, the United States Environmental Protection Agency, or any local air pollution agency with jurisdiction.
- §115.469. Compliance Schedules.
- (a) In [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, and Wise Counties the compliance date has passed for control requirements in §115.463(a) (d) of this title (relating to Control Requirements) and all associated requirements, and the owner or operator of a solvent cleaning operation shall continue to comply with the requirements in this division, except as specified in subsection (d) and (e) of this section. [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 the Bexar County area subject to the requirements of this division shall comply with the requirements in this division no later than January 1, 2025.
- [(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) The owner or operator of a solvent cleaning operation in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties shall be in compliance with the requirements of §115.463(e) of this title (relating to Control Requirements) no later than nine months after the commission publishes notification in the *Texas Register* of its determination that the industrial cleaning solvent contingency requirements are necessary as a result of EPA publication of a notice in the *Federal Register* that the specified area failed to attain the applicable National Ambient Air Quality Standard for ozone by the attainment deadline or failed to demonstrate reasonable further progress as set forth in the 1990 Amendments to the federal Clean Air Act, §172(c)(9).
- [(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.]
- (e) The owner or operator of a solvent cleaning operation in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties shall be in compliance with the requirements of §115.463(e) of this title no later than nine months after the commission publishes notification in the *Texas Register* of its determination that the contingency requirements are necessary as a result of EPA publication of a notice in the *Federal Register* that the specified area failed to attain the applicable National Ambient Air Quality Standard for ozone by the attainment deadline or failed to demonstrate reasonable further progress as set forth in the 1990 Amendments to the federal Clean Air Act.

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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Texas Commission on Environmental Quality
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DIVISION 7. MISCELLANEOUS INDUSTRIAL ADHESIVES

30 TAC §§115.470, 115.471, 115.473, 115.475, 115.478, 115.479

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The proposed amendments implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

§115.470. Applicability and Definitions.

(a) Applicability. Except as specified in §115.471 of this title (relating to Exemptions), the requirements in this division apply to the owner or operator of a manufacturing operation using adhesives or adhesive primers for any of the application processes specified in §115.473 [§115.473(a)] of this title (relating to Control Requirements) in the Bexar County, Dallas-Fort Worth and Houston-Galveston-Brazoria areas, as defined in §115.10 of this title (relating to Definitions). Adhesives or adhesive primers applied in the field (e.g., construction jobs in the field) are not subject to this division.

- (b) Definitions. Unless specifically defined in the Texas Clean Air Act (Texas Health and Safety Code, Chapter 382) or in §§3.2, 101.1, or 115.10 of this title (relating to Definitions), the terms in this division have the meanings commonly used in the field of air pollution control. In addition, the following meanings apply in this division unless the context clearly indicates otherwise.
- (1) Acrylonitrile-butadiene-styrene or ABS welding--Any process to weld acrylonitrile-butadiene-styrene pipe.
- (2) Adhesive--Any chemical substance applied for the purpose of bonding two surfaces together other than by mechanical means.
- (3) Adhesive primer--Any product intended by the manufacturer for application to a substrate, prior to the application of an adhesive, to provide a bonding surface.
- (4) Aerosol adhesive or adhesive primer--An adhesive or adhesive primer packaged as an aerosol product in which the spray mechanism is permanently housed in a non-refillable can designed for handheld application without the need for ancillary hoses or spray equipment.
- (5) Aerospace component--Any fabricated part, processed part, assembly of parts, or completed unit of any aircraft including but not limited to airplanes, helicopters, missiles, rockets, and space vehicles. This definition includes electronic components.
- (6) Application process--A series of one or more application systems and any associated drying area or oven where an adhesive or adhesive primer is applied, dried, or cured. An application process ends at the point where the adhesive is dried or cured, or prior to any subsequent application of a different adhesive. It is not necessary for an application process to have an oven or flash-off area.
- (7) Application system--Devices or equipment designed for the purpose of applying an adhesive or adhesive primer to a surface. The devices may include, but are not [be] limited to, brushes, sprayers, flow coaters, dip tanks, rollers, and extrusion coaters.
- (8) Ceramic tile installation adhesive--Any adhesive intended by the manufacturer for use in the installation of ceramic tiles.
- (9) Chlorinated polyvinyl chloride plastic or CPVC plastic welding--A polymer of the vinyl chloride monomer that contains 67% chlorine and is normally identified with a chlorinated polyvinyl chloride marking.
- (10) Chlorinated polyvinyl chloride welding or CPVC welding--An adhesive labeled for welding of chlorinated polyvinyl chloride.
 - (11) Contact adhesive--An adhesive:
- (A) designed for application to both surfaces to be bonded together;
- (B) allowed to dry before the two surfaces are placed in contact with each other;
- (C) forms an immediate bond that is impossible, or difficult, to reposition after both adhesive-coated surfaces are placed in contact with each other;
- (D) does not need sustained pressure or clamping of surfaces after the adhesive-coated surfaces have been brought together using sufficient momentary pressure to establish full contact between both surfaces; and
- (E) does not include rubber cements that are primarily intended for use on paper substrates or vulcanizing fluids that are designed and labeled for tire repair only.

- (12) Cove base--A flooring trim unit, generally made of vinyl or rubber, having a concave radius on one edge and a convex radius on the opposite edge that is used in forming a junction between the bottom wall course and the floor or to form an inside corner.
- (13) Cove base installation adhesive--Any adhesive intended by the manufacturer to be used for the installation of cove base or wall base on a wall or vertical surface at floor level.
- (14) Cyanoacrylate adhesive--Any adhesive with a cyanoacrylate content of at least 95% by weight.
- (15) Daily weighted average--The total weight of volatile organic compounds (VOC) emissions from all adhesives or adhesive primers subject to the same VOC content limit in §115.473(a) of this title (relating to Control Requirements), divided by the total volume of those adhesives or adhesive primers (minus water and exempt solvent) delivered to the application system each day. Adhesives or adhesive primers subject to different emission standards in §115.473(a) of this title must not be combined for purposes of calculating the daily weighted average. In addition, determination of compliance is based on each adhesive or adhesive primer application process.
- (16) Ethylene propylenediene monomer (EPDM) roof membrane--A prefabricated single sheet of elastomeric material composed of ethylene propylenediene monomer and that is field-applied to a building roof using one layer or membrane material.
- (17) Flexible vinyl--Non-rigid polyvinyl chloride plastic with a 5.0% by weight plasticizer content.
- (18) Indoor floor covering installation adhesive--Any adhesive intended by the manufacturer for use in the installation of wood flooring, carpet, resilient tile, vinyl tile, vinyl-backed carpet, resilient sheet and roll, or artificial grass. Adhesives used to install ceramic tile and perimeter-bonded sheet flooring with vinyl backing onto a non-porous substrate, such as flexible vinyl, are excluded from this definition.
- (19) Laminate--A product made by bonding together two or more layers of material.
- (20) Metal to urethane/rubber molding or casting adhesive-Any adhesive intended by the manufacturer to bond metal to high density or elastomeric urethane or molded rubber materials, in heater molding or casting processes, to fabricate products such as rollers for computer printers or other paper handling equipment.
- (21) Motor vehicle adhesive.—An adhesive, including glass-bonding adhesive, used in a process that is not an automobile or light-duty truck assembly coating process, applied for the purpose of bonding two vehicle surfaces together without regard to the substrates involved.
- (22) Motor vehicle glass-bonding primer-A primer, used in a process that is not an automobile or light-duty truck assembly coating process, applied to windshield or other glass, or to body openings, to prepare the glass or body opening for the application of glass-bonding adhesives or the installation of adhesive-bonded glass. Motor vehicle glass-bonding primer includes glass-bonding/cleaning primers that perform both functions (cleaning and priming of the windshield or other glass, or body openings) prior to the application of adhesive or the installation of adhesive-bonded glass.
- (23) Motor vehicle weatherstrip adhesive.-An adhesive, used in a process that is not an automobile or light-duty truck assembly coating process, applied to weatherstripping materials for the purpose of bonding the weatherstrip material to the surface of the vehicle.

- (24) Multipurpose construction adhesive--Any adhesive intended by the manufacturer for use in the installation or repair of various construction materials, including but not limited to drywall, subfloor, panel, fiberglass reinforced plastic (FRP), ceiling tile, and acoustical tile.
- (25) Outdoor floor covering installation adhesive--Any adhesive intended by the manufacturer for use in the installation of floor covering that is not in an enclosure and that is exposed to ambient weather conditions during normal use.
- (26) Panel installation--The installation of plywood, predecorated hardboard or tileboard, fiberglass reinforced plastic, and similar pre-decorated or non-decorated panels to studs or solid surfaces using an adhesive formulated for that purpose.
- (27) Perimeter bonded sheet flooring installation--The installation of sheet flooring with vinyl backing onto a nonporous substrate using an adhesive designed to be applied only to a strip of up to four inches wide around the perimeter of the sheet flooring.
- (28) Plastic solvent welding adhesive--Any adhesive intended by the manufacturer for use to dissolve the surface of plastic to form a bond between mating surfaces.
- (29) Plastic solvent welding adhesive primer--Any primer intended by the manufacturer for use to prepare plastic substrates prior to bonding or welding.
 - (30) Plastic foam--Foam constructed of plastics.
- (31) Plastics--Synthetic materials chemically formed by the polymerization of organic (carbon-based) substances. Plastics are usually compounded with modifiers, extenders, or reinforcers and are capable of being molded, extruded, cast into various shapes and films, or drawn into filaments.
- (32) Polyvinyl chloride plastic or PVC plastic--A polymer of the chlorinated vinyl monomer that contains 57% chlorine.
- (33) Polyvinyl chloride welding adhesive or PVC welding adhesive--Any adhesive intended by the manufacturer for use in the welding of polyvinyl chloride plastic pipe.
- (34) Porous material--A substance that has tiny openings, often microscopic, in which fluids may be absorbed or discharged, including, but not limited to, paper and corrugated paperboard. For the purposes of this definition, porous material does not include wood.
- (35) Pounds of volatile organic compounds (VOC) per gallon of adhesive (minus water and exempt solvent)--The basis for content limits for application processes that can be calculated by the following equation:

Figure: 30 TAC §115.470(b)(35) (No change.)

(36) Pounds of volatile organic compounds (VOC) per gallon of solids--The basis for content limits for application processes that can be calculated by the following equation:

Figure: 30 TAC §115.470(b)(36) (No change.)

- (37) Reinforced plastic composite--A composite material consisting of plastic reinforced with fibers.
- (38) Rubber--Any natural or manmade rubber substrate, including, but not limited to, styrene-butadiene rubber, polychloroprene (neoprene), butyl rubber, nitrile rubber, chlorosulfonated polyethylene, and ethylene propylene diene terpolymer.
- (39) Sheet rubber lining installation--The process of applying sheet rubber liners by hand to metal or plastic substrates to protect the underlying substrate from corrosion or abrasion. These processes also include laminating sheet rubber to fabric by hand.

- (40) Single-ply roof membrane--A prefabricated single sheet of rubber, normally ethylene propylenediene terpolymer, that is field-applied to a building roof using one layer of membrane material. For the purposes of this definition, single-ply roof membrane does not include membranes prefabricated from ethylene propylenediene monomer.
- (41) Single-ply roof membrane installation and repair adhesive--Any adhesive labeled for use in the installation or repair of single-ply roof membrane. Installation includes, as a minimum, attaching the edge of the membrane to the edge of the roof and applying flashings to vents, pipes, and ducts that protrude through the membrane. Repair includes gluing the edges of torn membrane together, attaching a patch over a hole, and reapplying flashings to vents, pipes, or ducts installed through the membrane.
- (42) Single-ply roof membrane adhesive primer--Any primer labeled for use to clean and promote adhesion of the single-ply roof membrane seams or splices prior to bonding.
- (43) Specialty adhesives--A contact adhesive that is used to bond all of the following substrates to any surface: melamine covered board, metal, unsupported vinyl, Teflon, ultra-high molecular weight polyethylene, rubber, and wood veneer 1/16 inch or less in thickness.
- (44) [(43)] Structural glazing--A process that includes the application of adhesive to bond glass, ceramic, metal, stone, or composite panels to exterior building frames.
- (45) [(44)] Subfloor installation-The installation of subflooring material over floor joists, including the construction of any load-bearing joists. Subflooring is covered by a finish surface material.
- (46) [(45)] Thin metal laminating adhesive--Any adhesive intended by the manufacturer for use in bonding multiple layers of metal to metal or metal to plastic in the production of electronic or magnetic components in which the thickness of the bond line(s) is less than 0.25 mil.
- (47) [(46)] Tire repair--A process that includes expanding a hole, tear, fissure, or blemish in a tire casing by grinding or gouging, applying adhesive, and filling the hole or crevice with rubber.
- (48) [(47)] Undersea-based weapon system components-The fabrication of parts, assembly of parts or completed units of any portion of a missile launching system used on undersea ships.
- (49) [(48)] Waterproof resorcinol glue--A two-part resorcinol-resin-based adhesive designed for applications where the bond line must be resistant to conditions of continuous immersion in fresh or salt water.

§115.471. Exemptions.

- (a) Except as specified in subsection (d) of this section, the [The] owner or operator of application processes located on a property with actual combined emissions of volatile organic compounds (VOC) less than 3.0 tons per calendar year, when uncontrolled, from all adhesives, adhesive primers, and solvents used during related cleaning operations, is exempt from the requirements of this division, except as specified in §115.478(b)(2) of this title (relating to Monitoring and Recordkeeping Requirements). When calculating the VOC emissions, adhesives and adhesive primers that are exempt under subsections (b) and (c) of this section are excluded.
- (b) Except as specified in subsection (d) of this section, the [The] following application processes are exempt from the VOC limits in §115.473(a) of this title (relating to Control Requirements) and the application system requirements in §115.473(b) of this title:

- (1) adhesives or adhesive primers being tested or evaluated in any research and development, quality assurance, or analytical laboratory:
- (2) adhesives or adhesive primers used in the assembly, repair, or manufacture of aerospace components or undersea-based weapon system components;
- (3) adhesives or adhesive primers used in medical equipment manufacturing operations;
 - (4) cyanoacrylate adhesive application processes;
- (5) aerosol adhesive and aerosol adhesive primer application processes;
- (6) polyester-bonding putties used to assemble fiberglass parts at fiberglass boat manufacturing properties and at other reinforced plastic composite manufacturing properties; and
- (7) processes using adhesives and adhesive primers that are supplied to the manufacturer in containers with a net volume of 16 ounces or less or a net weight of 1.0 pound or less.
- (c) Except as specified in subsection (d) of this section, the [The] owner or operator of any process or operation subject to another division of this chapter that specifies VOC content limits for adhesives or adhesive primers used during any of the application processes listed in §115.473(a) of this title, is exempt from the requirements in this division. Adhesives and adhesive primers used for miscellaneous metal and plastic parts surface coating processes in §115.453(a)(1)(C) (F) and (2) of this title (related to Control Requirements) meeting a specialty application process definition in §115.470 of this title (relating to Applicability and Definitions) are not included in this exemption. Contact adhesives are not included in this exemption. When an adhesive or adhesive primer meets more than one adhesive application process definition in §115.470 of this title, the least stringent applicable VOC content limit applies.
- (d) If the commission publishes notice in the *Texas Register*, as provided in §115.479(c) of this title (relating to Compliance Schedules) for either the Dallas-Fort Worth area or §115.479(d) of this title for the Houston-Galveston-Brazoria area, or both areas, to require compliance with the contingency measure control requirements of §115.473(e) of this title for the Dallas-Fort Worth area and/or §115.473(f) of this title for the Houston-Galveston-Brazoria area, then the exemptions in subsections (a) (c) of this section are no longer available, and the following exemptions apply in the applicable area as of the compliance date specified in §115.479(c) or (e) of this title.
- (1) The owner or operator of application processes who demonstrates that the total volume of noncompliant products, including all adhesives, adhesive primers, and solvents used during related cleaning operations, located on the property is less than 55 gallons per calendar year is exempt from the requirements of this division, except as specified in §115.478(b)(2) of this title. The owner or operator may not use this paragraph to exclude noncompliant adhesives used in architectural applications; contact adhesives; special purpose contact adhesives; adhesives used on porous substrates; rubber vulcanization adhesives and top and trim adhesives.
- (2) The requirements in §115.473(e) and (f) do not apply to:
- (A) adhesives or adhesive primers used in the assembly, repair, or manufacture of aerospace components;
 - (B) adhesive tape;
- (C) aerosol adhesives and primers dispensed from non-refillable aerosol spray systems;

- (D) regulated products sold in quantities of one fluid ounce or less;
 - (E) adhesives used to glue flowers to parade floats;
- (F) adhesives used to fabricate orthotics and prosthetics under a medical doctor's prescription;
 - (G) shoe repair, luggage, and handbag adhesives;
- (H) research and development programs and quality assurance labs;
- (I) solvent welding operations used in the manufacturing of medical devices; or
 - (J) adhesives used in tire repair.

§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. The requirements in this subsection are replaced with the requirements in subsection (e) of this section in the Dallas-Fort Worth area upon the compliance date specified in §115.479(c) of this title (relating to Compliance Schedules) or with the requirements in subsection (f) of this section in the Houston-Galveston-Brazoria area upon the compliance date specified in §115.479(d) of this title.

Figure: 30 TAC §115.473(a) (No change.)

- (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.
- (e) In accordance with the compliance schedule for contingency requirements in §115.479(c) of this title in the Dallas-Fort Worth area, the owner or operator shall apply low-VOC adhesives or adhesive primers to limit VOC emissions from all adhesives and adhesive primers used during the specified application processes to the VOC content limits listed in the tables in this subsection in grams of VOC per liter of adhesive (minus water and exempt solvent compounds), as delivered to the application system. 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(e)
- (f) In accordance with the compliance schedule for contingency requirements in §115.479(d) of this title in the Houston-Galveston-Brazoria area, the owner or operator shall apply low-VOC adhesives or adhesive primers to limit VOC emissions from all adhesives and adhesive primers used during the specified application processes to the VOC content limits listed in the tables in this subsection in grams of VOC per liter of adhesive (minus water and exempt solvent compounds), as delivered to the application system. 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(f)

§115.475. Approved Test Methods and Testing Requirements.

The owner or operator shall demonstrate compliance with the volatile organic compounds (VOC) content limits in §115.473(a), (e), or (f) of this title (relating to Control Requirements), as applicable, by applying the following test methods, as appropriate. Where a test method also inadvertently measures compounds that are exempt solvent, an owner or operator may exclude the exempt solvent when determining compliance with a VOC content limit. As an alternative to the test methods in this section, the VOC content of an adhesive or adhesive primer may be determined by using analytical data from the material safety data sheet.

- (1) Except for reactive adhesives, compliance with the VOC content limits in §115.473(a), (e), or (f) of this title, as applicable, must be determined using Method 24 (40 Code of Federal Regulations (CFR) Part 60, Appendix A).
- (2) Compliance with the VOC content limits for reactive adhesives in §115.473(a), (e), or (f) of this title, as applicable, must be determined using 40 CFR Part 63, Subpart PPPP, Appendix A, (as amended through April 24, 2007 (72 FR 20237)).
- (3) The owner or operator of an application process subject to §115.473 of this title shall measure the capture efficiency using the applicable procedures outlined in 40 CFR §52.741, Subpart O, Appendix B (as amended through October 21, 1996 (61 FR 54559)). These procedures are: Procedure T-Criteria for and Verification of a Permanent or Temporary Total Enclosure; Procedure L VOC Input; Proc

- dure G.2 Captured VOC Emissions (Dilution Technique); Procedure F.1 Fugitive VOC Emissions from Temporary Enclosures; and Procedure F.2 Fugitive VOC Emissions from Building Enclosures.
- (A) The following exemptions apply to capture efficiency testing requirements.
- (i) If a source installs a permanent total enclosure that meets the specifications of Procedure T and that directs all VOC to a control device, then the capture efficiency is assumed to be 100%, and the source is exempted from capture efficiency testing requirements. This does not exempt the source from performance of any control device efficiency testing that may be required. In addition, a source must demonstrate all criteria for a permanent total enclosure are met during testing for control efficiency.
- (ii) If a source uses a vapor control system designed to collect and recover VOC (e.g., carbon adsorption system), an explicit measurement of capture efficiency is not necessary if the following conditions are met. The overall control efficiency of the system can be determined by directly comparing the input liquid VOC to the recovered liquid VOC. The general procedure for use in this situation is given in 40 CFR §60.433 (as amended through October 17, 2000 (65 FR 61761)), with the following additional restrictions.
- (I) The source must be able to equate solvent usage with solvent recovery on a 24-hour (daily) basis, rather than a 30-day weighted average. This verification must be done within 72 hours following each 24-hour period of the 30-day period.
- (II) The solvent recovery system (i.e., capture and control system) must be dedicated to a single process line (e.g., one process line venting to a carbon adsorber system) or if the solvent recovery system controls multiple process lines, the source must be able to demonstrate that the overall control efficiency (i.e., the total recovered solvent VOC divided by the sum of liquid VOC input to all process lines venting to the control system) meets or exceeds the most stringent standard applicable for any process line venting to the control system.
- (B) The capture efficiency must be calculated using one of the following protocols referenced unless a suitable alternative protocol is approved by the executive director and the United States Environmental Protection Agency (EPA).
- (i) Gas/gas method using temporary total enclosure (TTE). The EPA specifications to determine whether a temporary enclosure is considered a TTE are given in Procedure T. The capture efficiency equation to be used for this protocol is: Figure: 30 TAC §115.475(3)(B)(i) (No change.)
- (ii) Liquid/gas method using TTE. The EPA specifications to determine whether a temporary enclosure is considered a TTE are given in Procedure T. The capture efficiency equation to be used for this protocol is:

Figure: 30 TAC §115.475(3)(B)(ii) (No change.)

(iii) Gas/gas method using the building or room enclosure (BE) in which the affected source is located and in which the mass of VOC captured and delivered to a control device and the mass of fugitive VOC that escapes from BE are measured while operating only the affected facility. All fans and blowers in the BE must be operating as they would under normal production. The capture efficiency equation to be used for this protocol is:

Figure: 30 TAC §115.475(3)(B)(iii) (No change.)

(iv) Liquid/gas method using a BE in which the mass of liquid VOC input to process and the mass of fugitive VOC that escapes from BE are measured while operating only the affected facility.

All fans and blowers in the BE must be operated as they would under normal production. The capture efficiency equation to be used for this protocol is:

Figure: 30 TAC §115.475(3)(B)(iv) (No change.)

- (C) The operating parameters selected for monitoring the capture system for compliance with the requirements in §115.478(a) of this title (relating to Monitoring and Recordkeeping requirements) must be monitored and recorded during the initial capture efficiency testing and thereafter during facility operation. The executive director may require a new capture efficiency test if the operating parameter values change significantly from those recorded during the initial capture efficiency test.
- (4) In addition to the requirements of paragraph (3) of this section, the owner or operator shall determine compliance with \$115.473(a)(2) of this title by applying the following test methods, as appropriate:
- (A) Methods 1 4 (40 CFR Part 60, Appendix A) for determining flow rates, as necessary;
- (B) Method 25 (40 CFR Part 60, Appendix A) for determining total gaseous nonmethane organic emissions as carbon;
- (C) Method 25A or 25B (40 CFR Part 60, Appendix A) for determining total gaseous organic concentrations using flame ionization or nondispersive infrared analysis; and
- (D) additional performance test procedures described in 40 CFR §60.444 (as amended through October 18, 1983 (48 FR 48375)).
- (5) Minor modifications to the methods in paragraphs (1)-(4) of this section may be approved by the executive director. Methods other than those specified in paragraphs (1)-(4) of this section may be used if approved by the executive director and validated using Method 301 (40 CFR Part 63, Appendix A). For the purposes of this paragraph, substitute "executive director" each place that Method 301 references "administrator."
- §115.478. Monitoring and Recordkeeping Requirements.
- (a) Monitoring requirements. The following monitoring requirements apply to the owner or operator of an application process subject to this division that uses a vapor control system in accordance with §115.473(a)(2) of this title (relating to Control Requirements). The owner or operator shall install and maintain monitors to accurately measure and record operational parameters of all required control devices, as necessary, to ensure the proper functioning of those devices in accordance with design specifications, including:
- (1) continuous monitoring of the exhaust gas temperature immediately downstream of direct-flame incinerators or the gas temperature immediately upstream and downstream of any catalyst bed;
- (2) the total amount of volatile organic compounds (VOC) recovered by carbon adsorption or other solvent recovery systems during a calendar month;
- (3) continuous monitoring of carbon adsorption bed exhaust; and
- (4) appropriate operating parameters for vapor control systems other than those specified in paragraphs (1) (3) of this subsection.
- (b) Recordkeeping requirements. The following recordkeeping requirements apply to the owner or operator of an application process subject to this division.
- (1) The owner or operator shall maintain records of the testing data or the material safety data sheet in accordance with the require-

- ments in §115.475(1) of this title (relating to Approved Test Methods and Testing Requirements). Records must be sufficient to demonstrate continuous compliance with the <u>applicable VOC limits in §115.473(a)</u>, (e), or (f) of this title.
- (2) The owner or operator of an application process claiming an exemption in §115.471 of this title (relating to Exemptions) shall maintain records sufficient to demonstrate continuous compliance with the applicable exemption criteria.
- (3) The owner or operator shall maintain records of any testing conducted at an affected facility in accordance with the provisions specified in §115.475(3) and (4) of this title.
- (4) Records must be maintained a minimum of two years and made available upon request to authorized representatives of the executive director, the United States Environmental Protection Agency, or any local air pollution agency with jurisdiction.
- §115.479. Compliance Schedules.
- (a) In [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, and Wise Counties, the compliance date has passed and the owner or operator of an application process shall continue to comply with this division except as specified in subsections (c) and (d) of this section. [shall comply with this division no later than March 1, 2013.]
- (b) [(e)] 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.
- [(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 in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties shall comply with §115.473(e) of this title (relating to Control Requirements) by no later than nine months after the commission publishes notification in the *Texas Register* of its determination that this contingency rule is necessary as a result of EPA publication of a notice in the *Federal Register* that the specified area failed to attain the applicable National Ambient Air Quality Standard for ozone by the attainment deadline or failed to demonstrate reasonable further progress as set forth in the 1990 Amendments to the Federal Clean Air Act, §172(c)(9).
- (d) The owner or operator of an application process in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties shall be in compliance with §115.473(f) of this title by no later than nine months after the commission publishes notification in the *Texas Register* of its determination that this contingency rule is necessary as a result of EPA publication of a notice in the *Federal Register* that the specified area failed to attain the applicable National Ambient Air Quality Standard for ozone by the attainment deadline or failed to demonstrate reasonable further progress as set forth in the 1990 Amendments to the Federal Clean Air Act, §172(c)(9).
- [(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.]

(e) The owner or operator of an application process in the Bexar County area subject to the requirements of this division shall comply with the requirements of this division no later than January 1, 2025.

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. MISCELLANEOUS INDUSTRIAL SOURCES DIVISION 1. CUTBACK ASPHALT

30 TAC §§115.510, 115.512, 115.515 - 115.517, 115.519

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The proposed amendments implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

§115.510. [Cutback Asphalt] Definitions.

The following terms, when used in this division (relating to <u>Use of [Cutback]</u> Asphalt), shall have the following meanings, unless the context clearly indicates otherwise. Additional definitions for terms used in this division are found in §115.10 of this title (relating to Definitions), §101.1 of this title (relating to Definitions), and §3.2 of this title (relating to Definitions).

- (1) Asphalt emulsion or emulsified asphalt--An emulsion consisting of a continuous and discontinuous phase, composed principally of a semisolid or liquid asphaltic base, water, and an emulsifying agent.
- (2) Conventional cutback asphalt-Any cutback asphalt which does not meet the definition of an exempt cutback asphalt.
- (3) Cutback asphalt--Any asphaltic cement which has been liquified by blending with petroleum solvents (diluents).
- (4) Exempt cutback asphalt—Any cutback asphalt which, when tested in accordance with American Society of Testing Materials Test Method D 402, "Distillation of Cutback Asphalt Products," as published in the 1997 edition of the Annual Book of ASTM Standards, shows the distillate fraction recovered up to 260 degrees Celsius (500 degrees Fahrenheit) to be less than 5.0% by volume of the total distillate recovered up to a temperature of 316 degrees Celsius (680 degrees Fahrenheit).

§115.512. Control Requirements.

- (a) The following control requirements shall apply in Nueces, Bastrop, Caldwell, Hays, Travis, and Williamson Counties and the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria [Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston] areas, as defined in §115.10 of this title (relating to Definitions).
- (1) The use of conventional cutback asphalt containing volatile organic compounds (VOC) solvents for the paving of roadways, driveways, or parking lots is restricted to no more than 7.0% of the total annual volume averaged over a two-year period of asphalt used by or specified for use by any state, municipal, or county agency who uses or specifies the type of asphalt application.
- (2) In the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria [Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston] areas and in Bastrop, Caldwell, Hays, Travis, and Williamson Counties, no person shall allow the use, application, sale, or offering for sale of conventional cutback asphalt containing VOC solvents for paving roadways, driveways, or parking lots during the period from April 16 to September 15 of any year.
- (3) Except as specified in subsection (b) of this section, when [When] asphalt emulsion is used or produced, the maximum VOC content shall not exceed 12% by weight or the following limitations, whichever is more stringent:
 - (A) 0.5% by weight for seal coats;
- (B) 3.0% by weight for $\underline{\text{seal coats}}$ [ehip seals] when $\underline{\text{unwashed}}$ [dusty or dirty] aggregate is used;
- (C) 8.0% by weight for mixing with open graded aggregate gradations with less than 1.0% by weight of [dust or elay-like] materials passing sieve number 200 adhering to the coarse aggregate fraction (1/4 inch in diameter or greater); and
- (D) 12% by weight for mixing with dense graded aggregate gradations when used to produce a mix designed to have 10% or less voids when fully compacted.
- (b) If the commission has published notice in the *Texas Register*, as provided in §115.519(c) or (d) of this title (relating to Counties and Compliance Schedules), to require compliance with the contingency measure control requirements for the Dallas-Fort Worth area and/or Houston-Galveston-Brazoria area, the following control requirements apply instead of subsection (a)(3) of this section.

- (1) In the Dallas-Fort Worth area, in accordance with the schedule specified in §115.519(c) of this title, no person shall allow the use, application, sale, or offering for sale of emulsified asphalt containing VOC solvents for paving roadways, driveways, or parking lots during the period from March 1 to November 30 of any year unless the VOC content is no more than 0.5% by volume. During the months of January, February, and December of any year the VOC content shall be no more than:
 - (A) 0.5% by weight for seal coats;
- (B) 3.0% by weight for seal coats when unwashed aggregate is used;
- (C) 8.0% by weight for mixing with open graded aggregate gradations with less than 1.0% by weight of materials passing sieve number 200 adhering to the coarse aggregate fraction (1/4 inch in diameter or greater); and
- (D) 12% by weight for mixing with dense graded aggregate gradations when used to produce a mix designed to have 10% or less voids when fully compacted.
- (2) In the Houston-Galveston-Brazoria area, in accordance with the schedule specified in §115.519(d) of this title, no person shall allow the use, application, sale, or offering for sale of emulsified asphalt containing VOC solvents for paving roadways, driveways, or parking lots during the period from January 1 to December 31 of any year unless the VOC content is no more than 0.5% by volume.
- §115.515. Testing Requirements.
- (a) Compliance with §115.510 and §115.512(a) of this title (relating to [Cutback Asphalt] Definitions; and Control Requirements) shall be determined by applying the following test methods, as appropriate:
- (1) American Society of Testing and Materials (ASTM) Test Method D 244, "Standard Test Methods for Emulsified Asphalts, Sections 11 to 15, Residue and Oil Distillate by Distillation," [as published in the 1997 edition of the Annual Book of ASTM Standards,] for determining volatile organic compound (VOC) content of asphalt emulsions;
- (2) ASTM Test Method D 402, "Standard Test Method for Distillation of Cut-Back Asphaltic Products," [as published in the 1997 edition of the Annual Book of ASTM Standards,] for determining the VOC content of cutback asphalt; [or]
- (3) test methods other than those specified in this section may be used if validated by 40 CFR Part 63, Appendix A, Test Method 301 and approved by the executive director; or
- (4) [(3)] minor modifications to these test methods approved by the executive director.
- (b) Once triggered to meet contingency requirements, the following testing requirements apply in addition to those specified in subsection (a) of this section to determine compliance with §115.512(b) of this title (relating to Control Requirements)
- (1) American Association of State Highway and Transportation Officials (AASHTO) Test Method AASHTO T 59, Section 6, Residue and Oil Distillate by Distillation, or American Society of Testing and Materials (ASTM) Test Method D 244, Sections 11 to 15, Residue and Oil Distillate by Distillation for determining volatile organic compound (VOC) content by volume of emulsified asphalt;
- (2) test methods other than those specified in this section may be used if validated by 40 CFR Part 63, Appendix A, Test Method 301 and approved by the executive director; or

(3) minor modifications to these test methods approved by the executive director.

§115.516. Recordkeeping Requirements.

In Nueces, Bastrop, Caldwell, Hays, Travis, and Williamson Counties and the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria [Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston] areas, any state, municipal, or county agency who uses or specifies the use of cutback asphalt or asphalt emulsion shall maintain records sufficient to document compliance with applicable restrictions and shall make such records available upon request to representatives of the executive director, EPA, or the local air pollution control agency having jurisdiction in the area.

§115.517. Exemptions.

For persons in Nueces, Bastrop, Caldwell, Hays, Travis, and Williamson Counties and the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas [Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston Areas], as defined in §115.10 of this title (relating to Definitions), the following are exempt from the provisions of §115.512(2) of this title (relating to Control Requirements):

- (1) asphalt concrete made with cutback asphalt, used for patching, which is stored in a long-life stockpile (longer than one-month storage); and
- (2) cutback asphalt used solely as a penetrating prime coat.
- §115.519. Counties and Compliance Schedules.
- (a) In Brazoria, Chambers, Collin, Dallas, Denton, Ellis, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Johnson, Kaufman, Liberty, Montgomery, Nueces, Orange, Parker, Rockwall, Tarrant, [and] Waller, and Wise Counties, the compliance date has passed for control requirements in 115.512(a) of this title (relating to Control Requirements) and all associated requirements, and all affected persons shall continue to comply with this division, except as specified in subsections (c) and (d) of this section. The compliance date for ozone attainment counties which have been added voluntarily to this division remain listed in §115.519(b).
- (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 Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties shall be in compliance with the requirements of §115.512(b)(1) of this title no later than nine months after the commission publishes notification in the *Texas Register* of its determination that the contingency requirements are necessary as a result of EPA publication of a notice in the *Federal Register* that the specified area failed to attain the applicable National Ambient Air Quality Standard for ozone by the attainment deadline or failed to demonstrate reasonable further progress as set forth in the 1990 Amendments to the Federal Clean Air Act, §172(c)(9).
- [(e) 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 Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties shall be in compliance with the requirements of §115.512(b)(2) of this title no later than nine months after the commission publishes notification in the *Texas Register* of its determination that the contingency requirements are necessary as a result of EPA publication of a notice in the

Federal Register that the specified area failed to attain the applicable National Ambient Air Quality Standard for ozone by the attainment deadline or failed to demonstrate reasonable further progress as set forth in the 1990 Amendments to the Federal Clean Air Act.

- [(d) All affected persons in Wise County shall comply with this division as soon as practicable, but no later than January 1, 2017.]
- (e) All affected persons in the Bexar County area shall comply with this division no later than January 1, 2025.
- [(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.]
- (f) All affected persons that become 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.

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

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DIVISION 2. PHARMACEUTICAL MANUFACTURING FACILITIES

30 TAC §§115.531, 115.532, 115.534 - 115.537, 115.539

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to pre-

scribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The proposed amendments implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

- §115.531. Emission Specifications.
- (a) For the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria [Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston] areas, as defined in §115.10 of this title (relating to Definitions), the owner or operator of a synthesized pharmaceutical manufacturing facility shall satisfy the following emission specifications.
- (1) Reactors, distillation units, crystallizers, centrifuges, and vacuum dryers. The emission of volatile organic compounds (VOC) from these sources shall be controlled by means of surface condensers from which the condenser outlet gas temperature must not exceed the following.

Figure 30 TAC §115.531(a)(1) (No change.)

- (2) Air dryers and exhaust systems. VOC emissions from all air dryers and production equipment exhaust systems shall be reduced to not more than 33 lb/day (15 kg/day) or controlled in accordance with §115.532(a)(4) of this title (relating to Control Requirements).
- (3) Loading facilities. VOC emissions from truck or rail-car deliveries to storage tanks at loading facilities shall be controlled in accordance with §115.532(a)(4) of this title (relating to Control Requirements).
- (b) For Gregg, Nueces, and Victoria Counties, the owner or operator of a synthesized pharmaceutical manufacturing facility shall satisfy the following emission specifications.
- (1) Reactors, distillation units, crystallizers, centrifuges, and vacuum dryers. The emission of VOC from these sources shall be controlled by means of surface condensers from which the condenser outlet gas temperature must not exceed the following.

 Figure 30 TAC §115.531(b)(1)) (No change.)
- (2) Air dryers and exhaust systems. VOC emissions from all air dryers and production equipment exhaust systems shall be reduced to not more than 33 lb/day (15 kg/day) or controlled in accordance with 115.532(b)(4) of this title (relating to Control Requirements).
- (3) Loading facilities. VOC emissions from truck or rail-car deliveries to storage tanks at loading facilities shall be controlled in accordance with 115.532(b)(4) of this title (relating to be Control Requirements).
- §115.532. Control Requirements.
- (a) For the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria [Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston] areas, the owner or operator of a synthesized pharmaceutical manufacturing facility shall provide the following specified controls.
 - (1) Tanks.
- (A) All in-process tanks that contain volatile organic compounds (VOC) at any time shall be kept covered, except when production, sampling, maintenance, or inspection procedures require operator access.
- (B) All storage tanks that store VOC shall have pressure vacuum conservation vents installed which are set at plus or minus 0.8

inches of water (plus or minus 0.2 kPa), unless a more effective control system is used.

(2) Centrifuges and filters. Centrifuges, rotary vacuum filters, and other filters having an exposed liquid surface which process liquids containing VOC shall be enclosed.

(3) Leaks.

- (A) All liquid leaks containing VOC from a process unit or storage tank shall be repaired the first time the equipment is off-line long enough to complete the repair.
- (B) All liquid or gaseous leaks of VOC observed during loading operations shall be repaired immediately. Loading operations shall be discontinued until the leak is repaired.
- (4) Air dryers, production equipment exhaust systems, and loading facilities. Sources affected by §115.531(a) of this title (relating to Emission Specifications) shall be controlled by a system with a reduction efficiency of at least 90% of the uncontrolled emissions.
- (5) Pharmaceutical manufacturing facility. Any pharmaceutical manufacturing facility that becomes subject to the provisions of paragraphs (1) (4) of this subsection by exceeding provisions of §115.537(a) of this title (relating to Exemptions) will remain subject to the provisions of this subsection, even if throughput or emissions later fall below exemption limits, unless and until emissions are reduced to no more than the controlled emissions level existing before implementation of the project by which throughput or emission rate was reduced to less than the applicable exemption limits in §115.537(a) of this title; and:
- (A) the project by which throughput or emission rate was reduced is authorized by any permit or permit amendment or standard permit or permit by rule required by Chapter 116 or Chapter 106 of this title (relating to Control of Air Pollution by Permit for New Construction or Modification; and Permits by Rule). If a permit by rule is available for the project, compliance with this subsection must be maintained for 30 days after the filing of documentation of compliance with that permit by rule; or
- (B) if authorization by permit, permit amendment, standard permit, or permit by rule is not required for the project, the owner/operator has given the executive director 30 days' notice of the project in writing.
- (b) For Gregg, Nueces, and Victoria Counties, the owner or operator of a synthesized pharmaceutical manufacturing facility shall provide the following specified controls.

(1) Tanks.

- (A) All in-process tanks that contain VOC at any time shall be kept covered, except when production, sampling, maintenance, or inspection procedures require operator access.
- (B) All storage tanks that store VOC shall have pressure vacuum conservation vents installed which are set at plus or minus 0.8 inches of water (plus or minus 0.2 kPa), unless a more effective control system is used.
- (2) Centrifuges and filters. Centrifuges, rotary vacuum filters, and other filters having an exposed liquid surface which process liquids containing VOC shall be enclosed.

(3) Leaks.

(A) All liquid leaks containing VOC from a process unit or storage tank shall be repaired the first time the equipment is off-line long enough to complete the repair.

- (B) All liquid or gaseous leaks of VOC observed during loading operations shall be repaired immediately. Loading operations shall be discontinued until the leak is repaired.
- (4) Air dryers, production equipment exhaust systems, and loading facilities. Sources affected by §115.531(b) of this title shall be controlled by a system with a reduction efficiency of at least 90% of the uncontrolled emissions.

§115.534. Inspection Requirements.

- (a) For all affected persons in the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria [Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston] areas, the following inspection requirements shall apply.
- (1) Inspection for visible liquid leaks, visible fumes, or significant odors resulting from the transfer of volatile organic compounds (VOC) from trucks or railcars to storage tanks at loading facilities shall be conducted by the owner or operator of any pharmaceutical manufacturing facility.
- (2) VOC loading or unloading through the affected transfer lines shall be discontinued immediately when a leak is observed and shall not be resumed until the observed leak is repaired.
- (b) For all affected persons in Gregg, Nueces, and Victoria Counties, the following inspection requirements shall apply.
- (1) Inspection for visible liquid leaks, visible fumes, or significant odors resulting from the transfer of VOC from trucks or railcars to storage tanks at loading facilities shall be conducted by the owner or operator of any pharmaceutical manufacturing facility.
- (2) VOC loading or unloading through the affected transfer lines shall be discontinued immediately when a leak is observed and shall not be resumed until the observed leak is repaired.

§115.535. Testing Requirements.

- (a) For the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria [Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston] areas, compliance with this division (relating to Pharmaceutical Manufacturing Facilities) shall be determined by applying the following test methods, as appropriate:
- (1) Test Methods 1-4 (40 Code of Federal Regulations (CFR) 60, Appendix A) for determining flow rate, as necessary;
- (2) Test Method 18 (40 CFR 60, Appendix A) for determining gaseous organic compound emissions by gas chromatography;
- (3) Test Method 25 (40 CFR 60, Appendix A) for determining total gaseous nonmethane organic emissions as carbon;
- (4) Test Methods 25A or 25B (40 CFR 60, Appendix A) for determining total gaseous organic concentrations using flame ionization or nondispersive infrared analysis;
- (5) determination of true vapor pressure using American Society of Testing and Materials (ASTM) Test Method D323-82 for the measurement of Reid vapor pressure, adjusted for actual storage temperature in accordance with API Publication 2517, Third Edition, 1989; or
- (6) minor modifications to these test methods approved by the executive director.
- (b) For Gregg, Nueces, and Victoria Counties, compliance with this division shall be determined by applying the following test methods, as appropriate:

- (1) Test Methods 1-4 (40 CFR 60, Appendix A) for determining flow rate, as necessary;
- (2) Test Method 18 (40 CFR 60, Appendix A) for determining gaseous organic compound emissions by gas chromatography;
- (3) Test Method 25 (40 CFR 60, Appendix A) for determining total gaseous nonmethane organic emissions as carbon;
- (4) Test Methods 25A or 25B (40 CFR 60, Appendix A) for determining total gaseous organic concentrations using flame ionization or nondispersive infrared analysis;
- (5) determination of true vapor pressure using ASTM Test Method D323-82 for the measurement of Reid vapor pressure, adjusted for actual storage temperature in accordance with API Publication 2517, Third Edition, 1989; or
- (6) minor modifications to these test methods approved by the executive director.
- §115.536. Monitoring and Recordkeeping Requirements.
- (a) For the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria [Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston] areas_the following recordkeeping requirements shall apply.
- (1) The owner or operator of any pharmaceutical manufacturing facility which utilizes a surface condenser to control emissions of volatile organic compound (VOC) from process units affected by §115.531(a)(1) of this title (relating to Emission Specifications) shall install and maintain monitors to continuously measure and record the outlet gas temperature to ensure proper functioning in accordance with design specifications.
- (2) The owner or operator of any pharmaceutical manufacturing facility which utilizes a vapor recovery system to satisfy the requirements of §115.531(a) of this title (relating to Emission Specifications) or §115.532(a) of this title (relating to Control Requirements) shall:
- (A) install and maintain monitors to continuously 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) the exhaust gas temperature of direct-flame incinerators and/or the gas temperature immediately upstream and downstream of any catalyst bed;
- (ii) the exhaust gas VOC concentration of any carbon adsorption system, as defined in §115.10 of this title (relating to Definitions), to determine if breakthrough has occurred;
- (iii) the total amount of VOC recovered by carbon adsorption or other solvent recovery systems during a calendar month; or
- (iv) the daily emission rate of VOC from the control device:
- (B) maintain a record of the dates and reasons for any maintenance and repair of the required control devices and the estimated quantity and duration of VOC emissions during such activities.
- (3) The owner or operator of any pharmaceutical manufacturing facility which is exempted from the requirements in accordance with the provisions of §115.537(a) of this title (relating to Exemptions) shall maintain a record of the following information, as appropriate:

- (A) the vapor pressure of materials transferred at loading facilities, stored in tanks, or processed in centrifuges and filters; and
 - (B) the daily emissions rate of VOC.
- (4) The owner or operator of any affected pharmaceutical manufacturing facility shall maintain records of any testing conducted at an affected facility in accordance with the provisions specified in §115.535(a) of this title (relating to Testing Requirements).
- (5) The owner or operator of any affected pharmaceutical manufacturing facility shall maintain all records at the affected facility for at least two years and make such records available upon request to representatives of the executive director, United States Environmental Protection Agency (EPA), or local air pollution control agency.
- (b) For Gregg, Nueces, and Victoria Counties, the following recordkeeping requirements shall apply.
- (1) The owner or operator of any pharmaceutical manufacturing facility which utilizes a surface condenser to control emissions of VOC from process units affected by §115.531(b)(1) of this title (relating to Emission Specifications) shall install and maintain monitors to continuously measure and record the outlet gas temperature to ensure proper functioning in accordance with design specifications.
- (2) The owner or operator of any pharmaceutical manufacturing facility which utilizes a vapor recovery system to satisfy the requirements of §115.531(b) of this title (relating to Emission Specifications) or §115.532(b) of this title (relating to Control Requirements) shall:
- (A) install and maintain monitors to continuously 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) the exhaust gas temperature of direct-flame incinerators and/or the gas temperature immediately upstream and downstream of any catalyst bed;
- (ii) in Victoria County, the exhaust gas VOC concentration of any carbon adsorption system, as defined in §115.10 of this title (relating to Definitions), to determine if breakthrough has occurred;
- (iii) the total amount of VOC recovered by carbon adsorption or other solvent recovery systems during a calendar month; or
- (iv) the daily emission rate of VOC from the control device;
- (B) maintain a record of the dates and reasons for any maintenance and repair of the required control devices and the estimated quantity and duration of VOC emissions during such activities.
- (3) The owner or operator of any pharmaceutical manufacturing facility which is exempted from the requirements in accordance with the provisions of §115.537(b) of this title (relating to Exemptions) shall maintain a record of the following information, as appropriate:
- (A) the vapor pressure of materials transferred at loading facilities, stored in tanks, or processed in centrifuges and filters; and
 - (B) the daily emissions rate of VOC.
- (4) The owner or operator of any affected pharmaceutical manufacturing facility shall maintain records of any testing conducted

at an affected facility in accordance with the provisions specified in §115.535(b) of this title (relating to Testing Requirements).

(5) The owner or operator of any affected pharmaceutical manufacturing facility shall maintain all records at the affected facility for at least two years and make such records available upon request to representatives of the executive director, EPA, or local air pollution control agency.

§115.537. Exemptions.

- (a) For the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria [Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston] areas, the following exemptions shall apply:
- (1) Storage tanks at loading facilities with capacities less than or equal to 2,000 gallons (7,571 liters) are exempt from the requirements of §115.531(a)(3) of this title (relating to Emission Specifications).
- (2) Storage tanks at loading facilities that store volatile organic compounds (VOC) with vapor pressures less than or equal to 4.1 psia (28 kPa) at 68 degrees Fahrenheit (20 degrees Celsius) are exempt from the requirements of §115.531(a)(3) of this title (relating to Emission Specifications).
- (3) Storage tanks containing VOC with vapor pressures less than or equal to 1.5 psia (10.3 kPa) at 68 degrees Fahrenheit (20 degrees Celsius) are exempt from the requirements of §115.532(a)(1)(B) of this title (relating to Control Requirements).
- (4) Centrifuges and filters which process liquids containing VOC with vapor pressures less than 0.5 psia (3.4 kPa) at 68 degrees Fahrenheit (20 degrees Celsius) are exempt from the requirements of §115.532(a)(2) of this title (relating to Control Requirements).
- (5) Any individual unit which, when uncontrolled, will emit a combined weight of VOC less than 15 lbs. (6.8 kg) in any continuous 24-hour period is exempt from the provisions of §115.531(a) and §115.532(a) of this title.
- (b) For Gregg, Nueces, and Victoria Counties, the following exemptions shall apply.
- (1) Storage tanks at loading facilities with capacities less than or equal to 2,000 gallons (7,571 liters) are exempt from the requirements of §115.531(b)(3) of this title (relating to Emission Specifications).
- (2) Storage tanks at loading facilities that store VOC with vapor pressures less than or equal to 4.1 psia (28 kPa) at 68 degrees Fahrenheit (20 degrees Celsius) are exempt from the requirements of §115.531(b)(3) of this title (relating to Emission Specifications).
- (3) Storage tanks containing VOC with vapor pressures less than or equal to 1.5 psia (10.3 kPa) at 68 degrees Fahrenheit (20 degrees Celsius) are exempt from the requirements of §115.532(b)(1)(B) of this title (relating to Control Requirements).
- (4) Centrifuges and filters which process liquids containing VOC with vapor pressures less than 0.5 psia (3.4 kPa) at 68 degrees Fahrenheit (20 degrees Celsius) are exempt from the requirements of §115.532(b)(2) of this title (relating to Control Requirements).
- (5) Any facility which, when uncontrolled, will emit a combined weight of VOC less than 550 pounds (249.5 kg) in any continuous 24-hour period is exempt from the provisions of §115.531(b) of this title (relating to Emission Specifications) and §115.532(b) of this title (relating to Control Requirements).

§115.539. Counties and Compliance Schedules.

- (a) All affected persons in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Gregg, Hardin, Harris, Jefferson, Liberty, Montgomery, Nueces, Orange, Tarrant, Victoria, and Waller Counties shall continue to comply with this division (relating to Pharmaceutical Manufacturing Facilities) as required by §115.930 of this title (relating to Compliance Dates).
- (b) All affected persons in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties shall comply with this division as soon as practicable, but no later than March 1, 2009.
- (c) All affected persons in the Bexar County area shall comply with this division as soon as practicable, but no later than January 1, 2025.

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 J. ADMINISTRATIVE PROVISIONS

DIVISION 1. ALTERNATE MEANS OF CONTROL

30 TAC §115.901, §115.911

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The proposed amendments implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

§115.901. Insignificant Emissions.

For persons in covered attainment counties that consist of Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties, the executive director, after consultation with appropriate local governmental agencies, may exempt a specific compound or a specific vent gas stream from the application of this chapter if the executive director determines that the emissions from the compound or specific vent gas stream will not make a significant contribution to air contaminants in the atmosphere. This section no longer applies in Bexar County after December 31, 2024.

- §115.911. Criteria for Approval of Alternate Means of Control Plans. An alternate means of control (AMOC) plan shall be approved if it meets each of the following criteria, as applicable.
- (1) All facilities covered by the AMOC plan are and remain in the same account number.
- (2) The AMOC plan must propose annual emission limits in tons per year for each source in the AMOC plan that, when collectively compared against actual annual emissions generated in 1990 (or subsequent years if a source in an AMOC was not operational prior to 1990), result in net emissions reductions equal to or greater than reductions that would be achieved if each source complied with all applicable requirements of this chapter.
- (3) If the AMOC plan involves any source with a proposed annual emission limit which exceeds the baseline as defined in §115.912(a) of this title (relating to Calculations for Determining Alternate Means of Control Reductions), the AMOC plan must provide additional reductions made at alternative sources which comply with the guidelines in §115.912 of this title and are at least equal to the amount the source exceeds its baseline, multiplied by the applicable factor provided in the following subparagraphs.
- (A) For sources located in the Beaumont-Port Arthur [Beaumont/Port Arthur] area, as defined in §115.10 of this title (relating to Definitions), the applicable factor is 1.2.
- (B) For sources located in the <u>Dallas-Fort Worth</u> [Dallas-Fort Worth] area, as defined in \$115.10 of this title, the applicable factor is $\underline{1.3}$ [1.15].
- (C) For sources located in the El Paso area, as defined in §115.10 of this title, the applicable factor is 1.2.
- (D) For sources located in the <u>Houston-Galveston-Brazoria</u> [Houston/Galveston] area, as defined in §115.10 of this title, the applicable factor is 1.3.
- (E) For sources located in the Bexar County area, as defined in §115.10 of this title, the applicable factor is 1.15.
- (F) [(E)] For sources located in other areas in Texas, the applicable factor is 1.1.
- (4) The AMOC application must demonstrate that the sum of the maximum daily potentials to emit from the sources subject to the proposed AMOC plan shall not be more than 200 pounds per day greater than the sum of the maximum daily potentials to emit from those sources if the emissions were controlled in accordance with this chapter. For each nonattainment area, the executive director shall establish a limit upon the sum of the increases of the maximum daily potentials to emit from all AMOC plans in the nonattainment area. The limit shall be set so that the sum of the maximum daily potentials to emit shall not increase the measurable or modeled ozone level by one part per billion.

- (5) The AMOC must be implemented and reductions created after January 1, 1991.
- (6) Reductions in actual emissions accounted for in the AMOC plan must be surplus and remain surplus to reductions required by this chapter and any netting or offsetting requirements of §§116.150, 116.151, 116.160, and 116.161 of this title (relating to New Major Source or Major Modification in Ozone Nonattainment Areas; New Major Source or Major Modification in Nonattainment Area Other Than Ozone; Prevention of Significant Deterioration Requirements; and Source Located in an Attainment Area with a Greater Than De Minimis Impact). Reductions for which the state has claimed credit in a State Implementation Plan may not be utilized as reductions in an AMOC plan.
- (7) Mobile sources and indirect sources (Federal Clean Air Act, §110(a)(5)(C)) shall not be included in the AMOC plan.
- (8) For purposes of demonstrating reductions and establishing emission limits in any AMOC plan, quantification of emissions must be accomplished using any of the following methods as specified by the executive director:
- (A) test methods approved by the executive director for the direct measurement of emissions, either continuously or periodically;
- (B) calculation equations which are a function of process or control system parameters, activity levels, and/or throughput or production rates;
- (C) mass-balance calculations which are a function of inventory, usage, and/or disposal records;
- (D) other appropriate methods acceptable to the executive director; or
 - (E) any combination of these approaches.
- (9) The AMOC plan must establish emission limits and/or control requirements for all sources in the plan which render the proposed annual emission limits enforceable.
- (10) The AMOC plan must include all necessary and appropriate provisions for monitoring, testing, reporting, and recordkeeping as specified by the executive director. The frequency of AMOC required monitoring, testing, reporting, and recordkeeping shall be sufficient to reasonably ensure compliance with applicable emission limits and/or control requirements. The monitoring, testing, reporting, and recordkeeping shall be at least as reliable, readily retrievable, and retained for a comparable period of time as the underlying requirements of this chapter.
- (A) If this chapter includes monitoring, testing, reporting, and/or recordkeeping requirements for sources of the type(s) to be covered by an alternate emission limitation and/or control requirement, then such requirement may be used to render the AMOC plan enforceable. If this chapter does not include readily transferable monitoring, testing, reporting, and/or recordkeeping requirements for sources of the type(s) to be covered by an alternate emission limitation and/or control requirement, then priority may be given to any such set of requirements adopted under other commission rules for the control of volatile organic compounds (VOC) emissions from sources of the type(s) to be covered by an alternate emission limitation and/or control requirement.
- (B) If this chapter includes emission limits and/or control requirements for sources of the type(s) to be covered by an alternate emission limitation and/or control requirement, then such alternative emission limitation and/or control requirement may be based on the same averaging time as is applied to those same type sources un-

der this chapter. If this chapter does not include emission limitations and/or control requirements for sources of the type(s) to be covered by an alternate emission limit and/or control requirement, then priority may be given to averaging times for emission limits and/or control requirements on similar units governed by other commission rules limiting VOC emissions from sources of the type(s) to be covered by an alternate emission limit and/or control requirement.

- (C) If no such commission monitoring, testing, reporting, and/or recordkeeping rules have been adopted that satisfy the criteria of subparagraphs (A) and (B) of this paragraph, then such requirements or averaging times shall be established on a case-by-case basis.
- (D) Additional or more frequent monitoring, testing, reporting, and/or recordkeeping may be required by the executive director to ensure the integrity of any AMOC plan.

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

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CHAPTER 117. CONTROL OF AIR POLLUTION FROM NITROGEN COMPOUNDS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes new §§117.200, 117.203, 117.205, 117.230, 117.235, 117.240, 117.245, 117.252, 117.1100, 117.1103, 117.1105, 117.1120, 117.1140, 117.1145, 117.1152, 117.3124, 117.9010, and 117.9110; and amendments to §§117.10, 117.310, 117.340, 117.410, 117.440, 117.2010, 117.2035, 117.2110, 117.2135, 117.3000, 117.3103, 117.3110, 117.3120, 117.3145, 117.9030, 117.9300, 117.9320, and 117.9800. If adopted, these rules would be submitted to the United States Environmental Protection Agency (EPA) as a state implementation plan (SIP) revision.

Background and Summary of the Factual Basis for the Proposed Rules

Reasonably Available Control Technology (RACT) Rules for Major Sources

The 1990 federal Clean Air Act (FCAA) Amendments (42 United States Code (USC), §§7401 et seq.) require the United States Environmental Protection Agency (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.

Nonattainment areas classified as moderate and above are required to meet the mandates of the FCAA under §172(c)(1) and §182(b)(2) and (f). FCAA, §172(c)(1) requires that the SIP

incorporate all reasonably available control measures, including RACT, as expeditiously as practicable for major sources of volatile organic compounds (VOC) and for all VOC sources covered by EPA-issued control techniques guidelines. FCAA, §182(f) requires the state to submit a SIP revision that implements RACT for all major sources of nitrogen oxides (NO_V).

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 Federal Register (FR) 53761, September 17, 1979). RACT requirements for moderate and higher classification nonattainment areas are included in the FCAA to assure that significant source categories at major sources of ozone precursor emissions are controlled to a reasonable extent, but not necessarily to best available control technology (BACT) levels expected of new sources or to maximum achievable control technology (MACT) levels required for major sources of hazardous air pollutants. 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. A major source is any stationary source or group of sources located within a contiguous area and under common control that emits or has the potential to emit a specific amount of NO, emissions based on the area's nonattainment classification.

The proposed rulemaking would implement RACT requirements for major sources of NO, in the Dallas-Fort Worth eight-hour ozone nonattainment area (DFW) and in Bexar County. The TCEQ evaluated the existing major sources in the DFW area and in Bexar County, and considered state and federal rules to determine what rules would be necessary to fulfill FCAA RACT requirements. The proposed rules are necessary so that all major NO, emission sources in the DFW area and Bexar County are subject to rules in 30 Texas Administrative Code (TAC) Chapter 117, or other federally enforceable measures, that meet or exceed the applicable RACT requirements. Additional NO, controls on major sources were determined to be either not economically feasible or not technologically feasible, as documented in the concurrently proposed SIP revisions for Bexar County and the DFW and Bexar County areas (SIP project numbers 2023-107-SIP-NR and 2023-132-SIP-NR, respectively).

Bexar County RACT

Bexar County is currently classified as moderate nonattainment for the 2015 eight-hour ozone NAAQS (87 FR 60897, October 7, 2022). Bexar County must attain the 2015 eight-hour ozone NAAQS by September 24, 2024 (87 FR 60897). The SIP revision to address FCAA requirements, including RACT, was due to the EPA by January 1, 2023, but the commission was unable to complete the review prior to the submission deadline.

In Bexar County, a major source is any stationary source or group of sources located within a contiguous area and under common control that emits or has the potential to emit at least 100 tons per year (tpy) of NO_χ . To identify all major sources of NO_χ emissions in Bexar County, the TCEQ reviewed the point source emissions inventory and Title V databases. All sources in the Title V database that were listed as a major source for NO_χ emissions were included in the RACT analysis. Since the point source emissions inventory database reports actual emissions rather than potential to emit, the TCEQ reviewed sources that reported actual emissions as low as 50 tpy of NO_χ to account for the difference between actual and potential emissions. Sites

from the emissions inventory database with emissions of 50 tpy or more of $\mathrm{NO}_{\scriptscriptstyle X}$ that were not identified in the Title V database and could not be verified as minor sources by other means are also included in the RACT analysis. The existing Chapter 117 rules, rules in other states, and federal rules were considered to evaluate what rules would be necessary to fulfill RACT requirements.

The proposed rulemaking implements RACT requirements for major sources of NO, in Bexar County. The proposed provisions include emission standards, exemptions, monitoring, recordkeeping, reporting, and testing requirements that would apply to engines, turbines, boilers, and cement kilns at major sources of NO, emissions in Bexar County. Affected sources would have to comply with these rules by January 1, 2025. The proposal includes new divisions or sections in 30 TAC Chapter 117. Subchapter B, Combustion Control at Major Industrial, Commercial, and Institutional Sources in Ozone Nonattainment Areas; Subchapter C, Combustion Control at Major Utility Electric Generation Sources in Ozone Nonattainment Areas; and Subchapter H. Administrative Provisions. Division 1. Compliance Schedule. In support of the new requirements, revisions are also proposed to Subchapter A, Definitions; Subchapter E, Multi-Region Combustion Control; and Subchapter H, Administrative Provisions, Division 2, Compliance Flexibility,

DFW RACT

The DFW area (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties) was reclassified as severe for the 2008 eight-hour ozone NAAQS (87 FR 60926, October 7, 2022). The DFW area must attain the 2008 eight-hour ozone NAAQS by July 20, 2027 (87 FR 60926). The SIP revision to address severe nonattainment area requirements is due to the EPA on May 7, 2024.

In the DFW 2008 severe ozone nonattainment area, a major source is any stationary source or group of sources located within a contiguous area and under common control that emits or has the potential to emit at least 25 tpy of NO.. The TCEQ reviewed the point source emissions inventory and Title V databases to identify all major sources of NO, emissions in the DFW area. All sources in the Title V database that were listed as a major source for NO, emissions were included in the RACT analysis. Since the point source emissions inventory database reports actual emissions rather than potential to emit, the TCEQ reviewed sources that reported actual emissions as low as 10 tpv of NO, to account for the difference between actual and potential emissions. Sites from the emissions inventory database with emissions of 10 tpy or more of NO, that were not identified in the Title V database and could not be verified as minor sources by other means are also included in the RACT analysis.

The existing Chapter 117 rules were compared to rules in other states and federal rules to determine whether the existing rules continue to fulfill RACT requirements. Chapter 117 rules that are consistent with or more stringent than controls implemented in other nonattainment areas were determined to fulfill RACT requirements. Federally approved state rules and rule approval dates can be found in 40 Code of Federal Regulations (CFR) §52.2270(c), EPA Approved Regulations in the Texas SIP. Emission sources subject to the more stringent BACT or MACT requirements were determined to also fulfill RACT requirements.

The commission reviewed the emission sources in the DFW area and the applicable Chapter 117 rules to verify that all major

emission sources in the DFW area are subject to requirements that meet or exceed the applicable RACT requirements, or that further emission controls on the sources were either not economically feasible or not technologically feasible. The current EPA-approved Chapter 117 rules continue to fulfill RACT requirements. Additional $\mathrm{NO}_{\scriptscriptstyle X}$ controls on major sources were determined to be either not economically feasible or not technologically feasible.

The proposed rule project implements RACT requirements for major sources of NO, in the DFW area. The proposed rulemaking would revise the definitions in Chapter 117, Subchapter A and compliance schedules in Subchapter H, Division 1 to lower the major source threshold from 50 tpy NO, to 25 tpy of NO. Because the DFW area was previously classified as serious nonattainment for the 2008 eight-hour ozone standard, sources that emit or have the potential to emit at least 50 tpy NO are already required to comply with Chapter 117 RACT rules. This proposed rulemaking would extend implementation of RACT to all major sources of NO, that emit or have the potential to emit at least 25 tpy NO_x. The proposed rulemaking would require major sources of NO to comply with new emission limits, control requirements, or operating requirements as well as other associated rule provisions necessary to implement any required NO. control measures, such as monitoring, testing, recordkeeping, reporting, and exemptions no later than November 7, 2025.

Rule Petition Revisions for the DFW and Houston-Galveston-Brazoria (HGB) Areas

On May 10, 2023, the commissioners directed the Executive Director to initiate a rulemaking to examine the issues raised in a rulemaking petition filed with the TCEQ on March 13, 2023, by Baker Botts LLP, on behalf of the Texas Industry Project under 30 TAC §20.15. As directed by the commission, the Executive Director reviewed the issues raised in the March 13, 2023, rulemaking petition. This proposed rulemaking would revise 30 TAC Chapter 117 for sources in the DFW and HGB areas to remove the requirements for certain engines to monitor NO, emissions using continuous emissions monitoring systems (CEMS) or a predictive emissions monitoring system (PEMS), to adjust the applicable ammonia emission limit to be consistent with typical operation of diesel engines, and to remove the ammonia monitoring requirements for these engines. Although the Chapter 117 ammonia standards are not part of the SIP, both the NO, and ammonia monitoring requirements are included as part of the SIP. Therefore, any rule changes would need to be submitted as part of the SIP.

The existing rules for major sources of NO, in the DFW and HGB areas require the owner or operator of units that use a chemical reagent for reduction of NO, emissions to install a CEMS or PEMS to monitor exhaust NO_x emissions (see §117.340(c)(1)(D) and §117.440(c)(1)(C)). The existing rules for major and minor sources of NO_x in the DFW and HGB areas require the owner or operator of units that use a chemical reagent for reduction of NO, emissions (to comply with an ammonia emission specification and therefore) to monitor ammonia emissions from the unit using one of the ammonia monitoring procedures specified in §117.8130 (see §§117.340(d), 117.440(d), 117.2035(e)(2), and 117.2135(d)(2)). These monitoring requirements are used to verify that affected units meet the applicable NO, and ammonia emission limits and provide additional assurance that NO, and ammonia emission rates will not increase due to variation in the operation of the SCR systems.

Manufacturer-certified Tier 4 engines rely on selective catalytic reduction (SCR) with a chemical reagent (such as urea or ammonia) to meet the federal limits in 40 CFR Part 1039, Subpart B.

These engines are not manufactured with pre-installed CEMS because they are designed, tested, and certified to ensure that NO_{x} emissions conform to federal Tier 4 standards during all normal operating conditions. The engine and emission control system are designed to minimize or exclude adjustable operating parameters and all adjustable parameters include restrictions, limits, stops, or other means of inhibiting adjustment to prevent adjusting parameters to settings outside the tested ranges. Tier 4 engines with SCR systems are designed to ensure the system operates within the certified parameters and equipped with an engine diagnostic system that issues a warning if the quality or quantity of the reductant does not meet the design specifications. Ensuring the proper operation of the emission control system also ensures that ammonia emissions remain low.

Given that the engine and emission control system cannot be manipulated by operators due to the certified engine design and considering the significant cost of installing and operating a CEMS and the logistics of installing a building for the monitoring system for a unit that may be moved from one location to another, the commission proposes that a CEMS or PEMS is not necessary under Chapter 117 to provide reasonable assurance of compliance with the applicable NO_{x} and ammonia emission specifications for stationary diesel engines subject to the requirements of 40 CFR Part 1039, Subpart B, and the commission proposes to exempt these engines from the CEMS and PEMS NO_{x} monitoring requirements and the ammonia monitoring requirements in Chapter 117.

The existing rules for major and minor sources of NO, in the DFW and HGB areas require the owner or operator of units subject to an ammonia emission specification under Chapter 117 to demonstrate initial compliance with the applicable ammonia specification (see §§117.340(d), 117.440(d), 117.2035(e)(2), and 117.2135(d)(2)). Because these units would not be equipped and operating with a CEMS or PEMS, owners or operators of these affected units would be required to conduct a stack test according the one of the allowed test methods under existing §117.8000(c)(4). The commission is also proposing to require these engines to be equipped with an engine diagnostic system that measures the quantity and quality of reductant ensure proper operation of the SCR control system based on the requirements of existing 40 CFR Part 1039, Subpart B, §1039.110.

Existing Chapter 117 rules require that ammonia emissions must not exceed 10 parts per million by volume (ppmv) at 3.0% oxygen (O_2), dry, for all units that inject urea or ammonia into the exhaust stream for NO_x control. The commission proposes that correcting ammonia concentrations to the 3.0% O_z level currently required is inappropriate for diesel engines that operate at significantly higher excess air in the exhaust stream and is proposing revisions to allow diesel engines to use the 15% O_z correction consistent with the Chapter 117 standards for other equipment that also operates with higher O_z in the exhaust gas (see §§117.310(c)(2), 117.410(c)(2), 117.2010(i)(2), 117.2110(h)(2)).

Demonstrating Noninterference Under FCAA §110(I)

The proposed changes are not expected adversely impact Texas's progress in attaining the eight-hour ozone NAAQS. These manufacturer-certified Tier 4 engines remain subject to the NOX and ammonia emission limits in Chapter. The engines are also required to comply with to NO_x monitoring and testing requirements and ammonia testing requirements that will provide for the accurate accounting of emissions and provide reasonable assurance of compliance with the applicable NO_x and ammonia emission specifications for these stationary diesel engines. The proposed requirement for the diagnostic system to alert the owner or operator when the reductant material quality is not within material concentration specifications as established by the SCR control system equipment manufacturer will also provide confidence that the NO_x emission controls are properly functioning. All of these requirements will ensure that no backsliding from the current SIP-approved requirements.

Section by Section Discussion

Subchapter A, Definitions

The commission proposes to revise the definition of applicable ozone nonattainment area in §117.10(2) to include the Bexar County ozone nonattainment area, which consists of Bexar County, and then re-letters the definitions for the subsequent areas as necessary to put the list in alphabetical order.

The proposal revises the definition of electric power generating system in §117.10(14) to include proposed new Subchapter C, Division 2 for Bexar County Ozone Nonattainment Area Utility Electric Generation Sources and to exclude Bexar County sources from existing rules for Utility Electric Generation in East and Central Texas in Subchapter E, Division 1 after December 31, 2024. This change ensures that EGUs in Bexar County will remain in compliance with the existing rule until they are required to comply with the proposed new rule. Portions of the existing definition would be re-numbered as necessary to keep the list in alphabetical order.

The proposal revises the §117.10(29) definition of major source to include any stationary source or group of sources located within a contiguous area and under common control that emits or has the potential to emit at least 100 tpy of NO, and is in the Bexar County ozone nonattainment area. The definition would also be revised to ensure that for the purposes of Chapter 117 Bexar County sources are only included in the major source definition contained in 40 Code of Federal Regulations §52.21 (as amended June 3, 1993, effective June 3, 1994) until December 31, 2024, when sources are required to comply with the proposed new rule. The proposal also revises the definition of major source in §117.10(29) to lower the major source threshold from 50 tpy to 25 tpy of NO, for sources in the Dallas-Fort Worth eight-hour ozone nonattainment area. The change is necessary to account for the area's severe classification for the 2008 eight-hour ozone NAAQS. Major sources affected by the proposed rulemaking are required to comply all applicable Chapter 117 rules by November 7, 2025, as stated in proposed changes §117.9030. Minor sources that are currently subject to Chapter 117, Subchapter D, Division 2 remain subject to that division until they are required to comply with the major source rule in Chapter 117, Subchapter B, Division 4. This is necessary since engines at sources that emit or have the potential to emit more than 25 tpy NO, but no more than 50 tpy NO, will be transitioning from compliance with the minor source rule to compliance with the major source rule. The proposed compliance date was selected based on the RACT due date from the severe reclassification (87 FR 60931, October 7, 2022). Portions of the existing definition would be re-lettered as necessary to keep the list in alphabetical order.

The proposed rule would revise the §117.10(51) definition of unit to reflect the proposed new requirements for Bexar County. The proposed change adds that for the purposes of §117.205 and associated requirements, a unit is any stationary gas turbine (including any duct burner used in the turbine exhaust duct) or gas-fired lean-burn stationary reciprocating internal combustion engine. The proposed change also adds that for the purposes of §117.1105 and associated requirements, a unit is any utility boiler, auxiliary steam boiler, or stationary gas turbine (including any duct burner used in turbine exhaust ducts).

Subchapter B, Combustion Control at Major Industrial, Commercial, and Institutional Major Sources in Ozone Nonattainment Areas

Division 2, Bexar County Ozone Nonattainment Area Major Sources

The proposed rulemaking adds new Subchapter B, Division 2 to include RACT rules for major sources in Bexar County as required by FCAA §172(c)(1) and §182(f). The proposed new division sets NO_x emission limits for major sources in Bexar County and includes requirements necessary to demonstrate compliance with these limits, including monitoring, testing, reporting, and recordkeeping requirements. The proposed requirements are based on and are consistent with EPA-approved requirements for other nonattainment areas in the state.

Proposed new §117.200 specifies the rule applicability for the division. The proposed new division applies to stationary gas turbines, duct burners used in turbine exhaust ducts, and gas-fired lean-burn stationary reciprocating internal combustion engines located at any major stationary source of NO_x in Bexar County.

Proposed new §117.203 lists the units that are exempt from this division, except for the monitoring, testing, recordkeeping, and reporting requirements in proposed new §§117.240(i), 117.245(f)(4) and (9), and 117.252, which are necessary to document that the unit meets the exemption criteria. The proposed rule exempts stationary gas turbines and gas-fired lean-burn stationary reciprocating internal combustion engines that are used: in research and testing of the unit; for purposes of performance verification and testing of the unit; solely to power other gas turbines or engines during startups; 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: or in response to and during the existence of any officially declared disaster or state of emergency. The proposed rule also exempts gas-fired lean-burn stationary reciprocating internal combustion engines with a horsepower (hp) rating less than 50 hp, and stationary gas turbines with a maximum rated capacity less than 10.0 million British thermal units per hour (MMBtu/hr). These proposed exemptions are consistent with EPA-approved exemptions for these same sources in other ozone nonattainment areas in Texas. The proposed rule also clarifies that units located at a major source that is subject to the proposed requirements for electric generating units in Subchapter C, Division 2 are exempt from this division.

Proposed new §117.205 lists the NO_x emission specifications for RACT for affected units at major sources in Bexar County. Proposed subsection (a) limits NO_x emissions from stationary gas turbines to 0.55 pound per million British thermal unit (lb/MMBtu); limits NO_x emissions from duct burners used in turbine exhaust ducts to 0.55 lb/MMBtu; and limits NO_x emissions from gas-fired lean-burn stationary reciprocating internal combustion engines

to 0.5 gram per horsepower-hour. The proposed limits are the same as limits for RACT sources in other nonattainment areas in Texas and are achievable using technologically and economically feasible controls. Proposed subsection (b) states that the emission specifications apply on a block one-hour average, in the units of the applicable emission specification, or if the unit is operated with a NO, CEMS or PEMS the limits apply on a rolling 30-day average, in the units of the applicable emission specification. Proposed subsection (c) clarifies that the owner or operator may use emission credits for compliance with these emission specifications in accordance with §117.9800. This option is consistent with compliance options provided for RACT sources in other nonattainment areas in the state. Proposed subsection (d) lists requirements that are intended to prevent circumvention of these rules. Proposed subsection (d) specifies that the maximum rated capacity used to determine the applicability of the emission specifications in this section and the other associated requirements in this division must be the greater of the maximum rated capacity as of December 31, 2019; the maximum rated capacity after December 31, 2019; or the maximum rated capacity authorized by a permit issued under Chapter 116 after December 31, 2019. Proposed subsection (d) also states that the unit's classification is determined by the most specific classification applicable to the unit as of December 31, 2019. For example, a unit that is classified as a gas-fired lean-burn stationary reciprocating internal combustion engine as of December 31, 2019, but subsequently is authorized to operate as a dual-fuel engine, is classified as a gas-fired lean-burn stationary reciprocating internal combustion engine for the purposes of this chapter. Proposed subsection (d) also requires that a source that met the definition of major source on December 31, 2019, 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, 2019, but becomes a major source at any time after December 31, 2019, is from that time forward always classified as a major source for purposes of this chapter. December 31, 2019, was selected since 2019 is the emissions inventory year used in the attainment demonstration SIP modeling.

Proposed new §117.230 lists the operating requirements for units subject to the §117.205 RACT limits and requires all units to be operated to minimize NO_{x} emissions over the unit's operating or load range during normal operations. The proposed rule requires each unit controlled with post-combustion control techniques to be operated such that the reducing agent injection rate is maintained to limit NO_{x} concentrations to less than or equal to the NO_{x} concentrations achieved at maximum rated capacity. The proposed rule also requires each gas-fired lean-burn stationary reciprocating internal combustion engine to be checked for proper operation in accordance with the engine monitoring requirements in to §117.8140(b). These proposed operating requirements are consistent with EPA-approved requirements for these same sources in other ozone nonattainment areas in Texas.

Proposed new §117.235 contains the requirements for the initial demonstration of compliance with the proposed new §117.205 RACT limits. Proposed subsection (a) requires the owner or operator of any unit subject to the emission specifications in §117.205 to test the unit for NO_x and oxygen (O_2) emissions while firing gaseous fuel or, as applicable, liquid, and solid fuel. Proposed subsection (b) requires the initial demonstration of compliance testing to be performed in accordance with the compliance schedule in proposed new §117.9010. Proposed

subsection (c) requires the initial demonstration of compliance tests to use the methods referenced in subsection (d) or (e). The proposal requires the tests be used for determination of initial compliance with the RACT emission specifications and requires test results to be reported in the units of the applicable emission specifications and averaging periods. Proposed new subsection (d) specifies that any CEMS or PEMS required by §117.240 must be installed and operational before conducting the required tests. The proposal specifies that verification of operational status must, at a minimum, include completion of the initial monitor certification and the manufacturer's written requirements or recommendations for installation, operation, and calibration of the device or system. Proposed new subsection (e) states that for units operating without CEMS or PEMS, compliance with the emission specifications must be demonstrated according to the stack testing requirements in §117.8000. Proposed new subsection (f) states that for units operating with CEMS or PEMS, initial compliance with the emission specifications must be demonstrated after monitor certification testing using the CEMS or PEMS. For units complying with a NO, emission specification on a block one-hour average, every one-hour period while operating at the maximum rated capacity (or as near thereto as practicable) is used to determine compliance with the NO emission specification. Proposed new subsection (g) requires compliance stack test reports to include the information required in §117.8010. These proposed requirements are consistent with EPA-approved requirements for these same sources in other ozone nonattainment areas in

Proposed new §117.240 includes the requirements for continuous demonstration of compliance with the RACT emission specifications. Proposed new subsection (a) requires units to have totalizing fuel flow meters, with an accuracy of ± 5%, to individually and continuously measure the gas and liquid fuel usage. A computer that collects, sums, and stores electronic data from continuous fuel flow meters is an acceptable totalizer. The owner or operator must continuously operate the totalizing fuel flow meter at least 95% of the time when the unit is operating during a calendar year. For the purpose of compliance with this subsection for units having pilot fuel supplied by a separate fuel system or from an unmonitored portion of the same fuel system, the fuel flow to pilots may be calculated using the manufacturer's design flow rates rather than measured with a fuel flow meter. The calculated pilot fuel flow rate must be added to the monitored fuel flow when fuel flow is totaled. Proposed subsection (a) also provides alternatives to the fuel flow monitoring requirements. The proposed alternative for units operating with a NO, and diluent CEMS may monitor stack exhaust flow using the flow monitoring specifications of 40 CFR Part 60, Appendix B, Performance Specification 6 or 40 CFR Part 75, Appendix A. Units that vent to a common stack with a NO, and diluent CEMS may use a single totalizing fuel flow meter. Gas-fired lean-burn stationary reciprocating internal combustion engines and gas turbines equipped with a continuous monitoring system that continuously monitors horsepower and hours of operation are not required to install totalizing fuel flow meters. The continuous monitoring system for such units must be installed, calibrated, maintained, and operated according to manufacturers' recommended procedures.

Proposed new subsection (b) specifies the requirements for NO_x monitors. The proposal requires using a CEMS or PEMS to monitor exhaust NO_x for units with a rated heat input greater than or equal to 100 MMBtu per hour; stationary gas turbines with a megawatt (MW) rating greater than or equal to 30 MW oper-

ated more than 850 hours per year; units that use a chemical reagent for reduction of NO; and units that the owner or operator elects to comply with the NO_x emission specifications of §117.205(a) using a pound per MMBtu limit on a 30-day rolling average. The proposal specifies that units subject to the NO CEMS requirements of 40 CFR Part 75 are not required to install CEMS or PEMS under this subsection. The proposal provides options that the owner or operator must use to provide substitute emissions compliance data during periods when the NO, monitor is off-line. The proposal requires that if the NO monitor is a CEMS subject to 40 CFR Part 75, the missing data procedures specified in 40 CFR Part 75, Subpart D must be to provide substitute emissions compliance data during periods when the NO monitor is off-line. The proposal requires that if the NO monitor is a CEMS subject to subject to 40 CFR Part 75, Appendix E, the missing data procedures specified in 40 CFR Part 75, Appendix E, §2.5 must be used to provide substitute emissions compliance data during periods when the NO, monitor is off-line. The proposal requires that if the NOX monitor is a PEMS, the methods specified in 40 CFR Part 75, Subpart D or calculations in accordance with §117.8110(b) must be used to provide substitute emissions compliance data during periods when the NO monitor is off-line. The owner or operator can monitor operating parameters for each unit in accordance with 40 CFR Part 75, Appendix E, §1.1 or §1.2 and calculate NO, emission rates based on those procedures. Lastly, the owner or operator can use the maximum block one-hour emission rate as measured during the initial demonstration of compliance required in §117.235.

Proposed new subsection (c) requires the owner or operator of any CEMS used to meet a pollutant monitoring requirement of this section to comply with the emission monitoring system requirements of §117.8100(a). Proposed new subsection (d) requires any PEMS used to meet a pollutant monitoring requirement of this section must predict the pollutant emissions in the units of the applicable emission limit and must meet the emission monitoring system requirements of §117.8100(b). Proposed new subsection (e) requires the owner or operator of any gas-fired lean-burn stationary reciprocating internal combustion engine subject to the emission specifications in §117.205 to stack test engine NO_x emissions as specified in §117.8140(a). Proposed new subsection (f) requires the owner or operator of any stationary gas turbine or gas-fired lean-burn stationary reciprocating internal combustion engine claimed exempt using the exemption of §117.203(1)(D) to record the operating time with a non-resettable elapsed run time meter in order to the unit meets the exemption criteria. Proposed new subsection (g) reguires that after the initial demonstration of compliance required by §117.235, the methods required in this section must be used to determine compliance with the emission specifications. For enforcement purposes, the executive director may also use other commission compliance methods to determine whether the unit is in compliance with applicable emission specifications. Proposed new subsection (h) requires the owner or operator of units that are subject to the emission specifications in §117.205 to test the units as specified in §117.235 in accordance with the applicable schedule specified in §117.9010. The proposal also requires the owner or operator of any unit not equipped with CEMS or PEMS that are subject to the emission specifications of §117.205 to retest the unit as specified in §117.235 within 60 days after any modification that could reasonably be expected to increase the NO, emission rate.

Proposed new section §117.245 includes the notification, recordkeeping, and reporting requirements necessary to demonstrate compliance with this division. Proposed new subsection (a) requires that for units subject to the startup and/or shutdown provisions of §101.222, hourly records must be made of startup and/or shutdown events and maintained for a period of at least two years. Records must be available for inspection by the executive director, the EPA, and any local air pollution control agency having jurisdiction upon request. These records must include but are not limited to: type of fuel burned; quantity of each type of fuel burned; and the date, time, and duration of the procedure. Proposed new subsection (b) requires the owner or operator of a unit subject to the emission specifications of §117.205 to submit written notification of any CEMS or PEMS relative accuracy test audit (RATA) conducted under §117.240 or any testing conducted under §117.235 at least 15 days in advance of the date of the RATA or testing to the appropriate regional office and any local air pollution control agency having jurisdiction. Proposed new subsection (c) requires the owner or operator of a unit subject to the emission specifications of §117.205(a) to furnish the Office of Compliance and Enforcement, the appropriate regional office, and any local air pollution control agency having jurisdiction a copy of any testing conducted under §117.235 and any CEMS or PEMS RATA conducted under §117.240 within 60 days after completion of such testing or evaluation and not later than the compliance date specified in §117.9010.

Proposed new §117.245(d) requires the owner or operator of a unit required to install a CEMS or PEMS under §117.240 to report in writing to the executive director on a semiannual basis any exceedance of the applicable emission specifications of this division and the monitoring system performance. All reports must be postmarked or received by the 30th day following the end of each calendar semiannual period (i.e., July 30 and January 30). The proposal specifies that the written reports must include the magnitude of excess emissions computed in accordance with 40 CFFR §60.13(h), any conversion factors used, the date and time of commencement and completion of each time period of excess emissions, and the unit operating time during the reporting period. The reports must specifically identify each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the affected unit, the nature and cause of any malfunction (if known), and the corrective action taken or preventative measures adopted. The reports must include the date and time identifying each period when the continuous monitoring system was inoperative (except for zero and span checks), the nature of the system repairs or adjustments, and periods when no excess emissions have occurred or the continuous monitoring system has not been inoperative, repaired, or adjusted. The proposal specifies that only a summary report form (as outlined in the latest edition of the commission's Guidance for Preparation of Summary, Excess Emission, and Continuous Monitoring System Reports) must be submitted, unless otherwise requested by the executive director, if the total duration of excess emissions for the reporting period is less than 1.0% of the total unit operating time for the reporting period and the CEMS or PEMS downtime for the reporting period is less than 5.0% of the total unit operating time for the reporting period. If the total duration of excess emissions for the reporting period is greater than or equal to 1.0% of the total unit operating time for the reporting period or the CEMS or PEMS downtime for the reporting period is greater than or equal to 5.0% of the total unit operating time for the reporting period, a summary report and an excess emission report must both be submitted.

Proposed new subsection (e) requires the owner or operator of any gas-fired engine subject to the emission specifications in §117.205 to report in writing to the executive director on a semiannual basis any excess emissions and the air-fuel ratio monitoring system performance. All reports must be postmarked or received by the 30th day following the end of each calendar semiannual period (i.e., July 30 and January 30). The proposal specifies that the written reports must include the magnitude of excess emissions (based on the quarterly emission checks of §117.230(a)(2)) and the biennial emission testing required in accordance with §117.240(e), computed in pounds per hour and grams per horsepower-hour, any conversion factors used, the date and time of commencement and completion of each time period of excess emissions, and the engine operating time during the reporting period. The report must also specifically identify, to the extent feasible, of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the engine or emission control system, the nature and cause of any malfunction (if known), and the corrective action taken or preventative measures adopted.

Proposed new subsection (f) requires the owner or operator of a unit subject to the requirements of this division to maintain written or electronic records of the data specified in this subsection. Such records must be kept for a period of at least five years and must be made available upon request by authorized representatives of the executive director, the EPA, or local air pollution control agencies having jurisdiction. The proposal specifies that the records must include records of annual fuel usage for each unit subject to §117.240(a). For each unit using a CEMS or PEMS in accordance with §117.240, the records must include monitoring records of hourly emissions and fuel usage (or stack exhaust flow) for units complying with an emission specification enforced on a block one-hour average; or daily emissions and fuel usage (or stack exhaust flow) for units complying with an emission specification enforced on a daily or rolling 30-day average. Emissions must be recorded in units of pounds per million British thermal units (lb/MMBtu) heat input and pounds or tons per day. The proposal requires that for each stationary internal combustion engine subject to the emission specifications of this division, records must include emissions measurements required by §117.230(2) and §117.240(e) of this title; catalytic converter, air-fuel ratio controller, or other emissions-related control system maintenance, including the date and nature of corrective actions taken; and daily average horsepower and total daily hours of operation for each engine that the owner or operator elects to use the alternative monitoring system allowed under §117.240(a)(2)(C). The proposal requires that for units claimed exempt from emission specifications using the exemption in §117.203(a)(1)(D) records must include monthly hours of operation. In addition, for each turbine or engine claimed exempt under §117.203(a)(1)(D) or (E), written records must be maintained of the purpose of turbine or engine operation and, if operation was for an emergency situation, identification of the type of emergency situation and the start and end times and date(s) of the emergency situation. The proposal requires records of the results of initial certification testing, evaluations, calibrations, checks, adjustments, and maintenance of CEMS or PEMS. The proposal also requires records of the results of performance testing, including initial demonstration of compliance testing conducted in accordance with §117.235.

Proposed new §117.252 contains the control plan procedures for RACT. The proposal requires the owner or operator of any unit subject to §117.205 to maintain a control plan report to show compliance with the requirements of §117.205. The report must include a list of all units that are subject to §117.205 that speci-

fies: the facility identification number and emission point number as submitted to the Emissions Assessment Section of the commission, the emission point number as listed on the Maximum Allowable Emissions Rate Table of any applicable commission permit: the maximum rated capacity: the method of NO control for each unit; the emissions measured by testing required in §117.235; the compliance stack test report or monitor certification report required by §117.235; and the use of any compliance flexibility in accordance with §117.9800. The report must also list all units with a claimed exemption from the emission specification of §117.205 and the specific rule citation claimed as the basis for any that exemption. The proposal requires the report to be submitted to the Office of Compliance and Enforcement, the appropriate regional office, and the Office of Air by the applicable date specified for control plans in §117.9010. The proposal also specifies that for any unit that becomes subject to §117.205 after the applicable date specified in §117.9010, the report must be submitted to the Office of Compliance and Enforcement, the appropriate regional office, and the Office of Air no later than 60 days after becoming subject. The proposal specifies that if any of the information changes in a control plan report submitted in accordance with section, including the installation of functionally identical replacement units, the control plan must be updated no later than 60 days after the change occurs. Written or electronic records of the updated control plan must be kept for a period of at least five years and must be made available upon request by authorized representatives of the executive director, the EPA, or local air pollution control agencies having jurisdiction.

Division 3, Houston-Galveston-Brazoria Ozone Nonattainment Area Major Sources

The proposed rulemaking amends §117.310(c)(2) to specify that for diesel engines that inject urea or ammonia into the exhaust stream for NO_x control, ammonia emissions must not exceed 10 ppmv at 15% O_2 , dry instead of 3% O_2 , dry, as currently in effect. The existing rules require that ammonia emissions must not exceed 10 parts per million at 3.0% O_2 , dry, for certain units that inject urea or ammonia into the exhaust stream for NO_x control. Correcting ammonia concentrations to the 3.0% O_2 level currently required is inappropriate for diesel engines that operate at significantly higher excess air in the exhaust stream. The proposed rule change to allow diesel engines to use the 15% O_2 correction consistent with the Chapter 117 standards for other equipment that also operates with higher O_2 in the exhaust gas.

The proposal would also amend §117.340(c)(2) to add proposed new subparagraph (C) to specify that CEMS and PEMS are not required to be installed on stationary diesel engines equipped with SCR systems using a reductant other than the engine's fuel with a diagnostic system that monitors reductant quality and tank levels and alerts operators to the need to refill the reductant tank before it is empty, or to replace the reductant if it does not meet applicable concentration specifications. The proposal states that if the SCR uses input from an exhaust NO, sensor (or other sensor) to alert operators when reductant quality is inadequate, reductant quality does not need to be monitored separately. The proposal also requires the reductant tank level to be monitored in accordance with the manufacturer's design to demonstrate compliance. The existing Chapter 117 requirement to monitor exhaust NO, concentrations using CEMS or PEMS on units using a chemical reagent to reduce NO_x was included in the rule to ensure compliance with the applicable NO, standards for units that rely on reagent-based emissions control systems that can be adjusted by the operator. Manufacturer-certified Tier 4 engines are designed to meet certain federal NO_x emissions limits and, as

such, include SCR systems designed to monitor several parameters over which the operator has no control. The engines are intended to be tamper-resistant and not subject to alteration. Tier 4 engines are not manufactured with pre-installed CEMS because these inherent design standards ensure $NO_{\rm x}$ emissions conform to the Tier 4 standards. Given that the control system cannot be manipulated and considering the significant cost of installing and operating a CEMS, a CEMS or PEMS is not necessary to provide reasonable assurance of compliance with the $NO_{\rm x}$ emission standards. The commission is requesting comment on any changes that need to be made to the proposed language to ensure it applies to all of the engines intended to be covered by this exemption.

The proposal would also amend §117.340(d) to exempt these engines from the ammonia monitoring requirement in this subsection. It is not necessary to install CEMS or PEMS or monitor ammonia emissions from these engines since these engines are intended to be tamper resistant and not subject to alteration.

Division 4, Dallas-Fort Worth Ozone Nonattainment Area Major Sources

The proposed rulemaking amends §117.410(c)(2) to specify that for diesel engines that inject urea or ammonia into the exhaust stream for NO $_{\rm x}$ control, ammonia emissions must not exceed 10 ppmv at 15% O $_{\rm 2}$, dry instead of 3% O $_{\rm 2}$, dry. The existing rules require that ammonia emissions must not exceed 10 parts per million at 3.0% O $_{\rm 2}$, dry, for certain units that inject urea or ammonia into the exhaust stream for NO $_{\rm x}$ control. However, correcting ammonia concentrations to the 3.0% O $_{\rm 2}$ level currently required is inappropriate for diesel engines that operate at significantly higher excess air in the exhaust stream. The proposed rule change to allow diesel engines to use the 15% O $_{\rm 2}$ correction consistent with the Chapter 117 standards for other equipment that also operates with higher O $_{\rm 2}$ in the exhaust gas.

The proposal would also amend §117.440(c)(2) to include the existing reference to NO, CEMS requirements of 40 CFR Part 75 as new subparagraph (A) and add proposed new subparagraph (B) to specify that CEMS and PEMS are not required to be installed on stationary diesel engines equipped with SCR systems using a reductant other than the engine's fuel with a diagnostic system that monitors reductant quality and tank levels and alerts operators to the need to refill the reductant tank before it is empty, or to replace the reductant if it does not meet applicable concentration specifications. The proposal states that if the SCR uses input from an exhaust NO, sensor (or other sensor) to alert operators when reductant quality is inadequate, reductant quality does not need to be monitored separately. The proposal also requires the reductant tank level to be monitored in accordance with the manufacturer's design to demonstrate compliance. The existing Chapter 117 requirement to monitor exhaust NO_x concentrations using CEMS or PEMS on units using a chemical reagent to reduce NO, was included in the rule to ensure compliance with the applicable NO standards for units that rely on reagent-based emissions control systems that can be adjusted by the operator. Manufacturer-certified Tier 4 engines are designed to meet certain federal NO, emissions limits and, as such, include SCR systems designed to monitor several parameters over which the operator has no control. The engines are intended to be tamper-resistant and not subject to alteration. Tier 4 engines are not manufactured with pre-installed CEMS because these inherent design standards ensure NO, emissions conform to the Tier 4 standards. Given that the control system cannot be manipulated and considering the significant cost of installing and operating a

CEMS, a CEMS or PEMS is not necessary to provide reasonable assurance of compliance with the NO_x emission standards. The commission is requesting comment on any changes that need to be made to the proposed language to ensure it applies to all of the engines intended to be covered by this exemption.

The proposal would also amend §117.440(d) to exempt these engines from the ammonia monitoring requirement in this subsection. It is not necessary to install CEMS or PEMS or monitor ammonia emissions from these engines since these engines are intended to be tamper resistant and not subject to alteration.

Subchapter C, Combustion Control at Major Utility Electric Generation Sources in Ozone Nonattainment Areas

Division 2, Bexar County Ozone Nonattainment Area Utility Electric Generation Sources

Proposed new §117.1100 specifies the rule applicability for the division. The proposed new division applies to utility boilers, auxiliary steam boilers, stationary gas turbines, and duct burners used in turbine exhaust ducts used in an electric power generating system in Bexar County. The proposed rule states that this division is applicable for the life of each affected unit in an electric power generating system or until this division or sections of this title that are applicable to an affected unit are rescinded.

Proposed new §117.1103 lists the units that are exempt from this division, except the monitoring, recordkeeping and reporting requirements that are necessary to document that the unit meets the exemption criteria. The proposed exemption applies to (1) any utility boiler or auxiliary steam boiler with an annual heat input less than or equal to 220,000 MMBtu per year; (2) any stationary gas turbines that operate less than 850 hours per year, based on a rolling 12-month basis; and (3) any stationary gas turbines that are used solely to power other gas turbines or engines during startups.

Proposed new §117.1105 contains the emission specifications RACT that sources must comply with in accordance with the applicable schedule in proposed new §117.9110. The emission specifications were determined to be both technologically and economically feasible. The emission rates are consistent with EPA-approved RACT limits for similar sources in the other nonattainment areas in the state and permit limits for this type of unit. The proposed new subsection (a)(1) limits NO emissions from stationary gas turbines, including duct burners used in turbine exhaust ducts, to 0.032 lb/MMBtu heat input on a rolling 30-day average basis. The proposed new subsection (a)(2) limits NO. emissions from utility boilers or auxiliary steam boilers, while firing natural gas or a combination of natural gas and oil to 0.2 lb/MMBtu heat input on a rolling 30-day average basis. The proposed new subsection (a)(3) limits NO, emissions from utility boilers or auxiliary steam boilers controlled with SCR, while firing coal, to 0.069 lb/MMBtu heat input on a rolling 30-day average basis. The proposed new subsection (a)(4) limits NO emissions from utility boilers or auxiliary steam boilers not controlled with SCR, while firing coal, to 0.20 lb/MMBtu heat input on a rolling 30-day average basis. The proposed new subsection (a)(5) limits NO emissions from utility boilers or auxiliary steam boilers, while firing oil only to 0.30 lb/MMBtu heat input on an hourly basis. Compliance with proposed emission specifications on a rolling 30-day average beginning on January 1, 2025, will be based on CEMS or PEMS data from the previous 30 operating days. The proposed new subsection (b) provides compliance flexibility by including options for sources to meet a system cap or use emission credits to comply with the $\mathrm{NO}_{\scriptscriptstyle \chi}$ emission specifications of this section.

The proposal adds new \$117,1120 to add system cap option for affected sources. The proposed new subsection (a) allows an owner or operator of an electric generating facility (EGF) to achieve compliance with the NO, emission specifications in §117.1105 by achieving equivalent NO emission reductions obtained by compliance with a 30-day system cap emission limitation in accordance with the requirements of this section. Proposed new subsection (b) requires each EGF within an electric power generating system that started operation before January 1, 2025 (which is the proposed compliance date for this division), and is subject to §117.1105 to be included in the system cap. Proposed new subsection (c) provides an equation to calculate the rolling 30-day system cap. The 30-day rolling average NO, emission cap in pounds per day is the product of the applicable emission specification in §117.1105 for each EGF times the average of the daily heat input for each EGF in the emission cap in MMBtu per day for any system 30-day period in 2019, 2020, 2021, 2022, or 2023 (the same 30-day period must be used for all EGFs in the emission cap). This value is then summed for all EGFs in the electric power generating system. Proposed new subsection (d) indicates that compliance with the system cap must be demonstrated in accordance with the requirements in proposed new §117.1140 and proposed new subsection (e) indicates that records, including semiannual reports for the monitoring systems, must be retained in accordance with proposed new §117.1145. The proposal requires sources to comply with the system cap in accordance with the schedule specified in proposed new§117.9110. Proposed new subsection (g) requires any exceedance of the system cap emission limit to be reported within 48 hours and requires a written report that includes a root cause analysis and corrective actions to be submitted within 21 days of the exceedance. Proposed new subsection (h) allows an EGF that is permanently retired or decommissioned and rendered inoperable to continue to be included in the system cap emission limit provided that the permanent shutdown occurred on or after the January 1, 2025 compliance date for this division. Proposed new subsection (i) prohibits emission reductions from shutdowns or curtailments that have been used for netting or offset purposes for an air permit issued under 30 TAC Chapter 116 from being included in the in the calculation of the system cap. Proposed new subsection (i) indicates that for the purposes of determining compliance with the system cap, the contribution of each affected EGF that is operating during a startup, shutdown, or emissions event must be calculated from the NO, emission rate measured by the NO monitor, if the monitor is operating properly, or if the NO monitor is not operating properly, the substitute data procedures identified in §117.1140 must be used. Proposed new subsection (k) allows emission credits may be used in accordance with the requirements of §117.9800 to exceed the system cap.

The proposal adds new §117.1140 to specify the requirements for demonstrating compliance with the proposed new emission limits. Proposed new subsection (a) requires owners or operators to install, calibrate, maintain, and operate a CEMS or PEMS to measure NO_{\times} on an individual basis for all units subject to the proposed new emission specifications in §117.1105. The proposal requires each CEMS or PEMS to comply with the relative accuracy test audit relative accuracy (RATA) requirements of 40 CFR Part 75, Appendix B, Figure 2, except the concentration options (parts per million by volume (ppmv) and lb/MMBtu) do not apply. The proposal also requires each CEMS or PEMS to meet

either the relative accuracy percent requirement of 40 CFR Part 75, Appendix B, Figure 2, or an alternative relative accuracy requirement of \pm 2.0 ppmv from the reference method mean value. The proposal requires CEMS or PEMS to comply with the emission monitoring system requirements of §117.8110. The proposal requires PEMS to predict NO $_{\rm x}$ emissions in the units of the applicable emission limitations and requires that data and fuel flow meters to be used to demonstrate continuous compliance. Proposed new subsection (b) provides acid rain peaking units the option to monitor operating parameters for each unit in accordance with 40 CFR Part 75, Appendix E, and calculate NO $_{\rm x}$ emission rates based on those procedures instead of using a CEMS or PEMS.

Proposed new §117.1140(c) also requires units subject to the proposed new emission specifications in §117.1105 and units claiming exemption under proposed new §117.1103(1) to use totalizing fuel flow meters to individually and continuously measure the gas and liquid fuel usage unless the owner or operator opts to assume fuel consumption at maximum design fuel flow rates during hours of the unit's operation. The proposal indicates that a computer that collects, sums, and stores electronic data from continuous fuel flow meters is an acceptable totalizer. Proposed new subsection (d) requires that a unit using the proposed exemption in §117.1103(2) record the operating time hours with an elapsed run time meter. Proposed new subsection (e) requires the owner or operator of any unit using the proposed new exemptions in §117.1103(1) or (2) to notify the executive director within seven days if the applicable limit is exceeded and to submit a plan for review and approval within 90 days after loss of the exemption that details the schedule to meet the applicable limit no later than 24 months after the exceedance. The proposal indicates that if the limit is exceeded, the exemption from the emission specifications of this division is permanently withdrawn.

Proposed new §117.1140(f) requires the methods in this section to be used to demonstrate compliance with the proposed new emission specifications of §117.1105 and the proposed new system cap in §117.1120. The proposal allows the executive director to use other commission compliance methods to determine compliance with applicable emission specifications for enforcement purposes. The proposal explains that for units complying with the NO, emission specifications of §117.1105 in lb/MMBtu on a rolling 30-day average basis, the rolling 30-day average is calculated for each day that fuel was combusted in the unit, and is the total pounds of NO, emissions from the unit for the preceding 30 days that fuel was combusted in the unit, divided by the total heat input (in MMBtu) for the unit during the same 30-day period. The proposal also explains that for any EGF complying with system cap in §117.1120 in pounds per day on a rolling 30-day average basis, the rolling 30-day average is calculated for each day that fuel was combusted in the unit and is the average of the total pounds of NO₂ emissions per day from all EGFs included in the system cap for the preceding 30 days that fuel was combusted in the units. Proposed new subsection (g) requires the missing data procedures specified in 40 CFR Part 75, Subpart D to be used to provide substitute emissions compliance data during periods when the NO, monitor is off-line except that a peaking unit may use the missing data procedures specified in 40 CFR Part 75, Appendix E, §2.5 and a PEMS for units not subject to the requirements of 40 CFR Part 75 may use calculations in accordance with §117.8110(b). The commission is requesting comment on any additional data substitution procedures that may be appropriate.

Proposed new §117.1145 adds notification, recordkeeping, and reporting requirements. Proposed new subsection (a) requires written notification of any CEMS or PEMS RATA conducted under §117.1140 to be submitted at least 15 days prior to such date and (b) requires a copy of the results of any CEMS or PEMS RATA conducted under §117.1140 to be submitted within 60 days after completion of such testing or evaluation. Proposed new subsection (c) requires units subject to the startup and/or shutdown provisions of §101.222, to maintain hourly records of startup and/or shutdown events (including but not limited to the type of fuel burned; quantity of each type of fuel burned; gross and net energy production in megawatt-hours; and the date, time, and duration of the event) for a period of at least two years. The proposed rule specifies that the records must be available for inspection upon request by the executive director, EPA, and any local air pollution control agency having jurisdiction.

Proposed new §117.1145(d) requires the owner or operator of a unit required to install a CEMS or PEMS under proposed new §117.1140 to report in writing to the executive director on a semiannual basis any exceedance of the applicable emission limitations in this division and the monitoring system performance. All reports must be postmarked or received by the 30th day following the end of each calendar semiannual period (i.e., July 30 and January 30). The proposal requires the reports to include (1) the magnitude of excess emissions computed in accordance with 40 CFR §60.13(h), any conversion factors used, the date and time of commencement and completion of each time period of excess emissions, and the unit operating time during the reporting period; (2) specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the affected unit, the nature and cause of any malfunction (if known) and the corrective action taken or preventative measures adopted; and (3) the date and time identifying each period when the continuous monitoring system was inoperative, except for zero and span checks and the nature of the system repairs or adjustments. The proposal indicates that when no excess emissions have occurred or the continuous monitoring system has not been inoperative, repaired, or adjusted, such information must be stated in the report. The proposal specifies that only a summary report form (as outlined in the latest edition of the commission's Guidance for Preparation of Summary, Excess Emission, and Continuous Monitoring System Reports) is required if the total duration of excess emissions for the reporting period is less than 1.0% of the total unit operating time for the reporting period and the CEMS or PEMS monitoring system downtime for the reporting period is less than 5.0% of the total unit operating time for the reporting period (unless otherwise requested by the executive director). The proposal requires both a summary report and an excess emission report to be submitted if the total duration of excess emissions for the reporting period is greater than or equal to 1.0% of the total unit operating time for the reporting period or the CEMS or PEMS downtime for the reporting period is greater than or equal to 5.0% of the total unit operating time for the reporting period.

Proposed new §117.1145(e) lists the required records, which must be kept for at least five years and must be made available upon request by authorized representatives of the executive director, EPA, or local air pollution control agencies having jurisdiction. Proposed new paragraph (1) requires the owner or operator of a unit complying with the NO $_{\rm x}$ emission specifications in §117.1105(a)(1) - (4) to maintain daily records indicating the NO $_{\rm x}$ emissions in lb; the quantity and type of each fuel burned; the heat input in MMBtu; and the rolling 30-day average NO $_{\rm x}$ emissions

sion rate in lb/MMBtu. Proposed new paragraph (2) requires the owner or operator of a unit complying with the NO emission specification in §117.1105(a)(5) to maintain hourly records indicating the NO emissions in lb; the quantity and type of each fuel burned; and the heat input in MMBtu. Proposed new paragraph (3) requires the owner or operator complying with the NO₂ emission system cap in §117.1120 to maintain daily records for each EGF in the cap indicating the NO emissions in lb; the quantity and type of each fuel burned; and the heat input in MMBtu. In addition, the owner or operator shall maintain daily records indicating the total NO, emissions in lb from all EGFs under the system cap and the rolling 30-day average NO_x emissions rate (in lb/day) for all EGFs under the system cap. Proposed new paragraph (4) requires the owner or operator of a unit using the exemption in §117.1103(1) to maintain monthly records indicating the quantity and type of each fuel burned, the heat input in MMBtu; and the rolling 12-month average heat input in MMBtu. Proposed new paragraph (5) requires the owner or operator of a unit the exemption in §117.1103(2) to maintain monthly records indicating the operating hours and the rolling 12-month average operating hours. Proposed new paragraph (6) requires the owner or operator to maintain records of records of the results of testing, evaluations, calibrations, checks, adjustments, and maintenance of a CEMS or PEMS.

Proposed new §117.1152 contains the control plan procedures for RACT. Proposed new subsection (a) requires the owner or operator of any unit subject to §117.1105 to submit a control plan report to show compliance with the requirements of §117.1105. The report must include: (1) the rule section used to demonstrate compliance, either §117.1105, §117.1120, or §117.9800; (2) the specific rule citation for any unit with a claimed exemption under §117.1105; (3) for each affected unit: the method of NO control, the method of monitoring emissions, and the method of providing substitute emissions data when the NO, monitoring system is not providing valid data; and (4) for sources complying with §117.1120, detailed calculation of the system cap that includes all data relied on for each electric generating facility included in the system cap equation in §117.1120(c). Proposed new subsection (b) requires report to be submitted to the Office of Compliance and Enforcement, the appropriate regional office, and the Office of Air by the applicable date specified for control plans in §117.9110. Proposed new subsection (c) specifies that for any unit that becomes subject to §117.1105 after the applicable date for control plans in §117.9110, the control plan must be submitted to the Office of Compliance and Enforcement, the appropriate regional office, and the Office of Air no later than 60 days after becoming subject. Proposed new subsection (d) requires that if any of the information changes in a control plan report submitted in accordance with subsection (b) or (c), including the installation of functionally identical replacements, the control plan must be updated no later than 60 days after the change occurs. Written or electronic records of the updated control plan must be kept for a period of at least five years and must be made available upon request by authorized representatives of the executive director, the EPA, or local air pollution control agencies having jurisdiction.

Subchapter D, Combustion Control at Minor Sources in Ozone Nonattainment Areas

Division 1, Houston-Galveston-Brazoria Ozone Nonattainment Area Minor Sources

The proposed rulemaking amends §117.2010(i)(2) to specify that for diesel engines that inject urea or ammonia into the exhaust

stream for NO $_{\rm x}$ control, ammonia emissions must not exceed 10 ppmv at 15% O $_{\rm 2}$, dry instead of 3% O $_{\rm 2}$, dry. The existing rules require that ammonia emissions must not exceed 10 parts per million at 3.0% O $_{\rm 2}$, dry, for certain units that inject urea or ammonia into the exhaust stream for NO $_{\rm x}$ control. However, correcting ammonia concentrations to the 3.0% O $_{\rm 2}$ level currently required is inappropriate for diesel engines that operate at significantly higher excess air in the exhaust stream. The proposed rule change to allow diesel engines to use the 15% O $_{\rm 2}$ correction is consistent with the Chapter 117 standards for other equipment that also operate with higher O $_{\rm 2}$ in the exhaust gas.

The proposal would amend §117.2035(e)(2) to specify that the ammonia monitoring requirements in this paragraph do not apply to stationary diesel engines equipped with selective catalytic reduction systems that meet the following criteria. The SCR system must use a reductant other than the engine's fuel and operate with a diagnostic system that monitors reductant quality and tank levels. The diagnostic system must alert owners or operators to the need to refill the reductant tank before it is empty or to replace the reductant if the reductant does not meet applicable concentration specifications. If the SCR system uses input from an exhaust NO, sensor (or other sensor) to alert owners or operators when the reductant quality is inadequate, the reductant quality does not need to be monitored separately by the diagnostic system. The reductant tank level must be monitored in accordance with the manufacturer's design to demonstrate compliance with this subparagraph. The method of alerting an owner or operator must be a visual or audible alarm.

Division 2, Dallas-Fort Worth Eight Hour Ozone Nonattainment Area Minor Sources

The proposed rulemaking amends §117.2110(h)(2) to specify that for diesel engines that inject urea or ammonia into the exhaust stream for NO $_{\rm c}$ control, ammonia emissions must not exceed 10 ppmv at 15% O $_{\rm c}$, dry instead of 3% O $_{\rm c}$, dry. The existing rules require that ammonia emissions must not exceed 10 parts per million at 3.0% O $_{\rm c}$, dry, for certain units that inject urea or ammonia into the exhaust stream for NO $_{\rm c}$ control. However, correcting ammonia concentrations to the 3.0% O $_{\rm c}$ level currently required is inappropriate for diesel engines that operate at significantly higher excess air in the exhaust stream. The proposed rule change to allow diesel engines to use the 15% O $_{\rm c}$ correction is consistent with the Chapter 117 standards for other equipment that also operate with higher O $_{\rm c}$ in the exhaust gas.

The proposal would amend §117.2135(d)(2) to specify that the ammonia monitoring requirements in this paragraph do not apply to stationary diesel engines equipped with selective catalytic reduction systems that meet the following criteria. The SCR system must use a reductant other than the engine's fuel and operate with a diagnostic system that monitors reductant quality and tank levels. The diagnostic system must alert owners or operators to the need to refill the reductant tank before it is empty or to replace the reductant if the reductant does not meet applicable concentration specifications. If the SCR system uses input from an exhaust NO, sensor (or other sensor) to alert owners or operators when the reductant quality is inadequate, the reductant quality does not need to be monitored separately by the diagnostic system. The reductant tank level must be monitored in all cases in accordance with the manufacturer's design to demonstrate compliance with this subparagraph. The method of alerting an owner or operator must be a visual or audible alarm.

Subchapter E, Multi-Region Combustion Control

Division 1, Utility Electric Generation in East and Central Texas

The proposed rule amends the applicability in §117.3000 to specify that this division no longer applies in Bexar County after December 31, 2024. This change ensures that units in Bexar County will remain in compliance with the existing rule until they are required to comply with the proposed new rules for EGUs in Subchapter C, Division 2.

Division 2, Cement Kilns

The proposed rule amends §117.3103 for portland cement kilns exempted from the provisions of this division, to include any portland cement kiln placed into service on or after December 31, 1999, except as specified in proposed new Bexar County RACT requirements in §117.3124. The proposed amendments also state that after the compliance date specified in §117.9320(c), portland cement kilns that are subject to §117.3124 are exempt from §117.3110 and §117.3120 of this title. These proposed changes are necessary to ensure that cement kilns in Bexar County will remain in compliance with the existing rule until they are required to comply with the proposed new RACT requirements in §117.3124.

The proposed rulemaking adds language to the emission specification in §117.3110 and the source cap requirements in §117.3120 to state that these sections no longer apply in Bexar County after December 31, 2024. These proposed changes are necessary to ensure that cement kilns in Bexar County are subject to these rules only until they are required to comply with the proposed new RACT requirements in §117.3124.

Proposed new §117.3124 lists the Bexar County control requirements for RACT.

The proposed rule limits NO_x emissions from each preheaterprecalciner or precalciner kiln Bexar County to 2.8 pounds per ton (lb/ton) of clinker produced on a 30-day rolling average beginning on the compliance date specified in §117.9320. This proposed limit is consistent with limits for this type of kiln in other state and federal rules. For one of the two affected kilns, this limit represents an approximate 40% reduction from the average NO_x emissions from 2017-2022. The other affected kiln is currently operating below this rate and the commission is requesting comments on the technological and economic feasibility of the existing kiln located at Capital Cement to meet a limit of 1.95 lb/ton of clinker produced on a 30-day rolling average during both normal conditions and during maintenance, startup, and shutdown. The proposed new section clarifies that for the purposes of this section, the 30-day rolling average is an average, calculated for each day that fuel was combusted in the cement kiln, as the total of all the hourly emissions data (in pounds) for the preceding 30 days that fuel was combusted in the cement kiln, divided by the total number of tons of clinker produced in that kiln during the same 30-day period. The proposed rule also states that an owner or operator may use emission credits in accordance with §117.9800 to meet the NO, emission control requirements of this section, in whole or in part.

The proposed rule amends the notification, recordkeeping, and reporting requirements in 117.3145 to require monitoring records for kilns subject to §117.3124 to include the hourly, daily, and rolling 30-day average $NO_{\rm x}$ emissions (in pounds); the hourly, daily, and rolling 30-day average production of clinker (in United States short tons); and the rolling 30-day average $NO_{\rm x}$ emission rate (in lb/ton of clinker produced). These records are necessary to demonstrate compliance with the proposed new RACT requirements for kilns in Bexar County.

Subchapter H, Administrative Provisions

Division 1, Compliance Schedules

The proposal adds new §117.9010 to include the compliance schedule for Bexar County ozone nonattainment area major sources. The proposal requires the owner or operator of any stationary source of NO_{\times} in Bexar County that is a major source of NO_{\times} and is subject to the requirements of Subchapter B, Division 2 to comply with the requirements that division as soon as practicable, but no later than January 1, 2025. The proposal also requires the owner or operator of any stationary source of NO_{\times} that becomes subject to the requirements of Subchapter B, Division 2 on or after January 1, 2025 to comply with the requirements of the division as soon as practicable, but no later than 60 days after becoming subject.

The proposal amends the compliance schedule for DFW area major sources in §117.9030 to add that for units subject to the emission specifications of §117.405(b) located at sources in Wise County that emit or have the potential to emit equal to or greater than 25 tpy but less than 50 tpy of NO, submission of the initial control plan required by §117.450(b) is required no later than May 7, 2025; and compliance with all other requirements of Subchapter B, Division 4 is required as soon as practicable, but no later than November 7, 2025. The proposal adds requirements for the owner or operator of any unit that is subject to the emission specifications in §117.410(a) located in the Dallas-Fort Worth eight-hour ozone nonattainment area that emits or have the potential to emit equal to or greater than 25 tpy but less than 50 tpy of NO, to submit the initial control plan required by §117.450(b) no later than May 7, 2025; and comply with all other requirements of Subchapter B, Division 4 as soon as practicable, but no later than November 7, 2025. The proposal also states that the owner or operator of any stationary source of NO, that becomes subject to the emission specifications in §117.410(a) on or after the applicable compliance date specified in paragraph (2) must comply with the requirements of Subchapter B, Division 4 as soon as practicable, but no later than 60 days after becoming subject.

The proposal adds new §117.9110 to include the compliance schedule for Bexar County ozone nonattainment area utility electric generation sources. The proposal requires the owner or operator of each electric utility in Bexar County to comply with the requirements of Subchapter C, Division 2 as soon as practicable, but no later than January 1, 2025. The proposal also requires the owner or operator of any electric utility that becomes subject to the requirements of Subchapter C, Division 2 on or after January 1, 2025, to comply with the requirements of that division as soon as practicable, but no later than 60 days after becoming subject.

The proposal amends §117.9300 to specify that beginning January 1, 2025, sources in Bexar County are no longer required to comply with the requirements of Subchapter E, Division 1. This change ensures that sources must comply with these requirements only until compliance with the proposed new RACT rules in Subchapter C, Division 2 is required.

The proposal amends 117.9320 to require the owner or operator of each portland cement kiln in Bexar County to comply with the requirements of §117.3124 and the applicable requirements of §117.3145 as soon as practicable, but no later than January 1, 2025.

Division 2, Compliance Flexibility

The proposal amends §117.9800 to allow for the use of emission credits for compliance with the proposed new Bexar County RACT requirements in §§117.205, 117.1105, 117.1120, and 117.3124. The proposal also specifies that for units using reduction credits in accordance with this section that are subject to new, more stringent rule limitations, the owner or operator using the reduction credits must submit a revised final control plan to the executive director in accordance with §117.1152. These requirements are the same as the EPA-approved options provided for other nonattainment areas in the state.

Fiscal Note: Costs to State and Local Government

Kyle Girten, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rules are in effect, no costs are anticipated for the agency as a result of administration or enforcement of the proposed rule.

Fiscal implications are anticipated for the University of Texas Southwestern Medical Center which has two sites that may be impacted by revisions to Subchapter A and Subchapter H that lower the threshold for major sources from 50 tpv NO, to 25 tpv NO. This would result in increased costs associated with three boilers totaling over \$210,000 in the first year and over \$10,000 per year for years two through five. Additionally, there would be increased costs associated with 27 diesel/oil fired engines that total over \$270,000 in the first year, over \$24,000 in years two and four, and over \$185,000 in years three and five. Increased costs in the first year are attributed to capital purchases, and variation in subsequent years is attributed to alternating testing requirements from year to year. The total costs for this state institution would be over \$480,000 in the first year, over \$34,000 in years two and four, and almost \$200,000 in years three and five.

