

TEXAS REGISTER

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sonal protection of department representatives resides with the department by law. A department representative shall not be impeded or refused entry in the course of his official duties by reason of any regulatory or contractual specification.

(f) All persons engaged in asbestos-related activities must have the department-issued ID Card present at the worksite.

§295.70. Compliance: Administrative Penalty.

(a) (No change.)

(b) The penalty shall not exceed \$10,000 a day per violation. Each day a violation continues will be considered a separate violation. The total penalty will be the sum of all individual violation penalties.

(c) - (e) (No change.)

(f) Violations shall be placed in one of the following severity levels.

(1) Critical violation. Severity Level III covers violations that are most significant and have a direct negative impact on public health and safety. The base penalty for a Level III violation, first occurrence will not exceed \$10,000 per day, per violation. Examples of Level III violations include, but are not limited to:

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

(C) working without a license or with improper (forged, altered, etc.) license;

(D) failure to adequately prevent public entry to potentially contaminated areas;

(E) failure to submit a notification;

(F) submitting a forged or altered training certificate in order to obtain a training provider or other license;

(G) training providers training without a license or with an improper license;

(H) training providers providing training certificates to persons who have not attended the required training course as specified by the department and/or the Model Accreditation Plan; and

(I) failure to submit a notification or to pay the required fee.

(2) Serious violation. Severity Level II covers violations that are significant and which, if not corrected, could threaten public health and safety. The base penalty for Level II violations on a first

occurrence will not exceed \$1,000 per day, per violation. Examples of Level II violations include, but are not limited to:

(A) failure to maintain material in a wet condition;

(B) working with a lapsed or suspended license;

(C) submitting an improper notification;

(D) a training provider failing to conduct a training course for the specified time period as specified in §295.64 of this title (relating to Training: Required Asbestos Training Courses);

(E) training with a lapsed training provider license. If this results in a suspension, the organization and principals will not be allowed to be licensed for a period of one year; and

(F) failure of a licensed person to maintain current training or physical.

(3) Significant violation. Severity Level I covers violations that are of more than minor significance and, if left uncorrected, could lead to more serious circumstances. This category shall include fraud and misrepresentation. The base penalty for Level I violations on first occurrence will not exceed \$100 per day, per violation. Examples of Level I violations include, but are not limited to:

(A) (No change.)

(B) inadequate storage for clothing in the "clean room;"

(C) failure to have worker certificate on a job site;

(D) failure of a training provider to submit information to the department regarding training course schedules or to notify the department of cancellations within the specified time periods;

(E) failure of a training provider to submit course completion information within the specified time period as described in §295.65(f)(3) of this title (Training: Approval of Training Courses); and

(F) a training provider exceeding the maximum trainee-instructor ratio.

(g) The person charged with the violation will be given the opportunity for a he/shearing conducted in accordance with

the applicable provisions of the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the department's formal he/shearing procedures in Chapter 1 of this title (relating to the Board of Health).

(h)-(i) (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 authority.

Issued in Austin, Texas, on September 1, 1994.

TRD-9447505

Susan K Steeg
General Counsel
Texas Department of
Health

Effective date: September 22, 1994

Proposal publication date: May 3, 1994

For further information, please call: (512) 834-6610

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TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 117. Control of Air Pollution From Nitrogen Compounds

The Texas Natural Resource Conservation Commission (TNRCC) adopts amendments to §§117.451, 117.510, 117.520, 117.530, and 117.601, concerning Control of Air Pollution From Nitrogen Compounds. Section 117.510 is adopted with changes to the proposed text as published in the June 10, 1994 *Texas Register* (19 TexReg 4487). Sections 117.451, 117.520, 117.530, and 117.601 are adopted without changes and will not be republished.

The changes have been adopted in order to extend the final compliance date of the Chapter 117 rule, which was previously adopted in response to a requirement by the United States Environmental Protection Agency (EPA) and the 1990 Federal Clean Air Act (FCAA) Amendments for states to apply reasonably available control technology (RACT) requirements to major sources of nitrogen oxides (NO_x) by May 31, 1995. This extension delays the implementation of NO_x RACT until May 31, 1997 in the following ozone nonattainment counties affected by Chapter 117: Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller (Houston/Galveston area); and Hardin, Jefferson, and Orange (Beaumont/Port Arthur area)

For the Houston/Galveston and Beaumont/Port Arthur areas, the State Implementation Plan (SIP) for demonstration of attainment of the ozone national ambient air quality standard (NAAQS) will be developed

in two stages. The first stage, to be completed by November 15, 1994, will be based on Urban Airshed Model (UAM) modeling using historical episodes. The second stage, now underway, will be completed between November 1995, and May 1996, using the UAM with the results of the Coastal Oxidant Assessment for Southeast Texas (COAST), an intensive 1993 field study. Preliminary results of base case UAM modeling indicate that, until large reductions in volatile organic compounds (VOC) have been made, NO_x reductions do not contribute to ozone attainment in portions of the modeled ozone nonattainment areas and will actually increase ozone levels in portions of these areas. The TNRCC intends to make the implementation of NO_x RACT contingent on the results of UAM modeling using data from the COAST study.

