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

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

TITLE 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:

(1) - (6) (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-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 years 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 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 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)(c)~~], 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's agent 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.

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

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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.

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

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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.

§113.1. 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.

(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 provided [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, §35.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) former §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 Registration Sections [~~Texas Securities Act, §7,~~] 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)(c)~~], 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 Registration [~~registration~~] by Coordination [~~coordination~~] in Texas of securities registered with the SEC [~~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 Registration [~~registration~~] by Coordination [~~coordination~~] in Texas of securities registered with the SEC [~~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 [~~, 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 copies~~] 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.

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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 [(Act)], §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 case 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, §4005.019(b)(9)(B) [§5.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, §4006.051 [§35.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, §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)].

(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 persons in this state, as provided in the Texas Securities Act, §4006.055 [§§35.B(2)] and §4006.151 [35-1.A]; and

(ii) pay the amendment fee provided for in the Texas Securities Act, §4006.001(1) [§35.A(1)].

(B) If the authorization is no longer in effect an offeror may:

(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% a year 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, §4006.001(1) [§35.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.

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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 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 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 an individual 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 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:

(I) 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 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) - (II) (No change.)

(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.

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CHAPTER 116. INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

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 an individual 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 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 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 [~~in Texas~~], or a notice filing pursuant to §116.1(b)(2) of this chapter, [~~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:

(I) 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 §116.1(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, §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) - (II) (No change.)

(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.

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Travis J. Iles
Securities Commissioner
State Securities Board
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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 (g).

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 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 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) [~~, 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, §4006.151 [§35-1]. All fees paid for authorization of federal covered securities of money market funds pursuant to §4006.151 [§35-1] shall be computed as set forth in the Act, §§4006.001(1) [§§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.

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Travis J. Iles
Securities Commissioner
State Securities Board
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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 Commissioner [~~commissioner~~], 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;

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

(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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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.

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

Mr. Edgar, 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.

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Travis J. Iles
Securities Commissioner
State Securities Board
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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 DEVELOPMENT 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.

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

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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 Regulations. 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 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. 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, Chapter 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 Texas Securities 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 Commissioner [commissioner] pursuant to the Securities Act, §4003.203(1) [§22.A(1)], must be received by the Commissioner [commissioner] 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 [commissioner].

(b) Draft copies of material, galley proofs, and scripts of film or slide presentations may be submitted to the Commissioner [commissioner] 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 Commissioner [commissioner], 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 §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 SEC [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 [commissioner].

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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State Securities Board
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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 rulemaking 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 (ERCOT) 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) [~~(c)~~] 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 customer 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.

(f) Cost responsibilities to interconnect generation resources 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.

(II) The current owner of an interconnected generation 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 cause, 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.

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Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936-7322

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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 rulemaking 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 autho-

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.

(2) The following activities are 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;

(B) be designed to participate in the ERCOT wholesale 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

(J) The basis for the total projected construction costs, including project contingencies.

(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 due;

(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.

(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:

(A) The event that entitles the borrower to withdraw the deposit;

(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

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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 . . .";

(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 rulemaking 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:

(1) Have a capacity of at least 100 megawatts (MW) attributable to:

(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 open-enrollment 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 REQUIREMENTS: 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:

(1) 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, §3106.003; 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, middle, 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 class 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 [~~of~~] teaching in a nationally accredited child care program or a Texas Rising Star Program;

(4) an associate or baccalaureate [~~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) a teacher [~~teachers~~] who has [~~have~~] not completed training required in subparagraph (A) of this paragraph prior to assignment in a prekindergarten class completes [~~shall complete~~]:

(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;

(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 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 [,] 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.

(i) [~~(f)~~] In a format prescribed by TEA [~~the Texas Education Agency (TEA)~~], a school district or an open-enrollment charter school shall:

(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.

(j) [~~(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.

(l) [~~(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

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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 IMPACT 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 create a new regulation; (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: 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;

(B) the likely impact of compliance on profitability or viability; and

(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

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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 IMPACT 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.

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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

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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 IMPACT 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

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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 IMPACT 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 Texas-licensed 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

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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 member's or spouse's military identification card;

(C) notifies the Board of the member's or [~~military~~] 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.

TRD-202304479
James W. Johnston
General Counsel
Texas Board of Nursing
Earliest possible date of adoption: January 14, 2024
For further information, please call: (512) 305-6879

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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 initial [~~pharmacist~~] license fee are not received by the board within 30 days from the initial license was issued [~~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 initial license [~~notice letter~~] has been expired for 90 days or less, the person may become licensed by making application and paying to the board one initial license fee and a fee that is one-half of a renewal fee [~~the examination fee for the license~~].

(B) If the initial license [~~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 one initial license fee [~~all unpaid renewal fees~~] and a fee that is equal to a renewal fee [~~the examination fee for the license~~].

(C) If the initial license [~~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

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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.
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Texas State Board of Pharmacy
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For further information, please call: (512) 305-8033

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 115. CONTROL OF AIR POLLUTION FROM VOLATILE ORGANIC COMPOUNDS

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(l)

Under FCAA, §110(l), 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(l) 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. These formatting 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 §115.112(e)(4)(B)(ii) and §115.112(e)(4)(C)(i). The provision in §115.112(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 §115.112(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 November 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 attainment 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. Existing §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 subject. 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 exemptions 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 required 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 rulemaking 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 §115.173(3)(A) are proposed as new §115.173(c). The provisions from current §115.173(3)(A)(i) are proposed as new §115.173(c)(1). The provisions from current §115.173(3)(A)(ii) are proposed as new §115.173(c)(2). The provisions from current §115.173(3)(B) are proposed as new §115.173(c)(3). The provisions from current §115.173(3)(C) are proposed as new §115.173(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 PETROLEUM REFINING, NATURAL GAS/GASOLINE PROCESSING, AND PETROCHEMICAL PROCESSES ON OZONE NONATTAINMENT 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, open-top 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 recordkeeping 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 requirements 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(l) 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 eight-hour 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 proposed §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, §110l. 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, 4 89 (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(l)). The CMP policy applicable to the proposed rulemaking is the policy that commission rules comply with federal regulations in 40 CFR, to protect and enhance air quality in the coastal areas (31 TAC §501.32). The proposed rulemaking would not increase emissions of air pollutants and is therefore consistent with the CMP goal in 31 TAC §501.12(1) and the CMP policy in 31 TAC §501.32. Promulgation and enforcement of these rules 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-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 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 [~~In 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) [~~(51)~~] Waxy, high pour point crude oil--A crude oil with a pour point of 50 degrees Fahrenheit (10 degrees Celsius) or higher as determined by the American Society for Testing and Materials Standard D97-66, "Test for Pour Point of Petroleum Oils."

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

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

TRD-202304486
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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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, Bexar County, 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, Bexar County, 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 gallons) 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. The exemptions in this subsection no longer apply in Bexar County beginning January 1, 2025.

(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.

(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;

(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;

[~~*(i)* 3,000 barrels (126,000 gallons) per year on a rolling 12-month basis; or~~]

[~~*(ii)* 15 months after the date the commission publishes notice in the *Texas Register* as specified in §115.119(b)(1)(C) of this title that the Dallas-Fort Worth area has been reclassified as a severe nonattainment area for the 1997 Eight-Hour Ozone National 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 clause (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;

[~~*(i)* 50 tons per year on a rolling 12-month basis; or~~]

[~~*(ii)* 15 months after the date the commission publishes notice in the *Texas Register* as specified in §115.119(b)(1)(C) of~~

this title that the Dallas-Fort Worth area has been reclassified as a severe nonattainment area for the 1997 Eight-Hour Ozone National Ambient Air Quality Standard, 25 tons per year on a rolling 12-month basis; and]

(C) in Wise County:

(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 Bexar County area, 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.

(B) Each closure device must be properly sealed to minimize vapor loss when closed.

(C) Each closure device must either be latched closed or, if designed to relieve pressure, set to automatically open at a pressure that will ensure all vapors are routed to the vapor recovery unit or other vapor control device under normal operating conditions other than gauging the tank or taking a sample through an open thief hatch.

(D) No closure device may be allowed to have a VOC leak for more than 15 calendar days after the leak is found unless delay of repair is allowed. For the purposes of this subparagraph, a leak is the exuding of process gasses from a closed device based on sight, smell, or sound. If parts are unavailable, repair may be delayed. Parts must be ordered promptly and the repair must be completed within five days of receipt of required parts. Repair may be delayed until the next shutdown if the repair of the component would require a shutdown that would create more emissions than the repair would eliminate. Repair must be completed by the end of the next shutdown.

§115.114. Inspection and Repair Requirements.

(a) The following inspection requirements apply in the Beaumont-Port Arthur, Bexar County, 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 Bexar County, 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 §115.112(b)(2)(F) of this title, within 60 days of the inspection the owner or operator shall repair the items or shall empty and degas the storage tank.

(B) If a failure cannot be repaired within 60 days and if the storage tank cannot be emptied within 60 days, the owner or operator may submit written requests for up to two extensions of up to 30 additional days each to the appropriate regional office. The owner or operator shall submit a copy to any local air pollution control program with jurisdiction. Each request for an extension must include a statement that alternate storage capacity is unavailable and a schedule that will assure that the repairs will be completed as soon as possible.

(3) If the storage tank is equipped with a mechanical shoe or liquid-mounted primary seal, compliance with §115.112(b)(2)(F) of this title can be determined by visual inspection.

(4) For an external floating roof storage tank, the secondary seal must be visually inspected at least once every 12 months to insure compliance with §115.112(b)(2)(E) - (F) of this title.

(A) If the external floating roof is not resting on the surface of the VOC inside the storage tank and is not resting on the leg supports; or liquid has accumulated on the external floating roof; or the seal is detached; or there are holes or tears in the seal fabric; or there are visible gaps between the seal and the wall of the storage tank, within 60 days of the inspection the owner or operator shall repair the items or shall empty and degas the storage tank.

(B) If a failure cannot be repaired within 60 days and if the storage tank cannot be emptied within 60 days, the owner or operator may submit written requests for up to two extensions of up to 30 additional days each to the appropriate regional office. The owner or operator shall submit a copy to any local air pollution control program with jurisdiction. Each request for an extension must include a statement that alternate storage capacity is unavailable and a schedule that will assure that the repairs will be completed as soon as possible.

(c) The following inspection requirements apply in Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties. The inspection and repair requirements of this subsection no longer apply for sources located in Bexar County beginning January 1, 2025.

(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, Bexar County, 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, Nueces, 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, Bexar County, 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, Bexar County, 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 §115.115(a)(3)(A) of this title; or

(ii) record the date and time of each switch between carbon containers and the method of determining the carbon replacement interval if the carbon adsorption system or carbon adsorber is switched according to §115.115(a)(3)(B) of this title.

(D) For a catalytic incinerator, the owner or operator shall continuously record the inlet and outlet gas temperature.

(E) For a vapor recovery unit, the owner or operator shall maintain records of the continuous operational parameter monitoring required in §115.115(a)(5) of this title.

(F) For any other control device not listed in this paragraph, the owner or operator shall maintain records of the continuous operational parameter monitoring required in §115.115(a)(6) of this title sufficient to demonstrate proper functioning of the control device to design specifications.

(5) The owner or operator shall maintain the results of any testing conducted in accordance with §115.116 of this title (relating to Testing Requirements) or §115.117 of this title (relating to Approved Test Methods) at an affected site. Results may be maintained at an off-site location if made available for review within 24 hours.

(6) In the Houston-Galveston-Brazoria and Dallas-Fort Worth areas, 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;

(ii) the status of the device during inspection;

(iii) the amount of time a closure device was open since the last inspection for reasons not allowed in §115.112(e)(7)(A) of this title;

(iv) the date repair was attempted and completed; and

(v) the list of closure devices awaiting delayed repair as allowed by §115.112(e)(7)(D) of this title.

(7) All records must be maintained for two years and be made available for review upon request by authorized representatives of the executive director, the United States Environmental Protection Agency, or any local air pollution control agency with jurisdiction. In the Dallas-Fort Worth area, any records created on or after March 1, 2011, must be maintained for at least five years. 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, Nueces, and Victoria Counties.

(1) The owner or operator of an external floating roof storage tank that is exempt from the requirement for a secondary seal in accordance with §115.111(b)(1), (6), and (7) of this title and used to store VOC with a true vapor pressure greater than 1.0 psia shall maintain records of the type of VOC stored and the average monthly true vapor pressure of the stored liquid.

