

SUBCHAPTER B: FAILURE TO ATTAIN FEE
§§101.100 - 101.102, 101.104, 101.106 - 101.110, 101.113,
101.116 - 101.118, 101.120 - 101.122
Effective June 12, 2013

§101.100. Definitions.

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

- (1) Actual emissions-- As defined in §101.10(b) of this title (relating to Emissions Inventory Requirements).
- (2) Area §185 Obligation --The total annual amount of §185 fee due from all applicable major stationary sources in a severe or extreme ozone nonattainment area that failed to attain the one-hour ozone National Ambient Air Quality Standard by its applicable attainment date of November 15, 2007.
- (3) Attainment date--The date an area is scheduled to attain the National Ambient Air Quality Standard for one-hour ozone, as documented in the state implementation plan. For the Houston-Galveston-Brazoria one-hour ozone nonattainment area, this is November 15, 2007.
- (4) Attainment year--For the Houston-Galveston-Brazoria one-hour ozone standard, the attainment year is calendar year 2007.
- (5) Baseline amount--Tons of volatile organic compounds and/or nitrogen oxides emissions calculated separately at a major stationary source, using data submitted to and recorded by the commission, under §101.106 of this title (relating to Baseline Amount Calculation).
- (6) Baseline emissions--Emissions reported in tons in the annual emissions inventory submitted to and recorded by the agency each calendar year per the requirements of §101.10 of this title adjusted as follows.
 - (A) The baseline emissions must include all annual emissions associated with authorized normal operations, startups, shutdowns, and maintenance activities and excludes emissions from emissions events reported.
 - (B) For regulated entities with emissions that are irregular, cyclic, or have emissions that vary significantly, the baseline emissions may be determined from an average of a consecutive 24-month period as allowed under §101.106(b)(2) of this title.

(7) Electric utility steam generating unit--Any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 megawatts electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is included in determining the electrical energy output capacity of the affected facility.

(8) Emissions unit--As defined in §101.1 of this title (relating to Definitions).

(9) Equivalency credits--An amount equivalent to the revenue collected in accordance with §101.102 of this title (relating to Equivalent Alternative Fee) for accumulation in the Fee Equivalency Account.

(10) Major stationary source--As defined under §116.12 of this title (relating to Nonattainment and Prevention of Significant Deterioration Review Definitions).

(11) Section 185 Account--The name of a group of one or more major stationary sources, under common control in the Houston Galveston-Brazoria one-hour ozone standard nonattainment area.

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§101.101. Applicability.

The provisions of this subchapter apply to all regulated entities that are major stationary sources of volatile organic compounds or nitrogen oxides that are located in the Houston-Galveston-Brazoria one-hour ozone nonattainment area.

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§101.102. Equivalent Alternative Fee.

(a) Fee Equivalency Account. The executive director shall establish and maintain a Fee Equivalency Account to document fees collected and available for use in demonstrating equivalency with the Area §185 Obligation. No actual money will be deposited into the Fee Equivalency Account. Instead, the Fee Equivalency Account will reflect equivalency credits based upon revenue collected for or under authority of :

(1) the Texas Emissions Reduction Plan program;

(2) the Low-Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Repair Program; and/or

(3) the Local Initiative Project.

(b) Revenue eligibility. The revenue eligible for credits to the Fee Equivalency Account must be from the Houston-Galveston-Brazoria (HGB) one-hour ozone standard nonattainment area.

(c) Revenue credited. The revenue credited to the Fee Equivalency Account shall be credited for the years funding is expended in HGB beginning with the calendar year prior to the adoption of this rule.

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§101.104. Equivalent Alternative Fee Accounting.

(a) Fee Equivalency Account credits. Equivalency Credits will be on a dollar-for-dollar basis and will not be discounted due to the passage of time. Equivalency Credits can be accumulated in the Fee Equivalency Account from year to year if a surplus exists in any given year and used to offset the calculated Houston-Galveston-Brazoria (HGB) one-hour ozone nonattainment area §185 Obligation as needed.

