

Texas Register

Volume 16, Number 77, October 18, 1991

Pages 5735-5875

In This Issue...

Office of the Governor

Executive Order

5737-AWR 91-12

5737-AWR 91-9A

5738-AWR 91-11

Emergency Sections

Office of the Secretary of State

5741-Elections

Board of Nurse Examiners

5741-Practice and Procedure

5743-Licensure and Practice

5744-Fees

Texas Optometry Board

5744-General Rules

Texas Board of Private Investigators and
Private Security Agencies

5744-Application Processing and Refunds

Comptroller of Public Accounts

5745-Tax Administration

Texas Youth Commission

5747-Discipline and Control

Texas Commission on Alcohol and Drug
Abuse

5747-Licensure of Chemical Dependency Counselors

Proposed Sections

Texas Department of Agriculture

5755-Seed Division

5759-Texas Agricultural Diversification Program: Grant
and Loan Program

Public Utility Commission of Texas

5762-Substantive Rules

Texas Department of Licensing and
Regulation

5764-Texas Commission of Licensing and Regulation

5765-Employers of Certain Temporary Common Workers

5767-Boxing

Texas Education Agency

5778-Curriculum

Texas Cosmetology Commission

5803-Sanitary Rulings

5804-General Rules and Regulations

Board of Nurse Examiners

5809-Practice and Procedure

5809-Licensure and Practice

5810-Fees

Texas Optometry Board

5810-Examinations

5811-General Rules

CONTENTS CONTINUED INSIDE

(ii) All affected facilities shall accomplish the initial capture efficiency testing by the schedule in §115.429.

(iii) During an initial pre-test meeting, the Texas Air Control Board (TACB) and the source owner or operator shall identify those operating parameters which shall be monitored to ensure that capture efficiency does not change significantly over time. These parameters shall be monitored and recorded initially during the capture efficiency testing and thereafter during facility operation. TACB may require a new capture efficiency test if the operating parameter values change significantly from those recorded during the initial capture efficiency test.

§115.426. Recordkeeping Requirements. For the counties referenced in §115.429 of this title (relating to Counties and Compliance Schedules), the following recordkeeping requirements shall apply.

(1)-(2) (No change.)

(3) The owner or operator shall maintain, on file, the capture efficiency protocol submitted under §115.425(4) of this title (relating to Testing Requirements). The owner or operator shall submit all results of the test methods and capture efficiency protocols to TACB within 60 days of the actual test date. The source owner or operator shall maintain records of the capture efficiency operating parameter values on site for a minimum of one year. If any changes are made to capture or control equipment, the owner or operator is required to notify the executive director in writing within 30 days of these changes and a new capture efficiency and/or control device destruction or removal efficiency test may be required.

(4) In accordance with the schedule referenced in §115.429(1), records shall be maintained sufficient to document the applicability of the conditions for exemptions referenced in §115.427 of this title (relating to Exemptions).

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 October 10, 1991.

TRD-9112628

Lane Hartscock
Deputy Director, Air Quality
Planning
Texas Air Control Board

Effective date: November 1, 1991

Proposal publication date: July 2, 1991

For further information, please call: (512) 908-1451

◆ ◆ ◆
Subchapter E. Solvent-Using Processes

Graphic Arts (Printing) By Rotogravure and Flexographic Processes

• **31 TAC §§115.435, 115.436, 115.439**

The Texas Air Control Board (TACB) adopts amendments to §115.435, concerning testing requirements; §115.436, concerning recordkeeping requirements; and §115.439, concerning counties and compliance schedules. Sections 115.435 and 115.436 are adopted with changes to the proposed text as published in the July 2, 1991, issue of the *Texas Register* (16 TexReg 3676). Section 115.439 is adopted without changes and will not be republished. The amendment satisfies a requirement by the United States Environmental Protection Agency (EPA) to correct certain regulation deficiencies and inconsistencies to ensure compliance with applicable requirements for control and collection systems of volatile organic compounds.

