

a school district under the TEC, Chapter 39 [§39.131], for failure to comply with the OFSDP requirements of this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 28, 2009.

TRD-200904304

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: November 8, 2009

For further information, please call: (512) 475-1497



## TITLE 22. EXAMINING BOARDS

### PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

#### CHAPTER 73. LICENSES AND RENEWALS

##### 22 TAC §73.7

The Texas Board of Chiropractic Examiners (Board) proposes an amendment to §73.7, Approved Continuing Education Courses, to remove a reference to the specific fee amount for submittal of an application for board approval of a continuing education course. The specific amounts for all board fees are listed in §75.7, Required Fees and Charges.

Glenn Parker, Executive Director, has determined that for each year of the first five years that this amended rule is in effect there will be no additional cost to state or local governments.

Mr. Parker has also determined that for each year of the first five years that this amended rule is in effect the public benefit will be that §73.7 will not need to be amended should the board change the fee for submittal of an application for approval of a continuing education course. Mr. Parker has also determined that there will be no adverse economic effect to individuals, small or micro businesses during the first five years that this amended rule will be in effect as this rule imposes no burdens.

Comments on the proposed amendment to §73.7 and/or a request for a public hearing on the proposed rule amendment may be submitted to Glenn Parker, Executive Director, Texas State Board of Chiropractic Examiners, 333 Guadalupe St., Tower III, Suite 825, Austin, TX 78701, (512) 305-6705 fax, no later than 30 days from the date that this proposed amendment is published in the *Texas Register*.

The rule amendment is proposed under Texas Occupations Code §201.152, relating to rules and §201.356 relating to continuing education. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic; §201.356 requires the board to adopt rules concerning continuing education.

No other statutes, articles, or codes are affected by the adopted rule.

§73.7. *Approved Continuing Education Courses.*

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

(c) Application deadline and fee. A sponsor may submit an application no later than 60 days prior to the date of the course, along with a nonrefundable application fee as set by the board [of \$25] for each course. For the purpose of this subsection, where the same course is held in multiple cities or towns, with different speakers, each location is considered a separate course. If a continuing education program consists of separate sessions or modules, on different topics and on different dates, each session or module is considered a separate course.

(d) - (j) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 25, 2009.

TRD-200904281

Glenn Parker

Executive Director

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: November 8, 2009

For further information, please call: (512) 305-6901



## TITLE 30. ENVIRONMENTAL QUALITY

### PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

#### CHAPTER 101. GENERAL AIR QUALITY RULES

The Texas Commission on Environmental Quality (commission or TCEQ) proposes amendments to §§101.1, 101.390 - 101.394, 101.396, and 101.399 - 101.401.

The proposed sections will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP).

##### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The Houston-Galveston-Brazoria (HGB) metropolitan area was designated nonattainment for the 1997 eight-hour ozone National Ambient Air Quality Standard (NAAQS) as a moderate area effective June 15, 2004. In October 2008, the HGB area was reclassified as a severe ozone nonattainment area by the EPA as requested by the governor of Texas. The HGB area is required to attain the 1997 eight-hour ozone standard of 0.08 parts per million as expeditiously as practicable, but no later than by June 15, 2019. The EPA requires submittal of the HGB Attainment Demonstration SIP Revision for the 1997 Eight-Hour Ozone Standard by April 15, 2010. This rulemaking would be submitted as part of the HGB Attainment Demonstration SIP Revision for the 1997 Eight-Hour Ozone Standard.

Photochemical modeling analysis demonstrates that a 25% reduction of the Highly Reactive Volatile Organic Compound (HRVOC) cap in Harris County would contribute to attainment of the 1997 eight-hour ozone NAAQS by reducing the future 2018 ozone design values for all HGB area monitors. The largest reductions are projected at the Deer Park monitoring site, which is the area's driving design value monitor.

In addition, some regulated entities participating in the HRVOC Emissions Cap and Trade (HECT) program have commented that the initial allocation of HRVOC allowances was not equitably distributed. The existing allocation methodology is based on the total amount, in pounds, of HRVOC produced as an intermediate, byproduct, or final product, or used by a process unit at each participating site. Subsequent analysis of the HRVOC emissions data reported under the HECT program for the 2007 and 2008 calendar-year control periods supports the assertion that some industry sectors may have been over-allocated while others may have received an insufficient allocation. Revisions to the rule are designed to result in a more equitable approach while establishing HRVOC limitations in support of HGB's attainment of the NAAQS as expeditiously as practicable.

As part of the December 2004 HGB SIP mid-course review for the one-hour ozone standard, the commission developed a dual approach to achieve the necessary HRVOC reductions: address variable short-term emissions through a not-to-exceed hourly emission limit and address steady-state and routine emissions through an annual cap. The annual HRVOC cap reduced the overall reactivity in the airshed by removing the compounds that are most prevalent and most likely to react rapidly enough to cause one-hour ozone exceedances.

For Harris County, the annual HRVOC cap was distributed and enforced through the HECT program under 30 TAC Chapter 101, Subchapter H, Division 6. This program established a mandatory annual HRVOC emissions cap on all sites subject to the HRVOC control requirements of 30 TAC Chapter 115, Subchapter H, Division 1 or Division 2, and having a potential to emit greater than ten tons per year (tpy). The cap is enforced through the allocation, trading, and banking of allowances. An allowance is the equivalent of one ton of HRVOC emissions. This HRVOC cap, initially implemented on January 1, 2007, was established at a level demonstrated as necessary to allow the HGB area to attain the one-hour ozone standard along with a 5% reduction to safeguard against potential emissions variations. The HECT program also requires subject sites with new or modified HRVOC sources to obtain unused allowances for any increased HRVOC emissions from other sites already participating in the program. For sites that have the potential to emit ten tpy or less of HRVOC from sources subject to the HRVOC control requirements of Chapter 115, Subchapter H, Divisions 1 or 2, the total, aggregate HRVOC emissions from those sources is limited to ten tpy. Sites exempt from the HECT program were extended an opportunity to opt-in, receive an HRVOC allocation, and thereby not be restricted to the ten tpy limit.

Proposed revisions to the HECT program under this rulemaking would reduce the total HECT cap by 25% by the attainment year and revise the HRVOC allocation methodology to address inequities from the initial allocation. Photochemical modeling analysis demonstrates that a 25% reduction of the total HRVOC cap in Harris County would advance attainment of the 1997 eight-hour ozone NAAQS by reducing the future 2018 ozone design values at all HGB monitors. The largest decrease in the projected design value, 0.24 parts per billion (ppb), was at the Deer Park monitor. The average decrease for all sites was 0.11 ppb.

HRVOC monitoring data reported for 2006 - 2008 indicates that the total actual emissions from sources in the HECT program have been approximately 50% of the total current HRVOC cap. Because the HRVOC rules in Chapter 115, Subchapter H, Divisions 1 and 2, require emissions from maintenance, startup, and shutdown activities and emissions events be included in the

HECT program, the total surplus observed in the two years that the program has been active cannot be removed. Therefore, a buffer in the cap is still needed to account for the inherent variability of HRVOC emissions associated with these activities.

The proposed rule would implement an initial 10% reduction on the existing available cap of 3,451.5 tons beginning with the 2014 calendar-year control period. The available cap would then be reduced in a "stepdown" fashion, similar to the existing Mass Emissions Cap and Trade Program (MECT) for Nitrogen Oxide, in 5% increments at the start of each calendar-year control period for 2015, 2016, and 2017. Therefore, the full 25% cap reduction will have been in effect for one full calendar-year control period by January 1, 2018. While historical data demonstrates an overall surplus in the HRVOC cap, the cap reduction and re-allocation may require some individual sites to install additional controls. The commission is therefore proposing this stepdown approach to allow companies time to install controls if necessary.

Following the initial allocation of allowances, companies participating in the HECT program commented that the allocation was not equitably distributed. Emissions reported by industry based on their HRVOC monitoring data supports the assertion of an inequitable distribution of allowances. In addition, HECT program participants commented that certain HRVOC-emitting industry sectors were more adversely affected under the existing allocation methodology due to different HRVOC emission rates associated with production throughput. Facilities that use HRVOC as a raw material in the production of olefins have higher HRVOC emissions associated with their process as compared to other chemical manufactures and refineries. Therefore, under the existing HECT program, sites in the refinery and non-polymer chemical sectors generally have the largest excess HRVOC allowances as compared to actual emissions. HECT program participants also commented on the reluctance of sites to trade due to the inclusion of emissions events in determining compliance with the program and the risk of trading away allowances that may be needed for compliance due to an emission event later in the calendar-year control period. The commission proposes to reallocate HRVOC allowances under the HECT program based on actual emissions data and implement several significant program changes to encourage market activity through trading.

The existing HECT allocation methodology is a level of activity production-based calculation of the total amount of HRVOC, in pounds, produced or used by a process unit. This production-based methodology was developed prior to the implementation of monitoring requirements for applicable sources of HRVOC in Harris County. HECT program participants have been reporting actual monitored emissions data to the HECT program since 2006.

The rule revision proposes a new allocation methodology based on actual emissions data with the goals of fairly and equitably distributing the compliance burden for HECT program participants, applying credit for controlling and reducing HRVOC emissions, and not rewarding or encouraging emissions from emissions events. Cap and trade programs aim to provide economic incentives for reducing emissions through controls by allowing excess allowances to be sold to other program participants. However, an allocation methodology based solely on actual emissions has the potential of penalizing sites that are well controlled and/or rewarding sites that are not well controlled. To allow for applicable sites to establish a representative baseline emission period, the proposal would allow sites to use

their two highest consecutive calendar-year control periods out of the four years from 2006 - 2009.

The proposed rulemaking includes a provision for HECT participants that qualify to have the ability to request from the executive director the use of an alternate baseline period from 2004 and 2005 for the purpose of establishing baseline emissions. The owner or operator of a site must submit a request to the executive director by July 1, 2010, demonstrating that they were performing speciated testing and continuous flow monitoring of HRVOC emissions during the requested alternative baseline period. This provision is available for participants with substantial HRVOC reductions. In addition, the emission reductions must be permanent, voluntary, and quantifiable of an amount equal to or greater than 50% of the site's total annual HRVOC emissions or a site-wide reduction in HRVOC emissions subject to the HECT program of 50 tons or greater. The emissions reductions must also have been made enforceable under an action submitted to the executive director no later than April 1, 2010.

Additionally, an owner or operator of qualifying sites not in operation during the baseline emissions period may request to retain their current allocation until an alternate baseline period is established. Beginning with the 2014 calendar-year control period, all sites under the HECT program will receive an allocation in accordance with the proposed allocation methodology.

Allocations would then be distributed based on the new allocation methodology beginning with the 2011 calendar-year control period. Baseline emissions for the purpose of calculating the site allocations would be the average of the actual emissions for the two consecutive calendar-year control periods as submitted in the Form ECT-6H, Highly-Reactive Volatile Organic Compound Emissions Cap and Trade Baseline Emissions Certification Form.

Recent economic conditions have prompted concerns from industry that the 2006 - 2009 years proposed for establishing baseline emissions activity may not be representative of general production and emission rates due to the recent economic downturn. However, the proposed reallocation methodology is based on the percentage of individual site emissions contributing to the total industry sector emissions and the fraction that each industry sector's emissions make up toward the total of all HRVOC emissions in the county. Therefore, the proposed allocation of allowances for any individual site would not be significantly affected by general changes in economic conditions. An individual site's allocations would only be changed if their uncontrolled emissions significantly increased as a proportion of the total industry sector emissions. The commission is seeking comment on the proposal for establishing baseline emissions, including choosing the two highest consecutive calendar-year control periods from the four-year period 2006 - 2009.

The proposed reallocation methodology would be based on calculating "uncontrolled" or "precontrolled" emissions for facilities using reported control efficiencies based on the specifications for flares in 30 TAC §115.725(d). Dividing actual emissions by one minus the percent control efficiency calculates the amount of emissions before controls, therefore allowing sites, who have controlled their HRVOC emissions from flares well, to receive credit for these reductions in the allocation. In addition, heaters, boilers, and furnaces combusting HRVOC streams would calculate "uncontrolled" emissions by dividing actual emissions by one minus a control efficiency of 99%. By allowing these facilities to claim a control efficiency of 99%, the methodology recognizes that the average percent control efficiency from these

types of combustion units provides better combustion and control efficiency than flares due to their closed combustion design and higher flame temperatures. Other facilities subject to Chapter 115, Subchapter H, Divisions 1 and 2, and the HECT program will be included in the equation for calculating uncontrolled emissions, however because they do not have a specified control efficiency under Chapter 115, their uncontrolled emissions will be equal to their actual emissions. This methodology cannot account for flare-gas recovery, recycle streams, or other processes resulting in differing emission control rates. Therefore, the commission is considering rule provisions to award credit for well controlled facilities that have installed flare minimization programs, flare gas recovery systems, HRVOC stream recycling and/or recirculation. The commission is seeking comment on suitable methodologies for awarding allowance credit for well controlled facilities during reallocation.

The proposed reallocation methodology also creates four industry-type sector pools to account for different HRVOC emission rates associated with the processes of the industry sectors with HRVOC emissions in Harris County. These industry sector definitions reflect those used in existing regulations and are readily defined by process type and product. The existing application of Best Available Control Technology (BACT) and other federal standards within industry sectors would assure a comparable cost of control within the industry sector, and the division of the cap into industry sector share would therefore reflect a more equitable allocation methodology. In addition, the amount of HRVOC product that is recycled and recovered for sites within the same industry sector should be comparable due to market forces and competition within the sector. Sites within industry sectors that produce HRVOC as product share the economic incentive to reduce emissions using similar recovery techniques.