(b) Area Section 185 obligation determination. Annually, the executive director shall calculate the applicable Failure to Attain Fee Obligation for all major stationary sources in the HGB one-hour ozone standard nonattainment area. The Failure to Attain Fee Obligation for each Section 185 Account will be summed. The resultant amount will represent the calendar year Area §185 Obligation for the HGB one-hour ozone standard nonattainment area. A calendar year's Area §185 Obligation will be calculated using actual emissions reported under §101.10 of this title (relating to Emissions Inventory Requirements) from the previous calendar year.

(c) Annual demonstration of equivalency. By no later than December 2014 and annually thereafter until the HGB one-hour ozone nonattainment area is no longer subject to the fee by the EPA or the fee is placed into abeyance, the executive director shall complete an equivalency demonstration to determine if adequate equivalency credits were available in the Fee Equivalency Account for the applicable calendar year to meet the Area §185 Obligation calculated under subsection (b) of this section.

(1) The annual determination of equivalency will be made as follows.

Figure: 30 TAC §101.104(c)(1)

$$\text{FeeBalance} = \text{AreaObligation} - \text{FeeEquivAcct}$$

Definitions:

AreaObligation = The Area §185 Obligation calculated under subsection (c) of this section representing the sum of the §185 Fee Obligations from all major stationary sources in the Houston-Galveston-Brazoria nonattainment area for the calendar year being assessed.

FeeEquivAcct = Amount of Equivalency Credits in the Fee Equivalency Account as determined under §101.102 of this title (relating to Equivalent Alternative Fee). This amount may contain any equivalency surplus from previous year's assessments.

FeeBalance = The amount in the Fee Equivalency Account Balance after the Area §185 Obligation is met in a calendar year.

(2) If the Fee Equivalency Account balance is calculated to be less than or equal to zero in paragraph (1) of this subsection, sufficient equivalency credits were available to offset the fee obligation. The executive director shall not assess a §185 Failure to Attain fee on Section 185 Accounts for the year being assessed.

(3) If the Fee Equivalency Account balance is calculated to be greater than zero in paragraph (1) of this subsection, insufficient equivalency credits were available to offset the fee obligation. The executive director shall assess a sufficient §185 Failure to Attain fee to fulfill the Area §185 Obligation. The amount due from each Section 185 Account will be prorated to generate sufficient revenue to meet the Area §185 Obligation. The proration will be calculated as follows.

Figure 30 TAC §101.104(c)(3)

$$\text{ProratedFee} = (\text{FeeBalance} / \text{AreaObligation}) \times \text{§185Fee}$$

Definitions:

§185Fee = The fee obligation for each major stationary source or Section 185 Account calculated by the executive director based on actual emissions reported in the inventory under §101.10 of this title (relating to Emissions Inventory Requirements).

AreaObligation = The Area §185 Obligation calculated under this subsection for the Houston-Galveston-Brazoria one-hour ozone standard nonattainment area for the calendar year being assessed.

FeeBalance = The amount in the Fee Equivalency Account after the §185 Obligation is met in a calendar year.

ProratedFee = The reduced fee each major stationary source or Section 185 Account will be assessed if insufficient equivalency credits are allocated in the Fee Equivalency

Account.

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§101.106. Baseline Amount Calculation.

(a) For the purposes of this subchapter, the baseline amount must be computed as the lower of the following:

(1) total amount of baseline emissions; or

(2) total emissions allowed under authorizations, including authorized emissions from maintenance, shutdown, and startup activities, applicable to the source in the attainment year.

(b) For the purposes of this subchapter, the baseline emissions must be from:

(1) the attainment year; or

(2) if the regulated entity's emissions are irregular, cyclical, or otherwise vary significantly from year to year, any single 24-month consecutive period within a historical period preceding the calendar year containing the attainment year to compute an average baseline emissions amount (tons per year) for the major stationary source. If used, the historical period must be:

(A) ten years for non-electric utility steam generating units; or

(B) five years for electrical utility steam generating units.

