

**Subchapter G. Consumer-Related Sources**  
**Consumer-Solvent Products**  
• 31 TAC §§115.612, 115.613, 115.615, 115.617, 115.619

The Texas Air Control Board (TACB) adopts new §§115.612, 115.613, 115.615, 115.617, and 115.619. Section 115.615 is adopted with changes to the proposed text as published in the July 28, 1989, issue of the *Texas Register* (14 TexReg 3676). Sections 115.612, 115.613, 115.617, and 115.619 are adopted without changes and will not be republished.

The new §115.612, concerning control requirements, defines the type of control or technologies required to achieve necessary emission reductions. The new §115.613, concerning alternate control requirements, enables the TACB executive director to approve substantially equivalent control technologies under specific conditions. The new §115.615, concerning testing requirements, identifies the test methods which must be used to determine compliance and enables the TACB executive director to approve minor modifications to the methods. The new §115.617, concerning exemptions, specifies the conditions necessary to qualify for exemption from certain control requirements. The new §115.619, concerning counties and compliance schedules, establishes the final compliance dates for applicable controls in specified counties. These sections are part of a series of additions to Chapter 115 proposed primarily to satisfy United States Environmental Protection Agency requirements for Phase I of the Post-1987 State Implementation Plan revisions for ozone.

The TACB also has adopted a comprehensive restructuring of Chapter 115 to promote greater clarity and to eliminate inconsistencies resulting from numerous independent revisions over the past several years.

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 commenter who suggested any changes in the proposal is categorized as against the proposal; a commenter who agreed with the proposal in its entirety is classified as being for the proposal. One commenter opposed the proposal, while no one testified in support.

One commenter, El Paso City-County Health District, suggested adding El Paso County to those already covered by the consumer solvent product control requirements. This additional control option will be studied in the future and may be considered in subsequent rulemaking, if appropriate.

These amendments are adopted under the Texas Clean Air Act (TCAA), §382.017, which provides the TACB with the authority to make rules consistent with the policy and purposes of the TCAA.

**§115.615. Testing Requirements.** For the counties referenced in §115.619 of this title (relating to Counties and Compliance Schedules), compliance with §115.612 of

this title (relating to Control Requirements) shall be determined by applying the following test methods, as appropriate:

(1) Test Method 24A (40 Code of Federal Regulations 60, Appendix A) for the determination of volatile matter content and density of printing inks and related coatings; or

(2) minor modifications to these test methods approved by the executive director.

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 January 26, 1990.

TRD-9000959 Allen Eli Bell  
Executive Director  
Texas Air Control Board

Effective date: February 19, 1990

Proposal publication date: July 28, 1990

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

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**Subchapter J. Administrative Provisions**

**Alternate Means of Control**

• 31 TAC §115.910

The Texas Air Control Board (TACB) adopts new §115.910, with changes to the proposed text as published in the July 28, 1989, issue of the *Texas Register* (14 TexReg 3677).

The new §115.910, concerning procedure, provides a mechanism for certain source categories to utilize alternate technologies in their control plans, under specific conditions. This section is part of a series of additions to Chapter 115 proposed primarily to satisfy United States Environmental Protection Agency (EPA) requirements for Phase I of the Post-1987 State Implementation Plan (SIP) revisions for ozone. The TACB also has adopted a comprehensive restructuring of Chapter 115 to promote greater clarity and to eliminate inconsistencies resulting from numerous independent revisions over the past several years.

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 commenter who suggested any changes in the proposal is categorized as against the proposal; a commenter who agreed with the proposal in its entirety is classified as being for the proposal. Five commenters opposed the proposal, while no one testified in support.

