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How to Use the Texas Register

Information Available: The 10 sections of the Texas Register represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following a 30-day public comment period.

Open Meetings - notices of open meetings.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the Texas Register is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 19 (1994) is cited as follows: 19 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "19 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 19 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using Texas Register indexes, the Texas Administrative Code, section numbers, or TRD number.

Texas Administrative Code

The Texas Administrative Code (TAC) is the official compilation of all final state agency rules published in the Texas Register. Following its effective date, a rule is entered into the Texas Administrative Code. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the TAC. West Publishing Company, the official publisher of the TAC, releases cumulative supplements to each printed volume of the TAC twice each year.

The TAC volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the

agencies are grouped as a matter of convenience. Each Part represents an individual state agency. The Official TAC also is available on WESTLAW, West's computerized legal research service, in the TX-ADC database.

To purchase printed volumes of the TAC or to inquire about WESTLAW access to the TAC call West: 1-800-328-9352.

The Titles of the TAC, and their respective Title numbers are:

- 1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the TAC scheme, each section is designated by a TAC number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the Texas Administrative Code; TAC stands for the Texas Administrative Code; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the Texas Administrative Code, please look at the Table of TAC Titles Affected. The table is published cumulatively in the blue-cover quarterly indexes to the Texas Register (January 22, April 16, July 13, and October 12, 1993). In its second issue each month the Texas Register contains a cumulative Table of TAC Titles Affected for the preceding month. If a rule has changed during the time period covered by the table, the rule's TAC number will be printed with one or more Texas Register page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The Table of TAC Titles Affected is cumulative for each volume of the Texas Register (calendar year).

Update by FAX: An up-to-date Table of TAC Titles Affected is available by FAX upon request. Please specify the state agency and the TAC number(s) you wish to update. This service is free to Texas Register subscribers. Please have your subscription number ready when you make your request. For non-subscribers there will be a fee of \$2.00 per page (VISA, MasterCard). (512) 463-5561.

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this rule and the Texas Veterinary Licensing Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on December 20, 1993.

TRD-9333885

Ron Allen
Executive Director
Texas Board of Veterinary
Medical Examiners

Earliest possible date of adoption: February 4, 1994

For further information, please call: (512) 447-1183

◆ ◆ ◆
• 22 TAC §573.13

The Texas Board of Veterinary Medical Examiners proposes new §573.13, concerning use of ultrasound in diagnosis or therapy, which defines terminology associated with this discipline and specifies when licensees must be involved in the therapy and/or diagnosis.

Ron Allen, executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Allen also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to ensure that ultrasound diagnosis and/or therapy is performed by a licensee, or under the supervision of a licensee, or as a result of a diagnosis and recommendation by the licensee.

No data is available reflecting the number of individuals administering ultrasound therapy or diagnosis as defined in this rule, nor under what circumstances, therefore the Board cannot project the cost to small businesses.

No data is available reflecting the number of individuals administering ultrasound, therapy or diagnosis as defined in this rule, nor under what circumstances, therefore the Board cannot project the cost to persons.

Comments on the proposal may be submitted to the Texas Board of Veterinary Medical Examiners, 1946 South IH-35, Suite 306, Austin, Texas 78704.

The new section is proposed under Texas Civil Statutes, Article 8890, §7(a), which provide the Texas Board of Veterinary Medical Examiners with the authority to make, alter, or amend such rules and regulations as may be necessary or desirable to carry into effect the provisions of this Act.

§573.13. Use of Ultrasound in Diagnosis or Therapy.

(a) Definitions.

(1) Ultrasound—Mechanical radiating energy with a frequency greater than 20 kilocycles per second.

(2) Ultrasonics—That part of the science of acoustics dealing with the frequency range beyond the upper limit of perception by the human ear, but usually restricted to frequencies above 500 kilocycles per second.

(3) Ultrasonic radiation—The effect of ultrasound which is injurious to tissues because of its thermal effects when absorbed by living matter.

(4) Ultrasound therapy—Controlled doses of ultrasound used therapeutically to selectively break down pathologic tissues, as in treatment of arthritis and lesions of the nervous system.

(5) Ultrasound diagnosis—Ultrasound images used as a diagnostic aid by visually displaying echoes received from irradiated tissues.

(6) Ultrasonography—The visualization of deep structures of the body by recording the reflections of pulses of ultrasonic waves directed into the tissues.

(b) Use of ultrasound for diagnosis or therapy of animals. The use of ultrasound in animals to diagnosis any condition or for any therapeutic purpose is the practice of veterinary medicine and shall only be performed by a licensed veterinarian or under the direct or general supervision of a licensed veterinarian.

(c) Use of ultrasound by persons who are not licensed veterinarians.

