The Texas Commission on Environmental Quality (commission or TCEQ) adopts amendments to 30 Texas Administrative Code (TAC) §60.1 and §60.2.

Amended §60.1 and §60.2 are adopted *with changes* to the proposed text as published in the July 25, 2025, issue of the *Texas Register* (50 TexReg 4241) and, therefore, will be republished.

Background and Summary of the Factual Basis for the Proposed Rules

The commission adopts revisions to Chapter 60 to implement certain requirements of Senate Bill (SB) 1397, regarding compliance history. SB 1397, 88th Legislature, 2023, Section 13, amended Texas Water Code (TWC) §5.754 requiring the commission to consider major, moderate, and minor violations when determining repeat violators. This rulemaking adoption also addresses management recommendations adopted by the Sunset Advisory Commission that were not included in SB 1397 for the commission to review and update the agency's compliance history rating formula to ensure it accurately reflects a regulated entity's record of violations, including considerations of site complexity and cumulative violations or repeating violations; and to regularly update compliance history ratings. Nonsubstantive changes were made to the rule language for consistency and plain language.

Section by Section Discussion

§60.1, Compliance History

The commission adopts revisions to §60.1(a)(6) and (7) to establish the effective date of the adopted rule. However, the commission made a change to the language

presented at proposal in §60.1(a)(6) and (7) to note the rule will become effective on September 1, 2026. This change will allow the executive director to ensure program upgrades are complete prior to full implementation of the rule changes. The commission will continue to use the version of the rule in effect at the time the compliance history classification was calculated in accordance with §60.1(b). For example, when an application for a permit is received by the executive director, the version of Chapter 60 in effect at the time the application is received will be the version used for compliance history purposes. The commission may consider new compliance history information as it deems necessary. Additionally, adopted §60.1(a)(8) adds a motion for reconsideration under §50.39 as requiring a compliance history be prepared and filed with the Office of the Chief Clerk before it is considered at commission agenda.

The adoption amends §60.1(b) to change the compliance period for enforcement actions to be calculated from the initial enforcement screening date. The compliance history period for an enforcement action is currently based on the date of the initial mailing of the enforcement settlement offer or petition, whichever occurs first. Since complicated cases may take substantial time to develop, the compliance history period could change while the settlement offer or petition is being drafted. Changing the start of the compliance period to the initial screening of an enforcement action means the compliance history will more closely reflect the performance of the site at the time the violations were documented as opposed to several months later. This provides greater certainty to the regulated community as to how an entity is performing at the time an enforcement action begins. This also means a site’s compliance history will remain the

same throughout the drafting and review process of the initial proposed agreed order or the petition instead of requiring additional reviews to verify whether the compliance history has changed during the process. In addition, clarification is made on how Notices of Violation (NOVs) are considered consistent with changes to §60.2(f).

Adopted §60.1(c)(8) changes the language referencing the Texas Environmental, Health, and Safety Audit Privilege Act. The Act was amended by the 85th Legislature in 2017 and the adopted language recognizes this change.

§60.2, Classification

The commission proposed a change to the effective date of 60.2(a); however, upon review of the rule, the commission determined this change was not necessary. The adoption amends §60.2(a) to change the frequency that the executive director shall evaluate the compliance history of each site from annually to semi-annually. This implements a management recommendation adopted by the Sunset Advisory Commission to regularly update an entity's compliance history rating. The commission adopts that compliance histories be evaluated on March 1st and September 1st each year. Since 2002, when the rule originally established an annual review, technological advances have made it possible for the agency to increase the number of reviews per year without overburdening agency resources. Semi-annual reviews will allow for appropriate planning for announced and unannounced investigations, as well as increased oversight of unsatisfactory performers. More frequent evaluations better allow the commission to consider whether proceedings should be initiated to revoke a permit, or to amend a permit where statutes allow, of an unsatisfactory performer. The

commission considered other evaluation periods and determined that evaluations more frequent than semi-annually may require shortening the appeal window to ensure appeal reviews could be completed before the next evaluation period begins.

The adoption changes the language proposed in §60.2(c) by changing the word "paragraph" to "subsection" and adding the phrase "relating to Classification" for consistency with rule language. The adoption amends §60.2(c) to change the methodology of grouping regulated entities from reliance on the North American Industry Classifications System (NAICS) to use of complexity points described in §60.2(e) as the commission has determined complexity to be a more accurate measurement criterion. In 2002, the commission determined Standard Industrial Classification (SIC) codes did not adequately capture the environmental complexity of the regulated community. In 2012, the commission listed NAICS codes as an option for grouping. However, over time, the commission found that the self-reported NAICS codes were frequently incorrect, inaccurate, or failed to fully describe the operations of the regulated site from an environmental impact standpoint. Therefore, the commission has not been able to effectively use NAICS codes for complexity determinations. The commission adopts the complexity formula to establish groupings to improve accuracy and provide certainty to the regulated public as they are already familiar with the formula and its impact on a site.

The adoption amends §60.2(f) to reflect changes to the way in which the commission evaluates repeat violators as required by SB 1397. Previously, in determining whether an entity was a repeat violator, the commission evaluated only major violations of the

same nature and the same environmental media that occurred during the five-year compliance period. Under the adopted rule, in accordance with SB 1397, the commission will evaluate major, moderate, and minor violations of the same nature and environmental media that occurred during the five-year compliance period.

The new formula considers “repeat violation points” for each violation of the same nature and the same environmental media documented in any final enforcement orders, court judgments, and criminal convictions during the five-year compliance period. The number of “repeat violation points” varies by classification of the violation with each minor violation receiving 2 repeat violation points, each moderate violation receiving 10 points, and each major violation receiving 50 points. The total of all repeat violation points assessed to a regulated entity is used to determine whether the regulated entity has exceeded the repeat violation point thresholds to be classified as a repeat violator. The commission changes the proposed rule by establishing repeat violation point thresholds based on five complexity point categories in contrast to the two groups in the proposed rule.

The commission adopts amended §60.2(f)(1) and (2) and new §60.2(f)(3). Adopted §60.2(f)(1) adds moderate and minor violations to repeat violator consideration and removes the requirement that violations be documented on separate occasions. Currently, multiple violations of the same type may be consolidated into a single enforcement action. Historically, the commission has considered “separate occasion” to mean individual orders or enforcement actions. For example, if a regulated entity had two unauthorized discharges within one compliance year and the entity signed a

single agreed order that contained both major violations, the commission treated it as a single major violation for purposes of the repeat violator criteria. The legislative directive of SB 1397 to include all minor, moderate, and major violations requires the removal of the “separate occasion” language to ensure all violations are considered. The change allows the commission to consider all repeat occurrences of similar violations documented during the five-year evaluation period rather than the number of orders or enforcement actions that contained similar violations.

Adopted §60.2(f)(2)(A) – (C) establishes “repeat violation point” values based on the classification of the violation. Each violation of the same nature and the same environmental media documented in any final enforcement orders, court judgments, and criminal convictions that occurred at least three times during the five-year compliance period is assessed repeat violation points based on the classification of the violation. Each minor violation receives 2 repeat violation points, each moderate violation receives 10 points, and each major violation receives 50 points. This methodology allows the commission to clearly differentiate between repeat violators with significant actual or potential environmental harm from those entities that have repeat violations with minimal actual or potential environmental harm. For example, repeating a minor violation five times during a five-year period would be equally weighted with a single moderate violation, and repeating the same moderate violation five times during a five-year period would be weighted equally to one major violation.

Adopted §60.2(f)(3) changes the proposed repeat violation point thresholds, based on complexity points, to determine repeat violator classifications. The proposed rule

established repeat violator thresholds based on two complexity categories: (1) Entities with 14 or less complexity points and 100 or more “repeat violation points” and (2) Entities with 15 or more complexity points with 150 or more “repeat violation points”. A rule language update was made at adoption to increase the number of complexity categories from two to five with different repeat violator point thresholds for each group. The five different thresholds for the repeat violator determination based on complexity points are:

1. Entities with less than 15 complexity points and 150 or more “repeat violation points” will be classified as a repeat violator.
2. Entities with at least 15 complexity points but less than 30 complexity points and 250 or more “repeat violation points” will be classified as a repeat violator.
3. Entities with at least 30 complexity points but less than 45 complexity points and 350 or more “repeat violation points” will be classified as a repeat violator.
4. Entities with at least 45 complexity points but less than 60 complexity points and 450 or more “repeat violation points” will be classified as a repeat violator.
5. Entities with at least 60 complexity points and 550 or more “repeat violation points” will be classified as a repeat violator.

This modification recognizes the increased self-reporting requirements for more complex facilities due to their proportionally larger number of authorizations, such as through the Texas Pollution Discharge Elimination System for wastewater and reporting of deviations to comply with Title V air permit requirements. These programs require entities to self-report violations whereas other sites are only subject to violations documented and discovered through investigations. Less complex

facilities do not have as many self-reporting requirements and therefore have less opportunity for the commission to identify violations.

This approach continues to use complexity points as the threshold and expands the criteria for repeat violators using a combination of minor, moderate, and major violations (total 150 points) for less complex entities and increasing complexity levels by 15 points and 100 repeat violator points respectively through each threshold. These thresholds ensure that the commission continues to hold repeat violators accountable without reducing environmental protections or standards. For example, regulated entities may reach the threshold by repeating the same moderate violation within a five-year period, repeating the same minor violation within a five-year period, or some combination of violation points to reach the appropriate point threshold.

