

The repeal is adopted under authority of the Texas Insurance Code, Article 1.04, and Texas Civil Statutes, Article 6252-13a, §4, which provide the State Board of Insurance with authority to adopt procedural rules necessary for it to perform its statutory function, and under the board's authority to repeal any rule it has previously promulgated.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on July 20, 1983.

TRD-835528 James W. Norman
Chief Clerk
State Board of Insurance

Effective date: August 11, 1983
Proposal publication date: April 5, 1983
For further information, please call (512) 475-2950.

Reducing Hazard

059.05.33.002

The State Board of Insurance adopts the repeal of Rule 059.05.33.002, without changes to the proposal published in the April 5, 1983, issue of the *Texas Register* (8 TexReg 1119).

This rule adopts by reference a key rate schedule and fire record list which indicate the appropriate rating credit to determine the premium for fire and allied lines insurance for towns and cities in Texas. This schedule and list are not in the nature of a rule. The material simply reflects other rule and rate determinations by the State Board of Insurance. The schedule does not consist of a statement of general applicability. Credits are determined individually for each city or town based on its particular loss experience.

No comments were received regarding adoption of the repeal.

The repeal is adopted under authority of the Texas Insurance Code, Article 5.29, pursuant to which the board may publish rates of premium; under authority of the Texas Insurance Code, Article 5.33, which authorizes the board to give each city, town, village, or locality credit for each hazard it reduces or removes and for other risk reducing improvements; and pursuant to the board's authority to repeal any rule it has previously promulgated.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on July 20, 1983.

TRD-835529 James W. Norman
Chief Clerk
State Board of Insurance

Effective date: August 11, 1983
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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part III. Texas Air Control Board

Chapter 115. Volatile Organic Compounds

Surface Coating Processes in Brazoria,
Dallas, El Paso, Galveston, Gregg,
Harris, Jefferson, Nueces, Orange,
Tarrant, and Victoria Counties

31 TAC §115.191

The Texas Air Control Board (TACB) adopts amendments to §115.191, with changes to the proposed text published in the January 21, 1983, issue of the *Texas Register* (8 TexReg 271). These amendments to §115.191 concern emission limitations for automobile and light-duty truck coating and affect only the General Motors Assembly Division (GMAD) Arlington Plant in Tarrant County.

The amendments make the following revisions to §115.191(8). They postpone the final compliance date from December 31, 1982, until December 31, 1986, for the front-end sheet metal dip prime operation and thereby delay for four years a required reduction of 75 tons per year of volatile organic compound (VOC) emissions. They revise the emission allowable for topcoat application for the period December 31, 1982, to December 31, 1986, to account for a change in the test method used to measure the emissions, and require that electrostatic spray equipment be used in at least 75% of the automatic spray stations in the first topcoat application area to reduce VOC emissions by an amount greater than the amount of VOC reduction that is delayed by the previous revision. They change the averaging time (for prime application to body and front-end sheet metal) from a daily weighted average to a weighted average over a longer period, to minimize the effect of daily variations in the coatings used. They change the averaging method from a daily weighted average to an arithmetic average for all coatings used in the topcoat application operation and for all coatings used in the final repair application operation.

Five comments were received regarding the proposed amendments to §115.191. General Motors testified in detail in support of the proposed amendments and suggested some changes. The Environmental Protection Agency (EPA) Region VI Office in Dallas testified concerning the approvability of the proposed amendments. The City of Dallas and the City of Fort Worth each had reservations about the proposed amendments, and the Houston Sierra Club opposed the proposed amendments.

The City of Fort Worth commented that, since Tarrant County has not attained the federal ozone standard, further VOC reductions will be needed to meet the standard. The city stated that, while 75 tons might not appear to be significant compared to total VOC

emissions in the Metroplex, every reasonable control should be implemented to reduce emissions of air contaminants that might affect the health and welfare of citizens.