(c) If a major stationary source uses a historical consecutive period as defined in subsection (b)(2) of this section, the baseline amount estimation will:

(1) use adequate data for calculating the baseline emissions units;

(2) be adjusted downward to exclude any noncompliant emission that occurred while the source was operating above an emissions limitation that was legally enforceable during the consecutive 24-month period; and

(3) be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the source had to comply by November 15, 2007, had such a major stationary source been required to comply with such limitations during the consecutive 24-month period.

(d) When control or ownership of emission units changes during the attainment year, the emissions from those emission units will be attributed to the major stationary source with control or ownership of the emission unit on December 31st of the attainment year.

(e) A baseline amount, reported in units of tons, must be calculated separately for volatile organic compounds and for nitrogen oxides. The calculation must be made for each pollutant for which the source meets the major source applicability requirements of §101.101 of this title (relating to Applicability).

(f) The baseline amount calculation is subject to approval by the executive director. The baseline amount will be fixed and not be changed without the approval of the executive director except as allowed under §101.109 of this title (relating to Adjustment of Baseline Amount) until the Failure to Attain Fee no longer applies to the area as described under §101.118 of this title (relating to Cessation of Program).

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§101.107. Aggregated Baseline Amount.

(a) Aggregation. Notwithstanding the requirements of §101.106 and §101.108 of this title (relating to Baseline Amount Calculation and Alternative Baseline Amount), a major stationary source of emissions that meets the applicability requirements of §101.101 of this title (relating to Applicability) after calculating each pollutant's emission baseline amount in accordance with this subchapter may choose to combine:

(1) volatile organic compounds (VOC) emissions into a single aggregated pollutant baseline amount for multiple major stationary sources under common control;

(2) nitrogen oxides (NO_x) emissions into a single aggregated pollutant baseline amount for multiple major stationary sources under common control;

(3) emissions for both VOC and NO_x into a single aggregated pollutant baseline amount for a single major stationary source; and/or

(4) emissions for both VOC and NO_x into a single aggregated pollutant baseline amount for multiple major stationary sources under common control .

(b) Pollutants aggregation. Pollutants in an aggregated amount must have:

(1) the same time period for calculating the baseline amount; and

(2) the same basis of either actual or authorized emissions to calculate the baseline amount.

(c) Section 185 Account reporting. An owner and or operator opting to combine VOC with NO_x and/or combine major stationary sources into one baseline amount shall identify all major stationary sources being aggregated under this section.

(d) Failure to Attain Fee obligation requirement. The fee obligation must be calculated in the same manner that an owner or operator elects to aggregate under this section.

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§101.108. Alternative Baseline Amount.

(a) Alternative to setting a baseline amount under §101.106 of this title (relating to Baseline Amount Calculation), an owner or operator of a major stationary source, if qualified, may choose to set an alternative baseline amount under this section.

(1) For purposes of this subchapter, the alternative baseline amount is computed as the lower of the following:

(A) total amount of baseline emissions as calculated under §101.106(b) of this title reported in the emissions inventory; or

(B) emissions allowed under authorization. If reported in the emissions inventory prior to or during the attainment year as required under §101.10 of this title (relating to Emissions Inventory Requirements), total authorized emissions may include the resulting authorized emissions from permit applications in process by the attainment year. The permit application for these unauthorized emissions must have been administratively complete by December 31, 2007, and the permit issued by the adoption date of this section.

(2) The baseline amount for the major stationary source is determined by selecting the emissions limits on permits issued after the attainment year for the previously unauthorized emissions units separately from the remaining units at the regulated entity's major stationary source as follows.

(A) The baseline amount for the previously unauthorized emissions and emissions units for which emissions limits were authorized after the attainment year will be the lower of the emissions reported in the emissions inventory for the emissions units or emissions authorized by permits for which the application was administratively complete by December 31, 2007.

(B) The baseline amount for all other emissions units not included in subparagraph (A) of this paragraph at the major stationary source will be the lower of

the baseline emissions reported in the emissions inventory for these emissions units and the applicable emissions limits authorized prior to December 31, 2007.