The adoption moves "Repeat Violator Exemption" from existing §60.2(f)(2) to adopted §60.2(f)(4).

Adopted §60.2(g)(1)(L) changes the language referencing the Texas Environmental, Health, and Safety Audit Privilege Act. The Act was amended by the 85th Legislature in 2017 and the adopted language recognizes this change.

Adopted §60.2(g)(2) changes the site rating ranges for regulated entities. Currently, there is a common set of ranges for entities of all complexities. The commission adopts separate classification groups based on complexity points to address the Sunset Advisory Commission’s management recommendation to compare entities of

similar complexity to one another. The adopted rule establishes separate ranges for higher complex entities and less complex entities.

Adopted §60.2(g)(2)(A) establishes the classification rating ranges for regulated entities with a complexity point total less than 15. For a regulated entity classified as less complex, a high performer is defined as having less than 0.10 points. A satisfactory performer is defined as having 0.10 points to 60 points. An unsatisfactory performer is defined as having more than 60 points.

Adopted §60.2(g)(2)(B) establishes the classification rating ranges for regulated entities with a complexity point total of 15 or more. A high performer is defined as having less than 0.10 points. A satisfactory performer is defined as having 0.10 points to 55 points. An unsatisfactory performer is defined as having more than 55 points.

As noted by the Sunset Advisory Commission, the compliance history rule calculation methodology disproportionately impacts less complex entities. The commission recognizes that, in general, less complex entities have fewer resources and face different challenges than their higher complexity counterparts. While the higher complexity entities are generally much larger in size, they tend to have more resources, represent a much smaller group of the regulated community, and typically have a potentially larger environmental footprint. The adopted rule allows for different classification thresholds for each complexity grouping, thereby accounting for their differences.

Adopted §60.2(g)(3)(A), (B)(i) and (ii) removes the specific point value that a regulated entity will receive following the application of a mitigating factor. Should a mitigating factor be granted to a regulated entity, the entity's rating will be adjusted to the maximum rating within the satisfactory classification for the entity's complexity point group. For regulated entities with less than 15 complexity points, the rating will be adjusted to 60. For regulated entities with 15 or more complexity points, the rating will be adjusted to 55. Additionally, a rule language update was made at adoption to §60.2(g)(3)(B)(i) by adding "semi-" to "annual" to make the timeframe for when the next compliance history is performed consistent with adopted §60.2(a).

Adopted §60.2(i) revises how a regulated entity can review their pending compliance history rating to match current practice by removing the submission of a Compliance History Review Form and replacing it with the registration for the Advanced Review of Compliance History (ARCH). The ARCH review period allows entities to review their pending compliance history components prior to publication of the compliance history scores and classifications on the commission's website. During the ARCH review period, entities may request revisions to their compliance history components, including re-classification of violations, review of repeat violator designations, and request for exemptions or mitigating factors.

Final Regulatory Impact Determination

The commission has reviewed the rulemaking adoption in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because the adopted rule changes do not

meet the definition of a "Major environmental rule" as defined in that statute. Although the intent of the adopted rule modifications are to protect the environment and reduce the risk to human health from environmental exposure, they do not 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. Instead, the adopted rule changes merely modify the standards for the classification of a person's compliance history by setting the number of major, moderate, and minor violations needed to be classified as a repeat violator, to review and update the agency's compliance history rating formula to ensure it accurately reflects a regulated entity's record of violations, and to update compliance history ratings more often than once per fiscal year. The requirements for establishing standards for the classification of a person's compliance history are contained in TWC §5.754.

The adopted rule modifications are designed to protect the environment, the public health, and the public safety of the state and all sectors of the state. Furthermore, the adopted rule modifications do not meet any of the four applicability requirements listed in §2001.0225(a). They do not exceed a standard set by federal law, because there is no comparable federal law. They do not exceed an express requirement of state law, because they are consistent with the requirements of TWC, §5.754. The adopted rule modifications do not exceed the requirements of a delegation agreement because there is no applicable delegation agreement. They are not proposed to be adopted solely under the general powers of the agency but will be adopted under the express requirements of TWC §5.754 and management recommendations adopted by the Sunset Advisory Commission.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received regarding the regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the adopted rules and performed an assessment of whether the adopted rules constitute a taking under TGC, Chapter 2007. The specific purpose of the adopted rules is to implement certain requirements of Senate Bill (SB) 1397 and other legislative directives regarding compliance history. The adopted rules will substantially advance this stated purpose by modifying the standards for the classification of a person's compliance history by setting the number of major, moderate, and minor violations needed to be classified as a repeat violator, to review and update the agency's compliance history rating formula to ensure it accurately reflects a regulated entity's record of violations, and to update compliance history ratings more often than once per fiscal year.

Promulgation and enforcement of these adopted rules will be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulations do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally); nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. In other words, the adopted rules will not burden private real property because they modify the standards for the classification

of a person's compliance history by setting the number of major, moderate, and minor violations needed to be classified as a repeat violator, to review and update the agency's compliance history rating formula to ensure it accurately reflects a regulated entity's record of violations, and to update compliance history ratings more often than once per fiscal year. The subject adopted rules do not affect a landowner's rights in private real property.

Consistency with the Coastal Management Program

The commission reviewed the rulemaking adoption and found that the adoption is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 et seq., and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §29.22, and found the rulemaking adoption consistent with the applicable CMP goals and policies.

CMP goals applicable to the adopted rule include: 31 TAC §26.12(1), to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs); 31 TAC §26.12(2), to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone; 31 TAC §26.12(3), to minimize loss of human life and property due to the impairment and loss of protective features of CNRAs; 31 TAC §26.12(5), to balance the benefits from economic development and multiple human uses of the coastal zone, the benefits from

protecting, preserving, restoring, and enhancing CNRAs, the benefits from minimizing loss of human life and property, and the benefits from public access to and enjoyment of the coastal zone; 31 TAC §26.12(6), to coordinate agency and subdivision decision-making affecting CNRAs by establishing clear, objective policies for the management of CNRAs; 31 TAC §26.12(7), to make agency and subdivision decision-making affecting CNRAs efficient by identifying and addressing duplication and conflicts among local, state, and federal regulatory and other programs for the management of CNRAs; and 31 TAC §26.12(8), to make agency and subdivision decision-making affecting CNRAs more effective by employing the most comprehensive, accurate, and reliable information and scientific data available and by developing, distributing for public comment, and maintaining a coordinated, publicly accessible geographic information system of maps of the coastal zone and CNRAs at the earliest possible date. The commission has reviewed the adopted rule for consistency with applicable goals of the CMP and determined that the adopted rule is consistent with the intent of the applicable goals and will not result in any significant adverse effect to CNRAs.

CMP policies applicable to the adopted rule include: 31 TAC §26.19, Construction and Operation of Solid Waste Treatment, Storage, and Disposal Facilities; 31 TAC §26.20, Prevention, Response, and Remediation of Oil Spills; 31 TAC §26.21, Discharge of Municipal and Industrial Wastewater to Coastal Waters; 31 TAC §26.22, Nonpoint Source (NPS) Water Pollution; 31 TAC §26.23, Development in Critical Areas; 31 TAC §26.25, Dredging and Dredged Material Disposal and Placement; 31 TAC §26.28, Development Within Coastal Barrier Resource System Units and Otherwise Protected Areas on Coastal Barriers; and 31 TAC §26.32, Emission of Air Pollutants. This

rulemaking does not relax existing standards for issuing permits related to the construction and operation of solid waste treatment, storage, and disposal facilities in the coastal zone or for governing the prevention of, response to, and remediation of coastal oil spills. This rulemaking does not relax existing commission rules and regulations governing the discharge of municipal and industrial wastewater to coastal waters, nor does it affect the requirement that the agency consult with the Department of State Health Services regarding wastewater discharges that could significantly adversely affect oyster reefs. This rulemaking does not relax the existing requirements that state agencies and subdivisions with the authority to manage NPS pollution cooperate in the development and implementation of a coordinated program to reduce NPS pollution in order to restore and protect coastal waters. Further, it does not relax existing requirements applicable to: areas with the potential to develop agricultural or silvicultural NPS water quality problems; on-site disposal systems; underground storage tanks; or Texas Pollutant Discharge Elimination System permits for stormwater discharges. This rulemaking does not relax the standards related to dredging; the discharge, disposal, and placement of dredge material; compensatory mitigation; and authorization of development in critical areas. This rulemaking does not relax existing standards for issuing permits related to development of infrastructure within Coastal Barrier Resource System Units and Otherwise Protected Areas. Rather, the intent of the rulemaking is to increase compliance with existing standards and rule requirements.

Promulgation and enforcement of this rule will not violate or exceed any standards identified in the applicable CMP goals and policies because the adopted rule is

consistent with these CMP goals and policies and because this rule does not create or have a direct or significant adverse effect on any coastal natural resource areas.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Public Comment

A public hearing on the proposed rules was held in Austin on August 18, 2025, at 9:30 AM. in Building D, Room 191 at the Texas Commission on Environmental Quality complex, located at 12100 Park 35 Circle. The hearing was structured for the receipt of oral or written comments by interested persons. The comment period closed on August 25, 2025. A total of seven commenters provided both general and specific comments on the proposed rules. The following commented on the proposal: The Associated General Contractors of Texas (AGC); Better Brazoria—Clean Air & Clean Water (Better Brazoria); Harris County Attorney's Office (HCAO); Harris County Pollution Control Services (PCS); Texas Association of Manufacturers (TAM), Texas Chemistry Council (TCC), and Texas Oil and Gas Association (TXOGA); Texas Industry Project (TIP); and Public Citizen.