Fiscal implications are anticipated for certain local government entities in Bexar County and the DFW area. For Bexar County, changes to Subchapters A, B, C, E, and H would affect one electric-generating utility with three sites emitting or with the potential to emit 100 tpy or more NO. Increased costs for this utility would total approximately \$3,000 per year for recordkeeping and reporting in years one through five. For the DFW area, two local governments, which have sources emitting or with the potential to emit between 25 tpy NO_x to 50 tpy NO_x, would be affected by changes proposed in Subchapters A and H. There would be increased costs associated with two diesel/oil fired engines that total over \$20,000 in the first year, approximately \$1,800 in years two and four, and over \$14,000 in years three and five. Additionally, there would be increased costs associated with two process heaters that total over \$90,000 in the first year and almost \$1,500 per year in years two through five. Increased costs in the first year are attributed to capital purchases, and when applicable, variation in subsequent years is attributed to alternating testing requirements from year to year. The total cost estimate for local government, including entities in Bexar County and DFW counties is \$113,000 in the first year, \$6,300 in years two and four, and \$18,500 in years three and five.

Public Benefits and Costs

Mr. Girten determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated will be compliance with federal law and continued protection of the environment and public health and safety combined with efficient and fair administration of $\mathrm{NO}_{\scriptscriptstyle X}$ emission standards for Bexar County, DFW counties, and HGB counties.

Cost savings are anticipated for entities with stationary diesel reciprocating internal combustion engines located at major or minor sources of NO $_{\rm x}$ in the HGB and DFW areas. Changes to Subchapter B and D would result in the removal of requirements for the monitoring of NO $_{\rm x}$ emissions using CEMS, and it would also provide for other more cost-effective methods for monitoring ammonia emissions. It is not possible to determine the number of affected entities, as these engines are used over a wide range of industry sectors, including but not limited to chemical plants, refineries, hospitals, educational institutions, and metal and forging foundries. New entities would no longer be responsible for capital costs associated with equipment purchase and installation for CEMS totaling approximately \$150,000, and new and existing entities would no longer incur operation and maintenance costs totaling approximately \$50,000 annually.

Costs would be incurred for affected businesses operating in Bexar County and the DFW area for implementation of requirements applicable to RACT. Revisions to Subchapters A, B, C, E, and H would apply RACT requirements to sources that emit 100 tpy or more NO_{x} in Bexar County. Revisions to Subchapters A and H would lower the threshold for major sources from 50 tpy NO_{x} to 25 tpy NO_{x} in the DFW area. The proposed rulemaking is not anticipated to increase any fees paid by businesses or industry.

In Bexar County, the rulemaking is anticipated to result in additional costs for one natural gas processing plant and cement kilns at two sites. The total cost for the natural gas processing plant, which has two engines and three turbines, is estimated at approximately \$50,000 in the first year, \$3,000 in years two and four, and over \$35,000 in years three and five. Increased costs in the first year is attributed to initial purchases, and variation in subsequent years is attributed to alternating testing requirements from year to year. The total cost estimate for the cement kilns would total an estimated \$400,000 to \$800,000 for each of the first five years as necessary for the purchase of 19% aqueous ammonia for operation of a selective non-catalytic reduction system when needed. It is not certain as to how much of this reagent would be needed. For Bexar County, the total cost for all affected businesses totals between approximately \$450,000 to \$850,000 in the first year, and between over \$400,000 and over \$800,000 in years two through five.

In the DFW area, the rulemaking is anticipated to result in additional costs for 17 rich-burn engine units, one lean-burn engine unit, eight diesel/fuel oil fired engine units, nine boilers, 16 process heater units, six turbine units, seven brick kiln units, two incinerator units, and one furnace unit. The total cost estimate for rich-burn engines, which would each require non-selective catalytic reduction with an air-fuel ratio controller, is almost \$500,000 in the first year, approximately \$90,000 in years two and four, and almost \$200,000 in years three and five. The total cost estimate for the lean-burn engine, which would require combustion modifications, is approximately \$470,000 in the first year, approximately \$1,700 in years two and four, and approximately \$8,000 in years three and five. The total cost estimate for diesel/fuel oil fired engines, which would require initial purchase and installation of a fuel flow meter, is approximately \$80,000 in the first year, \$7,000 in years two and four, and approximately \$55,000 in years three and five. The total cost estimate for boilers, which would require low NO, burners, is approximately \$650,000 in the first year, and over \$10,000 in years two through five. The total cost estimate for process heaters, which would require dry low-NO, (DLN) combustors along with initial demonstration testing, is approximately \$750,000 in the first year, and over \$11,000 in years two through five. The total cost estimate for turbines, some of which would require DLN combustors and others which may require different controls, is between \$1.1 million to \$2.7 million in the first year, and between \$3,500 to \$6,000 in years two through five. The total cost estimate for brick kilns. which require initial purchase and installation of a fuel flow meter, is approximately \$70,000 in the first year, and \$2,000 in years two through five. The total cost estimate for incinerators, which require initial purchase and installation of a fuel flow meter along with stack testing, is approximately \$22,000 in the first year, and \$2,000 in years two through five. The total cost estimate for the furnace, which require initial purchase and installation of a fuel flow meter along with stack testing, is approximately \$11,000 in the first year, and \$1,000 in years two through five. For the DFW area, the total cost for all affected businesses totals between approximately \$3.6 million to \$5.3 million in the first year, approximately \$130,000 in years two and four, and over \$290,000 in years three and five.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a significant way for the first five years that the proposed rule is in effect.

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities differently than larger communities for the first five years that the proposed rules are in effect. Two affected sources in Bexar County are in a rural community, and 22 major sources in the DFW area are near a city with a population less than 25,000. The proposed rulemaking contains necessary requirements to meet requirements of the FCAA.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or microbusinesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rules are in effect. No small businesses were identified in Bexar County that would be subject to the rules and three to seven businesses in the DFW area may qualify as small businesses. No businesses were identified in either county which are classified as micro-businesses.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect. This rulemaking incorporates RACT requirements which factors in technological and economic feasibility, and small businesses are required to comply with the same criteria and provisions as larger firms to satisfy FCAA requirements. It is ultimately anticipated that the effects of the proposed rules on small businesses or micro-businesses are largely proportional to their effects on larger businesses.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative

appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking amends an existing regulation, and it does not increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis

The commission reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rulemaking does not meet the definition of a major environmental rule as defined in that statute, and in addition, if it did meet the definition, would not be subject to the requirement to prepare a regulatory impact analysis. A major environmental rule means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Additionally, the proposed rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Tex. Gov't Code Ann., § 2001.0225(a). Section 2001.0225 of the Texas Government Code 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 specific intent of these proposed rules is to comply with federal requirements for the implementation of control strategies necessary to attain and maintain the NAAQS for ozone mandated by 42 USC, 7410, FCAA, §110, and required to be included in operating permits by 42 USC, §7661a, FCAA, §502, as specified elsewhere in this preamble. The proposed rule addresses RACT requirements for the Bexar County 2015 eight-hour ozone nonattainment area and the DFW 2008 eight-hour ozone nonattainment area as well as revisions to existing rules to remove specific monitoring requirements and adjust ammonia emission limits for certain engines as discussed elsewhere in this preamble. States are required to adopt SIPs with enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the FCAA. As discussed in the FISCAL NOTE portion of this preamble, the proposed rules are not anticipated to add any significant additional costs to affected individuals or businesses beyond what is necessary to attain the ozone NAAQS on the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

If a state does not comply with its obligations under 42 USC, §7410, FCAA, §110 to submit SIPs, states are subject to discretionary sanctions under 42 USC, §7410(m) or mandatory sanctions under 42 USC, §7509, FCAA, §179; as well as the imposition of a federal implementation plan (FIP) under 42 USC, §7410, FCAA, §110(c). Under 42 USC, §7661a, FCAA, §502,

states are required to have federal operating permit programs that provide authority to issue permits and assure compliance with each applicable standard, regulation, or requirement under the FCAA, including enforceable emission limitations and other control measures, means, or techniques, which are required under 42 USC, §7410, FCAA, §110. Similar to requirements in 42 USC, §7410, FCAA, §110, states are not free to ignore requirements in 42 USC, §7661a, FCAA, §502 and must develop and submit programs to provide for operating permits for major sources that include all applicable requirements of the FCAA. Lastly, states are also subject to the imposition of sanctions under 42 USC, §7661a(d) and (i), FCAA, §502(d) and (i) for failure to submit an operating permits program, the disapproval of any operating permits program, or failure to adequately administer and enforce the approved operating permits program.

The requirement to provide a fiscal analysis of regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th legislative session in 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 that concluded "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 rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law. Because of the ongoing need to meet federal requirements, the commission routinely proposes and adopts rules incorporating or designed to satisfy specific federal requirements. The legislature is presumed to understand this federal scheme. If each rule proposed by the commission to meet a federal requirement was considered to be a major environmental rule that exceeds federal law, then each of those rules would require the full regulatory impact analysis (RIA) contemplated by SB 633. Requiring a full RIA for all federally required rules 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 that the intent of SB 633 was only to require the full RIA for rules that are extraordinary in nature. While the proposed rules may have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA, and in fact creates no additional impacts since the proposed rules do not impose burdens greater than required to demonstrate attainment of the ozone NAAQS as discussed elsewhere in this preamble. For these reasons, the proposed rules fall under the exception in Texas Government Code, §2001.0225(a), because they are required by, and do not exceed, 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 legisla-

ture 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 RIA 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" (Texas Government Code, §2001.035). The legislature specifically identified Texas Government Code, §2001.0225 as falling under this standard.

As discussed in this analysis and elsewhere in this preamble, the commission has substantially complied with the requirements of Texas Government Code, §2001.0225. The proposed rules implement the requirements of the FCAA as discussed in this analysis and elsewhere in this preamble. The proposed rules were determined to be necessary to attain the ozone NAAQS and are required to be included in permits under 42 USC, §7661a, FCAA, §502, and will not exceed any standard set by state or federal law. These proposed rules are not an express requirement of state law. The proposed rules do not exceed a requirement of a delegation agreement or a contract between state and federal government, as the proposed rules, if adopted by the commission and approved by EPA, will become federal law as part of the approved SIP required by 42 U.S.C. §7410, FCAA, §110. The proposed rules were not developed solely under the general powers of the agency but are authorized by specific sections of Texas Health and Safety Code, Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code, which are cited in the STATUTORY AUTHORITY section of this preamble, including Texas Health and Safety Code, §§382.011, 382.012, and 382.017. Therefore, this proposed rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invites public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), taking means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or §17 or §19, Article I, Texas Constitution; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmen-

tal action; and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. The commission completed a takings impact analysis for the proposed rulemaking action under the Texas Government Code, §2007.043.

The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to meet federal requirements for the implementation of control strategies necessary to attain and maintain the NAAQS for ozone mandated by 42 USC, 7410, FCAA, §110, and required to be included in operating permits by 42 USC, §7661a, FCAA, §502. The proposed rule addresses RACT requirements for the Bexar County 2015 eight-hour ozone nonattainment area and the DFW 2008 eight-hour ozone nonattainment area as well as revisions to existing rules to remove specific monitoring requirements and adjust ammonia emission limits for certain engines as discussed elsewhere in this preamble.

States are required to adopt SIPs with enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the FCAA. If a state does not comply with its obligations under 42 USC, §7410, FCAA, §110 to submit SIPs, states are subject to discretionary sanctions under 42 USC, §7410(m) or mandatory sanctions under 42 USC, §7509, FCAA, §179; as well as the imposition of a federal implementation plan (FIP) under 42 USC, §7410, FCAA, §110(c). Under 42 USC, §7661a, FCAA, §502, states are required to have federal operating permit programs that provide authority to issue permits and assure compliance with each applicable standard, regulation, or requirement under the FCAA, including enforceable emission limitations and other control measures, means, or techniques, which are required under 42 USC, §7410, FCAA, §110. Similar to requirements in 42 USC, §7410, FCAA, §110, regarding the requirement to adopt and implement plans to attain and maintain the national ambient air quality standards, states are not free to ignore requirements in 42 USC, §7661a, FCAA, §502 and must develop and submit programs to provide for operating permits for major sources that include all applicable requirements of the FCAA. Lastly, states are also subject to the imposition of sanctions under 42 USC, §7661a(d) and (i), FCAA, §502(d) and (i) for failure to submit an operating permits program, the disapproval of any operating permits program, or failure to adequately administer and enforce the approved operating permits program.

The proposed rules will not create any additional burden on private real property beyond what is required under federal law, as the proposed rules, if adopted by the commission and approved by EPA, will become federal law as part of the approved SIP required by 42 U.S.C. §7410, FCAA, §110. The proposed rules will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.*, and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and found the proposed rulemaking is consistent with the applicable CMP goals and policies.

The proposed amendments are consistent with the applicable CMP goal expressed in 31 TAC §501.12(1) of protecting and preserving the quality and values of coastal natural resource areas, and the policy in 31 TAC §501.14(I), which requires that the commission protect air quality in coastal areas. The proposed rulemaking and SIP revision would ensure that the amendments comply with 40 CFR Part 50, National Primary and Secondary Air Quality Standards, and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Effect on Sites Subject to the Federal Operating Permits Program

Chapter 117 is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program. If the proposed revisions to Chapter 117 are adopted, owners or operators subject to the federal operating permit program must, consistent with the revision process in Chapter 122, upon the effective date of the rulemaking, revise their operating permit to include the new Chapter 117 requirements.

Announcement of Hearing

The commission will hold an in-person public hearing on this proposal in Houston on Thursday January 4, 2024, at 7:00 p.m. at the Houston-Galveston Area Council (Conference Room), 3555 Timmons Ln #100, Houston, TX 77027; in San Antonio on Tuesday January 9, 2024, at 7:00 p.m. at the Alamo Area Council of Governments (Board Room), 2700 NE Loop 410, Suite 101, San Antonio, TX 78217; and in Arlington on Thursday January 11, 2024, at 7:00 p.m. at the Arlington City Council Chambers, 101 West Abrams Street, Arlington, TX 76010. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to fax4808@tceq.texas.gov. Electronic comments may be submitted at: https://tceq.commentinput.com/comment/search. File size restrictions may apply to comments being submitted via the TCEQ Public Comments system. All comments should refer-

ence Rule Project Number 2023-117-117-AI. The comment period closes on January 16, 2024. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at https://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Lindley Anderson, Air Quality Division, at (512) 239-0003 or lindley.anderson@tceq.texas.gov.

SUBCHAPTER A. DEFINITIONS

30 TAC §117.10

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; and THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air.

The proposed amendments implement TWC, §§5.102, 5.103, 5.105 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.017.

§117.10. Definitions.

Unless specifically defined in the Texas Clean Air Act or Chapter 101 of this title (relating to General Air Quality Rules), the terms in this chapter have the meanings commonly used in the field of air pollution control. Additionally, the following meanings apply, unless the context clearly indicates otherwise. Additional definitions for terms used in this chapter are found in §3.2 and §101.1 of this title (relating to Definitions).

- (1) Annual capacity factor--The total annual fuel consumed by a unit divided by the fuel that could be consumed by the unit if operated at its maximum rated capacity for 8,760 hours per year.
- (2) Applicable ozone nonattainment area--The following areas, as designated under the 1990 Federal Clean Air Act Amendments.
- (A) Beaumont-Port Arthur ozone nonattainment area--An area consisting of Hardin, Jefferson, and Orange Counties.
- (B) Bexar County ozone nonattainment area--An area consisting of Bexar County.
- (C) [(B)] Dallas-Fort Worth eight-hour ozone nonattainment area--An area consisting of:
- (i) for the purposes of Subchapter D of this chapter (relating to Combustion Control at Minor Sources in Ozone Nonattain-

ment Areas), Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties; or

- (ii) for all other divisions of this chapter, Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties.
- (3) Auxiliary steam boiler--Any combustion equipment within an electric power generating system, as defined in this section, that is used to produce steam for purposes other than generating electricity. An auxiliary steam boiler produces steam as a replacement for steam produced by another piece of equipment that is not operating due to planned or unplanned maintenance.
- (4) Average activity level for fuel oil firing--The product of an electric utility unit's maximum rated capacity for fuel oil firing and the average annual capacity factor for fuel oil firing for the period from January 1, 1990, to December 31, 1993.
- (5) Block one-hour average--An hourly average of data, collected starting at the beginning of each clock hour of the day and continuing until the start of the next clock hour.
- (6) Boiler--Any combustion equipment fired with solid, liquid, and/or gaseous fuel used to produce steam or to heat water.
 - (7) Btu--British thermal unit.
- (8) Chemical processing gas turbine--A gas turbine that vents its exhaust gases into the operating stream of a chemical process.
- (9) Continuous emissions monitoring system (CEMS)-The total equipment necessary for the continuous determination and recordkeeping of process gas concentrations and emission rates in units of the applicable emission limitation.
- (10) Daily--A calendar day starting at midnight and continuing until midnight the following day.
- (11) Diesel engine--A compression-ignited two- or fourstroke engine that liquid fuel injected into the combustion chamber ignites when the air charge has been compressed to a temperature sufficiently high for auto-ignition.
- (12) Duct burner--A unit that combusts fuel and that is placed in the exhaust duct from another unit (such as a stationary gas turbine, stationary internal combustion engine, kiln, etc.) to allow the firing of additional fuel to heat the exhaust gases.
- (13) Electric generating facility (EGF)--A unit that generates electric energy for compensation and is owned or operated by a person doing business in this state, including a municipal corporation, electric cooperative, or river authority.
- (14) Electric power generating system--One electric power generating system consists of either:
- (A) for the purposes of Subchapter C, Divisions 1, 2, and 4 of this chapter (relating to Beaumont-Port Arthur Ozone Nonattainment Area Utility Electric Generation Sources; Bexar County Ozone Nonattainment Area Utility Electric Generation Sources; and Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Utility Electric Generation Sources), all boilers, auxiliary steam boilers, and stationary gas turbines (including duct burners used in turbine exhaust ducts) at electric generating facility (EGF) accounts that generate electric energy for compensation; are owned or operated by an electric cooperative, municipality, river authority, public utility, independent power producer, or a Public Utility Commission of Texas regulated

utility, or any of its successors; and are entirely located in one of the following ozone nonattainment areas:

- (i) Beaumont-Port Arthur; [of]
- (ii) Bexar County; or
- (iii) Dallas-Fort Worth eight-hour;
- (B) for the purposes of Subchapter C, Division 3 of this chapter (relating to Houston-Galveston-Brazoria Ozone Nonattainment Area Utility Electric Generation Sources), all boilers, auxiliary steam boilers, and stationary gas turbines (including duct burners used in turbine exhaust ducts) at EGF accounts that generate electric energy for compensation; are owned or operated by an electric cooperative, municipality, river authority, public utility, or a Public Utility Commission of Texas regulated utility, or any of its successors; and are entirely located in the Houston-Galveston-Brazoria ozone nonattainment area;
- (C) for the purposes of Subchapter B, Division 3 of this chapter (relating to Houston-Galveston-Brazoria Ozone Nonattainment Area Major Sources), all units in the Houston-Galveston-Brazoria ozone nonattainment area that generate electricity but do not meet the conditions specified in subparagraph (B) of this paragraph, including, but not limited to, cogeneration units and units owned by independent power producers; or
- (D) for the purposes of Subchapter E, Division 1 of this chapter (relating to Utility Electric Generation in East and Central Texas), all boilers, auxiliary steam boilers, and stationary gas turbines at EGF accounts that generate electric energy for compensation; are owned or operated by an electric cooperative, independent power producer, municipality, river authority, or public utility, or any of its successors; and are located in Atascosa, Bastrop, [Bexat,] Brazos, Calhoun, Cherokee, Fannin, Fayette, Freestone, Goliad, Gregg, Grimes, Harrison, Henderson, Hood, Hunt, Lamar, Limestone, Marion, McLennan, Milam, Morris, Nueces, Parker, Red River, Robertson, Rusk, Titus, Travis, Victoria, or Wharton County, or in Bexar County until December 31, 2024.
 - (15) Emergency situation--As follows.
 - (A) An emergency situation is any of the following:
- (i) an unforeseen electrical power failure from the serving electric power generating system;
- (ii) the period of time that an Electric Reliability Council of Texas, Inc. (ERCOT)-issued emergency notice or energy emergency alert (EEA) (as defined in ERCOT Nodal Protocols, Section 2: Definitions and Acronyms (August 13, 2014) and issued as specified in ERCOT Nodal Protocols, Section 6: Adjustment Period and Real-Time Operations (August 13, 2014)) is applicable to the serving electric power generating system. The emergency situation is considered to end upon expiration of the emergency notice or EEA issued by ERCOT;
- (iii) an unforeseen failure of on-site electrical transmission equipment (e.g., a transformer);
 - (iv) an unforeseen failure of natural gas service;
- (v) an unforeseen flood or fire, or a life-threatening situation;
- (vi) operation of emergency generators for Federal Aviation Administration licensed airports, military airports, or manned space flight control centers for the purposes of providing power in anticipation of a power failure due to severe storm activity; or
- (vii) operation of an emergency generator as part of ERCOT's emergency response service (as defined in *ERCOT Nodal*

Protocols, Section 2: Definitions and Acronyms (August 13, 2014)) if the operation is in direct response to an instruction by ERCOT during the period of an ERCOT EEA as specified in clause (ii) of this subparagraph.

- (B) An emergency situation does not include:
- (i) operation for training purposes or other foresee-able events; or
- (ii) operation for purposes of supplying power for distribution to the electric grid, except as specified in subparagraph (A)(vii) of this paragraph.
- (16) Functionally identical replacement--A unit that performs the same function as the existing unit that it replaces, with the condition that the unit replaced must be physically removed or rendered permanently inoperable before the unit replacing it is placed into service.
- (17) Heat input--The chemical heat released due to fuel combustion in a unit, using the higher heating value of the fuel. This does not include the sensible heat of the incoming combustion air. In the case of carbon monoxide (CO) boilers, the heat input includes the enthalpy of all regenerator off-gases and the heat of combustion of the incoming CO and of the auxiliary fuel. The enthalpy change of the fluid catalytic cracking unit regenerator off-gases refers to the total heat content of the gas at the temperature it enters the CO boiler, referring to the heat content at 60 degrees Fahrenheit, as being zero.
- (18) Heat treat furnace--A furnace that is used in the manufacturing, casting, or forging of metal to heat the metal so as to produce specific physical properties in that metal.
- (19) High heat release rate--A ratio of boiler design heat input to firebox volume (as bounded by the front firebox wall where the burner is located, the firebox side waterwall, and extending to the level just below or in front of the first row of convection pass tubes) greater than or equal to 70,000 British thermal units per hour per cubic foot.
- (20) Horsepower rating--The engine manufacturer's maximum continuous load rating at the lesser of the engine or driven equipment's maximum published continuous speed.
 - (21) Incinerator--As follows.
- (A) For the purposes of this chapter, the term "incinerator" includes both of the following:
- (i) a control device that combusts or oxidizes gases or vapors (e.g., thermal oxidizer, catalytic oxidizer, vapor combustor); and
- (ii) an incinerator as defined in §101.1 of this title (relating to Definitions).
- (B) The term "incinerator" does not apply to boilers or process heaters as defined in this section, or to flares as defined in $\S101.1$ of this title.
- (22) Industrial boiler--Any combustion equipment, not including utility or auxiliary steam boilers as defined in this section, fired with liquid, solid, or gaseous fuel, that is used to produce steam or to heat water.
- (23) International Standards Organization (ISO) conditions--ISO standard conditions of 59 degrees Fahrenheit, 1.0 atmosphere, and 60% relative humidity.
- (24) Large utility system--All boilers, auxiliary steam boilers, and stationary gas turbines that are located in the Dallas-Fort Worth

- eight-hour ozone nonattainment area, and were part of one electric power generating system on January 1, 2000, that had a combined electric generating capacity equal to or greater than 500 megawatts.
- (25) Lean-burn engine--A spark-ignited or compressionignited, Otto cycle, diesel cycle, or two-stroke engine that is not capable of being operated with an exhaust stream oxygen concentration equal to or less than 0.5% by volume, as originally designed by the manufacturer.
- (26) Low annual capacity factor boiler, process heater, or gas turbine supplemental waste heat recovery unit--An industrial, commercial, or institutional boiler; process heater; or gas turbine supplemental waste heat recovery unit with maximum rated capacity:
- (A) greater than or equal to 40 million British thermal units per hour (MMBtu/hr), but less than 100 MMBtu/hr and an annual heat input less than or equal to 2.8 (10^{11}) British thermal units per year (Btu/yr), based on a rolling 12-month average; or
- (B) greater than or equal to 100 MMBtu/hr and an annual heat input less than or equal to 2.2 (10^{11}) Btu/yr, based on a rolling 12-month average.
- (27) Low annual capacity factor stationary gas turbine or stationary internal combustion engine--A stationary gas turbine or stationary internal combustion engine that is demonstrated to operate less than 850 hours per year, based on a rolling 12-month average.
- (28) Low heat release rate--A ratio of boiler design heat input to firebox volume less than 70,000 British thermal units per hour per cubic foot.
- (29) Major source--Any stationary source or group of sources located within a contiguous area and under common control that emits or has the potential to emit:
- (A) at least 50 tons per year (tpy) of nitrogen oxides (${\rm NO_x}$) and is located in the Beaumont-Port Arthur ozone nonattainment area;
- (B) at least 100 tpy of NO_x and is located in the Bexar County ozone nonattainment area;
- (C) [(B)] at least 25[50] tpy of NO_x and is located in the Dallas-Fort Worth eight-hour ozone nonattainment area;
- (D) [(C)] at least 25 tpy of NO_x and is located in the Houston-Galveston-Brazoria ozone nonattainment area; or
- (E) (D) the amount specified in the major source definition contained in the Prevention of Significant Deterioration of Air Quality regulations promulgated by the United States Environmental Protection Agency in 40 Code of Federal Regulations §52.21 as amended June 3, 1993 (effective June 3, 1994), and is located in Atascosa, Bastrop, [Bexar,] Brazos, Calhoun, Cherokee, Comal, Fannin, Fayette, Freestone, Goliad, Gregg, Grimes, Harrison, Hays, Henderson, Hood, Hunt, Lamar, Limestone, Marion, McLennan, Milam, Morris, Nueces, Red River, Robertson, Rusk, Titus, Travis, Victoria, or Wharton County or in Bexar County until December 31, 2024.
- (30) Maximum rated capacity--The maximum design heat input, expressed in million British thermal units per hour, unless:
- (A) the unit is a boiler, utility boiler, or process heater operated above the maximum design heat input (as averaged over any one-hour period), in which case the maximum operated hourly rate must be used as the maximum rated capacity; or
- (B) the unit is limited by operating restriction or permit condition to a lesser heat input, in which case the limiting condition must be used as the maximum rated capacity; or

- (C) the unit is a stationary gas turbine, in which case the manufacturer's rated heat consumption at the International Standards Organization (ISO) conditions must be used as the maximum rated capacity, unless limited by permit condition to a lesser heat input, in which case the limiting condition must be used as the maximum rated capacity; or
- (D) the unit is a stationary, internal combustion engine, in which case the manufacturer's rated heat consumption at Diesel Equipment Manufacturer's Association or ISO conditions must be used as the maximum rated capacity, unless limited by permit condition to a lesser heat input, in which case the limiting condition must be used as the maximum rated capacity.
- (31) Megawatt (MW) rating--The continuous MW output rating or mechanical equivalent by a gas turbine manufacturer at International Standards Organization conditions, without consideration to the increase in gas turbine shaft output and/or the decrease in gas turbine fuel consumption by the addition of energy recovered from exhaust heat.
- $\mbox{(32)}$ Nitric acid--Nitric acid that is 30% to 100% in strength.
- (33) Nitric acid production unit--Any source producing nitric acid by either the pressure or atmospheric pressure process.
- (34) Nitrogen oxides (NO_x) --The sum of the nitric oxide and nitrogen dioxide in the flue gas or emission point, collectively expressed as nitrogen dioxide.
- (35) Parts per million by volume (ppmv)--All ppmv emission specifications specified in this chapter are referenced on a dry basis. When required to adjust pollutant concentrations to a specified oxygen (O₂) correction basis, the following equation must be used. Figure: 30 TAC §117.10(35) (No change.)
- (36) Peaking gas turbine or engine--A stationary gas turbine or engine used intermittently to produce energy on a demand basis.
- (37) Plant-wide emission rate--The ratio of the total actual nitrogen oxides mass emissions rate discharged into the atmosphere from affected units at a major source when firing at their maximum rated capacity to the total maximum rated capacities for those units.
- (38) Plant-wide emission specification--The ratio of the total allowable nitrogen oxides mass emissions rate dischargeable into the atmosphere from affected units at a major source when firing at their maximum rated capacity to the total maximum rated capacities for those units.
- (39) Predictive emissions monitoring system (PEMS)-The total equipment necessary for the continuous determination and recordkeeping of process gas concentrations and emission rates using process or control device operating parameter measurements and a conversion equation or computer program to produce results in units of the applicable emission limitation.
- (40) Process heater--Any combustion equipment fired with liquid and/or gaseous fuel that is used to transfer heat from combustion gases to a process fluid, superheated steam, or water for the purpose of heating the process fluid or causing a chemical reaction. The term "process heater" does not apply to any unfired waste heat recovery heater that is used to recover sensible heat from the exhaust of any combustion equipment, or to boilers as defined in this section.
- (41) Pyrolysis reactor--A unit that produces hydrocarbon products from the endothermic cracking of feedstocks such as ethane,

propane, butane, and naphtha using combustion to provide indirect heating for the cracking process.

- (42) Reheat furnace--A furnace that is used in the manufacturing, casting, or forging of metal to raise the temperature of that metal in the course of processing to a temperature suitable for hot working or shaping.
- (43) Rich-burn engine--A spark-ignited, Otto cycle, fourstroke, naturally aspirated or turbocharged engine that is capable of being operated with an exhaust stream oxygen concentration equal to or less than 0.5% by volume, as originally designed by the manufacturer.
- (44) Small utility system--All boilers, auxiliary steam boilers, and stationary gas turbines that are located in the Dallas-Fort Worth eight-hour ozone nonattainment area, and were part of one electric power generating system on January 1, 2000, that had a combined electric generating capacity less than 500 megawatts.
- (45) Stationary gas turbine--Any gas turbine system that is gas and/or liquid fuel fired with or without power augmentation. This unit is either attached to a foundation or is portable equipment operated at a specific minor or major source for more than 90 days in any 12-month period. Two or more gas turbines powering one shaft must be treated as one unit.
- (46) Stationary internal combustion engine--A reciprocating engine that remains or will remain at a location (a single site at a building, structure, facility, or installation) for more than 12 consecutive months. Included in this definition is any engine that, by itself or in or on a piece of equipment, is portable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of portability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine being replaced is included in calculating the consecutive residence time period. An engine is considered stationary if it is removed from one location for a period and then returned to the same location in an attempt to circumvent the consecutive residence time requirement. Nonroad engines, as defined in 40 Code of Federal Regulations §89.2, are not considered stationary for the purposes of this chapter.
- (47) System-wide emission rate--The ratio of the total actual nitrogen oxides mass emissions rate discharged into the atmosphere from affected units in an electric power generating system or portion thereof located within a single ozone nonattainment area when firing at their maximum rated capacity to the total maximum rated capacities for those units. For fuel oil firing, average activity levels must be used in lieu of maximum rated capacities for the purpose of calculating the system-wide emission rate.
- (48) System-wide emission specification--The ratio of the total allowable nitrogen oxides mass emissions rate dischargeable into the atmosphere from affected units in an electric power generating system or portion thereof located within a single ozone nonattainment area when firing at their maximum rated capacity to the total maximum rated capacities for those units. For fuel oil firing, average activity levels must be used in lieu of maximum rated capacities for the purpose of calculating the system-wide emission specification.
- (49) Thirty-day rolling average--An average, calculated for each day that fuel is combusted in a unit, of all the hourly emissions data for the preceding 30 days that fuel was combusted in the unit.
- (50) Twenty-four hour rolling average--An average, calculated for each hour that fuel is combusted (or acid is produced, for a nitric or adipic acid production unit), of all the hourly emissions data for the preceding 24 hours that fuel was combusted in the unit.

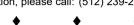
- (51) Unit--A unit consists of either:
- (A) for the purposes of §§117.105, 117.305, 117.405, 117.1005, and 117.1205 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)) and each requirement of this chapter associated with §§117.105, 117.305, 117.405, 117.1005, and 117.1205 of this title, any boiler, process heater, stationary gas turbine, or stationary internal combustion engine, as defined in this section:
- (B) for the purposes of §§117.110, 117.310, 117.1010, and 117.1210 of this title (relating to Emission Specifications for Attainment Demonstration) and each requirement of this chapter associated with §§117.110, 117.310, 117.1010, and 117.1210 of this title, any boiler, process heater, stationary gas turbine, or stationary internal combustion engine, as defined in this section, or any other stationary source of nitrogen oxides (NO $_x$) at a major source, as defined in this section:
- (C) for the purposes of §117.2010 of this title (relating to Emission Specifications) and each requirement of this chapter associated with §117.2010 of this title, any boiler, process heater, stationary gas turbine (including any duct burner in the turbine exhaust duct), or stationary internal combustion engine, as defined in this section;
- (D) for the purposes of §117.2110 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration) and each requirement of this chapter associated with §117.2110 of this title, any stationary internal combustion engine, as defined in this section;
- (E) for the purposes of §117.3310 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration) and each requirement of this chapter associated with §117.3310 of this title, any stationary internal combustion engine, as defined in this section; [of]
- (F) for the purposes of §117.410 and §117.1310 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration) and each requirement of this chapter associated with §117.410 and §117.1310 of this title, any boiler, process heater, stationary gas turbine, or stationary internal combustion engine, as defined in this section, or any other stationary source of NO_xat a major source, as defined in this section; [-]
- (G) for the purposes of §117.205 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)) and each requirement of this chapter associated with §117.205 of this title, any stationary gas turbine (including any duct burner used in the turbine exhaust duct) or gas-fired lean-burn stationary reciprocating internal combustion engine, as defined in this section; or
- (H) for the purposes of §117.1105 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)) and each requirement of this chapter associated with §117.1105 of this title, any utility boiler, auxiliary steam boiler, or stationary gas turbine (including any duct burner used in turbine exhaust ducts), as defined in this section.
- (52) Utility boiler--Any combustion equipment owned or operated by an electric cooperative, municipality, river authority, public utility, or Public Utility Commission of Texas regulated utility, fired with solid, liquid, and/or gaseous fuel, used to produce steam for the purpose of generating electricity. Stationary gas turbines, including any associated duct burners and unfired waste heat boilers, are not considered to be utility boilers.

(53) Wood--Wood, wood residue, bark, or any derivative fuel or residue thereof in any form, including, but not limited to, sawdust, sander dust, wood chips, scraps, slabs, millings, shavings, and processed pellets made from wood or other forest residues.

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

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Texas Commission on Environmental Quality
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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, 117.230, 117.235, 117.240, 117.245, 117.252

Statutory Authority

The new rules are proposed under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The new rules are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The proposed new rules implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

§117.200. Applicability.

This division applies to the following units located at any major stationary source of nitrogen oxides located in the Bexar County ozone nonattainment area:

- (1) stationary gas turbines;
- (2) duct burners used in turbine exhaust ducts; and
- (3) gas-fired lean-burn stationary reciprocating internal combustion engines.

§117.203. Exemptions.

The following units are exempt from this division, except as specified in §117.240(f), §117.245(f)(4) and (9), and §117.252 of this title (relating to Continuous Demonstration of Compliance; Notification, Record-keeping, and Reporting Requirements; and Control Plan Procedures for Reasonably Available Control Technology (RACT)):

- (1) stationary gas turbines and gas-fired lean-burn stationary reciprocating 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 gas turbines or engines 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; or
- (E) in response to and during the existence of any officially declared disaster or state of emergency;
- (2) gas-fired lean-burn stationary reciprocating internal combustion engines with a horsepower (hp) rating less than 50 hp;
- (3) stationary gas turbines with a maximum rated capacity less than 10.0 million British thermal units per hour; and
- (4) units located at a major source that is subject to Subchapter C, Division 2 of this chapter (related to Bexar County Ozone Nonattainment Area Utility Electric Generation Sources).
- §117.205. Emission Specifications for Reasonably Available Control Technology (RACT).
- (a) Emission specifications. 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 §117.9010 of this title (relating to Compliance Schedule for Bexar County Ozone Nonattainment Area Major Sources), except as provided in subsection (c) of this section:
- (1) stationary gas turbines, 0.55 pound per million British thermal unit (lb/MMBtu);
- (3) gas-fired lean-burn stationary reciprocating internal combustion engines, 0.5 gram per horsepower-hour.
- (b) NO_x averaging time. The emission specifications in subsection (a) of this section apply on:
- (1) a block one-hour average, in the units of the applicable standard; or
- (2) if the unit is operated with a NO_x continuous emissions monitoring system (CEMS) or predictive emissions monitoring system

- (PEMS) under §117.240 of this title (relating to Continuous Demonstration of Compliance), a rolling 30-day average, in the units of the applicable standard.
- (c) Compliance flexibility. An owner or operator may use §117.9800 of this title (relating to Use of Emission Credits for Compliance) to comply with the NO_e emission specifications of this section.
 - (d) 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 control plan requirements in §§117.235, 117.240, and 117.252 of this title (relating to Initial Demonstration of Compliance; Continuous Demonstration of Compliance; and Control Plan Procedures for Reasonably Available Control Technology) must be the greater of the following:
- (A) the maximum rated capacity as of December 31, 2019;
- (B) the maximum rated capacity after December 31, 2019; 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, 2019.
- (2) A unit's classification is determined by the most specific classification applicable to the unit as of December 31, 2019. For example, a unit that is classified as a gas-fired lean-burn stationary reciprocating internal combustion engine as of December 31, 2019, but subsequently is authorized to operate as a dual-fuel engine, is classified as a gas-fired lean-burn stationary reciprocating internal combustion engine for the purposes of this chapter.
- (3) A source that met the definition of major source on December 31, 2019, 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, 2019, but becomes a major source at any time after December 31, 2019, is from that time forward always classified as a major source for purposes of this chapter.

§117.230. Operating Requirements.

- All units subject to the emission specifications in §117.205 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)) must be operated to minimize nitrogen oxides (NO_x) emissions, consistent with the emission control techniques selected, over the unit's operating or load range during normal operations. Such operational requirements include the following.
- (1) Each unit controlled with post-combustion control techniques must be operated such that the reducing agent injection rate is maintained to limit NO_x concentrations to less than or equal to the NO_x concentrations achieved at maximum rated capacity.
- (2) Each gas-fired lean-burn stationary reciprocating internal combustion engine must be checked for proper operation of the engine according to §117.8140(b) of this title (relating to Emission Monitoring for Engines).
- §117.235. Initial Demonstration of Compliance.
- (a) The owner or operator of any unit subject to §117.205 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)) shall test the unit for nitrogen oxides (NO_x) and oxygen (O_x) emissions while firing gaseous fuel or, as applicable, liquid and solid fuel.

- (b) Initial demonstration of compliance testing must be performed in accordance with the schedule specified in §117.9010 of this title (relating to Compliance Schedule for Bexar County Ozone Nonattainment Area Major Sources).
- (c) The initial demonstration of compliance tests required by subsection (a) of this section must use the methods referenced in subsection (e) or (f) of this section and must be used for determination of initial compliance with the emission specifications of this division. Test results must be reported in the units of the applicable emission specifications and averaging periods.
- (d) Any continuous emissions monitoring system (CEMS) or any predictive emissions monitoring system (PEMS) required by §117.240 of this title (relating to Continuous Demonstration of Compliance) must be installed and operational before conducting testing under subsection (a) of this section. Verification of operational status must, at a minimum, include completion of the initial monitor certification and the manufacturer's written requirements or recommendations for installation, operation, and calibration of the device or system.
- (e) For units operating without CEMS or PEMS, compliance with the emission specifications of this division must be demonstrated according to the requirements of §117.8000 of this title (relating to Stack Testing Requirements).
- (f) For units operating with CEMS or PEMS in accordance with $\S117.240$ of this title, initial compliance with the emission specifications of this division must be demonstrated after monitor certification testing using the CEMS or PEMS. For units complying with a NO_x emission specification on a block one-hour average, every one-hour period while operating at the maximum rated capacity (or as near thereto as practicable) is used to determine compliance with the NO_x emission specification.
- (g) Compliance stack test reports must include the information required in §117.8010 of this title (relating to Compliance Stack Test Reports).
- §117.240. Continuous Demonstration of Compliance.
 - (a) Totalizing fuel flow meters.
- (1) The owner or operator of units subject to this division shall install, calibrate, maintain, and operate a totalizing fuel flow meter, with an accuracy of \pm 5%, to individually and continuously measure the gas and liquid fuel usage. A computer that collects, sums, and stores electronic data from continuous fuel flow meters is an acceptable totalizer. The owner or operator must continuously operate the totalizing fuel flow meter at least 95% of the time when the unit is operating during a calendar year. For the purpose of compliance with this subsection for units having pilot fuel supplied by a separate fuel system or from an unmonitored portion of the same fuel system, the fuel flow to pilots may be calculated using the manufacturer's design flow rates rather than measured with a fuel flow meter. The calculated pilot fuel flow rate must be added to the monitored fuel flow when fuel flow is totaled.
- (2) The following are alternatives to the fuel flow monitoring requirements of this subsection.
- (A) Units operating with a nitrogen oxides ($\mathrm{NO_x}$) and diluent continuous emissions monitoring system (CEMS) under subsection (c) of this section may monitor stack exhaust flow using the flow monitoring specifications of 40 Code of Federal Regulations (CFR) Part 60, Appendix B, Performance Specification 6 or 40 CFR Part 75, Appendix A.

- (B) Units that vent to a common stack with a NO_x and diluent CEMS under subsection (c) of this section may use a single totalizing fuel flow meter.
- (C) Gas-fired lean-burn stationary reciprocating internal combustion engines and gas turbines equipped with a continuous monitoring system that continuously monitors horsepower and hours of operation are not required to install totalizing fuel flow meters. The continuous monitoring system must be installed, calibrated, maintained, and operated according to manufacturers' recommended procedures.

(b) NO monitors.

- (1) The owner or operator of the following units shall install, calibrate, maintain, and operate a CEMS or predictive emissions monitoring system (PEMS) to monitor exhaust NO_v:
- (A) units with a rated heat input greater than or equal to 100 million British thermal units (MMBtu) per hour;
- (B) stationary gas turbines with a megawatt (MW) rating greater than or equal to 30 MW and operated more than 850 hours per year;
- (C) units that use a chemical reagent for reduction of NO,; and
- (D) units that the owner or operator elects to comply with the NO_x emission specifications of §117.205(a) of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)) using a pound per MMBtu limit on a 30-day rolling average.
- (2) Units subject to the NO_x CEMS requirements of 40 CFR Part $\overline{75}$ are not required to install CEMS or PEMS under this subsection.
- (3) The owner or operator shall use one of the following methods to provide substitute emissions compliance data during periods when the NO_v monitor is off-line:

(A) if the NO_v monitor is a CEMS:

- (i) subject to 40 CFR Part 75, use the missing data procedures specified in 40 CFR Part 75, Subpart D (Missing Data Substitution Procedures); or
- (ii) subject to 40 CFR Part 75, Appendix E, use the missing data procedures specified in 40 CFR Part 75, Appendix E, §2.5 (Missing Data Procedures);

(B) if the NO_x monitor is a PEMS:

- (i) use the methods specified in 40 CFR Part 75, Subpart D; or
- (ii) use calculations in accordance with §117.8110(b) of this title (relating to Emission Monitoring System Requirements for Utility Electric Generation Sources);
- (C) monitor operating parameters for each unit in accordance with 40 CFR Part 75, Appendix E, §1.1 or §1.2 and calculate NO, emission rates based on those procedures; or
- (D) use the maximum block one-hour emission rate as measured during the initial demonstration of compliance required in §117.235(e) of this title (relating to Initial Demonstration of Compliance).
- (c) CEMS requirements. The owner or operator of any CEMS used to meet a pollutant monitoring requirement of this section shall comply with the requirements of §117.8100(a) of this title (relating to

- Emission Monitoring System Requirements for Industrial, Commercial, and Institutional Sources).
- (d) PEMS requirements. The owner or operator of any PEMS used to meet a pollutant monitoring requirement of this section shall comply with the following.
- (1) The PEMS must predict the pollutant emissions in the units of the applicable emission limitations of this division.
- (2) The PEMS must meet the requirements of §117.8100(b) of this title.
- (e) Engine monitoring. The owner or operator of any gas-fired lean-burn stationary reciprocating internal combustion engine subject to the emission specifications of this division shall stack test engine NO_x emissions as specified in §117.8140(a) of this title (relating to Emission Monitoring for Engines).
- (f) Run time meters. The owner or operator of any stationary gas turbine or gas-fired lean-burn stationary reciprocating internal combustion engine claimed exempt using the exemption of §117.203(1)(D) of this title (relating to Exemptions) shall record the operating time with a non-resettable elapsed run time meter.
- (g) Data used for compliance. After the initial demonstration of compliance required by §117.235 of this title, the methods required in this section must be used to determine compliance with the emission specifications of §117.205(a) of this title. For enforcement purposes, the executive director may also use other commission compliance methods to determine whether the unit is in compliance with applicable emission specifications.

(h) Testing requirements.

- (1) The owner or operator of units that are subject to the emission specifications of §117.205(a) of this title shall test the units as specified in §117.235 of this title in accordance with the applicable schedule specified in §117.9010 of this title (relating to Compliance Schedule for Bexar County Eight-Hour Ozone Nonattainment Area Major Sources).
- (2) The owner or operator of any unit not equipped with CEMS or PEMS that are subject to the emission specifications of §117.205(a) of this title shall retest the unit as specified in §117.235 of this title within 60 days after any modification that could reasonably be expected to increase the NO_x emission rate.
- §117.245. Notification, Recordkeeping, and Reporting Requirements.
- (a) Startup and shutdown records. For units subject to the startup and/or shutdown provisions of §101.222 of this title (relating to Demonstrations), hourly records must be made of startup and/or shutdown events and maintained for a period of at least two years. Records must be available for inspection by the executive director, the United States Environmental Protection Agency, and any local air pollution control agency having jurisdiction upon request. These records must include but are not limited to: type of fuel burned; quantity of each type of fuel burned; and the date, time, and duration of the procedure.
- (b) Notification. The owner or operator of a unit subject to the emission specifications of §117.205(a) of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)) shall submit written notification of any continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) relative accuracy test audit (RATA) conducted under §117.240 of this title (relating to Continuous Demonstration of Compliance) or any testing conducted under §117.235 of this title (relating to Initial Demonstration of Compliance) at least 15 days in advance of the date

- of the RATA or testing to the appropriate regional office and any local air pollution control agency having jurisdiction.
- (c) Reporting of test results. The owner or operator of a unit subject to the emission specifications of §117.205(a) of this title shall furnish the Office of Compliance and Enforcement, the appropriate regional office, and any local air pollution control agency having jurisdiction a copy of any testing conducted under §117.235 of this title and any CEMS or PEMS RATA conducted under §117.240 of this title:
- (1) within 60 days after completion of such testing or evaluation; and
- (2) not later than the compliance schedule specified in §117.9010 of this title (relating to Compliance Schedule for Bexar County Eight-Hour Ozone Nonattainment Area Major Sources).
- (d) Semiannual reports. The owner or operator of a unit required to install a CEMS or PEMS under §117.240 of this title shall report in writing to the executive director on a semiannual basis any exceedance of the applicable emission specifications of this division and the monitoring system performance. All reports must be postmarked or received by the 30th day following the end of each calendar semiannual period (i.e., July 30 and January 30). Written reports must include the following information:
- (1) the magnitude of excess emissions computed in accordance with 40 Code of Federal Regulations §60.13(h), any conversion factors used, the date and time of commencement and completion of each time period of excess emissions, and the unit operating time during the reporting period;
- (2) specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the affected unit, the nature and cause of any malfunction (if known), and the corrective action taken, or preventative measures adopted;
- (3) the date and time identifying each period when the continuous monitoring system was inoperative, except for zero and span checks and the nature of the system repairs or adjustments;
- (4) when no excess emissions have occurred or the continuous monitoring system has not been inoperative, repaired, or adjusted, such information must be stated in the report; and
- (5) if the total duration of excess emissions for the reporting period is less than 1.0% of the total unit operating time for the reporting period and the CEMS or PEMS downtime for the reporting period is less than 5.0% of the total unit operating time for the reporting period, only a summary report form (as outlined in the latest edition of the commission's Guidance for Preparation of Summary, Excess Emission, and Continuous Monitoring System Reports) must be submitted, unless otherwise requested by the executive director. If the total duration of excess emissions for the reporting period is greater than or equal to 1.0% of the total unit operating time for the reporting period or the CEMS or PEMS downtime for the reporting period is greater than or equal to 5.0% of the total unit operating time for the reporting period, a summary report and an excess emission report must both be submitted.
- (e) Reporting for engines. The owner or operator of any gasfired engine subject to the emission specifications in §117.205 of this title shall report in writing to the executive director on a semiannual basis any excess emissions and the air-fuel ratio monitoring system performance. All reports must be postmarked or received by the 30th day following the end of each calendar semiannual period (i.e., July 30 and January 30). Written reports must include the following information:
- (1) the magnitude of excess emissions (based on the quarterly emission checks of §117.230(a)(2) of this title (relating to Operating Requirements) and the biennial emission testing re-

- quired for demonstration of emissions compliance in accordance with §117.240(e) of this title), computed in pounds per hour and grams per horsepower-hour, any conversion factors used, the date and time of commencement and completion of each time period of excess emissions, and the engine operating time during the reporting period; and
- (2) specific identification, to the extent feasible, of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the engine or emission control system, the nature and cause of any malfunction (if known), and the corrective action taken, or preventative measures adopted.
- (f) Recordkeeping. The owner or operator of a unit subject to the requirements of this division shall maintain written or electronic records of the data specified in this subsection. Such records must be kept for a period of at least five years and must be made available upon request by authorized representatives of the executive director, the United States Environmental Protection Agency, or local air pollution control agencies having jurisdiction. The records must include:
- (1) for each unit subject to §117.240(a) of this title, records of annual fuel usage;
- (2) for each unit using a CEMS or PEMS in accordance with §117.240 of this title, monitoring records of:
- (A) hourly emissions and fuel usage (or stack exhaust flow) for units complying with an emission specification enforced on a block one-hour average; or
- (B) daily emissions and fuel usage (or stack exhaust flow) for units complying with an emission specification enforced on a daily or rolling 30-day average. Emissions must be recorded in units of:
- (lb/MMBtu) heat input; and
 - (ii) pounds or tons per day;
- (3) for each stationary internal combustion engine subject to the emission specifications of this division, records of:
 - (A) emissions measurements required by:
 - (i) §117.230(2) of this title; and
 - (ii) §117.240(e) of this title;
- (B) catalytic converter, air-fuel ratio controller, or other emissions-related control system maintenance, including the date and nature of corrective actions taken; and
- (C) daily average horsepower and total daily hours of operation for each engine that the owner or operator elects to use the alternative monitoring system allowed under §117.240(a)(2)(C) of this title;
- (4) for units claimed exempt from emission specifications using the exemption of §117.203(1)(D) of this title (relating to Exemptions), records of monthly hours of operation, for exemptions based on hours per year of operation. In addition, for each turbine or engine claimed exempt under §117.203(1)(D) or (E) of this title, written records must be maintained of the purpose of turbine or engine operation and, if operation was for an emergency situation, identification of the type of emergency situation and the start and end times and date(s) of the emergency situation;
- (5) records of the results of initial certification testing, evaluations, calibrations, checks, adjustments, and maintenance of CEMS or PEMS; and

- (6) records of the results of performance testing, including initial demonstration of compliance testing conducted in accordance with §117.235 of this title.
- §117.252. Control Plan Procedures for Reasonably Available Control Technology.
- (a) The owner or operator of any unit subject to \$117.205 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)) at a major source of nitrogen oxides (NO_x) shall maintain a control plan report to show compliance with the requirements of \$117.205 of this title. The report must include:
- (1) a list of all units that are subject to §117.205 of this title. The list must include for each unit:
- (A) the facility identification number and emission point number as submitted to the Emissions Assessment Section of the commission; and
- (B) the emission point number as listed on the Maximum Allowable Emissions Rate Table of any applicable commission permit;
 - (C) the maximum rated capacity;
 - (D) the method of NO_x control for each unit;
- (E) the emissions measured by testing required in §117.235 of this title (relating to Initial Demonstration of Compliance);
- (F) the compliance stack test report or monitor certification report required by §117.235 of this title; and
- (G) the use of any compliance flexibility in accordance with §117.9800 of this title (relating to Use of Emission Credits for Compliance); and
- (2) a list of all units with a claimed exemption from the emission specification of §117.205 of this title and the specific rule citation claimed as the basis for that exemption.
- (b) 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 control plans in §117.9010 of this title (relating to Compliance Schedule for Bexar County Major Sources).
- (c) For any unit that becomes subject to §117.205 of this title after the applicable date specified for control plans in §117.9010 of this title, the control plan must be submitted to the Office of Compliance and Enforcement, the appropriate regional office, and the Office of Air no later than 60 days after becoming subject.
- (d) If any of the information changes in a control plan report submitted in accordance with subsection (b) or (c) of this section, including functionally identical replacements, the control plan must be updated no later than 60 days after the change occurs. Written or electronic records of the updated control plan must be kept for a period of at least five years and must be made available upon request by authorized representatives of the executive director, the United States Environmental Protection Agency, or local air pollution control agencies having jurisdiction.

The 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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Charmaine Backens

Deputy Director, Environmental Law Division Texas Commission on Environmental Quality Earliest possible date of adoption: January 14, 2024 For further information, please call: (512) 239-2678



DIVISION 3. HOUSTON-GALVESTON-BRAZORIA OZONE NONATTAINMENT AREA MAJOR SOURCES

30 TAC §117.310, §117.340

Statutory Authority

The amended rules are proposed under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The proposed amendments implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

- §117.310. Emission Specifications for Attainment Demonstration.
- (a) Emission specifications for the Mass Emission Cap and Trade Program. The nitrogen oxides (NO₂) emission rate values used to determine allocations for Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program) must be the lower of any applicable permit limit in a permit issued before January 2, 2001; any permit issued on or after January 2, 2001, that the owner or operator submitted an application determined to be administratively complete by the executive director before January 2, 2001; any limit in a permit by rule under which construction commenced by January 2, 2001; or the following emission specifications:
 - (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_x), dry basis);
- (2) fluid catalytic cracking units (including carbon monoxide (CO) boilers, CO furnaces, and catalyst regenerator vents), one of the following:
 - (A) 40 ppmv NO_x at 0.0% O_x, dry basis;
- (B) a 90% $\rm NO_x$ reduction of the exhaust concentration used to calculate the June August 1997 daily $\rm NO_x$ emissions. To ensure that this emission specification will result in a real 90% reduction in actual emissions, a consistent methodology must be used to calculate the 90% reduction; or
- (C) alternatively, for units that did not use a continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) to determine the June August 1997 exhaust concentration, the owner or operator may:
- (i) install and certify a NO_x CEMS or PEMS as specified in §117.340(f) or (g) of this title (relating to Continuous Demonstration of Compliance) no later than June 30, 2001;
- (ii) establish the baseline NO_x emission level to be the third quarter 2001 data from the CEMS or PEMS;
- (iii) provide this baseline data to the executive director no later than October 31, 2001; and
- (iv) achieve a 90% ${\rm NO_x}$ reduction of the exhaust concentration established in this baseline;
- (3) boilers and industrial furnaces (BIF units) that were regulated as existing facilities in 40 Code of Federal Regulations (CFR) Part 266, Subpart H (as was in effect on June 9, 1993):
- (A) with a maximum rated capacity equal to or greater than $100~\text{MMBtu/hr},\,0.015~\text{lb/MMBtu};\,\text{and}$
- (B) with a maximum rated capacity less than 100 MMBtu/hr:
 - (i) 0.030 lb/MMBtu; or
- (ii) an 80% reduction from the emission factor used to calculate the June August 1997 daily $\mathrm{NO_x}$ emissions. 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;
 - (4) coke-fired boilers, 0.057 lb/MMBtu;
 - (5) wood fuel-fired boilers, 0.060 lb/MMBtu;
 - (6) rice hull-fired boilers, 0.089 lb/MMBtu;
- (7) liquid-fired boilers, 2.0 pounds per 1,000 gallons of liquid burned;
 - (8) process heaters:
 - (A) other than pyrolysis reactors:
- (i) with a maximum rated capacity equal to or greater than 40 MMBtu/hr, 0.025 lb/MMBtu; and
- (ii) with a maximum rated capacity less 40 MMBtu/hr, 0.036 lb/MMBtu (or alternatively, 30 ppmv NO_x , at 3.0% O,, dry basis); and
 - (B) pyrolysis reactors, 0.036 lb/MMBtu;
 - (9) 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, except as specified in subparagraph (C) of this paragraph:
 - (i) fired on landfill gas, 0.60 g/hp-hr; and
 - (ii) all others, 0.50 g/hp-hr;
 - (C) dual-fuel engines:
- (i) with initial start of operation on or before December 31, 2000, 5.83 g/hp-hr; and
- (ii) with initial start of operation after December 31, 2000, 0.50 g/hp-hr; and
- (D) diesel engines, excluding dual-fuel engines, placed into service before October 1, 2001, that have not been modified, reconstructed, or relocated on or after October 1, 2001, the lower of 11.0 g/hp-hr or the emission rate established by testing, monitoring, manufacturer's guarantee, or manufacturer's other data. 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 CFR §60.15 (December 16, 1975), respectively, and the term "relocated" means to newly install at an account, as defined in §101.1 of this title (relating to Definitions), a used engine from anywhere outside that account; and
- (E) for diesel engines, excluding dual-fuel engines, not subject to subparagraph (D) of this paragraph:
- (i) with a horsepower rating of less than 11 horsepower (hp) that are installed, modified, reconstructed, or relocated:
- (I) on or after October 1, 2001, but before October 1, 2004, 7.0 g/hp-hr; and
 - (II) on or after October 1, 2004, 5.0 g/hp-hr;
- (ii) with a horsepower rating of 11 hp or greater, but less than 25 hp, that are installed, modified, reconstructed, or relocated:
- (I) on or after October 1, 2001, but before October 1, 2004, 6.3 g/hp-hr; and
 - (II) on or after October 1, 2004, 5.0 g/hp-hr;
- (iii) with a horsepower rating of 25 hp or greater, but less than 50 hp, that are installed, modified, reconstructed, or relocated:
- (I) on or after October 1, 2001, but before October 1, 2003, 6.3 g/hp-hr; and
 - (II) on or after October 1, 2003, 5.0 g/hp-hr;
- (iv) with a horsepower rating of 50 hp or greater, but less than 100 hp, that are installed, modified, reconstructed, or relocated:
- $(\it{I})~$ on or after October 1, 2001, but before October 1, 2003, 6.9 g/hp-hr;
- (II) on or after October 1, 2003, but before October 1, 2007, 5.0 g/hp-hr; and
 - (III) on or after October 1, 2007, 3.3 g/hp-hr;
- (v) with a horsepower rating of 100 hp or greater, but less than 175 hp, that are installed, modified, reconstructed, or relocated:

- (1) on or after October 1, 2001, but before October 1, 2002, 6.9 g/hp-hr;
- (II) on or after October 1, 2002, but before October 1, 2006, 4.5 g/hp-hr; and
 - (III) on or after October 1, 2006, 2.8 g/hp-hr;
- (vi) with a horsepower rating of 175 hp or greater, but less than 300 hp, that are installed, modified, reconstructed, or relocated:
- (I) on or after October 1, 2001, but before October 1, 2002, 6.9 g/hp-hr;
- (II) on or after October 1, 2002, but before October 1, 2005, 4.5 g/hp-hr; and
 - (III) on or after October 1, 2005, 2.8 g/hp-hr;
- (vii) with a horsepower rating of 300 hp or greater, but less than 600 hp, that are installed, modified, reconstructed, or relocated:
- (1) on or after October 1, 2001, but before October 1, 2005, 4.5 g/hp-hr; and
 - (II) on or after October 1, 2005, 2.8 g/hp-hr;
- (viii) with a horsepower rating of 600 hp or greater, but less than or equal to 750 hp, that are installed, modified, reconstructed, or relocated:
- (I) on or after October 1, 2001, but before October 1, 2005, 4.5 g/hp-hr; and
 - (II) on or after October 1, 2005, 2.8 g/hp-hr; and
- (ix) with a horsepower rating of 750 hp or greater that are installed, modified, reconstructed, or relocated:
- (I) on or after October 1, 2001, but before October 1, 2005, 6.9 g/hp-hr; and
 - (II) on or after October 1, 2005, 4.5 g/hp-hr;
 - (10) stationary gas turbines:
- (A) rated at 10.0 megawatts (MW) or greater, 0.032 lb/MMBtu:
- (B) rated at 1.0 MW or greater, but less than 10.0 MW, 0.15 lb/MMBtu; and
 - (C) rated at less than 1.0 MW, 0.26 lb/MMBtu;
- (11) duct burners used in turbine exhaust ducts, the corresponding gas turbine emission specification of paragraph (10) of this subsection;
 - (12) pulping liquor recovery furnaces, either:
 - (A) 0.050 lb/MMBtu; or
 - (B) 1.08 pounds per air-dried ton of pulp;
 - (13) kilns:

and

- (A) lime kilns, 0.66 pounds per ton of calcium oxide;
- (B) lightweight aggregate kilns, 1.25 pounds per ton of product;
 - (14) metallurgical furnaces:
 - (A) heat treating furnaces, 0.087 lb/MMBtu; and
 - (B) reheat furnaces, 0.062 lb/MMBtu;

- (15) magnesium chloride fluidized bed dryers, a 90% reduction from the emission factor used to calculate the 1997 ozone season daily NO, emissions;
 - (16) incinerators, either of the following:
- (A) an 80% reduction from the emission factor used to calculate the June August 1997 daily $\mathrm{NO_x}$ emissions. 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; and

- (17) as an alternative to the emission specifications in paragraphs (1) (16) of this subsection for units with an annual capacity factor of 0.0383 or less, 0.060 lb/MMBtu. For units placed into service on or before January 1, 1997, the 1997 1999 average annual capacity factor must be used to determine whether the unit is eligible for the emission specification of this paragraph. For units placed into service after January 1, 1997, the annual capacity factor must be calculated from two consecutive years in the first five years of operation to determine whether the unit is eligible for the emission specification of this paragraph, using the same two consecutive years chosen for the activity level baseline. The five-year period begins at the end of the adjustment period as defined in §101.350 of this title (relating to Definitions).
- (b) ${
 m NO_x}$ averaging time. The averaging time for the emission specifications of subsection (a) of this section must be as specified in Chapter 101, Subchapter H, Division 3 of this title, except that electric generating facilities (EGFs) must also comply with the daily and 30-day system cap emission limitations of §117.320 of this title (relating to System Cap).
- (c) Related emissions. No person shall allow the discharge into the atmosphere from any unit subject to subsection (a) of this section, emissions in excess of the following, except as provided in §117.325 of this title (relating to Alternative Case Specific Specifications) or paragraph (3) or (4) of this subsection.
- (1) 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 one-hour average, for units not equipped with CEMS or PEMS for CO.
- (2) For units that inject urea or ammonia into the exhaust stream for NO_x control, ammonia emissions must not exceed 10 ppmv at 3.0% O_2 , dry, for boilers and process heaters; 15% O_2 , dry, for stationary gas turbines (including duct burners used in turbine exhaust ducts), gas-fired lean-burn engines, [and] lightweight aggregate kilns, and diesel engines; 0.0% O_2 , dry, for fluid catalytic cracking units (including CO boilers, CO furnaces, and catalyst regenerator vents); 7.0% O_2 , dry, for BIF units that were regulated as existing facilities in 40 CFR Part 266, Subpart H (as was in effect on June 9, 1993), wood-fired boilers, and incinerators; and 3.0% O_3 , dry, for all other units, based on:
- $\hbox{(A)} \quad \hbox{a block one-hour averaging period for units not equipped with a CEMS or PEMS for ammonia; or }$
- (B) a rolling 24-hour averaging period for units equipped with CEMS or PEMS for ammonia.
- (3) The correction of CO emissions to $3.0\% O_2$, dry basis, in paragraph (1) of this subsection does not apply to the following units:

- (A) lightweight aggregate kilns; and
- (B) boilers and process heaters operating at less than 10% of maximum load and with stack O_2 in excess of 15% (i.e., hotstandby mode).
- (4) The CO limits in paragraph (1) of this subsection do not apply to the following units:
- (A) BIF units that were regulated as existing facilities in 40 CFR Part 266, Subpart H (as was in effect on June 9, 1993) and that are subject to subsection (a)(3) of this section; and
- (B) incinerators subject to the CO limits of one of the following:
- (i) §111.121 of this title (relating to Single-, Dual-, and Multiple-Chamber Incinerators);
- (ii) §113.2072 of this title (relating to Emission Limits) for hospital/medical/infectious waste incinerators; or
- (iii) 40 CFR Part 264 or 265, Subpart O, for hazardous waste incinerators.
 - (d) Compliance flexibility.
- (1) Section 117.325 of this title is not an applicable method of compliance with the NO_x emission specifications of this section.
- (2) An owner or operator may petition the executive director for an alternative to the CO or ammonia specifications of this section in accordance with §117.325 of this title.
- (3) An owner or operator may not use the alternative methods specified in §§117.315, 117.323, and 117.9800 of this title (relating to Alternative Plant-Wide Emission Specifications; Source Cap; and Use of Emission Credits for Compliance) to comply with the NO_x emission specifications of this section. The owner or operator shall use the mass emissions cap and trade program in Chapter 101, Subchapter H, Division 3 of this title to comply with the NO_x emission specifications of this section, except that electric generating facilities must also comply with the daily and 30-day system cap emission limitations of §117.320 of this title. An owner or operator may use the alternative methods specified in §117.9800 of this title for purposes of complying with §117.320 of this title.

(e) Prohibition of circumvention:

- (1) the maximum rated capacity used to determine the applicability of the emission specifications in subsection (a) of this section and the initial control plan, compliance demonstration, monitoring, testing requirements, and final control plan in §§117.335, 117.340, 117.350, and 117.354 of this title (relating to Initial Demonstration of Compliance; Continuous Demonstration of Compliance; Initial Control Plan Procedures; and Final Control Plan Procedures for Attainment Demonstration Emission Specifications) must be:
 - (A) the greater of the following:
 - (i) the maximum rated capacity as of December 31,

2000; or

(ii) the maximum rated capacity after December 31,

2000; or

(B) alternatively, 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) on or after January 2, 2001, that the owner or operator submitted an application determined to be administratively complete by the executive director before January 2, 2001, provided that the maximum rated capacity authorized by the permit issued on or after January 2, 2001,

is no less than the maximum rated capacity represented in the permit application as of January 2, 2001;

- (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 boiler as of December 31, 2000, but subsequently is authorized to operate as a BIF unit, is classified as a boiler for the purposes of this chapter. In another 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 subsection (a) of this section (ESAD unit) that result in increased NO_x emissions from a unit not subject to subsection (a) of this section (non-ESAD unit), 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, is only allowed if:
- (A) the increase in NO_x emissions at the non-ESAD unit is determined using a CEMS or PEMS that meets the requirements of §117.340(f) or (g) of this title, or through stack testing that meets the requirements of §117.335(e) of this title; and
- (B) a deduction in allowances equal to the increase in NO_x emissions at the non-ESAD unit is made as specified in §101.354 of this title (relating to Allowance Deductions);
- (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 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 chapter; and
- (5) the availability under subsection (a)(17) 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 on December 31, 2000. Reduced operation after December 31, 2000, cannot be used to qualify for a more lenient emission specification under subsection (a)(17) of this section than would otherwise apply to the unit.
- (f) Operating restrictions. No person shall start or operate any stationary diesel or dual-fuel engine for testing or maintenance 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 in the months of April through October.
- §117.340. Continuous Demonstration of Compliance.
- (a) Totalizing fuel flow meters. The owner or operator of units listed in this subsection shall install, calibrate, maintain, and operate a totalizing fuel flow meter, with an accuracy of \pm 5%, to individually and continuously measure the gas and liquid fuel usage. A computer that collects, sums, and stores electronic data from continuous fuel flow meters is an acceptable totalizer. The owner or operator of units with totalizing fuel flow meters installed prior to March 31, 2005, that do not meet the accuracy requirements of this subsection shall either recertify or replace existing meters to meet the \pm 5% accuracy required as soon as practicable but no later than March 31, 2007. For the purpose of compliance with this subsection for units having pilot fuel supplied

by a separate fuel system or from an unmonitored portion of the same fuel system, the fuel flow to pilots may be calculated using the manufacturer's design flow rates rather than measured with a fuel flow meter. The calculated pilot fuel flow rate must be added to the monitored fuel flow when fuel flow is totaled.

(1) The units are the following:

- (A) for units that are subject to §117.305 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)), for stationary gas turbines that are exempt under §117.303(b)(7) of this title (relating to Exemptions):
- (i) if individually rated more than 40 million British thermal units per hour (MMBtu/hr):
 - (I) boilers;
 - (II) process heaters;
- (III) boilers and industrial furnaces that were regulated as existing facilities by 40 Code of Federal Regulations (CFR) Part 266, Subpart H, as was in effect on June 9, 1993; and
- $\ensuremath{\textit{(IV)}}$ gas turbine supplemental-fired waste heat recovery units;
- (ii) stationary reciprocating internal combustion engines not exempt by §117.303(a)(6), (a)(8), (b)(9), or (b)(10) of this title;
- (iii) stationary gas turbines with a megawatt (MW) rating greater than or equal to 1.0 MW operated more than 850 hours per year; and
- (iv) fluid catalytic cracking unit boilers using supplemental fuel; and
- (B) for units subject to §117.310 of this title (relating to Emission Specifications for Attainment Demonstration):
- (i) boilers (excluding wood-fired boilers that must comply by maintaining records of fuel usage as required in §117.345(f) of this title (relating to Notification, Recordkeeping, and Reporting Requirements) or monitoring in accordance with paragraph (2)(A) of this subsection);
 - (ii) process heaters;
- (iii) 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;
 - (iv) duct burners used in turbine exhaust ducts;
- (v) stationary, reciprocating internal combustion engines;
 - (vi) stationary gas turbines;
- (vii) fluid catalytic cracking unit boilers and furnaces using supplemental fuel;
 - (viii) lime kilns;
 - (ix) lightweight aggregate kilns;
 - (x) heat treating furnaces;
 - (xi) reheat furnaces;
 - (xii) magnesium chloride fluidized bed dryers; and
- (xiii) incinerators (excluding vapor streams resulting from vessel cleaning routed to an incinerator, provided that fuel

- usage is quantified using good engineering practices, including calculation methods in general use and accepted in new source review permitting in Texas. All other fuel and vapor streams must be monitored in accordance with this subsection).
- (2) The following are alternatives to the fuel flow monitoring requirements of paragraph (1) of this subsection.
- (A) Units operating with a nitrogen oxides (NO_x) and diluent continuous emissions monitoring system (CEMS) under subsection (f) of this section may monitor stack exhaust flow using the flow monitoring specifications of 40 CFR Part 60, Appendix B, Performance Specification 6 or 40 CFR Part 75, Appendix A.
- (B) Units that vent to a common stack with a NO_x and diluent CEMS under subsection (f) of this section may use a single totalizing fuel flow meter.
- (C) Diesel engines operating with run time meters may meet the fuel flow monitoring requirements of this subsection through monthly fuel use records maintained for each engine.
- (D) Stationary reciprocating internal combustion engines and stationary gas turbines equipped with a continuous monitoring system that continuously monitors horsepower and hours of operation are not required to install totalizing fuel flow meters. The continuous monitoring system must be installed, calibrated, maintained, and operated according to manufacturers' recommended procedures.
 - (b) Oxygen (O₂) monitors.
- (1) The owner or operator shall install, calibrate, maintain, and operate an O₂ monitor to measure exhaust O₂ concentration on the following units operated with an annual heat input greater than 2.2(10 ¹¹) British thermal units per year (Btu/yr):
- (A) boilers with a rated heat input greater than or equal to $100 \ MMBtu/hr;$ and
- (B) process heaters with a rated heat input greater than or equal to 100 MMBtu/hr, except as provided in subsection (g) of this section.
 - (2) The following are not subject to this subsection:
- (A) units listed in $\S117.303(b)(3)$ (5) and (8) (10) of this title;
- (B) process heaters operating with a carbon dioxide CEMS for diluent monitoring under subsection (g) of this section; and
 - (C) wood-fired boilers.
- (3) The O₂ monitors required by this subsection are for process monitoring (predictive monitoring inputs, boiler trim, or process control) and are only required to meet the location specifications and quality assurance procedures referenced in subsection (f) of this section if O₂ is the monitored diluent under that subsection. However, if new O₂ monitors are required as a result of this subsection, the criteria in subsection (f) of this section should be considered the appropriate guidance for the location and calibration of the monitors.
 - (c) NO_x monitors.
- (1) The owner or operator of units listed in this paragraph shall install, calibrate, maintain, and operate a CEMS or predictive emissions monitoring system (PEMS) to monitor exhaust NO_x . The units are:
- (A) boilers with a rated heat input greater than or equal to 250 MMBtu/hr and an annual heat input greater than 2.2(10¹¹) Btu/yr;

- (B) process heaters with a rated heat input greater than or equal to 200 MMBtu/hr and an annual heat input greater than 2.2(10¹¹) Btu/yr;
- (C) stationary gas turbines with an MW rating greater than or equal to 30 MW operated more than 850 hours per year;
- (D) units that use a chemical reagent for reduction of NO_{\circ} ;
- (E) units that the owner or operator elects to comply with the NO_x emission specifications of §117.305 of this title using a pound per MMBtu (lb/MMBtu) limit on a 30-day rolling average;
 - (F) lime kilns and lightweight aggregate kilns;
- (G) units with a rated heat input greater than or equal to 100 MMBtu/hr that are subject to §117.310(a) of this title; and
- (H) fluid catalytic cracking units (including carbon monoxide (CO) boilers, CO furnaces, and catalyst regenerator vents). In addition, the owner or operator shall monitor the stack exhaust flow rate with a flow meter using the flow monitoring specifications of 40 CFR Part 60, Appendix B, Performance Specification 6 or 40 CFR Part 75, Appendix A.
- (2) The following are not required to install CEMS or PEMS under this subsection:
- (A) for purposes of §117.305 of this title, units listed §117.303(b)(3) (5) and (8) (10) of this title; [and]
- (B) units subject to the NO_x CEMS requirements of 40 CFR Part 75; and [-]
- (C) stationary diesel engines equipped with selective catalytic reduction (SCR) systems that meet the following criteria.
- (i) The SCR system must use a reductant other than the engine's fuel.
- (ii) The SCR system must operate with a diagnostic system that monitors reductant quality and tank levels.
- (iii) The diagnostic system must alert owners or operators to the need to refill the reductant tank before it is empty or to replace the reductant if the reductant does not meet applicable concentration specifications.
- (iv) If the SCR system uses input from an exhaust NO_x sensor (or other sensor) to alert owners or operators when the reductant quality is inadequate, the reductant quality does not need to be monitored separately by the diagnostic system.
- (v) The reductant tank level must be monitored in accordance with the manufacturer's design to demonstrate compliance with this subparagraph.
- (vi) The method of alerting an owner or operator must be a visual or audible alarm.
- (3) The owner or operator shall use one of the following methods to provide substitute emissions compliance data during periods when the NO₂ monitor is off-line:
 - (A) if the NO_x monitor is a CEMS:
- (i) subject to 40 CFR Part 75, use the missing data procedures specified in 40 CFR Part 75, Subpart D (Missing Data Substitution Procedures); or
- (ii) subject to 40 CFR Part 75, Appendix E, use the missing data procedures specified in 40 CFR Part 75, Appendix E, §2.5 (Missing Data Procedures);

- (B) use 40 CFR Part 75, Appendix E monitoring in accordance with §117.1240(e) of this title (relating to Continuous Demonstration of Compliance);
 - (C) if the NO_v monitor is a PEMS:
- (i) use the methods specified in 40 CFR Part 75, Subpart D; or
- (ii) use calculations in accordance with §117.8110(b) of this title (relating to Emission Monitoring System Requirements for Utility Electric Generation Sources); or
- (D) use the maximum block one-hour emission rate as measured during the initial demonstration of compliance required in §117.335(f) of this title (relating to Initial Demonstration of Compliance); or
 - (E) use the following procedures:
- (i) for $\mathrm{NO_x}$ monitor downtime periods less than 24 consecutive hours, use the maximum block one-hour $\mathrm{NO_x}$ emission rate, in lb/MMBtu, from the previous 24 operational hours of the unit;
- (ii) for $\mathrm{NO_x}$ monitor downtime periods equal to or greater than 24 consecutive hours, use the maximum block one-hour $\mathrm{NO_x}$ emission rate, in lb/MMBtu, from the previous 720 operational hours of the unit; and
- (iii) if the fuel flow or stack exhaust flow monitor required by subsection (a) of this section is off-line simultaneous with the NO_x monitor downtime, the owner or operator shall use the maximum block one-hour NO_x pound per hour emission rate for the substitute data under clause (i) or (ii) of this subparagraph in lieu of the lb/MMBtu emission rate.
- (d) Ammonia monitoring requirements. The owner or operator of units that are subject to the ammonia emission specifications of §117.310(c)(2) of this title shall comply with the ammonia monitoring requirements of §117.8130 of this title (relating to Ammonia Monitoring). Units identified in subsection (c)(2)(C) of this section are exempt from the ammonia monitoring requirements of this subsection.
- (e) CO monitoring. The owner or operator shall monitor CO exhaust emissions from each unit listed in subsection (c)(1) of this section using one or more of the methods specified in §117.8120 of this title (relating to Carbon Monoxide (CO) Monitoring).
- (f) CEMS requirements. The owner or operator of any CEMS used to meet a pollutant monitoring requirement of this section shall comply with the following.
- (1) The CEMS must meet the requirements of §117.8100(a) of this title (relating to Emission Monitoring System Requirements for Industrial, Commercial, and Institutional Sources).
 - (2) For units subject to §117.310 of this title:
- (A) all bypass stacks must be monitored, in order to quantify emissions directed through the bypass stack:
- $\ensuremath{\textit{(i)}}$ if the CEMS is located upstream of the bypass stack, then:
- (I) no effluent streams from other potential sources of ${\rm NO_x}$ emissions may be introduced between the CEMS and the bypass stack; and
- (II) the owner or operator shall install, operate, and maintain a continuous monitoring system to automatically record the date, time, and duration of each event when the bypass stack is open; and

- (ii) process knowledge and engineering calculations may be used to determine volumetric flow rate for purposes of calculating mass emissions for each event when the bypass stack is open, provided that:
- (I) the maximum potential calculated flow rate is used for emission calculations; and
- (II) the owner or operator maintains, and makes available upon request by the executive director, records of all process information and calculations used for this determination; and
- (B) exhaust streams of units that vent to a common stack do not need to be analyzed separately.
- (g) PEMS requirements. The owner or operator of any PEMS used to meet a pollutant monitoring requirement of this section shall comply with the following.
- (1) The PEMS must predict the pollutant emissions in the units of the applicable emission specifications of this division (relating to Houston-Galveston-Brazoria Ozone Nonattainment Area Major Sources).
- (2) The PEMS must meet the requirements of §117.8100(b) of this title.
- (h) Engine monitoring. The owner or operator of any stationary gas engine subject to $\S117.305$ of this title that is not equipped with NO $_{\rm x}$ CEMS or PEMS shall stack test engine NO $_{\rm x}$ and CO emissions as specified in $\S117.8140(a)$ of this title (relating to Emission Monitoring for Engines). The owner or operator of any stationary internal combustion engine subject to $\S117.310$ of this title that is not equipped with NO $_{\rm x}$ CEMS or PEMS shall stack test engine NO $_{\rm x}$ and CO emissions as specified in $\S117.8140(a)$ and (b) of this title.
- (i) Monitoring for stationary gas turbines less than 30 MW. The owner or operator of any stationary gas turbine rated less than 30 MW using steam or water injection to comply with the emission specifications of §117.305 or §117.315 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT) and Alternative Plant-Wide Emission Specifications) shall either:
- (1) install, calibrate, maintain, and operate a NO_x CEMS or PEMS in compliance with this section and monitor CO in compliance with subsection (e) of this section; or
- (2) install, calibrate, maintain, and operate a continuous monitoring system to monitor and record the average hourly fuel and steam or water consumption:
 - (A) the system must be accurate to within \pm 5.0%;
- (B) the steam-to-fuel or water-to-fuel ratio monitoring data must constitute the method for demonstrating continuous compliance with the applicable emission specification of §117.305 or §117.315 of this title; and
- (C) steam or water injection control algorithms are subject to executive director approval.
- (j) Run time meters. The owner or operator of any stationary gas turbine or stationary internal combustion engine claimed exempt using the exemption of §117.303(a)(6)(D), (a)(10), (a)(11), (b)(2) or (b)(9) of this title shall record the operating time with an elapsed run time meter. Any run time meter installed on or after October 1, 2001, must be non-resettable.
- (k) Hydrogen (H₂) monitoring. The owner or operator claiming the H₂ multiplier of §117.305(b)(6) or §117.315(g)(4) or (h) of this title shall sample, analyze, and record every three hours the fuel gas composition to determine the volume percent H₂.

- (1) The total H₂ volume flow in all gaseous fuel streams to the unit must be divided by the total gaseous volume flow to determine the volume percent of H₂ in the fuel supply to the unit.
- (2) Fuel gas analysis must be tested according to American Society for Testing and Materials (ASTM) Method D1945-81 or ASTM Method D2650-83, or other methods that are demonstrated to the satisfaction of the executive director and the United States Environmental Protection Agency to be equivalent.
- (3) A gaseous fuel stream containing 99% H_2 by volume or greater may use the following procedure to be exempted from the sampling and analysis requirements of this subsection.
- (A) A fuel gas analysis must be performed initially using one of the test methods in this subsection to demonstrate that the gaseous fuel stream is 99% H, by volume or greater.
- (B) The process flow diagram of the process unit that is the source of the H₂ must be supplied to the executive director to illustrate the source and supply of the hydrogen stream.
- (C) The owner or operator shall certify that the gaseous fuel stream containing H_2 will continuously remain, as a minimum, at 99% H_2 by volume or greater during its use as a fuel to the combustion unit.
 - (1) Data used for compliance.
- (1) After the initial demonstration of compliance required by §117.335 of this title, the methods required in this section must be used to determine compliance with the emission specifications of §117.305 of this title. For enforcement purposes, the executive director may also use other commission compliance methods to determine whether the source is in compliance with applicable emission limitations.
- (2) For units subject to §117.310(a) of this title, the methods required in this section must be used in conjunction with the requirements of Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program) to determine compliance. For enforcement purposes, the executive director may also use other commission compliance methods to determine whether the source is in compliance with applicable emission limitations.
- (m) Enforcement of NO_x RACT limits. If compliance with §117.305 of this title is selected, no unit subject to §117.305 of this title may be operated at an emission rate higher than that allowed by the emission specifications of §117.305 of this title. If compliance with §117.315 of this title is selected, no unit subject to §117.315 of this title may be operated at an emission rate higher than that approved by the executive director under §117.352(b) of this title (relating to Final Control Plan Procedures for Reasonably Available Control Technology).
- (n) Loss of $\mathrm{NO_x}$ RACT exemption. The owner or operator of any unit claimed exempt from the emission specifications of this division using the low annual capacity factor exemption of §117.303(b)(2) of this title shall notify the executive director within seven days if the Btu/yr or hour-per-year limit specified in §117.10 of this title (relating to Definitions), as appropriate, is exceeded.
- (1) If the limit is exceeded, the exemption from the emission specifications of this division is permanently withdrawn.
- (2) Within 90 days after loss of the exemption, the owner or operator shall submit a compliance plan detailing a plan to meet the applicable compliance limit as soon as possible, but no later than 24 months after exceeding the limit. The plan must include a schedule of increments of progress for the installation of the required control equipment.

- (3) The schedule is subject to the review and approval of the executive director.
- (o) Testing and operating requirements. The owner or operator of units that are subject to $\S117.310(a)$ of this title shall comply with the following.
- (1) The owner or operator of units that are subject to §117.310(a) of this title shall test the units as specified in §117.335 of this title in accordance with the schedule specified in §117.9020(2) of this title (relating to Compliance Schedule for Houston-Galveston-Brazoria Ozone Nonattainment Area Major Sources).
- (2) Each stationary internal combustion engine controlled with nonselective catalytic reduction must be equipped with an automatic air-fuel ratio (AFR) controller that operates on exhaust O₂ or CO control and maintains AFR in the range required to meet the engine's applicable emission limits.
- (p) Emission allowances. The owner or operator of units that are subject to §117.310(a) of this title shall comply with the following.
- (1) The NO_{x} testing and monitoring data of subsections (a), (c), (f), (g), and (o) of this section, together with the level of activity, as defined in §101.350 of this title (relating to Definitions), must be used to establish the emission factor for calculating actual emissions for compliance with Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program.
- (2) For units not operating with CEMS or PEMS, the following apply.
- (A) Retesting as specified in subsection (o)(1) of this section is required within 60 days after any modification that could reasonably be expected to increase the NO_v emission rate.
- (B) Retesting as specified in subsection (o)(1) of this section may be conducted at the discretion of the owner or operator after any modification that could reasonably be expected to decrease the NO_{x} emission rate, including, but not limited to, installation of post-combustion controls, low- NO_{x} burners, low excess air operation, staged combustion (for example, overfire air), flue gas recirculation, and fuel-lean and conventional (fuel-rich) reburn.
- (C) The $\mathrm{NO_x}$ emission rate determined by the retesting must be used to establish a new emission factor to calculate actual emissions from the date of the retesting forward. Until the date of the retesting, the previously determined emission factor must be used to calculate actual emissions for compliance with Chapter 101, Subchapter H, Division 3 of this title.
- (D) All test reports must be submitted to the executive director for review and approval within 60 days after completion of the testing.
- (3) The emission factor in paragraph (1) or (2) of this subsection is multiplied by the unit's level of activity to determine the unit's actual emissions for compliance with Chapter 101, Subchapter H, Division 3 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 4. DALLAS-FORT WORTH EIGHT-HOUR OZONE NONATTAINMENT AREA MAJOR SOURCES

30 TAC §117.410, §117.440

Statutory Authority

The amended rules are proposed under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The proposed amendments implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

§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_x), 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% $\rm O_{\rm 2},$ 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) (No change.)

- (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:
- $\it (i)~4.0~lb/ton$ 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_xpermit 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% O₂, dry basis (or alternatively, 3.0 g/hp-hr for stationary internal combustion engines; or 775 ppmv at 7.0% O₂, 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_x , dry, for boilers and process heaters; 15% O_x , dry, for station-

- ary gas turbines (including duct burners used in turbine exhaust ducts), [and] gas-fired lean-burn engines, and diesel engines; 7.0% O₂, dry, for incinerators; and 3.0% O₂, 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% O₂, 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 O₂ 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 NO₂ 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:
- $\hbox{(A)} \quad \text{the maximum rated capacity as of December 31,} \\ 2000;$
- $\begin{tabular}{ll} (B) & the maximum rated capacity after December 31, \\ 2000; or \end{tabular}$
- (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 $\S117.440$ of this title, or through stack testing that meets the requirements of $\S117.435$ of this title; and
- (B) emission credits equal to the increase in NO_xemissions 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.
- §117.440. Continuous Demonstration of Compliance.
- (a) Totalizing fuel flow meters. The owner or operator of units listed in this subsection shall install, calibrate, maintain, and operate a totalizing fuel flow meter, with an accuracy of \pm 5%, to individually and continuously measure the gas and liquid fuel usage. A computer that collects, sums, and stores electronic data from continuous fuel flow meters is an acceptable totalizer. The owner or operator must continuously operate the totalizing fuel flow meter at least 95% of the time when the unit is operating during a calendar year. For the purpose of compliance with this subsection for units having pilot fuel supplied by a separate fuel system or from an unmonitored portion of the same fuel system, the fuel flow to pilots may be calculated using the manufacturer's design flow rates rather than measured with a fuel flow meter. The calculated pilot fuel flow rate must be added to the monitored fuel flow when fuel flow is totaled.
- (1) The units are the following units subject to §117.405 (relating to Emission Specifications for Reasonably Available Control Technology (RACT)) or §117.410 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstrations):
- (A) boilers (excluding wood-fired boilers that must comply by maintaining records of fuel usage as required in §117.445(f) of this title (relating to Notification, Recordkeeping, and Reporting

Requirements) or monitoring in accordance with paragraph (2)(A) of this subsection);

- (B) process heaters;
- (C) duct burners used in turbine exhaust ducts;
- (D) stationary, reciprocating internal combustion en-

gines;

- (E) stationary gas turbines;
- (F) lime kilns
- (G) brick and ceramic kilns;
- (H) heat treating furnaces;
- (I) reheat furnaces;
- (J) lead smelting blast (cupola) and reverberatory fur-

naces:

- (K) glass and fiberglass/mineral wool melting furnaces;
- (L) incinerators (excluding vapor streams resulting from vessel cleaning routed to an incinerator, provided that fuel usage is quantified using good engineering practices, including calculation methods in general use and accepted in new source review permitting in Texas. All other fuel and vapor streams must be monitored in accordance with this subsection);
- (M) gas-fired glass, fiberglass, and mineral wool curing ovens;
 - (N) natural gas-fired ovens and heaters; and
- (O) natural gas-fired dryers used in organic solvent, printing ink, clay, brick, ceramic, and calcining and vitrifying processes.
- (2) The following are alternatives to the fuel flow monitoring requirements of paragraph (1) of this subsection.
- (A) Units operating with a nitrogen oxides ($\mathrm{NO_x}$) and diluent continuous emissions monitoring system (CEMS) under subsection (f) of this section may monitor stack exhaust flow using the flow monitoring specifications of 40 Code of Federal Regulations (CFR) Part 60, Appendix B, Performance Specification 6 or 40 CFR Part 75, Appendix A.
- (B) Units that vent to a common stack with a NO_x and diluent CEMS under subsection (f) of this section may use a single totalizing fuel flow meter.
- (C) Diesel engines operating with run time meters may meet the fuel flow monitoring requirements of this subsection through monthly fuel use records maintained for each engine.
- (D) Stationary reciprocating internal combustion engines and gas turbines equipped with a continuous monitoring system that continuously monitors horsepower and hours of operation are not required to install totalizing fuel flow meters. The continuous monitoring system must be installed, calibrated, maintained, and operated according to manufacturers' recommended procedures.
 - (b) Oxygen (O₂) monitors.
- (1) The owner or operator shall install, calibrate, maintain, and operate an O_2 monitor to measure exhaust O_2 concentration on the following units operated with an annual heat input greater than $2.2(10^{11})$ British thermal units per year (Btu/yr):
- (A) boilers with a rated heat input greater than or equal to 100 million British thermal units per hour (MMBtu/hr); and

- (B) process heaters with a rated heat input greater than or equal to 100 MMBtu/hr, except:
 - (i) as provided in subsection (g) of this section; and
- (ii) for process heaters operating with a carbon dioxide (CO_2) CEMS for diluent monitoring under subsection (f) of this section.
- (2) The O₂ monitors required by this subsection are for process monitoring (predictive monitoring inputs, boiler trim, or process control) and are only required to meet the location specifications and quality assurance procedures referenced in subsection (f) of this section if O₂ is the monitored diluent under that subsection. However, if new O₂ monitors are required as a result of this subsection, the criteria in subsection (f) of this section should be considered the appropriate guidance for the location and calibration of the monitors.

(c) NO monitors.

- (1) The owner or operator of units listed in this paragraph shall install, calibrate, maintain, and operate a CEMS or predictive emissions monitoring system (PEMS) to monitor exhaust NO_x . The units are:
- (A) units with a rated heat input greater than or equal to 100 MMBtu/hr that are subject to \$117.405(a) or (b) or \$117.410(a) of this title;
- (B) stationary gas turbines with a megawatt (MW) rating greater than or equal to 30 MW operated more than 850 hours per year:
- (C) units that use a chemical reagent for reduction of NOX;
- (D) units that the owner or operator elects to comply with the NO_{x} emission specifications of §117.405(a) or (b) of this title or §117.410(a) of this title using a pound per MMBtu (lb/MMBtu) limit on a 30-day rolling average;
 - (E) lime kilns; and
 - (F) brick kilns and ceramic kilns.
- (2) The following units [Units subject to the NO CEMS requirements of 40 CFR Part 75] are not required to install CEMS or PEMS under this subsection; [-]
- (B) stationary diesel engines equipped with selective catalytic reduction (SCR) systems that meet the following criteria.
- (i) The SCR system must use a reductant other than the engine's fuel.
- (ii) The SCR system must operate with a diagnostic system that monitors reductant quality and tank levels.
- (iii) The diagnostic system must alert owners or operators to the need to refill the reductant tank before it is empty or to replace the reductant if the reductant does not meet applicable concentration specifications.
- (iv) If the SCR system uses input from an exhaust NO_x sensor (or other sensor) to alert owners or operators when the reductant quality is inadequate, the reductant quality does not need to be monitored separately by the diagnostic system.
- (v) The reductant tank level must be monitored in accordance with the manufacturer's design to demonstrate compliance with this subparagraph.

- (vi) The method of alerting an owner or operator must be a visual or audible alarm.
- (3) The owner or operator shall use one of the following methods to provide substitute emissions compliance data during periods when the NO_v monitor is off-line:

(A) if the NO_x monitor is a CEMS:

- (i) subject to 40 CFR Part 75, use the missing data procedures specified in 40 CFR Part 75, Subpart D (Missing Data Substitution Procedures); or
- (ii) subject to 40 CFR Part 75, Appendix E, use the missing data procedures specified in 40 CFR Part 75, Appendix E, §2.5 (Missing Data Procedures);
- (B) use 40 CFR Part 75, Appendix E monitoring in accordance with §117.1340(d) of this title (relating to Continuous Demonstration of Compliance);
 - (C) if the NO, monitor is a PEMS:
- (i) use the methods specified in 40 CFR Part 75, Subpart D; or
- (ii) use calculations in accordance with §117.8110(b) of this title (relating to Emission Monitoring System Requirements for Utility Electric Generation Sources); or
- (D) the maximum block one-hour emission rate as measured during the initial demonstration of compliance required in §117.435(e) of this title (relating to Initial Demonstration of Compliance).
- (d) Ammonia monitoring requirements. The owner or operator of any unit subject to §117.405(a) or (b) or §117.410(a) of this title and the ammonia emission specification of §117.405(d)(2) or §117.410(c)(2) of this title shall monitor ammonia emissions from the unit according to the requirements of §117.8130 of this title (relating to Ammonia Monitoring). Units identified in subsection (c)(2)(B) of this section are exempt from the ammonia monitoring requirements of this subsection.
- (e) Carbon monoxide (CO) monitoring. The owner or operator shall monitor CO exhaust emissions from each unit listed in subsection (c)(1) of this section using one or more of the methods specified in §117.8120 of this title (relating to Carbon Monoxide (CO) Monitoring).
- (f) CEMS requirements. The owner or operator of any CEMS used to meet a pollutant monitoring requirement of this section shall comply with the requirements of §117.8100(a) of this title (relating to Emission Monitoring System Requirements for Industrial, Commercial, and Institutional Sources).
- (g) PEMS requirements. The owner or operator of any PEMS used to meet a pollutant monitoring requirement of this section shall comply with the following.
- (1) The PEMS must predict the pollutant emissions in the units of the applicable emission limitations of this division (relating to Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources).
- (2) The PEMS must meet the requirements of \$117.8100(b) of this title.
- (h) Engine monitoring. The owner or operator of any stationary gas engine subject to the emission specifications of this division shall stack test engine $\mathrm{NO_x}$ and CO emissions as specified in §117.8140(a) of this title (relating to Emission Monitoring for Engines).

- (i) Run time meters. The owner or operator of any stationary gas turbine or stationary internal combustion engine claimed exempt using the exemption of §117.403(a)(7)(D), (8), or (9) or (b)(2)(D) of this title (relating to Exemptions) shall record the operating time with a non-resettable elapsed run time meter.
- (j) Data used for compliance. After the initial demonstration of compliance required by §117.435 of this title, the methods required in this section must be used to determine compliance with the emission specifications of §117.405(a) or (b) or §117.410(a) of this title. For enforcement purposes, the executive director may also use other commission compliance methods to determine whether the unit is in compliance with applicable emission specifications.
 - (k) Testing requirements.
- (1) The owner or operator of units that are subject to the emission specifications of §117.405(a) or (b) or §117.410(a) of this title shall test the units as specified in §117.435 of this title in accordance with the applicable schedule specified in §117.9030 of this title (relating to Compliance Schedule for Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources).
- (2) The owner or operator of any unit not equipped with CEMS or PEMS that are subject to the emission specifications of $\S117.405(a)$ or (b) of this title or $\S117.410(a)$ of this title shall retest the unit as specified in $\S117.435$ of this title within 60 days after any modification that could reasonably be expected to increase the NO_x emission rate.

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 C. COMBUSTION CONTROL AT MAJOR UTILITY ELECTRIC GENERATION SOURCES IN OZONE NONATTAINMENT AREAS

DIVISION 2. BEXAS COUNTY OZONE NONATTAINMENT AREA UTILITY ELECTRIC GENERATION SOURCES

30 TAC §§117.1100, 117.1103, 117.1105, 117.1120, 117.1140, 117.1145, 117.1152

Statutory Authority

The new rules are proposed under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the

provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The new rules are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The proposed new rules implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

§117.1100. Applicability.

- (a) This division applies to the following units used in an electric power generating system, as defined in §117.10 of this title (relating to Definitions), located in the Bexar County ozone nonattainment area:
 - (1) utility boilers;
 - (2) auxiliary steam boilers;
 - (3) stationary gas turbines; and
 - (4) duct burners used in turbine exhaust ducts.
- (b) This division is applicable for the life of each affected unit in an electric power generating system or until this division or sections of this title that are applicable to an affected unit are rescinded.

§117.1103. Exemptions.

The following units are exempt from this division, except as specified in §117.1140 and 117.1145 of this title (relating to Demonstration of Compliance; and Notification, Recordkeeping, and Reporting Requirements):

- (1) utility boilers or auxiliary steam boilers with an annual heat input less than or equal to 220,000 million British thermal units per year, on a rolling 12-month basis;
- (2) stationary gas turbines that operate less than 850 hours per year, on a rolling 12-month basis; or
- (3) stationary gas turbines that are used solely to power other gas turbines or engines during startups.
- §117.1105. Emission Specifications for Reasonably Available Control Technology (RACT).
- (a) Emission Specifications. 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 §117.9110 of this title (relating to Compliance Schedule for Bexar County Ozone Nonattainment Area Utility Electric Generation Sources):
- (1) stationary gas turbines, including duct burners used in turbine exhaust ducts, 0.032 pound per million British thermal units (lb/MMBtu) heat input on a rolling 30-day average basis;

- (2) utility boilers or auxiliary steam boilers, while firing natural gas or a combination of natural gas and oil, 0.20 lb/MMBtu heat input on a rolling 30-day average basis;
- (3) utility boilers or auxiliary steam boilers controlled with selective catalytic reduction, while firing coal, 0.069 lb/MMBtu heat input on a rolling 30-day average basis;
- (4) utility boilers or auxiliary steam boilers not controlled with selective catalytic reduction, while firing coal, 0.20 lb/MMBtu heat input on a rolling 30-day average basis; and
- (5) utility boilers or auxiliary steam boilers, while firing oil only, 0.30 lb/MMBtu heat input on an hourly basis.
- (b) Compliance flexibility. An owner or operator may use any of the following alternative methods to comply with the NO_x emission specifications of this section:
 - (1) §117.1120 of this title (relating to System Cap); or
- (2) §117.9800 of this title (relating to Use of Emission Credits for Compliance).

§117.1120. System Cap.

- (a) An owner or operator of an electric generating facility (EGF), as defined in §117.10 of this title (relating to Definitions), may achieve compliance with the nitrogen oxides (NO_x) emission specifications in §117.1105 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)) by achieving equivalent NO_x emission reductions obtained by compliance with a system cap emission limitation in accordance with the requirements of this section.
- (b) Each EGF within an electric power generating system, as defined in §117.10 of this title, that started operation before January 1, 2025, and is subject to §117.1105 of this title, must be included in the system cap.
- (c) The system cap must be calculated using the following equation.

Figure: 30 TAC §117.1120(c)

- (d) Continuous compliance with the system cap must be demonstrated in accordance with the requirements in §117.1140 of this title (relating to Demonstration of Compliance).
- (e) The owner or operator shall maintain daily records indicating the NO_x emissions and fuel usage from each EGF and summations of total NO_x emissions and fuel usage for all EGFs under the system cap on a daily basis. Records must also be retained in accordance with $\S117.1145$ of this title (relating to Notification, Recordkeeping, and Reporting Requirements).
- (f) The owner or operator shall report any exceedance of the system cap emission limit within 48 hours to the appropriate regional office. The owner or operator shall then follow up within 21 days of the exceedance with a written report to the regional office that includes an analysis of the cause for the exceedance with appropriate data to demonstrate the amount of emissions in excess of the system cap and the necessary corrective actions taken by the company to assure future compliance. Additionally, the owner or operator shall submit semiannual reports for the monitoring systems in accordance with §117.1145 of this title.
- (g) The owner or operator shall demonstrate compliance with the system cap in accordance with the schedule specified in §117.9110 of this title (relating to Compliance Schedule for Bexar County Ozone Nonattainment Area Utility Electric Generation Sources).

- (h) An EGF that is permanently retired or decommissioned and rendered inoperable may be included in the system cap emission limit provided that the permanent shutdown occurred on or after January 1, 2025.
- (i) Emission reductions from shutdowns or curtailments that have been used for netting or offset purposes under the requirements of Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) may not be included in the in the calculation of the system cap in subsection (c) of the section.
- (j) For the purposes of determining compliance with the system cap, the contribution of each affected EGF that is operating during a startup, shutdown, or emissions event as defined in §101.1 of this title (relating to Definitions) must be calculated from the NO_x emission rate measured by the NO_x monitor, if the monitor is operating properly. If the NO_x monitor is not operating properly, the substitute data procedures identified in §117.1140 of this title must be used.
- (k) Emission credits may be used in accordance with the requirements of §117.9800 of this title (relating to Use of Emission Credits for Compliance) to exceed the system cap.

§117.1140. Demonstration of Compliance.

- (a) Nitrogen oxides (NO_x) monitoring. The owner or operator of each unit subject to the emission specifications in §117.1105 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)), shall install, calibrate, maintain, and operate a continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) to measure NO_x on an individual basis.
- (1) Each CEMS or PEMS is subject to the relative accuracy test audit relative accuracy requirements of 40 Code of Federal Regulations (CFR) Part 75, Appendix B, Figure 2, except the concentration options (parts per million by volume (ppmv) and pound per million British thermal units (lb/MMBtu)) do not apply. Each CEMS or PEMS must meet either the relative accuracy percent requirement of 40 CFR Part 75, Appendix B, Figure 2, or an alternative relative accuracy requirement of $\pm\,2.0$ ppmv from the reference method mean value.
- (2) Each CEMS or PEMS is subject to the requirements of §117.8110 of this title (relating to Emission Monitoring System Requirements for Utility Electric Generation Sources).
- (3) Each PEMS must predict NO_x emissions in the units of the applicable emission limitations of this division and PEMS and fuel flow meters must be used to demonstrate continuous compliance with the emission specifications of this division.
- (b) Acid rain peaking units. In lieu of the NO_x monitoring requirements in subsection (a) of this section, the owner or operator of each peaking unit as defined in 40 CFR §72.2, may monitor operating parameters for each unit in accordance with 40 CFR Part 75, Appendix E, and calculate NO_x emission rates based on those procedures.
- (c) Totalizing fuel flow meters. The owner or operator of each unit subject to the emission specifications in §117.1105 of this title and each unit using the exemption in §117.1103(1) of this title (relating to Exemptions) shall install, calibrate, maintain, and operate totalizing fuel flow meters to individually and continuously measure the gas and liquid fuel usage. A computer that collects, sums, and stores electronic data from continuous fuel flow meters is an acceptable totalizer. In lieu of installing a totalizing fuel flow meter on a unit, an owner or operator may opt to assume fuel consumption at maximum design fuel flow rates during hours of the unit's operation.

- (d) Run time meters. The owner or operator of a unit using the exemption of §117.1103(2) of this title shall record the operating time hours with an elapsed run time meter.
- (e) Loss of exemption. The owner or operator of any unit claimed exempt from the emission specifications of this division using the exemptions in §117.1103(1) or (2) of this title, shall notify the executive director within seven days if the applicable limit is exceeded.
- (1) If the limit is exceeded, the exemption from the emission specifications of this division is permanently withdrawn.
- (2) Within 90 days after loss of the exemption, the owner or operator shall submit a compliance plan detailing a plan to meet the applicable compliance limit as soon as possible, but no later than 24 months after exceeding the limit. The plan must include a schedule of increments of progress for the installation of the required control equipment.
- (3) The schedule is subject to the review and approval of the executive director.
- (f) Data used for compliance. The methods required in this section must be used to demonstrate compliance with the emission specifications of §117.1105 of this title and the system cap in §117.1120 of this title (relating to System Cap). For enforcement purposes, the executive director may also use other commission compliance methods to determine whether the unit is in compliance with applicable emission specifications.
- (1) For units complying with the NO_x emission specifications of §117.1105 of this title in pounds per million British thermal units (lb/MMBtu) on a rolling 30-day average basis, the rolling 30-day average is calculated for each day that fuel was combusted in the unit, and is the total NO_x emissions (in pounds) from the unit for the preceding 30 days that fuel was combusted in the unit, divided by the total heat input (in MMBtu) for the unit during the same 30-day period.
- (2) For any electric generating facility (EGF) complying with the system cap in §117.1120 of this title (relating to System Cap) in pounds per day on a rolling 30-day average basis, the rolling 30-day average is calculated for each day that fuel was combusted in the unit, and is the average of the total pounds of NO_x emissions per day from all EGFs included in the system cap for the preceding 30 days that fuel was combusted in the units.
- (g) Data Substitution. The missing data procedures specified in 40 CFR Part 75, Subpart D (Missing Data Substitution Procedures) must be used to provide substitute emissions compliance data during periods when the NO_x monitor is off-line except as follows.
- (1) A peaking unit, as defined in 40 CFR §72.2, subject to 40 CFR Part 75, Appendix E, may use the missing data procedures specified in 40 CFR Part 75, Appendix E, §2.5 (Missing Data Procedures).
- (2) A PEMS for units not subject to the requirements of 40 CFR Part 75 may use calculations in accordance with §117.8110(b) of this title (relating to Emission Monitoring System Requirements for Utility Electric Generation Sources).
- §117.1145. Notification, Recordkeeping, and Reporting Requirements.
- (a) Notification. The owner or operator of an affected unit shall submit written notification to the appropriate regional office and any local air pollution control agency having jurisdiction of any continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) relative accuracy test audit (RATA) conducted under §117.1140 of this title (relating to Demonstration of Compliance) at least 15 days prior to such date.

- (b) Reporting of test results. The owner or operator of an affected unit shall furnish the Office of Compliance and Enforcement, the appropriate regional office, and any local air pollution control agency having jurisdiction a copy of the results of any CEMS or PEMS RATA conducted under §117.1140 of this title within 60 days after completion of such testing or evaluation.
- (c) Startup and shutdown records. For units subject to the startup and/or shutdown provisions of §101.222 of this title (relating to Demonstrations), hourly records must be made of startup and/or shutdown events and maintained for a period of at least two years. Records must be available for inspection by the executive director, United States Environmental Protection Agency, and any local air pollution control agency having jurisdiction upon request. These records must include, but are not limited to: type of fuel burned; quantity of each type fuel burned; gross and net energy production in megawatt-hours; and the date, time, and duration of the event.
- (d) Semiannual reports. The owner or operator of a unit required to install a CEMS or PEMS under §117.1140 of this title shall report in writing to the executive director on a semiannual basis any exceedance of the applicable emission limitations in this division and the monitoring system performance. All reports must be postmarked or received by the 30th day following the end of each calendar semiannual period (i.e., July 30 and January 30). Written reports must include the following information:
- (1) the magnitude of excess emissions computed in accordance with 40 Code of Federal Regulations §60.13(h), any conversion factors used, the date and time of commencement and completion of each time period of excess emissions, and the unit operating time during the reporting period;
- (2) specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the affected unit, the nature and cause of any malfunction (if known) and the corrective action taken, or preventative measures adopted;
- (3) the date and time identifying each period when the continuous monitoring system was inoperative, except for zero and span checks and the nature of the system repairs or adjustments;
- (4) when no excess emissions have occurred or the continuous monitoring system has not been inoperative, repaired, or adjusted, such information must be stated in the report; and
- (5) if the total duration of excess emissions for the reporting period is less than 1.0% of the total unit operating time for the reporting period and the CEMS or PEMS monitoring system downtime for the reporting period is less than 5.0% of the total unit operating time for the reporting period, only a summary report form (as outlined in the latest edition of the commission's Guidance for Preparation of Summary, Excess Emission, and Continuous Monitoring System Reports) must be submitted, unless otherwise requested by the executive director. If the total duration of excess emissions for the reporting period is greater than or equal to 1.0% of the total unit operating time for the reporting period is greater than or equal to 5.0% of the total unit operating time for the reporting period, a summary report and an excess emission report must both be submitted.
- (e) Recordkeeping. The owner or operator of a unit subject to this division shall maintain records of the data specified in this subsection. Records must be kept for at least five years and must be made available upon request by authorized representatives of the executive director, United States Environmental Protection Agency, or local air pollution control agencies having jurisdiction.

- (1) The owner or operator of a unit complying with the NO_x emission specifications in §117.1105(a)(1) (4) of this title shall maintain daily records indicating the NO_x emissions in pounds; the quantity and type of each fuel burned; the heat input in million British thermal units (MMBtu); and the rolling 30-day average NO_x emission rate in pounds per MMBtu.
- (2) The owner or operator of a unit complying with the NO_x emission specification in §117.1105(a)(5) of this title shall maintain hourly records indicating the NO_x emissions in lb; the quantity and type of each fuel burned; and the heat input in MMBtu.
- (3) The owner or operator complying with the NO_x emission system cap in §117.1120 of this title shall maintain daily records for each EGF in the cap indicating the NO_x emissions in pounds; the quantity and type of each fuel burned; and the heat input in MMBtu. In addition, the owner or operator shall maintain daily records indicating the total NO_x emissions in pounds from all EGFs under the system cap and the rolling 30-day average NO_x emissions rate (in pounds per day) for all EGFs under the system cap.
- (4) The owner or operator of a unit using the exemption in §117.1103(1) of this title (relating to Exemptions), shall maintain monthly records indicating the quantity and type of each fuel burned, the heat input in MMBtu; and the rolling 12-month average heat input in MMBtu.
- (5) The owner or operator of a unit the exemption in §117.1103(2) of this title, shall maintain monthly records indicating the operating hours and the rolling 12-month average operating hours.
- (6) The owner or operator shall maintain records of records of the results of testing, evaluations, calibrations, checks, adjustments, and maintenance of a CEMS or PEMS.
- §117.1152. Control Plan Procedures for Reasonably Available Control Technology (RACT).
- (a) The owner or operator of any unit subject to $\S117.1105$ of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)) at a major source of nitrogen oxides (NO_x) shall submit a control plan report to demonstrate compliance with the requirements of $\S117.1105$ of this title. The report must include:
- (1) the rule section used to demonstrate compliance, either §117.1105 of this title; §117.1120 of this title (relating to System Cap); or §117.9800 of this title (relating to Use of Emission Credits for Compliance);
- (2) the specific rule citation for any unit with a claimed exemption from the emission specification of §117.1105 of this title;
- (3) for each affected unit: the method of NO_x control, the method of monitoring emissions, and the method of providing substitute emissions data when the NO_x monitoring system is not providing valid data; and
- (4) for sources complying with §117.1120 of this title, detailed calculation of the system cap that includes all data relied on for each electric generating facility included in the system cap equation in §117.1120(c) of this title.
- (b) 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 control plans in §117.9110 of this title (relating to Compliance Schedule for Bexar County Utility Electric Generation Sources).
- (c) For any unit that becomes subject to §117.1105 of this title after the applicable date specified for submission of control plans in

§117.9110 of this title, the control plan must be submitted to the Office of Compliance and Enforcement, the appropriate regional office, and the Office of Air no later than 60 days after becoming subject to §117.1105 of this title.

(d) If any of the information changes in a control plan report submitted in accordance with subsection (b) or (c) of this section, including functionally identical replacements, the control plan must be updated no later than 60 days after the change occurs. Written or electronic records of the updated control plan must be kept for a period of at least five years and must be made available upon request by authorized representatives of the executive director, the United States Environmental Protection Agency, or local air pollution control agencies having jurisdiction.

The 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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Texas Commission on Environmental Quality
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SUBCHAPTER D. COMBUSTION
CONTROL AT MINOR SOURCES IN
OZONE NONATTAINMENT AREAS
DIVISION 1. HOUSTON-GALVESTONBRAZORIA OZONE NONATTAINMENT AREA
MINOR SOURCES

30 TAC §117.2010, §117.2035

Statutory Authority

The amended rules are proposed under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to pre-

scribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The proposed amendments implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

§117.2010. Emission Specifications.

- (a) For sources that are subject to Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program), the nitrogen oxides (NO_x) emission rate values used to determine allocations for Chapter 101, Subchapter H, Division 3 of this title must be the lower of any applicable permit limit in a permit issued before January 2, 2001; any permit issued on or after January 2, 2001, that the owner or operator submitted an application determined to be administratively complete by the executive director before January 2, 2001; any limit in a permit by rule under which construction commenced by January 2, 2001; or the emission specifications in subsection (c) of this section. The averaging time must be as specified in Chapter 101, Subchapter H, Division 3 of this title.
- (b) For sources that are not subject to Chapter 101, Subchapter H, Division 3 of this title, NO_x emissions are limited to the lower of any applicable permit limit in a permit issued before January 2, 2001; any permit issued on or after January 2, 2001, that the owner or operator submitted an application determined to be administratively complete by the executive director before January 2, 2001; any limit in a permit by rule under which construction commenced by January 2, 2001; or the emission specifications in subsection (c) of this section. The averaging time must be as follows:
- (1) if the unit is operated with a NO_x continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) under §117.2035(c) of this title (relating to Monitoring and Testing Requirements), 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
- (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 limit in pounds per million British thermal units (lb/MMBtu); or
- (2) if the unit is not operated with a ${\rm NO_x}$ CEMS or PEMS under §117.2035(c) of this title, a block one-hour average, in the units of the applicable standard.
- (c) The following NO_x emission specifications must be used in conjunction with subsection (a) of this section to determine allocations for Chapter 101, Subchapter H, Division 3 of this title, or in conjunction with subsection (b) of this section to establish unit-by-unit emission specifications, as appropriate:
 - (1) from boilers and process heaters:
- (A) gas-fired, 0.036 lb/MMBtu heat input (or alternatively, 30 parts per million by volume (ppmv) at 3.0% oxygen (O_2), dry basis); and
- (B) liquid-fired, 0.072 lb/MMBtu heat input (or alternatively, 60 ppmv at 3.0% $O_{,y}$ dry basis);
- (2) from stationary, gas-fired, reciprocating internal combustion engines:

- (A) fired on landfill gas, 0.60 gram per horse-power-hour (g/hp-hr); and
 - (B) all others, 0.50 g/hp-hr;
- (3) from stationary, dual-fuel, reciprocating internal combustion engines, 5.83 g/hp-hr;
- (4) from stationary, diesel, reciprocating internal combustion engines:
- (A) placed into service before October 1, 2001, that have not been modified, reconstructed, or relocated on or after October 1, 2001, the lower of 11.0 g/hp-hr or the emission rate established by testing, monitoring, manufacturer's guarantee, or manufacturer's other data. 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 §60.15 (December 16, 1975), respectively, and the term "relocated" means to newly install at an account, as defined in §101.1 of this title (relating to Definitions), a used engine from anywhere outside that account; and
- (B) for engines not subject to subparagraph (A) of this paragraph:
- (i) with a horsepower (hp) rating of 50 hp or greater, but less than 100 hp, that are installed, modified, reconstructed, or relocated:
- (I) on or after October 1, 2001, but before October 1, 2003, 6.9 g/hp-hr;
- (II) on or after October 1, 2003, but before October 1, 2007, 5.0 g/hp-hr; and
 - (III) on or after October 1, 2007, 3.3 g/hp-hr;
- (ii) with a horsepower rating of 100 hp or greater, but less than 175 hp, that are installed, modified, reconstructed, or relocated:
- (I) on or after October 1, 2001, but before October 1, 2002, 6.9 g/hp-hr;
- (II) on or after October 1, 2002, but before October 1, 2006, 4.5 g/hp-hr; and
 - (III) on or after October 1, 2006, 2.8 g/hp-hr;
- (iii) with a horsepower rating of 175 hp or greater, but less than 300 hp, that are installed, modified, reconstructed, or relocated:
- $(\it{I})~$ on or after October 1, 2001, but before October 1, 2002, 6.9 g/hp-hr;
- $(I\!I)$ on or after October 1, 2002, but before October 1, 2005, 4.5 g/hp-hr; and
 - (III) on or after October 1, 2005, 2.8 g/hp-hr;
- (iv) with a horsepower rating of 300 hp or greater, but less than 600 hp, that are installed, modified, reconstructed, or relocated:
- $(\it{I})~$ on or after October 1, 2001, but before October 1, 2005, 4.5 g/hp-hr; and
 - (II) on or after October 1, 2005, 2.8 g/hp-hr;
- (v) with a horsepower rating of 600 hp or greater, but less than or equal to 750 hp, that are installed, modified, reconstructed, or relocated:

- (1) on or after October 1, 2001, but before October 1, 2005, 4.5 g/hp-hr; and
 - (II) on or after October 1, 2005, 2.8 g/hp-hr; and
- (vi) with a horsepower rating of 750 hp or greater that are installed, modified, reconstructed, or relocated:
- (I) on or after October 1, 2001, but before October 1, 2005, 6.9 g/hp-hr; and
 - (II) on or after October 1, 2005, 4.5 g/hp-hr;
- (5) from stationary gas turbines (including duct burners), $0.15\ lb/MMBtu$; and
- (6) as an alternative to the emission specifications in paragraphs (1) (5) of this subsection for units with an annual capacity factor of 0.0383 or less, 0.060 lb/MMBtu heat input. For units placed into service on or before January 1, 1997, the 1997 1999 average annual capacity factor must be used to determine whether the unit is eligible for the emission specification of this paragraph. For units placed into service after January 1, 1997, the annual capacity factor must be calculated from two consecutive years in the first five years of operation to determine whether the unit is eligible for the emission specification of this paragraph, using the same two consecutive years chosen for the activity level baseline. The five-year period begins at the end of the adjustment period as defined in §101.350 of this title (relating to Definitions).
- (d) The maximum rated capacity used to determine the applicability of the emission specifications in subsection (c) of this section must be:
 - (1) the greater of the following:
- (A) the maximum rated capacity as of December 31, 2000; or
- $\begin{tabular}{ll} (B) & the maximum rated capacity after December 31, \\ 2000; or \end{tabular}$
- (2) alternatively, 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) on or after January 2, 2001, for which the owner or operator submitted an application determined to be administratively complete by the executive director before January 2, 2001, provided that the maximum rated capacity authorized by the permit issued on or after January 2, 2001, is no less than the maximum rated capacity represented in the permit application as of January 2, 2001.
- (e) 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.
- (f) Changes after December 31, 2000, to a unit subject to an emission specification in subsection (c) of this section (ESAD unit) that result in increased NO_x emissions from a unit not subject to an emission specification in subsection (c) of this section (non-ESAD unit), such as redirecting one or more fuel or waste streams containing chemical-bound nitrogen to an incinerator or a flare, is only allowed if:
- (1) the increase in NO_x emissions at the non-ESAD unit is determined using a CEMS or PEMS that meets the requirements of §117.2035(c) of this title, or through stack testing that meets the requirements of §117.2035(e) of this title; and
 - (2) either of the following conditions is met:

- (A) for sources that are subject to Chapter 101, Subchapter H, Division 3 of this title, a deduction in allowances equal to the increase in NO_x emissions at the non-ESAD unit is made as specified in §101.354 of this title (relating to Allowance Deductions); or
- (B) for sources that are not subject to Chapter 101, Subchapter H, Division 3 of this title, emission credits equal to the increase in NO_{x} emissions at the non-ESAD unit are obtained and used in accordance with §117.9800 of this title (relating to Use of Emission Credits for Compliance).
- (g) 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 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 chapter.
- (h) The availability under subsection (c)(6) 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 on December 31, 2000. Reduced operation after December 31, 2000, cannot be used to qualify for a more lenient emission specification under subsection (c)(6) of this section than would otherwise apply to the unit.
- (i) No person shall allow the discharge into the atmosphere from any unit subject to NO_x emission specifications in subsection (c) of this section, emissions in excess of the following, except as provided in $\S117.2025$ of this title (relating to Alternative Case Specific Specifications):
- (1) carbon monoxide (CO), 400 ppmv at 3.0% O₂, dry basis (or alternatively, 3.0 g/hp-hr for stationary internal combustion engines):
- (A) on a rolling 24-hour averaging period, for units equipped with CEMS or PEMS for CO; and
- (B) on a one-hour average, for units not equipped with CEMS or PEMS for CO; and
- (2) for units that inject urea or ammonia into the exhaust stream for $\mathrm{NO_x}$ control, ammonia emissions of 10 ppmv at 3.0% $\mathrm{O_2}$, dry, for boilers and process heaters; 15% $\mathrm{O_2}$, dry, for stationary gas turbines (including duct burners used in turbine exhaust ducts), [and] gas-fired lean-burn engines, and diesel engines; and 3.0% $\mathrm{O_2}$, 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; or
- (B) a rolling 24-hour averaging period for units equipped with CEMS or PEMS for ammonia.
- §117.2035. Monitoring and Testing Requirements.
 - (a) Totalizing fuel flow meters.
- (1) The owner or operator of each unit subject to §117.2010 of this title (relating to Emission Specifications) and subject to Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program), or of each unit claimed exempt under §117.2003(b) of this title (relating to Exemptions) shall install, calibrate, maintain, and operate totalizing fuel flow meters with an accuracy of \pm 5%, to individually and continuously measure the gas and liquid fuel usage. A computer that collects, sums, and stores electronic data from continuous fuel flow meters is an acceptable totalizer. The owner or operator of units with totalizing fuel flow meters installed prior to March 31, 2005, that do not meet the accuracy requirements of this subsection shall either recertify or replace existing meters to

meet the \pm 5% accuracy required as soon as practicable, but no later than March 31, 2007. For the purpose of compliance with this subsection for units having pilot fuel supplied by a separate fuel system or from an unmonitored portion of the same fuel system, the fuel flow to pilots may be calculated using the manufacturer's design flow rates rather than measured with a fuel flow meter. The calculated pilot fuel flow rate must be added to the monitored fuel flow when fuel flow is totaled.