Revisions are made to §§117.451 (relating to Applicability, Nitric Acid Manufacturing—General), 117.510 (Compliance Schedule for Utility Electric Generation), 117.520 (Compliance Schedule for Commercial, Institutional, and Industrial Combustion Sources), 117.530 (Compliance Schedule for Nitric Acid and Adipic Acid Manufacturing Sources), and 117.601 (relating to Gas-Fired Steam Generation). References to the final compliance date of May 31, 1995 have been changed to May 31, 1997 in these sections. In addition, references to July 31, 1995 have been changed to July 31, 1997 in §117.510(5) and §117.520(4). Section 117.510 is adopted with language consistent with the previous adoption of Chapter 117 on May 25, 1994.

Public hearing on this proposal was held on July 6, 1994 at the TNRCC Austin offices. No oral comments were received at the public hearing, and written comments were received from 11 commenters.

Amoco Oil Company, Exxon Chemical Company, Exxon Company, U.S.A., Houston Lighting & Power (HL&P), Pennzoil Company, and the Texas Chemical Council supported the proposed two-year extension of the Chapter 117 final compliance date to May 31, 1997, and recommended that UAM modeling using the COAST data be relied upon to guide the ozone control strategy.

The staff acknowledges the support expressed by the commenters.

The Galveston-Houston Association for Smog Prevention (GHASP) protested the delay of VOC and NO_x controls and stated that a plan detailing the required reductions must be submitted by November 15, 1994 as required by the FCAA.

The FCAA requires states to develop, adopt, and submit a Post-1996 Rate-of-Progress (ROP) SIP and accompanying rules to EPA by November 15, 1994. This submittal must demonstrate how the Houston/Galveston and Beaumont/Port Arthur areas will achieve continuing reductions in VOC and/or NO_x emissions of 3.0% per year until 1999 for Beaumont/Port Arthur and 2007 for Houston/Galveston, or until attainment status is achieved. The plan must also include an additional 3.0% of contingency measures to be implemented if the nonattainment area fails to meet a deadline. The TNRCC currently plans

to submit to EPA by November 15, 1994 a SIP which will identify rules to achieve all or a portion of the first three years' VOC reductions (or 9.0% net-of-growth) and a commitment to submit any needed rules by January 15, 1995. This "down payment" approach is designed to meet the requirements for the years 1997-1999. The final SIP will be based on UAM modeling using the COAST study data. The TNRCC plans to complete this modeling in 1996, at which time the state will develop any further rules necessary to reach attainment as evidenced by the model.

The TNRCC's planned strategy does not dismiss the potential effectiveness of NO_x reductions, since the next round of UAM modeling using the COAST data may confirm the ozone benefits of NO_x control. However, the present strategy does acknowledge that the timing of NO_x reductions may be crucial. The modeling does not support the effectiveness of NO_x controls if implemented by 1995; however, it does suggest that there may be ozone benefits from NO_x reductions implemented as late as 2005, after further large VOC reductions have been made. The current rulemaking, being an interim measure, does not abandon the concept of NO_x control as an effective element of the long-term ozone control strategy.

The EPA Region 6 Office in Dallas commented that the 1990 FCAA amendments require implementation of NO_x RACT by May 31, 1995, and suggested that the state consider submitting a NO_x exemption petition as allowed under the FCAA, §182(f), in order to waive or delay this implementation deadline.