General Motors Corporation (GM) supported the proposed revisions to Regulation V. GM supported the proposed four-year extension of the compliance date for its front-end sheet metal prime system, because it would eliminate over \$7 million in control expenditures on a system that would be scrapped in four years. GM stated that the extension is approvable under established EPA policy. GM also stated that it is voluntarily instituting other controls that will reduce VOC emissions by an amount that will likely exceed 75 tons per year. GM recommended adopting by reference the method specified in the federal new source performance standards (NSPS), to establish the averaging time for VOC emissions from electrocoat prime systems. GM supported the proposed minor revision to topcoat emission limits and changing the averaging method to an arithmetic average. Also, GM pointed out a typographical error in the preamble to the proposed changes to §115.191.

The Houston Regional Group of the Sierra Club stated that the state should not submit any State Implementation Plan (SIP) revisions that might lead to EPA disapproval of the SIP. The club opposed all of the proposed amendments to Regulation V for the following reasons. Tarrant County is has not attained the ozone standard and the club believes that all available steps to reduce emissions need to be taken in nonattainment areas. The club notes that technology is now available to meet the regulatory limit for front-end sheet metal prime coating, and it is skeptical of the claim of economic unreasonableness of the controls. The club also noted the lack of information presented on the composition of the VOC emissions and on their health and welfare impacts.

The City of Dallas noted that it does not expect a measurable impact on Dallas air quality as a result of the proposed rule change. The city expressed concern about setting precedents for future relaxations and about using a weighting procedure based on a monthly average or a rolling average and about the loosening of emission limitations. The city said:

It is not our intention to infer that this specific proposal does not address powerful extenuating circumstances, only that we are concerned about precedents without very careful consideration.

The EPA stated that granting the proposed compliance date extension for the front-end sheet metal dip prime operation would be reasonable if significant costs were eliminated and continued compliance with the Federal Clean Air Act, §110 and §172, were assured. However, the EPA stated that granting the proposed extension would be in conflict with its proposed action (see the February 3, 1983, issue of the *Federal Register* (48 FedReg 4972)), identifying Tarrant County as an area that the EPA believes has not attained the primary ozone standard. The EPA said that including an averaging time for emissions from prime coat

operations is essential, and that the time should be adequate to allow for the expected variability in flow control additive usage. The EPA recommended the best six-out-of-seven-month rolling average, proposed in the July 29, 1982, issue of the *Federal Register* (47 FedReg 32743) as a revision to new source performance standards for automobile surface coating operations. For the topcoat operation, the EPA concurred with use of an arithmetic average of the VOC content of all topcoat materials used. The EPA said that the rule should provide for compliance, to be determined by an "instantaneous arithmetic average."

The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5(c)(1), requires categorization of comments as being "for" or "against" a proposal. A commentator who suggested any changes in the proposal is categorized as "against" the proposal, while a commentator who agreed with the proposal in its entirety is categorized as "for." Since each commentator suggested some changes, all are categorized as "against."

Copies of the written comments and the transcript of the hearing are available for inspection at the Texas Air Control Board Austin office, 6330 Highway 290 East, Austin, Texas 78723.

The evaluation of testimony is organized to deal separately with each of the four major changes the amendments make in §115.191.

All commentators who discussed the front-end dip prime compliance date postponement agreed that the technology is available to meet the current regulation limit. Although the Sierra Club expressed skepticism about GM's cost estimates, there was no testimony to contradict GM's estimate that putting in the new electrocoat system would cost in excess of \$7 million, or GM's statements that the system would be scrapped when the plant is converted in about four years to build front-drive vehicles. With an annual emission reduction of 75 tons, the cost per annual ton would be in excess of \$93,000. If the system operated for four years, the cost would be in excess of \$23,000 per ton of VOC emissions abated.

The cost of VOC control for new sources, using the best available control technology (BACT) under permits issued by the TACB, is typically less than \$1,000 per ton abated. The costs of VOC control under the new regulation provision, adopted December 3, 1982, for inclusion in the 1982 SIP revision for Harris County, typically run \$500 to \$1,000 per ton abated. Thus, the cost of VOC reductions to meet the regulation requirement would have been greater than 20 times the costs that are typical for the controls required for new sources meeting the BACT standard and for existing sources in Harris County, the only area of Texas that was required to have a 1982 SIP revision for ozone.

GM testimony indicated that the GM-Arlington plant has accomplished VOC emission reductions in excess of 2,000 tons per year, through controls required by Chapter 115, and that voluntary improvements sched-

uled for next year will likely lead to emission reductions of greater than 75 tons a year.