(2) The owner or operator shall record the results of inspections required by §115.114(b) of this title.

(3) In Victoria County, the owner or operator shall continuously record operational parameters of any of the following emission control devices installed to meet applicable control requirements in §115.112 of this title. Such records must be sufficient to demonstrate proper functioning of those devices to design specifications, including:

(A) the exhaust gas temperature immediately downstream of a direct-flame incinerator;

(B) the inlet and outlet gas temperature of a condensation system or catalytic incinerator; and

(C) the exhaust gas VOC concentration of any carbon adsorption system or carbon adsorber, to determine if breakthrough has occurred.

(4) The owner or operator shall maintain records of the results of any testing conducted in accordance with §115.117 of this title at an affected site.

(5) All records must be maintained for two years and be made available for review upon request by authorized representatives of the executive director, the United States Environmental Protection Agency, or any local air pollution control agency with jurisdiction.

§115.119. Compliance Schedules.

(a) In Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties, the compliance date has 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 §§115.112(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, 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 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 Bexar County, 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_8 and above).

(2) No person may allow a vent gas stream to be emitted from any catalyst regeneration of a petroleum or chemical process system, basic oxygen furnace, or fluid coking unit into the atmosphere, unless the vent gas stream is properly controlled in accordance with §115.122(c)(2) of this title.

(3) No person may allow a vent gas stream to be emitted from any iron cupola into the atmosphere, unless the vent gas stream is properly controlled in accordance with §115.122(c)(3) of this title.

(4) Vent gas streams from blast furnaces shall be controlled properly in accordance with §115.122(c)(4) of this title.

§115.122. Control Requirements.

(a) For all persons in the Beaumont-Port Arthur, Bexar County, 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 Bexar County, 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 uncontrolled, equal to or greater than 25 tons per calendar year shall reduce total VOC emissions by at least 30% from the bakery's 1990 emissions inventory in accordance with the schedule specified in §115.129(e) of this title.

(E) 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 §115.121(c)(1) of this title must be controlled properly:

(A) in a direct-flame incinerator at a temperature equal to or greater than 1,300 degrees Fahrenheit;

(B) in a smokeless flare that is lit at all times when VOC vapors are routed to the flare; or

(C) by any other vapor control system, as defined in §115.10 of this title, with a control efficiency of at least 90% or to a VOC concentration of no more than 20 ppmv (on a dry basis corrected to 3.0% oxygen for combustion devices).

(2) Any vent gas streams affected by §115.121(c)(2) of this title must be controlled properly:

(A) in a direct-flame incinerator or boiler at a temperature equal to or greater than 1,300 degrees Fahrenheit; 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 §115.121(c)(4) of this title must be controlled properly:

(A) in a smokeless flare that is lit at all times when VOC vapors are routed to the flare or in a combustion device used in a heating process associated with the operation of a blast furnace; or

(B) by any other vapor control system, as defined in §115.10 of this title, with a control efficiency of at least 90% or to a VOC concentration of no more than 20 ppmv (on a dry basis corrected to 3.0% oxygen for combustion devices).

§115.123. 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.

(3) Performance requirements for flares and vapor combustors.

(A) For flares, Test Method 22 (40 CFR Part 60, Appendix A) is used for visual determination of fugitive emissions from material sources and smoke emissions.

(B) For flares, additional test method requirements are described in 40 CFR §60.18(f), unless the United States Environmental Protection Agency (EPA) or the executive director has granted a waiver from such testing requirements.

(C) Flares in the Beaumont-Port Arthur, Bexar County, 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, Bexar County, 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 §60.18(b) will be considered to demonstrate compliance with the emission specifications and control efficiency requirements of §115.121 and §115.122 of this title.

(4) Minor modifications. Minor modifications to these test methods may be used, if approved by the executive director.

(5) Alternate test methods. Test methods other than those specified in paragraphs (1) - (3) of this section may be used if validated by 40 CFR 63, Appendix A, Test Method 301. 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, Bexar County, 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 downstream 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, Bexar County, 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 §115.127(a)(4)(C) of this title; and

(E) the total design capacity of process units exempt under §115.127(a)(4)(B) of this title.

(4) Alternative records for exempted vents. As an alternative to the requirements of paragraph (3)(B) and (C) of this section, records for each vent exempted from control requirements in accordance with §115.127 of this title and having a VOC emission rate or

concentration less than the applicable exemption limits at maximum actual operating conditions shall be sufficient to demonstrate continuous compliance with the applicable exemption limit. These records shall include complete information from either test results or appropriate calculations which clearly documents that the emission characteristics at maximum actual operating conditions are less than the applicable exemption limit. This documentation shall include the operating parameter levels that occurred during any testing, and the maximum levels feasible (either VOC concentration or mass emission rate) for the process.

(5) Bakeries. For bakeries subject to §115.122(a)(3)(A) - (B) of this title (relating to Control Requirements), the following additional requirements apply.

(A) The owner or operator of each bakery in the Houston-Galveston-Brazoria 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, Bexar County, 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 §115.121(a)(2) or (3) of this title; and

(D) a vent gas stream which qualifies for exemption under paragraphs (3), (4)(B), (4)(C), (4)(D), (4)(E), or (5) of this subsection.

(3) The following vent gas streams are exempt from the requirements of §115.121(a)(2)(B) - (E) of this title:

(A) a vent gas stream having a combined weight of VOC equal to or less than 100 pounds in any continuous 24-hour period;

(B) a vent gas stream from any air oxidation synthetic organic chemical manufacturing process with a concentration of VOC less than 612 ppmv; and

(C) a vent gas stream from any liquid phase polypropylene manufacturing process, any liquid phase slurry high-density polyethylene manufacturing process, and any continuous polystyrene manufacturing process with a concentration of VOC less than 408 ppmv.

(4) For synthetic organic chemical manufacturing industry (SOCMI) reactor processes and distillation operations, the following exemptions apply.

(A) Any reactor process or distillation operation that is designed and operated in a batch mode is exempt from the requirements of §115.121(a)(2)(A) of this title. For the purposes of this subparagraph, batch mode means any noncontinuous reactor process or distillation operation which is not characterized by steady-state conditions, and in which the addition of reactants does not occur simultaneously with the removal of products.

(B) Any reactor process or distillation operation operating in a process unit with a total design capacity of less than 1,100 tons per year, for all chemicals produced within that unit, is exempt from the requirements of §115.121(a)(2)(A) of this title.

(C) Any reactor process or distillation operation vent gas stream with a flow rate less than 0.388 standard cubic feet 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 §115.121(c)(1) of this title:

(A) a vent gas stream from a low-density polyethylene plant provided that no more than 1.1 pounds of ethylene per 1,000 pounds 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 §115.121(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 §115.121(c)(2) of this title.

(3) A vent gas stream is exempt from this division if all of the VOCs in the vent gas stream originate from a source(s) for which another division within Chapter 115 (for example, Storage of Volatile Organic Compounds) has established a control requirement(s), emission specification(s), or exemption(s) which applies to that VOC source category in that county.

(4) A combustion unit exhaust stream is exempt from this division provided that the unit is not being used as a control device for any vent gas stream which is subject to this division and which originates from a non-combustion source.

§115.129. Counties and Compliance Schedules.

(a) Except as specified in subsection (g) of this section, in [~~In~~] 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 Recordkeeping Requirements) as soon as practicable, but no later than one year, after the commission publishes notification in the *Texas Register* of its determination that this contingency rule is necessary as a result of failure to attain the national ambient air quality standard (NAAQS) for ozone by the attainment deadline or failure to demonstrate reasonable further progress as set forth in Federal Clean Air Act (FCAA), §172(c)(9).

(c) The owner or operator of each bakery in El Paso County subject to §115.122(a)(3)(D) of this title shall comply with §§115.121(a)(3), 115.122(a)(3)(D), and 115.126(6) of this title as soon as practicable, but no later than one year, after the commission publishes notification in the *Texas Register* of its determination that this contingency rule is necessary as a result of failure to attain the NAAQS for ozone by the attainment deadline or failure to demonstrate reasonable further progress as set forth in FCAA, §172(c)(9).

(d) The owner or operator of each vent gas stream in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties shall comply with this division as soon as practicable, but no later than March 1, 2009.

(e) The owner or operator of each vent gas stream in Wise County shall comply with this division as soon as practicable, but no later than January 1, 2017.

(f) The owner or operator of a vent gas stream in 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
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For further information, please call: (512) 239-2678

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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 downstream 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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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.

(1) The wastewater component shall meet the following requirements.

(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 Dallas-Fort Worth [~~Dallas/Fort Worth~~] and El Paso areas, and until December 31, 2002 in the Houston-Galveston-Brazoria [~~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 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 vapor-tight 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 cm^2/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/m^3), 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 §115.142(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 Beaumont-Port Arthur [~~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-Brazoria [~~Beaumont/Port Arthur and Houston/Galveston~~] areas, as defined in §115.10 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 Houston-Galveston-Brazoria [~~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, ±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, ±1.0%;

(iii) for an absorber, either:

(I) the scrubbing liquid temperature. The temperature monitoring device shall have an accuracy of ±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 ±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 ±10%. The temperature monitor shall have an accuracy of ±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 ±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, ±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 ±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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For further information, please call: (512) 239-2678

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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.

(17) Wellhead--the piping, casing, tubing and connected 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 §60.482-2a(c)(2) and §60.482-7a(e).

(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 §60.482-2a(c)(2) and §60.482-7a(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 unsafe-to-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 semi-annually.

(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-to-monitor 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.

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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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, as defined in §115.10 of this title (relating to Definitions), 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 Houston-Galveston-Brazoria [~~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 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) 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 §115.10 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) §115.214(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

(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) §115.212(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 require a unit shutdown, the repair may be delayed until the next scheduled shutdown.

(3) Marine terminals. For marine terminals in the Houston-Galveston-Brazoria [~~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 Houston-Galveston-Brazoria [~~Houston/Galveston~~] 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) the chemical name and amount of VOC cargo loaded; and

(iii) the conditions of the tanks prior to being loaded (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) §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) §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) §115.212(a)(2) of this title;

(B) §115.214(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 Houston-Galveston-Brazoria [~~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 §115.214(a)(3)(B)(i) and (C) and §115.216(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

§§115.212(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 §§115.212(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) §115.214(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) §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) §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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Charmaine Backens
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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, Bexar County, 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) 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. [;]

(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, Bexar County, 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. [;]

(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, Bexar County, 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, Bexar County, 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, Bexar County, 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) §115.226(2)(B) of this title (relating to Recordkeeping 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 [~~,~~] 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) §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.

(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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Texas Commission on Environmental Quality
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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 leak-tight 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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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 Houston-Galveston-Brazoria [~~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;

(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(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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Texas Commission on Environmental Quality
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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, Bexar County, 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-tert-butyl 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-inspect 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;

(ii) color coding;

(iii) a written or electronic database;

(iv) designation of process unit boundaries;

(v) 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:

(i) the components screened according to Method 21;

(ii) the concentration measured according to Method 21;

(iii) the date and time of the Method 21 screening; and

(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.

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.

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

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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(f) 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 §115.412(a)(1)(E) [~~§115.412(1)(E)~~] of this title:

(A) a cold solvent cleaning system for which the true vapor pressure of the solvent is less than or equal to 0.6 psia (4.1 kPa) as measured at 100 degrees Fahrenheit (38 degrees Celsius), provided that the solvent is not heated above 120 degrees Fahrenheit (49 degrees Celsius); and

(B) remote reservoir cold solvent cleaners.

(3) Any conveyorized degreaser with less than 20 square feet (ft^2) (2 square meters (m^2)) of air/vapor interface is exempt from the requirement of §115.412(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 (in^2) (100 square centimeters (cm^2)) 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 (in^2) (100 (cm^2)) 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 ft^2 ($1m^2$), 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 m^2) 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; 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 m^3 /min per m^2) 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/m^2) 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:

(i) exhaust ventilation for systems other than those which vent to a major control device shall not exceed 65 cfm/ft^2 (20 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, Nueces, 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, 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 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, 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 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 Bexar, 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

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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, Bexar County, 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, Bexar County, 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, Bexar County, 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, Bexar County, 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 Bexar County, Dallas-Fort Worth, [~~area, except in Wise County, and in the~~] El Paso, and Houston-Galveston-Brazoria areas.