The four industry sectors proposed are petroleum refining, nonpolymer chemical producers, polymer producers, and storage/loading/other. The proposed methodology then calculates each sector's share of the available cap by dividing the total amount of actual average emissions over the emissions baseline period for the sector by the total available cap. The resulting fraction expressed as a percentage becomes the industry sector share. Applying this sector share to the individual site allocation equation creates a methodology in which only facilities within the individual industry sectors compete with one another for allowances. Some sites contain facilities from two or more industry sectors, and these sites would be separated by the various facility process-type into "sub-sites" that would be included in the respective industry sectors, with emissions and allocations for the industry sector and site calculated accordingly.

To address the reluctance of sites to trade HECT allowances in order to reserve their allowances to cover emissions from emissions events under the current HECT program, the proposed reallocation methodology would create an emissions event set-aside pool. This set-aside would come out of the available cap before allocation. The total HRVOC cap would therefore not be increased. The proposed emissions event set-aside amount of 250 tons is intended to exceed the anticipated HRVOC emissions from emissions events during any calendar-year control period. This amount is based on records of emissions events from the 2006 Special Inventory, 223 tons, and those associated with Hurricane Ike, 196 tons. HECT participating sites would still be held accountable for emissions events under the existing Chapter 101 regulations. The regulated community is under continuous pressure to prevent and control emissions events and there is a strong enforcement action mechanism in place to

discourage excessive emissions events. The use of allowances from the set-aside by the agency to cover emissions from emissions events from a site would not in any way alleviate or replace the site's compliance burden with other Chapter 101 and Chapter 115 regulations for emissions events.

The 250 ton emissions event set-aside would be solely dedicated to covering emissions from emissions events for all sites under the HECT program. Allowances from the set-aside would not be distributed to any individual site on any basis, and any remaining allowances from the emissions event set-aside would not be available for sale or use as vintage allowances after each control period. Emissions from emissions events at individual sites would not be included in the calculation to determine the annual operating emissions for HECT account compliance until total emissions from emissions events in the county have exceeded the 250 ton set aside amount during any control period. Emissions from reportable emissions events, as defined under §101.1(87), in Harris County during each calendar-year control period would be counted toward the set-aside in reported chronological order to the State of Texas Environmental Electronic Reporting System (STEERS) until the end of each calendar-year control period or until the set-aside amount of 250 tons has been met. Allowances for non-reportable emissions from emissions events will be accounted under the 250 ton set aside on March 31st after each calendar-year control period in order of reported chronology. Emissions from emissions events would be applied toward the 250 ton set-aside in actual pounds per hour of HRVOC emissions and would not be calculated according to the 1,200 pound per hour short-term limit allowed under existing §101.396(b). In the event that the sum total of emissions events in any control period exceeds the 250 ton amount, individual sites would be required to cover any emissions from emissions events in excess of the 250 ton set-aside from their allocation or through the acquisition of allowances on the open market. Therefore, emissions from reportable emissions events would in effect be counted toward the set-aside before emissions from non-reportable emissions events. Using a hypothetical Scenario: during an emergency in Harris County over a period at the end of August, a total of 240 tons of HRVOC were emitted as reportable emissions events from HECT participating sites. During the first week of September, an individual site had a one ton non-reportable emission event and a second site had a nine ton reportable emission event. The 249 tons of emissions from reportable emissions events would be counted toward the 250 ton set-aside when reported to STEERS two weeks later. The one ton of emissions from the non-reportable emission event would be covered by the set-aside when the site submitted its ECT-1H, Annual Compliance Report, on March 31st of the following year, in the event that there were no other reportable emissions events after the first week in September. These emissions would then be covered by the set-aside. Any and all emissions from emissions events reported as occurring after the 250 ton limit was reached during the first week of September would be required to be covered by allowances from the individual site's compliance account.

In order to allow HECT participants to plan facility operations and HECT program trades and activities, reportable emissions events during the calendar-year control period, reported to STEERS as a final record under §101.201(b), will be counted toward the 250 ton set-aside in chronologically reported order, posted quarterly, and made available to the public and EPA on the emissions banking and trading webpage. The commission is seeking comment and suggested alternatives on the proposed

approach for tracking and posting reportable emissions events and the status of emissions covered under the emission event set-aside for the purpose of HECT program planning, including methods to estimate and post non-reportable emissions events during the calendar-year control period.

As part of the reallocation methodology, the commission proposes to increase the minimum allocation from five to ten tons. The current HECT program includes a minimum allocation of five tons for all sites whose product throughput/use level of activity-based allocation was less than or equal to five tons. However, the program also exempts sites with a potential to emit less than ten tons from the program. The original rationale for establishing the minimum allocation lower than the exemption level was to prevent companies with low emissions from "opting-in," and thereby automatically receiving allowances greater than their emissions. Under §101.392(b), any site wishing to opt-in must have requested to participate by April 30, 2005. As there is no longer an opportunity for sites to "opt-in," the reallocation proposal would raise the minimum allocation to ten tons in order to meet the exemption level. Under this proposal, sites with a potential to emit equal to or greater than ten tons that are required to participate in the program, but with average emissions over the baseline period of less than ten tons, would receive a minimum ten ton allocation.

According to the reallocation principals above, including a methodology based on average actual emissions from over the emissions baseline period, calculating "uncontrolled" or "pre-controlled" emissions using reported control efficiencies, setting aside 250 tons for emissions events, and raising the minimum allocation to ten tons, the commission proposes a revised reallocation methodology for HRVOC allowances beginning with the 2011 calendar-year control period. The total modeled (future base) cap on HRVOC emissions in Harris County is currently 3,633.1 tons. After deducting the required 5% EPA environmental contribution of 181.65 tons, the total HRVOC cap would be 3,451.4 tons. After then subtracting the 250 ton emissions event set-aside, the commission will allocate 3,201.4 tons to individual sites at the beginning of the 2011 calendar-year control period. The first 10% cap stepdown would occur at the beginning of the 2014 calendar-year control period. The total amount of HRVOC allowances available in 2014 would therefore be 3,106.3 tons. After subtracting the 250 ton emissions event set-aside, the commission will allocate 2,856.3 tons to individual sites in the 2014 calendar-year control period.

The proposed rulemaking would then continue to reduce the cap to a total of 25% in annual 5% reductions from 2015 to 2017. Therefore, the final available cap beginning with the 2017 control period would be 2,338.6 tpy. The 2,338.6 ton value represents the amount modeled in the 2018 future case 25 Percent HECT Cap Reduction sensitivity run of 2,588.6 tons, minus the 250 ton set-aside, as HRVOC allowances. The allocation methodology for each calendar-year control period would be identical to the proposed methodology for 2011.

The commission is also seeking comment on an alternative allocation methodology that would allocate to each site a quantity of allowances equal to their highest emissions over the emissions baseline period plus a flat percentage of the remaining cap. This alternative, a "flat percentage of highest emissions-based" methodology, proposes that each site receive an allocation equal to their highest emissions during any one year of the baseline emissions period from 2006 - 2009, plus an additional amount

of the remaining cap such that each site receives an equal percentage of their highest emissions.

The total highest emissions from HECT program participants during the baseline emissions period is estimated to be approximately 75% of the total cap prior to any reduction in the cap for the eight-hour ozone attainment demonstration. Therefore, this alternative proposes that the remaining 25% then be divided among the sites. This proposed methodology would calculate each site's allocation by multiplying the site's highest emissions by the total available cap divided by the sum of all highest emissions from all sites. Because the total available cap is greater than the sum of all of the sites' highest emissions, each site would therefore receive an allocation greater than 100% of their emissions during their highest emission year.

Consider an example where the total HRVOC cap is 3,500 tons and the sum of all of the site's highest emissions during the baseline emissions period is 3,181.8 tons; dividing the total cap of 3,500 by 3,181.8 equals 1.10 or 110%. Each site's highest emissions is then multiplied by this percentage yielding an allocation for each site of 110% of each site's highest emissions. If a site's highest emissions were 100 tons, then their allocation under this proposal would be equal to 110 tons.

## SECTION BY SECTION DISCUSSION

In addition to the proposed amendments to §§101.1, 101.390 - 101.394, 101.396, and 101.399 - 101.401 discussed elsewhere in this preamble, the commission also proposes to make various stylistic non-substantive changes to update rule language to current Texas Register style and format requirements, as well as establish more consistency in the rules. Such changes include appropriate and consistent use of acronyms, punctuation, section references, and certain terms such as "must" and "shall." These changes are non-substantive and generally are not specifically discussed in this preamble.

### §101.1, Definitions

Proposed changes to §101.1 would amend the definition of reportable quantity for 1,1,1,2,3,3,3-heptafluoropropane (HFC-227ea) in §101.1(88)(A)(i)(III)(-y-). The commission adopted a reportable quantity of 5,000 pounds for HFC-227ea in 2005 and the adopted rule was published in the December 30, 2005, issue of the *Texas Register* (30 TexReg 8886). However, the reportable quantity value of 5,000 pounds was inadvertently omitted in the version filed with the Secretary of State's Office. The commission is only proposing to correct this omission in §101.1(88)(A)(i)(III)(-y-) and no other changes to the definition of reportable quantity will be addressed in this rulemaking. Additionally, the commission proposes to update the definition of volatile organic compound in §101.1(115) to be consistent with the current definition in the 40 Code of Federal Regulations, §57.100(s) amended on January 21, 2009 (74 FR 3441).

### §101.390, Definitions

The commission proposes to revise §101.390(4) and add §101.390(9) to include the definitions of "Baseline emissions period" and "Uncontrolled emissions." "Baseline emissions period" is defined as any two consecutive calendar-year control periods designated by the site for the purpose of establishing baseline emissions for the allocation of allowances. "Uncontrolled emissions" is defined as taking the total emissions calculated over the baseline emissions period for each facility and dividing them by one minus the average percent control efficiency specifications found in Chapter 115. For heaters, boilers, and furnaces

combusting HRVOC streams, the definition would provide for these emissions to be calculated as actual average emissions over the baseline emissions period for each facility divided by one minus 99%. The commission also proposes renumbering §101.390.

### §101.391, Applicability

The commission proposes deleting the term "covered" and replacing it with "applicable" in describing sites and facilities subject to the rulemaking for rule consistency clarity.

### §101.392, Exemptions

The commission proposes deleting the term "covered" and replacing it with "applicable" in describing sites and facilities subject to the rulemaking for rule consistency clarity.

### §101.393, General Provisions

The commission proposes deleting the term "covered" and replacing it with "applicable" in describing sites and facilities subject to the rulemaking for rule consistency clarity.

### §101.394, Allocation of Allowances

The commission proposes repealing figure located at §101.394(a)(1) and adding a new figure to be located at §101.394(a)(1)(A). In addition, the commission proposes §101.394(a)(1)(B) to revise the reallocation methodology for allowances beginning in the calendar-year control period 2011. The proposed figure located at §101.394(a)(1)(B) provides the equation for calculating the new allocation methodology and for a stepped down reduction in the total cap of allowances. The first reduction is a 10% reduction of the total cap in calendar-year control period 2014, followed by successive 5% reductions per calendar-year control period until the 25% total reduction in the cap is reached in calendar-year control period 2017.

The commission also proposes to add §101.394(a)(1)(C) to allow sites not in operation during the baseline emissions period to use the allocation methodology provided under §101.394(a)(1)(A) until the alternate baseline emissions are established where the site has made HRVOC reductions. Proposed subparagraph (C) allows owners or operators of sites to request from the executive director the ability to retain the allocation received under §101.394(a)(1)(A), provided: that it is less than the HRVOC permit allowable limit and the baseline emissions period for any site qualifying will be any two consecutive calendar-year control periods from 2010 - 2012. However, the owner or operator of the site, should note that beginning with the 2014 calendar-year control period, all sites will receive an allocation in accordance with the proposed methodology under §101.394(a)(1)(B).

The commission also proposes to add §101.394(a)(1)(D) for HECT participants that implemented permanent, voluntary, and quantifiable HRVOC emission reductions and monitoring programs before the beginning of the 2006 calendar-year period. The proposed subparagraph (D) provides the ability to request from the executive director the use of an alternative baseline period from 2004 and 2005 for the purpose of establishing baseline emissions. To qualify for this provision, owners or operators of sites must be able to demonstrate to the executive director that they were performing speciated testing and continuous flow rate monitoring of HRVOC emissions during the requested alternative baseline period. In addition, the emission reductions must be permanent, voluntary, and quantifiable of an amount equal to or greater than 50% of the site's total annual HRVOC

emissions or a site-wide reduction in HRVOC emissions subject to the HECT program of 50 tons or greater. The emissions reductions must also have been made enforceable under an action submitted to the executive director no later than April 1, 2010. This provision would ensure that sites that made early reductions before the proposed baseline emissions period of 2006 - 2009 would receive adequate credit for those early reductions.

The commission proposes to repeal §101.394(c) because it is no longer applicable. The existing §101.394(d) will be relettered as subsection (c). Proposed §101.394(d) would ensure that sites to be allocated less than ten tons of allowances would instead receive a minimum allocation of ten tons of allowances per calendar-year control period. The commission also proposes renumbering §101.394.