The FCAA, §182(f) requires that RACT rules for major stationary sources of NO_x in certain ozone nonattainment areas be implemented by May 31, 1995. In addition, federal rules developed in accordance with the FCAA, §176(c)(4) require that federally funded transportation projects must conform with the SIP regarding attainment of all NAAQS (transportation conformity). The FCAA, §182(f)(1)(A) provides that the requirement to implement NO_x RACT, and, by extension, transportation conformity, shall not apply in an ozone nonattainment area if the Administrator of the EPA determines that additional NO_x reductions would not contribute to attainment of the NAAQS for ozone in the area. The TNRCC is requesting a temporary exemption from NO_x RACT and transportation conformity requirements until May 31, 1997 when the results of more detailed UAM modeling using the COAST study data are available to guide the ozone control strategy. The TNRCC's §182(f) temporary exemption petition for the Houston/Galveston and Beaumont/Port Arthur areas will be submitted to EPA by mid-August, 1994. The petition contains results of base case modeling for the Houston and Beaumont areas and documents the state's position that NO_x reductions by 1995 do not contribute to ozone attainment in these areas.

The HL&P commented that §117.510(2)(A) and (B), concerning Compliance Schedule for Utility Electric Generation, should be revised to remain consistent with the corresponding sections of the adopted rule by substituting "equipment and software required pursuant to" in place of "units required to install CEMS

pursuant to the requirements of" in the referenced paragraphs.

The proposal to extend the Chapter 117 compliance date was published in the same issue (June 10, 1994, 19 TexReg 4487) of the *Texas Register* as the May 25, 1994 adoption of revised Chapter 117. As a result, some language which changed in the adopted version was not reflected in the current proposal. The commenter's suggested language for §117.510(2)(A) and (B) is already contained in the version of Chapter 117 adopted May 25, 1994 and, therefore, is incorporated in the present adoption of Chapter 117.

An individual commented that delaying implementation of NO_x RACT would be detrimental to air quality and human health. Another individual commented that adding highway capacity would lead to more NO_x pollution, urban sprawl, water pollution, and ultimately, more injuries from automotive accidents.

The impact upon public health has been an important element in the decision to delay NO_x RACT. Preliminary UAM modeling indicates that reducing NO_x could increase ozone levels in portions of the modeled areas. This means that NO_x reductions could lead to increased population exposure to ozone. Therefore, delaying the implementation of NO_x RACT may protect against elevated levels of ozone in populated areas. With regard to other environmental and safety factors which may be indirectly related to air quality issues, the rulemaking presently under consideration does not impact transportation projects. The TNRCC's requested temporary §182(f) exemption from NO_x transportation conformity requirements only affects air quality considerations of the planned highway projects, and does not address the other factors listed by the commenter.

The GHASP commented that, due to inaccuracies in the TNRCC emissions inventory for NO_x and VOC, it is premature to draw conclusions about the effect of minor NO_x reductions in the 10-15% range.

The accuracy of emissions inventories has been the subject of considerable discussion. In its December 1992 report, "Rethinking the Ozone Problem in Urban and Regional Air Pollution," the National Research Council concluded that emissions inventories tended to underestimate VOC emissions and overestimate NO_x emissions. This may be supported by the observation that some ambient measurements of VOC/NO_x ratios are larger than would be expected from VOC and NO_x emissions reported in the inventories.

However, definitive conclusions cannot be drawn on the basis of this circumstantial evidence, especially if temporal and spatial distributions of emissions have not been taken into account. The COAST study will provide a refined profile of how VOC emissions vary over time and space. Another improved source of input data to the model will be the NO_x testing results submitted by sources in their NO_x RACT initial control plans. The UAM modeling with the COAST data may show that a site-dependent control strategy, with NO_x reductions varying across the area, is the appropriate means to achieve the standard. Until these modeling data are available,

the current preliminary UAM results are the best information upon which to base the short-term control strategy. For these reasons, the TNRCC believes that it is premature to implement NO_x RACT until such a decision can be based on sound science.

The Lone Star Chapter of the Sierra Club (Sierra Club) commented that there are indications that, while NO_x reductions may result in increased ozone levels in the urban core, outlying areas might experience decreased ozone levels, thus justifying NO_x controls now.

The controlling day is of prime importance in determining the appropriate ozone control strategy for the modeled area. This is the day in a modeled ozone episode requiring the most stringent VOC or NO_x reductions in order to attain the NAAQS. Therefore, results from a noncontrolling day should not be used to determine the control strategy for an area, since such a strategy would not move as expeditiously toward ozone attainment. On the controlling days for both Houston/Galveston and Beaumont/Port Arthur, the best evidence currently available indicates that NO_x reductions do not create a corresponding ozone benefit until considerable VOC reductions have been implemented.