§60.1 - Compliance History

Comment:

Public Citizen commented that the commission's approach to compliance history ratings do not adequately incorporate written Notices of Violation (NOVs). Per Public

Citizen, NOVs are a formal and frequent indicator of non-compliance, noting that the commission issued over 15,000 NOVs but only about 1,100 enforcement orders and civil judgments during FY 2024 therefore excluding NOVs means that the “vast majority” of documented non-compliance is not factored into the compliance history. They assert that the exclusion of NOVs leads to an inaccurate and incomplete picture of an entity’s compliance history. They requested that NOVs be included in compliance history for the full five-year period, without the one-year limitation.

Response:

The commission notes that limiting the use of NOVs to one year is governed by statute. TWC §5.753(d) states, "notices of violation must be included as a component of compliance history for a period not to exceed one year from the date of issuance of each notice of violation." The commission will continue to consider NOVs in the compliance history formula as required by statute.

No changes were made in response to this comment.

Comment:

HCAO noted the proposed preamble stated that the commission “may consider new compliance history information as necessary.” HCAO interprets this to mean that the commission may consider new information when reviewing a permit application that would not otherwise be considered under the effective version of the rule. They requested that the commission provide a list of factors to consider when deciding whether to use new compliance history information to ensure a thorough review and

predictability in decision-making.

Response:

The commission responds that, while not a part of this rulemaking, §60.4 outlines the conditions under which the executive director may take into consideration additional compliance history information. The commission has not altered the executive director's discretionary authority as provided by that rule.

No changes were made in response to this comment.

Comment:

TAM, TCC, TXOGA, and TIP requested limiting consideration of moderate and minor violations for repeat violator status to those violations that occurred after September 1, 2023, the date when Senate Bill 1397 became effective. The organizations contended that including violations that occurred before this date would be inconsistent with Texas Government Code § 311.022, which supports the prospective operation of statutes, and would violate general principles of due process and fair notice.

Response:

The commission notes that its compliance history report provides a current assessment of an entity's performance over the past five years. Although this report may include data from before the September 1, 2023 effective date of SB 1397, it is considered current at the time it is generated. Instructions to limit this period for the new repeat violator rule were not conveyed in statute.

Additionally, the Texas Attorney General previously addressed this matter specifically for compliance history in Attorney General Opinion JC-0515 (2001), affirming that a valid exercise of legislative authority to safeguard public safety and welfare can, in certain cases, overcome concerns of unconstitutional retroactivity.

No changes were made in response to this comment.

Comment:

AGC and Better Brazoria each provided comments related to when the 5-year compliance history period should begin for enforcement actions. AGC noted that, under the proposed rule, a regulated entity could lose the benefit of a "positive component" the entity implements within the timeframe between the enforcement screening date and the settlement offer. Better Brazoria noted the proposed rule could result in violations not being incorporated into a facility's compliance history rating and requested that an entity's compliance history be recalculated to ensure additional violations are appropriately incorporated to reflect the entity's compliance.

Response

The commission recognizes that the components of an entity's compliance history may change during settlement negotiations and litigation. Considering changes in components throughout the litigation process would create uncertainty and could result in additional staff resources and delays throughout the hearing process. Having a fixed compliance history during negotiations creates more certainty for all parties,

streamlines the negotiation process, and shortens the review time for agreed orders and petitions.

No changes were made in response to these comments.

Comment:

TAM, TCC, TXOGA, and TIP submitted comments regarding the way the commission currently calculates compliance history. They contend that using the date of a final enforcement action (e.g., an Agreed Order) to determine when a violation affects a site's compliance score is flawed and can misrepresent a site's current performance.

TAM, TCC, TXOGA, and TIP noted that the commission's current method of using the date of the final enforcement action, rather than the date the violation actually took place, can penalize a company for years after the violation has been corrected. The commenters noted TWC §§5.754(c)(2)(B) and 7.302(b)(2) indicate that the legislature intended violations to be evaluated based on the date they happened.

TAM, TCC, TXOGA, and TIP noted that an entity with emissions events from 2018 through 2020 which are resolved in an Agreed Order in 2025, will remain a component until 2030, even though the company may have been compliant since 2020. The commenters believed the time gap between the violation and the resolution in a final order contradicts the purpose of compliance history, which is to accurately reflect a site's performance over a five-year period. They proposed revising the rules to ensure that compliance history points are only assessed for violations that happened within

the preceding five-year period.

TAM, TCC, TXOGA, and TIP suggested adding language to 30 TAC §60.1(b) and 30 TAC §60.2(g) so that the date assigned to violations in the compliance history report matches the incident date instead of the date of the final order or action.

Response:

The commission did not propose any changes to the length of time for the compliance period and believes these comments are outside the scope of this rulemaking. However, the commission recognizes that there may be instances where the time gap between the activity and the resolution in a final order may be less representative of an entity's recent compliance posture. In these instances, the commission believes that it is appropriate for the executive director to consider, and if appropriate, apply discretion provided under §60.2(g)(3)(A) that allows the executive director to grant a mitigating factor that will reclassify a site to a satisfactory rating level.
No changes were made in response to these comments.

Comment:

PCS, HCAO, Better Brazoria, and Public Citizen each requested that the commission incorporate local investigations and violations into the compliance history formula, although each commenter provided different reasons to support the request.

PCS contended that TWC §5.1773, requires inclusion of violations issued by local governments in an entity's compliance history rating. PCS notes the public is

encouraged to report non-compliance to the commission's regional offices. However, the commission refers some of these complaints to PCS for investigation. Violations noted as a result of these referred complaint investigations are not included in the compliance history formula. PCS adds that nothing in SB 1397 prohibits the addition of local violations in the compliance history formula, that TWC §26.173(a) grants local governments the same authority to conduct investigations and find violations as the commission, and the inclusion of these will allow permit-writers to render more-informed decisions. PCS requests that the TCEQ amend the rule to require that investigations conducted by and violation notices issued by local governments be included in a facility's compliance history rating.

HCAO contended that an entity's compliance history would be more accurate if it included local government violations. They noted that the exclusion of local government compliance information creates a disparity in that the commission can impact compliance history by issuing a written notice of violation, while a local government can only impact compliance history with a court judgment. This delay allows entities to renew their permits without consideration of full compliance performance. HCAO and Better Brazoria each cited an example where a concrete batch plant with nearly twenty locally issued notices of violation maintained a satisfactory classification, allowing the TCEQ to approve a ten-year permit renewal even while a lawsuit was pending in Harris County. HCAO contends that inclusion of local violations would have presented a more accurate and complete compliance history of the concrete batch plant.

Better Brazoria contended that the current exclusion of local compliance history components, particularly notices of violation, eliminates valuable information and leads to an incomplete picture of an entity's compliance performance. Better Brazoria posited that disregarding verified violations from local authorities overlooks systemic noncompliance that should be evaluated when designating repeat violator status or considering permit renewals, and incorporating these violations would lead to a more accurate compliance rating, which could necessitate permit denial or renewal in certain situations.

Public Citizen asserted that the inclusion of enforcement actions by local governments as a compliance history component should be considered as proposed in SB 277 and HB 3972 of the 89th legislative session.

Response:

The commission notes that local governments and municipalities are not obligated to report complaints, investigations, violations, and enforcement actions to this commission. In order to ensure that this information is provided to the commission so that it may be considered in the compliance history calculation would require contractual arrangements with each local government or municipality that has environmental ordinances. Additionally, because local governments and municipalities vary in their resources, there is inconsistency in their ability to conduct investigations and pursue enforcement actions which would lead to inconsistent determinations of compliance histories for regulated entities across the state. The commission is charged with developing standards for evaluating and using compliance history in a way that

ensures regulatory consistency, including standards that establish a system of classifications per TWC §§5.753(a) and 5.754(a).

No changes were made in response to these comments.

60.2 Classification

Comment:

Better Brazoria and AGC supported the revision to §60.2(a) to require semi-annual evaluation of compliance history. Since compliance ratings will be assessed on March 1st and September 1st of each year instead of annually, then this more frequent evaluation will lead to more accurate ratings, particularly for facilities with recent violations.

Response:

The commission appreciates the positive comments in support of the rules.

No changes were made in response to this comment.

Comment:

Both Better Brazoria and Public Citizen requested the agency update compliance history more frequently, or even immediately, when new information becomes available. Public Citizen noted significant delays in the enforcement process which allows entities to apply for permits with a positive compliance rating while pending

enforcement actions are not yet finalized. Public Citizen also emphasized that communities have a right to timely information about local facilities' compliance, which is essential for communities to advocate for stronger enforcement and hold both polluters and the commission accountable.

Better Brazoria and Public Citizen recommended updating compliance history ratings throughout the year, specifically suggesting that updates occur when new information is received, such as when orders are signed or notices of violations are issued.

Response:

The time necessary to complete the compliance history classification and rating development, review, and approval process does not allow for mass classifications more frequently than twice a year. Before the compliance history rating can be publicly posted, TWC §5.756 requires a quality control and assurance review, and a 30-day window for entities to review and comment on their score. These factors, among others, make it infeasible to update the compliance history classification rating in real time. The commission also notes that, although mass classification and publication will occur twice a year, a compliance history report containing the most recent components, including investigations, violations, and orders is used for internal enforcement and permitting considerations, in accordance with §60.1(b). In addition, TCEQ posts data about complaints, investigations, and violations on its website upon completion, so information is available to the public in a timely manner.