(10) Miscellaneous metal parts and products coating. The requirements in this division apply in the Beaumont-Port Arthur and El Paso areas and in Gregg, Nueces, and Victoria Counties. In the Dallas-Fort Worth [~~area, except in Wise County,~~] and [~~the~~] Houston-Galveston-Brazoria 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, Bexar County, 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-Galveston-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 I etchant and Type II chemical milling maskants are used with a Type II etchant. This definition does not include bonding maskants, critical use and line sealer maskants, and seal coat maskants. Additionally, maskants that must be used with a combination of Type I or II etchants and any of the above types of maskants (i.e., bonding, critical use and line sealer, and seal coat) are not included. Maskants that are defined as specialty coatings are not included under this definition.

(O) Cleaning operation--Spray-gun, hand-wipe, and flush cleaning operations.

(P) Cleaning solvent--A liquid material used for hand-wipe, spray gun, or flush cleaning. This definition does not include solutions that contain no VOC.

(Q) Clear coating--A transparent coating usually applied over a colored opaque coating, metallic substrate, or placard to give improved gloss and protection to the color coat.

(R) Closed-cycle depainting system--A dust free, automated process that removes permanent coating in small sections at a time, and maintains a continuous vacuum around the area(s) being depainted to capture emissions.

(S) Coating operation--Using a spray booth, tank, or other enclosure or any area (such as a hangar) for applying a single type of coating (e.g., primer); using the same spray booth for applying another type of coating (e.g., topcoat) constitutes a separate coating operation for which compliance determinations are performed separately.

(T) Coating unit--A series of one or more coating applicators and any associated drying area and/or oven wherein a coating is applied, dried, and/or cured. A coating unit ends at the point where the coating is dried or cured, or prior to any subsequent application of a different coating.

(U) Commercial exterior aerodynamic structure primer--A primer used on aerodynamic components and structures that protrude from the fuselage, such as wings and attached components, control surfaces, horizontal stabilizers, vertical fins, wing-to-body fairings, antennae, and landing gear and doors, for the purpose of extended corrosion protection and enhanced adhesion.

(V) Commercial interior adhesive--Materials used in the bonding of passenger cabin interior components. These components must meet the Federal Aviation Administration (FAA) fireworthiness requirements.

(W) Compatible substrate primer--Either compatible epoxy primer or adhesive primer. Compatible epoxy primer is primer that is compatible with the filled elastomeric coating and is epoxy based. The compatible substrate primer is an epoxy-polyamide primer used to promote adhesion of elastomeric coatings such as impact-resistant coatings. Adhesive primer is a coating that:

(i) inhibits corrosion and serves as a primer applied to bare metal surfaces or prior to adhesive application; or

(ii) is applied to surfaces that can be expected to contain fuel. Fuel tank coatings are excluded from this category.

(X) Confined space--A space that:

(i) is large enough and so configured that a person can bodily enter and perform assigned work;

(ii) has limited or restricted means for entry or exit (for example, fuel tanks, fuel vessels, and other spaces that have limited means of entry); and

(iii) is not suitable for continuous occupancy.

(Y) Corrosion prevention compound--A coating system or compound that provides corrosion protection by displacing water and penetrating mating surfaces, forming a protective barrier between the metal surface and moisture. Coatings containing oils or waxes are excluded from this category.

(Z) Critical use and line sealer maskant--A temporary coating, not covered under other maskant categories, used to protect

selected areas of aerospace parts from strong acid or alkaline solutions such as those used in anodizing, plating, chemical milling and processing of magnesium, titanium, or high-strength steel, high-precision aluminum chemical milling of deep cuts, and aluminum chemical milling of complex shapes. Materials used for repairs or to bridge gaps left by scribing operations (i.e., line sealer) are also included in this category.

(AA) Cryogenic flexible primer--A primer designed to provide corrosion resistance, flexibility, and adhesion of subsequent coating systems when exposed to loads up to and surpassing the yield point of the substrate at cryogenic temperatures (-275 degrees Fahrenheit and below).

(BB) Cryoprotective coating--A coating that insulates cryogenic or subcooled surfaces to limit propellant boil-off, maintain structural integrity of metallic structures during ascent or re-entry, and prevent ice formation.

(CC) Cyanoacrylate adhesive--A fast-setting, single component adhesive that cures at room temperature. Also known as "super glue."

(DD) Dry lubricative material--A coating consisting of lauric acid, cetyl alcohol, waxes, or other noncross linked or resin-bound materials that act as a dry lubricant.

(EE) Electric or radiation-effect coating--A coating or coating system engineered to interact, through absorption or reflection, with specific regions of the electromagnetic energy spectrum, such as the ultraviolet, visible, infrared, or microwave regions. Uses include, but are not limited to, lightning strike protection, electromagnetic pulse (EMP) protection, and radar avoidance. Coatings that have been designated as "classified" by the Department of Defense are excluded.

(FF) Electrostatic discharge and electromagnetic interference coating--A coating applied to space vehicles, missiles, aircraft radomes, and helicopter blades to disperse static energy or reduce electromagnetic interference.

(GG) Elevated-temperature Skydrol-resistant commercial primer--A primer applied primarily to commercial aircraft (or commercial aircraft adapted for military use) that must withstand immersion in phosphate-ester hydraulic fluid (Skydrol 500b or equivalent) at the elevated temperature of 150 degrees Fahrenheit for 1,000 hours.

(HH) Epoxy polyamide topcoat--A coating used where harder films are required or in some areas where engraving is accomplished in camouflage colors.

(II) Fire-resistant (interior) coating--For civilian aircraft, fire-resistant interior coatings are used on passenger cabin interior parts that are subject to the FAA fireworthiness requirements. For military aircraft, fire-resistant interior coatings are used on parts that are subject to the flammability requirements of MIL-STD-1630A and MIL-A-87721. For space applications, these coatings are used on parts that are subject to the flammability requirements of SE-R-0006 and SSP 30233.

(JJ) Flexible primer--A primer that meets flexibility requirements such as those needed for adhesive bond primed fastener heads or on surfaces expected to contain fuel. The flexible coating is required because it provides a compatible, flexible substrate over bonded sheet rubber and rubber-type coatings as well as a flexible bridge between the fasteners, skin, and skin-to-skin joints on outer aircraft skins. This flexible bridge allows more topcoat flexibility around fasteners and decreases the chance of the topcoat cracking around the fasteners. The result is better corrosion resistance.

(KK) Flight test coating--A coating applied to aircraft other than missiles or single-use aircraft prior to flight testing to protect the aircraft from corrosion and to provide required marking during flight test evaluation.

(LL) Flush cleaning--Removal of contaminants such as dirt, grease, oil, and coatings from an aerospace vehicle or component or coating equipment by passing solvent over, into, or through the item being cleaned. The solvent may simply be poured into the item being cleaned and then drained, or assisted by air or hydraulic pressure, or by pumping. Hand-wipe cleaning operations where wiping, scrubbing, mopping, or other hand action are used are not included.

(MM) Fuel tank adhesive--An adhesive used to bond components exposed to fuel and must be compatible with fuel tank coatings.

(NN) Fuel tank coating--A coating applied to fuel tank components for the purpose of corrosion and/or bacterial growth inhibition and to assure sealant adhesion in extreme environmental conditions.

(OO) Grams of VOC per liter of coating (less water and less exempt solvent)--The weight of VOC per combined volume of total volatiles and coating solids, less water and exempt compounds. Can be calculated by the following equation:
Figure: 30 TAC §115.420(c)(1)(OO) (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 Definitions), including, but not limited to, motorcycles, passenger cars, vans, light-duty trucks, medium-duty trucks, heavy-duty trucks, buses, and other vehicle body parts, bodies, and cabs by an operation other than the original manufacturer. The coating of non-road vehicles and non-road equipment, as these terms are defined in §114.3 and §114.6 of this title (relating to Low Emission Vehicle Fleet Definitions; and Low Emission Fuel Definitions), and trailers is not included.

(I) Wipe-down solutions--Any solution used for cleaning and surface preparation.

(14) Vinyl coating--The use of printing or any decorative or protective topcoat applied over vinyl sheets or vinyl-coated fabric.

(15) Wood parts and products. The following terms apply to wood parts and products coating facilities subject to §115.421(14) of this title.

(A) Clear coat--A coating which lacks opacity or which is transparent and uses the undercoat as a reflectant base or undertone color.

(B) Clear sealers--Liquids applied over stains, toners, and other coatings to protect these coatings from marring during handling and to limit absorption of succeeding coatings.

(C) Final repair coat--Liquids applied to correct imperfections or damage to the topcoat.

(D) Opaque ground coats and enamels--Colored, opaque liquids applied to wood or wood composition substrates which completely hide the color of the substrate in a single coat.

(E) Semitransparent spray stains and toners--Colored liquids applied to wood to change or enhance the surface without concealing the surface, including but not limited to, toners and non-grain-raising stains.

(F) Semitransparent wiping and glazing stains--Colored liquids applied to wood that require multiple wiping steps to enhance the grain character and to partially fill the porous surface of the wood.

(G) Shellacs--Coatings formulated solely with the resinous secretions of the lac beetle (laccifer lacca), thinned with alcohol, and formulated to dry by evaporation without a chemical reaction.

(H) Topcoat--A coating which provides the final protective and aesthetic properties to wood finishes.

(I) Varnishes--Clear wood finishes formulated with various resins to dry by chemical reaction on exposure to air.

(J) Wash coat--A low-solids clear liquid applied over semitransparent stains and toners to protect the color coats and to set the fibers for subsequent sanding or to separate spray stains from wiping stains to enhance color depth.

(K) Wood parts and products coating--The coating of wood parts and products, excluding factory surface coating of flat wood paneling.

(16) Wood furniture manufacturing facilities. The following terms apply to wood furniture manufacturing facilities subject to §115.421(15) of this title.

(A) Adhesive--Any chemical substance that is applied for the purpose of bonding two surfaces together other than by mechanical means. Adhesives are not considered to be coatings or finishing materials for wood furniture manufacturing facilities subject to §115.421(15) of this title.

(B) Basecoat--A coat of colored material, usually opaque, that is applied before graining inks, glazing coats, or other opaque finishing materials and is usually topcoated for protection.

(C) Cleaning operations--Operations in which organic solvent is used to remove coating materials from equipment used in wood furniture manufacturing operations.

(D) Continuous coater--A finishing system that continuously applies finishing materials onto furniture parts moving along a conveyor system. Finishing materials that are not transferred to the part are recycled to the finishing material reservoir. Several types of application methods can be used with a continuous coater, including spraying, curtain coating, roll coating, dip coating, and flow coating.

(E) Conventional air spray--A spray coating method in which the coating is atomized by mixing it with compressed air at an air pressure greater than 10 pounds per square inch gauge (psig) at the point of atomization. Airless and air-assisted airless spray technologies are not conventional air spray because the coating is not atomized by mixing it with compressed air. Electrostatic spray technology is also not conventional air spray because an electrostatic charge is employed to attract the coating to the workpiece. In addition, high-volume low-pressure (HVLP) spray technology is not conventional air spray because its pressure is less than 10 psig.

(F) Finishing application station--The part of a finishing operation where the finishing material is applied (for example, a spray booth).

(G) Finishing material--A coating used in the wood furniture industry. For the wood furniture manufacturing industry, such materials include, but are not limited to, basecoats, stains, washcoats, sealers, and topcoats.

(H) Finishing operation--Those activities in which a finishing material is applied to a substrate and is subsequently air-dried, cured in an oven, or cured by radiation.

(I) Organic solvent--A liquid containing VOCs that is used for dissolving or dispersing constituents in a coating; adjusting the viscosity of a coating; cleaning; or washoff. When used in a coating, the organic solvent evaporates during drying and does not become a part of the dried film.

(J) Sealer--A finishing material used to seal the pores of a wood substrate before additional coats of finishing material are applied. Washcoats, which are used in some finishing systems to optimize aesthetics, are not sealers.

(K) Stain--Any color coat having a solids content of no more than 8.0% by weight that is applied in single or multiple coats directly to the substrate. Includes, but is not limited to, nongrain raising stains, equalizer stains, sap stains, body stains, no-wipe stains, penetrating stains, and toners.

(L) Strippable booth coating--A coating that is applied to a booth wall to provide a protective film to receive overspray during finishing operations; is subsequently peeled off and disposed; and reduces or eliminates the need to use organic solvents to clean booth walls.

(M) Topcoat--The last film-building finishing material applied in a finishing system. A material such as a wax, polish, nonoxidizing oil, or similar substance that must be periodically reapplied to a surface over its lifetime to maintain or restore the reapplied material's intended effect is not considered to be a topcoat.

(N) Touch-up and repair--The application of finishing materials to cover minor finishing imperfections.

