

# **DRAFT Failure to Attain Rule Language**

## **SUBCHAPTER B: FAILURE TO ATTAIN FEE AND EQUIVALENT ALTERNATIVE**

### **OBLIGATION**

#### **DIVISION 1: FAILURE TO ATTAIN FEE**

**§§101.100, 101.110, 101.115, 101.120, 101.125, 101.127, 101.130, 101.140, 101.145, 101.147,**

**101.150, 101.160, 101.170**

#### STATUTORY AUTHORITY

The new sections are proposed under .....

The proposed new sections implement the requirements of Sections 185 and 182(f) of the Federal Clean Air Act (FCAA).

#### **§101.100. Definitions.**

The following terms, when used in this subchapter, have the following meanings unless the context clearly indicates otherwise.

(1) **Annual Emissions** – the actual emissions reported in tons in annual emissions inventory update, submitted to, and approved by, the agency for each calendar year.

(2) **Attainment Date** – the date an area is scheduled to attain the national primary ambient air quality standard for ozone, as documented in the state implementation plan.

(3) **Attainment year** – For the 1-hour ozone standard, the attainment year is calendar year 2007. For the 1997 8-hour ozone standard, the attainment year is the calendar year immediately preceding an ozone nonattainment area's attainment date.

(4) **Baseline Amount** – The lower of actual or permitted emissions, calculated in tons, using data submitted to and approved by the commission, emitted by the source in the attainment year.

## **DRAFT Failure to Attain Rule Language**

or an annual average based on 24-months of operation in the ten years preceding the attainment date or previous 5-years for electrical utility steam generating units.

(5) **Electrical utility steam generating units** - 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.

(6) **Extension year** – A year as defined in section 181(a)(5) of the Federal Clean Air Act.

### **§101.110. Applicability.**

The provisions of this rule apply to all regulated entities that are major sources of volatile organic compounds (VOC) or nitrogen oxides (NO<sub>x</sub>) in a severe or extreme nonattainment area that has failed to attain the national primary ambient air quality standard for ozone by the applicable attainment date. For purposes of this section, an affected regulated entity shall have met any of the following conditions:

(a) For sources in a severe ozone nonattainment area that has failed to demonstrate attainment:

(1) The regulated entity has the potential to emit, at maximum operation or design capacity, 25 tons per year (tpy) of VOC

(2) The regulated entity has the potential to emit, at maximum operation or design capacity, 25 tons per year (tpy) of NO<sub>x</sub>

(b) For sources in an extreme ozone nonattainment area that has failed to demonstrate attainment:

(1) The regulated entity has the potential to emit, at maximum operation or design capacity, 10 tons per year (tpy) of VOC

(2) The regulated entity has the potential to emit, at maximum operation or design capacity, 10 tons per year (tpy) of NO<sub>x</sub>

## **DRAFT Failure to Attain Rule Language**

### **§101.115. New Source Exemption.**

Any major source meeting the applicability requirements of §101.110 that was not in operation on or before the attainment date is exempt from the requirements of this subchapter.

### **§101.120. Baseline Amount Calculation.**

(a) For purposes of this section, the baseline amount shall be computed as the lower of either of the following:

(1) total amount of actual emissions in the attainment year;

(2) total emissions allowed under the permit applicable to the source in the attainment year; or

(3) total emissions as calculated under subsection (b) of this section.

(b) if the regulated entity's emissions are irregular, cyclical, or otherwise vary significant from year to year, then the baseline amount may be computed using any single 24-month consecutive period within a historical period preceding the calendar year containing the attainment year to compute an average actual annual emissions rate (tons per year) for the site. If used, the historical period must be:

(3) ten years for non-utilities

(4) five years for electrical utility steam generating units

(c) Calculation. A baseline amount, reported in units of tons, must be calculated separately for VOC and for NO<sub>x</sub>.

(d) Baseline Amount Reporting. Within 90 days of the effective date of this section, the owner or operator of each regulated entity in an area meeting the requirements of Section 101.100 shall submit to the executive director a report establishing its baseline amount emissions on a form published by the executive director.