No changes were made in response to these comments.

Comment:

PCS, Better Brazoria, and Public Citizen expressed concern that under the compliance history program approximately 90% of regulated facilities are rated as "unclassified" in the compliance history database. This designation is given to sites that have no compliance history components in the database at the time that the mass classification is run. Better Brazoria and Public Citizen posited that this issue occurs because the formula does not include all relevant data. For example, PCS noted that data from local government investigations resulting in violations is excluded from the compliance history database, potentially making the unclassified number inaccurate. As a solution, Public Citizen recommended inclusion of citizen complaints, local government violations, and Tier II Deficiency Correction Reports to the compliance history formula and inclusion of minor and moderate violations to reduce the number of unclassified facilities.

In addition to the above comments, Better Brazoria requested two changes to address the “unclassified” classification 1) that an "unclassified" designation include a notation that the facility has no compliance history, and 2) that a contemporaneous compliance history review be completed when an unclassified facility seeks a permit renewal. If any violations are discovered as a result of that review, then investigations should be excluded as positive components in the site's compliance rating.

Response:

The commission acknowledges that the "unclassified" compliance history classification

is a source of public confusion. A “regulated entity” is a person, organization, place, or thing that is of environmental interest to TCEQ where regulatory activities of interest to the commission occur or have occurred in the past. Regulated entities are indexed in the commission’s “Central Registry”. Most of these entities do not have any of the components listed in §60.1(c). Entities that are commonly “unclassified” include construction sites with stormwater registrations, recycling centers, office buildings, and one-time shipment permittees. In order to ensure that a complete history of each site is maintained, the commission does not remove these types of entities from Central Registry. This leads to a continual increase in the number of entities with “unclassified” compliance history classifications. All entities are included in the compliance history mass classification and an entity’s “unclassified” status may change if compliance history components are added during the previous five years.

No changes were made in response to these comments; however, the commission agrees that adding a notation or further information to better explain the reason for an "unclassified" designation could help mitigate this confusion for the public.

Comment:

Better Brazoria stated that violations occurring in designated nonattainment areas, or impaired waterways, should be given a higher penalty. Failure to adequately weigh these violations results in inadequate consequences for polluting facilities, leading to inaccurate compliance history classifications and a lack of appropriate regulatory oversight. This deficiency may unfairly allow certain industrial facilities to avoid the stricter scrutiny warranted by their environmental impact. Better Brazoria

recommended that penalties for air program violations in nonattainment areas be weighted more heavily than violations in areas that meet EPA air standards.

Response:

The commission responds that, while it appreciates the concerns raised by the commenter, the penalty policy is outside the scope of this rulemaking.

No changes were made in response to this comment.

Comment:

Better Brazoria stated that the current complexity scoring system, though an improvement over NAICS codes, is flawed because it can artificially inflate an entity's compliance rating while failing to accurately reflect true environmental and public health risks. They assert that the rigid, permit-type and size-based point system underestimates the risk of certain operations. Better Brazoria provided an example of an entity with a single, high-risk permit like hazardous waste disposal who could score lower than a less risky facility with multiple low-point permits. This system is problematic because complexity points increase the denominator in the compliance rating formula, effectively diluting the impact of violations, meaning complexity forgives violations rather than adding weight to them. This low threshold allows complex, dangerous facilities to incur many minor infractions before being flagged as a repeat violator, which poses a significant and avoidable risk to local communities. Better Brazoria cited the TPC Port Neches disaster, which had over eighty emissions events in the five years preceding the explosion on site. To correct this, Better Brazoria

proposes either increasing repeat violation points to offset the artificial inflation from complexity points or assigning more weight to violations incurred by complex facilities, ensuring that a facility's complexity score truly reflects the potential risk it poses and that patterns of non-compliance always have consequences.

Response:

The commission responds that its compliance history regulations are applicable to a wide range of regulated entities, and the commission reviewed the compliance history formula for factors that could be adjusted in a meaningful way to address the Sunset Commission’s concerns. The inclusion of moderate and minor violations to the repeat violator calculation should more accurately reflect the compliance status of facilities of all sizes, and ensure that facilities with more violations will be considered for repeat violator status. The implementation of five complexity categories with corresponding repeat violation point thresholds should provide more granularity to ensure that facilities are held to appropriately stringent requirements for their complexity.

No changes were made in response to this comment.

Comment:

The AGC supported the proposed overall approach for calculating "repeat violation points." AGC believed it is appropriate to include only final enforcement orders, court judgements, and criminal convictions; and it is appropriate to give proper weight to minor, moderate, and major violations.

Response:

The commission appreciates the positive comment in support of the rules.

No changes were made in response to this comment.

Comment:

AGC supported the proposed exclusion of NOVs from the classification of "repeat violator." AGC noted that TWC §5.753 already recognizes that NOVs are not final actions. Further, NOVs are an important tool for achieving compliance quickly, and conserving agency resources through early resolution at the Regional Office level.

Response:

The commission appreciates the positive comment in support of the rules.

No changes were made in response to this comment.

Comment:

Public Citizen and Better Brazoria each advocated for the inclusion of all NOVs in the repeat violator calculation for a period of five years. Each NOV should be assigned points related to the severity, frequency, and complexity of the violation. The commenters asserted that this change would ensure a more accurate and comprehensive compliance history calculation.

Response:

The commission recognizes that the repeat violator designation has a rightfully severe impact on compliance history scores.

Previously, the repeat violator formula only included major violations. Major violations typically result in formal enforcement. With the removal of the consideration of NOVs from the repeat violator formula, the commission is adding moderate and minor violations and will only include violations from final commission actions after due process has been provided. It should be noted that NOVs are evaluated for severity and impact in accordance with §60.2(d). The commission did not propose any changes to §60.2(d) and therefore comments related to that section are outside the scope of this rulemaking. Moreover, the commission also believes the §60.2(d) classification for major, moderate, and minor violations is appropriate.

No changes were made in response to these comments.

Comment:

Public Citizen asserted that the current compliance history system overlooks a significant portion of environmental violations by excluding "minor" and "moderate" violations. Public Citizen pointed to the commission’s 2024 Annual Enforcement Report which showed the minor and moderate categories accounted for 86% of all violations during the fiscal year. Moderate violations were the most common type, representing 70% of the total. Public Citizen emphasized that regardless of the perceived severity of individual violations, their cumulative effect remains harmful to communities already overburdened by pollution. Including minor and moderate

violations in the repeat violator criteria closes this loophole to further prevent chronic polluters from avoiding the repeat violator designation and meaningful consequences.

Response:

The commission appreciates the positive comment in support of the rules.

No changes were made in response to this comment.

Comment:

Better Brazoria alleged that proposed §60.2(f)(4) violates the Legislature's intent by granting the Executive Director discretion to downgrade a facility's compliance history or grant an exemption from repeat violator status if the violations "do not warrant the designation." Better Brazoria stated this broad discretion, without any qualifiers, prevents the public and regulated community from knowing what conditions justify an exemption. They believe that this discretionary allowance was intended only for "exigent circumstances" and urge the commission to develop clear, static criteria for exemptions or to incorporate a policy by reference. Furthermore, they recommend that the rules adopt a definition of "exigent circumstances" that is narrow and consistent with the Sunset Advisory Commission's definition, thereby eliminating the current, much broader discretionary authority.

Response:

The executive director continues to have discretion to exempt an entity from the repeat violator designation based on the nature of the violations and conditions

leading to the violations. This discretion is necessary to allow for case-by-case evaluation of circumstances. The commission adopted this provision in 2012 because it was concerned that a repeat violator designation could be applied to an entity based on circumstances beyond their reasonable control. As stated in 2012, the commission expects the executive director to be stringent in application of the provision.

In addition to the repeat violator exemption, the executive director also has discretionary authority to adjust an entity's classification between compliance rating years through §60.4.

No changes were made in response to this comment.

Comment:

The AGC requested the commission retain the "separate occasion" language in §60.2(f). AGC noted that Senate Bill 1397 did not change the commissions mandate to "establish criteria" for the "repeat violator" classification, i.e., that language was not changed by the Legislature. Under this authority, AGC noted that the commission maintains the authority to retain the "separate occasion" language and respectfully requested keeping the current language.

Response:

Historically, the commission has considered each order or enforcement action as a "separate occasion" regardless of the number of major violations included in the order. Given the requirement in Senate Bill 1397 to also consider minor and moderate

violations, the commission must now document each violation separately to ensure proper calculation of the repeat violator score. Since the methodology for considering violations in the repeat violator calculation has changed, the commission is removing the "separate occasion" language.

No changes were made in response to this comment.

Comment:

TAM, TCC, TXOGA, and TIP, requested revision to §60.2(f) to align with the commenters interpretation of TWC §5.754(c)(2)(B). They asserted that the statute's language "occurred in the preceding five years," mandates that repeat violator status must be based solely on violations with a violation date within five years of the date compliance history is run. TAM, TCC, TXOGA, and TIP noted that the current commission practice uses the date of the final enforcement action (such as an Agreed Order) to determine when components are added to compliance history, which can include violations that occurred more than five years ago. To correct this, they propose amending the rule to explicitly state that a person may be classified as a repeat violator only when multiple major, moderate, or minor violations of the same nature and environmental media that occurred within the five-year compliance period preceding the date compliance history is run should be considered. This revision, they contend, is necessary to comply with the plain language of the Texas Water Code, reduce ambiguity, and streamline the evaluation process.

