



## TITLE 30. ENVIRONMENTAL QUALITY

### PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

#### CHAPTER 115. CONTROL OF AIR POLLUTION FROM VOLATILE ORGANIC COMPOUNDS

##### SUBCHAPTER B. GENERAL VOLATILE ORGANIC COMPOUND SOURCES

##### DIVISION 1. STORAGE OF VOLATILE ORGANIC COMPOUNDS

#### 30 TAC §§115.112, 115.114, 115.118, 115.119

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §§115.112, 115.114, 115.118, and 115.119.

If adopted, the amended sections will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP).

#### Background and Summary of the Factual Basis for the Proposed Rules

The 1990 Federal Clean Air Act (CAA) Amendments (42 United States Code, §§7401, *et seq.*) require the EPA to establish primary National Ambient Air Quality Standards (NAAQS) that protect public health and to designate areas exceeding the NAAQS as nonattainment areas. For each designated nonattainment area, the state is required to submit a SIP revision to the EPA that provides for attainment and maintenance of the NAAQS.

CAA, §172(c)(1) requires that the SIP incorporate all reasonably available control measures, including reasonably available control technology (RACT), for sources of relevant pollutants. The EPA defines RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53761, September 17, 1979). For ozone nonattainment areas classified as moderate and above, CAA, §182(b)(2) requires the state to submit a SIP revision that implements RACT for sources of volatile organic compounds (VOC) addressed in a control techniques guidelines (CTG) document and for all non-CTG major sources.

Under the 2008 eight-hour ozone NAAQS, the Houston-Galveston-Brazoria (HGB) 2008 eight-hour ozone nonattainment area (HGB area), consisting of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties, was classified as a marginal ozone nonattainment area with a July 20, 2015 attainment deadline (77 FR 30088, May 21, 2012). The HGB area did not attain the 2008 eight-hour ozone standard in 2014 but qualified for a one-year attainment date extension in accordance with CAA, §181(a)(5). The EPA

granted a one-year extension on May 4, 2016, extending the HGB area's attainment deadline to July 20, 2016 with a 2015 attainment year (81 FR 26697). Because the HGB area's 2015 design value of 80 parts per billion exceeded the 2008 eight-hour ozone NAAQS, the EPA is required by the CAA to reclassify the HGB area to moderate. The EPA is expected to set a determination of nonattainment and reclassification of the HGB 2008 eight-hour ozone nonattainment area from marginal to moderate per the CAA requirements. A reclassification of the HGB 2008 eight-hour ozone nonattainment area requires the state to submit an attainment demonstration SIP revision that addresses the ozone standard moderate nonattainment area requirements. As indicated in the EPA's 2008 ozone standard SIP requirements rule, the attainment deadline for moderate classification is July 20, 2018 with an attainment year of 2017 (80 FR 12264, March 6, 2015). These proposed rules will address updated RACT for the future required reclassification of the HGB nonattainment area.

The major source threshold for moderate nonattainment areas is a potential to emit (PTE) 100 tons per year (tpy) or more of VOC. However, a PTE of 25 tpy is retained as the major source threshold for the HGB area, which was classified as a severe nonattainment area under the 1997 eight-hour ozone NAAQS because this is the most stringent classification currently in effect for the HGB area. The TCEQ submitted a redesignation substitute report to the EPA demonstrating the HGB area attained and would continue to attain the one-hour ozone NAAQS on July 22, 2014, which was approved by the EPA on October 20, 2015 (80 FR 63429). On August 18, 2015, the TCEQ submitted a redesignation substitute report to the EPA demonstrating the HGB area has attained and will continue to attain the 1997 eight-hour ozone NAAQS. On May 25, 2016, the EPA published its proposed approval of the HGB area redesignation substitute and a finding of attainment for the 1997 eight-hour ozone NAAQS (81 FR 33166). The EPA's final approval of the 1997 eight-hour ozone NAAQS redesignation substitute would change the HGB area's major source threshold. Upon this approval, the HGB area would no longer be required to retain the major source threshold based on the severe nonattainment classification for the 1997 eight-hour ozone NAAQS, so the major source threshold would be based on the current marginal classification for the 2008 eight-hour ozone NAAQS, provided that no reclassification of the area has occurred. Upon the effective date of the EPA's expected reclassification for the HGB area, the major source threshold would then be based on the area's moderate classification for the 2008 eight-hour ozone NAAQS. However, such a reclassification would not apply retroactively, i.e., sources in the HGB area currently subject to the rule based on the current major source threshold for a severe classification would not become exempt from the rule. The proposed Chapter 115, Subchapter B, Division 1 rule revisions would address RACT for both CTG and non-CTG major source VOC storage tanks in the HGB area. Crude oil and condensate VOC storage tanks are non-CTG sources; therefore, rule provisions for these sources would only apply at or above the major source threshold, which is currently 25 tpy.

The proposed rulemaking would revise Chapter 115, Subchapter B, Division 1, to update the RACT requirements for VOC storage tanks in the HGB area. The proposed updates mirror revisions incorporated during the December 2011 (36 TexReg 8862) rulemaking (Rule Project Number 2010-025-115-AI) for the Dallas-Fort Worth (DFW) 1997 eight-hour ozone nonattainment area (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker,

Rockwall, and Tarrant Counties) and the June 2015 (40 TexReg 3907) rulemaking (Rule Project Number 2013-048-115-AI) for the DFW 2008 eight-hour ozone nonattainment area (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties) for VOC storage tanks. The proposed rule changes include: updating the control efficiency requirement for control devices other than vapor recovery units or flares; expanding the applicability to include the aggregate of storage tanks at a pipeline breakout station into the control requirements prescribing flashed gas controls; and adding inspection, repair, and recordkeeping requirements for consistency with existing requirements in the DFW area. The 95% control efficiency requirement adopted as part of the December 2011 rulemaking and being proposed as part of this rulemaking, was approved as RACT for all CTG and non-CTG VOC storage tanks by the EPA in 2014 (79 FR 53299) for the 1997 eight-hour DFW nonattainment area. The proposed inspection, repair, and recordkeeping requirements are necessary to ensure compliance with the level of RACT established for crude oil and condensate storage tanks. The applicability, inspection, recordkeeping, and increased control efficiency requirements proposed in this rulemaking are already in place for crude oil and condensate storage tanks in the DFW area.

The commission is proposing to update the control efficiency requirement for control devices other than vapor recovery units and flares in §115.112(e)(3)(A) from 90% to 95% for all storage tanks in the HGB area currently subject to §115.112(e)(3)(A) to be consistent with the commission's RACT determination for storage tanks in the DFW area. The commission expects that all facilities that are currently subject to the 90% control efficiency requirement are already meeting the proposed 95% control efficiency requirement and that this change will not require any of those subject to the current rule to replace their current control device. Vapor control devices, vapor recovery units, and flares are all viable control device options available under the existing control requirements. Sources already meeting the current 90% control efficiency requirement are likely to be operating a vapor recovery unit, a flare, or both. Although this proposed rulemaking would increase the required control efficiency of vapor control devices, vapor recovery units and flares are already assumed under the existing rule to at least meet a 95% control efficiency.

This proposal expands the applicability to include the aggregate of crude oil and condensate storage tanks at pipeline breakout stations in the HGB area. Emissions from all of the crude oil and condensate tanks at each pipeline breakout station would now be considered when determining applicability to the Chapter 115 VOC storage tank rules. Therefore, owners and operators currently not triggering applicability to the control requirements may now have to comply. There may be some newly affected owners and operators of these sources that would need to install a vapor control system, vapor recovery unit, or flare to meet the rule requirements. As discussed in the Fiscal Note section of this preamble, the commission anticipates that there are potentially six sites that may be made subject to the rule as a result of the proposed change to consider the aggregate of crude oil and condensate storage tanks at pipeline breakout stations. Generally, the commission expects the proposed requirements to place minimal burden on affected owners and operators and that the proposed compliance date provides an adequate amount of time for these owners and operators to make all necessary installations and adjustments for compliance purposes. However, the commission's requirements for crude oil and condensate storage tanks in Chapter 115, Subchapter B, Division 1 implement

non-CTG RACT, which applies to major sources. As discussed, the HGB area's major source threshold may change between proposal and adoption. The commission solicits comment on the issue of the expected transition from a severe to a marginal or moderate major source threshold as it pertains to the proposed change regarding the aggregate of crude oil and condensate storage tanks at pipeline breakout stations in the HGB area.

As indicated in the 2008 ozone standard SIP requirements rule, the EPA is expected to set the RACT compliance date on a reasonable schedule that the EPA Administrator will establish in the notice and comment rulemaking reclassifying the HGB area from marginal to moderate. The SIP requirements rule included a July 20, 2018 attainment deadline for moderate areas, with an attainment year of 2017. Because the EPA has not yet reclassified the HGB area to moderate, this rule proposal contains a RACT compliance deadline of July 20, 2018. According to the EPA's 2008 ozone standard SIP requirements rule, adopted measures must be implemented "no later than the outside attainment date for the area's classification, which would be July 20, 2018 for the HGB area (80 FR 12264 and 80 FR 12268)." Establishing a July 20, 2018 compliance deadline provides approximately a year and a half to make any necessary installations and adjustments needed to comply with the proposed rule requirements.