## **DRAFT Failure to Attain Rule Language**

(e) Approval. The baseline amount calculation is subject to approval by the executive director. After approval, it will be fixed and not be changed without the approval of the executive director

### **§101.125. Aggregated Pollutant Baseline Amount.**

(a) Notwithstanding the requirements of § 101.120, major sources meeting the applicability requirements of section §101.110 may choose to combine emissions for both VOC and NO<sub>x</sub> into a single baseline amount for a site after calculating each pollutant's emission baseline amount in accordance with this Subchapter.

(b) Major sources choosing to combine emissions for both VOC and NO<sub>x</sub> into a single baseline amount for a site shall not aggregate emissions from multiple sites as allowed under § 101.126.

(c) Baseline Reporting. Within 90 days of the effective date of this section, the owner or operator of each regulated entity in an area meeting the requirements of Section 101.100 shall submit to the executive director a report establishing its baseline amount emissions on a form published by the executive director.

(d) Approval. The baseline amount calculation is subject to approval by the executive director. After approval, it will be fixed and not be changed without the approval of the executive director, until the failure to attain fee no longer applies for the area.

(e) If a major source elects to aggregate pollutants as allowed in this section, then the major source shall also aggregate pollutants to calculate the failure to attain fee.

### **§ 101.127. Multiple Site Aggregation Baseline Amount.**

(a) Notwithstanding the requirements of § 101.120, Major sources meeting the applicability requirements of § 101.110, who are subject to Subchapter H,

## **DRAFT Failure to Attain Rule Language**

Division 3 may aggregate NO<sub>x</sub> emissions from multiple sites to calculate the baseline amount.

- (b) Notwithstanding the requirements of § 101.120, major sources meeting the applicability requirements of § 101.110, who are subject to Subchapter H, Division 6 may aggregate VOC emissions from multiple sites to calculate the baseline amount.
- (c) If a major source elects to aggregate emissions from multiple sites as allowed in this section, then the major source may not also elect to aggregate pollutants as allowed under § 101.125.
- (d) Baseline Reporting. Within 90 days of the effective date of this section, the owner or operator of each regulated entity in an area meeting the requirements of Section 101.100 shall submit to the executive director a report establishing its baseline amount emissions on a form published by the executive director.
- (e) Approval. The baseline amount calculation is subject to approval by the executive director. After approval, it will be fixed and not be changed without the approval of the executive director, until the failure to attain fee no longer applies for the area.
- (f) If a major source elects to aggregate emissions from multiple sites as allowed in this section, then the major source shall also aggregate emissions from multiple sites to calculate the failure to attain fee
- (g) The same period of time shall be used as a basis for the baseline amount calculation for all aggregated sites.

### **§101.130. Adjustment of Baseline Amount for Sources With Less than 24 months of operation at attainment date**

## **DRAFT Failure to Attain Rule Language**

(a) The baseline amount may be adjusted for certain regulated entities if they experienced less than 24-months of consecutive operation by the area's attainment date. The adjusted baseline amount shall be computed as the lower of the following:

(1) amount of actual emissions in the attainment year; or

(2) emissions allowed under the permit applicable to the source in the attainment year.

(b) Baseline Reporting. Within 60 days of completing 24-months of operation, the owner or operator of each regulated entity in an area meeting the requirements of Section 101.100 shall submit to the executive director a report establishing its adjusted baseline amount emissions on a form published by the executive director.

(c) Approval. The adjusted baseline amount calculation is subject to approval by the executive director. After approval, it will be fixed and not be changed without the approval of the executive director until the failure to attain fee no longer applies for the area.

### **§101.140. Failure to Attain Fee Obligation.**

(a) Pollutant Applicability. The total fee shall be applicable to and calculated for each pollutant - VOC or NO<sub>x</sub> – for which the regulated entity meets the requirements of §101.110.

(b) Obligation. The owner or operator of each regulated entity to which this rule applies shall pay a fee to the commission, computed in accordance with subsection (c) of this section. The fee shall be assessed on actual emissions exceeding 80 percent of the baseline amount during the attainment year.

