

# TEXAS REGISTER

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receipt of the request for appellate review. The time for appellate review may be extended by the chair of the hospital oversight committee for good cause.

(D) Nature of appellate review.

(i) The chair of the hospital oversight committee shall appoint a review panel composed of not less than three persons, either members of the hospital oversight committee or others, including but not limited to reputable persons outside the hospital, or any combination of the same, to consider the record upon which the recommendation before it was made. The majority of the panel shall be composed of members of the medical staff who shall not have actively participated in the consideration of the matter involved at any previous level.

(ii) At its discretion, the review panel may accept additional oral or written evidence subject to the same rights of cross-examination or confrontation which governed the hearing panel proceedings, but only if the affected individual can demonstrate that the evidence was offered but excluded at the hearing.

(iii) The affected individual shall have the right to present a written statement in support of his or her position on appeal, and the review panel may allow the affected individual or his or her representative to appear personally and present oral argument. The review panel shall recommend a final disposition of the matter to the hospital oversight committee.

(7) Final decision of the hospital oversight committee.

(A) Within 30 days after receipt of the review panel's recommendation, the hospital oversight committee shall render a final decision in writing affirming, modifying, or reversing the recommendation of the hearing panel and shall deliver copies of the decision to the affected individual and to the chief of the medical staff in person or by certified mail.

(B) No applicant or medical staff member shall be entitled as a matter of right to more than one appellate review on any single action or decision. If the hospital oversight committee ultimately denies initial appointment or reappointment to the medical staff to an applicant or revokes or terminates the medical staff appointment and clinical privileges of a current staff member, that individual may not apply again for medical staff appointment or clinical privileges at the hospital for two years from the date of the decision, unless the hospital oversight executive committee provides otherwise in its written decision.

(k) Amendments. There shall be an annual review of the medical staff bylaws, and the rules and regulations. The chief of staff/DDPS shall compile all proposed amendments for referral to the medical staff executive committee for its information and comment. Proposed amendments shall be voted upon at that meeting, provided that they shall have been mailed to the medical staff at least 14 days prior to the meeting. To be approved, an amendment must receive two-thirds of the votes cast by those present and voting. Amendments so adopted shall be effective when approved by the hospital oversight committee and the board.

(l) Approval. These medical staff bylaws shall be approved by the hospital oversight committee and shall become effective upon adoption by the board, superseding and replacing any and all previous medical staff bylaws. Henceforth, all activities and actions of the medical staff and of each individual exercising clinical privileges in the hospital shall be undertaken pursuant to the this chapter.

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 26, 1995.

TRD-9513824

Susan K. Staeg  
General Counsel  
Texas Department of  
Health

Effective date: November 16, 1995

Proposal publication date: May 9, 1995

For further information, please call: (512) 458-7236

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**Part VIII. Interagency  
Council on Early  
Childhood Intervention  
Services**

**Chapter 621. Early Childhood  
Intervention**

**Early Childhood Intervention  
Service Delivery for Mile-  
stones Services**

• 25 TAC §621.83

The Interagency Council on Early Childhood Intervention Services adopts an amendment to §621.83, concerning program requirements, in its Early Childhood Intervention Program chapter, without changes to the proposed text as published in the September 5, 1995, issue of the *Texas Register* (20 TexReg 6887).

The purpose of the amendment is to comply with federal regulations.

The adopted rule will allow Milestones programs to serve 1,500 gram babies who are also receiving WIC and Champus services.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §73.003, which authorizes the Interagency Council on Early Childhood Intervention Services to establish rules regarding services provided for children with developmental delays.

The amendment implements the Human Resources Code, §§73.001-73.021.

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 26, 1995.

TRD-8513933

Donna Samuelson  
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Interagency Council on  
Early Childhood  
Intervention

Effective date: November 20, 1995

Proposal publication date: September 5, 1995

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**TITLE 30. ENVIRONMENTAL  
QUALITY**

**Part I. Texas Natural  
Resource Conservation  
Commission**

**Chapter 115. Control of Air  
Pollution From Volatile  
Organic Compounds**

**Subchapter B. General Volatile  
Organic Compound Sources  
Water Separation**

• 30 TAC §§115.131-115.133,  
115.135, 115.137, 115.139

The Texas Natural Resource Conservation Commission (TNRCC) adopts amendments to §§115.131-115.133, 115.135, 115.137, and 115.139, concerning Water Separation. Sections 115.135, 115.137, and 115.139 are adopted with changes to the proposed text as published in the May 26, 1995, issue of the *Texas Register* (20 TexReg 3886). Sections 115.131-115.133 are adopted without changes and will not be republished.