#### *Demonstrating Noninterference under FCAA, §110(l)*

The revisions proposed in this rulemaking would update rule language for major source crude oil and condensate storage vessels in the HGB area, as required under FCAA, §172(c)(1) and §182(b)(2) for nonattainment areas classified as moderate and above. The inspection, recordkeeping, and increased control efficiency requirements proposed in this rulemaking are already in place for crude oil and condensate storage vessels in the DFW area and have been determined necessary to implement RACT in the HGB area. As part of this rulemaking, revisions are also being proposed that would correct rule citations. These revisions are only proposed for the sections that are simultaneously being revised to implement RACT. Therefore, the commission determined that the proposed revisions would not negatively affect the status of the state's progress towards attainment with the ozone NAAQS, would not interfere with control measures, and would not prevent reasonable further progress toward attainment of the ozone NAAQS.

#### Section by Section Discussion

##### *Subchapter B, General Volatile Organic Compounds*

##### *Division 1, Storage of Volatile Organic Compounds*

The proposed rulemaking would revise Chapter 115, Subchapter B, Division 1, to implement RACT requirements for the HGB 2008 eight-hour ozone nonattainment area. These proposed requirements would establish greater stringency to be consistent with the level of RACT established for this emission source category in the DFW 2008 eight-hour ozone nonattainment area, as well as establishing the compliance date. The proposed rule would update control requirements for VOC storage tanks by increasing the required control efficiency for all vapor control systems, other than vapor recovery systems and flares, from 90% to 95%. The proposed rule would also update inspection and repair requirements after tank opening/loading, quarterly seal integrity inspections, and corresponding recordkeeping requirements for these crude oil and condensate storage tanks. In addition, the commission proposes other non-substantive revisions to update rule citations and for *Texas Register* style and formatting requirements. Some of the non-substantive changes for style and for-

matting purposes may affect areas other than the HGB area, such as the DFW area.

#### §115.112, *Control Requirements*

The commission proposes revisions to the existing §115.112(e) to reflect the new compliance schedules that are proposed in subsection (e)(3). The current wording of subsection (e) states that the control requirements of the section begin on March 1, 2013; however, the updates to this rule would require new control requirements in the HGB area to be achieved by July 20, 2018.

The commission proposes revisions to existing §115.112(e)(3)(A) to establish a 95% control efficiency of control devices, other than vapor recovery units and flares, in the HGB area and to accommodate the incorporation of this provision into the existing rule language. Proposed subsection (e)(3)(A)(i) would specify that the 90% control efficiency prescribed in clause (i) no longer applies in the HGB area as of the date specified in clause (ii). The proposed changes to clause (ii) would delete the current wording of the DFW area control efficiency specification of 95% to incorporate the newly proposed control efficiency requirement for the HGB area. Proposed clause (ii) would indicate that beginning July 20, 2018, a 95% control efficiency is required in the HGB area. The rule language is being reformatted to improve reader usability. Finally, proposed clause (iii) would contain the 95% control efficiency requirement for the DFW area. The proposed changes to the wording of existing clause (ii), which has been re-numbered to clause (iii) is simply a formatting change and does not impact the existing control requirements for the DFW area. These proposed changes ensure RACT is being implemented for VOC storage tanks in the HGB area consistent with currently required 95% control efficiency in place for the DFW area.

The commission proposes an amendment to §115.112(e)(5) to harmonize the applicability of the control requirement for crude oil and condensate storage tanks prior to custody transfer and at pipeline breakout stations in the HGB area. The proposed change would require the aggregate of all storage tanks at a pipeline breakout station to control flashed gases using a vapor control system just as individual storage tanks and the aggregate of storage tanks at an upstream tank battery are currently required. In existing subsection (e)(5), only the aggregate of all storage tanks at a pipeline breakout station in the DFW area are required to comply with the control requirement. This proposed change expands the existing applicability of affected storage tanks in the HGB area. Because all of the crude oil and condensate tanks at each pipeline breakout station would now be considered when determining applicability to the Chapter 115 VOC storage tank rule, as specified in existing §115.112(e)(6), owners and operators currently not triggering applicability to subsection (e) control requirements may now have to comply. The commission relied on the 2014 point source emissions inventory to attempt estimating the number of affected pipeline breakout stations that were assumed to contain multiple condensate or crude oil tanks that are currently not reporting any control device operation. Barring meeting exemption criteria in §115.111, approximately six pipeline breakout stations were identified as potentially needing to install controls to comply with the applicable control requirements in §115.112. The rule provides affected owners and operators the flexibility to choose the vapor control system best suited for their operation. Vapor recovery units, vapor control devices, and flares are all viable options available under the existing control requirements that would potentially af-

fect these six pipeline breakout stations. Although this proposed rulemaking would increase the control efficiency of vapor control devices, vapor recovery units and flares are already assumed to at least meet a 95% control efficiency. The proposed change ensures storage tanks in the HGB area that are intended to be included in the applicability are subject to the RACT control specifications, consistent with the DFW area.

Proposed changes to subsection (e)(7) would incorporate the HGB area into the existing control requirements that currently apply to crude oil and condensate storage tanks in the DFW area. Paragraph (7) requires such storage tanks prior to custody transfer or at a pipeline breakout station for which the owner or operator is required under subsection (e) to control flashed gases to maintain such tanks in accordance with manufacturer instructions. Paragraph (7) also requires these tanks to be equipped with closure devices maintained according to the manufacturer's instructions or industry standards if manufacturer instructions are not available. These closure devices should be operated in accordance with subparagraphs (A) - (D) of paragraph (7), for all openings in the tank through which vapors are not routed to a vapor recovery unit or other vapor control device. These are existing requirements in the DFW area and the proposed rule would impose the same standards for crude oil and condensate storage tanks in the HGB area.

#### §115.114, *Inspection and Repair Requirements*

The proposed changes to §115.114(a)(5) would incorporate the HGB area into the existing inspection and repair requirements for crude oil and condensate fixed roof storage tanks prior to custody transfer or at a pipeline breakout station that are already in place for the DFW area.

Existing subparagraph (A), being proposed to apply in the HGB area, would require owners and operators of crude oil and condensate storage tanks in the HGB area to now engage in a visual, audio, and olfactory inspection of closure devices (e.g., thief hatches) not connected to a vapor control device. Inspections must occur when liquids are not being added to or unloaded from the tank and by the end of the business day during which the closure device was opened for sampling, gauging, or any unloading event. If the owner or operator finds the closure device open for reasons not allowed in §115.112(e)(7)(A), an attempt must be made to close the device during the inspection. If multiple events occur on a single day, a single inspection within one business day after the last event is sufficient. The inspection requirement is limited to closure devices not connected to a vapor control device because connected closure devices are designed to pass vapors to the control device in the presence of sufficient pressure. If a closure device not connected to a control device allows vapors to escape to the atmosphere without control, all flashed gases are not being controlled, as required. These repair requirements are the same repair requirements currently applicable in the DFW area and are similar to leak detection and repair requirements in other divisions of Chapter 115.

Existing subparagraph (B), being proposed to apply in the HGB area, would require owners and operators of crude oil and condensate storage tanks to conduct an audio, visual, and olfactory inspection of all gaskets and vapor sealing surfaces for closure devices not connected to a vapor control device at least once per calendar quarter. This inspection is designed to assure that the sealing surfaces are and will continue to function correctly. If a closure device is not sealing properly, the owner or operator is required to repair it. The first attempt at repair must take place no later than five calendar days after the inspection, and the repair

must be complete within 15 calendar days, with some exceptions. If parts are unavailable, they must be ordered promptly and the repair completed within five days of arrival. There is a delay of repair provision that allows delay until the next shutdown if the repair would require a shutdown that would create more emissions in a day than the daily emissions of delayed repair. All repairs are considered complete when the closure device no longer exudes process gases based on sight, smell, or sound. These repair requirements are the same repair requirements currently applicable in the DFW area and are similar to leak detection and repair requirements in other divisions of Chapter 115.

#### *§115.118, Recordkeeping Requirements*

Proposed changes to §115.118(a)(6)(D) and (E) would remove language that specifies the rules apply only in the DFW area because the commission is proposing to expand the applicability of these recordkeeping provisions to the HGB area. Existing subparagraph (D) requires the owner or operator of any storage tank that stores crude oil or condensate prior to custody transfer or at a pipeline breakout station and is required by §115.112(e) to control flash emissions, to keep records that detail manufacturer or industry standard instructions used to maintain the storage tanks and tank closure devices in use. Existing subparagraph (E) requires the owner or operator of any storage tank that stores crude oil or condensate prior to custody transfer or at a pipeline breakout station to maintain records of the results of each inspection and repair required in §115.112(e)(7) or §115.114(a)(5), including the date of the inspection; the status of the device during inspection; the amount of time a closure device was open since the last inspection for reasons not allowed in §115.112(e)(7)(A); the date repair was attempted and completed; and the list of closure devices awaiting delayed repair as allowed by §115.112(e)(7)(D).