(c) Calculation of fee. The fee will be calculated by:

## **DRAFT Failure to Attain Rule Language**

$$\underline{VOC_{Fee} = FCAA185_{FeeRate} * (VOC_{Actual} - 0.8 * VOC_{BaselineAmount})}$$

$$\underline{NOx_{Fee} = FCAA185_{FeeRate} * (NOx_{Actual} - 0.8 * NOx_{BaselineAmount})}$$

### Definitions:

$$\underline{FCAA\ 185\ Fee\ Rate = \$5000(CPI/122.15)}$$

CPI = The annual Consumer Price Index (CPI) adjustment factor which is equivalent to the cumulative increase in the CPI beginning with the 1989 change in the index up to and including the change in year prior to the year for which the fees are due. For any calendar year the CPI is the average of the CPI for all-urban consumers published by the Department of Labor, as of the close of the 12-month period ending on August 31 of each calendar year or the revision of the CPI which is most consistent with the CPI for calendar year 1989 in accordance with Sections 502(b)(3)(B)(v) and 185(b)(3) of the CAA.

VOC Actual = Total annual VOC in units of tons reported on the annual Emissions

Inventory (EI) for the regulated entity

NO<sub>x</sub> Actual = Total annual NO<sub>x</sub> reported in units of tons on the annual EI for the regulated entity

VOC Baseline Amount = Baseline for VOC calculated per **§101.120**

NO<sub>x</sub> Baseline Amount= Baseline for NO<sub>x</sub> calculated per **§101.120**

### **§101.145. Failure to Attain Fee Obligation for Aggregated Pollutant Baseline.**

(a) Pollutant Applicability. The fee shall be applicable to both pollutants, VOC and NO<sub>x</sub>, as combined, emitted from the regulated entity meeting the requirements of §101.110, that chooses to aggregate VOC and NO<sub>x</sub> as allowed under § 101.125.

## **DRAFT Failure to Attain Rule Language**

(b) Obligation. The owner or operator of each regulated entity to which this rule applies shall remit to the commission a fee, computed in accordance with subsection (c) of this section. The fee shall be assessed on actual emissions exceeding 80 percent of the baseline during the attainment year.

(c) Calculation of fee. The fee will be calculated by:

$$\underline{TotalFee = FCAA185FeeRate * [(VOCActual + NOxActual) - 0.8 * BaselineCombined]}$$

Definitions:

FCAA 185 Fee Rate Per Ton = \$5000(CPI/122.15)

CPI = The annual Consumer Price Index (CPI) adjustment factor which is equivalent to the cumulative increase in the CPI beginning with the 1989 change in the index up to and including the change in year prior to the year for which the fees are due. For any calendar year the CPI is the average of the CPI for all-urban consumers published by the Department of Labor, as of the close of the 12-month period ending on August 31 of each calendar year or the revision of the CPI which is most consistent with the CPI for calendar year 1989 in accordance with Sections 502(b)(3)(B)(v) and 185(b)(3) of the CAA.

VOC Actual = Total annual VOC in units of tons reported on the annual Emissions

Inventory (EI) for the regulated entity

NO<sub>x</sub> Actual = Total annual NO<sub>x</sub> reported in units of tons on the annual EI for the regulated entity

BaselineCombined = Baseline amount for combined VOC and NO<sub>x</sub> calculated per §101.125.

### **§101.147 Failure to Attain Fee Obligation for Multiple Site Aggregation**

## **DRAFT Failure to Attain Rule Language**

(a) Pollutant Applicability. The total fee shall be applicable to and calculated for each pollutant - VOC or NO<sub>x</sub> – for which the regulated entity meets the requirements of §101.110. Actual VOC and NO<sub>x</sub> emissions may be combined for multiple sites and limited to emissions from:

(1) Sites allowed to aggregate NO<sub>x</sub> per §101.127 (a)

(2) Sites allowed to aggregate VOC per §101.127 (b)

(b) Fee obligation from VOC or NO<sub>x</sub> emission sources not qualified for baseline aggregation under § 127 will remain separate and due from each site.

(c) Obligation. The owner or operator of each regulated entity to which this rule applies shall pay a fee to the commission, computed in accordance with subsection (d) or (e) of this section. The fee shall be assessed on actual emissions exceeding 80 percent of the baseline amount during the attainment year.

(d) Calculation of fee for sources not aggregated. The fee will be calculated by the method described in § 140.