Response:

The commission did not propose any changes to the length of time for the repeat violator calculation and believes these comments are outside the scope of this rulemaking. However, the commission recognizes that there may be instances where the time gap between the activity and the resolution in a final order may be less representative of an entity's recent compliance posture.

In these instances, the commission believes that it is appropriate for the executive director to consider, and if appropriate, apply discretion provided under §60.2(f) that allows the executive director to grant an exemption if "the nature of the violations and the conditions leading to the violations do not warrant the designation." The executive director may review the date the underlying violations associated with each proposed repeat violator designation were committed during the quality control and quality assurance review period. If the executive director conducts a review and determines that the underlying violations do not warrant the designation, the executive director will grant an exemption. This review may also occur in response to requests during the ARCH review period or appeals window.

No changes were made in response to this comment.

Comment:

TAM, TCC, TXOGA, and TIP, requested changing the definition of "same nature" in 30 TAC §60.2(f) for determining repeat violator status, noting that the definition uses a broad "root citation" approach, classifying any violations under the same rule subsection as being of the same nature. TAM, TCC, TXOGA, and TIP specifically

invoked 30 TAC §116.115, which encompasses permit violations without differentiating between the nature of the violations cited. They contended that the proposed inclusion of minor and moderate violations, when combined with this existing definition, will unfairly result in an unrepresentative number of repeat violators. To ensure a more accurate assessment of a facility's compliance pattern, they proposed amending the rule to define "same nature" more narrowly, requiring that violations must involve the same equipment and same root cause, in addition to the root citation. TAM, TCC, TXOGA, and TIP contended that this change is supported by existing practice for Title V violations, aligns with the Texas Water Code's emphasis on root cause analysis, and addresses the Sunset Report's call to identify common patterns of noncompliance.

Response:

The commission agrees that some regulations, including Title V of the Clean Air Act, consider the same equipment and root cause that, where such information is provided by the entity, may be considered in the "same nature" determination. However, there is not a consistent requirement for entities to identify the equipment and root cause for all violations. To expand this definition of "same nature" to all violations of all programs within the commission's authority would require significant changes to statutes, rules, authorizations, and policies. Frequently, determining the root cause is not always possible. Additionally, it is not the responsibility of the commission to determine what caused a failure at a site. The commission's focus is on evaluating compliance with applicable requirements, while finding and correcting the cause of a violation is the responsibility of the site owner and operator.

Regulations and rules are generally separated by environmental media. For example, air rules are located in 30 TAC chs. 101, 106, 111, 112, 113, 114, 115, 116, 117. Violations that cite these rules will involve the same environmental media with a similar nature. The violation description may explain the point of failure that contributed to the violation, if the information is available. With a similar point of failure, the nature of the violations will generally be similar. In addition, the commission reviews violations during the quality control and quality assurance process to ensure they involve the same nature and environmental media. This essential review process will be maintained under the proposed rule per §60.2(f), which provides that the executive director is able to evaluate if the repeat violator designation is warranted considering the nature of the violations and the conditions leading to the violations.

The commission may record the root cause of a violation if that information is available. If an entity believes the citation level fails to give adequate consideration of the “same nature” principle, there are several levels of review that are available for reviewing and correcting any errors. The commission rules require an internal quality control and quality assurance procedure to proactively identify errors, as well as allowing correction requests to be submitted at any time. The executive director may also adjust the repeat violator designation when information provided by the entity demonstrates the violation is not repeating. If during any level of review, the executive director determines that the “same nature” determination is not appropriate, the executive director will remove the violations from consideration. Finally, entities may

also avail themselves of the appeals process in §60.3(e).

No changes were made in response to these comments.

Comment:

TAM, TCC, TXOGA, and TIP proposed reducing the points assigned to “moderate violations” in §60.2(f) from 10 to 5 points. They expressed concern that the proposed 10-point value, coupled with the broad definition of moderate violations, could unfairly trigger “repeat violator” status for sites with minimal, infrequent emissions events. Specifically, they note that under the proposal, a site with just three one-hour emissions events annually could be classified as a repeat violator. They believed this would be contrary to the Sunset Report's focus on “habitual noncompliance” which included examples of facilities having over 40 emissions events. TAM, TCC, TXOGA, and TIP contended that the proposed threshold would inaccurately represent a site’s true compliance, potentially penalizing sites with successful compliance programs for minor, corrected events. They therefore proposed revising §60.2(f)(2) to assign 5 points for each moderate violation to create a more balanced threshold.

Response:

The commission notes that the proposed point values of 2, 10, and 50 are intentionally structured so that if an entity commits the same violation annually over a five-year period, the cumulative impact elevates the classification to the next level. This design ensures that frequent, lower-level violations are appropriately addressed over time. For instance, a gas station that repeatedly fails to maintain consistent leak detection

records would eventually accumulate enough points from these minor violations to be equivalent to a single moderate violation. Reducing the point value for a moderate violation from 10 to 5 would drastically increase the number of violations a facility would need to accrue to meet the repeat violator threshold, effectively doubling the requirement over a five-year period. The changes in 30 TAC § 60.2(f)(3), related to repeat violator point thresholds for different complexity categories, takes into account the potentially adverse impact of moderate and minor violations in determining if a facility should be a repeat violator and achieves a similar result to lowering the points assigned to moderate violations.

No changes were made in response to these comments.

Comment:

TAM, TCC, and TXOGA requested that the repeat violator threshold be increased to 250 points for sites with 30 or more complexity points.

Similarly, TIP requested the creation of a new complexity category with a separate repeat violator point threshold. Specifically, TIP recommended a threshold of 250 repeat violator points for sites with over 30 complexity points. TIP contends that using the current 15-complexity-point threshold to separate all sites into just two compliance levels disproportionately disadvantages highly complex sites, such as large refineries and chemical plants. These larger facilities have many more emissions points and permit obligations, naturally increasing their risk of accumulating minor noncompliance points. Consequently, a site with 15 complexity points is less likely to

reach the 150-point repeat violator threshold, even with a single major violation, than a site with 50+ complexity points. TIP concludes that grouping a 50+ complexity point site with a 15-point site, which they assert are far from "similar complexity," violates the spirit of the Sunset Report and could unfairly label large sites as repeat violators simply due to their size rather than their actual compliance performance.

Response:

In preparing the proposed rule, the commission conducted simulations using several years of historical data to evaluate the potential impact of different point values on various entities. These simulations analyzed how repeat violation points and repeat violator thresholds could affect different types of entities.

The commission recognizes that the inclusion of both moderate and minor violations will make it more likely for entities to accumulate points and reach the repeat violator thresholds. This is particularly true for entities who are required to self-report violations. To reduce the impact of minor and moderate violations in facilities that would not otherwise be considered repeat violators, while ensuring that minor and moderate violations are integral to the repeat violator calculation, the commission has adjusted the proposed rule to include five complexity categories with point thresholds ranging from 150 to 550 based on complexity category. These changes are documented in §60.2(f)(3).

Comment:

AGC noted that the "Repeat Violator" status currently results in a 25 percent penalty

enhancement. The proposed preamble acknowledges that adding minor and moderate violations will result in more repeat violators. While beyond the scope of the rulemaking, AGC requests the commission modify the penalty policy, such as adding a tiered approach for penalty enhancements, with lower penalty enhancements for entities that are repeat violators on the basis of minor or moderate violations alone.

Response:

The commission responds that, while it appreciates the concerns raised by the commenter, it agrees that the penalty policy is outside the scope of this rulemaking. The commission considered how including minor and moderate violations will impact all entities. By assigning weighted points to these violations and requiring a minimum point threshold, the commission will ensure only deserving entities are designated as repeat violators.

No changes were made in response to this comment.

Comment:

Better Brazoria contended that the proposed criteria for classifying a repeat violator fails to provide an accurate picture of a facility's overall compliance history because violations must be of the same environmental media. Better Brazoria stated that complex facilities with permits across various media, such as air, water, and waste, may escape repeat violator status because the violations are not in the same media, despite demonstrating a clear pattern of non-compliance. Better Brazoria emphasized that multiple violations across different environmental media often signal a broader,

systemic compliance problem at a facility, regardless of its complexity. For example, an operation failing on both a stormwater permit and a separate permit or registration indicates deeper issues, which, even if seemingly minor, impact public health, such as contaminated runoff and particulate matter releases from operations near communities. Commenters therefore requested the repeat violator classification be updated to incorporate and assess habitual violations across media types when they point to a systemic issue.

TAM, TCC, TXOGA and TIP noted a lack of clarity regarding whether the required point total is calculated across all media (a total of 150 points) or only within a single medium (e.g., 150 points for air and 150 points for water). TAM, TCC, TXOGA, and TIP requested revising the proposed rule, to apply a separate repeat violator point total for each environmental media (e.g., air, water, waste), in accordance with TWC §5.754(c)(2)(B), which mandates that repeat violator consideration be limited to violations of "the same nature and the same environmental media."

Response:

The commission acknowledges that the proposed preamble did not directly clarify how the rule would handle repeat violations across environmental media types. TWC §5.754(c)(2)(B) requires that, for the purpose of designating repeat violators, the commission must consider all violations of the same nature and environmental media. As outlined in the proposed preamble, when an entity has multiple violations of the same nature and environmental media within the preceding five-year period, the points from these violations are combined. The points from all repeating violations on a site

are then totaled across all environmental media to determine whether the entity exceeds its designated repeat violator threshold.