Testimony by the City of Fort Worth and the City of Dallas indicated that the air quality impact of the rule change will be unmeasurable, although both cities expressed concern about the proposed compliance delay. The City of Fort Worth stated that:

every reasonable control should be implemented to reduce contaminants which affect the health and welfare of citizens . . . In consideration of the foregoing, we do not support the adoption of the proposed amendment to TACB Regulation V.

The City of Dallas stated:

It is not our intention to infer that this specific proposal does not address powerful extenuating circumstances, only that we are concerned about precedents without very careful consideration.

Considering the high cost per ton of VOC control estimated by the company, the cities' comments are difficult to interpret.

GM stated, and the EPA confirmed, that it is the EPA's general policy to approve compliance date extensions like the one proposed here. However, the EPA stated that this proposed extension is in conflict with the EPA's proposed action (see the February 3, 1983, issue of the *Federal Register* (48 FedReg 4972)), identifying Tarrant County as an area that the EPA believes has not met the ozone standard, for which the EPA proposes to implement sanctions.

On the other hand, the ozone SIP for Tarrant County is currently fully approved. Under the SIP, there is a growth allowance of 8,110 tons per year of VOC from 1979 to 1982. Permits for new construction and modification have used approximately 750 tons per year of this growth allowance. Adoption of the proposed compliance date extension would have consumed an additional 75 tons per year of this increment.

At present, the EPA actions published in the February 3, 1983, issue of the *Federal Register* (48 FedReg 4972) are only proposed actions. Delays in final action, extended litigation, revisions to the EPA's proposal, or amendments to the Federal Clean Air Act may occur. Under these circumstances, it is arguable that this proposal should be reviewed only under existing, approved federal and state requirements concerning ozone nonattainment areas. If the EPA later finds the SIP for Tarrant County to be inadequate, appropriate action will be taken at that time.

Since the City of Dallas, the City of Fort Worth, and the EPA had all expressed reservations about delaying compliance with the existing provisions of §115.191(8) in an area that has not attained standards, and since it was not clear from the hearing record whether GM had accomplished or would accomplish sufficient voluntary reductions to counterbalance the resultant 75 tons per year emission reduction delay, the Regulation Development Committee of the Texas Air Control Board, at its June 10, 1983, meeting, requested clarification of the testimony by the City of Fort Worth, the City of Dallas, and General Motors. The board wanted to know the basis of the concerns

expressed by Fort Worth and Dallas. It also wanted to know whether GM-Arlington could accomplish voluntary VOC emission reductions that would equal or exceed the 75 ton per year VOC emission reduction that was proposed to be delayed until 1986. The staff invited clarification of these matters from the City of Dallas, the City of Fort Worth, and GM-Arlington. Responses were received from GM-Arlington and the City of Fort Worth. The City of Fort Worth stated that the principal concern was the public health impact, with a secondary concern about possible EPA sanctions. GM responded that it could achieve a VOC emission reduction that exceeds the amount of the emission reduction requirement that GM requested be delayed. This voluntary reduction would be the result of installation of electrostatic spray equipment in three-fourths of the automatic spray stations in the first topcoat application area. The use of such spray equipment would enhance transfer efficiency and thereby decrease paint usage and VOC emissions. (More of the paint reaches the surfaces being painted.)

To make the VOC emission reduction legally enforceable, a new footnote to the proposed rule is being adopted which requires the use of the electrostatic spray equipment. The deferral of the emission reduction requirement for the prime application is adopted as proposed. Technical review indicates that the net result of these amendments is a reduction in the allowable and actual VOC emissions. To assure legal enforceability, Board Order 83-13 adopts these amendments and states that:

The use of such spray equipment as provided by these amendments having enhanced transfer efficiency shall provide a decrease in total topcoat volatile organic compound emissions that exceeds any volatile organic compound emissions difference that results from having a volatile organic compound emission limit for the front-end sheet metal prime application of 5.6 lbs/gallon (0.67 kg/l) instead of 1.2 lbs/gallon (0.15 kg/l).