The amendment to §115.435 adds additional requirements for capture efficiency compliance testing to be consistent with EPA guidance. The amendment to §115.436 adds a paragraph to explain the additional recordkeeping requirements required by new capture efficiency testing. The amendment to §115.439 adds a new compliance date for new requirements.

A public hearing was held on July 22, 1991, in Austin. No oral testimony was presented. Written testimony was received from two commenters during the comment period which was extended from July 23 until July 30, 1991.

EPA comments concerning clarification, exemptions, and alternative protocols (covered in detail under §115.425) were also incorporated into the final rule language of §115.435.

Flexible Packaging Association (FPA) was concerned with the lack of demonstrable improvement in accuracy, cost effectiveness, length of test, and lack of universal applicability of the capture efficiency testing in §115.435. EPA has determined that a liquid/gas mass balance can not normally be used to satisfy the capture efficiency testing requirements, because of the high probability error associated with the procedure. The staff can appreciate the investments of FPA members to develop alternative ink and coating formulations, enhancements in application techniques, and the installation of add-on collection devices, and additional volatile organic compounds (VOC) destruction devices in order to reduce emissions. Even though improvements have been made, the overall process efficiency can only be determined by testing both capture (collection) efficiency and control device efficiency. The cost of performing capture efficiency testing could possibly be high; however, if a permanent total enclosure or a building or room enclosure exists, then the facility may meet an exemption or need only to perform a one-time capture efficiency test, thereby minimizing expenses. The staff incorporated certain exemptions and alternative method approval procedures in the final rule language which will provide for a determination on a case-by-case basis.

The staff adopted EPA's comment that test results required by §115.436 should be submitted within 60 days of the actual test date and that capture efficiency operating parameter records shall be maintained at the facility for a minimum of one year.

The amendments are adopted under the Texas Clean Air Act (TCAA), §382.017, Texas Health and Safety Code, Annotated (Vernon 1990), which provides TACB with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§115.435. Testing Requirements. For the counties referenced in §115.439 of this title (relating to Counties and Compliance Schedules), compliance shall be determined by applying the following test methods, as appropriate:

(1)-(6) (No change.)

(7) the capture efficiency which shall be measured using applicable procedures outlined in 40 Code of Federal Regulations (CFR), Part 52.741, Subpart O, Appendix B. These procedures are:

- Procedure T - Criteria for and Verification of a
Permanent or Temporary Total Enclosure
- Procedure L - Volatile Organic Compounds (VOC) Input
- Procedure G.2 - Captured VOC Emissions (Dilution
Technique)
- Procedure F.1 - Fugitive VOC Emissions from Temporary
Enclosures
- Procedure F.2 - Fugitive VOC Emissions from Building
Enclosures

(A) The following are exemptions to capture efficiency testing requirements.

(i) If a source installs a permanent total enclosure (PTE) which meets the specifications of Procedure T and which directs all VOC to a control device, then the capture efficiency is assumed to be 100%, and the source is exempted from capture efficiency testing requirements. This does not exempt the source from performance of any control device efficiency testing that may be required. In addition, a source must demonstrate all criteria for a PTE are met during testing for control efficiency.

(ii) If a source uses a control device designed to collect and recover VOC (e.g., carbon absorber), an explicit

measurement of capture efficiency is not necessary if the following conditions are met. The overall control of the system can be determined by directly comparing the input liquid VOC to the recovered liquid VOC. The general procedure for use in this situation is given in 40 Code of Federal Regulation (CFR), §60.433 with the following additional restrictions.

(I) The source must be able to equate solvent usage with solvent recovery on a 24-hour (daily) basis, rather than a 30-day weighted average. This must be done within 72 hours following each 24-hour period.

(II) The solvent recovery system (i.e., capture and control system) must be dedicated to a single process line (e.g., one process line venting to a carbon absorber system); or if the solvent recovery

system controls multiple process lines, the source must be able to demonstrate that the overall control (i.e., the total recovered solvent VOC divided by the sum of liquid VOC input to all process lines venting to the control system) meets or exceeds the most stringent standard applicable for any process line venting to the control system.