(C) The baseline amount for the major stationary source will be determined by combining the lower amounts determined in accordance with subparagraphs (A) and (B) of this paragraph.

(b) A baseline amount, reported in tons per year, must be calculated separately for emissions from volatile organic compounds and for nitrogen oxides. The calculation must be made for each pollutant for which the site meets the major source applicability requirements of §101.101 of this title (relating to Applicability).

(c) When control or ownership of emissions units changes during the attainment year, the emissions from those emissions units will be attributed to the owner or operator of the major stationary source who has control or ownership of the emission unit on December 31st of the attainment year.

(d) Except as allowed under §101.109 of this title (relating to Adjustment of Baseline Amount) or as required by subsection (a)(2) of this section, the baseline amount will be fixed and not be changed without the approval of the executive director until the Failure to Attain Fee no longer applies to the area as described under §101.118 of this title (relating to Cessation of Program).

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§101.109. Adjustment of Baseline Amount.

(a) The owner or operator of a Section 185 Account may request adjustment of their baseline amount if ownership and operation of emissions units is no longer under common ownership or control. Adjustments to the baseline amount are limited as follows:

(1) The baseline amount, as calculated and reported for all equipment no longer under common ownership or control will be transferred from the original reporting Section 185 Account to the new Section 185 Account without modification to the reported amount; and

(2) Baseline amounts for remaining equipment at a Section 185 Account will not be adjusted based on a change of ownership or control of emissions units to or from a Section 185 Account.

(b) Within 90 calendar days of the effective date of a change of ownership or control emissions units, the owner or operator of each Section 185 Account affected by the change in ownership or control of emissions units in an area meeting the

requirements of §101.101 of this title (relating to Applicability) shall submit to the executive director a report requesting its adjustment of the baseline amount on a form published by the executive director.

(c) The baseline amount adjustment request is subject to approval by the executive director. After approval, it will be fixed and not change except as allowed under this section without the approval of the executive director until the Failure to Attain Fee no longer applies to the area as described under §101.118 of this title (relating to Cessation of Program).

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§101.110. Baseline Amount for New Major Stationary Source, New Construction at a Major Stationary Source, or Major Stationary Sources with Less Than 24 Months of Operation.

(a) Baseline amount. A baseline amount may be established for major stationary sources after the attainment date as follows.

(1) If a major stationary source did not meet the applicability requirements in §101.101 of this title (relating to Applicability) on the attainment date of November 15, 2007, a major stationary source may establish a baseline amount based on the first full year of operation in accordance with the requirements of this subchapter.

(2) A major stationary source may include emissions limits from new emissions units authorized after the attainment date in its baseline amount determination if those emissions units were authorized by a nonattainment new source review permit, issued under Chapter 116, Subchapter B, Division 5 of this title (relating to Nonattainment Review Permits).

(b) Baseline amount reporting. Within 90 calendar days of completing one full calendar year of operation, the owner or operator of each major stationary source in an area meeting the requirements of §101.101 of this title shall submit to the executive director a report establishing its baseline amount on a form published by the executive director. The baseline amount is the lower of:

(1) the first full year of baseline emissions; or

(2) emissions allowed under applicable authorizations.

(c) For purposes of this subchapter, the emissions considered for the baseline amount for a new unit or units are restricted to the emissions units without a previously established baseline amount.

(d) Adjustment. The baseline amount as established under subsection (b) of this section may be adjusted for major stationary sources meeting the applicability requirements in §101.101 of this title if the major stationary source or emissions units at the major stationary source experienced less than 24 months of consecutive operation by the area's attainment date or later. The adjusted baseline amount must be reported on a form published by the executive director within 90 calendar days of completing 24 months of operation. The adjusted baseline amount must be computed for the applicable emissions units and major stationary source as allowed under subsection (b) of this section as the lower of the following:

(1) total average amount of baseline emissions for the 24-month period; or

(2) emissions allowed under authorizations applicable to the major stationary source.