(1) For diagnostic purposes—A person who is not a licensed veterinarian may perform ultrasonography on an animal for diagnostic purposes only if: the person administering the ultrasound is doing so at the request of a licensed veterinarian; the veterinarian has established a veterinarian/client/patient relationship; and it is the veterinarian who uses the ultrasonography to make a diagnosis.

(2) For therapeutic purposes—A person who is not a licensed veterinarian may perform ultrasonography on an animal for therapeutic purposes only if a veterinarian has: established a veterinarian/client/patient relationship; made a diagnosis; prescribed ultrasonics as a treatment; and, the person administering the ultrasound is doing so at the specific request of a licensed veterinarian.

(d) Prohibited acts. Any person who uses ultrasound on animals in a manner inconsistent with this rule shall be in violation of this rule and the Texas Veterinary Licensing Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on December 20, 1993.

TRD-9333884

Ron Allen
Executive Director
Texas Board of Veterinary
Medical Examiners

Earliest possible date of adoption: February 4, 1994

For further information, please call: (512) 447-1183

◆ ◆ ◆
TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resources Conservation Commission

Chapter 115. Control of Air Pollution from Volatile Organic Compounds

Subchapter B. General Volatile Organic Compound Sources

Vent Gas Control

• 30 TAC §§115.121, 115.122, 115.126, 115.127, 115.129

The Texas Natural Resource Conservation Commission (TNRCC) proposes amendments to §§115.121, 115.122, 115.126, 115.127, and 115.129, concerning Vent Gas Control. The proposed changes have been developed in response to a requirement by the U.S. Environmental Protection Agency (EPA) and the 1990 Amendments to the Federal Clean Air Act (FCAA) for states to develop and adopt the Rate of Progress (ROP) State Implementation Plan (SIP). The ROP SIP is required to achieve and maintain a volatile organic compound (VOC) emissions level that is 15% below the 1990 base year emissions by 1996 in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston ozone nonattainment areas. The ozone nonattainment counties affected by this proposal are Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller.

The proposed amendments to §115.121, concerning Emission Specifications, add emission limitations for bakery ovens. The proposed amendments to §115.122, concerning Control Requirements, specify that each affected bakery shall reduce total VOC emissions by at least 30% from the 1990 emissions inventory and clarify the "once-in, always-in" requirement in response to a request by the Texas Chemical Council. The proposed amendments to §115.126, concerning Monitoring and Recordkeeping Requirements, require affected bakeries to submit an initial control plan which demonstrates that the overall reduction of VOC emissions at the bakery will be at least 30% by May 31, 1996, require submission of an annual report beginning in 1997 which demonstrates that the overall reduction of VOC emissions at the

bakery continues to be at least 30%, and require submission of an updated report following the installation of an additional bakery oven(s).

The proposed amendments to §115.127, concerning Exemptions, provide an exemption for smaller bakery ovens, and add an exemption for vent gas streams in the pulp and paper industry in response to a petition for rulemaking submitted by the Texas Paper Industry Environmental Council. The proposed exemption for vent gas streams in the pulp and paper industry would allow affected vent gas streams to continue to utilize the current 30,000 parts per million (ppm) exemption rather than the 612 ppm exemption which takes effect May 31, 1995. The proposed exemption would only apply until November 15, 1998, by which time the federal maximum achievable control technology (MACT) standard for the pulp and paper industry is anticipated to be in effect. The proposed amendments to §115.129, concerning Counties and Compliance Schedules, specify the applicable counties and the compliance date for the new requirements.

The proposed amendments are part of the Phase II rules in a series of proposed revisions to Chapter 115 (concerning Control of Air Pollution From Volatile Organic Compounds) and the SIP to provide the required reductions in the ozone nonattainment areas as mandated by the 1990 FCAA Amendments. Since this is an interim step in attaining the ozone standard, only those controls needed to satisfy the requirement will be adopted. Additional controls are anticipated to be adopted by November 15, 1994, in conjunction with an attainment demonstration requirement in each ozone nonattainment area. By this time, Urban Airshed Modeling (UAM) will be available to facilitate more scientific decision-making regarding the effect of control measure scenarios on ozone levels. The UAM is a quantitative state-of-the-art computer model that will enable the staff to evaluate the effects of various combinations of control measures on ozone.

Texas is submitting rules to meet the ROP reduction in two phases. Phase I rules comprised a significant portion of the required reductions and were submitted by the original deadline of November 15, 1993. Phase II consists of any remaining percentage toward the 15% net of growth reductions, as well as additional contingency measures to obtain an additional 3.0% of reductions. Phase II will be submitted by November 15, 1994.

Stephen Minick, budget and planning division, has determined that for each year of the first five-year period the proposed sections are in effect, there would be no fiscal implications for state and local governments. Economic costs to small businesses, persons, or businesses required to implement the proposed control measures are estimated at a total capital cost of approximately \$1.25 million (an average of \$104,167 per bakery) plus total annual operating and maintenance costs of \$250,000 (an average of \$20,833 per bakery) for the 12 affected bakeries.