#### *§101.396, Allowance Deductions*

The commission proposes to add §101.396(c) to differentiate between routine emissions from normal operations and scheduled maintenance, startup, and shutdowns, and emissions from emissions events for the purposes of identifying those emissions to be applied against the 250 ton emission event set-aside. In addition, proposed subsection (d) states that once total emissions from all emissions events in Harris County exceed 250 tons in any one calendar-year control period, emissions from emissions events are to be covered by allowances from each individual site. The commission also proposes renumbering §101.396.

#### *§101.399, Allowance Banking and Trading*

The commission proposes to amend §101.399(h)(5) to delete the reference to §101.394(c) because it is no longer applicable. In addition, the commission proposes to add §101.399(e) to prohibit the transfer of allowances allocated to sites under §101.394(a)(1)(C) that have yet to establish a baseline emissions period. The commission also proposes renumbering the remaining subsections in §101.399.

#### *§101.400, Reporting*

The commission proposes to add §101.400(a)(4) to require sites to report the total amount and respective dates of HRVOC emissions from emissions events for potential applicability to the emission event set-aside.

#### *§101.401, Level of Activity Certification*

The commission proposes to add §101.401(f) and (g). Proposed §101.401(f) will require the Form ECT-6H, Highly-Reactive Volatile Organic Compound Emissions Cap and Trade Baseline Emissions Certification Form, to be submitted no later than April 30, 2010. Proposed §101.401(g) will require sites to select two consecutive calendar-year control periods to establish a baseline emissions period.

#### **FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT**

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency as a result of administration or enforcement of the proposed rules. Other units of state or local governments are not expected to experience any fiscal implications as a result of the proposed rules since they do not participate in the types of activities to which the rules would apply.

The proposed rules would revise Chapter 101, Subchapter H, Division 6 to: 1) propose a 25% reduction in the allowance cap of the total HECT Program and 2) revise the allocation methodology currently used in the program. The proposed 25% reduction in the allowance cap would be phased in with a 10% reduction occurring in calendar-year 2014 and a 5% reduction per year starting calendar-year 2015 - 2017. Currently, the HECT program only applies to Harris County. The proposed rules implement a strategy to reduce HRVOC emissions and assist with the attainment of the 1997 eight-hour ozone NAAQS for the HGB non-attainment area.

Local governments and state agencies in Harris County are not expected to experience any fiscal impacts as a result of the proposed rules since they do not participate in the types of activities that produce HRVOC emissions and do not own allowances. The proposed rule is expected to impact petroleum refineries, non-polymer chemical manufacturers, polymer manufacturers, and petrochemical storage and loading facilities in Harris County.

#### **PUBLIC BENEFITS AND COSTS**

Nina Chamness also determined that for each year of the first five years the proposed new rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be increased environmental protection because of a lower allowance cap in Harris County and a more equitable distribution of HRVOC allowances among industry participants in the county.

The proposed rules are not expected to have a fiscal impact on individuals.

The most affected industry sectors are petroleum refining, non-polymer chemical producers, polymer producers, and storage and loading facilities in Harris County. Agency records show that there could be as many as 28 nonpolymer chemical producers, 11 polymer producers, seven storage and loading facilities, and five refineries that will be subject to the proposed rule starting in calendar-year 2011. Emissions reported for these facilities indicate that actual emissions are lower than total allowances available for trading when the county as a whole is considered. Therefore, the proposed phased in 25% reduction in the HECT allowance cap will have no overall fiscal impact on these industrial groups as a whole if they continue to produce at historic levels. However, if a reallocation of allowances does not occur, some owners of chemical manufacturing and polymer manufacturing facilities would continue to have actual emissions exceed historically allocated allowances. The proposed reallocation of allowances to cover certified actual emission levels could save some nonpolymer chemical producers and polymer producers in Harris County the cost of purchasing allowances or installing controls.

Cost impacts of reallocation cannot be estimated. The costs for controls vary widely depending on product, plant configurations, and equipment. Not having to install a control could save as much as \$6,000 to \$11.5 million depending on the operations of these manufacturers.

#### **SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT**

No adverse fiscal implications are anticipated for small or micro-businesses in Harris County as a result of the proposed rules since these small businesses do not typically own businesses that produce HRVOCs.

#### **SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS**

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules are required to protect the environment and do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

#### DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed this proposed rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rulemaking action meets the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" is 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, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The proposed amendments to Chapter 101 and revisions to the SIP would reduce the total cap amount of HRVOC allowances for the HECT program by 25% and revise the allocation methodology for allowances for participants of the HECT program. The HECT program was adopted as a control measure for the HGB one-hour attainment demonstration SIP, and it is currently only applicable in Harris County. Photochemical modeling analysis demonstrates that a 25% reduction of the cap on the total Harris County HRVOC allocation would contribute to attainment of the 1997 eight-hour ozone NAAQS by reducing future ozone design values at all HGB monitors.

Following the initial allocation of allowances, stakeholder comments indicated that the allocation was not equitably distributed. Information from the first three years of monitoring data supports the assertion of an inequitable distribution of allowances. The proposed revisions are necessary to implement a more equitable allocation methodology, while contributing to HGB's attainment of the 1997 eight-hour ozone NAAQS as expeditiously as practicable. The proposed change in allocation methodology will result in allowance reductions for certain facilities, and it is possible facilities that have made significant investments on future HRVOC stream trades may see the value of these investments reduced or nullified. Facilities that have their HRVOC allowances reduced, either through the reallocation or reduction of the total HRVOC cap, may incur costs from the installation of additional controls or having to purchase allowances from other sources if necessary to comply with their lower allowances. If the cap is reduced, the price of HRVOC allowances available in the market may increase.

This rulemaking does not meet any of the four applicability criteria of a "major environmental rule" as defined in the Texas Government Code. Texas Government Code, §2001.0225 applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the fed-

eral 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. Specifically, the proposed amendments will result in a decrease in the HECT program cap, and will adjust the allocation methodology for allowances under the program. The HECT program was adopted as a control measure for the HGB one-hour attainment demonstration SIP, and the proposed changes to the program will contribute to HGB's attainment of the 1997 eight-hour ozone NAAQS as expeditiously as practicable. The rulemaking does not exceed an express requirement of federal or state law or a requirement of a delegation agreement, and was not developed solely under the general powers of the agency, but was specifically developed under federal law and authorized under the Texas Health and Safety Code (THSC).

The rulemaking implements requirements of 42 United States Code (USC), §7410, which requires states to adopt a SIP that provides for "implementation, maintenance, and enforcement" of the NAAQS in each air quality control region of the state. While 42 USC, §7410 does not require specific programs, methods, or reductions to meet the standard, SIPs must include "enforceable emission limitations and other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter," (meaning 42 USC, Chapter 85, Air Pollution Prevention and Control). It is true that the Federal Clean Air Act (FCAA) does require some specific measures for SIP purposes, such as the inspection and maintenance program, but those programs are the exception, not the rule, in the SIP structure of 42 USC, §7410. The provisions of the FCAA recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public to collaborate on the best methods to attain the NAAQS for the specific regions in the state. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 USC, §7410. Thus, while specific measures are not generally required, the emission reductions are required. States are not free to ignore the requirements of 42 USC, §7410, and must develop programs to assure that the nonattainment areas of the state would be brought into attainment on schedule. The proposed amendments will help the HGB area attain the 1997 eight-hour ozone NAAQS as expeditiously as practicable.

The requirement to provide a fiscal analysis of adopted regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th Legislature, 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These are identified in the statutory language as major environmental rules that would have a material adverse impact and would 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 would have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the

bill that exempted proposed rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law. As discussed earlier in this preamble, 42 USC, §7410 does not require specific programs, methods, or reductions in order to meet the NAAQS; thus, states must develop programs for each nonattainment area to ensure that area would meet the attainment deadlines. Because of the ongoing need to address nonattainment issues, the commission routinely proposes and adopts SIP rules. The legislature is presumed to understand this federal scheme. If each rule proposed for inclusion in the SIP was considered to be a major environmental rule that exceeds federal law, then every SIP rule would require the full regulatory impact analysis contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board in its fiscal notes. Because 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 Legislative Budget Board, the commission contends that the intent of SB 633 was only to require the full regulatory impact analysis for rules that are extraordinary in nature. While the SIP rules would have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of 42 USC, §7410. For these reasons, rules adopted for inclusion in the SIP fall under the exception in Texas Government Code, §2001.0225(a), because they are specifically required by federal law.

In addition, 42 USC, §7502(a)(2) requires attainment as expeditiously as practicable, and 42 USC, §7511(a), requires states to submit ozone attainment demonstration SIPs for ozone nonattainment areas, such as the HGB eight-hour ozone nonattainment area. As discussed earlier in this preamble, the proposed amendments will help the HGB area attain the 1997 eight-hour ozone NAAQS as expeditiously as practicable.

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 un-amended. The commission presumes 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); *Sharp v. House of Lloyd, Inc.*, 815 S.W.2d 245 (Tex. 1991); *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).

As discussed, this rulemaking action implements requirements of 42 USC, §7410. There is no contract or delegation agreement that covers the topic that is the subject of this action. Therefore, the rulemaking does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, nor is it adopted solely under the general powers of the agency. Finally, this rulemaking action was not developed solely under the general powers of the agency, but is authorized by specific sections of THSC, Chapter 382 Texas Clean Air Act (TCAA), and the Texas Water Code that are cited in the STATUTORY AUTHORITY section of this rulemaking, including THSC, §§382.002, 382.011, 382.012, 382.016, and 382.017. Therefore, this rulemaking action is not

subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because the rulemaking does not meet any of the four applicability requirements.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

#### TAKINGS IMPACT ASSESSMENT

The commission completed a takings impact assessment for this rulemaking action under Texas Government Code, §2007.043. The proposed amendments would reduce the total cap amount of HRVOC allowances for the HECT program by 25% and revise the allocation methodology for allowances for participants of the HECT program. Photochemical modeling analysis demonstrates that a 25% reduction of the cap on the total Harris County HRVOC allocation would contribute to attainment of the 1997 eight-hour ozone NAAQS by reducing future ozone design values at all HGB monitors. The proposed changes to the HECT program will result in allowance reductions for certain facilities and it is possible facilities that have made significant investments on future HRVOC stream trades may see the value of these investments reduced or nullified. Facilities that have their HRVOC allowances reduced, either through the reallocation or reducing the total HRVOC cap, may incur costs from the installation of additional controls or having to purchase allowances from other sources if necessary to comply with their lower allowances. If the cap is reduced, the price of HRVOC allowances available in the market may increase. However, the allowances that will be affected by these rules are not property rights (§101.393(e)), and therefore reductions or changes in the allowances does not constitute a taking. Consequently, this rulemaking action does not meet the definition of a takings under Texas Government Code, §2007.002(5).

Additionally, Texas Government Code, §2007.003(b)(4) provides that Chapter 2007 does not apply to this rulemaking action because it is reasonably taken to fulfill an obligation mandated by federal law. The proposed changes to the HECT program within the HGB area that would be implemented by these proposed rules were developed to advance attainment of the 1997 eight-hour ozone NAAQS in the HGB ozone nonattainment area. States are primarily responsible for ensuring attainment and maintenance of NAAQS once the EPA has established them. Under 42 USC, §7410, and related provisions, states must submit, for approval by the EPA, SIPs that provide for the attainment and maintenance of NAAQS through control programs directed to sources of the pollutants involved. Therefore, one purpose of this proposed rulemaking action is to meet the air quality standards established under federal law as NAAQS. However, this rulemaking is only one step among many necessary for attaining the ozone NAAQS.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found 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. CMP goals applicable to the proposed amendments is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). The proposed amendments update a definition, reallocate allowances, and lower the HRVOC cap. No new sources of air contaminants will be authorized and the revisions will maintain the same level of emissions control as previous rules. CMP policies applicable to the proposed amendments are the policy that the commission's rules comply with federal regulations in Code of Federal Regulations, Title 40, to protect and enhance air quality in the coastal areas (31 TAC §501.32). Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed rules are consistent with these CMP goals and policies because these rules do not create or have a direct or significant adverse effect on any coastal natural resource areas. 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 101, Subchapter H is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program. Owners or operators subject to the Federal Operating Permits Program must, consistent with the revision process in Chapter 122, upon the effective date of the proposed rulemaking, revise their operating permit to include the new Chapter 101, Subchapter H requirements.

#### ANNOUNCEMENT OF HEARINGS

The commission will hold public hearings on this proposal in conjunction with the HGB SIP revision, HGB Attainment Demonstration and Reasonable Further Progress SIP revisions, Control Techniques Guidelines rulemaking, and the Mass Emissions Cap and Trade Program Cap Integrity for the HGB Ozone Nonattainment Area revisions in Houston on October 28, 2009, at 2:00 p.m. and 6:00 p.m. in Conference Room A at the Houston-Galveston Area Council, located at 3555 Timmons Lane, and in Austin on October 29, 2009, at 3:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. Each 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 each hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to each hearing.

Persons who have special communication or other accommodation needs who are planning to attend a hearing should contact Charlotte Horn, Office of Legal Services at (512) 239-0779. Requests should be made as far in advance as possible.

#### SUBMITTAL OF COMMENTS

Written comments may be submitted to Devon Ryan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.state.tx.us/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2009-006-101-EN. The comment period closes November 9, 2009. Copies of the proposed rulemaking can be obtained from the commission's Web site at

[http://www.tceq.state.tx.us/nav/rules/propose\\_adopt.html](http://www.tceq.state.tx.us/nav/rules/propose_adopt.html). For further information, please contact Jay C. Tonne Jr., P.E., Air Quality Planning Section, (512) 239-1453.