The UAM results show that modeled NO_x reductions slightly decreased ozone concentrations at two outlying ozone monitoring stations, Northwest Harris County and Mauriceville (located in the Houston and Beaumont areas, respectively) on one or more days leading up to the controlling day for each modeled episode. On the controlling days for both these sites, UAM results show that NO_x reductions have less impact in lowering ozone levels than comparable VOC reductions. Furthermore, the modeling for controlling days shows that NO_x reductions either have no impact or are counterproductive in lowering the highest ozone levels in the area.

Sierra Club and GHASP commented that, in addition to the role of NO_x in ozone formation, NO_x's contribution to visible haze, acidic particulate, and acid rain is further reason to implement NO_x RACT now.

Although NO_x emissions do play a minor role in the formation of visible haze, fine acid particulate matter, and acid rain, these effects have not been adequately quantified to the extent that would warrant NO_x reductions independent of the ozone control strategy. For this reason, it is difficult to weigh these contributions against prematurely implementing a NO_x control program which possibly would increase ozone levels, based on currently available air quality modeling data.

Subchapter C. Acid Manufacturing

Nitric Acid Manufacturing-General

• 30 TAC §117.451

The amendment is adopted under the Texas Health and Safety Code (Vernon 1992), 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.

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 August 31, 1994.

TRD-9447510

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

Effective date: September 22, 1994

Proposal publication date: June 10, 1994

For further information, please call: (512) 239-1970

Subchapter D. Administrative Provisions

• 30 TAC §§117.510, 117.520, 117.530

The amendments are adopted under the Texas Health and Safety Code (Vernon 1992), 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.

§117.510. Compliance Schedule For Utility Electric Generation. All persons affected by the provisions of the undesignated head (relating to Utility Electric Generation) in Subchapter B of this chapter shall be in compliance as soon as practicable, but no later than May 31, 1997 (final compliance date). Additionally, all affected persons shall meet the following compliance schedules and submit written notification to the Executive Director:

(1) (No change.)

(2) conduct applicable continuous emissions monitoring system (CEMS) or predictive emissions monitoring systems (PEMS) evaluations and quality assurance procedures as specified in §117.113 of this title (relating to Continuous Demonstration of Compliance) according to the following schedules:

(A) (No change.)

(B) for equipment and software not required pursuant to 40 CFR 75, no later than May 31, 1997;

(3) install all nitrogen oxides (NO_x) abatement equipment, implement all NO_x control techniques, and submit the results of the CEMS or PEMS performance evaluation and quality assurance procedures to the Texas Natural Resource Conservation Commission no later than May 31, 1997;

(4) for units operating without CEMS or PEMS, conduct applicable tests for initial demonstration of compliance as

specified in §117.111 of this title (relating to Initial Demonstration of Compliance); and submit the results by April 1, 1994, or as early as practicable, but in no case later than May 31, 1997;

(5) for units operating with CEMS or PEMS and complying with the NO_x emission limit on a rolling 30-day average, conduct the applicable tests for the initial demonstration of compliance as specified in §117.111 of this title and submit the results of the applicable CEMS or PEMS performance evaluation and quality assurance procedures as specified in §117.113 of this title (relating to Continuous Demonstration of Compliance) no later than July 31, 1997;

(6) for units operating with CEMS or PEMS and complying with the NO_x emission limit in pounds per hour on a block one-hour average, conduct the applicable tests for the initial demonstration of compliance as specified in §117.111 of this title and submit the results of the applicable CEMS or PEMS performance evaluation and quality assurance procedures as specified in §117.113 of this title by May 31, 1997;

(7) (No change.)

(8) no later than May 31, 1997, submit a final control plan for compliance in accordance with §117.115 of this title (relating to Final Control Plan Procedures).

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 August 31, 1994.

TRD-9447511

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

Effective date: September 22, 1994

Proposal publication date: June 10, 1994

For further information, please call: (512) 239-1970

Subchapter E. Gas-Fired Steam Generation

• 30 TAC §117.601

The amendment is adopted under the Texas Health and Safety Code (Vernon 1992), 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.

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 August 31, 1994.

TRD-9447512

Mary Ruth Holder
Director, Legal Services
Division
Texas Natural Resource

Effective date: September 22, 1994

Proposal publication date: June 10, 1994

For further information, please call: (512)
239-1970

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 72. Memoranda of Understanding with Other State Agencies

Memorandum of Understanding with the Texas Department of Commerce Regarding Economic Development

• 40 TAC §72.3001

The Texas Department of Human Services (DHS) adopts new §72.3001, concerning the memorandum of understanding with the Texas Department of Commerce regarding economic development, in its Memoranda of Understanding with Other State Agencies rule chapter, without changes to the proposed text as published in the July 26, 1994, issue of the *Texas Register* (19 TexReg 5698).