- (2) The following are alternatives to the fuel flow monitoring requirements of this subsection.
- (A) Units operating with a nitrogen oxides (NO_x) and diluent continuous emissions monitoring system (CEMS) under subsection (c) of this section may monitor stack exhaust flow using the flow monitoring specifications of 40 Code of Federal Regulations (CFR) Part 60, Appendix B, Performance Specification 6 or 40 CFR Part 75, Appendix A.
- (B) Units that vent to a common stack with a NO_x and diluent CEMS under subsection (c) of this section may use a single totalizing fuel flow meter.
- (C) Diesel engines operating with run time meters may meet the fuel flow monitoring requirements of this subsection through monthly fuel use records.
- (D) Units of the same category of equipment subject to Chapter 101, Subchapter H, Division 3 of this title may share a single totalizing fuel flow meter provided:
- (i) the owner or operator performs a stack test in accordance with subsection (e) of this section for each unit sharing the totalizing fuel flow meter; and
- (ii) the testing results from the unit with the highest emission rate (in pounds per million British thermal units or grams per horsepower-hour) are used for reporting purposes in §101.359 of this title (relating to Reporting) for all units sharing the totalizing fuel flow meter.
- (E) The owner or operator of a unit or units claimed exempt under §117.2003(b) of this title, located at an independent school district may demonstrate compliance with the exemption by the following:
- (i) in addition to the records required by §117.2045(a)(1) of this title (relating to Recordkeeping and Reporting Requirements), maintain the following monthly records in either electronic or written format. These records must be kept for a period of at least five years and must be made available upon request by authorized representatives of the executive director, the United States Environmental Protection Agency, or local air pollution control agencies having jurisdiction;
 - (I) total fuel usage for the entire site;
 - (II) the estimated hours of operation for each

unit;

- (III) the estimated average operating rate (e.g., a percentage of maximum rated capacity) for each unit; and
 - (IV) the estimated fuel usage for each unit; and
- (ii) within 60 days of written request by the executive director, submit for review and approval all methods, engineering calculations, and process information used to estimate the hours of operation, operating rates, and fuel usage for each unit.

- (F) The owner or operator of units claimed exempt under §117.2003(b) of this title may share a single totalizing fuel flow meter to demonstrate compliance with the exemption, provided that:
- (i) all affected units at the site qualify for the exemption under §117.2003(b) of this title; and
- $\mbox{\it (ii)} \quad \mbox{the total fuel usage for all units at the site is less than:}$
- (I) the annual fuel usage limitation in §117.2003(b)(1) of this title; or
- (II) the annual fuel usage limitation in §117.2003(b)(2) of this title when all affected units at the site are equal to or greater than 5.0 million British thermal units per hour.
- (G) Stationary reciprocating internal combustion engines and stationary gas turbines equipped with a continuous monitoring system that continuously monitors horsepower and hours of operation are not required to install totalizing fuel flow meters. The continuous monitoring system must be installed, calibrated, maintained, and operated according to manufacturer's procedures.
- (b) Oxygen (O₂) monitors. If the owner or operator installs an O₃ monitor, the criteria in §117.8100(a) of this title (relating to Emission Monitoring System Requirements for Industrial, Commercial, and Institutional Sources) should be considered the appropriate guidance for the location and calibration of the monitor.
- (c) ${
 m NO_x}$ monitors. If the owner or operator installs a CEMS or predictive emissions monitoring system (PEMS), it must meet the requirements of §117.8100(a) or (b) of this title. If a PEMS is used, the PEMS must predict the pollutant emissions in the units of the applicable emission specifications of this division (relating to Houston-Galveston-Brazoria Ozone Nonattainment Area Minor Sources).
- (d) Monitor installation schedule. Installation of monitors must be performed in accordance with the schedule specified in §117.9200 of this title (relating to Compliance Schedule for Houston-Galveston-Brazoria Ozone Nonattainment Area Minor Sources).
- (e) Testing requirements. The owner or operator of any unit subject to $\S117.2010$ of this title shall comply with the following testing requirements.
- (1) Each unit must be tested for NO_x , carbon monoxide (CO), and O, emissions.
- (2) One of the ammonia monitoring procedures specified in $\S117.8130$ of this title (relating to Ammonia Monitoring) must be used to demonstrate compliance with the ammonia emission specification of $\S117.2010(i)(2)$ of this title for units that inject urea or ammonia into the exhaust stream for NO_x control. This paragraph does not apply to stationary diesel engines equipped with selective catalytic reduction (SCR) systems that meet the following criteria.
- (B) The SCR system must operate with a diagnostic system that monitors reductant quality and tank levels.
- (C) The diagnostic system must alert owners or operators to the need to refill the reductant tank before it is empty or to replace the reductant if the reductant does not meet applicable concentration specifications.
- (D) If the SCR system uses input from an exhaust NO_x sensor (or other sensor) to alert owners or operators when the reductant quality is inadequate, the reductant quality does not need to be monitored separately by the diagnostic system.

- (E) The reductant tank level must be monitored in accordance with the manufacturer's design to demonstrate compliance with this paragraph.
- (F) The method of alerting an owner or operator must be a visual or audible alarm.
- (3) For units not equipped with CEMS or PEMS, all testing must be conducted according to $\S117.8000$ of this title (relating to Stack Testing Requirements). In lieu of the test methods specified in $\S117.8000$ of this title, the owner or operator may use American Society for Testing and Materials (ASTM) D6522-00 to perform the NO_x, CO, and O₂ testing required by this subsection on natural gas-fired reciprocating engines, combustion turbines, boilers, and process heaters. If the owner or operator elects to use ASTM D6522-00 for the testing requirements, the report must contain the information specified in $\S117.8010$ of this title (relating to Compliance Stack Test Reports).
- (4) Test results must be reported in the units of the applicable emission specifications and averaging periods. If compliance testing is based on 40 CFR Part 60, Appendix A reference methods, the report must contain the information specified in §117.8010 of this title.
- (5) For units equipped with CEMS or PEMS, the CEMS or PEMS must be installed and operational before testing under this subsection. Verification of operational status must, at a minimum, include completion of the initial monitor certification and the manufacturer's written requirements or recommendations for installation, operation, and calibration of the device.
- (6) Initial compliance with §117.2010 of this title for units operating with CEMS or PEMS must be demonstrated after monitor certification testing using the NOX CEMS or PEMS.
- (7) For units not operating with CEMS or PEMS, the following apply.
- (A) Retesting as specified in paragraphs (1) (4) of this subsection is required within 60 days after any modification that could reasonably be expected to increase the NO_x emission rate.
- (B) Retesting as specified in paragraphs (1) (4) of this subsection may be conducted at the discretion of the owner or operator after any modification that could reasonably be expected to decrease the NO_{x} emission rate, including, but not limited to, installation of post-combustion controls, low- NO_{x} burners, low excess air operation, staged combustion (for example, overfire air), flue gas recirculation, and fuel-lean and conventional (fuel-rich) reburn.
- (C) The $\mathrm{NO_x}$ emission rate determined by the retesting must establish a new emission factor to be used to calculate actual emissions from the date of the retesting forward. Until the date of the retesting, the previously determined emission factor must be used to calculate actual emissions for compliance with Chapter 101, Subchapter H, Division 3 of this title.
- (8) Testing must be performed in accordance with the schedule specified in §117.9200 of this title.
- (9) All test reports must be submitted to the executive director for review and approval within 60 days after completion of the testing.
 - (f) Emission allowances.
- (1) For sources that are subject to Chapter 101, Subchapter H, Division 3 of this title, the NO_x testing and monitoring data of subsections (a) (e) of this section, together with the level of activity, as defined in $\S 101.350$ of this title (relating to Definitions), must be used to establish the emission factor calculating actual emissions for compliance with Chapter 101, Subchapter H, Division 3 of this title.

- (2) The emission factor in subsection (e)(7) of this section or paragraph (1) of this subsection is multiplied by the unit's level of activity to determine the unit's actual emissions for compliance with Chapter 101, Subchapter H, Division 3 of this title.
- (g) Run time meters. The owner or operator of any stationary diesel engine claimed exempt using the exemption of $\S117.2003(a)(2)(E)$, (H), or (I) of this title shall record the operating time with an elapsed run time meter. Any run time meter installed on or after October 1, 2001, must be non-resettable.

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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Charmaine Backens

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DIVISION 2. DALLAS-FORT WORTH EIGHT-HOUR OZONE NONATTAINMENT AREA MINOR SOURCES

30 TAC §117.2110, §117.2135

Statutory Authority

The amended rules are proposed under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The proposed amendments implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

- §117.2110. Emission Specifications for Eight-Hour Attainment Demonstration.
- (a) The owner or operator of any source subject to this division (relating to Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Minor Sources) shall not allow the discharge into the atmosphere emissions of nitrogen oxides (NO_x) in excess of the following emission specifications.
- (1) Emission specifications for stationary, gas-fired, reciprocating internal combustion engines are as follows:
 - (A) rich-burn engines:
- (i) fired on landfill gas, 0.60 grams per horsepower-hour (g/hp-hr); and
 - (ii) all other rich-burn engines, 0.50 g/hp-hr; and
 - (B) 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:
- $(\it{I})~$ fired on landfill gas or other biogas, 0.60 g/hp-hr; and
 - (II) all other lean-burn engines, 0.50 g/hp-hr.

or

- (2) The emission specification for stationary, dual-fuel, reciprocating internal combustion engines is 5.83 g/hp-hr.
- (3) Emission specifications for stationary, diesel, reciprocating internal combustion engines are as follows:
- (A) 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: and
- (B) for engines not subject to subparagraph (A) of this paragraph:
- (i) with a horsepower (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;
- (ii) with a horsepower rating of 100 hp or greater, but less than or equal to 750 hp, that are installed, modified, reconstructed, or relocated on or after March 1, 2009, 2.8 g/hp-hr; and
- (iii) with a horsepower rating of 750 hp or greater that are installed, modified, reconstructed, or relocated on or after March 1, 2009, 4.5 g/hp-hr.
- (4) As an alternative to the emission specifications in paragraphs (1) (3) of this subsection for units with an annual capacity factor of 0.0383 or less, 0.060 pound per million British thermal units (lb/MMBtu) heat input. For units placed into service on or before December 31, 2000, the annual capacity factor as of December 31, 2000, must be used to determine eligibility for the alternative emission specification of this paragraph. For units placed into service after December 31, 2000, a 12-month rolling average must be used to determine the annual capacity factor.
- (5) For the purposes of this subsection, 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 §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.
- (b) The averaging time for the NO_x emission specifications of subsection (a) of this section is as follows:
- (1) if the unit is operated with a NO_x continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) under §117.2135(c) of this title (relating to Monitoring, Notification, and Testing Requirements), 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, calculated as the product of the boiler's maximum rated capacity and its applicable limit in lb/MMBtu; or
- (2) if the unit is not operated with a NO_x CEMS or PEMS under §117.2135(c) of this title, a block one-hour average, in the units of the applicable standard.
- (c) The maximum rated capacity used to determine the applicability of the emission specifications in subsection (a) of this section must be the greater of the following:
 - (1) the maximum rated capacity as of December 31, 2000;
 - (2) the maximum rated capacity after December 31, 2000.
- (d) 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, must be classified as a stationary gas-fired engine for the purposes of this chapter.
- (e) Changes after December 31, 2000, to a unit subject to an emission specification in subsection (a) of this section (ESAD unit) that result in increased NO_x emissions from a unit not subject to an emission specification in subsection (a) of this section (non-ESAD unit), such as redirecting one or more fuel or waste streams containing chemical-bound nitrogen to an incinerator or a flare, is only allowed if:
- (1) the increase in NO_x emissions at the non-ESAD unit is determined using a CEMS or PEMS that meets the requirements of §117.2135(c) of this title, or through stack testing that meets the requirements of §117.2135(f) of this title; and
- (2) emission credits equal to the increase in NOX emissions at the non-ESAD unit are obtained and used in accordance with §117.9800 of this title (relating to Use of Emission Credits for Compliance).
- (f) 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.
- (g) The availability under subsection (a)(4) 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 on December 31, 2000. Reduced operation after December 31, 2000, cannot be used to qualify

for a more lenient emission specification under subsection (a)(4) of this section than would otherwise apply to the unit.

- (h) 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 §117.2125 of this title (relating to Alternative Case Specific Specifications):
- (1) carbon monoxide (CO), 400 ppmv at $3.0\% \text{ oxygen } (O_2)$, dry basis (or alternatively, 3.0 g/hp-hr for stationary internal combustion engines):
- (A) on a rolling 24-hour averaging period, for units equipped with CEMS or PEMS for CO; and
- (B) on a one-hour average, for units not equipped with CEMS or PEMS for CO; and
- (2) for units that inject urea or ammonia into the exhaust stream for NO_x control, ammonia emissions of 10 ppmv at 15% O_z , dry, for gas-fired lean-burn engines and diesel engines; and 3.0% O_z , 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; or
- (B) a rolling 24-hour averaging period for units equipped with CEMS or PEMS for ammonia.
- (i) An owner or operator may use emission reduction credits as specified in $\S117.9800$ of this title to comply with the NO_x emission specifications of this section.
- §117.2135. Monitoring, Notification, and Testing Requirements.
- (a) Oxygen (O₂) monitors. If the owner or operator installs an O₂ monitor, the criteria in §117.8100(a) of this title (relating to Emission Monitoring System Requirements for Industrial, Commercial, and Institutional Sources) should be considered the appropriate guidance for the location and calibration of the monitor.
- (b) Nitrogen oxides ($\mathrm{NO_x}$) monitors. If the owner or operator installs a continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS), the CEMS or PEMS must meet the requirements of §117.8100(a) or (b) of this title. If a PEMS is used, the PEMS must predict the pollution emissions in the units of the applicable emission limitations of this division.
- (c) Monitor installation schedule. Installation of monitors must be performed in accordance with the schedule specified in §117.9210 of this title (relating to Compliance Schedule for Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Minor Sources).
- (d) Testing requirements. The owner or operator of any unit subject to §117.2110 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration) shall comply with the following testing requirements.
- (1) Each unit must be tested for NO_x , carbon monoxide (CO), and O, emissions.
- (2) One of the ammonia monitoring procedures specified in $\S117.8130$ of this title (relating to Ammonia Monitoring) must be used to demonstrate compliance with the ammonia emission specification of $\S117.2110(h)(2)$ of this title for units that inject urea or ammonia into the exhaust stream for NO_x control. This paragraph does not apply to stationary diesel engines equipped with selective catalytic reduction (SCR) systems that meet all of the following criteria.

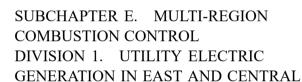
- (B) The SCR system must operate with a diagnostic system that monitors reductant quality and tank levels.
- (C) The diagnostic system must alert owners or operators to the need to refill the reductant tank before it is empty or to replace the reductant if the reductant does not meet applicable concentration specifications.
- (D) If the SCR system uses input from an exhaust NO_x sensor (or other sensor) to alert owners or operators when the reductant quality is inadequate, the reductant quality does not need to be monitored separately by the diagnostic system.
- (E) The reductant tank level must be monitored in accordance with the manufacturer's design to demonstrate compliance with this paragraph.
- (F) The method of alerting an owner or operator must be a visual or audible alarm.
- (3) For units not equipped with CEMS or PEMS, all testing must be conducted according to \$117.8000 of this title (relating to Stack Testing Requirements). In lieu of the test methods specified in \$117.8000 of this title, the owner or operator may use American Society for Testing and Materials (ASTM) D6522-00 to perform the NO $_{\chi}$, CO, and O $_{\chi}$ testing required by this subsection on natural gas-fired reciprocating engines. If the owner or operator elects to use ASTM D6522-00 for the testing requirements, the report must contain the information specified in \$117.8010 of this title (relating to Compliance Stack Test Reports).
- (4) Test results must be reported in the units of the applicable emission specifications and averaging periods. If compliance testing is based on 40 Code of Federal Regulations Part 60, Appendix A reference methods, the report must contain the information specified in §117.8010 of this title.
- (5) For units equipped with CEMS or PEMS, the CEMS or PEMS must be installed and operational before testing under this subsection. Verification of operational status must, at a minimum, include completion of the initial monitor certification and the manufacturer's written requirements or recommendations for installation, operation, and calibration of the device.
- (6) Initial compliance with the emission specifications of $\S117.2110$ of this title for units operating with CEMS or PEMS must be demonstrated after monitor certification testing using the NO_x CEMS or PEMS.
- (7) For units not operating with CEMS or PEMS, the following apply.
- (A) Retesting as specified in paragraphs (1) (4) of this subsection is required within 60 days after any modification that could reasonably be expected to increase the NO_x emission rate.
- (B) Retesting as specified in paragraphs (1) (4) of this subsection may be conducted at the discretion of the owner or operator after any modification that could reasonably be expected to decrease the NO_{x} emission rate, including, but not limited to, installation of post-combustion controls, low- NO_{x} burners, low excess air operation, staged combustion (for example, overfire air), flue gas recirculation, and fuel-lean and conventional (fuel-rich) reburn.
- (C) Stationary, reciprocating internal combustion engines not equipped with CEMS or PEMS must be periodically tested for $\mathrm{NO_x}$ and CO emissions as specified in §117.8140(a) of this title (relating to Emission Monitoring for Engines).
- (8) Testing must be performed in accordance with the schedule specified in §117.9210 of this title.

- (9) All test reports must be submitted to the executive director for review and approval within 60 days after completion of the testing.
- (10) The owner or operator of an affected unit in the Dallas-Fort Worth eight-hour ozone nonattainment area must submit written notification of any CEMS or PEMS relative accuracy test audit (RATA) or testing required under this section to the appropriate regional office and any local air pollution control agency having jurisdiction at least 15 days in advance of the date of RATA or testing.
- (e) Run time meters. The owner or operator of any stationary diesel engine claimed exempt using the exemption of §117.2103(5), (8), (9), or (10) of this title (relating to Exemptions) shall record the operating time with a non-resettable elapsed run time meter.

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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Charmaine Backens
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TEXAS

30 TAC §117.3000

Statutory Authority

The amended rules are proposed under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring

the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The proposed amendments implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

§117.3000. Applicability.

- (a) The provisions of this division (relating to Utility Electric Generation in East and Central Texas) apply to each utility electric power boiler and stationary gas turbine (including duct burners used in turbine exhaust ducts) that:
 - (1) generates electric energy for compensation;
- (2) is owned or operated by an electric cooperative, independent power producer, municipality, river authority, or public utility, or any of its successors;
 - (3) was placed into service before December 31, 1995; and
- (4) is located in Atascosa, Bastrop, Bexar, Brazos, Calhoun, Cherokee, Fannin, Fayette, Freestone, Goliad, Gregg, Grimes, Harrison, Henderson, Hood, Hunt, Lamar, Limestone, Marion, McLennan, Milam, Morris, Nueces, Parker, Red River, Robertson, Rusk, Titus, Travis, Victoria, or Wharton County.
- (b) The provisions of §117.3005 of this title (relating to Gas-Fired Steam Generation) also apply in Palo Pinto County.
- (c) This division no longer applies in Bexar County after December 31, 2024.

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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Charmaine Backens

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DIVISION 2. CEMENT KILNS

30 TAC §§117.3103, 117.3110, 117.3120, 117.3124, 117.3145

Statutory Authority

The new and amended rules are proposed under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The new and amended rules are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources,

consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The proposed new and amended rules implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

§117.3103. Exemptions.

- (a) Portland cement kilns exempted from the provisions of this division (relating to Cement Kilns), include any portland cement kiln placed into service on or after December 31, 1999, except as specified in §§117.3110, 117.3120, [and] 117.3123, and 117.3124 of this title (relating to Emission Specifications; Source Cap; [and] Dallas-Fort Worth Eight-Hour Ozone Attainment Demonstration Control Requirements; and Bexar County Control Requirements for Reasonably Available Control Technology (RACT)).
- (b) Any account in Ellis County with no portland cement kilns in operation prior to January 1, 2001, is exempt from $\S117.3123$ of this title.
- (c) After the compliance date specified in §117.9320(c) of this title (relating to Compliance Schedule for Cement Kilns), portland cement kilns that are subject to §117.3123 of this title are exempt from §117.3110 and §117.3120 of this title between March 1 and October 31 of each calendar year.
- (d) After the compliance date specified in §117.9320(c) of this title, portland cement kilns that are subject to §117.3124 of this title are exempt from §117.3110 and §117.3120 of this title.

§117.3110. Emission Specifications.

- (a) In accordance with the compliance schedule in $\S117.9320$ of this title (relating to Compliance Schedule for Cement Kilns), the owner or operator of each portland cement kiln shall ensure that nitrogen oxides (NO_x) emissions do not exceed the following rates on a 30-day rolling average. For the purposes of this section, the 30-day rolling average is calculated as the total of all the hourly emissions data (in pounds) that fuel was combusted in a cement kiln in the preceding 30 consecutive days, divided by the total number of tons of clinker produced in that kiln during the same 30-day period:
 - (1) for each long wet kiln:
- (A) in Bexar, Comal, Hays, and McLennan Counties, 6.0 pounds per ton (lb/ton) of clinker produced; and
 - (B) in Ellis County, 4.0 lb/ton of clinker produced;
 - (2) for each long dry kiln, 5.1 lb/ton of clinker produced;
- for each preheater kiln, 3.8 lb/ton of clinker produced;
- (4) for each preheater-precalciner or precalciner kiln, 2.8 lb/ton of clinker produced.
- (b) If there are multiple cement kilns at the same account, the owner or operator may choose to comply with the emission specifications of subsection (a) of this section on the basis of a weighted average

for the cement kilns at the account that are subject to the same specification. Each owner or operator choosing this option shall submit written notification of this choice to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction before the appropriate compliance date in §117.9320 of this title.

- (c) Each long wet or long dry kiln for which the following controls are installed and operated during kiln operation is not required to meet the NO_{x} emission specifications of subsection (a) of this section, provided that each owner or operator choosing this option submits written notification of this choice to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction before the appropriate compliance date in §117.9320 of this title:
 - (1) a low-NO_v burner and either:
 - (A) mid-kiln firing; or
- (B) some other form of secondary combustion achieving equivalent levels of NO_x reductions; or alternatively;
- (2) other additions or changes to the kiln system achieving at least a 30% reduction in NO_x emissions, provided the additions or changes are approved by the executive director with concurrence from the United States Environmental Protection Agency.
- (d) Each preheater or precalciner kiln for which either a low- NO_x burner or a low- NO_x precalciner is installed and operated during kiln operation is not required to meet the NO_x emission specifications of subsection (a) of this section. Each owner or operator choosing this option shall submit written notification of this choice to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction before the appropriate compliance date in §117.9320 of this title.
- (e) An owner or operator may use §117.9800 of this title (relating to Use of Emission Credits for Compliance) to meet the NO_x emission control requirements of this section, in whole or in part.
- (f) This section no longer applies in Bexar County after December 31, 2024.

§117.3120. Source Cap.

- (a) As an alternative to complying with the requirements of §117.3110 of this title (relating to Emission Specifications) in Bexar, Comal, Ellis, Hays, and McLennan Counties, an owner or operator may reduce total nitrogen oxides (NO_x) emissions (in pounds per day (ppd)) from all cement kilns at the account (including any cement kilns placed into service on or after December 31, 1999) to at least 30% less than the total NO_x emissions (in ppd) from all cement kilns in the account's 1996 emissions inventory (EI), on a 90-day rolling average basis. For the purposes of this section, the 90-day rolling average is calculated as the total of all the hourly emissions data for the preceding 90 days. For the calendar year that includes the appropriate compliance date in §117.9320 of this title (relating to Compliance Schedule for Cement Kilns), only hourly emissions data on or after that compliance date is included, such that the first 90-day period ends 90 days after the appropriate compliance date in §117.9320 of this title. A 90-day rolling average emission cap must be calculated using the following equation. Figure: 30 TAC §117.3120(a) (No change.)
- (b) To qualify for the source cap option available under this section, the owner or operator shall submit an initial control plan to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction that demonstrates that the overall reduction of NO_x emissions from all cement kilns at the account

- will be at least 30% from the 1996 baseline EI on a 90-day rolling average basis. The plan must be submitted no later than December 31 of the year preceding the appropriate compliance date in §117.9320 of this title. Each control plan must be approved by the executive director before the owner or operator may use the source cap available under this section for compliance. At a minimum, the control plan must include the emission point number (EPN), facility identification number (FIN), and 1996 baseline EI NO_{x} emissions (in ppd) from each cement kiln at the account; a description of the control measures that have been or will be implemented at each cement kiln; and an explanation of the recordkeeping procedure and calculations that will be used to demonstrate compliance.
- (c) Beginning on March 31 of the year following the appropriate compliance date in §117.9320 of this title, the owner or operator shall submit an annual report no later than March 31 of each year to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction that demonstrates that the overall reduction of NO_x emissions from all cement kilns at the account is at least 30% from the 1996 baseline EI on a 90-day rolling average basis. At a minimum, the report must include the EPN, FIN, and each 90-day rolling average NO_x emissions (in ppd) during the preceding calendar year for the cement kilns at the account.
- (d) All representations in control plans and annual reports become enforceable conditions. The owner or operator shall not vary from such representations if the variation will cause a change in the identity of the specific cement kilns subject to this section or the method of control of emissions unless the owner or operator submits a revised control plan to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction no later than 30 days after the change. All control plans and reports must demonstrate that the total NO_x emissions (in ppd) from all cement kilns at the account (including any cement kilns placed into service on or after December 31, 1999) are being reduced to at least 30% less than the total NO_x emissions (in ppd) from all cement kilns in the account's 1996 EI on a 90-day rolling average basis.
- (e) The $\mathrm{NO_x}$ emissions monitoring required by §117.3140 of this title (relating to Continuous Demonstration of Compliance) for each cement kiln in the source cap must be used to demonstrate continuous compliance with the source cap.
- (f) An owner or operator may use §117.9800 of this title (relating to Use of Emission Credits for Compliance) to meet the NO_{x} emission control requirements of this section, in whole or in part.
- (g) This section no longer applies in Bexar County after December 31, 2024.
- §117. 3124. Bexar County Control Requirements for Reasonably Available Control Technology (RACT).
- (a) In accordance with the applicable schedule in §117.9320 of this title (relating to Compliance Schedule for Cement Kilns), the owner or operator of each portland cement kiln located in Bexar County shall ensure that nitrogen oxides (NO_x) emissions from each preheater-precalciner or precalciner kiln do not exceed 2.8 pounds per ton (lb/ton) of clinker produced on a rolling 30-day average basis.
- (b) For the purposes of this section, the rolling 30-day average is an average, calculated for each day that fuel was combusted in the cement kiln, as the total of all the hourly emissions data (in pounds) for the preceding 30 days that fuel was combusted in the cement kiln, divided by the total number of tons of clinker produced in that kiln during the same 30-day period.

- (c) An owner or operator may use \$117.9800 of this title (relating to Use of Emission Credits for Compliance) to meet the NO_x emission control requirements of this section, in whole or in part.
- §117.3145. Notification, Recordkeeping, and Reporting Requirements
- (a) Notification. The owner or operator of each portland cement kiln shall submit verbal notification to the executive director of the date of any continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) performance evaluation conducted under §117.3140 or §117.3142 of this title (relating to Continuous Demonstration of Compliance; and Emission Testing and Monitoring for Eight-Hour Attainment Demonstration) at least 15 days before such date followed by written notification within 15 days after testing is completed.
- (b) Reporting of test results. The owner or operator of each portland cement kiln shall furnish the executive director and any local air pollution control agency having jurisdiction a copy of any CEMS or PEMS relative accuracy test audit conducted under §117.3140 or §117.3142 of this title:
- (1) within 60 days after completion of such testing or evaluation; and
- (2) not later than the appropriate compliance date in §117.9320 of this title (relating to Compliance Schedule for Cement Kilns).
- (c) Recordkeeping. The owner or operator of a portland cement kiln subject to the requirements of this division (relating to Cement Kilns) shall maintain written or electronic records of the data specified in this subsection. Such records must be kept for a period of at least five years and must be made available upon request by authorized representatives of the executive director, United States Environmental Protection Agency, or local air pollution control agencies having jurisdiction. The records must include:
- (1) for each kiln subject to §117.3110 or 117.3120 of this title (relating to Emission Specifications; and Source Cap), monitoring records of:
- (A) daily and rolling 30-day average (and, for each kiln subject to the source cap in §117.3120 of this title, rolling 90-day average) nitrogen oxides (NO₂) emissions (in pounds);
- (B) daily and rolling 30-day average (and, for each kiln subject to the source cap in §117.3120 of this title, rolling 90-day average) production of clinker (in United States short tons); and
- (C) average NO_x emission rate (in pounds per ton (lb/ton) of clinker produced) on the basis of a rolling 30-day average (and, for each kiln subject to the source cap in §117.3120 of this title, a rolling 90-day average);
- (2) records of the results of initial certification testing, evaluations, calibrations, checks, adjustments, and maintenance of CEMS and PEMS;
- (3) records of the results of any stack testing conducted; [and]
- (4) for each kiln subject to the source cap in §117.3123 of this title (relating to Dallas-Fort Worth Eight-Hour Ozone Attainment Demonstration Control Requirements) and emission testing and monitoring requirements in §117.3142 of this title:
- (A) records of the control plan required under §117.3123 of this title;

- (B) hourly records of the average NO_x concentration in parts per million by volume;
- (C) hourly records of the NO_x emissions in pounds per hour;
 - (D) daily records of the NO_x emissions in tons per day;
- (E) daily records of the NO_x emissions in tons per day expressed as a 30-day rolling average;
- (F) hourly records of the average exhaust gas flow rate in dry standard cubic feet per minute; and
- (G) records of ammonia monitoring required under \$117.3142(a)(3) of this title; and [-]
- (5) for each kiln subject to §117.3124 of this title (relating to Bexar County Control Requirements for Reasonably Available Control Technology (RACT)), monitoring records of:
- (A) hourly, daily, and rolling 30-day average NO_x emissions (in pounds);
- (B) hourly, daily, and rolling 30-day average production of clinker (in United States short tons); and
- (C) rolling 30-day average NO_x emission rate (in pounds per ton of clinker produced).

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 H. ADMINISTRATIVE PROVISIONS

DIVISION 1. COMPLIANCE SCHEDULES

30 TAC §§117.9010, 117.9030, 117.9110, 117.9300, 117.9320

Statutory Authority

The new and amended rules are proposed under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The new and amended rules are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources,

consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The proposed new and amended rules implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

§117.9010. Compliance Schedule for Bexar County Ozone Nonattainment Area Major Sources.

- (a) The owner or operator of any stationary source of nitrogen oxides (NO_x) in the Bexar County ozone nonattainment area that is a major source of NO_x and is subject to the requirements of Subchapter B, Division 2 of this chapter (relating to Bexar County Ozone Nonattainment Area Major Sources) shall comply with the requirements of Subchapter B, Division 2 of this chapter as soon as practicable, but no later than January 1, 2025.
- (b) The owner or operator of any stationary source of NO_x that becomes subject to the requirements of Subchapter B, Division 2 of this chapter on or after the applicable compliance date specified in subsection (a) of this section, shall comply with the requirements of Subchapter B, Division 2 of this chapter as soon as practicable, but no later than 60 days after becoming subject.
- §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) for units subject to the emission specification of $\S117.405(a)$ of this title located in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, or Tarrant Counties, or located at a source in Wise County that emits or has the potential to emit equal to or greater than 100 tons per year (tpy) of NO_x :
- (i) submission of the initial control plan required by §117.450 of this title (relating to Initial Control Plan Procedures) was required by June 1, 2016;
- (ii) for units subject to the emission specification of §117.405(a) of this title as of January 1, 2017, compliance with all other requirements of Subchapter B, Division 4 of this chapter was required by January 1, 2017, and these units shall continue to comply with the requirements of Subchapter B, Division 4 of this chapter; and
- (iii) for units that became subject to the emission specification of §117.405(a) of this title after January 1, 2017, compliance is required as specified in paragraph (2) of this subsection;

- (B) for units subject to the emission specifications of \$117.405(b) of this title located at sources in Wise County that emit or have the potential to emit equal to or greater than 100 tpy of NO_{$_{\odot}$}:
- (i) submission of the initial control plan required by §117.450 of this title was required by June 1, 2016;
- (ii) for units subject to the emission specifications of §117.405(b) of this title as of January 1, 2017, compliance with all other requirements of Subchapter B, Division 4 of this chapter was required by January 1, 2017, and these units shall continue to comply with the requirements of Subchapter B, Division 4 of this chapter; and
- (iii) for units that became subject to the emission specifications of §117.405(b) of this title after January 1, 2017, compliance is required as specified in paragraph (2) of this subsection; [and]
- (C) for units subject to the emission specifications of $\S117.405$ of this title located at sources in Wise County that emit or have the potential to emit equal to or greater than 50 tpy but less than 100 tpy of NO_{\circ} :
- (i) submission of the initial control plan required by §117.450 of this title is required no later than January 15, 2021; and
- (ii) for units subject to the emission specifications of §117.405 of this title, compliance with all other requirements of Subchapter B, Division 4 of this chapter is required as soon as practicable, but no later than July 20, 2021; and [-]
- (D) for units subject to the emission specifications of §117.405 of this title located at sources in Wise County that emit or have the potential to emit equal to or greater than 25 tpy but less than 50 tpy of NO_v :
- (i) submission of the initial control plan required by §117.450(b) of this title is required no later than May 7, 2025; and
- (ii) compliance with all other requirements of Subchapter B, Division 4 of this chapter is required as soon as practicable, but no later than November 7, 2025.
- (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.
- (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 $\S117.450$ 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.
- (3) The owner or operator of any unit that is subject to the emission specifications in §117.410(a) of this title located at sources in the Dallas-Fort Worth eight-hour ozone nonattainment area that emit or have the potential to emit equal to or greater than 25 tpy but less than 50 tpy of NO_s:
- (A) submission of the initial control plan required by \$117.450(b) of this title is required no later than May 7, 2025; and
- (B) compliance with all other requirements of Subchapter B, Division 4 of this chapter is required as soon as practicable, but no later than November 7, 2025.
- (4) 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 (3) 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.
- §117.9110. Compliance Schedule for Bexar County Ozone Nonattainment Area Utility Electric Generation Sources.
- (a) The owner or operator of each electric utility in the Bexar County ozone nonattainment area that is subject to the requirements of Subchapter C, Division 2 of this chapter (relating to Bexar County Ozone Nonattainment Area Utility Electric Generation Sources) shall comply with the requirements of Subchapter C, Division 2 of this chapter as soon as practicable, but no later than January 1, 2025.
- (b) The owner or operator of any electric utility that becomes subject to the requirements of Subchapter C, Division 2 of this chapter on or after the applicable compliance date specified in subsection (a) of this section, shall comply with the requirements of Subchapter C, Division 2 of this chapter as soon as practicable, but no later than 60 days after becoming subject.
- §117.9300. Compliance Schedule for Utility Electric Generation in East and Central Texas.
- (a) The owner or operator of each utility electric power boiler or stationary gas turbine located in Atascosa, Bastrop, Bexar, Brazos, Calhoun, Cherokee, Fannin, Fayette, Freestone, Goliad, Gregg, Grimes, Harrison, Henderson, Hood, Hunt, Lamar, Limestone, Marion, McLennan, Milam, Morris, Nueces, Parker, Red River, Robertson, Rusk, Titus, Travis, Victoria, and Wharton Counties shall comply with the requirements of Subchapter E, Division 1 of this chapter (relating to Utility Electric Generation in East and Central Texas) as soon as practicable, but no later than the following dates:

- (1) except as provided in subparagraph (C) of this paragraph, May 1, 2003, for units owned by utilities subject to the cost-recovery provisions of Texas Utilities Code, §39.263(b):
- (A) the owner or operator shall use the period of May 1, 2003, through April 30, 2004, for the initial annual compliance period. Compliance for each subsequent annual period is on a calendar year basis. For example, the second annual compliance period is January 1, 2004, through December 31, 2004;
- (B) the updated final control plan required by \$117.3054 of this title (relating to Final Control Plan Procedures) must be submitted by May 31, 2004, and by January 31, 2005; and
- (C) the owner or operator shall comply with the ammonia specification of §117.3010(2) of this title (relating to Emission Specifications) by May 1, 2005; and
 - (2) May 1, 2005, for all other units:
- (A) the owner or operator shall use the period of May 1, 2005, through April 30, 2006, for the initial annual compliance period. Compliance for each subsequent annual period is on a calendar year basis. For example, the second annual compliance period is January 1, 2006, through December 31, 2006; and
- (B) the updated final control plan required by §117.3054 of this title must be submitted by May 31, 2006, and by January 31, 2007.
- (b) Beginning January 1, 2025, sources in Bexar County are no longer required to comply with the requirements of Subchapter E, Division 1 of this chapter.
- §117.9320. Compliance Schedule for Cement Kilns.
- (a) Except as specified in <u>subsections</u> [subsection] (c) <u>and (d)</u> of this section, the owner or operator of each portland cement kiln placed into service before December 31, 1999, in Bexar, Comal, Ellis, Hays, and McLennan Counties shall be in compliance with the requirements of Subchapter E, Division 2 of this chapter (relating to Cement Kilns) as soon as practicable, but no later than the following dates:
 - (1) May 1, 2003, for cement kilns in Ellis County; and
- (2) May 1, 2005, for cement kilns in Bexar, Comal, Hays, and McLennan Counties.
- (b) Notwithstanding subsection (a)(1) of this section, for a cement kiln in Ellis County that the owner or operator has filed an application for modification of its facility to meet the requirements of Subchapter E, Division 2 of this chapter on or before May 30, 2003, the compliance schedule is extended until six months after the issuance of the permit for operation of a low-NO_x burner and 12 months after issuance of the permit for operation of a secondary combustion system. Such application(s) must relate only to those modifications required to comply with Subchapter E, Division 2 of this chapter, and any issues incident thereto.
- (c) The owner or operator of each portland cement kiln in Ellis County shall comply with the requirements of §117.3123 and §117.3142 of this title (relating to Dallas-Fort Worth Eight-Hour Ozone Attainment Demonstration Control Requirements; and Emission Testing and Monitoring for Eight-Hour Attainment Demonstration), and the applicable requirements of §117.3145 of this title (relating to Notification, Recordkeeping, and Reporting Requirements) that are associated with §117.3123 and §117.3142 of this title, as soon as practicable, but no later than March 1, 2009.
- (1) The provisions regarding extension of compliance schedules in subsection (b) of this section do not apply to this subsec-

tion or the requirements of §117.3123, §117.3142, or the applicable requirements of §117.3145 of this title.

- (2) If a contested case hearing is granted as a direct result of a permit application necessary to comply with the requirements of §117.3123 of this title, the compliance date of this subsection for the site affected by the contested case hearing is extended until no later than March 1, 2010. The compliance date for the affected site remains March 1, 2009, if:
- (A) a contested case hearing is granted as a result of a permit application that includes modifications necessary to comply with §117.3123 of this title, but the contested case hearing is the result of modifications included in the permit that are unrelated to compliance with §117.3123 of this title, then the compliance date for the affected site remains March 1, 2009; or
- (B) a contested case hearing is granted at the request of the owner or operator of the affected portland cement kiln or any third party affiliated with the owner or operator.
- (d) The owner or operator of each portland cement kiln in Bexar County shall comply with the requirements of §117.3124 of this title (relating to Bexar County Control Requirements for Reasonably Available Control Technology (RACT)), and the applicable requirements of §117.3145 of this title (relating to Notification, Recordkeeping, and Reporting Requirements) as soon as practicable, but no later than January 1, 2025.

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

Filed with the Office of the Secretary of State on December 1, 2023.

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Charmaine Backens

Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 14, 2024
For further information, please call: (512) 239-2678



DIVISION 2. COMPLIANCE FLEXIBILITY

30 TAC §117.9800

Statutory Authority

The amended rules are proposed under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of

the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The proposed amendments implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

§117.9800. Use of Emission Credits for Compliance.

- (a) An owner or operator of a unit not subject to Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program) may meet emission control requirements of the sections specified in paragraphs (1) (9) [(8)] of this subsection, in whole or in part, by obtaining an emission reduction credit (ERC), mobile emission reduction credit (MERC), discrete emission reduction credit (DERC), or mobile discrete emission reduction credit (MDERC) in accordance with Chapter 101, Subchapter H, Division 1 or 4 of this title (relating to Emission Credit Banking and Trading; and Discrete Emission Credit Banking and Trading), unless there are federal or state regulations or permits under the same commission account number that contain a condition or conditions precluding such use:
- (1) §§117.105, 117.205, 117.405, [ef] 117.1005, or 117.1105 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT));
- (2) §117.110 or §117.1010 of this title (relating to Emission Specifications for Attainment Demonstration);
- (3) §117.1015 of this title (relating to Alternative System-Wide Emission Specifications);
- (4) §117.115 of this title (relating to Alternative Plant-Wide Emission Specifications);
- (5) §§117.123, 117.423, or 117.3120 of this title (relating to Source Cap);
- (6) §§117.2010, 117.3010, or 117.3110 of this title (relating to Emission Specifications);
- (7) §§117.410, 117.1310, 117.2110, or 117.3310 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration); [of]
- (8) §117.3123 of this title (relating to Dallas-Fort Worth Eight-Hour Ozone Attainment Demonstration Control Requirements); or [-]
- (9) §117.3124 of this title (relating to Bexar County Control Requirements for Reasonably Available Control Technology (RACT)).
- (b) An owner or operator of a unit subject to §§117.320, 117.1120, 117.1020, 117.1220, or 117.3020 of this title (relating to System Cap) may meet the emission control requirements of these sections in whole or in part, by complying with the requirements of Chapter 101, Subchapter H, Division 1 or 4 of this title, by obtaining an ERC, MERC, DERC, or MDERC, unless there are federal or state regulations or permits under the same commission account number that contain a condition or conditions precluding such use.
- (c) For the purposes of this section, the term "reduction credit (RC)" refers to an ERC, MERC, DERC, or MDERC, whichever is applicable.

(d) Any lower nitrogen oxides (NO_a) emission specification established under this chapter for the unit or units using RCs requires the user of the RCs to obtain additional RCs in accordance with Chapter 101, Subchapter H, Division 1 or 4 of this title and/or otherwise reduce emissions prior to the effective date of such rule change. For units using RCs in accordance with this section that are subject to new, more stringent rule limitations, the owner or operator using the RCs shall submit a revised final control plan to the executive director in accordance with §§117.156, 117.356, 117.456, 117.1056, 117.1256, and 117.1356 of this title (relating to Revision of Final Control Plan) and §117.252 and §117.1152 of this title (relating to Control Plan Procedures for Reasonably Available Control Technology (RACT)) to revise the basis for compliance with the emission specifications of this chapter. The owner or operator using the RCs shall submit the revised final control plan as soon as practicable, but no later than 90 days prior to the effective date of the new, more stringent rule. The owner or operator of the unit(s) currently using RCs shall calculate the necessary emission reductions per unit as follows.

Figure: 30 TAC §117.9800(d) (No change.)

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

Filed with the Office of the Secretary of State on December 1, 2023.

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Charmaine Backens

Deputy Director, Environmental Law Division Texas Commission on Environmental Quality Earliest possible date of adoption: January 14, 2024 For further information, please call: (512) 239-2678

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING SUBCHAPTER A. MANAGEMENT OF THE BEACH DUNE SYSTEM

31 TAC §15.7, §15.34

The General Land Office (GLO) proposes amendments to 31 Texas Administrative Code (TAC) §15.7(h)(5), relating to Local Government Management of the Public Beach, and §15.34, relating to Certification Status of Village of Surfside Beach Dune Protection and Beach Access Plan (Plan). The GLO is proposing the amendment to §15.7(h)(5) to ensure consistency with related provisions in the TAC. The GLO is proposing new §15.34(e) to certify as consistent with state law Plan amendments proposed by the Village of Surfside Beach (Village). The proposed Plan amendments include increasing the beach user fee (BUF) and updating the Plan's beach access section.

Copies of the Village's proposed Plan can be obtained by contacting the Village of Surfside Beach City Secretary at 1304 Monument Drive, Surfside Beach, Texas 77541-9522, (979) 233-1531, or the GLO's Archives and Records Division, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711-2873, (512) 463-5277.

BACKGROUND AND ANALYSIS OF THE PROPOSED AMENDMENT TO §15.7(h)(5)

GLO adopted amendments to 31 TAC Ch. 15, effective May 30, 2023. Some of the amendments were made with the goal of enhancing beach access for persons with disabilities. After the rule amendments were adopted, the GLO was made aware by the Texas Department of Licensing and Regulation (TDLR) and its Elimination of Architectural Barriers Program that a minor amendment to §15.7(h)(5) was necessary, which states in part, "For the purposes of vehicular restrictions only, beach access for persons is preserved if the following criteria are met....' Since the GLO does not have the authority to determine by rule whether access is preserved for persons with disabilities, the GLO is proposing an amendment to the subsection. The proposed amendment would add "with disabilities" and "presumed" to the text of the rule pertaining to vehicular restrictions to the beach and access for persons with disabilities. The amendment would make §15.7(h)(5) consistent with the rest of §15.7(h) by specifying that meeting the criteria in the rule creates a presumption that access is preserved, but that other evidence may be considered in making a final determination. The presumption is rebuttable given other evidence, existing and historical use of the beach, and circumstances particular to the vehicular restriction requested. The amended text as proposed is. "For the purposes of vehicular restrictions only, beach access for persons with disabilities is presumed to be preserved if the following criteria are met...." This change would make the rule consistent with the rest of §15.7(h), Preservation and Enhancement of Public Beach Use and Access.

BACKGROUND AND ANALYSIS OF THE PROPOSED AMENDMENT TO §15.34

Pursuant to the Open Beaches Act (Texas Natural Resources Code, Chapter 61) and the Texas Administrative Code (31 TAC §§15.3, 15.7, and 15.8), a local government with jurisdiction over Gulf Coast beaches must submit any proposed amendments to its Plan or Beach User Fee Plan (BUF Plan) to the GLO for certification. If appropriate, the GLO will certify that the Plan or BUF Plan is consistent with state law by amendment of a rule, as authorized in Texas Natural Resources Code (TNRC) §§61.011(d)(5) and 61.015(b). The certification by rule reflects the state's certification of the Plan; however, the text of the Plan is not adopted by the GLO, as provided in 31 TAC §15.3(o)(4).

On October 10, 2023, the City Council of the Village of Surfside Beach adopted Ordinance 2023-10-10 to adopt the proposed amendments to the Plan, which include increasing the BUF and updating the Plan's beach access section. The ordinance becomes effective upon the GLO's certification of the amendments to the Plan as consistent with state law. The Plan was submitted to the GLO in accordance with 31 TAC §15.3 and §15.8 and TNRC §61.022(c).

The Village is a coastal community in Brazoria County bordering the Gulf of Mexico. The Village is located on Follett's Island and is accessible from Galveston Island via County Road 257, and from the City of Freeport via State Highway 332. The Village includes approximately 3.8 miles of jurisdictional beach. The areas governed by the Plan include those beaches and adjacent areas within Village jurisdiction that border the Gulf of Mexico.

As provided in 31 TAC §15.8, local governments may request authorization to increase the BUF provided that the local government demonstrates that the increased BUF corresponds to increased costs of the local government for providing public ser-

vices and facilities directly related to the public beach. Pursuant to 31 TAC §15.3 and §15.8, the Village adopted a new BUF and submitted a BUF Plan to the GLO with a request for certification that the BUF Plan is consistent with state law.

The proposed amendment to the BUF Plan increases the annual permit fee amount from \$12 to \$30, expiring on December 31st of each year, and adds a new daily permit option of up to \$15 per vehicle, valid until 12 a.m. (midnight) on the date of issue. The amendment also includes an off-season rate of up to \$15 for annual permits sold January 1st through January 31st, expiring on December 31st of each year. The annual and daily permits allow for parking motor vehicles along the beach-facing side of Beach Drive, immediately adjacent to the beach, and driving onto the beach at designated access points. The permits will be available for purchase at the Village City Hall, local area businesses, and beach permit booths.

According to the Village, the BUF increase is necessary due to ongoing budget deficits from the management of increased beach visitation, increased expenditures on beach maintenance and safety, and damages from unpredictable seasonal storms. which may impact the beach, dune walkovers, beach accesses, and parking areas. In the short term, the Village indicates that additional revenue generated by the increased BUF will enable the Village to expand beach cleaning and maintenance activities by increasing beach maintenance personnel and by purchasing additional beach equipment, enhancing safety by increasing lifeguard and law enforcement presence, and installing educational beach maintenance signage. In the long term, the revenue from the BUF will be used to install a mobile command center to improve safety and emergency response; provide beach amenities such as showers, permanent restrooms, picnic areas, and vending areas; and further increase beach maintenance and safety personnel and equipment.

Based on the information and justification provided by the Village, the GLO has determined that the BUF increase is reasonable. The BUF does not exceed the necessary and actual cost of providing reasonable beach-related facilities and services, does not unfairly limit public use of and access to and from public beaches in any manner, and is consistent with §15.8 of the Beach/Dune Rules and the Open Beaches Act. Therefore, the GLO finds that the BUF Plan is consistent with state law.

The proposed amendments also modify vehicular access to the public beach with an updated parking inventory for off-beach parking areas. The proposed amendment prohibits on-beach vehicular access from Hwy 332 to Starfish Street, which is approximately 400 linear feet of beach. This prohibition is due to the narrow width of the beach, soft sand conditions that has made driving a hazard in this area for a number of years, and future groin locations. In order for the Village to close vehicular access in the area from Hwy 332 to the jetties, 27 additional parking spaces, in excess of the required number, were provided, and the Village demonstrated compliance in the updated parking inventory.

FISCAL AND EMPLOYMENT IMPACTS

Ms. Angela Sunley, Deputy Director of GLO's Coastal Resources Division, has determined that for each year of the first five years the proposed amended rules are in effect, there will be minimal fiscal implications for the state government or local economy as a result of enforcing or administering the amended rules. Ms. Sunley has determined that the proposed

amendments will not affect the costs of compliance for small businesses or micro-businesses. The proposed Plan amendments relate to individual permits for on-beach and off-beach parking and are not related to the permitting or restriction of business activities. The impact of the BUF increase is mitigated by the existence of no-fee parking areas within the Village. The other Plan amendments will primarily affect the location of beach access and will have minimal impact on small businesses.

Ms. Sunley has determined that there will be minimal fiscal implications to the local government and no additional costs of compliance for large and small businesses or individuals resulting from the proposed amendment to §15.7(h)(5). GLO is providing funding for certain amenities, such as mobility mats and beach wheelchairs, to local governments to enhance access for persons with disabilities.

PUBLIC BENEFIT

Ms. Sunley has determined that the public will benefit from the proposed amendment to §15.7(h)(5) since there will be more options and flexibility for enhancing beach access for persons with disabilities.

Ms. Sunley has determined that the public will be affected by the increase of the Village's BUF since individuals will be required to pay larger daily and annual fees. However, the Plan includes no-fee areas of public beach parking and no-fee drivable areas of the beach, as required by 31 TAC §15.8(h), mitigating the impact of the BUF increase on individuals. The Village's Plan designates 675 free parking spaces within walking distance of the beach.

Ms. Sunley has determined that the BUF benefits the public and beachgoers because the increased fees will enable the Village to continue to fund and provide adequate and improved beach-related services to the public. The BUF specifically benefits the public and beachgoers by funding improved access and enhancing the safety of the public at the beach.

ENVIRONMENTAL REGULATORY ANALYSIS

The GLO has evaluated the proposed rulemaking action considering the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The amendments are proposed under Texas Natural Resources Code §§61.011, 61.015(b), and 61.022 (b) & (c), and 61.070, which provide the GLO with the authority to adopt rules governing the preservation and enhancement of the public's right to use and have access to public beaches, imposition or increase of beach user fees, and certification of local government beach access and use plans as consistent with state law. The proposed amendments do not exceed federal or state requirements.

TAKINGS IMPACT ASSESSMENT

The GLO has evaluated the proposed rulemaking in accordance with Texas Government Code §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines to determine whether a detailed takings impact assessment is required. The GLO has determined that the proposed amendments do not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, §17 and §19 of the Texas Constitution. GLO has determined that the proposed amendments would not affect any private real property in a manner that restricts or limits any owner's right to property or use of that property.

GOVERNMENT GROWTH IMPACT STATEMENT

The GLO prepared a Government Growth Impact Statement for this proposed rulemaking. Since the proposed amendment to §15.34 simply certifies as consistent with state law the amendments to Village of Surfside Beach Dune Protection and Beach Access Plan (Plan), it will not affect the operations of the GLO. The proposed amendment to §15.7(h)(5) amends the standard for preserving beach access for persons with disabilities and will not affect the operations of the GLO. The proposed rulemaking does not create or eliminate a government program, will not require an increase or decrease in future legislative appropriations to the agency, will not require the creation of new employee positions nor eliminate current employee positions at the agency, nor will it require an increase or decrease in fees paid to the General Land Office. The proposed rule amendments do not create, limit, or repeal existing agency regulations, but rather clarify an existing rule and certify the amendments to the Village's Plan as consistent with state law. The proposed rules do not increase or decrease the number of individuals subject to the rule's applicability. The proposed amendments to §15.7 and §15.34 will not affect the economy in the State of Texas.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

The proposed rulemaking is subject to the Coastal Management Program (CMP) as provided for in the Texas Natural Resources Code §33.2053, and 31 TAC §29.11(a)(1)(J) and §29.11(c) (relating to Actions and Rules Subject to the CMP). GLO has reviewed this proposed action for consistency with the CMP goals and policies in accordance with the regulations and has determinate that the proposed action is consistent with the applicable CMP goals and policies. The applicable goals and policies are found at 31 TAC §26.12 (relating to Goals) and §26.26 (relating to Policies for Construction in the Beach/Dune System).

The proposed amendments are consistent with the CMP goals outlined in 31 TAC §26.12(5). These goals seek to balance the benefits of economic development and multiple human uses, protecting, preserving, restoring, and enhancing CNRAs, and the benefits from public access to and enjoyment of the coastal zone. The proposed amendments are consistent with 31 TAC §26.12(5) as they provide the Village with the ability to enhance public access and enjoyment of the coastal zone, protect and preserve and enhance the CNRA, and balance other uses of the coastal zone. The proposed rules are also consistent with CMP policies in §26.26(a)(4) by enhancing and preserving the ability of the public, individually and collectively, to exercise its rights of use of and access to and from public beaches.

PUBLIC COMMENT REQUEST

To comment on the proposed rulemaking or its consistency with the CMP goals and policies, please send a written comment to Mr. Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711, facsimile number (512) 475-1859 or email to walter.talley@glo.texas.gov. Written comments must be received no later than 5:00 p.m., thirty (30) days from the date of publication of this proposal.

STATUTORY AUTHORITY

The amendment is proposed under Texas Natural Resources Code §§61.011, 61.015(b), and 61.022 (b) & (c), and 61.070, which provide the GLO with the authority to adopt rules governing the preservation and enhancement of the public's right to access and use public beaches, imposition or increase of beach user fees, and certification of local government beach access and use plans as consistent with state law.

The GLO hereby certifies that the section as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

§15.7. Local Government Management of the Public Beach.

- (a) (g) (No change.)
- (h) Preservation and enhancement of public beach use and access. A local government shall regulate pedestrian or vehicular beach access, traffic, and parking on the beach only in a manner that preserves or enhances existing public right to use and have access to and from the beach. A local government shall not impair or close an existing access point, close a public beach to pedestrian or vehicular traffic, or modify public beach parking without prior approval from the General Land Office. The General Land Office may approve and certify a local government's modification to their beach access and use plan based upon the General Land Office's affirmative finding that such modifications preserve or enhance the public's right to use and access the public beach.
 - (1) (4) (No change.)
- (5) A local government may not restrict vehicular traffic from a public beach unless it preserves or enhances beach access for persons with disabilities. For the purposes of vehicular restrictions only, beach access for persons with disabilities is presumed to be preserved if the following criteria are met:

(i) - (o) (No change.)

§15.34. Certification Status of Village of Surfside Beach Dune Protection and Beach Access Plan.

- (a) (d) (No Changes.)
- (e) The General Land Office certifies that the Beach User Fee and the Beach User Fee Plan adopted by the City Council of the Village of Surfside Beach in Ordinance 2023-10-10 on October 10, 2023, is consistent with state law. The Plan adopts a Beach User Fee of up to \$15.00 a day and an annual fee of up to \$30.00. The amendments also update the beach access section of the Plan.

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

Filed with the Office of the Secretary of State on November 29, 2023.

TRD-202304400

Mark Havens Chief Clerk General Land Office

Earliest possible date of adoption: January 14, 2024 For further information, please call: (512) 475-1859



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 15. TEXAS FORENSIC SCIENCE COMMISSION

CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES SUBCHAPTER C. FORENSIC ANALYST LICENSING PROGRAM

37 TAC §651.202, §651.222

The Texas Forensic Science Commission (Commission) proposes amendments to 37 Texas Administrative Code Chapter 651.202 Definitions and Chapter 651.222 Voluntary Forensic Analyst Licensing Requirements Including Eligibility, License Term, Fee, and Procedure for Denial of Initial Application or Renewal Application and Reconsideration. The amendments create new voluntary license categories for latent print processing technicians, crime scene investigation analysts, and crime scene reconstruction analysts.

Background and Justification. Under the revised rules, crime scene processing technicians, crime scene investigation analysts, and crime scene reconstruction analysts may apply for a voluntary license by the Commission. The Commission also defines certain crime scene processing and reconstruction terms for clarity. The amendments are necessary to reflect adoptions made by the Commission at its October 21, 2023 quarterly meeting at which the Commission voted to incorporate the changes to its administrative rules expanding its voluntary licensing program to include licenses for latent print processing technicians, crime scene investigation analysts, and crime scene reconstruction analysts.

Fiscal Note. Leigh M. Tomlin, Associate General Counsel of the Commission, has determined that for each year of the first five years the new rule is in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. There is no anticipated effect on local employment or the local economy as a result of the proposal. There is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the proposed rule amendments. The amendments create voluntary license programs for latent print processing technicians, crime scene processing technicians, crime scene investigation analysts, and crime scene reconstruction analysts who wish to participate in the program.

One-for-One Rule Requirement for Rules with a Fiscal Impact. Because Ms. Tomlin has determined that the rules do not have a fiscal impact that imposes a cost on a regulated person, including another state agency, a special district, or a local government, the agency is not required to take further action under Government Code § 2001.0045.

Rural Impact Statement. The Commission expects no adverse economic effect on rural communities as the new rule does not impose any direct costs or fees on municipalities in rural communities.

Public Benefit/Cost Note. Ms. Tomlin has also determined that for each year of the first five years the new rule is in effect, the anticipated public benefit is an option for crime scene practitioners not eligible for mandatory licensure in the State to achieve a voluntary license by the Commission. Voluntary license requirements encourage forensic practitioner participation in continuing education requirements, compliance with the Texas Forensic Analyst and Crime Laboratory Manager's Code of Professional Responsibility, and a general forensic analyst licensing exam that includes a required understanding of forensic analyst disclosure obligations designed to improve the integrity and reliability of forensic science in Texas courtrooms for practitioners not mandatorily subject to these licensing components. There is no economic cost to persons required to comply with the rule in response to the changes proposed by the rulemaking.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code § 2006.002(c) and (f), Ms. Tomlin has determined that the proposed amendments will not have an adverse economic effect on any small or micro-business because there are no anticipated economic costs to any person or crime laboratory. The amended rules provide an option for latent print processing technicians, crime scene processing technicians, crime scene investigation analysts, and crime scene reconstruction analysts to achieve voluntary licensure in the State of Texas.

The Takings Impact Assessment. Ms. Tomlin has determined that no private real property interests are affected by this proposal 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, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Government Growth Impact Statement. Ms. Tomlin has determined that for the first five-year period, implementation of the proposed amendments will have no government growth impact. Pursuant to the analysis required by Government Code 2001.0221(b), 1) the proposed rule does not create or eliminate a government program; 2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions; 3) implementation of the proposed rule does not increase or decrease future legislative appropriations to the agency; 4) the proposed rule does require a fee, but the fee associated with the new license categories is voluntary for those wishing achieve voluntary licensure in one of the three new categories of voluntary licensure; 5) the proposed rule does not create a new regulation; 6) the proposed rule does not expand, limit, or repeal an existing regulation; 7) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and 8) the proposed rule has no effect on the state's economy.

Environmental Rule Analysis. The Commission has determined that the proposed rules are not brought with specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Commission asserts that the proposed rules are not a "major environmental rule," as defined in Government Code §2001.0225. As a result, the Commission asserts the preparation of an environmental impact analysis, as provided by §2001.0225, is not required.

Request for Public Comment. The Commission invites comments on the proposal from any member of the public. Please submit comments to Leigh M. Tomlin, 1700 North Congress Avenue, Suite 445, Austin, Texas 78701 or leigh@fsc.texas.gov. Comments must be received by January 22, 2023 to be considered by the Commission.

Statutory Authority. The rules are proposed under the Commission's general rulemaking authority provided in Code of Criminal Procedure, Article 38.01 § 3-a and its authority to regulate forensic analysts under Article 38.01 § 4-a and authority to establish voluntary licensing programs for forensic examinations or tests not subject to accreditation requirements under Article 38.01 § 4-a(c). The proposed rules have been reviewed by legal counsel and found to be within the state agency's authority to adopt.

Cross-reference to statute. The proposal affects Tex. Code Crim. Proc. art. 38.01 §§ 4-a and 4-a(c).

§651.202. Definitions.

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

- (1) Forensic analyst Means a person who on behalf of a crime laboratory accredited under Article 38.01 §4-d, Code of Criminal Procedure, technically reviews or performs a forensic analysis or draws conclusions from or interprets a forensic analysis for a court or crime laboratory. The term does not include a medical examiner or other forensic pathologist who is a licensed physician.
- (2) Forensic analysis Has the meaning assigned by Article 38.35, Code of Criminal Procedure.
- (3) Forensic pathology Includes that portion of an autopsy conducted by a medical examiner or other forensic pathologist who is a licensed physician.
- (4) Accredited laboratory Includes a public or private laboratory or other entity that conducts forensic analysis as defined in Article 38.35, Code of Criminal Procedure and is accredited by a national accrediting body recognized by the Commission and listed in §651.4 of this title (relating to List of Recognized Accrediting Bodies).
- (5) Physical evidence Has the meaning assigned by Article 38.35, Code of Criminal Procedure.
- (6) Accredited university A college or university accredited by a national accrediting body recognized by the United States Department of Education, or a foreign university with a degree program(s) recognized as equivalent by the Commission.
- (7) Professional Misconduct Professional misconduct means the forensic analyst or crime laboratory, through a material act or omission, deliberately failed to follow the standard of practice that an ordinary forensic analyst or crime laboratory would have followed, and the deliberate act or omission would substantially affect the integrity of the results of a forensic analysis. An act or omission was deliberate if the forensic analyst or crime laboratory was aware of and consciously disregarded an accepted standard of practice required for a forensic analysis.
- (8) Technician An individual who performs basic analytical functions under the supervision of a qualified analyst but does not evaluate data, reach conclusions or sign any report for court or investigative purposes shall be considered a technician under the disciplines set forth in this section, with the exception of a Firearms/Toolmarks Technician who may issue a report provided it is limited to a representation that a firearm was test-fired and/or cartridge cases were entered into the National Integrated Ballistics Information Network.

- (9) Interpretation for toxicology Interpretation is the consideration of dose-response relationships between drugs, alcohol or other compounds of interest and the resulting behavioral or physical changes to human performance, including the evaluation of pharmacokinetic and pharmacodynamics parameters. Examples include but are not limited to: calculation of dose or other pharmacokinetic calculations; determination of drug/drug interactions; determination (or reporting) of therapeutic, toxic, or lethal drug ranges; evaluation of drug absorption, distribution, metabolism, or excretion; and determination of the effects (mental or physical).
- (10) Crime scene reconstruction is the application of the scientific method to evaluate information regarding a crime scene from all reasonably available sources such as scene documentation, investigative reports, physical evidence, laboratory reports, autopsy documentation, photographs, video, and witness statements. Crime Scene Reconstruction--as distinguished from crime scene processing or crime scene investigation--includes the application of analytical methods beyond general observations or opinions about the scene to identify and test hypotheses.
- (11) Crime scene investigation includes locating, documenting, and collecting evidence at a crime scene as well as analysis of selected evidence for purposes of assessing suitability for additional forensic testing. It does not include the application of the scientific method to evaluate information regarding a scene, which would be considered crime scene reconstruction.
- (12) Crime scene processing-- includes locating, documenting, and collecting evidence at a crime scene, but does not include any analytical activities with respect to the evidence.
- (13) [(11)] Latent print examination includes the forensic examination of friction ridge detail from the hands and feet.
- (14) Latent Print Processing -includes identifying and collecting latent prints from items obtained at a crime scene utilizing appropriate optical, physical, and/or chemical techniques with sequential processing to develop latent, patent, and/or plastic prints from a substrate.
- (15) [(14)] Forensic anthropology Includes the application of anthropological methods and theory, particularly those relating to the recovery and analysis of human remains.
- §651.222. Voluntary Licensure Forensic Analyst <u>and Technician</u> Licensing Requirements, Including Eligibility, License Term, Fee and Procedure for Denial of Initial Application or Renewal Application and Reconsideration.
- (a) Issuance. The Commission may issue an individual's forensic analyst <u>or technician</u> license for forensic examinations or tests not subject to accreditation under this section.
- (b) Voluntary. Licensure under this section is voluntary and is not a prerequisite for practice in any of the forensic disciplines listed in this section.
- (c) The following forensic disciplines are eligible for a forensic analyst or forensic technician license under this section:
 - (1) forensic anthropology;
- (2) document examination, including document authentication, physical comparison, and product determination;
- (3) latent print examination, including the forensic examination of friction ridge detail from the hands and feet;
- (4) latent print processing, including identifying and collection latent prints from items obtained at a crime scene utilizing appropriate optical, physical, and/or chemical techniques with sequential

- processing to develop latent, patent, and/or plastic prints from a substrate;
- (5) [(4)] digital/multimedia evidence (limited to computer, mobile, vehicle, call detail records (*i.e.*, phone carrier record comparisons to mobile device), and location detail records); and [-]
 - (6) crime scene, with the following sub-disciplines:
- (A) crime scene processing technician, including crime scene documentation (scene notes, photography, sketching, laser scanning), and evidence identification, collection, preservation, and submission;
- (B) crime scene investigation analyst, including crime scene processing activities as well as the application of analytical techniques used for evidence triage such as chemical and presumptive testing. It may also include the issuance of a report on crime scene documentation or crime scene processing.
- (C) crime scene reconstruction analyst, including crime scene processing activities, crime scene investigation activities, and any forensic activities requiring the application of the scientific method to evaluate information regarding a crime scene from all reasonably available sources such as scene documentation, investigative reports, physical evidence, laboratory reports, autopsy documentation, photographs, video, and witness statements.
- (D) crime scene reconstruction analyst, with specific recognition in bloodstain pattern analysis, including all crime scene reconstruction activities described in (C) of this subsection.
- (E) crime scene reconstruction analyst, with specific recognition in shooting incident reconstruction, including crime scene reconstruction activities described in (C) of this subsection.
- (d) Application. Before being issued a forensic analyst license, an applicant shall complete and submit to the Commission a current forensic analyst license application and provide documentation that he or she has satisfied all applicable requirements set forth under this section.
 - (e) Minimum Education Requirements.
- (1) Document Examination Analyst. An applicant for a forensic analyst license in document examination must have a high school diploma or equivalent degree or higher (*i.e.*, baccalaureate or advanced degree).
- (2) Forensic Anthropologist. An applicant for a forensic analyst license in forensic anthropology must be certified by the American Board of Forensic Anthropology (ABFA), including fulfillment of any minimum education requirements required to comply with and maintain ABFA certification at the time of the candidate's application for a license.
- (3) Latent Print Analyst. An applicant for a forensic analyst license in latent print examination must have:
- (A) A baccalaureate or advanced degree from an accredited university;
- (B) 3 years of experience in latent print examination with an Associates of Arts or Associates or Science; or
- (C) 4 years of experience in latent print examination and 176 hours of training that includes 16 hours of testimonial training (with only a maximum of 80 conference hours accepted as training hours).

- (4) Latent Print Processing Technician. An applicant for a forensic technician license in latent print processing must have a minimum of a high school diploma or equivalent degree.
- (5) [(4)] Digital/Multimedia Evidence Analyst. An applicant for a forensic analyst license in digital/multimedia evidence must have:
- (A) a baccalaureate or advanced degree from an accredited university;
- (B) a non-law enforcement or non-military background without a baccalaureate degree, demonstrating equivalent digital skill set through Certified Forensic Computer Examiner (CFCE), Global Information Assurance Certification Certified Forensic Examination (GCFE), or Global Information Assurance Certification Certified Forensic Analyst (GCFA) or equivalent non-vendor certification examination(s) with competency test(s); or
- (C) law enforcement or military experience equivalent demonstrated through forensic training through one of the following organizations: SysAdmin, Audit, Network, and Security (SANS), International Association for Computer Investigative Specialists (IACIS), National White Collar Crime Center (NW3C), Law Enforcement & Emergency Services Video Association International, Inc. (LEVA), U.S. Military, Computer Analysis Response Team (CART) (FBI Training), Seized Computer Evidence Recovery Specialist (SCERS), or U.S. Secret Service.
- (6) Crime Scene Reconstruction Analyst. An applicant for a forensic analyst license in crime scene reconstruction, crime scene reconstruction with specific recognition in bloodstain pattern analysis, or crime scene reconstruction with specific recognition in shooting incident reconstruction must have a minimum of an associate's degree or equivalent degree.
- (7) Crime Scene Investigation Analyst. An applicant for a forensic analyst license limited to the crime scene investigation category of licensure must have minimum of a high school diploma or equivalent degree.
- (8) Crime Scene Processing Technician. An applicant for a forensic technician license limited to the crime scene processing technician category of licensure must have a minimum of a high school diploma or equivalent degree.
- (9) [(5)] Foreign/Non-U.S. degrees. The Commission shall recognize equivalent foreign, non-U.S. baccalaureate or advanced degrees. The Commission reserves the right to charge licensees a reasonable fee for credential evaluation services to assess how a particular foreign degree compares to a similar degree in the United States. The Commission may accept a previously obtained credential evaluation report from an applicant or licensee in fulfillment of the degree comparison assessment.
- (f) Specific Coursework Requirements and Certification Requirements.
- (1) General Requirement for Statistics. With the exception of the categories of licensure specifically exempt in this sub-section, an applicant for any forensic analyst license under this section must have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission.
- (2) Forensic Discipline-Specific Coursework Requirements.
- (A) Document Examination Analyst. An applicant for a forensic analyst license in document examination must have a three-

- semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission. No other specific college-level coursework is required.
- (B) Forensic Anthropologist. An applicant for a forensic analyst license in forensic anthropology must be certified by the American Board of Forensic Anthropology (ABFA), including fulfillment of any specific coursework requirements required to comply with and maintain ABFA certification at the time of the candidate's application for a license.

(C) Latent Print Analyst.

- (i) An applicant for a forensic analyst license in latent print examination who qualifies for a latent print analyst license based on the minimum education requirements forth in subsection (d)(3)(A) or (B) of this section must have a minimum of 24 semester-credit hours or equivalent in science, technology, engineering, or mathematics (STEM) related coursework.
- (ii) All applicants for a forensic analyst license in latent print examination must have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission.
- (iii) IAI Certification Requirement for Unaccredited Laboratory. All licensed latent print examination analysts and applicants who are not employed by a laboratory accredited by the Commission are required to be certified by the International Association for Identification (IAI) under the IAI's Latent Print Certification program and are required to provide proof of certification upon request. Licensees are required to notify the Commission of any change in the status of their IAI certification within ten (10) business days of any changes.
- (D) Digital/Multimedia Evidence Analyst. An applicant for a forensic analyst license in digital/multimedia evidence must have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission. No other specific college-level coursework is required.
- (E) Crime Scene Reconstruction Analyst. An applicant for a forensic analyst license in crime scene reconstruction must have a twelve-semester credit hours of college-level courses or equivalent coursework approved by the Commission that includes fluid dynamics, math and physics; a forty-hour crime scene reconstruction course approved by the Commission; and 440 additional hours of forensic-related courses approved by the Commission which may include documented in-house mentorship programs.
- (F) Crime Scene Reconstruction Analyst, with specific recognition in bloodstain pattern analysis. An applicant for a forensic analyst license in crime scene reconstruction, with specific recognition in bloodstain pattern analysis, must have a forty-hour crime scene reconstruction course approved by the commission, two forty-hour advanced courses taught by two different instructors in blood pattern analysis with syllabi accepted by the International Association of Bloodstain Pattern Analysts (IABPA) or the International Association for Identification (IAI) for certification; a forty-hour fluid dynamics course approved by the Commission, a forty-hour math and physics course approved by the Commission, twenty-four hours of instruction involving presentation and preparation of demonstrative evidence such as 3D modeling, courtroom demonstratives, and 440 additional hours of forensic-related courses approved by the Commission which may include documented in-house mentorship programs.
- (G) Crime Scene Reconstruction Analyst, with specific recognition in shooting incident reconstruction and crime scene reconstruction. An application for a forensic analyst license in crime

scene reconstruction, with specific recognition in shooting incident reconstruction must have a forty-hour crime scene reconstruction course approved by the commission, two forty-hour shooting incident reconstruction courses taught by two different instructors in shooting incident reconstruction with syllabi accepted by the International Association for Identification (IAI), the Association of Firearm and Toolmark Examiners (AFTE), or the Association for Crime Scene Reconstruction (ACSR) for certification and approved by the Commission, twenty-four hours of instruction involving presentation and preparation of demonstrative evidence such as 3D modeling and courtroom demonstratives, and 440 additional hours of forensic-related courses approved by the Commission which may include documented in-house mentorship programs.

- (H) Crime Scene Investigation Analyst. An applicant for a forensic analyst license in crime scene investigation must successfully complete the Texas Commission on Law Enforcement's (TCOLE's) Intermediate Crime Scene Course (2106), and must complete a minimum of 240 hours of forensic-related training courses which may include in-house mentorship training.
- (3) Exemptions from Specific Coursework Requirements. [Previously Licensed Document Examination Analyst Exemption. An applicant for a voluntary forensic analyst license previously licensed by the Commission when licensure was mandatory for the discipline is exempt from any specific coursework requirements in this subsection.]
- (A) Previously Licensed Document Examination Analyst Exemption. An applicant for a voluntary forensic analyst license previously licensed by the Commission when licensure was mandatory for the discipline is exempt from any specific coursework requirements in this subsection.
- (B) An applicant for the technician license category of any forensic discipline set forth in this subchapter is not required to fulfill any specific college-level coursework requirements, including the three-semester credit hour (or equivalent) college-level statistics course component for licensure.
- (C) An applicant for a forensic analyst license limited to the crime scene investigation analyst category of licensure is not required to fulfill the three-semester credit hour (or equivalent) collegelevel statistics course component for licensure.

(g) Work Experience.

- (1) Crime Scene Reconstruction Analyst. An applicant for any forensic analyst license in crime scene reconstruction must have a minimum of five years' experience working in crime scene settings.
- (2) Crime Scene Investigation Analyst. An applicant for a forensic analyst license in crime scene investigation must have one year of experience working in crime scene settings,
- $\underline{\text{(h)}}$ [(g)] General Forensic Analyst Licensing Exam Requirement.
- (1) Exam Requirement. An applicant for a forensic analyst license under this section must pass the General Forensic Analyst Licensing Exam administered by the Commission.
- (A) An applicant is required to take and pass the General Forensic Analyst Licensing Exam one time.
- (B) An applicant may take the General Forensic Analyst Licensing Exam no more than three times. If an applicant fails the General Forensic Analyst Licensing Exam three times, the applicant has thirty (30) days from the date the applicant receives notice of the failure to request special dispensation from the Commission as described in subparagraph (C) of this paragraph. Where special dis-

pensation is granted, the applicant has 90 days from the date he or she receives notice the request for exam is granted to successfully complete the exam requirement. However, for good cause shown, the Commission or its Designee at its discretion may waive this limitation.

- (C) Requests for Exam. If an applicant fails the General Forensic Analyst Licensing Exam three times, the applicant must request in writing special dispensation from the Commission to take the exam more than three times. Applicants may submit a letter of support from their employing agency's director or licensing representative and any other supporting documentation supplemental to the written request.
- (D) If an applicant sits for the General Forensic Analyst Licensing Exam more than three times, the applicant must pay a \$50 exam fee each additional time the applicant sits for the exam beyond the three initial attempts.
- (E) Modified General Forensic Analyst Licensing Exam. Forensic Technicians in any disciplines set forth in this subchapter, including latent print processing technicians, crime scene processing technicians and crime scene investigation analysts, may fulfill the General Forensic Analyst Licensing Exam requirement by taking a modified exam administered by the Commission.
- (2) Credit for Pilot Exam. If an individual passes a Pilot General Forensic Analyst Licensing Exam, regardless of his or her eligibility status for a voluntary or mandatory Forensic Analyst License at the time the exam is taken, the candidate has fulfilled the General Forensic Analyst Licensing Exam Requirement of this subsection.
 - (i) [(h)] Proficiency Monitoring Requirement.
- (1) Requirement for Applicants Employed by an Accredited Laboratory. An applicant who is employed by an accredited laboratory must demonstrate the applicant participates in the laboratory's process for intraagency [-laboratory] comparison, interagency[-laboratory] comparison, proficiency testing, or observation-based performance monitoring requirements in compliance with and on the timeline set forth by the laboratory's accrediting body's proficiency monitoring requirements as applicable to the Forensic Analyst's or Forensic Technician's specific forensic discipline and job duties.
- (2) Requirement for Applicants Not Employed at an Accredited Laboratory or at an Accredited Laboratory in an Unaccredited Forensic Discipline. An applicant who is employed by an entity other than an accredited laboratory or performs a forensic examination or test at an accredited laboratory in a forensic discipline not covered by the scope of the laboratory's accreditation must demonstrate the applicant participates in the laboratory or employing entity's process for intraagency [-laboratory] comparison, proficiency testing, or observation-based performance monitoring requirements in compliance with and on the timeline set forth by the laboratory or employing entity's Commission-approved process for proficiency monitoring as applicable to the Forensic Analyst's or Forensic Technician's specific forensic discipline and job duties.
- (3) A signed certification by the laboratory or entity's authorized representative that the applicant has satisfied the applicable proficiency monitoring requirements, including any intraagency [-laboratory] comparison, inter-laboratory comparisons, proficiency testing, or observation-based performance monitoring requirements in paragraph (1) or (2) of this subsection as of the date of the analyst's application must be provided on the Proficiency Monitoring Certification form provided by the Commission. The licensee's authorized representative must designate the specific forensic discipline in which the Forensic Analyst or Forensic Technician actively performs forensic casework

or is currently authorized to perform supervised or independent casework.

- (4) Applicants employed by an entity other than an accredited laboratory or performing forensic examinations or tests at an accredited laboratory in a discipline not covered by the scope of the laboratory or employing entity's accreditation must include written proof of the Forensic Science Commission's approval described in (5) of this subsection with the Proficiency Monitoring Certification form required in (3) of this subsection. The applicant must include written documentation of performance in conformance with expected consensus results for the laboratory or employing entity's Commission-approved activities or exercise(s) as applicable to the applicant's specific forensic discipline and job duties in compliance with and on the timeline set forth by the laboratory or employing entity's Commission-approved process for proficiency monitoring.
- (5) Applicants employed by an entity other than an accredited laboratory or performing forensic examinations or tests at an accredited laboratory in a discipline not covered by the scope of the laboratory or employing entity's accreditation seeking approval of proficiency monitoring activities or exercise(s) must seek prior approval of the activities or exercise(s) from the Commission.
- (6) Special Proficiency Testing Requirements for Latent Print Analysts and Latent Print Processing Technicians
- (A) Where available and appropriate for the job function(s) being tested, proficiency tests shall be obtained from an external source through participation in a proficiency testing program offered by a provider accredited to the ISO/IEC 17043 international standard.
- (B) Where not available or not appropriate for the job function(s) being tested, proficiency tests may be obtained from an external source through participation in an interagency [laboratory] comparison or developed internally by the employing laboratory or entity through participation in an interagency [laboratory] comparison or intraagency [laboratory] comparison.
- (C) All latent print examiner and latent print processing technician proficiency tests selected shall be developed and validated in accordance with the requirements set forth in Sections 4.2 and 4.3 of the Organization of Scientific Area Committees for Forensic Science (OSAC) 2022-S-0012 Friction Ridge Subcommittee's Standard for Proficiency Testing in Friction Ridge Examination.
- (7) Special Proficiency Testing Requirements for Crime Scene Processing Technicians, Crime Scene Investigation Analysts, and Crime Scene Reconstruction Analysts.
- (A) Where available and appropriate for the job function(s) being tested, proficiency tests shall be obtained from an external source through participation in a proficiency testing program offered by a provider accredited to the ISO/IEC 17043 international standard.
- (B) Where not available or not appropriate for the job function(s) being tested, proficiency tests may be obtained from an external source through participation in an interagency comparison or developed internally by the employing laboratory or entity through participation in an interagency comparison or intraagency comparison.
- (j) [(+)] Employing Laboratory or Agency Quality Requirement for Forensic Analysts. Applicants for a forensic analyst license under this section must be employed by a laboratory or agency that can demonstrate, regardless of Commission accreditation status, compliance with specific standards as applicable to the applicant's forensic discipline as published on the Commission's website and updated January 15 of each calendar year.
 - (k) [(j)] License Term and Fee.

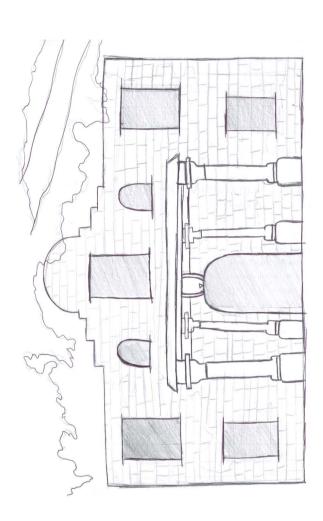
- (1) A Forensic Analyst license issued under this section shall expire two years from the date the applicant is granted a license.
- (2) Application Fee. A Forensic Analyst or Forensic Technician license applicant or current licensee under this section shall pay the following fee(s) as applicable:
- (A) Initial Application fee of \$220 <u>for Analysts and</u> \$150 for Technicians/Crime Scene Investigation Analysts;
- (B) Biennial renewal fee of \$200 for Analysts and \$130 for Technicians/Crime Scene Investigation Analysts;
 - (C) License Reinstatement fee of \$220; or
- (D) Special Exam Fee of \$50 for General Forensic Analyst Licensing Exam, required only if testing beyond the three initial attempts.
- (1) [(k)] Forensic Analyst License Renewal. Renewal of a Forensic Analyst License. Applicants for renewal of a Forensic Analyst License must comply with §651.208 (Forensic Analyst and Forensic Technician License Renewal) of this subchapter.
- (m) [(+)] Forensic Analyst License Expiration and Reinstatement. Expiration and Reinstatement of a Forensic Analyst License. A Forensic Analyst must comply with §651.209 of this subchapter (Forensic Analyst and Forensic Technician License Expiration and Reinstatement).
- (n) [(m)] Procedure for Denial of Initial Application or Renewal Application and Reconsideration.
- (1) Application Review. The Commission Director or Designee must review each initial application or renewal application and determine whether the applicant meets the qualifications and requirements set forth in this subchapter. If a person who has applied for a forensic analyst license under this section does not meet the qualifications or requirements set forth in this subchapter and has submitted a complete application, the Director or Designee must consult with members of the Licensing Advisory Committee before denying the application.
- (2) Denial of Application. The Commission, through its Director or Designee, may deny an initial or renewal application if the applicant fails to meet any of the qualifications or requirements set forth in this subchapter.
- (3) Notice of Denial. The Commission, through its Director or Designee, shall provide the applicant a written statement of the reason(s) for denial of the initial or renewal application.
- (4) Request for Reconsideration. Within twenty (20) days of the date of the notice that the Commission has denied the application, the applicant may request that the Commission reconsider the denial. The request must be in writing, identify each point or matter about which reconsideration is requested, and set forth the grounds for the request for reconsideration.
- (5) Reconsideration Procedure. The Commission must consider a request for reconsideration at its next meeting where the applicant may appear and present testimony.
- (6) Commission Action on Request. After reconsidering its decision, the Commission may either affirm or reverse its original decision.
- (7) Final Decision. The Commission, through its Director or Designee, must notify the applicant in writing of its decision on reconsideration within fifteen (15) business days of the date of its meeting where the final decision was rendered.

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

Filed with the Office of the Secretary of State on December 4, 2023.

TRD-202304485

Leigh Tomlin
Associate General Counsel
Texas Forensic Science Commission
Earliest possible date of adoption: January 14, 2024
For further information, please call: (512) 784-0037



ADOPTED. RULES Ad

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 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 133. FORMS

7 TAC §133.8

The Texas State Securities Board adopts the repeal of §133.8, which adopts by reference a form concerning Consent to Service, without changes to the proposed text as published in the June 30, 2023, issue of the *Texas Register* (48 TexReg 3451). The repealed rule will not be republished.

The rule and Form 133.8 are repealed because they are no longer needed due to the availability of a uniform form that serves this purpose. The uniform Form U-2, Uniform Consent to Service of Process, has long been recognized by the Board in Rule 133.33 as accepted for filing with the Agency as an alternative to Form 133.8.

A form that is no longer needed will be eliminated.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the authority of the Texas Government Code, Section 4002.151. Section 4002.151 provides the Board with the authority to adopt rules as necessary to implement the provisions of the Texas Securities Act, including rules governing registration statements, applications, notices, and reports; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The repeal affects: none applicable.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 1, 2023.

TRD-202304432 Travis J. Iles Securities Commissioner State Securities Board

Effective date: December 21, 2023 Proposal publication date: June 30, 2023

For further information, please call: (512) 305-8303

TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 22. PROCEDURAL RULES SUBCHAPTER D. NOTICE

16 TAC §22.52

The Public Utility Commission of Texas (commission) adopts amendments to 16 Texas Administrative Code (TAC) §22.52, relating to Notice in Licensing Proceedings. The commission adopts the rule with changes to the proposed text as published in the August 4, 2023, issue of the *Texas Register* (48 TexReg 4231). The amendments will reduce the timeline for intervention in a new transmission facility certificate of convenience and necessity (CCN) proceeding from 45 days after the date the formal application was filed with the commission to 30 days. This modification will facilitate the implementation of PURA §37.057, as amended by Senate Bill (SB) 1076, enacted by the 88th Texas Legislature (R.S.), which reduced the time for the commission to approve new transmission facility CCNs to 180 days. The rule will be republished.

The amendments also implement PURA §37.054, as amended by SB 365, enacted by the 88th Texas Legislature (R.S.), by requiring an applicant for a CCN to provide notice of each proposed substation included in the CCN application or amendment to owners of property owners adjacent to the proposed substations.

The commission received comments on the amendments from AEP Texas Inc. (AEP Texas); CenterPoint Energy Houston Electric, LLC (CenterPoint Energy); Entergy Texas, Inc., Southwestern Public Service Company, Southwestern Electric Power Company, and El Paso Electric Company (collectively, Joint Utilities); LCRA Transmission Services Corporation (LCRA TSC); Oncor Electric Delivery Company LLC (Oncor); the Office of Public Utility Counsel (OPUC); and Texas-New Mexico Power Company (TNMP).

§22.52(a)(1)(A) - Reduction of electric licensing proceedings intervention time period

Section 22.52(a)(1)(A) reduces the time period for intervention included in the required notice for electric licensing proceedings from 45 to 30 days.

AEP Texas, CenterPoint, Oncor, TNMP, and LCRA supported the new intervention deadline of 30 days. CenterPoint argued that 30 days is a reasonable and sufficient length of time for these proceedings. CenterPoint noted a similar timeline for distribution cost recovery factor proceedings and argued that a CCN case is nearly always preceded by public meetings and notice of those public meetings in the affected communities.

OPUC argued the proposed intervention deadline is unnecessary and would make intervention impracticable for landowners. OPUC further contended that the proposed reduction is a contradiction with recent commission decisions on notice issues because the commission did not similarly reduce the 45-day intervention period for rate cases during its recent review of §22.51, relating to Notice for Public Utility Regulatory Act, Chapter 36, Subchapters C - E; Chapter 51, §51.009; and Chapter 53, Subchapters C - E, Proceedings.

Commission response

SB 1076 (88R) has reduced new transmission facility CCN proceedings to a timeline of 180 days, which is a departure from the previous one-year timeline. Therefore, the commission must abbreviate related timelines.

The commission disagrees with OPUC that the intervention deadline reduction is impracticable for landowners. Late intervention by affected persons can be granted by the commission if necessary. The commission further disagrees that the proposed intervention timeline of 30 days for new transmission facility CCN proceedings presents a contradiction in the commission's established notice process and recent rulemakings on this issue. First, recent amendments to §22.51 were limited to minor and conforming changes, therefore substantive rule changes such as reducing the deadline for intervention were not considered. Second, the scope, subject matter, and number of persons affected by a rate case proceeding are not comparable to a CCN proceeding. Therefore, it is reasonable for the commission to require different procedural provisions for the two types of proceedings.

OPUC recommended applying the reduced intervention period to only new transmission facility CCN cases. OPUC alternatively recommended the commission remove the current exemption under subparagraph §22.52(a)(1)(A) and establish a 45-day intervention deadline for all electric CCN cases.

Commission response

The commission agrees with OPUC that the reduced intervention period should only apply to new transmission facility CCN cases and amends the rule accordingly.

§22.52(a)(3) - Clarify property boundaries

The rule requires notice to be delivered to "directly affected" landowners. Proposed §22.52(a)(3) states that land is "directly affected" by a requested CCN if it is adjacent to a property on which a substation proposed to be authorized by the CCN will be located or is directly across a highway, road, or street that is adjacent to a property on which such a substation will be located.

LCRA noted that the property on which a substation is located is frequently much larger than the portion of that land on which the substation will be located. For example, a 100-acre parcel of land may be purchased for a new substation but only ten acres of the 100-acre parcel are used for the substation site location. LCRA seeks clarification on whether the ten-acre portion of the 100-acre parcel is considered the "property" for the proposed substation or if the entire 100-acre parcel is considered the property for the proposed substation. Further, LCRA proposed to define "property on which a substation proposed to be authorized by a certificate of convenience and necessity is located" to mean "the boundaries of the property to be acquired or licensed by the applicant for the construction and operation of the substation facilities." LCRA recommends this definition be cited as a new sentence at the conclusion of §22.52(a)(3).

LCRA also provided an attachment to its comments with a labeled map to illustrate the difficulty of determining which properties are adjacent to the property on which the substation is proposed to be located.

Commission response

The commission declines to modify the rule to define "property on which a substation proposed to be authorized by a certificate of convenience and necessity is located" to mean "the boundaries of the property to be acquired or licensed by the applicant for the construction and operation of the substation facilities" as requested by LCRA. Notice of a proposed substation must be delivered to landowners with property adjacent to the entire legally recognized parcel of land on which the substation is proposed to be located. In terms of the example provided by LCRA, the "property on which a substation...is located" refers to the 100-acre parcel of land, not the ten-acre portion. There is no basis in PURA §37.054 for subdividing the larger property for notice purposes. Furthermore, allowing the property to be subdivided based on where the substation may be located introduces ambiguity regarding which landowners must be provided notice. and may result in otherwise interested landowners not receiving said notice.

Furthermore, a TDU should resolve ambiguous cases, such as properties that would be adjacent at the corners but for an intervening roadway, in favor of providing notice. For example, on LCRA's reference map, properties P02, P05, and P14 should each be provided notice of the proposed substation.

AEP Texas, CenterPoint, Oncor, and TNMP recommended clerical and grammatical edits, including the use of future tense instead of past tense. AEP Texas, CenterPoint, and TNMP also recommended refining §22.52(a)(3) to include "for purposes of this paragraph" when referencing directly affected land.

Commission response

The commission agrees with the recommended edits and modifies the rule accordingly.

§22.52(a)(3)(B) - "Public" highway, road, or street

Under proposed §22.52(a)(3)(B), notice of a proposed substation must be provided to owners of land adjacent to a property on which a substation is located, as well as land that is directly across a highway, road, or street that is adjacent to a property on which such a substation is located.

LCRA recommended inserting the word "public" before "highway, road, or street...". LCRA argued that a landowner may maintain a driveway or other private thoroughfare in the vicinity of a proposed substation, and a dispute could arise about whether the private driveway is a road. This could unintentionally restrict the notice boundary and introduce uncertainty as to whether the TDU complied with the notice requirements.

Commission Response

The commission declines to modify the rule to include "public" to describe types of roadways within the rule as recommended by LCRA, because it is unnecessary. If a private roadway does not run along a property boundary, then the roadway is irrelevant, because the property extends across the private roadway, and notice would still be required for the adjacent property owner. Similarly, if the private roadway does run along a property line, notice is required, because the properties on each side of the private roadway are either adjacent to each other or directly across

an adjacent roadway of each other. In either scenario, the analvsis is unaffected.

§22.52(a)(3)(B) - Notice to landowners

Section 22.52(a)(3)(B) requires an applicant to mail notice of an electric licensing proceeding to landowners with property adjacent to each proposed substation.

CenterPoint notes proposed §22.52(a)(3)(B) requires the electric licensing applicant to notify itself of any new substations that the applicant may be proposing. CenterPoint argues if the intent of proposed §22.52(a)(3)(B) was to require notice to "the owner of land" rather than "the owner of each proposed substation," the proposed language does not support this.

Commission Response

The commission agrees with CenterPoint and modifies the rule to require notice be provided to the owner of the land rather than the owner of each proposed substation. The commission also reorders subparagraphs (B) and (C) to ensure it is clear maps are not only required to be included in proceedings with proposed substations.

§22.52(a)(3) and §22.52(a)(3)(B) - Definition of adjacent related to property location

Section 22.52(a)(3) and §22.52(a)(3)(B) each use the phrase "adjacent to a property on which a substation...is located" to indicate which nearby properties are considered directly affected and, therefore, must be provided notice.

TNMP requested the commission define "adjacent" as property "directly bordering" the property of which a proposed substation is located.

Commission Response

The commission agrees with TNMP that "adjacent" should be interpreted as "directly bordering," but declines to modify the rule, because it is unnecessary. This interpretation is consistent with the plain language meaning of this term.

§22.52(a)(4) - Clerical and grammatical recommendations

Section §22.54(a)(4) expands the list of persons who are entitled to direct mail notice of any public meetings held by the utility prior to the filing of its licensing application if certain criteria are met.

AEP Texas, CenterPoint, Oncor, and TNMP recommend clerical and grammatical edits, including the use of future tense instead of past tense. Further, these commenters recommended including "directly" before the term "across" to describe location relative to a highway, road, or street that is adjacent to a substation.

Commission Response

The commission agrees with the grammatical tense suggestion and clarifies the tense of language used to be consistent with SB 365 (88R). The commission also revises the rule to use "directly across" consistent with its use in statute.

Standard Landowner Notice Forms

Oncor requested the commission amend the standard landowner notice forms, for CCN transmission line cases, to reflect §22.52 amendments.

Commission Response

The commission agrees with Oncor that the forms need to be updated. Commission staff will update the standard landowner notice forms and associated brochures to conform with the adopted

rule and post the updated forms on the commission's website on the effective date of the new rule.

"New" Substations

The Joint Utilities requested the commission confirm whether a CCN is required for the construction of new substations. Oncor requested the commission clarify whether the new notice requirement applies to either (1) new substations or (2) both new substations and expanded footprints of existing substations.

Commission Response

The amended rule does not require a CCN for the construction of a new substation. It requires notice to be provided to certain landowners of substations proposed to be authorized by a CCN application. The commission also clarifies that the rule applies to new substations.

The amended rule is adopted under the following provisions of PURA: §§14.002 and 14.052, which provide the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; §37.057 which requires the commission to approve or deny an application for a certificate for a new transmission facility not later than 180 days after the date the application is filed.

Cross reference to statutes: Public Utility Regulatory Act §14.002, §14.052, and §37.057.

- §22.52. Notice in Licensing Proceedings.
- (a) Notice in electric licensing proceedings. In all electric licensing proceedings except minor boundary changes, the applicant must give notice in the following ways:
- (1) Applicant must publish notice once of the applicant's intent to secure a certificate of convenience and necessity in a newspaper having general circulation in the county or counties where a certificate of convenience and necessity is being requested, no later than the week after the application is filed with the commission. This notice must identify the commission's docket number and the style assigned to the case by Central Records. In electric transmission line cases, the applicant must obtain the docket number and style no earlier than 25 days prior to making the application by filing a preliminary pleading requesting a docket assignment. The notice must identify in general terms the type of facility if applicable, and the estimated expense associated with the project. The notice must describe all routes without designating a preferred route or otherwise suggesting that a particular route is more or less likely to be selected than one of the other routes.
- (A) The notice must include all the information required by the standard format established by the commission for published notice in electric licensing proceedings. The notice must state the date established for the deadline for intervention in the proceeding (date 45 days after the date the formal application was filed with the commission; or date 30 days after the date the formal application was filed with the commission for an application for certificate of convenience and necessity filed under PURA §39.203(e) or an application for a certificate of convenience and necessity for a new transmission facility subject to PURA §37.057) and that a letter requesting intervention should be received by the commission by that date.
- (B) The notice must describe in clear, precise language the geographic area for which the certificate is being requested and the location of all alternative routes of the proposed facility. This description must refer to area landmarks, including but not limited to geographic landmarks, municipal and county boundary lines, streets,

roads, highways, railroad tracks, and any other readily identifiable points of reference, unless no such references exist for the geographic area. In addition, the notice must include a map that identifies all of the alternative locations of the proposed routes and all major roads, transmission lines, and other features of significance to the areas that are used in the utility's written notice description.

- (C) The notice must state a location where a detailed routing map may be reviewed. The map must clearly and conspicuously illustrate the location of the area for which the certificate is being requested including all the alternative locations of the proposed routes, and must reflect area landmarks, including but not limited to geographic landmarks, municipal and county boundary lines, streets, roads, highways, railroad tracks, and any other readily identifiable points of reference, unless no such references exist for the geographic area.
- (D) Proof of publication of notice must be in the form of a publisher's affidavit which must specify each newspaper in which the notice was published, the county or counties in which each newspaper is of general circulation, the dates upon which the notice was published, and a copy of the notice as published. Proof of publication must be submitted to the commission as soon as available.
- (E) The applicant must provide a copy of each environmental impact study or assessment for the project to the Texas Parks and Wildlife Department (TPWD) for its review within seven days of filing the application. Proof of submission of the information to TPWD must be provided in the form of an affidavit to the commission, which must specify the date the information was mailed or otherwise provided to TPWD, and must provide a copy of the cover letter or other documentation that confirms that the information was provided to TPWD.
- (2) Applicant must, upon filing an application, also mail notice of its application to municipalities within five miles of the requested territory or facility, neighboring utilities providing the same utility service within five miles of the requested territory or facility, each county government for all counties in which any portion of the proposed facility or requested territory is located, and the Department of Defense Siting Clearinghouse. In addition, the applicant must, upon filing the application, serve the notice on the Office of Public Utility Counsel using a method specified in §22.74(b) of this title (relating to Service of Pleadings and Documents). The notice must contain the information as set out in paragraph (1) of this subsection and a map as described in paragraph (1)(C) of this subsection. An affidavit attesting to the provision of notice to municipalities, utilities, counties, the Department of Defense Siting Clearinghouse, and the Office of Public Utility Counsel must specify the dates of the provision of notice and the identity of the individual municipalities, utilities, and counties to which such notice was provided. Before final approval of any modification to the applicant's proposed route, applicant must provide notice as required under this paragraph to municipalities, utilities, and counties affected by the modification which have not previously received notice. The notice of modification must state such entities will have 20 days to intervene.
- (3) Applicant must, on the date it files an application, mail notice of its application to the owners of land, as stated on the current county tax rolls, who would be directly affected by the requested certificate. For purposes of this paragraph, land is directly affected if an easement or other property interest would be obtained over all or any portion of it, or if it contains a habitable structure that would be within 300 feet of the centerline of a transmission project of 230kV or less, or within 500 feet of the centerline of a transmission project greater than 230kV. For purposes of this paragraph, land is also directly affected if it is adjacent to a property on which a substation proposed to be authorized by the certificate of convenience and necessity will be located or

is directly across a highway, road, or street that is adjacent to a property on which such a substation will be located.

- (A) Required contents of notice. The notice must contain all information required in paragraph (1) of this subsection and must include all the information required by the standard notice letter to landowners prescribed by the commission. The commission's docket number pertaining to the application must be stated in all notices. The notice must also include a copy of the "Landowners and Transmission Line Cases at the PUC" brochure prescribed by the commission.
- (B) Map of route. The notice must include a map as described in paragraph (1)(C) of this subsection.
- (C) Notice of proposed substations. Notice of each substation proposed to be authorized by a certificate of convenience and necessity to each owner of:
- (i) property adjacent to the property on which the proposed substation will be located; and
- (ii) property located directly across a highway, road, or street that is adjacent to the property on which the proposed substation will be located.
- (D) Issuance of notice prior to final approval. Before final approval of any modification in the applicant's proposed route, applicant must provide notice as required under subparagraphs (A) through (C) of this paragraph to all directly affected landowners who have not already received such notice.
- (E) Proof of notice. Proof of notice may be established by an affidavit affirming that the applicant sent notice by first-class mail to each of the persons listed as an owner of directly affected land on the current county tax rolls. The proof of notice must include a list of all landowners to whom notice was sent and a statement of whether any formal contact related to the proceeding between the utility and the landowner other than the notice has occurred. This proof of notice must be filed with the commission no later than 20 days after the filing of the application.
- (F) Cure of insufficient notice. Upon the filing of proof of notice as described in subparagraph (E) of this paragraph, the lack of actual notice to any individual landowner will not in and of itself support a finding that the requirements of this paragraph have not been satisfied. If, however, the utility finds that an owner of directly affected land has not received notice, it must immediately advise the commission by written pleading and must provide notice to such landowners by priority mail, with delivery confirmation, in the same form described in subparagraphs (A) through (C) of this paragraph, except that the notice must state that the person has fifteen days from the date of delivery to intervene. The utility must immediately file a supplemental affidavit of notice with the commission.
- (4) The utility must hold at least one public meeting prior to the filing of its licensing application if 25 or more persons would be entitled to receive direct mail notice of the application. Direct mail notice of the public meeting must be sent by first-class mail to each of the persons listed on the current county tax rolls as an owner of land within 300 feet of the centerline of a transmission project of 230kV or less, an owner of land within 500 feet of the centerline of a transmission project greater than 230kV, an owner of land adjacent to a property on which a substation proposed to be authorized by the certificate of convenience and necessity will be located, or an owner of land directly across a highway, road, or street that is adjacent to such a substation. The utility must also provide written notice to the Department of Defense Siting Clearinghouse of the public meeting. In the notice for the public meeting, at the public meeting, and in other communications with a potentially affected person, the utility must not describe routes

as preferred routes or otherwise suggest that a particular route is more or less likely to be selected than one of the other routes. In the event that no public meeting is held, the utility must provide written notice to the Department of Defense Siting Clearinghouse of the planned filing of an application prior to completion of the routing study.

- (5) Failure to provide notice in accordance with this section will be cause for day-for-day extension of deadlines for intervention and for commission action on the application.
- (6) Upon entry of a final, appealable order by the commission approving an application, the utility must provide notice to all owners of land who previously received direct notice. Proof of notice under this subsection must be provided to the commission's staff.
- (A) If the owner's land is directly affected by the approved route, the notice must consist of a copy of the final order.
- (B) If the owner's land is not directly affected by the approved route, the notice must consist of a brief statement that the land is no longer the subject of a pending proceeding and will not be directly affected by the facility.
- (7) All notices of an applicant's intent to secure a certificate of convenience and necessity whether provided by publication or direct mail must include the following language: "All routes and route segments included in this notice are available for selection and approval by the Public Utility Commission of Texas."
- (b) Notice in telephone licensing proceedings. In all telephone licensing proceedings, except minor boundary changes, applications for a certificate of operating authority, or applications for a service provider certificate of operating authority, the applicant must give notice in the following ways:
- (1) Applicants must publish in a newspaper having general circulation in the county or counties where a certificate of convenience and necessity is being requested, once each week for two consecutive weeks, beginning the week after the application is filed, notice of the applicant's intent to secure a certificate of convenience and necessity. This notice must identify in general terms the types of facilities, if applicable, the area for which the certificate is being requested, and the estimated expense associated with the project. Whenever possible, the notice should state the established intervention deadline. The notice must also include the following statement: "Persons with questions about this project should contact (name of utility contact) at (utility contact telephone number). Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission, P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals may contact the commission through Relay Texas at 1-800-735-2989. The deadline for intervention in the proceeding is (date 70 days after the date the application was filed with the commission) and you must send a letter requesting intervention to the commission which is received by that date." Proof of publication of notice must be in the form of a publisher's affidavit, which must specify the newspaper or newspapers in which the notice was published; the county or counties in which the newspaper or newspapers is or are of general circulation; the dates upon which the notice was published and a copy of the notice as published. Proof of publication must be submitted to the commission as soon as available.
- (2) Applicant must also mail notice of its application, which must contain the information as set out in paragraph (1) of this subsection, to cities and to neighboring utilities providing the same service within five miles of the requested territory or facility. Applicant must also provide notice to the county government of all counties in which any portion of the proposed facility or territory is

located. The notice provided to county governments must be identical to that provided to cities and to neighboring utilities. An affidavit attesting to the provision of notice to counties must specify the dates of the provision of notice and the identity of the individual counties to which such notice was provided.

(3) Failure to provide notice in accordance with this section will be cause for day-for-day extension of deadlines for intervention.

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 November 30, 2023.

TRD-202304413 Adriana Gonzales Rules Coordinator

Public Utility Commission of Texas
Effective date: December 20, 2023
Proposal publication date: August 4, 2023

For further information, places cells (F12) 00

For further information, please call: (512) 936-7322



CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER H. ELECTRICAL PLANNING DIVISION 1. RENEWABLE ENERGY RESOURCES AND USE OF NATURAL GAS

The Public Utility Commission of Texas (commission) repeals 16 Texas Administrative Code (TAC) §25.173, relating to Goal for Renewable Energy, and adopts new 16 TAC §25.173, relating to Goal for Renewable Energy. The commission adopts this rule with changes and the repeal without changes to the proposed text as published in the October 27, 2023, issue of the Texas Register (48 TexReg 6294). The repeal will not be republished. The rule will be republished. The adopted rule implements Section 53 of House Bill (HB) 1500 enacted by the 88th Texas Legislature (R.S.) by establishing a renewable energy credit (REC) trading program and temporary solar renewable portfolio standard. Additionally, the adopted rule directs the Electric Reliability Council of Texas (ERCOT) to continue to maintain an accreditation and banking system to award and track RECs generated by eligible facilities on a voluntary basis, as required by Public Utility Regulatory Act (PURA) §39.9113.

The commission received comments on the proposed rule from the 3Degrees Group, Inc. (3Degrees), ERCOT, Office of Public Utility Counsel (OPUC), Solar Energy Industries Association (SEIA), Texas Energy Buyers Alliance (TEBA), Texas Solar Power Association (TSPA), and Vistra Corp. (Vistra). Additionally, the Alliance for Retail Markets and Texas Energy Association of Marketers filed joint comments as the REP Coalition.

General Comments

OPUC recommended that the commission undertake a separate rulemaking to adopt a new rule for the voluntary REC program.

Commission Response

The commission declines to address the mandatory solar goal and the voluntary REC program in separate rulemakings, as recommended by OPUC, because it is unnecessary. The REC program depends upon the accreditation, banking, and trading aspects of the voluntary program to function, so the two topics are appropriately addressed together. Moreover, a separate rulemaking would delay the start of the 2024 compliance year for the solar goal beyond the beginning of the 2024 calendar year.

Registration of energy storage resources for the voluntary REC program

TEBA recommended that ADERs, batteries, and other types of energy storage resources be allowed to register for the voluntary REC program.

Commission Response

The commission disagrees with TEBA that it is appropriate in this rulemaking proceeding to expand RPS beyond what is explicitly authorized in statute and declines to implement the proposed change. PURA §39.9113 explicitly directs ERCOT to "maintain" [a] system to award and track voluntary renewable energy credits generated by eligible facilities (emphasis added)." Creating new types of credits, or authorizing ERCOT to do so, is beyond the scope of this proceeding.

Definition of "accreditation and banking system"

OPUC stated that the commission should "consider adding definition and scope to the term "accreditation and banking system" under PURA §39.9113."

Commission Response

The commission declines to add a definition for "accreditation and banking system" as requested by OPUC because it is unnecessary. The required system already exists, and ERCOT will maintain its current system with minor modifications.

Updates to additional rules

SEIA noted that with the adoption of this new rule, the commission will also need to update 16 TAC §25.476, relating to Renewable and Green Energy Verification.

Commission Response

SEIA's recommendation is beyond the scope of this rulemaking proceeding. The commission may consider this recommendation in a future proceeding.

Proposed §25.173(a)--Purpose

Proposed §25.173(a) details the purpose of this section as establishing a solar renewable portfolio standard program and directing ERCOT to administer a voluntary REC accreditation program.

SEIA recommended that the commission modify paragraph (2) of subsection (a) to insert the words "continue to" before "administer a voluntary," to clarify that ERCOT is not to initiate a new program following the adoption of this rule.

The REP Coalition suggested clarifying in paragraph (2) that ER-COT does have different administrative duties for both voluntary and mandatory aspects, but two separate programs are not required. Further, the REP Coalition recommended that subsection (a), and the rule in its entirety, refer to both programs as the "trading program" instead of separating them into respective "trading" and "accreditation" programs.

Commission Response

The commission agrees with SEIA and the REP Coalition that PURA §39.9113 only contemplates a single REC program for ERCOT to administer and modifies §25.173(a) accordingly.

Adopted §25.173(b)--Application

Adopted §25.173(b) specifies that this section applies to power generation companies and retail entities.

The REP Coalition stated that, given the HB 1500, Section 53 directive to adopt rules to implement RPS as it existed immediately before the repeal of PURA §39.904, the commission should add an "Application" provision to specify that the rule applies to power generation companies and retail entities.

Commission Response

The commission agrees with the REP Coalition and adds an application provision as adopted subsection (b). Subsequent subsections are renumbered accordingly.

Proposed §25.173(b)--Definitions

ERCOT and TSPA both noted an "error in [paragraph] (18), which cross-references subsection (h) instead of subsection (e)." TSPA also noted that it is "appropriate to continue referencing PURA §39.904 in the proposed [Renewable Portfolio Standard] definition" because HB 1500 directed the commission to apply the section "as it existed immediately before the effective date of this Act."

OPUC requested the deletion or modification of multiple definitions. First, OPUC requested that the definitions for opt-out notice and REC offset, in paragraphs (9) and (12) respectively, be deleted because they are "irrelevant and unnecessary" under PURA §39.9113. Second, OPUC requested that the commission "clarify whether REC accounts ([as defined in paragraph (14)]) and solar REC accounts are distinguished, and how different account holders will be identified." Third, OPUC requested the deletion of references to subsection (h) and PURA §39.904 from the Renewable Portfolio Standard (RPS) definition in paragraph (18), as it is "unnecessary" following the repeal of PURA §39.904.

Commission Response

The commission agrees with ERCOT and TSPA and amends the proposed rule accordingly. The commission disagrees with OPUC's recommendations to alter or delete the cited provisions. Section 53 of HB 1500 effectively requires the commission to continue the REC trading program and RPS obligation until September 1, 2025.

To address multiple commenters' concerns regarding paragraph (18) and the definition of "renewable portfolio standard," the commission modifies the proposed rule by deleting paragraph (18) and replacing it with a "solar renewable portfolio standard" definition in paragraph (23), as discussed in further detail below.

Proposed subsection (b)(1); "Compliance period"

Proposed subsection (b)(1) defines "compliance period" to be January 1, 2024, to December 31, 2024 (2024 compliance period), and January 1, 2025 to August 31, 2025 (2025 compliance period).

The REP Coalition recommended simplifying the compliance period definition in paragraph (1) by defining a compliance period as a calendar year and provided recommended language.

Commission Response

The commission agrees with the REP Coalition's recommendation and modifies the proposed rule accordingly.

Proposed subsection (b)(2); "Compliance premium"

Proposed subsection (b)(2) defines "compliance premium" as "[a] premium awarded" in conjunction with a solar renewable energy credit that is generated by a renewable energy source that meets the criteria of subsection (d) of this section."

The REP Coalition recommended revising the compliance premium definition in paragraph (2) by clarifying that "a compliance premium is awarded for a MWh of renewable energy that meets the eligibility for the mandatory solar RPS program in subsection (e)(2)(A)."

Commission Response

The commission agrees with the REP Coalition and modifies the proposed rule accordingly. This modification clarifies and aligns with the applicability timelines established by Section 53 of HB 1500 for the solar RPS.

Proposed subsection (b)(9); "Opt-out notice"

Proposed subsection (b)(9) defines "opt-out notice" as a "written notice submitted" by a transmission-level voltage customer under PURA \$39.904(m-1)."

The REP Coalition recommended removing the reference to PURA §39.904 in paragraph (9). Additionally, the REP Coalition recommended removing all references to PURA §39.904 in the proposed rule to be consistent with the intent of HB 1500 in repealing the statutory provision.

Commission Response

The commission agrees with the REP Coalition that references to PURA §39.904 should be removed and modifies the proposed rule accordingly.

Proposed subsection (b)(10); "Program administrator"

The proposed rule's definition of "program administrator" included references to the statutory responsibility of the independent organization for the ERCOT region to maintain the accreditation and banking program and also the commission's authority to appoint a "program administrator" for the retired RPS program under repealed PURA §39.904. The proposed language further designated the independent organization certified under PURA §39.151 for the ERCOT region as the program administrator under both statutes.

The REP Coalition recommended that the "program administrator" simplify the definition of program administrator to clarify that ERCOT will be responsible for both the RPS obligation that is applicable to retail entities and the REC trading program.

Commission Response

The commission agrees with the REP Coalition that the program administrator definition should clarify that the program administrator is responsible for both the solar RPS obligation and the REC trading program and modifies the proposed rule accordingly.

Proposed subsection (b)(18); "Renewable portfolio standard (RPS)"

Proposed subsection (b)(18) defines the "renewable portfolio standard" as "the amount of capacity required to meet the requirements of PURA §39.904 under subsection (h) of this section."

The REP Coalition recommended replacing the "RPS" definition in paragraph (18) with a "solar renewable portfolio standard (solar RPS)" definition that equates the RPS requirement to "the amount of solar capacity required in subsection (e)(2) to implement Section 53 of House Bill 1500."

Commission Response

The commission agrees with the REP Coalition and replaces the definition of RPS with a definition of solar renewable portfolio standard. This modification will clearly delineate between the retired and new portfolio standards and also help clarify the distinction between the mandatory and voluntary aspects of this rule. The commission makes other conforming changes throughout the rule.

Proposed §25.173(c)--Certification of Renewable Energy Facilities

Proposed §25.173(c) establishes the requirements and process for the commission to certify all renewable facilities that will produce REC offsets, RECs, solar RECs, or compliance premiums for sale in the trading and accreditation programs.

Clarification on REC program requirements for re-registration of generators

Multiple commenters requested clarifications to the rule as proposed on whether previously registered generators will have to re-register to participate in REC trading.

TSPA stated that it isn't clear whether generators will be required to re-register for the program in the rule as proposed and that requiring current participants to re-register would be "inefficient and disruptive." TSPA proposed language clarifying that re-registration is not required for generators already participating in the program.

SEIA stated there "[was] no indication that the legislature intended that the [c]ommission should require solar facilities that were already registered and certified" to re-register and be re-certified to continue in the generation, trading, and accreditation of solar RECs." SEIA provided a new suggested paragraph to subsection (c) to make this clarification.

TEBA recommended that the commission modify subsection (c) to be clear that "generators with existing Renewable Energy Credit Certification [will] be grandfathered into the new rule" and do not have to reregister for participation in the voluntary REC market. TEBA provided a new suggested paragraph to make this clarification.

The REP Coalition provided language that clarifies in subsection (c) that generators already certified by the commission to participate in the REC trading program are not required to obtain a new certification as a result of the repeal and replacement of this section.

Commission Response

The commission agrees with comments from TSPA, SEIA, TEBA, and the REP Coalition. Renewable energy facilities will not have to re-register or re-certify for the REC trading program. The commission amends the rule accordingly.