(O) Washcoat--A transparent special purpose coating having a solids content of 12% by weight or less. Washcoats are applied over initial stains to protect and control color and to stiffen the wood fibers in order to aid sanding.

(P) Washoff operations--Those operations in which organic solvent is used to remove coating from a substrate.

(Q) Wood furniture--Any product made of wood, a wood product such as rattan or wicker, or an engineered wood product such as particleboard that is manufactured under any of the following standard industrial classification codes: 2434 (wood kitchen cabinets), 2511 (wood household furniture, except upholstered), 2512 (wood household furniture, upholstered), 2517 (wood television, radios, phonograph and sewing machine cabinets), 2519 (household furniture not elsewhere classified), 2521 (wood office furniture), 2531 (public building and related furniture), 2541 (wood office and store fixtures, partitions, shelving and lockers), 2599 (furniture and fixtures not elsewhere classified), or 5712 (custom kitchen cabinets).

(R) Wood furniture component--Any part that is used in the manufacture of wood furniture. Examples include, but are not limited to, drawer sides, cabinet doors, seat cushions, and laminated tops. However, foam seat cushions manufactured and fabricated at a facility that does not engage in any other wood furniture or wood furniture component manufacturing operation are excluded from this definition.

(S) Wood furniture manufacturing operations--The finishing, cleaning, and washoff operations associated with the production of wood furniture or wood furniture components.

§115.422. Control Requirements.

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 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 §115.421(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 housekeeping 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 Bexar County, 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, Bexar County, 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, Bexar County, 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 §60.044; or

(E) minor modifications to these test methods approved by the executive director.

(3) Compliance with the alternative emission limits in §115.421(11) 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, Bexar County, 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.

(I) The source must be able to equate solvent usage with solvent recovery on a 24-hour (daily) basis, rather than a 30-day weighted average. This must be done within 72 hours following each 24-hour period of the 30-day period.

(II) The solvent recovery system (i.e., capture and control system) must be dedicated to a single process line (e.g., one process line venting to a carbon adsorber system); or if the solvent recovery system controls multiple process lines, the source must be able to demonstrate that the overall control (i.e., the total recovered solvent VOC divided by the sum of liquid VOC input to all process lines venting to the control system) meets or exceeds the most stringent standard applicable for any process line venting to the control system.

(B) The capture efficiency must 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, Bexar County, 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, 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 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 Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, vehicle refinishing (body shops); and

(C) in the Beaumont-Port Arthur and Houston-Galveston-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, Bexar County, 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, 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 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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Charmaine Backens
Deputy Director, Environmental Law Division
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, 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) 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 Dallas-Fort Worth and Houston-Galveston-Brazoria areas [~~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 solvent-borne 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 §101.1 of this title (relating to Definitions), applied on each flexible package printing line by using one of the following options. These limits are based on the daily weighted average, as defined in §115.430(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, 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 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 §60.444 (as amended through October 18, 1983 (48 FR 48375)); or

(7) minor modifications to these test methods and procedures approved by the executive director.

(c) Methods other than those specified in subsections (a)(1) - (6) and (b)(1) - (6) of this section may be used if approved by the executive director and validated using Method 301 (40 CFR Part 63, Appendix A). For the purposes of this subsection, substitute "executive director" each place that Method 301 references "administrator."

§115.436. Monitoring and Recordkeeping Requirements.

(a) In the Beaumont-Port Arthur, 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.

TRD-202304501
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
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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; [~~or~~]

(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.

(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; [~~or~~]

(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 Bexar County, Dallas-Fort Worth, and Houston-Galveston-Brazoria areas, the owner or operator of a minor printing source, as defined in §115.440 of this title (relating to Applicability and Definitions) and in Wise County, the owner or operator of a minor printing source or a major printing source, as defined in §115.440 of this title:

(1) may exempt up to 110 gallons of cleaning solution per calendar year from the content limits in §115.442(c)(1) of this title (relating to Control Requirements);

(2) may exempt any press with a total fountain solution reservoir less than 1.0 gallons from the fountain solution content limits in §115.442(c)(2) - (4) of this title; and

(3) may exempt any sheet-fed press with a maximum sheet size of 11.0 inches by 17.0 inches or less from the fountain solution content limits in §115.442(c)(2) of this title.

§115.442. Control Requirements.

(a) In the El Paso area as defined in §115.10 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 Bexar County, 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 Bexar County, 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 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 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 ±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 Bexar County, Dallas-Fort Worth and Houston-Galveston-Brazoria areas, the following monitoring and recordkeeping requirements apply in accordance with the appropriate compliance date specified in §115.449 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 §115.442(b)(2) - (4) or (c)(2) - (4) of this title.

(A) The VOC concentration of each batch of fountain solution must be monitored using a refractometer or a hydrometer that is corrected for temperature. The refractometer or hydrometer must have a visual, analog, or digital readout with an accuracy of 0.5% VOC. A standard solution must be used to calibrate the refractometer for the type of alcohol used in the fountain solution. The VOC content of the fountain solution may be monitored with a conductivity meter if it is determined that a refractometer or hydrometer cannot be used for the type of VOC in the fountain solution. The conductivity meter reading for the fountain solution must be referenced to the conductivity of the incoming water. Records must be sufficient to demonstrate continuous compliance with the fountain solution content limits in §115.442(b)(2) - (4) or (c)(2) - (4) of this title.

(B) The VOC concentration of each batch fountain solution must be determined using analytical data from the MSDS or equivalent information from the supplier that was derived using the approved test methods in §115.445 of this title. The concentration of all alcohols or alcohol substitutes used to prepare the batch and, if diluted prior to use, the proportions that each of these materials is used must be recorded for each batch of fountain solution. Records must be sufficient to demonstrate continuous compliance with the fountain solution content limits in §115.442(b)(2) - (4) or (c)(2) - (4) of this title.

(4) The owner or operator of an offset lithographic printing press using refrigeration equipment on the fountain solution reservoir shall monitor and record the fountain solution temperature at least once per hour. Temperature monitoring devices must be installed, maintained, and operated according to the manufacturer's specifications. Records must be sufficient to demonstrate continuous compliance with the fountain solution content limits in §115.442(b)(2) and (4) or (c)(2) and (4) of this title.

(5) The owner or operator of a heatset web offset lithographic printing press shall comply with the following monitoring and recordkeeping requirements to demonstrate continuous compliance with the control requirements in §115.442(b)(5) of this title.

(A) Operational parameters of any emission control device installed to comply with the requirements in §115.442(b)(5) of this title must be continuously measured and recorded. Monitors must be installed, calibrated, maintained, and operated according to the manufacturer's instructions. Temperature monitors must be equipped with a continuous recorder and have an accuracy of ±0.5 degrees Fahrenheit or ±1.0% of the temperature being monitored, whichever is less stringent. Measuring and recording the operational parameters of the control device at least once every 15 minutes is sufficient to demonstrate compliance with this subparagraph. Records must be sufficient to demonstrate proper functioning of the device to design specifications and must include:

(i) the exhaust gas temperature of direct-flame incinerators and/or the gas temperature immediately upstream and downstream of any catalyst bed;

(ii) the total amount of VOC recovered by a carbon adsorption system or other solvent recovery system per calendar month; and

(iii) the exhaust gas VOC concentration of any carbon adsorption system to determine if breakthrough has occurred.

(B) An air flow direction measuring device must be used to demonstrate the dryer meets the 100% capture efficiency required in §115.442(b)(5) of this title.

(6) The owner or operator of an offset lithographic printing press shall maintain the results of any tests conducted using the approved test methods in §115.445 of this title.

(7) The owner or operator of an offset lithographic printing press shall maintain all records for at least two years and make such records available upon request to authorized representatives of the executive director, the United States Environmental Protection Agency, or any local air pollution agency with jurisdiction.

§115.449. Compliance Schedules.

(a) In the El Paso area, 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, Bexar, 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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Texas Commission on Environmental Quality
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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 Bexar County and 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 coating [~~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 multi-component coating used in an automobile or light-duty truck assembly surface coating process and applied to a cargo bed after the application of topcoat and outside of the topcoat operation to provide additional durability and chip resistance.

(D) Automobile and light-duty truck cavity wax--A coating, used in an automobile or light-duty truck assembly surface

coating process, applied into the cavities of the vehicle primarily for the purpose of enhancing corrosion protection.

(E) Automobile and light-duty truck deadener--A coating used in an automobile or light-duty truck assembly surface coating process and applied to selected vehicle surfaces primarily for the purpose of reducing the sound of road noise in the passenger compartment.

(F) Automobile and light-duty truck gasket/gasket sealing material--A fluid used in an automobile or light-duty truck assembly surface coating process and applied to coat a gasket or replace and perform the same function as a gasket. Automobile and light-duty truck gasket/gasket sealing material includes room temperature vulcanization seal material.

(G) Automobile and light-duty truck glass-bonding primer--A primer, used in an automobile or light-duty truck assembly surface coating process, applied to windshield or other glass, or to body openings, to prepare the glass or body opening for the application of glass-bonding adhesives or the installation of adhesive-bonded glass. Automobile and light-duty truck glass-bonding primer includes glass-bonding/cleaning primers that perform both functions (cleaning and priming of the windshield or other glass, or body openings) prior to the application of an adhesive or the installation of adhesive-bonded glass.

(H) Automobile and light-duty truck lubricating wax/compound--A protective lubricating material used in an automobile or light-duty truck assembly surface coating process and applied to vehicle hubs and hinges.

(I) Automobile and light-duty truck sealer--A high viscosity material used in an automobile or light-duty truck assembly surface coating process and generally, but not always, applied in the paint shop after the body has received an electrodeposition primer coating and before the application of subsequent coatings (e.g., primer-surfacer). The primary purpose of automobile and light-duty truck sealer is to fill body joints completely so that there is no intrusion of water, gases, or corrosive materials into the passenger area of the body compartment. Such materials are also referred to as sealant, sealant primer, or caulk.

(J) Automobile and light-duty truck trunk interior coating--A coating used in an automobile or light-duty truck assembly surface coating process outside of the primer-surfacer and topcoat operations and applied to the trunk interior to provide chip protection.

(K) Automobile and light-duty truck underbody coating--A coating used in an automobile or light-duty truck assembly surface coating process and applied to the undercarriage or firewall to prevent corrosion or provide chip protection.

(L) Automobile and light-duty truck weather strip adhesive--An adhesive used in an automobile or light-duty truck assembly surface coating process and applied to weather-stripping materials for the purpose of bonding the weather-stripping material to the surface of the vehicle.

(M) Automobile assembly surface coating process--The assembly-line coating of new passenger cars, or passenger car derivatives, capable of seating 12 or fewer passengers.

(N) Electrodeposition primer--A process of applying a protective, corrosion-resistant waterborne primer on exterior and interior surfaces that provides thorough coverage of recessed areas. Electrodeposition primer is a dip-coating method that uses an electrical field to apply or deposit the conductive coating onto the part; the object being painted acts as an electrode that is oppositely charged from the particles of paint in the dip tank. Electrodeposition primer is also referred to as E-Coat, Uni-Prime, and ELPO Primer.

(O) Final repair--The operation(s) performed and coating(s) applied to completely assembled motor vehicles or to parts that are not yet on a completely assembled vehicle to correct damage or imperfections in the coating. The curing of the coatings applied in these operations is accomplished at a lower temperature than that used for curing primer-surfacer and topcoat. This lower temperature cure avoids the need to send parts that are not yet on a completely assembled vehicle through the same type of curing process used for primer-surfacer and topcoat and is necessary to protect heat-sensitive components on completely assembled vehicles.

(P) In-line repair--The operation(s) performed and coating(s) applied to correct damage or imperfections in the topcoat on parts that are not yet on a completely assembled vehicle. The curing of the coatings applied in these operations is accomplished at essentially the same temperature as that used for curing the previously applied topcoat. In-line repair is also referred to as high-bake repair or high-bake reprocess. In-line repair is considered part of the topcoat operation.

(Q) Light-duty truck assembly surface coating process--The assembly-line coating of new motor vehicles rated at 8,500 pounds gross vehicle weight or less and designed primarily for the transportation of property, or derivatives such as pickups, vans, and window vans.

(R) Primer-surfacer--An intermediate protective coating applied over the electrodeposition primer and under the topcoat. Primer-surfacer provides adhesion, protection, and appearance properties to the total finish. Primer-surfacer is also referred to as guide coat or surfacer. Primer-surfacer operations may include other coatings (e.g., anti-chip, lower-body anti-chip, chip-resistant edge primer, spot primer, blackout, deadener, interior color, basecoat replacement coating, etc.) that are applied in the same spray booth(s).