The justification for the new section is to adopt by reference Texas Administrative Code Title 10, Community Development; Part V, Texas Department of Commerce; Chapter 195, Memoranda of Understanding; §195.3, which was proposed in the April 22, 1994, issue of the *Texas Register* (19 TexReg 3046) and was adopted without change in the June 17, 1994, issue of the *Texas Register* (19 TexReg 4748). This memorandum of understanding implements the requirement in the Texas Government Code, §481.028, enacted by the 73rd Legislature that the Texas Department of Commerce enter into memoranda of understanding with other state agencies involved in economic development to cooperate in program planning and budgeting.

The new section will function by coordinating the workforce and economic development activities with involved state agencies in program and budget planning.

No comments were received regarding adoption of the new section.

The new section is adopted under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs.

The new section implements the Human Resources Code §§22.001-22.024.

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 authority.

Adopted in Austin, Texas, on August 31, 1994.

Effective date: October 1, 1994

Proposal publication date: July 26, 1994

For further information, please call: (512)
450-3785

Part IV. Texas Commission for the Blind

Chapter 159. Administrative Rules and Procedures

• 40 TAC §159.12

The Texas Commission for the Blind adopts new §159.12, concerning public access to agency documents and records and the charges, if any, the agency makes for copies of public records, with changes to the proposed text as published in the August 2, 1994, issue of the *Texas Register* (19 TexReg 5932).

The Commission adopts the rule to comply with actions taken by the 73rd Legislature in House Bill 1009 in relation to Government Code, Chapter 552, which requires agencies to adopt rules specifying charges for copies of open records. Changes were made in subparagraph (b), paragraph (2) of the proposed text to correct cross references to the agency's rules on confidentiality and the Government Code.

The rule provides the framework within which the Commission will recover the cost to provide copies of open records to persons requesting the copies and contains the charges persons must pay for copies. The rule also provides the public with the primary location where procedural documents may be viewed.

The Commission received no comments regarding the proposed rule.

The rule is adopted under the Human Resources Code, Title 5, Chapter 91, Subchapter B, §90.011, which provides the Texas Commission for the Blind with the authority to adopt rules prescribing the policies and procedures followed by the commission in the administration of its programs.

§159.12. Public Access to Documents and Records.

(a) Copies of the state plan, which is submitted by the state and approved by the federal government, internal procedural documents, manuals, guidelines of programs, and policies of the Board are maintained for public view and inspection at the central office on working days between the hours of 8:00 a.m. and 5:00 p.m.

(b) Charges for Copies of Public Records.

(1) General. Chapter 428, Acts, 73rd Legislature, Regular Session (1993), requires state agencies to adopt rules that

specify the charges the Commission will make for copies of public records. State agencies are authorized to establish charges up to the full cost to the agency of providing the copies, unless the request is for 50 pages or less of readily available information in standard-size form.

(2) Legal compliance. In the provision of records, the Commission complies with Government Code, Chapter 552, 34 Code of Federal Regulations, §361.59, and Texas Human Resources Code, Title 5, §91.059. Additional information on confidentiality of records is addressed in §161.5 of this title (relating to Confidentiality of Records).

(3) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(A) Full cost—The sum of all direct costs plus a proportional share of overhead, or indirect costs. Full cost will be determined in accordance with generally accepted methodologies.

(B) Nonstandard-size copy—A copy of public information that is made available to a requestor in any format other than a standard-size paper copy. Microfiche, microfilm, diskettes, magnetic tapes, CD-ROM, and nonstandard-size paper copies are examples of nonstandard-size copies.

(C) Readily available information—Information that already exists in printed form, or information that is stored electronically and is ready to be printed or copied without requiring any programming, or information that already exists on microfiche or microfilm. Information that requires a substantial amount of time to locate or prepare for release is not readily available information.

(D) Standard-size copy—A printed impression on one side of piece of paper that measures up to 8-1/2 by 14 inches. Each side of a piece of paper on which an impression is made is counted as a single-copy. A piece of paper that is printed on both sides is counted as two copies.

(4) Copy charge. The charges in this paragraph are to cover the cost of materials onto which information is copied and do not reflect any additional charges that may be associated with a particular request.

(A) Standard-size copy—The charge for standard-size paper copies reproduced by means of an office machine copier or a computer printer is \$.10 per page.

(B) Nonstandard-size copy—The charges for nonstandard copies