Recommended revision to allow energy storage devices to register for REC program

TEBA recommended that the commission add another paragraph to subsection (c) that will permit ERCOT to expand registration for the REC program to other resource types, such

as batteries, ADERs, and other types of energy storage devices, but did not recommend specific language. Additionally, TEBA recommended the creation of "energy storage certificates" and additional attributes for use by energy storage devices.

Commission Response

The commission declines to expand the registration requirements to permit additional resource types to register for the program because it is beyond the scope of this rulemaking. HB 1500 directed ERCOT to maintain an accreditation and banking system for renewable energy technologies. Whether additional technologies should be permitted to participate, or whether ERCOT should create additional types of credits or attributes for these technologies, would require further investigation.

Proposed §25.173(d)--Renewable energy credits, solar renewable energy credits, and compliance premiums

Proposed §25.173(d) establishes the eligibility criteria for renewable facilities to produce RECs, solar RECs, and compliance premiums.

Statutory authorization for a REC "trading" program

OPUC requested that any language regarding a REC "trading" program be removed from the proposed rule. OPUC argued that the commission does not have statutory authority to continue a trading program for RECs following the repeal of PURA §39.904 and passage of HB 1500 as the legislature "intentionally and purposefully" omitted the word "trading" from the new authorizing statute, PURA §39.9113. Further, OPUC argued that the trading program for RECs becomes "unnecessary" without the need to meet an RPS obligation through the purchase and retirement of RECs.

The commission disagrees with OPUC. A trading program is necessary to comply with HB 1500, Section 53, which requires the commission to, by rule, "adopt a program to apply that section as it existed immediately before the effective date of this Act, and to apply other statutes that referred to that section immediately before the effective date of this Act, as if that section had not been repealed by this Act and the other statutes that referred to that section had not been repealed or amended by this Act." A trading program existed as a part of the repealed PURA §39.904, so it is implicitly authorized by HB 1500. Further, under §311.021(4) of the Texas Code Construction Act, statutes must be construed such that the result is "feasible of execution." If ER-COT does not maintain a trading program, it would be impossible for a retail entity that does not also own solar generation facilities to meet its obligations under the new solar renewable portfolio standard, making the statute infeasible to execute.

Additionally, the trading program must apply to all renewable energy credits and persist after the expiration of the solar-only program. Under §311.021(3) of the Texas Code Construction Act, statutes must be construed such that "a just and reasonable result is intended." HB 1500 directs ERCOT to maintain a REC accreditation and banking system to award and track voluntary energy credits. In practical terms, the maintenance of the accreditation and banking system is required for activities such as the validation of green energy retail electric products. Without a trading mechanism, only the entity that generated the renewable energy credit would be capable of retiring these credits and validating green energy products. This would result in the inability of any entity that does not own generation to offer green energy products, which is neither a just nor reasonable outcome in a competitive retail market.

Subsection (d)(1)(A)--Facilities eligible for producing RECs for the accreditation program

Clauses (ii), (iii), (v), and (vi) of subparagraph (A) pertain to renewable technologies that use fossil fuels in the production of electricity. These clauses limit the eligibility of a dual-source facility and specify that a dual-source facility may only generate RECs based on the production of electricity from a renewable source. Clause (vi) of subparagraph (A) addresses statewide renewable capacity MW goals. Clause (vii) of subparagraph (A) limits RECs that can be generated from repowered resources up to 150 MWs.

OPUC requested the deletion of clauses (ii), (iii), (v), and (vi) from subparagraph (A) because they are "not relevant to the new [REC] program." OPUC argued that these clauses conflict with HB 1500's solar-only intent by permitting gas-powered technologies to register for the REC accreditation program. Further, OPUC argued that because clause (vi) addresses statewide renewable capacity megawatt goals, which are no longer applicable after the repeal of PURA §39.904, it should be deleted.

The REP Coalition recommended the deletion of the statewide renewable capacity megawatt goals provision from clause (vi) and the entirety of clause (vii) from subparagraph (A) because they are inapplicable to the REC accreditation program.

Commission Response

The commission declines to remove clauses (ii), (iii), and (v) under subparagraph (A) from the proposed rule. Subsection (d)(1) outlines the eligibility of all renewable facilities participating in the voluntary element of the REC program to produce RECs, and clauses (ii), (iii), and (v) are needed to apply the section as it was before its repeal. A renewable facility that uses both fossil fuels and renewable resources may still generate RECs in accordance with these requirements.

The commission agrees with OPUC and the REP Coalition that the renewable capacity language of clause (vi) from subparagraph (A) is not relevant to the voluntary element of the REC program. The commission also agrees with the REP Coalition's recommendation to delete clause (vii) from subparagraph (A) because this clause is no longer relevant to the REC program. The rule is modified accordingly.

Subsection (d)(3)--Compliance premiums

Subsection (d)(3) describes how compliance premiums are created and awarded. Paragraph (A) of this subsection states that one compliance premium will be awarded in conjunction with each solar REC generated between January 1, 2024, and December 31, 2024. The proposed rule does not allow for the creation or award of any compliance premiums after December 31, 2024, nor does it allow for the use of compliance premiums after the 2024 compliance period.

3Degrees requested that compliance premiums continue to be earned through the remainder of the RPS to September 1, 2025. 3Degrees reasoned that maintaining compliance premiums would reduce the additional compliance burdens on REPs and help to sustain the level of demand for solar RECs until the RPS is phased out.

OPUC stated that subsection (d)(3) is "wholly inapplicable to the new program under PURA §39.9113."

The REP Coalition stated that compliance premiums awarded before January 1, 2024, should be eligible for use through the settlement period for the 2024 compliance period, and that com-

pliance premiums should be awarded for each solar REC generated through December 31, 2024.

Commission Response

The commission disagrees with 3Degrees that compliance premiums should be earned after December 31, 2024, and declines to modify the proposed rule. Compliance premiums were originally intended to incentivize non-wind renewable generation to meet the non-wind target in repealed PURA §39.904. Following the repeal of PURA §39.904, it is no longer necessary to provide the additional incentive of compliance premiums for non-wind renewable generation. Further, compliance premiums are intended to be used by entities for compliance with the solar RPS. However, when an entity uses compliance premiums to meet its solar RPS obligation, the total solar RPS obligation for the next compliance year increases proportionally. Therefore, it is not appropriate for compliance premiums to be created or used for the 2025 compliance year's RPS obligation because no subsequent compliance year exists to shift the obligation forward to. This would serve to undermine the eventual retirement of sufficient solar RECs to achieve the mandatory solar RPS goal.

The commission agrees with OPUC that compliance premiums should not be created or awarded following the end of the mandatory solar RPS. However, Section 53 of HB 1500 directed the commission to "phase out the program." As detailed above, limiting the creation and award of compliance premiums to December 31, 2024, allows the solar RPS to be phased out as well as permits compliance premiums to expire naturally at the end of their three-year compliance life.

The commission agrees with the REP Coalition that compliance premiums awarded for solar RECs generated before December 31, 2023, and through December 31, 2024, should be available for use in the solar RPS through the settlement period for the 2024 compliance period and modifies the proposed rule accordingly.

Subsection (d)(4)--Production, transfer, and expiration of RECs and solar RECs

Subsection (d)(4) contains the regulations and process for the production, transfer and expiration of RECs and solar RECs.

Vistra opposed voluntary RECs having a compliance life of three years and provided redlines removing "RECs or" from subparagraphs (E), (G), and (H). Vistra argued that the initial rationale for RECs having a defined compliance life does not apply to non-solar or voluntary RECs and that instituting compliance lives onto RECs will "impair the property rights of REC owners."

OPUC restated that the use of "trading program" language is neither authorized by statute nor necessary in a voluntary program setting.

OPUC stated that it is unclear if solar RECs and RECs are interchangeable, how RECs will be retired when there is no longer an RPS requirement, or if RECs and solar RECs will have the same value.

Commission Response

The commission declines to modify the proposed rule to remove REC compliance lives as requested by Vistra. Section 53 of HB 1500 directs the commission to "adopt a program to apply [PURA §39.904] as it existed immediately before the effective date of [HB 1500], as if that section had not been repealed." Accordingly, the commission maintains the established practice of assigning RECs a three-year compliance life.

The commission also declines to remove the compliance lives of non-solar RECs or of all RECs after the expiration of the solar RPS mandate as this time. Currently, retail electric providers (REPs) are able to certify their energy products as ""green' by voluntarily retiring RECs with ERCOT. These voluntary retirements and ""green' product certifications benefit both REPs and consumers by allowing REPs to provide transparent renewable energy options to consumers and allowing consumers to make informed choices when choosing energy plans. Based on the current program structure, consumers have an expectation that the green energy product they are purchasing is supporting renewable energy that was generated within the last three years.

Without compliance lives, REPs would still be able to voluntarily retire RECs for product certifications, but there would not be any certainty for consumers surrounding when that REC was generated. The commission declines to remove the compliance lives of RECs without a more focused investigation of the effects such a change would have on the market and consumers.

Further, the commission disagrees with Vistra that retaining compliance lives on RECs constitutes a property rights violation. The compliance life of a REC exists when a REC is created, and it is known by all parties during any transactions involving the REC that the REC will eventually expire. On the other hand, without compliance lives, all RECs could exist on the voluntary market in perpetuity. This would eventually over-inflate the voluntary market, decrease the market value of each REC and disincentivize participation in the market for generators or retail entities looking to sell these RECs.

The commission disagrees with OPUC that a REC "trading" program is not authorized by statute. Section 53 of HB 1500 directs the commission to "adopt a program to apply [PURA §39.904] as it existed immediately before the effective date of [HB 1500], as if that section had not been repealed." This statutory directive implicitly directs the commission to implement a REC trading program in the amended §25.173.

Further, the commission disagrees with OPUC's argument that a REC trading program is unnecessary in a voluntary capacity. The REC trading program is the vehicle for renewable energy facilities and retail entities to purchase and sell RECs, including solar RECs. This trading program is necessary not only for the mandatory solar RPS, but for retail entities to trade and retire RECs voluntarily to meet green product requirements under §25.476.

Proposed §25.173(e)--Solar Renewable Energy Credits Trading Program

Proposed §25.173(e) establishes the requirements and process for administering and participating in the solar renewable energy credits program.

TSPA stated that "the proposed solar capacity requirements of 1,310 MW and 655 MW of new resources for the 2024 and 2025 compliance periods, respectively, are reasonable." Additionally, TSPA expressed support for the creation of the solar REC trading program and the solar RPS calculation.

OPUC argued that PURA §39.9113 "does not authorize a trading program." Further, OPUC commented that "[commission] staff should consider a rulemaking option that doesn't create a new market based on authority that no longer exists."

The REP Coalition recommended revisions to paragraphs (1) and (2) of this subsection to clarify that the solar-only RPS obligation for retail entities will end on September 1, 2025, and fur-

ther revisions to paragraph (2) to delete language that is "obsolete." The REP Coalition also provided language that revises subparagraph (A)(i) and (A)(ii) of paragraph (2) "consistent with the definition of "New facilities' in subsection (c)."

Commission Response

The commission disagrees with OPUC's argument that a trading program is not authorized. The trading program is the mechanism by which ERCOT maintains both the mandatory and voluntary elements of this section. A new market is not being created; the rule is being modified to encapsulate the mandatory and voluntary requirements from HB 1500 while using ERCOT's existing framework.

The commission agrees with the REP Coalition's recommendations to remove language from paragraph (2) and to change subparagraphs (A)(i) and (A)(ii) to use the definition of "new facilities" and modifies the proposed rule accordingly.

Subsection (e)(3); Calculation of capacity conversion factor (CCF)

The capacity conversion factor is used by the program administrator to allocate the solar RPS obligation to retail entities.

3Degrees requested that the commission revise the calculation of the capacity conversion factor (CCF) through the remainder of the RPS to September 1, 2025, to reflect historic generator performance data for solar facilities only. 3Degrees stated that if the CCF included all renewable resources, then the CCF would be overinflated and result in an inaccurate RPS obligation. 3Degrees provided language on how to specify this change in paragraph (3) of this subsection. Additionally, 3Degrees requested that the PUC direct ERCOT to update Section 14 of the nodal protocols, State of Texas Renewable Energy Credit Trading Program, to apply a solar-based CCF to the RPS requirement calculation.

The REP Coalition suggested revising the timing of the CCF calculation from the third quarter of each odd numbered year to the first quarter of the 2024 compliance year. The REP Coalition also recommended adding language to clarify this CCF will be used through the end of solar RPS and provided language consistent with its recommendations.

Commission Response

The commission agrees with 3Degrees that CCF language should be updated to specify its applicability only to solar resources and modifies the rule language accordingly.

The commission agrees with the REP Coalition's suggestion to adjust the timing of the CCF calculation and modifies the rule accordingly.

Subsection (e)(5); Nomination and award of REC offsets

Subsection (e)(5) establishes how an entity can use REC offsets to meet its obligations under the mandatory RPS.

OPUC argued that "offsets in [paragraph] (5) are unnecessary in the new, voluntary REC program."

Commission Response

The commission agrees with OPUC that offsets are not relevant to the voluntary portion of the REC trading program. However, the commission declines to modify the proposed rule due to statutory requirements and relevance to the mandatory solar RPS.

Proposed §25.173(f)--Renewable Energy Credits Accreditation Program

Proposed §25.173(f) establishes the requirements and process for administering and participating in the renewable energy credits accreditation program.

TSPA and 3Degrees supported the REC accreditation program as proposed. Further, 3Degrees commented on the importance of Texas RECs in national voluntary REC markets.

SEIA suggested, for consistency with other provisions of this rule, that the commission replace "ERCOT" with "program administrator."

The REP Coalition proposed revisions to subsection (f) to clarify that the program administrator will continue to maintain the records, accounts, RECs, and CPs from the REC trading program "as it existed prior to August 31, 2023, and December 31, 2023," and as under repealed PURA §39.904.

Commission Response

The commission agrees with SEIA and modifies the rule to reference "program administrator" instead of "ERCOT" to maintain consistency with the rest of this section.

The commission agrees with the REP Coalition that ERCOT must continue to maintain the records of the trading program as it previously existed, and the rule has been modified accordingly.

Subsection (f)(2)

Under subsection (f)(2), "ERCOT may assign additional attributes to RECs, such as more precise REC-generation timestamps, to allow buyers to distinguish between RECs."

TEBA and SEIA commented in support of paragraph (2). 3Degrees recommended modifying the rule to explicitly allow ERCOT to implement time stamps on RECs to allow for more granular REC tracking capabilities.

Commission Response

The commission declines to modify the proposed rule as requested by 3Degrees, because REC characteristics and attributes should be determined by the program administrator after considering the value provided by and potential consequences of adding each new attribute.

Proposed §25.173(g)--Responsibilities of the Program Administrator

Proposed §25.173(g) establishes the requirements and responsibilities the program administrator must follow in administering both the REC trading and accreditation programs.

OPUC argued that the responsibilities of the program administrator should be limited to managing an accreditation and banking system to award and track voluntary RECs "as envisioned in PURA §39.9113."

The REP Coalition did not comment on this section but provided various non-substantive redline revisions to subsection (g) consistent with its comments on other provisions of the rule.

Commission Response

The commission declines to limit the program administrator's responsibilities to managing voluntary RECs as requested by OPUC, because the program administrator is also responsible for managing the mandatory solar RPS requirements.

The commission agrees with the REP Coalition's non-substantive revisions and modifies the rule accordingly.

Subsection (g)(5)

Subsection (g)(5) requires the program administrator to "[r]etire RECs, solar RECs, and compliance premiums at the end of each REC, solar REC, or compliance premiums' compliance life".

Vistra proposed removing the requirement that the program administrator retire RECs, consistent with its prior recommendation that the commission eliminate REC expiration dates.

Commission Response

While the creation and retirement of RECs is voluntary under the adopted rule, the commission declines to modify the rule to remove compliance lives from RECs as requested by Vistra for reasons previously discussed.

Proposed §25.173(h)--Penalties and Enforcement

Proposed §25.173(h) allows the program administrator to determine whether a retail entity has retired sufficient solar RECs or compliance premiums to satisfy its RPS allocation. If the program administrator determines that a retail entity has not satisfied its RPS obligation, the retail entity may be subject to an administrative penalty, under PURA §15.023, of \$50 per MWh that is deficient.

OPUC argued that subsection (h) is "not applicable to the REC program under PURA §39.9113" and should be removed entirely. Further, OPUC argued that the REC program is meant to function as "a voluntary program" focused on accrediting generation and banking credits to enable voluntary contractual obligations," and that it is unnecessary to penalize the failure to retire RECs or compliance premiums.

The REP Coalition suggested moving subsection (h) to immediately after the settlement process provision in subsection (i). The REP Coalition argued that the settlement process must be completed before the program administrator can determine whether a retail entity is out of compliance with its RPS obligation and is subject to an administrative penalty.

Commission Response

The commission declines to remove the enforcement provisions of this rule as recommended by OPUC, because they are pertinent to the mandatory solar RPS program. The commission may remove these provisions in a future rulemaking proceeding following the expiration of the solar RPS program requirements.

The commission agrees with the REP Coalition's recommendation to relocate this provision within the rule for clarity and modifies the rule accordingly.

Proposed §25.173(i)--Settlement Process

Proposed §25.173(i) establishes the settlement process for a retail entity to comply with its RPS obligation for the previous compliance period.

OPUC argued that it may not be necessary to define a settlement process because "there is no longer a RPS requirement." Further, OPUC suggested allowing the program administrator to dictate the settlement period or "leave [it] to market forces to determine in voluntary contractual transactions."

Commission Response

The commission declines to remove the settlement process from the rule as requested by OPUC, because it is necessary for the mandatory solar RPS requirements.

The REP Coalition suggested removing the following language from this subsection: "The compliance period is the settlement period in which the following must occur." The REP Coalition stated that the quoted language is inconsistent with the description of settlement period and the concept of a compliance period. The REP Coalition offered replacement language to note that the settlement period is the 90 days following the compliance period.

Commission Response

The commission agrees with the REP Coalition's suggested language and modifies the rule accordingly.

Proposed §25.173(j)--Microgenerators and REC Aggregators

Proposed §25.173(j) allows for a REC aggregator to manage the participation of multiple microgenerators in the REC trading and accreditation programs and establishes how ERCOT assigns RECs within this arrangement.

OPUC stated that it is unclear if subsection (j) is necessary for the REC program under PURA §39.9113. OPUC suggested the commission remove this language or update it for microgenerators and REC aggregators and address other technologies like demand response.

The REP Coalition suggested edits to subsection (j), provided in redlines, consistent with its general comments.

TEBA suggested that an additional paragraph be added to subsection (j) to clarify that an existing REC aggregator does not need to re-register.

Commission Response

The commission disagrees with OPUC and declines to remove subsection (j) from the rule. This language must remain in the rule to maintain RPS as it was prior to the repeal of PURA §39.904 by HB 1500. Additionally, it is beyond the scope of this rulemaking to consider demand response at this time.

The commission agrees with TEBA that microgenerators and REC aggregators do not have to re-register, and modifies the rule accordingly.

Adopted §25.173(I)--Effective date

3Degrees and the REP Coalition requested that the commission provide additional clarification on the RPS requirements for the compliance period gap from August 24, 2023, to January 1, 2024, and on the settlement of the 2023 compliance year. The REP Coalition requested a new subsection addressing how the 2023 compliance year should be addressed by ERCOT.

Commission Response

The commission directed ERCOT to discontinue the current program at the August 24, 2023, open meeting. The solar-only program is a new program with a solar-only RPS obligation. There are no compliance requirements from September 1, 2023, through January 1, 2024; however, any solar RECs generated during this period may be used to fulfill retail entity solar RPS obligations for the 2024 and 2025 compliance periods. The commission adds new subsection (I) to memorialize these previously issued directives.

16 TAC §25.173

The repeal is adopted under the following provisions of PURA: §14.001, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; §39.151, which gives the commission complete authority to oversee the independent organization's operations; and §39.9113, which requires the independent organization certified under §39.151 for the ERCOT power region to maintain an accreditation and banking system to award and track voluntary renewable energy credits generated by eligible facilities.

The repeal is also adopted under the provisions of HB 1500 §53 from the 88th Texas Legislature (R. S.) which directs the commission to adopt a program, effective until September 1, 2025, to apply repealed PURA §39.904 as it existed immediately before the section's effective repeal date only to renewable energy technologies that exclusively rely on an energy source that is naturally regenerated over a short time and are derived directly from the sun.

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 November 30, 2023.

TRD-202304409 Adriana Gonzales Rules Coordinator Public Utility Commission of Texas

Effective date: January 1, 2024

Proposal publication date: October 27, 2023 For further information, please call: (512) 936-7322

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16 TAC §25.173

The new rule is adopted under the following provisions of PURA: §14.001, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; §39.151, which gives the commission complete authority to oversee the independent organization's operations; and §39.9113, which requires the independent organization certified under §39.151 for the ERCOT power region to maintain an accreditation and banking system to award and track voluntary renewable energy credits generated by eligible facilities.

The new rule is also adopted under the provisions of HB 1500 §53 from the 88th Texas Legislature (R. S.) which directs the commission to adopt a program, effective until September 1, 2025, to apply repealed PURA §39.904 as it existed immediately before the section's effective repeal date only to renewable energy technologies that exclusively rely on an energy source that is naturally regenerated over a short time and are derived directly from the sun.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 39.151, and 39.9113; and HB 1500 from the 88th Texas Legislature (R. S.)

- §25.173. Renewable Energy Credit Program.
 - (a) Purpose. The purposes of this section are to:
- (1) Establish a solar renewable portfolio standard pursuant to Section 53 of House Bill 1500, enacted by the 88th Texas Legislature, Regular Session, to be phased out by September 1, 2025; and

- (2) Direct the independent organization certified under PURA §39.151 for the ERCOT region to continue to administer a renewable energy credit (REC) trading program on a voluntary basis.
- (b) Application. This section applies to power generation companies as defined in §25.5 of this title (relating to Definitions), and retail entities as defined in subsection (c) of this section.

(c) Definitions.

- (1) Compliance period--A calendar year beginning January 1 and ending December 31 in which renewable energy credits are generated.
- (2) Compliance premium--A premium awarded by the program administrator in conjunction with a solar renewable energy credit that is generated by a renewable energy source that meets the criteria of subsection (e)(2)(A) of this section. For the purpose of the solar renewable energy portfolio standard requirements, one compliance premium is equal to one solar renewable energy credit.
- (3) Designated representative--A person authorized by the owners or operators of a renewable resource to register that resource with the program administrator. The designated representative must have the authority to represent and legally bind the owners and operators of the renewable resource in all matters pertaining to the renewable energy credit trading program.
- (4) Existing facilities--Renewable energy generators placed in service before September 1, 1999.
- (5) Generation offset technology--Any renewable technology that reduces the demand for electricity at a site where a customer consumes electricity. An example of this technology is solar water heating.
- (6) Microgenerator--A customer who owns one or more eligible renewable energy generating units with a rated capacity of less than one megawatt (1 MW) operating on the customer's side of the utility meter.
- (7) New facilities--Solar renewable energy generators placed in service on or after September 1, 1999. A new facility includes the incremental capacity and associated energy from an existing renewable facility achieved through repowering activities undertaken on or after September 1, 1999.
- (8) Off-grid generation--The generation of renewable energy in an application that is not interconnected to a utility transmission or distribution system.
- (9) Opt-out notice--Written notice submitted to the commission by a transmission-level voltage customer.
- (10) Program administrator--The entity responsible for carrying out the administrative responsibilities related to the REC trading program and the solar renewable portfolio standard as set forth in this section. In accordance with PURA §39.9113, the program administrator is the independent organization certified under PURA §39.151 for the ERCOT region.
- (11) REC aggregator--An entity managing the participation of two or more microgenerators in the REC trading program.
- (12) REC offset (offset)--A REC offset represents one megawatt-hour (MWh) of renewable energy from an existing facility that is not eligible to earn renewable energy credits or compliance premiums.
- (13) Renewable energy credit (REC)--A REC represents one MWh of renewable energy that is physically metered and verified

in Texas and meets the requirements set forth in subsection (e)(1)(A) of this section.

- (14) Renewable energy credit account (REC account)--An account maintained by the program administrator for the purpose of tracking the production, sale, transfer, purchase, and retirement of RECs, solar RECs, or compliance premiums by a program participant.
- (15) Renewable energy credit trading program (trading program)--The process of awarding, trading, tracking, and submitting RECs as a means of meeting the renewable energy requirements set out in subsection (g) of this section.
- (16) Renewable energy resource (renewable resource)--A resource that produces energy derived from renewable energy technologies.
- (17) Renewable energy technology--Any technology that exclusively relies on an energy source that is naturally regenerated over a short time and derived directly from the sun, indirectly from the sun, or from moving water or other natural movements and mechanisms of the environment. Renewable energy technologies include those that rely on energy derived directly from the sun, wind, geothermal, hydroelectric, wave, or tidal energy, or on biomass or biomass-based waste products, including landfill gas. A renewable energy technology does not rely on energy resources derived from fossil fuels, waste products from fossil fuels, or waste products from inorganic sources.
- (18) Repowered facility--An existing facility that has been modernized or upgraded to use renewable energy technology to produce electricity consistent with this rule.
- (19) Retail entity--Municipally-owned utilities, generation and transmission cooperatives and distribution cooperatives that offer customer choice, retail electric providers (REPs), and investor-owned utilities that have not unbundled under PURA Chapter 39.
- (20) Settlement period--The period following a compliance period in which the settlement process for that compliance period takes place as set forth in subsection (i) of this subsection.
- (21) Small producer--A renewable resource that is less than ten megawatts (10 MW) in size.
- (22) Solar renewable energy credit (solar REC)--A REC representing one MWh of renewable energy that is physically metered and verified in Texas and meets the requirements set forth in subsection (e)()(2) of this section.
- (23) Solar renewable portfolio standard (solar RPS) The amount of solar capacity required in subsection (e)(2) of this section to implement Section 53 of House Bill 1500 enacted by the 88th Texas Legislature, Regular Session.
- (24) Transmission-level voltage customer--A customer that receives electric service at 60 kilovolts (kV) or higher or that receives electric service directly through a utility-owned substation that is connected to the transmission network at 60 kV or higher.
- (d) Certification of renewable energy facilities. The commission will certify all renewable facilities that will produce either REC offsets, RECs, solar RECs, or compliance premiums for sale in the trading program. To be awarded REC offsets, RECs, solar RECs, or compliance premiums, a power generator must complete the certification process described in this subsection. The program administrator must not award REC offsets, RECs, solar RECs, or compliance premiums for energy produced by a power generator before it has been certified by the commission.
- (1) The designated representative of the generating facility must file an application with the commission on a form approved

- by the commission for each renewable energy generation facility. At a minimum, the application must include the location, owner, technology, and rated capacity of the facility, and must demonstrate that the facility meets the resource eligibility criteria in subsection (e) of this section. Any subsequent changes to the information in the application must be filed with the commission within 30 days of such changes.
- (2) No later than 30 days after the designated representative files the certification form with the commission, the commission will inform both the program administrator and the designated representative whether the renewable facility has met the certification requirements. At that time, the commission will either certify the renewable facility as eligible to receive REC offsets, RECs, solar RECs, or compliance premiums or describe any insufficiencies to be remedied. If the application is contested, the time for acting is extended for such time as is necessary for commission action.
- (3) Upon receiving notice of certification of new facilities, the program administrator will create a REC account for the designated representative of the renewable resource.
- (4) The commission or program administrator may make on-site visits to any certified facility, and the commission will decertify any facility if it is not in compliance with the provisions of this subsection.
- (5) A decertified renewable generator may not be awarded RECs, solar RECs, or compliance premiums. However, any RECs, solar RECs, REC offsets, or compliance premiums awarded by the program administrator and transferred to a retail entity prior to the decertification remain valid.
- (6) Participants that were registered and certified to participate in the trading program prior to the effective date of this rule continue to be registered and certified under this subsection and are not required to re-register or be recertified to participate in the trading program.
- (e) Renewable energy credits, solar renewable energy credits, and compliance premiums.
 - (1) Renewable energy credits (RECs).
- (A) Facilities eligible for producing RECs in the trading program. For a renewable facility to be eligible to produce RECs for the trading program it must be either a new facility, a small producer, or a repowered facility as defined in subsection (c) of this section and must also meet the requirements of this subsection.
- (i) A renewable energy resource must not be ineligible under subparagraph (B) of this paragraph and must be certified under subsection (d) of this section.
- (ii) For a renewable energy technology that requires fossil fuel, the facility's use of fossil fuel must not exceed 25.0% of the total annual fuel input on a British thermal unit (BTU) or equivalent basis.
- (iii) For a renewable energy technology that requires the use of fossil fuel that exceeds 2.0% of the total annual fuel input on a BTU or equivalent basis, RECs can only be earned on the renewable portion of the production. A renewable energy resource using a technology described by this clause must comply with the following requirements:
- (I) A meter must be installed and periodic tests of the heat content of the fuel must be conducted to measure the amount of fossil fuel input on a British thermal unit (BTU) or equivalent basis that is used at the facility;

- (II) The renewable energy resource must calculate the electricity generated by the unit in MWh, based on the BTUs (or equivalent) produced by the fossil fuel and the efficiency of the renewable energy resource, subtract the MWh generated with fossil fuel input from the total MWh of generation and report the renewable energy generated to the program administrator;
- (III) The renewable energy resource must report the generation to the program administrator in the measurements, format, and frequency prescribed by the program administrator, which may include a description of the methodology for calculating the nonrenewable energy produced by the resource; and
- (IV) The renewable energy resource is subject to audit to verify the accuracy of the data submitted to the program administrator and compliance with this section, to be conducted by the program administrator or an independent third party as requested by the program administrator. If the program administrator requires a third party audit, the audit must be performed at the expense of the renewable energy resource.
- (iv) The output of the facility must be readily capable of being physically metered and verified in Texas by the program administrator. Energy from a renewable facility that is delivered into a transmission system where it is commingled with electricity from non-renewable resources before being metered cannot be verified as delivered to Texas customers. A facility is not ineligible if the facility is a generation-offset, off-grid, or on-site distributed renewable facility and it otherwise meets the requirements of this subparagraph.
- (v) For a municipally owned utility operating a gas distribution system, any production or acquisition of landfill gas that is directly supplied to the gas distribution system is eligible to produce RECs based upon the conversion of the thermal energy in BTUs to electric energy in kWh using for the conversion factor the systemwide average heat rate of the gas-fired units of the combined utility's electric system as measured in BTUs per kWh.
- (\ensuremath{vi}) . For industry-standard thermal technologies, the RECs can be earned only on the renewable portion of energy production.
- (B) Facilities not eligible for producing RECs in the trading program. A renewable facility is not eligible to produce RECs if it is:
- (i) A renewable energy capacity addition associated with an emissions reductions project described in Health and Safety Code §382.05193, that is used to satisfy the permit requirements in Health and Safety Code §382.0519; or
- (ii) An existing facility that is not a small producer as defined in subsection (c) of this section or has not been repowered as permitted under subparagraph (A) of this paragraph.
- (2) Solar renewable energy credits (solar RECs) for solar RPS.
- (A) Facilities eligible for producing solar RECs and compliance premiums for the solar RPS. For a renewable facility to be eligible to produce solar RECs and compliance premiums for the solar RPS, it must be either a new facility, a small producer, or a repowered facility as defined in subsection (c) of this section and must also meet the requirements of this paragraph:
- (i) A renewable energy resource must not be ineligible under subparagraph (B) of this paragraph and must register under subsection (d) of this section.

- (ii) A facility must only use renewable energy technologies that exclusively rely on an energy source that is naturally regenerated, over a short time and derived directly from the sun.
- (iii) The output of the facility must be readily capable of being physically metered and verified in Texas by the program administrator. Energy from a solar renewable facility that is delivered into a transmission system where it is commingled with electricity from non-solar renewable resources before being metered cannot be verified as delivered to Texas customers. A facility is not ineligible by virtue of the fact that the facility is a generation-offset, off-grid, or on-site distributed solar renewable facility if it otherwise meets the requirements of this subparagraph.
- (iv) For repowered facilities, a facility is eligible to earn solar RECs on all renewable energy produced up to a capacity of 150 MW. A repowered facility with a capacity greater than 150 MW may earn solar RECs for the energy produced in proportion to 150 divided by nameplate capacity.
- (B) Facilities not eligible for producing solar RECs and compliance premiums for use in the solar RPS. A renewable facility is not eligible to produce solar RECs and compliance premiums for use in the solar RPS if it is:
- (i) A renewable energy capacity addition associated with an emissions reductions project described in Health and Safety Code §382.05193, that is used to satisfy the permit requirements in Health and Safety Code §382.0519; or
- (ii) An existing facility that is not a small producer as defined in subsection (c) of this section or has not been repowered as permitted under this subsection.
- (3) Compliance premiums. The program administrator will award compliance premiums to solar REC generators certified by the commission under subsection (d) of this section.
- (A) For eligible solar technologies as set forth in paragraph (2)(A)(ii) of this subsection, one compliance premium will be created and awarded in conjunction with each solar REC generated January 1, 2008 through December 31, 2024. Compliance premiums will not be created or awarded after December 31, 2024.
- (B) Except as provided in this paragraph, the award, retirement, trade, and registration of compliance premiums must follow the requirements of paragraph (4) of this subsection and subsections (f) and (i) of this section.
- (C) A compliance premium may be used by any retail entity toward its solar RPS requirement under subsection (f)(2) of this section.
- (D) A compliance premium may not be used by any retail entity toward the RPS requirement after the settlement period for 2024 compliance period.
- (E) The program administrator must increase the statewide RPS requirement calculated under subsection (f)(2)(A) of this section by the number of compliance premiums retired during the previous compliance period.
- (4) Production, transfer, and expiration of RECs and solar RECs. The production, transfer, and expiration of RECs and solar RECs must follow the requirements of this paragraph. RECs and solar RECs issued through December 31, 2023, continue to exist and retire consistent with their issuance.
- (A) The owner of a renewable resource will earn one REC or solar REC when a MWh is metered at that renewable resource. The program administrator will record the energy in metered MWh and

credit the REC account of the renewable resource that generated the energy on a quarterly basis. Quarterly production must be rounded to the nearest whole MWh, with fractions of 0.5 MWh or greater rounded up.

- (B) The transfer of RECs or solar RECs between parties is effective only when the transfer is recorded by the program administrator.
- (C) The program administrator will require that RECs or solar RECs be adequately identified prior to recording a transfer and must issue an acknowledgement of the transaction to parties upon provision of adequate information. At a minimum, the following information must be provided:
 - (i) identification of the parties;
- (ii) REC or solar REC serial number, REC or solar REC issue date, and the renewable resource that produced the REC or solar REC:
- (iii) the number of RECs or solar RECs to be transferred: and
 - (iv) the transaction date.
- (D) A retail entity must surrender RECs or solar RECs to the program administrator for retirement from the market for a compliance period. The program administrator will document all REC and solar REC retirements annually.
- (E) On or after each April 1, the program administrator will retire RECs and solar RECs that have not been retired by retail entities and have reached the end of their compliance life.
- (F) The program administrator may establish a procedure to ensure that the award, transfer, and retirement of RECs and solar RECs are accurately recorded.
- (G) The issue date of RECs or solar RECs generated by renewable energy resources will coincide with the compliance period in which the credits are created. All RECs and solar RECs will have a compliance life of three compliance periods, after which the program administrator will retire them from the trading program.
- (H) Each REC or solar REC that is not used in the compliance period in which it was created may be banked and is valid for the next two compliance periods. For purposes of this subparagraph, calendar year 2023 counts as a single compliance period.
 - (f) Solar renewable portfolio standard (solar RPS).
- (1) Solar RECs may be generated, transferred, and retired by renewable energy power generators certified under subsection (d) of this section, retail entities, and other market participants as set forth in subsection (e)(4) of this section. Solar RECs generated by renewable energy resources in the calendar year 2025 may be used by any retail entity toward the solar RPS requirement for the compliance period beginning January 1, 2025, or on a voluntary basis in the subsequent years.
- (A) The program administrator will allocate a solar RPS requirement among all retail entities as a percentage of the retail sales of each retail entity as set forth in paragraph (2) of this subsection. Each retail entity is responsible for retiring sufficient solar RECs as set forth in paragraph (2) of this subsection and subsection (e)(4) of this section for the 2024 and 2025 compliance periods. The requirement to retire solar RECs to comply with this section becomes effective on the date a retail entity begins serving retail electric customers in Texas or, for an electric utility, as specified by law.

- (B) Solar RECs will be credited on an energy basis as set forth in subsection (e)(4) of this section.
- (C) A municipally-owned utility or distribution cooperative possessing renewable resources that meet the requirements of subsection (e)(2)(A) of this section may sell solar RECs generated by such a resource to retail entities as set forth in subsection (e)(4) of this section.
- (D) Except where specifically stated, the provisions of this section apply uniformly to all participants in the trading program.
 - (E) The solar RPS end on September 1, 2025.
- (2) Allocation of solar RPS requirement to retail entities. The program administrator must allocate solar RPS requirements among retail entities. The solar RPS terminates September 1, 2025, but is subject to the settlement period following that termination date. The program administrator must use the following methodology to determine the total annual solar RPS requirement for a given year and the final solar RPS allocation for individual retail entities:
- (A) The total statewide solar RPS requirement for each applicable compliance period must be calculated in terms of MWh and must be equal to the applicable capacity requirement set forth in this paragraph multiplied by 8,760 hours for the 2024 compliance period and 5,840 hours for the 2025 compliance period, multiplied by the appropriate capacity conversion factor set forth in paragraph (3) of this subsection. The solar renewable energy capacity requirements for the compliance periods beginning January 1, 2024, and January 1, 2025, respectively are:
- (i) 1,310 MW of resources from New Facilities in the 2024 compliance period; and
- $\ensuremath{\textit{(ii)}}\xspace$ 655 MW of resources from New Facilities in the 2025 compliance period.
- (B) The final solar RPS allocation for an individual retail entity for a compliance period must be calculated as follows:
- (i) Prior to the preliminary solar RPS allocation, each retail entity's total retail energy sales are reduced to exclude the consumption of customers that opt out in accordance with paragraph (4) of this subsection. Each retail entity's preliminary solar RPS allocation is determined by dividing its total retail energy sales in Texas by the total retail sales in Texas of all retail entities and multiplying that percentage by the total statewide solar RPS requirement for that compliance period.
- (ii) The adjusted solar RPS allocation for each retail entity that is entitled to an offset is determined by reducing its preliminary solar RPS allocation by the offsets to which it qualifies, as determined under paragraph (5) of this subsection, with the maximum reduction equal to the retail entity's preliminary solar RPS allocation. The total reduction for all retail entities is equal to the total usable offsets for that compliance period.
- (iii) Each retail entity's final solar RPS allocation for a compliance period must be increased to recapture the total usable offsets calculated under clause (ii) of this subparagraph. The additional solar RPS allocation must be calculated by dividing the retail entity's preliminary RPS allocation by the total preliminary solar RPS allocation of all retail entities. This fraction must be multiplied by the total usable offsets for that compliance period and this amount must be added to the retail entity's adjusted solar RPS allocation to produce the retail entity's final solar RPS allocation for the compliance period.
- (C) Concurrent with determining final individual solar RPS allocations for the current compliance period in accordance with

this subsection, the program administrator must recalculate the final solar RPS allocations for the previous compliance periods, taking into account corrections to retail sales resulting from resettlements. The difference between a retail entity's corrected final solar RPS allocation and its original final solar RPS allocation for the previous compliance periods must be added to or subtracted from the retail entity's final solar RPS allocation for the current compliance period.

- (3) Calculation of capacity conversion factor. The capacity conversion factor used by the program administrator to allocate solar RECs to retail entities must be calculated during the first quarter of the 2024 compliance period and will be utilized through the end of the solar RPS. The capacity conversion factor must:
- (A) Be based on actual generator performance data for the previous two years for solar renewable resources in the trading program during that period for which at least 12 months of performance data are available;
- (B) Represent a weighted average of generator performance; and
- (C) Use all actual generator performance data that is available for each solar renewable resource, excluding data for testing periods.

(4) Opt-out notice.

- (A) A customer receiving electrical service at transmission-level voltage who submits an opt-out notice to the commission for the applicable compliance period must have its load excluded from the solar RPS calculation. Any opt-out notice submitted under the RPS as it existed prior to the effective date of this section continues to apply to the solar RPS for the compliance period as specified in this subsection.
- (B) An investor-owned utility that is subject to the solar RPS requirement under this section must not collect costs attributable to the solar RPS from an eligible customer who has submitted an optout notice. An investor-owned utility whose rates include the cost of solar RECs must file a tariff to implement this paragraph, not later than 30 days after the effective date of this section.
- (C) A customer opt-out notice must be filed in the commission-designated project number before the beginning of a compliance period for the notice to be effective for that period. Each opt-out notice must include the name of the individual customer opting out, the customer's ESI IDs, the retail entities serving those ESI IDs, and the term for which the notice is effective, which may not exceed two years. The customer opting out must also provide the information included in the opt-out notice directly to ERCOT and may request that ERCOT protect the customer's ESI ID and consumption as confidential information. A customer may revoke a notice under this paragraph at any time prior to the end of a compliance period by filing a letter in the designated project number and providing notice to ERCOT.

(5) Nomination and award of REC offsets.

- (A) A REP, municipally-owned utility, G&T cooperative, distribution cooperative, or an affiliate of a REP, municipally-owned utility, or distribution cooperative, may apply offsets to meet all or a portion of its solar RPS requirement, as calculated in paragraph (2) of this subsection, only if those offsets were nominated in a filing with the commission by June 1, 2001.
- (B) The program administrator must award offsets consistent with the commission's actions to verify designations of REC offsets and with this section.

- (C) REC offsets must be equal to the average annual MWh output of an existing resource for the years 1991-2000 or the entire life of the existing resource, whichever is less.
- (D) REC offsets qualify for use in a compliance period under paragraph (2) of this subsection only to the extent that:
- (i) The resource producing the REC offset has continuously since September 1, 1999, been owned by or its output has been committed under contract to a utility, municipally-owned utility, or cooperative (or successor in interest) nominating the resource under subparagraph (A) of this paragraph or, if the resource has been committed under a contract that expired after September 1, 1999, and before January 1, 2002, it was owned by or its output was committed under contract to a utility, municipally-owned utility, or cooperative on January 1, 2002; and
- (ii) The facility producing the REC offsets is operated and producing energy during the compliance period in a manner consistent with historic practice.
- (E) If the production of energy from a facility that is eligible for an award of REC offsets ceases for any reason, or if the power purchase agreement with the facility's owner (or successor in interest) that is referred to in subparagraph (D)(i) of this paragraph has lapsed or is no longer in effect, the retail entity must no longer be awarded REC offsets related to the facility.

(F) REC offsets must not be traded.

- (g) Renewable energy credits trading program. The program administrator must maintain a voluntary banking and accreditation system to facilitate a voluntary renewable energy credit trading program. The program administrator must maintain the records, accounts, RECs, and compliance premiums from the trading program as it existed prior to August 31, 2023, and prior to the effective date of this section, as applicable.
- (1) RECs may be generated, transferred, and retired by renewable energy power generators certified under subsection (d) of this section, retail entities, and other market participants as set forth in this section. For purposes of this subsection, there is no distinction between RECs and solar RECs.
- (A) A power generating company may participate in the trading program and may generate RECs and buy or sell RECs as set forth in subsection (e)(4) of this section.
- (B) RECs must be credited on an energy basis as set forth in subsection (e)(4) of this section.
- (C) A municipally-owned utility or distribution cooperative possessing renewable resources that meet the requirements of subsection (e)(1)(A) and (e)(2)(A) of this section may sell RECs generated by such a resource to retail entities as set forth in subsection (e)(4) of this section.
- (2) The program administrator may assign additional attributes to RECs, such as more precise REC generation timestamps, to allow buyers to distinguish between RECs.
- (h) Responsibilities of the program administrator. At a minimum, the program administrator must perform the following functions:
- (1) Create and maintain accounts that track RECs, solar RECs, and compliance premiums for each participant in the trading program;
- (2) Award RECs, solar RECs, or compliance premiums to certified renewable energy facilities on a quarterly basis based on verified meter reads;

- (3) Award offsets to retail entities on an annual basis based on a nomination submitted by the retail entity under subsection (f)(5) of this section;
- (4) Annually record the retirement of RECs, solar RECs, and compliance premiums that each retail entity submits;
- (5) Retire RECs, solar RECs, and compliance premiums at the end of each REC, solar REC, or compliance premium's compliance life:
- (6) Maintain public information on its website that provides trading program information to interested buyers and sellers of RECs, solar RECs, or compliance premiums;
- (7) Create an exchange procedure where persons may purchase and sell RECs, solar RECs, or compliance premiums. The exchange must ensure the anonymity of persons purchasing or selling RECs, solar RECs, or compliance premiums. The program administrator may delegate this function to an independent third party, subject to commission approval;
- (8) Make public each month the total energy sales of retail entities in Texas for the previous month;
- (9) Perform audits of generators participating in the trading program to verify accuracy of metered production data;
- (10) Allocate the RPS requirement to each retail entity in accordance with subsection (f)(2) of this section; and
- (11) Submit an annual report to the commission. The program administrator must submit a report to the commission on or before May 15 of each calendar year. The report must contain information pertaining to renewable energy power generators and retail entities. At a minimum, the report must contain:
- (A) the amount of existing and new renewable energy capacity in MW installed in the state by technology type, the owner/operator of each facility, the date each facility began to produce energy, the amount of energy generated in megawatt-hours (MWh) each quarter for all capacity participating in the trading program or that was retired from service; and
- (B) a listing of all retail entities participating in the trading program, each retail entity's solar RPS requirement, the number of offsets used by each retail entity, the number of solar RECs retired by each retail entity, the number of compliance premiums retired by each retail entity, a listing of all retail entities that were in compliance with the solar RPS requirement, a listing of all retail entities that failed to comply with the solar RPS requirement, and the deficiency of each retail entity that failed to retire sufficient solar RECs or compliance premiums to meet its solar RPS requirement.
- (i) Settlement process. The 90 days following the compliance period is the settlement period during which the following actions will occur:
- (1) 30 days after the end of the compliance period, the program administrator will notify each retail entity of its total solar RPS requirement for the previous compliance period as determined under subsection (f)(2) of this section.
- (2) 90 days after the end of the compliance period, each retail entity must submit solar RECs or compliance premiums to the program administrator from its account equivalent to its solar RPS requirement for the previous compliance period. If the retail entity does not submit sufficient solar RECs or compliance premiums to satisfy its obligation, the retail entity is subject to the penalty provisions in subsection (j) of this section.

- (3) The program administrator may request the commission to adjust the deadlines set forth in this section if changes to the ERCOT settlement calendar or other factors affect the availability of reliable retail sales data.
- (j) Penalties and enforcement. If by April 1 of the year following a compliance period in which the solar RPS was in effect the program administrator determines that a retail entity has not retired sufficient solar RECs or compliance premiums to satisfy its allocation of the solar RPS, the retail entity is subject to an administrative penalty, under PURA §15.023, of \$50 per MWh that is deficient.
- (k) Microgenerators and REC aggregators. A REC aggregator may manage the participation of multiple microgenerators in the trading program. The program administrator will assign to the REC aggregator all RECs or solar RECs accrued by the microgenerators who are under a REC management contract with the REC aggregator.
- (1) The microgenerator's units must be installed and connected to the grid in compliance with commission Substantive Rules, applicable interconnection standards adopted under the commission Substantive Rules, and federal rules.
- (2) Notwithstanding subsection (e)(1)(A)(iii) of this section, a REC aggregator may use any of the following methods for reporting generation to the program administrator, as long as the same method is used for each microgenerator in an aggregation unit, as defined by the REC aggregator. A REC aggregator may have more than one aggregation and may choose any of the methods listed below for each aggregation unit.
- (A) The REC aggregator may provide the program administrator with production data that is measured and verified by an electronic meter that meets ANSI C12 standards and that will be separate from the aggregator's billing meter for the service address and for which the billing data and the renewable energy data are separate and verifiable data. Such actual data must be collected and transmitted within a reasonable time and is subject to verification by the program administrator. REC aggregators using this method will be awarded one REC for every MWh generated.
- (B) The REC aggregator may provide the program administrator with sufficient information for the program administrator to estimate with reasonable accuracy the output of each unit, based on known or observed information that correlates closely with the generation output. REC aggregators using this method will be awarded one REC for every 1.25 MWh generated. After installing the unit, the certified technician must provide the microgenerator, the REC aggregator, and the program administrator the information required by the program administrator under this paragraph.
- (C) A generating unit may have a meter that transmits actual generation data to the program administrator using applicable protocols and procedures. Such protocols and procedures must require that actual data be collected and transmitted within a reasonable time. REC aggregators using this method will be awarded one REC for every MWh generated.
- (3) REC aggregators must register with the commission and the program administrator and must also register to participate in the trading program.
- (4) A microgenerator participating in the trading program individually without the assistance of a REC aggregator must comply with the requirements of this subsection.
- (5) REC aggregators and microgenerators that were registered and certified to participate in the trading program prior to the effective date of this section continue to be registered and certified under

this subsection and are not required to re-register or be recertified to participate in the trading program.

(1) Effective date. This section is effective January 1, 2024. The version of this rule that existed prior to January 1, 2024 applies through December 31, 2023, including the settlement of the 2023 compliance period, except that the 2023 compliance period ended on August 31, 2023, and RPS calculation must use 5,832 hours rather than 8,760 hours.

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 November 30, 2023

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SUBCHAPTER S. WHOLESALE MARKETS

16 TAC §25.509

The Public Utility Commission of Texas (commission) adopts amendments to 16 Texas Administrative Code (TAC) §25.509, relating to Scarcity Pricing Mechanism for the Electric Reliability Council of Texas Power Region with changes to the proposed text as published in the September 29, 2023, issue of the *Texas Register* (48 TexReg 5606). The adopted rule implements Section 18 of Senate Bill (SB) 3, passed in the 87th Texas Legislative Session (R.S.), by establishing an emergency pricing program (EPP) for the wholesale electric market as required by Public Utility Regulatory Act (PURA) §39.160. The rule will be republished.

The commission received comments on the proposed rule from East Texas Electric Cooperative, Inc. (ETEC), Electric Reliability Council of Texas (ERCOT), Lower Colorado River Authority (LCRA), NRG Energy, Inc. (NRG), Office of Public Utility Counsel (OPUC), Potomac Economics (IMM), Steering Committee of Cities Served by Oncor (OCSC), Texas Coalition for Affordable Power (TCAP), Texas Competitive Power Advocates (TCPA), Texas Energy Association for Marketers (TEAM), Texas Electric Cooperatives, Inc. (TEC), Texas Industrial Energy Consumers (TIEC), and Texas Public Power Association (TPPA).

General Comments

Ancillary services cap

The adopted rule language sets the emergency offer cap (ECAP) equal to the value of the low system-wide offer cap (LCAP). The value of the LCAP is set to \$2,000 per MWh for energy offers and \$2,000 per MW per hour for ancillary service offers.

ETEC stated that the rule should apply the ECAP to all market clearing prices, including ancillary service prices, during an EPP event to conform with the requirements of SB 3.

TEC noted that the proposed rule does not set or otherwise address an ancillary services cap in order to conform with PURA

§39.160(d). However, TEC did not recommend a value for the ancillary services cap. As an alternative, TEC asserted that implementation of ERCOT nodal protocol revision request (NPRR) 1080, Limiting Ancillary Service Price to System-Wide Offer Cap, could be used to meet this statutory requirement.

Commission Response

The commission does not agree that the proposed rule fails to address a cap on ancillary services. By definition, a system-wide offer cap is applied system wide, meaning it applies to both energy and ancillary services in all markets, including the day-ahead market (DAM) and the real-time market (RTM). Much like the LCAP and high system-wide offer cap (HCAP), ECAP applies an offer cap to both energy and ancillary services in the DAM and RTM

However, to provide clarity and regulatory certainty for market participants, the commission modifies the proposed rule to explicitly state that the LCAP, HCAP, and ECAP apply to both energy and ancillary service offers.

Applicability of the Performance Credit Mechanism (PCM) during EPP

TPPA requested clarification in the rule preamble on whether the commission anticipates or intends PCM, once implemented, to be applicable when the EPP is activated.

Commission Response

The impact of the activation of the EPP on the PCM is beyond the scope of this rulemaking.

Cap on marginal cost recovery

At the September 14, 2023 open meeting, the commission discussed whether the ability of a generator to recover its reasonable, verifiable operating costs should be capped at the HCAP. Commissioner McAdams requested that commenters address this topic.

TEAM supported the imposition of a cap on marginal cost recovery and recommended that this cap be set equal to the value of HCAP at \$5,000 per MWh and \$5,000 per MW per hour. ERCOT commented that the implementation of a cap on marginal cost recovery is operationally feasible--at either a value matching the HCAP or another value--but stated that such a cap would disincentivize generators from running during times of scarcity due to the risk of incurring unrecoverable costs.

NRG, OCSC, TCAP, TCPA, and TEC stated that a cap on marginal cost recovery will both disincentivize generators from running and negatively impact reliability in times of scarcity and increased demand. TEC argued that a marginal cost recovery cap would force not-for-profit entities, like electric cooperatives, to pass all unrecovered costs down to member owners.

TEC also contended that "the commission's jurisdiction does not extend to...the natural gas industry" and OCSC and TCAP noted that "competitive [natural] gas pricing" is beyond the commission's jurisdiction. Further, TCPA stated that this rule is "not the appropriate channel" to address these concerns.

NRG, TCPA, and TEC suggested that the rule mirror PURA §39.160, allowing generators to be reimbursed for "reasonable, verifiable operating costs that exceed the emergency cap." NRG, TCPA, and TEC noted that the proposed rule's current provision regarding reimbursement for costs exceeding the ECAP mirrors the LCAP reimbursement structure under §25.509(b)(7) by limiting cost recovery to only marginal costs.

Commission Response

The commission agrees with commenters that a cap on the recovery of costs for resource entities is not specifically contemplated in PURA §39.160. However, the commission modifies the rule to require a more stringent and transparent review process for the recovery of marginal costs over the HCAP. Under these requirements, a resource entity must submit to ERCOT an attestation stating that any and all fuel costs submitted for recovery are primarily related to the provision of fuel, or services directly tied to the provision of the purchased fuel, and any resource entity requesting cost recovery above HCAP must provide any additional documents or information requested by ERCOT including fuel purchase contracts.

Effective date of the adopted rule

ERCOT requested that the effective date of the rule fall on the same date as the commission's approval of the necessary protocol revisions for EPP implementation. If the commission prefers that the EPP be implemented prior to system changes necessary to automate the EPP, ERCOT requested that the rule preamble clarify that activation of the EPP may be as soon as practicable, including by the start of the next operating day.

Commission Response

The commission declines to modify the rule to make the effective date of the rule fall on the same day as the commission's approval of the necessary protocol revisions to automate the EPP. Instead, the commission modifies the rule to require ERCOT to implement the EPP immediately to ensure the EPP is available this winter. To account for ERCOT's concerns surrounding the automation of the EPP, the commission also modifies the rule to authorize ERCOT to use a manual activation process until the necessary protocol and system changes are complete.

One-time price adjustment for REPs

TEAM requested that the rule allow REPs a one-time price adjustment to existing fixed rate contracts that will account for any cost recovery mechanism for out-of-market costs paid under the EPP. TEAM argued that the activation of the EPP is a change resulting from a state law that imposes new or modified costs on REPs that are beyond the REP's control.

Commission Response

TEAM's comment concerns provisions of §25.475, relating to general retail electric provider requirements and information disclosures to residential and small commercial customers, which is beyond the scope of this rulemaking.

§25.509(c)(1) - Activation of the EPP

Section 25.509(c) establishes how the emergency pricing program (EPP) is administered and how it operates. Under §25.509(c)(1), the EPP will activate if the average system-wide energy price, as determined by ERCOT, has been at the HCAP for 12 hours within a rolling 24-hour period.

NRG supported the EPP activation parameters as proposed. However, several other commenters requested clarification around the criteria for EPP activation.

TPPA stated that the rule should clarify whether the 12 hours with energy prices at HCAP within a 24-hour period must be consecutive, or if they can be any combination of 12 hours within the 24-hour window. Additionally, TPPA requested clarification on whether an hour at the HCAP is meant to be four consecutive

15-minute settlement intervals at which the price of energy is at HCAP.

OPUC suggested a similar clarification. Specifically, OPUC requested that the rule clarify that the EPP may be triggered if the average system-wide energy price has been at the HCAP for "a total of 12 hours" within a rolling 24-hour period.

Commission Response

The commission disagrees with commenters that the rule would benefit from additional clarification surrounding the EPP's activation criteria. The proposed rule adequately clarifies that the EPP is activated when the system-wide energy prices, as determined by the ERCOT, are at HCAP for 12 hours within a rolling 24-hour period. The commission further clarifies that these 12 hours at HCAP need not be consecutive but they must occur within a rolling 24-hour period.

ERCOT argued that during an extended system-wide energy emergency, an "average system-wide energy price" could remain just below the HCAP because of transmission congestion and offer mitigation considerations. In this scenario, the EPP would not be triggered. ERCOT suggested the removal of the word "average" from the from the phrase "average system-wide energy price" provision to address this issue.

Commission Response

The commission agrees that transmission congestion and offer mitigation should not prevent the activation of the EPP. Accordingly, the commission modifies the proposed rule by removing the word "average" before "system-wide energy price" as requested by ERCOT.

LCRA requested that the commission direct ERCOT to assign a specific settlement point price for the average system-wide energy price in the nodal protocols. Specifically, LCRA suggested using the ERCOT Hub Average 345-kV settlement point price for this purpose.

Commission Response

The commission declines to modify the proposed rule to direct ERCOT to set this value equal to the ERCOT Hub Average 345-kV settlement point price as requested by LCRA. Removing "average" from the "system-wide energy price" in the proposed rule, as previously discussed, effectively allows ERCOT to set the system-wide energy price as equal to the real-time energy price, exclusive of congestion. Allowing the system-wide energy price to be set equal to the real-time energy price exclusive of congestion ensures that the EPP will be activated in response to energy prices that are truly system-wide, instead of energy prices that are tied to averaged locational marginal pricing.

§25.509(c)(2) - Emergency Offer Cap (ECAP)

Section 25.509(c)(2) sets the system-wide offer cap value for when the EPP is active equal to the value of the LCAP at \$2,000 per MWh for energy offers and \$2,000 per MW per hour for ancillary service offers.

LCRA, NRG, and TIEC supported the proposed rule language of setting the ECAP equal to the LCAP.

TEAM recommended that the ECAP be set below the LCAP at \$1,500 per MWh. TEAM argued that the EPP will only be triggered when "normal market principles are not appropriate," specifically at times when economics is likely not the limiting factor for generation to be online and available in real-time. TEAM stated that setting the ECAP at \$1,500 per MWh will "reduce

the risk premiums priced into the market," protect market participants and consumers from exposure to costs far above actual operating costs during emergency conditions, and ensure that each resource recovers its actual costs.

ETEC commented that the ECAP should be set equal to the lesser of either the LCAP or the market clearing price that would result under normal ERCOT operations. ETEC argued that the ECAP as proposed administratively sets a price that is unnecessary if load is capable of being met at a market clearing price below \$2,000 per MWh or \$2,000 per MW per hour.

Commission Response

The commission declines to modify the proposed rule to set the value of the ECAP at \$1,500 per MWh as recommended by TEAM. Setting the ECAP equal to the value of the LCAP at \$2,000 per MWh and \$2,000 per MW per hour is appropriate because it provides consumers with sufficient protection from high prices during emergency energy situations while also minimizing the potential for uplift from covering costs above ECAP.

In response to ETEC, the commission notes that the ECAP establishes a system-wide offer cap, but does not administratively set the market price at a certain value. If the market clearing price is lower than ECAP while the EPP is active, that price will be the prevailing energy or ancillary services price.

§25.509(c)(3) - Duration of the EPP

Section 25.509(c)(3) sets the termination of the EPP as the later of: (A) 72 hours after the activation of the EPP, or (B) 24 hours after ERCOT exits emergency operations.

OCSC and TCAP argued that the proposed rule does not provide adequate flexibility for consideration of individual EPP events. Further, OCSC and TCAP proposed language that gives the commission discretion to adjust the EPP's duration parameters under "extraordinary conditions" provided that the commission acts in accordance with PURA §39.1514 and Texas Government Code §551.045.

TCPA commented that the rule should direct ERCOT to establish automatic activation and duration parameters for the EPP with specific attention to maintaining DAM incentives for generators. Further, TCPA commented that subparagraphs (A) and (B) should both align with the beginning of an operational day in order to accommodate the day-ahead market.

Commission Response

The commission declines to add a provision for explicit commission discretion over adjusting the EPP's duration parameters as circumstances may require, because it is unnecessary. The commission has the discretion to act in "extraordinary circumstances," and will follow the relevant legal requirements, including both the Texas Government Code and PURA as applicable, to exercise it.

Regarding TCPA's comments about aligning the entry and exit times of the EPP with DAM operations, the proposed rule has clearly defined entry and exit criteria, as well as requirements for notices. A market participant should be able to determine whether DAM offers will be impacted based on the timing of the notices. Protocols revisions could also be made to clarify further if needed.

Multiple commenters addressed subparagraph (A) of the EPP duration provision which establishes that the EPP may be terminated 72 hours after activation.

TPPA proposed alternative language that establishes the EPP termination triggers as either upon ERCOT's recall of any involuntary load shed instructions, or, if ERCOT did not issue instructions for involuntary load shed, 24 hours after EPP activation.

NRG proposed language that would limit the duration of the EPP to 72 hours after EPP activation, unless the EPP is activated during emergency conditions. In the case that EPP is activated during emergency conditions, NRG suggests maintaining the duration timelines proposed in the rule.

LCRA and TCPA proposed that the first exit provision be changed to "24 hours after the activation of the EPP." TCPA further commented that a minimum of 72 hours at an administratively set price cap has no basis in statute and is too long of a duration if ERCOT is not in emergency operations.

TEC and TPPA stated that the "72 hours after EPP activation" provision should be removed entirely.

TIEC proposed an increase in the minimum EPP duration from 72 hours after EPP activation to 120 hours. TIEC stated that this was necessary because, during extreme operational events, generators with forced outages may require more than 72 hours to reliably return to service and changing weather can cause uncertain conditions.

ETEC proposed language that would terminate the EPP after the end of ERCOT emergency operations but prior to the start of the next operating day.

Commission Response

The commission agrees with the commenters that a period of 72 hours is too long for EPP to remain in effect in the absence of ERCOT entering into emergency operations and modifies the rule to lower the minimum duration to 24 hours after activation of the EPP.

Multiple commenters requested clarity around the definition of "emergency operations" in subparagraph (B). TCPA proposed two versions of language to address the definition of "emergency operations." One version replaced the term "emergency operations" with "firm load shed" while the second version maintained the "emergency operations" language as proposed but defined it as "a period in which ERCOT experiences firm load shed."

Two commenters proposed the same or similar changes to TCPA's first version of language. TEC proposed the same change but expressed that the rule should also account for the possibility of EPP activation outside of a firm load shed event. TEC did not propose language to address this consideration. LCRA proposed a similar change but replaced "emergency operations" with "Energy Emergency Alert (EEA) Level 3 firm load shed."

Two commenters proposed similar changes to TCPA's second version of language. ETEC proposed defining "emergency operations" as "a period in which ERCOT experiences firm load shed." NRG proposed replacing "emergency operations" with "emergency conditions as declared by ERCOT in accordance with applicable protocols."

Commission Response

The commission agrees with commenters that the term "emergency operations" should be clearly defined in the rule. However, the commission disagrees that this definition should be tied to firm load shed. Once the EPP has been activated, it should remain active while ERCOT is under conditions that necessitate

an energy emergency alert (EEA), even if the conditions do not result in firm load shed. Accordingly, the commission modifies the rule to define "emergency operations" as ERCOT entering into any level of EEA.

ERCOT requested clarity around the EPP's general termination criteria. Because it is not specified that emergency conditions must be present for the activation of the EPP, ERCOT recommended the addition of clarifying language that states that subparagraph (B) applies only when a system-wide energy emergency has been declared.

Additionally, ERCOT requested clarity on whether the EPP is extended if ERCOT exits an EEA condition but then re-enters an EEA within 24 hours. ERCOT provided language that addresses both respective outcomes.

Commission Response

The commission agrees with ERCOT's suggestions and modifies the rule accordingly. Specifically, the modifications clarify that the duration provision in subparagraph (B) applies only if ERCOT has entered into emergency operations, and that the EPP will terminate 24 hours after ERCOT exits emergency operations as long as emergency operations have not been re-entered during that 24-hour period. If ERCOT exits but then re-enters emergency operations within 24 hours, the EPP will remain in effect.

§25.509(c)(4) - Market Notice

Section 25.509(c)(4) requires ERCOT to issue a market notice both when an EPP event is activated and deactivated.

LCRA and NRG supported the requirement for ERCOT to issue a market notice when the EPP is activated and deactivated as proposed. However, NRG requested that the date and time of activation and deactivation of the EPP be included in the respective notices.

OPUC provided language that requires the notice to be issued to both market participants and the public. OPUC states that expanding this notice requirement to the public is important for both increasing transparency on market conditions and supporting a positive relationship between ERCOT and the public.

ERCOT and OPUC requested that the rule language replace "market notice" with "notice." ERCOT reasoned that, while they intend to provide market notices on the activation and deactivation of the EPP as soon as practicable, a market notice is a formal process defined in ERCOT protocols that could take several hours to issue. Additionally, ERCOT stated that using the term "notice" would allow it to provide notice to stakeholders in near real-time via postings to the Operations Messages or Public Notices pages of the ERCOT website.

Commission Response

The commission agrees with commenters that the EPP notice should include the date and time of the respective activation or deactivation of the EPP and modifies the rule accordingly.

The commission agrees with ERCOT that prompt issuance of the EPP notice is paramount to ensuring that market participants and the public are sufficiently informed during emergency energy situations. The commission also agrees with OPUC that the public should be made aware of the activation of the EPP. Both goals can be accomplished by replacing "market notice" with "notice," and the commission modifies the rule accordingly.

\$25.509(c)(5) - Reimbursement for Costs That Exceed the ECAP

Section 25.509(c)(5) requires ERCOT to reimburse resource entities for any actual marginal costs in excess of the larger of the ECAP or the real-time energy price for the resource.

OCSC, NRG, TCAP, TCPA, and TEC requested that the rule allow generators to be reimbursed for actual operating costs, not just marginal costs as provided in the proposed rule language.

TCPA stated that the rule language should mirror the authorizing statute, PURA §39.160(g), by allowing generators to be reimbursed for "reasonable, verifiable operating costs" that exceed the ECAP. TEC recommended that ERCOT use the verifiable cost manual to the extent practicable to verify a resource entity's operating costs for reimbursement.

The IMM, OPUC, TEAM, and TIEC supported the reimbursement language as proposed. The IMM argued that the costs appropriate for reimbursement under the authorizing statute are any energy costs accepted by ERCOT under the RUC Make-Whole payment mechanism, including marginal costs.

Commission Response

The commission declines to modify the rule to provide reimbursement for actual operating costs instead of marginal costs as requested by stakeholders. PURA §39.160 requires generators be reimbursed for "reasonable, verifiable operating costs." Interpreting this to mean verifiable, marginal costs gives effect to the term "reasonable" in the statute, because using marginal costs is consistent with ERCOT's market design and with similar mechanisms such as RUC make-whole payments.

The commission agrees with the IMM that reimbursement of resource entities' marginal costs following an EPP event is reasonable because recovery of marginal costs provides adequate compensation for resource entities. The ERCOT energy-only market is not designed to guarantee complete recovery of a resource entity's costs across all intervals. Rather, the market is designed to provide recovery of marginal costs for most intervals and other costs across the lifetime of an asset. Fuel costs are precisely the type of costs that this make-whole provision provides protection against. Finally, it is not reasonable or consistent with the current market structure to require ERCOT to reimburse resource entities beyond recovery of a resource's marginal costs.

Multiple commenters requested clarity on how charges to recover reimbursable costs are allocated after the EPP. TEAM requested that, if the commission adopts a mechanism for awarding out-of-market costs to generators, those costs are allocated in a manner that is consumer-friendly and competitively neutral. ERCOT recommended the commission consider using load ratio share as an appropriate cost allocation methodology to equitably allocate charges for recoverable costs across the market. Additionally, ERCOT reasoned that specifying a cost allocation methodology would assist if ERCOT is required to utilize a manual process to activate the EPP prior to any system and protocol changes that effectuate EPP. OPUC proposed language that would prohibit any costs related to the EPP and generator reimbursement from being passed on to retail customers.

Commission Response

The commission declines to modify the rule to prohibit costs associated with the EPP from being recovered by an electric utility or retail electric provider either directly or indirectly from retail

customers as requested by OPUC. There is no statutory basis for completely insulating the retail market segment from costs, especially indirect costs, associated with the EPP.

The commission agrees with ERCOT that a load ratio share cost allocation methodology will allocate costs equitably across the market and be easy to implement. This methodology should also address TEAM's concerns surrounding the competitive neutrality of the cost allocation methodology. The commission modifies the rule accordingly.

§25.509(c)(6) - Report

Section 25.509(c)(6) requires ERCOT to file a report to the commission within 60 calendar days of the termination of an EPP event to provide: (A) a summary of the EPP event trigger, (B) an analysis of the EPP's performance while active, (C) the number of generators that filed for cost recovery and resulting total amount of recovered costs, and (D) any recommendations to modify or improve the EPP.

OCSC and TCAP supported the proposed reporting and timeframe requirements but requested the reporting timeframe for subparagraphs (A) and (B) be shortened to five days. OCSC and TCAP argued that these two elements of the report are feasible for to ERCOT deliver within five days of an EPP event and are important for providing timely information to market participants and the public. Further, OCSC and TCAP requested that ERCOT use the remaining 55 days to curate a more detailed, final response for subparagraphs (A) and (B).

Commission Response

The commission agrees with commenters that an initial report containing a summary of the EPP event trigger and an analysis of the EPP's performance while active should be delivered by ERCOT earlier than 60 calendar days after an EPP event to provide timely information to market participants and the public. However, the commission disagrees that the timeframe for this report should be set to five days after an EPP event. To provide ERCOT with sufficient time to compile and analyze data following an EPP event, the commission modifies the rule to allow ERCOT ten working days to file this initial report.

ERCOT requested that the EPP event report deadline be extended from 60 days to 90 days after an EPP event. ERCOT commented that if a cost recovery process similar to the one used for costs that exceed LCAP is adopted for EPP, QSEs would not be required to file their resources' recoverable costs until 60 days after an EPP event. Further, ERCOT argued that this constraint would limit its ability to sufficiently analyze QSEs' cost recovery information and compile it into a report in a timely manner.

Alternatively, ERCOT proposed rule language that would allow it to file the report in two phases. The first phase of the report would be delivered within 60 days of an EPP event and contain an EPP event trigger summary and performance analysis, while the second phase of the report would be delivered within 90 days of an EPP event and contain cost recovery information.

Commission Response

The commission agrees that requiring ERCOT to file a comprehensive report to the commission 60 days after an EPP event does not provide sufficient time for ERCOT to analyze data from the EPP event and provide recommendations. Accordingly, the commission modifies the rule to extend the reporting deadline for ERCOT to 90 calendar days. Additionally, the commission

includes language to clarify that the 90-day report should include the dollar amounts of costs submitted and costs approved by fuel type, quantity, and any other information ERCOT finds relevant.

In addition to this comprehensive report, ERCOT must file an initial report containing a summary of the EPP event trigger and a performance analysis of the EPP while active within 10 working days of the termination of the EPP.

§25.509(d) - Review of System-Wide Offer Cap Programs

Section 25.509(d) requires the commission to review each of the system-wide offer cap programs every five years to determine whether to update aspects of each program.

OCSC and TCAP stated that the commission should review each system-wide offer cap program, including EPP, every two years instead of every five years as proposed.

Commission Response

The commission declines to modify the proposed rule to require a review of each system-wide offer cap program every two years as requested by commenters. The five-year timeframe for review of the system-wide offer cap programs is a minimum requirement, and the commission will review the system-wide offer cap programs more frequently if necessary.

The amended rule is adopted under the following provisions of PURA: §14.001, which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; §14.002, which provides the commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; §39.160, which directs the commission to establish an emergency pricing program for the wholesale electric market.

Cross reference to statutes: Public Utility Regulatory Act §§14.001, 14.002, 39.160.

§25.509. Scarcity Pricing Mechanism for the Electric Reliability Council of Texas Power Region.

- (a) Definitions. The following terms, when used in this section, have the following meanings, unless the context indicates otherwise:
- (1) Emergency operations--ERCOT entering into any level of Energy Emergency Alert.
- (2) Generation entity--an entity that owns or controls a generation resource.
- (3) Generation resource--a generator capable of providing energy or ancillary services to the ERCOT grid and that is registered with ERCOT as a generation resource.
- (4) Load entity--an entity that owns or controls a load resource.
- (5) Load resource--a load capable of providing ancillary service to the ERCOT system or energy in the form of demand response and is registered with ERCOT as a load resource.
- (6) Resource entity--an entity that is a generation entity or a load entity.
- (b) Scarcity Pricing Mechanism (SPM). ERCOT will administer the SPM. The SPM will operate as follows:
 - (1) The SPM will operate on a calendar year basis.

- (2) For each day, the peaking operating cost (POC) will be 10 times the natural gas price index value determined by ERCOT. The POC is calculated in dollars per megawatt-hour (MWh).
- (3) For the purpose of this section, the real-time energy price (RTEP) will be measured as an average system-wide price as determined by ERCOT.
- (4) Beginning January 1 of each calendar year, the peaker net margin will be calculated as: $\sum ((RTEP POC) * (number of minutes in a settlement interval / 60 minutes per hour))$ for each settlement interval when RTEP POC >0.
- (5) Each day, ERCOT will post at a publicly accessible location on its website the updated value of the peaker net margin, in dollars per megawatt (MW).
 - (6) System-Wide Offer Caps.
- (A) The low system-wide offer cap (LCAP) will be set at \$2,000 per MWh for energy offers and \$2,000 per MW per hour for ancillary service offers.
- (B) The high system-wide offer cap (HCAP) will be \$5,000 per MWh for energy offers and \$5,000 per MW per hour for ancillary service offers.
- (C) The system-wide offer cap will be set equal to the HCAP at the beginning of each calendar year and maintained at this level until the peaker net margin during a calendar year exceeds a threshold of three times the cost of new entry of new generation plants.
- (D) If the peaker net margin exceeds the threshold established in subparagraph (C) of this paragraph during a calendar year, the system-wide offer cap will be set to the LCAP for the remainder of that calendar year. In this event, ERCOT will continue to apply the operating reserve demand curve and the reliability deployment price adder for the remainder of that calendar year. Energy prices, exclusive of congestion prices, will not exceed the LCAP plus \$1 for the remainder of that calendar year.
- (7) Reimbursement for Operating Losses when the LCAP is in Effect. When the system-wide offer cap is set to the LCAP, ERCOT must reimburse resource entities for any actual marginal costs in excess of the larger of the LCAP or the real-time energy price for the resource. ERCOT must utilize existing settlement processes to the extent possible to verify the resource entity's costs for reimbursement.
- (c) Emergency Pricing Program (EPP). ERCOT will administer the EPP. The EPP will operate as follows.
- (1) Activation of the EPP. The EPP must be activated if the system-wide energy price, as determined by ERCOT, has been at the HCAP for 12 hours within a rolling 24-hour period.
- (2) Emergency Offer Cap (ECAP). While the EPP is active, the system-wide offer cap will be set to the ECAP for both energy and ancillary service offers. The ECAP will be set equal to the value of the LCAP.
- (3) Duration of the EPP. The EPP will remain in effect until the later of:
 - (A) 24 hours after the activation of the EPP; or
- (B) if ERCOT has entered into or remained in emergency operations while the EPP is activated, 24 hours after ERCOT exits emergency operations without re-entering emergency operations.
- (4) Market Notice. ERCOT will issue a notice both when the EPP is activated and when the EPP is terminated. The notice must include the date and time of the activation or termination of the EPP.

- (5) Reimbursement for Costs That Exceed the ECAP.
- (A) While the EPP is active, ERCOT must reimburse resource entities for any actual marginal costs in excess of the larger of the ECAP or the real-time energy price for the resource. ERCOT must utilize existing settlement processes to the extent practicable to verify the resource entity's costs for reimbursement.
- (B) For reimbursement of actual marginal costs in excess of the HCAP, a resource entity must submit a reimbursement request in the manner prescribed by ERCOT. If a resource entity fails to provide information to ERCOT in its reimbursement request, as required by this subparagraph, ERCOT must not approve the reimbursement of the resource entity's fuel costs. This reimbursement request must include:
- (i) for a resource entity requesting recovery of fuel costs, an attestation that the costs submitted for recovery are solely related to the provision of fuel or services directly related to the provision of the purchased fuel; and
- (ii) any additional documents or information requested by ERCOT, including fuel purchase contracts.
- (C) ERCOT must allocate costs associated with this paragraph on a load ratio share basis.

(6) Report.

and

- (A) Within 10 working days from the date the EPP is terminated, ERCOT must file an initial report with the commission that contains the following information:
 - (i) a summary of the event that triggered the EPP;
- (ii) an analysis of the EPP's performance while the program was active.
- (B) Within 90 calendar days from the date the EPP is terminated, ERCOT must file a final report with the commission that contains the following information:
- (i) a final summary of the event that triggered the EPP;
- (ii) a final analysis of the EPP's performance while the program was active;
- (iii) the number of generators that filed for cost recovery under paragraph (5) of this subsection;
- (iv) the total dollar amount of costs submitted and costs recovered under paragraph (5) of this subsection, including the fuel type, MW per hour, and number of units associated with recovered costs; and
- $(v) \quad \text{any recommendations to modify or improve the EPP.}$
- (7) Immediate Implementation. ERCOT must implement the EPP immediately. Notwithstanding any conflicting language in this subsection, ERCOT may utilize a manual process to activate the EPP and may consider the real-time energy price, exclusive of any congestion, to determine the system-wide energy price, until any system and protocol changes are complete. ERCOT must issue a market notice when it transitions from a manual to an automated EPP activation process.
- (d) Review of System-Wide Offer Cap Programs. Beginning January 1, 2026, and every five years thereafter, the commission will review each of the system-wide offer cap programs to determine whether to update aspects of each program.

(e) Development and Implementation. ERCOT must use a stakeholder process, in consultation with commission staff, to develop and implement rules that comply with this section. Nothing in this section prevents the commission from taking actions necessary to protect the public interest, including actions that are otherwise inconsistent with the other provisions in this section.

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 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) adopts five repeals, ten amendments, and one new rule in Chapter 26 Substantive Rules Applicable to Telecommunication Service Providers as part of the statutorily required four-year rule review under Texas Government Code §2001.039. The commission also adopts corresponding revisions to commission forms.

The commission adopts the following rules with changes to the proposed text as published in the October 20, 2023 issue of the *Texas Register* (48 TexReg 6096): §26.5, relating to Definitions; §26.30, relating to Complaints; §26.31, relating to Disclosures to Applicants and Customers; §26.34, relating to Telephone Prepaid Calling Services; §26.89, relating to Nondominant Carriers' Obligations Regarding Information on Rates and Services; §26.111, relating to Certificate of Operating Authority (COA) and Service Provider Certificate of Operating Authority (SPCOA) Criteria; §26.130, relating to Selection of Telecommunications Utilities; §26.207, relating to Form and Filing of Tariffs; new §26.208, relating to General Tariff Procedures; §26.276, relating to Unbundling; and §26.405, relating to Financial Need for Continued Support. These sections will be republished.

The commission adopts the following rules with no changes to the proposed text as published in the October 20, 2023, issue of the *Texas Register* (48 TexReg 6096): §26.32, relating to Protection Against Unauthorized Billing Charges; §26.52, relating to Emergency Operations; §26.53, relating to Inspections and Tests; §26.54, relating to Service Objectives and Performance Benchmarks; §26.73, relating to Annual Earnings Reports; §26.79, relating to Equal Opportunity Reports; §26.80, relating to Annual Report on Historically Underutilized Businesses; §26.85, relating to Report on Workforce Diversity and other Business Practices; §26.123, relating to Caller Identification Services; §26.127, relating to Abbreviated Dialing Codes; §26.128, relating to Telephone Directories; §26.171, relating to Small Incumbent Local Exchange Company Regulatory Flexibility; §26.175, relating to Reclassification of Telecom-

munications Services for Electric Incumbent Local Exchange Companies (ILECs): §26,209, relating to New and Experimental Services; §26.210, relating to Promotional Rates for Local Exchange Company Services; §26.211, relating to Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges; §26.214, relating to Long Run Incremental Cost (LRIC) Methodology for Services provided by Certain Incumbent Local Exchange Companies (ILECs); §26.215, relating to Long Run Incremental Cost Methodology for Dominant Certificated Telecommunications Utility (DCTU) Services; §26.217, relating to Administration of Extended Area Service (EAS) Requests; §26.221, relating to Applications to Establish or Increase Expanded Local Calling Service Surcharges; §26.224, relating to Requirements Applicable to Basic Network Services for Chapter 58 Electing Companies; §26.272, relating to Interconnection; §26.403, relating to Texas High Cost Universal Service Plan (THCUSP); §26.404, relating to Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan: §26.407, relating to Small and Rural Incumbent Local Exchange Company Universal Service; §26.409, relating to Review of Texas Universal Service Fund Support Received by Competitive Eligible Telecommunications Providers; §26.414, relating to Review of Texas Universal Service Fund Support Received by Competitive Eligible Telecommunications Providers; §26.417, relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF); §26.418, relating to Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds; §26.419, relating to Telecommunication Resale Providers Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF) for Lifeline Service; and §26.433, relating to Roles and Responsibilities of 9-1-1 Service Providers. These sections will not be republished.

The commission adopts the repeals of 16 Texas Administrative Code (TAC) §26.55, relating to Monitoring of Service; §26.78, relating to State Agency Utility Account Information; §26.87, relating to Infrastructure Reports; §26.142, relating to Integrated Services Digital Network; and §26.208 relating to General Tariff Procedures, with no changes to the proposed text as published in the October 20, 2023, issue of the *Texas Register* (48 TexReg 6090). These sections will not be republished.

Definitions

Adopted §26.5 revises definition of "public service answering point (PSAP)," under §26.5(191), to include an emergency communications center.

Customer Complaints

Adopted §26.30 and §26.32 change the deadline for, as applicable, a Certificated Telecommunications Utility (CTU), billing telecommunications utility, a billing agent, or a service provider to respond to complaints submitted to the commission from 21 days to 15 days. This change aligns with recent changes to customer protection rules in project number 52796.

Consumer Protection Division Contact E-mail Address and Title

Sections 26.30(a)(2)(B)(iii)(IV), 26.31(b)(4)(C)(x), 26.34(f)(3), 26.130(g)(3) and (i)(4), as proposed, are amended to update "consumer@puc.texas.gov" as the contact e-mail for the commission's Consumer Protection Division. Sections 26.208(c)(2)(E) and 26.276(g)(1), as proposed, are amended to update the reference from "Office of Customer Protection" to "Consumer Protection Division."

Emergency Operations

Adopted §26.52 requires dominant certificated telecommunications utilities (DCTUs) to comply with the backup power obligations associated with fiber optic cables that are prescribed by federal law or other applicable regulations, including the requirements of 47 Code of Federal Regulations §9.20.

Inspections and Tests

Adopted §26.53, revises the requirement for DCTUs to report to the commission the numbers assigned for dial test terminations. Specifically, such numbers would only have to be provided by the DCTU if requested by the commission.

Service Objectives and Performance Benchmarks

Adopted §26.54 deletes requirements related to one-party line service and voice band data under subsection (b).

Annual Report on Historically Underutilized Businesses

Adopted §26.80, expands the list of providers to which the section does not apply to include any company that holds a certificate of operating authority (COA), a company that holds a service provider certificate of operating authority (SPCOA) and a registered interexchange carrier (IXC).

Report on Workforce Diversity and other Business Practices

Adopted §26.85 expands the list of providers to which the section does not apply to include any company that holds a COA, a company that holds a SPCOA and a registered IXC.

COA and SPCOA Criteria

Amended §26.111 revises subsection (i)(4) to require applicants to file SPCOA amendment applications with the Commission on State Emergency Communications (CSEC) via electronic mail within five working days from the date the amendment was filed. The change to subsection (i)(4) would require applicants to provide notice of the SPCOA amendment applications to all affected 9-1-1 administrative entities in the manner provided by paragraph (3)(A)-(D). Additionally, subsection (m)(2) is revised to require a COA or SPCOA holder that intends to cease operations to provide a copy of its application to cease operations and relinquish its certificate to CSEC. The commission also adopts minor and conforming changes to the commission prescribed SPCOA application form. Section 26.111(d), as proposed, is amended to include the term "or entity" where necessary for consistency with §26.111(a) and other provisions in the rule. Section 26.111(g)(3), as proposed, is amended to strike the term "initial" to make clear that the requirements under §26.111(g)(3)(A)-(D) apply to tariff amendment applications as well as new tariff applications, which is reflective of historical commission practice and for consistency with language in §26.111(g) requiring ongoing adherence to the requirements prescribed by that subsection. Section 26.111(i)(1)(C) was inadvertently omitted from the published rule and is re-inserted. Section 26.111(i)(1)(E)(i), as proposed, is revised to correctly reflect that the requirements for the discontinuation of optional services do not apply to a deregulated company holding a COA or to an exempt carrier.

9-1-1 administrative entities

The reference to "9-1-1 entity" in proposed §26.111(i)(4) and §26.272(e)(1)(B)(vi)(I) to is corrected to refer to "9-1-1 administrative entity." Amended §26.433 corrects the reference to "9-1-1 administrative entity" in subsection (i)(1).

Capitol Complex Telephone System Directory

Adopted §26.128 replaces the term State of Texas Telephone Directory with Capitol Complex Telephone System Directory in subsection (b)(1) and (2) and deletes the requirement under subsection (e)(5) for telephone directories published by certain telecommunications utilities or its affiliates to include sample long distance rates.

House Bill (HB) 1597 Implementation

HB 1597, adopted by the 88th Texas Legislature (R.S.), amends the requirements associated with filing a telecommunications tariff with the commission under PURA §52.251. Specifically, HB 1597 authorizes an affiliate or trade association to, on behalf of a public utility, file a tariff for telecommunications service with the commission. HB 1597 also provides that a tariff is considered approved if the commission does not approve or deny the tariff or request supplemental information from the filer within 60 days from the date the tariff was filed. Lastly, HB 1597 requires the filer to provide supplemental information to the commission within 15 days from the request and provides that a tariff is considered approved if the commission does not approve or deny the tariff within 30 days from the date the commission receives the supplemental information.

To implement HB 1597, the commission repeals and replaces §26.208 and adopts §§26.89, 26.207, 26.209, 26.210, and 26.211. Section 26.89(a)(3), as proposed, is further revised to authorize commission substantive rule citations applicable to a tariff to be included as a cover letter.

New §26.208 aligns the general requirements of PURA §52.251, as amended by HB 1597, with the more specific requirements of PURA Chapter 53, Subchapter C (§§53.101-53.113) when a tariff involves a rate change. New §26.208 also clarifies the requirements for tariff applications, including those related to effective dates and notice to affected persons, and more clearly describes the process for commission review of such applications. To conform with the abridged timeline for commission review and approval imposed by HB 1597, new §26.208 prohibits a tariff application from being docketed, unless the application involves a new tariff or a rate change under PURA Chapter 53, Subchapter C. Sections 26.209, 26.210, and 26.211 are adopted to remove references to docketing of an application filed under those provisions. New §26.208(b), as proposed, is amended by deleting §26.208(b)(1) and renumbering and retitling §26.208(b)(2) and (3) accordingly, revising the provisions for notice to municipalities and by newspaper to only apply to major rate changes, and authorizing an applicant to request a waiver to notice requirements for administrative or clerical tariff amendments, as determined by the presiding officer. New §26.208(c)(1)(C), as proposed, is also amended to further limit the prohibition on electronic notice only to applications involving a "major" rate change, or if otherwise required by the presiding officer. Additionally, §26.209 and §26.210 are adopted to more clearly indicate that a tariff to which §26.209 or §26.210 apply may be filed in accordance with §26.208. Similarly, §26.207 is amended to reference §§26.208, 26.209, and 26.211 more clearly. Section 26.211 is amended to clarify that an informational notice filing in accordance with §26.227, relating to Procedures Applicable to Nonbasic Services and Pricing Flexibility for Basic and Nonbasic Services for Chapter 58 Electing Companies, suffices for compliance provided that the notice complies with §26.228, relating to Requirements Applicable to Pricing Flexibility for Chapter 58 Electing Companies or §26.229, relating to Requirements Applicable to Chapter 52 Companies, as applicable. Section 26.207(d)(1)(A), as proposed, is further revised to authorize commission substantive

rule citations applicable to a tariff to be included as a cover letter. Lastly, amended §26.89 and §26.207, and adopted §§26.209, 26.210, and 26.211 more clearly reflect the statutory language of PURA §52.251.

Senate Bill (SB) 1425 and SB 1710 Implementation

SB 1425, adopted by the 88th Legislature, amends PURA §56.032 to require small ILECs seeking adjustments from the Small and Rural Plan to, every calendar year, publicly file with the commission operational information concerning the small ILEC's operations that are regulated by the commission. The commission adopts §26.407 to implement HB 1425. The commission also amends the commission prescribed form for the annual report and accompanying schedules used by small ILECs, as well as the associated instructions.

SB 1710 adopted by the 88th Legislature, amends PURA §56.023 to implement revisions to support levels received by eligible telecommunications providers under the High Cost Plan or Small and Rural Plan of the Texas Universal Service Fund (TUSF). SB 1710 also revises eligibility criteria for receipt of support from the TUSF and requires the commission to periodically review such criteria. Lastly, SB 1710 adds provisions for expiration and relinquishment of support from the TUSF. Section 26.405(d)(2)(B), as proposed, is further amended to omit the reference to "Version 7" of the National Broadband Map and instead refer to the version of the map in effect for at least 90 days.

The commission also adopts §26.409 by setting an expiration date for the provision of December 31, 2023, consistent with the requirements of PURA §56.023(s).

Comments

The commission received comments from Texas Cable Association, Texas Telephone Association, Verizon, and Windstream.

The comments received in this project were in response to a proposal for publication that was published in the *Texas Register* to provided formal notice of a rulemaking proceeding and were in response to a notice of the commission's chapter 26 rule review. Under Tex. Gov't Code, Chapter 2001, the commission may only adopt substantive amendments that address issues that were noticed in the commission's proposal for publication. Comments requesting amendments beyond the scope of the issues addressed in the proposal for publication are not being considered for implementation in this rulemaking proceeding but may be considered in a future rulemaking proceeding. This will ensure that all interested parties have an opportunity to comment on the proposed changes.

Consumer Protection Division Contact E-mail Address

Sections 26.30(a)(2)(B)(iii)(IV), 26.31(b)(4)(C)(x), 26.34(f)(3), 26.130(g)(3) and (i)(4) respectively refer to the e-mail address of the commission's Consumer Protection Division in the context of certain customer complaint rules.

Commission Response

The commission revises the reference to the e-mail address of the commission's Consumer Protection Division in these provisions from "customer@puc.texas.gov" to correctly refer to "consumer@puc.texas.gov."

Section 26.111(a) and (d) - Applicability and certification

Existing §26.111(a) establishes that the section applies to the certification of a person or entity to provide certain telecommuni-

cations services as holders of COAs and SPCOAs under PURA Chapter 54, Subchapters C and D. Proposed §26.111(d) adds language that prohibits a person from providing the services listed under §26.111(a) unless the person obtains a certificate of convenience and necessity, COA, or SPCOA in accordance with the requirements of §26.111.

TCA recommended that the prohibition added to §26.111(d) be deleted because it is unnecessary, ambiguous, and would impose costs with no commensurate benefit to the public. TCA argued that §26.111(a) should instead be amended to state that no provision in §26.111 prohibits the granting of a COA or SP-COA to entities that intend to utilize Voice over Internet Protocol (VoIP) or other advanced technologies but do not provide local exchange telephone service, basic local telecommunications service, or switched access service. TCA stated that its recommended change would better reflect the commission's holdings in Daemon Systems (Docket No. 52765), Earthgrid (Docket No. 53076), and Nexstream (Docket No. 52359). In these cases, TCA asserted, parties argued that the commission may only grant an SPCOA to an entity if it would be providing local exchange telephone service, basic local telecommunications, or switched access service. The commission rejected those arguments. Moreover, TCA stated that its recommended change would provide clarity and certainty to the telecommunications industry. TCA stated that such a change is reflective of the legislative intent of SB 2399 (88R), which would have expressly authorized the commission to grant a certificate to a VoIP provider. TCA provided redlines consistent with its recommendation.

Commission Response

The commission declines to amend §26.111(a) and (d) in the manner TCA recommends. Section 26.211(d) restates a prohibition under PURA §54.001, making TCA's proposed edits to §26.211(a) and (d) unnecessary.

The applicants in the cited cases both offered telecommunications-related services, such as VoIP (Daemon Systems and Nexstream), and optical service via fiber cable (Earthgrid). The holdings of those cases were intended to provide the commission discretion in reviewing applications for certification by stating that existing law does not prohibit certification despite the applicant not providing basic telephone service or even a telecommunications-related service. However, codification of the holdings of those cases in §26.111, as TCA recommends, may result in future applicants arguing that they cannot be denied certification despite not providing basic local telephone service or a telecommunications-related service. Accordingly, under the adopted rule, the commission retains the discretion to review each application for certification on a case-by-case basis.

The commission does not agree with TCA that the existence of SB 2399 is a persuasive basis for amending the rule because SB 2399 was not enacted into law.

The commission also modifies §26.111(d) to add the term "or entity" where appropriate for consistency with §26.211(a) and other provisions in the rule.

Section 26.111(i)(1)(A) - COA or SPCOA name change amendments

Section 26.111(i)(1)(A) establishes the process for a certificate holder to change its corporate or assumed name and requires a certificate holder to be in compliance with commission rules before they can change its corporate or assumed name.

Verizon recommended eliminating the requirement that a COA or SPCOA holder be in compliance with commission rules before name change requests are administratively granted. Verizon found this requirement overly burdensome, unnecessary, and wasteful, particularly for national carriers with multiple affiliates. Verizon recommended that the provision be revised so that carrier name changes are eligible for administrative disposition and be limited only to ensure the change does not lead to customer confusion. Verizon reasoned that the application form for a name change requires an applicant to provide five years of complaint history for itself and each of its affiliates, and to list the number of customers in each state, information which has no bearing on whether a name change should be permitted. Verizon provided redlines consistent with its recommendation.

Commission Response

The commission declines to revise §26.111(i)(1)(A) as proposed by Verizon. Name change amendments are eligible for administrative approval under §26.111(i)(1)(A)(i) and requiring compliance with commission rules before allowing a corporate name change ensures that the name change complies with the applicable customer protection rules. Additionally, providing complaint history to the commission is necessary to ensure ongoing compliance with commission rules, even for a name change, and is a standard requirement for other commission registrations such as §25.107(e)(2)(D), relating to Certification and Obligations of Retail Electric Providers (REPs), 25.111(f)(1)(Q), relating to Registration of Aggregators, and for affiliates under §25.84(g), relating to Annual Reporting of Affiliate Transactions for Electric Utilities. Furthermore, §26.111(g)(3)(A)(ii) substantially addresses Verizon's concerns. Specifically, the provision authorizes an applicant to request to limit the inclusion of complaint history, disciplinary records, and compliance records if it would be unduly burdensome to provide. The commission instead amends §26.111(g)(3) to strike the term "initial" as the application form has historically applied to both new SPCOA applications and amendments. Specifically, the revision makes clear that an applicant seeking an amendment to a SPCOA certificate is authorized to request to limit the inclusion of complaint history, disciplinary records. and compliance records if it would be unduly burdensome to provide. This change harmonizes the provision with historical commission practice and the requirements listed in the commission-prescribed application form and aligns the provision with §26.111(g) which requires ongoing adherence to the technical and managerial requirements prescribed under that subsection.

Section 26.111(i)(1)(C), (2), and (3) - Sale or transfer of certificate; acquisition or merger of certificate holder

Section 26.111(i)(1)(C) establishes the process and requirements for certificate holder to sell, transfer, assign, or lease a controlling interest in its COA or SPCOA or sell, transfer or lease a controlling interest in the entity holding the COA or the SPCOA. Section 26.111(i)(2) authorizes abbreviated amendment applications for corporate restructuring or internal change in ownership or controlling interest. Section 26.111(i)(3) requires notice to be filed with the commission if a certificate holder acquires or merges with another certificate holder, other than a CCN holder, and further requires a full amendment application to be filed if commission staff determines that it is necessary.

Verizon recommended that §26.111(i)(1)(C), (2), and (3) be revised to ensure the rule is consistent with the commission's authority regarding telecommunications carrier transactions. Verizon stated that the commission's authority to regulate stock

sales, mergers, and asset and ownership transactions of public utilities is codified at PURA §14.101-103, and these sections apply only to public utilities, not to COA or SPCOA holders. Verizon also noted that PURA §51.010 specifically excludes COA and SPCOA holders from the provisions of PURA §14.101. For these reasons, Verizon concluded that the commission lacks authority to regulate stock sales, mergers, and acquisitions of COA and SPCOA holders. Specifically, the commission should only require SPCOA or COA holders to notify the commission of a sale, transfer, or merger of at least 50% of the company within 30 days after closing, without the need for commission approval. Verizon further recommended that the commission exempt COA and SPCOA holders from the requirement to file an application for such transactions. Verizon provided redlines consistent with its recommendation.

Commission Response

The commission disagrees with Verizon because commission review of such transactions by certificate holders is authorized under PURA §§54.103, 54.152-155, and 54.255 to ensure the company acquiring the certificate is eligible and can provide adequate service. Accordingly, the commission declines to revise §26.111(i)(1)(C), (2), or (3) because commission review of transactions involving the controlling interest of a certificate is substantively different from the process detailed in PURA §14.101. Commission review of transactions under §26.111 is limited to an analysis of eligibility and capability to provide service to ensure that the parties to the transaction comply with commission rules and otherwise are qualified to conduct the sale. In contrast, PURA §14.101 requires detailed reporting of certain transactions and authorizes commission investigation to determine whether the transaction is equitable and in the public interest, and to "disallow the effect of the transaction if the transaction will unreasonably affect rates or service."

Section 26.111(i)(1)(C) was inadvertently omitted from the rule and is re-inserted.

Section 26.111(i)(1)(E)(i) - Discontinuation of optional service

Section 26.111(i)(1)(E)(i) establishes the process for a deregulated company holding a COA or an exempt carrier to discontinue service and relinquish its certificate, or to discontinue an optional service.

Verizon recommended that the commission clarify the process for discontinuing optional services under §26.111(i)(1)(E)(i). Specifically, Verizon recommended that the provision be amended to clearly state that a deregulated company holding a COA or an exempt carrier is not required to provide the information that would ordinarily be required when discontinuing optional services.

Commission Response

The commission agrees with Verizon that a deregulated company holding a COA or an exempt carrier is not required to provide the information that would ordinarily be required when discontinuing optional services and amends the rule accordingly.

Section 26.111(i)(4) - Notice to CSEC and 9-1-1 administrative entities

Section 26.111(i)(4) requires an applicant to provide a copy of the COA or SPCOA application or amendment notice to CSEC and provide notice to all affected 9-1-1 administrative entities of the application or amendment. TCA recommended that §26.111(i)(4) be amended to require the commission to maintain a complete contact list with email addresses for 9-1-1 administrative entities on the commission's website.

Commission Response

The commission declines to amend §26.111(i)(4) to require the commission to maintain a complete contact list of 9-1-1 administrative entities on its website. A map and contact list of 9-1-1 administrative entities are available on CSEC's website. A contact list maintained by the commission would be both duplicative and susceptible to becoming out of date, because the commission is not the agency tasked with maintaining such information.

Section 26.111(I)(5)(B) - Copy of most recent tariff in certification amendment

Section 26.111(I)(5)(B) requires an amendment for certification to include a copy of the applicant's most recent commission-approved tariff.

TCA recommended inserting language to §26.111(I)(5)(B) that would exempt COA and SPCOA holders from the requirement to file tariffs.

Commission Response

The commission declines to amend the rule as recommended by TCA because it is unnecessary. Section 26.111(I)(5)(B)(ii) exempts entities subject to §26.89, which applies to nondominant carriers, from the tariff filing requirement.

Section 26.89(a)(3) and $\S26.207(d)(1)(A)$ - Inclusion of rules applicable to each tariff

Sections 26.89(a)(3) and 26.207(d)(1)(A) require a tariff to include each rule that relates to or affects a rate of, or a utility service, product, or commodity furnished by, a nondominant carrier or utility.

TTA recommended the requirement for rule references be deleted from §26.89(a)(3) and §26.207(d)(1)(A). TTA commented that if the commission repealed or renumbered a rule, each tariff subject to the requirement would have to be revised and each company would consequently have to re-file its tariff. TTA further noted that, some tariff pages may require numerous different rule references depending on the level of detail that would be required. TTA recommended the rule references be included in the cover letter used to file a tariff with the commission. TTA provided draft language consistent with its recommendation.

Commission Response

The commission agrees with TTA's recommendation and modifies the proposed language to clarify such information is to be provided a cover letter.

Section 26.208(b)(1) - Filing of a new DCTU tariff and application for certification

Section 26.208(b)(1) requires an application to file a new DCTU tariff prior to or concurrently with an application for certification and otherwise meet the requirements of §26.208(b)(2)(A) and (B).

Commission Response

The commission modifies the provision for clarity. There is no statutory requirement for a tariff to be filed prior to or concurrently with an application for certification. Further, the requirement to

file a tariff with an amendment for certification is already covered by §26.111(I)(5)(B).

Section 26.208(b)(2)-(3) and (c)(1)(C) - Notice for tariff amendments involving a rate change

Section 26.208(b)(2) prescribes the requirements, including notice, for a tariff amendment involving a rate change, including a major rate change. Section 26.208(b)(3) prescribes the requirements, including notice, for other DCTU tariff amendments that do not involve a rate change. Sections §26.208(b)(2)(B) and §26.208(b)(3)(B) both require notice to be provided to affected persons, including each municipality and customer affected by the change, for tariff amendments involving a rate change and other tariff amendments, respectively. Section 26.208(c)(1)(C) authorizes notice for tariff applications to be provided electronically unless otherwise required by the presiding officer or if the application involves a major rate change. Section 26.208(c)(1)(C) also establishes the process for notice if the application involves a major rate change.

TTA recommended the newspaper and municipality notice requirements in proposed §26.208(b)(2) and (3) be revised to only apply to tariff amendments involving major rate change. Specifically, TTA recommended revising §26.208(b)(2) to state the provision only applies to a "major" rate change, with the effect of changing the applicability of the notice requirement under §26.208(b)(2)(B). Similarly, TTA recommended revising §26.208(b)(3) to apply to "non-major rate changes" in addition to other tariff amendments, and also revising §26.208(b)(3)(B) to remove the requirement to provide notice to municipalities and customers affected by the change. Lastly, TTA recommended the prohibition on electronic notice for tariff applications in §26.208(c)(1)(C), if required by the presiding officer or for applications involving a rate change, be further limited to only applications involving a "major" rate change. TTA commented that PURA §53.103(c) authorizes the commission to waive notice requirements for tariff changes in certain circumstances. TTA explained it has been the commission's historical practice to require publication only for major rate change tariff applications, but only require notice to OPUC for non-major rate changes. TTA provided draft language consistent with its recommendation.

Commission Response

The commission agrees with TTA's recommendation and modifies the cited provisions accordingly.

Section 26.208(b)(3)(B) - Notice to affected persons of other DCTU tariff amendments

Section 26.208(b)(3)(B) requires a DCTU to provide notice to affected persons, including each municipality affected by the change, in the manner prescribed by §26.208(c) or as otherwise required by the presiding officer.

TTA recommended §26.208(b)(3)(B) be revised to allow an applicant to request a waiver of the notice requirement for non-major rate change tariffs, for good cause. Specifically, TTA recommended the good cause exception be available when tariff amendments are administrative or clerical and, therefore, have minimal or no impact on the public. TTA provided draft language consistent with its recommendation.

Commission Response

The commission agrees with TTA's recommendation and modifies the rule accordingly.

Section 26.208(e)(1)(A) - Effective date of tariff

Section 26.208(e)(1)(A) requires the effective date of an applicant's tariff to be no earlier than 35 days after the date a sufficient application is approved by the presiding officer.

TTA recommended language in §26.208(e)(1) that requires the effective date of tariffs to be "no earlier than 35 days after the date a sufficient application is approved by the presiding officer" be deleted as it is not supported by HB 1597. Alternatively, TTA recommended a separate rulemaking be initiated on this policy alone. TTA remarked that this is a change in the commission precedent of establishing the default effective date for tariffs to be 35 days from the date of filing. TTA commented that this change is unnecessary and referenced existing §26.207((g)). TTA further commented that the default tariff effective date of 35 days after filing has provided consistency to companies and that the change "reverses the presumption of approval" and "empowers (c)ommission (s)taff to effectively delay the effective date of every routine tariff indefinitely." TTA recommended that this change be deleted from the rule or, alternatively, if the commission's objective is to implement this change, to initiate a separate rulemaking on this policy alone. TTA provided draft language consistent with its recommendation.

Commission Response

The commission rejects TTA's recommended change to §26.208(e)(1)(A) and suggestion to initiate a separate rulemaking on this issue. The change of the effective date of a tariff from the date of filing to the date of approval by the presiding officer is necessary to implement the timeline required by HB 1597. The extension of the proposed effective date under §26.111(e)(4) is limited only to tariff applications that involve a rate change. Requirements for tariff proceedings under PURA §52.251, as amended by HB 1597, must be read in pari materia with the specific requirements under PURA Chapter 53, Subchapter C. Likewise, the specific grant of statutory authority under PURA Chapter 53, Subchapter C prevails over the more general grant in PURA §52.251. This is further reflected in §26.208(f)(4) which curtails the circumstances in which a tariff application may be docketed and §26.208(h) which contemplates the procedures for docketing a tariff application involving a rate change. Furthermore, TTA's citation to §26.207(i) no longer exists, as that provision has been merged with what is now §26.111(e)(4). PURA §53.102 states, "(A) utility may not change its rates unless the utility files a statement of its intent with the commission at least 35 days before the effective date of the proposed change" which does not conflict with §26.208(e)(1)(A). Accordingly, the change regarding the effective date of the tariff is not inconsistent with existing law. A presumption of approval has never existed in §26.208, nor does the provision authorize commission staff to indefinitely delay a proposed tariff. As ever, the determination on the sufficiency of a tariff will be made by the presiding officer upon considering staff's recommendation. In any event, §26.208(e)(2) authorizes the presiding officer to approve an earlier effective date for good cause shown by an applicant.

Section 26.405(d)(2)(B) - TTA and Windstream

Section 26.405(d)(2)(B) prescribes the process the commission will use to determine the census blocks served by an unsubsidized wireline voice provider competitor within a specific exchange using the current version of the National Broadband Map.

TTA and Windstream recommended the reference to the National Broadband Map in §26.405(d)(2)(B) be revised to omit the reference to "Version 7" of the map and instead insert language requiring use of the version of the map that has been in effect for at least 90 days. TTA explained that the proposed language presents a timing issue when considering newly revised data from the map and application submission before the deadline. TTA provided draft language consistent with its recommendation. Windstream noted if the recommended change were not accepted, it would make filing a complete and accurate application on or before December 31, 2023 "nearly impossible" for providers.

Commission Response

The commission agrees with TTA and Windstream's recommendation and modifies the cited provision.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §26.5

The amendments are adopted generally under PURA §14.002, which provides the commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §52.001(b)(1) which requires that commission rules, policies and principles be formulated and applied to protect the public interest; and PURA §52.002 which grants the commission exclusive original jurisdiction over the business and property of a telecommunications utility in the State of Texas.

Cross reference to statutes: Public Utility Regulatory Act §§14.002; 12.252, 14.052, 15.021- 15.0233, 15.051, 16.051, 17.001, 17.003,17.004, 17.052(3), 17.102, 17.151-17.158, 51.001(g), 51.004, 52.001(b)(1), 52.002, 52.007, 52.051, 52.053, 52.054, 52.058, 52.0583(b), 52.0584, 52.059, 52.154, 52.207, 52.251, 52.256, 53.101-53.113, 54.101-54.105, 54.151-54.159, 54.251, 54.259, 54.260, 54.261, 55.001, 55.002, 55.008, 55.015, 55.024, 55.201-55.204, 55.253, 55.301-55.308, 56.001, 56.002, 56.023, 56.024, 56.032, 56.156, 58.024, 58.051, 58.051-58.063,58.061, 59.024, 60.021, 60.022, 60.023, 60.122, 60.124, 60.125, 64.001, 64.004, 64.051, 64.052, 64.053, 64.101-64.102, 64.151-64.158, 65.002, 65.004, 65.102; Texas Business and Commerce Code §304.055; and Texas Government Code §2001.039.

§26.5. Definitions.

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

- (1) Access customer--Any user of access services which are obtained from a certificated telecommunications utility (CTU).
- (2) Access services--CTU services which provide connections for or are related to the origination or termination of intrastate telecommunications services that are generally, but not limited to, interexchange services.
- (3) Administrative review--A process under which an application may be approved without a formal hearing.
 - (4) Affected person--
- $\qquad \qquad (A) \quad \text{a public utility affected by an action of a regulatory} \\ \text{authority;}$
- (B) a person whose utility service or rates are affected by a proceeding before a regulatory authority; or
 - (C) a person who:

- (i) is a competitor of a public utility with respect to a service performed by the utility; or
- (ii) wants to enter into competition with a public utility.

(5) Affiliate--

- (A) a person who directly or indirectly owns or holds at least 5.0% of the voting securities of a public utility;
- (B) a person in a chain of successive ownership of at least 5.0% of the voting securities of a public utility;
- (C) a corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by a public utility;
- (D) a corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by:
- (i) a person who directly or indirectly owns or controls at least 5.0% of the voting securities of a public utility; or
- (ii) a person in a chain of successive ownership of at least 5.0% of the voting securities of a public utility;
- (E) a person who is an officer or director of a public utility or of a corporation in a chain of successive ownership of at least 5.0% of the voting securities of a public utility; or
- (F) a person determined to be an affiliate under Public Utility Regulatory Act §11.006.
- (6) Aggregate customer proprietary network information (CPNI)--A configuration of customer proprietary network information that has been collected by a telecommunications utility and organized such that none of the information will identify an individual customer.
- (7) Alternate 9-1-1 routing-The routing of 9-1-1 calls to a designated alternate location if all dedicated 9-1-1 trunks to a primary public safety answering point are busy or out of service.
- (8) Assumed name--Has the meaning assigned by Texas Business and Commerce Code, §36.10.
- (9) Automatic dial announcing device (ADAD)--Any automated equipment used for telephone solicitation or collection that:
- (A) is capable of storing numbers to be called, or has a random or sequential number generator capable of producing numbers to be called; and
- (B) alone or in conjunction with other equipment, can convey a prerecorded or synthesized voice message to the number called without the use of a live operator.
- (10) Automatic location identification (ALI)--The automatic display at a public safety answering point of a caller's telephone number, the address/location of the telephone number, and supplementary emergency services information for the location from which a call originates.
- (11) Automatic number identification (ANI)--The telephone number associated with an access line, connection, or station from which a call originates that is automatically transmitted by the local switching system to an interexchange or other communications carrier or to the operator of a 9-1-1 system.
- (12) Base rate area--A specific area within an exchange area, as set forth in the dominant certificated telecommunications utilities' tariffs, maps or descriptions, wherein local exchange service is furnished at uniform rates without extra mileage charges.

- (13) Basic local telecommunications service--Flat rate residential and business local exchange telephone service, including primary directory listings; tone dialing service; access to operator services; access to directory assistance services; access to 911 service where provided by a local authority or dual party relay service; the ability to report service problems seven days a week; lifeline services; and any other service the commission, after a hearing, determines should be included in basic local telecommunications service.
- (14) Basic network services (BNS)--Those services identified in Public Utility Regulatory Act §58.051.
- (15) Baud--Unit of signaling speed reflecting the number of discrete conditions or signal elements transmitted per second.
 - (16) Bellcore--Bell Communications Research, Inc.
- (17) Billing agent--Any entity that submits charges to a billing telecommunications utility on behalf of itself or any service provider.
- (18) Billing telecommunications utility--Any telecommunications provider, as defined in the Public Utility Regulatory Act §51.002 that issues a bill directly to a customer for any telecommunications product or service.
- (19) Bit Error Ratio (BER)--The ratio of the number of bits received in error to the total number of bits transmitted in a given time interval.
- (20) Bit Rate--The rate at which data bits are transmitted over a communications path, normally expressed in bits per second.
- (21) Bona fide request--A written request to an incumbent local exchange company (ILEC) from a CTU or an enhanced service provider, requesting that the ILEC unbundle its network/services to the extent ordered by the Federal Communications Commission. A bona fide request indicates an intent to purchase the service subject to the purchaser being able to obtain acceptable rates, terms, and conditions.
- (22) Business service--A telecommunications service provided a customer where the use is primarily of a business, professional, institutional or otherwise occupational nature.
- (23) Busy hour--The clock hour each day during which the greatest usage occurs.
- (24) Busy season--That period of the year during which the greatest volume of traffic is handled in a switching office.
- (25) Call aggregator--Any person or entity that owns or otherwise controls telephones intended to be utilized by the public, which control is evidenced by the authority to post notices on and/or unblock access at the telephone.
- (26) Call splashing--Call transferring (whether caller-requested or operator service provider-initiated) that results in a call being rated and/or billed from a point different from that where the call originated.
- (27) Call transferring--Handing off a call from one operator service provider (OSP) to another OSP.
- (28) Caller identification materials (caller ID materials)--Any advertisements, educational materials, training materials, audio and video marketing devices, and any information disseminated about caller ID services.
- (29) Caller identification service (caller ID service)--A service offered by a telecommunications provider that provides calling party information to a device capable of displaying the information.

- (30) Calling area--The area within which telecommunications service is furnished to customers under a specific schedule of exchange rates. A "local" calling area may include more than one exchange area.
 - (31) Calling party information--
- (A) the telephone listing number and/or name of the customer from whose telephone instrument a telephone number is dialed; or
- (B) other information that may be used to identify the specific originating number or originating location of a wire or electronic communication transmitted by a telephone instrument.
 - (32) Capitalization--Long-term debt plus total equity.
- (33) Carrier of choice--An option that allows an individual to choose an interexchange carrier for long distance calls made through Telecommunications Relay Service.
- (34) Carrier-initiated change--A change in the telecommunications utility serving a customer that was initiated by the telecommunications utility to which the customer is changed, whether the switch is made because a customer did or did not respond to direct mail solicitation, telemarketing, or other actions initiated by the carrier.
- (35) Central office--A switching unit in a telecommunications system which provides service to the general public, having the necessary equipment and operating arrangements for terminating and interconnecting customer lines and trunks or trunks only.
- (36) Census block group (CBG)--A United States Census Bureau geographic designation that generally contains between 250 and 550 housing units.
- (37) Certificated service area--The geographic area within which a company has been authorized to provide basic local telecommunications services pursuant to a certificate of convenience and necessity (CCN), a certificate of operating authority (COA), or a service provider certificate of operating authority (SPCOA) issued by the commission.
- (38) Certificated telecommunications utility--A telecommunications utility that has been granted either a CCN, a COA, or a SPCOA.
- (39) Class of service or customer class--A description of utility service provided to a customer which denotes such characteristics as nature of use (business or residential) or type of rate (flat rate or message rate). Classes may be further subdivided into grades, denoting individual or multiparty line or denoting quality of service.
 - (40) Commercial mobile radio service (CMRS)--
- (A) As defined in 47 C.F.R. §20.3, a mobile service that is:
- (i) provided for profit with, i.e., the intent of receiving compensation or monetary gain;
 - (ii) an interconnected service; and
- (iii) available to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public; or
- (B) the functional equivalent of such a mobile service described in subparagraph (A) of this paragraph.
- (41) Commission--The Public Utility Commission of Texas.

- (42) Commission on State Emergency Communications (CSEC)--The state commission with the responsibilities and authority as specified in Texas Health and Safety Code, Chapter 771.
- (43) Competitive exchange service--Any of the following services, when provided on an inter- or intrastate basis within an exchange area: central office based PBX-type services for systems of 75 stations or more; billing and collection services; high speed private line services of 1.544 megabits or greater; customized services; private line and virtual private line services; resold or shared local exchange telephone services if permitted by tariff; dark fiber services; non-voice data transmission service when offered as a separate service and not as a component of basic local telecommunications service; dedicated or virtually dedicated access services; services for which a local exchange company has been granted authority to engage in pricing flexibility pursuant to §26.211 of this title (relating to Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges); any service initially provided within an exchange after October 26, 1992, if first provided by an entity other than the incumbent local exchange company (companies) certificated to provide service within that exchange; and any other service the commission declares is not local exchange telephone service.
- (44) Competitive services (CS)--Those services as defined in Public Utility Regulatory Act §58.151, and any other service the commission subsequently categorizes as a competitive service.
- (45) Completed call--A call that is answered by the called party.
- (46) Complex service--The provision of a circuit requiring special treatment, special equipment, or special engineering design, including but not limited to private lines, WATS, PBX trunks, rotary lines, and special assemblies.
 - (47) Consumer good or service--
- (A) Real property or tangible or intangible personal property that is normally used for personal, family, or household purposes, including personal property intended to be attached to or installed in any real property;
 - (B) A cemetery lot;
 - (C) A time-share estate; or
 - (D) A service related to real or personal property.
- (48) Consumer telephone call--An unsolicited call made to a residential telephone number to:
 - (A) solicit a sale of a consumer good or service;
- (B) solicit an extension of credit for a consumer good or service; or
- (C) obtain information that will or may be used to directly solicit a sale of a consumer good or service or to extend credit for the sale.
- (49) Cooperative--An incumbent local exchange company that is a cooperative corporation.
 - (50) Cooperative corporation--
- (A) An electric cooperative corporation organized and operating under the Electric Cooperative Corporation Act, Texas Utilities Code Annotated, Chapter 161, or a predecessor statute to Chapter 161 and operating under that chapter; or
- (B) A telephone cooperative corporation organized under the Telephone Cooperative Act, Texas Utilities Code, Chapter 162,

or a predecessor statute to Chapter 162 and operating under that chapter.

- (51) Corporate name--Has the meaning assigned by Texas Business Corporation Act, Article §2.05.
- (52) Corporation--A domestic or foreign corporation, joint-stock company, or association, and each lessee, assignee, trustee, receiver or other successor in interest of the corporation, company, or association, that has any of the powers or privileges of a corporation not possessed by an individual or partnership. The term does not include a municipal corporation, except as expressly provided by the Public Utility Regulatory Act.
- (53) Custom calling-type services--Call management services available from a central office switching system including, but not limited to, call forwarding, call waiting, caller ID, or automatic recall
- (54) Customer access line--A unit of measurement representing a telecommunications circuit or, in the case of ISDN, a telecommunications channel designated for a particular customer. One customer access line shall be counted for each circuit which is capable of generating usage on the line side of the switched network or a private line circuit, regardless of the quantity or ownership of customer premises equipment connected to each circuit. In the case of multiparty lines, each party shall be counted as a separate customer access line.
- (55) Customer-initiated change--A change in the telecommunications utility serving a customer that is initiated by the customer and is not the result of direct mail solicitation, telemarketing, or other actions initiated by the carrier.
- (56) Customer premises equipment (CPE)--Telephone terminal equipment located at a customer's premises. This does not include overvoltage protection equipment, inside wiring, coin-operated (or pay) telephones, "company-official" equipment, mobile telephone equipment, "911" equipment, equipment necessary for provision of communications for national defense, or multiplexing equipment used to deliver multiple channels to the customer.
- (57) Customer proprietary network information (CPNI), customer-specific--Any information compiled about a customer by a telecommunications utility in the normal course of providing telephone service that identifies the customer by matching such information with the customer's name, address, or billing telephone number. This information includes, but is not limited to: line type(s), technical characteristics (e.g., rotary service), class of service, current telephone charges, long distance billing record, local service billing record, directory assistance charges, usage data, and calling patterns.
- (58) Customer trouble report--Any oral or written report from a customer or user of telecommunications service received by any telecommunications utility relating to a physical defect, difficulty, or dissatisfaction with the service provided by the telecommunications utility's facilities. Each telephone or PBX switchboard position reported in trouble shall be counted as a separate report when several items are reported by one customer at the same time, unless the group of troubles so reported is clearly related to a common cause.
- (59) dBrn--A unit used to express noise power relative to one Pico watt (-90 dBm).
- $\mbox{(60)}~\mbox{dBrnC--Noise}$ power in dBrn, measured with C-message weighting.
- (61) dBrnCO--Noise power in dBrnC referred to or measured at a zero transmission level point.