One commenter, EPA, supported the language in §115.910 stating that TACB approval does not constitute federal approval, but suggested the section should indicate which modifications require EPA approval and how a company is to be notified. Another commenter, General Motors Corporation (GM), however, stated that federal case law has held that the current alternate means of control (AMOC) rule does not require federal

approval. One commenter, Texas Chemical Council, also indicated that the TACB staff should work with EPA to coordinate approvals where necessary. GM is correct that the present AMOC rule does not require federal approval, however, the proposed revisions would change the regulation to require EPA approval in some cases. EPA has indicated that the Post-1987 SIP revision will not be approvable unless that requirement is made clear in the regulation. During recent negotiations, EPA indicated that federal review and approval of alternate control methods would be required only when specific equivalency criteria are not clearly indicated in appropriate rules. The TACB staff believes that facilitating EPA approval, when that approval is necessary, is appropriate.

One individual requested that the term "substantially equivalent" be defined while another recommended that equivalency be established as within 5.0% of emissions when controlled. He also suggested the term "significant contribution" in subsection (b) be defined in tons per year. Using 5.0% of controlled emissions as a guideline for defining "substantially equivalent" may be useful in the evaluation of many AMOC requests. However, a determination of equivalency must be made on a case-by-case basis for each AMOC in response to individual circumstances. Similarly, "significant contribution" may vary depending on the type of source, the compounds emitted, and the potential for air quality degradation in the specific area.

One commenter, EPA, suggested that any exemptions in §115.423(4) and §115.123(a) be submitted to the EPA for approval. These sections provide mechanisms for certain source categories to utilize alternate technologies under specific conditions. The language in §115.123(a) may be clarified to eliminate any confusion regarding the exemption of insignificant sources where such sources have been identified in other sections of the rule. However, it is important that while incineration is specified as the primary control technique, the use of other vapor recovery systems with similar reduction efficiencies should be allowed without an AMOC demonstration or approval. The use of a vapor recovery system satisfying the conditions of §115.423(3) is directly provided for in the rule and, therefore, should not require an AMOC demonstration or approval. However, alternative control options approved under paragraph (4), which allows use of controls different than those specified in §115.421(9), concerning emissions specifications for miscellaneous metal parts and products coatings, based on technological and economic reasonableness, may result in less stringent emission controls. Therefore, submittal of TACB approval of these control measures as SIP revisions is appropriate.

The new section is adopted under the Texas Clean Air Act (TCAA), §382.017, which provides the TACB with the authority to make rules consistent with the policy and purposes of the TCAA.

**§115.910. Procedure.**

(a) Any person affected by any control requirement of this chapter may

request the executive director to approve alternate methods of control. The executive director shall approve such alternate methods of control if it can be demonstrated that such control will result in substantially equivalent emission reductions as the methods of control specified in this regulation. Executive director approval does not necessarily constitute satisfaction of all federal requirements nor eliminate the need for approval by the United States Environmental Protection Agency in cases where specified criteria for determining equivalency have not been clearly identified in applicable sections of this chapter.

(b) For persons in Aransas, Bexar, Calhoun, Hardin, Matagorda, Montgomery, San Patricio, and Travis Counties, the executive director, after consultation with appropriate local governmental agencies, may exempt a specific compound or a specific vent gas stream from the application of this chapter (Regulation V) if it can be demonstrated that the emissions from the compound or specific vent gas stream will not make a significant contribution to air contaminants in the atmosphere.

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 January 26, 1990.

TRD-9000956

Allen Ell Bell  
Executive Director  
Texas Air Control Board

Effective date: February 19, 1990

Proposal publication date: July 28, 1989

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

## Compliance and Control Plan Requirements

### • 31 TAC §§115.930, 115.932, 115.934, 115.936

The Texas Air Control Board (TACB) adopts new §§115.930, 115.932, 115.934, and 115.936. Section 115.934 is adopted with changes to the proposed text as published in the July 28, 1989, issue of the *Texas Register* (14 TexReg 3678). Sections 115.930, 115.932, and 115.936 are adopted without changes and will not be republished.