## SUBCHAPTER A. GENERAL RULES

### 30 TAC §101.1

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the Texas Water Code; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also proposed under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. The amendment is also proposed under THSC, §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions. The amendment is also proposed under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401, *et seq.*, which requires states to submit state implementation plan (SIP) revisions that specify the manner in which the National Ambient Air Quality Standard (NAAQS) will be achieved and maintained within each air quality control region of the state.

The proposed amendment implements THSC, §§382.002, 382.011, 382.012, 382.016, and 382.017 and FCAA, 42 USC, §§7401 *et seq.*

#### §101.1. Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms that are defined by the TCAA, the following terms, when used in the air quality rules in this title, have the following meanings, unless the context clearly indicates otherwise.

(1) Account--For those sources required to be permitted under Chapter 122 of this title (relating to Federal Operating Permits Program), all sources that are aggregated as a site. For all other sources, any combination of sources under common ownership or control and located on one or more contiguous properties, or properties contiguous except for intervening roads, railroads, rights-of-way, waterways, or similar divisions.

(2) Acid gas flare--A flare used exclusively for the incineration of hydrogen sulfide and other acidic gases derived from natural gas sweetening processes.

(3) Agency established facility identification number--For the purposes of Subchapter F of this chapter (relating to Emissions Events and Scheduled Maintenance, Startup, and Shutdown Activities), a unique alphanumeric code required to be assigned by the owner

or operator of a regulated entity that the emission inventory reporting requirements of §101.10 of this title (relating to Emissions Inventory Requirements) are applicable to each facility at that regulated entity.

(4) Ambient air--That portion of the atmosphere, external to buildings, to which the general public has access.

(5) Background--Background concentration, the level of air contaminants that cannot be reduced by controlling emissions from man-made sources. It is determined by measuring levels in non-urban areas.

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

(7) Capture system--All equipment (including, but not limited to, hoods, ducts, fans, booths, ovens, dryers, etc.) that contains, collects, and transports an air pollutant to a control device.

(8) Captured facility--A manufacturing or production facility that generates an industrial solid waste or hazardous waste that is routinely stored, processed, or disposed of on a shared basis in an integrated waste management unit owned, operated by, and located within a contiguous manufacturing complex.

(9) Carbon adsorber--An add-on control device that uses activated carbon to adsorb volatile organic compounds from a gas stream.

(10) Carbon adsorption system--A carbon adsorber with an inlet and outlet for exhaust gases and a system to regenerate the saturated adsorbent.

(11) 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.

(12) Cold solvent cleaning--A batch process that uses liquid solvent to remove soils from the surfaces of parts or to dry the parts by spraying, brushing, flushing, and/or immersion while maintaining the solvent below its boiling point. Wipe cleaning (hand cleaning) is not included in this definition.

(13) Combustion unit--Any boiler plant, furnace, incinerator, flare, engine, or other device or system used to oxidize solid, liquid, or gaseous fuels, but excluding motors and engines used in propelling land, water, and air vehicles.

(14) Combustion 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 will be treated as one unit.

(15) Commercial hazardous waste management facility--Any hazardous waste management facility that accepts hazardous waste or polychlorinated biphenyl compounds for a charge, except a captured facility that disposes only waste generated on-site or a facility that accepts waste only from other facilities owned or effectively controlled by the same person.

(16) Commercial incinerator--An incinerator used to dispose of waste material from retail and wholesale trade establishments.

(17) Commercial medical waste incinerator--A facility that accepts for incineration medical waste generated outside the property boundaries of the facility.

(18) Component--A piece of equipment, including, but not limited to, pumps, valves, compressors, and pressure relief valves that has the potential to leak volatile organic compounds.

(19) Condensate--Liquids that result from the cooling and/or pressure changes of produced natural gas. Once these liquids are processed at gas plants or refineries or in any other manner, they are no longer considered condensates.

(20) Construction-demolition waste--Waste resulting from construction or demolition projects.

(21) Control system or control device--Any part, chemical, machine, equipment, contrivance, or combination of same, used to destroy, eliminate, reduce, or control the emission of air contaminants to the atmosphere.

(22) Conveyorized degreasing--A solvent cleaning process that uses an automated parts handling system, typically a conveyor, to automatically provide a continuous supply of parts to be cleaned or dried using either cold solvent or vaporized solvent. A conveyorized degreasing process is fully enclosed except for the conveyor inlet and exit portals.

(23) Criteria pollutant or standard--Any pollutant for which there is a national ambient air quality standard established under 40 Code of Federal Regulations Part 50.

(24) Custody transfer--The transfer of produced crude oil and/or condensate, after processing and/or treating in the producing operations, from storage tanks or automatic transfer facilities to pipelines or any other forms of transportation.

(25) *De minimis* impact--A change in ground level concentration of an air contaminant as a result of the operation of any new major stationary source or of the operation of any existing source that has undergone a major modification that does not exceed the following specified amounts.  
Figure: 30 TAC §101.1(25) (No change.)

(26) Domestic wastes--The garbage and rubbish normally resulting from the functions of life within a residence.

(27) Emissions banking--A system for recording emissions reduction credits so they may be used or transferred for future use.

(28) Emissions event--Any upset event or unscheduled maintenance, startup, or shutdown activity, from a common cause that results in unauthorized emissions of air contaminants from one or more emissions points at a regulated entity.

(29) Emissions reduction credit--Any stationary source emissions reduction that has been banked in accordance with Chapter 101, Subchapter H, Division 1 of this title (relating to Emission Credit Banking and Trading).

(30) Emissions reduction credit certificate--The certificate issued by the executive director that indicates the amount of qualified reduction available for use as offsets and the length of time the reduction is eligible for use.

(31) Emissions unit--Any part of a stationary source that emits, or would have the potential to emit, any pollutant subject to regulation under the Federal Clean Air Act.

(32) Excess opacity event--When an opacity reading is equal to or exceeds 15 additional percentage points above an applicable opacity limit, averaged over a six-minute period.

(33) Exempt solvent--Those carbon compounds or mixtures of carbon compounds used as solvents that have been excluded from the definition of volatile organic compound.

(34) External floating roof--A cover or roof in an open top tank that 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.

(35) Federal motor vehicle regulation--Control of Air Pollution from Motor Vehicles and Motor Vehicle Engines, 40 Code of Federal Regulations Part 85.

(36) Federally enforceable--All limitations and conditions that are enforceable by the United States Environmental Protection Agency administrator, including those requirements developed under 40 Code of Federal Regulations (CFR) Parts 60 and 61; requirements within any applicable state implementation plan (SIP); and any permit requirements established under 40 CFR §52.21 or under regulations approved under 40 CFR Part 51, Subpart 1, including operating permits issued under the approved program that is incorporated into the SIP and that expressly requires adherence to any permit issued under such program.

(37) Flare--An open combustion unit (i.e., lacking an enclosed combustion chamber) whose combustion air is provided by uncontrolled ambient air around the flame, and that is used as a control device. A flare may be equipped with a radiant heat shield (with or without a refractory lining), but is not equipped with a flame air control damping system to control the air/fuel mixture. In addition, a flare may also use auxiliary fuel. The combustion flame may be elevated or at ground level. A vapor combustor, as defined in this section, is not considered a flare.

(38) Fuel oil--Any oil meeting the American Society for Testing and Materials (ASTM) specifications for fuel oil in ASTM D396-01, Standard Specifications for Fuel Oils, revised 2001. This includes fuel oil grades 1, 1 (Low Sulfur), 2, 2 (Low Sulfur), 4 (Light), 4, 5 (Light), 5 (Heavy), and 6.

(39) Fugitive emission--Any gaseous or particulate contaminant 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.

(40) Garbage--Solid waste consisting of putrescible animal and vegetable waste materials resulting from the handling, preparation, cooking, and consumption of food, including waste materials from markets, storage facilities, and handling and sale of produce and other food products.

(41) Gasoline--Any petroleum distillate having a Reid vapor pressure of four pounds per square inch (27.6 kilopascals) or greater that is produced for use as a motor fuel, and is commonly called gasoline.

(42) Hazardous wastes--Any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*, as amended.

(43) Heatset (used in offset lithographic printing)--Any operation where heat is required to evaporate ink oil from the printing ink. Hot air dryers are used to deliver the heat.

(44) High-bake coatings--Coatings designed to cure at temperatures above 194 degrees Fahrenheit.

(45) High-volume low-pressure spray guns--Equipment used to apply coatings by means of a spray gun that operates between

0.1 and 10.0 pounds per square inch gauge air pressure measured at the air cap.

(46) Incinerator--An enclosed combustion apparatus and attachments that is used in the process of burning wastes for the primary purpose of reducing its volume and weight by removing the combustibles of the waste and is equipped with a flue for conducting products of combustion to the atmosphere. Any combustion device that burns 10% or more of solid waste on a total British thermal unit (Btu) heat input basis averaged over any one-hour period is considered to be an incinerator. A combustion device without instrumentation or methodology to determine hourly flow rates of solid waste and burning 1.0% or more of solid waste on a total Btu heat input basis averaged annually is also considered to be an incinerator. An open-trench type (with closed ends) combustion unit may be considered an incinerator when approved by the executive director. Devices burning untreated wood scraps, waste wood, or sludge from the treatment of wastewater from the process mills as a primary fuel for heat recovery are not included under this definition. Combustion devices permitted under this title as combustion devices other than incinerators will not be considered incinerators for application of any rule within this title provided they are installed and operated in compliance with the condition of all applicable permits.

(47) Industrial boiler--A boiler located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes.

(48) Industrial furnace--Cement kilns; lime kilns; aggregate kilns; phosphate kilns; coke ovens; blast furnaces; smelting, melting, or refining furnaces, including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, or foundry furnaces; titanium dioxide chloride process oxidation reactors; methane reforming furnaces; pulping recovery furnaces; combustion devices used in the recovery of sulfur values from spent sulfuric acid; and other devices the commission may list.

(49) Industrial solid waste--Solid waste resulting from, or incidental to, any process of industry or manufacturing, or mining or agricultural operations, classified as follows.

(A) Class 1 industrial solid waste or Class 1 waste is any industrial solid waste designated as Class 1 by the executive director as any industrial solid waste or mixture of industrial solid wastes that because of its concentration or physical or chemical characteristics is toxic, corrosive, flammable, a strong sensitizer or irritant, a generator of sudden pressure by decomposition, heat, or other means, and may pose a substantial present or potential danger to human health or the environment when improperly processed, stored, transported, or otherwise managed, including hazardous industrial waste, as defined in §335.1 and §335.505 of this title (relating to Definitions and Class 1 Waste Determination).

(B) Class 2 industrial solid waste is any individual solid waste or combination of industrial solid wastes that cannot be described as Class 1 or Class 3, as defined in §335.506 of this title (relating to Class 2 Waste Determination).

(C) Class 3 industrial solid waste is any inert and essentially insoluble industrial solid waste, including materials such as rock, brick, glass, dirt, and certain plastics and rubber, etc., that are not readily decomposable as defined in §335.507 of this title (relating to Class 3 Waste Determination).

(50) Internal floating cover--A cover or floating roof in a fixed roof tank that rests upon or is floated upon the liquid being con-

tained, and is equipped with a closure seal or seals to close the space between the cover edge and tank shell.

(51) Leak--A volatile organic compound concentration greater than 10,000 parts per million by volume or the amount specified by applicable rule, whichever is lower; or the dripping or exuding of process fluid based on sight, smell, or sound.

(52) Liquid fuel--A liquid combustible mixture, not derived from hazardous waste, with a heating value of at least 5,000 British thermal units per pound.

(53) Liquid-mounted seal--A primary seal mounted in continuous contact with the liquid between the tank wall and the floating roof around the circumference of the tank.

(54) Maintenance area--A geographic region of the state previously designated nonattainment under the Federal Clean Air Act Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under 42 United States Code, §7505a. The following are the maintenance areas within the state:

(A) Victoria Ozone Maintenance Area 60 (*Federal Register* (FR) 12453) - Victoria County; and

(B) Collin County Lead Maintenance Area (64 FR 55421) - Portion of Collin County. Eastside: Starting at the intersection of South Fifth Street and the fence line approximately 1,000 feet south of the Exide property line going north to the intersection of South Fifth Street and Eubanks Street; Northside: Proceeding west on Eubanks to the Burlington Railroad tracks; Westside: Along the Burlington Railroad tracks to the fence line approximately 1,000 feet south of the Exide property line; Southside: Fence line approximately 1,000 feet south of the Exide property line.

(55) Maintenance plan--A revision to the applicable state implementation plan, meeting the requirements of 42 United States Code, §7505a.

(56) Marine vessel--Any watercraft used, or capable of being used, as a means of transportation on water, and that is constructed or adapted to carry, or that carries, oil, gasoline, or other volatile organic liquid in bulk as a cargo or cargo residue.

(57) Mechanical shoe seal--A metal sheet that is held vertically against the storage tank wall by springs or weighted levers and is connected by braces to the floating roof. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof.

(58) Medical waste--Waste materials identified by the Department of State Health Services as "special waste from health care-related facilities" and those waste materials commingled and discarded with special waste from health care-related facilities.

(59) Metropolitan Planning Organization--That organization designated as being responsible, together with the state, for conducting the continuing, cooperative, and comprehensive planning process under 23 United States Code (USC), §134 and 49 USC, §1607.