- (62) D-Channel--The integrated-services-digital-network out-of-band signaling channel.
- (63) Dedicated signaling transport--Transmission of outof-band signaling information between an access customer's common channel signaling network and a CTU's signaling transport point on facilities dedicated to the use of a single customer.

(64) Dedicated 9-1-1 trunk--Refers to either:

- (A) a single purpose telephone circuit, or Internet Protocol (IP) equivalent, that originates at a CTU's (CTU's) switching office or point of presence and connects to a port of termination at an E9-1-1 selective router, 9-1-1 tandem, IP-based 9-1-1 system, or next generation 9-1-1 system, as described to the CTU by the appropriate 9-1-1 administrative entity or entities in its 9-1-1 service arrangement requirements for each applicable rate center (direct dedicated 9-1-1 trunk); or
- (B) any other single purpose telephone circuit, or IP equivalent, that is used by a CTU to provide 9-1-1 service consistent with the 9-1-1 administrative entity's or entities' 9-1-1 service arrangement requirements that does not connect directly to a port of termination as described in subparagraph (A) of this paragraph (indirect dedicated 9-1-1 trunk). A direct dedicated 9-1-1 trunk includes transport, port usage, and termination.
- (65) Default routing--The capability to route a 9-1-1 call to a designated public safety answering point when the incoming 9-1-1 call cannot be selectively routed due to an automatic number identification failure or other cause.
- (66) Depreciation expenses--The charges based on the depreciation accrual rates designed to spread the cost recovery of the property over its economic life.
- (67) Deregulated company--An incumbent local exchange company (ILEC) for which all of the company's markets have been deregulated.
- (68) Direct-trunked transport--Transmission of traffic between the serving wire center and another CTU's office, without intermediate switching. It is charged on a flat-rate basis.
- (69) Disconnection of telephone service--The event after which a customer's telephone number is deleted from the central office switch and databases.
- (70) Discretionary services (DS)--Those services as defined in the Public Utility Regulatory Act §58.101, and any other service the commission subsequently categorizes as a discretionary service.
- (71) Distance learning--Instruction, learning, and training that is transmitted from one site to one or more sites by telecommunications services that are used by an educational institution predominantly for such instruction, learning, or training--including: video, data, voice, and electronic information.
- (72) Distribution lines--Those lines from which the end user may be provided direct service.
- (73) Dominant carrier--A provider of a communication service provided wholly or partly over a telephone system who the commission determines has sufficient market power in a telecommunications market to control prices for that service in that market in a manner adverse to the public interest. The term includes a provider who provided local exchange telephone service within certificated exchange areas on September 1, 1995, as to that service and as to any other service for which a competitive alternative is not available in a particular geographic market. In addition with respect to:

- (A) intraLATA long distance message telecommunications service originated by dialing the access code "1-plus," the term includes a provider of local exchange telephone service in a certificated exchange area for whom the use of that access code for the origination of "1-plus" intraLATA calls in the exchange area is exclusive; and
- (B) interexchange services, the term does not include an interexchange carrier that is not a certificated local exchange company.
- (74) Dominant certificated telecommunications utility (DCTU)--A CTU that is also a dominant carrier. Unless clearly indicated otherwise, the rules applicable to a DCTU apply specifically to only those services for which the DCTU is dominant.
- (75) Dual-party relay service--A service using oral and printed translations, by either a person or an automated device, between hearing- or speech-impaired individuals who use telecommunications devices for the deaf, computers, or similar automated devices, and others who do not have such equipment.
- (76) Educational institution--Accredited primary or secondary schools owned or operated by state and local government entities or by private entities; institutions of higher education as defined by the Texas Education Code, §61.003(13); the Texas Education Agency, its successors and assigns; regional education service centers established and operated pursuant to the Texas Education Code, Chapter 8; and the Texas Higher Education Coordinating Board, its successors and assigns.
- (77) Electing local exchange company (LEC)--A CTU electing to be regulated under the terms of the Public Utility Regulatory Act, Chapter 58.
- (78) Electric utility--Except as provided in Chapter 25, Subchapter I, Division 1 of this title (relating to Open-Access Comparable Transmission Service for Electrical Utilities in the Electric Reliability Council of Texas), an electric utility is: A person or river authority that owns or operates for compensation in this state equipment or facilities to produce, generate, transmit, distribute, sell, or furnish electricity in this state. The term includes a lessee, trustee, or receiver of an electric utility and a recreational vehicle park owner who does not comply with Texas Utilities Code, Chapter 184, Subchapter C, with regard to the metered sale of electricity at the recreational vehicle park. The term does not include:
 - (A) a municipal corporation;
 - (B) a qualifying facility;
 - (C) a power generation company;
 - (D) an exempt wholesale generator;
 - (E) a power marketer;
- (F) a corporation described by Public Utility Regulatory Act §32.053 to the extent the corporation sells electricity exclusively at wholesale and not to the ultimate consumer;
 - (G) an electric cooperative;
 - (H) a retail electric provider;
 - (I) the state of Texas or an agency of the state; or
 - (J) a person not otherwise an electric utility who:
- (i) furnishes an electric service or commodity only to itself, its employees, or its tenants as an incident of employment or tenancy, if that service or commodity is not resold to or used by others;
- (ii) owns or operates in this state equipment or facilities to produce, generate, transmit, distribute, sell or furnish electric

- energy to an electric utility, if the equipment or facilities are used primarily to produce and generate electric energy for consumption by that person; or
- (iii) owns or operates in this state a recreational vehicle park that provides metered electric service in accordance with Texas Utilities Code, Chapter 184, Subchapter C.
- (79) Element--Unbundled network elements, including: interconnection, physical-collocation, and virtual-collocation elements.
- (80) Eligible telecommunications provider (ETP) service area--The geographic area, determined by the commission, containing high cost rural areas which are eligible for Texas Universal Service Funds support under §26.403 or §26.404 of this title (relating to Texas High Cost Universal Service Plan (THCUSP) and Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan).
- (81) Embedded customer premises equipment--All customer premises equipment owned by a telecommunications utility, including inventory, which was tariffed or subject to the separations process of January 1, 1983.
- (82) Emergency service number (ESN)--A three to five digit number representing a unique combination of emergency service agencies designated to serve a specific range of addresses within a particular geographic area. The ESN facilitates any required selective routing and selective transfer to the appropriate public safety answering point and the dispatching of the proper service agencies.
- (83) Emergency service zone (ESZ)--A geographic area that has common law enforcement, fire, and emergency medical services personnel that respond to 9-1-1 calls.
- (84) End user choice--A system that allows the automatic routing of interexchange, operator-assisted calls to the billed party's chosen carrier without the use of access codes.
- (85) Enhanced service provider--A company that offers computer-based services over transmission facilities to provide the customer with value-added telephone services.
- (86) Entrance facilities--The transmission path between the access customer's (such as an interexchange carrier) point of demarcation and the serving wire center.
- (87) Equal access--Access which is equal in type, quality and price to Feature Group C, and which has unbundled rates. From an end user's perspective, equal access is characterized by the availability of "1-plus" dialing with the end user's carrier of choice.
- (88) Exchange area.—The geographic territory delineated as an exchange area by official commission boundary maps. An exchange area usually embraces a city or town and its environs. There is usually a uniform set of charges for telecommunications service within the exchange area. An exchange area may be served by more than one central office and/or one certificated telephone utility. An exchange area may also be referred to as an exchange.
- (89) Exempt Carrier--A nondominant telecommunications utility that satisfies any of the criteria of PURA §52.154.
- (90) Expenses--Costs incurred in the provision of services that are expensed, rather than capitalized, in accordance with the Uniform System of Accounts applicable to the carrier.
- (91) Experimental service--A new service that is proposed to be offered on a temporary basis for a specified period not to exceed one year from the date the service is first provided to any customer.

- (92) Extended area service (EAS)--A telephone switching and trunking arrangement which provides for optional calling service by DCTUs within a local access and transport area and between two contiguous exchanges or between an exchange and a contiguous metropolitan exchange local calling area. For purposes of this definition, a metropolitan exchange local calling area shall include all exchanges having local or mandatory EAS calling throughout all portions of any of the following exchanges: Austin metropolitan exchange, Corpus Christi metropolitan exchange, Dallas metropolitan exchange, Fort Worth metropolitan exchange, Houston metropolitan exchange, San Antonio metropolitan exchange, or Waco metropolitan exchange. EAS is provided at rate increments in addition to local exchange rates, rather than at toll message charges.
- (93) Extended local calling service (ELCS)--Service provided pursuant to §26.219 and §26.221 of this title (relating to Administration of Expanded Local Calling Requests; and Applications to Establish or Increase Expanded Local Calling Service Surcharges).
- (94) E911 or E9-1-1--9-1-1 service that is capable of providing automatic number identification, automatic location identification, selective routing, and selective transfer.
- (95) Facilities--All the plant and equipment of a public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any public utility, including any construction work in progress allowed by the commission.
- (96) Facilities-based provider--A telecommunications provider that provides telecommunications services using facilities that it owns or leases or a combination of facilities that it owns and leases, including unbundled network elements.
- (97) Foreign exchange (FX)--Exchange service furnished by means of a circuit connecting a customer's station to a primary serving office of another exchange.
- (98) Foreign serving office (FSO)--Exchange service furnished by means of a circuit connecting a customer's station to a serving office of the same exchange but outside of the serving office area in which the station is located.
- (99) Forward-looking common costs--Economic costs efficiently incurred in providing a group of elements or services that cannot be attributed directly to individual elements or services.
- (100) Forward-looking economic cost--The sum of the total element long-run incremental cost of an element and a reasonable allocation of its forward-looking common costs.
- (101) Forward-looking economic cost per unit--The forward-looking economic cost of the element as defined in this section, divided by a reasonable projection of the sum of the total number of units of the element that the DCTU is likely to provide to requesting telecommunications carriers and the total number of units of the element that the DCTU is likely to use in offering its own services, during a reasonable time period.
- (102) Geographic scope--The geographic area in which the holder of a COA or of a SPCOA is authorized to provide service.
- (103) Grade of service--The number of customers a line is designated to serve.
- (104) Health Center--A federally qualified health center service delivery site.

- (105) Hearing--Any proceeding at which evidence is taken on the merits of the matters at issue, not including prehearing conferences
- (106) Hearing carryover--A technology that allows an individual who is speech-impaired to hear the other party in a telephone conversation and to use specialized telecommunications devices to send communications through the telecommunications relay service operator.
- (107) High cost area--A geographic area for which the costs established using a forward-looking economic cost methodology exceed the benchmark levels established by the commission.
- (108) High cost assistance (HCA)--A program administered by the commission in accordance with the provisions of $\S 26.403$ of this title.
- (109) Identity--The name, address, telephone number, and/or facsimile number of a person, whether natural, partnership, municipal corporation, cooperative corporation, corporation, association, governmental subdivision, or state agency and the relationship of the person to the entity being represented.
- (110) Impulse noise--Any momentary occurrence of the noise on a channel significantly exceeding the normal noise peaks. It is evaluated by counting the number of occurrences that exceed a threshold. This noise degrades voice and data transmission.
- (111) Incumbent local exchange company (ILEC)--A local exchange company that had a CCN on September 1, 1995.
- (112) Informational notice--Notice that is filed in connection with nonbasic services, new service offerings, and pricing and packaging flexibility if required by Public Utility Regulatory Act Chapter 52, 58, or 59.
- (113) Information sharing program--Instruction, learning, and training that is transmitted from one site to one or more sites by telecommunications services that are used by a library predominantly for such instruction, learning, or training, including video, data, voice, and electronic information.
- (114) Integrated services digital network (ISDN)--A digital network architecture that provides a wide variety of communications services, a standard set of user-network messages, and integrated access to the network. Access methods to the ISDN are the Basic Rate Interface (BRI) and the Primary Rate Interface (PRI).
- (115) Interactive multimedia communications--Real-time, two-way, interactive voice, video, and data communications conducted over networks that link geographically dispersed locations. This definition includes interactive communications within or between buildings on the same campus or library site.
- (116) Intercept service--A service arrangement provided by the local exchange carrier whereby calls placed to a disconnected or discontinued telephone number are intercepted and the calling party is informed by an operator or by a recording that the called telephone number has been disconnected, discontinued, changed to another number, or otherwise is not in service.
- (117) Interconnection--Generally means: The point in a network where a customer's transmission facilities interface with the dominant carrier's network under the provisions of this section. More particularly it means: The termination of local traffic including basic telecommunications service as delineated in §26.403 of this title or integrated services digital network (ISDN) as defined in this section and/or EAS/ELCS traffic of a CTU using the local access lines of another CTU, as described in §26.272(d)(4)(A) of this title (relating

- to Interconnection). Interconnection shall include non-discriminatory access to signaling systems, databases, facilities and information as required to ensure interoperability of networks and efficient, timely provision of services to customers without permitting access to network proprietary information or customer proprietary network information, as defined in this section, unless otherwise permitted in §26.272 of this title.
- (118) Interconnector--A customer that interfaces with the dominant carrier's network under the provisions of §26.271 of this title (relating to Expanded Interconnection).
- (119) Interexchange carrier (IXC)--A carrier providing any means of transporting intrastate telecommunications messages between local exchanges, but not solely within local exchanges, in the State of Texas. The term may include a CTU or CTU affiliate to the extent that it is providing such service. An entity is not an IXC solely because of:
- (A) the furnishing, or furnishing and maintenance of a private system;
- (B) the manufacture, distribution, installation, or maintenance of customer premises equipment;
- (C) the provision of services authorized under the FCC's Public Mobile Radio Service and Rural Radio Service rules; or
 - (D) the provision of shared tenant service.
- (120) Internet Protocol (IP)--A data communication protocol used in communicating data from one computer to another on the Internet or other networks.
- (121) Internet Protocol enabled service--A service, capability, functionality, or application that uses Internet Protocol or a successor protocol to allow an end user to send or receive a data, video, or voice communication in Internet Protocol or a successor protocol.
- (122) Interoffice trunks--Those communications circuits which connect central offices.
- (123) IntraLATA equal access--The ability of a caller to complete a toll call in a local access and transport area (LATA) using his or her provider of choice by dialing "1" or "0" plus an area code and telephone number.
- (124) Intrastate--Refers to communications which both originate and terminate within Texas state boundaries.
- (125) Least cost technology--The technology or mix of technologies that would be chosen in the long run as the most economically efficient choice. The choice of least cost technologies, however, shall:
- (A) be restricted to technologies that are currently available on the market and for which vendor prices can be obtained;
- (B) be consistent with the level of output necessary to satisfy current demand levels for all services using the basic network function in question; and
- (C) be consistent with overall network design and topology requirements.
- (126) License--The whole or part of any commission permit, certificate, approval, registration, or similar form of permission required by law.
- (127) Licensing--The commission process respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

- (128) Lifeline Service--A program certified by the Federal Communications Commission to provide for the reduction or waiver of the federal subscriber line charge for residential consumers.
- (129) Line--A circuit or channel extending from a central office to the customer's location to provide telecommunications service. One line may serve one customer, or all customers served by a multiparty line.
- (130) Local access and transport area (LATA)--A geographic area established for the provision and administration of communications service. It encompasses one or more designated exchanges, which are grouped to serve common social, economic and other purposes. For purposes of these rules, market areas, as used and defined in the Modified Final Judgment and the GTE Final Judgment, are encompassed in the term local access and transport area.
- (131) Local call--A call within the certificated telephone utility's toll-free calling area including calls which are made toll-free through a mandatory EAS or expanded local calling (ELC) proceeding.
- (132) Local calling area--The area within which telecommunications service is furnished to customers under a specific schedule of exchange rates. A local calling area may include more than one exchange area.
- (133) Local exchange carrier (LEC)--A telecommunications utility that has been granted either a certificate of convenience and necessity or a COA to provide local exchange telephone service, basic local telecommunications service, or switched access service within the state. A local exchange company is also referred to as a local exchange carrier.
- (134) Local exchange telephone service or local exchange service—A telecommunications service provided within an exchange to establish connections between customer premises within the exchange, including connections between a customer premises and a long distance provider serving the exchange. The term includes tone dialing service, service connection charges, and directory assistance services offered in connection with basic local telecommunications service and interconnection with other service providers. The term does not include the following services, whether offered on an intra-exchange or inter-exchange basis:
- (A) central office based PBX-type services for systems of 75 stations or more;
 - (B) billing and collection services;
- (C) high-speed private line services of 1.544 megabits or greater;
 - (D) customized services;
 - (E) private line or virtual private line services;
- (F) resold or shared local exchange telephone services if permitted by tariff;
 - (G) dark fiber services;
- (H) non-voice data transmission service offered as a separate service and not as a component of basic local telecommunications service;
 - (I) dedicated or virtually dedicated access services;
 - (J) a competitive exchange service; or
- $\mbox{(K)}\mbox{ \ any other service the commission determines is not a "local exchange telephone service."}$

- (135) Local message--A completed call between customer access lines located within the same local calling area.
- (136) Local message charge--The charge that applies for a completed telephone call that is made when the calling customer access line and the customer access line to which the connection is established are both within the same local calling area, and a local message charge is applicable.
- (137) Local service charge--The charge for furnishing facilities to enable a customer to send or receive telecommunications within the local calling area. This local calling area may include more than one exchange area.
 - (138) Local telecommunications traffic--
- (A) Telecommunications traffic between a DCTU and a telecommunications carrier other than a commercial mobile radio service (CMRS) provider that originates and terminates within the mandatory single or multi-exchange local calling area of a DCTU including the mandatory EAS areas served by the DCTU; or
- (B) Telecommunications traffic between a DCTU and a CMRS provider that, at the beginning of the call, originates and terminates within the same major trading area.
- (139) Long distance telecommunications service--That part of the total communication service rendered by a telecommunications utility which is furnished between customers in different local calling areas in accordance with the rates and regulations specified in the utility's tariff.
- (140) Long run--A time period long enough to be consistent with the assumption that the company is in the planning stage and all of its inputs are variable and avoidable.
- (141) Long run incremental cost (LRIC)--The change in total costs of the company of producing an increment of output in the long run when the company uses least cost technology. The LRIC should exclude any costs that, in the long run, are not brought into existence as a direct result of the increment of output.
- (142) Mandatory minimum standards--The standards established by the Federal Communications Commission, outlining basic mandatory telecommunication relay services.
- (143) Market--An exchange in which an incumbent local exchange company provides residential local exchange telephone service.
- (144) Master street address guide (MSAG)--A database maintained by each 9-1-1 administrative entity of street names and house number ranges within their associated communities defining emergency service zones and their associated emergency service numbers to enable proper routing of 9-1-1 calls.
- (145) Meet point billing--An access billing arrangement for services to access customers when local transport is jointly provided by more than one CTU.
 - (146) Message--A completed customer telephone call.
- (147) Message rate service--A form of local exchange service under which all originated local messages are measured and charged for in accordance with the utility's tariff.
- (148) Minor rate change--A change, including the restructuring of rates of existing services, that decreases the rates or revenues of the small local exchange company (SLEC) or that, together with any other rate or proposed or approved tariff changes in the 12 months preceding the date on which the proposed change will take effect, results in an increase of the SLEC's total regulated intrastate gross annual rev-

- enues by not more than 5.0%. Further, with regard to a change to a basic local access line rate, a minor change may not, together with any other change to that rate that went into effect during the 12 months preceding the proposed effective date of the proposed change, result in an increase of more than 50%.
- (149) Municipality--A city, incorporated village, or town, existing, created, or organized under the general, home rule, or special laws of the state.
- (150) National integrated services digital network (ISDN)-The standards and services promulgated for integrated services digital network by Bellcore.
- (151) Negotiating party--A CTU or other entity with which a requesting CTU seeks to interconnect in order to complete all telephone calls made by or placed to a customer of the requesting CTU.
- (152) Next generation 9-1-1 system (NG9-1-1 system)--A system of securely managed IP-based 9-1-1 networks and elements that augment and are capable of interoperating with present-day E9-1-1 features and functions and add new capabilities. NG9-1-1 may replace or complement the present E9-1-1 system. NG9-1-1 is designed to provide access to emergency services from all sources, and to provide multimedia data capabilities for public safety answering positions and other emergency service organizations.
- (153) New service--Any service not offered on a tariffed basis prior to the date of the application relating to such service and specifically excludes basic local telecommunications service including local measured service. If a proposed service could serve as an alternative or replacement for a service offered prior to the date of the new-service application and does not provide significant improvements (other than price) over, or significant additional services not available under, a service offered prior to the date of such application, it shall not be considered a new service.
- (154) Nonbasic services--Those services identified in Public Utility Regulatory Act §58.151, including any service reclassified by the commission pursuant to Public Utility Regulatory Act §58.024.
- (155) Non-discriminatory--Type of treatment that is not less favorable than that an interconnecting CTU provides to itself or its affiliates or other CTUs.
- (156) Non-dominant certificated telecommunications utility (NCTU)--A CTU that is not a DCTU and has been granted a CCN (after September 1, 1995, in an area already certificated to a DCTU), a COA, or a SPCOA to provide local exchange service.
 - (157) Nondominant carrier--
- (A) An interexchange telecommunications carrier (including a reseller of interexchange telecommunications services).
 - (B) Any of the following that is not a dominant carrier:
 - (i) a specialized communications common carrier;
 - (ii) any other reseller of communications;
- (iii) any other communications carrier that conveys, transmits, or receives communications in whole or in part over a telephone system; or
- (iv) a provider of operator services that is not also a subscriber.
 - (C) A deregulated company that holds a COA.
- (158) North American Numbering Plan (NANP)--Use of 10-digit dialing in the format of a 3-digit "NPA" followed by a 3-digit "NXX" and a 4-digit line number, NPA-NXX-XXX.

- (159) Numbering plan area (NPA)--The first three digits of a ten-digit North American Numbering Plan (NANP) local telephone number uniquely identifying a Numbering Plan area. Generally referred to as the area code of a NANP telephone number.
- (160) NXX--A 3-digit code in which N is any digit 2 through 9 and X is any digit 0 through 9. Typically used in describing the "Exchange Code" fields of a North American Numbering Plan telephone number.
- (161) Open network architecture--The overall design of an ILEC's network facilities and services to permit all users of the network, including the enhanced services operations of an ILEC and its competitors, to interconnect to specific basic network functions on an unbundled and non-discriminatory basis.
- (162) Operator service--Any service using live operator or automated operator functions for the handling of telephone service, such as local collect, toll calling via collect, third number billing, credit card, and calling card services. The transmission of "1-800" and "1-888" numbers, where the called party has arranged to be billed, is not operator service.
- (163) Operator service provider (OSP)--Any person or entity that provides operator services by using either live or automated operator functions. When more than one entity is involved in processing an operator service call, the party setting the rates shall be considered to be the OSP. However, subscribers to customer-owned pay telephone service shall not be deemed to be OSPs.
- (164) Originating line screening (OLS)--A two digit code passed by the local switching system with the automatic number identification (ANI) at the beginning of a call that provides information about the originating line.
- (165) Out-of-service trouble report--An initial customer trouble report in which there is complete interruption of incoming or outgoing local exchange service. On multiple line services a failure of one central office line or a failure in common equipment affecting all lines is considered out of service. If an extension line failure does not result in the complete inability to receive or initiate calls, the report is not considered to be out of service.
- (166) P.01 grade of service--A standard of service quality intended to measure the probability (P), expressed as a decimal fraction, of a telephone call being blocked. P.01 is the grade of service reflecting the probability that one call out of one hundred during the average busy house will be blocked.
- (167) Packaged Service--The combination of any regulated service with any other regulated or unregulated service or with any service of an affiliate, offered to customers at a packaged rate or rates.
- (168) Partial deregulation--The ability of a cooperative to offer new services on an optional basis and/or change its rates and tariffs under the provisions of the Public Utility Regulatory Act, §§53.351 53.359.
- (169) Pay-per-call-information services--Services that allow a caller to dial a specified 1-900-XXX-XXXX or 976-XXXX number. Such services routinely deliver, for a predetermined (sometimes time-sensitive) fee, a pre-recorded or live message or interactive program. Usually a telecommunications utility will transport the call and bill the end-user on behalf of the information provider.
- (170) Pay telephone access service (PTAS)--A service offered by a CTU which provides a two-way, or optionally, a one-way originating-only business access line composed of the serving central office line equipment, all outside plant facilities needed to connect the

serving central office with the customer premises, and the network interface; this service is sold to pay telephone service providers.

- (171) Pay telephone service (PTS)--A telecommunications service utilizing any coin, coinless, credit card reader, or cordless instrument that can be used by members of the general public, or business patrons, employees, and/or visitors of the premises' owner, provided that the end user pays for local or toll calls from such instrument on a per call basis. Pay per call telephone service provided to inmates of confinement facilities is PTS. For purposes of this section, coinless telephones provided in guest rooms by a hotel/motel are not pay telephones. A telephone that is primarily used by business patrons, employees, and/or visitors of the premises' owner is not a pay telephone if all local calls and "1-800" and "1-888" type calls from such telephone are free to the end user.
- (172) Per-call blocking--A telecommunications service provided by a telecommunications provider that prevents the transmission of calling party information to a called party on a call-by-call basis.
- (173) Per-line blocking--A telecommunications service provided by a telecommunications utility that prevents the transmission of calling party information to a called party on every call, unless the calling party acts affirmatively to release calling party information.
- (174) Percent interstate usage (PIU)--An access customerspecific ratio or ratios determined by dividing interstate access minutes by total access minutes. The specific ratio shall be determined by the CTU unless the CTU's network is incapable of determining the jurisdiction of the access minutes. A PIU establishes the jurisdiction of switched access usage for determining rates charged to switched access customers and affects the allocation of switched access revenue and costs by CTUs between the interstate and intrastate jurisdictions.
- (175) Person--Any natural person, partnership, municipal corporation, cooperative corporation, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.
- (176) Pleading--A written document submitted by a party, or a person seeking to participate in a proceeding, setting forth allegations of fact, claims, requests for relief, legal argument, and/or other matters relating to a proceeding.
- (177) Prepaid local telephone service (PLTS)--Prepaid local telephone service means:
- (A) voice grade dial tone residential service consisting of flat rate service or local measured service, if chosen by the customer and offered by the DCTU;
- (B) if applicable, mandatory services, including EAS, extended metropolitan service, or ELCS;
 - (C) tone dialing service;
 - (D) access to 911 service;
 - (E) access to dual party relay service;
 - (F) the ability to report service problems seven days a
- week;
- (G) access to business office;
- (H) primary directory listing;
- (I) toll blocking service; and
- (J) non-published service and non-listed service at the customer's option.

- (178) Premises--A tract of land or real estate including buildings and other appurtenances thereon.
- (179) Pricing flexibility--Discounts and other forms of pricing flexibility may not be preferential, prejudicial, or discriminatory. Pricing flexibility includes:
 - (A) customer specific contracts;
 - (B) volume, term, and discount pricing;
- (C) zone density pricing, with zone to be defined as an exchange;
 - (D) packaging of services; and
 - (E) other promotional pricing flexibility.
- (180) Primary interexchange carrier (PIC)--The provider chosen by a customer to carry that customer's toll calls.
- (181) Primary interexchange carrier (PIC) freeze indicator--An indicator that the end user has directed the CTU to make no changes in the end user's PIC.
- (182) Primary rate interface (PRI) integrated services digital network (ISDN)--One of the access methods to ISDN, the 1.544-Mbps PRI comprises either twenty-three 64 Kbps B-channels and one 64 Kbps D-channel (23B+D) or twenty-four 64 Kbps B-channels (24B) when the associated call signaling is provided by another PRI in the group.
- (183) Primary service--The initial provision of voice grade access between the customer's premises and the switched telecommunications network. This includes the initial connection to a new customer or the move of an existing customer to a new premises but does not include complex services.
- (184) Print translations--The temporary storage of a message in an operator's screen during the actual process of relaying a conversation.
- (185) Privacy issue--An issue that arises when a telecommunications provider proposes to offer a new telecommunications service or feature that would result in a change in the outflow of information about a customer. The term privacy issue is to be construed broadly. It includes, but is not limited to, changes in the following:
- (A) the type of information about a customer that is released;
 - (B) the customers about whom information is released;
- (C) the entity or entities to whom the information about a customer is released;
 - (D) the technology used to convey the information;
 - (E) the time at which the information is conveyed; and
- (F) any other change in the collection, use, storage, or release of information.
- (186) Private line--A transmission path that is dedicated to a customer and that is not connected to a switching facility of a telecommunications utility, except that a dedicated transmission path between switching facilities of interexchange carriers shall be considered a private line.
- (187) Proceeding--A hearing, investigation, inquiry, or other procedure for finding facts or making a decision. The term includes a denial of relief or dismissal of a complaint. It may be rulemaking or non-rulemaking; rate setting or non-rate setting.

- (188) Promotional rate--A temporary tariff, fare, toll, rental or other compensation charged by a certificated telecommunications utility (CTU) to new or new and existing customers and designed to induce customers to test a service. A promotional rate shall incorporate a reduction or a waiver of some rate element in the tariffed rates of the service, or a reduction or waiver of the service's installation charge and/or service connection charges, and shall not incorporate any charge for discontinuance of the service by the customer. Such rates may not be offered for basic local telecommunications service, including local measured service.
- (189) Promotional Service--A service offered to customers at a promotional rate or rates.
- (190) Provider of pay telephone service--The entity that purchases PTAS from a CTU and registers with the Public Utility Commission as a provider of PTS to end users.
- (191) Public safety answering point (PSAP)--A continuously operated communications facility established or authorized by local government authorities that answers 9-1-1 calls originating within a given service area, as further defined in Texas Health and Safety Code Chapters 771 and 772. The term includes an emergency communications center.
- (192) Public utility or utility-A person or river authority that owns or operates for compensation in this state equipment or facilities to convey, transmit, or receive communications over a telephone system as a dominant carrier. The term includes a lessee, trustee, or receiver of any of those entities, or a combination of those entities. The term does not include a municipal corporation. A person is not a public utility solely because the person:
- (A) furnishes or furnishes and maintains a private system;
- (B) manufactures, distributes, installs, or maintains customer premises communications equipment and accessories; or
- (C) furnishes a telecommunications service or commodity only to itself, its employees, or its tenants as an incident of employment or tenancy, if that service or commodity is not resold to or used by others.
- (193) Public Utility Regulatory Act (PURA)--The enabling statute for the Public Utility Commission of Texas, located in the Texas Utilities Code Annotated, §§11.001 66.016 (West 2007, Supplement 2013).
- (194) Qualifying low-income consumer--A consumer that participates in one of the following programs: Medicaid, food stamps, Supplemental Security Income, federal public housing assistance, or Low-Income Home Energy Assistance Program.
 - (195) Qualifying services--
 - (A) residential flat rate basic local exchange service;
 - (B) residential local exchange access service; and
 - (C) residential local area calling usage.
 - (196) Rate--Includes:
- (A) any compensation, tariff, charge, fare, toll, rental, or classification that is directly or indirectly demanded, observed, charged, or collected by a public utility for a service, product, or commodity, described in the definition of utility in the Public Utility Regulatory Act §31.002 or §51.002; and
- (B) a rule, practice, or contract affecting the compensation, tariff, charge, fare, toll, rental, or classification.

- (197) Reciprocal compensation--An arrangement between two carriers in which each of the two carriers receives compensation from the other carrier for the transport and termination on each carrier's network facilities of local telecommunications traffic that originates on the network facilities of the other carrier.
- (198) Reclassification area--The geographic area within the electing ILEC's territory, consisting of one or more exchange areas, for which it seeks reclassification of a service.
- (199) Redirect the call--A procedure used by operator service providers (OSPs) that transmits a signal back to the originating telephone instrument that causes the instrument to disconnect the OSP's connection and to redial the digits originally dialed by the caller directly to the local exchange carrier's network.
- (200) Regional planning commission--The meaning established in Texas Health and Safety Code §771.001(10).
- (201) Regulatory authority--In accordance with the context where it is found, either the commission or the governing body of a municipality.
- (202) Relay Texas Advisory Committee (RTAC)--The committee authorized by the Public Utility Regulatory Act, §56.110 and 1997 Texas General Laws Chapter 149.
- (203) Relay Texas--The name by which telecommunications relay service in Texas is known.
- (204) Relay Texas administrator--The individual employed by the commission to oversee the administration of statewide telecommunications relay service.
- (205) Repeated trouble report--A customer trouble report regarding a specific line or circuit occurring within 30 days or one calendar month of a previously cleared trouble report on the same line or circuit.
- (206) Residual charge--The per-minute charge designed to account for historical contribution to joint and common costs made by switched transport services.
- (207) Retail service--A telecommunications service is considered a retail service when it is provided to residential or business end users and the use of the service is other than resale. Each tariffed or contract offering which a customer may purchase to the exclusion of other offerings shall be considered a service. For example: the various mileage bands for standard toll services are rate elements, not services; however, individual optional calling plans that can be purchased individually and which are offered as alternatives to each other are services, not rate elements.
- (208) Return-on-assets--After-tax net operating income divided by total assets.
- (209) Reversal of partial deregulation--The ability of a minimum of 10% of the members of a partially deregulated cooperative to request, in writing, that a vote be conducted to determine whether members prefer to reverse partial deregulation. Ten percent shall be calculated based upon the total number of members of record as of the calendar month preceding receipt of the request from members for reversal of partial deregulation.
- (210) Rule--A statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the commission. The term includes the amendment or repeal of a prior rule but does not include statements concerning only the internal management or organization of the commission and not affecting private rights or procedures.

- (211) Rulemaking proceeding--A proceeding conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, Subchapter B, to adopt, amend, or repeal a commission rule.
- (212) Rural incumbent local exchange company (ILEC)-An ILEC that qualifies as a "rural telephone company" as defined in 47 United States Code §3(37) and/or 47 United States Code §251(f)(2).
- (213) Selective routing--The feature provided with 9-1-1 or 311 service by which 9-1-1 or 311 calls are automatically directed to the appropriate answering point for serving the location from which the call originates.
- (214) Selective transfer--A public safety answering point initiating the routing of a 9-1-1 call to a response agency by operation of one of several buttons typically designated as police, fire, and emergency medical, based on the emergency service number of the caller.
- (215) Separation--The division of plant, revenues, expenses, taxes, and reserves applicable to exchange or local service if these items are used in common to provide public utility service to both local exchange telephone service and other service, such as interstate or intrastate toll service.
- (216) Service--Has its broadest and most inclusive meaning. The term includes any act performed, anything supplied, and any facilities used or supplied by a public utility in the performance of the utility's duties under the Public Utility Regulatory Act to its patrons, employees, other public utilities, and the public. The term also includes the interchange or facilities between two or more public utilities. The term does not include the printing, distribution, or sale of advertising in a telephone directory.
- (217) Service connection charge--A charge designed to recover the costs of non-recurring activities associated with connection of local exchange telephone service.
- (218) Service order system--The system used by a telecommunications provider that, among other functions, tracks customer service requests and billing data.
- (219) Service provider--Any entity that offers a product or service to a customer and that directly or indirectly charges to or collects from a customer's bill an amount for the product or service on a customer's bill received from a billing telecommunications utility.
- (220) Service provider certificate of operating authority (SPCOA) reseller--A holder of a service provider certificate of operating authority that uses only resold telecommunications services provided by an ILEC or by a COA holder or by a SPCOA holder.
- (221) Service restoral charge--A charge applied by the DCTU to restore service to a customer's telephone line after it has been suspended by the DCTU.
- (222) Serving wire center (SWC)--The CTU designated central office which serves the access customer's point of demarcation.
- (223) Signaling for tandem switching--The carrier identification code (CIC) and the OZZ code or equivalent information needed to perform tandem switching functions. The CIC identifies the interexchange carrier and the OZZ digits identify the call type and thus the interexchange carrier trunk to which traffic should be routed.
- (224) Small certificated telecommunications utility (CTU)--A CTU with fewer than 2.0% of the nation's subscriber lines installed in the aggregate nationwide.
- (225) Small local exchange company (SLEC)--Any incumbent CTU as of September 1, 1995, that has fewer than 31,000

- access lines in service in this state, including the access lines of all affiliated incumbent local exchange companies within the state, or a telephone cooperative organized pursuant to the Telephone Cooperative Act, Texas Utilities Code Annotated, Chapter 162.
- (226) Small incumbent local exchange company (Small ILEC)--An ILEC that is a cooperative corporation or has, together with all affiliated ILECs, fewer than 31,000 access lines in service in Texas
- (227) Spanish speaking person--A person who speaks any dialect of the Spanish language exclusively or as their primary language.
- (228) Special access--A transmission path connecting customer designated premises to each other either directly or through a hub or hubs where bridging, multiplexing or network reconfiguration service functions are performed and includes all exchange access not requiring switching performed by the dominant carrier's end office switches.
- (229) Specialized Telecommunications Assistance Program (STAP)--The program described in §26.415 of this title (relating to Specialized Telecommunications Assistance Program (STAP)).
- (230) Specialized Telecommunications Assistance Program (STAP) voucher--A voucher issued by the Texas Department of Assistive and Rehabilitative Services under the equipment distribution program, in accordance with its rules, that an eligible individual may use to acquire eligible specialized telecommunications devices from a vendor of such equipment.
- (231) Stand-alone costs-The stand-alone costs of an element or service are defined as the forward-looking costs that an efficient entrant would incur in providing only that element or service.
- (232) Station--A telephone instrument or other terminal device.
- (233) Study area--An incumbent local exchange company's (ILEC's) existing service area in a given state.
- (234) Supplemental services--Telecommunications features or services offered by a CTU for which analogous services or products may be available to the customer from a source other than a DCTU. Supplemental services shall not be construed to include optional extended area calling plans that a DCTU may offer pursuant to §26.217 of this title (relating to Administration of Extended Area Service (EAS) Requests), or pursuant to a final order of the commission in a proceeding pursuant to the Public Utility Regulatory Act, Chapter 53.
- (235) Suspension of service--That period during which the customer's telephone line does not have dial tone but the customer's telephone number is not deleted from the central office switch and databases.
- (236) Switched access--Access service that is provided by CTUs to access customers and that requires the use of CTU network switching or common line facilities generally, but not necessarily, for the origination or termination of interexchange calls. Switched access includes all forms of transport provided by the CTU over which switched access traffic is delivered.
- (237) Switched access demand--Switched access minutes of use, or other appropriate measure where not billed on a minute of use basis, for each switched access rate element, normalized for out of period billings. For the purposes of this section, switched access demand shall include minutes of use billed for the local switching rate element.

- (238) Switched access minutes--The measured or assumed duration of time that a CTU's network facilities are used by access customers. Access minutes are measured for the purpose of calculating access charges applicable to access customers.
- (239) Switched transport--Transmission between a CTU's central office (including tandem-switching offices) and an interexchange carrier's point of presence.
- (240) Tandem-switched transport--Transmission of traffic between the serving wire center and another CTU office that is switched at a tandem switch and charged on a usage basis.
- (241) Tariff--The schedule of a utility containing all rates, tolls, and charges stated separately by type or kind of service and the customer class, and the rules and regulations of the utility stated separately by type or kind of service and the customer class.
- (242) Telecommunications provider--As defined in the Public Utility Regulatory Act §51.002(10).
- (243) Telecommunications relay service (TRS)--A service using oral and print translations by either live or automated means between individuals who are hearing-impaired or speech-impaired who use specialized telecommunications devices and others who do not have such devices. Unless specified in the text, this term shall refer to intrastate telecommunications relay service only.
- (244) Telecommunications relay service (TRS) carrier--The telecommunications carrier selected by the commission to provide statewide telecommunications relay service.
 - (245) Telecommunications utility--
 - (A) a public utility;
- (B) an interexchange telecommunications carrier, including a reseller of interexchange telecommunications services;
 - (C) a specialized communications common carrier;
 - (D) a reseller of communications;
- (E) a communications carrier who conveys, transmits, or receives communications wholly or partly over a telephone system;
- (F) a provider of operator services as defined by §55.081, unless the provider is a subscriber to customer-owned PTS; and
- (G) a separated affiliate or an electronic publishing joint venture as defined in the Public Utility Regulatory Act, Chapter 63.
- (246) Telephones intended to be utilized by the public-Telephones that are accessible to the public, including, but not limited to, pay telephones, telephones in guest rooms and common areas of hotels, motels, or other lodging locations, and telephones in hospital patient rooms.
- (247) Telephone solicitation--An unsolicited telephone call.
- (248) Telephone solicitor--A person who makes or causes to be made a consumer telephone call, including a call made by an automatic dialing/announcing device.
- (249) Test year--The most recent 12 months, beginning on the first day of a calendar or fiscal year quarter, for which operating data for a public utility are available.
- (250) Texas Universal Service Fund (TUSF)--The fund authorized by the Public Utility Regulatory Act, $\S 56.021$ and 1997 Texas General Laws Chapter 149.

- $\left(251\right)$ Tier 1 local exchange company--A local exchange company with annual regulated operating revenues exceeding \$100 million.
- (252) Title IV-D Agency--The office of the attorney general for the state of Texas.
- (253) Toll blocking--A service provided by telecommunications carriers that lets consumers elect not to allow the completion of outgoing toll calls from their telecommunications channel.
- (254) Toll control--A service provided by telecommunications carriers that allows consumers to specify a certain amount of toll usage that may be incurred on their telecommunications channel per month or per billing cycle.
- (255) Toll limitation--Denotes both toll blocking and toll control.
- (256) Total element long-run incremental cost (TELRIC)-The forward-looking cost over the long run of the total quantity of the facilities and functions that are directly attributable to, or reasonably identifiable as incremental to, such element, calculated taking as a given the CTU's provision of other elements.
- (257) Transitioning company--An incumbent local exchange company for which at least one, but not all, of the company's markets has been deregulated.
- (258) Transport--The transmission and/or any necessary tandem and/or switching of local telecommunications traffic from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than a DCTU.
- (259) Trunk--A circuit facility connecting two switching systems.
- (260) Two-primary interexchange carrier (Two-PIC) equal access--A method that allows a telephone subscriber to select one carrier for all 1+ and 0+ interLATA calls and the same or a different carrier for all 1+ and 0+ intraLATA calls.
- (261) Unauthorized charge--Any charge on a customer's telephone bill that was not consented to or verified in compliance with §26.32 of this title (relating to Protection Against Unauthorized Billing Charges ("Cramming")).
- (262) Unbundling--The disaggregation of the ILEC's network/service to make available the individual network functions or features or rate elements used in providing an existing service.
- (263) Unit cost.—A cost per unit of output calculated by dividing the total long run incremental cost of production by the total number of units.
- (264) Usage sensitive blocking--Blocking of a customer's access to services which are charged on a usage sensitive basis for completed calls. Such calls shall include, but not be limited to, call return, call trace, and auto redial.
- (265) Virtual private line--Circuits or bandwidths, between fixed locations, that are available on demand and that can be dynamically allocated.
- (266) Voice carryover--A technology that allows an individual who is hearing-impaired to speak directly to the other party in a telephone conversation and to use specialized telecommunications devices to receive communications through the telecommunications relay service operator.

- (267) Voice over Internet Protocol (VoIP)--The technology used to transmit voice communications using Internet Protocol.
 - (268) Voice over Internet Protocol service--A service that:
- (A) uses Internet Protocol or a successor protocol to enable a real-time, two-way voice communication that originates from or terminates to the user's location in Internet Protocol or a successor protocol:
- (B) requires a broadband connection from the user's location; and
- (C) permits a user generally to receive a call that originates on the public switched telephone network and to terminate a call to the public switched telephone network.
- (269) Volume insensitive costs--The costs of providing a basic network function (BNF) that do not vary with the volume of output of the services that use the BNF.
- (270) Volume sensitive costs--The costs of providing a basic network function (BNF) that vary with the volume of output of the services that use the BNF.
 - (271) Wireless provider--A provider that:
- (A) provides commercial mobile radio service as defined in paragraph (40) of this section; or
- (B) utilizes fixed wireless technology to provide local exchange service.
- (272) Wholesale service--A telecommunications service is considered a wholesale service when it is provided to a telecommunications utility and the use of the service is to provide a retail service to residence or business end-user customers.
- (273) Working capital requirements--The additional capital required to fund the increased level of accounts receivable necessary to provide telecommunications service.
- (274) "0-" call--A call made by the caller dialing the digit "0" and no other digits within five seconds. A "0-" call may be made after a digit (or digits) to access the local network is (are) dialed.
- (275) "0+" call--A call made by the caller dialing the digit "0" followed by the terminating telephone number. On some automated call equipment, a digit or digits may be dialed between the "0" and the terminating telephone number.
- (276) 311 answering point--A communications facility that:
- $\qquad \qquad (A) \quad \text{is operated, at a minimum, during normal business} \\ \text{hours;}$
- (B) is assigned the responsibility to receive 311 calls and, as appropriate, to dispatch the non-emergency police or other governmental services, or to transfer or relay 311 calls to the governmental entity;
- (C) is the first point of reception by a governmental entity of a 311 call; and
- (D) serves the jurisdictions in which it is located or other participating jurisdictions.
- (277) 311 service--A telecommunications service provided by a certificated telecommunications provider through which the end user of a public telephone system has the ability to reach non-emergency police and other governmental services by dialing the digits 3-1-1. 311 service must contain the selective routing feature or other equivalent state-of-the-art feature.

- (278) 311 service request--A written request from a governmental entity to a CTU requesting the provision of 311 service. A 311 service request must:
 - (A) be in writing;
- (B) contain an outline of the program the governmental entity will pursue to adequately educate the public on the 311 service;
- (C) contain an outline from the governmental entity for implementation of 311 service;
- (D) contain a description of the likely source of funding for the 311 service (i.e., from general revenues, special appropriations, etc.); and
- (E) contain a listing of the specific departments or agencies of the governmental entity that will actually provide the non-emergency police and other governmental services.
 - (279) 311 system--A system of processing 311 calls.
- (280) 9-1-1 administrative entity--A regional planning commission as defined in Texas Health and Safety Code §771.001(10) or an emergency communication district as defined in Texas Health and Safety Code §771.001(3).
- (281) 9-1-1 database management services provider--An entity designated by a 9-1-1 administrative entity to provide 9-1-1 database management services that support the provision of 9-1-1 services.
- (282) 9-1-1 database services--Services purchased by a 9-1-1 administrative entity that accepts, processes, and validates subscriber record information of telecommunications providers for purposes of selective routing and automatic location identification, and that may also provide statistical performance measures.
- (283) 9-1-1 network services--Services purchased by a 9-1-1 administrative entity that routes 9-1-1 calls from an E9-1-1 selective router, 9-1-1 tandem, next generation 9-1-1 system, Internet Protocol-based 9-1-1 system or its equivalent to public safety answering points or a public safety answering point network.
- (284) 9-1-1 network services provider--A CTU designated by the appropriate 9-1-1 administrative entity to provide 9-1-1 network services in a designated area.
- (285) 911 system--A system of processing emergency 911 calls, as defined in Texas Health and Safety Code §772.001, as may be subsequently amended.
- (286) 9-1-1 selective routing tandem switch--A switch located in a telephone central office that is equipped to accept, process, and route 9-1-1 calls to a predetermined, specific location. Also known as E9-1-1 control office or E9-1-1 selective router.
- (287) 9-1-1 service--As defined in Texas Health and Safety Code §771.001(6) and §772.001(6).
- (288) 9-1-1 service agreement--A contract addressing the 9-1-1 service arrangements for a local area that the appropriate 9-1-1 administrative entity enters into.
- (289) 9-1-1 service arrangement--Each particular arrangement for 9-1-1 emergency service specified by the appropriate 9-1-1 administrative entity for the relevant rate centers within its jurisdictional area and that is subject to a 9-1-1 service agreement.

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 B. CUSTOMER SERVICE AND PROTECTION

16 TAC §§26.30 - 26.32, 26.34

The amendments are adopted generally under PURA §14.002, which provides the commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §52.001(b)(1) which requires that commission rules, policies and principles be formulated and applied to protect the public interest; and PURA §52.002 which grants the commission exclusive original jurisdiction over the business and property of a telecommunications utility in the State of Texas.

Cross reference to statutes: Public Utility Regulatory Act §§14.002; 12.252, 14.052, 15.021- 15.0233, 15.051, 16.051, 17.001, 17.003,17.004, 17.052(3), 17.102, 17.151-17.158, 51.001(g), 51.004, 52.001(b)(1), 52.002, 52.007, 52.051, 52.053, 52.054, 52.058, 52.0583(b), 52.0584, 52.059, 52.154, 52.207, 52.251, 52.256, 53.101-53.113, 54.101-54.105, 54.151-54.159, 54.251, 54.259, 54.260, 54.261, 55.001, 55.002, 55.008, 55.015, 55.024, 55.201-55.204, 55.253, 55.301-55.308, 56.001, 56.002, 56.023, 56.024, 56.032, 56.156, 58.024, 58.051, 58.051-58.063,58.061, 59.024, 60.021, 60.022, 60.023, 60.122, 60.124, 60.125, 64.001, 64.004, 64.051, 64.052, 64.053, 64.101-64.102, 64.151-64.158, 65.002, 65.004, 65.102; Texas Business and Commerce Code §304.055; and Texas Government Code §2001.039.

§26.30. Complaints.

- (a) Complaints to a certificated telecommunications utility (CTU). A customer or applicant for a service may submit a complaint to a CTU either in person, by letter, telephone, or by any other means determined by the CTU. For purposes of this section, a complainant is a customer or applicant for a service that has submitted a complaint to a CTU or to the commission.
- (1) Initial investigation. The CTU must investigate the complaint and advise the complainant of the results of the investigation within 21 days of receipt of the complaint. A CTU must inform customers of the right to receive these results in writing.
- (2) Supervisory review by the CTU. If a complainant is not satisfied with the initial response to the complaint, the complainant may request a supervisory review by the CTU.
- (A) A CTU supervisor must conduct the supervisory review and inform the complainant of the results of the review within ten days of receipt of the complainant's request for a review. A CTU must inform customers of the right to receive these results in writing.
- (B) A complainant who is dissatisfied with a CTU's supervisory review must be informed of:

- (i) the right to file a complaint with the commission;
- (ii) the commission's informal complaint resolution

process:

- (iii) the following contact information for the commission:
- (1) Mailing Address: PUCT, Consumer Protection Division, P.O. Box 13326, Austin, Texas 78711-3326;
- (II) Phone Number: (512) 936-7120 or in Texas (toll-free) 1-888-782-8477;
 - (III) FAX: (512) 936-7003;
 - (IV) E-mail address: consumer@puc.texas.gov;
 - (V) Internet address: http://www.puc.texas.gov;
 - (VI) Relay Texas (toll-free): 1-800-735-2989.
- (b) Complaints to the commission. The commission may only review a complaint of a retail or wholesale customer against a deregulated company or exempt carrier that is within the scope of the commission's authority provided in Public Utility Regulatory Act (PURA) §65.102.
 - (1) Informal complaints.
 - (A) The complaint to the commission should include:
- (i) The complainant's name, address, and telephone number.
- (ii) The name of the CTU or subsidiary company against which the complaint is being made.
 - (iii) The customer's account or phone number.
- (iv) An explanation of the facts relevant to the complaint.
- (v) Any other information or documentation which supports the complaint.
- (B) Upon receipt of a complaint from the commission, a CTU must investigate and advise the commission in writing of the results of its investigation within 15 days of the date the complaint was forwarded by the commission.
 - (C) The commission will:
 - (i) review the CTU's investigative results;
 - (ii) determine a resolution for the complaint; and
- (iii) notify the complainant and the CTU in writing of the resolution.
- (D) While any informal complaint process is ongoing at the commission:
- basic local telecommunications service must not be suspended or disconnected for the nonpayment of disputed charges; and
- (ii) a customer is obligated to pay any undisputed portion of the bill.
- (E) The CTU must keep a record of any informal complaint forwarded to it by the commission for two years after the determination of that complaint.
- (i) This record must show the name and address of the complainant, and the date, nature, and adjustment or disposition of the complaint.

- (ii) A CTU is not required to keep records of protests regarding commission-approved rates or charges that require no further action by the CTU.
- (2) Formal complaints. If the complainant is not satisfied with the results of the informal complaint process, the complainant may file a formal complaint with the commission. This process may include the formal docketing of the complaint as provided by §22.242 of this title (relating to Complaints).
- §26.31. Disclosures to Applicants and Customers.
- (a) Application. Subsection (b)(4)(C)(viii) of this section does not apply to a deregulated company holding a certificate of operating authority, or to an exempt carrier that meets the criteria of Public Utility Regulatory Act (PURA) §52.154.
- (b) Certificated telecommunications utilities (CTU). The disclosure requirements of this subsection only apply to residential customers and business customers with five or fewer customer access lines.
- (1) Promotional requirements. Promotions, including advertising and marketing, conducted by a CTU must comply with the following:
- (A) If any portion of a promotion is translated into another language, then all portions of the promotion must be translated into that language. Promotions containing a single informational line or sentence in another language to advise a person on how to obtain the same promotional information in a different language are exempt from this requirement.
- (B) Promotions must not be fraudulent, unfair, misleading, deceptive, or anti-competitive as prohibited by federal and state law.
- (2) Prior to acceptance of service. A CTU must provide the following information to an applicant before the applicant accepts service:
- (A) notice that the customer will receive the information packet described in paragraphs (3) and (4) of this subsection;
- (B) an explanation of each product or service being offered;
- (C) a description of how each charge will appear on the telephone bill;
 - (D) any applicable minimum contract service terms;
- (E) disclosure of all money that must be paid prior to installation of a new service or transfer of an existing service to a new location, and whether the money is refundable;
- (F) disclosure of construction charges in accordance with §26.22 of this title (relating to Request for Service);
- (G) information about any necessary change in the applicant's telephone number;
- (H) disclosure of the company's cancellation policy; and
- (I) information on whom to call and a working toll-free number for customer inquiries.
- (3) Terms and conditions of service. A CTU must provide information regarding terms and conditions of service to customers in writing and free of charge at the initiation of service. Upon request, a customer is entitled to receive an additional copy of the terms and conditions of service free of charge from the CTU every calendar year. Any contract offered by a CTU must include the terms and conditions of service. A CTU is prohibited from offering a customer a contract or

terms and conditions of service that waives the customer's rights under federal or state law, or commission rule.

- (A) The information must be:
- (i) sent to the new customer before payment for a full bill is due:
- (ii) clearly labeled to indicate it contains the terms and conditions of service;
- (iii) provided in a readable format written in plain, non-technical language; and
- (iv) provided in the same language in which the CTU markets the service.
 - (B) The following information must be included:
- (i) each rate and charge as it will appear on the telephone bill;
- (ii) an itemization of each charge that may be imposed on the customer, including charges for late payments and returned checks:
- (iii) a full description of each product or service to which the customer has subscribed;
- (iv) any applicable minimum contract service terms and fees for cancellation or early termination;
- (v) all money that must be paid prior to installation of new service or transfer of existing service to a new location and whether the money is refundable;
- (vi) applicable construction charges in accordance with §26.22 of this title;
- (vii) any necessary change in the applicant's telephone number;
- (viii) the company's cancellation or early termination policy;
- (ix) an operational toll-free number for customer service; and
- (x) the provider's legal business name used for providing telecommunications services in the state.
- (4) Customer rights. At the initiation of service, a CTU must provide to a customer information regarding customer rights in writing and free of charge.
- (A) The informational disclosures relating to customer protections required by subparagraph (C) of this paragraph must be:
- (i) sent to the new customer before payment for a full bill is due;
- (ii) clearly labeled to indicate the customer protection disclosures contain information regarding customer rights;
- (iii) provided in a readable format and written in plain, non-technical language; and
- (iv) provided in the same language in which the CTU markets the service.
 - (B) The CTU must also provide:
- (i) the information in subparagraph (C) of this paragraph to each customer at least every other year at no charge; or

- (ii) a printed statement on the bill or a billing insert identifying where the information in subparagraph (C) of this paragraph can be obtained. The statement must be provided to each customer every six months.
- (C) The following informational disclosures relating to customer protections must be provided by the CTU:
- (i) the CTU's customer credit requirements and the circumstances under which a customer deposit or an additional deposit may be required, the manner in which a deposit and interest paid on deposits are calculated, the time frame and requirements for return of the deposit to the customer, and any other terms and conditions related to deposits;
- (ii) the time period for payment of outstanding bills without incurring a penalty and the amount and conditions under which a penalty may be applied to delinquent bills;
- (iii) the grounds for suspension or disconnection of service:
- (iv) the requirements a CTU must meet to suspend or disconnect service;
- (v) the requirements a CTU must meet for resolving billing disputes and how disputes affect suspension or disconnection of service;
- (vi) information on alternative payment plans offered by the CTU, including payment arrangements and deferred payment plans. A CTU must provide to each customer a statement that the customer has the right to request these alternative payment plans;
- (vii) the requirements to have the customer's service restored or reconnected after involuntary suspension or disconnection;
- (viii) a customer's right to continue local service as long as full payment for local service is timely made;
- (ix) information regarding protections against unauthorized billing charges ("cramming") and selection of telecommunications utilities ("slamming") as required by §26.32 of this title (relating to Protection Against Unauthorized Billing Charges ("Cramming")) and §26.130 of this title (relating to Selection of Telecommunications Utilities), respectively;
- (x) the customer's right to file a complaint with the CTU, the procedures for a supervisory review, and the customer's right to file a complaint with the commission regarding any matter concerning the CTU's service. The commission's contact information: PUCT, Consumer Protection Division, P.O. Box 13326, Austin, Texas 78711-3326, (512) 936-7120 or in Texas (toll-free) 1-888-782-8477, e-mail address: consumer@puc.texas.gov, Internet address: www.puc.texas.gov, and Relay Texas (toll-free) 1-800-735-2989, must accompany this information;
- (xi) the hours, addresses, and telephone numbers of each CTU office where bills may be paid and customer service information may be obtained, or a toll-free number at which the customer may obtain such information;
- (xii) a toll-free telephone number or equivalent, such as the use of wide area telephone service or acceptance of collect calls, that a customer may call to report service problems or make billing inquiries;
- (xiii) a statement that each CTU service is provided without discrimination as to a customer's race, color, sex, nationality, religion, marital status, income level, source of income, or from unreasonable discrimination on the basis of geographic location;

- (xiv) a summary of the company's policy regarding the provision of credit history based upon the credit history of a customer's former spouse;
- (xv) notice of any special services such as readers or notices in Braille, if available, the phone number for Relay Texas: 1-800-735-2989, and any teletypewriter or text telephone service offered by the CTU;
- (xvi) how a customer with a physical disability, and those who care for them, can identify themselves to the CTU so that special action can be taken to appropriately inform these persons of their rights; and
- (xvii) if a CTU is offering Lifeline Service in accordance with §26.412 (relating to Lifeline Service Program), how information about customers who qualify for Lifeline Service may be shared between each relevant state agency and the customer's phone service provider.
- (5) Notice of changes. A CTU must provide each customer written notice between 30 and 60 calendar days in advance of a material change in the terms and conditions of service or customer rights and must give each customer the option to decline any material change in the terms and conditions of service and cancel service without penalty due to the material change in the terms and conditions of service. This paragraph does not apply to changes that are beneficial to the customer such as a price decrease or changes required by law.
 - (6) Right of cancellation.
- (A) A CTU must provide each residential applicant and customer the right of rescission in accordance with applicable law.
- (B) If a residential applicant or customer enrolls in a contract with a minimum duration exceeding 31 days, a CTU must promptly provide the applicant or customer with the terms and conditions of service after the applicant or customer has provided authorization to CTU. The CTU must offer the applicant or customer a right to cancel the contract without penalty or fee for a period of six working days after the terms and conditions of service are mailed or sent electronically to the applicant or customer.
- (c) Dominant certificated telecommunications utility (DCTU). In addition to the requirements of subsection (b) of this section, the following requirements apply to residential customers and business customers with five or fewer customer access lines.
- (1) Prior to acceptance of service. Before an applicant signs a contract for service, or a DCTU accepts any money for new residential service or transfers a customer's existing residential service to a new location, the DCTU must provide to each applicant the following:
- (A) information relating to the DCTU's residential service alternatives, beginning with the lowest-priced option, and the range of service offerings available within the applicant's service area with full consideration to the cost associated with applicable equipment options and installation charges; and
- (B) a statement written in plain English or Spanish that clearly informs the applicant about the availability of Lifeline Service.
 - (2) Customer rights.
- (A) If a DCTU provides the same information as required by subsection (b)(4)(C) of this section in the telephone directories provided to each customer in accordance with §26.128 of this title (relating to Telephone Directories), the DCTU must provide a printed statement on each customer's bill or a billing insert identifying the loca-

- tion of the information within the telephone directory. The statement or billing insert must be provided to customers at least every six months.
- (B) The information required by subsection (b)(4)(C) of this section and this subsection must be provided in plain English and Spanish; however, a DCTU is exempt from the Spanish language requirement if 10% or fewer of its customers are exclusively Spanish-speaking. If the DCTU is exempt from the Spanish language requirement, it must notify each customer through a statement provided in plain English and Spanish, in the customer rights disclosures that the information is available in Spanish from the DCTU, by mail or from the DCTU's offices.
- (C) The information required in subsection (b)(4)(C) of this section must also include:
- (i) the customer's right to information about rates and services;
- (ii) the customer's right to inspect or obtain at reproduction cost a copy of the applicable tariffs and service rules;
- (iii) information on prohibitions for disconnection of local service for the ill and disabled;
- (iv) information on the availability of prepaid local telephone service as required by §26.29 of this title (relating to Prepaid Local Telephone Service (PLTS)); and
- (v) information regarding privacy issues as required by §26.121 of this title (relating to Privacy Issues).
- §26.34. Telephone Prepaid Calling Services.
- (a) Purpose. The provisions of this section are intended to prescribe standards for the information a prepaid calling services provider must disclose to customers regarding the rates and terms of service for prepaid calling services offered in this state.
- (b) Application. This section applies to any "telecommunications utility" as defined by §26.5 of this title, relating to Definitions. This section does not apply to a deregulated company holding a certificate of operating authority, or to an exempt carrier utility that meets the criteria of Public Utility Regulatory Act (PURA) §52.154. This section also does not apply to a credit calling card in which a customer pays for a service after use and receives a monthly bill for such use.
- (c) Liability. A prepaid calling services company is responsible for ensuring, either through its contracts with its network provider, distributors and marketing agents or other means, that:
- (1) end-user purchased prepaid calling service remains usable in accordance with the requirements of this section; and
- (2) compliance requirements of all disclosure provisions of this section are met.
- (d) Definitions. The following terms used in this section have the following meanings, unless the context indicates otherwise:
- (1) Access telephone number--The number that allows a prepaid calling services customer to access the services of a telecommunications utility to place telephone calls.
- (2) Billing increment--A unit of time used to charge customers for prepaid calling services.
- (3) Personal identification number (PIN)--A number assigned as an authorization code that ensures system security for a prepaid calling services customer and allows the prepaid calling services company to track minutes used.
- (4) Prepaid calling services account--An amount of money paid by a customer in advance to access the services of a telecommu-

nications utility to place telephone calls. When the customer makes completed telephone calls, the value of the account decreases at a predetermined rate.

- (5) Prepaid calling card--A card or any other device purchased to establish a prepaid calling services account.
- (6) Prepaid calling services--Any telecommunications transaction in which:
- (A) a customer pays in advance for telecommunications services;
- (B) the customer's prepaid calling services account is depleted at a predetermined rate as the customer uses the service; and
- (C) the customer must use a PIN and an access telephone number to use the telecommunications services.
- (7) Prepaid calling services company--A company that provides prepaid calling or other telecommunications services to the public using its own telecommunications network or resold telecommunications services, or distributors who purchase PINs or telecommunications services to resell to the end-user customer.
- (8) Recharge--A transaction in which the value of the prepaid calling services account is renewed. The customer must be informed verbally or electronically of the new rates and surcharges at the time of recharge.
- (9) Surcharge--any fee or cost charged against a prepaid calling services account in addition to a per-minute rate or billing increment including connection, payphone, and maintenance fees.
 - (e) Billing requirements for prepaid calling services.
- (1) Billing increments must be defined and disclosed in the prepaid calling services company's published tariffs or price list on file with the commission, on any display at the point of sale, on any prepaid calling card, or on any prepaid calling card packaging.
- (2) A prepaid calling services account may be decreased only for a completed call. Station busy signals and unanswered calls are not completed calls and must not be charged against the account.
- (3) A surcharge must not be levied more than once on a given call.
- (4) Prepaid calling services companies must not reduce the value of a prepaid calling services account by more than the company's published domestic tariffs or price list on file with the commission and any surcharges filed at the commission. Domestic rates and surcharges must be disclosed at the time of purchase. Current international rates must be disclosed at the time of purchase with an explanation, if applicable, that these prices may be subject to change.
- (5) The prepaid calling services account may be recharged by the customer at a different domestic rate from the original domestic rate or the last domestic recharge rate provided that the new domestic rate and any domestic or international surcharges conform with the company's published tariff or price list on file with the commission at the time of recharge. The customer must be informed of the rates at the time of recharge. A prepaid calling services company must keep internal records of changes to its international rates and must provide customers with the appropriate international rate information through a toll-free telephone number. International prepaid calling services rates must be updated annually in accordance with §26.89 of this title, relating to Information Regarding Rates and Services of Nondominant Carriers.

- (6) Upon verbal or written request, prepaid calling services companies must be capable of providing a customer the following call detail data information at no charge:
- (A) Dialing and signaling information that identifies the inbound access telephone number called;
 - (B) The number of the originating telephone;
 - (C) The date and time the call originated;
 - (D) The date and time the call terminated;
 - (E) The called telephone number; and
 - (F) The PIN or account number associated with the call.
- (7) Prepaid calling services companies must maintain call detail data records for at least two years.
- (f) Written disclosure requirements for all prepaid calling services.
- (1) Information required on prepaid calling cards. Cards must be issued with all information required by subparagraphs (A) and (B) of this paragraph in at least the same language in which the card is marketed. Bilingual cards are permitted provided that the information required by subparagraphs (A) and (B) of this paragraph is printed in both languages.
- (A) At a minimum, a card must contain the following information printed in a legible font no smaller than eight-point:
- (i) The toll-free number as required by subsection (i) of this section;
- (ii) The maximum rate per minute must be shown for local, intrastate, and interstate calls. International call prices must be provided to the customer through a toll-free number printed on the card. If the cost for a one minute call is higher than the maximum rate per minute, it must be printed on the prepaid calling card; and
- (iii) The words "VOID" or "SAMPLE" or sequential numbers, such as "999999999" on both sides of the card if the card was produced as a "non-active" card so that it is obvious to the customer that the card is not useable. If the card is not so labeled, the card is considered active and the issuing company must honor it.
- (B) At a minimum, a card must contain the following information printed in legible font no smaller than five-point:
- (i) The value of the card and any applicable surcharges must be expressed in the same format such as a card whose value is expressed in minutes must express surcharges in minutes. If the value of a card is expressed in minutes, the minutes must be identified as domestic or international and the identification must be printed on the same line or next line as the value of the card in minutes;
- (ii) The prepaid calling services company's name as registered with the commission. A "doing business as" name may only be used if officially filed with the commission. The language must clearly indicate that the company is providing the prepaid calling services:
 - (iii) Instructions on using the card correctly; and
- (iv) Expiration date or policy, if the card cannot be used after a date certain. If an expiration date or policy is not disclosed on the card, it will be considered active indefinitely.
- (2) Information required at a point of sale. All the following information must be legibly printed on or in any packaging in a minimum eight point font and displayed visibly in a prominent area at the point of sale so that the customer may make an informed decision

before purchase. Bilingual information may be made available provided that the information in subparagraphs (A)-(I) of this paragraph is printed in both languages.

- (A) A listing of applicable surcharges;
- (B) The company's name as registered with the commission. A "doing business as" name may only be used if officially filed with the commission. The language must clearly indicate that the company is providing the prepaid calling card services;
- (C) The toll-free number as required by subsection (i) of this section;
- (D) The billing increment expressed in minutes or fractions of minutes and maximum charge per billing increment for prepaid calling card services for local, intrastate, interstate, and international calls will be provided to the customer through a toll-free number printed on the card;
- (E) The expiration policy, if the card cannot be used after a date certain. If an expiration date is not disclosed at the time of purchase, the prepaid calling services will be considered active until the prepaid calling services account is completely depleted;
- (F) The recharge policy, if applicable. If an expiration date is not disclosed at the time prepaid calling services are recharged, the services will be considered active until the prepaid calling services account is completely depleted;
- (G) The policy for rounding billing increments, if applicable;
- (H) A statement that if a customer is unable to resolve a complaint with the company that the customer has the right to contact the state regulatory agency which has jurisdiction within the state where the prepaid calling services were purchased; and
 - (I) A statement that:
- (i) Notifies a customer of the customer's extent of liability for lost or stolen cards, if there is liability; and
- (ii) Warns a customer to safeguard the card against loss or theft.
- (3) If a customer asks a prepaid calling services company how to file a complaint, the company must provide the following contact information: PUCT, Consumer Protection Division, P.O. Box 13326, Austin, Texas 78711-3326; phone: (512) 936-7120 or in Texas (toll-free) 1-888-782-8477;; e-mail address: consumer@puc.texas.gov; Internet address: www.puc.texas.gov; and Relay Texas (toll-free): 1-800-735-2989.
- (g) Verbal disclosure requirements for prepaid calling services. Prepaid calling services companies must provide an announcement:
- (1) At the beginning of each call indicating the domestic minutes, billing increments, or dollars remaining on the prepaid calling services account or prepaid calling card; and
- (2) When the prepaid account or card balance is about to be completely depleted. This announcement must be made at least one minute or billing increment before the time expires.
- (h) Registration requirements for prepaid calling services companies. All prepaid calling services companies must register with the commission in accordance with §26.107 of this title (relating to Registration of Interexchange Carriers (IXCs), Prepaid Calling Services Companies (PPC), and Other Nondominant Telecommunications Carriers.

- (i) Business and technical assistance requirements for prepaid calling services companies. A prepaid calling services company must provide a toll-free number with a live operator to answer incoming calls 24 hours a day, seven days a week or electronically voice record customer inquiries or complaints. A combination of live operators or recorders may be used. If a recorder is used, the prepaid calling services company must attempt to contact each customer no later than the next working day following the date of the recording. Personnel must be sufficient in number and expertise to resolve customer inquiries and complaints. If an immediate resolution is not possible, the prepaid calling services company must resolve the inquiry or complaint by calling the customer or, if the customer requests, in writing within ten working days of the original request. In the event a complaint cannot be resolved within ten days of the request, the prepaid calling services provider must advise the complainant in writing of the status and subsequently complete the investigation within 21 days of the original request.
- (j) Requirements for refund of unused balances. If a prepaid calling services company fails to provide service at the rates disclosed at the time of initial purchase or at the time an account is recharged, or fails to meet technical standards, the prepaid calling services company must either refund the customer for each unused prepaid calling service or provide equivalent service.
- (k) Requirements when a prepaid calling services company terminates operations in this state.
- (1) When a prepaid calling services company expects to terminate operations in this state for any reason, the company must at least 30 days prior to the termination of operations:
 - (A) Notify the commission in writing:
 - (i) That operations will be ending;
 - (ii) Of the date of the termination of operations; and
- (iii) That the company certifies that the actions required by this subsection have been completed;
- (B) Notify each customer at the address on file with the company, if applicable, that operations will be ending the date of the termination of operations, and explain how customers may receive a refund or equivalent services for any unused services;
- (C) Announce the termination of operations at the beginning of each call, including the date of termination and a toll-free number to call for more information; and
- (D) Provide to customers via its toll-free customer service number the procedure for obtaining refunds and continue to provide this information for at least 60 days after the date the company terminates operations.
- (2) Within 24 hours after ceasing operations, the prepaid calling services company must deliver to the commission a list of names, if known, and account numbers of all customers with unused balances. For each customer, the list must include the following:
- (A) The identification number used by the company for billing and debit purposes; and,
- (B) The unused time, stated in minutes, as applicable, and the unused dollar amount of the prepaid calling services account.
- (l) Date of compliance for prepaid calling card services companies. Prepaid calling service offered for sale in the state of Texas and each prepaid calling services company must be in compliance with this rule within six months of the effective date of this section.
 - (m) Compliance and enforcement.

- (1) Administrative penalties. If the commission finds that a prepaid calling services company has violated any provision of this section, the commission will order the company to take corrective action, as necessary, and the company may be subject to administrative penalties and other enforcement actions under PURA, Chapter 15.
- (2) Enforcement. The commission will coordinate its enforcement efforts against a prepaid calling services company for fraudulent, unfair, misleading, deceptive, or anticompetitive business practices with the Office of the Attorney General to ensure consistent treatment of specific alleged violations.

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. INFRASTRUCTURE AND RELIABILITY

16 TAC §§26.52 - 26.54

The amendments are adopted generally under PURA §14.002, which provides the commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §52.001(b)(1) which requires that commission rules, policies and principles be formulated and applied to protect the public interest; and PURA §52.002 which grants the commission exclusive original jurisdiction over the business and property of a telecommunications utility in the State of Texas.

Cross reference to statutes: Public Utility Regulatory Act §§14.002; 12.252, 14.052, 15.021- 15.0233, 15.051, 16.051, 17.001, 17.003,17.004, 17.052(3), 17.102, 17.151-17.158, 51.001(g), 51.004, 52.001(b)(1), 52.002, 52.007, 52.051, 52.053, 52.054, 52.058, 52.0583(b), 52.0584, 52.059, 52.154, 52.207, 52.251, 52.256, 53.101-53.113, 54.101-54.105, 54.151-54.159, 54.251, 54.259, 54.260, 54.261, 55.001, 55.002, 55.008, 55.015, 55.024, 55.201-55.204, 55.253, 55.301-55.308, 56.001, 56.002, 56.023, 56.024, 56.032, 56.156, 58.024, 58.051, 58.051-58.063,58.061, 59.024, 60.021, 60.022, 60.023, 60.122, 60.124, 60.125, 64.001, 64.004, 64.051, 64.052, 64.053, 64.101-64.102, 64.151-64.158, 65.002, 65.004, 65.102; Texas Business and Commerce Code §304.055; and Texas Government Code §2001.039.

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16 TAC §26.55

The repeal is adopted generally under PURA §14.002, which provides the commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §52.001(b)(1) which requires that commission rules, policies and principles be formulated and applied to protect the public interest; and PURA §52.002 which grants the commission exclusive original jurisdiction over the business and property of a telecommunications utility in the State of Texas.

Cross reference to statutes: Public Utility Regulatory Act §§14.002; 12.252, 14.052, 15.021- 15.0233, 15.051, 16.051, 17.001, 17.003,17.004, 17.052(3), 17.102, 17.151-17.158, 51.001(g), 51.004, 52.001(b)(1), 52.002, 52.007, 52.051, 52.053, 52.054, 52.058, 52.0583(b), 52.0584, 52.059, 52.154, 52.207, 52.251, 52.256, 53.101-53.113, 54.101-54.105, 54.151-54.159, 54.251, 54.259, 54.260, 54.261, 55.001, 55.002, 55.008, 55.015, 55.024, 55.201-55.204, 55.253, 55.301-55.308, 56.001, 56.002, 56.023, 56.024, 56.032, 56.156, 58.024, 58.051, 58.051-58.063,58.061, 59.024, 60.021, 60.022, 60.023, 60.122, 60.124, 60.125, 64.001, 64.004, 64.051, 64.052, 64.053, 64.101-64.102, 64.151-64.158, 65.002, 65.004, 65.102; Texas Business and Commerce Code §304.055; and Texas Government Code §2001.039.

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SUBCHAPTER D. RECORDS, REPORTS, AND OTHER REQUIRED INFORMATION

16 TAC §§26.73, 26.79, 26.80, 26.85, 26.89

The amendments are adopted generally under PURA §14.002, which provides the commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §52.001(b)(1) which requires that commission rules, policies and principles be formulated and applied to protect the public interest; and PURA §52.002 which grants the commission exclusive original jurisdiction over the business and property of a telecommunications utility in the State of Texas.

Cross reference to statutes: Public Utility Regulatory Act §§14.002; 12.252, 14.052, 15.021- 15.0233, 15.051, 16.051, 17.001, 17.003,17.004, 17.052(3), 17.102, 17.151-17.158, 51.001(g), 51.004, 52.001(b)(1), 52.002, 52.007, 52.051, 52.053, 52.054, 52.058, 52.0583(b), 52.0584, 52.059, 52.154, 52.207, 52.251, 52.256, 53.101-53.113, 54.101-54.105, 54.151-54.159, 54.251, 54.259, 54.260, 54.261, 55.001, 55.002, 55.008, 55.015, 55.024, 55.201-55.204, 55.253, 55.301-55.308, 56.001, 56.002, 56.023, 56.024, 56.032, 56.156, 58.024, 58.051, 58.051-58.063,58.061, 59.024, 60.021, 60.022, 60.023, 60.122, 60.124, 60.125, 64.001, 64.004, 64.051, 64.052, 64.053, 64.101-64.102, 64.151-64.158, 65.002, 65.004, 65.102; Texas Business and Commerce Code §304.055; and Texas Government Code §2001.039.

§26.89. Nondominant Carriers' Obligations Regarding Information on Rates and Services.

- (a) Filing of tariff by nondominant carrier. A nondominant carrier, including a nondominant carrier holding a certificate of operating authority or a service provider certificate of operating authority may, but is not required to file with the commission the information listed under paragraphs (1)-(3) of this subsection. If filed, such information must be updated and kept current at all times.
- (1) A description of each type of telecommunications service provided;
- (2) For each service listed in response to paragraph (1) of this subsection, the locations in the state by city in which service is originated or terminated. If a service is provided statewide, the carrier must specify either origination or termination; and
- (3) A tariff, schedule, or list showing each rate for each service, product, or commodity offered by the nondominant carrier. A tariff must include a cover letter that lists each rule that relates to or affects a rate of the nondominant carrier, or a utility service, product, or commodity furnished by the nondominant carrier.
- (b) Annual tariff update. By June 30 of each calendar year, each nondominant carrier that, during the previous 12 months, has not filed changes to the information specified by subsection (a) of this section must file with the commission a letter informing the commission that no changes have occurred. An uncertificated nondominant carrier that fails to file either this letter or the updates specified by subsection (a) of this section during the 12 month period ending on June 30 will no longer be registered with the commission.
- (c) Filing of nondominant carrier tariff by affiliate or trade association. An affiliate of a nondominant carrier or trade association may file the information listed under subsection (a)(1)-(3) and (b) of this section on behalf of a nondominant carrier.
- (1) For each filing, the nondominant carrier must authorize the affiliate of the nondominant carrier or trade association, via written affidavit filed with the commission, to file such information on its behalf
- (2) The authorization specified by paragraph (1) of this subsection may be included in the filing by the affiliate of the non-dominant carrier or trade association.
- (3) The filing by affiliate of the nondominant carrier or trade association must comply with the requirements of this section and other applicable law.
- (d) Registration requirement for nondominant carriers. A nondominant carrier must comply with the registration requirements of §26.107 of this title (relating to Registration of Interexchange Carriers

(IXCs), Prepaid Calling Services Companies (PPC), and Other Non-dominant Telecommunications Carriers).

- (e) Exceptions. A nondominant carrier:
- (1) may, but is not required to, maintain on file with the commission each tariff, price list, or customer service agreement that governs the terms of providing service;
- (2) may cross-reference its federal tariff in its state tariff if its intrastate switched access rates are the same as its interstate switched access rate:
- (3) may withdraw a tariff, price list, or customer service agreement not required to be filed or maintained with the commission under this section if the nondominant carrier:
- (A) files written notice of the withdrawal with the commission; and
- (B) notifies each of its customers of the withdrawal and posts each current and applicable tariff, price list, or customer service agreement on its Internet website.
- (4) is not required to obtain advance approval for a filing with the commission or a posting on the nondominant carrier's Internet website that adds, modifies, withdraws, or grandfathers a retail service or the rates, terms, or conditions of such a service:
- (5) is not subject to any rule or regulatory practice that is not imposed on:
- (A) a holder of a certificate of convenience and necessity serving the same area; or
 - (B) a deregulated company that:
- (i) has 500,000 or more access lines in service at the time it becomes a deregulated company; or
- (ii) serves an area also served by the nondominant telecommunications utility.

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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16 TAC §26.78, §26.87

The repeals are adopted generally under PURA §14.002, which provides the commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §52.001(b)(1) which requires that commission rules, policies and principles be formulated and applied to protect the public interest; and PURA §52.002 which grants the commission exclusive original jurisdiction over the business and property of a telecommunications utility in the State of Texas.

Cross reference to statutes: Public Utility Regulatory Act §§14.002; 12.252, 14.052, 15.021- 15.0233, 15.051, 16.051, 17.001, 17.003,17.004, 17.052(3), 17.102, 17.151-17.158, 51.001(g), 51.004, 52.001(b)(1), 52.002, 52.007, 52.051, 52.053, 52.054, 52.058, 52.0583(b), 52.0584, 52.059, 52.154, 52.207, 52.251, 52.256, 53.101-53.113, 54.101-54.105, 54.151-54.159, 54.251, 54.259, 54.260, 54.261, 55.001, 55.002, 55.008, 55.015, 55.024, 55.201-55.204, 55.253, 55.301-55.308, 56.001, 56.002, 56.023, 56.024, 56.032, 56.156, 58.024, 58.051, 58.051-58.063,58.061, 59.024, 60.021, 60.022, 60.023, 60.122, 60.124, 60.125, 64.001, 64.004, 64.051, 64.052, 64.053, 64.101-64.102, 64.151-64.158, 65.002, 65.004, 65.102; Texas Business and Commerce Code §304.055; and Texas Government Code §2001.039.

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SUBCHAPTER E. CERTIFICATION,

LICENSING AND REGISTRATION

16 TAC §26.111

The amendment is adopted generally under PURA §14.002, which provides the commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §52.001(b)(1) which requires that commission rules, policies and principles be formulated and applied to protect the public interest; and PURA §52.002 which grants the commission exclusive original jurisdiction over the business and property of a telecommunications utility in the State of Texas.

Cross reference to statutes: Public Utility Regulatory Act §§14.002; 12.252, 14.052, 15.021- 15.0233, 15.051, 16.051, 17.001, 17.003,17.004, 17.052(3), 17.102, 17.151-17.158, 51.001(g), 51.004, 52.001(b)(1), 52.002, 52.007, 52.051, 52.053, 52.054, 52.058, 52.0583(b), 52.0584, 52.059, 52.154, 52.207, 52.251, 52.256, 53.101-53.113, 54.101-54.105, 54.151-54.159, 54.251, 54.259, 54.260, 54.261, 55.001, 55.002, 55.008, 55.015, 55.024, 55.201-55.204, 55.253, 55.301-55.308, 56.001, 56.002, 56.023, 56.024, 56.032, 56.156, 58.024, 58.051, 58.051-58.063,58.061, 59.024, 60.021, 60.022, 60.023, 60.122, 60.124, 60.125, 64.001, 64.004, 64.051, 64.052, 64.053, 64.101-64.102, 64.151-64.158, 65.002, 65.004, 65.102; Texas Business and Commerce Code §304.055; and Texas Government Code §2001.039.

- §26.111. Certificate of Operating Authority (COA) and Service Provider Certificate of Operating Authority (SPCOA) Criteria.
- (a) Scope and purpose. This section applies to the certification of a person or entity to provide local exchange telephone service, basic

local telecommunications service, and switched access service as holders of certificates of operating authority (COAs) and service provider certificates of operating authority (SPCOA) established in the Public Utility Regulatory Act (PURA), Chapter 54, Subchapters C and D.

(b) Definitions.

- (1) Affiliate--An affiliate of, or a person affiliated with, a specified person, is a person that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the person specified.
- (2) Annual Report--A report that includes, at a minimum, the certificate holder's primary business telephone number, toll-free customer service number, email address, authorized company contact, regulatory contact, complaint contact, primary and secondary emergency contacts and operation and policy migration contacts which is submitted to the commission every calendar year. Each provided contact must include the contact's company title.
- (3) Application An application for a new COA or SPCOA certificate or an amendment to an existing COA or SPCOA certificate.
- (4) Control--The term control, including the terms controlling, controlled by and under common control with, means the power, either directly or indirectly through one or more affiliates, to direct or cause the direction of the management or policies of a person, whether through ownership of voting securities, by contract, or otherwise.
- (5) Executive officer--When used in reference to a person, means its president or chief executive officer, a vice-president serving as its chief financial officer, or a vice-president serving as its chief accounting officer, or any other officer of the person who performs any of the foregoing functions for the person.
- (6) Facilities-based certification--Certification that authorizes the certificate holder to provide service using its own equipment, unbundled network elements, or E9-1-1 database management associated with selective routing services.
- (7) Permanent employee--An individual that is fully integrated into the certificate holder's business. A consultant is not a permanent employee.
- (8) Person--An individual and any business entity, including a limited liability company, a partnership of two or more persons having a joint or common interest, a mutual or cooperative association, but does not include a municipal corporation.
- (9) Principal--A person or member of a group of persons that controls the person in question.
- (10) Shareholder--As context indicates and the applicable business entity requires, the legal or beneficial owner of any of the equity in a business entity, including, stockholders of corporations, members of limited liability companies and partners of partnerships.
 - (c) Ineligibility for certification.
- (1) An applicant is ineligible for a COA or SPCOA if the applicant is a municipality.
- (2) An applicant is ineligible for a COA if the applicant has not created a proper separation of business operations between itself and an affiliated holder of a certificate of convenience and necessity, as required by PURA $\S54.102$.
- (3) An applicant is ineligible for an SPCOA if the applicant, and affiliates of the applicant, in the aggregate have more than 6.0% of the total intrastate switched access minutes of use as measured for the most recent 12-month period.

- (4) The commission will not grant an SPCOA to a holder of a:
 - (A) CCN for the same territory; or
 - (B) COA for the same territory.
- (d) Application for COA or SPCOA certification. A person or entity is prohibited from providing local exchange telephone service, basic local telecommunications service, or switched access service unless the person or entity obtains a certificate of convenience and necessity in accordance with §26.101 of this title (relating to Certificate of Convenience and Necessity Criteria), or a certificate of operating authority or a service provider certificate of operating authority in accordance with this section.
- (1) An applicant for COA or SPCOA certification must demonstrate the capability of complying with this section. An applicant who obtains a COA or SPCOA, or who receives a certificate under this section must maintain compliance with this section.
- (2) An application must be made on the form prescribed by the commission, verified by oath or affirmation, and signed by an executive officer of the applicant.
- (3) Except where good cause exists to extend the time for review, the presiding officer must issue an order finding whether the application is deficient or complete within 20 days of filing. Deficient applications, including those without necessary supporting documentation, will be rejected without prejudice.
- (4) While an application is pending, an applicant must inform the commission of any material change in the information provided in the application within five working days of any such change.
- (5) Except where good cause exists to extend the time for review, the presiding officer will enter an order approving, rejecting, or approving with modifications, an application within 60 days of the filing of the application.
- (6) While an application is pending, an applicant must respond to any request for information from commission staff within ten days after receipt of the request by the applicant.
- (e) Standards for granting certification to COA and SPCOA applicants. The commission may grant a COA or SPCOA to an applicant that demonstrates eligibility in accordance with subsection (c) of this section, has the technical and financial qualifications required by this section, has the ability to meet the commission's quality of service requirements to the extent required by PURA and this title, and the applicant and its executive officers and principals do not have a history of violations of rules or misconduct such that granting the application would be inconsistent with the public interest. In determining whether to grant a certificate, the commission will consider whether the applicant has satisfactorily provided the information required under this section in the application.
- (f) Financial requirements. To obtain COA or SPCOA certification, an applicant must demonstrate shareholders' equity as required by this subsection.
- (1) To obtain facilities-based certification, an applicant must demonstrate shareholders' equity of not less than \$100,000. To obtain resale-only or data-only certification, an applicant must demonstrate shareholders' equity of not less than \$25,000.
- (2) For the period beginning on the date of certification and ending one year after the date of certification, the certificate holder must not make any distribution or other payment to any shareholders or affiliates if, after giving effect to the distribution or other payment, the shareholders' equity of the certificate holder is less than the amount

- required by this paragraph. The restriction on distributions or other payments contained in this paragraph includes dividend distributions, redemptions and repurchases of equity securities, loans, or loan repayments to shareholders or affiliates.
- (3) Shareholders' equity must be documented by an audited or unaudited balance sheet for the applicant's most recent quarter. The audited balance sheet must include the independent auditor's report. The unaudited balance sheet must include a sworn statement from an executive officer of the applicant attesting to the accuracy, in all material respects, of the information provided in the unaudited balance sheet.
- (g) Technical and managerial requirements. To obtain COA or SPCOA certification, an applicant must have and maintain the technical and managerial resources and ability to provide continuous and reliable service in accordance with PURA, commission rules, and other applicable laws.
- (1) To obtain facilities-based certification, an applicant must have principals, consultants or permanent employees in managerial positions whose combined experience in the telecommunications industry equals or exceeds five years. To obtain resale-only or data-only certification, an applicant must have principals or permanent employees in managerial positions whose combined experience in the telecommunications industry equals or exceeds one year.
- (2) To support technical qualification, an applicant must provide the following documentation: the name, title, number of years of telecommunications or related experience, and a description of the experience for each principal, consultant and/or permanent employee that the applicant will rely upon to demonstrate the experience required by paragraph (1) of this subsection.
- (3) An applicant must include the following in its application for COA or SPCOA certification:
- (A) Any complaint history, disciplinary record and compliance record during the 60 months immediately preceding the filing of the application regarding: the applicant; the applicant's affiliates that provide utility-like services such as telecommunications, electric, gas, water, or cable service; the applicant's principals; and any person that merged with any of the preceding persons;
- (i) The complaint history, disciplinary record, and compliance record must include information from any federal agency including the U.S. Securities and Exchange Commission; any self-regulatory organization relating to the sales of securities, financial instruments, or other financial transactions; state public utility commissions, state attorney general officers, or other regulatory agencies in states where the applicant is doing business or has conducted business in the past including state securities boards or commissions, the Texas Secretary of State, Texas Comptroller's Office, and Office of the Texas Attorney General. Relevant information includes the type of complaint, status of complaint, resolution of complaint, and the number of customers in each state where complaints occurred.
- (ii) The applicant may request to limit the inclusion of this information if it would be unduly burdensome to provide, so long as the information provided is adequate for the commission to assess the complaint history, disciplinary record, and compliance record of the applicant and the principals and affiliates of the applicant.
- (iii) The commission may also consider any complaint information on file at the commission.
- (B) A summary of any history of insolvency, bankruptcy, dissolution, merger, or acquisition of the applicant or any

predecessors in interest during the 60 months immediately preceding the application;

- (C) A statement indicating whether the applicant or the principals of the applicant are currently under investigation or have been penalized by an attorney general or any state or federal regulatory agency for violation of any deceptive trade or consumer protection laws or regulations; and
- (D) Disclosure of whether the applicant or principals of the applicant have been convicted or found liable for fraud, theft, larceny, deceit, or violations of any securities laws, customer protection laws, or deceptive trade laws in any state.
 - (4) Quality of service and customer protection.
- (A) The applicant must affirm that it will meet the commission's applicable quality-of-service standards as listed on the quality of service questionnaire contained in the application. The quality-of-service standards include E9-1-1 compliance and local number portability capability. Data-only providers are not subject to the requirements for E9-1-1 and local number portability compliance as applicable to switched voice services.
- (B) The applicant must affirm that it is aware of and will comply with the applicable customer protection rules and disclosure requirements as set forth in Chapter 26, Subchapter B, of this title (relating to Customer Service and Protection).
- (5) Limited scope of COAs and SPCOAs. If, after considering the factors in this subsection, the commission finds it to be in the public interest to do so, the commission may:
 - (A) Limit the geographic scope of the COA.
- (B) Limit the scope of an SPCOA's service to facilitiesbased, resale-only, data-only, geographic scope, or some combination of the preceding list.
- (h) Certificate Name. All local exchange telephone service, basic local telecommunications service, and switched access service provided under a COA or SPCOA must be provided in the name under which certification was granted by the commission. The commission will grant the COA or SPCOA certificate in only one name.
- (1) The applicant must provide the following information from its registration with the Texas Secretary of State or registration with another state or county, as applicable:
- (A) Form of business being registered (e.g., corporation, company, partnership, sole proprietorship, etc.);
 - (B) Any assumed names;
 - (C) Certification or file number; and
 - (D) Date business was registered.
- (2) Business names must not be deceptive, misleading, inappropriate, confusing or duplicative of existing name currently in use or previously approved for use by a certificated telecommunications provider (CTU).
- (3) Any name in which the applicant proposes to do business will be reviewed for compliance with paragraph (2) of this subsection. If the presiding officer determines that any requested name does not meet the requirements of paragraph (2) of this subsection, the presiding officer must notify the applicant that the requested name may not be used by the applicant. The applicant will be required to amend its application to provide at least one suitable name to be certificated.
 - (i) Amendment of a COA or SPCOA Certificate.

- (1) A person or entity granted a COA or SPCOA in accordance with this section must file an application to amend a COA or an SPCOA certificate in a commission approved format to:
- (A) Change the corporate name or assumed name of the certificate holder.
- (i) Name change amendments may be granted via administrative approval if the holder is in compliance with applicable commission rules and no hearing is requested.
- (ii) Commission staff will review any name in which the applicant proposes to do business. If staff determines that any requested name is deceptive, misleading, vague, inappropriate, or duplicative, it must notify the applicant that the requested name is prohibited for use by the applicant. An applicant is required to provide at least one suitable name or the amendment will be denied by the presiding officer.
- (B) Change the geographic scope of a COA or an SP-COA.
- (C) Sell, transfer, assign, or lease a controlling interest in the COA or SPCOA or sell, transfer or lease a controlling interest in the entity holding the COA or the SPCOA. An application for this type of amendment must:
- (i) be filed at least 60 days prior to the occurrence of the transaction;
 - (ii) be jointly filed by the transferor and transferee;
 - (iii) comply with the requirements for certification;

and

- (iv) comply with applicable commission rules.
- (D) Change of type of provider from resale-only, facilities-based only or data-only on a SPCOA certificate.
- (E) Discontinuation of service and relinquishment of certificate, or discontinuation of an optional service by a deregulated company holding a certificate of operating authority or an exempt carrier.
- (i) A deregulated company holding a certificate of operating authority or an exempt carrier must provide the information in subclauses (I)-(III) of this clause for the discontinuation of service and relinquishment of its certificate. The requirements for the discontinuation of optional services do not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier.
- (I) Certification that the carrier will send customers whose service is being discontinued a notification letter providing a minimum of 61 days of notice of termination of service and clearly stating the date of termination of service;
- $(I\!I)$ A statement regarding the disposition of customer credits and deposits; and
- (III) Certification that the carrier will comply with §26.24 of this title (relating to Credit Requirements and Deposits).
- (ii) A carrier that does not meet the criteria of clause (i) of this subparagraph must comply with subsections (m) and (n) of this section to discontinue service, relinquish a certificate, or discontinue an optional service.
- (2) If the application to amend the COA or SPCOA certificate is for a corporate restructuring, a change in internal ownership, or an internal change in controlling interest, the applicant may file an abbreviated amendment application, unless the ownership or controlling interest involves an uncertificated company, significant changes in

management personnel, or changes to the underlying financial qualifications of the certificate holder that were previously approved by the commission. If commission staff cannot determine continued compliance with the applicable substantive rules based on the information provided on the abbreviated amendment application, then a full amendment application must be filed by the applicant.

- (3) When a certificate holder acquires or merges with another certificate holder, other than a CCN holder, the acquiring entity must file a notice within 30 calendar days of the closing of the acquisition or merger in a project established by staff. Staff will have ten working days to review the notice and determine whether a full amendment application will be required. If staff has not filed, within ten working days, a request to docket the proceeding and determination that a full amendment application is required, a notice of approval may be issued. Notice to the commission must include but not be limited to:
 - (A) A joint filing statement;
- (B) Certificated entity names, certificate numbers, contact information, and statements of compliance; and
- (C) An affidavit from each certificated entity attesting to compliance with COA or SPCOA certification requirements, as applicable.
- (4) No later than five working days after filing an application or amendment with the commission, the applicant must provide a copy of the application or amendment to the Commission on State Emergency Communications and, in accordance with paragraph (3) of this subsection, notice to all affected 9-1-1 administrative entities. The applicant may provide the amendment application and notice via electronic mail.
- (5) If the application to amend requests any change other than a name change, the factors as set forth in subsections (c) and (d) of this section may be considered by the commission in determining whether to approve an amendment to a COA or SPCOA.
- (j) Non-use of certificates. Applicants must use their COA or SPCOA certificates expeditiously.
- (1) A certificate holder that has discontinued providing service for a period of 12 consecutive months after the date the certificate holder has initially begun providing service must file an affidavit on an annual basis attesting that it continues to possess the required technical and financial resources necessary to provide the level of service proposed in its initial application.
- (2) A certificate holder that has not provided service within 24 months of being granted the certificate by the commission may have its certificate suspended or revoked.
- (k) Renewal of certificates. Each COA and SPCOA holder must file with the commission a renewal of its certification once every ten years. The commission may, prior to the ten year renewal requirement, require each COA and SPCOA holder to file a renewal of its certification.
 - (1) The certification renewal must include:
 - (A) the certificate holder's name;
 - (B) the certificate holder's address; and
- (C) the most recent version of the annual report the commission requires the certificate holder to submit to comply with subsection (l)(1) of this section, to the extent required by PURA and this title.
- (2) A certification renewal must be filed on or before June 1, 2014, and every ten years thereafter.

- (3) COA or SPCOA holders will have an automatic extension of the filing deadline until October 1 of each reporting year to comply with paragraph (1) of this subsection. Commission staff will send three notices to each COA and SPCOA holder that has not submitted its certification renewal by June 1. The first notice will be sent on or before July 1, the second notice will be sent on or before August 1, and the third notice will be sent on or before September 1. Failure to send any of these notices by commission staff or failure to receive any of these notices by a COA or SPCOA holder must not affect the requirement to renew a certificate under this section by October 1 of the renewal period.
- (4) Failure to timely file the annual renewal required in paragraph (1) of this subsection on or before October 1 of each reporting year will automatically render the certificate of the COA or SPCOA invalid and therefore no longer in compliance with PURA §54.001.
- (5) COA or SPCOA holders that continue to provide regulated telecommunications services under an invalid COA or SPCOA may be subject to administrative penalties and other enforcement actions.
- (6) A certificate holder whose COA or SPCOA certificate is invalid may obtain a new certificate only by complying with the requirements prescribed for obtaining an original certificate.
 - (l) Reporting Requirements.
- (1) Each COA or SPCOA holder must provide and maintain accurate contact information via the annual report to the extent required by PURA and this title. At a minimum, the COA or SPCOA holder must maintain a current regulatory contact person, complaint contact person, primary and secondary emergency contact, operation and policy migration contact, business physical and mailing address, primary business telephone number, toll-free customer service number, and primary email address. The COA or SPCOA holder must submit the required information in the manner established by the commission.
- (2) The applicable annual report is due on or before April 30 of each calendar year. The COA or SPCOA holder must electronically submit the required information in a manner established by the commission.
- (3) When terminating or disconnecting service to another CTU, a COA or an SPCOA holder must file a copy of the termination or disconnection notice with the commission not later than two working days after the notice is sent to the CTU. The service termination or disconnection notice must be filed in a project established for that purpose.
- (4) COA and SPCOA holders must file a notice of the initiation of a bankruptcy in a project number established for that purpose. The notice must be filed not later than five working days after the filing of the bankruptcy petition. The notice of bankruptcy must also include, at a minimum, the following information:
- (A) The name of the certificated company that is the subject of the bankruptcy petition, the date and state in which bankruptcy petition was filed, type of bankruptcy such as Chapter 7, 11, or 13, and whether the bankruptcy is voluntary or involuntary, the bankruptcy case number; and
- (B) The number of affected customers, the type of service provided to the affected customers, and the name of each provider of last resort associated with the affected customers.
 - (5) Reports.
- (A) A certificate holder must file all reports to the extent required by PURA and this title, including §26.51 of this title (relating

- to Reliability of Operations of Telecommunications Providers); §26.76 of this title (relating to Gross Receipts Assessment Report); §26.80 of this title (relating to Annual Report on Historically Underutilized Businesses); §26.85 of this title (relating to Report of Workforce Diversity and Other Business Practices); §26.89 of this title (relating to Nondominant Carriers' Obligations Regarding Information on Rates and Services); §26.465 of this title (relating to Methodology for Counting Access Lines and Reporting Requirements for Certified Telecommunications Providers); and §26.467 of this title (relating to Rates, Allocation, Compensation, Adjustments and Reporting).
- (B) An amendment for certification must include a copy of the applicant's most recent tariff that has been approved by the commission in accordance with §26.207 of this title (relating to Form and Filing of Tariffs), §26.208 of this title (relating to General Tariff Requirements), and other commission rules as applicable or specified by those provisions. A tariff that has not been approved but is currently under review by the commission may be used to satisfy this requirement.
- (i) A control number for the project associated with the applicant's most recently approved tariff or tariff that is currently under review by the commission may be provided as an alternative to providing a copy.
- (ii) An entity subject to §26.89 of this title (Relating to Nondominant Carriers' Obligations Regarding Information on Rates and Services) may, but is not required to, comply with this paragraph.
- (m) Standards for cessation of operations and relinquishment of certification. A COA or SPCOA holder may cease operations in the state only if authorized by the commission in accordance with this subsection. A COA or SPCOA holder that ceases operations and relinquishes its certification must comply with PURA §54.253. This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier.
- (1) Before the certificate holder ceases operations, it must give notice of the intended action to the commission, each affected customer, the Commission on State Emergency Communications (CSEC), each affected 9-1-1 administrative entity, the Office of Public Utility Counsel (OPUC), each wholesale provider of telecommunications facilities or services from which the certificate holder purchased facilities or services, the Texas Comptroller of Public Accounts, the Texas Secretary of State and the administrator of the Texas Universal Service Fund.
- (A) The notification letter must clearly state the intent of the certificate holder to cease providing service.
- $\ensuremath{(B)}$ The notification letter must provide each customer a minimum of 61 days of notice of termination of service, and the date of the termination of service must be clearly stated in the notification letter.
- (C) The notification letter must inform each customer of the carrier of last resort or make other arrangements to provide service as approved by each customer.
- (2) A COA or SPCOA holder that intends to cease operations must file with the commission an application to cease operations and relinquish its certificate, and provide a copy of the application to CSEC. The application must provide the following information:
- $\qquad \qquad (A) \quad \text{Name, address, and phone number of the certificate holder;} \\$
- (B) COA or SPCOA certificate number being relinquished;

- (C) The commission control number in which the COA or SPCOA was granted;
- (D) A description of the areas in which service will be discontinued and whether basic local telecommunications service is available from other certificate holders in these areas;
- (E) A description of any contractual arrangements with customers that will not be honored, as a consequence of the cessation of operations; and
- (F) A statement regarding the disposition of customer credits and deposits, and a sworn statement stating the authority to relinquish certification, that proper notice of the relinquishment has been provided to all customers, and that the information provided in the application is true and correct.
- (3) All customer deposits and credits must be returned within 60 days of notification to cease operations and relinquish certification.
- (4) Any switchover fees that will be charged to affected customers as a consequence of the cessation of operations must be paid by the certificate holder relinquishing the certificate.
- (5) Commission approval of the cessation of operations does not relieve the COA or SPCOA of obligations to its customers under contract or other applicable law.
- (n) Standards for discontinuing optional services. A COA or SPCOA holder discontinuing an optional service must comply with PURA §54.253. This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier.
- (1) The COA or SPCOA holder must file an application with the commission to discontinue optional services, which must provide the following information:
- (A) Name, address, and phone number of the certificate holder;
 - (B) COA or SPCOA certificate number being amended;
- (C) The commission control number in which the COA or SPCOA was granted;
- (D) A description of the optional services that will be discontinued and whether such services are available from other certificate holders in the areas served by the certificate holder;
- (E) A description of any contractual arrangements with customers that will not be honored, as a consequence of the discontinuation of optional services; and
- (F) A sworn statement stating the authority to discontinue service options, that proper notice of the discontinuation of service has been provided to all customers, and that the information provided in the amended application is true and correct.
- (2) Notification to each customer receiving optional services is required, and must comply with the following requirements:
- (A) The notification letter must clearly state the intent of the certificate holder to cease an optional service and a copy of the letter must be provided to the commission and OPUC.
- (B) The notification letter must give customers a minimum of 61 days of notice of the discontinuation of optional services.
- (3) All customer deposits and credits associated with a discontinued optional service must be returned within 30 days of the discontinuation.

- (4) The certificate holder must maintain the optional services until it has obtained commission authorization to cease the optional services.
- (5) If the amendment application requests any change other than a name change, the factors as set forth in subsections (c) and (d) of this section may be considered by the commission in determining whether to approve an amendment to a COA or an SPCOA.
- (o) Revocation or suspension. A certificate granted in accordance with this section is subject to amendment, suspension, or revocation by the commission for violation of PURA or commission rules or if the commission determines that holder of the certificate does not meet the requirements under this section to the extent required by PURA and this title. A suspension of a COA or an SPCOA certificate requires the cessation of all activities associated with obtaining new customers in the state of Texas for a product or service that require a COA or an SPCOA. A revocation of a COA or SPCOA certificate requires the cessation of activities in the state of Texas that require a COA or an SP-COA in accordance with commission order. The commission may also impose an administrative penalty on a person for a violation of PURA or commission substantive rules. Commission Staff or any affected person may bring a complaint seeking to amend, suspend, or revoke a COA or an SPCOA certificate. Grounds for initiating an investigation that may result in the suspension or revocation include the following:
- (1) Non-use of approved certificate for a period of 24 months, without re-qualification prior to the expiration of the 24-month period;
- (2) Providing false or misleading information to the commission;
- (3) Failure to meet financial obligations on a timely basis, or the inability to obtain or maintain the financial resources needed to provide adequate service;
- (4) Violation of any state law applicable to the certificate holder that affects the certificate holders' ability to provide telecommunications services;
- (5) Failure to meet commission reporting requirements to the extent required by PURA and this title;
- (6) Engaging in fraudulent, unfair, misleading, deceptive, or anti-competitive practices or unlawful discrimination in providing telecommunications service:
- (7) Switching, or causing a customer's telecommunications service to be switched, without first obtaining the customer's permission;
- (8) Billing an unauthorized charge, or causing an unauthorized charge to be billed, to a customer's telecommunications service bill;
- (9) Failure to maintain financial resources in accordance with subsection (f)(1) of this section;
- (10) A pattern of not responding to commission inquiries or customer complaints in a timely fashion;
- (11) Suspension or revocation of a registration, certification, or license by any state or federal authority;
- (12) Conviction of a felony by the certificate holder, a person controlling the certificate holder, or principal employed by the certificate holder, or any crime involving theft, fraud, or deceit related to the certificate holder's service:
- (13) Failure to serve as a provider of last resort if required to do so by the commission;

- (14) Failure to provide required services to customers under the federal or Texas Universal Service Fund:
- (15) Failure to comply with the rules of the federal or Texas Universal Service Fund; and
- (16) Violations of PURA or any commission rule or order applicable to the certificate holder.

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 F. REGULATION OF TELECOMMUNICATIONS SERVICE

16 TAC §§26.123, 26.127, 26.128, 26.130

The amendments are adopted generally under PURA §14.002, which provides the commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §52.001(b)(1) which requires that commission rules, policies and principles be formulated and applied to protect the public interest; and PURA §52.002 which grants the commission exclusive original jurisdiction over the business and property of a telecommunications utility in the State of Texas.

Cross reference to statutes: Public Utility Regulatory Act §§14.002; 12.252, 14.052, 15.021-15.0233, 15.051, 16.051, 17.001, 17.003,17.004, 17.052(3), 17.102, 17.151-17.158, 51.001(g), 51.004, 52.001(b)(1), 52.002, 52.007, 52.051, 52.053, 52.054, 52.058, 52.0583(b), 52.0584, 52.059, 52.154, 52.207, 52.251, 52.256, 53.101-53.113, 54.101-54.105, 54.151-54.159, 54.251, 54.259, 54.260, 54.261, 55.001, 55.002, 55.008, 55.015, 55.024, 55.201-55.204, 55.253, 55.301-55.308, 56.001, 56.002, 56.023, 56.024, 56.032, 56.156, 58.024, 58.051, 58.051-58.063,58.061, 59.024, 60.021, 60.022, 60.023, 60.122, 60.124, 60.125, 64.001, 64.004, 64.051, 64.052, 64.053, 64.101-64.102, 64.151-64.158, 65.002, 65.004, 65.102; Texas Business and Commerce Code §304.055; and Texas Government Code §2001.039.

- §26.130. Selection of Telecommunications Utilities.
 - (a) Purpose and Application.
- (1) Purpose. The provisions of this section are intended to ensure that all customers in this state are protected from an unauthorized change in a customer's local or long-distance telecommunications utility.
- (2) Application. This section, including any references in this section to requirements in 47 Code of Federal Regulations (C.F.R.) Subpart K (entitled "Changing Long Distance Service"), applies to a "telecommunications utility," as that term is defined in §26.5 of this title

- (relating to Definitions). This section does not apply to an unauthorized charge unrelated to a change in preferred telecommunications utility. Requirements related to proper authorization for a billing charge by a telecommunication utility are addressed by §26.32 of this title (relating to Protection Against Unauthorized Billing Charges ("Cramming")).
- (b) Definitions. The following words and terms when used in this section have the following meanings unless the context indicates otherwise:
- (1) Authorized telecommunications utility--Any telecommunications utility that submits a change request, after obtaining customer authorization with verification, in accordance with the requirements of this section.
- (2) Customer--Any person, including the person's spouse, in whose name telephone service is billed, including individuals, governmental units at all levels of government, corporate entities, and any other entity with legal capacity to request a change in local service or telecommunications utilities.
- (3) Executing telecommunications utility--Any telecommunications utility that effects a request that a customer's preferred telecommunications utility be changed. A telecommunications utility may be treated as an executing telecommunications utility, however, if it is responsible for any unreasonable delays in the execution of telecommunications utility changes or for the execution of unauthorized telecommunications utility changes, including fraudulent authorizations.
- (4) Submitting telecommunications utility--Any telecommunications utility that requests on behalf of a customer that the customer's preferred telecommunications utility be changed.
- (5) Unauthorized telecommunications utility--Any telecommunications utility that submits a change request that is not in accordance with the requirements of this section.
 - (c) Changes in preferred telecommunications utility.
- (1) Changes by a telecommunications utility. A telecommunications utility is prohibited from submitting or executing a change on the behalf of a customer in the customer's selection of a provider of telecommunications service except in accordance with this section. Before a change order is processed by the executing telecommunications utility, the submitting telecommunications utility must obtain authorization from the customer that such change is desired for each affected telephone line and ensure that verification of the authorization is obtained in accordance with 47 C.F.R. Subpart K. In the case of a change by written solicitation, the submitting telecommunications utility must obtain verification as specified in 47 C.F.R. Subpart K, and subsection (d) of this section. A change order must be verified by one of the following methods:
- (A) Written or electronically signed authorization from the customer in a form that meets the requirements of subsection (d) of this section. A customer must be provided the option of using another authorization method as an alternative to an electronically signed authorization.
- (B) Electronic authorization placed from the telephone number which is the subject of the change order, except in exchanges where automatic recording of the automatic number identification (ANI) from the local switching system is not technically possible. To verify the electronic authorization, the submitting telecommunications utility must:
- (i) ensure that the electronic authorization confirms the information described in subsection (d)(3) of this section; and

- (ii) establish one or more toll-free telephone numbers exclusively for the purpose of verifying the change so that a customer calling toll-free number will reach a voice response unit or similar mechanism that records the required information regarding the change and automatically records the ANI from the local switching system.
- (C) Oral authorization by the customer for the change that meets the following requirements:
- (i) The customer's authorization must be given to an appropriately qualified and independent third party that obtains appropriate verification data including, at a minimum, the customer's month and year of birth, the customer's month and day of birth, mother's maiden name, or the last four digits of the customer's social security number. A corporation or partnership may provide its federal Employer Identification Number, or last six digits thereof, and the name and job title of the authorized representative for the corporation or partnership to satisfy this subparagraph.
- (ii) The entirety of the customer's authorization and the customer's verification of authorization must be electronically recorded on audio tape, a wave sound file, or other recording device that is compatible with the commission's equipment.
- (iii) The recordings must be dated and include clear and conspicuous confirmation that the customer authorized the change in telephone service provider.
- (iv) The third party verification must elicit, at a minimum, the identity of the customer, confirmation that the person on the call is authorized to make the change in service, the name of each telecommunications utility affected by the change but not including the name of the displaced carrier, each telephone number to be switched, and the type of service involved. The third party verifier must not market or advertise the telecommunications utility's services by providing additional information, including information regarding preferred carrier freeze procedures.
- (v) The third party verification must be conducted in the same language used in the sales transaction.
- (vi) Automated systems must provide customers the option of speaking with a live person at any time during the call.
- (vii) A telecommunications utility or its sales representative initiating a three-way call or a call through an automated verification system must drop off the call once a three-way connection with the third party verifier has been established unless:
- (1) the telecommunications utility files sworn written certification with the commission that the sales representative is unable to drop off the sales call after initiating a third party verification. Such certification should provide sufficient information as to each reason for the inability of the sales agent to drop off the line after the third party verification is initiated. A carrier is exempt from this requirement for a period of two years from the date the carrier's certification was filed with the commission;
- (II) a telecommunications utility that seeks to extend the exemption provided under subclause (I) of this clause must, before the end of the two-year period, and every two years thereafter, recertify to the commission the utility's continued inability to comply with this clause.
- (viii) The third party verification must immediately terminate if the sales agent of a telecommunications utility that has filed a sworn written certification in accordance with clause (vii) of this subparagraph responds to a customer inquiry or speaks after third party verification has begun.

- (ix) The independent third party must:
- (I) not be owned, managed, directed or controlled by the telecommunications utility or the telecommunications utility's marketing agent;
- (II) not have financial incentive to confirm change orders; and
- (III) operate in a location physically separate from the telecommunications utility and the telecommunications utility's marketing agent.
- (2) Changes by customer request directly to the local exchange company. If a customer requests a change in the customer's current preferred telecommunications utility by contacting the local exchange company directly, and that local exchange company is not the chosen carrier or affiliate of the chosen carrier, the verification requirements in paragraph (1) of this subsection do not apply. The customer's current local exchange company must maintain a record of the customer's request for 24 months.
- (d) Letters of Agency (LOA). A written or electronically signed authorization from a customer for a change of telecommunications utility must use a letter of agency (LOA) as specified in this subsection:
- (1) The LOA must be a separate or easily separable document or located on a separate screen or webpage containing only the authorization and verification language described in paragraph (3) of this subsection for the sole purpose of authorizing the telecommunications utility to initiate a telecommunications utility change. The LOA must be fully completed, signed and dated by the customer requesting the telecommunications utility change. An LOA submitted with an electronically signed authorization must include the consumer disclosures required by the Electronic Signatures in Global and National Commerce Act 47 United States Code §7001(c).
- (2) The LOA must not be combined with inducements of any kind on the same document, screen, or webpage, except that the LOA may be combined with a check as specified in subparagraphs (A) and (B) of this paragraph:
- (A) An LOA combined with a check may contain only the language set out in paragraph (3) of this subsection, and the necessary information to make the check a negotiable instrument.
- (B) A check combined with an LOA must not contain any promotional language or material but must contain on the front and back of the check in easily readable, bold-faced type near the signature line, a notice similar in content to the following: "By signing this check, I am authorizing (name of the telecommunications utility) to be my new telephone service provider for (the type of service that will be provided)."

(3) LOA language.

- (A) At a minimum, the LOA must be clearly legible, printed in a text not smaller than 12-point type, and must contain clear and unambiguous language that includes and confirms:
- (i) the customer's billing name and address and each telephone number to be covered by the preferred telecommunications utility change order;
- (ii) the decision to change preferred carrier from the current telecommunications utility to the new telecommunications utility;

- (iii) the name of the new telecommunications utility and that the customer designates the new telecommunications utility to act as the customer's agent for the preferred carrier change;
- (iv) that the customer understands that only one preferred telecommunications utility may be designated for each type of service, such as local, intraLATA, and interLATA service, for each telephone number. The LOA must contain separate statements regarding those choices, although a separate LOA for each service is not required;
- (v) that the customer understands that any preferred carrier selection the customer chooses may involve a one-time charge to the customer for changing the customer's preferred telecommunications utility and that the customer may consult with the carrier as to whether a fee applies to the change; and
- (vi) appropriate verification data, including, at a minimum, the customer's month and year of birth, the customer's month and day of birth, mother's maiden name, or the last four digits of the customer's social security number. A corporation or partnership may provide a federal Employer Identification Number, or last six digits thereof, and the name and job title of the authorized representative of the corporation or partnership to satisfy the requirements of this subparagraph.
- (B) Any telecommunications utility designated in a LOA as the customer's preferred and authorized telecommunications utility must be the carrier directly setting rates for the customer.
- (C) The following LOA form meets the requirements of this subsection. Other versions may be used, but must comply with all of the requirements of this subsection. Figure: 16 TAC §26.130(d)(3)(C)
- (4) The LOA must not require or suggest that a customer take some action to retain the customer's current telecommunications utility.
- (5) If any portion of an LOA is translated into another language, then all portions of the LOA must be translated into that language. Every LOA must be translated into the same language as promotional materials, oral descriptions or instructions provided with the LOA.
- (6) The submitting telecommunications utility must submit a change order on behalf of a customer within 60 days after obtaining a written or electronically signed LOA from the customer except LOAs relating to multi-line and/or multi-location business customers that have entered into negotiated agreements with a telecommunications utility to add presubscribed lines to their business locations during the course of a term agreement must be valid for the period specified in the term agreement.
 - (e) Notification of alleged unauthorized change.
- (1) When a customer informs an executing telecommunications utility of an alleged unauthorized telecommunications utility change, the executing telecommunications utility must immediately notify both the authorized and alleged unauthorized telecommunications utility of the incident.
- (2) Any telecommunications utility, executing, authorized, or alleged unauthorized, that is informed of an alleged unauthorized telecommunications utility change must direct the customer to contact the Public Utility Commission of Texas for resolution of the complaint.
- (3) The alleged unauthorized telecommunications utility must remove all unpaid charges pending a determination of whether an unauthorized change occurred.

- (4) The alleged unauthorized telecommunications utility may challenge a complainant's allegation of an unauthorized change by notifying the complainant in writing to file a complaint with the Public Utility Commission of Texas within 30 days after the customer's assertion of an unauthorized switch to the alleged unauthorized telecommunications utility. If the complainant does not file a complaint within 30 days, the unpaid charges may be reinstated.
- (5) The alleged unauthorized telecommunications utility must take all actions within its control to facilitate the customer's prompt return to the original telecommunications utility within three working days of the customer's request.
- (6) The alleged unauthorized telecommunications utility must also be liable to the customer for any charges assessed to change the customer from the authorized telecommunications utility to the alleged unauthorized telecommunications utility in addition to charges assessed for returning the customer to the authorized telecommunications utility.

(f) Unauthorized changes.