The commission proposes amendments to existing §115.118(a)(7) to include a new requirement indicating that any records created on or after January 1, 2017 must be maintained for at least five years. The language extends the record retention time from two years to five years starting with records that would originate on January 1, 2017. This proposed change ensures that all applicable records are retained appropriately for the five-year timeframe. The five-year retention schedule being proposed for the HGB area is consistent with other major source recordkeeping requirements and was adopted for the DFW area during the December 2011 rulemaking.

#### *§115.119, Compliance Schedules*

The commission proposes revising §115.119(a)(1) and (2) to reference §115.112(e)(1) - (6) instead of §115.112(e) to correctly identify which requirements are intended to be complied with by the specified compliance dates. As currently written, subsection (a)(1) implies the HGB area is subject to all of the requirements in §115.112(e)(1) - (7); however, paragraph (7) only applies to the DFW area in the existing rules. The compliance dates in subsection (a)(1) and (2) have already passed and these changes would have no bearing on the compliance obligations for owners and operators affected by these paragraphs. These proposed changes are intended to distinguish between the compliance date for existing requirements in the HGB area under §115.112(e)(1) - (6) and the requirements being proposed to apply in the HGB area as part of this rulemaking under §115.112(e)(7).

In addition, the commission proposes to clarify that beginning July 20, 2018 the control efficiency requirement in §115.112(e)(3)(A)(ii) no longer applies in the HGB area. Currently, subsection (a)(1) specifies a March 1, 2013 compliance date for owners and operators subject to existing §115.112(e)(3)(A)(i) in the HGB area. The 90% control efficiency requirement in §115.112(e)(3)(A)(i) is being increased in stringency as part of this proposed rulemaking and would therefore be superseded by the 95% control efficiency requirement being proposed as §115.112(e)(3)(A)(ii).

Additional changes proposed to subsection (a)(2) clarify that §115.112(e)(3)(A)(i) no longer applies beginning July 20, 2018 and that prior to July 20, 2018, the owner or operator of a storage tank subject to the 90% control efficiency requirement of §115.112(e)(3)(A)(i) should continue to comply with §115.112(e)(3)(A)(i) until compliance has been demonstrated with the 95% control efficiency proposed in §115.112(e)(3)(A)(ii).

The commission proposes adding subsection (a)(3) to establish the compliance date for the requirements being proposed in the HGB area as part of this rulemaking. Proposed paragraph (3) requires the affected owner or operator to comply with §§115.112(e)(3)(A)(ii), 115.112(e)(7), 115.114(a)(5), and 115.118(a)(6)(D) and (E) as soon as practicable, but no later than July 20, 2018. These rule references cite the 95% control efficiency requirement, and the inspection, repair, and recordkeeping requirements of the rule. As indicated in the 2008 ozone standard SIP requirements rule, the EPA is expected to set the RACT compliance date on a reasonable schedule that the Administrator will establish in the notice and comment rulemaking reclassifying the HGB area from marginal to moderate. The SIP requirements rule included a July 20, 2018 attainment deadline for moderate areas, with an attainment year of 2017. In order to satisfy the requirements of the attainment demonstration, adopted measures must be implemented no later than the outside attainment date for the area's classification. The July 20, 2018 compliance deadline provides approximately a year and a half for affected owners and operators to make all necessary installations and adjustments for compliance purposes.

The commission proposes deleting §115.119(h) because sources in Wise County are required to comply with the requirements of this division. This subsection was adopted as part of the December 2015 rulemaking for the DFW area (Rule Project Number 2013-048-115-AI) because litigation was still ongoing at the time the rulemaking was adopted. Litigation has since ended making this provision obsolete. Owners and operators of storage tanks in Wise County remain subject to §115.119(f).

#### *Fiscal Note: Costs to State and Local Government*

Jeffrey Horvath, Analyst in the Chief Financial Officer's Division, determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency and no fiscal implications are expected for other units of state or local government as a result of administration or enforcement of the proposed rule.

The proposed rulemaking would fulfill the state's obligation to implement RACT for VOC storage tanks in the future required reclassification of the HGB nonattainment area to moderate. FCAA, §182(b)(2) requires states to revise their SIP to include RACT for CTG emission source categories and non-CTG major sources of VOC emissions for nonattainment areas classified as moderate and above. These revisions are required to be submitted to the EPA. Because the HGB ozone nonattainment

area was originally classified as marginal nonattainment under the 2008 eight-hour ozone NAAQS, a RACT analysis was not required as part of the SIP revision submitted to the EPA. The HGB area did not attain the 2008 ozone NAAQS by the required date but received an attainment deadline extension from the EPA. However, the HGB area did not attain the NAAQS by the attainment deadline extension. For this reason, the FCAA requires the HGB area to be reclassified under the 2008 ozone NAAQS to moderate nonattainment. At that time, the HGB area will become subject to the RACT requirements under FCAA, §182(b)(2).

The proposed rulemaking provides the same level of control for VOCs from storage tanks in the HGB area that currently exists in the DFW nonattainment area. The proposed rulemaking would establish a new level of control for VOC storage tanks by increasing the control efficiency for all vapor control systems, other than vapor recovery systems and flares, from 90% to 95%. Vapor recovery systems and flares are already expected to achieve the 95% control efficiency and are therefore excluded from the rulemaking. The proposed rulemaking would also implement inspection requirements after tank opening/loading and quarterly seal integrity inspections and corresponding recordkeeping requirements for these crude oil and condensate storage tanks.

All affected owners and operators in the HGB nonattainment area must comply with the proposed requirements no later than July 20, 2018. The July 20, 2018 compliance date provides affected owners and operators approximately a year and a half to make any necessary changes and become compliant.

Implementation of the proposed rules is not expected to result in significant fiscal implications for the agency. TCEQ regional staff would perform investigations of affected facilities to verify compliance with the proposed rules. These investigations would be combined with existing Title V permit program compliance requirements, investigations in response to complaints, or through a facility search and survey to determine compliance. Therefore, the proposed rules are not anticipated to have significant fiscal implications for TCEQ regional or main campus offices.

No fiscal implications are anticipated for other units of state or local government. No other state agencies or local governments were identified in the emissions inventory as owners or operators of affected units.

#### Public Benefits and Costs

Mr. Horvath also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules could be lower ozone levels in the HGB area and compliance with federal law. The EPA asserts that the general public in the HGB ozone nonattainment area may benefit from improved air quality as a result of lower ozone levels.

In general, the proposed rules are not expected to result in significant fiscal implications for businesses or individuals. Owners or operators of VOC storage tanks in the HGB area will have new compliance requirements under the proposed rules. The proposal requires control devices other than vapor recovery units or flares to meet a 95% control efficiency requirement. Owners and operators of major source crude oil and condensate storage tanks would be required to maintain their tanks; inspect tank openings periodically to assure that they are closed tightly and VOC vapors are being controlled; repair any leaks found during inspection; and keep records of the inspections.

Agency staff estimates that there would be 47 entities with 118 facilities that operate crude oil or condensate storage tanks in the HGB area that have an uncontrolled emission factor over 25 tpy of VOC. Agency staff anticipates all of these entities and facilities are already maintaining the new 95% control requirement with their current practices. Because they are anticipated to already meet the proposed control requirement, no additional costs are expected for these facilities from increasing the control requirement from 90% to 95%.

However, the proposed rules would also expand the applicability requirements to include the aggregate of crude oil and condensate tanks at a pipeline breakout station in the HGB area. There are six potential sites that fall under this expanded applicability. These six sites may need to install controls if they do not meet the exemption criterion. If these affected sites must install vapor recovery units to control emissions, they would be expected to have one-time capital costs estimated to be \$60,000 - \$110,000. In addition, the proposed rules would include requirements for monitoring vapor recovery units. These requirements would require a compressor run-time meter and a flow meter on the recovered vapor line. Many vapor recovery units are made with a run-time meter and the estimated cost to add one is \$300. Estimated cost to install a flow meter is \$3,000.

Other costs from the proposed rules would include the use of flares to control VOC emissions from tanks. The flares must be designed and operated in accordance with 40 Code of Federal Regulations (CFR) §60.18(b) - (f) and require the flare to be lit at all times when there is an emissions stream being vented to the flare. If the flare is already subject to the requirements in 40 CFR §60.18, then there is no additional fiscal impact associated with this requirement. If the flare is not already subject to the requirements in 40 CFR §60.18 the cost of a temperature monitor would range from \$1,000 to \$5,000. A design verification inspection to satisfy 40 CFR §60.318, would cost approximately \$3,000. A flare or vapor recovery unit is assumed for each controlled tank battery, not both, and owners and operators are expected to choose the most economical option. These costs would only be incurred by those sources not already subject to the HGB VOC RACT requirements.

The commission expects that affected owners and operators would use existing personnel to perform the proposed closure device inspections, thus incurring no additional labor costs. If an owner or operator chose to add staff to accomplish the inspections or seek an outside contractor, a 30-minute inspection with a labor rate of \$30.46 per hour is assumed, as the EPA has used in technical support documents for New Source Performance Standards. Each inspection could account for \$15.23 of labor charges. Assuming the maximum number of required inspections of one per day, the total cost could be up to \$5,559 per year. The low end of crude oil condensate production requiring inspection would likewise yield inspection costs of \$442 per year. The average of these is \$3,001 per year. Proposed quarterly inspection of closure device gaskets and seals is included in the maintenance costs, since it is assumed that the inspection will occur during the maintenance activity.