(e) Approval. The adjusted baseline amount calculation is subject to approval by the executive director. Baseline amounts will be fixed and not change except as allowed under §101.109 of this title (relating to Adjustment of Baseline Amount) without the approval of the executive director until the Failure to Attain Fee no longer applies for the area as described under §101.118 of this title (relating to Cessation of Program).

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§101.113. Failure to Attain Fee Obligation.

(a) Pollutant applicability. The total fee obligation must be met for each pollutant, volatile organic compounds (VOC), nitrogen oxides (NO_x), or both, for which the Section 185 Account meets the requirements of §101.101 of this title (relating to Applicability) for any year or partial year that the Section 185 Account operated as a major stationary source. Actual VOC or NO_x emissions may be kept separate or aggregated together. A single pollutant may be aggregated across multiple major stationary sources, or both VOC and NO_x may be aggregated together across multiple major stationary sources. Aggregation is limited to emissions from:

(1) major stationary sources that aggregated VOC baseline amounts under §101.107 of this title (relating to Aggregated Baseline Amount);

(2) major stationary sources that aggregated NO_x baseline amounts under §101.107 of this title; or

(3) major stationary sources that aggregated VOC with NO_x baseline amounts under §101.107 of this title.

(b) **Obligation.** The owner or operator of each major stationary source to which this rule applies shall pay a fee to the commission computed in accordance with subsection (d) of this section. Payment of all fees must be paid in accordance with §101.116 of this title (relating to Failure to Attain Fee Payment). The fee will be assessed on actual emissions that exceed 80% of the pollutant baseline amount. The fee is due until the Failure to Attain Fee no longer applies to the area as described under §101.118 of this title (relating to Cessation of Program).

(c) **Separate pollutant obligation.** Fee obligation from VOC or NO_x emission major stationary sources not qualified or chosen for baseline aggregation under §101.107 of this title will remain separate and due from each major stationary source. The fee will be calculated by the method described in subsection (d) of this section.

(d) **Calculation of fee for emissions.** The fee will be calculated in accordance with the method used for a baseline amount determination.

(1) If VOC are aggregated under §101.107(a) of this title, VOC emissions from all major stationary sources in the Section 185 Account must be used for aggregated actual emissions and the aggregated baseline emissions.

(2) If NO_x are aggregated under §101.107(a) of this title, NO_x emissions from all major stationary sources in the Section 185 Account must be used for the aggregated actual and aggregated baseline emissions.

(3) If VOC are aggregated with NO_x at one major stationary source under §101.107(a) of this title, VOC and NO_x emissions must be used for the aggregated actual and aggregated baseline emissions. If VOC are aggregated with NO_x across multiple major stationary sources, VOC and NO_x emissions from each major stationary source in the Section 185 Account must be used for the aggregated actual and aggregated baseline emissions. The fee will be calculated for VOC, NO_x, or both, as follows.

Figure: 30 TAC §101.113(d)(3)

$$\text{\$185Fee} = \$200[(2/3 * \text{Part70x}) + (1/3 * \text{Part70y})] * (\text{Actual} - 0.8 * \text{BA})$$

Definitions:

\\$185Fee = The fee amount due annually to the commission based on actual volatile organic compound (VOC), nitrogen oxide (NO_x) emissions, or both.

Actual = All quantifiable emissions of VOC, NO_x from the major stationary source or Section 185 Account; or if VOC is aggregated with NO_x, both VOC and NO_x together, reported in the annual emissions inventory including emissions from emissions events in units of tons for the regulated entities combined under

§101.107 of this title (relating to Aggregated Baseline Amount), for the year being assessed.

BA = Baseline amount in tons per year from Section 185 Account as calculated under this subchapter.

Part70x = The Code of Federal Regulations (CFR) Part 70 fee published by the EPA for the 12 months that includes the fiscal year for the calendar year that a fee is being assessed. This value represents the base value for January through August portion of the annual fee.

Part70y = The CFR Part 70 fee published by the EPA for the 12 months that includes the fiscal year following the calendar year that a fee is being assessed. This value represents the base value for September through December portion of the annual fee.