(S) [~~(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;

(iii) lightness limit for metallics: 35% aluminum flake;

(iv) lightness limit for solids: 50% titanium dioxide white;

(v) solid reds: hue angle of -11 to 38 degrees and maximum lightness of 23 to 45 units; and

(vi) metallic reds: hue angle of -16 to 35 degrees and maximum lightness of 28 to 45 units. These criteria are based on Cielab color space, 0/45 geometry. For spherical geometry, specular included, the upper limit is 49 units. The maximum lightness varies as the hue moves from violet to orange. This is a natural consequence of the strength of the colorants, and real colors show this effect.

(M) 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 to:

(i) chronic exposure to corrosive, caustic or acidic agents, chemicals, chemical fumes, chemical mixtures, or solutions;

(ii) repeated exposure to temperatures in excess of 250 degrees Fahrenheit (121 degrees Celsius);

(iii) repeated heavy abrasion, including mechanical wear and repeated scrubbing with industrial grade solvents, cleansers, or scouring agents; or

(iv) exposure to extreme environmental conditions, such as continuous outdoor exposure.

(C) Heat-resistant coating--A coating that must withstand a temperature of at least 400 degrees Fahrenheit (204 degrees Celsius) during normal use.

(D) Metallic coating--A coating that contains more than 0.042 pounds of metal particles per gallon of coating as applied. Metal particles are pieces of a pure elemental metal or a combination of elemental metals.

(E) Pretreatment coating--A coating that contains no more than 12% solids by weight and at least 0.50% acid by weight; is used to provide surface etching; and is applied directly to metal surfaces to provide corrosion resistance, adhesion, and ease of stripping.

(F) Solar-absorbent coating--A coating that has as its prime purpose the absorption of solar radiation.

(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.

(M) Mask coating--A thin film coating applied through a template to coat a small portion of a substrate.

(N) Metallic coating--A coating containing more than 5.0 grams of metal particles per liter of coating as applied. Metal particles are pieces of a pure elemental metal or a combination of elemental metals.

(O) Military specification coating--A coating that has a formulation approved by a United States Military Agency for use on military equipment.

(P) [~~(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.

(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 §115.420(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 topcoat for purposes of providing corrosion resistance, adhesion of subsequent coatings, or a moisture barrier, or promoting a uniform surface necessary for filling in surface imperfections.

(F) High-gloss coating--A coating that achieves at least 85% reflectance on a 60 degree meter when tested by American Society for Testing and Materials Test Method D523-89.

(G) Pleasure craft coating--A marine coating, except unsaturated polyester resin (fiberglass) coatings, applied by brush, spray, roller, or other means to a pleasure craft.

(H) Pretreatment wash primer--A coating that contains no more than 25% solids by weight and at least 0.10% acids by weight; used to provide surface etching; and applied directly to fiberglass and metal surfaces to provide corrosion resistance and adhesion of subsequent coatings.

(I) Repair coating--A coating used to re-coat portions of a previously coated product that has sustained mechanical damage to the coating following normal surface coating processes.

(J) Topcoat--A final coating applied to the interior or exterior of a pleasure craft.

(K) Touch-up coating--A coating used to cover minor coating imperfections appearing after the main surface coating process.

(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 §115.453(c) of this title.

(i) The following miscellaneous plastic parts surface coatings and surface coating processes are exempt from the coating VOC limits in §115.453(a)(1)(D) of this title:

(1) touch-up and repair coatings;

(2) stencil coatings applied on clear or transparent substrates;

(3) clear or translucent coatings;

(4) any individual coating type used in volumes less than 50 gallons in any one year, if substitute compliant coatings are not available, provided that the total usage of all such coatings does not exceed 200 gallons per year, per property;

(5) reflective coating applied to highway cones;

(6) mask coatings that are less than 0.5 mil thick dried and the area coated is less than 25 square inches;

(7) electromagnetic interference/radio frequency interference (EMI/RFI) shielding coatings; and

(8) heparin-benzalkonium chloride-containing coatings applied to medical devices, if the total usage of all such coatings does not exceed 100 gallons per year, per property.

(j) The following automotive/transportation and business machine plastic part surface coatings and surface coating processes are exempt from the VOC limits in §115.453(a)(1)(E) of this title:

(1) texture coatings;

(2) vacuum-metalizing coatings;

(3) gloss reducers;

(4) texture topcoats;

(5) adhesion primers;

(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 §115.453(a)(1)(C) - (F) and (2) of this title that meet a specific adhesive or adhesive primer application process definition in §115.470 of this title (relating to Applicability and Definitions) and are listed in Table 2 of §115.473(a) of this title (relating to Control Requirements) are not subject to the requirements in this division. Contact adhesives are not included in this exemption.

§115.453. Control Requirements.

(a) The following control requirements apply to surface coating processes subject to this division. Except as specified in paragraph (3) of this subsection, these limitations are based on the daily weighted average of all coatings, as defined in §101.1 of this title (relating to Definitions), as delivered to the application system. 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) [~~(c)~~] The owner or operator of a surface coating process that becomes subject to this division on or after the applicable compliance date of this section shall comply with the requirements in this division no later than 60 days after becoming subject.

[~~(d) Upon the date the commission publishes notice in the *Texas Register* that the Wise County nonattainment designation for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard is no longer legally effective, the owner or operator of each surface coating process in Wise County is not required to comply with any of the requirements in this division.~~]

(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.

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 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 Bexar County, 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.]~~

(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) [~~(11)~~] 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 §115.468(b)(2) of this title (relating to Monitoring and Recordkeeping Requirements). When calculating the VOC emissions, solvents used for solvent cleaning operations that are exempt from this division under subsections (b) - (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 operation requirements related to that process or operation is exempt from the requirements in this division.

(c) A solvent cleaning operation is exempt from this division if:

(1) the process or operation that the solvent cleaning operation is associated with is subject to another division in this chapter; and

(2) the VOC emissions from the solvent cleaning operation are controlled in accordance with an emission specification or control requirement of the division that the process or operation is subject to.

(d) The following are exempt from the VOC limits in §115.463(a) of this title (relating to Control Requirements:

(1) electrical and electronic components;

(2) precision optics;

(3) numisimatic dies;

(4) resin mixing, molding, and application equipment;

(5) coating, ink, and adhesive mixing, molding, and application equipment;

(6) stripping of cured inks, cured adhesives, and cured coatings;

(7) research and development laboratories;

(8) medical device or pharmaceutical preparation operations;

(9) performance or quality assurance testing of coatings, inks, or adhesives;

(10) architectural coating manufacturing and application operations;

(11) magnet wire coating operations;

(12) semiconductor wafer fabrication;

(13) coating, ink, resin, and adhesive manufacturing;

(14) polyester resin operations;

(15) flexographic and rotogravure printing processes;

(16) screen printing operations; and

(17) digital printing operations.

(e) 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 adhesives.

(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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Charmaine Backens
Deputy Director, Environmental Law Division
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, pre-decorated hardboard or tileboard, fiberglass reinforced plastic, and similar pre-decorated or non-decorated panels to studs or solid surfaces using an adhesive formulated for that purpose.

(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 nonrefillable 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; Procedure G.2 - Captured VOC Emissions (Dilution Technique); Procedure F.1 - Fugitive VOC Emissions from Temporary Enclosures; and Procedure F.2 - Fugitive VOC Emissions from Building Enclosures.

(A) The following exemptions apply to capture efficiency testing requirements.

(i) If a source installs a permanent total enclosure that meets the specifications of Procedure T and that directs all VOC to a control device, then the capture efficiency is assumed to be 100%, and the source is exempted from capture efficiency testing requirements. This does not exempt the source from performance of any control device efficiency testing that may be required. In addition, a source must demonstrate all criteria for a permanent total enclosure are met during testing for control efficiency.

(ii) If a source uses a vapor control system designed to collect and recover VOC (e.g., carbon adsorption system), an explicit measurement of capture efficiency is not necessary if the following conditions are met. The overall control efficiency of the system can be determined by directly comparing the input liquid VOC to the recovered liquid VOC. The general procedure for use in this situation is given in 40 CFR §60.433 (as amended through October 17, 2000 (65 FR 61761)), with the following additional restrictions.

(I) The source must be able to equate solvent usage with solvent recovery on a 24-hour (daily) basis, rather than a 30-day weighted average. This verification must be done within 72 hours following each 24-hour period of the 30-day period.

(II) The solvent recovery system (i.e., capture and control system) must be dedicated to a single process line (e.g., one process line venting to a carbon adsorber system) or if the solvent recovery system controls multiple process lines, the source must be able to demonstrate that the overall control efficiency (i.e., the total recovered solvent VOC divided by the sum of liquid VOC input to all process lines venting to the control system) meets or exceeds the most stringent standard applicable for any process line venting to the control system.

(B) The capture efficiency must be calculated using one of the following protocols referenced unless a suitable alternative protocol is approved by the executive director and the United States Environmental Protection Agency (EPA).

(i) Gas/gas method using temporary total enclosure (TTE). The EPA specifications to determine whether a temporary enclosure is considered a TTE are given in Procedure T. The capture efficiency equation to be used for this protocol is:
Figure: 30 TAC §115.475(3)(B)(i) (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 requirements in §115.475(1) of this title (relating to Approved Test Methods and Testing Requirements). Records must be sufficient to demonstrate continuous compliance with the applicable VOC limits in §115.473(a), (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) [~~(c)~~] The owner or operator of an application process that becomes subject to this division on or after the applicable compliance date in this section shall comply with the requirements in this division no later than 60 days after becoming subject.

[~~(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 Use of [~~Cutback~~] 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 seal coats [~~chip seals~~] when 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 clay-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).

[~~(c) All affected persons in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties shall comply with this division as soon as practicable, but no later than March 1, 2009.~~]

(d) All affected persons in 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 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.

§115.531. 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 railcar 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 railcar 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 Dallas-Fort Worth [~~Dallas/Fort Worth~~] area, as defined in §115.10 of this title, the applicable factor is 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 Houston-Galveston-Brazoria [~~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_x).

The EPA defines RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 *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_x emissions based on the area's nonattainment classification.

The proposed rulemaking would implement RACT requirements for major sources of NO_x 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_x 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_x 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_x. To identify all major sources of NO_x 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_x 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_x to account for the difference between actual and potential emissions. Sites

from the emissions inventory database with emissions of 50 tpy or more of NO_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_x 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_x 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_x. The TCEQ reviewed the point source emissions inventory and Title V databases to identify all major sources of NO_x emissions in the DFW area. All sources in the Title V database that were listed as a major source for NO_x 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 tpy of NO_x 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_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 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 NO_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_x 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_x to 25 tpy of NO_x. 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_x are already required to comply with Chapter 117 RACT rules. This proposed rulemaking would extend implementation of RACT to all major sources of NO_x that emit or have the potential to emit at least 25 tpy NO_x. The proposed rulemaking would require major sources of NO_x to comply with new emission limits, control requirements, or operating requirements as well as other associated rule provisions necessary to implement any required NO_x 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_x 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_x 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_x in the DFW and HGB areas require the owner or operator of units that use a chemical reagent for reduction of NO_x 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_x 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_x and ammonia emission limits and provide additional assurance that NO_x 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_x 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_2 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_2 correction consistent with the Chapter 117 standards for other equipment that also operates with higher O_2 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(l)

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_x 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_x 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_x but no more than 50 tpy NO_x 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_x 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_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. 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 Texas.