Maintenance costs are estimated at \$487 per tank battery. Assuming one repair per year at each tank battery with a labor rate of \$30.46 per hour and a two-hour time, repair labor is estimated at \$61. Assuming \$100 per year for parts, the total estimated repair cost is \$161 per tank battery. An additional \$100 per year may be required to keep records generated at each tank battery.

In most instances, all of these costs will be offset by revenue generated from the operation of installed vapor recovery units. In 2006, the EPA's Natural Gas Star program estimated annual savings of \$44,000 - \$1 million depending on system configuration, the amount and sale price of recovered product, operations, and maintenance costs. Recovered condensate at 25 tpy in the HGB area would be 204 barrels saved through the recovery. The West Texas Intermediate Crude oil price is valued at \$40.06 as of August 1, 2016 making the value of the recovered condensate \$8,172. These costs and benefits would only be incurred by those sources not already subject to the HGB VOC RACT requirements and overall are not expected to be significant.

#### Small Business and Micro-Business Assessment

In general, no adverse fiscal implications are anticipated due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect for small or micro-businesses. Agency staff did identify one entity that may be a small business, but for the most part all affected entities were large businesses. There would be fiscal implications for this small business the first year the proposed rules are in effect, though any cost is not expected to be significant and would be offset from the sale of recovered condensate.

#### Small Business Regulatory Flexibility Analysis

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

#### Local Employment Impact Statement

The commission 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 the proposed rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a major environmental rule as defined in that statute, and in addition, if it did meet the definition, would not be subject to the requirement to prepare a regulatory impact analysis.

A major environmental rule means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific intent of the proposed amendments is to revise Chapter 115, Subchapter B, Division 1, to update the RACT requirements for VOC storage tanks in the HGB area. Potentially affected sources in the HGB area that are already responsible for complying with RACT for the 1997 eight-hour ozone NAAQS must meet an existing 90% control efficiency requirement. The commission expects that all facilities that are currently subject to the 90% control efficiency requirement are already meeting the proposed 95% control efficiency requirement that is required by the proposed amendments, and that this change will not require any of those subject to the current rules to replace their current control de-

vice. Generally, the commission expects the proposed requirements to place minimal burden on affected owners and operators and that the proposed compliance date provides an adequate amount of time for these owners and operators to make all necessary installations and adjustments for compliance purposes. As discussed in the fiscal note portion of this preamble, the proposed amendments are not anticipated to add any significant additional costs to affected individuals or businesses beyond what is already required to comply with these federal standards on the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Additionally, these amendments do not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Texas Government Code, §2001.0225(a). 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 federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed amendments will update RACT requirements for VOC storage tanks in the HGB area.

The state previously adopted Chapter 115 RACT rules for VOC sources in the HGB area as part of the SIP for the 1997 eight-hour ozone standard. On March 27, 2008, the EPA revised both the primary and secondary ozone standard (the eight-hour ozone NAAQS) to a level of 0.075 parts per million with an effective date of May 27, 2008 (73 FR 16436). Under the 2008 eight-hour ozone NAAQS, the HGB area, consisting of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties, was classified as a marginal nonattainment area with a July 20, 2015 attainment deadline (77 FR 30088, May 21, 2012). However, the HGB area did not attain the 2008 eight-hour ozone standard by its attainment date, and is expected to be reclassified by the EPA as a moderate ozone nonattainment area for the 2008 eight-hour ozone NAAQS. For nonattainment areas classified as moderate and above, FCAA, §172(b)(1) and §182(b)(2) requires the state to submit a SIP revision that implements RACT for sources of VOC addressed in a CTG document and for all non-CTG major sources. The proposed rules update RACT requirements in Chapter 115, Subchapter B, Division 1, to update the RACT requirements for CTG storage tanks and for non-CTG major source crude oil and condensate storage tanks in the HGB area. The proposed updates mirror revisions incorporated during the December 2011 (36 TexReg 8862) rulemaking for the DFW 1997 eight-hour ozone nonattainment area (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties) and the June 2015 (40 TexReg 3907) rulemaking for the DFW 2008 eight-hour ozone nonattainment area (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties) for VOC storage tanks.

The proposed rulemaking implements requirements of 42 USC, §7410, which requires states to adopt a SIP that provides for the implementation, maintenance, and enforcement of the NAAQS in each air quality control region of the state. While 42 USC, §7410 generally does not require specific programs, methods, or reductions in order to meet the standard, the SIP must include enforceable emission limitations and other control mea-

tures, 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 (42 USC, Chapter 85, Air Pollution Prevention and Control). 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 for attaining 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. States are not free to ignore the requirements of 42 USC, §7410, and must develop programs to assure that their contributions to nonattainment areas are reduced so that these areas can be brought into attainment on schedule. The proposed rulemaking will revise rules in Chapter 115, Subchapter B, Division 1, to update RACT requirements for CTG storage tanks and for non-CTG major source crude oil and condensate storage tanks in the HGB area.

The requirement to provide a fiscal analysis of proposed 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 will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 concluding that "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted 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, the FCAA does not always require specific programs, methods, or reductions in order to meet the NAAQS; thus, states must develop programs for each area contributing to nonattainment to help ensure that those areas will meet the attainment deadlines. Because of the ongoing need to address nonattainment issues, and to meet the requirements of 42 USC, §7410, 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 (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the LBB, the commission believes 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 will have a broad impact, the impact is no greater than is necessary or appropriate to meet the requirements of the FCAA. For these reasons, rules adopted for inclusion in the SIP fall under the exception in Texas

Government Code, §2001.0225(a), because they are required by federal law.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code but left this provision substantially unamended. It is presumed that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." *Central Power & Light Co. v. Sharp*, 919 S.W.2d 485, 489 (Tex. App. Austin 1995), *writ denied with per curiam opinion respecting another issue*, 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.*, 798 S.W.2d 353, 357 (Tex. App. Austin 1990, *no writ*). *Cf. Humble Oil & Refining Co. v. Calvert*, 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.*, 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor*, 24 S.W.3d 581 (Tex. App. Austin 2000, *pet. denied*); and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.*, 563 S.W.2d 916 (Tex. 1978).

The commission's interpretation of the regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance." The legislature specifically identified Texas Government Code, §2001.0225, as falling under this standard. The commission has substantially complied with the requirements of Texas Government Code, §2001.0225.

The specific intent of the proposed rulemaking is to update the RACT requirements for CTG storage tanks and for non-CTG major source crude oil and condensate storage tanks in the HGB area as required by the FCAA. The proposed rulemaking does not exceed a standard set by federal law or exceed an express requirement of state law. No contract or delegation agreement covers the topic that is the subject of this proposed rulemaking. Therefore, this proposed rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because it does not meet the definition of a "major environmental rule"; it also does not meet any of the four applicability criteria for a major environmental rule.

The commission invites public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

#### Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. For nonattainment areas classified as moderate and above, FCAA, §172(b)(1) and §182(b)(2) requires the state to submit a SIP revision that implements RACT for all CTG emission source categories and for major stationary sources of VOC. The specific purpose of the proposed rulemaking is to revise rules in Chapter 115, Subchapter B, Division 1, to update the RACT requirements for CTG storage tanks and for non-CTG major source crude oil and condensate storage tanks in the HGB moderate eight-hour 2008 ozone nonattainment

area. Texas Government Code, §2007.003(b)(4), provides that Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking because it is an action reasonably taken to fulfill an obligation mandated by federal law.

In addition, the commission's assessment indicates that Texas Government Code, Chapter 2007 does not apply to these proposed rules because this is an action that is taken in response to a real and substantial threat to public health and safety; that is designed to significantly advance the health and safety purpose; and that does not impose a greater burden than is necessary to achieve the health and safety purpose. Thus, this action is exempt under Texas Government Code, §2007.003(b)(13). The proposed rules fulfill the FCAA requirement to implement RACT in nonattainment areas. These revisions will result in more stringent VOC emission specifications in the HGB ozone nonattainment area, which may contribute to the timely attainment of the ozone standard and reduced public exposure to VOCs. Consequently, the proposed rulemaking meets the exemption criteria in Texas Government Code, §2007.003(b)(4) and (13). For these reasons, Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking.

#### Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) (or 31 TAC §505.11(b)(4), whichever is applicable) relating to rules subject to the Coastal Management Program (CMP), and will, therefore, require that goals and policies of the CMP be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking is editorial in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

#### Effect on Sites Subject to the Federal Operating Permits Program

Chapter 115 is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program. 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 rulemaking, revise their operating permit to include the adopted Chapter 115 requirements.

#### Announcement of Hearing

The commission will hold a public hearing on this proposal in Houston on October 24, 2016, at 2:00 p.m. in the Texas Department of Transportation District Office Auditorium at 7600 Washington Avenue, Houston, Texas 77007. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or

1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

#### Submittal of Comments

Written comments may be submitted to Derek Baxter, 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://www1.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2016-039-115-AI. The comment period closes on October 24, 2016. Copies of the proposed rulemaking can be obtained from the commission's website at [http://www.tceq.texas.gov/rules/propose\\_adopt.html](http://www.tceq.texas.gov/rules/propose_adopt.html). For further information, please contact Graham Bates, Air Quality Planning, (512) 239-2606.

