

**TEXAS SECTION 185 ONE-HOUR EQUIVALENT RULE:
STRAW RULE LANGUAGE**

**(NOTE: Parallel language for 8-hour Rule Would be
Developed with 2020 First Program Year)**

§ 101.____. Definitions

- (1) **HGB Nonattainment Area** -- The Houston-Galveston-Brazoria ("HGB") ozone nonattainment area, as defined in §101.1(70)(E)(i) of this Chapter.
- (2) **Program Year** -- Each calendar year following the effective date of this rule during which one or more federal reference ozone monitors within the HGB Nonattainment Area record more than one quality-assured one-hour ozone exceedance per monitor.
- (3) **Program Year Emissions** -- Using the best current emissions quantification method, the aggregate actual emissions, in tons, of volatile organic compounds plus nitrogen oxides during the Program Year from each major stationary source in the HGB Nonattainment Area that is under the common control of the same person (or persons under common control). If the source is a major stationary source of both volatile organic compounds and nitrogen oxides, Program Year Emissions shall include both volatile organic compounds and nitrogen oxides from each major stationary source in the HGB Nonattainment Area that is under the common control of the same person (or persons under common control). If the source is a major stationary source of only volatile organic compounds or nitrogen oxides, Program Year Emissions shall include either volatile organic compounds or nitrogen oxides, whichever is applicable, from each major stationary source in the HGB Nonattainment Area that is under common control of the same person (or persons under common control).
- (4) **Baseline Emissions** -- Using the best current emissions quantification method, the sum of Baseline Actual Volatile Organic Compound Emissions plus Baseline Actual Nitrogen Oxide Emissions from each major stationary source in the HGB Nonattainment Area that is under the common control of the same person (or persons under common control).
- (5) **Baseline Actual Volatile Organic Compound Emissions** -- The actual emissions, in tons, of volatile organic compounds that a major stationary source emitted during any consecutive 24-month period selected by the owner or operator within the 10-year period (or 5-year period for electrical utility steam generating units) immediately preceding January 1, 2007, not to exceed the allowable rate under any permit applicable to the source during that 24-month period or, if no such permit has been issued, the allowable rate under commission rules applicable during that 24-month period that were then approved by the Environmental Protection Agency as part of the Texas State Implementation Plan.

- (6) **Baseline Actual Nitrogen Oxide Emissions** -- The actual emissions, in tons, of nitrogen oxides that a major stationary source emitted during any consecutive 24-month period selected by the owner or operator within the 10-year period (or 5-year period for electrical utility steam generating units) immediately preceding the year 2007, not to exceed the allowable rate under any permit applicable to the source during that 24-month period or, if no such permit has been issued, the allowable rate under commission rules applicable during that 24-month period.

§ 101.____. Section 185 Equivalent Obligation

- (1) The owner or operator of a major stationary source of volatile organic compounds or nitrogen oxides that is located in an HGB Nonattainment Area shall pay a fee to the commission, or otherwise satisfy an equivalent obligation, as determined under this subsection.
- (2) The fee shall be equal to \$5,000, adjusted in accordance with subsections (3) and (4) of this section, per ton of Program Year Emissions in excess of 80 percent of Baseline Emissions from each major stationary source in the HGB Nonattainment Area that is under the common control of the same person (or persons under common control). An owner or operator of a major stationary source may, due to a declared disaster, emergency or other extenuating circumstances, request approval of Program Year Emissions more representative of normal operation as determined by the executive director. Applications for extenuating circumstances must be submitted by the owner or operator to the executive director no later than March 31 following the Program Year for which extenuating circumstances are claimed.
- (3) The fee shall be adjusted annually by the change in the Consumer Price Index pursuant to Federal Clean Air Act Sections 185(b)(3) and 502(b)(3)(B)(v).
- (4) In lieu of paying the monetary fee set forth in subsection (2), an owner or operator of a major stationary source or group of commonly-controlled sources subject to the fee requirements of this section may satisfy all or part of the fee obligation by any combination of the following:
 - (A) a capital investment to reduce actual emissions of volatile organic compounds or nitrogen oxides in an amount equivalent to all or part of the tons on which the fee would otherwise be assessed;
 - (B) retirement of an amount of tons of Emissions Reduction Credits, Discrete Emissions Reduction Credits, or current or banked Highly Reactive Volatile Organic Compound Emissions Cap and Trade ("HECT") or Mass Emissions Cap and Trade ("MECT") program allowances in an amount equivalent to all or part of the tons on which the fee would otherwise be assessed;
 - (C) payment of an amount equivalent to all or part of the fee directly to a Supplemental Environmental Project, or

- (D) payment of an amount equivalent to all or part of the fee directly to any other emission reduction program approved by the executive director for the HGB Nonattainment Area.
- (5) Notwithstanding any provision of this section, no owner or operator shall be required to pay any fee under this subsection with respect to emissions during any year during which the HGB Nonattainment Area is determined to have attained the one-hour ozone standard or that would qualify as an extension year under Federal Clean Air Act Section 181(a)(5), or during any year that is not a Program Year, and no owner or operator shall be required to pay any fee under this subsection to the extent that such fees are no longer required to be imposed pursuant to Federal Clean Air Act Section § 185, as it may be amended from time to time.

§ 101.____. Section 185 Reporting and Fee Payment

- (1) Within 120 days of the effective date of this section, the owner or operator of each major stationary source in the HGB Nonattainment Area that is subject to Section 101.____ shall submit to the executive director a report establishing its Baseline Emissions, on a form published by the executive director.
- (2) Within 30 days after the date the source's annual emissions inventory update is due pursuant to § 101.10(b)(2) of this chapter, the owner or operator of each major stationary source in the HGB Nonattainment Area that is subject to Section 101.____ shall submit a report of its Program Year Emissions to the executive director, on a form published by the executive director, detailing the amount of Program Year Emissions emitted during the prior Program Year.
- (3) Within 30 days after the Program Year Emissions report is due, the owner or operator of each major stationary source in the HGB Nonattainment Area that is subject to Section 101.____ under shall submit to the executive director, on a form published by the executive director, a Final Compliance Report detailing the following:
 - (A) the amount of Program Year Emissions emitted during the prior Program Year;
 - (B) a summary of the methods used to satisfy the Section 185 Equivalence Obligation established in Section 101.____ for the preceding Program Year.
- (4) The owner or operator of any major stationary source to which this rule applies shall remit to the commission any fee owed pursuant to § 101.____(1)-(4). Payment of fees due under this section is due within 30 days of the date the agency sends a statement of assessment to the source owner or operator.