The new §115.930, concerning compliance, dates, contains the information necessary to determine the compliance date for all requirements in Regulation V. The new §115.932, concerning control plan procedure, contains the requirements and schedules necessary to develop a control plan for compliance. The new §115.934, concerning control plan deviation, contains the steps necessary to apply for a change in the terms of a control plan including compliance dates. The new §115.936, concerning reporting procedure, contains the requirements and schedules for reporting the completion of each step of the control plan. These sections

are part of a series of additions to Chapter 115 proposed primarily to satisfy United States Environmental Protection Agency (EPA) requirements for Phase I of the Post-1987 State Implementation Plan (SIP) revisions for ozone. The TACB also has adopted a comprehensive restructuring of Chapter 115 to promote greater clarity and to eliminate inconsistencies resulting from numerous independent revisions over the past several years.

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 commenter who suggested any changes in the proposal is categorized as against the proposal; a commenter who agreed with the proposal in its entirety is classified as being for the proposal. Two commenters opposed the proposal, while no one testified in support.

Two commenters, EPA and one individual, supported the requirements for compliance and control plan schedules but indicated that compliance date extensions approved by the executive director must be submitted to EPA as SIP revisions. Any extension to compliance deadlines included in the SIP must be proposed as a delayed compliance order (DCO) and adopted by the board. All board orders which have previously adopted a DCO have been submitted to EPA as SIP revisions. While no change in this policy is anticipated, clarification that board approval does not eliminate the need for federal approval may be appropriate.

The new sections are adopted under the Texas Clean Air Act (TCAA), §382.017, which provides the TACB with the authority to make rules consistent with the policy and purposes of the TCAA.

**§115.934. Control Plan Deviation.** No persons affected by §115.932 of this title (relating to Control Plan Procedure) shall deviate from the terms of the control plans including the date for final compliance and the dates for accomplishing the required steps in such plans. The executive director may, upon application of any person affected, change the date for accomplishing the required steps in a plan. Any control plan that specifies a final compliance date subsequent to the date specified by any sections of this regulation must be approved by the Texas Air Control Board (TACB). Approval of a delayed compliance order by the TACB does not constitute satisfaction of all federal requirements nor eliminate the need for approval by the United States Environmental Protection Agency.

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 January 26, 1990.

TRD-9000957

Allen Ell Bell  
Executive Director  
Texas Air Control Board

Effective date: February 19, 1990

Proposal publication date: July 28, 1989

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

## TITLE 34. PUBLIC FINANCE

### Part I. Comptroller of Public Accounts

#### Chapter 3. Tax Administration

##### Subchapter Y. Controlled Substances Tax

###### • 34 TAC §3.681

The Comptroller of Public Accounts adopts new §3.681, with changes to the proposed text as published in the November 24, 1989, issue of the *Texas Register* (14 TexReg 6163).

The changes occur in subsection (b)(1) and (2) and reflect the recent recodification of the Texas Controlled Substances Act, placing the Act in the Health and Safety Code.

This new section defines the substances to which the tax applies and sets out the tax rates.

No comments were received regarding adoption of the new section.

The new section is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

###### §3.681. Imposition and Rate of Tax.

(a) A tax is imposed on the purchase, acquisition, importation, manufacture, or production by a dealer of a taxable substance on which tax previously has not been paid under the Tax Code, Chapter 159.

(b) A taxable substance is a substance consisting of or containing any of the following:

(1) a controlled substance, a counterfeit substance, or marihuana, as those terms are defined by the Health and Safety Code, Chapter 481, Texas Controlled Substances Act, §481.002;

(2) a simulated controlled substance as defined by the Health and Safety Code, §482.001; or

(3) a mixture that contains any of these substances.

(c) A dealer is a person who, in violation of the laws of this state, imports into this state or manufactures, produces, acquires, or possesses in this state:

(1) seven grams or more of a taxable substance other than marihuana; or

(2) four ounces or more of a taxable substance consisting of or containing marihuana.