(60) Mobile emissions reduction credit--The credit obtained from an enforceable, permanent, quantifiable, and surplus (to other federal and state rules) emissions reduction generated by a mobile source as set forth in Chapter 114, Subchapter F of this title (relating to Vehicle Retirement and Mobile Emission Reduction Credits), and that has been banked in accordance with Subchapter H, Division 1 of this chapter.

(61) Motor vehicle--A self-propelled vehicle designed for transporting persons or property on a street or highway.

(62) Motor vehicle fuel dispensing facility--Any site where gasoline is dispensed to motor vehicle fuel tanks from stationary storage tanks.

(63) Municipal solid waste--Solid waste resulting from, or incidental to, municipal, community, commercial, institutional, and recreational activities, including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste except industrial solid waste.

(64) Municipal solid waste facility--All contiguous land, structures, other appurtenances, and improvements on the land used for processing, storing, or disposing of solid waste. A facility may be publicly or privately owned and may consist of several processing, storage, or disposal operational units, e.g., one or more landfills, surface impoundments, or combinations of them.

(65) Municipal solid waste landfill--A discrete area of land or an excavation that receives household waste and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under 40 Code of Federal Regulations §257.2. A municipal solid waste landfill (MSWLF) unit also may receive other types of Resource Conservation and Recovery Act Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, conditionally exempt small-quantity generator waste, and industrial solid waste. Such a landfill may be publicly or privately owned. An MSWLF unit may be a new MSWLF unit, an existing MSWLF unit, or a lateral expansion.

(66) National ambient air quality standard--Those standards established under 42 United States Code, §7409, including standards for carbon monoxide, lead, nitrogen dioxide, ozone, inhalable particulate matter, and sulfur dioxide.

(67) Net ground-level concentration--The concentration of an air contaminant as measured at or beyond the property boundary minus the representative concentration flowing onto a property as measured at any point. Where there is no expected influence of the air contaminant flowing onto a property from other sources, the net ground level concentration may be determined by a measurement at or beyond the property boundary.

(68) New source--Any stationary source, the construction or modification of which was commenced after March 5, 1972.

(69) Nitrogen oxides (NO<sub>x</sub>)--The sum of the nitric oxide and nitrogen dioxide in the flue gas or emission point, collectively expressed as nitrogen dioxide.

(70) Nonattainment area--A defined region within the state that is designated by the United States Environmental Protection Agency (EPA) as failing to meet the national ambient air quality standard for a pollutant for which a standard exists. The EPA will designate the area as nonattainment under the provisions of 42 United States Code, §7407(d). For the official list and boundaries of nonattainment areas, see 40 Code of Federal Regulations Part 81 and pertinent *Federal Register* (FR) notices. The following areas comprise the nonattainment areas within the state for all national ambient air quality standards (NAAQS). EPA has indicated that it will revoke the one-hour ozone standard in full, including the associated designations and classifications, on June 15, 2005, which is one year following the effective date of the designations for the eight-hour NAAQS of June 15, 2004.

(A) Carbon monoxide (CO). El Paso CO nonattainment area (56 FR 56694)--Classified as a Moderate CO nonattainment area with a design value less than or equal to 12.7 parts per million. Portion of El Paso County. Portion of the city limits of El Paso: That portion of the City of El Paso bounded on the north by Highway 10 from Porfirio

Diaz Street to Reynolds Street, Reynolds Street from Highway 10 to the Southern Pacific Railroad lines, the Southern Pacific Railroad lines from Reynolds Street to Highway 62, Highway 62 from the Southern Pacific Railroad lines to Highway 20, and Highway 20 from Highway 62 to Polo Inn Road. Bounded on the east by Polo Inn Road from Highway 20 to the Texas-Mexico border. Bounded on the south by the Texas-Mexico border from Polo Inn Road to Porfirio Diaz Street. Bounded on the west by Porfirio Diaz Street from the Texas-Mexico border to Highway 10.

(B) Inhalable particulate matter (PM<sub>10</sub>). El Paso PM<sub>10</sub> nonattainment area (56 FR 56694)--Classified as a Moderate PM<sub>10</sub> nonattainment area. Portion of El Paso County that comprises the El Paso city limit boundaries as they existed on November 15, 1990.

(C) Lead. No designated nonattainment areas.

(D) Nitrogen dioxide. No designated nonattainment areas.

(E) Ozone (one-hour).

(i) Houston-Galveston-Brazoria (HGB) one-hour ozone nonattainment area (56 FR 56694) - Classified as a Severe-17 ozone nonattainment area. Consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties.

(ii) El Paso one-hour ozone nonattainment area (56 FR 56694) - Classified as a Serious ozone nonattainment area. Consists of El Paso County.

(iii) Beaumont-Port Arthur (BPA) one-hour ozone nonattainment area (69 FR 16483) - Classified as a Serious ozone nonattainment area. Consists of Hardin, Jefferson, and Orange Counties.

(iv) Dallas-Fort Worth one-hour ozone nonattainment area (63 FR 8128) - Classified as a Serious ozone nonattainment area. Consists of Collin, Dallas, Denton, and Tarrant Counties.

(F) Ozone (eight-hour).

(i) HGB eight-hour ozone nonattainment area (69 FR 23936) - Classified as a Moderate ozone nonattainment area. Consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties.

(ii) BPA eight-hour ozone nonattainment area (69 FR 23936) - Classified as a Marginal ozone nonattainment area. Consists of Hardin, Jefferson, and Orange Counties.

(iii) Dallas-Fort Worth eight-hour ozone nonattainment area (69 FR 23936) - Classified as a Moderate ozone nonattainment area. Consists of Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties.

(iv) San Antonio eight-hour ozone nonattainment area (69 FR 23936) - Classified under the Federal Clean Air Act, Title I, Part D, Subpart 1 (42 United States Code, §7502), nonattainment deferred to September 30, 2005, or as extended by EPA.

(G) Sulfur dioxide. No designated nonattainment areas.

(71) Non-reportable emissions event--Any emissions event that in any 24-hour period does not result in an unauthorized emission from any emissions point equal to or in excess of the reportable quantity as defined in this section.

(72) Opacity--The degree to which an emission of air contaminants obstructs the transmission of light expressed as the percentage of light obstructed as measured by an optical instrument or trained observer.

(73) Open-top vapor degreasing--A batch solvent cleaning process that is open to the air and that uses boiling solvent to create solvent vapor used to clean or dry parts through condensation of the hot solvent vapors on the parts.

(74) Outdoor burning--Any fire or smoke-producing process that is not conducted in a combustion unit.

(75) Particulate matter--Any material, except uncombined water, that exists as a solid or liquid in the atmosphere or in a gas stream at standard conditions.

(76) Particulate matter emissions--All finely-divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by United States Environmental Protection Agency Reference Method 5, as specified at 40 Code of Federal Regulations (CFR) Part 60, Appendix A, modified to include particulate caught by an impinger train; by an equivalent or alternative method, as specified at 40 CFR Part 51; or by a test method specified in an approved state implementation plan.

(77) 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.

(78) PM<sub>10</sub>--Particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers as measured by a reference method based on 40 Code of Federal Regulations (CFR) Part 50, Appendix J, and designated in accordance with 40 CFR Part 53, or by an equivalent method designated with that Part 53.

(79) PM<sub>10</sub> emissions--Finely-divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method specified in 40 Code of Federal Regulations Part 51, or by a test method specified in an approved state implementation plan.

(80) Polychlorinated biphenyl compound--A compound subject to 40 Code of Federal Regulations Part 761.

(81) Process or processes--Any action, operation, or treatment embracing chemical, commercial, industrial, or manufacturing factors such as combustion units, kilns, stills, dryers, roasters, and equipment used in connection therewith, and all other methods or forms of manufacturing or processing that may emit smoke, particulate matter, gaseous matter, or visible emissions.

(82) Process weight per hour--"Process weight" is the total weight of all materials introduced or recirculated into any specific process that may cause any discharge of air contaminants into the atmosphere. Solid fuels charged into the process will be considered as part of the process weight, but liquid and gaseous fuels and combustion air will not. The "process weight per hour" will be derived by dividing the total process weight by the number of hours in one complete operation from the beginning of any given process to the completion thereof, excluding any time during that the equipment used to conduct the process is idle. For continuous operation, the "process weight per hour" will be derived by dividing the total process weight for a 24-hour period by 24.

(83) Property--All land under common control or ownership coupled with all improvements on such land, and all fixed or movable objects on such land, or any vessel on the waters of this state.

(84) Reasonable further progress--Annual incremental reductions in emissions of the applicable air contaminant that are sufficient to provide for attainment of the applicable national ambient air

quality standard in the designated nonattainment areas by the date required in the state implementation plan.

(85) Regulated entity--All regulated units, facilities, equipment, structures, or sources at one street address or location that are owned or operated by the same person. The term includes any property under common ownership or control identified in a permit or used in conjunction with the regulated activity at the same street address or location. Owners or operators of pipelines, gathering lines, and flowlines under common ownership or control in a particular county may be treated as a single regulated entity for purposes of assessment and regulation of emissions events.

(86) Remote reservoir cold solvent cleaning--Any cold solvent cleaning operation in which liquid solvent is pumped to a sink-like work area that drains solvent back into an enclosed container while parts are being cleaned, allowing no solvent to pool in the work area.

(87) Reportable emissions event--Any emissions event that in any 24-hour period, results in an unauthorized emission from any emissions point equal to or in excess of the reportable quantity as defined in this section.

(88) Reportable quantity (RQ)--Is as follows:

(A) for individual air contaminant compounds and specifically listed mixtures by name or Chemical Abstracts Service (CAS) number, either:

(i) the lowest of the quantities:

(I) listed in 40 Code of Federal Regulations (CFR) Part 302, Table 302.4, the column "final RQ";

(II) listed in 40 CFR Part 355, Appendix A, the column "Reportable Quantity"; or

(III) listed as follows:

(-a-) acetaldehyde - 1,000 pounds, except in the Houston-Galveston-Brazoria (HGB) and Beaumont-Port Arthur (BPA) ozone nonattainment areas as defined in paragraph (70)(E)(i) and (iii) of this section, where the RQ must be 100 pounds;

(-b-) butanes (any isomer) - 5,000 pounds;

(-c-) butenes (any isomer, except 1,3-butadiene) - 5,000 pounds, except in the HGB and BPA ozone nonattainment areas as defined in paragraph (70)(E)(i) and (iii) of this section, where the RQ must be 100 pounds;

(-d-) carbon monoxide - 5,000 pounds;

(-e-) 1-chloro-1,1-difluoroethane (HCFC-142b) - 5,000 pounds;

(-f-) chlorodifluoromethane (HCFC-22) - 5,000 pounds;

(-g-) 1-chloro-1-fluoroethane (HCFC-151a) - 5,000 pounds;

(-h-) chlorofluoromethane (HCFC-31) - 5,000 pounds;

(-i-) chloropentafluoroethane (CFC-115) - 5,000 pounds;

(-j-) 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124) - 5,000 pounds;

(-k-) 1-chloro-1,1,2,2 tetrafluoroethane (HCFC-124a) - 5,000 pounds;

(-l-) 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee) - 5,000 pounds;

(-m-) decanes (any isomer) - 5,000 pounds;

(-n-) 1,1-dichloro-1-fluoroethane (HCFC-141b) - 5,000 pounds;

(-o-) 3,3-dichloro-1,1,2,2-pentafluoropropane (HCFC-225ca) - 5,000 pounds;

(-p-) 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb) - 5,000 pounds;

(-q-) 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFR-114) - 5,000 pounds;

(-r-) 1,1-dichlorotetrafluoroethane (CFC-114a) - 5,000 pounds;

(-s-) 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a) - 5,000 pounds;

(-t-) 1,1-difluoroethane (HFC-152a) - 5,000 pounds;

(-u-) difluoromethane (HFC-32) - 5,000 pounds;

(-v-) ethanol - 5,000 pounds;

(-w-) ethylene - 5,000 pounds, except in the HGB and BPA ozone nonattainment areas as defined in paragraph (70)(E)(i) and (iii) of this section, where the RQ must be 100 pounds;

(-x-) ethylfluoride (HFC-161) - 5,000 pounds;

(-y-) 1,1,1,2,3,3,3-heptafluoropropane (HFC-227ea) - 5,000 pounds;

(-z-) 1,1,1,3,3,3-hexafluoropropane (HFC-236fa) - 5,000 pounds;

(-aa-) 1,1,1,2,2,3,3-hexafluoropropane (HFC-236ea) - 5,000 pounds;

(-bb-) hexanes (any isomer) - 5,000 pounds;

(-cc-) isopropyl alcohol - 5,000 pounds;

(-dd-) mineral spirits - 5,000 pounds;

(-ee-) octanes (any isomer) - 5,000 pounds;

(-ff-) oxides of nitrogen - 200 pounds in

ozone nonattainment, ozone maintenance, early action compact areas, Nueces County, and San Patricio County, and 5,000 pounds in all other areas of the state, which should be used instead of the RQs for nitrogen oxide and nitrogen dioxide provided in 40 CFR Part 302, Table 302.4, the column "final RQ";

(-gg-) pentachlorofluoroethane (CFR-111) - 5,000 pounds;

(-hh-) 1,1,1,3,3-pentafluorobutane (HFC-365mfc) - 5,000 pounds;