(e) Calculation of fee for emissions from aggregated site. The fee will be calculated by:

$$\text{VOC Fee} = \text{FCAA Fee Rate} * (\text{VOC Aggregated Actual} - 0.8 * \text{VOC Aggregated Baseline Amount})$$

$$\text{NOx Fee} = \text{FCAA 185 Fee Rate} * (\text{NOx Aggregated Actual} - 0.8 * \text{NOx Aggregated Baseline Amount})$$

Definitions:

$$\text{FCAA 185 Fee Rate} = \$5000(\text{CPI}/122.15)$$

CPI = The annual Consumer Price Index (CPI) adjustment factor which is equivalent to the cumulative increase in the CPI beginning with the 1989 change in the index up to and including the change in year prior to the year for which the fees are due. For any calendar year the CPI is the average of the CPI for all-urban consumers published by the

## **DRAFT Failure to Attain Rule Language**

Department of Labor, as of the close of the 12-month period ending on August 31 of each calendar year or the revision of the CPI which is most consistent with the CPI for calendar year 1989 in accordance with Sections 502(b)(3)(B)(v) and 185(b)(3) of the CAA.

VOC Aggregated Actual = Total annual VOC in units of tons reported on the annual Emissions Inventory (EI) for the regulated entities combined per **§101.127**

NO<sub>x</sub> Aggregated Actual = Total annual NO<sub>x</sub> reported in units of tons on the annual EI for the regulated entities combined per **§101.127**

VOC Aggregated Baseline Amount = Aggregated baseline for VOC calculated per **§101.127**

NO<sub>x</sub> Aggregated Baseline Amount= Aggregated baseline for NO<sub>x</sub> calculated per **§101.127**

### **§101.150. Failure to Attain Fee Payment.**

(a) Payment. Fees must be paid by check, certified check, electronic funds transfer, or money order made payable to the TCEQ, and sent to the TCEQ address printed on the billing statement.

(b) Due date. Payment of the fee is due within 30 days of the invoice date.

(c) When Failure to Attain Fee Begins. The first fee is due and calculated for actual emissions from the first full calendar year following the attainment year.

### **§101.160. Cessation of Program.**

The failure to attain fee shall continue to apply until one of the following actions is final:

(a) Redesignation of the nonattainment area by EPA;

## **DRAFT Failure to Attain Rule Language**

(b) Finding of attainment by EPA; or

(c) Three years of quality assured ambient monitoring data demonstrating attainment  
have been accepted by EPA.

### **§101.170. Exemption from Fee Obligation**

No major stationary source shall be required to pay a fee during any year that has been  
determined by the EPA to be an extension year under section 181(a)(5) of the Federal Clean Air  
Act.

# **DRAFT Failure to Attain Rule Language**

## **SUBCHAPTER B: FAILURE TO ATTAIN FEE AND EQUIVALENT ALTERNATIVE**

### **OBLIGATION**

#### **DIVISION 2: EQUIVALENT OBLIGATION**

##### **§§ 101.200, 101.210,**

###### **§101.200 Eligibility for Equivalent Alternative Obligation.**

Notwithstanding any requirement in Division 1 of this Subchapter, a major stationary source that is obligated to pay a failure to attain fee may submit a request to the Executive Director to fulfill the fee obligation with an equivalent alternative obligation in compliance with the requirements of this subchapter.

###### **§101.210 Equivalent Alternative Obligation.**

(a) A major stationary source subject to this Subchapter may submit a request to fulfill its failure to attain fee obligation by substituting emission reductions, on a pollutant specific basis, in an amount equivalent to the tons on which the failure to attain fee has been assessed by retiring either:

- (1) an equivalent amount of emissions reduction credits;
- (2) an equivalent amount of discrete emission reduction credits;
- (3) an equivalent amount of current or banked Highly Reactive Volatile

Organic Compound Emissions Cap and Trade (HECT) program allowances; or

- (4) an equivalent amount of Mass Emissions Cap and Trade (MECT)

program allowances.

(b) A major stationary source that aggregated pollutants for purposes of establishing its emission baseline amount must provide for equivalent aggregated pollutant emission reductions when requesting an equivalent alternative obligation.

## **DRAFT Failure to Attain Rule Language**

(c) A major stationary source that aggregated multiple sites for purposes of establishing its emission baseline amount must provide for equivalent emission reductions from the aggregated multiple sites when requesting an equivalent alternative obligation.