- (1) Responsibilities of the telecommunications utility that initiated the change. If a customer's telecommunications utility is changed without verification consistent with this section, the telecommunications utility that initiated the unauthorized change must:
- (A) take all actions within its control to facilitate the customer's prompt return to the original telecommunications utility within three working days of the customer's request;
- (B) pay all charges associated with returning the customer to the original telecommunications utility within five working days of the customer's request;
- (C) provide all billing records to the original telecommunications utility related to the unauthorized change of services within ten working days of the customer's request;
- (D) pay, within 30 working days of the customer's request, the original telecommunications utility any amount paid to it by the customer that would have been paid to the original telecommunications utility if the unauthorized change had not occurred;
- (E) return to the customer within 30 working days of the customer's request:
- (i) any amount paid by the customer for charges incurred during the first 30 calendar days after the date of an unauthorized change; and
- (ii) any amount paid by the customer after the first 30 calendar days in excess of the charges that would have been charged if the unauthorized change had not occurred;
 - (F) remove all unpaid charges; and
- (G) pay the original telecommunications utility for any billing and collection expenses incurred in collecting charges from the unauthorized telecommunications utility.
- (2) Responsibilities of the original telecommunications utility. The original telecommunications utility must:
- (A) inform the telecommunications utility that initiated the unauthorized change of the amount that would have been charged for identical services if the unauthorized change had not occurred, within ten working days of the receipt of the billing records required under paragraph (1)(C) of this subsection;
- (B) where possible, provide to the customer all benefits associated with the service, such as frequent flyer miles, that would

- have been awarded had the unauthorized change not occurred, upon receiving payment for service provided during the unauthorized change;
- (C) maintain a record of customers that experienced an unauthorized change in telecommunications utilities that contains:
- (i) the name of the telecommunications utility that initiated the unauthorized change;
- (ii) each telephone number affected by the unauthorized change;
- (iii) the date the customer asked the telecommunications utility that made the unauthorized change to return the customer to the original telecommunications utility; and
- (iv) the date the customer was returned to the original telecommunications utility; and
- (D) not bill the customer for any charges incurred during the first 30 calendar days after the unauthorized change, but may bill the customer for unpaid charges incurred after the first 30 calendar days based on what it would have charged if the unauthorized change had not occurred.
 - (g) Notice of customer rights.
- (1) Each telecommunications utility must make available to its customers the notice set out in paragraph (3) of this subsection.
- (2) Each notice provided under paragraph (5)(A) of this subsection must contain the name, address and telephone numbers where a customer can contact the telecommunications utility.
- (3) Customer notice. The notice must state: Figure: 16 TAC \$26.130(g)(3)
- (4) The customer notice requirements in paragraph (3) of this subsection may be combined with the notice requirements of §26.32(g)(1) and (2) of this title (relating to Protection Against Unauthorized Billing Charges ("Cramming")) if all of the information required by each is in the combined notice.
 - (5) Language, distribution and timing of notice.
- (A) Telecommunications utilities must send the notice to new customers at the time service is initiated, and upon customer request.
- (B) Each telecommunications utility must print the notice in the white pages of its telephone directories, beginning with any directories published 30 calendar days after the effective date of this section and thereafter. The notice that appears in the directory is not required to list the information contained in paragraph (2) of this subsection.
- (C) The notice must be in plain English and Spanish as necessary to adequately inform the customer. The commission may exempt a telecommunications utility from the Spanish requirement if the telecommunications utility shows that 10% or fewer of its customers are exclusively Spanish-speaking, and that the telecommunications utility will notify all customers through a statement in plain English and Spanish that the information is available in Spanish by mail from the telecommunications utility or at the utility's offices.
 - (h) Compliance and enforcement.
- (1) Records of customer verifications and unauthorized changes.
- (A) The submitting telecommunications utility must maintain records of all change orders, including verifications of

customer authorizations, for a period of 24 months and must provide such records to the customer, if the customer challenges the change.

- (B) A telecommunications utility must provide a copy of records maintained under the requirements of subsections (c), (d), and (f)(2)(C) of this section to the commission staff 21 calendar days from the date the records were requested by commission staff.
- (C) The proof of authorization and verification of authorization as required from the alleged unauthorized telecommunications utility in accordance with subparagraph (B) of this paragraph and paragraph (2)(A) of subsection (I) must establish a valid authorized telecommunications utility change as defined by subsections (c) and (d) of this section. Failure by the alleged unauthorized telecommunications utility to timely submit a response that addresses the complainant's assertions, relating to an unauthorized change, within the time specified in subparagraph (B) of this paragraph or paragraph (2) of subsection (I) establishes a violation of this section.
- (2) Administrative penalties. If the commission finds that a telecommunications utility is in violation of this section, the commission will order the utility to take corrective action as necessary, and the utility may be subject to administrative penalties in accordance with Public Utility Regulatory Act (PURA) §15.023 and §15.024.
- (3) Evidence. Evidence supplied by the customer that meets the standards set out in Texas Government Code §2001.081, including one or more affidavits from a customer challenging the change, is admissible in a proceeding to enforce the provisions of this section.
- (4) Certificate revocation. The commission may suspend, restrict, deny, or revoke the registration or certificate, including an amended certificate, of a telecommunications utility, denying the telecommunications utility the right to provide service in this state, in accordance with the provisions of either PURA §17.052 or PURA §55.306.
- (5) Coordination with the office of the attorney general. The commission will coordinate its enforcement efforts regarding the prosecution of fraudulent, unfair, misleading, deceptive, and anticompetitive business practices with the Office of the Attorney General to ensure consistent treatment of specific alleged violations.
- (i) Notice of identity of a customer's telecommunications utility. Any bill for telecommunications services must contain the following information in clear, bold type in each bill sent to a customer. Where charges for multiple lines are included in a single bill, this information must appear on the first page of the bill if possible, or be displayed prominently elsewhere in the bill:
- (1) The name and telephone number of the telecommunications utility providing local exchange service if the bill is for local exchange service.
- (2) The name and telephone number of the primary interexchange carrier if the bill is for interexchange service.
- (3) The name and telephone number of the local exchange and interexchange providers if the local exchange provider is billing for the interexchange carrier. The commission may, for good cause, waive this requirement in exchanges served by incumbent local exchange companies serving 31,000 access lines or less.
- (4) A statement that customers who believe they have been slammed may contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, (512) 936-7120 or in Texas (toll-free) 1 (888) 782-8477, e-mail address: consumer@puc.texas.gov. Hearing and speech-impaired individuals may contact the commission through Relay Texas at 1-800-735-2989.

This statement may be combined with the statement requirements of §26.32(g)(4) of this title if all of the information required by each is in the combined statement.

- (j) Preferred telecommunications utility freezes.
- (1) Purpose. A preferred telecommunications utility freeze ("freeze") prevents a change in a customer's preferred telecommunications utility selection unless the customer consents to the local exchange company that implemented the freeze.
- (2) Nondiscrimination. All local exchange companies that offer freezes must offer freezes on a nondiscriminatory basis to all customers regardless of the customer's telecommunications utility selection except for local telephone service.
- (3) Type of service. Customer information on freezes must clearly distinguish between intraLATA and interLATA telecommunications services. The local exchange company offering a freeze must obtain separate authorization for each service for which a freeze is requested.
- (4) Freeze information. All information provided by a telecommunications utility about freezes have the sole purpose of educating customers and providing information in a neutral way to allow the customer to make an informed decision, and must not market or induce the customer to request a freeze. The freeze information provided to customers must include:
- (A) a clear, neutral explanation of what a freeze is and what services are subject to a freeze;
- (B) instructions on lifting a freeze that make it clear that these steps are in addition to required verification for a change in preferred telecommunications utility;
- (C) an explanation that the customer will be unable to make a change in telecommunications utility selection unless the customer lifts the freeze, including information describing the specific procedures by which the freeze may be lifted; and
- (D) a statement that there is no charge to the customer to impose or lift a freeze.
- (5) Freeze verification. A local exchange company must not implement a freeze unless the customer's request is verified using one of the following procedures:
- (A) A written and signed or electronically signed authorization that meets the requirements of paragraph (6) of this subsection.
- (B) An electronic authorization placed from the telephone number on which a freeze is to be imposed. The electronic authorization must confirm appropriate verification data including the customer's month and year of birth, the customer's month and day of birth, mother's maiden name, or the last four digits of the customer's social security number and the information required in paragraph (6)(G) of this subsection. A corporation or partnership may provide a federal Employer Identification Number, or last six digits thereof, and the name and job title of the authorized representative of the corporation or partnership to satisfy the requirements of this subparagraph. The local exchange company must establish one or more toll-free telephone numbers exclusively for this purpose. Calls to the number will connect the customer to a voice response unit or similar mechanism that records the information including the originating ANI.
- (C) An appropriately qualified independent third party obtains the customer's oral authorization to submit the freeze that includes and confirms appropriate verification data as required by subparagraph (B) of this paragraph. This must include clear and conspic-

uous confirmation that the customer authorized a freeze. The independent third party must:

- (i) not be owned, managed, or directly controlled by the local exchange company or the local exchange company's marketing agent;
- (ii) not have financial incentive to confirm freeze requests; and
- (iii) operate in a location physically separate from the local exchange company and its marketing agent.
- (D) Any other method approved by Federal Communications Commission rule or order granting a waiver.
- (6) Written authorization. A written freeze authorization must:
- (A) be a separate or easily separable document with the sole purpose of imposing a freeze;
 - (B) be signed and dated by the customer;
 - (C) not be combined with inducements of any kind;
- (D) be completely translated into another language if any portion is translated;
- (E) be translated into the same language as any educational materials, oral descriptions, or instructions provided with the written freeze authorization;
- (F) be printed with readable type of sufficient size to be clearly legible; and
- (G) contain clear and unambiguous language that confirms:
- (i) the customer's name, address, and each telephone number to be covered by the freeze;
- (ii) the decision to impose a freeze on each telephone number and the particular service with a separate statement for each service to be frozen;
- (iii) that the customer understands that a change in telecommunications utility cannot be made unless the customer lifts the freeze; and
- (iv) that the customer understands that there is no charge for imposing or lifting a freeze.
- (7) Lifting freezes. A local exchange company that executes a freeze request must allow customers to lift a freeze by:
- (A) written and signed or electronically signed authorization stating the customer's intent to lift a freeze;
- (B) oral authorization stating an intent to lift a freeze confirmed by the local exchange company with appropriate confirmation verification data as indicated in paragraph (5)(B) of this subsection;
- (C) a three-way conference call with the local exchange company, the telecommunications utility that will provide the service, and the customer with appropriate confirmation verification data from the customer as indicated in paragraph (5)(B) of this subsection; or
- (D) any other method approved by Federal Communications Commission rule or order granting a waiver.
- (8) No customer charge. The customer must not be charged for imposing or lifting a freeze.
- (9) Local service freeze prohibition. A local exchange company must not impose a freeze on local telephone service.

- (10) Marketing prohibition. A local exchange company must not initiate any marketing of its services during the process of implementing or lifting a freeze.
- (11) Freeze records retention. A local exchange company must maintain records of all freezes and verifications for a period of 24 months and must provide these records to customers and to the commission staff upon request.
- (12) Suggested freeze information language. A telecommunications utility that informs a customer about freezes may use the following language. Other versions may be used, but must comply with all of the requirements of paragraph (4) of this subsection.
- (13) Suggested freeze authorization form. The following form is recommended for written authorization from a customer requesting a freeze. Other versions may be used, but must comply with all of the requirements of paragraph (6) of this subsection. Figure: 16 TAC §26.130(j)(13) (No change.)
- (14) Suggested freeze lift form. The following form is recommended for written authorization to lift a freeze. Other versions may be used, but must comply with all of the requirements of paragraph (7) of this subsection.

Figure: 16 TAC §26.130(j)(14) (No change.)

- (k) Transferring customers from one telecommunications utility to another.
- (1) A telecommunications utility may acquire, through a sale or transfer, either part or all of another telecommunications utility's customer base without obtaining each customer's authorization and verification in accordance with subsection (c)(1) of this section, provided that the acquiring utility complies with this section. Any telecommunications utility that will acquire customers from another telecommunications utility that will no longer provide service due to acquisition, merger, bankruptcy or any other reason, must provide notice to each affected customer. The notice must be in a billing insert or separate mailing at least 30 calendar days prior to the transfer of any customer. If legal or regulatory constraints prevent sending the notice at least 30 calendar days prior to the transfer, the notice must be sent promptly after all legal and regulatory conditions are met. The notice must:
- (A) identify the current and acquiring telecommunications utilities;
- (B) explain why the customer will not be able to remain with the current telecommunications utility;
- (C) explain that the customer has a choice of selecting a service provider and may select the acquiring telecommunications utility or any other telecommunications utility and that the customer may incur a charge if the customer selects another telecommunications utility;
- (D) explain that if the customer wants another telecommunications utility, the customer should contact that telecommunications utility or the local telephone company;
- (E) explain the time frame for the customer to make a selection and what will happen if the customer makes no selection;
- (F) identify the effective date that customers will be transferred to the acquiring telecommunications utility;
- (G) provide the rates and conditions of service of the acquiring telecommunications utility and how the customer will be notified of any changes;
- (H) explain that the customer will not incur any charges associated with the transfer;

- (I) explain whether the acquiring carrier will be responsible for handling complaints against the transferring carrier; and
- (J) provide a toll-free telephone number for a customer to call for additional information.
- (2) The acquiring telecommunications utility must provide the commission with a copy of the notice when it is sent to customers.
- (l) Complaints to the commission. A customer may file a complaint with the commission's CPD against a telecommunications utility for any reasons related to the provisions of this section.
- (1) Customer complaint information. CPD may request, at a minimum, the following information:
- $\qquad \qquad (A) \quad \text{the customer's name, address, and telephone number;} \\$
 - (B) a brief description of the facts of the complaint;
- (C) a copy of the customer's and spouse's legal signature; and
- (D) a copy of the most recent phone bill and any prior phone bill that shows the switch in carrier.
- (2) Telecommunications utility's response to complaint. After review of a customer's complaint, CPD must forward the complaint to the telecommunications utility. The telecommunications utility must respond to CPD within 21 calendar days after CPD forwards the complaint. The telecommunications utility's response must include the following:
- (A) all documentation related to the authorization and verification used to switch the customer's service; and
- (B) all corrective actions taken as required by subsection (f) of this section, if the switch in service was not verified in accordance with subsections (c) and (d) of this section.
- (3) CPD investigation. CPD must review all of the information related to the complaint and make a determination on whether or not the telecommunications utility complied with the requirements of this section. CPD must inform the complainant and the alleged unauthorized telecommunications utility of the results of the investigation and identify any additional corrective actions that may be required. CPD must also inform, if known, the authorized telecommunications utility if there was an unauthorized change in service.
- (m) Additional requirements for changes involving certain telecommunications utilities.
- (1) Definitions. The following words and terms, when used in this subsection, have the following meanings unless the context clearly indicates otherwise.
- (A) Local service provider (LSP)--the certified telecommunications utility chosen by a customer to provide local exchange service to that customer.
- (B) Old local service provider (old LSP)--The local service provider immediately preceding the change to a new local service provider.
- (C) New local service provider (new LSP)--The local service provider from which the customer requests new service.
- (D) Primary interexchange carrier (PIC)--the provider chosen by a customer to carry that customer's toll calls. For the purposes of this subsection, any reference to primary interexchange carrier refers to both interLATA and intraLATA toll carriers.

- (E) Old primary interexchange carrier (old PIC)--The primary interexchange carrier immediately preceding the change to a new primary interexchange carrier.
- (F) New primary interexchange carrier (new PIC)--The primary interexchange carrier from which the customer requests new service or continuing service after changing local service providers.
- (G) Change execution--means the date the LSP initially has knowledge of the PIC or LSP change in the switch.
- (2) Contents and delivery of notice required by paragraphs (3) and (4) of this subsection.
 - (A) Notice must contain at least:
 - (i) the effective date of the change in the switch;
 - (ii) the customer's billing name, address, and num-

ber; and

- $\mbox{\it (iii)} \quad \mbox{any other information necessary to implement the change.}$
- (B) If an LSP does not otherwise have the appropriate contact information for notifying a PIC, then the LSP's notification to the PIC must be deemed complete upon delivery of the notice to the PIC's address, facsimile number or e-mail address listed in the appropriate utility directory maintained by the commission.
- (3) Notification requirements for change in PIC only. The LSP must notify the old PIC and the new PIC of the PIC change within five working days of the change execution.
- (A) The new PIC must initiate billing the customer for presubscribed services within five working days after receipt of such notice.
- (B) The old PIC must discontinue billing the customer for presubscribed services within five working days after receipt of such notice.
 - (4) Notification requirements for change in LSP.
- (A) Requirement of the new LSP to notify the old LSP. Within five working days of the change execution, the new LSP must notify the old LSP of the change in the customer's LSP.
- (B) Requirement of the new LSP to notify the new PIC. Within five working days of the change execution, the new LSP must notify the new PIC of the customer's selection of such PIC as the customer's PIC.
- (C) Requirement of the old LSP to notify the old PIC. Within five working days of the old LSP's receipt of notice in accordance with to subparagraph (A) of this paragraph, the old LSP must notify the old PIC that the old LSP is no longer the customer's LSP.
- (5) Requirements of the new PIC to initiate billing customer. If the new PIC receives notice in accordance with paragraph (4)(B) of this subsection, within five working days after receipt of such notice, the new PIC must initiate billing the customer for presubscribed services.
- (6) Requirements of the old PIC to discontinue billing customer. If the old PIC receives notice in accordance with paragraph (4)(C) of this subsection that the old LSP is no longer the customer's LSP, the old PIC must discontinue billing the customer for presubscribed services within seven working days after receipt of such notice, unless the new LSP notifies the old PIC that it is the new PIC in accordance with paragraph (4)(B) of this subsection.

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 G. ADVANCED SERVICES 16 TAC §26.142

The repeal is adopted generally under PURA §14.002, which provides the commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §52.001(b)(1) which requires that commission rules, policies and principles be formulated and applied to protect the public interest; and PURA §52.002 which grants the commission exclusive original jurisdiction over the business and property of a telecommunications utility in the State of Texas.

Cross reference to statutes: Public Utility Regulatory Act §§14.002; 12.252, 14.052, 15.021- 15.0233, 15.051, 16.051, 17.001, 17.003,17.004, 17.052(3), 17.102, 17.151-17.158, 51.001(g), 51.004, 52.001(b)(1), 52.002, 52.007, 52.051, 52.053, 52.054, 52.058, 52.0583(b), 52.0584, 52.059, 52.154, 52.207, 52.251, 52.256, 53.101-53.113, 54.101-54.105, 54.151-54.159, 54.251, 54.259, 54.260, 54.261, 55.001, 55.002, 55.008, 55.015, 55.024, 55.201-55.204, 55.253, 55.301-55.308, 56.001, 56.002, 56.023, 56.024, 56.032, 56.156, 58.024, 58.051, 58.051-58.063,58.061, 59.024, 60.021, 60.022, 60.023, 60.122, 60.124, 60.125, 64.001, 64.004, 64.051, 64.052, 64.053, 64.101-64.102, 64.151-64.158, 65.002, 65.004, 65.102; Texas Business and Commerce Code §304.055; and Texas Government Code §2001.039.

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SUBCHAPTER I. ALTERNATIVE REGULATION

16 TAC §26.171, §26.175

The amendments are adopted generally under PURA §14.002, which provides the commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §52.001(b)(1) which requires that commission rules, policies and principles be formulated and applied to protect the public interest; and PURA §52.002 which grants the commission exclusive original jurisdiction over the business and property of a telecommunications utility in the State of Texas.

Cross reference to statutes: Public Utility Regulatory Act §§14.002; 12.252, 14.052, 15.021- 15.0233, 15.051, 16.051, 17.001, 17.003,17.004, 17.052(3), 17.102, 17.151-17.158, 51.001(g), 51.004, 52.001(b)(1), 52.002, 52.007, 52.051, 52.053, 52.054, 52.058, 52.0583(b), 52.0584, 52.059, 52.154, 52.207, 52.251, 52.256, 53.101-53.113, 54.101-54.105, 54.151-54.159, 54.251, 54.259, 54.260, 54.261, 55.001, 55.002, 55.008, 55.015, 55.024, 55.201-55.204, 55.253, 55.301-55.308, 56.001, 56.002, 56.023, 56.024, 56.032, 56.156, 58.024, 58.051, 58.051-58.063,58.061, 59.024, 60.021, 60.022, 60.023, 60.122, 60.124, 60.125, 64.001, 64.004, 64.051, 64.052, 64.053, 64.101-64.102, 64.151-64.158, 65.002, 65.004, 65.102; Texas Business and Commerce Code §304.055; and Texas Government Code §2001.039.

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SUBCHAPTER J. COSTS, RATES AND TARIFFS

16 TAC §§26.207 - 26.211, 26.214, 26.215, 26.217, 26.221, 26.224

The amendments and new rules are adopted generally under PURA §14.002, which provides the commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §52.001(b)(1) which requires that commission rules, policies and principles be formulated and applied to protect the public interest; and PURA §52.002 which grants the commission exclusive original jurisdiction over the business and property of a telecommunications utility in the State of Texas.

Cross reference to statutes: Public Utility Regulatory Act §§14.002; 12.252, 14.052, 15.021- 15.0233, 15.051, 16.051, 17.001, 17.003,17.004, 17.052(3), 17.102, 17.151-17.158, 51.001(g), 51.004, 52.001(b)(1), 52.002, 52.007, 52.051, 52.053, 52.054, 52.058, 52.0583(b), 52.0584, 52.059, 52.154, 52.207, 52.251, 52.256, 53.101-53.113, 54.101-54.105, 54.151-54.159, 54.251, 54.259, 54.260, 54.261, 55.001, 55.002, 55.008, 55.015, 55.024, 55.201-55.204, 55.253, 55.301-

55.308, 56.001, 56.002, 56.023, 56.024, 56.032, 56.156, 58.024, 58.051, 58.051-58.063,58.061, 59.024, 60.021, 60.022, 60.023, 60.122, 60.124, 60.125, 64.001, 64.004, 64.051, 64.052, 64.053, 64.101-64.102, 64.151-64.158, 65.002, 65.004, 65.102; Texas Business and Commerce Code §304.055; and Texas Government Code §2001.039.

§26.207. Form and Filing of Tariffs.

- (a) Application. Unless the context clearly indicates otherwise, in this section the term "utility" or "public utility" refers to a dominant carrier.
- (b) Purpose. This section establishes standards for the form, filing and review of a dominant certificated telecommunications utility's (DCTU's) tariff.
- (c) Effective tariff. A utility is prohibited from directly or indirectly demanding, charging, or collecting any rate or charge, or imposing any classifications, practices, rules, or regulations different from those prescribed in its currently effective tariff filed with and approved by the commission.

(d) Tariff required.

- (1) A public utility, or an affiliate of the public utility or a trade association on behalf of the public utility, must file with the commission a tariff showing each rate that is subject to the commission's jurisdiction and is in effect for a utility service, product, or commodity offered by the utility. A current or proposed tariff must:
- (A) include a cover letter that lists each rule that relates to or affects a rate of the utility, or a utility service, product, or commodity furnished by the utility;
- (B) be filed prior to or concurrently with an application for certification, including a certificate amendment, under §26.111 (relating to Certificate of Operating Authority (COA) and Service Provider Certificate of Operating Authority (SPCOA) Criteria); and
- (C) as applicable, comply with the requirements of this section and §26.208 of this title (relating to General Tariff Procedures), §26.209 of this title (relating to New and Experimental Services), or §26.211 of this title (relating to Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges).
- (2) A public utility must also file each subsequent tariff revision with the commission. Each revision must be accompanied by a cover page which contains a list of pages being revised, a statement describing each change, the effect of the change if it revises an existing rate, and a statement describing the impact on rates of the change for each customer class, if any. If a proposed tariff revision constitutes an increase in existing rates of a particular customer class, then the commission may require that notice be given.
- (3) A telecommunications utility, upon the issuance of a commission order determining that the telecommunications utility is a dominant carrier, must file a tariff complying with the requirements of this subsection. Such a tariff must be filed within the time specified in the commission order, or within 60 days in the absence of such a specification.
- (e) Filing of public utility tariff by affiliate or trade association. An affiliate of a public utility or trade association may file a tariff or tariff revision under this section or other applicable law, on behalf of a public utility.
- (1) For each filing, the public utility must authorize the affiliate of the nondominant carrier or trade association, via written affidavit filed with the commission, to file such information on its behalf.

- (2) The authorization specified by paragraph (1) of this subsection may be included in the filing by the affiliate of the public utility or trade association.
- (3) The filing by affiliate of the public utility or trade association must comply with the requirements of this section and other applicable law.
 - (f) Tariff filing requirements.
- (1) The front page of the tariff must include the name of the utility and location of its principal office and the type of service rendered.
- (2) Each rate schedule must clearly state the territory, city, county, or exchange where the rate schedule applies.
- (3) Tariff sheets must be numbered consecutively per schedule. Each sheet must show an effective date, a revision number, section number, sheet number, name of the utility, the name of the tariff, and title of the section in a consistent manner. Sheets issued under new numbers must be designated as original sheets. Sheets being revised must show the number of the revision, and the sheet numbers must be the same.
- (g) Composition of tariffs. A tariff must contain sections setting forth:
 - (1) a table of contents;
- (2) a preliminary statement containing a brief description of the utility's operations;
- (3) a list of the cities, exchanges, and counties in which service is provided;
 - (4) the rate schedules; and
- (5) the service rules and regulations, including forms of the service agreements.
- (h) Tariff filings in response to commission orders. A tariff filed in response to a commission order must include a transmittal letter affirming that the tariff is in compliance with the order, provide the control number, date of the order, a list of tariff sheets filed, and any other necessary information. The tariff sheets must comply with all other rules of this title and must include only the changes ordered. The effective date or wording of the tariffs must comply with the provisions of the order.
- (i) Symbols for changes. Each proposed tariff sheet must contain notations in the right-hand margin indicating each change made. Notations to be used are: (C) to denote a change in regulations; (D) to denote discontinued rates or regulations; (E) to denote the correction of an error made during a revision, such as the revision which resulted in the error must be one connected to some material contained in the tariff prior to the revision; (I) to denote a rate increase; (N) to denote a new rate or regulation; (R) to denote a rate reduction; and (T) to denote a change in text, but no change in rate or regulation. Each changed provision in the tariff must contain a vertical line in the right-hand margin of the page which clearly shows the exact number of lines being changed.
- (j) Availability of tariffs. Each utility must make available to the public electronically and at each of its business offices or designated sales offices within Texas, each tariff that is currently on file with the commission. The utility must assist persons seeking information on its tariffs and permit such persons the opportunity to examine any tariff upon request. The utility must also provide copies of each of its tariffs at a reasonable cost.

§26.208. General Tariff Procedures.

- (a) Application. This section establishes the process for commission review of a dominant certificated telecommunications utility (DCTU) tariff and tariff amendments. A DCTU must meet the requirements of this section to file a new tariff or amend an existing tariff to which this section applies, including changes to a rate or service, the types of service provided, jurisdiction or service area, or for the withdrawal of a service. For purposes of this section, the term "trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.
- (1) This section applies to a DCTU and to an affiliate of a DCTU or a trade association that elects to file or amend a tariff on a DCTU's behalf, and to each tariff filed by those entities in accordance with §26.207 of this title (relating to Form and Filing of Tariffs) and the following provisions, as applicable:
- (A) section 26.209 of this title (relating to New and Experimental Services) or §26.210 of this title (relating to Promotional Rates for Local Exchange Company Services), if determined to be necessary by the presiding officer; or
- (B) section 26.211 of this title (relating to Rate Setting Flexibility for Services Subject to Significant Competitive Challenges).
- (2) This section does not apply to a person, or a tariff submitted by a person, to which §26.89 of this title (relating to Nondominant Carriers' Obligations Regarding Information on Rates and Services) or §26.171 of this title (relating to Small Incumbent Local Exchange Company Regulatory Flexibility) applies.
- (3) For purposes of this section, "major rate change" means an increase in rates that would increase the aggregate revenues of an applicant more than \$100,000 or two and a half percent, whichever is greater. The term does not include an increase in rates approved by the commission, or otherwise ordered by the commission after hearings are held with public notice.
 - (b) General tariff requirements.
- (1) DCTU tariff amendments involving a major rate change. For a tariff amendment involving a major rate change, an applicant must meet the following requirements prior to amending its tariff.
- (A) File an application with the commission at least 35 days before the effective date of the proposed change to the DCTU's tariff;
- (B) Provide notice to affected persons, including each municipality and customer affected by the change, in the manner prescribed by subsection (c) of this section, or as otherwise required by the presiding officer; and
- (C) If applicable, publish notice of the DCTU's intent to change rates in accordance with PURA §53.103, as provided under subsection (c)(1)(C)(i) and (ii) of this section. Notice under this subparagraph is waived if the rate change only involves a rate reduction.
- (2) Non-major rate changes and other DCTU tariff amendments. For a tariff amendment that does not involve a rate change under paragraph (1) of this subsection, a DCTU must meet the following requirements prior to amending its tariff:
- (A) File an application with the commission at least 35 days before the effective date of the proposed change to the DCTU's tariff; and
- (B) Provide notice to affected persons in the manner prescribed by subsection (c) of this section or as otherwise required

- by the presiding officer. An applicant may request a waiver to this requirement if the tariff amendments are of an administrative or clerical nature, or have minimal or no impact to the public, as determined by the presiding officer.
- (c) Public notice. An application must include plans to provide public notice of the tariff filing.
 - (1) General requirements for public notice.
- (A) Prior to the issuance of notice, an applicant may request, or the presiding officer may require, the contents of the notice to be reviewed and approved by the presiding officer.
- (B) Notice must be written in plain language and must contain sufficient detail to provide each affected person, including each affected municipality, adequate notice of the filing.
- (C) Notice may be provided electronically unless otherwise required by the presiding officer or, if the application involves a major rate change, in accordance with PURA §53.103, which requires the applicant to:
- (i) publish, in a conspicuous form and place, notice to the public of the proposed change once each week for four successive weeks before the effective date of the proposed change in a newspaper having general circulation in each county containing territory affected by the proposed change; and
- (ii) mail notice of the proposed change to any other affected person as required by the commission's rules.
- (D) The presiding officer may require notice to be provided to the public in addition to that proposed by the DCTU.
- (2) Content of public notice. Public notice of the application must include at a minimum:
- (A) a description of each service or proposed service and each applicable rate;
- (B) the proposed effective date of the service or, if the service is promotional or experimental, the time period during which the promotional rates are proposed to be in effect;
- (C) each customer class likely to be affected if the application is approved;
- (D) the probable effect on the DCTU's revenues if the service is approved; and
- (E) the following language: "Persons with questions or who want more information on this application may contact (DCTU name) at (DCTU address) or call (DCTU toll-free telephone number) during normal business hours. A complete copy of the application is available for inspection at the address listed above. The commission has assigned Control Number (provided by DCTU) to this application, located at (hyperlink to application). Persons who wish to formally participate in the commission's proceedings concerning this application, or who wish to express their comments concerning this application should contact the Public Utility Commission of Texas, Consumer Protection Division, P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission's Office of Consumer Protection at (512) 936-7120 or, toll free, at (888) 782-8477. Hearing- and speech-impaired individuals may contact the commission through Relay Texas at (800) 735-2989. Requests to participate in the proceedings and comments should reach the commission no later than (date, 20 days after the application was filed)."
- (d) Proof of notice. An application must include a statement indicating the date public notice was completed in accordance with subsection (c) of this section and a copy of the issued notice.

- (e) Effective date of tariff amendment.
 - (1) General standard.
- (A) The effective date of an applicant's tariff must be no earlier than 35 days after the date a sufficient application is approved by the presiding officer.
- (B) On the presiding officer's own motion or at the request of the applicant, an alternative effective date may be established unless a specific effective date is required under this section or other law.
- (2) Early effective date. Upon a showing of good cause by the applicant, the presiding officer may approve a sufficient application, other than an application involving a major rate change, to take effect prior to the 35-day period prescribed by paragraph (1) of this subsection.
- (A) The presiding officer may establish additional conditions, such as notice, that an applicant must meet prior to granting an early effective date. Any additional conditions prescribed by the presiding officer are subject to suspension of the effective date under paragraph (4) of this subsection.
- (B) Upon approval of an early effective date by the presiding officer, the applicant must immediately revise the tariff to include the change.
- (3) Recalculation of effective date upon cure of an insufficient application. Upon the filing of an application curing each deficiency specified by the presiding officer, any deadlines must be determined from the date the application is deemed sufficient or from the effective date if the presiding officer extends that date.
- (4) Suspension of effective date. For an application involving a rate change, the commission may suspend the effective date of the tariff change for 150 days after the requested effective date.
- (A) In the event that a hearing on the merits exceeds 15 working days, the suspended effective date is extended two calendar days for each working day the hearing exceeds 15 working days.
- (B) If the presiding officer does not make a final determination concerning the effective date of a rate change before the expiration of the suspension period, the effective date is automatically approved unless a hearing is already in progress.
- (f) Administrative review. An application filed in accordance with this section will be reviewed administratively.
 - (1) Review of sufficiency.
- (A) The presiding officer will deem an application to be sufficient if it, at a minimum:
- (i) includes an effective date and, as applicable, meets the requirements of subsection (b)(1)(A) or (2)(A) of this section;
- (ii) meets the requirements of §26.207 of this title and the applicable provision specified by subsection (a)(1) of this section under which the application was filed;
- (iii) includes proof that notice of the application was provided in compliance with subsection (d) of this section; and
- (iv) if the application involves the withdrawal of a service, that the requirements of subsection (i) of this section have been met.
- (B) No later than 20 days after the date an application is filed:

- (i) an interested person, including the Office of Public Utility Counsel (OPUC), may file written comments or recommendations concerning the sufficiency of the application; and
- (ii) commission staff must file a recommendation regarding the sufficiency of the application.
- (C) If the presiding officer concludes that the application is insufficient, the presiding officer will notify the applicant of the insufficiency in the relevant portions of the application and cite the particular requirement with which the application does not comply. The presiding officer will grant the applicant an opportunity to cure each specific deficiency within a specified time period, and change the effective date in accordance with subsection (e)(3) of this section.
- (2) Substantive review of application. The presiding officer must approve or deny an application not later than 60 days after a complete application is filed. An application is complete if the presiding officer has deemed that the application is sufficient under paragraph (1) of this subsection.
- (A) The presiding officer will substantively review the application to determine whether the application fulfills the requirements of this subparagraph and other applicable law. To approve an application, the presiding officer must, at a minimum, determine that:
- (i) the proposed rates and terms of the service are not unreasonably preferential, prejudicial, or discriminatory, subsidized directly or indirectly by regulated monopoly services, or predatory or anticompetitive; and
- (ii) provision of the service is consistent with the public interest in a technologically advanced telecommunications system, the preservation of universal service, and the prevention of anticompetitive practices and of subsidization of new and experimental services with revenues from regulated monopoly services.
- (B) Commission staff must file a recommendation regarding whether the application meets the substantive requirements of this paragraph. Commission staff's recommendation on whether an application meets the substantive requirements for administrative approval may be provided with its recommendation on the sufficiency of the application in accordance with paragraph (1) of this subsection, or in a subsequent filing.
- (C) While the application is under substantive review by the presiding officer, commission staff and OPUC may submit requests for information to the applicant.
- (i) Notwithstanding the requirements of §22.144 of this title (relating to Requests for Information and Requests for Admission of Facts), the applicant must file the requested information with the commission within 15 days after receipt of such a request for information.
- (ii) If an applicant does not respond to a request for information within the time period specified by clause (i) of this subparagraph, the presiding officer will reject the application without prejudice and notify the applicant of the rejection.
- (iii) If the presiding officer does not approve or deny the application within 30 days from the date the requested information is filed with the commission, the application is automatically approved.
- (3) Automatic approval. A complete application is automatically approved 60 days from the date it is filed if:
- (A) the presiding officer does not approve or deny the complete application; and

- (B) commission staff or the presiding officer do not request supplemental information from the applicant.
- (4) Docketing prohibited. An application, except for an application involving a rate increase as provided by subsection (h) of this section, cannot be docketed.
- (g) Approval or denial of applications. For an application to be approved, the applicant must meet the requirements of the applicable provisions of this section and other applicable law, unless such requirements are modified or waived by the presiding officer. If, based on the administrative review, the presiding officer determines that:
- (1) all requirements not waived have been met, the application will be approved in the manner specified by the presiding officer.
- (2) one or more of the requirements not waived have not been met, the presiding officer will:
 - (A) dismiss the application without prejudice; or
- (B) docket the application in accordance with subsection (h) of this section if the application involves a rate change, except for a rate change covered by §26.171 of this title.
- (h) Docketing and of an application involving a rate change. The presiding officer may docket an application involving a rate change, except for a rate change covered by §26.171 of this title, in accordance with this section.
- (1) If an application is docketed, the presiding officer may suspend the effective date of a rate change in the manner provided by subsection (e)(4) of this section via order.
- (1) A copy of all answers to requests for information issued after docketing must be filed with the commission within 15 days after receipt of the request.
- (2) An affected person may move to intervene in the docket, and a hearing on the merits will be scheduled.
- (3) The application will be processed in accordance with the commission's rules applicable to docketed proceedings.
- (i) Withdrawal of a service. When an applicant seeks to withdraw a tariffed service, the application must be filed in accordance with this subsection. An applicant must provide the following in its application before withdrawing a service.
- (1) The control number for the project where the tariff was filed, including a hyperlink to the project;
- (2) Proof of notice by the applicant, as required by subsection (d), or as otherwise required by the presiding officer.
- (3) The number of current customers in each exchange, by customer class;
 - (4) The reason for withdrawing the service;
- (5) Provisions for grandfathering each current customer or for competitive alternatives available within the exchange locations, including each alternative provided by the DCTU;
- (6) Annual revenues for the last three years for the service; and
- (7) If the service has no current customers, the applicant must provide an affidavit to this effect.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 1, 2023.

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16 TAC §26.208

The repeal is adopted generally under PURA §14.002, which provides the commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §52.001(b)(1) which requires that commission rules, policies and principles be formulated and applied to protect the public interest; and PURA §52.002 which grants the commission exclusive original jurisdiction over the business and property of a telecommunications utility in the State of Texas.

Cross reference to statutes: Public Utility Regulatory Act §§14.002; 12.252, 14.052, 15.021- 15.0233, 15.051, 16.051, 17.001, 17.003,17.004, 17.052(3), 17.102, 17.151-17.158, 51.001(g), 51.004, 52.001(b)(1), 52.002, 52.007, 52.051, 52.053, 52.054, 52.058, 52.0583(b), 52.0584, 52.059, 52.154, 52.207, 52.251, 52.256, 53.101-53.113, 54.101-54.105, 54.151-54.159, 54.251, 54.259, 54.260, 54.261, 55.001, 55.002, 55.008, 55.015, 55.024, 55.201-55.204, 55.253, 55.301-55.308, 56.001, 56.002, 56.023, 56.024, 56.032, 56.156, 58.024, 58.051, 58.051-58.063,58.061, 59.024, 60.021, 60.022, 60.023, 60.122, 60.124, 60.125, 64.001, 64.004, 64.051, 64.052, 64.053, 64.101-64.102, 64.151-64.158, 65.002, 65.004, 65.102; Texas Business and Commerce Code §304.055; and Texas 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.

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SUBCHAPTER L. WHOLESALE MARKET PROVISIONS

16 TAC §26.272, §26.276

The amendments are adopted generally under PURA §14.002, which provides the commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §52.001(b)(1) which requires that commission rules, policies and principles be formulated and ap-

plied to protect the public interest; and PURA §52.002 which grants the commission exclusive original jurisdiction over the business and property of a telecommunications utility in the State of Texas.

Cross reference to statutes: Public Utility Regulatory Act §§14.002; 12.252, 14.052, 15.021- 15.0233, 15.051, 16.051, 17.001, 17.003,17.004, 17.052(3), 17.102, 17.151-17.158, 51.001(g), 51.004, 52.001(b)(1), 52.002, 52.007, 52.051, 52.053, 52.054, 52.058, 52.0583(b), 52.0584, 52.059, 52.154, 52.207, 52.251, 52.256, 53.101-53.113, 54.101-54.105, 54.151-54.159, 54.251, 54.259, 54.260, 54.261, 55.001, 55.002, 55.008, 55.015, 55.024, 55.201-55.204, 55.253, 55.301-55.308, 56.001, 56.002, 56.023, 56.024, 56.032, 56.156, 58.024, 58.051, 58.051-58.063,58.061, 59.024, 60.021, 60.022, 60.023, 60.122, 60.124, 60.125, 64.001, 64.004, 64.051, 64.052, 64.053, 64.101-64.102, 64.151-64.158, 65.002, 65.004, 65.102; Texas Business and Commerce Code §304.055; and Texas Government Code §2001.039.

§26.276. Unbundling.

(a) Purpose. The purpose of this section is to implement Public Utility Regulatory Act (PURA) §60.021, which requires an incumbent local exchange company (ILEC), at a minimum, to unbundle its network to the extent ordered by the Federal Communications Commission (FCC).

(b) Application.

- (1) The provisions of this section apply, as of its effective date, to each ILEC that serves one million or more access lines.
- (2) The provisions of this section apply upon a bona fide request to each ILEC that serves fewer than one million access lines.

(c) Unbundling requirements.

- (1) Unbundling in accordance with current FCC requirements. Each ILEC that is subject to this section must unbundle as specified in subparagraphs (A) and (B) of this paragraph. An ILEC with interstate tariffs in effect must unbundle its network or services under the same terms and conditions, except for price, as it unbundles its interstate services, unless ordered otherwise by the commission. The ILEC must also not impose a charge or rate element that is not included in its interstate tariffs for these unbundled rate elements. Nothing in this paragraph precludes the commission from requiring further unbundling of local exchange company services, including the services unbundled in accordance with this paragraph.
- (A) The ILEC's network must be unbundled to the extent ordered by the FCC in compliance with its open network architecture requirements; and
- (B) Signaling for tandem switching must be unbundled to the extent ordered by the FCC in compliance with CC Docket Number 91-141, Third Report and Order, In the Matter of Expanded Interconnection with Local Telephone Company Facilities, Transport Phase II.
- (2) Unbundling in accordance with future FCC requirements. An ILEC must unbundle its network or services for intrastate services to the extent ordered, in the future, by the FCC for interstate services. An ILEC with interstate tariffs in effect must unbundle these services under the same terms and conditions, except for price, as it unbundles its interstate services, unless ordered otherwise by the commission. The ILEC must also not impose a charge or rate element that is not included in its interstate tariffs for unbundling. Nothing in this paragraph precludes the commission from requiring

further unbundling of local exchange company services, including the services unbundled in accordance with this paragraph.

- (d) Costing and pricing of services in compliance with this section.
- (1) Cost standard. Services unbundled in compliance with this section must be subject to the following cost standard.
- (A) The cost standard for unbundled services must be the long run incremental costs (LRIC) of providing the service.
- (B) Any ILEC subject to §26.214 of this title (relating to Long Run Incremental Cost (LRIC) Methodology for Services provided by Certain Incumbent Local Exchange Companies (ILECs)) or §26.215 of this title (relating to Long Run Incremental Cost Methodology for Dominant Certificated Telecommunications Utility Services), as applicable, must file LRIC studies in accordance with that rule for unbundled components specified in subsection (c)(1) of this section.
- (C) For any ILEC that is subject to §26.214 or §26.215 of this title, the cost standard for unbundled services required under subsection (c)(2) of this section must be the long run incremental costs as prescribed by §26.214 or §26.215 of this title, as applicable.
- (D) The long run incremental cost standard does not apply if the ILEC proposes rates that are the same as the rates in effect for the carrier's interstate provision of the same or equivalent unbundled service or if the ILEC adopts rates of another ILEC in accordance with paragraph (2)(B) of this subsection.
- (2) Pricing standard. Services unbundled in compliance with this section must be subject to the following pricing standard.
- (A) Any ILEC may propose rates, without cost justification, that are at parity with the rates in effect for the carrier's interstate provision of the same or equivalent unbundled service. The ILEC must amend its intrastate rates, terms and conditions to be consistent with subsequent revisions in its interstate tariffs providing for unbundling in accordance with the filing requirements established in subsection (f)(4) of this section.
- (B) In addition to the provision in subparagraph (A) of this paragraph, ILECs that are not subject to §26.214 or §26.215 of this title may adopt the rates of another ILEC that are developed in accordance with the requirements of this section.
- (C) If an ILEC proposes rates that are not at parity with the rates in effect for the carrier's interstate provision of the same or equivalent unbundled service or does not adopt the rates of another ILEC in accordance with subparagraph (B) of this paragraph, the following requirements apply to any service approved under this section:
- (i) Unless waived or modified by the presiding officer, the service must be offered in every exchange served by the ILEC, except exchanges in which the ILEC's facilities do not have the technical capability to provide the service.
- (ii) If the sum of the rates of the new unbundled components is equal to the price of the original bundled service and if the ratio of the rate of each unbundled component to its LRIC is the same for each unbundled component, there is a rebuttable presumption that the rate of an unbundled component is reasonable.
- (iii) The proposed rates and terms of the service must not be unreasonably preferential, prejudicial, or discriminatory, subsidized directly or indirectly by regulated monopoly services, or predatory or anticompetitive.
- (D) Rates based upon the new LRIC cost studies required under paragraph (1)(B) of this subsection are subject to §26.214

- or §26.215 of this title, as applicable, to the same extent as any other service offered by an ILEC subject to the applicable provision.
- (e) Basket assignment. An ILEC electing for incentive regulation under PURA Chapter 58 must, in its compliance tariff filed in accordance with subsection (f) of this section, include a proposal and rationale for designating the unbundled components as basic services or non-basic services.
 - (f) Filing requirements.
- (1) Initial filing to implement subsection (c)(1) of this section in effect for ILECs serving one million or more access lines. An ILEC serving one million or more access lines must file initial tariff amendments to implement the provisions of subsection (c)(1) of this section not later than 60 days from the effective date of this section. The proposed effective date of such filings must be not later than 30 days after the filing date, unless suspended. Tariff revisions filed in accordance with this paragraph must not be combined in a single application with any other tariff revision.
- (2) Filings to comply with subsection (c)(2) of this section for ILECs serving one million or more access lines. An ILEC serving one million or more access lines must file tariff amendments to implement the provisions of subsection (c)(2) of this section, within 60 days of the effective date of its interstate tariff providing for unbundling. The proposed effective date of such filings must be not later than 30 days after the filing date, unless suspended. Tariff revisions filed in accordance with this paragraph must not be combined in a single application with any other tariff revision.
- (3) Filings to implement subsections (c)(1) and (2) of this section for ILECs serving fewer than one million access lines. If an ILEC serving fewer than one million access lines receives a bona fide request, the ILEC must unbundle its network or services in accordance with the bona fide request within 90 days from the date of receipt of the bona fide request or has the burden of demonstrating the reasons for not unbundling in accordance with the bona fide request.
- (4) Filings to comply with subsection (d)(2)(A) of this section. An ILEC proposing rates in accordance with subsection (d)(2)(A) of this section must file tariff amendments to implement the revisions in its interstate tariffs providing for unbundling, within 30 days of the effective date of its interstate tariff providing for unbundling. The proposed effective date of such filings must be not later than 30 days after the filing date, unless suspended. Tariff revisions filed in accordance with this paragraph must not be combined in a single application with any other tariff revision.
- (g) Requirements for notice and contents of application in compliance with this section.
- (1) Notice of Application. The presiding officer may require notice to be provided to the public as required by Chapter 22, Subchapter D of this title (relating to Notice). The notice must include, at a minimum, a description of the service, the proposed rates and other terms of the service, the types of customers likely to be affected if the service is approved, the probable effect on ILEC's revenues if the service is approved, the proposed effective date for the service, and the following language: "Persons who wish to comment on this application should notify the commission by (specified date, ten days before the proposed effective date). Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Consumer Protection Division at (512) 936-7120 or toll free at (888) 782-8477. Hearing- and speech-impaired individuals may contact the commission through Relay Texas at (800) 735-2989."

- (2) Contents of application for an ILEC serving one million or more access lines that is required to comply with subsection (f)(1), (2), and (4) of this section. An ILEC must request approval of an unbundled service by filing an application that complies with the requirements of this section. A copy of the application must be delivered to the Office of Public Utility Counsel. The application must contain the following information:
- (A) a description of the proposed service and the rates, terms and conditions, under which the service is proposed to be offered and a demonstration that the proposed rates, terms and conditions comply with the requirements in subsections (c), (d), and (e) of this section, as applicable;
- (B) a statement detailing the type of notice, if any, the ILEC has provided or intends to provide to the public regarding the application and a brief statement explaining why the ILEC's notice proposal is reasonable;
 - (C) a copy of the text of the notice, if any;
- (D) a long run incremental cost study supporting the proposed rates, if the rates are not at parity with the carrier's interstate rates;
- (E) detailed documentation showing that the proposed service is priced above the long run incremental cost of such service, including all workpapers and supporting documentation relating to computations or assumptions contained in the application, if the rates are not at parity with the carrier's interstate rates;
- (F) projection of revenues, demand, and expenses demonstrating that in the second year after the service is first offered, the proposed rates will generate sufficient annual revenues to recover the annual long run incremental costs of providing the service, as well as a contribution for joint or common costs, if the rates are not at parity with the carrier's interstate rates;
- (G) explanation that the proposed rates and terms of the service are not unreasonably preferential, prejudicial, or discriminatory, subsidized directly or indirectly by regulated monopoly services, or predatory or anticompetitive;
- (H) the information required by §\$26.121 of this title (relating to Privacy Issues), 26.122 of this title (relating to Customer Proprietary Network Information, and 26.123 of this title (relating to Caller Identification Services); and
- (I) any other information which the ILEC wants considered in connection with the commission's review of its application.
- (3) Contents of application for an ILEC serving fewer than one million access lines that is required to comply with subsection (f)(3) and (4) of this section. An ILEC must file with the commission an application complying with the requirements of this section. A copy of the application must the Office of Public Utility Counsel. The application must contain the following:
- (A) contents of the application required by paragraph (2)(A), (B), (C), (H), and (I) of this subsection;
- (B) contents of the application required by paragraph (2)(D), (E), (F), and (G) of this subsection, if the rates are not at parity with the carrier's interstate rates or the rates of another ILEC;
- (C) a description of the proposed service and the rates, terms, and conditions under which the service is proposed to be offered and an affidavit from the general manager or an officer of the ILEC approving the proposed service;

- (D) a notarized affidavit from a representative of the ILEC affirming that the rates are just and reasonable and are not unreasonably preferential, prejudicial, or discriminatory; subsidized directly or indirectly by regulated monopoly services; or predatory, or anticompetitive; and
- (E) projections of the amount of revenues that will be generated by the proposed service.
 - (h) Commission processing of application.
- (1) Administrative review. An application considered under this section is eligible for administrative review unless the ILEC requests the application be docketed or the presiding officer, for good cause, determines at any point during the review that the application should be docketed.
- (A) The operation of the proposed rate schedule may be suspended for 35 days after the effective date of the application. The effective date must be according to the requirements in subsection (f) of this section.
- (B) The application will be reviewed for sufficiency. If the presiding officer concludes that material deficiencies exist in the application, the applicant will be notified within ten working days of the filing date of the specific deficiency in its application, and the earliest possible effective date of the application will be no less than 30 days after the filing of a sufficient application with substantially complete information as required by the presiding officer. Thereafter, any deadlines will be 30 days from the day after the filing of the sufficient application and information or from the effective date if the presiding officer extends that date.
- (C) While the application is under administrative review, commission staff and the staff of the Office of the Public Utility Counsel (OPUC) may submit requests for information to the ILEC. Answers to such requests for information must be filed with the commission and a copy must be provided to OPUC within ten days after receipt of the request by the ILEC.
- (D) No later than 20 days after the filing date of the sufficient application, interested persons may provide to the commission staff written comments or recommendations concerning the application. Commission staff must and OPC may file with the presiding officer written comments or recommendations concerning the application.
- (E) No later than 35 days after the effective date of the application, the presiding officer will issue an order approving, denying, or docketing the ILEC's application.
- (2) Approval or denial of application. The application will be approved by the presiding officer if the proposed tariff meets the requirements in this section. If, based on the administrative review, the presiding officer determines, that one or more of the requirements not waived have not been met, the presiding officer will docket the application.
- (3) Standards for docketing. The application may be docketed in accordance with §22.33(b) of this title (relating to Tariff Filings).
- (4) Review of the application after docketing. If the application is docketed, the operation of the proposed rate schedule will be automatically suspended to a date 120 days after the applicant has filed its direct testimony and exhibits, or 155 days after the effective date, whichever is later. Affected persons may move to intervene in the docket, and the presiding officer may schedule a hearing on the merits. The application will be processed in accordance with the commission's rules applicable to docketed cases.

- (5) Interim rates. For good cause, interim rates may be approved after docketing. If the service requires substantial initial investment by customers before they may receive the service, interim rates will be approved only if the ILEC shows, in addition to good cause, that it will notify each customer prior to purchasing the service that the customer's investment may be at risk due to the interim nature of the service.
- (i) Commission processing of waivers. Any request for modification or waiver of the requirements of this section must include a complete statement of the ILEC's arguments and factual support for that request. The presiding officer will rule on the request expeditiously.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 1, 2023.

Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
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TRD-202304450

SUBCHAPTER P. TEXAS UNIVERSAL SERVICE FUND

16 TAC §§26.403 - 26.405, 26.407, 26.409, 26.414, 26.417 - 26.419

The amendments are adopted generally under PURA §14.002, which provides the commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §52.001(b)(1) which requires that commission rules, policies and principles be formulated and applied to protect the public interest; and PURA §52.002 which grants the commission exclusive original jurisdiction over the business and property of a telecommunications utility in the State of Texas.

Cross reference to statutes: Public Utility Regulatory Act §§14.002; 12.252, 14.052, 15.021- 15.0233, 15.051, 16.051, 17.001, 17.003,17.004, 17.052(3), 17.102, 17.151-17.158, 51.001(g), 51.004, 52.001(b)(1), 52.002, 52.007, 52.051, 52.053, 52.054, 52.058, 52.0583(b), 52.0584, 52.059, 52.154, 52.207, 52.251, 52.256, 53.101-53.113, 54.101-54.105, 54.151-54.159, 54.251, 54.259, 54.260, 54.261, 55.001, 55.002, 55.008, 55.015, 55.024, 55.201-55.204, 55.253, 55.301-55.308, 56.001, 56.002, 56.023, 56.024, 56.032, 56.156, 58.024, 58.051, 58.051-58.063,58.061, 59.024, 60.021, 60.022, 60.023, 60.122, 60.124, 60.125, 64.001, 64.004, 64.051, 64.052, 64.053, 64.101-64.102, 64.151-64.158, 65.002, 65.004, 65.102; Texas Business and Commerce Code §304.055; and Texas Government Code §2001.039.

§26.405. Financial Need for Continued Support.

(a) Purpose. This section establishes criteria to demonstrate financial need for continued support for the provision of basic local telecommunications service under the Texas High Cost Universal Service Plan (THCUSP) and the Small and Rural Incumbent Local Ex-

change Company Universal Service Plan (SRILEC USP). This section also establishes the process by which the commission will evaluate petitions to show financial need and will set new monthly per-line support amounts.

- (b) Application. This section applies to an incumbent local exchange company (ILEC) that is subject to §26.403(f) of this title (relating to the Texas High Cost Universal Service Plan (THCUSP)) or §26.404(g) of this title (relating to the Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan).
- (c) Definitions. The following words and terms when used in this section have the following meaning unless the context clearly indicates otherwise:
- (1) Business line--The telecommunications facilities providing the communications channel that serves a single-line business customer's service address. For the purpose of this definition, a single-line business line is one to which multi-line hunting, trunking, or other special capabilities do not apply. For a line served by an ILEC, a business line is a line served in accordance with the ILEC's business service tariff or a package that includes such a tariffed service. For a line served by an ILEC in accordance with a customer specific contract or that is otherwise not served in accordance with a tariff, to qualify as a business line, the service must be provided in accordance with a customer application, subscriber agreement, or contract entered into by a public or private organization of any character, or a representative or agent of such entity, irrespective of the person or entity in actual possession of the telephone device. For a line that is served by an ETP other than an ILEC, to qualify as a business line, the service must be provided in accordance with a customer application, subscriber agreement, or contract entered into by a public or private organization of any character, or a representative or agent of such entity, irrespective of the person or entity in actual possession of the telephone device.
- (2) Eligible line--A residential line or a single-line business line over which an ETP provides the service supported by the THCUSP or SRILEC USP through its own facilities, purchase of unbundled network elements (UNEs), or a combination of its own facilities and purchase of UNEs. An eligible line may be a business line or a residential line but cannot be both.
- (3) Eligible telecommunications provider (ETP)--A telecommunications provider designated by the commission in accordance with §26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)).
- (4) Physical 911 address--For the purposes of this section, a physical 911 address is an address transmitted to the applicable emergency service providers by an ETP with respect to a line that is not stated in GPS coordinates.
- (5) Residential line--The telecommunications facilities providing the communications channel that serves a residential customer's service address. For the purpose of this definition, a residential line is one to which multi-line hunting, trunking, or other special capabilities do not apply. A line that qualifies as a business line does not qualify as a residential line.
- (6) Service Address--For the purposes of this section, a business or residential customer's service address is defined using the following criteria:
- (A) A service address is the unique physical street address, including any suite or unit number, where a line is provided to a customer, except as provided in clauses (i)-(ii) and subparagraph (B) of this paragraph.

- (i) If no unique physical street address is available, a physical 911 address must be used.
- (ii) If no unique physical street address and no physical 911 address are available, the business or residential customer's service address must be an area of land under common operation or use as defined by a deed, state permit, lease name, or licensed or registered field of operation, which must be described by an ETP using GPS coordinates. Multiple buildings within a single area of land under common operation or use must not qualify as separate service addresses, even if the GPS coordinates for each building are different.
- (B) For eligible lines served using commercial mobile radio service, a service address for such a line may be the customer's billing address for the purposes of this definition.

(d) Determination of financial need.

- (1) Criteria to determine financial need. For each exchange that is served by an ILEC ETP filing a petition in accordance with subsection (f)(1) of this section, the commission will determine whether an ILEC ETP has a financial need for continued support. An ILEC ETP has a financial need for continued support within an exchange if the exchange does not contain an unsubsidized wireline voice provider competitor as set forth in paragraph (2) of this subsection.
- (2) Establishing the existence of an unsubsidized wireline voice provider competitor. For the purposes of this section, an exchange contains an unsubsidized wireline voice provider competitor if the percentage of square miles served by an unsubsidized wireline voice provider competitor exceeds 75% of the square miles within the exchange. The commission will determine whether an exchange contains an unsubsidized wireline voice provider competitor using the following criteria.
- (A) For the purposes of this section, an entity is an unsubsidized wireline voice provider competitor within an exchange if it:
- (i) does not receive THCUSP support, SRILEC USP support, Federal Communications Commission (FCC) Connect America Fund (CAF) support or successor federal programs, or FCC Legacy High Cost support for service provided within that exchange; and
- (ii) offers basic local service or broadband service of 3 megabits per second down and 768 kilobits per second up using wireline-based technology using either its own facilities or a combination of its own facilities and purchased unbundled network elements (UNEs).
- (B) Using the current version of the National Broadband Map in effect for at least 90 days, the commission will determine the census blocks served by an unsubsidized wireline voice provider competitor within a specific exchange and the total number of square miles represented by those census blocks using the following criteria.
- (i) The number of square miles served by an unsubsidized wireline voice provider competitor within an exchange must be equal to the total square mileage covered by census blocks in the exchange in which an unsubsidized wireline voice provider competitor offers service to any customer or customers.
- (ii) The commission will determine the percentage of square miles served by an unsubsidized wireline voice provider competitor within an exchange by dividing the number of square miles served by an unsubsidized wireline voice provider competitor within the exchange by the number of square miles within the exchange.
- (C) The data provided by the FCC's Broadband Data Collection creates a rebuttable presumption regarding the presence of an unsubsidized wireline voice provider competitor within a specific

- census block. However, nothing in this rule is intended to preclude a party from providing evidence as to the accuracy of individual census block data within the FCC's Broadband Data Collection with regard to whether an unsubsidized wireline voice provider competitor offers service within a particular census block.
- (3) Periodic review of criteria to demonstrate financial need for continued support. Beginning September 1, 2024, and every four years thereafter, the commission will review and may adjust the standards and criteria to demonstrate financial need for continued support under this subsection.
- (e) Criteria for determining amount of continued support. In a proceeding conducted in accordance with subsection (f) of this section, the commission will set new monthly per-line support amounts for each exchange served by a petitioning ILEC ETP. The new monthly per-line support amounts must be effective beginning with the first disbursement following a commission order entered in accordance with subsection (f)(2) of this section, except that the new amounts must not be effective earlier than January 1, 2024 for an exchange with service supported by the THCUSP or earlier than January 1, 2025 for an exchange with service supported by the SRILEC USP.
- (1) Exchanges in which the ILEC ETP does not have a financial need for continued support.
- (A) For each exchange that is served by an ILEC ETP that has filed a petition in accordance with subsection (f)(1) of this section and for which the commission has not determined that the ILEC ETP has a financial need for continued support, the commission will reduce the monthly per-line support amount to zero.
- (B) For each exchange that is served by an ILEC ETP that has filed a petition in accordance with subsection (f)(1) of this section and which is not included in the petition, the commission will reduce the monthly per-line support amount to zero.
- (2) Exchanges in which the ILEC ETP has a financial need for continued support. For each exchange that is served by an ILEC ETP that has filed a petition in accordance with subsection (f)(1) of this section and for which the commission has determined the ILEC ETP has a financial need for continued support, the commission will set a monthly per-line support amount according to the following criteria.
- (A) The initial monthly per-line support amounts for each exchange must be equal to:
- (i) the amount that the ILEC ETP was eligible to receive on December 31, 2023 for an ILEC ETP that receives support from the THCUSP;
- (ii) the amount that the ILEC ETP was eligible to receive on December 31, 2024 for an ILEC ETP that receives support from the SRILEC USP and that has not filed a request in accordance with subsection (g) of this section; or
- (iii) the new monthly per-line support amounts calculated in accordance with subsection (g) of this section for an ILEC ETP that has filed a request in accordance with subsection (g) of this section.
- (B) Initial monthly per-line support amounts for each exchange must be reduced by the extent to which the disbursements received by an ILEC ETP from the THCUSP or SRILEC USP in the twelve month period ending with the most recently completed calendar quarter prior to the filing of a petition in accordance with subsection (f)(1) of this section are greater than 80% of the total amount of expenses reflected in the summary of expenses filed in accordance with subsection (f)(1)(C) of this section. In establishing any reductions to the initial monthly per-line support amounts, the commission may con-

- sider any appropriate factor, including the residential line density per square mile of any affected exchanges.
- (C) For each exchange with service supported by the THCUSP, monthly per-line support must not exceed:
- (i) the monthly per-line support that the ILEC ETP is eligible to receive on December 31, 2023, if the petition is filed before January 1, 2024;
- (ii) 75 percent of the monthly per-line support that the ILEC ETP is eligible to receive on December 31, 2023, if the petition is filed on or after January 1, 2024, and before January 1, 2025;
- (iii) 50 percent of the monthly per-line support the ILEC ETP is eligible to receive on December 31, 2023, if the petition is filed on or after January 1, 2025, and before January 1, 2026;
- (iv) 25 percent of the monthly per-line support that the ILEC ETP is eligible to receive on December 31, 2023, if the petition is filed on or after January 1, 2026, and before January 1, 2027; or
- (v) zero percent of the monthly per-line support that the ILEC ETP is eligible to receive on December 31, 2023, if the petition is filed on or after January 1, 2027, and before January 1, 2028.
- (D) For each exchange with service supported by the SRILEC USP, monthly per-line support must not exceed:
- (i) the monthly per-line support that the ILEC ETP is eligible to receive on December 31, 2024, if the petition is filed before January 1, 2025;
- (ii) 75 percent of the monthly per-line support that the ILEC ETP is eligible to receive on December 31, 2024, if the petition is filed on or after January 1, 2025, and before January 1, 2026;
- (iii) 50 percent of the monthly per-line support the ILEC ETP is eligible to receive on December 31, 2024, if the petition is filed on or after January 1, 2026, and before January 1, 2027;
- (iv) 25 percent of the monthly per-line support that the ILEC ETP is eligible to receive on December 31, 2024, if the petition is filed on or after January 1, 2027, and before January 1, 2028; or
- (v) zero percent of the monthly per-line support that the ILEC ETP is eligible to receive on December 31, 2023, if the petition is filed on or after January 1, 2028, and before January 1, 2029.
- (E) An ILEC ETP may only be awarded continued support for the provision of service in exchanges with service that is eligible for support from the THCUSP or SRILEC USP at the time of filing of a petition in accordance with subsection (f)(1) of this section.
- (F) Portability of support. The support amounts established in accordance with this section are applicable to all ETPs and are portable with the customer.
- (f) Proceeding to Determine Financial Need and Amount of Support.
- (1) Petition to determine financial need. An ILEC ETP that is subject to §26.403(f) or §26.404(g) of this title may petition the commission to initiate a contested case proceeding to demonstrate that it has a financial need for continued support for the provision of basic local telecommunications service.
- (A) An ILEC ETP that is subject to either $\S26.403(f)$ or $\S26.404(g)$ of this title may only file one petition in accordance with this subsection. A petition filed in accordance with this subsection must include the information necessary to reach the determinations specified in this subsection.

- (B) An ILEC ETP filing a petition in accordance with this subsection must provide notice as required by the presiding officer in accordance with §22.55 of this title (relating to Notice in Other Proceedings). At a minimum, notice must be published in the *Texas Register*:
- (C) A petition filed in accordance with this subsection must include a summary of the following total Texas regulated expenses and property categories, including supporting workpapers, attributable to the ILEC ETP's exchanges with service supported by the THCUSP or SRILEC USP during the twelve month period ending with the most recently completed calendar quarter prior to the filing of the petition:
 - (i) Plant-specific operations expense;
 - (ii) Plant non-specific operations expense;
 - (iii) Customer operations expense;
 - (iv) Corporate operations expense;
 - (v) Depreciation and amortization expenses;
 - (vi) Other operating expenses;
 - (vii) Total telecom plant in service;
 - (viii) Total property held for future use; and
 - (ix) Total telecom plant under construction.
- (D) A summary filed in accordance with this subsection must be filed publicly. Workpapers filed in accordance with this subsection may be filed publicly or confidentially.
- (E) Upon receipt of a petition in accordance with this section, the commission will initiate a contested case proceeding to determine whether the ILEC ETP has a financial need for continued support under this section for the exchanges identified in the petition. In the same proceeding, the commission will set a new monthly per-line support amount for all exchanges served by the ILEC ETP.
- (2) Issuance of final order on petition. The commission will issue a final order in the proceeding not later than the 330th day after the date the petition is filed with the commission. Until the commission issues a final order on the proceeding, the ILEC ETP must continue to receive the total amount of support it was eligible to receive on the date the ILEC ETP filed a petition under this subsection.
- (3) Effect of final order. An ILEC ETP is not subject to $\S26.403(f)$ or $\S26.404(g)$ of this title after the commission issues a final order on the petition.
- (4) Burden of proof. The ILEC ETP filing a petition in accordance with this subsection must bear the burden of proof with respect to all issues that are in the scope of the proceeding.
- (g) De-averaging of the support received by ILEC ETPs from the SRILEC USP. On or before January 1, 2017, an ILEC ETP filing a petition in accordance with subsection (f)(1) of this section and that receives support from the SRILEC USP may include in its petition a request that the commission determine for each exchange served by the ILEC ETP new monthly per-line support amounts that the ILEC ETP will be eligible to receive on December 31, 2017. The new monthly per-line support amounts will be calculated using the following methodology.
- (1) The commission will use per-line proxy support levels based on the following ranges of average residential line density per square mile within an individual exchange. These proxies are used specifically for the purpose of de-averaging and do not indicate a preference that support at these levels be provided from the SRILEC USP.

Figure: 16 TAC §26.405(g)(1)

- (2) Using the per-line proxy support amount levels set forth in this subsection, the commission will create a benchmark support amount for each exchange of a requesting ILEC ETP. The benchmark support amount for each individual supported exchange of a company or cooperative is calculated by multiplying the number of total eligible lines as of December 31, 2016 served by the ILEC ETP within each exchange by the corresponding proxy support amount for that individual exchange based on the average residential line density per square mile of the exchange as of December 31, 2016.
- (3) To the extent that the total sum of the benchmark support amounts for all of the supported exchanges of a company or cooperative is greater than or less than the targeted total support amount a company or cooperative would be eligible to receive on December 31, 2017 as a result of the final order in Docket No. 41097, the benchmark per-line support amount for each exchange must be proportionally reduced or increased by the same percentage amount so that the total support amount a company or cooperative is eligible to receive on December 31, 2017, as a result of the final order in Docket No. 41097, is unaffected by the de-averaging process.
- (4) The per-line support amount that a company or cooperative is eligible to receive in a specific exchange on December 31, 2017, for purposes of a petition filed in accordance with subsection (f)(1) of this section, is the per-line support amount for each exchange determined through the de-averaging process set forth in this subsection
- (h) Reporting requirements. An ILEC ETP that receives support in accordance with this section is subject to the reporting requirements prescribed by §26.403(g) or §26.404(h) of this title.
- (i) Additional Financial Assistance. Nothing in this section prohibits an ILEC or a cooperative that is not an electing company under Chapter 58, 59, or 65 of PURA to apply for Additional Financial Assistance in accordance with §26.408 of this title (relating to Additional Financial Assistance (AFA)).
- (j) Service to be supported. The services to be supported in accordance with the section are subject to the same definitions and limitations as those prescribed by $\S26.403(d)$ and $\S26.404(d)$ of this title, in addition to any limitation ordered by the commission in a contested case proceeding.
- (k) Expiration of support to an ILEC ETP. On December 31, 2024, support to an ILEC ETP or cooperative must be reduced to zero percent of the amount of support that the company is eligible to receive on that date if the following conditions are met:
- (1) The support to the ILEC ETP or cooperative has been reduced to 25 percent of the amount of support the ILEC ETP or cooperative was eligible to receive before December 31, 2022; and
- (2) The ILEC ETP or cooperative has not submitted a petition under subsection (f)(1) of this section.
- (l) Relinquishment of support. An ETP may file a notice with the commission of the ETP's relinquishment of the support it is entitled to receive under this subchapter.
- (1) After notice by the provider, the commission will notify the TUSF administrator of the relinquishment and require the TUSF administrator to terminate support to the provider.
- (2) If the commission does not notify the TUSF administrator before 90 days of the date the ETP filed the notice with the commission, the ETP may stop receiving support 90 days from the date the ETP filed notice with the commission.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-202304451 Adriana Gonzales Rules Coordinator Public Utility Commission of Texas

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SUBCHAPTER Q. 9-1-1 ISSUES

16 TAC §26.433

The amendment is adopted generally under PURA §14.002, which provides the commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §52.001(b)(1) which requires that commission rules, policies and principles be formulated and applied to protect the public interest; and PURA §52.002 which grants the commission exclusive original jurisdiction over the business and property of a telecommunications utility in the State of Texas.

Cross reference to statutes: Public Utility Regulatory Act §§14.002; 12.252, 14.052, 15.021- 15.0233, 15.051, 16.051, 17.001, 17.003,17.004, 17.052(3), 17.102, 17.151-17.158, 51.001(g), 51.004, 52.001(b)(1), 52.002, 52.007, 52.051, 52.053, 52.054, 52.058, 52.0583(b), 52.0584, 52.059, 52.154, 52.207, 52.251, 52.256, 53.101-53.113, 54.101-54.105, 54.151-54.159, 54.251, 54.259, 54.260, 54.261, 55.001, 55.002, 55.008, 55.015, 55.024, 55.201-55.204, 55.253, 55.301-55.308, 56.001, 56.002, 56.023, 56.024, 56.032, 56.156, 58.024, 58.051, 58.051-58.063,58.061, 59.024, 60.021, 60.022, 60.023, 60.122, 60.124, 60.125, 64.001, 64.004, 64.051, 64.052, 64.053, 64.101-64.102, 64.151-64.158, 65.002, 65.004, 65.102; Texas Business and Commerce Code §304.055; and Texas 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.

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PART 39. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

CHAPTER 850. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS SUBCHAPTER E. PROCUREMENT AND PROCUREMENT BID PROTEST PROCEDURES

22 TAC §850.221

The Texas Board of Professional Geoscientists (TBPG) adopts new Subchapter E and new rule §850.221 Procurement and Procurement Bid Protest Procedures to 22 Texas Administrative Code Chapter 850. This new rule is adopted as published in the October 20, 2023, issue of the *Texas Register* (48 TexReg 6170) and will not be republished.

The adopted new Subchapter E and new rule §850.221 align with Texas Government Code §2155.076, each state agency, by rule, "shall develop and adopt protest procedures for resolving vendor protests relating to purchasing issues. An agency's rules must be consistent with the [Comptroller's] rules."

No public comments were received regarding the proposal.

This section is adopted under the Texas Geoscience Practice Act, Texas Occupations Code §1002.151, which authorizes the Board to adopt and enforce all rules consistent with the Act as necessary for the performance of its duties. The rule is adopted pursuant to Texas Government Code section 2155.075, which requires the agency to adopt rules relating to bid protest procedures in purchasing.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 4, 2023.

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Rene Truan
Executive Director
Texas Board of Professional Geoscientists
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For further information, please call: (512) 936-4428

CHAPTER 851. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS LICENSING AND ENFORCEMENT RULES SUBCHAPTER B. P.G. LICENSING, FIRM REGISTRATION, AND GIT CERTIFICATION

22 TAC §851.22

The Texas Board of Professional Geoscientists (TBPG) adopts an amendment to 22 TAC §851.22 Waivers and Substitutions: Policy, Procedures, and Criteria. This amendment is adopted as published in the October 13, 2023, issue of the *Texas Register* (48 TexReg 5949) and will not be republished.

The adopted amendment to 22 TAC §851.22 would eliminate an unnecessary barrier to possible licensure. The adopted amendment would also allow the person who failed an exam to apply for a waiver of the exam after five years have passed since the applicant last failed the exam. Five years offers an applicant sufficient time to gain further education and experience that would possibly qualify the person to become licensed without the need to take the exam the applicant previously failed.

No public comments were received regarding the proposal.

This amendment is authorized by the Texas Geoscience Practice Act, Texas Occupations Code §1002.151, which authorizes the Board to adopt and enforce all rules and regulations consistent with the Act as necessary for the performance of its duties, and the regulation of the practice of geoscience in this state; and §1002.259, which authorizes the Board to waive any requirement for licensure except for the payment of required fees.

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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Rene Truan
Executive Director
Texas Board of Professional Geoscientists
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For further information, please call: (512) 936-4428

TRD-202304476



TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to Title 30 Texas Administrative Code (TAC) §§114.1, 114.2, 114.50, 114.53, and 114.309.

Amended §§114.2, 114.50, and 114.309 are adopted *without changes* to the proposed text as published in the June 16, 2023, issue of the *Texas Register* (48 TexReg 3174) and, therefore, will not be republished. Amended §114.1 and §114.53 are adopted *with changes* to the proposed text and, therefore, will be republished.

Amended §§114.1, 114.2, 114.50, 114.53, and 114.309 will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the State Implementation Plan (SIP).

Background and Summary of the Factual Basis for the Adopted Rules

On October 7, 2022, the EPA published its reclassification of Bexar County from marginal to moderate nonattainment for the 2015 eight-hour ozone National Ambient Air Quality Standard (NAAQS), effective November 7, 2022 (87 Federal Register (FR)

60897). Bexar County is subject to the moderate nonattainment requirements in federal Clean Air Act (FCAA), §182(b). The FCAA and 40 Code of Federal Regulations (CFR) Part 51, as amended, require a basic vehicle emissions inspection and maintenance (I/M) program in ozone nonattainment areas classified as moderate, so the state must implement an I/M program in Bexar County. Rulemaking is required to implement I/M and set the testing fee applicable in Bexar County, and a SIP revision is required to incorporate a Bexar County I/M program into the SIP. The rulemaking and SIP revision were due to the EPA by January 1, 2023, and implementation of the I/M program in Bexar County is required by November 7, 2026.

Also on October 7, 2022, the EPA published its reclassification of the 10-county Dallas-Fort Worth (DFW) area from serious to severe nonattainment for the 2008 eight-hour ozone NAAQS, effective November 7, 2022 (87 FR 60926). Beginning one year after reclassification to severe, participation in the federal reformulated gasoline (RFG) program is required in the 10-county DFW nonattainment area. RFG is gasoline that is blended to burn more cleanly than conventional gasoline to reduce smog-forming and toxic pollutants. In RFG-covered areas, the sale of gasoline that the EPA has not certified as reformulated is prohibited. Collin, Dallas, Denton, and Tarrant Counties are already covered under the federal RFG rules because they opted into the program effective January 1, 1995 under the 1979 one-hour ozone NAAQS (57 FR 46316, October 8, 1992).

Ellis, Johnson, Kaufman, Parker, Rockwall, and Wise Counties are currently subject to the state low Reid Vapor Pressure (RVP) rules in Chapter 114, Subchapter H, Division 1, but on November 7, 2023 they will be subject to the federal RFG program. To avoid overlapping applicability between the state RVP rules and the federal RFG program for those six counties, this rulemaking adoption removes these counties from the state low RVP program.

During the 2019 Quadrennial review of Chapter 114, staff identified definitions that are no longer necessary. The obsolete definitions were associated with repealed agency programs and are not used in or applicable to current rules in Chapter 114. The adopted revisions remove these obsolete definitions.

Demonstrating Noninterference under Federal Clean Air Act, §110(I)

Under FCAA, §110(I), the EPA cannot approve a SIP revision if it would interfere with attainment of the NAAQS, reasonable further progress toward attainment, or any other applicable requirement of the FCAA. The commission provides the following information to demonstrate why the adopted changes to the I/M program rules and low RVP requirements in Chapter 114 will not: negatively impact the status of the state's progress towards attainment, interfere with control measures, or prevent reasonable further progress toward attainment of the ozone NAAQS.

The adopted amendments to Chapter 114 revise 30 TAC Chapter 114, Subchapters A and C to add program-related definitions, identify vehicles in Bexar County that will be subject to vehicle emissions inspections, require emissions inspection stations in Bexar County to offer the on-board diagnostics (OBD) test approved by the EPA, and establish the maximum fee that Bexar County emissions inspection stations may charge for the OBD test. Additional details regarding the adopted Bexar County I/M program are discussed in the Bexar County I/M SIP revision (Project No. 2022-027-SIP-NR), adopted concurrently with this rulemaking. These amendments do not affect the EPA-

approved I/M program requirements for other areas, and the adopted requirements for the Bexar County I/M program meet EPA requirements for implementing an I/M program for moderate ozone nonattainment areas. Therefore, the adopted rulemaking will not negatively impact the state's progress towards attainment of the 2008 and 2015 eight-hour ozone NAAQS.

The adopted amendments to Chapter 114 also modify administrative aspects of 30 TAC Chapter 114, Subchapter H to remove Ellis, Johnson, Kaufman, Parker, Rockwall, and Wise Counties from the list of affected counties required to comply with the state's low RVP control requirements. The removal of these six counties from the state low RVP program will not interfere with attainment or maintenance of the NAAQS for the DFW area due to implementation of federal RFG requirements, which are more stringent than the state rules. The Chapter 114 low RVP program requires a maximum gasoline RVP of no greater than 7.8 pounds per square inch (psi) and has a seasonal applicability, the specific time period of the summer ozone season. The federal RFG program controls more components of gasoline as well as requiring a lower RVP for gasoline and has no seasonal limitations. The adopted revisions will not negatively impact the state's progress towards attainment of the 2008 and 2015 eight-hour ozone NAAQS.

Section by Section Discussion

The amendments to Chapter 114 revise 30 TAC Chapter 114, Subchapters A and C to repeal obsolete definitions and revise the I/M program rules to provide for implementation of the Bexar County program. The amendments also revise 30 TAC Chapter 114, Subchapter H to remove Ellis, Johnson, Kaufman, Parker, Rockwall, and Wise Counties from the list of affected counties required to comply with the state's low RVP control requirements.

The commission also adopts non-substantive changes to update the rules in accordance with current *Texas Register* style and format requirements, improve readability, establish consistency in the rules, remove outdated definitions identified during the Quadrennial review, and conform to the standards in the Texas Legislative Council Drafting Manual, September 2020. These non-substantive changes are not intended to alter the existing rule requirements in any way and may not be specifically discussed in this preamble.

Subchapter A: Definitions

§114.1. Definitions

The revisions remove obsolete definitions in this section that were identified during the 2019 Quadrennial review of Chapter 114 and have been reaffirmed by staff as no longer necessary and updated the mail code in the Texas Inspection and Maintenance State Implementation Plan definition to MC 206 from MC 166 as included in the proposed rulemaking. The obsolete definitions were associated with repealed agency programs and are not used in or applicable to current rules in Chapter 114. The definitions removed are: Heavy-duty vehicle, Inherently low emission vehicle, Light-duty vehicle, Loaded mode inspection and maintenance test, Low emission vehicle, Mass transit authority, Reformulated gasoline, Tier I federal emission standards, Ultra low emission vehicle, and Zero emission vehicle. The remaining definitions are renumbered as appropriate.

§114.2. Inspection and Maintenance Definitions

The revisions add new language under the definition for Program area in §114.2(10) to reflect that the new Bexar County program area consists of Bexar County.

Subchapter C: Vehicle Inspection and Maintenance; Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program; and Early Action Compact Counties

Division 1: Vehicle Inspection and Maintenance

§114.50. Vehicle Emissions Inspection Requirements

The revisions to §114.50(a) add new paragraph (5) to specify the program start dates, specify the model year vehicles in the Bexar County program area to be tested, and that all vehicle emissions testing stations must offer OBD tests. The new subparagraph (A) requires all Bexar County vehicles subject to I/M program requirements to receive the EPA-approved OBD test beginning November 1, 2026. The new subparagraph (B) requires all vehicle emissions inspection stations in the Bexar County program area to offer the OBD test.

The revisions to §114.50(b) amend paragraphs (1), (3), and (6) by adding the Bexar County program area to the list of program areas subject to the control requirements of the subsection.

§114.53. Inspection and Maintenance Fees

The revision to §114.53(a) adds a new paragraph (4) to establish the maximum fee of \$18.50 that Bexar County program area emissions inspection stations may charge for the OBD test. In 2020, TCEQ commissioned a study to help prepare for the future implementation of an I/M program in Bexar County. The Bexar County Inspection and Maintenance Program Study Final Report (Bexar County I/M Study) is available at https://wayback.archiveit.org/414/20210528194434/https://www.tceg.texas.gov/assets/public/implementation/air/ms/IM/2020%20Bexar%20County%20IM%20Prog%20Study%20Report.pdf. The Bexar County I/M Study recommended a fee between \$18 and \$22. The Commission adopts a fee of \$18.50, as the Commission finds that this amount is comparable to the existing OBD fee in the Houston-Galveston-Brazoria and Dallas-Fort Worth program areas, and this amount is also consistent with the Bexar County I/M Study's recommendation. The revision does not include provisions for the Bexar County program area to participate in the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP), which has not been funded since 2017 and all participating counties have opted out of the LIRAP. If TCEQ is reappropriated funding in the future to implement LIRAP or a similar program, TCEQ will initiate rulemaking to designate that Bexar County is eligible to participate effective upon the start date of the I/M program. The revision to §114.53(d)(4) adds a new paragraph that requires affected vehicle owners to remit \$2.50 to the Department of Motor Vehicles (DMV) or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee to cover the costs to implement, maintain, administer, and enforce the required vehicle I/M program in Bexar County.

Subchapter H: Low Emission Fuels

Division 1: Gasoline Volatility

§114.309. Affected Counties

The revisions remove Ellis, Johnson, Kaufman, Parker, Rockwall, and Wise Counties from the list of affected counties required to comply with the state's low RVP control requirements. These six counties are subject to the federal RFG program as of November 7, 2023, prior to the anticipated effective date of this rulemaking, if adopted. Federal RFG

program requirements are more stringent, and exempting these counties from the state low-RVP rules eliminates unnecessary overlapping state requirements.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking considering the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the adopted rulemaking does not meet the definition of a "Major Environmental Rule" as defined in that statute, and in addition, if it did meet the definition, will not be subject to the requirement to prepare a regulatory impact analysis. A "Major Environmental Rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Additionally, the adopted rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Tex. Gov't Code Ann., §2001.0225(a). Tex. Gov't Code Ann., \$2001.0225 applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The adopted rulemaking's purpose is to implement the required vehicle I/M program in Bexar County and to remove certain counties in the DFW area from the state low RVP program since they will be subject to the federal RFG rules as of November 7, 2023. These changes are necessary to comply with federal requirements for the implementation of vehicle I/M programs required by 42 United States Code (U.S.C.) §7511a(a), FCAA, §182(b) for the Bexar County 2015 eight-hour ozone nonattainment area and to remove counties in the DFW 2008 eight-hour ozone severe nonattainment area from the state low RVP program that will become subject to requirements for RFG as required by 42 U.S.C. §7545, FCAA, §211(k)(10)(D). The requirement to implement and enforce vehicle I/M programs is specifically required for certain nonattainment areas by the FCAA, and the adopted revisions to 30 TAC Chapter 114 are anticipated to be used as a control strategy for demonstrating attainment of the 2015 eight-hour ozone NAAQS upon implementation of the program in the Bexar County area.

The adopted rulemaking implements requirements of 42 U.S.C. §7410, FCAA, §110, 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; as well as the removal of counties from the existing state low RVP program that will become subject to the requirements of the 42 U.S.C. §7545, FCAA, §211(k)(10)(D), as discussed elsewhere in this preamble. While 42 U.S.C. §7410, FCAA, §110 generally does not require specific programs, methods, or reductions in order to meet the standard, vehicle I/M programs are specifically required by the FCAA, as are the requirements for federal RFG for severe ozone nonattainment areas. The SIP must also include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emis-

sions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of the FCAA. 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, and when programs are specifically reguired, states may implement them with flexibility allowed under the statute and EPA rules. 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 U.S.C. §7410, FCAA, §110; nor does it allow states to ignore specific requirements of the FCAA. States are not free to ignore the requirements of 42 U.S.C. §7410, FCAA, §110 and must develop programs to assure that their contributions to nonattainment areas are reduced so that these areas can be brought into attainment on the schedule prescribed by the FCAA.

If a state does not comply with its obligations under 42 U.S.C., §7410, FCAA, §110 to submit SIPs that comply with the requirements of the FCAA, states are subject to discretionary sanctions under 42 U.S.C., §7410(m), FCAA, §110(m) or mandatory sanctions under 42 U.S.C., §7509, FCAA, §179 as well as the imposition of a FIP under 42 U.S.C., §7410, FCAA, §110(c).

As discussed earlier in this preamble, states are required to adopt SIPs with enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the FCAA. As discussed in the FISCAL NOTE portion of the preamble to the proposed rule, the adopted rules are not anticipated to add any significant additional costs to affected individuals or businesses beyond what is necessary to attain the 2015 eight-hour ozone NAAQS, comply with the specific requirements for vehicle I/M programs, or 42 U.S.C. §7545, FCAA, §211(k)(10)(D) on the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. No comments were received.

The requirement to provide a fiscal analysis of regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th Legislative Session. 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 will seldom apply, the commission provided a cost estimate for SB 633 that concluded "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 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, but vehicle I/M programs are specifically required by the FCAA for moderate nonattainment areas,

as are the requirements for federal RFG for severe ozone nonattainment areas: thus, states must develop programs for each nonattainment area to help ensure that those areas will meet the required attainment deadlines and comply with EPA requirements for vehicle I/M programs and the federal RFG program. Because of the ongoing need to meet federal requirements, the commission routinely proposes and adopts rules incorporating or designed to satisfy specific federal requirements. The legislature is presumed to understand this federal scheme. If each rule proposed by the commission to meet a federal requirement was considered to be a major environmental rule that exceeds federal law, then each of those rules would require the full regulatory impact analysis (RIA) contemplated by SB 633. Requiring a full RIA for all federally required rules 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, then the intent of SB 633 is presumed to only to require the full RIA for rules that are extraordinary in nature. While the adopted rules may have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA and creates no additional impacts since the rules do not impose burdens greater than required to demonstrate attainment of the 2015 eight-hour ozone NAAQS and comply with the requirements for vehicle I/M programs and the federal RFG program as discussed elsewhere in this preamble.

For these reasons, the adopted rules fall under the exception in Texas Government Code, §2001.0225(a), because they are required by, and do not exceed, 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 RIA 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" (Texas Government Code, §2001.035). The legislature specifically identified Texas Government Code, §2001.0225 as subject to this standard.

As discussed in this analysis and elsewhere in this preamble, the commission has substantially complied with the requirements of Texas Government Code, §2001.0225. The adopted rules implement the requirements of the FCAA as discussed in this analysis and elsewhere in this preamble. The adopted rules were determined to comply with requirements for vehicle I/M programs

and federal RFG requirements and will not exceed any standard set by state or federal law. These adopted rules are not an express requirement of state law. The adopted rules do not exceed a requirement of a delegation agreement or a contract between state and federal government, as the rules, if adopted by the commission and approved by EPA, will become federal law as part of the approved SIP required by 42 U.S.C., §7410, FCAA, §110. The adopted rules were not developed solely under the general powers of the agency but are authorized by specific sections of Texas Health and Safety Code (THSC), Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code, which are cited in the STATUTORY AUTHORITY section of this preamble, including THSC, §§382.011, 382.012, and 382.017. Therefore, this rulemaking adoption is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), taking means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or §17 or §19, Article I, Texas Constitution; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The commission completed a takings impact analysis for the adopted rulemaking action under the Texas Government Code, Chapter 2007. The primary purpose of this adopted rulemaking, as discussed elsewhere in this preamble, is to meet federal requirements for the implementation of vehicle I/M programs and removal of the six specified counties from the state low RVP program since they will become subject to the federal RFG program one year after reclassification to severe for the 2008 eight-hour ozone NAAQS. Therefore, Chapter 2007 does not apply to this adopted rulemaking because it is an action reasonably taken to fulfill an obligation mandated by federal law, as provided by Texas Government Code, §2007.003(b)(4).

As discussed elsewhere in this preamble, the adopted rulemaking implements requirements of the FCAA, 42 U.S.C., §7410, FCAA, §110 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 U.S.C., §7410, FCAA, §110 generally does not require specific programs, methods, or reductions in order to meet the standard, vehicle I/M programs and federal RFG are specifically required by the FCAA. 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 the FCAA. 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 U.S.C., §7410, FCAA, §110. States are not free to ignore the requirements of 42 U.S.C., §7410, FCAA, §110 and must develop programs to assure that nonattainment areas can be brought into attainment on the schedule prescribed by the FCAA.

States are required to adopt SIPs with enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the FCAA. If a state does not comply with its obligations under 42 U.S.C., §7410, FCAA, §110 to submit SIPs that meet the requirements of the FCAA, states are subject to discretionary sanctions under 42 U.S.C., §7410(m) or mandatory sanctions under 42 U.S.C., §7509, FCAA, §179; as well as the imposition of a FIP under 42 U.S.C., §7410, FCAA, §110(c).

The adopted rulemaking will not create any additional burden on private real property beyond what is required under federal law, as the rules, if adopted by the commission and approved by EPA, will become federal law as part of the approved SIP required by 42 U.S.C., §7410, FCAA, §110. The rules will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The adopted rulemaking will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the adopted rulemaking will not cause a taking under Texas Government Code, Chapter 2007. 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 rulemaking is identified in the Coastal Coordination Act Implementation Rules, 31 TAC §29.11(b)(2) relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

Note: §505.11(b)(2) applies only to air pollutant emissions, on-site sewage disposal systems, and underground storage tanks. §505.11(b)(4) applies to all other actions. 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. No comments were received regarding the CMP.

Public Comment

The commission offered a public hearing on July 6, 2023 at 7:00 p.m. in Arlington, Texas for the state RVP program, but no attendees registered to make comments on the record, so the public hearing was not opened. The commission held a public hearing

on July 13, 2023 at 7:00 p.m. for the Bexar County I/M program in San Antonio. Texas, and testimony was received and transcribed for the record. The comment period closed on July 17, 2023. No comments were received regarding the removal of the six DFW area counties from the state low RVP program. Oral and/or written comments on the Bexar County I/M program proposal were received from the following: Alamo Area Council of Governments (AACOG); EPA Region 6; Official Inspection Station (OIS); Rema Investment Group, LLC (RIE); San Antonio Auto Service, LLC (SAAS); Texas State Inspection Association (TSIA); and 16 individuals. After the comment period closed, Texas Department of Public Safety (DPS) submitted a letter to TCEQ regarding the timeline for Bexar County vehicle emissions inspection implementation, which was added to the comments received for commission consideration on this SIP revision. Comments were received concerning the maximum fees set for individual emissions inspections in Bexar County as well as the other I/M counties in Texas. Comments were also received concerning the timing of the proposed start of the I/M program in Bexar County, TCEQ's outreach efforts associated with implementing I/M in Bexar County, and the end of the state's safety inspection program.

Response to Comments

Comment

RIE, SAAS, and two individuals stated that they were in support of the proposal to implement I/M in Bexar County. AACOG expressed thanks to the TCEQ for holding the public hearing in San Antonio to provide residents an opportunity to testify on the proposal. OIS offered that committee hearings should not be timed or censored and commented that the rule comment period should be extended to allow DPS to hold information meetings in which inspectors and automotive store owners may participate.

Response

The commission appreciates support for the proposed rule-making and public hearing. The commission complied with all applicable public notice and rulemaking requirements for this rulemaking: (Texas Government Code, Subchapter B, Chapter 2001; Texas Clean Air Act, THSC, §382.017; Texas Water Code, §5.103; 30 TAC Chapter 20; and 40 CFR §51.102). The comment period lasted for 45 days, longer than the required 30 days. The commission applied a time limit for providing oral testimony at its July 13, 2023 public hearing to allow as many potential attendees to participate as possible. No word limit was applied to written comments, which were accepted during the entire 45-day comment period. DPS's outreach efforts are beyond the scope this rulemaking. No changes were made in response to this comment.

Comment

AACOG commented that because San Antonio is a poor city, elected officials are concerned about the impact the emissions inspection fee will have on residents. AACOG thanked TCEQ for including Bexar County elected officials in its outreach efforts and for listening to their concerns.

OIS commented that industry representatives should be notified about information meetings and allowed to provide input. OIS pointed out that the public information meetings held during development of the proposed rulemaking were scheduled for the middle of the workday and were poorly attended by shop owners. OIS noted that no in-person townhall meetings were offered, which was part of the process for previous I/M implementation.

Without in-person townhall meetings, OIS stated, industry representatives are unable to participate in an open dialogue on the topic or to provide input, and elected officials do not have the opportunity to hear their input. Not providing an opportunity for elected officials to hear industry's perspective allows them to conclude that industry is supportive of the plan.

Response

The commission appreciates the support for its outreach efforts related to this rulemaking as well the comments suggesting additional outreach. For this rulemaking, the commission was required to offer a public hearing, which it did on July 13, 2023. Prior to that hearing, TCEQ provided information on I/M implementation in Bexar County at meetings held throughout development of this rulemaking. TCEQ presented on I/M implementation planning at a San Antonio Air Quality Technical Information Meeting on August 16, 2021, which was open to the public, and again at a November 8, 2022 meeting of the TSIA. TCEQ then held a public information meeting on January 17, 2023 that was targeted at Bexar County stakeholders. For that meeting, TCEQ contacted area elected officials, TSIA, Texas Clean Air Working Group, regional planning authorities in all of the areas in the state that implement I/M. the Bexar County Environmental Services Department, and the City of San Antonio Metropolitan Health District to invite their representatives to the meeting. Additionally, notice of the meeting was distributed as a bulletin to inspection machines statewide and shared through GovDelivery, TCEQ's Public Information Meeting on the Expansion of Vehicle Inspection and Maintenance (I/M) to Bexar County webpage, which was created for the meeting, and the events calendar on the TCEQ's homepage. The public information meeting was held virtually to maximize attendance, and time was set aside to receive input and questions from attendees.

No changes were made in response to this comment.

Comment

AACOG, SAAS, OIS, TSIA, REI, and 13 individuals provided input on the maximum fees set for individual emissions inspections in Texas, with OIS and one individual providing similar input in written comments and oral testimony at the public hearing. AACOG, TSIA, OIS, and four individuals specifically commented on the proposed maximum fee of \$11.50 for Bexar County, with AACOG commenting that the low fee is welcome because it will provide relief for the area's low-income drivers. TSIA, OIS, and the four individuals commented that the proposed fee for Bexar County is too low. Three individuals commented that they owned inspections stations that would close if the fee were not increased. One individual stated they were a station owner in a neighboring county and, though they were unsure whether they would be part of the program, they would not consider conducting emissions inspections if the maximum fee were \$11.50.

RIE, SAAS, OIS, TSIA, and 13 individuals commented on the I/M fee in general, all stating that the maximum fee should be increased, and RIE, SAAS, TSIA, and nine of those individuals recommended fees ranging from \$22 to \$40. OIS, TSIA, and nine individuals expressed concern that the proposed maximum inspection fee will not cover the costs associated with conducting the inspections. One individual commented that the previous TCEQ inspection fee survey indicated that the current fee rates are inadequate. The same individual indicated they participated in multiple inspection fee surveys and claimed that Texas has the lowest inspection fee in the United States.

OIS and two individuals commented on the consequences of not setting an adequate fee for emissions inspections in Texas. OIS and one individual warned that stations would stop offering inspections, which would lead to longer wait times and frustrated vehicle owners. One individual went on to describe a scenario in which inspection stations close on January 1, 2025, the end date for state vehicle safety inspections, and the long lines and angry vehicle owners result in negative media coverage holding TCEQ accountable for the situation. The individual indicated that the described outcome can be avoided by increasing the emissions inspection fee for all counties in the I/M program.

Response

The commission adopts a maximum vehicle emissions inspection fee of \$18.50 for the Bexar County I/M program. This amount was changed from the proposed fee of \$11.50. The adopted fee of \$18.50 for Bexar County is comparable to the maximum OBD fee of \$18.50 for the Houston-Galveston-Brazoria (HGB) and Dallas-Fort-Worth (DFW) program areas. This amount is also consistent with the Bexar County I/M Study that recommended an OBD fee for all program areas between \$18 and \$22. The Bexar County I/M Study is available at: https://wayback.archive-it.org/414/20210528194434/https://www.tceq.texas.gov/assets/public/implementation/air/ms/IM/2020%20Bexar%20County%20IM%20Prog%20Study%20Report.pdf.

Under THSC, §382.202(f), the commission is required to review the vehicle emissions fee for the I/M program every two years. The next fee study is planned for Fiscal Year 2024. The upcoming study will include a review of changes in costs associated with conducting emissions inspections and could include a review of fees in other states. If additional changes are determined to be necessary, rulemaking could be recommended for the commission's consideration.

Comment

AACOG, OIS, TSIA, and two individuals referenced TCEQ's biennial fee analysis studies to assesses the adequacy of the vehicle emissions inspection fee. In addition to the 2020 fee study, TCEQ conducted a separate program study to explore the efforts needed to implement I/M in Bexar County (Bexar County I/M Study). AACOG, OIS, TSIA, and the individuals referenced the proposed fee of \$11.50 in comparison to the 2020 studies' recommendations. AACOG supported the decision, and OIS, TSIA, and the two individuals disagreed with it.

Response

The commission adopts a maximum vehicle emissions inspection fee of \$18.50 for the Bexar County I/M program. As mentioned above, this amount was changed from the proposed fee of \$11.50 and is comparable to the maximum OBD fee of \$18.50 for the HGB and DFW program areas. The adopted fee of \$18.50 is also consistent with the Bexar County I/M Study that recommended a fee between \$18 and \$22. As previously mentioned, the 2024 fee study will specifically consider whether fees in all program areas, including Bexar County, should be changed in light of the elimination of the vehicle safety inspection program.

The commission appreciates previous participation and looks forward to continued participation in studies regarding the vehicle emissions inspection fee.

Comment

OIS commented that TCEQ is not statutorily required to set a price for emissions testing and that doing so enables potential legal action. OIS suggested that inspection stations be allowed to set their own fees and that specific signage could be prominently displayed for public view indicating the inspection fee at each station.

Response

Emissions inspection fee authority is granted to the commission under Tex. Health & Safety Code (THSC), §382.202. While the statute provides some discretionary authority, the intent of the legislature is clear that the commission exercise authority to set emission inspection fees.

Additionally, since states are required under federal regulations to demonstrate adequate resources to implement their inspection and maintenance programs, and since Texas chose to implement a decentralized emission testing program, the commission's predecessor agencies submitted its fee authority and the fee rules to the EPA as part of its demonstration that the program would have adequate resources for implementation. EPA published approval of the Texas enhanced inspection and maintenance program, including the fees and resource demonstration, on November 14, 2001 (66 FR 57261). That approval made TCEQ's fee authority federally enforceable. No changes were made in response to this comment.

Comment

TSIA and 10 individuals commented in support of increasing the inspection fee in various counties other than Bexar County or statewide. One of these individuals commented that there is a significant demand for inspections compared to available inspection stations and without a fee increase, a significant amount of current stations, including three of their own, will close, making it harder for consumers to inspect and register their vehicles. The same individual commented that the higher fees charged in Dallas and Houston are allowing some stations to offer discounts in those areas, so supply and demand are more in balance at a \$25.50 fee.

Response

Revising the maximum vehicle emissions inspection fee charged by stations outside of Bexar County is beyond the scope of this rulemaking. No change was made in response to this comment.

Comment

OIS commented that TCEQ plans on eliminating 50% of inspection stations, recommending only 458 locations for Bexar County, which would cause motorists to drive further to locate an inspection station and wait four times as long.

Response

The commission does not set the number of inspection stations in emissions testing areas. A Bexar County I/M Study suggested that the county would need approximately 458 inspection stations to adequately test the vehicle fleet for an I/M program. No change was made in response to this comment.

Comment

OIS and four individuals provided comments against the end of state safety inspections for noncommercial vehicles. One individual station owner stated their business would close, and OIS commented that the inspection industry will be dismantled when safety inspections end in 2025. An individual station owner offered that their customers are concerned that ending the safety

inspection program will result in more cars being left alongside the road, and another individual commented that the safety inspection program helps avoid accidents. That individual went on to suggest that organizations should protest the statutory repeal of the program and keep roads and air safe.

One individual commented that the safety inspection program has contributed to Texas' greatness for 70 years. Another individual conveyed that inspection customers are frustrated by the current system and suggested that the answer is to improve it by modernizing and streamlining the testing process. The same individual provided an example suggestion of eliminating the emergency brake system test.

Response

These comments are outside the scope of this rulemaking, which addresses requirements in the FCAA and 40 CFR Part 51, as amended, to implement a basic vehicle emissions I/M program in the Bexar County 2015 ozone NAAQS nonattainment area. This program is separate from the state's vehicle safety inspection program that will end on January 1, 2025 as a result of HB 3297, 88th Texas Legislature, Regular Session. No changes were made in response to this comment.

Comment

Comments were received from AACOG, DPS, OIS, TSIA, and two individuals concerning the proposed start of I/M in Bexar County, November 1, 2026. AACOG commented that it was critical to have as much time as possible to disseminate information about and to implement the program due to the planned end of state safety inspections on January 1, 2025. DPS suggested a start date of January 1, 2025 for vehicle emissions inspections in Bexar County to align with the end of non-commercial safety inspections. DPS commented that safety-only vehicle inspection stations will close and exit the program before January 1, 2025, creating a shortage of available stations when the emissions inspection program begins in 2026. DPS also commented that the proposed start date of November 1, 2026 would potentially have a negative impact on existing safety stations, the process of closing inspection stations to then open up new stations several months later would be a significant increase in workload for the agency, and that the complexity of educating citizens on the inspection process for the next three years could cause significant confusion. OIS, TSIA, and an individual commented that starting I/M on the proposed date of November 1, 2026 would leave an inspections gap once safety inspections end that would be difficult for stations to endure financially. OIS and TSIA commented that the Bexar County I/M start date should be as close to the end date for safety inspections as possible. OIS went on to comment that there is no statutory requirement or mandate requiring TCEQ to establish a specific start date for I/M in Bexar County, including the proposed November 1, 2026 start date. OIS stated that TCEQ may choose to implement I/M in Bexar County starting January 1, 2025, eliminating the inspections gap, which would preserve the workforce, clean the air, and save lives. OIS added that San Antonio is a poor city but a growing city with poor air quality that needs to be cleaned up.

Response

Under the FCAA, §182(i), states generally must meet new requirements associated with a reclassification according to the schedules prescribed in connection with such requirements. The I/M rules in 40 CFR Part 51, Subpart S allow areas newly required to establish programs up to four years after the effective date of reclassification, 40 CFR §§51.373(b), 51.352(c) and

(e)(2). In its final reclassification rule published October 7, 2022 (87 FR 60897), EPA also took comment on, and established, the I/M program implementation deadline of no later than four years after the effective date of reclassification (November 7, 2026). The commission adopts this rulemaking with its proposed November 1, 2026 start date to ensure adequate time for delivery and setup of vehicle emissions inspection equipment and to work with partner agencies to develop and implement a public awareness plan. The commission is aware that the end of state safety inspections will occur before I/M starts in Bexar County and will work with DPS on the transition from safety-only inspections to emissions and commercial safety inspections. No changes were made in response to this comment.

Comment

The EPA requested that TCEQ review opportunities to incorporate environmental justice (EJ) considerations adequately and appropriately into SIP revisions. The EPA encouraged the TCEQ to screen SIP revisions for EJ concerns and consider civil rights issues for potentially impacted communities early in the SIP revision process. The EPA recommended utilizing EJScreen and knowledge of the impacted area. The EPA expressed that the TCEQ should consider whether pollution sources contribute to community risk.

Response

The purpose of this rulemaking is to implement I/M and set the testing fee applicable in Bexar County in accordance with EPA's guidance and FCAA requirements. TCEQ followed all relevant federal and state statutes, regulations, and guidance in the development of this rulemaking for the Bexar County nonattainment area.

This rulemaking is not the appropriate mechanism to address EJ issues. No federal or state statute, regulation, or guidance provides a process for evaluating or considering the socioeconomic or racial status of communities within an ozone nonattainment area. In a recent proposed approval of a TCEQ submittal for El Paso County, which did not include an EJ evaluation, EPA stated that the FCAA "and applicable implementing regulations neither prohibit nor require such an evaluation" (88 FR 14103). TCEQ continues to be committed to protecting Texas' environment and the health of its citizens regardless of location.

While EPA may encourage states to utilize EJScreen in rulemaking actions, it is not necessary, because the NAAQS are protective of all populations. If the NAAQS are not sufficient to protect public health, it is incumbent upon EPA to revise the NAAQS.

This rulemaking was developed in compliance with the policies and guidance delineated in TCEQ's Language Access Plan (LAP) and TCEQ's Public Participation Plan (PPP). The LAP helps ensure individuals with limited English proficiency may meaningfully access TCEQ programs, activities, and services in a timely and effective manner; and the PPP identifies the methods by which TCEQ interacts with the public, provides guidance and best practices for ensuring meaningful public participation in TCEQ activities, and highlights opportunities for enhancing public involvement in TCEQ activities and programs.

TCEQ translated the Plain Language Summaries, GovDelivery notices, Public Hearing notices, and SIP Hot Topics notices into Spanish for all projects. Newspaper publications were also in Spanish. Additionally, two Spanish translators were available at all hearings, and the notices included a statement that Spanish translation would be available at each hearing.

No changes were made in response to these comments.

SUBCHAPTER A. DEFINITIONS

30 TAC §114.1, §114.2

Statutory Authority

The expansion of the vehicle I/M program to Bexar County is adopted under the authority of Texas Water Code (TWC), §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act (TCAA).

The expansion of the vehicle I/M program to Bexar County is also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air and THSC, §382.012, concerning State Air Control Plan, which authorizes of the commission to prepare and develop a general, comprehensive plan for the control of the state's air. Additionally, the expansion of the vehicle I/M program to Bexar County is authorized under THSC, §382.201, concerning Definitions, which specifies the definitions that apply under Subchapter G of the THSC, Vehicle Emissions; THSC, §382.202, concerning Vehicle Emissions Inspection and Maintenance Program, which authorizes the commission to establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of the federal Clean Air Act; THSC, §382.203, concerning Vehicles Subject to Program; Exemptions, which establishes which vehicles are subject to the I/M program and which are exempt from it; and THSC, §382.205, concerning Inspection Equipment and Procedures, which authorizes the commission to adopt standards and specifications for motor vehicle emissions testing equipment, recordkeeping and reporting procedures, and measurable emissions standards, as well as consult with the Department of Public Safety of the State of Texas.

The adopted rules implement TWC, §§5.103, 5.105, and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.017, 382.201-382.203, and 382.205.

§114.1. Definitions.

Unless specifically defined in Texas Health and Safety Code, Chapter 382, also known as the Texas Clean Air Act (TCAA), 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 TCAA, the following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

- (1) Dual-fuel vehicle--Any motor vehicle or motor vehicle engine engineered and designed to be operated on two different fuels, but not a mixture of the two.
- (2) Emergency vehicle--A vehicle defined as an authorized emergency vehicle according to Texas Transportation Code, §541.201(1).

- (3) Emissions--The emissions of oxides of nitrogen, volatile organic compounds, carbon monoxide, particulate, or any combination of these substances.
- (4) First safety inspection certificate--Initial Texas Department of Public Safety (DPS) certificates issued through DPS-certified inspection stations for every new vehicle found to be in compliance with the rules and regulations governing safety inspections. Beginning on the single sticker transition date as defined in this section, the safety inspection certificates will no longer be used.
- (5) First vehicle registration--Initial vehicle registration insignia sticker issued through the Texas Department of Motor Vehicles for every new vehicle found to be in compliance with the rules and regulations governing vehicle registration prior to the single sticker transition date as defined in this section and vehicle registration and safety inspections beginning on the single sticker transition date.
- (6) Gross vehicle weight rating--The value specified by the manufacturer as the maximum design loaded weight of a vehicle. This is the weight as expressed on the vehicle's registration and includes the weight the vehicle can carry or draw.
- (7) Law enforcement vehicle--Any vehicle controlled by a local government and primarily operated by a civilian or military police officer or sheriff, or by state highway patrols, or other similar law enforcement agencies, and used for the purpose of law enforcement activities including, but not limited to, chase, apprehension, surveillance, or patrol of people engaged in or potentially engaged in unlawful activities.
- (8) Single sticker transition date--The transition date of the single sticker system is the later of March 1, 2015, or the date that the Texas Department of Motor Vehicles and the Texas Department of Public Safety concurrently implement the single sticker system required by Texas Transportation Code, §502.047.
- (9) Texas Inspection and Maintenance State Implementation Plan--The portion of the Texas state implementation plan that includes the procedures and requirements of the vehicle emissions inspection and maintenance program as adopted by the commission and approved by the EPA. A copy of the Texas Inspection and Maintenance State Implementation Plan is available at the Texas Commission on Environmental Quality, 12100 Park 35 Circle, Austin, Texas, 78753; mailing address: P.O. Box 13087, MC 206, Austin, Texas 78711-3087.
- (10) Vehicle registration--Vehicle characteristics, corresponding owner information, and registration expiration date contained in the Texas Department of Motor Vehicles registration system.
- (11) Vehicle registration insignia sticker--The sticker issued through the Texas Department of Motor Vehicles (DMV) or county tax assessor-collector for a vehicle compliant with the DMV regulations. Beginning on the single sticker transition date as defined in this section, the vehicle registration insignia sticker, a current valid VIR, or other form of proof authorized by the DPS or the DMV will be used as proof of compliance with inspection and maintenance program requirements, the DMV's rules and regulations governing vehicle registration, and the Texas Department of Public Safety's rules and regulations governing safety inspections.

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. VEHICLE INSPECTION AND MAINTENANCE; LOW INCOME VEHICLE REPAIR ASSISTANCE, RETROFIT, AND ACCELERATED VEHICLE RETIREMENT PROGRAM; AND EARLY ACTION COMPACT COUNTIES

DIVISION 1. VEHICLE INSPECTION AND MAINTENANCE

30 TAC §114.50, §114.53

Statutory Authority

The expansion of vehicle I/M program to Bexar County is adopted under the authority of Texas Water Code (TWC), §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to carry out its powers and duties under the TWC; TWC, §.7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The expansion of vehicle I/M to Bexar County is also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; and THSC, §382.012, concerning State Air Control Plan, which authorizes of the commission to prepare and develop a general, comprehensive plan for the control of the state's air. Additionally, the expansion of vehicle I/M to Bexar County is authorized under THSC, §382.201, concerning Definitions, which specifies the definitions that apply under Subchapter G of the THSC, Vehicle Emissions; THSC, §382.202, concerning Vehicle Emissions Inspection and Maintenance Program, which authorizes the commission to establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of the federal Clean Air Act; THSC, §382.203, concerning Vehicles Subject to Program; Exemptions, which establishes which vehicles are subject to the I/M program and which are exempt from it; THSC, §382.204, concerning Remote Sensing Program Component, which requires the commission and the Department of Public Safety (DPS) to develop an enforcement program that includes a remote sensing component; THSC, §382.205, concerning Inspection Equipment and Procedures, which authorizes the commission to adopt standards and specifications for motor vehicle emissions testing equipment, recordkeeping and reporting procedures, and measurable emissions standards, as well as consult with the DPS; THSC, §382.206. Collection of Data: Report, which authorizes the collection of information derived from the emissions inspection and maintenance program; THSC, §382.207, Inspection Stations; Quality Control Audits: which requires standards and procedures for inspection stations as well as other specifics relating to transportation planning and quality control auditing; THSC, §382.208, Attainment Program, which requires the commission to coordinate with federal, state, and local transportation planning agencies to develop and implement transportation programs and other measures necessary to demonstrate and maintain attainment; THSC, §382.209, Low-Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program, which authorizes the commission to establish and authorize the commissioners court of a participating county to implement a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program; and THSC, §382.210, Implementation Guidelines and Assistance, which requires the commission to adopt guidelines to assist a participating county in implementing a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program...

The adopted rules implement TWC, §§5.103, 5.105, and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.017, 382.201-382.210.

- §114.53. Inspection and Maintenance Fees.
- (a) The following fees must be paid for an emissions inspection of a vehicle at an inspection station. This fee must include one free retest should the vehicle fail the emissions inspection provided that the motorist has the retest performed at the same station where the vehicle originally failed and submits, prior to the retest, a properly completed vehicle repair form showing that emissions-related repairs were performed and the retest is conducted within 15 days of the initial emissions test.
- (1) In El Paso County beginning May 1, 2002 and ending on the day before the single sticker transition date as defined in §114.1 of this title (relating to Definitions), any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(4)(A), (B), or (C) of this title (relating to Vehicle Emissions Inspection Requirements) must collect a fee of \$14 and remit \$2.50 to the Texas Department of Public Safety (DPS). If the El Paso County Commissioners Court adopts a resolution that is approved by the commission to participate in the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP), the emissions inspection station in El Paso County must collect a fee of \$16 and remit to the DPS \$4.50 beginning upon the date specified by the commission and ending on the day before the single sticker transition date. Beginning on the single sticker transition date, any emissions inspection station in El Paso County required to conduct an emissions test in accordance with §114.50(a)(4)(A), (B), or (C) of this title must collect a fee not to exceed \$11.50.
- (2) In the Dallas-Fort Worth program area beginning May 1, 2002 and ending on the day before the single sticker transition date as defined in §114.1 of this title, any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(1)(A) or (B) of this title and in the extended Dallas-Fort Worth program area beginning May 1, 2003 and ending on the day before the single sticker transition date, any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(2)(A) or (B) of this title must collect a fee not to exceed \$27. Beginning May 1, 2002 and ending on the day before the single sticker transition date in the Dallas-Fort Worth and the extended Dallas-Fort Worth program areas, the emissions inspection station must remit to the DPS \$2.50 for each ac-

- celeration simulation mode (ASM-2) test and \$8.50 for each on-board diagnostics (OBD) test. Beginning on the single sticker transition date in the Dallas-Fort Worth and the extended Dallas-Fort Worth program areas, any emissions inspection station required to conduct an emissions test in accordance with \$114.50(a)(1)(A) or (B) and (2)(A) or (B) of this title must collect a fee not to exceed \$24.50 for each ASM-2 test and \$18.50 for each OBD test.
- (3) In the Houston-Galveston-Brazoria program area beginning May 1, 2002 and ending on the day before the single sticker transition date as defined in §114.1 of this title, any emissions inspection station in Harris County required to conduct an emissions test in accordance with §114.50(a)(3)(A) or (B) of this title and beginning May 1, 2003 and ending on the day before the single sticker transition date, any emissions inspection station in Brazoria, Fort Bend, Galveston, and Montgomery Counties required to conduct an emissions test in accordance with §114.50(a)(3)(D) or (E) of this title must collect a fee not to exceed \$27. Beginning May 1, 2002 and ending on the day before the single sticker transition date in Brazoria, Fort Bend, Galveston, Harris, and Montgomery Counties, the emissions inspection station must remit to the DPS \$2.50 for each ASM-2 test and \$8.50 for each OBD test. Beginning on the single sticker transition date in Brazoria, Fort Bend, Galveston, Harris, and Montgomery Counties, any emissions inspection station required to conduct an emissions test in accordance with \$114.50(a)(3)(A), (B), (D), or (E) of this title must collect a fee not to exceed \$24.50 for each ASM-2 test and \$18.50 for each OBD test.
- (4) In the Bexar County program area beginning November 1, 2026, any emissions inspection station in Bexar County required to conduct an emissions test in accordance with §114.50(a)(5)(A) or (B) of this title must collect a fee not to exceed \$18.50.
- (b) The per-vehicle fee and the amount the inspection station remits to the DPS for a challenge test at an inspection station designated by the DPS, must be the same as the amounts set forth in subsection (a) of this section. The challenge fee must not be charged if the vehicle is retested within 15 days of the initial test.
- (c) Inspection stations performing out-of-cycle vehicle emissions inspections for the state's remote sensing element must charge a motorist for an out-of-cycle emissions inspection in the amount specified in subsection (a) of this section resulting from written notification that subject vehicle failed on-road testing. If the vehicle passes the vehicle emissions inspection, the vehicle owner may request reimbursement from the DPS.
- (d) Beginning on the single sticker transition date as defined in §114.1 of this title, vehicle owners shall remit as part of the annual vehicle registration fee collected by the Texas Department of Motor Vehicles (DMV) or county tax assessor-collector the amount of the vehicle emissions inspection fee that is required to be remitted to the state.
 - (1) In El Paso County, the following requirements apply.
- (A) If participating in the LIRAP, vehicle owners shall remit \$4.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee. Of the \$4.50 remitted, \$2.00 constitutes the LIRAP fee as defined in §114.7 of this title (relating to Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program Definitions).
- (B) If participating in the LIRAP and in the process of opting out, vehicle owners shall remit \$4.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee until the LIRAP fee termination effective date as defined in §114.7 of this title. Of the \$4.50 remitted, \$2.00

constitutes the LIRAP fee as defined in §114.7 of this title. Upon the LIRAP fee termination effective date, vehicle owners shall remit \$2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee.

- (C) If not participating in the LIRAP, vehicle owners shall remit \$2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee.
- (2) In the Dallas-Fort Worth and the extended Dallas-Fort Worth program areas, the following requirements apply.
- (A) Vehicle owners in counties participating in the LI-RAP shall remit \$2.50 for motor vehicles subject to ASM-2 tests and \$8.50 for motor vehicles subject to OBD tests to the DMV or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee. Of the \$8.50 remitted for OBD tests, \$6.00 constitutes the LIRAP fee as defined in \$114.7 of this title.
- (B) Vehicle owners in counties participating in the LI-RAP that are in the process of opting out shall remit \$2.50 for motor vehicles subject to ASM-2 tests and \$8.50 for motor vehicles subject to OBD tests to the DMV or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee until the LIRAP fee termination effective date as defined in \$114.7 of this title. Of the \$8.50 remitted for OBD tests, \$6.00 constitutes the LIRAP fee as defined in \$114.7 of this title. Upon the LIRAP fee termination effective date, vehicle owners in participating counties that are in the process of opting out of the LIRAP shall remit \$2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee.
- (C) Vehicle owners in counties not participating in the LIRAP shall remit \$2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee.
- (3) In the Houston-Galveston-Brazoria program area, the following requirements apply.
- (A) Vehicle owners in counties participating in the LI-RAP shall remit \$2.50 for motor vehicles subject to ASM-2 tests and \$8.50 for motor vehicles subject to OBD tests to the DMV or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee. Of the \$8.50 remitted for OBD tests, \$6.00 constitutes the LIRAP fee as defined in \$114.7 of this title.
- (B) Vehicle owners in counties participating in the LIRAP that are in the process of opting out shall remit \$2.50 for motor vehicles subject to ASM-2 tests and \$8.50 for motor vehicles subject to OBD tests to the DMV or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee until the LIRAP fee termination effective date as defined in \$114.7 of this title. Of the \$8.50 remitted for OBD tests, \$6.00 constitutes the LIRAP fee as defined in \$114.7 of this title. Upon the LIRAP fee termination effective date, vehicle owners in participating counties that are in the process of opting out of the LIRAP shall remit \$2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee.
- (C) Vehicle owners in counties not participating in the LIRAP shall remit \$2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-assessor-collector at the

time of annual vehicle registration as part of the vehicle emissions inspection fee.