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§101.116. Failure to Attain Fee Payment.

(a) Payment. Payment of fees required by this subchapter must be paid by check, certified check, electronic funds transfer, or money order made payable to the Texas Commission on Environmental Quality (TCEQ), and sent to the TCEQ address printed on the billing statement.

(b) When Failure to Attain Fee begins. The first payment of the fee is due and is calculated using the actual emissions from the emissions inventory for the calendar year preceding the adoption date of this section.

(c) First payment date for sources that were not major on the attainment date. The first payment of the fee is due and is calculated using the actual emissions from the emissions inventory for the later of:

- (1) the first calendar year the source becomes a major source; or
- (2) the calendar year preceding the adoption date of this section.

(d) Nonpayment of fees. Each emissions fee payment must be paid at the time and in the manner and amount provided by this subsection. Failure to pay the full emissions fee by the due date will result in enforcement action under Texas Water Code (TWC), §7.178. The provisions of TWC, §7.178, as first adopted and amended thereafter, are and will remain in effect for purposes of any unpaid fee assessments, and the fees assessed in accordance with such provisions as adopted or as amended remain a continuing obligation.

(e) Late payments. The agency will impose interest and penalties on owners or operators of Section 185 Accounts who fail to make payment of emissions fees when due in accordance with Chapter 12 of this title (relating to Payment of Fees).

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§101.117. Compliance Schedule.

(a) Baseline amount determination. The owner or operator of each major stationary source meeting the requirements of §101.101 of this title (relating to Applicability) shall submit to the executive director a report establishing its baseline amount emissions on a form published by the executive director. The Baseline Amount Determination forms for the Houston-Galveston-Brazoria one-hour ozone nonattainment area are due no later than 120 calendar days after the adoption date of this rule.

(b) New major source baseline amount reporting. No later than 90 calendar days following the first full year of operation as a major source, the owner and/or operator of a major stationary source that meets the requirements of §101.101 of this title shall submit to the executive director a report establishing its baseline amount emissions on a form published by the executive director.

(c) The executive director shall determine a baseline amount for any major stationary source subject to §101.101 of this title that fails to submit an approvable baseline amount by the due date requested by the commission.

(1) The executive director-determined baseline amount shall be 12.5 tons for volatile organic compounds and 12.5 tons for nitrogen oxides, or, if available, the lower of the baseline emissions reported under §101.10 of this title (relating to Emissions Inventory Requirements) or authorized for the major stationary source for 2007.

(2) The executive director shall not aggregate baseline amounts under §101.107 of this title (relating to Aggregated Baseline Amount) in determining a baseline amount under this subsection.

(d) Payment due date. The fee payment is due no later than 30 calendar days after the invoice date. The first invoice will be issued by the end of the year following the effective date of this rule. If a Section 185 Account commences or resumes operation, the full Failure to Attain Fee payment will be due prior to commencement or resumption of operations.

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§101.118. Cessation of Program.

(a) The Failure to Attain Fee will continue to apply until one of the following actions is final:

(1) redesignation of the Houston-Galveston-Brazoria one-hour ozone nonattainment area by the United States Environmental Protection Agency (EPA) to attainment;

(2) finding of attainment by the EPA; or

(3) any action or rulemaking by the EPA to end the Failure to Attain fee.

(b) Notwithstanding subsection (a) of this section, the Failure to Attain Fee will be calculated but not invoiced, and the fee collection may be placed in abeyance by the executive director if three consecutive years of quality-assured data resulting in a design value that did not exceed the one-hour ozone National Ambient Air Quality Standard (NAAQS), or a demonstration indicating that the area would have attained by the attainment date but for emissions emanating from outside the United States, are submitted to the EPA. The design value may exclude days submitted to the EPA by the executive director that exceeded the NAAQS because of exceptional events. Fee collection will remain in abeyance until the EPA takes final action on its review of the certified monitoring data and any demonstration(s).

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§101.120. Eligibility for Equivalent Alternative Obligation.