For example, a refinery with both multiple air emission violations and multiple wastewater discharge violations would have the points from each set of repeating violations, air and water, added together to determine if it is a repeat violator. This holistic approach helps ensure that systemic issues across environmental media are more quickly identified through the repeat violation formula.

No changes were made in response to these comments.

Comment:

TAM, TCC, TXOGA, and TIP asserted that the current rule's compliance history formula disproportionately impacts smaller entities, such as upstream production facilities, which means a single emissions event with an associated reporting or recordkeeping violation can cause these sites to trigger an unsatisfactory compliance history designation. However, the commenters asserted a single event does not accurately reflect overall poor performance, making a reclassification process necessary to accurately represent a facility's compliance record. TAM, TCC, TXOGA, and TIP requested the addition of a mitigating factor to allow reclassification of unsatisfactory less complex sites (those with 15 or fewer complexity points) to a satisfactory classification.

Response:

The commission acknowledges that the smallest entities could be unfairly designated as unsatisfactory performers for committing two minor or two moderate violations. To address this concern, the commission is raising the threshold for unsatisfactory performance from 55 to 60 points. Therefore, a separate mitigating factor for a single minor or moderate violation is not necessary.

No changes were made in response to these comments.

§60.3 Use of Compliance History

Comment:

Better Brazoria appreciated the proposal to evaluate compliance history more frequently. However, they expressed concern that evaluating and rating compliance history twice a year may give industrial operators more opportunities to challenge unfavorable, but accurate, designations. To ensure compliance ratings remain accurate and to minimize these appeals, Better Brazoria requested a shortened appeal window to prevent industrial operators from having extended opportunities to challenge unfavorable compliance history classifications.

Response:

The commission responds that the compliance history rules apply to a wide range of regulated entities with varying sizes and complexities. The commission recognizes that a rule of such broad application may create situations where unique factual circumstances may warrant the exercise of additional review through the appeals

process. To prevent an unmanageable number of appeals to the executive director, the right of an appeal is already limited to unsatisfactory performers, repeat violators, and satisfactory performers with 45 points or higher. Unsatisfactory performers and repeat violators receive additional oversight and regulatory restrictions by the commission and providing an avenue for these entities to supply additional information to the executive director to appeal the classification is warranted. With these limitations, the commission is not reducing the 45-day appeal window for regulated entities at this time.

No changes were made in response to this comment.

Comment:

Public Citizen asserted that while the rulemaking considered the duration of the appeal window for regulated entities, it failed to include any measures for transparency in the appeals process. Currently, the Compliance History website states that appeals rely solely on submitted written documentation, as "here is no hearing associated with this process." Given the lack of a public hearing, the commenter requested access be granted, upon request, to all documentation and reasoning submitted to or considered by the commission when determining whether to grant an appeal.

Response:

The commission operates in adherence to the Public Information Act. Consequently, documents and materials related to the appeals process may be requested and

released in accordance with the Act's provisions through the commission's public information request process.

No changes were made in response to this comment.

Comment:

Better Brazoria asserted that a flaw with compliance history is that entities are able to self-report which removes the commission's ability to protect public health. The commenter requests that any entities which self-report compliance history data be subject to auditing and independent data verification.

Response:

This comment is outside the scope of this rulemaking. However, the commission agrees that self-reported data should be subject to auditing and independent data verification. To ensure this, the commission reviews self-reported data and evaluates it against applicable requirements, often requesting additional information to determine if the entity's evaluation was appropriate. The commission cites violations for noncompliance whether they are self-reported or identified through an investigation.

No changes were made in response to this comment.

§60.1 and §60.2

Statutory Authority

The amended rules are adopted under the authority of Texas Water Code (TWC), §5.753, concerning Standards for Evaluating and Using Compliance History, and TWC, §5.754, as amended by Senate Bill 1397, 88th Legislature, 2023, Section 13, concerning Classification and Use of Compliance History, which authorize rulemaking to establish compliance history standards, call upon the compliance history program to ensure consistency, and establish criteria for classifying a repeat violator. These provisions do not restrict the application of such classifications to be at specific intervals. Additional authority exists under TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted amended rules implement TWC, §§5.102, 5.103, 5.753, and 5.754.

§60.1. Compliance History.

(a) Applicability. The provisions of this chapter are applicable to all persons subject to the requirements of Texas Water Code (TWC), Chapters 26, 27, and 32 and Texas Health and Safety Code (THSC), Chapters 361, 375, 382, and 401.

(1) Specifically, the agency will utilize compliance history when making decisions regarding:

(A) the issuance, renewal, amendment, modification, denial, suspension, or revocation of a permit;

(B) enforcement;

(C) the use of announced investigations; and

(D) participation in innovative programs.

(2) For purposes of this chapter, the term "permit" means licenses, certificates, registrations, approvals, permits by rule, standard permits, or other forms of authorization.

(3) With respect to authorizations, this chapter only applies to forms of authorization, including temporary authorizations, that require some level of notification to the agency, and which, after receipt by the agency, requires the agency to make a substantive review of and approval or disapproval of the authorization required in the notification or submittal. For the purposes of this rule, "substantive review of and approval or disapproval" means action by the agency to determine, prior to issuance of the requested authorization, and based on the notification or other submittal, whether the person making the notification has satisfied statutory or

regulatory criteria that are prerequisites to issuance of such authorization. The term "substantive review or response" does not include confirmation of receipt of a submittal.

(4) Notwithstanding paragraphs (2) and (3) of this subsection, this chapter does not apply to certain permit actions such as:

(A) voluntary permit revocations;

(B) minor amendments and nonsubstantive corrections to permits;

(C) Texas pollutant discharge elimination system and underground injection control minor permit modifications;

(D) Class 1 solid waste modifications, except for changes in ownership;

(E) municipal solid waste Class I modifications, except for temporary authorizations and municipal solid waste Class I modifications requiring public notice;

(F) permit alterations;

(G) administrative revisions; and

(H) air quality new source review permit amendments which meet the criteria of §39.402(a)(3)(A) - (C) and (5)(A) - (C) of this title (relating to Applicability to Air Quality Permits and Permit Amendments) and minor permit revisions under Chapter 122 of this title (relating to Federal Operating Permits Program).

(5) Further, this chapter does not apply to occupational licensing programs under the jurisdiction of the commission.

(6) This rule will become effective on September 1, 2026. The executive director shall continue in effect the standards and use of compliance history for any action (permitting, enforcement, or otherwise) that were in effect before the effective date of the rule.

(7), this chapter shall apply to the use of compliance history in agency decisions relating to:

(A) applications submitted on or after this date for the issuance, amendment, modification, or renewal of permits;

(B) inspections and flexible permitting;

(C) a proceeding that is initiated or an action that is brought on or after this date for the suspension or revocation of a permit or the imposition of a penalty in a matter under the jurisdiction of the commission; and

(D) applications submitted on or after this date for other forms of authorization, or participation in an innovative program, except for flexible permitting.

(8) If a motion for reconsideration or a motion to overturn is filed under §50.39 or §50.139 of this title (relating to Motion for Reconsideration; and Motion to Overturn Executive Director's Decision) with respect to any of the actions listed in paragraph (4) of this subsection, and is set for commission agenda, a compliance history shall be prepared by the executive director and filed with the Office of the Chief Clerk no later than six days before the Motion is considered on the commission agenda.

(b) Compliance period. The compliance history period includes the five years prior to the date the permit application is received by the executive director; the five-year period preceding the date of the initial enforcement screening; for purposes of determining whether an announced investigation is appropriate, the five-year period preceding an investigation; or the five years prior to the date the application for participation in an innovative program is received by the executive director. The compliance history period may be extended beyond the date the application for the permit or participation in an innovative program is received by the executive director, up through completion of review of the application. Notices of violation may only be

used as a component of compliance history for a period not to exceed one year from the date of issuance.

(c) Components. The compliance history shall include multimedia compliance-related information about a person, specific to the site which is under review, as well as other sites which are owned or operated by the same person. The components are:

(1) any final enforcement orders, court judgments, and criminal convictions of this state relating to compliance with applicable legal requirements under the jurisdiction of the commission. "Applicable legal requirement" means an environmental law, regulation, permit, order, consent decree, or other requirement;

(2) notwithstanding any other provision of the TWC, orders developed under TWC, §7.070 and approved by the commission on or after February 1, 2002;

(3) to the extent readily available to the executive director, final enforcement orders, court judgments, consent decrees, and criminal convictions relating to violations of environmental rules of the United States Environmental Protection Agency;

(4) chronic excessive emissions events. For purposes of this chapter, the term "emissions event" is the same as defined in THSC, §382.0215(a);

(5) any information required by law or any compliance-related requirement necessary to maintain federal program authorization;

(6) the dates of investigations;

(7) all written notices of violation for a period not to exceed one year from the date of issuance of each notice of violation, including written notification of a violation from a regulated person, issued on or after September 1, 1999, except for those administratively determined to be without merit;

(8) the date of letters notifying the executive director of an intended audit conducted and any violations disclosed and having received immunity under the Texas Environmental, Health, and Safety Audit Privilege Act (Audit Act), 85th Legislature, 2017, TEX. HEALTH AND SAFETY CODE ch. 1101;

(9) an environmental management system approved under Chapter 90 of this title (relating to Innovative Programs), if any, used for environmental compliance;

(10) any voluntary on-site compliance assessments conducted by the executive director under a special assistance program;

(11) participation in a voluntary pollution reduction program; and

(12) a description of early compliance with or offer of a product that meets future state or federal government environmental requirements.