(B) The capture efficiency shall be calculated using one of the following four protocols referenced. Any affected source must use one of these protocols, unless a suitable alternative protocol is approved by the executive director and EPA.

(i) Gas/gas method using temporary total enclosure (TTE). EPA specifications to determine whether a temporary enclosure is considered a TTE are given in Procedure T. The capture efficiency equation to be used for this protocol is:

$$CE = Gw / (Gw + Fw)$$

where: CE = capture efficiency, decimal fraction

Gw = mass of VOC captured and delivered to control device using a TTE (use Procedure G.2)

Fw = mass of fugitive VOC that escapes from a TTE (use Procedure F.1)

(ii) Liquid/gas method using TTE. EPA specifications to determine whether a temporary enclosure is considered a TTE are given in Procedure T. The capture efficiency equation to be used for this protocol is:

$$CE = (L - F) / L$$

where: CE = capture efficiency, decimal fraction

L = mass of liquid VOC input to process (use Procedure L)

F = mass of fugitive VOC that escapes from a TTE (use Procedure F.1)

(iii) Gas/gas method using the building or room in which the affected source is located as the enclosure

(BE) and in which G and F are measured while operating only the affected facility. All fans and blowers in the BE must be operating as they would under normal pro-

duction. The capture efficiency equation to be used for this protocol is:

$$CE = G / (G + Fb)$$

where: CE = capture efficiency, decimal fraction

G = mass of VOC captured and delivered to a control device (use Procedure G.2)

Fb = mass of fugitive VOC that escapes from building enclosure (use Procedure F.2)

(iv) Liquid/gas method using a BE in which L and F are measured while operating only the affected facility. All fans and blowers in the building or room must be operated as they would under normal production. The capture efficiency equation to be used for this protocol is:

$$CE = (L - Fb) / L$$

where: CE = capture efficiency, decimal fraction

L = mass of liquid VOC input to process
(use Procedure L)

Fb = mass of fugitive VOC that escapes from BE (use Procedure F.2)

(C) The following conditions must be met in measuring capture efficiency.

(i) Any error margin associated with a test protocol may not be incorporated into the results of a capture efficiency test.

(ii) All affected facilities shall accomplish the initial capture efficiency testing by the schedule in §115.439 of this title (relating to Counties and Compliance Schedules).

(iii) During an initial pre-test meeting, the Texas Air Control Board (TACB), and the source owner or operator shall identify those operating parameters which shall be monitored to ensure that capture efficiency does not change significantly over time. These parameters shall be monitored and recorded initially during the capture efficiency testing and thereafter during facility operation. TACB may require a new capture efficiency test if the operating parameter values change significantly from those recorded during the initial capture efficiency test.

(8) minor modifications to these test methods and procedures approved by the executive director.

§115.436. *Recordkeeping Requirements.* For the counties referenced in §115.439 of this title (relating to Counties and Compliance Schedules), the owner or operator of any graphic arts facility subject to the control requirements of §115.432 of this title (relating to Control Requirements) shall:

(1)-(5) (No change.)

(6) maintain on file the capture efficiency protocol submitted under §115.435(7) of this title (relating to Testing Requirements). The owner or operator shall submit all results of the test methods and capture efficiency protocols to the Texas Air Control Board (TACB) within 60 days of the actual test date. The source owner or operator shall maintain records of the capture efficiency operating parameter values on-site for a minimum of one year. If any changes are made to capture or control equipment, the owner or operator is required to notify the executive director in writing within 30 days of these changes and a new capture efficiency and/or control device destruction or removal efficiency test may be required.

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 October 10, 1991.

TRD-9112625 Lane Hartsock, Deputy
Director
Air Quality Planning
Texas Air Control Board

Effective date: November 1, 1991

Proposal publication date: July 2, 1991

For further information, please call: (512) 908-1451

TITLE 34. PUBLIC FI- NANCE

Part IV. Employees Retirement System of Texas

• 34 TAC §71.9

The Employees Retirement System of Texas adopts the repeal of §71.9, concerning military service credit-eligible periods, without changes to the proposed text as published in the August 13, 1991, issue of the *Texas Register* (16 TexReg 60).