(-ii-) pentafluoroethane (HFC-125) - 5,000 pounds;

(-jj-) 1,1,2,2,3-pentafluoropropane (HFC-245ca) - 5,000 pounds;

(-kk-) 1,1,2,3,3-pentafluoropropane (HFC-245ea) - 5,000 pounds;

(-ll-) 1,1,1,2,3-pentafluoropropane (HFC-245eb) - 5,000 pounds;

(-mm-) 1,1,1,3,3-pentafluoropropane (HFC-245fa) - 5,000 pounds;

(-nn-) pentanes (any isomer) - 5,000 pounds;

(-oo-) propane - 5,000 pounds;

(-pp-) propylene - 5,000 pounds, except in the HGB and BPA ozone nonattainment areas as defined in paragraph (70)(E)(i) and (iii) of this section, where the RQ must be 100 pounds;

(-qq-) 1,1,2,2-tetrachlorodifluoroethane (CFR-112) - 5,000 pounds;

(-rr-) 1,1,1,2-tetrachlorodifluoroethane (CFC-112a) - 5,000 pounds;

(-ss-) 1,1,2,2-tetrafluoroethane (HFC-134) - 5,000 pounds;

(-tt-) 1,1,1,2-tetrafluoroethane (HFC-134a) - 5,000 pounds;

(-uu-) 1,1,2-trichloro-1,2,2-trifluoroethane (CFR-113) - 5,000 pounds;

(-vv-) 1,1,1-trichloro-2,2,2-trifluoroethane (CFC-113a) - 5,000 pounds;  
(-ww-) 1,1,1-trifluoro-2,2-dichloroethane (HCFC-123) - 5,000 pounds;  
(-xx-) 1,1,1-trifluoroethane (HFC-143a) - 5,000 pounds;  
(-yy-) trifluoromethane (HFC-23) - 5,000 pounds; or

(-zz-) toluene - 1,000 pounds, except in the HGB and BPA ozone nonattainment areas as defined in paragraph (70)(E)(i) and (iii) of this section, where the RQ must be 100 pounds;

(ii) if not listed in clause (i) of this subparagraph, 100 pounds;

(B) for mixtures of air contaminant compounds:

(i) where the relative amount of individual air contaminant compounds is known through common process knowledge or prior engineering analysis or testing, any amount of an individual air contaminant compound that equals or exceeds the amount specified in subparagraph (A) of this paragraph;

(ii) where the relative amount of individual air contaminant compounds in subparagraph (A)(i) of this paragraph is not known, any amount of the mixture that equals or exceeds the amount for any single air contaminant compound that is present in the mixture and listed in subparagraph (A)(i) of this paragraph;

(iii) where each of the individual air contaminant compounds listed in subparagraph (A)(i) of this paragraph are known to be less than 0.02% by weight of the mixture, and each of the other individual air contaminant compounds covered by subparagraph (A)(ii) of this paragraph are known to be less than 2.0% by weight of the mixture, any total amount of the mixture of air contaminant compounds greater than or equal to 5,000 pounds; or

(iv) where natural gas excluding carbon dioxide, water, nitrogen, methane, ethane, noble gases, hydrogen, and oxygen or air emissions from crude oil are known to be in an amount greater than or equal to 5,000 pounds or the associated hydrogen sulfide and mercaptans in a total amount greater than 100 pounds, whichever occurs first;

(C) for opacity from boilers and combustion turbines as defined in this section fueled by natural gas, coal, lignite, wood, fuel oil containing hazardous air pollutants at a concentration of less than 0.02% by weight, opacity that is equal to or exceeds 15 additional percentage points above the applicable limit, averaged over a six-minute period. Opacity is the only RQ applicable to boilers and combustion turbines described in this paragraph; or

(D) for facilities where air contaminant compounds are measured directly by a continuous emission monitoring system providing updated readings at a minimum 15-minute interval an amount, approved by the executive director based on any relevant conditions and a screening model, that would be reported prior to ground level concentrations reaching at any distance beyond the closest regulated entity property line:

(i) less than one-half of any applicable ambient air standards; and

(ii) less than two times the concentration of applicable air emission limitations.

(89) Rubbish--Nonputrescible solid waste, consisting of both combustible and noncombustible waste materials. Combustible rubbish includes paper, rags, cartons, wood, excelsior, furniture,

rubber, plastics, yard trimmings, leaves, and similar materials. Noncombustible rubbish includes glass, crockery, tin cans, aluminum cans, metal furniture, and like materials that will not burn at ordinary incinerator temperatures (1,600 degrees Fahrenheit to 1,800 degrees Fahrenheit).

(90) Scheduled maintenance, startup, or shutdown activity--For activities with unauthorized emissions that are expected to exceed a reportable quantity (RQ), a scheduled maintenance, startup, or shutdown activity is an activity that the owner or operator of the regulated entity whether performing or otherwise affected by the activity, provides prior notice and a final report as required by §101.211 of this title (relating to Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements); the notice or final report includes the information required in §101.211 of this title; and the actual unauthorized emissions from the activity do not exceed the emissions estimates submitted in the initial notification by more than an RQ. For activities with unauthorized emissions that are not expected to, and do not, exceed an RQ, a scheduled maintenance, startup, or shutdown activity is one that is recorded as required by §101.211 of this title. Expected excess opacity events as described in §101.201(e) of this title (relating to Emissions Event Reporting and Recordkeeping Requirements) resulting from scheduled maintenance, startup, or shutdown activities are those that provide prior notice (if required), and are recorded and reported as required by §101.211 of this title.

(91) Sludge--Any solid or semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant; water supply treatment plant, exclusive of the treated effluent from a wastewater treatment plant; or air pollution control equipment.

(92) Smoke--Small gas-born particles resulting from incomplete combustion consisting predominately of carbon and other combustible material and present in sufficient quantity to be visible.

(93) Solid waste--Garbage, rubbish, refuse, sludge from a waste water treatment plant, water supply treatment plant, or air pollution control equipment, and other discarded material, including solid, liquid, semisolid, or containerized gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term does not include:

(A) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under the Texas Water Code, Chapter 26;

(B) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land, if the object of the fill is to make the land suitable for the construction of surface improvements; or

(C) waste materials that result from activities associated with the exploration, development, or production of oil or gas, or geothermal resources, and other substance or material regulated by the Railroad Commission of Texas under Natural Resources Code, §91.101, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is hazardous waste as defined by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by Resource Conservation and Recovery Act, as amended (42 United States Code, §§6901 *et seq.*).

(94) Sour crude--A crude oil that will emit a sour gas when in equilibrium at atmospheric pressure.

(95) Sour gas--Any natural gas containing more than 1.5 grains of hydrogen sulfide per 100 cubic feet, or more than 30 grains of total sulfur per 100 cubic feet.

(96) Source--A point of origin of air contaminants, whether privately or publicly owned or operated. Upon request of a source owner, the executive director shall determine whether multiple processes emitting air contaminants from a single point of emission will be treated as a single source or as multiple sources.

(97) Special waste from health care-related facilities--A solid waste that if improperly treated or handled, may serve to transmit infectious disease(s) and that is comprised of the following: animal waste, bulk blood and blood products, microbiological waste, pathological waste, and sharps.

(98) Standard conditions--A condition at a temperature of 68 degrees Fahrenheit (20 degrees Centigrade) and a pressure of 14.7 pounds per square inch absolute (101.3 kiloPascals).

(99) Standard metropolitan statistical area--An area consisting of a county or one or more contiguous counties that is officially so designated by the United States Bureau of the Budget.

(100) Submerged fill pipe--A fill pipe that extends from the top of a tank to have a maximum clearance of six inches (15.2 centimeters) from the bottom or, when applied to a tank that is loaded from the side, that has a discharge opening entirely submerged when the pipe used to withdraw liquid from the tank can no longer withdraw liquid in normal operation.

(101) Sulfur compounds--All inorganic or organic chemicals having an atom or atoms of sulfur in their chemical structure.

(102) Sulfuric acid mist/sulfuric acid--Emissions of sulfuric acid mist and sulfuric acid are considered to be the same air contaminant calculated as H<sub>2</sub>SO<sub>4</sub> and must include sulfuric acid liquid mist, sulfur trioxide, and sulfuric acid vapor as measured by Test Method 8 in 40 Code of Federal Regulations Part 60, Appendix A.

(103) Sweet crude oil and gas--Those crude petroleum hydrocarbons that are not "sour" as defined in this section.

(104) Total suspended particulate--Particulate matter as measured by the method described in 40 Code of Federal Regulations Part 50, Appendix B.

(105) Transfer efficiency--The amount of coating solids deposited onto the surface or a part of product divided by the total amount of coating solids delivered to the coating application system.

(106) True vapor pressure--The absolute aggregate partial vapor pressure, measured in pounds per square inch absolute, of all volatile organic compounds at the temperature of storage, handling, or processing.

(107) Unauthorized emissions--Emissions of any air contaminant except carbon dioxide, water, nitrogen, methane, ethane, noble gases, hydrogen, and oxygen that exceed any air emission limitation in a permit, rule, or order of the commission or as authorized by Texas Clean Air Act, §382.0518(g).

(108) Unplanned maintenance, startup, or shutdown activity--For activities with unauthorized emissions that are expected to exceed a reportable quantity or with excess opacity, an unplanned maintenance, startup, or shutdown activity is:

(A) a startup or shutdown that was not part of normal or routine facility operations, is unpredictable as to timing, and is not the type of event normally authorized by permit; or

(B) a maintenance activity that arises from sudden and unforeseeable events beyond the control of the operator that requires the immediate corrective action to minimize or avoid an upset or malfunction.

(109) Upset event--An unplanned and unavoidable breakdown or excursion of a process or operation that results in unauthorized emissions. A maintenance, startup, or shutdown activity that was reported under §101.211 of this title (relating to Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements), but had emissions that exceeded the reported amount by more than a reportable quantity due to an unplanned and unavoidable breakdown or excursion of a process or operation is an upset event.

(110) Utility boiler--A boiler used to produce electric power, steam, or heated or cooled air, or other gases or fluids for sale.

(111) Vapor combustor--A partially enclosed combustion device used to destroy volatile organic compounds by smokeless combustion without extracting energy in the form of process heat or steam. The combustion flame may be partially visible, but at no time does the device operate with an uncontrolled flame. Auxiliary fuel and/or a flame air control damping system that can operate at all times to control the air/fuel mixture to the combustor's flame zone, may be required to ensure smokeless combustion during operation.

(112) Vapor-mounted seal--A primary seal mounted so there is an annular space underneath the seal. The annular vapor space is bounded by the bottom of the primary seal, the tank wall, the liquid surface, and the floating roof or cover.

(113) Vent--Any duct, stack, chimney, flue, conduit, or other device used to conduct air contaminants into the atmosphere.

(114) Visible emissions--Particulate or gaseous matter that can be detected by the human eye. The radiant energy from an open flame is not considered a visible emission under this definition.

(115) Volatile organic compound--As defined in 40 Code of Federal Regulations §51.100(s), except §51.100(s)(2) - (4), as amended on January 21, 2009 (74 FR 3441) [~~November 29, 2004 (69 FR 69290)~~].

(116) Volatile organic compound (VOC) water separator--Any tank, box, sump, or other container in which any VOC, floating on or contained in water entering such tank, box, sump, or other container, is physically separated and removed from such water prior to outfall, drainage, or recovery of such water.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

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For further information, please call: (512) 239-6090



## SUBCHAPTER H. EMISSIONS BANKING AND TRADING

DIVISION 6. HIGHLY-REACTIVE VOLATILE ORGANIC COMPOUND EMISSIONS CAP AND TRADE PROGRAM

30 TAC §§101.390 - 101.394, 101.396, 101.399 - 101.401

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the Texas Water Code; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. The amendments are also proposed under THSC, §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions. The amendments are also proposed under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401, *et seq.*, which requires states to submit state implementation plan (SIP) revisions that specify the manner in which the National Ambient Air Quality Standard (NAAQS) will be achieved and maintained within each air quality control region of the state.

The proposed amendments implement THSC, §§382.002, 382.011, 382.012, 382.016, and 382.017 and FCAA, 42 USC, §§7401 *et seq.*

§101.390. *Definitions.*

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

(1) Allowance--The authorization to emit one ton of highly-reactive volatile organic compounds, expressed in tenths of a ton, during a control period.

(2) Authorized account representative--The responsible person who is authorized in writing to transfer and otherwise manage allowances for the site.

(3) Banked allowance--An allowance that is not used to reconcile emissions in the designated year of allocation, but is carried forward for up to one year and noted as banked in the compliance account or broker account.

(4) Baseline emissions period--Any two consecutive calendar-year control periods from 2006 - 2009 designated by a site for the purpose of establishing baseline emissions used for the allocation of allowances, except as allowed under §101.394(a)(1)(C) and (D) of this title (relating to Allocation of Allowances).

(5) ~~[(4)]~~ Broker--A person that is not required to participate in the requirements of this division, but that opens an account under this division for the purpose of banking and trading allowances.

(6) ~~[(5)]~~ Broker account--The account where allowances held by a broker are recorded. Allowances held in a broker account may not be used to satisfy compliance requirements for this division.

(7) ~~[(6)]~~ Compliance account--The account in which allowances held by a site are recorded for the purposes of meeting the requirements of this division.