(a) Alternative option. Notwithstanding any requirement in this subchapter, the owner or operator of Section 185 Accounts obligated to pay a Failure to Attain Fee may submit a request to the executive director to partially or completely fulfill the Failure to Attain Fee obligation with an equivalent alternative obligation in compliance with the requirements with §101.121 and §101.122 of this title (relating to Equivalent Alternative Obligation and Using Supplemental Environmental Project to Fulfill an Equivalent Alternative Obligation, respectively).

(1) A Failure to Attain Fee obligation from volatile organic compounds (VOC) or nitrogen oxides (NO_x) emissions from Section 185 Accounts not fulfilled under this section will remain separate and due from each regulated entity.

(2) Fee obligation from VOC and/or NO_x emissions not fulfilled under this section will be calculated by the method described in §101.113 of this title (relating to Failure to Attain Fee Obligation).

(b) Failure to Attain Obligation. The entire Failure to Attain Fee obligation is due in accordance with §101.117 of this title (relating to Compliance Schedule) for all Section 185 Accounts not meeting the requirements of §101.121 and §101.122 of this title.

(c) The owner or operator of a Section 185 Account must inform the executive director if they are selecting an equivalent alternative obligation using forms approved by the executive director. The owner or operator of a Section 185 Account must submit a form selecting their equivalent alternative obligation that lists the tons of each pollutant or amount of payment that will meet the fee obligation with the alternative obligation as described in §101.121 and §101.122 of this title.

(d) No later than July 31 in the year following the rule adoption and annually thereafter:

(1) all equivalent alternatives under §101.121 of this title must be approved, exercised, or otherwise completed; and

(2) all Supplemental Environmental Projects under §101.122 of this title must be approved and funded.

(e) If the executive director does not receive notification of a selection of equivalent alternative obligation and the equivalent alternative obligation is not approved and funded, exercised, or otherwise completed, the fee payment will be due in full under the provisions of §101.116 of this title (relating to Failure to Attain Fee Payment).

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§101.121. Equivalent Alternative Obligation.

(a) The owner or operator of a Section 185 Account subject to this subchapter may submit a request to partially or completely fulfill its §185 Failure to Attain Fee obligation by substituting emission reductions, on a volatile organic compounds or nitrogen oxides specific basis, in an amount equivalent to the tons on which the Failure to Attain Fee has been assessed by relinquishing an equivalent amount of any combination of:

(1) emissions reduction credits;

(2) discrete emission reduction credits;

(3) current or banked Highly-Reactive Volatile Organic Compound Emissions Cap and Trade program allowances; and/or

(4) current or banked Mass Emissions Cap and Trade program allowances.

(b) The use of the provisions of this section to fulfill a Failure to Attain Fee obligation is subject to approval by the executive director.

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§101.122. Using Supplemental Environmental Project to Fulfill an Equivalent Alternative Obligation.

(a) The owner and/or operator of a Section 185 Account subject to this subchapter may submit a request to partially or completely fulfill its Failure to Attain Fee obligation by contributing to a Supplemental Environmental Project (SEP), on a volatile organic compounds (VOC) or nitrogen oxides (NO_x) specific basis by either:

(1) an amount equivalent to the tons on which the Failure to Attain Fee has been assessed; or

(2) an amount equivalent to the Failure to Attain Fee amount assessed.

(b) The SEP must directly reduce the amount of VOC and/or NO_x emissions in the Houston-Galveston-Brazoria one-hour ozone nonattainment area.

(c) The SEP must be enforceable through an Agreed Order or other enforceable document.

(d) The use of SEP funds must be on a dollar-for-dollar basis and shall not be discounted due to the passage of time. Credit from SEP funds may be accumulated from year to year, and if a surplus exists in any given year, the funds may be used to offset the calculated Failure to Attain Fee as needed.

(e) Funds in a SEP used to offset an administrative penalty cannot be used to offset a Failure to Attain Fee obligation.

(f) The use of a SEP to fulfill a Failure to Attain Fee obligation is subject to approval by the executive director.

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