(d) Change in ownership. In addition to the requirements in subsections (b) and (c) of this section, if ownership of the site changed during the five-year compliance period, a distinction of compliance history of the site under each owner during that five-year period shall be made. Specifically, for any part of the compliance period that involves a previous owner, the compliance history will include only the site under review. For the purposes of this rule, a change in operator shall be considered a change in ownership if the operator is a co-permittee.

§60.2. Classification.

(a) Classifications. Beginning September 1, 2002, the executive director shall evaluate the compliance history of each site and classify each site and person as needed for the actions listed in §60.1(a)(1) of this title (relating to Compliance History). On September 1, 2026, and semi-annually thereafter, the executive director shall evaluate the compliance history of each site, and classify each site and person. For the purposes of classification in this chapter, and except with regard to portable units, "site" means all regulated units, facilities, equipment, structures, or sources at one street address or location that are owned or operated by the same person. Site includes any property identified in the permit or used in connection with the regulated activity at the same street address or location. A "site" for a portable regulated unit or facility

is any location where the unit or facility is or has operated. Each site and person shall be classified as:

(1) a high performer, which has an above-satisfactory compliance record;

(2) a satisfactory performer, which generally complies with environmental regulations; or

(3) an unsatisfactory performer, which performs below minimal acceptable performance standards established by the commission.

(b) Inadequate information. For purposes of this rule, "inadequate information" shall be defined as no compliance information. If there is no compliance information about the site at the time the executive director develops the compliance history classification, then the classification shall be designated as "unclassified." The executive director may conduct an investigation to develop a compliance history.

(c) Groupings. Sites will be divided into groupings based on complexity or other information available to the executive director. The complexity calculation is described in subsection (e) of this section (relating to Classification).

(d) Major, moderate, and minor violations. In classifying a site's compliance history, the executive director shall determine whether a documented violation of an applicable legal requirement is of major, moderate, or minor significance.

(1) Major violations are:

(A) a violation of a commission enforcement order, court order, or consent decree;

(B) operating without required authorization or using a facility that does not possess required authorization;

(C) an unauthorized release, emission, or discharge of pollutants that caused, or occurred at levels or volumes sufficient to cause, adverse effects on human health, safety, or the environment;

(D) falsification of data, documents, or reports; and

(E) any violation included in a criminal conviction, which required the prosecutor to prove a culpable mental state or a level of intent to secure the conviction.

(2) Moderate violations are:

(A) complete or substantial failure to monitor, analyze, or test a release, emission, or discharge, as required by a commission rule or permit;

(B) complete or substantial failure to submit or maintain records, as required by a commission rule or permit;

(C) not having an operator whose level of license, certification, or other authorization is adequate to meet applicable rule requirements;

(D) any unauthorized release, emission, or discharge of pollutants that is not classified as a major violation;

(E) complete or substantial failure to conduct a unit or facility inspection, as required by a commission rule or permit;

(F) any violation included in a criminal conviction, for a strict liability offense, in which the statute plainly dispenses with any intent element needed to be proven to secure the conviction; and

(G) maintaining or operating regulated units, facilities, equipment, structures, or sources in a manner that could cause an unauthorized or noncompliant release, emission, or discharge of pollutants.

(3) Minor violations are:

(A) performing most, but not all, of a monitoring or testing requirement, including required unit or facility inspections;

(B) performing most, but not all, of an analysis or waste characterization requirement;

(C) performing most, but not all, of a requirement addressing the submittal or maintenance of required data, documents, notifications, plans, or reports; and

(D) maintaining or operating regulated units, facilities, equipment, structures, or sources in a manner not otherwise classified as moderate.

(e) Complexity Points. All sites classified shall have complexity points as follows:

(1) Program Participation Points. A site shall be assigned Program Participation Points based upon its types of authorizations, as follows:

(A) four points for each permit type listed in clauses (i) - (viii) of this subparagraph issued to a person at a site:

(i) Radioactive Waste Disposal;

(ii) Hazardous or Industrial Non-Hazardous Storage Processing or Disposal;

(iii) Municipal Solid Waste Type I;

(iv) Prevention of Significant Deterioration;

(v) Phase I--Municipal Separate Storm Sewer System;

(vi) Texas Pollutant Discharge Elimination System (TPDES) or National Pollutant Discharge Elimination System (NPDES) Industrial or Municipal Major;

(vii) Nonattainment New Source Review; and

(viii) Underground Injection Control Class I/III;

(B) three points for each type of authorization listed in clauses (i) - (iv) of this subparagraph issued to a person at a site:

(i) Municipal Solid Waste Type I AE;

(ii) Municipal Solid Waste Type IV, V, or VI;

(iii) Municipal Solid Waste Type IV AE; and

(iv) TPDES or NPDES Industrial or Municipal Minor;

(C) two points for each permit type listed in clauses (i) - (iii) of this subparagraph issued to a person at a site or utilized by a person at a site:

(i) Title V Federal Operating Permit;

(ii) New Source Review individual permit; and

(iii) any other individual site-specific water quality permit not referenced in subparagraph (A) or (B) of this paragraph or any water quality general permit;

(D) one point for each type of authorization listed in clauses (i) - (xiii) of this subparagraph issued to a person at a site or utilized by a person at a site:

(i) Edwards Aquifer authorization;

(ii) Enclosed Structure permit or registration relating to the use of land over a closed Municipal Solid Waste landfill;

(iii) Industrial Hazardous Waste registration;

(iv) Municipal Solid Waste Tire Registrations;

(v) Other types of Municipal Solid Waste permits or registrations not listed in subparagraphs (A) - (C) of this paragraph;

(vi) Petroleum Storage Tank registration;

(vii) Radioactive Waste Storage or Processing license;

(viii) Sludge registration or permit;

(ix) Stage II Vapor Recovery registration;

(x) Municipal Solid Waste Type IX;

(xi) Permit by Rule requiring submission of an application under Chapter 106 of this title (relating to Permits by Rule);

(xii) Uranium license; and

(xiii) Air Quality Standard Permits.

(2) Size. Every site shall be assigned points based upon size as determined by the following:

(A) Facility Identification Numbers (FINs): The total number of FINS at a site will be multiplied by 0.02 and rounded up to the nearest whole number.

(B) Water Quality external outfalls:

(i) 10 points for a site with ten or more external outfalls;

(ii) 5 points for a site with at least five, but fewer than ten, external outfalls;

(iii) 3 points for sites with at least two, but fewer than five, external outfalls; and

(iv) 1 point for sites with one external outfall;

(C) Active Hazardous Waste Management Units (AHWMUs):

(i) 10 points for sites with 50 or more AHWMUs;

(ii) 5 points for sites with at least 20, but fewer than 50, AHWMUs;

(iii) 3 points for sites with at least ten, but fewer than 20, AHWMUs; and

(iv) 1 point for sites with at least one but fewer than ten AHWMUs.

(D) Small Entities shall receive 3 points. A small entity is defined as: a city with a population of less than 5,000; a county with a population of less than 25,000; or a small business. A small business is defined as any person, firm, or business which employs, by direct payroll and/or through contract, fewer than 100 full-time employees. A business that is a wholly owned subsidiary of a corporation shall not qualify as a small business if the parent organization does not qualify as a small business.

(E) Underground Storage Tanks (USTs) and Aboveground Storage Tanks (ASTs):

(i) 4 points for sites with 11 or more USTs;

(ii) 3 points for sites with five to ten USTs;

(iii) 3 points for sites with more than 11 ASTs;

(iv) 2 points for sites with three to four USTs;

(v) 2 points for sites with three to ten, ASTs;

(vi) 1 point for sites with one to two USTs; and

(vii) 1 point for sites with one to two ASTs.

(3) Nonattainment area points. Every site located in a nonattainment area shall be assigned 1 point.

(4) The subtotals from paragraphs (1) - (3) of this subsection shall be summed.

(f) Repeat violator.

(1) Repeat violator criteria. A person may be classified as a repeat violator at a site when multiple major, moderate, or minor violations of the same nature and the same environmental media occurs during the preceding five-year compliance period. Same nature is defined as violations that have the same root citation at the subsection level. For example, all rules under §334.50 of this title (relating to Release Detection) (e.g. §334.50(a) or (b)(2) of this title) would be considered same nature. The total complexity points for a site equals the sum of points assigned to a specific site in subsection (e) of this section.

(2) Repeat violation points. Each repeat violation will be:

(A) Assigned 2 points for each minor violation as documented in any final enforcement orders, court judgments, and criminal convictions;

(B) Assigned 10 points for each moderate violation as documented in any final enforcement orders, court judgments, and criminal convictions; and

(C) Assigned 50 points for each major violation as documented in any final enforcement orders, court judgments, and criminal convictions.

(3) A person is a repeat violator at a site when the number of repeat violation points is:

(A) Equal to or greater than 550 for sites with 60 or more complexity points; or,

(B) Equal to or greater than 450 for sites with 45 to 59 complexity points; or,

(C) Equal to or greater than 350 for sites with 30 to 44 complexity points; or,

(D) Equal to or greater than 250 for sites with 15 to 29 complexity points; or,

(E) Equal to or greater than 150 for sites with less than 15 complexity points.

(4) Repeat violator exemption. The executive director shall designate a person as a repeat violator as provided in this subsection, unless the executive director determines the nature of the violations and the conditions leading to the violations do not warrant the designation.