Since there is no increase in VOC emission allowable, and since a legally enforceable reduction requirement is provided by the board order adopting these regulation changes, the EPA concerns should be satisfied. The concerns of the City of Fort Worth may be satisfied since the adopted amendments require a net decrease in VOC emissions. GM-Arlington, the only affected source, finds the effect of the amendments and board order acceptable.

Although the Sierra Club raised a question about the toxicity of the VOC emissions involved, no evidence was presented indicating that there is any reason for concern about toxicity of emissions from the GM-Arlington plant at concentrations expected to occur in ambient air, and the change to a net decrease responds positively to the club's concern.

As GM noted, there was a typographical error in which 1983 was written in one location where 1986 should have appeared. The correct printing of "1986" elsewhere, the discussion of the four-year delay in the 75 ton per year emission reduction, and the correct printing of the proposed regulation change should have made the proposal clear in spite of the error.

GM presented testimony that the proposed change in the topcoat application emission allowable from five pounds of VOC per gallon of topcoat to 5.2 merely characterizes more accurately the same materials that the present 5.0 value was intended to represent. The change will not allow or result in any increase in VOC emissions. That is, the same coating material that yielded five pounds of VOC per gallon under the old testing method that was current when the 5.0 value was adopted yields 5.2 pounds of VOC per gallon under the new testing method that is now in use.

Footnote (3) is added to §115.191(8)(A) to provide a legally enforceable emission reduction that is larger than the decrease that is deferred by adoption of the amendment to §115.191(8)(A). This matter was discussed previously.

GM presented testimony that the separate addition of different components in the prime dip bath leads to wide fluctuations in the daily weighted average for VOC emissions from this process. Therefore, a relatively long averaging time is needed to characterize VOC emissions from this process adequately.

The proposal that was taken to the public hearing was for a "weighted average over a period to be approved by the board." The Sierra Club and the City of Dallas expressed concern about the adequacy and/or approvability of the average to be used or about the absence of an average in the regulation. Further, the EPA has stated it would be necessary that the regulation include a definite averaging time if it were to be approvable as part of the SIP.

GM recommended, in its testimony, that the averaging time be the same as the averaging time specified in the federal NSPS for this process. GM stated that it expects the one-month averaging time contained in the current NSPS to be changed within the next year, and that it will request, at such time as the proposed NSPS is adopted, that the averaging time in the regulation be made the same as in the new NSPS. GM suggested that the averaging time in the regulation be set by incorporating by reference the averaging time in the NSPS (40 Code of Federal Regulations §60, Subpart MM). GM suggested, as an alternative, the calendar month period set out in the current NSPS.

The EPA recommended the best-six-out-of-seven-month rolling average contained in a proposed revision to the current NSPS. GM's testimony indicated that the proposal is unlikely to be adopted, so the EPA-recommended approach has neither the advantage of being the current NSPS averaging method, nor the advantage that it is likely to become the established method.

Either suggestion by GM should be approvable by the EPA, so either should meet the concerns of the other commentators about adequacy and approvability. The 30-day averaging time is adopted, since it is acceptable to all parties, and it avoids the more convoluted adoption by reference.

GM requested and supported the proposed change from a daily weighted average to an arithmetic average

of all coatings in stock, for use in an operation. The EPA stated that this approach is acceptable. It is concerned, however, that whatever is adopted be enforceable as an instantaneous average a field inspector can determine during an inspection. It appears that setting the average of all coatings in stock, for use in a process, satisfies GM and the EPA, as well as the Sierra Club, which was concerned about SIP approvability.

The amendments are adopted under Texas Civil Statutes, Article 4477-5, §3.09(a), which provide the Texas Air Control Board with the authority to make rules consistent with the general intent and purposes of the Texas Clean Air Act, and to amend any rule or regulation the Texas Air Control Board makes.

§115.191. Emission Limitations. No person may cause, suffer, allow, or permit volatile organic compound emissions from the surface coating processes (defined in §101.1 of this title (relating to Definitions)) affected by paragraphs (1)-(10) of this section to exceed the specified emission limits, which are based on a daily weighted average, except for those in paragraph (8), as detailed, and for those in paragraph (10), which are based on paneling surface area.

(1)-(7) (No change.)

(8) Automobile and light-duty truck coating.

