physician..." CPT code to indicate that the service was the treating doctor's review of report(s) only.

(K) V1, Level of MMI for Treating Doctor - This modifier shall be added to the "Work related or medical disability examination by the treating physician..." CPT code when the office visit level of service is equal to a "minimal" level.

(L) V2, Level of MMI for Treating Doctor - This modifier shall be added to the "Work related or medical disability examination by the treating physician..." CPT code when the office visit level of service is equal to "self limited or minor" level.

(M) V3, Level of MMI for Treating Doctor - This modifier shall be added to the "Work related or medical disability examination by the treating physician..." CPT code when the office visit level of service is equal to "low to moderate" level.

(N) V4, Level of MMI for Treating Doctor - This modifier shall be added to the "Work related or medical disability examination by the treating physician..." CPT code when the office visit level of service is equal to "moderate to high severity" level and of at least 25 minutes duration.

(O) V5, Level of MMI for Treating Doctor - This modifier shall be added to the "Work related or medical disability examination by the treating physician..." CPT code when the office visit level of service is equal to "moderate to high severity" level and of at least 45 minutes duration.

(P) WC, Work Conditioning - This modifier shall be added to the appropriate "Work hardening/conditioning" CPT code to indicate work conditioning was performed.

(Q) WH, Work Hardening - This modifier shall be added to the appropriate "Work hardening/conditioning" CPT code to indicate work hardening was performed.

(R) WP, Whole Procedure - This modifier shall be added to the CPT code when both the professional and technical components of a procedure are performed by a single HCP.

(f) Where any terms or parts of this section or its application to any person or circumstance are determined by a court of competent jurisdiction to be invalid, the invalidity does not affect other provisions or applications of this section that can be given effect without the invalidated provision or application.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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# TITLE 30. ENVIRONMENTAL QUALITY

## PART 1. TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

### CHAPTER 115. CONTROL OF AIR POLLUTION FROM VOLATILE ORGANIC COMPOUNDS

The Texas Natural Resource Conservation Commission (commission) adopts amendments to Subchapter A, Definitions, §115.10; Subchapter B, General Volatile Organic Compound Sources, §§115.113, 115.116, 115.117, 115.132, 115.133, 115.136, 115.137, 115.139, 115.140, 115.145, 115.147, 115.153, 115.159, 115.161, and 115.169; Subchapter C, Volatile Organic Compound Transfer Operations, §115.214; Subchapter D, Petroleum Refining, Natural Gas Processing, and Petrochemical Processes, §§115.311 - 115.313, 115.316, 115.319, 115.322, 115.325 - 115.327, 115.352, 115.353, 115.355 - 115.357, and 115.359; Subchapter E, Solvent-Using Processes, §§115.420 - 115.422, 115.440, 115.442, 115.445, and 115.446; Subchapter F, Miscellaneous Industrial Sources, §§115.532, 115.533, 115.535, 115.539, 115.541 - 115.543, 115.545 - 115.547, 115.549, 115.552, and 115.559; and Subchapter J, Administrative Provisions, §§115.910 - 115.916, 115.920, 115.923, 115.930, 115.932, 115.934, and 115.940. These sections will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP).

Sections 115.326, 115.355, 115.446, and 115.915 are adopted *with changes* to the proposed text as published in the January 4, 2002 issue of the *Texas Register* (27 TexReg 49). Sections 115.10, 115.113, 115.116, 115.117, 115.132, 115.133, 115.136, 115.137, 115.139, 115.140, 115.145, 115.147, 115.153, 115.159, 115.161, 115.169, 115.214, 115.311 - 115.313, 115.316, 115.319, 115.322, 115.325, 115.327, 115.352, 115.353, 115.356, 115.357, 115.359, 115.420 - 115.422, 115.440, 115.442, 115.445, 115.532, 115.533, 115.535, 115.539, 115.541 - 115.543, 115.545 - 115.547, 115.549, 115.552, 115.559, 115.910 - 115.914, 115.916, 115.920, 115.923, 115.930, 115.932, 115.934, and 115.940 are adopted *without changes* to the proposed text and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The commission adopts these amendments to Chapter 115, Control of Air Pollution from Volatile Organic Compounds (VOC), and revisions to the SIP in order to make a variety of changes which clarify and add flexibility to existing requirements, correct technical and typographical errors, update references to terms, and delete redundant language.