(4) In the Bexar County program area, vehicle owners shall remit \$2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee.

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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For further information, please call: (512) 239-6087



SUBCHAPTER H. LOW EMISSION FUELS DIVISION 1. GASOLINE VOLATILITY

30 TAC §114.309

Statutory Authority

The removal of the six specified counties from the low Reid Vapor Pressure (LVP) program is adopted under the authority of Texas Water Code (TWC), §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorizes the commission to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The removal of the six specified counties from the low RVP program is also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012 concerning State Air Control Plan, which authorizes of the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act.

The adopted rules implement TWC, §§5.103, 5.105, and 7.002; and THSC, §§382.002, 382.011, 382.012, and 382.017.

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 290. PUBLIC DRINKING WATER SUBCHAPTER D. RULES AND REGULATIONS FOR PUBLIC WATER SYSTEMS

30 TAC §§290.38, 290.39, 290.41 - 290.47

The Texas Commission on Environmental Quality (TCEQ) adopts amendments to 30 Texas Administrative Code (TAC) §§290.38, 290.39, and 290.41 - 290.47.

Amended §§290.38, 290.39, 290.41 - 290.44 and 290.47 are adopted *without changes* to the adopted text as published in the July 14, 2023, issue of the *Texas Register* (48 TexReg 3835) and, therefore, will not be republished. Amended §290.45 and §290.46 are adopted *with changes* to the adopted text as published in the July 14, 2023, issue of the *Texas Register* and, therefore, will be republished.

Background and Summary of the Factual Basis for the Adopted Rules

In 2021, the 87th Legislature passed Senate Bill (SB) 3, which relates to preparing for, preventing, and responding to weather emergencies and power outages. SB 3 requires that certain water service providers ensure emergency operations during an extended power outage. SB 3 amended Texas Water Code (TWC), Chapter 13, by adding §13.1394, Standards of Emergency Operations, and amending §13.1395, Standards of Emergency Operations in Certain Counties. New TWC, §13.1394, requires that affected utilities create an emergency preparedness plan that shows how an affected utility will provide emergency operations and submit that plan to the TCEQ for review and approval. TWC, §13.1394, stipulates that a water service provider must maintain 20 pounds per square inch (psi) of pressure, or a water pressure approved by the executive director, during power outages that last longer than 24 hours as soon as it is safe and practicable following a natural disaster. The statute also specifies that the TCEQ has 90 days to review the plan, once the plan is submitted, and either approve it or recommend changes. Once the TCEQ approves the plan the water service provider must operate in accordance with the plan and maintain any generators in accordance with manufacturer's specifications. TWC, §13.1394 also specifies that the TCEQ will conduct inspections to ensure compliance and that waivers to these requirements are available under certain circumstances. SB 3 stated in Section 36(b) that each affected utility was to submit to the TCEQ an emergency preparedness plan required by TWC, §13.1394, no later than March 1, 2022, and stated in 36(c) that the emergency preparedness plan was to be implemented no later than July 1, 2022, unless the affected utility had obtained an adjusted, TCEQ approved timeline.

Amended TWC, §13.1395, excludes from the requirement of creating an emergency preparedness plan those raw water services that are unnecessary or otherwise subject to interruption or curtailment during emergencies pursuant to contract.

In response to the widespread power and equipment failures and drinking water outages and shortages during Winter Storm Uri in 2021, the TCEQ organized an after-action review to evaluate the factors that impacted public water systems across the state. This review resulted in findings and recommendations to enhance and integrate additional public water system critical infrastructure resiliency measures. These findings and recommendations were presented to the TCEQ during a work session, held on May 19, 2022.

Section by Section Discussion

§290.38, Definitions

The TCEQ adopts this rulemaking to add a definition to §290.38 for "accredited laboratory" to clarify the requirements for laboratories used to analyze drinking water samples for determination of compliance with maximum contaminant levels, actions levels, and microbial contaminants. This adopted change corresponds to the definition of "certified laboratory" in §290.38(12), which indicates that laboratories must be accredited, rather than certified, after June 30, 2008. Laboratory accreditation is issued by the TCEQ under Texas Water Code, Chapter 5, Subchapter R, and its associated TCEQ rules.

The TCEQ adopts this rulemaking to add a definition to §290.38 for "adverse weather conditions". This adopted change is a recommendation which resulted from the after-action review findings.

The TCEQ adopts this rulemaking to amend the definition of "affected utility" by adding language to encompass the definitions of affected utility in TWC, §13.1394 and §13.1395. The TCEQ adopts these amendments to reflect the requirements of TWC, §13.1394(a)(1) and §13.1395(a)(1).

The TCEQ adopts this rulemaking to amend the definition of "approved laboratory" to clarify that laboratory approval is required for determining compliance with treatment technique requirements in addition to maximum or minimum allowable constituent levels currently stated in rule.

The TCEQ adopts this rulemaking to amend the definition of "emergency operations" to clarify the minimum required water pressure that affected utilities must provide during emergency operations. This clarification is consistent with the requirements under TWC, §13.1394, which is 20 pounds per square inch, or a pressure approved by the executive director, and TWC, §13.1395, which is 35 pounds per square inch.

The TCEQ also adopts this rulemaking to amend sequential numbering for this section as necessary.

§290.39, General Provisions

The TCEQ's adopted amendments for this section will clarify existing rules and also add provisions relating to TWC, §13.1394 and §13.1395 to implement SB 3.

The TCEQ adopts this rulemaking to amend §290.39(a) to include a statement that authority for this subchapter includes TWC, §13.1394.

The TCEQ adopts this rulemaking to amend §290.39(c)(4) by adding language that references TWC, §13.1394 and §13.1395, replacing §§290.39(c)(4)(A) through 290.39(c)(4)(E) with a refer-

ence to §290.39(o) instead. This will reduce repetitive language already contained in §290.39(o).

The TCEQ adopts this rulemaking to amend §290.39(n) to add a subsection tagline. This amendment will meet Texas Register rule standards and guidelines and will make the subsection consistent with other subsections in §290.39.

The TCEQ adopts this rulemaking to amend the tagline of §290.39(o) to clarify that this subsection applies to affected utilities as defined in TWC, §13.1394 and §13.1395.

The TCEQ adopts this rulemaking to amend §290.39(o)(1) to remove a date and reference to the use of another emergency preparedness plan that meets the requirements of the rule. The templates, included in Appendix G, may be used for the submittal of emergency preparedness plans for affected utilities as defined in TWC, §13.1394 and §13.1395.

The TCEQ adopts this rulemaking to amend §290.39(o)(2), and add §§290.39(o)(2)(A) through 290.39(o)(2)(C), to include language from TWC, §13.1394(d) and §13.1395(d), requiring affected utilities who provide or convey surface water to wholesale customers to demonstrate in their emergency preparedness plan the ability to do so during emergencies, unless they provide raw water service that is unnecessary or subject to interruption or curtailment during emergencies under a contract.

The TCEQ adopts this rulemaking to amend §290.39(o)(3) by adding a reference to the requirement that affected utilities select one of the options listed in §§290.45(h)(1)(A) through 290.45(h)(1)(N) when operating as an affected utility as defined in TWC, §13.1394, or options listed in §§290.45(i)(1)(A) through 290.45(i)(1)(H) when operating as an affected utility as defined in TWC, §13.1395. The amended reference clarifies which options are applicable under each water code section.

The TCEQ adopts this rulemaking to amend §290.39(o)(4) to remove outdated language and to clarify the requirement for implementation of an approved emergency preparedness plan applies to all affected utilities defined in TWC, §13.1394 and §13.1395.

§290.41, Water Sources

The TCEQ adopts this rulemaking to add §290.41(f) requiring that all critical equipment associated with a raw water source be weatherized against adverse weather conditions. Weatherization techniques may be chosen by the affected utility to protect critical equipment against the types of adverse weather conditions experienced in its region of the state. The TCEQ adopts this addition in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

§290.42, Water Treatment

The TCEQ adopts amendments and additions to this section in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The TCEQ adopts this rulemaking to amend §290.42(I) to include additional minimum content requirements for a plant operations manual so that operators will have the necessary information for the continuation of operations.

The TCEQ adopts this rulemaking to add §290.42(I)(1) to require that a plant operations manual include a description of planned

protective measures for critical plant equipment during adverse weather conditions, replacement part information, information on manufacturer's user manuals, vendor/technician information, and information on alternative sources of equipment outside the area

The TCEQ adopts this rulemaking to add §290.42(I)(2) to require that a plant operations manual identify all chemicals used for the treatment of drinking water, the entity's chemical vendor information, and information on alternative sources of chemicals outside the area.

The TCEQ adopts this rulemaking to add §290.42(I)(3), and §§290.42(I)(3)(A) through 290.42(I)(3)(F) to require that a plant operations manual include the following routine activities: protocol, schedules, and documentation related to chemical pump feed rate verification, chemical dose adjustments, process control sampling, calibration and accuracy verifications; operations of critical plant equipment, to include plant start-up and shut-down under normal and emergency conditions, while in manual and automated settings, as applicable, and the inclusion of manufacturer's specifications for maintaining and troubleshooting of critical plant equipment.

The TCEQ adopts this rulemaking to add §290.42(I)(4) to require that a plant operations manual include information outlining a continuity of operations plan in the event that critical equipment fails, or key personnel are not available. This information could include arrangements for emergency plant coverage or mutual aid agreements with other utilities for equipment or personnel.

The TCEQ adopts this rulemaking to add §290.42(I)(5) to require that a plant operations manual be reviewed and, if necessary, updated when a significant change occurs, as outlined in §290.39(j), after emergency events that impact plant operation, but at least every three years. This requirement is intended to ensure that a plant operations manual is evaluated and kept up-to-date.

The TCEQ adopts this rulemaking to add §290.42(o) to require that all critical components associated with drinking water treatment facilities be weatherized against adverse weather conditions. Weatherization techniques may be chosen by the affected utility to protect critical equipment against the types of adverse weather conditions experienced in their region of the state.

§290.43, Water Storage

The TCEQ adopts this rulemaking to amend §290.43(b)(1) to add new language that includes a setback distance of 150 feet between an elevated or ground storage tank and an on-site sewage facility (OSSF) spray field. This addition is consistent with the setback distance between a public water supply well and an OSSF spray field, which is a standard determined to provide adequate protection of public health. This addition streamlines the approval process by eliminating the requirement for a system to submit an exception if they cannot meet the previous setback distance of 500 feet between a storage tank and OSSF spray field, while still protecting public health.

The TCEQ adopts this rulemaking to amend §290.43(d)(2) to clarify that only one pressure gauge is required when more than one pressure tank is connected by a common manifold. This amendment streamlines the approval process by eliminating the requirement for a system to submit an exception if they plan to use only one pressure gauge.

The TCEQ adopts this rulemaking to add §290.43(g) to require that all critical equipment associated with water storage facilities

be weatherized against adverse weather conditions. Weatherization techniques may be chosen by the affected utility to protect critical equipment against the types of adverse weather conditions experienced in their region of the state. The TCEQ adopts this addition in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

§290.44, Water Distribution

The TCEQ adopts this rulemaking to amend §290.44(d) to correct a compound word error and to specify that the distribution system of public water systems that are affected utilities, defined in TWC, §13.1394 or §13.1395, must be designed to implement the requirements of §290.45(h) and §290.45(i), respectively.

The TCEQ adopts this rulemaking to amend §290.44(i)(2)(J) to clarify that an accredited laboratory must analyze samples used to determine compliance for microbial contaminants. This adopted change is intended to make this regulation consistent with §290.119 and the definition of accredited laboratory.

The TCEQ adopts this rulemaking to add §290.44(k) to require that all critical equipment associated with water transmission facilities be weatherized against adverse weather conditions. Weatherization techniques may be chosen by the affected utility to protect critical equipment against the types of adverse weather conditions experienced in their region of the state. The TCEQ adopts this addition in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

§290.45, Minimum Water System Capacity Requirements

The TCEQ adopts this rulemaking to amend §§290.45(a)(2), 290.45(g)(1)(F) and 290.45(g)(6)(A)(i) to correct a compound word error.

The TCEQ adopts this rulemaking to amend §290.45(a)(7) to include the minimum emergency pressure requirement of 20 psi or a pressure approved by the executive director for affected utilities under TWC, §13.1394.

The TCEQ adopts this rulemaking to add §290.45(a)(8) to include requirements for an affected utility to review their emergency preparedness plan at least once every three years and to submit a new or revised emergency preparedness plan to the executive director for approval within 90 days after certain conditions occur. Subparagraphs (A)-(D) describe the conditions which require a new or revised emergency preparedness plan to the executive director. These adopted requirements are intended to provide resiliency and continuity of operations to affected utilities and to eliminate the unnecessary burden of submitting an entire emergency preparedness plan for changes to emergency contacts.

The TCEQ adopts this rulemaking to amend §290.45(b)(1)(D)(v) and §290.45(b)(2)(H) to clarify the rules by deleting the generator maintenance requirement portion of the rule, clarifying that minimum pressure requirements must be met in the event of loss of normal power and adding language which states emergency power must be maintained as required by adopted §290.46(m)(8).

The TCEQ adopts this rulemaking to amend §290.45(b)(3) to clarify that affected utilities, defined in TWC, §13.1394 or

§13.1395, must have an emergency preparedness plan approved by the executive director and meet the requirements for emergency operations contained in §290.45(h) and §290.45(i), respectively.

The TCEQ adopts this rulemaking to amend §290.45(c)(3) to clarify that affected utilities, defined in TWC, §13.1394 or §13.1395, must have an emergency preparedness plan approved by the executive director and must meet the requirements for emergency operations contained in §290.45(h) or §290.45(i), respectively.

The TCEQ adopts this rulemaking to amend §290.45(d)(4) to clarify that affected utilities, defined in TWC, §13.1394 or §13.1395, must have an emergency preparedness plan approved by the executive director and meet the requirements for emergency operations contained in §290.45(h) and §290.45(i), respectively.

The TCEQ adopts this rulemaking to amend §290.45(e)(1) to clarify that if a contract prohibits a water purchaser from securing water from sources other than the contracted wholesaler during emergency operations, the wholesaler is responsible for meeting applicable capacity requirements.

The TCEQ adopts this rulemaking to amend §290.45(e)(3) to clarify that if emergency power is required it must be sufficient to meet the minimum pressure requirements, and to add that all wholesale contracts executed or amended on or after January 1, 2025, must specify if the wholesaler will supply water, pressure, or both water and pressure during emergency operations. This addition is meant for the wholesale entity to clarify whether it intends to provide both water and pressure to the purchasing entity or if the wholesale entity only intends to provide water under emergency operations. This addition is not intended to conflict with a wholesaler's "Force Majeure" clause but is required to ensure compliance with TWC, §13.1394 and §13.1395.

The TCEQ adopts this rulemaking to amend §290.45(e)(4) to clarify that affected utilities, defined in TWC, §13.1394 or §13.1395, must have an emergency preparedness plan approved by the executive director and meet the requirements for emergency operations contained in §290.45(h) or §290.45(i), respectively.

The TCEQ adopts this rulemaking to amend §290.45(f)(6) to clarify that this paragraph references capacity requirements, consistent with other portions of §290.45, and to add that all wholesale contracts executed or amended on or after January 1, 2025, must specify if the wholesaler intends to supply water, pressure, or both water and pressure during emergency operations. This requirement is meant for the wholesale entity to clarify whether it intends to provide both water and pressure to the purchasing entity or if the wholesale entity only intends to provide water under emergency operations. This requirement is not intended to conflict with a wholesaler's "Force Majeure" clause but is required for wholesalers to comply with TWC, §13.1394 and §13.1395.

The TCEQ adopts this rulemaking to amend §290.45(g)(5)(A)(i) to include a requirement to provide 20 psi or a pressure approved by the executive director in distribution, as stated in TWC §13.1394, when operating emergency power facilities.

The TCEQ adopts this rulemaking to amend §290.45(g)(5)(A)(iv) to clarify that affected utilities, defined in TWC, §13.1394 or §13.1395, must have an emergency preparedness plan approved by the executive director and meet the requirements for

emergency operations contained in §290.45(h) and §290.45(i), respectively.

The TCEQ adopts this rulemaking to amend §290.45(g)(5)(B) to clarify that affected utilities, defined in TWC, §13.1394 or §13.1395, must have an emergency preparedness plan approved by the executive director and meet the requirements for emergency operations contained in §290.45(h) and §290.45(i), respectively.

The TCEQ adopts this rulemaking to amend §290.45(g)(5)(B)(i) - (iii) to add language that emergency power facilities must be maintained as prescribed in §290.46(m)(8), that the emergency power must be activated before the distribution pressure falls below 20 psi or a pressure approved by the executive director, or 35 psi, as required by TWC, §13.1394 and §13.1395, respectively, and increase the fuel requirement to operate emergency power facilities during emergency operations for at least 48 hours. The emergency power maintenance and the increase in available fuel requirements are in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The TCEQ adopts this rulemaking to delete §290.45(g)(5)(D) which requires public water systems to maintain and submit an emergency response plan that details the procedures to follow and individuals to contact during a power outage. This requirement is redundant because it is required by all affected utilities in their emergency preparedness plan and all non-affected utilities in their plant operations manual.

The TCEQ adopts this rulemaking to add a new §290.45(h) to differentiate the requirements between affected utilities defined in TWC, §13.1394 and §13.1395 and to specify emergency power requirements in addition to the existing power requirements for public water systems in §290.45. The TCEQ adopts to amend sequential numbering for this section and correct any cross-references within this chapter, as necessary.

The TCEQ adopts this rulemaking to add new §290.45(h)(1) and subsequent subparagraphs to include the fourteen emergency operation options, as listed in TWC, §13.1394(c)(1) through 13.1394(c)(14) for emergency preparedness plans.

The TCEQ adopts this rulemaking to add new §290.45(h)(2) to require that affected utilities that provide raw surface water to wholesale customers must include in their emergency preparedness plan how they intend to provide raw water services during emergencies, except during instances when raw water services are unnecessary or otherwise subject to interruption or curtailment during emergencies under a contract, as stated in TWC, §13.1394(d).

The TCEQ adopts this rulemaking to add new §290.45(h)(3) which requires that auxiliary power facilities for affected utilities be inspected, maintained, tested, and operated in accordance with the manufacturer's specifications and as outlined in adopted §290.46(m)(8). The TCEQ adopts this addition to implement TWC, §13.1394(h). The TCEQ also adopts this addition in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The TCEQ adopts this rulemaking to add new §290.45(h)(4) to allow an affected utility to adopt and enforce limitations on water

use while providing emergency operations, as stated in TWC §13.1394(k).

The TCEQ adopts this rulemaking to add new §290.45(h)(5) to add that during emergency operations, affected utilities with elevated storage must operate in accordance with their approved emergency preparedness plan, which may or may not include using elevated storage, as stated in TWC, §13.1394(e).

The TCEQ adopts this rulemaking to add new §290.45(h)(6) which requires an affected utility maintain on-site, or make readily available during emergency operations, an amount of fuel necessary to operate any emergency power equipment during emergency operations for at least 48 hours. The TCEQ adopts this in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The TCEQ adopts this rulemaking to add new 290.45(h)(7) to require that each affected utility implement an emergency preparedness plan upon approval by the executive director under TWC, §13.1394.

The TCEQ adopts this rulemaking to amend §290.45(i) to add language that specifies that this subsection applies to affected utilities as defined in TWC, §13.1395 and to remove repetitive language. This amendment will differentiate the requirements for affected utilities under TWC, §13.1394 and §13.1395.

The TCEQ adopts this rulemaking to amend §290.45(i)(1)(G) to remove reference for this emergency preparedness option to apply to existing facilities only and to correct a compound word error

The TCEQ adopts this rulemaking to amend §290.45(i)(2) to clarify that the requirements under this paragraph do not apply to raw water services that are unnecessary or otherwise subject to interruption or curtailment during emergencies pursuant to a contract, as indicated in TWC, §13.1395(d).

The TCEQ adopts this rulemaking to amend §290.45(i)(3) to require maintenance of an emergency generator, which is part of an approved emergency preparedness plan, by adding language that requires the generator to be maintained in accordance with Level 2 maintenance requirements contained in the current National Fire Protection Association (NFPA) 110 Standard and manufacturer's recommendations if the affected utility serves 1,000 connections or greater, or manufacturer's specifications and as outlined in §290.46(m)(8) if the affected utility serves fewer than 1,000 connections. The TCEQ adopts this amendment in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The TCEQ adopts this rulemaking to amend §290.45(i)(5) to abbreviate "Texas Water Code" to TWC.

The TCEQ adopts this rulemaking to amend §290.45(i)(6) to clarify that an affected utility must provide enough fuel necessary to operate emergency power facilities during emergency operations for at least 48 hours. The TCEQ adopts this amendment in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The TCEQ adopts this rulemaking to add §290.45(i)(7) to require that each affected utility implement an emergency preparedness plan upon approval by the executive director under TWC, §13.1395.

§290.46, Minimum Acceptable Operating Practices for Public Water Systems

The TCEQ adopts this rulemaking to amend §290.46(f)(5) to clarify that public water systems that are affected utilities, as defined by TWC, §13.1394 or §13.1395, must maintain records related to their emergency preparedness plan for as long as the plan is applicable.

The TCEQ adopts this rulemaking to amend §290.46(f)(5)(B) to add that an affected utility must maintain copies of operating, inspection, testing, and maintenance records for auxiliary power equipment and associated components required to be maintained or actions performed as prescribed in §290.46(m)(8). These record requirements support implementation of TWC, §13.1394(i), because the statute requires that the TCEQ periodically inspect affected utilities to ensure compliance with their approved emergency preparedness plan.

The TCEQ adopts this rulemaking to amend §290.46(g) to clarify that an accredited laboratory must analyze samples used to determine compliance for microbial contaminants. This adopted change is for consistency with §290.119 and the definition of accredited laboratory.

The TCEQ adopts this rulemaking to amend §290.46(i) to correct a spelling error.

The TCEQ adopts this rulemaking to add §290.46(m)(8) to require that emergency generators be maintained and tested monthly under at least 30% load based on manufacturer's name plate kilowatt (kW) rating for at least 30 minutes, or as recommended by the manufacturer, to ensure functionality during emergency situations. The TCEQ adopts this requirement in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The TCEQ adopts this rulemaking to add §290.46(m)(8)(A) to require that emergency generators operated at water systems serving 1,000 connections or greater to be maintained in accordance with Level 2 maintenance requirements contained in the current NFPA 110 Standard and the manufacturer's recommendations. In addition, the water system must maintain an inventory of operational maintenance items, lubricants, and coolants for critical generator components. The TCEQ adopts this requirement in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The TCEQ adopts this rulemaking to add §290.46(m)(8)(B) to require that emergency generators operated at water systems with fewer than 1,000 connections to be maintained according to §§290.46(m)(8)(B)(i) through 290.46(m)(8)(B)(x) and with any additional requirements prescribed in the manufacturer's specifications or Level 2 maintenance requirements contained in NFPA 110 Standard. In addition, the public water system must maintain an inventory of operational maintenance items, lubricants, and coolants for critical generator components. The TCEQ adopts this requirement in response to the after-action review, which found that additional maintenance to critical equipment and in-

creased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The TCEQ adopts this rulemaking to add §290.46(m)(8)(B)(i) to require inspection and maintenance of the generator fuel system prior to monthly generator start-up. The TCEQ adopts this requirement in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The TCEQ adopts this rulemaking to add §§290.46(m)(8)(B)(i)(I) through 290.46(m)(8)(B)(i)(V) to require inspection of the fuel tank for fuel levels, contamination, and condensation in the portion of the tank occupied by air; inspection of fuel lines and fittings for breaks, degradation, and replacement; inspection of fuel filters and water separators for clogging, sediment buildup, and replacement; inspection of the fuel transfer pumps, float switches and valves, where provided between holding tanks and the generator, to verify that they are operating properly; and inspection of fuel tank grounding rods, cathodic and generator lightning protection for damage that may render the protection ineffective. The TCEQ adopts these requirements in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The TCEQ adopts this rulemaking to add §290.46(m)(8)(B)(ii) to require inspection of the fuel pump to verify that it is working properly when the generator is operating under load. The TCEQ adopts this requirement in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The TCEQ adopts this rulemaking to add §290.46(m)(8)(B)(iii) to require inspection and maintenance of the generator lubrication system, prior to monthly generator start up. The TCEQ adopts this requirement in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The TCEQ adopts this rulemaking to add §290.46(m)(8)(B)(iii)(I) and §290.46(m)(8)(B)(iii)(II) to require inspection of oil lines and oil reservoirs for adequate oil levels, leaks, breaks, degradation, and oil replacement, as well as the greasing of all bearing components and grease fittings. The TCEQ adopts these requirements in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The TCEQ adopts this rulemaking to add §290.46(m)(8)(B)(iv) to require inspection and maintenance of the generator coolant system, prior to monthly generator start up. The TCEQ adopts this requirement in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The TCEQ adopts this rulemaking to add §§290.46(m)(8)(B)(i-v)(I) through 290.46(m)(8)(B)(iv)(III) to require inspection of the

block heater, coolant lines and coolant reservoirs for adequate coolant levels, leaks, breaks, and degradation; inspection of coolant filters for clogging, sediment buildup, and coolant filter replacement; and inspection of the radiator, fan system, belts, and air intake and filters for obstruction, cracks, breaks, and leaks. The TCEQ adopts these requirements in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The TCEQ adopts this rulemaking to add §290.46(m)(8)(b)(v) to require inspection of the exhaust manifold and muffler, and that fumes are directed away from enclosed areas when the generator is operating under load. The TCEQ adopts this requirement in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The TCEQ adopts this rulemaking to add §290.46(m)(8)(B)(vi) to require that a carbon monoxide monitor equipped with automatic alarms and generator shutdowns must be present and operational inside enclosed structures where generators are located. The TCEQ adopts this requirement as a safety measure for utility staff.

The TCEQ adopts this rulemaking to add §290.46(m)(8)(B)(vii) to require inspection and maintenance of the generator's electrical system be conducted prior to monthly generator start up. The TCEQ adopts this requirement in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The TCEQ adopts this rulemaking to add §290.46(m)(8)(B)(vii)(I) and §290.46(m)(8)(B)(vii)(II) to require inspection of battery chargers, wiring and cables for damage, corrosion, and connection continuity, verification that batteries are mounted and secured, that all contacts are tightened onto battery terminals, and inspection of each battery unit for electrolyte levels, adequate charge retention and appropriate discharge voltage. The TCEQ adopts these requirements in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The TCEQ adopts this rulemaking to add §290.46(m)(8)(B)(viii) to require inspection of generator engine starters and alternators when the generator is operating under load to verify that they are operating properly. The TCEQ adopts this requirement in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The TCEQ adopts this rulemaking to add §290.46(m)(8)(B)(ix) to require a monthly inspection of the Programmable Logic Controllers (PLC) and Uninterrupted Power Supplies (UPC), where applicable, to ensure that they are water-tight, not subject to floods, are properly ventilated, and that backup power supplies have adequate charge. The TCEQ adopts this requirement in response to the after-action review, which found that additional maintenance to critical equipment and increased protection

against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The TCEQ adopts this rulemaking to add $\S290.46(m)(8)(B)(x)$ to require a monthly inspection of the generator's switch gears to ensure they are water-tight and in good, working condition. The TCEQ adopts this requirement in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The TCEQ adopts this rulemaking to add §290.46(m)(9) to require that all critical components necessary for the continued operations of the water system's facilities be weatherized against adverse weather conditions. Weatherization techniques may be chosen by the affected utility to protect critical equipment against the types of adverse weather conditions experienced in their region of the state. The TCEQ adopts this requirement in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The TCEQ adopts this rulemaking to amend subsection §290.46(q) to clarify the subject matter of the subsection, which is special precautions, protective measures, and boil water notices. Overall, the adopted amendments to the subsection clarify when to issue notices and defines language that must be used when a special precaution, protective measure, or boil water notice is issued or rescinded, as well as the timeframe and documentation required to the executive director. The adopted amendments also rearrange portions of the subsection for clarity. These adopted amendments do not result in requirements that are less stringent than federal drinking water requirements.

The TCEQ adopts this rulemaking to amend $\S290.46(q)(1)$ to remove the tagline and to clarify that along with boil water notices, this paragraph applies to special precautions and protective measures. A subparagraph will be added to include the situations that require these types of notices. The delivery method to customers and to the executive director for the initial and rescind notices, along with requirements for multilingual postings, are adopted to be deleted from this paragraph and relocated into adopted $\S290.46(q)(2)$ through 290.46(q)(4).

The TCEQ adopts this rulemaking to add §290.46(q)(1)(A), to include §§290.46(q)(1)(A)(i) through 290.46(q)(1)(A)(iii), and new §290.46(q)(1)(A)(iv) and 290.46(q)(1)(A)(v), which describe the situations that require a boil water notice. Included in these situations are instances of low system water pressure, *E. coli* or MCL violations, turbidity exceedances, low distribution residuals, and waterborne disease outbreaks. These changes are adopted to clarify the instances that require a boil water notice, special precaution, or protective measure. Additionally, the TCEQ adopts to delete the summarized conditions for combined filter effluent because the precise requirements are located in the reference and to amend §290.46(q)(1)(A)(i) through §290.46(q)(1)(A)(iii) to remove the taglines.

The TCEQ adopts this rulemaking to add §290.46(q)(1)(B) to clarify that situations requiring special precautions or protective measures (other than boil water notices) may be determined by the public water system or at the discretion of the executive director. Executive director discretion will be determined as described in §290.46(q)(5).

The TCEQ adopts this rulemaking to add §290.46(q)(2) to clarify that all boil water notices, special precautions, and protective measures must be issued using one or more of the Tier 1 delivery methods specified in §290.122(a)(2) and by using language and format specified by the executive director.

The TCEQ adopts this rulemaking to add §290.46(q)(3) to clarify when and how a boil water notice, special precaution, or protective measure should be delivered to the executive director.

The TCEQ adopts this rulemaking to add §290.46(q)(4) to clarify that a boil water notice, special precaution, or protective measure must be multilingual where appropriate based on local demographics.

The TCEQ adopts this rulemaking to amend $\S290.46(q)(5)$ to remove the tagline, and to amend $\S290.46(q)(5)(A)(ii)$ and $\S290.46(q)(5)(A)(iii)$ to move the description of waterborne disease outbreak and the failure to maintain adequate disinfectant residuals into the situations that require boil water notices, special precautions, or protective measures, under $\S290.46(q)(1)(A)$.

The TCEQ adopts this rulemaking to amend $\S290.46(q)(5)(B)$ to add that the executive director may require additional actions be performed in order to rescind a notice, depending on local conditions and the nature of the event that triggered the initial notice. The executive director will provide such additional actions in writing.

The TCEQ adopts this rulemaking to amend §290.46(q)(5)(C) to clarify that a public water system shall provide any required information to the executive director to document that the public water system has met the rescind requirements for special precautions, protective measures and boil water notices required at the discretion of the executive director.

The TCEQ adopts this rulemaking to amend §290.46(q)(6) to remove the tagline, to add language regarding notifying customers when a boil water notice, special precaution or protective measure has been rescinded, to reorganize the paragraph into subparagraphs and clauses that include the actions that must be performed prior to rescinding a boil water notice, and to amend sequential numbering as necessary.

The TCEQ adopts this rulemaking to amend §290.46(q)(6)(A)(ii) and move the reference to flushing affected areas of a distribution system to §290.46(q)(6)(A)(iii).

The TCEQ adopts this rulemaking to add §290.46(q)(6)(A)(iv) to address situations in which the executive director may require, in writing, that additional actions be completed, and that the executive director receives and approves documentation of those actions prior to rescinding a boil water notice.

The TCEQ adopts this rulemaking to amend §290.46(q)(6)(B) to include that the method of rescind notice delivery to customers be in a manner similar to the original notice.

The TCEQ adopts this rulemaking to amend §290.46(q)(6)(C) to include that the public water system must submit a Certificate of Delivery for the rescind notice to be consistent with §290.122(f).

The TCEQ adopts this rulemaking to amend §290.46(r) to clarify that an affected utility, as defined in TWC, §13.1394 or TWC, §13.1395, must maintain a minimum of 20 psi or a pressure approved by the executive director, or 35 psi, respectively, throughout the distribution system as soon as safe and practicable during an extended power outage following the occurrence of a nat-

ural disaster. The TCEQ adopts the latter amendments pursuant to TWC, §13.1394.

The TCEQ adopts this rulemaking to amend §290.46(c) and §290.46(x)(4) to correct a compound word error.

§290.47, Appendices

The TCEQ adopts this rulemaking to amend §290.47(c) and remove boil water notice templates which will allow executive director's staff to make warranted modifications to these templates and add to this subsection a table containing a non-exhaustive list of critical equipment, components and facilities that must be protected from adverse weather conditions. The phrase "variable flow device" was amended to "variable frequency drive" to be consistent with industry terminology. The TCEQ adopts these changes to assist water operators with the identification of facilities and components that if lost or impacted by adverse weather would result in water system being unable to produce, treat, store, or distribute treated water to customers.

The TCEQ adopts this rulemaking to amend §290.47(g) to add an emergency preparedness plan template, under §290.47(g)(1), for use by those affected utilities defined in TWC, §13.1394, and to amend the template, under §290.47(g)(2), for use by those affected utilities defined in TWC, §13.1395. The TCEQ adopts these changes to comply with TWC, §13.1394 and §13.1395 requirements regarding the creation of templates by rule.

Final Regulatory Impact Determination

The TCEQ reviewed this rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to §2001.0225. A "major environmental rule" means a rule with a 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.

First, the rulemaking does not meet the statutory definition of a "major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the rulemaking is to ensure that affected utilities as defined by TWC, §13.1394 and §13.1395 have emergency preparedness plans to provide potable water service during emergency operations and to clarify existing drinking water rules.

Second, the rulemaking does not meet the statutory definition of a "major environmental rule" because the rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the rules will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the amendments will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the rulemaking does not meet any of the four applicability requirements for a "major environmental rule" listed in Texas Government Code, §2001.0225(a). Section 2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law;

3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of the preceding four applicability requirements because this rulemaking: does not exceed any standard set by federal law for public water systems and is consistent with and no less stringent than federal rules; does not exceed any express requirement of state law under Texas Health and Safety Code (THSC), Chapter 341, Subchapter C; does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government; and is not based solely under the general powers of the agency, but specifically under THSC, §341.031, which authorizes the TCEQ to establish public drinking water standards and adopt and enforce rules to implement the federal Safe Drinking Water Act, as well under as SB 3, which authorizes the TCEQ to promulgate rules in its implementation of TWC, §13.1394 and §13.1395, and the other general powers of the TCEQ.

The TCEQ invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No written comments on the Draft Regulatory Impact Analysis Determination were received.

Takings Impact Assessment

The TCEQ evaluated this rulemaking and performed a preliminary assessment of whether these rules constitute a taking under Texas Government Code, Chapter 2007.

The TCEQ adopts these rules to clarify existing requirements and for the specific purpose of implementing SB 3, 87th R.S. (2021), which requires the TCEQ to receive, review, and monitor compliance with affected utilities' emergency preparedness plans to ensure provision of potable water service during emergency operations.

The TCEQ's analysis indicates that Texas Government Code, Chapter 2007, does not apply to these rules based upon exceptions to applicability in Texas Government Code, §2007.003(b)(13). The rulemaking 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 public health and safety purpose; and that does not impose a greater burden than is necessary to achieve the public health and safety purpose. Texas Government Code, §2007.003(b)(13). Lack of potable water service during emergency operations constitutes a real and substantial threat to public health and safety and requires appropriate governmental regulation. The rules significantly advance the public health and safety purpose by ensuring appropriate governmental regulation of affected utilities' emergency preparedness plans and their implementation and do so in a way that does not impose a greater burden than is necessary to achieve the public health and safety purpose.

Further, the TCEQ has determined that promulgation and enforcement of these rules will be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rules because the rules neither relate to, nor have any impact on, the use or enjoyment of private real property, and there will be no reduction in property value as a result of these rules. The rules require affected utilities to submit emergency preparedness plans, and operate under their emergency preparedness plans during emergency

operations. Therefore, the rules will not constitute a taking under Texas Government Code Chapter 2007.

Consistency with the Coastal Management Program

The TCEQ 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.

The TCEQ invited public comment regarding the consistency with the coastal management program during the public comment period. No comments were received during the public comment period.

Public Comment

The TCEQ held a public hearing on August 11, 2023. The comment period closed at 11:59 p.m. on August 14, 2023. The TCEQ received comments from Dallas Water Utilities (DWU) and Texas Rural Water Association (TRWA). Commentors expressed concern with several topics included in the rule package and TRWA suggested some changes to the rule language.

Response to Comments

Comment

Dallas Water Utilities (DWU) and the Texas Rural Water Association (TRWA) commented with concerns related to the implementation of a 48-hour onsite fuel reserve for emergency power generation facilities. DWU suggested that TCEQ consider alternatives, such as the Joint Commission Emergency Management Standard for emergency resource management plans, to develop plans for specific needs and circumstances for each individual utility rather than a blanket statewide fuel reserve requirement. TRWA suggested lowering the onsite fuel reserve requirement to 24 hours in §290.45(g)(5)(B)(iii), §290.45(h)(6) and §290.45(i)(6) because TRWA believes that 48 hours' worth of generator fuel is excessive, costly, and is a potential environmental and safety hazard.

Response

The TCEQ disagrees that 48-hours of generator fuel is excessive because the American Water Works Association (AWWA) Standards (J100-10 Risk and Resilience Management of Water and Wastewater Systems) reference the 2008 edition of the National Electric Code (NEC), Article 708, which establishes a 72-hour backup power minimum for critical operations and assets. Participants of the Winter Storm Uri after-action review stated that their water systems did not have enough fuel, nor did they have access to ancillary fuel reserves, and internal public drinking water subject matter experts supported an increase in fuel reserve requirements. Based on this, the TCEQ noted that a 48-hour onsite fuel reserve, or an option that makes fuel readily available during emergency operations, should be sufficient to maintain distribution pressure during an extended power outage. Discussion on this topic occurred during the May 19, 2022, Commissioner's Work Session. Additionally, the executive director staff acknowledge that while there may be costs, security needs and compliance requirements associated with acquiring and maintaining an amount of fuel beyond that which a public water system currently maintains, the accessibility to that fuel during an extended power outage will limit system downtime and reduce impacts to customers, meeting the intent of this rule. Regarding the suggestion from DWU, the TCEQ supports the participation of public water systems in mutual aid programs and additional contracts to assist in providing fuel during emergency situations, however, developing plans for specific needs is not practicable for the varied water system types and sizes in Texas. No changes were made to the rule language.

Comment

TRWA commented that §290.45(g)(5)(B)(iii), §290.45(h)(6), and §290.45(i)(6) should not apply to onsite power generation equipment that is fueled by natural gas because this type of generator is fueled through a direct connection pipeline. TRWA suggested revising the rule language to specifically exclude utilities that have installed generators that run on natural gas.

Response

The TCEQ disagrees with the suggested revision because natural gas generators fueled by a natural gas pipeline are compliant with the rule as proposed because the generators are supplied with a direct fuel source; therefore, fuel is readily available. Affected utilities that operate generators without a continuous, direct fuel connection must maintain a 48-hour onsite fuel reserve or make fuel readily available during emergency operations. No changes were made to the rule language.

Comment

TRWA commented with concerns that affected utilities could misinterpret the circumstances in which emergency power generation facilities are required to be put online, causing equipment damage or hazards. TRWA suggested revising rule language to clarify circumstances in which generators will be required in §290.45(b)(1)(D)(v), §290.45(g)(5)(B)(ii) and §290.47(g)(1).

Response

The TCEQ disagrees that clarification is necessary because the definitions of emergency operations, emergency power, and extended power outage are included in this rule package under §290.38(28)-(30). The TCEQ believes that the inclusion of these definitions provide clarity to when emergency power generation equipment is needed to maintain distribution pressure due to outages caused by electrical power failure. Additionally, emergency power generation equipment is one of fourteen options identified under Texas Water Code (TWC) §13.1394, and one of eight options identified under TWC §13.1395, to maintain distribution pressure during an extended power outage. No changes were made to the rule language.

Comment

TRWA commented that affected utilities should include in their plant operations manual a description of a weatherization plan for critical equipment and that rule references related to weatherization should refer the reader to this weatherization plan. TRWA suggested revising the rule language to include reference to the affected utility's plant operations manual in §290.41(f), §290.42(o), §290.44(k) and §290.46(m)(9).

Response

The TCEQ disagrees with the suggested revisions because the requirement to identify critical plant equipment and planned protective measures for this equipment during adverse weather conditions, contained in §290.42(I)(1), alleviates any need to restate that information in each rule that references weatherization. Additionally, the rule as proposed allows public water systems the flexibility to install weatherization methods appropriate for the specific type and severity of event beyond those described in their operations manual. No changes were made to the rule language.

Comment

TRWA commented with concerns that affected utilities could misinterpret the requirement by which updated emergency preparedness plan contact information must be submitted to the TCEQ, resulting in the overreporting of personnel changes and causing unnecessary burden to the utility. TRWA suggested revising rule language by removing the phrase "personnel changes" and adding the word "information" to clarify that changes in a utility's emergency contact information is required under §290.45(a)(8)(D).

Response

The TCEQ agrees with the comment because the rule as proposed was not intended to encompass every personnel change at an affected utility. Section 290.45(a)(8)(D) has been revised in response to this comment.

Comment

TRWA commented with concerns that affected utilities could misinterpret the length of time that emergency preparedness planrelated records are required to be retained causing excessive record retention. TRWA suggested revising §290.46(f)(5)(A)-(C) to clarify how long records related to emergency preparedness plans and generators are required to be retained.

Response

The TCEQ disagrees with the suggested revisions because the retention timeframe in §290.46(f)(5) is unchanged from existing rule. The existing rule has not resulted in common misinterpretation and allows an affected utility operational flexibility. An affected utility is required to maintain an emergency preparedness plan and the rule requires the affected utility determine which applicable documents and records must be retained. When an affected utility makes changes to its emergency preparedness plan or when equipment related to its emergency preparedness plan is retired, records relating to the prior emergency preparedness plan or to retired equipment may be discarded. No changes were made to the rule language.

Comment

TRWA commented with concerns that the rule language regarding multilingual boil water notices, special precautions and protective measures is too vague for public water systems to effectively implement. TRWA suggested revising §290.46(q)(1) and §290.46(q)(4) based on public notice language in Title 40 Code of Federal Regulations (40 CFR) §141.205(C)(2).

Response

The TCEQ disagrees with the suggested revisions because specific public notice language is governed under a subchapter of Chapter 290 that is not open for this rulemaking. At the time that Chapter 290, Subchapter F is opened for

rulemaking, this issue will be revisited. No changes were made to the rule language.

Comment

TRWA commented with concerns that the phrase "or as recommended by the manufacturer" in §290.46(m)(8) is not clear regarding whether it modifies the frequency of testing, number of minutes a generator is required to be tested, or the load under which the generator must be tested. TRWA suggested revising §290.46(m)(8) rule language by moving "or as recommended by the manufacturer" to modify only the frequency a generator is required to be tested.

Response

The TCEQ disagrees with the suggested revisions because the placement of the phrase "or as recommended by the manufacturer" is meant to modify the frequency of testing, number of minutes a generator is required to be tested, and load under which the generator is operated during the testing. This phrase placement allows the public water systems operational flexibility to ensure generator testing can occur in accordance with manufacturer recommendations which should reflect optimal actions for the specific equipment selected. No changes were made to the rule language.

Comment

TRWA commented with concern that the language in §290.46(m)(8)(B), specifically, "spare parts" is vague and may be interpreted to mean large items. TRWA suggested revising §290.46(m)(8)(B) rule language by removing the phrase "spare parts" and specifying "operational maintenance items such as fuel filters, air filters".

Response

The TCEQ agrees with the comment regarding "spare parts" because the phrase may be too general. It could be interpreted as requiring a public water system to maintain a stock of replacement parts for every portion of a generator on site. Section 290.46(m)(8)(A)-(B) has been revised to clarify the rule in response to this comment.

Comment

TRWA commented with concerns that not all valves, gauges, and meters should be required to be protected against adverse weather conditions, especially those located inside a buried vault or buried in the ground. TRWA suggested revising the table in §290.47(c) to add the term "exposed" to valves, gauges, and meters to distinguish this type of device from those which may not require weatherization.

Response

The TCEQ disagrees with the suggested revisions because the intent of the rule is to require that all valves, gauges, and meters be protected against adverse weather conditions which may impact device operability and performance. By not specifying exposed, the public water system is given the operational flexibility to determine which devices require weatherization. This recommendation, discussed in a TCEQ Commissioner's Work Session on May 19, 2022, resulted from the Winter Storm Uri after-action review and discussion with industry professionals and subject matter experts. To address the varied climate and weather conditions experienced by public water systems across the state, the TCEQ has decided to provide supplemental

guidance which will include available options for public water systems to meet the requirements of this rule. The guidance will be offered after the adoption of this rule. No changes were made to the rule language.

Statutory Authority

These amendments are adopted under the authority of the Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; Texas Health and Safety Code (THSC), §341.031, which establishes the commission's authority to establish public drinking water standards and adopt and enforce rules to implement the federal Safe Drinking Water Act; and SB 3, specifically TWC §13.1394 and §13.1395, which authorized the commission to promulgate rules in its implementation of these statutes.

The adopted amendments implement TWC §13.1394, as added by Senate Bill (SB 3) of the 87th Texas Legislative Session (2021), and TWC §13.1395 and §13.1396, as amended by SB 3 of the 87th Texas Legislative Session. Additional amendments adopted by the commission provide clarity to existing rules.

- §290.45. Minimum Water System Capacity Requirements.
 - (a) General provisions.
- (1) The requirements contained in this section are to be used in evaluating both the total capacities for public water systems and the capacities at individual pump stations and pressure planes which serve portions of the system that are hydraulically separated from, or incapable of being served by, other pump stations or pressure planes. The capacities specified in this section are minimum requirements only and do not include emergency fire flow capacities for systems required to meet requirements contained in $\S290.46(x)$ and (y) of this title (relating to Minimum Acceptable Operating Practices for Public Drinking Water Systems).
- (2) The executive director will require additional supply, storage, service pumping, and pressure maintenance facilities if a normal operating pressure of 35 pounds per square inch (psi) cannot be maintained throughout the system, or if the system's maximum daily demand exceeds its total production and treatment capacity. The executive director will also require additional capacities for a system that is unable to maintain a minimum pressure of 20 psi during firefighting, line flushing, other unusual conditions, and systems that are required to provide fire flow as specified in §290.46(x) and (y) of this title.
- (3) The executive director may establish additional capacity requirements for a public water system using the method of calculation described in subsection (g)(2) of this section if there are repeated customer complaints regarding inadequate pressure or if the executive director receives a request for a capacity evaluation from customers of the system.
- (4) Throughout this section, total storage capacity does not include pressure tank capacity.
- (5) The executive director may exclude the capacity of facilities that have been inoperative for the past 120 days and will not be returned to an operative condition within the next 30 days when determining compliance with the requirements of this section.
- (6) The capacity of the treatment facilities shall not be less than the required raw water or groundwater production rate or the anticipated maximum daily demand of the system. The production capacity

of a reverse osmosis or nanofiltration membrane system shall be the quantity of permeate water after post-treatment that can be delivered to the distribution system. The amount available for customer use must consider:

- (A) the quantity of feed water discharged to waste;
- (B) the quantity of bypass water used for blending;
- (C) the quantity of permeate water used for cleaning and maintenance; and
- (D) any other loss of raw water or groundwater available for use due to other processes at the reverse osmosis or nanofiltration facility.
- (7) If a public water system that is an affected utility fails to provide a minimum of 20 psi or a pressure approved by the executive director, or 35 psi, as required by TWC §13.1394 and §13.1395 respectively, throughout the distribution system during emergency operations as soon as it is safe and practicable following the occurrence of a natural disaster, a revised emergency preparedness plan or justification regarding pressure drop shall be submitted for review and approval within 180 days of the date normal power is restored. Based on the review of the revised emergency preparedness plan, the executive director may require additional or alternative auxiliary emergency facilities.
- (8) A public water system that is an affected utility is required to review its emergency preparedness plan once every three years. An affected utility shall submit a new or revised emergency preparedness plan to the executive director for approval within 90 days after any of the following conditions occur:
- (A) An affected utility chooses to implement a different option or options other than those in the most recent approved emergency preparedness plan;
- (B) A previously non-affected utility meets the definition of an affected utility;
- (C) An affected utility makes a significant change as described in §290.39(j) of this title that affects emergency operations; or
- (D) An affected utility makes changes to utility contact or emergency communications information. For these changes, the affected utility must submit only the updated applicable pages of the emergency preparedness plan to the executive director.
 - (b) Community water systems.

nection;

- (1) Groundwater supplies must meet the following requirements.
- (A) If fewer than 50 connections without ground storage, the system must meet the following requirements:
- (i) a well capacity of 1.5 gallons per minute (gpm) per connection; and
- (ii) a pressure tank capacity of 50 gallons per connection.
- (B) If fewer than 50 connections with ground storage, the system must meet the following requirements:
 - (i) a well capacity of 0.6 gpm per connection;
 - (ii) a total storage capacity of 200 gallons per con-
- (iii) two or more service pumps having a total capacity of 2.0 gpm per connection; and

- (iv) a pressure tank capacity of 20 gallons per connection.
- (C) For 50 to 250 connections, the system must meet the following requirements:
 - (i) a well capacity of 0.6 gpm per connection;
 - (ii) a total storage capacity of 200 gallons per con-

nection;

- (iii) two or more pumps having a total capacity of 2.0 gpm per connection at each pump station or pressure plane. For systems which provide an elevated storage capacity of 200 gallons per connection, two service pumps with a minimum combined capacity of 0.6 gpm per connection are required at each pump station or pressure plane. If only wells and elevated storage are provided, service pumps are not required; and
- (iv) an elevated storage capacity of 100 gallons per connection or a pressure tank capacity of 20 gallons per connection.
- (D) For more than 250 connections, the system must meet the following requirements:
- (i) two or more wells having a total capacity of 0.6 gpm per connection. Where an interconnection is provided with another acceptable water system capable of supplying at least 0.35 gpm for each connection in the combined system under emergency conditions, an additional well will not be required as long as the 0.6 gpm per connection requirement is met for each system on an individual basis. Each water system must still meet the storage and pressure maintenance requirements on an individual basis unless the interconnection is permanently open. In this case, the systems' capacities will be rated as though a single system existed;
- (ii) a total storage capacity of 200 gallons per connection;
- (iii) two or more pumps that have a total capacity of 2.0 gpm per connection or that have a total capacity of at least 1,000 gpm and the ability to meet peak hourly demands with the largest pump out of service, whichever is less, at each pump station or pressure plane. For systems which provide an elevated storage capacity of 200 gallons per connection, two service pumps with a minimum combined capacity of 0.6 gpm per connection are required at each pump station or pressure plane. If only wells and elevated storage are provided, service pumps are not required;
- (iv) an elevated storage capacity of 100 gallons per connection or a pressure tank capacity of 20 gallons per connection. If pressure tanks are used, a maximum capacity of 30,000 gallons is sufficient for up to 2,500 connections. An elevated storage capacity of 100 gallons per connection is required for systems with more than 2,500 connections. Alternate methods of pressure maintenance may be proposed and will be approved if the criteria contained in subsection (g)(5) of this section are met; and
- (v) emergency power for systems which serve more than 250 connections and do not meet the elevated storage requirement. Sufficient emergency power must be provided to deliver a minimum of 0.35 gpm per connection and meet minimum pressure requirements to the distribution system in the event of the loss of normal power supply. Alternately, an emergency interconnection can be provided with another public water system that has emergency power and is able to supply at least 0.35 gpm for each connection in the combined system. Emergency power must be maintained as required by §290.46(m)(8) of this title.

- (E) Mobile home parks with a density of eight or more units per acre and apartment complexes which supply fewer than 100 connections without ground storage must meet the following requirements:
 - (i) a well capacity of 1.0 gpm per connection; and
- (ii) a pressure tank capacity of 50 gallons per connection with a maximum of 2,500 gallons required.
- (F) Mobile home parks and apartment complexes which supply 100 connections or greater, or fewer than 100 connections and utilize ground storage must meet the following requirements:
- (i) a well capacity of 0.6 gpm per connection. Systems with 250 or more connections must have either two wells or an approved interconnection which is capable of supplying at least 0.35 gpm for each connection in the combined system;
 - (ii) a total storage of 200 gallons per connection;
- (iii) at least two service pumps with a total capacity of 2.0 gpm per connection; and
- $\mbox{\it (iv)} \quad \mbox{a pressure tank capacity of 20 gallons per connection.}$
- (2) Surface water supplies must meet the following requirements:
- (A) a raw water pump capacity of 0.6 gpm per connection with the largest pump out of service;
- (B) a treatment plant capacity of 0.6 gpm per connection under normal rated design flow;
- (C) transfer pumps (where applicable) with a capacity of 0.6 gpm per connection with the largest pump out of service;
- (D) a covered clearwell storage capacity at the treatment plant of 50 gallons per connection or, for systems serving more than 250 connections, 5.0% of daily plant capacity;
- (E) a total storage capacity of 200 gallons per connection;
- (F) a service pump capacity that provides each pump station or pressure plane with two or more pumps that have a total capacity of 2.0 gpm per connection or that have a total capacity of at least 1,000 gpm and the ability to meet peak hourly demands with the largest pump out of service, whichever is less. For systems which provide an elevated storage capacity of 200 gallons per connection, two service pumps with a minimum combined capacity of 0.6 gpm per connection are required at each pump station or pressure plane;
- (G) an elevated storage capacity of 100 gallons per connection or a pressure tank capacity of 20 gallons per connection. If pressure tanks are used, a maximum capacity of 30,000 gallons is sufficient for systems of up to 2,500 connections. An elevated storage capacity of 100 gallons per connection is required for systems with more than 2,500 connections. Alternate methods of pressure maintenance may be proposed and will be approved if the criteria contained in subsection (g)(5) of this section are met; and
- (H) emergency power for systems which serve more than 250 connections and do not meet the elevated storage requirement. Sufficient emergency power must be provided to deliver a minimum of 0.35 gpm per connection and meet minimum pressure requirements to the distribution system in the event of the loss of normal power supply. Alternately, an emergency interconnection can be provided with another public water system that has emergency power and is able to supply at least 0.35 gpm for each connection in the combined system.

Emergency power must be maintained as required by §290.46(m)(8) of this title.

- (3) Any community public water system that is an affected utility, defined in TWC §13.1394 or §13.1395 shall have an emergency preparedness plan approved by the executive director and must meet the requirements for emergency operations contained in subsection (h) or (i) of this section. This includes any affected utility that provides 100 gallons of elevated storage capacity per connection.
- (c) Noncommunity water systems serving transient accommodation units. The following water capacity requirements apply to noncommunity water systems serving accommodation units such as hotel rooms, motel rooms, travel trailer spaces, campsites, and similar accommodations.
- (1) Groundwater supplies must meet the following requirements
- (A) If fewer than 100 accommodation units without ground storage, the system must meet the following requirements:
 - (i) a well capacity of 1.0 gpm per unit; and
- (ii) a pressure tank capacity of ten gallons per unit with a minimum of 220 gallons.
- (B) For systems serving fewer than 100 accommodation units with ground storage or serving 100 or more accommodation units, the system must meet the following requirements:
 - (i) a well capacity of 0.6 gpm per unit;
 - (ii) a ground storage capacity of 35 gallons per unit;
- (iii) two or more service pumps which have a total capacity of 1.0 gpm per unit; and
 - (iv) a pressure tank capacity of ten gallons per unit.
- (2) Surface water supplies, regardless of size, must meet the following requirements:
- (A) a raw water pump capacity of $0.6~\mathrm{gpm}$ per unit with the largest pump out of service;
 - (B) a treatment plant capacity of 0.6 gpm per unit;
- (C) a transfer pump capacity (where applicable) of 0.6 gpm per unit with the largest pump out of service;
- (D) a ground storage capacity of 35 gallons per unit with a minimum of 1,000 gallons as clearwell capacity;
- (E) two or more service pumps with a total capacity of 1.0 gpm per unit; and
- (F) a pressure tank capacity of ten gallons per unit with a minimum requirement of 220 gallons.
- (3) A noncommunity public water system that is an affected utility, defined in TWC §13.1394 or §13.1395 shall meet the requirements of subsection (h) or (i) of this section.
- (d) Noncommunity water systems serving other than transient accommodation units.
- (1) The following table is applicable to paragraphs (2) and (3) of this subsection and shall be used to determine the maximum daily demand for the various types of facilities listed.

 Figure: 30 TAC §290.45(d)(1) (No change.)
- $\ensuremath{\text{(2)}} \quad \text{Groundwater supplies must meet the following requirements.}$

- (A) Subject to the requirements of subparagraph (B) of this paragraph, if fewer than 300 persons per day are served, the system must meet the following requirements:
- (i) a well capacity which meets or exceeds the maximum daily demand of the system during the hours of operation; and
- (ii) a minimum pressure tank capacity of 220 gallons with additional capacity, if necessary, based on a sanitary survey conducted by the executive director.
- (B) Systems which serve 300 or more persons per day or serve fewer than 300 persons per day and provide ground storage must meet the following requirements:
- (i) a well capacity which meets or exceeds the maximum daily demand;
- (ii) a ground storage capacity which is equal to 50% of the maximum daily demand;
- (iii) if the maximum daily demand is less than 15 gpm, at least one service pump with a capacity of three times the maximum daily demand;
- (iv) if the maximum daily demand is 15 gpm or more, at least two service pumps with a total capacity of three times the maximum daily demand; and
- (v) a minimum pressure tank capacity of 220 gallons with additional capacity, if necessary, based on a sanitary survey conducted by the executive director.
- (3) Each surface water supply or groundwater supply that is under the direct influence of surface water, regardless of size, must meet the following requirements:
- (A) a raw water pump capacity which meets or exceeds the maximum daily demand of the system with the largest pump out of service;
- (B) a treatment plant capacity which meets or exceeds the system's maximum daily demand;
- (C) a transfer pump capacity (where applicable) sufficient to meet the maximum daily demand with the largest pump out of service;
- (D) a clearwell capacity which is equal to 50% of the maximum daily demand;
- (E) two or more service pumps with a total capacity of three times the maximum daily demand; and
- (F) a minimum pressure tank capacity of 220 gallons with additional capacity, if necessary, based on a sanitary survey conducted by the executive director.
- (4) A noncommunity public water system that is an affected utility, defined in TWC §13.1394 or §13.1395, shall meet the requirements of subsection (h) or (i) of this section.
- (e) Water wholesalers. The following additional requirements apply to systems which supply wholesale treated water to other public water supplies.
- (1) All wholesalers must provide enough production, treatment, and service pumping capacity to meet or exceed the combined maximum daily commitments specified in their various contractual obligations. If a contract prohibits a purchaser from securing water from sources other than the contracted wholesaler during emergency operations, the wholesaler is responsible for meeting applicable capacity requirements.

- (2) For wholesale water suppliers, minimum water system capacity requirements shall be determined by calculating the requirements based upon the number of retail customer service connections of that wholesale water supplier, if any, fire flow capacities, if required by \$290.46(x)\$ and (y) of this title and adding that amount to the maximum amount of water obligated or pledged under all wholesale contracts.
- (3) Emergency power is required for each portion of the system which supplies more than 250 connections under direct pressure and does not provide an elevated storage capacity of at least 100 gallons per connection. If emergency power is required, it must be sufficient to deliver 20% of the minimum required service pump capacity and meet minimum pressure requirements in the event of the loss of normal power supply. When the wholesaler provides water through an air gap into the purchaser's storage facilities it will be the purchaser's responsibility to meet all minimum water system capacity requirements including emergency power. For wholesale contracts executed or amended on or after January 1, 2025, the contract must specify if the wholesaler will supply water, pressure, or both water and pressure during emergency operations to comply with TWC §13.1394 or §13.1395.
- (4) A wholesaler that is an affected utility, defined in TWC §13.1394 or §13.1395, must meet the requirements specified in subsection (h) or (i) of this section.
- (f) Purchased water systems. The following requirements apply only to systems which purchase treated water to meet all or part of their production, storage, service pump, or pressure maintenance capacity requirements.
- (1) The water purchase contract must be available to the executive director in order that production, storage, service pump, or pressure maintenance capacity may be properly evaluated. For purposes of this section, a contract may be defined as a signed written document of specific terms agreeable to the water purchaser and the water wholesaler, or in its absence, a memorandum or letter of understanding between the water purchaser and the water wholesaler.
- (2) The contract shall authorize the purchase of enough water to meet the monthly or annual needs of the purchaser.
- (3) The contract shall also establish the maximum rate at which water may be drafted on a daily and hourly basis. In the absence of specific maximum daily or maximum hourly rates in the contract, a uniform purchase rate for the contract period will be used.
- (4) The maximum authorized daily purchase rate specified in the contract, or a uniform purchase rate in the absence of a specified daily purchase rate, plus the actual production capacity of the system must be at least 0.6 gpm per connection.
- (5) For systems which purchase water under direct pressure, the maximum hourly purchase authorized by the contract plus the actual service pump capacity of the system must be at least 2.0 gpm per connection or provide at least 1,000 gpm and be able to meet peak hourly demands, whichever is less.
- (6) The purchaser is responsible for meeting all capacity requirements. If additional capacity to meet increased demands cannot be attained from the wholesaler through a new or amended contract, additional capacity must be obtained from water purchase contracts with other entities, new wells, or surface water treatment facilities. However, if the water purchase contract prohibits the purchaser from securing water from sources other than the wholesaler, the wholesaler is responsible for meeting applicable capacity requirements. For wholesale contracts executed or amended on or after January 1, 2025, the contract must specify if the wholesaler will supply water, pressure, or both water and pressure during emergency operations to comply with TWC §13.1394 or §13.1395.

- (7) All other minimum capacity requirements specified in this section and §290.46(x) and (y) of this title shall apply.
- (g) Alternative capacity requirements. Public water systems may request approval to meet alternative capacity requirements in lieu of the minimum capacity requirements specified in this section. Any water system requesting to use an alternative capacity requirement must demonstrate to the satisfaction of the executive director that approving the request will not compromise the public health or result in a degradation of service or water quality and comply with the requirements found in $\S290.46(x)$ and (y) of this title. Alternative capacity requirements are unavailable for groundwater systems serving fewer than 50 connections without total storage as specified in subsection (b)(1) of this section or for noncommunity water systems as specified in subsections (c) and (d) of this section.
- (1) Alternative capacity requirements for public water systems may be granted upon request to and approval by the executive director. The request to use an alternative capacity requirement must include:
- (A) a detailed inventory of the major production, pressurization, and storage facilities utilized by the system;
- (B) records kept by the water system that document the daily production of the system. The period reviewed shall not be less than three years. The applicant may not use a calculated peak daily demand;
- (C) data acquired during the last drought period in the region, if required by the executive director;
- (D) the actual number of active connections for each month during the three years of production data;
- (E) description of any unusual demands on the system such as fire flows or major main breaks that will invalidate unusual peak demands experienced in the study period;
- (F) any other relevant data needed to determine that the proposed alternative capacity requirement will provide at least 35 psi in the public water system except during line repair or during firefighting when it cannot be less than 20 psi; and
- (G) a copy of all data relied upon for making the proposed determination.
- (2) Alternative capacity requirements for existing public water systems must be based upon the maximum daily demand for the system, unless the request is submitted by a licensed professional engineer in accordance with the requirements of paragraph (3) of this subsection. The maximum daily demand must be determined based upon the daily usage data contained in monthly operating reports for the system during a 36 consecutive month period. The 36 consecutive month period must end within 90 days of the date of submission to ensure the data is as current as possible.
- (A) Maximum daily demand is the greatest number of gallons, including groundwater, surface water, and purchased water delivered by the system during any single day during the review period. Maximum daily demand excludes unusual demands on the system such as fire flows or major main breaks.
- (B) For the purpose of calculating alternative capacity requirements, an equivalency ratio must be established. This equivalency ratio must be calculated by multiplying the maximum daily demand, expressed in gpm per connection, by a fixed safety factor and dividing the result by 0.6 gpm per connection. The safety factor shall be 1.15 unless it is documented that the existing system capacity is adequate for the next five years. In this case, the safety factor may be

- reduced to 1.05. The conditions in §291.93(3) of this title (relating to Adequacy of Water Utility Service) concerning the 85% rule shall continue to apply to public water systems that are also retail public utilities.
- (C) To calculate the alternative capacity requirements, the equivalency ratio must be multiplied by the appropriate minimum capacity requirements specified in subsection (b) of this section. Standard rounding methods are used to round calculated alternative production capacity requirement values to the nearest one-hundredth.
- (3) Alternative capacity requirements which are proposed and submitted by licensed professional engineers for review are subject to the following additional requirements.
- (A) A signed and sealed statement by the licensed professional engineer must be provided which certifies that the proposed alternative capacity requirements have been determined in accordance with the requirements of this subsection.
- (B) If the system is new or at least 36 consecutive months of data is not available, maximum daily demand may be based upon at least 36 consecutive months of data from a comparable public water system. A licensed professional engineer must certify that the data from another public water system is comparable based on consideration of the following factors: prevailing land use patterns (rural versus urban); number of connections; density of service populations; fire flow obligations; and socio-economic, climatic, geographic, and topographic considerations as well as other factors as may be relevant. The comparable public water system shall not exhibit any of the conditions listed in paragraph (6)(A) of this subsection.
- (4) The executive director shall consider requests for alternative capacity requirements in accordance with the following requirements.
- (A) For those requests submitted under the seal of a licensed professional engineer, the executive director must mail written acceptance or denial of the proposed alternative capacity requirements to the public water system within 90 days from the date of submission. If the executive director fails to mail written notification within 90 days, the alternative capacity requirements submitted by a licensed professional engineer automatically become the alternative capacity requirements for the public water system.
 - (B) If the executive director denies the request:
- (i) the executive director shall mail written notice to the public water system identifying the specific reason or reasons for denial and allow 45 days for the public water system to respond to the reason(s) for denial;
- (ii) the denial is final if no response from the public water system is received within 45 days of the written notice being mailed; and
- (iii) the executive director must mail a final written approval or denial within 60 days from the receipt of any response timely submitted by the public water system.
- (5) Although elevated storage is the preferred method of pressure maintenance for systems of over 2,500 connections, it is recognized that local conditions may dictate the use of alternate methods utilizing hydropneumatic tanks and on-site emergency power equipment. Alternative capacity requirements to the elevated storage requirements may be obtained based on request to and approval by the executive director. Special conditions apply to systems qualifying for an elevated storage alternative capacity requirement.
- (A) The system must submit documentation sufficient to assure that the alternate method of pressure maintenance is capable

of providing a safe and uninterrupted supply of water under pressure to the distribution system during all demand conditions.

- (i) A signed and sealed statement by a licensed professional engineer must be provided which certifies that the pressure maintenance facilities are sized, designed, and capable of providing a minimum pressure of at least 35 psi at all points within the distribution network at flow rates of 1.5 gpm per connection or greater. In addition, the engineer must certify that the emergency power facilities are capable of providing the greater of the average daily demand or 0.35 gpm per connection while maintaining distribution pressures of at least 20 psi or a pressure approved by the executive director, or 35 psi, as required by TWC §13.1394 and §13.1395, respectively, and that emergency power facilities powering production and treatment facilities are capable of supplying at least 0.35 gpm per connection to storage.
- (ii) The system's licensed professional engineer must conduct a hydraulic analysis of the system under peak conditions. This must include an analysis of the time lag between the loss of the normal power supply and the commencement of emergency power as well as the minimum pressure that will be maintained within the distribution system during this time lag. In no case shall this minimum pressure within the distribution system be less than 20 psi. The results of this analysis must be submitted to the executive director for review.
- (iii) For existing systems, the system's licensed professional engineer must provide continuous pressure chart recordings of distribution pressures maintained during past power failures, if available. The period reviewed shall not be less than three years.
- (iv) A public water system that is an affected utility, defined in TWC §13.1394 or §13.1395, must conduct the modeling requirements contained in clauses (i) (iii) of this subparagraph using the requirements specified in subsection (h) or (i) of this section.
- (B) Emergency power facilities must be maintained and provided with necessary appurtenances to assure immediate and dependable operation in case of normal power interruption. A public water system that is an affected utility, defined in TWC §13.1394 or §13.1395, must meet the requirements specified in subsection (h) or (i) of this section.
- (i) The facilities must be serviced and maintained in accordance with Level 2 maintenance requirements contained in the current NFPA 110 Standard and the manufacturers' recommendations if the affected utility serves 1,000 connections or greater, or in accordance with manufacturer's recommendations and as prescribed in §290.46(m)(8) of this title if the affected utility serves fewer than 1,000 connections.
- (ii) The switching gear must be capable of bringing the emergency power generating equipment on-line during a power interruption such that the pressure in the distribution network does not fall below 20 psi or a pressure approved by the executive director, or 35 psi, as required by TWC §13.1394 and §13.1395, respectively.
- (iii) The minimum on-site fuel storage capacity shall be determined by the fuel demand of the emergency power facilities and the frequency of fuel delivery. An amount of fuel equal to that required to operate the emergency power facilities during emergency operations for a period of at least 48 hours must always be maintained on site or made readily available.
- (iv) Residential rated mufflers or other means of effective noise suppression must be provided on each emergency power motor.
- (C) Battery-powered or uninterrupted power supply pressure monitors and chart recorders which are configured to activate

- immediately upon loss of normal power must be provided for pressure maintenance facilities. These records must be kept for a minimum of three years and made available for review by the executive director. Records must include chart recordings of all power interruptions including interruptions due to periodic emergency power under-load testing and maintenance.
- (6) Any alternative capacity requirement granted under this subsection is subject to review and revocation or revision by the executive director. If permission to use an alternative capacity requirement is revoked, the public water system must meet the applicable minimum capacity requirements of this section.
- (A) The following conditions, if attributable to the alternative capacity requirements, may constitute grounds for revocation or revision of established alternative capacity requirements or for denial of new requests, if the condition occurred within the last 36 months:
- (i) documented pressure below 35 psi at any time not related to line repair, except during firefighting when it cannot be less than 20 psi;
 - (ii) water outages due to high water usage;
- (iii) mandatory water rationing due to high customer demand or overtaxed water production or supply facilities;
- (iv) failure to meet a minimum capacity requirement or an established alternative capacity requirement;
- (v) changes in water supply conditions or usage patterns which create a potential threat to public health; or
- (vi) any other condition where the executive director finds that the alternative capacity requirement has compromised public health or resulted in a degradation of service or water quality.
- (B) If the executive director finds any of the conditions specified in subparagraph (A) of this paragraph, the process for revocation or revision of an alternative capacity requirement shall be as follows, unless the executive director finds that failure of the service or other threat to public health and safety is imminent under subparagraph (C) of this paragraph.
- (i) The executive director must mail the public drinking water system written notice of the executive director's intent to revoke or revise an alternative capacity requirement identifying the specific reason(s) for the proposed action.
- (ii) The public water system has 30 days from the date the written notice is mailed to respond to the proposed action.
- (iii) The public water system has 30 days from the date the written notice is mailed to request a meeting with the agency's public drinking water program personnel to review the proposal. If requested, such a meeting must occur within 45 days of the date the written notice is mailed.
- (iv) After considering any response from or after any requested meeting with the public drinking water system, the executive director must mail written notification to the public drinking water system of the executive director's final decision to continue, revoke, or revise an alternative capacity requirement identifying the specific reason(s) for the decision.
- (C) If the executive director finds that failure of the service or other threat to public health and safety is imminent, the executive director may issue written notification of the executive director's final decision to revoke or revise an alternative capacity requirement at any time.

- (h) Affected utilities as defined in TWC §13.1394. This subsection applies to all affected utilities, as defined in TWC §13.1394, and is in addition to any other requirements pertaining to emergency power found in this chapter.
- (1) Affected utilities must provide one or more of the following options to ensure the emergency operation of its water system during an extended power outage at a minimum of 20 psi, or a pressure approved by the executive director, whichever is applicable, and in accordance with the affected utility's approved emergency preparedness plan:
- (A) the maintenance of automatically starting auxiliary generators;
- (B) the sharing of auxiliary generator capacity with one or more affected utilities, including through participation in a statewide mutual aid program;
- (C) the negotiation of leasing and contracting agreements, including emergency mutual aid agreements with other retail public utilities, exempt utilities, or providers, or conveyers of potable water or raw water service, if the agreements provide for coordination with the division of emergency management in the governor's office;
- (D) the use of portable generators capable of serving multiple facilities equipped with quick-connect systems;
- (E) the use of on-site electrical generation or electrical distribution generation facilities;
- (F) hardening of the electric transmission and electric distribution system against damage from natural disasters during an extended power outage;
- (G) the maintenance of direct engine or right-angle drives;
- (H) designation of the water system as a critical load facility or redundant, isolated or dedicated electrical feeds;
- (I) water storage capabilities with sufficient storage to provide water to customers during an extended power outage;
- (J) water supplies can be delivered from outside the service area of the affected utility by opening an emergency interconnect or using a water hauler;
- $\hspace{1cm} (K) \hspace{0.3cm} \text{affected utility has ability to provide water through artesian flows:} \\$
- (L) affected utility has ability to open valves between pressure zones to provide redundant interconnectivity between pressure zones;
- (M) affected utility will implement emergency water demand rules to maintain emergency operations; or
- (N) any other alternative determined by the executive director to be acceptable.
- (2) Each affected utility that supplies, provides, or conveys raw surface water shall include in its emergency preparedness plan, under paragraph (1) of this subsection, provisions for demonstrating the capability of each raw water intake pump station, pump station, and pressure facility necessary to provide raw water service to its wholesale customers during emergencies. This does not apply to raw water services that are unnecessary or otherwise subject to interruption or curtailment during emergencies under a contract.
- (3) Emergency generators used as part of an approved emergency preparedness plan must be inspected, maintained, tested,

- and operated in accordance with the manufacturer's specifications and as outlined in 290.46(m)(8) of this title.
- (4) An affected utility may adopt and is encouraged to enforce limitations on water use while the utility is providing emergency operations.
- (5) As soon as safe and practicable following the occurrence of a natural disaster, an affected utility must operate in accordance with its approved emergency preparedness plan, which may include using elevated storage. An affected utility may meet the requirements of TWC §13.1394 including having a currently approved emergency preparedness plan, in lieu of any other rules regarding elevated storage requirements, provided that, under normal operating conditions, the affected utility continues to meet the pressure requirements of §290.46(r) of this title (related to Minimum Acceptable Operating Practices for Public Drinking Water Systems) and the production, treatment, total storage, and service pump capacity requirements of this subchapter.
- (6) An affected utility must maintain on-site, or make readily available during emergency operations, an amount of fuel necessary to operate any required emergency power equipment necessary to maintain emergency operations for at least 48 hours.
- (7) Each affected utility must implement its emergency preparedness plan upon approval by the executive director.
- (i) Affected utilities as defined by TWC $\S13.1395$. This subsection applies to all affected utilities as defined by TWC $\S13.1395$ and is in addition to any other requirements pertaining to emergency power found in this subchapter.
- (1) Affected utilities must provide one of the following options of sufficient power to meet the capacity requirements of paragraph (1) or (2) of this subsection, whichever is applicable, and in accordance with the affected utility's approved emergency preparedness plan:
- (A) the maintenance of automatically starting auxiliary generators;
- (B) the sharing of auxiliary generator capacity with one or more affected utilities;
- (C) the negotiation of leasing and contracting agreements, including emergency mutual aid agreements with other retail public utilities, exempt utilities, or providers, or conveyors of potable or raw water service, if the agreements provide for coordination with the division of emergency management in the governor's office;
- (D) the use of portable generators capable of serving multiple facilities equipped with quick-connect systems;
- (E) the use of on-site electrical generation or electrical distributed generation facilities;
- (F) hardening of the electric transmission and electric distribution system against damage from natural disasters during an extended power outage;
- (G) the maintenance of direct engine or right-angle drives; or
- (H) any other alternative determined by the executive director to be acceptable.
- (2) Each affected utility that supplies, provides, or conveys surface water to wholesale customers shall install and maintain automatically starting auxiliary generators or distributive generation facilities for each raw water intake pump station, water treatment plant, pump station, and pressure facility necessary to provide water to its wholesale customers. This does not apply to raw water services that are

unnecessary or otherwise subject to interruption or curtailment during emergencies under a contract.

- (3) Emergency generators used as part of an approved emergency preparedness plan must be maintained, tested, and operated in accordance with Level 2 maintenance requirements contained in the current NFPA 110 Standard and the manufacturers specifications if the affected utility serves 1,000 connections or greater, or the manufacturer's specifications and as outlined in §290.46(m)(8) of this title for affected utilities serving fewer than 1,000 connections.
- (4) An affected utility may adopt and is encouraged to enforce limitations on water use while the utility is providing emergency operations.
- (5) As soon as safe and practicable following the occurrence of a natural disaster, an affected utility must operate in accordance with its approved emergency preparedness plan, which may include using elevated storage. An affected utility may meet the requirements of TWC §13.1395, including having a currently approved emergency preparedness plan, in lieu of any other rules regarding elevated storage requirements, provided that, under normal operating conditions, the affected utility continues to meet the pressure requirements of §290.46(r) of this title and the production, treatment, total storage and service pump capacity requirements of this subchapter.
- (6) An affected utility must maintain on-site, or make readily available during emergency operations, an amount of fuel necessary to operate any required emergency power equipment necessary to maintain emergency operations for at least 48 hours.
- (7) Each affected utility must implement their emergency preparedness plan upon approval by the executive director.
- §290.46. Minimum Acceptable Operating Practices for Public Drinking Water Systems.
- (a) General. When a public drinking water supply system is to be established, plans shall be submitted to the executive director for review and approval prior to the construction of the system. All public water systems are to be constructed in conformance with the requirements of this subchapter and maintained and operated in accordance with the following minimum acceptable operating practices. Owners and operators shall allow entry to members of the commission and employees and agents of the commission onto any public or private property at any reasonable time for the purpose of inspecting and investigating conditions relating to public water systems in the state including the required elements of a sanitary survey as defined in §290.38 of this title (relating to Definitions). Members, employees, or agents acting under this authority shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection, and if the property has management in residence, shall notify management or the person then in charge of his presence and shall exhibit proper credentials.
- (b) Microbiological. Submission of samples for microbiological analysis shall be as required by Subchapter F of this chapter (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems). Microbiological samples may be required by the executive director for monitoring purposes in addition to the routine samples required by the drinking water standards. These samples shall be submitted to an accredited laboratory. (A list of the accredited laboratories can be obtained by contacting the executive director.) The samples shall be submitted to the executive director in a manner prescribed by the executive director.
- (c) Chemical. Samples for chemical analysis shall be submitted as directed by the executive director.

- (d) Disinfectant residuals and monitoring. A disinfectant residual must be continuously maintained during the treatment process and throughout the distribution system.
- (1) Disinfection equipment shall be operated and monitored in a manner that will assure compliance with the requirements of \$290.110 of this title (relating to Disinfectant Residuals).
- (2) The disinfection equipment shall be operated to maintain the following minimum disinfectant residuals in each finished water storage tank and throughout the distribution system at all times:
- (A) a free chlorine residual of 0.2 milligrams per liter (mg/L); or
- (B) a chloramine residual of 0.5 mg/L (measured as total chlorine) for those systems that distribute chloraminated water.
- (e) Operation by trained and licensed personnel. Except as provided in paragraph (1) of this subsection, the production, treatment, and distribution facilities at the public water system must be operated at all times under the direct supervision of a water works operator who holds an applicable, valid license issued by the executive director. Except as provided in paragraph (1) of this subsection, all public water systems must use a water works operator who holds an applicable, valid license issued by the executive director to meet the requirements of this subsection. The licensed operator of a public water system may be an employee, contractor, or volunteer.
- (1) Transient, noncommunity public water systems are exempt from the requirements of this subsection if they use only groundwater or purchase treated water from another public water system.
- (2) All public water systems that are subject to the provisions of this subsection shall meet the following requirements.
- (A) Public water systems shall not allow new or repaired production, treatment, storage, pressure maintenance, or distribution facilities to be placed into service without the prior guidance and approval of a licensed water works operator.
- (B) Public water systems shall ensure that their operators are trained regarding the use of all chemicals used in the water treatment plant. Training programs shall meet applicable standards established by the Occupational Safety and Health Administration or the Texas Hazard Communication Act, Texas Health and Safety Code, Chapter 502.
- (C) Public water systems using chlorine dioxide shall place the operation of the chlorine dioxide facilities under the direct supervision of a licensed operator who has a Class "C" or higher license.
- (D) Effective September 1, 2016, reverse osmosis or nanofiltration membrane systems must have operators that have successfully completed at least one executive director-approved training course or event specific to the operations and maintenance of reverse osmosis or nanofiltration membrane treatment.
- (3) Systems that only purchase treated water shall meet the following requirements in addition to the requirements contained in paragraph (2) of this subsection.
- (A) Purchased water systems serving no more than 250 connections must use an operator who holds a Class "D" or higher license.
- (B) Purchased water systems serving more than 250 connections, but no more than 1,000 connections, must use an operator who holds a Class "C" or higher license.

- (C) Purchased water systems serving more than 1,000 connections must use at least two operators who hold a Class "C" or higher license and who each work at least 16 hours per month at the public water system's treatment or distribution facilities.
- (4) Systems that treat groundwater and do not treat surface water or groundwater that is under the direct influence of surface water shall meet the following requirements in addition to the requirements contained in paragraph (2) of this subsection.
- (A) Groundwater systems serving no more than 250 connections must use an operator with a Class "D" or higher license.
- (B) Groundwater systems serving more than 250 connections, but no more than 1,000 connections, must use an operator with a Class "C" or higher groundwater license.
- (C) Groundwater systems serving more than 1,000 connections must use at least two operators who hold a Class "C" or higher groundwater license and who each work at least 16 hours per month at the public water system's production, treatment, or distribution facilities.
- (5) Systems that treat groundwater that is under the direct influence of surface water must meet the following requirements in addition to the requirements contained in paragraph (2) of this subsection.
- (A) Systems which serve no more than 1,000 connections and utilize cartridge or membrane filters must use an operator who holds a Class "C" or higher groundwater license and has completed a four-hour training course on monitoring and reporting requirements or who holds a Class "C" or higher surface water license and has completed the Groundwater Production course.
- (B) Systems which serve more than 1,000 connections and utilize cartridge or membrane filters must use at least two operators who meet the requirements of subparagraph (A) of this paragraph and who each work at least 24 hours per month at the public water system's production, treatment, or distribution facilities.
- (C) Systems which serve no more than 1,000 connections and utilize coagulant addition and direct filtration must use an operator who holds a Class "C" or higher surface water license and has completed the Groundwater Production course or who holds a Class "C" or higher groundwater license and has completed a Surface Water Production course. Effective January 1, 2007, the public water system must use at least one operator who has completed the Surface Water Production I course and the Surface Water Production II course.
- (D) Systems which serve more than 1,000 connections and utilize coagulant addition and direct filtration must use at least two operators who meet the requirements of subparagraph (C) of this paragraph and who each work at least 24 hours per month at the public water system's production, treatment, or distribution facilities. Effective January 1, 2007, the public water system must use at least two operators who have completed the Surface Water Production I course and the Surface Water Production II course.
- (E) Systems which utilize complete surface water treatment must comply with the requirements of paragraph (6) of this subsection.
- (F) Each plant must have at least one Class "C" or higher operator on duty at the plant when it is in operation or the plant must be provided with continuous turbidity and disinfectant residual monitors with automatic plant shutdown and alarms to summon operators so as to ensure that the water produced continues to meet the commission's drinking water standards during periods when the plant is not staffed.

- (6) Systems that treat surface water must meet the following requirements in addition to the requirements contained in paragraph (2) of this subsection.
- (A) Surface water systems that serve no more than 1,000 connections must use at least one operator who holds a Class "B" or higher surface water license. Part-time operators may be used to meet the requirements of this subparagraph if the operator is completely familiar with the design and operation of the plant and spends at least four consecutive hours at the plant at least once every 14 days and the system also uses an operator who holds a Class "C" or higher surface water license. Effective January 1, 2007, the public water system must use at least one operator who has completed the Surface Water Production I course.
- (B) Surface water systems that serve more than 1,000 connections must use at least two operators; one of the required operators must hold a Class "B" or higher surface water license and the other required operator must hold a Class "C" or higher surface water license. Each of the required operators must work at least 32 hours per month at the public water system's production, treatment, or distribution facilities. Effective January 1, 2007, the public water system must use at least two operators who have completed the Surface Water Production I course and the Surface Water Production II course.
- (C) Each surface water treatment plant must have at least one Class "C" or higher surface water operator on duty at the plant when it is in operation or the plant must be provided with continuous turbidity and disinfectant residual monitors with automatic plant shutdown and alarms to summon operators so as to ensure that the water produced continues to meet the commission's drinking water standards during periods when the plant is not staffed.
- (D) Public water systems shall not allow Class "D" operators to adjust or modify the treatment processes at surface water treatment plant unless an operator who holds a Class "C" or higher surface license is present at the plant and has issued specific instructions regarding the proposed adjustment.
- (f) Operating records and reports. All public water systems must maintain a record of water works operation and maintenance activities and submit periodic operating reports.
- (1) The public water system's operating records must be organized, and copies must be kept on file or stored electronically.
- (2) The public water system's operating records must be accessible for review during inspections and be available to the executive director upon request.
- ${\rm (3)} \quad {\rm All \ public \ water \ systems \ shall \ maintain \ a \ record \ of \ operations.}$
- (A) The following records shall be retained for at least two years:
 - (i) the amount of chemicals used:
- (I) Systems that treat surface water or groundwater under the direct influence of surface water shall maintain a record of the amount of each chemical used each day.
- (II) Systems that serve 250 or more connections or serve 750 or more people shall maintain a record of the amount of each chemical used each day.
- (III) Systems that serve fewer than 250 connections, serve fewer than 750 people, and use only groundwater or purchased treated water shall maintain a record of the amount of each chemical used each week;

- (ii) the volume of water treated and distributed:
- (I) Systems that treat surface water or groundwater under the direct influence of surface water shall maintain a record of the amount of water treated and distributed each day.
- (II) Systems that serve 250 or more connections or serve 750 or more people shall maintain a record of the amount of water distributed each day.
- (III) Systems that serve fewer than 250 connections, serve fewer than 750 people, and use only groundwater or purchase treated water shall maintain a record of the amount of water distributed each week.
- (IV) Systems that serve 250 or more connections or serve 750 or more people and also add chemicals or provide pathogen or chemical removal shall maintain a record of the amount of water treated each day.
- (V) Systems that serve fewer than 250 connections, serve fewer than 750 people, use only groundwater or purchase treated water, and also add chemicals or provide pathogen or chemical removal shall maintain a record of the amount of water treated each week;
- (iii) the date, location, and nature of water quality, pressure, or outage complaints received by the system and the results of any subsequent complaint investigation;
 - (iv) the dates that dead-end mains were flushed;
- (v) the dates that storage tanks and other facilities were cleaned;
- (vi) the maintenance records for water system equipment and facilities. For systems using reverse osmosis or nanofiltration, maintain records of each clean-in-place process including the date, duration, and procedure used for each event;
- (vii) for systems that do not employ full-time operators to meet the requirements of subsection (e) of this section, a daily record or a monthly summary of the work performed and the number of hours worked by each of the part-time operators used to meet the requirements of subsection (e) of this section; and
- (viii) the owner or manager of a public water system that is operated by a volunteer to meet the requirements of subsection (e) of this section, shall maintain a record of each volunteer operator indicating the name of the volunteer, contact information for the volunteer, and the time period for which the volunteer is responsible for operating the public water system. These requirements apply to full-time and part-time licensed volunteer operators. Part-time licensed volunteer operators are excluded from the requirements of clause (vii) of this subparagraph.
- (B) The following records shall be retained for at least three years:
- (i) copies of notices of violation and any resulting corrective actions. The records of the actions taken to correct violations of primary drinking water regulations must be retained for at least three years after the last action taken with respect to the particular violation involved;
- (ii) copies of any public notice issued by the water system;
- (iii) the disinfectant residual monitoring results from the distribution system;

- (iv) the calibration records for laboratory equipment, flow meters, rate-of-flow controllers, on-line turbidimeters, and on-line disinfectant residual analyzers;
- (v) the records of backflow prevention device programs;
- (vi) the raw surface water monitoring results and source water monitoring plans required by §290.111 of this title (relating to Surface Water Treatment) must be retained for three years after bin classification required by §290.111 of this title;
- (vii) notification to the executive director that a system will provide 5.5-log *Cryptosporidium* treatment in lieu of raw surface water monitoring;
- (viii) except for those specified in subparagraphs (C)(iv) and (E)(i) of this paragraph, the results of all surface water treatment monitoring that are used to demonstrate log inactivation or removal;
- (ix) free and total chlorine, monochloramine, ammonia, nitrite, and nitrate monitoring results if chloramines are used in the water system; and
- (x) the records of treatment effectiveness monitoring for systems using reverse osmosis or nanofiltration membranes. Treatment effectiveness monitoring includes the parameters for determining when maintenance is required. Examples of parameters to be monitored include conductivity (or total dissolved solids) on each membrane unit, pressure differential across a membrane vessel, flow, flux, and water temperature. At a minimum, systems using reverse osmosis or nanofiltration membranes must monitor the conductivity (or total dissolved solids) of the feed and permeate water once per day.
- (C) The following records shall be retained for a period of five years after they are no longer in effect:
- (i) the records concerning a variance or exemption granted to the system;
- (ii) Concentration Time (CT) studies for surface water treatment plants;
- (iii) the Recycling Practices Report form and other records pertaining to site-specific recycle practices for treatment plants that recycle; and
- (iv) the turbidity monitoring results and exception reports for individual filters as required by §290.111 of this title.
- (D) The following records shall be retained for at least five years:
 - (i) the results of microbiological analyses;
- (ii) the results of inspections (as required in subsection (m)(1) of this section) for all water storage and pressure maintenance facilities;
- (iii) the results of inspections (as required by subsection (m)(2) of this section) for all pressure filters;
- (iv) documentation of compliance with state approved corrective action plan and schedules required to be completed by groundwater systems that must take corrective actions;
- (v) documentation of the reason for an invalidated fecal indicator source sample and documentation of a total coliform-positive sample collected at a location with conditions that could cause such positive samples in a distribution system;

- (vi) notification to wholesale system(s) of a distribution coliform-positive sample for consecutive systems using groundwater;
- (vii) Consumer Confidence Report compliance documentation;
- (viii) records of the lowest daily residual disinfectant concentration and records of the date and duration of any failure to maintain the executive director-approved minimum specified disinfectant residual for a period of more than four hours for groundwater systems providing 4-log treatment;
- (ix) records of executive director-specified compliance requirements for membrane filtration, records of parameters specified by the executive director for approved alternative treatment and records of the date and duration of any failure to meet the membrane operating, membrane integrity, or alternative treatment operating requirements for more than four hours for groundwater systems. Membrane filtration can only be used if it is approved by the executive director and if it can be properly validated;
- (x) assessment forms, regardless of who conducts the assessment, and documentation of corrective actions completed or documentation of corrective actions required but not yet completed as a result of those assessments and any other available summary documentation of the sanitary defects and corrective actions taken in accordance with §290.109 of this title (relating to Microbial Contaminants) for executive director review;
- (xi) seasonal public water systems shall maintain executive director-approved start-up procedures and certification documentation in accordance with §290.109 of this title for executive director review; and
- (xii) records of any repeat sample taken that meets the criteria for an extension of the 24-hour period for collecting repeat samples under §290.109 of this title.
- (E) The following records shall be retained for at least ten years:
- (i) copies of Monthly Operating Reports and any supporting documentation including turbidity monitoring results of the combined filter effluent;
 - (ii) the results of chemical analyses;
- (iii) any written reports, summaries, or communications relating to sanitary surveys of the system conducted by the system itself, by a private consultant, or by the executive director shall be kept for a period not less than ten years after completion of the survey involved;
- (iv) copies of the Customer Service Inspection reports required by subsection (j) of this section;
- (v) copy of any Initial Distribution System Evaluation (IDSE) plan, report, approval letters, and other compliance documentation required by §290.115 of this title (relating to Stage 2 Disinfection Byproducts (TTHM and HAA5));
- (vi) state notification of any modifications to an IDSE report;
- (vii) copy of any 40/30 certification required by §290.115 of this title;
- (viii) documentation of corrective actions taken by groundwater systems in accordance with §290.116 of this title (relating to Groundwater Corrective Actions and Treatment Techniques);

- (ix) any Sample Siting Plans required by \$290.109(d)(6) of this title and monitoring plans required by \$290.121(b) of this title (relating to Monitoring Plans); and
- (x) records of the executive director-approved minimum specified disinfectant residual and executive director-approved membrane system integrity monitoring results for groundwater systems providing 4-log treatment, including wholesale, and consecutive systems, regulated under §290.116(c) of this title.
- (F) A public water system shall maintain records relating to lead and copper requirements under §290.117 of this title (relating to Regulation of Lead and Copper) for no less than 12 years. Any system subject to the requirements of §290.117 of this title shall retain on its premises original records of all sampling data and analyses, reports, surveys, letters, evaluations, schedules, executive determinations, and any other information required by the executive director under §290.117 of this title. These records include, but are not limited to, the following items: tap water monitoring results including the location of each site and date of collection; certification of the volume and validity of first-draw-tap sample criteria via a copy of the laboratory analysis request form; where residents collected the sample; certification that the water system informed the resident of proper sampling procedures; the analytical results for lead and copper concentrations at each tap sample site; and designation of any substitute site not used in previous monitoring periods.
- (G) A public water system shall maintain records relating to special studies and pilot projects, special monitoring, and other system-specific matters as directed by the executive director.
- (4) Public water systems shall submit routine reports and any additional documentation that the executive director may require to determine compliance with the requirements of this chapter.
- (A) The reports must be submitted to the Texas Commission on Environmental Quality, Water Supply Division, MC 155, P.O. Box 13087, Austin, Texas 78711-3087 by the tenth day of the month following the end of the reporting period.
- (B) The reports must contain all the information required by the drinking water standards and the results of any special monitoring tests which have been required.
- (C) The reports must be completed in ink, typed, or computer-printed and must be signed by the licensed water works operator.
- (5) All public water systems that are affected utilities under TWC §13.1394 or §13.1395 must maintain the following records for as long as they are applicable to the system:
- (A) An emergency preparedness plan approved by the executive director and a copy of the approval letter.
- (B) All required operating, inspection, testing, and maintenance records for auxiliary power equipment, and associated components required to be maintained, or actions performed as prescribed in §290.46(m)(8) of this title.
- (C) Copies of the manufacturer's specifications for all generators that are part of the approved emergency preparedness plan.
- (g) Disinfection of new or repaired facilities. Disinfection by or under the direction of water system personnel must be performed when repairs are made to existing facilities and before new facilities are placed into service. Disinfection must be performed in accordance with American Water Works Association (AWWA) requirements and water samples must be submitted to an accredited laboratory. The sample results must indicate that the facility is free of microbiological con-

tamination before it is placed into service. When it is necessary to return repaired mains to service as rapidly as possible, doses may be increased to 500 mg/L and the contact time reduced to 1/2 hour.

- (h) Calcium hypochlorite. A supply of calcium hypochlorite disinfectant shall be kept on hand for use when making repairs, setting meters, and disinfecting new mains prior to placing them in service.
- (i) Plumbing ordinance. Public water systems must adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to ensure that neither cross-connections nor other unacceptable plumbing practices are permitted (See §290.47(b) of this title (relating to Appendices)). Should sanitary control of the distribution system not reside with the purveyor, the entity retaining sanitary control shall be responsible for establishing and enforcing adequate regulations in this regard. The use of pipes and pipe fittings that contain more than 0.25% lead or solders and flux that contain more than 0.2% lead is prohibited for installation or repair of any public water supply and for installation or repair of any plumbing in a residential or nonresidential facility providing water for human consumption and connected to a public drinking water supply system. This requirement may be waived for lead joints that are necessary for repairs to cast iron pipe.
- (j) Customer service inspections. A customer service inspection certificate shall be completed prior to providing continuous water service to new construction, on any existing service either when the water purveyor has reason to believe that cross-connections or other potential contaminant hazards exist, or after any material improvement, correction, or addition to the private water distribution facilities. Any customer service inspection certificate form which varies from the format found in commission Form 20699 must be approved by the executive director prior to being placed in use.
- (1) Individuals with the following credentials shall be recognized as capable of conducting a customer service inspection certification.
- (A) Plumbing Inspectors and Water Supply Protection Specialists licensed by the Texas State Board of Plumbing Examiners (TSBPE).
- (B) Customer service inspectors who have completed a commission-approved course, passed an examination administered by the executive director, and hold current professional license as a customer service inspector.
- (2) As potential contaminant hazards are discovered, they shall be promptly eliminated to prevent possible contamination of the water supplied by the public water system. The existence of a health hazard, as identified in §290.47(f) of this title, shall be considered sufficient grounds for immediate termination of water service. Service can be restored only when the health hazard no longer exists, or until the health hazard has been isolated from the public water system in accordance with §290.44(h) of this title (relating to Water Distribution).
- (3) These customer service inspection requirements are not considered acceptable substitutes for and shall not apply to the sanitary control requirements stated in §290.102(a)(5) of this title (relating to General Applicability).
- (4) A customer service inspection is an examination of the private water distribution facilities for the purpose of providing or denying water service. This inspection is limited to the identification and prevention of cross-connections, potential contaminant hazards, and illegal lead materials. The customer service inspector has no authority or obligation beyond the scope of the commission's regulations. A customer service inspection is not a plumbing inspection as defined and regulated by the TSBPE. A customer service inspector is

- not permitted to perform plumbing inspections. State statutes and TS-BPE adopted rules require that TSBPE licensed plumbing inspectors perform plumbing inspections of all new plumbing and alterations or additions to existing plumbing within the municipal limits of all cities, towns, and villages which have passed an ordinance adopting one of the plumbing codes recognized by TSBPE. Such entities may stipulate that the customer service inspection be performed by the plumbing inspector as a part of the more comprehensive plumbing inspection. Where such entities permit customer service inspectors to perform customer service inspections, the customer service inspector shall report any violations immediately to the local entity's plumbing inspection department.
- (k) Interconnection. No physical connection between the distribution system of a public drinking water supply and that of any other water supply shall be permitted unless the other water supply is of a safe, sanitary quality and the interconnection is approved by the executive director.
- (l) Flushing of mains. All dead-end mains must be flushed at monthly intervals. Dead-end lines and other mains shall be flushed as needed if water quality complaints are received from water customers or if disinfectant residuals fall below acceptable levels as specified in §290.110 of this title.
- (m) Maintenance and housekeeping. The maintenance and housekeeping practices used by a public water system shall ensure the good working condition and general appearance of the system's facilities and equipment. The grounds and facilities shall be maintained in a manner so as to minimize the possibility of the harboring of rodents, insects, and other disease vectors, and in such a way as to prevent other conditions that might cause the contamination of the water.
- (1) Each of the system's ground, elevated, and pressure tanks shall be inspected annually by water system personnel or a contracted inspection service.
- (A) Ground and elevated storage tank inspections must determine that the vents are in place and properly screened, the roof hatches closed and locked, flap valves and gasketing provide adequate protection against insects, rodents, and other vermin, the interior and exterior coating systems are continuing to provide adequate protection to all metal surfaces, and the tank remains in a watertight condition.
- (B) Pressure tank inspections must determine that the pressure release device and pressure gauge are working properly, the air-water ratio is being maintained at the proper level, the exterior coating systems are continuing to provide adequate protection to all metal surfaces, and the tank remains in watertight condition. Pressure tanks provided with an inspection port must have the interior surface inspected every five years.
- (C) All tanks shall be inspected annually to determine that instrumentation and controls are working properly.
- (2) When pressure filters are used, a visual inspection of the filter media and internal filter surfaces shall be conducted annually to ensure that the filter media is in good condition and the coating materials continue to provide adequate protection to internal surfaces.
- (3) When cartridge filters are used, filter cartridges shall be changed at the frequency required by the manufacturer, or more frequently if needed.
- (4) All water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances shall be maintained in a watertight condition and be free of excessive solids.

- (5) Basins used for water clarification shall be maintained free of excessive solids to prevent possible carryover of sludge and the formation of tastes and odors.
- (6) Pumps, motors, valves, and other mechanical devices shall be maintained in good working condition.
- (7) Reverse osmosis or nanofiltration membrane systems shall be cleaned, or replaced, in accordance with the allowable operating conditions of the manufacturer and shall be based on one or more of the following: increased salt passage, increased or decreased pressure differential, and/or change in normalized permeate flow.
- (8) Emergency generators must be appropriately tested and maintained monthly under at least 30% load based on the manufacturer's name plate kilowatt (kW) rating for at least 30 minutes, or as recommended by the manufacturer, to ensure functionality during emergency situations.
- (A) Emergency generators operated at water systems serving 1,000 connections or greater must be maintained in accordance with Level 2 maintenance requirements contained in the current National Fire Protection Association (NFPA) 110 Standard and manufacturer's recommendation. In addition, the water system must maintain an inventory of operational maintenance items, lubricants, and coolants for critical generator components.
- (B) Emergency generators operated at water systems serving fewer than 1,000 connections must be maintained according to clauses (i) (x) of this subparagraph, supplemented with any additional requirements not listed below as prescribed in the manufacturer's specifications, or Level 2 maintenance requirements contained in NFPA 110 Standard. In addition, the public water system must maintain an inventory of operational maintenance items, lubricants, and coolants for critical generator components.
- (i) Prior to monthly generator start-up, inspect and perform any needed maintenance on the generator fuel system.
- (I) Document tank levels and inspect fuel tanks for fuel contamination and condensation in the portion of the tank occupied by air. If contamination is suspected, replace or polish the contaminated fuel before use.
- (II) Inspect fuel lines and fittings for breaks and degradation. Replace fuel lines if needed.
- (III) Inspect fuel filters and water separators for water accumulation, clogging and sediment buildup. Replace fuel filters and separators at the frequency recommended by the manufacturer, or as needed.
- (IV) Inspect fuel transfer pumps, float switches and valves, where provided, between holding tanks and the generator to verify that they are operating properly.
- (V) Where provided, inspect fuel tank grounding rods, cathodic and generator lightning protection for damage that may render the protection ineffective.
- (ii) While the generator is operating under load, inspect the fuel pump to verify that it is operating properly.
- (iii) Prior to monthly generator start up, inspect and perform any needed maintenance on the generator lubrication system.
- (I) Inspect oil lines and oil reservoirs for adequate oil levels, leaks, breaks and degradation. Change oil at the frequency recommended by the manufacturer.
- (II) Grease all bearing components and grease fittings at the frequency recommended by the manufacturer.

- (iv) Prior to monthly generator start up, inspect and perform any needed maintenance on the generator coolant system.
- (I) Inspect the block heater, coolant lines and coolant reservoirs for adequate coolant levels, leaks, breaks and degradation; replace as needed.
- (II) Inspect coolant filters for clogging and sediment buildup. Replace coolant filters at the frequency recommended by the manufacturer, or as needed.
- (III) Inspect the radiator, fan system, belts and air intake and filters for obstruction, cracks, breaks, and leaks; replace as needed.
- (v) While the generator is operating under load, inspect the exhaust manifold and muffler to verify that they are not obstructed or leaking, are in good working condition and that fumes are directed away from enclosed areas.
- (vi) Where a generator is located inside an enclosed structure, a carbon monoxide monitor equipped with automatic alarms and generator shutdowns must be present and operational.
- (vii) Prior to monthly generator start up, inspect and perform any needed maintenance on the generator electrical system.
- (I) Confirm that all batteries are mounted and properly secured. Inspect battery chargers, wiring and cables for damage, corrosion, connection continuity, and that all contacts are securely tightened onto battery terminals.
- (II) Inspect each battery unit for adequate electrolyte levels, charge retention and appropriate discharge voltage.
- (viii) While the generator is operating under load, inspect engine starters and alternators to verify that they are operating properly.
- (ix) At least once per month, inspect Programmable Logic Controllers (PLC) and Uninterrupted Power Supplies (UPC), where applicable, to ensure that they are water-tight and not subject to floods, are properly ventilated, and that backup power supplies have adequate charge.
- (x) At least once per month, inspect switch gears to ensure they are water-tight and in good, working condition.
- (9) All critical components as described in the table in §290.47(c) associated to the source, treatment, storage, or other facilities necessary for the continued operations and distribution of water to customers must be protected from adverse weather conditions. Weatherization methods must be maintained in good condition and replaced as needed to ensure adequate protection.
- (n) Engineering plans and maps. Plans, specifications, maps, and other pertinent information shall be maintained to facilitate the operation and maintenance of the system's facilities and equipment. The following records shall be maintained on file at the public water system and be available to the executive director upon request.
- (1) Accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank shall be maintained at the public water system until the facility is decommissioned. As-built plans of individual projects may be used to fulfill this requirement if the plans are maintained in an organized manner.
- (2) An accurate and up-to-date map of the distribution system shall be available so that valves and mains can be easily located during emergencies.

- (3) Copies of well completion data as defined in §290.41(c)(3)(A) of this title (relating to Water Sources) shall be kept on file for as long as the well remains in service.
- (o) Filter backwashing at surface water treatment plants. Filters must be backwashed when a loss of head differential of six to ten feet is experienced between the influent and effluent loss of head gauges or when the turbidity level at the effluent of the filter reaches 1.0 nephelometric turbidity unit (NTU).
- (p) Data on public water system ownership and management. The agency shall be provided with information regarding public water system ownership and management.
- (1) When a public water system changes ownership, a written notice of the transaction must be provided to the executive director. The grantee shall notify the executive director of the change in ownership within 30 days after the effective date of the change in ownership by providing the name of the grantor, the effective date of the change in ownership, the physical and mailing address and phone number of the grantee, the public water system's drinking water supply identification number, and any other information necessary to identify the transaction.
- (2) On an annual basis, the owner of a public water system shall provide the executive director with a list of all the operators and operating companies that the public water system uses. The notice shall contain the name, contact information, work status, license number, and license class of each operator and the name and registration number of each operating company. Public water systems may report the list of operators and operating companies to the executive director by utilizing the Texas Commission on Environmental Quality (TCEQ) online "Operator Notice" form. If reporting cannot be accomplished utilizing the TCEQ online "Operator Notice" form, then a public water system may report the list of operators and operating companies on the written "Operator Notice" form to the executive director by mail, email or facsimile. (See §290.47(d) of this title).
- (q) Special precautions, protective measures, and boil water notices. Special precautions, protective measures, and boil water notices shall be instituted by the public water system as specified in this subsection in the event of low distribution pressures (below 20 pounds per square inch (psi)), water outages, microbiological samples found to contain *Escherichia coli (E. coli)* (or other approved fecal indicator), failure to maintain adequate disinfectant residuals, elevated finished water turbidity levels, or other conditions which indicate that the potability of the drinking water supply has been compromised. Special precautions, protective measures, and boil water notices are corrective or protective actions which shall be instituted by the public water system to comply with the requirements of this subsection.
- (1) A public water system shall issue a boil water notice, special precaution, or protective measure to customers throughout the distribution system or in the affected area(s) of the distribution system as soon as possible, but in no case later than 24 hours after the public water system has met any of the criteria described in subparagraph (A) and (B) of this paragraph.
 - (A) Situations requiring boil water notices:
- (i) The flowchart found in §290.47(e) of this title shall be used to determine if a boil water notice shall be issued by the public water system to customers in the event of a loss of distribution system pressure.
- (ii) A public water system shall issue a boil water notice to customers for a violation of the MCL for *E. coli* (or other approved fecal indicator) as described in §290.109(b)(1) of this title.

- (iii) A public water system shall issue a boil water notice to customers if the combined filter effluent turbidity of the finished water, produced by a treatment plant that is treating surface water or groundwater under the direct influence of surface water, is above the turbidity level requirements as described in §290.122(a)(1)(B) of this title.
- (iv) A public water system shall issue a boil water notice to customers if the public water system has failed to maintain adequate disinfectant residuals as described in subsection (d) of this section and as described in §290.110 of this title (relating to Disinfectant Residuals) for more than 24 hours.
- (v) A public water system shall issue a boil water notice to customers if a waterborne disease outbreak occurs as defined in 40 Code for Federal Regulations §141.2.
- (B) Situations requiring special precautions or protective measures may be determined by the public water system or at the discretion of the executive director, as described in paragraph (5) of this subsection.
- (2) Boil water notices, special precautions, or protective measures shall be issued to customers by using one or more of the Tier 1 delivery methods as described in §290.122(a)(2) of this title (relating to Public Notification) and shall be issued using the applicable language and format specified by the executive director.
- (3) A copy of boil water notice, special precaution, or protective measure issued shall be provided to the executive director electronically, within 24 hours or no later than the next business day after the issuance by the public water system, and a signed Certificate of Delivery shall be provided to the executive director within ten days after issuance by the public water system in accordance with §290.122(f) of this title.
- (4) Boil water notices, special precautions, or protective measures shall be multilingual where appropriate, based upon local demographics.
- (5) Special precautions, protective measures, and boil water notices may be required at the discretion of the executive director and shall be instituted by the public water system, upon written notification to the public water system, and shall remain in effect until the public water system meets the requirements of subparagraph (C) of this paragraph and paragraph (6) of this subsection.
- (A) Circumstances warranting the exercise of such discretion may include:
- (i) the public water system has failed to provide any of the required compliance information to the executive director as described in §290.111(h)(2) of this title (relating to Surface Water Treatment) and the failure results in the inability of the executive director to determine compliance as described in §290.111(i) of this title or the existence of a potential or actual health hazard, as described in §290.38 of this title (relating to Definitions); or
- (ii) waterborne emergencies for situations that do not meet the definition of waterborne disease outbreak as defined in 40 Code of Federal Regulations §141.2, but that still have the potential to have serious adverse health effects as a result of short-term exposure. These can include, but are not limited to, outbreaks not related to treatment deficiencies, as well as situations that have the potential to cause outbreaks, such as failures or significant interruption in water treatment processes, natural disasters that disrupt the water supply or distribution system, chemical spills, or unexpected loading of possible pathogens into the source water.

- (B) The executive director will provide written notification to the public water system in the event a public water system is required to institute special precautions, protective measures, or issue boil water notices to customers at the discretion of the executive director. Upon written notification from the executive director, the public water system shall implement special precautions, protective measures, or issue boil water notices to customers within 24 hours or within the time period specified by the executive director. The executive director may specify, in writing, additional required actions to the requirements described in paragraph (6) of this subsection for a public water system to rescind the notice.
- (C) The public water system shall provide any required information to the executive director to document that the public water system has met the rescind requirements for special precautions, protective measures, and boil water notices required at the discretion of the executive director under this paragraph.
- (6) Once the boil water notice, special precaution, or protective measure is no longer in effect, the public water system shall notify customers that the notice has been rescinded. A public water system shall not rescind a notice or notify customers that a notice has been rescinded until the public water system has met all the applicable requirements, as described in subparagraph (A) of this paragraph.
- (A) Required actions prior to rescinding a boil water notice include:
- (i) water distribution system pressures in excess of 20 psi are consistently being maintained throughout the distribution system in accordance with the flowchart found in §290.47(e) of this title (relating to Appendices);
- (ii) a minimum of 0.2 mg/L free chlorine residual or 0.5 mg/L chloramine residual (measured as total chlorine) is present and is consistently being maintained in each finished water storage tank and throughout the distribution system as described in subsection (d) of this section;
- (iii) finished water entering the distribution system, produced by a treatment plant that is treating surface water or ground-water under the direct influence of surface water, has a turbidity level that is consistently below 1.0 NTU and the affected areas of the distribution system have been thoroughly flushed;
- (iv) additional actions may be required by the executive director, in writing, and these additional actions shall be completed and documentation provided to the executive director for approval prior to the public water system rescinding the notice, and
- (v) water samples for microbiological analysis, marked as "special" on the laboratory sample submission form, were collected from representative locations throughout the distribution system or in the affected area(s) of the distribution system after the public water system has met all other applicable requirements of this paragraph and the water samples collected for microbiological analysis are found negative for coliform organisms. The water samples described in this subparagraph shall be analyzed at laboratories in accordance with §290.119 of this title (relating to Analytical Procedures).
- (B) A public water system shall notify customers that the notice has been rescinded within 24 hours or no later than the next business day, using language and format specified by the executive director once the public water system has met the requirements of this paragraph. The method of delivery of the rescind notice must be in a manner similar to the original notice.
- (C) The public water system shall provide a copy of the rescind notice, a copy of the associated microbiological laboratory

- analysis results, as required by subparagraph (A) of this paragraph, and a signed Certificate of Delivery to the executive director within ten days after the public water system has issued the rescind notice to customers in accordance with \$290.122(f) of this title.
- (r) Minimum pressures. All public water systems shall be operated to provide a minimum pressure of 35 psi throughout the distribution system under normal operating conditions. The system shall also be operated to maintain a minimum pressure of 20 psi during emergencies such as firefighting. As soon as safe and practicable following the occurrence of a natural disaster, a public water system that is an affected utility, as defined in TWC §13.1394 or §13.1395, shall maintain a minimum of 20 psi or a pressure approved by the executive director, or 35 psi, respectively, throughout the distribution system during an extended power outage.
- (s) Testing equipment. Accurate testing equipment or some other means of monitoring the effectiveness of any chemical treatment or pathogen inactivation or removal processes must be used by the system.
- (1) Flow-measuring devices and rate-of-flow controllers that are required by $\S290.42(b)$ and (d) of this title (relating to Water Treatment) shall be calibrated at least once every 12 months. Well meters required by $\S290.41(c)(3)(N)$ of this title shall be calibrated at least once every three years.
- (2) Laboratory equipment used for compliance testing shall be properly calibrated.
 - (A) pH meters shall be properly calibrated.
- (i) Benchtop pH meters shall be calibrated according to manufacturer specifications at least once each day.
- (ii) The calibration of benchtop pH meters shall be checked with at least one buffer each time a series of samples is run, and if necessary, recalibrated according to manufacturer specifications.
- (iii) On-line pH meters shall be calibrated according to manufacturer specifications at least once every 30 days.
- (iv) The calibration of on-line pH meters shall be checked at least once each week with a primary standard or by comparing the results from the on-line unit with the results from a properly calibrated benchtop unit. If necessary, the on-line unit shall be recalibrated with primary standards.
 - (B) Turbidimeters shall be properly calibrated.
- (i) Benchtop turbidimeters shall be calibrated with primary standards at least once every 90 days. Each time the turbidimeter is calibrated with primary standards, the secondary standards shall be restandardized.
- (ii) The calibration of benchtop turbidimeters shall be checked with secondary standards each time a series of samples is tested, and if necessary, recalibrated with primary standards.
- (iii) On-line turbidimeters shall be calibrated with primary standards at least once every 90 days.
- (iv) The calibration of on-line turbidimeters shall be checked at least once each week with a primary standard, a secondary standard, or the manufacturer's proprietary calibration confirmation device or by comparing the results from the on-line unit with the results from a properly calibrated benchtop unit. If necessary, the on-line unit shall be recalibrated with primary standards.
- (C) Chemical disinfectant residual analyzers shall be properly calibrated.

- (i) The accuracy of manual disinfectant residual analyzers shall be verified at least once every 90 days using chlorine solutions of known concentrations.
- (ii) The accuracy of continuous disinfectant residual analyzers shall be checked at least once every seven days with a chlorine solution of known concentration or by comparing the results from the on-line analyzer with the result of approved benchtop method in accordance with §290.119 of this title.
- (iii) If a disinfectant residual analyzer produces a result which is not within 15% of the expected value, the cause of the discrepancy must be determined and corrected and, if necessary, the instrument must be recalibrated.
- (D) Analyzers used to determine the effectiveness of chloramination in $\S290.110(c)(5)$ of this title shall be properly verified in accordance with the manufacturer's recommendations every 90 days. These analyzers include monochloramine, ammonia, nitrite, and nitrate equipment used by the public water system.
- (E) Ultraviolet (UV) light disinfection analyzers shall be properly calibrated.
- (i) The accuracy of duty UV sensors shall be verified with a reference UV sensor monthly, according to the UV sensor manufacturer.
- (ii) The reference UV sensor shall be calibrated by the UV sensor manufacturer on a yearly basis, or sooner if needed.
- (iii) If used, the UV Transmittance (UVT) analyzer shall be calibrated weekly according to the UVT analyzer manufacturer specifications.
- (F) Systems must verify the performance of direct integrity testing equipment in a manner and schedule approved by the executive director.
- (G) Conductivity (or total dissolved solids) monitors and pressure instruments used for reverse osmosis and nanofiltration membrane systems shall be calibrated at least once every 12 months.
- (H) Any temperature monitoring devices used for reverse osmosis and nanofiltration shall be verified and calibrated in accordance with the manufacturer's specifications.
- (t) System ownership. All community water systems shall post a legible sign at each of its production, treatment, and storage facilities. The sign shall be located in plain view of the public and shall provide the name of the water supply and an emergency telephone number where a responsible official can be contacted.
- (u) Abandoned wells. Abandoned public water supply wells owned by the system must be plugged with cement according to 16 TAC Chapter 76 (relating to Water Well Drillers and Water Well Pump Installers). Wells that are not in use and are non-deteriorated as defined in those rules must be tested every five years or as required by the executive director to prove that they are in a non-deteriorated condition. The test results shall be sent to the executive director for review and approval. Deteriorated wells must be either plugged with cement or repaired to a non-deteriorated condition.
- (v) Electrical wiring. All water system electrical wiring must be securely installed in compliance with a local or national electrical code.
- (w) Security. All systems shall maintain internal procedures to notify the executive director by a toll-free reporting phone number immediately of the following events, if the event may negatively impact the production or delivery of safe and adequate drinking water:

- (1) an unusual or unexplained unauthorized entry at property of the public water system;
 - (2) an act of terrorism against the public water system;
- (3) an unauthorized attempt to probe for or gain access to proprietary information that supports the key activities of the public water system;
- (4) a theft of property that supports the key activities of the public water system; or
- (5) a natural disaster, accident, or act that results in damage to the public water system.
- (x) Public safety standards. This subsection only applies to a municipality with a population of 1,000,000 or more, with a public utility within its corporate limits; a municipality with a population of more than 36,000 and less than 41,000 located in two counties, one of which is a county with a population of more than 1.8 million; a municipality, including any industrial district within the municipality or its extraterritorial jurisdiction (ETJ), with a population of more than 7,000 and less than 30,000 located in a county with a population of more than 155,000 and less than 180,000; or a municipality, including any industrial district within the municipality or its ETJ, with a population of more than 11,000 and less than 18,000 located in a county with a population of more than 125,000 and less than 230,000.

(1) In this subsection:

- (A) "Regulatory authority" means, in accordance with the context in which it is found, either the commission or the governing body of a municipality.
- (B) "Public utility" means any person, corporation, cooperative corporation, affected county, or any combination of these persons or entities, other than a municipal corporation, water supply or sewer service corporation, or a political subdivision of the state, except an affected county, or their lessees, trustees, and receivers, owning or operating for compensation in this state equipment or facilities for the transmission, storage, distribution, sale, or provision of potable water to the public or for the resale of potable water to the public for any use or for the collection, transportation, treatment, or disposal of sewage or other operation of a sewage disposal service for the public, other than equipment or facilities owned and operated for either purpose by a municipality or other political subdivision of this state or a water supply or sewer service corporation, but does not include any person or corporation not otherwise a public utility that furnishes the services or commodity only to itself or its employees or tenants as an incident of that employee service or tenancy when that service or commodity is not resold to or used by others.