(A) The following volatile organic compound emission limits shall be achieved, on the basis of solvent content per gallon of coating (minus water) applied, as soon as practicable, but no later than December 31, 1982:

Operation (including application, flashoff, and oven areas)	VOC Emission Limitation	
	pounds per gallon	kg per liter
prime application ¹ (body)	1.2	0.15
(front-end sheet metal)	5.6	0.67
primer surfacer application	3.0	0.36
topcoat application ^{2, 3}	5.2	0.62
final repair application ²	6.5	0.78

(B) The following volatile organic compound emission limits shall be achieved, on the basis of solvent content per gallon of coating (minus water) applied, as soon as practicable, but no later than December 31, 1986:

Operation (including application, flashoff and oven areas)	Voc Emission Limitation	
	pounds per gallon	kg per liter
prime application ¹ (body and front-end sheet metal)	1.2	0.15
primer surfacer application	2.8	0.34
topcoat application ²	2.8	0.34
final repair application ²	4.8	0.58

¹Weighted average over a calendar month.

²Arithmetic average of all coatings in stock for use in the process.

³To be applied using electrostatic spray equipment in at least 75% of the automatic spray stations in the first topcoat application area.

(9)-(10) (No change.)

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on July 20, 1983.

TRD-835502 Bill Stewart, P.E.
Executive Director
Texas Air Control Board

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For further information, please call (512) 451-5711, ext. 354.



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Resources

Chapter 16. ICF/SNF

The Texas Department of Human Resources adopts amendments to §§16.1101, 16.1504, 16.3201, 16.3801, 16.3802, 16.3806, and new §16.4911 in its Intermediate Care Facility/Skilled Nursing Facility (ICF/SNF) rules. Sections 16.1101, 16.1504, 16.3201, 16.3801, and 16.3806 are adopted without changes to the proposed text published in the January 28, 1983, issue of the *Texas Register* (8 TexReg 319). Sections 16.3802 and 16.4911 are adopted with changes to the proposed text published in the January 28, 1983, issue of the *Texas Register* (8 TexReg 320). The text of the sections adopted without changes will not be republished.

These amendments and the new rule are necessary to clarify the ICF/SNF standards for participation.

Section 16.1101 is amended to require acknowledgment cards for medication aides. Section 16.1504 is amended to delete the requirement for cancellation of ICF II contracts. Section 16.3201 is amended to provide facilities an optional procedure for notifying recipient-patients of their right to use generic drugs. Section 16.3801 is amended to exclude insulin as an item covered by the vendor payment to the facility. Section 16.3802 is amended to allow the facility, under certain circumstances, to charge a recipient-patient by the cost per tank of oxygen to the facility. Section 16.3806 is amended to provide for semiannual verification of therapeutic home visits. New §16.4911 describes the requirements for nurses' stations.

Written comments were received from the Texas Nursing Home Association (TNHA) regarding §§16.3801, 16.3802, and 16.4911. The TNHA agreed with the proposed language of §16.3801, concerning vendor payment. The TNHA expressed concerns and recommendations about §16.3802, concerning additional changes, and §16.4911, concerning nurses' stations.

Comments received on the following rules were incorporated and have been addressed by making appropriate changes.

The TNHA disagreed with the proposed amendment to §16.3802 as written, because it would not allow facilities to recover all of their oxygen-related costs. The TNHA suggested that facilities be allowed to charge any rate not to exceed the rate established by the department.

The department's intention in proposing this policy is to allow facilities an optional method of charging for oxygen in certain situations. The department has revised the proposed language to clarify that charging a recipient-patient by the cost per tank of oxygen used exclusively on a recurring basis is an optional procedure.

The TNHA requested that the language of §16.4911 be reworded according to language agreed upon in a joint meeting with the TNHA, the Texas Association of Homes for the Aging, the Texas Department of Health, and the Texas Department of Human Resources. In the meeting, the Texas Department of Health also requested some word changes, including the addition of the phrase "in existing construction."

The department agrees with the comments that the proposed language did not adequately address the issues. These issues concern allowing a 10% deviation from the 150-foot requirement for existing construction, requiring an auxiliary station if patient bedrooms are more than 150 feet walking distance by indoor corridor passage from the nurses station, and defining the purpose of an auxiliary station. Section 16.4911 has been revised to address these issues.