The rule is being repealed to comply with legislation adopted by the 72nd Legislature.

State employees will be able to purchase service credit for any active duty military service without regard to whether it was during a time of war or armed conflict.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Texas Government Code, §815.102, which provides the Employees Retirement System of Texas with the authority to adopt rules for the administration of the funds of the retirement system.

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 October 8, 1991.

TRD-9112341 Charles D. Travis
Executive Director
Employees Retirement
System of Texas

Effective date: October 29, 1991

Proposal publication date: August 13, 1991

For further information, please call: (512) 867-3336

• 34 TAC §71.17

The Employees Retirement System of Texas adopts an amendment to §71.17, concerning credit for unused accumulated sick leave, without changes to the proposed text as published in the August 13, 1991, issue of the *Texas Register* (16 TexReg 60).

The rule is being amended to correspond with legislation passed by the 72nd Legislative Session.

The rule is amended so as to comply with legislation passed by the 72nd Legislature, and members with over 40 years' service will be entitled to additional credit for retirement purposes.

No comments were received regarding adoption of the amendment.

The amendment is adopted under §815.102, Texas Government Code, which provides Employees Retirement System of Texas with the authority to adopt rules for the administration of the funds of the retirement system.

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 October 8, 1991.

TRD-9112338 Charles D. Travis
Executive Director
Employees Retirement
System of Texas

Effective date: October 29, 1991

Proposal publication date: August 13, 1991

For further information, please call: (512) 867-3336

Chapter 73. Benefits.

• 34 TAC §73.19

The Employees Retirement System of Texas adopts the repeal of §73.19, concerning disability retiree-continuation of benefits, without changes to the proposed text as published in the August 13, 1991, issue of the *Texas Register* (16 TexReg 60).

The rule is being repealed to comply with legislation adopted by the 72nd Legislature.

The repeal will allow disability retirees to earn additional income without their disability annuity being reduced.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Texas Government Code, §815.102, which provide the Employees Retirement System of Texas with the authority to adopt rules for the administration of the funds of the retirement system.

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 October 8, 1991.

TRD-9112340 Charles D. Travis
Executive Director
Employees Retirement
System of Texas

Effective date: October 29, 1991

Proposal publication date: August 13, 1991

For further information, please call: (512) 867-3336

Chapter 77. Judicial Retirement

• 34 TAC §77.5

The Employees Retirement System of Texas adopts the repeal of §77.5, concerning military service credit-eligible periods, without changes to the proposed text as published in the August 13, 1991, issue of the *Texas Register* (16 TexReg 60).

The rule is being repealed to comply with legislation adopted by the 72nd Legislature.

Members of Judicial Retirement Systems I and II will be able to purchase service credit for any active duty military service without regard to whether it was during a time of war or conflict.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Texas Government Code, §835.002 and §840.002, which provides the Employees Retirement System of Texas with the authority to adopt rules for the administration of the funds of the retirement system.

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 October 8, 1991.

TRD-9112339 Charles D. Travis
Executive Director
Employees Retirement
System of Texas

Effective date: October 29, 1991

Proposal publication date: August 13, 1991

For further information, please call: (512) 867-3336

Chapter 81. Insurance

• 34 TAC §81.7

The Employees Retirement System of Texas adopts an amendment to §81.7, concerning enrollment and participation, with changes to the proposed text as published in the August 13, 1991, issue of the *Texas Register* (16 TexReg 60).

Trustee rules are modified in compliance with legislation to allow state employees and retirees who do not reside in any HMO service area an annual opportunity to enroll eligible dependents without evidence of insurability. Rules will also be modified to clarify the effective date of coverage changes and to allow a state employee to reinstate canceled coverage without evidence of insurability when he/she returns to work from