Revisions to Chapter 115, concerning Control of Air Pollution from Volatile Organic Compounds (VOC), and to the State Implementation Plan are adopted in response to petitions for rulemaking from four companies in oil and gas production and the Texas Mid-Continent Oil and Gas Association (TMOGA). The revisions are adopted in order to provide for more cost-effective regulation. The rule previously did not set a de minimis exemption level for VOC water separators used in conjunction with the production of crude oil or condensate in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston ozone non-attainment areas. The affected

ozone nonattainment counties are Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller. In response to testimony, the rule now exempts VOC separators which primarily handle stormwater. The amendments are also adopted in order to clarify existing requirements, update rule references, and delete obsolete or unnecessary language.

The amendments to §115.131, concerning Emission Specifications, and §115.132, concerning Control Requirements, delete language made obsolete by the passage of the May 31, 1995, compliance date.

The amendment to §115.133, concerning Alternate Control Requirements, updates a reference to §115.910 to reflect a title change. The amendment to §115.135, concerning Testing Requirements, provides new and updated test methods for determining true vapor pressure.

The amendment to §115.137, concerning Exemptions, establishes an exemption for low emitting VOC water separators used in crude oil and condensate production and delete language made obsolete by the passage of the May 31, 1995, compliance date.

The amendment to §115.139, concerning Counties and Compliance Schedules, deletes language made obsolete by the passage of the May 31, 1995, compliance date.

A public hearing was held on June 22, 1995 in Houston. Written comments were accepted through July 7, 1995.

Nine commenters submitted testimony on §§115.131-115.133, 115.135, 115.137, and 115.139, concerning Water Separation. Mitchell Energy Corporation; Pennzoil Company; and Texaco Exploration and Production, Incorporated fully supported the proposed revisions, while Chevron USA Production Company (Chevron); Citgo Petroleum Corporation (Citgo); City of Dallas (Dallas); Exxon Company, U.S.A. (Exxon); Mobil Oil Corporation (Mobil); and TMOGA generally supported the proposed revisions but suggested changes.

Mobil commented on the test methods at §115.135(a)(5) and (b)(5) and stated that the wording "for the measurement of Reid vapor pressure" should be deleted because some of the referenced test methods can provide true vapor pressure without any need to convert from Reid vapor pressure.

The TNRCC agrees with Mobil that the reference should be more generic. In addition, it has come to the TNRCC's attention that §115.135(a) and (b) refer only to §115.132 rather than to §§115.131, 115.132 and 115.137. The gaseous VOC concentration test methods are used to demonstrate compliance with the emission specifications of §115.131, and the liquid VOC vapor pressure test methods are used to demonstrate compliance with the vapor pressure exemptions in §115.137. The TNRCC has corrected §115.135(a) and (b) to make it clear that these test methods are applicable in determining compliance with §§115.131, 115.132 and 115.137.

Chevron, Citgo, Exxon and TMOGA commented on §115.137(a)(1). Exxon and TMOGA stated that the proposed mass emission rate exemption for VOC water separators used exclusively in conjunction with the production of crude oil or condensate should be extended to include all VOC water separators. Chevron and Citgo recommended that the proposed mass emission rate exemption be broadened specifically to include VOC water separators at petroleum bulk terminals (Standard Industrial Classification code 5171), due to the poor cost-effectiveness of controlling vented emissions from these separators.

The TNRCC did not extend the mass emission rate exemption to include all VOC water separators. A difference between VOC water separators at oil and gas production facilities and other separators is that oil and gas production facilities are typically located at remote sites which do not have flares available or personnel on-site to monitor control devices. More importantly, separators used in oil and gas production may continuously emit gases, due to the depressurization of entrained gases in the produced oil and water. In contrast, VOC water separators used in wastewater systems produce VOC emissions largely from surface evaporation. A vented tank or other enclosure is a reasonable and very cost-effective control measure for wastewater separators, since there is not a continuous outflow of process gas. The United States Environmental Protection Agency (EPA) estimates that a VOC wastewater separator which is enclosed, with a pressure relief vent set to open at the maximum pressure necessary for proper system operation, will control 85% of the VOC emissions, compared to an open-tank separator. The cost-effectiveness is estimated by the EPA at \$36/ton for refinery separators.