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_x 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_x 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 operated more than 850 hours per year; units that use a chemical reagent for reduction of NO_x; 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_x 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_x monitor is off-line. The proposal requires that if the NO_x 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_x monitor is off-line. The proposal requires that if the NO_x 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_x 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_x 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_x 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) requires 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_x 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_x 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_x 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_x was included in the rule to ensure compliance with the applicable NO_x 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_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_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_x control, ammonia emissions must not exceed 10 ppmv at 15% O_2, dry instead of 3% O_2, dry. 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. However, 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 §117.440(c)(2) to include the existing reference to NO_x 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_x 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_x was included in the rule to ensure compliance with the applicable NO_x 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_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_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_x 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_x 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_x 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_x 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_x 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 NO_x 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_x emission specifications in §117.1105 by achieving equivalent NO_x 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_x 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 (j) 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_x emission rate measured by the NO_x monitor, if the monitor is operating properly, or if the NO_x 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_x 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 ± 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_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_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_x 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_x 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 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. 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_x 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_x emission specifications in §117.1105(a)(1) - (4) to maintain daily records indicating the NO_x emissions in lb; the quantity and type of each fuel burned; the heat input in MMBtu; and the rolling 30-day average NO_x emis-

sion rate in lb/MMBtu. Proposed new paragraph (2) requires the owner or operator of a unit complying with the NO_x emission specification in §117.1105(a)(5) to maintain hourly records indicating the NO_x 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 NO_x emission system cap in §117.1120 to maintain daily records for each EGF in the cap indicating the NO_x 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_x 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_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, 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_x control, ammonia emissions must not exceed 10 ppmv at 15% O_2, dry instead of 3% O_2, dry. 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. However, 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 is consistent with the Chapter 117 standards for other equipment that also operate with higher O_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_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. 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_x control, ammonia emissions must not exceed 10 ppmv at 15% O_2, dry instead of 3% O_2, dry. 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. However, 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 is consistent with the Chapter 117 standards for other equipment that also operate with higher O_2 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_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. 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 preheater-precalciner 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_x 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_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_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_x in Bexar County that is a major source of NO_x 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_x 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_x 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_x 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_x 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 tpy NO_x to 25 tpy NO_x. 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_x. 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 NO_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_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_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_x 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_x (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 micro-businesses 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 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 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(l), 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 Nonattainment Areas), Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties; or

(ii) for all other divisions of this chapter, Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties.

(D) [~~(C)~~] Houston-Galveston-Brazoria ozone nonattainment area--An area consisting of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties.

(3) Auxiliary steam boiler--Any combustion equipment within an electric power generating system, as defined in this section, that is used to produce steam for purposes other than generating electricity. An auxiliary steam boiler produces steam as a replacement for steam produced by another piece of equipment that is not operating due to planned or unplanned maintenance.

(4) Average activity level for fuel oil firing--The product of an electric utility unit's maximum rated capacity for fuel oil firing and the average annual capacity factor for fuel oil firing for the period from January 1, 1990, to December 31, 1993.

(5) Block one-hour average--An hourly average of data, collected starting at the beginning of each clock hour of the day and continuing until the start of the next clock hour.

(6) Boiler--Any combustion equipment fired with solid, liquid, and/or gaseous fuel used to produce steam or to heat water.

(7) Btu--British thermal unit.

(8) Chemical processing gas turbine--A gas turbine that vents its exhaust gases into the operating stream of a chemical process.

(9) Continuous emissions monitoring system (CEMS)--The total equipment necessary for the continuous determination and recordkeeping of process gas concentrations and emission rates in units of the applicable emission limitation.

(10) Daily--A calendar day starting at midnight and continuing until midnight the following day.

(11) Diesel engine--A compression-ignited two- or four-stroke engine that liquid fuel injected into the combustion chamber ignites when the air charge has been compressed to a temperature sufficiently high for auto-ignition.

(12) Duct burner--A unit that combusts fuel and that is placed in the exhaust duct from another unit (such as a stationary gas turbine, stationary internal combustion engine, kiln, etc.) to allow the firing of additional fuel to heat the exhaust gases.

(13) Electric generating facility (EGF)--A unit that generates electric energy for compensation and is owned or operated by a person doing business in this state, including a municipal corporation, electric cooperative, or river authority.

(14) Electric power generating system--One electric power generating system consists of either:

(A) for the purposes of Subchapter C, Divisions 1, 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; [~~or~~]

(ii) Bexar County; or

(iii) [~~(ii)~~] 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, [~~Bexar,~~] Brazos, Calhoun, Cherokee, Fannin, Fayette, Freestone, Goliad, Gregg, Grimes, Harrison, Henderson, Hood, Hunt, Lamar, Limestone, Marion, McLennan, Milam, Morris, Nueces, Parker, Red River, Robertson, Rusk, Titus, Travis, Victoria, or Wharton County, or 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 foreseeable events; or

(ii) operation for purposes of supplying power for distribution to the electric grid, except as specified in subparagraph (A)(vii) of this paragraph.

(16) Functionally identical replacement--A unit that performs the same function as the existing unit that it replaces, with the condition that the unit replaced must be physically removed or rendered permanently inoperable before the unit replacing it is placed into service.

(17) Heat input--The chemical heat released due to fuel combustion in a unit, using the higher heating value of the fuel. This does not include the sensible heat of the incoming combustion air. In the case of carbon monoxide (CO) boilers, the heat input includes the enthalpy of all regenerator off-gases and the heat of combustion of the incoming CO and of the auxiliary fuel. The enthalpy change of the fluid catalytic cracking unit regenerator off-gases refers to the total heat content of the gas at the temperature it enters the CO boiler, referring to the heat content at 60 degrees Fahrenheit, as being zero.

(18) Heat treat furnace--A furnace that is used in the manufacturing, casting, or forging of metal to heat the metal so as to produce specific physical properties in that metal.

(19) High heat release rate--A ratio of boiler design heat input to firebox volume (as bounded by the front firebox wall where the burner is located, the firebox side waterwall, and extending to the level just below or in front of the first row of convection pass tubes) greater than or equal to 70,000 British thermal units per hour per cubic foot.

(20) Horsepower rating--The engine manufacturer's maximum continuous load rating at the lesser of the engine or driven equipment's maximum published continuous speed.

(21) Incinerator--As follows.

(A) For the purposes of this chapter, the term "incinerator" includes both of the following:

(i) a control device that combusts or oxidizes gases or vapors (e.g., thermal oxidizer, catalytic oxidizer, vapor combustor); and

(ii) an incinerator as defined in §101.1 of this title (relating to Definitions).

(B) The term "incinerator" does not apply to boilers or process heaters as defined in this section, or to flares as defined in §101.1 of this title.

(22) Industrial boiler--Any combustion equipment, not including utility or auxiliary steam boilers as defined in this section, fired with liquid, solid, or gaseous fuel, that is used to produce steam or to heat water.

(23) International Standards Organization (ISO) conditions--ISO standard conditions of 59 degrees Fahrenheit, 1.0 atmosphere, and 60% relative humidity.

(24) Large utility system--All boilers, auxiliary steam boilers, and stationary gas turbines that are located in the Dallas-Fort Worth

eight-hour ozone nonattainment area, and were part of one electric power generating system on January 1, 2000, that had a combined electric generating capacity equal to or greater than 500 megawatts.

(25) Lean-burn engine--A spark-ignited or compression-ignited, Otto cycle, diesel cycle, or two-stroke engine that is not capable of being operated with an exhaust stream oxygen concentration equal to or less than 0.5% by volume, as originally designed by the manufacturer.

(26) Low annual capacity factor boiler, process heater, or gas turbine supplemental waste heat recovery unit--An industrial, commercial, or institutional boiler; process heater; or gas turbine supplemental waste heat recovery unit with maximum rated capacity:

(A) greater than or equal to 40 million British thermal units per hour (MMBtu/hr), but less than 100 MMBtu/hr and an annual heat input less than or equal to 2.8 (10^{11}) British thermal units per year (Btu/yr), based on a rolling 12-month average; or

(B) greater than or equal to 100 MMBtu/hr and an annual heat input less than or equal to 2.2 (10^{11}) Btu/yr, based on a rolling 12-month average.

(27) Low annual capacity factor stationary gas turbine or stationary internal combustion engine--A stationary gas turbine or stationary internal combustion engine that is demonstrated to operate less than 850 hours per year, based on a rolling 12-month average.

(28) Low heat release rate--A ratio of boiler design heat input to firebox volume less than 70,000 British thermal units per hour per cubic foot.

(29) Major source--Any stationary source or group of sources located within a contiguous area and under common control that emits or has the potential to emit:

(A) at least 50 tons per year (tpy) of nitrogen oxides (NO_x) and is located in the Beaumont-Port Arthur ozone nonattainment area;

(B) at least 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.

(32) Nitric acid--Nitric acid that is 30% to 100% in strength.

(33) Nitric acid production unit--Any source producing nitric acid by either the pressure or atmospheric pressure process.

(34) Nitrogen oxides (NO_x)--The sum of the nitric oxide and nitrogen dioxide in the flue gas or emission point, collectively expressed as nitrogen dioxide.

(35) Parts per million by volume (ppmv)--All ppmv emission specifications specified in this chapter are referenced on a dry basis. When required to adjust pollutant concentrations to a specified oxygen (O_2) correction basis, the following equation must be used.
Figure: 30 TAC §117.10(35) (No change.)

(36) Peaking gas turbine or engine--A stationary gas turbine or engine used intermittently to produce energy on a demand basis.

(37) Plant-wide emission rate--The ratio of the total actual nitrogen oxides mass emissions rate discharged into the atmosphere from affected units at a major source when firing at their maximum rated capacity to the total maximum rated capacities for those units.

(38) Plant-wide emission specification--The ratio of the total allowable nitrogen oxides mass emissions rate dischargeable into the atmosphere from affected units at a major source when firing at their maximum rated capacity to the total maximum rated capacities for those units.

(39) Predictive emissions monitoring system (PEMS)--The total equipment necessary for the continuous determination and recordkeeping of process gas concentrations and emission rates using process or control device operating parameter measurements and a conversion equation or computer program to produce results in units of the applicable emission limitation.

(40) Process heater--Any combustion equipment fired with liquid and/or gaseous fuel that is used to transfer heat from combustion gases to a process fluid, superheated steam, or water for the purpose of heating the process fluid or causing a chemical reaction. The term "process heater" does not apply to any unfired waste heat recovery heater that is used to recover sensible heat from the exhaust of any combustion equipment, or to boilers as defined in this section.

(41) Pyrolysis reactor--A unit that produces hydrocarbon products from the endothermic cracking of feedstocks such as ethane,

propane, butane, and naphtha using combustion to provide indirect heating for the cracking process.

(42) Reheat furnace--A furnace that is used in the manufacturing, casting, or forging of metal to raise the temperature of that metal in the course of processing to a temperature suitable for hot working or shaping.

(43) Rich-burn engine--A spark-ignited, Otto cycle, four-stroke, naturally aspirated or turbocharged engine that is capable of being operated with an exhaust stream oxygen concentration equal to or less than 0.5% by volume, as originally designed by the manufacturer.

(44) Small utility system--All boilers, auxiliary steam boilers, and stationary gas turbines that are located in the Dallas-Fort Worth 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; [~~or~~]

(F) for the purposes of §117.410 and §117.1310 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration) and each requirement of this chapter associated with §117.410 and §117.1310 of this title, any boiler, process heater, stationary gas turbine, or stationary internal combustion engine, as defined in this section, or any other stationary source of NO_x at a major source, as defined in this section; [~~.~~]

(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, Recordkeeping, 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);

(2) duct burners used in turbine exhaust ducts, 0.55 lb/MMBtu; and

(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_x 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_2) 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 §117.240 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 ± 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 (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_x 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_x:

(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_x; 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 75 are not required to install CEMS or PEMS under this subsection.

(3) The owner or operator shall use one of the following methods to provide substitute emissions compliance data during periods when the NO_x monitor is off-line:

(A) if the NO_x monitor is a CEMS:

(i) subject to 40 CFR Part 75, use the missing data procedures specified in 40 CFR Part 75, Subpart D (Missing Data Substitution Procedures); or

(ii) subject to 40 CFR Part 75, Appendix E, use the missing data procedures specified in 40 CFR Part 75, Appendix E, §2.5 (Missing Data Procedures);

(B) 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_x 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 gas-fired 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 required 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:

(i) pounds per million British thermal units (lb/MMBtu) heat input; and

(ii) pounds or tons per day;

(3) for each stationary internal combustion engine subject to the emission specifications of this division, records of:

(A) emissions measurements required by:

(i) §117.230(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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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 (NO_x) 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_2), 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_2, dry basis;

(B) a 90% NO_x reduction of the exhaust concentration used to calculate the June - August 1997 daily 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% 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 MMBtu/hr, 0.015 lb/MMBtu; 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 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_2, 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:

(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:

(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;

(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:

(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;

(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:

(A) lime kilns, 0.66 pounds per ton of calcium oxide; and

(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_x emissions;

(16) incinerators, either of the following:

(A) an 80% reduction from the emission factor used to calculate the June - August 1997 daily 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) 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_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.

(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., hot-standby 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 ± 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 ± 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

(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 (O_2) monitors.