(g) Formula. The executive director shall determine a site rating based upon the following method.

(1) Site rating. For the time period reviewed, the following calculations shall be performed based upon the compliance history at the site.

(A) The number of major violations contained in:

(i) any adjudicated final court judgments and default judgments, shall be multiplied by 160;

(ii) any non-adjudicated final court judgments or consent decrees without a denial of liability shall be multiplied by 140;

(iii) any non-adjudicated final court judgments or consent decrees containing a denial of liability, adjudicated final enforcement orders, and default orders, shall be multiplied by 120;

(iv) any final prohibitory emergency orders issued by the commission shall be multiplied by 120;

(v) any agreed final enforcement orders without a denial of liability shall be multiplied by 100; and

(vi) any agreed final enforcement orders containing a denial of liability shall be multiplied by 80.

(B) The number of moderate violations contained in:

(i) any adjudicated final court judgments and default judgments shall be multiplied by 115;

(ii) any non-adjudicated final court judgments or consent decrees without a denial of liability shall be multiplied by 95;

(iii) any non-adjudicated final court judgments or consent decrees containing a denial of liability, adjudicated final enforcement orders, and default orders, shall be multiplied by 75;

(iv) any agreed final enforcement orders without a denial of liability shall be multiplied by 60; and

(v) any agreed final enforcement orders containing a denial of liability shall be multiplied by 45.

(C) The number of minor violations contained in:

(i) any adjudicated final court judgments and default judgments shall be multiplied by 45;

(ii) any non-adjudicated final court judgments or consent decrees without a denial of liability shall be multiplied by 35;

(iii) any non-adjudicated final court judgments or consent decrees containing a denial of liability, adjudicated final enforcement orders, and default orders, shall be multiplied by 25;

(iv) any agreed final enforcement orders without a denial of liability shall be multiplied by 20; and

(v) any agreed final enforcement orders containing a denial of liability shall be multiplied by 15.

(D) The total number of points assigned for all resolved violations in subparagraphs (A) - (C) of this paragraph will be reduced based on achievement of compliance with all ordering provisions. For the first two years after the effective date of the enforcement order(s), court judgment(s), consent decree(s), and criminal conviction(s), the site will receive the total number of points assigned for violations in subparagraphs (A) - (C) of this paragraph. If all violations in subparagraphs (A) - (C) of this paragraph are resolved and compliance with all ordering provisions is achieved, for each enforcement order(s), court judgment(s), consent decree(s), and criminal conviction(s) :

(i) under two years old, the points associated with the violations in subparagraphs (A) - (C) of this paragraph will be multiplied by 1.0;

(ii) over two years old, the points associated with the violations in subparagraphs (A) - (C) of this paragraph will be multiplied by 0.75;

(iii) over three years old, the points associated with the violations in subparagraphs (A) - (C) of this paragraph will be multiplied by 0.50; and

(iv) over four years old, the points associated with the violations in subparagraphs (A) - (C) of this paragraph will be multiplied by 0.25.

(E) The number of major violations contained in any notices of violation shall be multiplied by 10.

(F) The number of moderate violations contained in any notices of violation shall be multiplied by 4.

(G) The number of minor violations contained in any notices of violation shall be multiplied by 1.

(H) The number of counts in all criminal convictions:

(i) under Texas Water Code (TWC), §§7.145, 7.152, 7.153, 7.162(a)(1) - (5), 7.163(a)(1) - (3), 7.164, 7.168 - 7.170, 7.176, 7.182, 7.183, and all felony convictions under the Texas Penal Code, TWC, Texas Health and Safety Code (THSC), or the United States Code (USC) shall be multiplied by 500; and

(ii) under TWC, §§7.147 - 7.151, 7.154, 7.157, 7.159, 7.160, 7.162(a)(6) - (8), 7.163(a)(4), 7.165 - 7.167, 7.171, 7.177 - 7.181, and all misdemeanor convictions under the Texas Penal Code, TWC, THSC, or the USC shall be multiplied by 250.

(I) The number of chronic excessive emissions events shall be multiplied by 100.

(J) The subtotals from subparagraphs (A) - (I) of this paragraph shall be summed.

(K) If the person is a repeat violator as determined under subsection (f) of this section, then 500 points shall be added to the total in subparagraph (J) of this paragraph. If the person is not a repeat violator as determined under subsection (f) of this section, then zero points shall be added to the total in subparagraph (J) of this paragraph.

(L) If the total in subparagraph (K) of this paragraph is greater than zero, then:

(i) subtract 1 point from the total in subparagraph (K) of this paragraph for each notice of an intended audit conducted under the Audit Act submitted to the agency during the compliance period; or

(ii) if a violation(s) was disclosed as a result of an audit conducted under the Audit Act; as amended, and the site received immunity from an administrative or civil penalty for that violation(s) by the agency, then the following number(s) shall be subtracted from the total in subparagraph (K) of this paragraph:

(I) the number of major violations multiplied by 10;

(II) the number of moderate violations multiplied by 4; and

(III) the number of minor violations multiplied by 1.

(M) The result of the calculations in subparagraphs (J) - (L) of this paragraph shall be divided by the number of investigations conducted during the compliance period multiplied by 0.1 plus the number of complexity points in subsection (e) of this section. If a site does not have any investigation points and the subtotal from subsection (e)(1) - (3) of this section equals zero, then one default point shall be used. Investigations that do not document any violations will be the only ones counted in the compliance history formula. The number of investigations multiplied by 0.1 shall be rounded up to the nearest whole number. If the value is less than zero, then the site rating shall be assigned a value of zero. For the purposes of this chapter, an investigation is a review or evaluation of information by the executive director or executive director's staff or agent regarding the compliance status of a site, excluding those investigations initiated by citizen complaints. An investigation, for the purposes of this chapter, may take the form of a site assessment, file or record review, compliance investigation, or other review or evaluation of information.

(N) If the person receives certification of an environmental management system (EMS) under Chapter 90 of this title (relating to Innovative

Programs) and has implemented the EMS at the site for more than one year, then multiply the result in subparagraph (M) of this paragraph by 0.90, which is (1 - 0.10) and this is the maximum reduction that can be received for an EMS. If the person receives credit for a voluntary pollution reduction program or for early compliance, then multiply the result in subparagraph (M) of this paragraph by 0.95, which is (1 - 0.05). The maximum reduction that a site's compliance history may be reduced through voluntary pollution reduction programs in this subparagraph is 0.85, which is (1 - 0.15). If site participates in both EMS and voluntary pollution reduction programs then the maximum reduction that a site's compliance history may be reduced through EMS and voluntary programs in this subparagraph is 0.75, which is (1 - 0.10 - 0.15).

(2) Point ranges. The executive director shall assign the site a classification based upon the compliance history and application of the formula in paragraph (1) of this subsection to determine a site rating, utilizing the following site rating ranges for each classification:

(A) For entities with less than 15 complexity points:

(i) fewer than 0.10 points--high performer;

(ii) 0.10 points to 60 points--satisfactory performer; and

(iii) more than 60 points--unsatisfactory performer.

(B) For entities with 15 or more complexity points:

(i) fewer than 0.10 points--high performer;

(ii) 0.10 points to 55 points—satisfactory performer; and

(iii) more than 55 points—unsatisfactory performer.

(3) Mitigating factors. The executive director shall evaluate mitigating factors for a site classified as an unsatisfactory performer.

(A) The executive director may reclassify the site from unsatisfactory to satisfactory performer based upon the following mitigating factors:

(i) other compliance history components included in §60.1(c)(10) - (12) of this title;

(ii) implementation of an EMS not certified under Chapter 90 of this title at a site for more than one year;

(iii) a person, all of whose other sites have a high or satisfactory performer classification, purchased a site with an unsatisfactory performer classification or became permitted to operate a site with an unsatisfactory performer classification if the person entered into a compliance agreement with the

executive director regarding actions to be taken to bring the site into compliance prior to the effective date of this rule; and

(iv) voluntarily reporting a violation to the executive director that is not otherwise required to be reported and that is not reported under the Audit Act, or that is reported under the Audit Act but is not granted immunity from an administrative or civil penalty for that violation(s) by the agency.

(B) When a person, all of whose other sites have a high or satisfactory performer classification, purchased a site with an unsatisfactory performer classification or became permitted to operate a site with an unsatisfactory performer classification and the person contemporaneously entered into a compliance agreement with the executive director regarding actions to be taken to bring the site into compliance, the executive director:

(i) shall reclassify the site from unsatisfactory performer to satisfactory performer until such time as the next semi-annual compliance history classification is performed; and

(ii) may, at the time of subsequent compliance history classifications, reclassify the site from unsatisfactory performer to satisfactory performer based upon the executive director's evaluation of the person's compliance with the terms of the compliance agreement.

(h) Person classification. The executive director shall assign a classification to a person by adding the complexity weighted site ratings of all the sites owned and/or operated by that person in the State of Texas. Each site that a person is affiliated to will receive a point value based on the compliance history rating at the site multiplied by the percentage of complexity points that site represents of the person's total complexity points for all sites. Each of these calculated amounts will be added together to determine the person's compliance history rating.

(i) Notice of classifications. Notice of person and site classifications shall be posted on the commission's website after 30 days from the completion of the classification. The notice of classification shall undergo a quality assurance, quality control review period. An owner or operator of a site may review the pending compliance history rating upon request by registering for the Advanced Review of Compliance History.