(8) ~~[(7)]~~ Level of activity--The amount of highly-reactive volatile organic compounds, as defined in §115.10 of this title (relating to Definitions), in pounds produced as an intermediate, by-product, or final product or used by a process unit during a given period of time, but excluding any recycled highly-reactive volatile organic compounds internal to the process unit.

(9) Uncontrolled emissions--The total emissions calculated by dividing actual average emissions over the baseline emissions period for each facility by one minus the average percent control efficiency specifications in §115.725(d) of this title (relating to Control of Air Pollution from Volatile Organic Compounds). For heaters, boilers, and furnaces combusting highly-reactive volatile organic compound streams, the uncontrolled emissions shall be calculated by dividing actual average emissions over the baseline emissions period for each facility by one minus 99%. The control efficiency for all other non-flare facilities is equal to zero; therefore, the uncontrolled emissions will be equal to the actual emissions.

§101.391. *Applicability.*

This division applies to each site, as defined in §122.10 of this title (relating to General Definitions), in the Houston-Galveston-Brazoria [~~Houston/Galveston/Brazoria~~] ozone nonattainment area, as defined in §115.10 of this title (relating to Definitions), that is subject to Chapter 115, Subchapter H, Division 1 of this title [~~relating to Vent Gas Control~~] or Division 2 of this title (relating to Cooling Tower Heat Exchange Systems). Applicable [~~Covered~~] facilities include vent gas streams, flares, and cooling tower heat exchange systems that emit highly-reactive volatile organic compounds, as defined in §115.10 of this title (relating to Definitions), and that are located at a site subject to Chapter 115, Subchapter H of this title (relating to Highly-Reactive Volatile Organic Compounds). For the purpose of compliance with Chapter 115, Subchapter H, Division 1 or Division 2 of this title, each site that meets the applicability requirements of this section will ~~elect to opt-in to this division under §101.392(b) of this title (relating to Exemptions); shall~~ always be subject to this division.

§101.392. *Exemptions.*

(a) Sites in the Houston-Galveston-Brazoria [~~Houston/Galveston/Brazoria~~] ozone nonattainment area that have the potential to emit, as defined in §116.12 of this title (relating to Nonattainment Review Definitions), ten tons per year or less of highly-reactive volatile organic compounds from all applicable [~~covered~~] facilities at the site are exempt from the requirements of this division.

~~[(b) Sites exempt from this division under subsection (a) of this section may elect to opt-in to the requirements of this division by notifying the executive director in writing by April 30, 2005.]~~

(b) ~~[(e)]~~ All sites in the Houston-Galveston-Brazoria [~~Houston/Galveston/Brazoria~~] ozone nonattainment area, excluding Harris County, are exempt from the requirements of this division except for §101.401 of this title (relating to Level of Activity Certification). The commission may revoke this exemption upon public notice of this revocation. If the exemption is revoked, sites subject to this division

located in the Houston-Galveston-Brazoria [~~Houston/Galveston/Brazoria~~] ozone nonattainment area, excluding Harris County, will ~~[must]~~ comply by January 1, 2007, or within 180 days of public notice, whichever is later.

§101.393. *General Provisions.*

(a) Allowances may be used only for the purposes described in this division and may not be used to meet or exceed the emission limitations authorized under Chapter 116, Subchapter B of this title (relating to New Source Review Permits), or any other applicable rule or law.

(b) The initial control period is January 1, 2007, through December 31, 2007. Each control period after December 31, 2007, shall begin January 1 and end December 31 of each year. No later than March 1 after each control period, a site subject to this division must hold a quantity of allowances in its compliance account that is equal to or greater than the total highly-reactive volatile organic compound emissions from the applicable [~~covered~~] facilities located at the site during the control period.

(c) Allowances may not be used to satisfy netting requirements under Chapter 116, Subchapter B, Divisions 5 and 6 of this title (relating to Nonattainment Review; and Prevention of Significant Deterioration Review).

(d) Allowances may be used simultaneously to satisfy the requirements of this division and the one-to-one portion of the offset requirements for new or modified covered facilities, subject to federal nonattainment new source review requirements as provided in Chapter 116, Subchapter B, Division 7 of this title (relating to Emission Reductions: Offsets).

(e) An allowance does not constitute a security or a property right.

(f) All allowances will be allocated, transferred, deducted, or used in tenths of tons. The number of allowances will be rounded down to the nearest tenth of a ton when determining excess allowances and rounded up to the nearest tenth of a ton when determining allowances used.

(g) Each site shall have only one compliance account.

(h) The commission will maintain a registry of compliance accounts and broker accounts. The registry will not contain proprietary information.

§101.394. *Allocation of Allowances.*

(a) On January 1, 2007, the executive director will deposit allowances into compliance accounts as follows.

(1) For sites located in Harris County [~~that are not eligible to receive allowances under subsection (e) of this section~~], allowances for the emissions of one or more of the highly-reactive volatile organic compounds (HRVOC) as defined in §115.10 of this title (relating to Definitions), will be determined using the equations [~~equation~~] in subparagraphs (A) and (B) of this paragraph [~~the following figure~~].  
[Figure: 30 TAC §101.394(a)(1)]

(A) For calendar-year control periods 2007 - 2010, the following equation will be used to determine the allocation for each site:

Figure: 30 TAC §101.394(a)(1)(A)

(B) For calendar-year control periods 2011 and later the following allocation methodology will apply:

Figure: 30 TAC §101.394(a)(1)(B)

(C) Sites not in operation during the baseline emissions period due to the construction of an authorized modification that re-

sulted in an HRVOC emission reduction may request from the executive director the use of the allocation methodology provided under subparagraph (A) of this paragraph in lieu of the allocation provided under subparagraph (B) of this paragraph, according to the following:

(i) this allocation is less than the HRVOC permit allowable limit;

(ii) the baseline emissions period for any site under this subparagraph will be any two consecutive calendar-year control periods from 2010 - 2012; and

(iii) beginning with the 2014 calendar-year control period, all sites will receive an allocation in accordance with the methodology under subparagraph (B) of this paragraph.

(D) A site meeting the following conditions may request to use an alternative baseline emissions period consisting of the two consecutive calendar-year control periods immediately preceding the baseline emissions period defined under §101.390(4) of this title (relating to Definitions):

(i) the site used continuous flow rate monitoring and speciation of HRVOC to determine HRVOC emissions during the alternative baseline period;

(ii) the site had permanent, voluntary, and quantifiable HRVOC emission reductions in an amount equal to or greater than 50% of the site's total annual HRVOC emissions subject to this program, or a site-wide reduction in HRVOC emissions subject to this program of 50 tons or greater, as calculated by comparing the average HRVOC emissions from the alternate baseline period to the baseline emissions period defined under §101.390(4) of this title;

(iii) qualifying HRVOC emission reductions must have been made enforceable by a permit application submitted under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) or other submittal to the executive director no later than April 1, 2010; and

(iv) a request for an alternative baseline period must be received by the executive director no later than July 1, 2010.

(2) For sites located in Brazoria, Chambers, Fort Bend, Galveston, Liberty, Montgomery, and Waller Counties [~~that are not eligible to receive allowances under subsection (e) of this section~~], allowances for emissions of ethylene and propylene for each site will be determined using the equation in the following figure.  
Figure: 30 TAC §101.394(a)(2) (No change.)

(b) The level of activity of a site will ~~[shall]~~ be determined by summing the levels of activity from the chosen 12 consecutive month period for each process unit, as defined in §115.10 of this title, located at the site that produce one or more HRVOCs as an intermediate, by-product, or final product or that use one or more HRVOCs as a raw material or intermediate to produce a product.

[(e) The owner or operator of a site that is subject to this division, but that does not include a process unit that produces or uses an HRVOC, shall apply by January 30, 2005, to the executive director for an allocation based on HRVOC throughput or storage capacity for any 12 consecutive months during the period of 2000 through 2004.]

[(1) The executive director may equitably allocate up to 10% of the total HRVOC allocations for Harris County to all such sites located in Harris County;]

[(2) For sites located in Brazoria, Chambers, Fort Bend, Galveston, Liberty, Montgomery, and Waller Counties, the executive director may allocate up to 10% of the total HRVOC emissions allo-

ated for those counties to all such sites located in Brazoria, Chambers, Fort Bend, Galveston, Liberty, Montgomery, and Waller Counties.]

~~[(3) The executive director shall distribute all allowances not allocated under this subsection proportionally to those sites receiving allocations under subsections (a) and (b) of this section.]~~

~~(c) [(d)] Sites subject to the requirements of this division or electing to opt-in to the requirements of this division that receive an HRVOC allocation of less than 5.0 tons based on the allocation methodologies under subsection (a)(1)(A) [subsection (a) or (e)] of this section will [shall] be eligible to receive a minimum allocation of 5.0 tons of HRVOC allowances per year.~~

~~(d) Sites subject to the requirements of this division that receive an HRVOC allocation of less than 10.0 tons based on the allocation methodologies under subsection (a)(1)(B) of this section will be eligible to receive a minimum allocation of 10.0 tons of HRVOC allowances per calendar-year control period.~~

~~(e) If the total actual HRVOC emissions from the covered facilities at a site during a control period exceed the amount of allowances in the compliance account for the site on March 1 following the control period, allowances for the next control period will [shall] be reduced by an amount equal to the emissions exceeding the allowances in the compliance account plus 10% of the exceedance. This allocation reduction does not preclude the executive director from initiating an enforcement action. If a compliance account does not hold sufficient allowances to accommodate the reduction, the executive director may issue a notice of deficiency to the owner or operator. The owner or operator will [shall] purchase or transfer allowances sufficient to accommodate the reduction within 30 days of issuance of the notice of deficiency from the executive director.~~

~~(f) Allowances will be allocated by the executive director, who will deposit allowances into each compliance account:~~

- ~~(1) initially, by January 1, 2007; and~~
- ~~(2) subsequently, by January 1 of each following year.~~

~~(g) The executive director may adjust the deposits for any control period to reflect new or existing state implementation plan requirements.~~

~~(h) The executive director may add or deduct allowances from compliance accounts based on the review of reports required under §101.400 of this title (relating to Reporting).~~

#### *§101.396. Allowance Deductions.*

~~(a) On March 31 of each year after a control period, allowances representing the total highly-reactive volatile organic compounds (HRVOC) emissions from the applicable [covered] facilities at a site during the previous control period will be deducted from the compliance account for the site. The amount of HRVOC emissions will be based upon the monitoring and testing protocols established in §115.725 and §115.764 of this title (relating to Monitoring and Testing Requirements), as appropriate.~~

~~(b) The amount of HRVOC emissions from applicable [covered] facilities will [shall] be calculated for each hour of the year and summed to determine the annual emissions for compliance. For [emissions from emissions events subject to the requirements of §101.201 of this title (relating to Emissions Event Reporting and Recordkeeping Requirements) or] emissions from scheduled maintenance, startup, or shutdown activities subject to the requirements of §101.211 of this title (relating to Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements),<sup>2</sup>[<sup>3</sup>] the hourly emissions to be included in the summation shall not exceed the short-term limit of~~

§115.722(c) and §115.761(c) of this title (relating to Site-wide Cap and Control Requirements; and Site-wide Cap.

~~(c) As of January 1, 2011, HRVOC emissions, up to a total of 250 tons from all applicable facilities in Harris County, that are attributed to emissions events subject to the requirements of §101.201 of this title (relating to Emissions Event Reporting and Recordkeeping Requirements) will be excluded from determining annual compliance for each calendar-year control period. Emissions from emissions events at each individual site will be applied against the emissions event set-aside in the chronological order reported to the State of Texas Environmental Electronic Reporting System, as a final record, under §101.201(b). Emissions from non-reportable emission events will be applied against the emissions event set-aside on March 31 of each year after the control period in the order of actual occurrence reported on Form ECT-1H, Highly-Reactive Volatile Organic Compound (HRVOC) Emissions Cap and Trade Annual Compliance Report, as required under §101.400(a)(4) of this title (relating to Reporting).~~

~~(d) If the total HRVOC emissions from all applicable facilities in Harris County that are attributable to emission events subject to the requirements of §101.201 of this title exceed the 250 ton emissions event set-aside in any calendar-year control period, allowances equivalent to the emissions from those emissions events occurring after the emissions event set-aside limit has been reached will be deducted from a site's compliance account no later than March 31 of the year following the applicable calendar-year control period.~~

~~(e) [(e)] If the monitoring and testing data referenced in subsection (a) of this section does not exist or is unavailable, the site may determine its HRVOC emissions for that period of time using the following methods and in the following order: continuous monitoring data; periodic monitoring data; testing data; data from manufacturers; and engineering calculations. When determining the amount of HRVOC emissions under this subsection, the site will [shall] include a justification for using the substitute method or methods in lieu of the methods referenced in subsection (a) of this section.~~

~~(f) [(d)] When deducting allowances from the compliance account of a site for a control period, the executive director will deduct the allowances beginning with the most recently allocated allowances before deducting banked vintage allowances.~~

#### *§101.399. Allowance Banking and Trading.*

~~(a) Allowances allocated for a control period that are not used for compliance in that control period may be banked for use in demonstrating compliance for the next control period or transferred.~~

~~(b) Allowances that have not expired or been used may be transferred at any time during a control period, except as provided in this section.~~

~~(1) The person desiring to transfer the allowances shall apply for approval of the transaction to the executive director by submitting a completed Form ECT-2, Application for Transfer of Allowances.~~

~~(2) The ECT-2 form must include the purchase price per allowance proposed to be paid, except for transactions between sites under common ownership or control.~~

~~(3) All information regarding the quantity and purchase price of the allowances will be immediately made available to the public.~~

~~(4) If the executive director approves the application, the executive director will send a letter to the seller and purchaser reflecting the transaction. The transaction is final upon issuance of the letter.~~

(c) A person receiving allowances on an annual basis may permanently transfer ownership of current and future allowances to any person in accordance with the following requirements.