(1) The owner or operator shall install, calibrate, maintain, and operate an O_2 monitor to measure exhaust O_2 concentration on the following units operated with an annual heat input greater than $2.2(10^{11})$ British thermal units per year (Btu/yr):

(A) boilers with a rated heat input greater than or equal to 100 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 §117.303(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 O_2 monitors required by this subsection are for process monitoring (predictive monitoring inputs, boiler trim, or process control) and are only required to meet the location specifications and quality assurance procedures referenced in subsection (f) of this section if O_2 is the monitored diluent under that subsection. However, if new O_2 monitors are required as a result of this subsection, the criteria in subsection (f) of this section should be considered the appropriate guidance for the location and calibration of the monitors.

(c) NO_x monitors.

(1) The owner or operator of units listed in this paragraph shall install, calibrate, maintain, and operate a CEMS or predictive emissions monitoring system (PEMS) to monitor exhaust NO_x. The units are:

(A) boilers with a rated heat input greater than or equal to 250 MMBtu/hr and an annual heat input greater than $2.2(10^{11})$ 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 $2.2(10^{11})$ 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_x;

(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 NO_x monitor is off-line:

(A) if the NO_x monitor is a CEMS:

(i) subject to 40 CFR Part 75, use the missing data procedures specified in 40 CFR Part 75, Subpart D (Missing Data Substitution Procedures); or

(ii) subject to 40 CFR Part 75, Appendix E, use the missing data procedures specified in 40 CFR Part 75, Appendix E, §2.5 (Missing Data Procedures);

(B) use 40 CFR Part 75, Appendix E monitoring in accordance with §117.1240(e) of this title (relating to Continuous Demonstration of Compliance);

(C) if the NO_x monitor is a PEMS:

(i) use the methods specified in 40 CFR Part 75, Subpart D; or

(ii) use calculations in accordance with §117.8110(b) of this title (relating to Emission Monitoring System Requirements for Utility Electric Generation Sources); or

(D) 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 NO_x monitor downtime periods less than 24 consecutive hours, use the maximum block one-hour NO_x emission rate, in lb/MMBtu, from the previous 24 operational hours of the unit;

(ii) for NO_x monitor downtime periods equal to or greater than 24 consecutive hours, use the maximum block one-hour 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:

(i) if the CEMS is located upstream of the bypass stack, then:

(I) no effluent streams from other potential sources of 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 §117.305 of this title that is not equipped with NO_x CEMS or PEMS shall stack test engine NO_x and CO emissions as specified in §117.8140(a) of this title (relating to Emission Monitoring for Engines). The owner or operator of any stationary internal combustion engine subject to §117.310 of this title that is not equipped with NO_x CEMS or PEMS shall stack test engine NO_x and CO emissions as specified in §117.8140(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 ± 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 (H_2) monitoring. The owner or operator claiming the H_2 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 H_2.

(1) The total H_2 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 H_2 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_2 by volume or greater.

(B) The process flow diagram of the process unit that is the source of the H_2 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.

(l) 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 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 §117.310(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 O_2 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_x 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 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_2), dry basis);

(2) liquid-fired boilers, 2.0 pounds per 1,000 gallons of liquid burned;

(3) process heaters:

(A) with a maximum rated capacity equal to or greater than 40 MMBtu/hr, 0.025 lb/MMBtu; and

(B) with a maximum rated capacity less than 40 MMBtu/hr, 0.036 lb/MMBtu (or alternatively, 30 ppmv, at 3.0% O_2, dry basis);

(4) stationary, reciprocating internal combustion engines:

(A) gas-fired rich-burn engines:

(i) fired on landfill gas, 0.60 grams per horsepower-hour (g/hp-hr); and

(ii) all others, 0.50 g/hp-hr;

(B) gas-fired lean-burn engines:

(i) placed into service before June 1, 2007, that have not been modified, reconstructed, or relocated on or after June 1, 2007, 0.70 g/hp-hr; and

(ii) placed into service, modified, reconstructed, or relocated on or after June 1, 2007:

(I) fired on landfill gas, 0.60 g/hp-hr; and

(II) all others, 0.50 g/hp-hr;

(C) dual-fuel engines, 0.50 g/hp-hr;

(D) diesel engines, excluding dual-fuel engines, placed into service before March 1, 2009, that have not been modified, reconstructed, or relocated on or after March 1, 2009, the lower of 11.0 g/hp-hr or the emission rate established by testing, monitoring, manufacturer's guarantee, or manufacturer's other data;

(E) for diesel engines, excluding dual-fuel engines, not subject to subparagraph (D) of this paragraph:

(i) with a horsepower (hp) rating of less than 50 hp that are installed, modified, reconstructed, or relocated on or after March 1, 2009, 5.0 g/hp-hr;

(ii) with a hp rating of 50 hp or greater, but less than 100 hp, that are installed, modified, reconstructed, or relocated on or after March 1, 2009, 3.3 g/hp-hr;

(iii) with a hp rating of 100 hp or greater, but less than 750 hp, that are installed, modified, reconstructed, or relocated on or after March 1, 2009, 2.8 g/hp-hr; and

(iv) with a hp rating of 750 hp or greater that are installed, modified, reconstructed, or relocated on or after March 1, 2009, 4.5 g/hp-hr; and

(F) for the purposes of this paragraph, the terms "modification" and "reconstruction" have the meanings defined in §116.10 of this title (relating to General Definitions) and 40 Code of Federal Regulations (CFR) §60.15 (December 16, 1975), respectively, and the term "relocated" means to newly install at an account, as defined in §101.1 of this title (relating to Definitions), a used engine from anywhere outside that account;

(5) stationary gas turbines:

(A) rated at 10 megawatts (MW) or greater, 0.032 lb/MMBtu;

(B) rated at 1.0 MW or greater, but less than 10 MW, 0.15 lb/MMBtu; and

(C) rated at less than 1.0 MW, 0.26 lb/MMBtu;

(6) duct burners used in turbine exhaust ducts, the corresponding gas turbine emission specification of paragraph (5) of this subsection;

(7) kilns:

(A) lime kilns, 3.7 pounds per ton (lb/ton) of calcium oxide, demonstrated either:

(i) on an individual kiln basis; or

(ii) on a site-wide production rate weighted average basis, using the following equation:
Figure: 30 TAC §117.410(a)(7)(A)(ii) (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:

(i) 4.0 lb/ton of glass pulled during furnace operation equal to or greater than 25% of the permitted glass production capacity; and

(ii) the applicable maximum allowable pound per hour NO_x permit limit in a permit issued before June 1, 2007, during furnace operation less than 25% of the permitted glass production capacity;

(B) mineral wool-type cold-top electric fiberglass melting furnaces, 4.0 lb/ton of product pulled;

(C) mineral wool-type fiberglass regenerative furnaces, 1.45 lb/ton of product pulled; and

(D) mineral wool-type fiberglass non-regenerative gas-fired furnaces, 3.1 lb/ton product pulled;

(11) gas-fired curing ovens used for the production of mineral wool-type or textile-type fiberglass, 0.036 lb/MMBtu;

(12) natural gas-fired ovens and heaters, 0.036 lb/MMBtu;

(13) natural gas-fired dryers:

(A) dryers used in organic solvent, printing ink, clay, brick, ceramic tile, calcining, and vitrifying processes, 0.036 lb/MMBtu;

(B) spray dryers used in ceramic tile manufacturing processes, 0.15 lb/MMBtu; and

(14) as an alternative to the emission specifications in paragraphs (1) - (13) of this subsection for units with an annual capacity factor of 0.0383 or less, 0.060 lb/MMBtu. The capacity factor as of December 31, 2000, must be used to determine whether the unit is eligible for the emission specification of this paragraph. A 12-month rolling average must be used to determine the annual capacity factor for units placed into service after December 31, 2000.

(b) NO_x averaging time. The emission specifications of subsection (a) of this section apply:

(1) if the unit is operated with a NO_x CEMS or PEMS under §117.440 of this title, either as:

(A) a rolling 30-day average period, in the units of the applicable standard;

(B) a block one-hour average, in the units of the applicable standard, or alternatively;

(C) a block one-hour average, in pounds per hour, for boilers and process heaters, calculated as the product of the boiler's or process heater's maximum rated capacity and its applicable specification in lb/MMBtu; and

(2) if the unit is not operated with a NO_x CEMS or PEMS under §117.440 of this title, a block one-hour average, in the units of the applicable standard. Alternatively for boilers and process heaters, the emission specification may be applied in pounds per hour, as specified in paragraph (1)(C) of this subsection.

(c) Related emissions. No person shall allow the discharge into the atmosphere from any unit subject to NO_x emission specifications in subsection (a) of this section, emissions in excess of the following, except as provided in §117.425 of this title (relating to Alternative Case Specific Specifications) or paragraph (3) or (4) of this subsection.

(1) Carbon monoxide (CO) emissions must not exceed 400 ppmv at 3.0% O_2, dry basis (or alternatively, 3.0 g/hp-hr for stationary internal combustion engines; or 775 ppmv at 7.0% O_2, dry basis for wood fuel-fired boilers or process heaters):

(A) on a rolling 24-hour averaging period, for units equipped with CEMS or PEMS for CO; and

(B) on a block one-hour averaging period, for units not equipped with CEMS or PEMS for CO.

(2) For units that inject urea or ammonia into the exhaust stream for NO_x control, ammonia emissions must not exceed 10 ppmv at 3.0% O_2, dry, for boilers and process heaters; 15% O_2, dry, for stationary gas turbines (including duct burners used in turbine exhaust ducts), [~~and~~] gas-fired lean-burn engines, and diesel engines; 7.0% O_2, dry, for incinerators; and 3.0% O_2, dry, for all other units, based on:

(A) a block one-hour averaging period for units not equipped with a CEMS or PEMS for ammonia; and

(B) a rolling 24-hour averaging period for units equipped with CEMS or PEMS for ammonia.

(3) The correction of CO emissions to 3.0% O_2, dry basis, in paragraph (1) of this subsection does not apply to boilers and process heaters operating at less than 10% of maximum load and with stack O_2 in excess of 15% (i.e., hot-standby mode).

(4) The CO specifications in paragraph (1) of this subsection do not apply to incinerators subject to the CO limits of one of the following:

(A) §111.121 of this title (relating to Single-, Dual-, and Multiple-Chamber Incinerators);

(B) §113.2072 of this title (relating to Emission Limits) for hospital/medical/infectious waste incinerators; or

(C) 40 CFR Part 264 or 265, Subpart O, for hazardous waste incinerators.

(d) Compliance flexibility.

(1) An owner or operator may use any of the following alternative methods to comply with the NO_x emission specifications of this section:

(A) §117.423 of this title (relating to Source Cap); or

(B) §117.9800 of this title (relating to Use of Emission Credits for Compliance).

(2) Section 117.425 of this title is not an applicable method of compliance with the NO_x emission specifications of this section.

(3) An owner or operator may petition the executive director for an alternative to the CO or ammonia specifications of this section in accordance with §117.425 of this title.

(e) Prohibition of circumvention.

(1) The maximum rated capacity used to determine the applicability of the emission specifications in this section and the initial compliance demonstration, monitoring, testing requirements, and final control plan in §§117.435, 117.440, and 117.454 of this title (relating to Initial Demonstration of Compliance; Continuous Demonstration of Compliance; and Final Control Plan Procedures for Attainment Demonstration Emission Specifications) must be the greater of the following:

(A) the maximum rated capacity as of December 31, 2000;

(B) the maximum rated capacity after December 31, 2000; or

(C) the maximum rated capacity authorized by a permit issued under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) after December 31, 2000.

(2) A unit's classification is determined by the most specific classification applicable to the unit as of December 31, 2000. For example, a unit that is classified as a stationary gas-fired engine as of December 31, 2000, but subsequently is authorized to operate as a dual-fuel engine, is classified as a stationary gas-fired engine for the purposes of this chapter.

(3) Changes after December 31, 2000, to a unit subject to an emission specification in this section that result in increased NO_x emissions from a unit not subject to an emission specification of this section, such as redirecting one or more fuel or waste streams containing chemical-bound nitrogen to an incinerator with a maximum rated capacity of less than 40 MMBtu/hr, or a flare, are only allowed if:

(A) the increase in NO_x emissions at the unit not subject to this section is determined using a CEMS or PEMS that meets the requirements of §117.440 of this title, or through stack testing that meets the requirements of §117.435 of this title; and

(B) emission credits equal to the increase in NO_x emissions at the unit not subject to this section are obtained and used in accordance with §117.9800 of this title.