Mr. Minick also has determined that for the first five-year period the proposed sections are in effect, the public benefit anticipated as

a result of implementing the sections will be satisfaction of FCAA Amendments and EPA requirements, and VOC emission reductions in ozone nonattainment areas which are necessary for the timely attainment of the ozone standard.

Public hearings on this proposal will be held at the following times and places: January 24, 1994, 7:00 p.m., City of Houston, Pollution Control, Building Auditorium, Houston, Texas; January 26, 1994, 6:00 p.m., City of El Paso, Council Chambers, 2 Civic Center Plaza, El Paso, Texas; January 27, 1994, 7:00 p.m., Irving Central Library, 801 West Irving Boulevard, Irving, Texas.

Staff members will be available to discuss the proposal 30 minutes prior to each hearing. Public comments, both oral and written, on the proposed changes are invited at the hearings. Interrogation or cross-examination is not permitted.

Written comments not presented at the hearings must be submitted to the TNRCC, Office of Air Quality, Regulation Development Section, P.O. Box 13087, Austin, Texas 78711-3087, no later than February 11, 1994. Material received by 4:00 p.m. on that date will be considered by the Commission prior to any final action on the proposed revisions. Copies of the proposed revisions are available at the Regulation Development Section of the TNRCC Air Quality Planning Annex located at 12118 North IH-35, Park 35 Technology Center, Building E, Austin, Texas 78753, and at all TNRCC Air Program regional offices. For further information, contact Eddie Mack at (512) 239-1488.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 475-2245. Requests should be made as far in advance as possible.

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

§115.121. Emission Specifications.

(a) For all persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas as defined in §115.10 of this title (relating to Definitions), the following emission specifications shall apply.

(1)-(4) (No change.)

(5) For the Dallas/Fort Worth, El Paso, and Houston/Galveston areas after May 31, 1996, no person shall allow a vent gas stream to be emitted from any bakery oven, as defined in §115.10 of this title (relating to Definitions), unless the total VOC mass emissions are controlled properly in accordance with §115.122(a)(3) of this title (relating to Control Requirements).

(b)-(c) (No change.)

§115.122. Control Requirements.

(a) For all persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, the following control requirements shall apply.

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

(3) For the Dallas/Fort Worth, El Paso, and Houston/Galveston areas each bakery with a vent gas stream(s) affected by §115.121(a)(5) of this title shall reduce total volatile organic compound (VOC) emissions by at least 30% from the bakery's 1990 baseline emissions inventory by May 31, 1996.

(4)[(3)] Any vent gas stream that becomes subject to the provisions of paragraphs (1), (2), or (3) of this subsection by exceeding provisions of §115.127(a) of this title (relating to Exemptions) shall [will] remain subject to the provisions of this subsection, even if throughput or emissions later fall below the exemption limits unless and until emissions are reduced to at or below the controlled emissions level existing prior to implementation of the project by which throughput or emission rate was reduced [the modification] and:

(A) -(B) (No change.)

(a)-(b) (No change.)

§115.126. Monitoring and Recordkeeping Requirements.

(a) For the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, the owner or operator of any facility which emits volatile organic compounds (VOC) through a stationary vent shall maintain records at the facility for at least two years and shall make such records available to representatives of the Texas Natural Resource Conservation Commission (TNRCC), U.S. Environmental Protection Agency (EPA), or any local air pollution control agency having jurisdiction in the area upon request. These records shall include, but not be limited to, the following.

(1) -(3) (No change.)

(4) For bakeries affected by §115.121(a) (5) and §115.122(a)(3) of this title (relating to Emission Specifications and Control Requirements), the following additional requirements apply.

(A) The owner or operator of each bakery shall submit an initial control plan no later than May 31, 1995, to the TNRCC Austin Office (Office of Air Quality), the appropriate TNRCC

Regional Office, and any local air pollution control program with jurisdiction which demonstrates that the overall reduction of VOC emissions from the bakery's 1990 baseline emissions inventory will be at least 30% by May 31, 1996. At a minimum, the control plan shall include the emission point number (EPN) and the facility identification number (FIN) of each bakery oven and any associated control device, a plot plan showing the location, EPN, and FIN of each bakery oven and any associated control device, and calculation of the 1990 VOC emission rates (consistent with the bakery's 1990 emissions inventory).