#### 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 TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; 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; THSC, §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and THSC, §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 revisions that specify the manner in which the National Ambient Air Quality Standards will be achieved and maintained within each air quality control region of the state.

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

#### §115.112. Control Requirements.

(a) The following requirements apply in the Beaumont-Port Arthur, Dallas-Fort Worth, and El Paso areas, as defined in §115.10 of this title (relating to Definitions). The control requirements in this subsection no longer apply in the Dallas-Fort Worth area beginning March 1, 2013.

(1) No person shall place, store, or hold in any storage tank any volatile organic compounds (VOC) unless the storage tank is capable of maintaining working pressure sufficient at all times to prevent any vapor or gas loss to the atmosphere or is in compliance with the control requirements specified in Table I (a) of this paragraph for VOC

other than crude oil and condensate or Table II (a) of this paragraph for crude oil and condensate.

Figure: 30 TAC §115.112(a)(1) (No change.)

(2) For an external floating roof or internal floating roof storage tank subject to the provisions of paragraph (1) of this subsection, the following requirements apply.

(A) All openings in an internal floating roof or external floating roof except for automatic bleeder vents (vacuum breaker vents) and rim space vents must provide a projection below the liquid surface or be equipped with a cover, seal, or lid. Any cover, seal, or lid must be in a closed (i.e., no visible gap) position at all times except when the device is in actual use.

(B) Automatic bleeder vents (vacuum breaker vents) must be closed at all times except when the roof is being floated off or landed on the roof leg supports.

(C) Rim vents, if provided, must be set to open only when the roof is being floated off the roof leg supports or at the manufacturer's recommended setting.

(D) Any roof drain that empties into the stored liquid must be equipped with a slotted membrane fabric cover that covers at least 90% of the area of the opening.

(E) There must be no visible holes, tears, or other openings in any seal or seal fabric.

(F) For an external floating roof storage tank, secondary seals must be the rim-mounted type (the seal must be continuous from the floating roof to the tank wall). The accumulated area of gaps that exceed 1/8 inch in width between the secondary seal and storage tank wall may not be greater than 1.0 square inch per foot of tank diameter.

(3) Vapor control systems, as defined in §115.10 of this title, used as a control device on any storage tank must maintain a minimum control efficiency of 90%. If a flare is used, it must be designed and operated in accordance with 40 Code of Federal Regulations §60.18(b) - (f) [~~§60.18(b-f)~~] (as amended through December 22, 2008 (73 FR 78209)) and be lit at all times when VOC vapors are routed to the flare.

(b) The following requirements apply in Gregg, Nueces, and Victoria Counties.

(1) No person shall place, store, or hold in any storage tank any VOC, unless the storage tank is capable of maintaining working pressure sufficient at all times to prevent any vapor or gas loss to the atmosphere or is in compliance with the control requirements specified in Table I(a) in subsection (a)(1) of this section for VOC other than crude oil and condensate or Table II(a) in subsection (a)(1) of this section for crude oil and condensate. If a flare is used as a vapor recovery system, as defined in §115.10 of this title, it must be designed and operated in accordance with 40 Code of Federal Regulations §60.18(b) - (f) (as amended through December 22, 2008 (73 FR 78209)) and be lit at all times when VOC vapors are routed to the flare.

(2) For an external floating roof or internal floating roof storage tank subject to the provisions of paragraph (1) of this subsection, the following requirements apply.

(A) All openings in an internal floating roof or external floating roof, except for automatic bleeder vents (vacuum breaker vents) and rim space vents, must provide a projection below the liquid surface or be equipped with a cover, seal, or lid. Any cover, seal, or lid must be in a closed (i.e., no visible gap) position at all times, except when the device is in actual use.

(B) Automatic bleeder vents (vacuum breaker vents) must be closed at all times except when the roof is being floated off or landed on the roof leg supports.

(C) Rim vents, if provided, must be set to open only when the roof is being floated off the roof leg supports or at the manufacturer's recommended setting.

(D) Any roof drain that empties into the stored liquid must be equipped with a slotted membrane fabric cover that covers at least 90% of the area of the opening.

(E) There must be no visible holes, tears, or other openings in any seal or seal fabric.

(F) For an external floating roof storage tank, secondary seals must be the rim-mounted type (the seal shall be continuous from the floating roof to the tank wall). The accumulated area of gaps that exceed 1/8 inch in width between the secondary seal and tank wall may not be greater than 1.0 square inch per foot of tank diameter.

(c) The following requirements apply in Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties.

(1) No person may place, store, or hold in any storage tank any VOC, other than crude oil or condensate, unless the storage tank is capable of maintaining working pressure sufficient at all times to prevent any vapor or gas loss to the atmosphere or is in compliance with the control requirements specified in Table I (b) of this paragraph for VOC other than crude oil and condensate.

Figure: 30 TAC §115.112(c)(1) (No change.)

(2) For an external floating roof or internal floating roof storage tank subject to the provisions of paragraph (1) of this subsection, the following requirements apply.

(A) There must be no visible holes, tears, or other openings in any seal or seal fabric.

(B) All tank gauging and sampling devices must be vapor-tight except when gauging and sampling is taking place.

(3) No person in Matagorda or San Patricio Counties shall place, store, or hold crude oil or condensate in any storage tank unless the storage tank is a pressure tank capable of maintaining working pressures sufficient at all times to prevent vapor or gas loss to the atmosphere or is equipped with one of the following control devices, properly maintained and operated:

(A) an internal floating roof or external floating roof, as defined in §115.10 of this title. These control devices will not be allowed if the VOC has a true vapor pressure of 11.0 pounds per square inch absolute (psia) or greater. All tank-gauging and tank-sampling devices must be vapor-tight, except when gauging or sampling is taking place; or

(B) a vapor control system as defined in §115.10 of this title.

(d) The following requirements apply in the Houston-Galveston-Brazoria area, as defined in §115.10 of this title. The requirements in this subsection no longer apply beginning March 1, 2013.

(1) No person shall place, store, or hold in any storage tank any VOC unless the storage tank is capable of maintaining working pressure sufficient at all times to prevent any vapor or gas loss to the atmosphere or is in compliance with the control requirements specified in either Table I(a) of subsection (a)(1) of this section for VOC other than crude oil and condensate or Table II(a) of subsection (a)(1) of this section for crude oil and condensate.

(2) For an external floating roof or internal floating roof storage tank subject to the provisions of paragraph (1) of this subsection, the following requirements apply.

(A) All openings in an internal floating roof or external floating roof as defined in §115.10 of this title except for automatic bleeder vents (vacuum breaker vents), and rim space vents must provide a projection below the liquid surface. All openings in an internal floating roof or external floating roof except for automatic bleeder vents (vacuum breaker vents), rim space vents, leg sleeves, and roof drains must be equipped with a deck cover. The deck cover must be equipped with a gasket in good operating condition between the cover and the deck. The deck cover must be closed (i.e., no gap of more than 1/8 inch) at all times, except when the cover must be open for access.

(B) Automatic bleeder vents (vacuum breaker vents) and rim space vents must be equipped with a gasketed lid, pallet, flapper, or other closure device and must be closed (i.e., no gap of more than 1/8 inch) at all times except when required to be open to relieve excess pressure or vacuum in accordance with the manufacturer's design.

(C) Each opening into the internal floating roof for a fixed roof support column may be equipped with a flexible fabric sleeve seal instead of a deck cover.

(D) Any external floating roof drain that empties into the stored liquid must be equipped with a slotted membrane fabric cover that covers at least 90% of the area of the opening or an equivalent control that must be kept in a closed (i.e., no gap of more than 1/8 inch) position at all times except when the drain is in actual use. Stub drains on an internal floating roof storage tank are not subject to this requirement.

(E) There must be no visible holes, tears, or other openings in any seal or seal fabric.

(F) For an external floating roof storage tank, secondary seals must be the rim-mounted type (the seal must be continuous from the floating roof to the tank wall with the exception of gaps that do not exceed the following specification). The accumulated area of gaps that exceed 1/8 inch in width between the secondary seal and storage tank wall may not be greater than 1.0 square inch per foot of storage tank diameter.

(G) Each opening for a slotted guidepole in an external floating roof storage tank must be equipped with one of the following control device configurations:

(i) a pole wiper and pole float that has a seal or wiper at or above the height of the pole wiper;

(ii) a pole wiper and a pole sleeve;

(iii) an internal sleeve emission control system;

(iv) a retrofit to a solid guidepole system;

(v) a flexible enclosure system; or

(vi) a cover on an external floating roof tank.

(H) The external floating roof or internal floating roof must be floating on the liquid surface at all times except as specified in this subparagraph. The external floating roof or internal floating roof may be supported by the leg supports or other support devices, such as hangers from the fixed roof, during the initial fill or refill after the storage tank has been cleaned or as allowed under the following circumstances:

(i) when necessary for maintenance or inspection;

(ii) when necessary for supporting a change in service to an incompatible liquid;

(iii) when the storage tank has a storage capacity less than 25,000 gallons or the vapor pressure of the material stored is less than 1.5 psia;

(iv) when the vapors are routed to a control device from the time the floating roof is landed until the floating roof is within ten percent by volume of being refloated;

(v) when all VOC emissions from the tank, including emissions from roof landings, have been included in a floating roof storage tank emissions limit or cap approved under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification); or

(vi) when all VOC emissions from floating roof landings at the regulated entity, as defined in §101.1 of this title (relating to Definitions), are less than 25 tons per year.