(1) The person desiring to transfer the allowances shall apply for approval of the transaction to the executive director by submitting a completed Form ECT-4, Application for Permanent Transfer of Allowance Ownership.

(2) The ECT-4 form must include the purchase price per allowance proposed to be paid, except for transactions between sites under common ownership or control.

(3) All information regarding the quantity and purchase price of the allowances will be immediately made available to the public.

(4) If the executive director approves the application, the executive director will send a letter to the seller and purchaser reflecting the transaction. The transaction is final upon issuance of the letter.

(d) A person may transfer allowances that are scheduled to be allocated in a future control period but have not yet been deposited into an account.

(1) The person desiring to transfer the allowances shall apply for approval of the transaction to the executive director by submitting a completed Form ECT-5, Application for Transfer of Individual Future Year Allowances.

(2) The ECT-5 form must include the purchase price per allowance proposed to be paid, except for transactions between sites under common ownership or control.

(3) All information regarding the quantity and purchase price of the allowances will be immediately made available to the public.

(4) If the executive director approves the application, the executive director will send a letter to the seller and purchaser reflecting the transaction. The transaction is final upon issuance of the letter.

(e) Allowances that were provided under §101.394(a)(1)(C) of this title (relating to Allocation of Allowances) are not eligible for transfer under subsections (b), (c), or (d) of this section.

(f) [(e)] Allowances generated from sites located in counties other than Harris County may not be used at sites located in Harris County. Allowances generated from sites located in Harris County may not be used at sites located in counties other than Harris County.

(g) [(f)] Only authorized account representatives may transfer allowances.

(h) [(g)] Allowances subject to an approved transaction will be deposited into the purchaser's broker or compliance account within 30 days of receipt of a completed transfer application.

(i) [(h)] Volatile organic compound emission reduction credits (ERC) certified in accordance with Division 1 of this subchapter (relating to Emission Credit Banking and Trading) may be converted to a yearly highly-reactive volatile organic compound (HRVOC) allocation.

(1) Qualified volatile organic compound (VOC) ERCs must be generated:

(A) from a reduction at a site located in the Houston/Galveston/Brazoria nonattainment area;

(B) from a reduction strategy implemented after December 31, 2004; and

(C) from a reduction in VOC species other than those defined as HRVOCs under §115.10 of this title (relating to Definitions).

(2) VOC reductions due to the installation of best available control technology do not qualify for conversion under this subsection.

(3) In addition to the requirements of Division 1 of this subchapter, a qualified VOC ERC must meet the following requirements:

(A) the ERC must be quantifiable, real, surplus, enforceable, and permanent as required in §101.302 of this title (relating to General Provisions) at the time the ERC is converted;

(B) the baseline emissions to which the VOC reduction is compared must consist of the average actual emissions for any two consecutive calendar years preceding the emission reduction strategy and that include or follow the most recent year of emission inventory used in the state implementation plan;

(C) the quantification of VOC reductions must be performed using the monitoring and testing methods required under §115.725 or §115.764 of this title (relating to Monitoring and Testing Requirements) and subject to the recordkeeping and reporting requirements under §115.726 and §115.766 of this title (relating to Recordkeeping and Reporting Requirements);

(D) the ERC must not have expired; and

(E) the owner of the ERC shall have prior approval from the executive director to convert the ERC to an HRVOC allocation.

(4) VOC ERCs must be converted to HRVOC allowances at a ratio calculated using the equation in the following figure.

Figure: 30 TAC §101.399(i)(4)

~~Figure: 30 TAC §101.399(h)(4)~~

(5) For each site eligible to receive allowances under §101.394(a) [~~or (e)~~] of this title [~~(relating to Allocation of Allowances)~~], additional HRVOC allowances received from the conversion of VOC ERCs under this subsection must be limited to a quantity not to exceed more than 5% of the site's initial HRVOC allocation.

(6) In addition to paragraph (5) of this subsection, sites subject to this division may receive an HRVOC allocation from the conversion of VOC ERCs under this subsection equivalent to any HRVOC emissions increases from new or modified covered facilities not in operation prior to January 2, 2004, and that were included in an application for a permit under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) that was deemed administratively complete by the executive director within one year of the effective date of this rule.

#### *§101.400. Reporting.*

(a) No later than March 31 after each control period, each site will [~~shall~~] submit a completed Form ECT-1H, Highly-Reactive Volatile Organic Compound (HRVOC) Emissions Cap and Trade Annual Compliance Report, to the executive director, which will [~~shall~~] include the following:

(1) the total amount of actual HRVOC emissions from applicable [~~covered~~] facilities at the site during the preceding control period;

(2) the method or methods used to determine the actual HRVOC emissions, including, but not limited to, monitoring protocol and results, calculation methodologies, and emission factors; [~~and~~]

(3) a summary of all final transactions for the preceding control period; and[-]

(4) the total amount and respective dates of HRVOC emissions from emissions events subject to the requirements of §101.201 of this title (relating to Emissions Event Reporting and Recordkeeping Requirements).

(b) For sites failing to submit an ECT-1H form by the required deadline in subsection (a) of this section, the executive director may withhold approval of any proposed trades from that site involving allowances allocated for the control period for which the ECT-1H form is due or to be allocated in subsequent control periods.

*§101.401. Level of Activity Certification.*

(a) No later than April 30, 2005, the owner or operator of each site subject to this division will ~~shall~~ submit to the executive director a completed Form ECT-3H, Highly-Reactive Volatile Organic Compound Emissions Cap and Trade Level of Activity Certification Form.

(b) For each process unit subject to this division, the owner or operator will ~~shall~~ certify in the ECT-3H form the level of activity for the selected 12 consecutive months during the period of 2000 through 2004.

(c) The owner or operator will ~~shall~~ attach to the ECT-3H form information and documentation necessary to support the proposed level of activity baseline.

(d) The owner or operator of the site may mark any portion of the ECT-3H form, or supporting information and documentation, as confidential under Texas Health and Safety Code, §382.041.

(e) In conjunction with submission of the ECT-3H form, the owner or operator of the site subject to this division will ~~shall~~ provide enforceable documentation of the maximum allowable emission rate of highly-reactive volatile organic compounds from facilities located at that site.

(f) No later than April 30, 2010, the owner or operator of each site subject to this division will submit to the executive director a completed Form ECT-6H, Highly Reactive Volatile Organic Compound Emissions Cap and Trade Baseline Emissions Certification Form.

(g) For each site subject to this division, the owner or operator will certify in the ECT-6H form two consecutive calendar-year control periods selected from the period of 2006 - 2009 to establish the baseline emissions period.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 25, 2009.

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Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

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For further information, please call: (512) 239-6090



SUBCHAPTER H. EMISSIONS BANKING  
AND TRADING  
DIVISION 3. MASS EMISSIONS CAP AND  
TRADE PROGRAM

30 TAC §§101.350, 101.351, 101.353

The Texas Commission on Environmental Quality (commission or agency) proposes amendments to §§101.350, 101.351, and 101.353.

The amended sections will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The purpose of the proposed amendments to Subchapter H, Division 3, Mass Emissions Cap and Trade Program, is to maintain the integrity of the nitrogen oxides (NO<sub>x</sub>) cap in the Houston-Galveston-Brazoria (HGB) ozone nonattainment area and minimize increases in the NO<sub>x</sub> cap. The proposal would discontinue the acceptance of late ECT-3 forms, Level of Activity Certification, submitted in accordance with §101.360(a) after March 30, 2010, from sites defined on or before December 31, 2000, as major sources of NO<sub>x</sub>, as defined in 30 TAC §117.10. Also, the proposed rulemaking would amend the definition of "Uncontrolled design capacity" to provide additional flexibility for certain stationary diesel engines and clarify both site and facility applicability.

The Mass Emissions Cap and Trade (MECT) program is a market-based component of the SIP that provides stationary sources of NO<sub>x</sub> compliance flexibility for the emission specifications under 30 TAC Chapter 117, while establishing a mandatory cap for total NO<sub>x</sub> emissions from affected source categories in the HGB ozone nonattainment area. The MECT program was adopted as a primary control measure of the HGB attainment demonstration for the one-hour ozone National Ambient Air Quality Standard (NAAQS). The MECT program NO<sub>x</sub> cap is a product of the emission specifications of Chapter 117 and the submitted levels of activity from applicable facilities. The proposed rulemaking would not affect the submittal of ECT-3 forms from minor sources of NO<sub>x</sub>.

In accordance with §101.360(a), to receive an allocation of allowances (one allowance equals one ton of NO<sub>x</sub>), sites were required to submit an ECT-3 form with the levels of activity from their applicable facilities by June 30, 2001. Applicable facilities with historical actual emission data were allocated allowances based on actual levels of activity while other applicable facilities without historical actual emission data were allocated allowances based on permitted allowable emissions. Representatives of facilities with allocations based on permitted emissions are required to submit a second ECT-3 form once a historical emissions baseline is established to convert their permit-based allocation to a historical level of activity based allocation in accordance with §101.360(b)(1). The current rule doesn't address late submittals of ECT-3 forms. Therefore, a site that has never complied with the MECT program could submit a late ECT-3 form in accordance with §101.360(a) and receive an allocation of allowances, thus, potentially increasing the NO<sub>x</sub> cap. To maintain the integrity and minimize increases in the NO<sub>x</sub> cap, the proposed rulemaking would discontinue the acceptance of late ECT-3 forms from sites defined on or before December 31, 2000, as major sources of NO<sub>x</sub> if submitted in accordance with §101.360(a) after March 30, 2010. These applicable facilities would have to obtain allowances from the market instead of receiving an allocation of allowances.

Informal comments from industry were received regarding clarification on "air pollution control equipment" in the definition of "Uncontrolled design capacity." Therefore, the proposed rulemaking

Figure: 30 TAC §101.394(a)(1)(A)

$$S = \frac{LA}{\sum_{i=1}^n LA_i} \times AC^1$$

Where:

S = the greater of 5.0 tons or the allocation for the site.

i = each site located in Harris County and subject to this division.

n = the total number of sites subject to this division.

LA = the level of activity baseline for a site, calculated as the annual level of activity for any 12 consecutive months during the period of 2000 - 2004 for the site, as certified by the executive director.

AC<sup>1</sup> = 3,106.3 tons per year of highly-reactive volatile organic compounds less the total amount allocated to those sites receiving a minimum of 5.0 tons.

Figure: 30 TAC §101.394(a)(1)(B)

$$S = AC^1 \times (\text{Industry Sector Share}) \times (\text{Facility Share})$$

Where:

S = the greater of 10.0 tons or the allocation for the site.

Industry Sector Share = Total actual average emissions for the industry sector baseline emissions period divided by the total actual average emissions for all participating sites' baseline emissions period.

Facility Share = The sum of the total average actual emissions for non-flare facilities and uncontrolled emissions for flares, as well as heaters, boilers, and furnaces combusting highly-reactive volatile organic compound (HRVOC) streams, for the baseline emissions period divided by the total uncontrolled actual average emissions for the industry sector baseline emission period.

AC<sup>1</sup> = the amount of HRVOC tons defined in (1) - (5) of this figure less the total amount allocated to those sites receiving a minimum of 10.0 tons.

(1) For 2011 - 2013, AC<sup>1</sup> = 3,201.5 tons;

(2) For 2014, AC<sup>1</sup> = 2,856.4 tons;

(3) For 2015, AC<sup>1</sup> = 2,683.8 tons;

(4) For 2016, AC<sup>1</sup> = 2,511.2 tons; and

(5) For 2017 and all subsequent calendar-year control periods, AC<sup>1</sup> = 2,338.6 tons.

Figure: 30 TAC §101.399(i)(4)

$$A = \frac{1}{11.57} \sum (R_i \times E_i)$$

Where:

A = yearly allocation of highly-reactive volatile organic compound allowances.

R<sub>i</sub> = the reactivity of each speciated volatile organic compound reduced as specified in California Code of Regulations, Title 17, Chapter 1, §94700, concerning MIR Values for Compounds, as amended.

E<sub>i</sub> = the actual emissions reduced, in tons per year, of each speciated volatile organic compound.

Figure: 30 TAC §115.440(b)(10)

$$PP_C = \frac{\sum_{i=1}^n \frac{W_i}{MW_i} \times VP_i}{\frac{W_w}{MW_w} + \sum_{e=1}^n \frac{W_e}{MW_e} + \sum_{i=1}^n \frac{W_i}{MW_i}}$$

Where:

PP<sub>c</sub> = the VOC composite partial pressure of a solution at 20 degrees Celsius, millimeters of mercury (mm Hg);

W<sub>i</sub> = the weight of VOC i, grams (g);

MW<sub>i</sub> = the molecular weight of VOC i, g/g-mole;

VP<sub>i</sub> = the vapor pressure of VOC i at 20 degrees Celsius, mm Hg;

W<sub>w</sub> = the weight of water, g;

MW<sub>w</sub> = the molecular weight of water, g/g-mole;

W<sub>e</sub> = the weight of non-water exempt compound e, g; and

MW<sub>e</sub> = the molecular weight of non-water exempt compound e, g/g-mole.