(B) In order to document continued compliance with §115.121(a)(5) and §115.122(a)(3) of this title, the owner or operator of each bakery shall submit an annual report no later than March 31 of each year, starting in 1997, to the TNRCC Austin Office (Office of Air Quality), the appropriate TNRCC Regional Office, and any local air pollution control program with jurisdiction which demonstrates that the overall reduction of VOC emissions from the bakery's 1990 baseline emissions inventory during the preceding calendar year is at least 30% after May 31, 1996. At a minimum, the report shall include the emission point number (EPN) and the facility identification number (FIN) of each bakery oven and any associated control device, a plot plan showing the location, EPN, and FIN of each bakery oven and any associated control device, and the calculation of VOC emission rates.

(C) The owner or operator of each bakery shall submit an updated report no later than 30 days after the installation of an additional bakery oven(s). The report shall be submitted to the TNRCC Austin Office (Office of Air Quality), the appropriate TNRCC Regional Office, and any local air pollution control program with jurisdiction and shall demonstrate that the overall reduction of VOC emissions from the bakery's 1990 baseline emissions inventory during the preceding calendar year continues to be at least 30%.

(b) (No change.)

§115.127. Exemptions.

(a) For all persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, the following exemptions apply.

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

(3) In Dallas, Harris, and Tarrant Counties, and after May 31, 1995,

in ozone nonattainment counties other than Dallas, Harris, and Tarrant, the following vent gas streams are exempt from the requirements of §115.121(a)(2) of this title:

(A) (No change.)

(B) Until May 31, 1995, in Harris County, a vent gas stream specified in §115.121(a)(2) of this title with a concentration of volatile organic compounds (VOC) less than 0.44 pounds per square inch absolute (psia) true partial pressure (30,000 parts per million); [and]

(C) until November 15, 1998, for facilities which have been assigned the code number 26 as described in the document Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement, a vent gas stream specified in §115.121(a)(2) of this title with a concentration of VOC less than 0.44 psia true partial pressure (30,000 parts per million); and

(D)[(C)] a vent gas stream specified in §115.121(a)(2) of this title with a concentration of VOC less than 0.009 psia true partial pressure (612 ppm).

(4)-(5) (No change.)

(6) Bakeries are exempt from the requirements of §115.121(a)(5) of this title if each bakery oven on the property, when uncontrolled, emits a combined weight of VOC less than 25 tons in one year.

(b)-(c) (No change.)

§115.129. Counties and Compliance Schedules. All affected persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas shall be in compliance with this undesignated head (relating to Vent Gas Control) in accordance with the following schedules.

(1)-(4) (No change.)

(5) All affected bakeries in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Harris, Liberty, Montgomery, Tarrant, and Waller Counties shall be in compliance with §115.121(a)(5), 115.122(a)(3), 115.126(a)(4), and 115.127(a) (6) of this title (relating to Emission Specifications, Control Requirements, Monitoring and Recordkeeping Requirements, and Exemptions), as soon as practicable, but no later than May 31, 1996.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on December 17, 1993.

TRD-9334024

Mary Ruth Holder
Director, Legal Division
Texas Natural Resource
Conservation
Commission

Proposed date of adoption May 15, 1994

For further information, please call: (512) 463-8159

Industrial Wastewater

• 30 TAC §§115.140,
115.142-115.149

The Texas Natural Resource Conservation Commission (TNRCC) proposes new §§115.140, 115.142-115.449, concerning Industrial Wastewater. This new undesignated head will be included in existing Subchapter B, concerning General Volatile Organic Compound Sources. The new sections have been developed in response to a requirement by the U.S. Environmental Protection Agency (EPA) and the 1990 amendments to the Federal Clean Air Act (FCAA) for states to develop and adopt revisions to the Rate-of-Progress (ROP) State Implementation Plan (SIP).

The ROP SIP is required to achieve and maintain a volatile organic compound (VOC) emissions level that is 15% below the 1990 base year emissions by 1996 in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston ozone nonattainment areas. The ozone nonattainment counties affected by this proposal are Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Harris, Liberty, Montgomery, Tarrant, and Waller.

Proposed §115.140, concerning Definitions, defines certain words and phrases unique to the proposed rule. The proposal defines an affected source category based on the Source Identification Code (SIC) as proposed in the draft Control Techniques Guidelines (CTG). The draft CTG recommended not including the pulp and paper industry due to an extensive work in developing a multimedia Maximum Available Control Technology (MACT) standard for the industry. Additionally, the draft CTG has recommended not including the petroleum refinery industry. The staff has decided to include the petroleum refinery industry in this rulemaking since the majority of the quantifiable wastewater emissions in the 1990 inventory are from petroleum refineries. The staff realizes that the Benzene National Emissions Standards for Hazardous Air Pollutants (NESHAPS) will affect many of these refineries, however, industry has not been able to accurately reflect what reductions have or will occur from this regulation. The staff will continue to work with the petroleum refinery industry and if it determines that the majority of the 1990 emissions will be regulated by the Benzene NESHAPS, the staff may reconsider including them as an affected source category.

The definition for affected VOC wastewater stream bases the determination on two char-