The TNRCC agrees that vapor recovery systems are not cost-effective air pollution control for the VOC water separator vents at gasoline bulk terminals, as described by the commenters. These separators are essentially backup units to catch gasoline or other petroleum product spills. To address the concerns of these commenters, the TNRCC has added an exemption for covered VOC water separators which are designed solely to capture stormwater, spills, or exterior surface cleanup waters. These separators would have to be enclosed, but would not need pressure relief valves or vapor recovery systems to control emissions.

Under §115.132, there are three options for controlling emissions from VOC water separators. One option is for each VOC water separator compartment to have all openings sealed and totally enclose the liquid contents. Another option is to equip each compartment with a floating roof or internal floating cover which rests on the surface of the liquid contents and is equipped with a closure seal or seals to close the space between the roof edge and tank wall. The third option is to vent the emissions from the compartment to a vapor recovery system. These three options have been available since the initial adoption of the VOC water separator rules by the former Texas Air Control Board on January 26, 1972.

The TNRCC believes that the requirements of the first control option (§115.132(a)(1), (b)(1) and (c)(1)) have been recently misinterpreted to mean that no venting to the atmosphere is allowed. The agency clarifies that the intent of these control requirements is to allow for venting of emissions through a pressure relief valve, without vapor recovery, provided that the pressure relief valve is designed to open only as necessary to allow proper operation, and is set at the maximum possible pressure to minimize unnecessary venting. The VOC water separator needs to operate at nearly constant level for proper operation, and excessive pressure could alter the liquid levels and impair the separation effect. Conservation vents, a type of pressure relief valve, allow minor pressure equilibration (e.g. tank "breathing" losses), and are of fairly standardized design. A conservation vent designed to hold at least 0.5 ounce of vacuum and eight ounces of pressure, and operable, based on a visual inspection, would be considered compliant. The effectiveness of the separator, and rule compliance, is primarily dependent upon roof seals, access doors, and other openings being well-sealed such that the separator can hold a vacuum or pressure without emissions to the atmosphere, except through the pressure relief valve. To incorporate these clarifications, §§115.132(a)(1), (b)(1), (c)(1), and 115.137(b) need to be revised. Because these rules were not proposed for revision as part of the current rulemaking, the TNRCC intends to propose these revisions in separate rulemaking at a later date.

Dallas commented on §115.139 and suggested that the appropriate rule title be given after each rule reference, rather than including multiple rule titles together.

The rule reference format initially proposed in §115.139 is allowed by the *Texas Register* and results in less repetition of the wording "relating to." However, because the May 31, 1995 compliance date in the proposed §115.139 has passed, the TNRCC has revised §115.139 to include only a reference to §115.930, concerning Compliance Dates. Section 115.930 states, in part, that "if the compliance dates are not specified for any provision, the compliance date is past and all affected persons must be and remain in compliance with the provision as of the original compliance date."

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.

#### §115.135. Testing Requirements.

(a) For the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, compliance with §115.131(a), §115.132(a), and §115.137 of this title (relating to Emission Specifications; Control Requirements; and Exemptions) shall be determined by applying the following test methods, as appropriate:

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

(5) determination of true vapor pressure at actual storage temperature using American Society for Testing Materials (ASTM) Test Methods D323-89, D2879, D4953, D5190, or D5191; using API Publication 2517, Third Edition, 1989 or standard reference texts to convert from Reid vapor pressure to true vapor pressure, where applicable; or

(6) (No change.)

(b) For Gregg, Nueces, and Victoria Counties, compliance with §115.131(b), §115.132(b), and §115.137(b) of this title shall be determined by applying the following test methods, as appropriate:

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

(5) determination of true vapor pressure at actual storage temperature using ASTM Test Methods D323-89, D2879, D4953, D5190, or D5191; and using API Publication 2517, Third Edition, 1989 or standard reference texts to convert from Reid vapor pressure to true vapor pressure, where applicable; or

(6) (No change.)