(4) A source that met the definition of major source on December 31, 2000, is always classified as a major source for purposes of this chapter. A source that did not meet the definition of major source (i.e., was a minor source, or did not yet exist) on December 31, 2000, but becomes a major source at any time after December 31, 2000, is from that time forward always classified as a major source for purposes of this chapter.

(5) The availability under subsection (a)(14) of this section of an emission specification for units with an annual capacity factor of 0.0383 or less is based on the unit's status as of December 31, 2000. Reduced operation after December 31, 2000, cannot be used to qualify for a more lenient emission specification under subsection (a)(14) of this section than would otherwise apply to the unit.

(f) Operating restrictions. No person may start or operate any stationary diesel or dual-fuel engine for testing or maintenance of the engine between the hours of 6:00 a.m. and noon, except:

(1) for specific manufacturer's recommended testing requiring a run of over 18 consecutive hours;

(2) to verify reliability of emergency equipment (e.g., emergency generators or pumps) immediately after unforeseen repairs. Routine maintenance such as an oil change is not considered to be an unforeseen repair; or

(3) firewater pumps for emergency response training conducted from April 1 through October 31.

§117.440. Continuous Demonstration of Compliance.

(a) Totalizing fuel flow meters. The owner or operator of units listed in this subsection shall install, calibrate, maintain, and operate a totalizing fuel flow meter, with an accuracy of ± 5%, to individually and continuously measure the gas and liquid fuel usage. A computer that collects, sums, and stores electronic data from continuous fuel flow meters is an acceptable totalizer. The owner or operator must continuously operate the totalizing fuel flow meter at least 95% of the time when the unit is operating during a calendar year. For the purpose of compliance with this subsection for units having pilot fuel supplied by a separate fuel system or from an unmonitored portion of the same fuel system, the fuel flow to pilots may be calculated using the manufacturer's design flow rates rather than measured with a fuel flow meter. The calculated pilot fuel flow rate must be added to the monitored fuel flow when fuel flow is totaled.

(1) The units are the following units subject to §117.405 (relating to Emission Specifications for Reasonably Available Control Technology (RACT)) or §117.410 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstrations):

(A) boilers (excluding wood-fired boilers that must comply by maintaining records of fuel usage as required in §117.445(f) of this title (relating to Notification, Recordkeeping, and Reporting Requirements) or monitoring in accordance with paragraph (2)(A) of this subsection);

(B) process heaters;

(C) duct burners used in turbine exhaust ducts;

(D) stationary, reciprocating internal combustion engines;

(E) stationary gas turbines;

(F) lime kilns

(G) brick and ceramic kilns;

(H) heat treating furnaces;

(I) reheat furnaces;

(J) lead smelting blast (cupola) and reverberatory furnaces;

(K) glass and fiberglass/mineral wool melting furnaces;

(L) incinerators (excluding vapor streams resulting from vessel cleaning routed to an incinerator, provided that fuel usage is quantified using good engineering practices, including calculation methods in general use and accepted in new source review permitting in Texas. All other fuel and vapor streams must be monitored in accordance with this subsection);

(M) gas-fired glass, fiberglass, and mineral wool curing ovens;

(N) natural gas-fired ovens and heaters; and

(O) natural gas-fired dryers used in organic solvent, printing ink, clay, brick, ceramic, and calcining and vitrifying processes.

(2) The following are alternatives to the fuel flow monitoring requirements of paragraph (1) of this subsection.

(A) Units operating with a nitrogen oxides (NO_x) and diluent continuous emissions monitoring system (CEMS) under subsection (f) of this section may monitor stack exhaust flow using the flow monitoring specifications of 40 Code of Federal Regulations (CFR) Part 60, Appendix B, Performance Specification 6 or 40 CFR Part 75, Appendix A.

(B) Units that vent to a common stack with a NO_x and diluent CEMS under subsection (f) of this section may use a single totalizing fuel flow meter.

(C) Diesel engines operating with run time meters may meet the fuel flow monitoring requirements of this subsection through monthly fuel use records maintained for each engine.

(D) Stationary reciprocating internal combustion engines and gas turbines equipped with a continuous monitoring system that continuously monitors horsepower and hours of operation are not required to install totalizing fuel flow meters. The continuous monitoring system must be installed, calibrated, maintained, and operated according to manufacturers' recommended procedures.

(b) Oxygen (O_2) monitors.

(1) The owner or operator shall install, calibrate, maintain, and operate an O_2 monitor to measure exhaust O_2 concentration on the following units operated with an annual heat input greater than $2.2(10^{11})$ British thermal units per year (Btu/yr):

(A) boilers with a rated heat input greater than or equal to 100 million British thermal units per hour (MMBtu/hr); and

(B) process heaters with a rated heat input greater than or equal to 100 MMBtu/hr, except:

(i) as provided in subsection (g) of this section; and

(ii) for process heaters operating with a carbon dioxide (CO_2) CEMS for diluent monitoring under subsection (f) of this section.

(2) The O_2 monitors required by this subsection are for process monitoring (predictive monitoring inputs, boiler trim, or process control) and are only required to meet the location specifications and quality assurance procedures referenced in subsection (f) of this section if O_2 is the monitored diluent under that subsection. However, if new O_2 monitors are required as a result of this subsection, the criteria in subsection (f) of this section should be considered the appropriate guidance for the location and calibration of the monitors.

(c) NO_x monitors.

(1) The owner or operator of units listed in this paragraph shall install, calibrate, maintain, and operate a CEMS or predictive emissions monitoring system (PEMS) to monitor exhaust NO_x. The units are:

(A) units with a rated heat input greater than or equal to 100 MMBtu/hr that are subject to §117.405(a) or (b) or §117.410(a) 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$_x$ CEMS requirements of 40 CFR Part 75~~] are not required to install CEMS or PEMS under this subsection; [~~.~~]

(A) units subject to the NO_x CEMS requirements of 40 CFR Part 75; and

(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_x monitor is off-line:

(A) if the NO_x monitor is a CEMS:

(i) subject to 40 CFR Part 75, use the missing data procedures specified in 40 CFR Part 75, Subpart D (Missing Data Substitution Procedures); or

(ii) subject to 40 CFR Part 75, Appendix E, use the missing data procedures specified in 40 CFR Part 75, Appendix E, §2.5 (Missing Data Procedures);

(B) use 40 CFR Part 75, Appendix E monitoring in accordance with §117.1340(d) of this title (relating to Continuous Demonstration of Compliance);

(C) if the NO_x monitor is a PEMS:

(i) use the methods specified in 40 CFR Part 75, Subpart D; or

(ii) use calculations in accordance with §117.8110(b) of this title (relating to Emission Monitoring System Requirements for Utility Electric Generation Sources); or

(D) the maximum block one-hour emission rate as measured during the initial demonstration of compliance required in §117.435(e) of this title (relating to Initial Demonstration of Compliance).

(d) Ammonia monitoring requirements. The owner or operator of any unit subject to §117.405(a) or (b) or §117.410(a) 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 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 §117.405(a) or (b) of this title or §117.410(a) of this title shall retest the unit as specified in §117.435 of this title within 60 days after any modification that could reasonably be expected to increase the NO_x emission rate.

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 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 §117.1145 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 ± 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 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) 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 §117.1105 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 §117.1105 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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SUBCHAPTER D. COMBUSTION CONTROL AT MINOR SOURCES IN OZONE NONATTAINMENT AREAS
DIVISION 1. HOUSTON-GALVESTON-BRAZORIA 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 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_2, dry basis);

(2) from stationary, gas-fired, reciprocating internal combustion engines:

(A) fired on landfill gas, 0.60 gram per horsepower-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:

(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;

(iv) with a horsepower rating of 300 hp or greater, but less than 600 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;

(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:

(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

(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

(B) the maximum rated capacity after December 31, 2000; or

(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 §117.2025 of this title (relating to Alternative Case Specific Specifications):

(1) carbon monoxide (CO), 400 ppmv at 3.0% 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 3.0% O_2, dry, for boilers and process heaters; 15% O_2, dry, for stationary gas turbines (including duct burners used in turbine exhaust ducts), [~~and~~] gas-fired lean-burn engines, and diesel engines; and 3.0% O_2, dry, for all other units, based on:

(A) a block one-hour averaging period for units not equipped with a CEMS or PEMS for ammonia; 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 ± 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 ± 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

(ii) 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 (O_2) monitors. If the owner or operator installs an O_2 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) 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 §117.2010 of this title shall comply with the following testing requirements.

(1) Each unit must be tested for NO_x, carbon monoxide (CO), and O_2 emissions.

(2) One of the ammonia monitoring procedures specified in §117.8130 of this title (relating to Ammonia Monitoring) must be used to demonstrate compliance with the ammonia emission specification of §117.2010(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.

(A) The SCR system must use a reductant other than the engine's fuel.

(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_x, CO, and O_2 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 §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 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 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 §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 §117.2003(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.

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

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Charmaine Backens
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Texas Commission on Environmental Quality
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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:

(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.

(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; or

(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% 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_2, dry, for gas-fired lean-burn engines and diesel engines; and 3.0% O_2, dry, for all other units, based on:

(A) a block one-hour averaging period for units not equipped with a CEMS or PEMS for ammonia; 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 §117.9800 of this title to comply with the NO_x emission specifications of this section.

§117.2135. Monitoring, Notification, and Testing Requirements.

(a) Oxygen (O_2) monitors. If the owner or operator installs an O_2 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 (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_2 emissions.

(2) One of the ammonia monitoring procedures specified in §117.8130 of this title (relating to Ammonia Monitoring) must be used to demonstrate compliance with the ammonia emission specification of §117.2110(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.

(A) The SCR system must use a reductant other than the engine's fuel.

(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_x, CO, and O_2 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 §117.2110 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 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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SUBCHAPTER E. MULTI-REGION COMBUSTION CONTROL
DIVISION 1. UTILITY ELECTRIC GENERATION IN EAST AND CENTRAL 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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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 §117.3123 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 §117.9320 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;

(3) for each preheater kiln, 3.8 lb/ton of clinker produced; and

(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_x 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 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 (NO_x) 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 §117.405(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_x:

(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 §117.405 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_x:

(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_x:

(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 §117.450 of this title no later than June 1, 2008; and

(B) for units subject to the emission specifications of §117.410(a) of this title, comply with all other requirements of Subchapter B, Division 4 of this chapter as soon as practicable, but no later than:

(i) March 1, 2009, for units subject to §117.410(a)(1), (2), (4), (5), (6), (7)(A), (8), (10), and (14) of this title;

(ii) March 1, 2010, for units subject to §117.410(a)(3), (7)(B), (9), (11), (12), and (13) of this title;

(C) for diesel and dual-fuel engines, comply with the restriction on hours of operation for maintenance or testing in §117.410(f) of this title, and associated recordkeeping in §117.445(f)(9) of this title (relating to Notification, Recordkeeping, and Reporting Requirements), as soon as practicable, but no later than March 1, 2009; and

(D) for any stationary gas turbine or stationary internal combustion engine claimed exempt using the exemption of §117.403(a)(7)(D), (8), or (9) of this title (relating to Exemptions), comply with the run time meter requirements of §117.440(i) of this title (relating to Continuous Demonstration of Compliance), and recordkeeping requirements of §117.445(f)(4) of this title, as soon as practicable, but no later than March 1, 2009.

(2) The owner or operator of any stationary source of NO_x that becomes subject to the requirements of Subchapter B, Division 4 of this chapter on or after the applicable compliance date specified in paragraph (1) of this subsection, shall comply with the requirements of Subchapter B, Division 4 of this chapter as soon as practicable, but no later than 60 days after becoming subject.

(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_x:

(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 subsections [~~subsection~~] (c) and (d) 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 subsection 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

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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, [~~or~~] 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); [~~or~~]

(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_x) emission specification established under this chapter for the unit or units using RCs requires the user of the RCs to obtain additional RCs in accordance with Chapter 101, Subchapter H, Division 1 or 4 of this title and/or otherwise reduce emissions prior to the effective date of such rule change. For units using RCs in accordance with this section that are subject to new, more stringent rule limitations, the owner or operator using the RCs shall submit a revised final control plan to the executive director in accordance with §§117.156, 117.356, 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.

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Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
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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 services 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:

(A) - (E) (No change.)

(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 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 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 and Technician 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 or technician 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) college-level 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,

(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 dispensation 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, interagency [~~-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) [~~(i)~~] 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 for Analysts and $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.

(l) [~~(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) [~~(l)~~] 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.

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TRD-202304485

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Texas Forensic Science Commission
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For further information, please call: (512) 784-0037

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