(3) Vapor control systems, as defined in §115.10 of this title, used as a control device on any storage tank must maintain a minimum control efficiency of 90%.

(4) For a storage tank storing condensate, as defined in §101.1 of this title, prior to custody transfer, flashed gases must be routed to a vapor control system if the liquid throughput through an individual tank or the aggregate of tanks in a tank battery exceeds 1,500 barrels (63,000 gallons) per year.

(5) For a storage tank storing crude oil or condensate prior to custody transfer or at a pipeline breakout station, flashed gases must be routed to a vapor control system if the uncontrolled VOC emissions from an individual storage tank, or from the aggregate of storage tanks in a tank battery, equal or exceed 25 tons per year on a rolling 12-month basis. Uncontrolled emissions must be estimated by one of the following methods; however, if emissions determined using direct measurements or other methods approved by the executive director under subparagraph [subparagraphs] (A) or (D) of this paragraph are higher than emissions estimated using the default factors or charts in subparagraph [subparagraphs] (B) or (C) of this paragraph, the higher values must be used.

(A) The owner or operator may make direct measurements using the measuring instruments and methods specified in §115.117 of this title (relating to Approved Test Methods).

(B) The owner or operator may use a factor of 33.3 pounds of VOC per barrel (42 gallons) of condensate produced or 1.6 pounds of VOC per barrel (42 gallons) of oil produced.

(C) For crude oil storage only, the owner or operator may use the chart in Exhibit 2 of the United States Environmental Protection Agency publication *Lessons Learned from Natural Gas Star Partners: Installing Vapor Recovery Units on Crude Oil Storage Tanks*, October 2003, and assuming that the hydrocarbon vapors have a molecular weight of 34 pounds per pound mole and are 48% by weight VOC.

(D) Other test methods or computer simulations may be allowed if approved by the executive director.

(e) The control requirements in this subsection apply in the Houston-Galveston-Brazoria and Dallas-Fort Worth areas beginning March 1, 2013, except as specified in §115.119 of this title (relating to Compliance Schedules) and in paragraph (3) of this subsection.

(1) No person shall place, store, or hold VOC in any storage tank unless the storage tank is capable of maintaining working pressure sufficient at all times to prevent any vapor or gas loss to the atmosphere or is in compliance with the control requirements specified in Table 1

of this paragraph for VOC other than crude oil and condensate or Table 2 of this paragraph for crude oil and condensate.

Figure: 30 TAC §115.112(e)(1) (No change.)

(2) For an external floating roof or internal floating roof storage tank subject to the provisions of paragraph (1) of this subsection, the following requirements apply.

(A) All openings in an internal floating roof or external floating roof must provide a projection below the liquid surface. Automatic bleeder vents (vacuum breaker vents) and rim space vents are not subject to this requirement.

(B) All openings in an internal floating roof or external floating roof must be equipped with a deck cover. The deck cover must be equipped with a gasket in good operating condition between the cover and the deck. The deck cover must be closed (i.e., no gap of more than 1/8 inch) at all times, except when the cover must be open for access. Automatic bleeder vents (vacuum breaker vents), rim space vents, leg sleeves, and roof drains are not subject to this requirement.

(C) Automatic bleeder vents (vacuum breaker vents) and rim space vents must be equipped with a gasketed lid, pallet, flapper, or other closure device and must be closed (i.e., no gap of more than 1/8 inch) at all times except when required to be open to relieve excess pressure or vacuum in accordance with the manufacturer's design.

(D) Each opening into the internal floating roof for a fixed roof support column may be equipped with a flexible fabric sleeve seal instead of a deck cover.

(E) Any external floating roof drain that empties into the stored liquid must be equipped with a slotted membrane fabric cover that covers at least 90% of the area of the opening or an equivalent control that must be kept in a closed (i.e., no gap of more than 1/8 inch) position at all times except when the drain is in actual use. Stub drains on an internal floating roof storage tank are not subject to this requirement.

(F) There must be no visible holes, tears, or other openings in any seal or seal fabric.

(G) For an external floating roof storage tank, secondary seals must be the rim-mounted type. The seal must be continuous from the floating roof to the tank wall with the exception of gaps that do not exceed the following specification. The accumulated area of gaps that exceed 1/8 inch in width between the secondary seal and storage tank wall may not be greater than 1.0 square inch per foot of storage tank diameter.

(H) Each opening for a slotted guidepole in an external floating roof storage tank must be equipped with one of the following control device configurations:

- (i) a pole wiper and pole float that has a seal or wiper at or above the height of the pole wiper;
- (ii) a pole wiper and a pole sleeve;
- (iii) an internal sleeve emission control system;
- (iv) a retrofit to a solid guidepole system;
- (v) a flexible enclosure system; or
- (vi) a cover on an external floating roof tank.

(I) The external floating roof or internal floating roof must be floating on the liquid surface at all times except as allowed under the following circumstances:

(i) during the initial fill or refill after the storage tank has been cleaned;

(ii) when necessary for preventive maintenance, roof repair, primary seal inspection, or removal and installation of a secondary seal, if product is not transferred into or out of the storage tank, emissions are minimized, and the repair is completed within seven calendar days;

(iii) when necessary for supporting a change in service to an incompatible liquid;

(iv) when the storage tank has a storage capacity less than 25,000 gallons;

(v) when the vapors are routed to a control device from the time the storage tank has been emptied to the extent practical or the drain pump loses suction until the floating roof is within 10% by volume of being refloated;

(vi) when all VOC emissions from the storage tank, including emissions from floating roof landings, have been included in an emissions limit or cap approved under Chapter 116 of this title prior to March 1, 2013; or

(vii) when all VOC emissions from floating roof landings at the regulated entity are less than 25 tons per year.

(3) A control device used to comply with this subsection must meet one of the following conditions at all times when VOC vapors are routed to the device.

(A) A control device, other than a vapor recovery unit or a flare, must maintain the following minimum control efficiency:

(i) 90% in the Houston-Galveston-Brazoria area until the date specified in clause (ii) of this subparagraph; ~~90%; and~~

(ii) 95% in the Houston-Galveston-Brazoria area beginning July 20, 2018; and ~~in the Dallas-Fort Worth area, 95%.~~

(iii) 95% in the Dallas-Fort Worth area.

(B) A vapor recovery unit must be designed to process all vapor generated by the maximum liquid throughput of the storage tank or the aggregate of storage tanks in a tank battery and must transfer recovered vapors to a pipe or container that is vapor-tight, as defined in §115.10 of this title.

(C) A flare must be designed and operated in accordance with 40 Code of Federal Regulations §60.18(b) - (f) (as amended through December 22, 2008 (73 FR 78209)) and be lit at all times when VOC vapors are routed to the flare.

(4) For a storage tank storing condensate prior to custody transfer, flashed gases must be routed to a vapor control system if the condensate throughput of an individual tank or the aggregate of tanks in a tank battery exceeds:

(A) in the Houston-Galveston-Brazoria area, 1,500 barrels (63,000 gallons) per year on a rolling 12-month basis;

(B) in the Dallas-Fort Worth area except Wise County:

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

(ii) 15 months after the date the commission publishes notice in the *Texas Register* as specified in §115.119(b)(1)(C) of this title that the Dallas-Fort Worth area has been reclassified as a severe nonattainment area for the 1997 Eight-Hour Ozone National Ambient Air Quality Standard, 1,500 barrels (63,000 gallons) per year on a rolling 12-month basis; and

(C) in Wise County, 6,000 barrels (252,000 gallons) per year on a rolling 12-month basis.

(5) For a storage tank storing crude oil or condensate prior to custody transfer or at a pipeline breakout station, flashed gases must be routed to a vapor control system if the uncontrolled VOC emissions from an individual storage tank, or from the aggregate of storage tanks in a tank battery, or from the aggregate of storage tanks at a pipeline breakout station [in the Dallas-Fort Worth area], equal or exceed:

(A) in the Houston-Galveston-Brazoria area, 25 tons per year on a rolling 12-month basis;

(B) in the Dallas-Fort Worth area, except Wise County:

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

(ii) 15 months after the date the commission publishes notice in the *Texas Register* as specified in §115.119(b)(1)(C) of this title that the Dallas-Fort Worth area has been reclassified as a severe nonattainment area for the 1997 Eight-Hour Ozone National Ambient Air Quality Standard, 25 tons per year on a rolling 12-month basis; and

(C) in Wise County, 100 tons per year on a rolling 12-month basis.

(6) Uncontrolled emissions from a storage tank or tank battery storing crude oil or condensate prior to custody transfer or at a pipeline breakout station must be estimated by one of the following methods. However, if emissions determined using direct measurements or other methods approved by the executive director under subparagraph [subparagraphs] (A) or (B) of this paragraph are higher than emissions estimated using the default factors or charts in subparagraph [subparagraphs] (C) or (D) of this paragraph, the higher values must be used.

(A) The owner or operator may make direct measurements using the measuring instruments and methods specified in §115.117 of this title.