#### §115.137. Exemptions.

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

(1) Any volatile organic compound (VOC) water separator used exclusively in conjunction with the production of crude oil or condensate is exempt from §115.132(a) of this title (relating to Control Requirements) if the emissions from the separator have a combined weight of VOC equal to or less than 100 pounds (45.4 kg) in any continuous 24-hour period. When emissions from multiple sources (including, but not limited to, VOC water separators, treaters, storage tanks, and saltwater disposal tanks) are routed through a common vent, the calculation of VOC emissions for purposes of this exemption shall be based upon the total of all emission sources which are routed to the common vent. It is unacceptable to disconnect any of the multiple sources routed through a common vent for purposes of complying with this exemption.

(2) Any single or multiple compartment VOC water separator which separates materials having a true vapor pressure of VOC less than 0.5 psia (3.4 kPa) obtained from any equipment is exempt from §115.132(a) of this title.

(3) Any single or multiple compartment VOC water separator which is designed solely to capture stormwater, spills, or exterior surface cleanup waters, provided that the separator is fully covered. These separators are not required to be equipped with pressure/vacuum vents or vapor recovery systems.

(b) (No change.)

(c) For Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties, the following exemptions shall apply:

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

(4) Any single or multiple compartment VOC water separator which is designed solely to capture stormwater, spills, or exterior surface cleanup waters, provided that the separator is fully covered. These separators are not required to be equipped with pressure/vacuum vents or vapor recovery systems.

§115.139. Counties and Compliance Schedules. All affected persons in Aransas, Bexar, Brazoria, Calhoun, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Gregg, Hardin, Harris, Jefferson, Liberty, Matagorda, Montgomery, Nueces, Orange, San Patricio, Tarrant, Travis, Victoria, and Waller Counties shall continue to comply with this undesignated head (relating to Water Separation) as required by §115.930 of this title (relating to Compliance Dates).

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 25, 1995.

TRD-9513922

Kevin McCalla  
Director, Legal Services  
Division  
Texas Natural Resource  
Conservation  
Commission

Effective date: November 20, 1995

Proposal publication date: May 26, 1995

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

## TITLE 34. PUBLIC FINANCE

### Part I. Comptroller of Public Accounts

#### Chapter 5. Funds Management (Fiscal Affairs)

##### Claims Processing-Purchase Vouchers

###### • 34 TAC §5.57

The Comptroller of Public Accounts adopts new §5.57, concerning use of credit cards by state agencies, without changes to the proposed text as published in the July 21, 1995, issue of the *Texas Register* (20 TexReg 5368).

The new section covers the procedures that state agencies must follow when using credit cards to pay for purchases and when paying credit card issuers.

No comments were received regarding adoption of the new section.

The new section is adopted under the Government Code, §403.023(b), which authorizes the comptroller to adopt rules relating to the use of credit cards by state agencies.

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 24, 1995.

TRD-9513761

Martin E. Cherry  
Chief, General Law  
Section  
Comptroller of Public  
Accounts

Effective date: November 15, 1995

Proposal publication date: July 21, 1995

For further information, please call: (512) 463-4028

## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Services

#### Chapter 11. Food Distribution and Processing

The Texas Department of Human Services (DHS) adopts the repeal of §11.105, new §11.105, and an amendment to §11.6008, without changes to the proposed text as published in the September 12, 1995, issue of the *Texas Register* (20 TexReg 7177).

The justification for the repeal, new section, and amendment is to clarify and simplify the adverse action process and time frames for sanctions for contractors participating in the Special Nutrition Programs who fail to comply with the requirements of the Single Audit Act. The adoption also moves the notification process in advance of the audit due date and deletes the suspension of payment step in the sanction process.

The sections will function by enhancing program accountability by enabling DHS to expedite the collection and resolution of audits required under the Single Audit Act.

No comments were received regarding adoption of the sections.

##### Food Distribution Program

###### • 40 TAC §11.105

The repeal is adopted under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

The repeal implements the Human Resources Code, §§22.001-22.024 and §§33.001-33.024.

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 legal authority.

Issued in Austin, Texas, on October 30, 1995.