(C) "Residential area" means:

- (i) an area designated as a residential zoning district by a governing ordinance or code or an area in which the principal land use is for private residences;
- (ii) a subdivision for which a plat is recorded in the real property records of the county and that contains or is bounded by public streets or parts of public streets that are abutted by residential property occupying at least 75% of the front footage along the block face; or
- (iii) a subdivision a majority of the lots of which are subject to deed restrictions limiting the lots to residential use.
- (D) "Industrial district" has the meaning assigned by Texas Local Government Code, §42.044, and includes an area that is designated by the governing body of a municipality as a zoned industrial area.

- (2) When the regulatory authority is a municipality, it shall by ordinance adopt standards for installing fire hydrants in residential areas in the municipality. These standards must, at a minimum, follow current AWWA standards pertaining to fire hydrants and the requirements of $\S290.44(e)(6)$ of this title.
- (3) When the regulatory authority is a municipality, it shall by ordinance adopt standards for maintaining sufficient water pressure for service to fire hydrants adequate to protect public safety in residential areas in the municipality. The standards specified in paragraph (4) of this subsection are the minimum acceptable standards.
- (4) A public utility shall deliver water to any fire hydrant connected to the public utility's water system located in a residential area so that the flow at the fire hydrant is at least 250 gallons per minute for a minimum period of two hours while maintaining a minimum pressure of 20 psi throughout the distribution system during emergencies such as firefighting. That flow is in addition to the public utility's maximum daily demand for purposes other than firefighting.
- (5) When the regulatory authority is a municipality, it shall adopt the standards required by this subsection within one year of the effective date of this subsection or within one year of the date this subsection first applies to the municipality, whichever occurs later.
- (6) A public utility shall comply with the standards established by a municipality under both paragraphs (2) and (3) of this subsection within one year of the date the standards first apply to the public utility. If a municipality has failed to comply with the deadline required by paragraph (5) of this subsection, then a public utility shall comply with the standards specified in paragraphs (2) and (4) of this subsection within two years of the effective date of this subsection or within one year of the date this subsection first applies to the public utility, whichever occurs later.
 - (y) Fire hydrant flow standards.
 - (1) In this subsection:
- (A) "Municipal utility" means a retail public utility, as defined by Texas Water Code (TWC), §13.002, that is owned by a municipality.
- (B) "Residential area" means an area used principally for private residences that is improved with at least 100 single-family homes and has an average density of one home per half acre.
- (C) "Utility" includes a "public utility" and "water supply or sewer service corporation" as defined by TWC §13.002.
- (2) The governing body of a municipality by ordinance may adopt standards set by the executive director requiring a utility to maintain a minimum sufficient water flow and pressure to fire hydrants in a residential area located in the municipality or the municipality's ETJ. The municipality must submit a signed copy of the ordinance to the executive director within 60 days of the adoption of an ordinance by its governing body.
- (3) In addition to a utility's maximum daily demand, the utility must provide, for purposes of emergency fire suppression:
- (A) a minimum sufficient water flow of at least 250 gallons per minute for at least two hours; and
- (B) a minimum sufficient water pressure of at least 20 psi.
- (4) If a municipality adopts standards for a minimum sufficient water flow and pressure to fire hydrants, the municipality must require a utility to maintain at least the minimum sufficient water flow and pressure described by paragraph (3) of this subsection in fire hy-

drants in a residential area located within the municipality or the municipality's ETJ. If the municipality adopts a fire flow standard exceeding the minimum standards set in paragraph (3) of this subsection, the standard adopted by the municipality must be based on:

- (A) the density of connections;
- (B) service demands; and
- (C) other relevant factors.
- (5) If the municipality owns a municipal utility, it may not require another utility located in the municipality or the municipality's ETJ to provide water flow and pressure in a fire hydrant greater than that provided by the municipal utility as determined by the executive director.
- (6) If the municipality does not own a municipal utility, it may not require a utility located in the municipality or the municipality's ETJ to provide a minimum sufficient water flow and pressure greater than the standard established by paragraph (3) of this subsection.
- (7) An ordinance under paragraph (2) of this subsection may not require a utility to build, retrofit, or improve infrastructure in existence at the time the ordinance is adopted.
- (8) A municipality with a population of less than 1.9 million that adopts standards under paragraph (2) of this subsection or that seeks to use a utility's water for emergency fire suppression shall enter into a written memorandum of understanding with the utility.
- (A) The memorandum of understanding must provide for:
 - (i) the necessary testing of fire hydrants; and
- (ii) other relevant issues pertaining to the use of the water and maintenance of the fire hydrants to ensure compliance with this subsection.
- (B) The municipality must submit a signed copy of the memorandum of understanding to the executive director within 60 days of the execution of the memorandum of understanding between its governing body and the utility.
- (9) A municipality may notify the executive director of a utility's failure to comply with a standard adopted under paragraph (3) of this subsection.
- (10) On receiving the notice described by paragraph (9) of this subsection, the executive director shall require a utility in violation of a standard adopted under this subsection to comply within a reasonable time established by the executive director.
- (z) Nitrification Action Plan (NAP). Any water system distributing chloraminated water must create a NAP. The system must create a written NAP that:
- (1) contains the system-specific plan for monitoring free ammonia, monochloramine, total chlorine, nitrite, and nitrate levels;
- (2) contains system-specific action levels of the above monitored chemicals where action must be taken;
- (3) contains specific corrective actions to be taken if the action levels are exceeded; and
- (4) is maintained as part of the system's monitoring plan in \$290.121 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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CHAPTER 291. UTILITY REGULATIONS SUBCHAPTER L. STANDARDS OF EMERGENCY OPERATIONS

30 TAC §§291.160 - 291.163

The Texas Commission on Environmental Quality (TCEQ) adopts amendments to 30 Texas Administrative Code §§291.160, 291.161, and 291.162, and the addition of new §291.163.

Amended §291.160 and §291.161 are adopted *without changes* to the text as published in the July 14, 2023, issue of the *Texas Register* (48 TexReg 3889) and, therefore, will not be republished. Section 291.162 and the addition of new §291.163 are adopted *with changes* due to capitalization and punctuation corrections and, therefore, will be republished.

Background and Summary of the Factual Basis for the Adopted Rules

In 2021, the 87th Legislature passed Senate Bill (SB) 3, which relates to preparing for, preventing, and responding to weather emergencies and power outages. SB 3 requires that certain water service providers ensure emergency operations during an extended power outage. SB 3 amended Texas Water Code (TWC), Chapter 13, by adding §13.1394, Standards of Emergency Operations, and amending §13.1395, Standards of Emergency Operations in Certain Counties. New TWC §13.1394, requires that affected utilities create an emergency preparedness plan that shows how an affected utility will provide emergency operations and submit that plan to the TCEQ for review and approval. TWC §13.1394, stipulates that a water service provider must maintain 20 pounds per square inch (psi) of pressure, or a water pressure approved by the executive director, during power outages that last longer than 24 hours as soon as it is safe and practicable following a natural disaster. The statute also specifies that the TCEQ has 90 days to review the plan, once the plan is submitted, and either approve it or recommend changes. Once the TCEQ approves the plan the water service provider must operate in accordance with the plan and maintain any generators in accordance with manufacturer's specifications. TWC §13.1394 also specifies that the TCEQ will conduct inspections to ensure compliance and that waivers to these requirements are available under certain circumstances. SB 3 stated in Section 36(b) that each affected utility was to submit to the TCEQ an emergency preparedness plan required by TWC §13.1394, no later than March 1, 2022, and stated in Section 36(c) that the emergency preparedness plan was to be implemented no later than July 1, 2022, unless the affected utility had obtained an adjusted, TCEQ approved timeline. The TCEQ notes that these additions to the TWC, made by SB 3, give the TCEQ the authority to regulate water service providers that have not previously been regulated by the TCEQ because, as the definition appears in TWC §13.1394, not all affected utilities are public water systems.

Amended TWC §13.1395, excludes from the requirement of creating an Emergency Preparedness Plan those raw water services that are unnecessary or otherwise subject to interruption or curtailment during emergencies pursuant to contract.

In response to the widespread power and equipment failures and drinking water outages and shortages during Winter Storm Uri in 2021, the TCEQ organized an after-action review to evaluate the factors that impacted public water systems across the state. This review resulted in findings and recommendations to enhance and integrate additional public water system critical infrastructure resiliency measures. These findings and recommendations were presented to the TCEQ during a work session, held on May 19, 2022.

Section by Section Discussion

§291.160, Purpose

The TCEQ adopts to amend §291.160 to add a reference to TWC §13.1394 and to adjust the verb tense of the section based on the addition.

§291.161, Definitions

The TCEQ adopts this rulemaking to amend the definition of "affected utility" by adding language to encompass the definitions of affected utility in TWC §13.1394 and §13.1395. The TCEQ adopts these amendments to reflect the requirements in TWC §13.1394(a)(1) and §13.1395(a)(1). Current subsection lettering will be revised to accommodate the amended definition.

The TCEQ adopts this rulemaking to amend the definition of "emergency operations" to clarify the minimum water pressure that affected utilities must provide during emergency operations. This clarification is consistent with the requirements under TWC §13.1394, which is 20 pounds per square inch, or a pressure approved by the executive director, and TWC §13.1395, which is 35 pounds per square inch.

§291.162, Emergency Operation of An Affected Utility as Defined in TWC §13.1395

The TCEQ adopts this rulemaking to amend the title of §291.162 to clarify that this section is applicable to affected utilities as defined in TWC §13.1395.

The TCEQ adopts this rulemaking to amend §291.162(d) to clarify that this subsection does not apply to raw water services that are unnecessary or otherwise subject to interruption or curtailment during emergencies under a contract as stated in TWC §13.1395.

The TCEQ adopts this rulemaking to amend §291.162(e) to revise the appendix reference from "Appendix J" to "Appendix G2" for consistency with adopted amendment to §290.47.

The TCEQ adopts this rulemaking to amend §291.162(f) with language that refers to the generator maintenance requirements listed in adopted amendments to §290.46(m)(8). This adopted change is a recommendation approved by the TCEQ as a result of the After-Action Review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions will have reduced the impacts to water infrastructure during the winter storm.

The TCEQ adopts this rulemaking to amend §291.162(i) to change "subchapter" to "section" based on the adopted addition

of §291.163 to the subchapter. This amendment will make language consistent with adopted additions to §291.163(i).

The TCEQ adopts this rulemaking to delete §291.162(j) and (k) because the deadlines listed in these subsections have passed and are no longer applicable; subsection lettering will be revised to accommodate these deletions.

The TCEQ adopts this rulemaking to amend new §291.162(j) to clarify that affected utilities created after December 31, 2012, are required to have emergency preparedness plans approved and implemented prior to providing water to customers.

§291.163, Emergency Operation of an Affected Utility as Defined in TWC §13.1394

The TCEQ adopts this rulemaking to add new §291.163 to provide regulatory requirements for affected utilities as defined in TWC §13.1394.

The TCEQ adopts this rulemaking to add §291.163(a) which requires an affected utility to adopt and submit to the executive director for approval an emergency preparedness plan that demonstrates the utility's ability to provide emergency operations and a timeline for implementing the plan, as required by TWC §13.1394(b)(2)(A) and §13.1394(b)(2)(B).

The TCEQ adopts this rulemaking to add §291.163(b) which requires the executive director to review the emergency preparedness plan submitted by an affected utility, to determine if the plan is acceptable, and to request additional information or recommend changes if the plan is not acceptable. The executive director's request for information or recommended changes must be made on or before the 90th day after the executive director receives the plan as required by TWC §13.1394(c).

The TCEQ adopts this rulemaking to add §291.163(c), to include §291.163(c)(1) through §291.163(c)(14), which provides the 14 emergency operation options available to affected utilities as listed in TWC §13.1394(c)(1) through §13.1394(c)(14).

The TCEQ adopts this rulemaking to add §291.163(d) which requires affected utilities that provide raw surface water to wholesale customers to include in their emergency preparedness plan how they intend to provide raw water services to their wholesale customers during emergencies. This requirement does not apply to raw water services that are unnecessary or otherwise subject to interruption or curtailment during emergencies under a contract under TWC §13.1394(d).

The TCEQ adopts this rulemaking to add §291.163(e) which addresses the requirement for the TCEQ to develop an emergency preparedness plan template. This new subsection informs affected utilities that they may use the template included in Appendix G1 of §290.47 to create their emergency preparedness plan as required under TWC §13.1394(g).

The TCEQ adopts this rulemaking to add §291.163(f) which requires that any generator used as part of an approved emergency preparedness plan must be inspected, operated, and maintained according to the manufacturer's specifications, per TWC §13.1394(h) and the requirements listed in §290.46(m)(8), which are adopted in a companion rulemaking in response to the After-Action Review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions will have reduced the impacts to water infrastructure during the winter storm.

The TCEQ adopts this rulemaking to add §291.163(g) which allows the executive director to grant an affected utility a financial

waiver to the requirement of submitting an emergency preparedness plan pursuant to TWC §13.1394(j). The executive director will consider whether complying with the emergency preparedness plan requirements will cause a significant financial burden on the affected utilities customers. The adopted rule requires that the affected utility submit documentation to the executive director that must demonstrate the significant financial burden on customers before a waiver is granted.

The TCEQ adopts this rulemaking to add §291.163(h) which allows an affected utility to adopt and enforce limitations on water use while the utility is providing emergency operations pursuant to TWC §13.1394(k).

The TCEQ adopts this rulemaking to add §291.163(i), which states that information provided by an affected utility under this section is confidential and is not subject to disclosure under Texas Government Code, Chapter 552 as stated in TWC §13.1394(I).

The TCEQ adopts this rulemaking to add §291.163(j), which provides that affected utilities which are established after December 31, 2022, must have an emergency preparedness plan approved and implemented prior to providing water to customers. The TCEQ adopts this addition based on emergency preparedness plan submission and implementation deadlines in March and July 2022, respectively, included in SB 3 for existing affected utilities.

The TCEQ adopts this rulemaking to add §291.163(k) which provides that an affected utility that cannot provide a minimum of 20 psi, or a water pressure approved by the TCEQ, during emergency operations to revise and submit their emergency preparedness plan within 180 days of restoration of power, and that based on a review of the plan, the executive director may require additional or alternative auxiliary emergency facilities to implement TWC §13.1394(b)(1).

Final Regulatory Impact Determination

The TCEQ reviewed this rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to §2001.0225. A "major environmental rule" means a rule with a specific intent 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.

First, the rulemaking does not meet the statutory definition of a "major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the rulemaking is to ensure that affected utilities have emergency preparedness plans to provide potable water service during emergency operations.

Second, the rulemaking does not meet the statutory definition of a "major environmental rule" because the rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the adopted rules will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the amendments will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the rulemaking does not meet any of the four applicability requirements for a "major environmental rule" listed in Texas Government Code §2001.0225(a). Section 2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of the preceding four applicability requirements because this rulemaking: does not exceed any standard set by federal law for public water systems and is consistent with and no less stringent than federal rules; does not exceed any express requirement of state law under Texas Health and Safety Code (THSC), Chapter 341, Subchapter C; does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government; and is not based solely under the general powers of the agency. but specifically under TWC §5.107 which establishes the TCEQ's authority to collect regulatory assessments from utility service providers under TWC Chapter 13; THSC §341.031, which allows the TCEQ to establish public drinking water standards and adopt and enforce rules to implement the federal Safe Drinking Water Act, as well as under SB 3, which authorizes the TCEQ to promulgate rules in its implementation of TWC §13.1394 and §13.1395, and the other general powers of the TCEQ.

The TCEQ invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No written comments on the Draft Regulatory Impact Analysis Determination were received.

Takings Impact Assessment

The TCEQ evaluated this rulemaking and performed a preliminary assessment of whether these rules constitute a taking under Texas Government Code, Chapter 2007.

The TCEQ adopts these rules to clarify existing requirements and for the specific purpose of implementing SB 3, 87th R.S. (2021), which requires the TCEQ to receive, review, and monitor compliance with affected utilities' emergency preparedness plans to ensure provision of potable water service during emergency operations.

The TCEQ's analysis indicates that Texas Government Code, Chapter 2007, does not apply to these rules based upon exceptions to applicability in Texas Government Code §2007.003(b)(13). The rulemaking 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 public health and safety purpose; and that does not impose a greater burden than is necessary to achieve the public health and safety purpose. Texas Government Code §2007.003(b)(13). Lack of potable water service during emergency operations constitutes a real and substantial threat to public health and safety and requires appropriate governmental regulation. The rules significantly advance the public health and safety purpose by ensuring appropriate governmental regulation of affected utilities' emergency preparedness plans and do so in a way that does not impose a greater burden than is necessary to achieve the public health and safety purpose.

Further, the TCEQ has determined that promulgation and enforcement of these rules will be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rule because the rules neither relate to, nor have any impact on, the use or enjoyment of private real property, and there will be no reduction in property value as a result of these rules. The rules require affected utilities to submit emergency preparedness plans, and operate under their emergency preparedness plans during emergency operations. Therefore, the rules will not constitute a taking under Texas Government Code Chapter 2007.

Consistency with the Coastal Management Program

The TCEQ 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.

The TCEQ invited public comment regarding the consistency with the coastal management program during the public comment period. No comments were received during the public comment period.

Public Comment

The TCEQ held a public hearing on August 11, 2023. The comment period closed at 11:59 p.m. on August 14, 2023. No comments were received on the proposed rule. However, public comments were received regarding Chapter 290 which are addressed in that concurrent rulemaking.

Statutory Authority

These amendments are adopted under the authority of the Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; and Texas Health and Safety Code (THSC), §341.0315, which requires public water systems to comply with commission rules adopted to ensure the supply of safe drinking water.

The adopted amendments implement TWC, §13.1394, as added by requirements in Senate Bill (SB) 3 of the 87th Texas Legislative Session (2021), and TWC, §13.1395. Additional commission adopted amendments provide clarity to existing rules.

§291.162. Emergency Operation of an Affected Utility as Defined in TWC §13.1395.

- (a) An affected utility shall adopt and submit to the executive director for its approval an emergency preparedness plan that demonstrates the utility's ability to provide emergency operations.
- (b) The executive director shall review an emergency preparedness plan submitted by an affected utility. If the executive director determines that the plan is not acceptable, the executive director shall recommend changes to the plan. The executive director must make its recommendations on or before the 90th day after the executive director receives the plan.
- (c) An emergency preparedness plan shall provide for one of the following:

- (1) the maintenance of automatically starting auxiliary generators;
- (2) the sharing of auxiliary generator capacity with one or more affected utilities;
- (3) the negotiation of leasing and contracting agreements, including emergency mutual aid agreements with other retail public utilities, exempt utilities, or providers or conveyors of potable or raw water service, if the agreements provide for coordination with the division of emergency management in the governor's office;
- (4) the use of portable generators capable of serving multiple facilities equipped with quick-connect systems;
- (5) the use of on-site electrical generation or distributed generation facilities;
- (6) hardening the electric transmission and distribution system serving the water system;
- (7) for existing facilities, the maintenance of direct engine or right angle drives; or
- (8) any other alternative determined by the executive director to be acceptable.
- (d) Each affected utility that supplies, provides, or conveys surface water to wholesale customers shall include in its emergency preparedness plan provisions for the actual installation and maintenance of automatically starting auxiliary generators or distributive generation facilities for each raw water intake pump station, water treatment plant, pump station, and pressure facility necessary to provide water to its wholesale customers. This subsection does not apply to raw water services that are unnecessary or otherwise subject to interruption or curtailment during emergencies under a contract.
- (e) The affected utility may use the template in Appendix G2 of $\S290.47$ of this title (relating to Appendices) to assist in preparation of the plan.
- (f) An emergency generator used as part of an approved emergency preparedness plan must be inspected, operated, and maintained according to the manufacturer's specifications and the requirements listed in §290.46(m)(8) of this title (relating to Minimum Acceptable Operating Practices for Public Drinking Water Systems).
- (g) The executive director may grant a waiver of the requirements of this section to an affected utility if the executive director determines that compliance with this section will cause a significant financial burden on customers of the affected utility. The affected utility shall submit financial, managerial, and technical information as requested by the executive director to demonstrate the financial burden.
- (h) An affected utility may adopt and is encouraged to enforce limitations on water use while the utility is providing emergency operations.
- (i) Information provided by an affected utility under this section is confidential and is not subject to disclosure under Texas Government Code, Chapter 552.
- (j) Affected utilities which are established after December 31, 2012 must have emergency preparedness plans approved and implemented prior to providing water to customers.
- (k) An affected utility may file with the executive director a written request for an extension, not to exceed 90 days, of the date by which the affected utility is required under this subchapter to submit the affected utility's emergency preparedness plan or the date the affected utility is required to implement the plan.

- (l) If an affected utility fails to provide a minimum of 35 pounds per square inch throughout the distribution system during emergency operations as soon as it is safe and practicable following the occurrence of a natural disaster, a revised emergency preparedness plan shall be submitted for review and approval within 180 days of the date normal power is restored. Based on the review of the revised emergency preparedness plan, the executive director may require additional or alternative auxiliary emergency facilities.
- §291.163. Emergency Operation of an Affected Utility as Defined in TWC §13.1394.
- (a) An affected utility shall adopt and submit to the executive director for approval an emergency preparedness plan that demonstrates the utility's ability to provide emergency operations and a timeline for implementing the plan.
- (b) The executive director shall review an emergency preparedness plan submitted by an affected utility. If the executive director determines that the plan is not acceptable, the executive director shall request additional information or recommend changes to the plan. The executive director shall communicate to the affected utility the request for information or recommendations on or before the 90th day after the executive director receives the plan.
- (c) An emergency preparedness plan shall include one or more of the following:
- (1) the maintenance of automatically starting auxiliary generators;
- (2) the sharing of auxiliary generator capacity with one or more affected utilities, including through participation in a statewide mutual aid program;
- (3) the negotiation of leasing and contracting agreements, including emergency mutual aid agreements with other retail public utilities, exempt utilities, or providers or conveyors of potable or raw water service, if the agreements provide for coordination with the division of emergency management in the governor's office;
- (4) the use of portable generators capable of serving multiple facilities equipped with quick-connect systems;
- (5) the use of on-site electrical generation or distributed generation facilities;
- (6) hardening the electric transmission and distribution system serving the water system;
 - (7) the maintenance of direct engine or right-angle drives;
- (8) designation of the water system as a critical load facility or redundant, isolated, or dedicated electrical feeds;
 - (9) water storage capabilities;
- (10) water supplies delivered from outside the service area of the affected utility;
 - (11) the ability to provide water through artesian flows;
 - (12) redundant interconnectivity between pressure zones;
- (13) emergency water demand rules to maintain emergency operations; or
- (14) any other alternative determined by the executive director to be acceptable.
- (d) Each affected utility that supplies, provides, or conveys raw surface water to wholesale customers shall include in its emergency preparedness plan provisions for demonstrating the capability of each raw water intake pump station, pump station, and pressure facil-

ity necessary to provide water service to its wholesale customers. This subsection does not apply to raw water services that are unnecessary or otherwise subject to interruption or curtailment during emergencies under a contract.

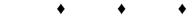
- (e) The affected utility may use the template in Appendix G1 of $\S290.47$ of this title (relating to Appendices) to assist in preparation of the plan.
- (f) An emergency generator used as part of an approved emergency preparedness plan must be inspected, operated, and maintained according to the manufacturer's specifications and the requirements listed in §290.46(m)(8) of this title (relating to Minimum Acceptable Operating Practices for Public Drinking Water Systems).
- (g) The executive director may grant a waiver of the requirements of this section to an affected utility if the executive director determines that compliance with this section will cause a significant financial burden on customers of the affected utility. The affected utility shall submit financial, managerial, and technical information as requested by the executive director to demonstrate the financial burden.
- (h) An affected utility may adopt and is encouraged to enforce limitations on water use while the utility is providing emergency operations.
- (i) Information provided by an affected utility under this section is confidential and is not subject to disclosure under Texas Government Code, Chapter 552.
- (j) Affected utilities, established after December 31, 2022, must have emergency preparedness plans approved and implemented prior to providing water to customers.
- (k) If an affected utility fails to provide a minimum of 20 psi, or a water pressure approved by the commission, throughout the distribution system during emergency operations as soon as it is safe and practicable following the occurrence of a natural disaster, a revised emergency preparedness plan shall be submitted for review and approval within 180 days of the date normal power is restored. Based on the review of the revised emergency preparedness plan, the executive director may require additional or alternative auxiliary emergency facilities.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 1, 2023.

TRD-202304416
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: December 21, 2023
Proposal publication date: July 14, 2023

For further information, please call: (512) 239-6087



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 20. STATEWIDE PROCUREMENT AND SUPPORT SERVICES

SUBCHAPTER E. SPECIAL CATEGORIES OF CONTRACTING

DIVISION 2. STATEWIDE PROCUREMENT DIVISION SERVICES - TRAVEL AND VEHICLES

34 TAC §20.411, §20.413

The Comptroller of Public Accounts adopts amendments to §20.411, concerning state agency reimbursement and reporting and §20.413, concerning state travel credit cards, without changes to the proposed text as published in the October 20, 2023, issue of the *Texas Register* (48 TexReg 6193). The rules will not be republished.

In its planning and administration of the state travel program, the comptroller utilizes data collected through the state travel credit card. Because that data is sufficient for comptroller purposes, the amendment deletes the requirement for agencies to manually report travel data. Reference to agency reporting is deleted from §20.411(e) and §20.413(a).

The amendment substantially modifies §20.413(c), regarding issuance of state travel credit cards to state agency employees, in three ways. First, it clarifies the obligation imposed by the first sentence of the subsection. The phrase should be issued could be interpreted as an aspiration rather than a requirement, and does not specify whether it addresses employees, state agencies, or the financial institution administering the credit card program. The amendment replaces that phrase with a plain statement that a state agency shall encourage certain employees to obtain the state travel credit card.

Second, the amendment raises the level of annual travel spending that §20.413(c) addresses from \$500 to \$1,000. The \$1,000 threshold better balances the administrative costs of establishing, monitoring, and terminating card accounts against the rebates generated from the cards.

Finally, the amendment to §20.413(c) eliminates the need to forecast the number of trips an employee will take in a fiscal year. Instead, agencies will use the expected monetary value of travel to determine whether §20.413(c) applies. Because the amount spent through the state travel credit card is the primary factor in calculating rebates, it is the best measure of value.

Section 20.413 is further revised to ensure consistent usage of the term state travel credit card.

The comptroller did not receive any comments regarding adoption of the amendment.

These amendments are adopted under Government Code, §403.023, which authorizes the comptroller to adopt rules relating to the use of credit or charge cards by state agencies to pay for purchases, and Government Code, §2171.002, which authorizes the comptroller to adopt rules to efficiently and effectively administer Government Code, Chapter 2171.

These amendments implement Government Code, §§403.023, 2171.051, and 2171.055.

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 November 30, 2023.

TRD-202304406

Don Neal

General Counsel for Operations and Support Legal Services

Comptroller of Public Accounts Effective date: December 20, 2023

Proposal publication date: October 20, 2023 For further information, please call: (512) 475-2220



SUBCHAPTER F. CONTRACT MANAGE-MENT

DIVISION 2. REPORTS AND AUDITS

34 TAC §20.509

The Comptroller of Public Accounts adopts amendments to §20.509, concerning vendor performance reporting, without changes to the proposed text as published in the October 13, 2023, issue of the *Texas Register* (48 TexReg 5967). The rule will not be republished.

The amendments delete subsection (a), which contained a requirement that is adequately stated in subsection (b).

The amendment of former subsection (b), now subsection (a), removes language providing that a state agency shall submit a vendor performance report and grade within 30 days of completion or termination of a purchase order or contract. The subsection now states only that the submission is mandatory. The time for submitting a vendor performance report is addressed in relettered subsection (c).

The amendment also revises subsection (b)(1) through (b)(4). Amended paragraph (1) provides the requirement to report and grade a vendor's performance applies to a purchase exceeding \$25,000 from a contract administered by the comptroller and the Department of Information Resources, which refers to contracts entered into by the comptroller under Government Code, §2155.061, and by the Department of Information Resources under Government Code, §2157.068, respectively. Amendments to paragraph (2) state that the requirement applies to any agency contract, and remove the reference to purchases made through an agency's delegated authority. This revised language is consistent with Government Code, §2155.089, which provides that the requirement applies to all contracts aside from those expressly exempted by Government Code, §2155.089(c). The amendments delete paragraphs (3) and (4) because all contracts subject to the requirement to report and grade a vendor's performance in Government Code, §2155.089, are covered by amended paragraphs (1) and (2).

The amendment of former subsection (c), now subsection (b), removes language providing that a state agency shall, for contracts in excess of \$5 million, submit a vendor performance report and grade within 30 days of completion of a key milestone identified in the contract and at least once each year during the term of the contract. The subsection now states only that the submission is mandatory. The time for submitting a vendor performance report is addressed in relettered subsection (c).

The amendment of former subsection (d), now subsection (c), adds language requiring submission of a vendor performance report and grade within 30 days of completion or termination of

a purchase order or contract and, for a contract with a value that exceeds \$5 million, the completion of a key milestone identified in the contract. The 30-day requirement has been relocated to amended subsection (c) to clarify that a state agency's obligation to submit the vendor performance report and grade is separate from the requirement to submit within 30 days, and that a failure to submit within the 30-day period does not invalidate the report or grade. The amendment also corrects a grammatical error.

The amendment of former subsection (e), now subsection (d), corrects a grammatical error.

Subsection (f) is now subsection (e), and the text of this subsection is unchanged.

The amendment of former subsection (g), now subsection (f), excludes certain purchases from the requirement to report and grade a vendor's performance. Because paragraph (1) now states that the section does not apply to contracts described in Government Code, §2155.089(c), it no longer reproduces the operative language from the Government Code.

Subsection (f), formerly subsection (g), also excludes certain small purchases from the requirement to report and grade a vendor's performance. Paragraph (2) excludes spot purchases of \$10,000 or less, for which competitive bidding is not required under §20.82(b)(1) of this title. Paragraph (3) excludes purchase orders resulting from informal bids under §20.82(d)(1)(A), which applies to purchases of goods and services not exceeding \$25,000.

There is no requirement in statute to report vendor performance for spot purchases. Spot purchases are not "contracts" within the meaning of Government Code, Title 10, Subtitle D. Spot purchases are carved out by Government Code, §2155.132(e), which distinguishes a purchase "made under a written contract" from the broader category of purchases. Therefore, not every purchase is a "contract," and smaller purchases are not subject to all formal contracting requirements. Because Government Code, §2155.089 applies to contracts, spot purchases are outside its scope.

Likewise, there is no requirement in statute to report vendor performance for purchases resulting from informal bids. Purchases resulting from informal bids are not "contracts" within the meaning of Government Code, Title 10, Subtitle D. The informal bidding method of procurement is described in Government Code, Chapter 2156, Subchapter B. That method of procurement is expressly distinguished in Chapter 2156 from the "Contract Purchase Procedure" in Subchapter A and the formal bidding procedure in Subchapter C. While Subchapters A and C each reference the awarding of a "contract" (§2156.007 and §2156.125, respectively), Subchapter B does not mention that term. Because Government Code, §2155.089 applies to contracts, purchases resulting from informal bids are outside its scope.

Prudent procurement policy does not require vendor performance reporting for spot purchases and purchases resulting from informal bids. Government Code, §2155.002, instructs the comptroller to focus resources on purchases "that involve relatively large amounts of money." Reporting and grading performance on every small purchase would consume significant amounts of agency staff time. By allowing, rather than requiring, agencies to report vendor performance on small purchases, the rule will allow agencies to focus on the most remarkable vendor performance, good and bad. Thus, the most useful reports may still appear in the comptroller's vendor performance tracking system.

The comptroller did not receive any comments regarding adoption of the amendment.

These amendments are adopted under Government Code, §2155.0012, which authorizes the comptroller to adopt rules to efficiently and effectively administer Government Code, Chapter 2155.

The amendments implement Government Code, §2155.089.

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 November 30, 2023.

TRD-202304405

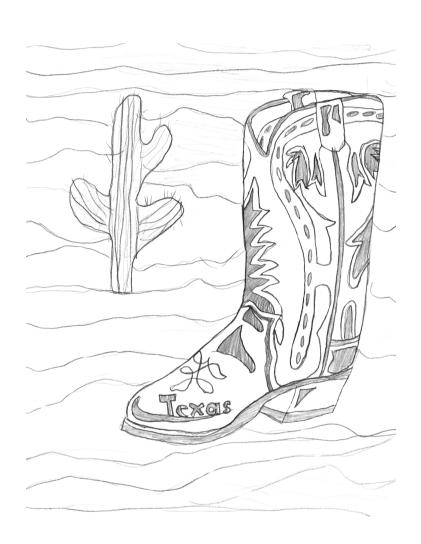
Don Neal

General Counsel for Operations and Support Legal Services

Comptroller of Public Accounts
Effective date: December 20, 2023

Proposal publication date: October 13, 2023 For further information, please call: (512) 475-2220

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EVIEW OF This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039.

Included here are proposed rule review notices, which

invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the Texas Administrative Code on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

State Securities Board

Title 7, Part 7

The State Securities Board (Agency), beginning December 2023, will review and consider for readoption, revision, or repeal Chapter 133, Forms, in accordance with Texas Government Code, §2001.039, which requires rule review every four years. The rules to be reviewed are located in Title 7, Part 7, of the Texas Administrative Code. The text of the rule sections will not be published. The text of these rules may be found in the Texas Administrative Code, Title 7, Part 7 or through the Board's website at www.ssb.texas.gov/texas-securities-act-board-

The Agency has conducted a preliminary review of this chapter and determined the reasons for initially adopting the chapter continue to exist. The Agency's Board will consider, among other things, whether the initial factual, legal, and policy reasons for adoption of these rules continue to exist, whether these rules should be repealed, and whether any changes are needed. This notice to review has no effect on the chapter as it currently exists. Readopted rules will be noted in a subsequent issue of the Texas Register's "Review of Agency Rules" section without publication of the text.

Any changes to the rules proposed by the Agency's Board after reviewing the rules and considering the comments received in response to this notice will appear in the "Proposed Rules" section of a subsequent issue of the Texas Register. Such changes will be open for public comment prior to the final adoption of any changes to the rule by the Agency in accordance with the requirements of the Administrative Procedure Act, Texas Government Code Annotated, Chapter 2001.

Comments or suggestions on the proposal must be in writing and will be accepted for 30 days following publication of this notice in the *Texas* Register. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin. Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication. Comments received will be reviewed and discussed in a future Board meeting.

Issued in Austin, Texas on December 1, 2023.

TRD-202304425 Travis J. Iles Securities Commissioner State Securities Board Filed: December 1, 2023

Texas State Board of Pharmacy

Title 22, Part 15

The Texas State Board of Pharmacy files this notice of intent to review Chapter 283, (§§283.1 - 283.12), concerning Licensing Requirements for Pharmacists, pursuant to Texas Government Code §2001.039, regarding Agency Review of Existing Rules.

Comments regarding whether the reason for adopting the rule continues to exist, may be submitted to Eamon D. Briggs, Deputy General Counsel, Texas State Board of Pharmacy, 1801 Congress Avenue, Suite 13.100, Austin, Texas 78701-1319, FAX (512) 305-8061. Comments must be received by 5:00 p.m., January 30, 2024.

TRD-202304509

Daniel Carroll, Pharm.D.

Executive Director

Texas State Board of Pharmacy

Filed: December 4, 2023

The Texas State Board of Pharmacy files this notice of intent to review Chapter 291, Subchapter B (§§291.31 - 291.36), concerning Pharmacies (Community Pharmacy (Class A)), pursuant to Texas Government Code §2001.039, regarding Agency Review of Existing Rules.

Comments regarding whether the reason for adopting the rule continues to exist, may be submitted to Eamon D. Briggs, Deputy General Counsel, Texas State Board of Pharmacy, 1801 Congress Avenue, Suite 13.100, Austin, Texas 78701-1319, FAX (512) 305-8061. Comments must be received by 5:00 p.m., January 30, 2024.

TRD-202304510

Daniel Carroll, Pharm.D.

Executive Director

Texas State Board of Pharmacy

Filed: December 4, 2023

The Texas State Board of Pharmacy files this notice of intent to review Chapter 315, (§§315.1 - 315.16), concerning Controlled Substances, pursuant to the Texas Government Code §2001.039, regarding Agency Review of Existing Rules.

Comments regarding whether the reason for adopting the rule continues to exist, may be submitted to Eamon D. Briggs, Deputy General Counsel, Texas State Board of Pharmacy, 1801 Congress Avenue, Suite 13.100, Austin, Texas 78701-1319, FAX (512) 305-8061. Comments must be received by 5:00 p.m., January 30, 2024.

TRD-202304511
Daniel Carroll, Pharm.D.
Executive Director
Texas State Board of Pharmacy

Filed: December 4, 2023



Health and Human Services Commission

Title 26, Part 1

The Texas Health and Human Services Commission (HHSC) proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 26, Part 1, of the Texas Administrative Code:

Chapter 321, Substance Use Services

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 321, Substance Use Services, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to HHSRulesCoordinationOffice@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 321" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*:

The text of the rule sections being reviewed will not be published, but may be found in Title 26, Part 1, of the Texas Administrative Code or on the Secretary of State's website at State Rules and Open Meetings (texas.gov).

TRD-202304414
Jessica Miller
Director, Rules Coordination Office
Health and Human Services Commission

Filed: December 1, 2023



The Texas Health and Human Services Commission (HHSC) proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 26, Part 1, of the Texas Administrative Code:

Chapter 901, Volunteer and Community Engagement

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 901, Volunteer and Community Engagement, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to HHSRulesCoordinationOffice@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 901" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*:

The text of the rule sections being reviewed will not be published, but may be found in Title 26, Part 1, of the Texas Administrative Code or

on the Secretary of State's website at State Rules and Open Meetings (texas.gov).

TRD-202304402 Jessica Miller

Director, Rules Coordination Office Health and Human Services Commission

Filed: November 30, 2023



The Texas Health and Human Services Commission (HHSC) proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 26, Part 1, of the Texas Administrative Code:

Chapter 990, Anatomical Gift

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 990, Anatomical Gift, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to HHSRulesCoordinationOffice@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 990" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*:

The text of the rule sections being reviewed will not be published, but may be found in Title 26, Part 1, of the Texas Administrative Code or on the Secretary of State's website at State Rules and Open Meetings (texas.gov).

TRD-202304401

Jessica Miller

Director, Rules Coordination Office Health and Human Services Commission

Filed: November 30, 2023



Adopted Rule Reviews

State Securities Board

Title 7, Part 7

Pursuant to the notice of proposed rule review published in the June 2, 2023, issue of the *Texas Register* (48 TexReg 2863), the State Securities Board (Board) has reviewed and considered for readoption, revision, or repeal all sections of the following chapters of Title 7, Part 7, of the Texas Administrative Code, in accordance with Texas Government Code, §2001.039, Agency Review of Existing Rules: Chapter 102, Complaint Process; Chapter 107, Terminology; Chapter 127, Miscellaneous; and Chapter 131, Guidelines for Confidentiality of Information. The text of these rules may be found in the Texas Administrative Code, Title 7, Part 7 or through the Board's website at www.ssb.texas.gov/texas-securities-act-board-rules.

The Board considered, among other things, whether the reasons for adoption of these rules continue to exist. After its review, the Board finds that the reasons for adopting these rules continue to exist and readopts these chapters, without changes, pursuant to the requirements of the Texas Government Code.

No comments were received regarding the readoption of Chapters 102, 107, 127, or 131.

This concludes the review of 7 TAC Chapters 102, 107, 127, and 131. Issued in Austin, Texas on December 1, 2023.

TRD-202304426 Travis J. Iles Securities Commissioner State Securities Board Filed: December 1, 2023



Public Utility Commission of Texas

Title 16, Part 2

The Public Utility Commission of Texas (commission) readopts Texas Administrative Code (TAC), Chapter 26, Substantive Rules Applicable to Telecommunications Providers pursuant to the Administrative Procedure Act (APA), Texas Government Code §2001.039, Agency Review of Existing Rules. The notice of intention to review Chapter 26 was published in the *Texas Register* on October 13, 2023 (48 TexReg 5987).

APA §2001.039 requires that each state agency review its rules every four years and readopt, readopt with amendments, or repeal the rules adopted by that agency pursuant to the Texas Government Code, Chapter 2001. Such reviews must include, at a minimum, an assessment by the agency as to whether the reason for adopting or readopting the rules continues to exist. The commission has completed the review of the rules in Chapter 26 pursuant to APA §2001.039 and finds that the reasons for adopting the rules in Chapter 26 continue to exist. Based on this review and comments received, the commission readopts the chapter with five repeals, one new rule, and several amendments which will be published in the Adopted Rules section of the *Texas Register*.

The commission has completed the review of Chapter 26 as required by Texas Government Code §2001.039 and has determined that the reasons for initially adopting the rules in Chapter 26 continue to exist. Therefore, the commission re-adopts Chapter 26, Substantive Rules Applicable to Telecommunication Service Providers, in its entirety, under PURA, Texas Utilities Code Annotated §14.002 which requires the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction and Texas Government Code §2001.039, which requires each state agency to review and re-adopt its rules every four years.

Cross reference to Statutes: PURA \$14.002 and Texas Gov't. Code \$2001.039.

TRD-202304420 Adriana Gonzales Rules Coordinator

Public Utility Commission of Texas

Filed: December 1, 2023

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Department of State Health Services

Title 25, Part 1

The Texas Health and Human Services Commission (HHSC), on behalf of Texas Department of State Health Services (DSHS), adopts the review of the chapter below in Title 25, Part 1, of the Texas Administrative Code (TAC):

Chapter 297, Indoor Air Quality

Subchapter A Government Buildings

Notice of the review of this chapter was published in the October 13, 2023, issue of the *Texas Register* (48 TexReg 5988). HHSC received one comment concerning this chapter. A summary of the comment and HHSC's and DSHS' response follows.

Comment: One commenter recommends that DSHS include the Institute of Inspection Cleaning and Restoration Certification standards and certifications in the rules to improve indoor air quality in government buildings.

Response: DSHS disagrees and declines to include the recommended standards and certifications because the rules will be repealed under Senate Bill 202, 84th Legislature, Regular Session, 2015, which repealed the authorizing statute Texas Health and Safety Code, Chapter 385 Indoor Air Quality in Government Buildings.

HHSC and DSHS have reviewed Chapter 297 in accordance with \$2001.039 of the Texas Government Code, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist. The agencies determined that the original reasons for adopting all rules in the chapter no longer exists and Chapter 297 will be repealed. The repeal of Chapter 297 identified by HHSC and DSHS in the rule review will be proposed in a future issue of the *Texas Register*:

This concludes HHSC's and DSHS' review of 25 TAC Chapter 297 as required by the Texas Government Code, §2001.039.

TRD-202304565 Jessica Miller Director, Rules Cool

Director, Rules Coordination Office Department of State Health Services

Filed: December 5, 2023



Texas Commission on Environmental Quality

Title 30, Part 1

The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 TAC Chapter 301, Levee Improvement Districts, District Plans of Reclamation, and Levees and Other Improvements, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for readoption, readoption with amendments, or repeal each of its rules every four years. TCEQ published its Notice of Intent to Review these rules in the June 16, 2023, issue of the *Texas Register* (48 TexReg 3303).

The review assessed whether the initial reasons for adopting the rules continue to exist and TCEQ has determined that those reasons exist. The rules in Chapter 301 are required because they include general provisions applicable to levee improvement districts, including procedures applicable to the formation of levee improvement districts, approval of levees and other improvements, rules regarding notices and hearings, rules regarding unauthorized levees and other improvements, fees, and requirements for information to be filed with the executive director. These rules are based on the specific authority granted in Texas Water Code (TWC), §16.236 to make and enforce rules regarding levee safety, TWC Chapter 57, as well as the general rulemaking authority granted the TCEQ in TWC, §5.103.

Public Comment

The public comment period closed on July 18, 2023. TCEQ did not receive comments on the rules review of this chapter.

As a result of the review, TCEQ finds that the reasons for adopting the rules in 30 TAC Chapter 301 continue to exist and readopts these sec-

tions in accordance with the requirements of Texas Government Code, §2001.039.

TRD-202304431 Charmaine Backens

Deputy Director, Environmental Law Division Texas Commission on Environmental Quality

Filed: December 1, 2023







The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 319, General Regulations Incorporated into Permits, as required by Texas Government Code (TGC), §2001.039. TGC, §2001.039, requires a state agency to review and consider for readoption, readoption with amendments, or repeal each of its rules every four years. TCEQ published its Notice of Intent to Review these rules in the June 16, 2023, issue of the *Texas Register* (48 TexReg 3303).

The review assessed whether the initial reasons for adopting the rules continue to exist and TCEQ has determined that those reasons exist. The rules in Chapter 319 provide general requirements for wastewater discharge permits under the Texas Pollutant Discharge Elimination System and Commission wastewater permitting programs. This chapter consists of three subchapters:

Subchapter A sets out monitoring and reporting requirements;

Subchapter B sets maximum allowable concentrations of hazardous metals that are discharged into or adjacent to surface water in the state; and

Subchapter C specifies conditions under which notification of a spill must be given to appropriate local government officials and local media, procedures for giving the required notice, content of the notice, and the method of giving notice.

The rules under Chapter 319 are necessary to verify compliance with permit effluent limitations, to ensure hazardous metal discharges are protective of human health and the environment, and to notify the public of potential hazards related to spills.

Public Comment

The public comment period closed on July 18, 2023. TCEQ did not receive comments on the rules review of this chapter.

As a result of the review, TCEQ finds that the reasons for adopting the rules in 30 TAC Chapter 319 continue to exist and readopts these sections in accordance with the requirements of TGC, §2001.039.

TRD-202304433

Charmaine Backens

Deputy Director, Environmental Law Division Texas Commission on Environmental Quality

Filed: December 1, 2023







The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 328, Waste Minimization and Recycling, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for readoption, readoption with amendments, or repeal each of its rules every four years. TCEQ published its Notice of Intent to Review these rules in the June 30, 2023, issue of the *Texas Register* (48 TexReg 3303).

The review assessed whether the initial reasons for adopting the rules continue to exist and TCEQ has determined that those reasons exist.

The rules in Chapter 328 are required because they implement requirements for management of various materials that can be diverted from solid waste streams; to promote economic recovery and reuse of materials; and to support the development of markets for recycled, remanufactured, or environmentally sensitive products or services in a sustainable manner that protects the environment, public health, and safety as authorized by the Texas Health and Safety Code (THSC). Each subchapter fulfills individual THSC requirements.

Subchapter A implements THSC, §361.119 and §361.1191, which establish rules to ensure that a solid waste processing facility is regulated as a solid waste facility and is not allowed to operate unregulated as a recycling facility. This subchapter also contains rules for the limitations on the storage of recyclable materials and reporting and record-keeping requirements for facilities regulated under this subchapter.

Subchapter B implements the requirements of THSC, §361.422, which states that the commission shall establish rules and reporting requirements through which progress toward achieving the established source reduction and recycling goals can be measured.

Subchapter C implements the requirements of THSC, §§361.452 - 361.453, relating to lead-acid battery retailers and wholesalers and the collection of lead-acid batteries for recycling. TCEQ is required to produce, print, and distribute notices of battery recycling. In performing this duty, the commission may also inspect any place, building, or premises governed by THSC, §361.452 for compliance.

Subchapter D implements the requirements of THSC, §371.104 relating to the registration and management of Used Oil Filters. TCEQ is required to register facilities that transport, store, and process used oil filters.

Subchapter E implements the requirements of THSC, §371.023 that TCEQ shall develop a grant program for local governments and private entities that encourages the collection, reuse, and recycling of household do-it-yourselfer used oil.

Subchapter F implements the requirements of THSC, §361.112 which establishes procedures and requirements for the safe storage, transportation, utilization, and disposal of used or scrap tires or tire pieces.

Subchapter G implements the requirements of THSC, §361.430, requiring the commission to promulgate rules and regulations that establish a newsprint recycling program for the state and develop forms for and regulations governing the submission of the reports required by §361.430(g).

Subchapter H implements the requirements of THSC, §369.002, which states that the commission shall maintain, for distribution, a list of the symbols required for certain plastic containers manufactured or distributed within the state and has the ability to approve the use of another nationally or internationally recognized label coding system for special-purpose plastics.

Subchapter I implements the requirements of THSC, §§361.951 - 361.966, which establishes a comprehensive, convenient, and environmentally sound program for the collection, recycling, and reuse of computer equipment that has reached the end of its useful life.

Subchapter J implements the requirements of THSC, §§361.971 - 361.992, which establishes a comprehensive, convenient, and environmentally sound program for the collection, recycling, and reuse of television equipment.

Subchapter K implements the requirements of THSC, §§361.425 - 361.426, which establishes a program for the separation and collection of all recyclable materials generated by a governmental entity's operations, including, at a minimum, aluminum, steel containers, aseptic

packaging and polycoated paperboard cartons, high-grade office paper, and corrugated cardboard.

Public Comment

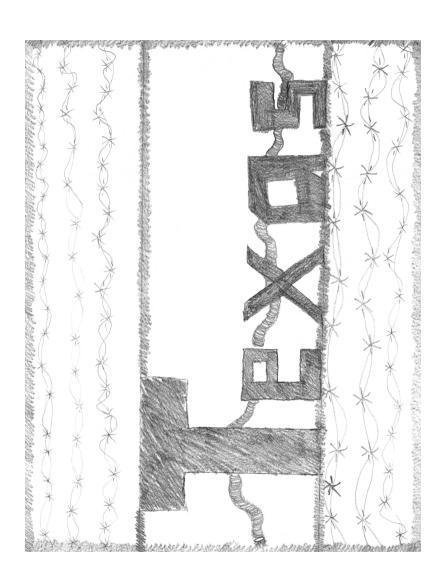
The public comment period closed on July 18, 2023. TCEQ did not receive comments on the rules review of this chapter.

As a result of the review, TCEQ finds that the reasons for adopting the rules in 30 TAC Chapter 328 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-202304434
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality

Filed: December 1, 2023

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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: 16 TAC §25.511(h)

$$Dollars(per\ MW) = \begin{cases} 0, & if\ EAF_{actual} \leq EAF_{50} \\ (0.25\delta_n + 0.015(EAF_{actual} - EAF_{50})\delta_n), & if\ EAF_{50} < EAF_{actual} < EAF_{95} \\ \delta_n, & if\ EAF_{actual} \geq EAF_{95} \end{cases}$$

Where δ_n is the grant payment amount based on the applicant's notice of eligibility.

Figure: 16 TAC §25.511(h)(2)

Performance Year 1 -- The electric generating facility achieves an EAF of 96. The applicant receives a full grant payment of \$1,200,000.

Performance Year 2 -- The electric generating facility achieves an EAF of 85. The formula results in the following grant payment discount:

$$0.25(\$12,000) + 0.015(85 - 50)(\$12,000) = \$9,300 \times 100 MW$$

The applicant will receive a discounted grant payment of \$930,000.

Performance Year 3 -- The electric generating facility achieves an EAF of 48. The applicant receives no grant payment.

Customer billing name: ______ Customer billing address: Customer street address: City, state, zip code: Customer's month and year of birth, the customer's month and day of birth, mother's maiden of the the last four digits customer's social security number: name. or If applicable, the name of an individual legally authorized to act for the customer: Relationship to customer: Telephone number of the individual authorized to act for the customer: Only one telephone company may be designated as my preferred carrier for each type of service for each telephone number. By initialing here and signing below, I am authorizing (insert name of new telecommunications utility) to become my new telephone service provider for local telephone service. I authorize (insert name of new telecommunications utility) to act as my agent to make this change happen, and direct my (current telecommunications utility) to work with the new provider to make the change. By initialing here and signing below, I am authorizing (insert name of new telecommunications utility) to become my new telephone service provider in place of my (current telecommunications utility) for local toll telephone service. I authorize (insert name of new telecommunications utility) to act as my agent to make this change happen, and direct my (current telecommunications utility) to work with the new provider to make the change.

Figure: 16 TAC §26.130(d)(3)(C)

By initialing here and signing below, I am authorizing (insert name of new
telecommunications utility) to become my new telephone service provider in place of my (current
telecommunications utility) for long distance telephone service. I authorize (insert name of new
telecommunications utility) to act as my agent to make this change happen, and direct my (current
telecommunications utility) to work with the new provider to make the change.
I understand that I may be required to pay a one-time charge to switch providers and may consult
with the carrier as to whether the charge will apply. If I later wish to return to my current telephone
company, I may be required to pay a reconnection charge. I also understand that my new telephone
company may have different calling areas, rates, and charges than my current telephone company,
and I am willing to be billed accordingly.
Telephone number(s) to be changed:
Initial here if you are listing additional telephone numbers to be changed.
I have read and understand this Letter of Agency. I am at least eighteen years of age and legally authorized to change telephone companies for services to each telephone number listed above.
Signed: Date

Figure: 16 TAC §26.130(g)(3)

Selecting a Telephone Company -- Your Rights as a Customer

Telephone companies are prohibited by law from switching you from one telephone service provider to another without your permission, a practice commonly known as "slamming."

If you are slammed, Texas law requires the telephone company that slammed you to do the following:

- 1. Pay, within five working days of your request, all charges associated with returning you to your original telephone company.
- 2. Provide all billing records to your original telephone company within ten working days of your request.
- 3. Pay, within 30 working days, your original telephone company the amount you would have paid if you had not been slammed.
- 4. Refund to you within 30 working days any amount you paid for charges during the first 30 days after the slam and any amount more than what you would have paid your original telephone company for charges after the first 30 days following the slam.

Your original telephone company is required to provide you with all the benefits, such as frequent flyer miles, you would have normally received for your telephone use during the period in which you were slammed.

If you have been slammed, you can change your service immediately back to your original provider by calling your authorized telecommunications provider (your original provider) and advising the company that you have been switched from its service without appropriate authorization. You should also report the slam by writing or calling the PUCT Consumer Protection Division, P.O. Box 13326, Austin, Texas 78711-3326, (512) 936-7120 or in Texas (toll-free) 1 (888) 782-8477, e-mail address: customer@puc.texas.gov. Hearing and speech-impaired individuals may contact the commission through Relay Texas.

You can prevent slamming by requesting a preferred telephone company freeze from your current service provider. With a freeze in place, you must give formal consent to "lift" the freeze before your phone service can be changed. A freeze may apply to local toll service, long distance service, or both. The Public Utility Commission of Texas can give you more information about freezes and your rights as a customer.

Figure: 16 TAC §26.405(g)(1)

Residential Line Density	Proxy Per-Line
Per Square Mile	Support Amount
0 to 2.49	\$120.53
2.49 to 4.99	\$69.82
5 to 9.99	\$46.46
10 to 14.99	\$31.45
15 to 19.99	\$18.81
20 to 24.99	\$14.78
25 to 29.99	\$10.51
30 to 49.99	\$4.33
50 or greater	\$1.83

Figure: 30 TAC §115.460(b)(10)

Grams of VOC per liter of material = $\frac{W_s - W_w - W_{es}}{V_m}$

Where:

 W_s = Weight of volatile compounds in grams

 W_w = Weight of water in grams

 W_{es} = Weight of exempt solvents, as defined in §101.1 of this title

(relating to Definitions), in grams

 V_m = Volume of material in liters

Figure: 30 TAC §115.463(e)

Table 1: VOC Content Limits for Industrial Cleaning Solvents

Solvent Cleaning Category	VOC Content	VOC Content
	Limit	Limit
	(pounds VOC	(grams VOC
	per gallon)	per liter)
(A) Product Cleaning During Manufacturing Process or		
Surface Preparations for Coating, Adhesives, or Ink		
Application		
(i) General	0.21	25
(ii) Electrical Components and Electronic Components	0.83	100
(iii) Medical Devices and Pharmaceuticals	6.7	800
(B) Repair and Maintenance Cleaning		
(i) General	0.21	25
(ii) Electrical and Electronic Components	0.83	100
(iii) Medical Devices and Pharmaceuticals		
(A) Tools, Equipment, Machinery	6.7	800
(B) Medical or Pharmaceutical Work Surfaces	5.0	600
(C) Cleaning of Coatings or Adhesives Application	0.21	25
Equipment		
(D) Cleaning of Ink Application Equipment		
(i) General	0.21	25
(ii) Flexographic Printing	0.21	25
(iii) Gravure Printing		
(A) Publications	0.83	100
(B) Packaging	0.21	25

Colvert Cleaning Category	VOC Content	VOC Content
Solvent Cleaning Category	VOC Content	voc comem
	Limit	Limit
	Lillic	Lillic
	(pounds VOC	(grams VOC
	per gallon)	per liter)
(iv) Lithographic (Offset) or Letter Press Printing		
(A) Roller Wash, Blanket Wash, and On-press	0.83	100
Components		
(B) Removable Press Components	0.21	25
(v) Screen Printing	0.83	100
(vi) Ultraviolet Ink/Electron Beam Ink Application	0.83	100
Equipment (except screen printing)		
(vii) Specialty Flexographic Printing	0.83	100
(E) Cleaning of Polyester resin Application Equipment	0.21	25

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Table 1.	
Category	Grams of volatile organic compounds (VOC) per liter adhesive
Computer Diskette Manufacturing Adhesive	350
Contact Adhesive	80
Edge Glue Adhesive	250
Plastic Welding Cement	
ABS Welding Cement	325
ABS to PVC Transition Cement	510
CPVC Welding Cement	490
CPVC For Life-Safety Systems	490
Higher Viscosity CPVC	490
PVC Welding Cement	510
All Other Plastic Welding Cements	100
Rubber Vulcanization Adhesive	850
Special Purpose Contact Adhesive	250
Thin Metal Laminating Adhesive	780
Tire Tread Adhesive	100
Top and Trim Adhesive	540
Waterproof Resorcinol Glue	170
All Other Adhesives	250

Table 2.		
Substrate Specific Adhesives	Grams of volatile organic compounds (VOC) per liter adhesive	
Metal	30	
Plastic Foams	50	
Porous Material (except wood)	50	
Wood	30	
Fiberglass	80	
Reinforced Plastic Composite	200	

Table 3.		
Adhesive Primers	Grams of volatile organic compounds (VOC) per liter adhesive	
Plastic	550	
Pressure Sensitive	785	
Traffic Marking Tape	150	
Vehicle Glass	700	
Roof Adhesive Primers	250	
All Other Adhesive Primers	250	

Table 1.		
Category	Grams of volatile organic compounds (VOC) per liter adhesive	
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Edge Glue Adhesive	250	
Plastic Welding Cement		
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ABS to PVC Transition Cement	510	
CPVC Welding Cement	490	
CPVC For Life-Safety Systems	490	
Higher Viscosity CPVC	490	
PVC Welding Cement	510	
All Other Plastic Welding Cements	100	
Rubber Vulcanization Adhesive	850	
Special Purpose Contact Adhesive	250	
Thin Metal Laminating Adhesive	780	
Tire Tread Adhesive	100	
Top and Trim Adhesive	540	
Waterproof Resorcinol Glue	170	
All Other Adhesives	250	

Table 2.		
Substrate Specific Adhesives	Grams of volatile organic compounds (VOC) per liter adhesive	
Metal	30	
Plastic Foams	50	
Porous Material (except wood)	50	
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Fiberglass	80	
Reinforced Plastic Composite	200	

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Plastic	550	
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Traffic Marking Tape	150	
Vehicle Glass	700	
Roof Adhesive Primers	250	
All Other Adhesive Primers	250	

Figure: 30 TAC §117.1120(c)

$$System\ Cap = \sum_{i=1}^{N} (H_i \times R_i)$$

Where:

 $\underline{\text{System Cap} = \text{NO}_{x} \text{ emission cap for an electric power generating system in}}$ pounds per day on a rolling 30-day average basis;

<u>i</u> = each EGF in the electric power generating system;

N =the total number of EGFs in the system cap;

Hi = the average of the daily heat input for each EGF in the system cap, in million British thermal units per day, as certified to the executive director, for any 30-day period in 2019, 2020, 2021, 2022, or 2023; the same 30-day period must be used for all EGFs in the emission cap; and

Ri = the applicable emission specification in §117.1105 of this title for each EGF.

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.

Office of the Attorney General

2024 Tax Charts

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure is not included in the print version of the Texas Register. The figure is available in the on-line version of the December 15, 2023, issue of the Texas Register.)

TRD-202304576
Justin Gordon
General Counsel
Office of the Attorney General
Filed: December 6, 2023

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, 303.008, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/11/23 - 12/17/23 is 18.00% for consumer credit.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/11/23 - 12/17/23 is 18.00% for commercial² credit.

The monthly ceiling as prescribed by $\$303.005^3$ and \$303.009 for the period of 12/01/23 - 12/31/23 is 18.00%.

The quarterly ceiling as prescribed by §303.008 and §303.009 for the period of 01/01/24 - 03/31/24 is 18.00% for consumer credit.

The quarterly ceiling as prescribed by \$303.008 and \$303.009 for the period of 01/01/24 - 03/31/24 is 18.00% for commercial² credit.

The annualized ceiling as prescribed by \$303.008 and $\$303.009^4$ for the period of 01/01/24 - 12/31/24 is 18.00% for consumer credit.

The annualized ceiling as prescribed by \$303.008 and $\$303.009^4$ for the period of 01/01/24 - 12/31/24 is 18.00% for commercial² credit.

- ¹ Credit for personal, family, or household use.
- ² Credit for business, commercial, investment, or other similar purpose.
- ³ Only for variable rate commercial transactions, as provided by §303.004(a).
- ⁴ Only for open-end credit as defined in §301.002(14), as provided by §303.007.

TRD-202304573 Leslie L. Pettijohn Commissioner Office of Consumer Credit Commissioner

Filed: December 6, 2023

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the Texas Register no later than the 30th day before the date on which the public comment period closes, which in this case is January 18, 2024. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on January 18, 2024. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: 2BN SERVICES LLC; DOCKET NUMBER: 2023-1551-WR-E; IDENTIFIER: RN111802807; LOCATION: Mason, Mason County; TYPE OF FACILITY: operator; RULES VIOLATED: TWC, §11.081 and §11.121, by failing to obtain authorization prior to appropriating any state water or beginning construction of any work designed for the storage, taking, or diversion of water; PENALTY: \$350; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(2) COMPANY: BILL STARKS CONSTRUCTION CO INCORPORATED; DOCKET NUMBER: 2023-1463-WQ-E; IDENTIFIER: RN111757860; LOCATION: Abilene, Jones County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain authorization to discharge stormwater associated with construction activities; PENALTY: \$875; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

- (3) COMPANY: BROOKS, JAMES EDWIN; DOCKET NUMBER: 2023-1461-WOC-E; IDENTIFIER: RN111604815; LOCATION: Watauga, Tarrant County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.
- (4) COMPANY: CIMA GENERAL CONTRACTORS INCORPORATED; DOCKET NUMBER: 2023-1462-WQ-E; IDENTIFIER: RN111628079; LOCATION: Bartonville, Denton County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain authorization to discharge stormwater associated with construction activities; PENALTY: \$875; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.
- (5) COMPANY: Circle 7 Dairy LLC and GRAND CANYON DAIRY LLC; DOCKET NUMBER: 2022-0651-AGR-E; IDENTIFIER: RN100794155; LOCATION: Dublin, Erath County; TYPE OF FACILITY: concentrated animal feeding operation; RULES VIO-LATED: 30 TAC §305.125(1) and §321.31(a), TWC, §26.121(a)(1) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0002950000, Part VI.A, by failing to prevent the discharge of agricultural waste into or adjacent to any water in the state; 30 TAC §305.125(1) and §321.36(b) and TPDES Permit Number WQ0002950000, Part X.M, by failing to remove manure and settled solids accumulations in the settling basin on a regular and consistent basis so as to assure attainment of the 50% designed removal efficiency; 30 TAC §305.125(1) and §321.38(g)(1)(A) and TPDES Permit Number WQ0002950000, Part VII.A.3(f)(1), by failing to keep the spillway and embankment free of foreign material such as rocks larger than four inches, trash, brush, and fallen trees; 30 TAC §305.125(1) and §321.39(b)(5) and TPDES Permit Number WQ0002950000, Part VII.A.5(h), by failing to prevent trees from growing on the Retention Control Structure embankment; 30 TAC §305.125(1) and §321.39(g)(3) and TPDES Permit Number WQ0002950000, Part X.Q.6, by failing to properly dispose of dead carcasses; and 30 TAC §305.125(1) and §321.40(h) and TPDES Permit Number WQ0002950000, Part VII.A.8(d)(1), by failing to maintain a vegetative buffer strip of no less than 100 feet of vegetation between manure, litter, or wastewater application areas and water in the state; PENALTY: \$18,313; ENFORCEMENT COORDINATOR: Mistie Gonzales, (254) 761-3056; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.
- (6) COMPANY: City of Henderson; DOCKET NUMBER: 2021-0992-MWD-E; IDENTIFIER: RN101612588; LOCATION: Henderson, Rusk County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC \$305.65 and TWC, \$26.121(a)(1), by failing to maintain authorization to discharge wastewater into or adjacent to any water in the state; PENALTY: \$26,000; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFF-SET AMOUNT: \$20,800; ENFORCEMENT COORDINATOR: Madison Stringer, (512) 239-1126; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.
- (7) COMPANY: City of Marquez; DOCKET NUMBER: 2023-0519-MWD-E; IDENTIFIER: RN101918506; LOCATION: Marquez, Leon County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0013980001, Operational Requirements Number 1, by failing to ensure that all systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §305.125(1) and (9)(A) and TPDES Permit Number WQ0013980001, Monitoring and Reporting Requirements Number

- 7(c), by failing to report to the TCEO in writing, any effluent violation which deviates from the permitted effluent limitation by more than 40% within five working days of becoming aware of non-compliance; 30 TAC §305.125(1) and §319.11(d) and TPDES Permit Number WO0013980001, Monitoring and Reporting Requirements Number 1. by failing to comply with flow measurements, equipment, installation, and procedures that conform to those prescribed in the Water Measurement Manual, published by the United States Department of the Interior, Bureau of Reclamation, Washington, D.C., or methods that are equivalent as approved by the Executive Director; and 30 TAC §317.7(e), by failing to provide the required plant protection with fencing, lockable gates, and hazard signs; PENALTY: \$24,338; SUP-PLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$19,471; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5865; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.
- (8) COMPANY: MYERS, JAMES A; DOCKET NUMBER: 2023-1638-WR-E; IDENTIFIER: RN111644472; LOCATION: Weatherford, Parker County; TYPE OF FACILITY: operator; RULES VIOLATED: 30 TAC §297.11 and TWC, §11.081 and §11.121, by failing to obtain authorization prior to diverting, storing, impounding, taking, or using state water, or beginning construction of any work designed for the storage, taking, or diversion of water; PENALTY: \$875; ENFORCEMENT COORDINATOR: Nancy Sims, (512) 239-5053; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.
- (9) COMPANY: REY, THOMAS A; DOCKET NUMBER: 2023-1548-OSS-E; IDENTIFIER: RN104404322; LOCATION: Conroe, Montgomery County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §285.61(4), by failing to ensure that an authorization to construct has been issued prior to beginning construction of an on-site sewage facility; PENALTY: \$175; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.
- (10) COMPANY: SWIFT HOLDINGS INCORPORATED; DOCKET NUMBER: 2023-1621-WQ-E; IDENTIFIER: RN11122122; LOCATION: Gilmer, Upshur County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain authorization to discharge stormwater associated with construction activities; PENALTY: \$875; ENFORCEMENT COORDINATOR: Shane Glantz, (325) 698-6124; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

TRD-202304523

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: December 5, 2023

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Combined Notice of Public Meeting and Notice of Application and Preliminary Decision for TPDES Permit for Municipal Wastewater New Permit No. WQ0016296001

APPLICATION AND PRELIMINARY DECISION. Lower Valley Water District, 1557 Farm-to-Market Road 1110, Clint, Texas 79836, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016296001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day. TCEQ received this application on February 13, 2023.

The facility will be located at 616 Northwest Camp Street, Fabens, in El Paso County, Texas 79838. The treated effluent will be discharged to San Felipe Arroyo, thence to River Drain, thence to Fabens Waste Channel, thence to the Rio Grande Below Riverside Diversion Dam in Segment No. 2307 of the Rio Grande River Basin. The unclassified receiving water uses are minimal aquatic life use for San Felipe Arroyo and high aquatic life use for the River Drain and Fabens Waste Channel. The designated uses for Segment No. 2307 are primary contact recreation, public water supply, and high aquatic life use. In accordance with 30 Texas Administrative Code Section 307.5 and the TCEQ's Procedures to Implement the Texas Surface Water Quality Standards (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in the River Drain and Fabens Waste Channel, which have been identified as having high aquatic life uses. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application.

https://gisweb.tceq.texas.gov/LocationMapper/?marker=106.1598,31.5079448&level=18

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Lower Valley Water District, 1557 Farm-to-Market Road 1110, Clint, Texas.

ALTERNATIVE LANGUAGE NOTICE. Alternative language notice in Spanish is available at https://www.tceq.texas.gov/permitting/wastewater/plain-language-summaries-and-public-notices. El aviso de idioma alternativo en español está disponible en https://www.tceq.texas.gov/permitting/wastewater/plain-language-summaries-and-public-notices.

PUBLIC COMMENT / PUBLIC MEETING. You may submit public comments or request a public meeting about this application. You may submit public comments or request a public meeting about this application. The TCEQ will hold a public meeting on this application because it was requested by local legislators.

The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the

permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Tuesday, January 16, 2024 at 7:00 p.m. MST (Mountain Standard Time)

O'Donnell Intermediate School Auditorium

301 NE Camp Street

Fabens, Texas 79838

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least one week prior to the meeting.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting a contested case hearing or reconsideration of the Executive Director's decision. A contested case hearing is a legal proceeding similar to a civil trial in a state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name; address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify an individual member of the group who would be adversely affected by the proposed facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are germane to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

The Commission will only grant a contested case hearing on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised in timely filed comments that were not subsequently withdrawn.

EXECUTIVE DIRECTOR ACTION. The Executive Director may issue final approval of the application unless a timely contested case hearing request or request for reconsideration is filed. If a timely hearing request or request for reconsideration is filed, the Executive Director will not issue final approval of the permit and will forward the application and request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

All written public comments and public meeting requests must be submitted to the Office of the Chief Clerk, MC 105, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at www.tceq.texas.gov/goto/comment within 30 days from the date of newspaper publication of this notice or by the date of the public meeting, whichever is later.

INFORMATION AVAILABLE ONLINE. For details about the status of the application, visit the Commissioners' Integrated Database at www.tceq.texas.gov/goto/cid. Search the database using the permit number for this application, which is provided at the top of this notice.

AGENCY CONTACTS AND INFORMATION. Public comments and requests must be submitted either electronically at www.tceq.texas.gov/goto/comment, or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC 105, P.O. Box 13087, Austin, Texas 78711-3087. Any personal information you submit to the TCEQ will become part of the agency's record; this includes email addresses. For more information about this permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040 or visit their website at www.tceq.texas.gov/goto/pep. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Lower Valley Water District at the address stated above or by calling Mr. Ed Long, P.E., Chief Operations & Technical Officer, at (915) 791-4480.

Issuance Date: December 1, 2023

TRD-202304578 Laurie Gharis Chief Clerk

Texas Commission on Environmental Quality

Filed: December 6, 2023

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Correction of Error

The Texas Commission on Environmental Quality (TCEQ) published a proposed rule review notice for Title 30, Chapter 5 in the November 24, 2023, issue of the *Texas Register* (48 TexReg 6921). Due to an error by TCEQ, the notice incorrectly refers to Chapter 86 instead of Chapter 5 in several paragraphs. The references to Chapter 86 should be to Chapter 5.

TRD-202304582 Charmaine Backens Deputy Director, Environmental Law Division Texas Commission on Environmental Quality Filed: December 6, 2023

Enforcement Orders

An agreed order was adopted regarding Vidor Mhp No. 1, LLC, Docket No. 2021-0557-MWD-E on December 5, 2023 assessing \$3,450 in

administrative penalties with \$690 deferred. Information concerning any aspect of this order may be obtained by contacting Monica Larina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Far Hills Utility District, Docket No. 2022-0905-MWD-E on December 5, 2023 assessing \$2,888 in administrative penalties with \$577 deferred. Information concerning any aspect of this order may be obtained by contacting Laura Draper, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Mako, LLC, Docket No. 2022-1287-WR-E on December 5, 2023 assessing \$4,500 in administrative penalties with \$900 deferred. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding JUSTICE SAND CO., INC., Docket No. 2022-1610-AIR-E on December 5, 2023 assessing \$6,000 in administrative penalties with \$1,200 deferred. Information concerning any aspect of this order may be obtained by contacting Desmond Martin, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Point, Docket No. 2023-0179-UTL-E on December 5, 2023 assessing \$1,400 in administrative penalties with \$280 deferred. Information concerning any aspect of this order may be obtained by contacting Claudia Bartley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Candelaria Water Supply Corporation, Docket No. 2023-0467-UTL-E on December 5, 2023 assessing \$530 in administrative penalties with \$106 deferred. Information concerning any aspect of this order may be obtained by contacting Claudia Bartley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding IOC Company LLC, Docket No. 2023-1298-WR-E on December 5, 2023 assessing \$350 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202304581 Laurie Gharis Chief Clerk

Texas Commission on Environmental Quality

Filed: December 6, 2023

Notice of District Petition

Notice issued November 30, 2023

TCEQ Internal Control No. D-05092023-019; Lackland Creekview Development, LLC, a Texas limited liability company, (Petitioner) filed a petition with the Texas Commission on Environmental Quality (TCEQ) for the annexation of land into Grayson County Municipal Utility District No. 8 (District) under Texas Water Code Chapters 49 and 54, Texas Local Government Code Sections (§§) 42.042 and 42.0425 and the procedural rules of the TCEQ. The petition states

that: (1) the Petitioner holds title to all the property in the proposed annexation area to be included in the District; (2) the proposed property annexation will contain approximately 70.201 acres of land located within Grayson County; (3) all of the land to be included within the proposed property annexation is within the extraterritorial jurisdiction of the City of Van Alstyne, Texas (City); and (4) there is one lienholder on the property, American National Bank & Trust, and they have consented to the proposed annexation. The property proposed for annexation is a non-contiguous tract located east of the existing District boundaries and approximately one quarter mile east of the City. Access to the annexation tract will be by Farm-to-Market Road 3133. In accordance with Local Government Code §42.042 and Texas Water Code §54.016, the petition was submitted to the City, requesting the City's consent to the addition of land to the District. After more than 90 days passed without receiving consent, a petition was submitted to the City to provide water and sewer services to the proposed annexation property. The 120-day period for reaching a mutually agreeable contract as established by the Texas Water Code \$54.016(c) expired and the information provided indicates that the Petitioner and the City have not executed a mutually agreeable contract for service. Pursuant to Texas Water Code §54.016(d), failure to execute such an agreement constitutes authorization for the Petitioner to initiate proceedings to include the land within the District.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, 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 Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-202304579

Laurie Gharis Chief Clerk

Texas Commission on Environmental Quality

Filed: December 6, 2023







Notice of Opportunity to Comment on a Default Order 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 Order (DO). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the Texas Register no later than the 30th day before the date on which the public comment period closes, which in this case is January 18, 2024. 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 com-

A copy of the 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 January 18, 2024.** The commission's attorney is available to discuss the DO and/or the comment procedure at the listed phone number; however, TWC, §7.075, provides that comments on the DO shall be submitted to the commission in **writing.**

(1) COMPANY: Jimmy Ray Bland; DOCKET NUMBER: 2021-0781-MSW-E; TCEQ ID NUMBER: RN111005716; LOCA-TION: 0.3 miles north of Fishtrap Road on Collins Road, Denton, Denton County; TYPE OF FACILITY: auto crushing and scrap tire storage facility; RULES VIOLATED: Texas Health and Safety Code, §361.112(a) and 30 TAC §§328.56(d)(2), 328.59(b)(1), and 328.60(a), by failing to obtain a scrap tire storage registration for the facility, prior to storing more than 500 used or scrap tires on the ground or 2,000 used or scrap tires in trailers; 30 TAC §328.58(a) and §328.62(c), by failing to maintain a complete record in the form of a five-part manifest of each individual load of used or scrap tires or tire pieces transported from the facility; 30 TAC §328.58(e), by failing to notify the appropriate commission regional office of any transporter or authorized scrap tire facility that fails to complete the manifest, alters the generator portion of the manifest, or fails to return the manifest within three months after the off-site transportation of the used or scrap tires or tire pieces; 30 TAC §328.56(d)(4), by failing to monitor tires stored outside for vectors and utilize appropriate vector control measures at least once every two weeks; and 30 TAC §330.15(a) and (c), by

causing, suffering, allowing, or permitting the unauthorized disposal of municipal solid waste; PENALTY: \$79,779; STAFF ATTORNEY: Taylor Pearson, Litigation, MC 175, (512) 239-5937; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-202304561 Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: December 5, 2023

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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 January 18, 2024. 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 January 18, 2024.** The designated attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: BRIGHTON KING LIMITED LIABILITY COM-PANY and KEV KING LIMITED LIABILITY COMPANY; DOCKET NUMBER: 2022-0967-PWS-E; TCEQ ID NUMBER: RN111522579; LOCATION: 15222 King Road near Frisco, Denton County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(q)(1), by failing to issue a boil water notice to customers of the facility within 24 hours of a low disinfectant residual using the prescribed notification format as specified in 30 TAC §290.42(b)(1) and (e)(3) and §290.47(c), by failing to provide disinfection facilities for the groundwater supply for the purpose of microbiological control and distribution protection; Texas Health and Safety Code, §341.033(a) and 30 TAC §290.46(e)(4)(A), by failing to operate the facility under the direct supervision of a water works operator who holds a Class D or higher groundwater license; and 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service; PENALTY: \$7,503; STAFF ATTORNEY: Marilyn Norrod, Litigation, MC 175, (512) 239-5916; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Maria Elena Gueta dba Maria Elena's Mobile Homes: DOCKET NUMBER: 2022-0915-PWS-E; TCEQ ID NUMBER: RN105677447; LOCATION: 1905 West Philips Street, Alvin, Brazoria County; TYPE OF FACILITY: public water system; RULES VIOLATED: 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 for each year, and failed to submit to the TCEQ by July 1st for 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 for calendar years 2016 - 2020; 30 TAC $\S290.117(c)(2)(C)$, (\bar{h}) , and (i)(1), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed, and report the results to the executive director for the January 1, 2019 - December 31, 2021 monitoring period; and TWC, §5.702 and 30 TAC §290.51(a)(6), by failing to pay annual Public Health Service fees and/or any associated late fees for the TCEO Financial Administration Account Number 90200670 for Fiscal Year 2022; PENALTY: \$2,746; STAFF ATTORNEY: Jennifer Peltier, Litigation, MC 175, (512) 239-0544; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-202304560
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: December 5, 2023

Notice of Public Hearing on Proposed Revisions to 30 Texas Administrative Code Chapters 115 and 117 and to the State Implementation Plan

The Texas Commission on Environmental Quality (commission) will offer a public hearing to receive testimony regarding proposed state implementation plan (SIP) revisions resulting from reclassification of the Dallas-Fort Worth (DFW) area from serious to severe nonattainment for the 2008 eight-hour ozone National Ambient Air Quality Standard (NAAQS). The hearing will also be offered to receive testimony regarding proposed air quality rules applicable to the DFW area. These proposals are made under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Chapter 2001, Subchapter B; and 40 Code of Federal Regulations §51.102 of the United States Environmental Protection Agency (EPA) concerning SIPs.

The proposed revisions to the SIP include an attainment demonstration (AD) that includes a photochemical modeling analysis and a weightof-evidence assessment that meets EPA modeling guidance (Project No. 2023-107-SIP-NR) and a demonstration that includes an analysis of reasonable further progress towards attainment (Project No. 2023-108-SIP-NR). The RFP SIP revision includes motor vehicle emissions budgets (MVEB) for the 2023 analysis (milestone) year and both the RFP and AD SIP revisions include MVEB for the 2026 attainment year. The concurrently proposed rulemakings concern amendments to 30 Texas Administrative Code (TAC) Chapter 115, to address reasonably available control technology (RACT) and contingency measure requirements for the 2008 ozone NAAQS and to correct inadvertent errors made in a previously adopted rulemaking (Project No. 2023-116-115-AI) and Chapter 117, to address RACT requirements as well as a rule petition for stationary diesel engines and associated emissions monitoring requirements (Project No. 2023-117-117-AI).

The commission will offer a public hearing on these proposals in Arlington on January 11, 2024 at 7:00 p.m. CST in the Arlington City Council Chambers, located at 101 West Abrams Street. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

The hearing will be conducted in English, and Spanish language interpretation services will be made available. Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Jamie Zech, Office of Air at (512) 239-3935 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Written comments may be submitted to Denine Calvin, MC 206, Office of Air, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to either (512) 239-4804 or fax4808@tceq.texas.gov. Electronic comments may be submitted via the Public Comment system at: https://tceq.commentinput.com/. File size restrictions may apply. All comments should reference the respective project number.

The comment period closes at 11:59 p.m. CST on January 16, 2024. Information concerning the proposed rules, including proposal documents and instructions for providing public comment, is available at https://www.tceq.texas.gov/rules/propose_adopt.html. Information concerning the proposed SIP revisions, including proposal documents and instructions for providing public comment, is available at https://www.tceq.texas.gov/airquality/sip/dfw/dfw-latest-ozone. For further information, please contact the project manager for the proposed project: for Project Nos. 2023-107-SIP-NR and 2023-108-SIP-NR, contact Denine Calvin, at (512) 239-0613. For Project No. 2023-116-115-AI, contact Bob Gifford at (512) 239-8541. For Project No. 2023-117-117-AI, contact Lindley Anderson at (512) 239-0003.

TRD-202304428
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: December 1, 2023

Notice of Public Hearing on Proposed Revisions to 30 Texas Administrative Code Chapters 115 and 117 and to the State Implementation Plan

The Texas Commission on Environmental Quality (commission) will offer a public hearing to receive testimony regarding proposed state implementation plan (SIP) revisions resulting from reclassification of the Houston-Galveston-Brazoria (HGB) area from serious to severe nonattainment for the 2008 eight-hour ozone National Ambient Air Quality Standard (NAAQS). The hearing will also be offered to receive testimony regarding proposed air quality rules applicable to the HGB area. These proposals are made under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Chapter 2001, Subchapter B; and 40 Code of Federal Regulations §51.102 of the United States Environmental Protection Agency (EPA) concerning SIPs.

The proposed revisions to the SIP include an attainment demonstration (AD) that includes a photochemical modeling analysis and a weight-of-evidence assessment that meets EPA modeling guidance (**Project No. 2023-110-SIP-NR**) and a demonstration that includes an analysis of reasonable further progress (RFP) towards attainment (**Project**

No. 2023-108-SIP-NR). The RFP SIP revision includes motor vehicle emissions budgets (MVEB) for the 2023 analysis (milestone) year and both the RFP and AD SIP revisions include MVEB for the 2026 attainment year. The concurrently proposed rulemakings concern amendments to 30 Texas Administrative Code (TAC) Chapter 115, to address contingency measure requirements for the 2008 ozone NAAQS and to correct inadvertent errors made in a previously adopted rulemaking (Project No. 2023-116-115-AI) and Chapter 117, to address a rule petition for stationary diesel engines and associated emissions monitoring requirements (Project No. 2023-117-117-AI).

The commission will offer a public hearing on these proposals in Houston on January 4, 2024 at 7:00 p.m. CST at the Houston-Galveston Area Council, located at 3555 Timmons Lane, #100. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

The hearing will be conducted in English, and Spanish language interpretation services will be made available. Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Jamie Zech, Air Quality Division at (512) 239-3935 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Written comments may be submitted to Vanessa T. De Arman, MC 206, Office of Air, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to either (512) 239-4804 or fax4808@tceq.texas.gov. Electronic comments may be submitted via Public Comment system at: https://tceq.commentinput.com/. File size restrictions may apply. All comments should reference the respective project number.

The comment period closes at 11:59 p.m. CST on January 16, 2024. Information concerning the proposed rules, including proposal documents and instructions for providing public comment, is available at https://www.tceq.texas.gov/rules/propose_adopt.html. Information concerning the proposed SIP revisions, including proposal documents and instructions for providing public comment, is available at https://www.tceq.texas.gov/airquality/sip/hgb/hgb-lat-est-ozone. For further information, please contact the project manager for the proposed project: for Project No. 2023-110-SIP-NR, contact Vanessa T. De Arman, at (512) 239-5609 and for Project No. 2023-116-115-AI, contact Bob Gifford at (512) 239-8541. For Project No. 2023-117-117-AI, contact Lindley Anderson at (512) 239-0003.

TRD-202304429
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: December 1, 2023

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Notice of Public Hearing on Proposed Revisions to 30 Texas Administrative Code Chapters 115 and 117 and to the State Implementation Plan

The Texas Commission on Environmental Quality (commission) will offer a public hearing to receive testimony regarding proposed air quality rules and a state implementation plan (SIP) revision resulting from reclassification of Bexar County from marginal to moderate nonattainment for the 2015 eight-hour ozone National Ambient Air Quality Stan-

dard (NAAQS) under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Chapter 2001, Subchapter B; and 40 Code of Federal Regulations §51.102 of the United States Environmental Protection Agency (EPA) concerning SIPs.

The proposed rulemaking concerns amendments to 30 Texas Administrative Code (TAC) Chapters 115 and 117 to implement reasonably available control technology (RACT) requirements in Bexar County (Project Nos. 2023-116-115-AI and 2023-117-117-AI). The proposed revision to the SIP includes a RACT analysis to address federal Clean Air Act requirements and implements RACT for all categories of stationary sources identified by EPA or classified as major stationary sources of nitrogen oxides or volatile organic compounds (Project No. 2023-132-SIP-NR).

The commission will offer a public hearing on these proposals in San Antonio on January 9, 2024 at 7:00 p.m. CST in the Alamo Area Council of Governments board room, located at 2700 NE Loop 410, Suite 101. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposals 30 minutes prior to the hearing.

The hearing will be conducted in English, and Spanish language interpretation services will be made available. Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Jamie Zech at (512) 239-3935. Requests should be made as far in advance as possible.

Written comments may be submitted to Stephanie Frederick, MC 206, Office of Air, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to either (512) 239-4804 or fax4808@tceq.texas.gov. Electronic comments may be submitted via the Public Comment system at: https://tceq.commentinput.com/. File size restrictions may apply. All comments should reference the respective project number.

The comment period closes at 11:59 p.m. CST on January 16, 2024. Information concerning the proposed rules, including proposal documents and instructions for providing public comment, is available at https://www.tceq.texas.gov/rules/propose_adopt.html. Information concerning the proposed SIP revisions, including proposal documents and instructions for providing public comment, is available at https://www.tceq.texas.gov/airquality/sip/san/san-latest-ozone. For further information, contact the project manager for the proposed project. For **Project No. 2023-116-115-AI**, contact Bob Gifford at (512) 239-8541. For **Project No. 2023-117-117-AI**, contact Lindley Anderson at (512) 239-0003. For **Project No. 2023-132-SIP-NR**, contact Stephanie Frederick at (512) 239-1001.

TRD-202304430

Charmaine Backens

Deputy Director, Environmental Law Division Texas Commission on Environmental Quality

Filed: December 1, 2023

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Notice of Public Meeting for TPDES Permit for Municipal Wastewater New Permit No. WQ0016210001

APPLICATION. Atlantis WKA Bastrop, LLC, 2121 Midway Road, Suite 320, Carrollton, Texas 75006, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016210001, to authorize the discharge of treated domestic wastewater at a daily aver-

age flow not to exceed 300,000 gallons per day. TCEQ received this application on August 29, 2022.

The facility will be located approximately 826 feet southwest of the intersection of Orchard Road and State Highway 71 West, in Bastrop County, Texas 78612. The treated effluent will be discharged to a sinuous man-made ditch, thence to an unnamed tributary, thence to Dry Creek, thence to Colorado River Below Lady Bird Lake in Segment No. 1428 of the Colorado River Basin. The unclassified receiving water uses are minimal aquatic life use for the sinuous man-made ditch, and limited aquatic life use for the unnamed tributary and Dry Creek. The designated uses for Segment No. 1428 are primary contact recreation, public water supply, and exceptional aquatic life use. In accordance with 30 Texas Administrative Code Section 307.5 and the TCEQ's Procedures to Implement the Texas Surface Water Quality Standards (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. This review has preliminarily determined that no water bodies with exceptional, high, or intermediate aquatic life uses are present within the stream reach assessed; therefore, no Tier 2 degradation determination is required. No significant degradation of water quality is expected in water bodies with exceptional, high, or intermediate aquatic life uses downstream, and existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application.

https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=97.521388%2C30.169166&level=12

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements.

ALTERNATIVE LANGUAGE NOTICE. Alternative language notice in Spanish is available at https://www.tceq.texas.gov/permitting/wastewater/plain-language-summaries-and-public-notices. El aviso de idioma alternativo en español está disponible en https://www.tceq.texas.gov/permitting/wastewater/plain-language-summaries-and-public-notices.

PUBLIC COMMENT / PUBLIC MEETING. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Thursday, January 18, 2024, at 7:00 p.m.

Jerry Fay Wilhelm Center for the Performing Arts

1401 Cedar Street

Bastrop, Texas 78602

INFORMATION. Members of the public are encouraged to submit written comments anytime during the meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at www.tceq.texas.gov/goto/comment. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. Si desea información en Español, puede llamar (800) 687-4040. General information about the TCEQ can be found at our web site at https://www.tceq.texas.gov.

The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Bastrop Public Library, 1100 Church Street, Bastrop, Texas.

Further information may also be obtained from Atlantis WKA Bastrop, LLC at the address stated above or by calling Mr. Wyatt Henderson at (972) 715-6440.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

Issuance Date: December 6, 2023

TRD-202304580 Laurie Gharis Chief Clerk

Texas Commission on Environmental Quality

Filed: December 6, 2023

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Notice of Water Quality Application

The following notice was issued on November 29, 2023:

The following notice does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087 WITHIN (30) DAYS FROM THE DATE THIS NOTICE IS PUBLISHED IN THE *Texas Register*:

INFORMATION SECTION

City of Lubbock has applied for a minor amendment to Texas Pollutant Discharge Elimination System Permit No. WQ0010353002, to authorize to remove 210.3 acres from the Lubbock Land Application Site (LLAS) irrigation area. The existing permit authorizes the discharge/dispose of treated domestic wastewater at an annual average flow not to exceed 31,500,000 gallons per day. The existing permit authorizes the disposal of treated domestic wastewater via irrigation of 5,634 acres of the LLAS, and 3400 acres of the Hancock Land Application Site. The facility is located at 3603 Guava Avenue, in the City of Lubbock, Lubbock County, Texas 79404.

TRD-202304577

Laurie Gharis Chief Clerk

Texas Commission on Environmental Quality

Filed: December 6, 2023



General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 26. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of November 27, 2023 to December 1, 2023. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC \$\$30.20(f), 30.30(h), and 30.40(e), the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, December 8, 2023. The public comment period for this project will close at 5:00 p.m. on January 7, 2024.

Federal License and Permit Activities:

Applicant: Brazoria County

Location: The project site is located at the San Bernard River Mouth, approximately 8 miles southwest of Freeport, in Brazoria County, Texas.

Latitude and Longitude: 28.86211, -95.43907

Project Description: The applicant proposes to perform hydraulic maintenance dredging to restore the mouth of the San Bernard River at its historic location. Approximately 300,000 cubic yards of material is planned to be dredged in order to increase the depth of the channel to 10 feet. The total dredge footprint of this project will be 34.14 acres. The applicant proposes to discharge suitable sand material into the surf zone for down shore beach nourishment. The proposed impacts to wetlands do not exceed 0.1 acre, and no fill material is being placed in wetlands or other special aquatic sites. Therefore, no mitigation is proposed for this project.

Type of Application: U.S. Army Corps of Engineers permit application # SWG-2015-00603. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 24-1066-F1

Applicant: Coastal Bend Bays & Estuaries Program

Location: The project site is located in the Corpus Christi Bay, adjacent to the JFK Causeway, in Corpus Christi, Nueces County, Texas.

Latitude and Longitude: 27.65775, -97.25130

Project Description: The applicant proposes to place fill within open water and modify an existing anthropogenically-created island to improve nesting habitat for colonial waterbirds. Specifically, the applicant proposes to construct an erosion control structure erosion control structure around the perimeter of an existing island, and place fill in

nearshore open waters to expand upland nesting habitat and tidal wetlands. As proposed, 1.35-acres of nearshore open water with bare bottom and 0.15-acres of tidal wetlands will be filled with sand to expand the upland portion of the island to 1.02-acres and create 0.33-acres of tidal wetlands, a net growth of 0.18-acres of tidal wetlands. Additionally, a 1,155 linear foot erosion control structure will be constructed with a crest elevation of +3.5 feet NAVD and 2:1 side slope, with a width of 10 feet wide at the crest and a width of 24 feet at the base. The erosion control structure is planned to have an approximately 20 feet wide gap located on the southwestern side of the island to facilitate juvenile bird entry and egress and long-term management by Coastal Ben Bays & Estuaries Program. The total project footprint is planned to be 1.64 acres with 2,600 cubic yards of sand and approximately 2,100 cubic yards of rock proposed to be placed. Fill material is proposed to be supplied from a third-party source and will be of clean and free of toxic materials. Native vegetation will be planted throughout the island to stabilize the sand fill and provide roosting birds with habitat and forage material. The applicant does not propose compensatory mitigation. The applicant has stated "the proposed project will result in net increases to ecological and aquatic resource functions and services through a conservative approximate 2.2 acre created tidal wetland habitat to 1 acre impacted wetland habitat (creation to impact ratio of 2.2:1)"; this statement has not been verified by the Corps.

Type of Application: U.S. Army Corps of Engineers permit application # SWG-2023-00361. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Railroad Commission of Texas as part of its certification under §401 of the Clean Water Act.

CMP Project No: 24-1080-F1

Applicant: Aransas County Navigation District

Location: The project site is located within the Aransas Bay, at

Aransas Beach, Rockport, Aransas County, Texas.

Latitude and Longitude: 28.029145, -97.040526

Project Description: The applicant proposes to conduct a beach nourishment project along Rockport Beach to return the beach to a previously permitted designed condition. Specifically, the applicant plans to place sand on the beach above and below the high tide line for periodic beach maintenance and to replace lost material from hurricanes Harvey and Hanna. The applicant proposes to place 3.3 acres (5,296 cubic yards) of sand below the high tide line within waters; an additional ~6,000 cubic yards will be placed on dry land above the high-tide line. Beach quality sand is planned to be obtained from the Briggs Plant in Victoria, Texas. The only in-water work will be the placement and grading of sand at and below the high-tide line with heavy machinery. The applicant does not propose compensatory mitigation.

Type of Application: U.S. Army Corps of Engineers permit application # SWG-1991-01789. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 24-1081-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from the Texas General Land Office Public Information Officer at 1700 N. Congress Avenue, Austin, Texas 78701, or via email at pialegal@glo.texas.gov. Comments should be sent to the Texas General Land Office Coastal Management Program Coordinator at the above address or via email at federal.consistency@glo.texas.gov.

TRD-202304566 Mark Havens Chief Clerk General Land Office Filed: December 5, 2023



Texas Health and Human Services Commission

Public Notice: Change in Composition to the Drug Utilitzation Review Board

The Texas Health and Human Services Commission (HHSC) announces its intent to submit transmittal number 23-0040 to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The proposed amendment requires a change in composition to the Drug Utilization Review Board (DURB). Changes include one additional managed care organization (MCO) representative, which will raise the number of MCO representatives from 2 to 3, as well as allowing MCO representatives to vote on changes. The proposed amendment implements House Bill 3286, 88th Texas Legislature, Regular Session, 2023. This change increases the total number of DURB members from 18 to 19. Texas covers travel expenses for DURB members and adding one more member may increase travel costs. The proposed amendment is effective March 1, 2024.

Texas covers travel expenses for DURB members and adding one more member will increase travel costs. The proposed amendment is estimated to result in an additional annual expenditure of \$6,667 for federal fiscal year (FFY) 2024, consisting of \$1,667 in federal funds and \$5,000 in state general revenue. For FFY 2025, the estimated additional annual expenditure is \$6,667 consisting of \$1,667 in federal funds and \$5,000 in state general revenue.

To obtain copies of the proposed amendment, interested parties may contact Nicole Hotchkiss, State Plan Coordinator, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 438-5035; or by email at Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the Access and Eligibility Services for local benefit offices.

TRD-202304513

Karen Ray Chief Counsel

Texas Health and Human Services Commission

Filed: December 4, 2023

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Public Notice: House Bill 54 - Personal Needs Allowance (PNA)

The Texas Health and Human Services Commission (HHSC) announces its intent to submit transmittal number 23-0027 to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The purpose of this amendment is to increase the minimum monthly personal needs allowance (PNA) for residents of a nursing facility (NF), assisted living facility, intermediate care facilities for individuals with intellectual disabilities (ICFs/IID), or other similar long-term care facility from \$60 to \$75 for individuals and from \$120 to \$150 for couples. The proposed amendment implements House Bill 54, 88th Texas Legislature, Regular Session, 2023. The proposed amendment is effective January 1, 2024.

The proposed amendment is estimated to result in an additional annual aggregate expenditure of \$2,109,043 million for federal fiscal year (FFY) 2024, consisting of \$688,923 in federal funds and \$1,420,120 million in state general revenue. For FFY 2025, the estimated additional annual expenditure is \$2,904,683, consisting of \$949,212 in federal funds and \$1,955,471 in state general revenue.

To obtain copies of the proposed amendment, interested parties may contact Nicole Hotchkiss, State Plan Coordinator, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 438-5035; or by email at Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local Access and Eligibility Services for local benefit offices.

TRD-202304512

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: December 4, 2023

Texas Department of Insurance

Company Licensing

Application to do business in the state of Texas for Concept Program Management, Inc., a foreign fire and/or casualty company. The home office is in Omaha, Nebraska.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of John Carter, 1601 Congress Ave., Suite 6.900, Austin, Texas 78711.

TRD-202304571 Justin Beam Chief Clerk Texas Department of Insurance Filed: December 6, 2023

Texas Lottery Commission

Scratch Ticket Game Number 2546 "BONUS 7"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2546 is "BONUS 7". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2546 shall be \$2.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2546.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 08, 09, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 7 SYMBOL, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$30.00, \$50.00, \$100, \$1,000 and \$30,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2546 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
18	ETN
19	NTN
20	TWY
21	TWON
22	тwто
23	TWTH
24	TWFR
25	TWFV
26	TWSX
28	TWET
29	TWNI
30	TRTY

7 SYMBOL	WIN\$
\$2.00	TWO\$
\$4.00	FOR\$
\$5.00	FIV\$
\$10.00	TEN\$
\$20.00	TWY\$
\$30.00	TRTY\$
\$50.00	FFTY\$
\$100	ONHN
\$1,000	ONTH
\$30,000	30TH

- E. Serial Number A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.
- F. Bar Code A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.
- G. Game-Pack-Ticket Number A fourteen (14) digit number consisting of the four (4) digit game number (2546), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 2546-0000001-001.
- H. Pack A Pack of the "BONUS 7" Scratch Ticket Game contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack.
- I. Non-Winning Scratch Ticket A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.
- J. Scratch Ticket Game, Scratch Ticket or Ticket Texas Lottery "BONUS 7" Scratch Ticket Game No. 2546.
- 2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "BONUS 7" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off

to expose twenty-three (23) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If the player reveals a "7" Play Symbol, the player wins the PRIZE for that symbol instantly! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

- 2.1 Scratch Ticket Validation Requirements.
- A. To be a valid Scratch Ticket, all of the following requirements must be met:
- 1. Exactly twenty-three (23) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
- 2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
- 3. Each of the Play Symbols must be present in its entirety and be fully legible;
- 4. Each of the Play Symbols must be printed in black ink except for dual image games;
- 5. The Scratch Ticket shall be intact;
- 6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
- 7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
- 8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner:
- 9. The Scratch Ticket must not be counterfeit in whole or in part;
- 10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

- 11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
- 12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;
- 13. The Scratch Ticket must be complete and not miscut, and have exactly twenty-three (23) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;
- 14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;
- 15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
- 16. Each of the twenty-three (23) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
- 17. Each of the twenty-three (23) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
- 18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
- 19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.
- B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.
- C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.
- 2.2 Programmed Game Parameters.
- A. Consecutive non-winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.
- B. A Ticket can win as indicated by the prize structure.
- C. A Ticket can win up to ten (10) times.
- D. Each Pack of Tickets will not contain more than thirty-one (31) winners.
- E. On winning and non-winning Tickets, the top cash PRIZEs of 1,000 and 30,000 will each appear at least once, except on Tickets winning ten (10) times and with respect to other parameters, play action or prize structure.

- F. No matching non-winning YOUR NUMBERS Play Symbols will appear on a Ticket.
- G. No matching WINNING NUMBERS Play Symbols will appear on a Ticket.
- H. Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.
- I. All YOUR NUMBERS Play Symbols will never equal the corresponding Prize Symbol (i.e., \$2 and 02, \$4 and 04, \$5 and 05, \$10 and 10, \$20 and 20 and \$30 and 30).
- J. On all Tickets, a Prize Symbol will not appear more than two (2) times, except as required by the prize structure to create multiple wins.
- K. On non-winning Tickets, the WINNING NUMBERS Play Symbols will never match a YOUR NUMBERS Play Symbol.
- L. Tickets winning more than one (1) time will use as many WIN-NING NUMBERS Play Symbols as possible to create matches, unless restricted by other parameters, play action or prize structure.
- M. The "7" (WIN\$) Play Symbol will win the PRIZE for that Play Symbol.
- N. The "7" (WIN\$) Play Symbol will never appear more than once on a Ticket.
- O. The "7" (WIN\$) Play Symbol will never appear on a non-winning Ticket.
- P. The "7" (WIN\$) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.
- 2.3 Procedure for Claiming Prizes.
- A. To claim a "BONUS 7" Scratch Ticket Game prize of \$2.00, \$4.00, \$5.00, \$8.00, \$10.00, \$20.00, \$30.00, \$50.00 or \$100, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$30.00, \$50.00 or \$100 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.
- B. To claim a "BONUS 7" Scratch Ticket Game prize of \$1,000 or \$30,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.
- C. As an alternative method of claiming a "BONUS 7" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social

- Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.
- D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:
- 1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
- 2. in default on a loan made under Chapter 52, Education Code;
- 3. in default on a loan guaranteed under Chapter 57, Education Code; or
- 4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.
- E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.
- 2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:
- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.
- 2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "BONUS 7" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

- 2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "BONUS 7" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.
- 2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.
- 2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.
- 3.0 Scratch Ticket Ownership.
- A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.
- B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.
- 4.0 Number and Value of Scratch Prizes. There will be approximately 9,120,000 Scratch Tickets in Scratch Ticket Game No. 2546. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2546 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$2.00	924,160	9.87
\$4.00	535,040	17.05
\$5.00	182,400	50.00
\$8.00	206,720	44.12
\$10.00	170,240	53.57
\$20.00	72,960	125.00
\$30.00	14,250	640.00
\$50.00	15,010	607.59
\$100	7,030	1,297.30
\$1,000	20	456,000.00
\$30,000	8	1,140,000.00

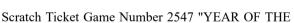
^{*}The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2546 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2546, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202304574 **Bob Biard** General Counsel Texas Lottery Commission Filed: December 6, 2023



DRAGON"

- 1.0 Name and Style of Scratch Ticket Game.
- A. The name of Scratch Ticket Game No. 2547 is "YEAR OF THE DRAGON". The play style is "key number match".
- 1.1 Price of Scratch Ticket Game.
- A. The price for Scratch Ticket Game No. 2547 shall be \$5.00 per Scratch Ticket.
- 1.2 Definitions in Scratch Ticket Game No. 2547.
- A. Display Printing That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.
- B. Latex Overprint The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.
- C. Play Symbol The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for

^{**}The overall odds of winning a prize are 1 in 4.29. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 06, 07, 09, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40, 41, 42, 43, 44, 45, 46, 47, 49, 50, 51, 52, 53, 54, 55, 8 SYMBOL, 5X SYMBOL, 10X SYMBOL, \$5.00, \$10.00, \$25.00, \$50.00, \$100, \$500, \$1,000 and \$100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears

under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2547 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
06	SIX
07	SVN
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR

35	TRFV
36	TRSX
37	TRSV
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
49	FRNI
50	FFTY
51	FFON
52	FFTO
53	FFTH
54	FFFR
55	FFFV
8 SYMBOL	WIN\$
5X SYMBOL	WINX5
10X SYMBOL	WINX10
\$5.00	FIV\$
\$10.00	TEN\$
\$25.00	TWFV\$
\$50.00	FFTY\$
\$100	ONHN
\$500	FVHN
\$1,000	ONTH
\$100,000	100TH

- E. Serial Number A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.
- F. Bar Code A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.
- G. Game-Pack-Ticket Number A fourteen (14) digit number consisting of the four (4) digit game number (2547), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2547-0000001-001.
- H. Pack A Pack of the "YEAR OF THE DRAGON" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fan-folded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.
- I. Non-Winning Scratch Ticket A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.
- J. Scratch Ticket Game, Scratch Ticket or Ticket Texas Lottery "YEAR OF THE DRAGON" Scratch Ticket Game No. 2547.
- 2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "YEAR OF THE DRAGON" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose fifty-two (52) Play Symbols. YEAR OF THE DRAGON: If the player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals an "8" Play Symbol, the player wins the prize for that symbol instantly. If the player reveals a "5X" Play Symbol, the player wins 5 TIMES the prize for that symbol. If the player reveals a "10X" Play Symbol, the player wins 10 TIMES the prize for that symbol. BONUS: If the player reveals 2 matching prize amounts in the same BONUS, the player wins that amount. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.
- 2.1 Scratch Ticket Validation Requirements.
- A. To be a valid Scratch Ticket, all of the following requirements must
- 1. Exactly fifty-two (52) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
- 2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
- 3. Each of the Play Symbols must be present in its entirety and be fully legible;
- 4. Each of the Play Symbols must be printed in black ink except for dual image games;
- 5. The Scratch Ticket shall be intact;

- 6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
- 7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
- 8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
- 9. The Scratch Ticket must not be counterfeit in whole or in part;
- 10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
- 11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
- 12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;
- 13. The Scratch Ticket must be complete and not miscut, and have exactly fifty-two (52) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;
- 14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;
- 15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
- 16. Each of the fifty-two (52) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
- 17. Each of the fifty-two (52) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
- 18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
- 19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.
- B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.
- C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.
- 2.2 Programmed Game Parameters.
- A. GENERAL: A Ticket can win up to twenty-two (22) times in accordance with the prize structure.

- B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.
- C. KEY NUMBER MATCH: Each Ticket will have eight (8) different WINNING NUMBERS Play Symbols.
- D. KEY NUMBER MATCH: Non-winning YOUR NUMBERS Play Symbols will all be different.
- E. KEY NUMBER MATCH: Non-winning Prize Symbols will never appear more than four (4) times.
- F. KEY NUMBER MATCH: The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.
- G. KEY NUMBER MATCH: The "8" (WIN\$), "5X" (WINX5) and "10X" (WINX10) Play Symbols will never appear in the WINNING NUMBERS or BONUS Play Symbol spots.
- H. KEY NUMBER MATCH: The "5X" (WINX5) and "10X" (WINX10) Play Symbols will only appear on winning Tickets as dictated by the prize structure.
- I. KEY NUMBER MATCH: Non-winning Prize Symbol(s) will never be the same as the winning Prize Symbol(s).
- J. KEY NUMBER MATCH: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 50 and \$50).
- K. BONUS: Matching Prize Symbols will only appear in a winning BONUS play area as dictated by the prize structure.
- L. BONUS: A Ticket will not have matching non-winning Prize Symbols across the two (2) BONUS play areas.
- M. BONUS: Non-winning Prize Symbols will not be the same as winning Prize Symbols across the two (2) BONUS play areas.
- 2.3 Procedure for Claiming Prizes.
- A. To claim a "YEAR OF THE DRAGON" Scratch Ticket Game prize of \$5.00, \$10.00, \$25.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$25.00, \$50.00, \$100 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.
- B. To claim a "YEAR OF THE DRAGON" Scratch Ticket Game prize of \$1,000 or \$100,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim

- is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.
- C. As an alternative method of claiming a "YEAR OF THE DRAGON" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.
- D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:
- 1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code \$403.055;
- 2. in default on a loan made under Chapter 52, Education Code;
- 3. in default on a loan guaranteed under Chapter 57, Education Code; or
- 4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.
- E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.
- 2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:
- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.
- 2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "YEAR OF THE DRAGON" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.
- 2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "YEAR OF THE DRAGON" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.
- 2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the

Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 7,200,000 Scratch Tickets in Scratch Ticket Game No. 2547. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2547 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$5.00	768,000	9.38
\$10.00	672,000	10.71
\$25.00	192,000	37.50
\$50.00	96,000	75.00
\$100	25,200	285.71
\$500	1,920	3,750.00
\$1,000	240	30,000.00
\$100,000	6	1,200,000.00

^{*}The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2547 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2547, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the

State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202304532

Bob Biard

General Counsel

Texas Lottery Commission

Filed: December 5, 2023

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Scratch Ticket Game Number 2548 "LUXE"

1.0 Name and Style of Scratch Ticket Game.

^{**}The overall odds of winning a prize are 1 in 4.10. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

- A. The name of Scratch Ticket Game No. 2548 is "LUXE". The play style is "key number match".
- 1.1 Price of Scratch Ticket Game.
- A. The price for Scratch Ticket Game No. 2548 shall be \$50.00 per Scratch Ticket.
- 1.2 Definitions in Scratch Ticket Game No. 2548.
- A. Display Printing That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.
- B. Latex Overprint The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.
- C. Play Symbol The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each
- Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 03, 04, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 2X SYMBOL, 5X SYMBOL, 10X SYMBOL, 20X SYMBOL, \$50.00, \$100, \$200, \$500, \$1,000, \$10,000 and \$5,000,000.
- D. Play Symbol Caption The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2548 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
03	THR
04	FOR
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
21	TWON
22	тwто
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR

35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
51	FFON
52	FFTO
53	FFTH
54	FFFR
55	FFFV
2X SYMBOL	DBL
5X SYMBOL	WINX5
10X SYMBOL	WINX10
20X SYMBOL	WINX20
\$50.00	FFTY\$
\$100	ONHN
\$200	TOHN
\$500	FVHN
\$1,000	ONTH
\$10,000	10TH
\$5,000,000	TPPZ

- E. Serial Number A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.
- F. Bar Code A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.
- G. Game-Pack-Ticket Number A fourteen (14) digit number consisting of the four (4) digit game number (2548), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 020 within each Pack. The format will be: 2548-000001-001.
- H. Pack A Pack of the "LUXE" Scratch Ticket Game contains 020 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 020 will both be exposed.
- I. Non-Winning Scratch Ticket A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.
- J. Scratch Ticket Game, Scratch Ticket or Ticket Texas Lottery "LUXE" Scratch Ticket Game No. 2548.
- 2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "LUXE" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose eighty-three (83) Play Symbols. BONUS PLAY IN-STRUCTIONS: If a player reveals 2 matching prize amounts in the same BONUS, the player wins that amount. LUXE PLAY INSTRUC-TIONS: If the player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "2X" Play Symbol, the player wins DOUBLE the prize for that symbol. If the player reveals a "5X" Play Symbol, the player wins 5 TIMES the prize for that symbol. If the player reveals a "10X" Play Symbol, the player wins 10 TIMES the prize for that symbol. If the player reveals a "20X" Play Symbol, the player wins 20 TIMES the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.
- 2.1 Scratch Ticket Validation Requirements.
- A. To be a valid Scratch Ticket, all of the following requirements must be met:
- 1. Exactly eighty-three (83) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
- 2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
- 3. Each of the Play Symbols must be present in its entirety and be fully legible;
- 4. Each of the Play Symbols must be printed in black ink except for dual image games;
- 5. The Scratch Ticket shall be intact;

- 6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
- 7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
- 8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
- 9. The Scratch Ticket must not be counterfeit in whole or in part;
- 10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
- 11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
- 12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;
- 13. The Scratch Ticket must be complete and not miscut, and have exactly eighty-three (83) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;
- 14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;
- 15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
- 16. Each of the eighty-three (83) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
- 17. Each of the eighty-three (83) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
- 18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
- 19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.
- B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.
- C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.
- 2.2 Programmed Game Parameters.

- A. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.
- B. GENERAL: A Ticket can win as indicated by the prize structure.
- C. GENERAL: A Ticket can win up to thirty-eight (38) times.
- D. GENERAL: The "2X" (DBL), "5X" (WINX5), "10X" (WINX10) and "20X" (WINX20) Play Symbols will never appear in any of the three (3) BONUS play areas.
- E. BONUS: A Ticket can win up to one (1) time in each of the three (3) BONUS play areas.
- F. BONUS: A Ticket will not have matching, non-winning Prize Symbols across the three (3) BONUS play areas.
- G. BONUS: Non-winning Prize Symbols in a BONUS play area will not be the same as winning Prize Symbols from another BONUS play area
- H. BONUS: A non-winning BONUS play area will have two (2) different Prize Symbols.
- I. LUXE: A Ticket can win up to thirty (35) times in the main play area.
- J. LUXE: All non-winning YOUR NUMBERS Play Symbols will be different.
- K. LUXE: Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.
- L. LUXE: All WINNING NUMBERS Play Symbols will be different.
- M. LUXE: Tickets winning more than one (1) time will use as many WINNING NUMBERS Play Symbols as possible to create matches, unless restricted by other parameters, play action or prize structure.
- N. LUXE: On all Tickets, a Prize Symbol will not appear more than seven (7) times, except as required by the prize structure to create multiple wins.
- O. LUXE: On Non-Winning Tickets, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.
- P. LUXE: All YOUR NUMBERS Play Symbols will never equal the corresponding Prize Symbol (i.e., \$50 and 50).
- Q. LUXE: On winning and Non-Winning Tickets, the top cash prizes of \$1,000, \$10,000 and \$5,000,000 will each appear at least once, except on Tickets winning thirty-eight (38) times and with respect to other parameters, play action or prize structure.
- R. LUXE: The "2X" (DBL) Play Symbol will never appear as a WIN-NING NUMBERS Play Symbol.
- S. LUXE: The "2X" (DBL) Play Symbol will never appear on a Non-Winning Ticket.
- T. LUXE: The "2X" (DBL) Play Symbol will win DOUBLE the prize for that Play Symbol and will win as per the prize structure.
- U. LUXE: The "2X" (DBL) Play Symbol will never appear more than two (2) times on a Ticket.
- V. LUXE: The "5X" (WINX5) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.
- W. LUXE: The "5X" (WINX5) Play Symbol will never appear on a Non"Winning Ticket.
- X. LUXE: The "5X" (WINX5) Play Symbol will win 5 TIMES the prize for that Play Symbol and will win as per the prize structure.

- Y. LUXE: The "5X" (WINX5) Play Symbol will never appear more than one (1) time on a Ticket.
- Z. LUXE: The "10X" (WINX10) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.
- AA. LUXE: The "10X" (WINX10) Play Symbol will never appear on a Non-Winning Ticket.
- BB. LUXE: The "10X" (WINX10) Play Symbol will win 10 TIMES the prize for that Play Symbol and will win as per the prize structure.
- CC. LUXE: The "10X" (WINX10) Play Symbol will never appear more than one (1) time on a Ticket.
- DD. LUXE: The "20X" (WINX20) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.
- EE. LUXE: The "20X" (WINX20) Play Symbol will never appear on a Non"Winning Ticket.
- FF. LUXE: The "20X" (WINX20) Play Symbol will win 20 TIMES the prize for that Play Symbol and will win as per the prize structure.
- GG. LUXE: The "20X" (WINX20) Play Symbol will never appear more than one (1) time on a Ticket.
- HH. LUXE: The "2X" (DBL), "5X" (WINX5), "10X" (WINX10) and "20X" (WINX20) will never appear on the same Ticket, with the exception of the "5X" (WINX5) and "10X" (WINX10) which may appear on the same Ticket with each other as indicated by the prize structure.
- 2.3 Procedure for Claiming Prizes.
- A. To claim a "LUXE" Scratch Ticket Game prize of \$50.00, \$100, \$200 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$100, \$200 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.
- B. To claim a "LUXE" Scratch Ticket Game prize of \$1,000 or \$10,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.
- C. To claim a "LUXE" Scratch Ticket Game top level prize of \$5,000,000, the claimant must sign the winning Scratch Ticket and present it at Texas Lottery Commission headquarters in Austin, Texas. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification and proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident

- Aliens). The Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.
- D. As an alternative method of claiming a "LUXE" Scratch Ticket Game prize, with the exception of the top level prize of \$5,000,000, the claimant may submit the signed winning Scratch Ticket and a thoroughly completed a claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.
- E. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:
- 1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
- 2. in default on a loan made under Chapter 52, Education Code;
- 3. in default on a loan guaranteed under Chapter 57, Education Code; or
- 4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.
- F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.
- 2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:
- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

- 2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "LUXE" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.
- 2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "LUXE" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.
- 2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.
- 2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.
- 3.0 Scratch Ticket Ownership.
- A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.
- B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.
- 4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 6,000,000 Scratch Tickets in Scratch Ticket Game No. 2548. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2548 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in
\$50.00	750,000	8.00
\$100	600,000	10.00
\$200	250,000	24.00
\$500	115,000	52.17
\$1,000	7,500	800.00
\$10,000	150	40,000.00
\$5,000,000	4	1,500,000.00

^{*}The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2548 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2548, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202304534
Bob Biard
General Counsel
Texas Lottery Commission
Filed: December 5, 2023

North Central Texas Council of Governments

Notice of Contract Award To Perform the North Oak Cliff Conceptual Engineering Study and Support the Upper Trinity River Transportation and Stormwater Infrastructure (TSI) Project Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of contract award. The request appeared in the February 3, 2023, issue of the *Texas Register* (48 TexReg 551). The selected entity will perform technical and professional work To Perform the North Oak Cliff Conceptual Engineering Study and Support the Upper Trinity River Transportation and Stormwater Infrastructure (TSI) Project.

The entity selected for this project is Halff Associates, Inc. 1201 N Bowser Road, Richardson, Texas 75081. The amount of the contract is not to exceed \$1,555,000.

Issued in Arlington, Texas on December 5, 2023.

TRD-202304575
R. Michael Eastland
Executive Director

North Central Texas Council of Governments

Filed: December 6, 2023

Request for Proposals for Engineering Services to support the Transportation and Stormwater Infrastructure (TSI) Hydrologic & Hydraulic Assessment

The North Central Texas Council of Governments (NCTCOG) is requesting written proposals from qualified firms to conduct hydrologic and hydraulic analysis to support flood risk reduction and environmental planning activities.

Proposals must be received no later than 5:00 p.m., Central Time, on Friday, January 26, 2024, to Kate Zielke, Environment & Development Program Supervisor, North Central Texas Council of Govern-

^{**}The overall odds of winning a prize are 1 in 3.48. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

ments, 616 Six Flags Drive, Arlington, Texas 76011 and electronic submissions to TransRFPs@nctcog.org. The Request for Proposals will be available at www.nctcog.org/rfp by the close of business on Friday, December 15, 2023.

NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability. TRD-202304572
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: December 6, 2023

How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 48 (2023) is cited as follows: 48 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 "48 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 48 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: http://www.sos.state.tx.us. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The Titles of the TAC, and their respective Title numbers are:

- 1. Administration
- 4. Agriculture
- 7. Banking and Securities
- 10. Community Development
- 13. Cultural Resources
- 16. Economic Regulation
- 19. Education
- 22. Examining Boards
- 25. Health Services
- 26. Health and Human Services
- 28. Insurance
- 30. Environmental Quality
- 31. Natural Resources and Conservation
- 34. Public Finance
- 37. Public Safety and Corrections
- 40. Social Services and Assistance
- 43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATIO	ON
Part 4. Office of the Secretary	of State
Chapter 91. Texas Register	
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