(B) The owner or operator may use other test methods or computer simulations approved by the executive director.

(C) The owner or operator may use a factor of 33.3 pounds of VOC per barrel (42 gallons) of condensate produced or 1.6 pounds of VOC per barrel (42 gallons) of oil produced.

(D) For crude oil storage only, the owner or operator may use the chart in Exhibit 2 of the United States Environmental Protection Agency publication *Lessons Learned from Natural Gas Star Partners: Installing Vapor Recovery Units on Crude Oil Storage Tanks*, October 2003, and assuming that the hydrocarbon vapors have a molecular weight of 34 pounds per pound mole and are 48% by weight VOC.

(7) Storage tanks in the Dallas-Fort Worth area and Houston-Galveston-Brazoria area storing crude oil or condensate prior to custody transfer or at a pipeline breakout station for which the owner or operator is required by this subsection to control flashed gases must be maintained in accordance with manufacturer instructions. All openings in the storage tank through which vapors are not routed to a vapor recovery unit or other vapor control device must be equipped with a closure device maintained according to the manufacturer's instructions, and operated according to this paragraph. If manufacturer instructions are unavailable, industry standards consistent with good engineering practice can be substituted.

(A) Each closure device must be closed at all times except when normally actuated or required to be open for temporary access or to relieve excess pressure or vacuum in accordance with the manufacturer's design and consistent with good air pollution control

practices. Such opening, actuation, or use must be limited to minimize vapor loss.

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

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

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

#### §115.114. *Inspection and Repair Requirements.*

(a) The following inspection requirements apply in the Beaumont-Port Arthur, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, as defined in §115.10 of this title (relating to Definitions).

(1) For an internal floating roof storage tank, the internal floating roof and the primary seal or the secondary seal (if one is in service) must be visually inspected through a fixed roof inspection hatch at least once every 12 months.

(A) If the internal floating roof is not resting on the surface of the volatile organic compounds (VOC) inside the storage tank and is not resting on the leg supports; or liquid has accumulated on the internal floating roof; or the seal is detached; or there are holes or tears in the seal fabric; or there are visible gaps between the seal and the wall of the storage tank, within 60 days of the inspection the owner or operator shall repair the items or shall empty and degas the storage tank in accordance with Subchapter F, Division 3 of this chapter (relating to Degassing of Storage Tanks, Transport Vessels, and Marine Vessels).

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

(2) For an external floating roof storage tank, the secondary seal gap must be physically measured at least once every 12 months to insure compliance with §115.112(a)(2)(F), (d)(2)(F), and (e)(2)(G) of this title (relating to Control Requirements).

(A) If the secondary seal gap exceeds the limitations specified by §115.112(a)(2)(F), (d)(2)(F), and (e)(2)(G) of this title, within 60 days of the inspection the owner or operator shall repair the items or shall empty and degas the storage tank in accordance with Subchapter F, Division 3 of this chapter.

(B) If a failure cannot be repaired within 60 days and if the storage tank cannot be emptied within 60 days, the owner or operator may submit written requests for up to two extensions of up to 30 additional days each to the appropriate regional office. The owner or operator shall submit a copy to any local air pollution control program

with jurisdiction. Each request for an extension must include a statement that alternate storage capacity is unavailable and a schedule that will assure that the repairs will be completed as soon as possible.

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

(4) For an external floating roof storage tank, the secondary seal must be visually inspected at least once every six months to ensure compliance with §115.112(a)(2)(E) and (F), (d)(2)(E) and (F), and (e)(2)(F) and (G) of this title.

(A) If the external floating roof is not resting on the surface of the VOC inside the storage tank and is not resting on the leg supports; or liquid has accumulated on the external floating roof; or the seal is detached; or there are holes or tears in the seal fabric; or there are visible gaps between the seal and the wall of the storage tank, within 60 days of the inspection the owner or operator shall repair the items or shall empty and degas the storage tank in accordance with Subchapter F, Division 3 of this chapter.

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

(5) For fixed roof storage tanks in the Dallas-Fort Worth and Houston-Galveston-Brazoria areas [area] storing crude oil or condensate prior to custody transfer or at a pipeline breakout station for which the owner or operator is required by §115.112(e) of this title to control flashed gases, the owner or operator shall inspect and repair all closure devices not connected to a vapor recovery unit or other vapor control device according to the schedule in this paragraph.

(A) The owner or operator shall conduct an audio, visual, and olfactory inspection of each closure device not connected to a vapor recovery unit or other vapor control device to ensure compliance with §115.112(e)(7)(A) of this title. The inspection must occur when liquids are not being added to or unloaded from the tank. If the owner or operator finds the closure device open for reasons not allowed in §115.112(e)(7)(A) of this title, the owner or operator shall attempt to close the device during the inspection. The inspection must occur before the end of one business day after each opening of a thief or access hatch for sampling or gauging, and before the end of one business day after each unloading event. If multiple events occur on a single day, a single inspection within one business day after the last event is sufficient.

(B) The owner or operator shall conduct an audio, visual, and olfactory inspection of all gaskets and vapor sealing surfaces of each closure device not connected to a vapor recovery unit or other vapor control device once per calendar quarter to ensure compliance with §115.112(e)(7)(B) of this title. If the owner or operator finds an improperly sealed closure device, the owner or operator shall make a first attempt at repair no later than five calendar days after the inspection and repair the device no later than 15 calendar days after the inspection unless delay of repair is allowed. If parts are unavailable, repair may be delayed. Parts must be ordered promptly and the repair must be completed within five days of receipt of required parts. Repair may be delayed until the next shutdown if the repair of the component would require a shutdown that would create more emissions than the repair would eliminate. Repair must be completed by the end of the

next shutdown. For the purpose of this subparagraph, a repair is complete if the closure device no longer exudes process gasses based on sight, smell, or sound.

(b) The following inspection requirements apply in Gregg, Nueces, and Victoria Counties.

(1) For an internal floating roof storage tank, the following inspection requirements apply.

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

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

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

(A) If the secondary seal gap exceeds the limitations specified by §115.112(b)(2)(F) of this title, within 60 days of the inspection the owner or operator shall repair the items or shall empty and degas the storage tank.

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

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

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

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

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

(c) The following inspection requirements apply in Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties.

(1) For an internal floating roof storage tank, the following inspection requirements apply.

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

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

(2) For an external floating roof storage tank, the following inspection requirements apply.

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

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

#### *§115.118. Recordkeeping Requirements.*

(a) The following recordkeeping requirements apply in the Beaumont-Port Arthur, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, as defined in §115.10 of this title (relating to Definitions).

(1) The owner or operator of storage tank claiming an exemption in §115.111 of this title (relating to Exemptions) shall maintain records sufficient to demonstrate continuous compliance with the applicable exemption criteria. Where applicable, true vapor pressure, volatile organic compounds (VOC) content type, or a combination of the two must be recorded initially and at every change of service or when the storage tank is emptied and refilled.

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

(3) The owner or operator shall maintain records of the results of inspections required by §115.114(a) of this title (relating to Inspection and Repair Requirements). For secondary seal gaps that

are required to be physically measured during inspection, these records must include a calculation of emissions for all secondary seal gaps that exceed 1/8 inch where the accumulated area of such gaps is greater than 1.0 square inch per foot of tank diameter. These calculated emissions inventory reportable emissions must be reported in the annual emissions inventory submittal required by §101.10 of this title (relating to Emissions Inventory Requirements). The emissions must be calculated using the following equation.

Figure: 30 TAC §115.118(a)(3) (No change.)

(4) The owner or operator shall maintain records of any operational parameter monitoring required in §115.115(a) of this title (relating to Monitoring Requirements). Such records must be sufficient to demonstrate proper functioning of those devices to design specifications and must include, but are not limited to, the following.

(A) For a direct-flame incinerator, the owner or operator shall continuously record the exhaust gas temperature immediately downstream of the device.

(B) For a condensation system, the owner or operator shall continuously record the outlet gas temperature to ensure the temperature is below the manufacturer's recommended operating temperature for controlling the VOC vapors routed to the device.

(C) For a carbon adsorption system or carbon adsorber, the owner or operator shall:

(i) continuously record the exhaust gas VOC concentration of any carbon adsorption system monitored according to §115.115(a)(3)(A) of this title; or

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

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

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

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

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

(6) In the Houston-Galveston-Brazoria and Dallas-Fort Worth areas, the owner or operator shall maintain the following additional records.

(A) The owner or operator of a fixed roof storage tank that is not required in §115.112(d)(1) or (e)(1) of this title (relating to Control Requirements) to be equipped with an external floating roof, internal floating roof, or vapor control system shall maintain records of the type of VOC stored, the starting and ending dates when the material is stored, and the true vapor pressure at the average monthly storage temperature of the stored liquid. This requirement does not apply to a storage tank with storage capacity of 25,000 gallons or less storing VOC other than crude oil or condensate, or to a storage tank with storage capacity of 40,000 gallons or less storing crude oil or condensate.

(B) The owner or operator of any storage tank that stores crude oil or condensate prior to custody transfer or at a pipeline breakout station and is not equipped with a vapor control system shall maintain records of the estimated uncontrolled emissions from the storage tank on a rolling 12-month basis. The records must be made available for review within 72 hours upon request by authorized representatives of the executive director, the United States Environmental Protection Agency, or any local air pollution control agency with jurisdiction.

(C) The owner or operator of an external floating roof or internal floating roof storage tank meeting the extended compliance date in §115.119(a)(1)(A) or (b)(1)(A) of this title (relating to Compliance Schedules) shall maintain records of the date of the last time the storage tank was emptied and degassed.

(D) The owner or operator of any storage tank that stores crude oil or condensate prior to custody transfer or at a pipeline breakout station [~~in the Dallas-Fort Worth area and~~] is required by §115.112(e) of this title to control flash emissions shall maintain records of the manufacturer or industry standard instructions used to maintain the storage tanks and tank closure devices in use.

(E) The owner or operator of any storage tank that stores crude oil or condensate prior to custody transfer or at a pipeline breakout station [~~in the Dallas-Fort Worth area~~] shall maintain records of the results of each inspection and repair required in §115.112(e)(7) or §115.114(a)(5) [or §115.112(e)(7)] of this title, including the following items:

- (i) the date of the inspection;
  - (ii) the status of the device during inspection;
  - (iii) the amount of time a closure device was open since the last inspection for reasons not allowed in §115.112(e)(7)(A) of this title;
  - (iv) the date repair was attempted and completed;
- and
- (v) the list of closure devices awaiting delayed repair as allowed by §115.112(e)(7)(D) of this title.

(7) All records must be maintained for two years and be made available for review upon request by authorized representatives of the executive director, the United States Environmental Protection Agency, or any local air pollution control agency with jurisdiction. In the Dallas-Fort Worth area, any records created on or after March 1, 2011, must be maintained for at least five years. In the Houston-Galveston-Brazoria area, any records created on or after January 1, 2017 must be maintained for at least five years.

(b) The following recordkeeping requirements apply in Gregg, Nueces, and Victoria Counties.

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

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

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

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

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

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

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

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

#### §115.119. Compliance Schedules.

(a) In Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties, the compliance date has passed and the owner or operator of each storage tank in which any volatile organic compounds (VOC) are placed, stored, or held shall continue to comply with this division except as follows.

(1) The affected owner or operator shall comply with the requirements of §§115.112(d); 115.115(a)(1),(2),(3)(A), and (4); 115.117; and 115.118(a) [§§115.112(d); §115.115(a)(1), (2), (3)(A), and (4); §115.117; and §115.118(a)] of this title (relating to Control Requirements; Monitoring Requirements; Approved Test Methods; and Recordkeeping Requirements, respectively) no later than January 1, 2009. Section 115.112(d) of this title no longer applies in the Houston-Galveston-Brazoria area beginning March 1, 2013. Prior to March 1, 2013, the owner or operator of a storage tank subject to §115.112(d) of this title shall continue to comply with §115.112(d) of this title until compliance has been demonstrated with the requirements of §115.112(e)(1) - (6) [§115.112(e)] of this title. Section 115.112(e)(3)(A)(i) of this title no longer applies beginning July 20, 2018.

(A) If compliance with these requirements would require emptying and degassing of the storage tank, compliance is not required until the next time the storage tank is emptied and degassed but no later than January 1, 2017.

(B) The owner or operator of each storage tank with a storage capacity less than 210,000 gallons storing crude oil and condensate prior to custody transfer shall comply with the requirements of this division no later than January 1, 2009, regardless if compliance with these requirements would require emptying and degassing of the storage tank.

(2) The affected owner or operator shall comply with §§115.112(e)(1) - (6) [§§115.112(e)], 115.115(a)(3)(B), (5), and (6), and 115.116 of this title (relating to Testing Requirements) as soon as practicable, but no later than March 1, 2013. Section 115.112(e)(3)(A)(i) of this title no longer applies beginning July 20, 2018. Prior to July 20, 2018, the owner or operator of a storage tank subject to §115.112(e)(3)(A)(i) of this title shall continue to comply with §115.112(e)(3)(A)(i) of this title until compliance has been demonstrated with the requirements of §115.112(e)(3)(A)(ii) of this title. After July 20, 2018, the owner or operator of a storage tank is subject to §115.112(e)(3)(A)(ii) of this title.

(A) If compliance with these requirements would require emptying and degassing of the storage tank, compliance is not required until the next time the storage tank is emptied and degassed but no later than January 1, 2017.

(B) The owner or operator of each storage tank with a storage capacity less than 210,000 gallons storing crude oil and condensate prior to custody transfer shall comply with these requirements no later than March 1, 2013, regardless if compliance with these requirements would require emptying and degassing of the storage tank.

(3) The affected owner or operator shall comply with §§115.112(e)(3)(A)(ii), 115.112(e)(7), 115.118(a)(6)(D) and (E), and 115.114(a)(5) of this title (relating to Inspection and Repair Requirements) as soon as practicable, but no later than July 20, 2018.

(b) In Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties, the owner or operator of each storage tank in which any VOC is placed, stored, or held was required to be in compliance with this division on or before March 1, 2009, and shall continue to comply with this division, except as follows.

(1) The affected owner or operator shall comply with §§115.112(e), 115.115(a)(3)(B), (5), and (6), 115.116, and 115.118(a)(6) of this title as soon as practicable, but no later than March 1, 2013.

(A) If compliance with §115.112(e) of this title would require emptying and degassing of the storage tank, compliance is not required until the next time the storage tank is emptied and degassed but no later than December 1, 2021.

(B) The owner or operator of a storage tank with a storage capacity less than 210,000 gallons storing crude oil and condensate prior to custody transfer shall comply with these requirements no later than March 1, 2013, regardless if compliance with these requirements would require emptying and degassing of the storage tank.

(C) As soon as practicable but no later than 15 months after the commission publishes notice in the *Texas Register* that the Dallas-Fort Worth area, except Wise County, has been reclassified as a severe nonattainment area for the 1997 Eight-Hour Ozone National Ambient Air Quality Standard the owner or operator of a storage tank storing crude oil or condensate prior to custody transfer or at a pipeline breakout station is required to be in compliance with the control requirements in §115.112(e)(4)(B)(ii) and (5)(B)(ii) of this title except as specified in §115.111(a)(11) of this title (relating to Exemptions).

(2) The owner or operator is no longer required to comply with §115.112(a) of this title beginning March 1, 2013.

(3) The affected owner or operator in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties shall comply with §§115.112(e)(7), 115.114(a)(5), and 115.118(a)(6)(D) and (E) of this title as soon as practicable, but no later than January 1, 2017.

(c) In Hardin, Jefferson, and Orange Counties, the owner or operator of each storage tank in which any VOC is placed, stored, or held was required to be in compliance with this division by March 7, 1997, and shall continue to comply with this division, except that compliance with §115.115(a)(3)(B), (5), and (6), and §115.116 of this title is required as soon as practicable, but no later than March 1, 2013.

(d) In El Paso County, the owner or operator of each storage tank in which any VOC is placed, stored, or held was required to be in compliance with this division by January 1, 1996, and shall continue to comply with this division, except that compliance with §115.115(a)(3)(B), (5), and (6), and §115.116 of this title is required as soon as practicable, but no later than March 1, 2013.

(e) In Aransas, Bexar, Calhoun, Gregg, Matagorda, Nueces, San Patricio, Travis, and Victoria Counties, the owner or operator of each storage tank in which any VOC is placed, stored, or held was required to be in compliance with this division by July 31, 1993, and

shall continue to comply with this division, except that compliance with §115.116(b) of this title is required as soon as practicable, but no later than March 1, 2013.

(f) In Wise County, the owner or operator of each storage tank in which any VOC is placed, stored, or held shall comply with this division as soon as practicable, but no later than January 1, 2017.

(g) The owner or operator of each storage tank in which any VOC is placed, stored, or held that becomes subject to this division on or after the date specified in subsections (a) - (f) of this section, shall comply with the requirements in this division no later than 60 days after becoming subject.

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

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

Filed with the Office of the Secretary of State on September 23, 2016.

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Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: November 6, 2016

For further information, please call: (512) 239-2613



## CHAPTER 290. PUBLIC DRINKING WATER

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §§290.38, 290.42, 290.46, 290.47, 290.102 - 290.104, 290.106 - 290.119, 290.121, 290.122, 290.272, and 290.275.

### Background and Summary of the Factual Basis for the Proposed Rules

Under 40 Code of Federal Regulations (CFR) §142.10 and §142.12, TCEQ shall adopt rules at least as stringent as the federal rules to maintain primacy over the Public Water System Supervision Program in Texas. The Revised Total Coliform Rule (RTCR), a federal drinking water rule, was promulgated by the United States Environmental Protection Agency (EPA) on February 13, 2013. The RTCR increases public health protection through the reduction of potential pathways of entry for fecal contamination into the distribution system of public water systems. Greater public health protection is anticipated under the RTCR as it requires public water systems that are vulnerable to microbial contamination to identify and address problems.

The proposed amendments to Chapter 290, provide rule language that is no less stringent than the RTCR. The proposed amendments provide for consistency with other federal drinking water provisions, address the EPA's comments on the federal Ground Water Rule (GWR), and provide clarification on existing state rules. Regarding the GWR, the EPA conducted a primacy review of the TCEQ's adopted GWR rules. On March 10, 2014,