SECTION BY SECTION DISCUSSION

Throughout this rulemaking the outdated term "undesignated head" is replaced with the proper term "division" in response to revised *Texas Register* rules published in the February 13, 1998 issue of the *Texas Register* (23 TexReg 1289). Also throughout the rulemaking, the term "Centigrade" is replaced with the term "Celsius" which is now the term commonly used to describe this temperature scale. In a separate rulemaking published in the July 16, 1999 issue of the *Texas Register* (24 TexReg 5490), the commission added a definition of vapor control system to §115.10 which is identical to the definition of vapor recovery system. This will facilitate a transition in the Chapter 115 rules to this term from the misleading term "vapor recovery system," which is defined to include both recovery and combustion control devices. Consequently, the adopted amendments also

change references from "vapor recovery system" to "vapor control system" for clarification. Justification for these changes will not be discussed any further in this discussion other than to point out where each change has been made.

Additionally, formatting, punctuation, and other nonsubstantive corrections are made throughout the rulemaking as necessary. These corrections include the deletion of unnecessary section title references. These nonsubstantive corrections will not be discussed further.

*Subchapter A, Definitions*

The adopted amendment to §115.10, Definitions, revises the definition of marine terminal to clarify that both loading and unloading can occur at a marine terminal. This change is necessary for consistency with §115.214(a)(3)(B)(i) and (C), Inspection Requirements, which applies to unloading of VOC at marine terminals.

*Subchapter B, General Volatile Organic Compound Sources*

*Division 1, Storage of Volatile Organic Compounds*

The adopted amendments to §115.113, Alternate Control Requirements, incorporate Aransas, Bexar, Calhoun, Gregg, Matagorda, Nueces, San Patricio, Travis, and Victoria Counties into subsection (a), now implied, and delete all of subsections (b) and (c) which currently contain the alternate control requirements for these nine counties. The amendments to §115.113 also revise the term "section" (which should have been "undesignated head") to "division." Finally, the amendments to §115.113 change "executive director" to lowercase for consistency with other divisions.

The adopted amendments to §115.116, Monitoring and Recordkeeping Requirements, abbreviate "EPA" because this term is defined in 30 TAC §3.2, Definitions, and delete the existing §115.116(a)(3)(D) and (b)(3)(D), which concern records associated with control device maintenance activities, because maintenance activities are already addressed in 30 TAC §101.7, Maintenance, Start-up and Shutdown Reporting, Recordkeeping, and Operational Requirements.

The adopted amendments to §115.117, Exemptions, revise the term "undesignated head" to "division," spell out "pounds per square inch absolute" (psia), and add an exemption for storage containers which have a storage capacity of no more than 1,000 gallons for consistency with Tables I(a), I(b), and II(a) in §115.112, Control Requirements.

*Subchapter B, General Volatile Organic Compound Sources*

*Division 3, Water Separation*

The adopted amendments to §115.132, Control Requirements, update the old term "standard exemption" with the correct term "permit by rule" and correct the reference to the Chapter 106 title to "Permits by Rule."

The adopted amendments to §115.133, Alternate Control Requirements, incorporate Aransas, Bexar, Calhoun, Gregg, Matagorda, Nueces, San Patricio, Travis, and Victoria Counties into subsection (a), now implied, and delete all of subsections (b) and (c), which currently contain the alternate control requirements for these nine counties. The amendments to §115.133 also revise the term "section" (which should have been "undesignated head") to "division." Finally, the amendments to §115.133 change "executive director" to lower-case for consistency with other divisions.

The adopted amendments to §115.136, Monitoring and Recordkeeping Requirements, abbreviate "EPA" because this term is defined in §3.2, and delete the existing §115.136(a)(2)(D) and (b)(2)(D), which concern records associated with control device maintenance activities, because maintenance activities are already addressed in §101.7.

The adopted amendments to §115.137, Exemptions, revise the term "undesignated head" to "division," spell out "pounds per square inch absolute," and change a reference from "vapor recovery system" to "vapor control system."

The adopted amendment to §115.139, Counties and Compliance Schedule, revises the term "undesignated head" to "division."

*Subchapter B, General Volatile Organic Compound Sources*

*Division 4, Industrial Wastewater*

The adopted amendment to §115.140, Industrial Wastewater Definitions, replaces "Texas Natural Resource Conservation Commission" with "commission" for consistency with the commission's style guidelines.

The adopted amendments to §115.145, Approved Test Methods, correct a punctuation error and delete unnecessary section title references.

The adopted amendments to §115.147, Exemptions, correct the term "portion" to "division" and correct the formatting of the numerical number "10" to the term "ten." The amendments to §115.147 also clarify the applicability of the exemption available under §115.147(3) by changing the reference to "the requirements of this division" to "the control requirements of §115.142." This exemption was initially added to ensure that duplication of control requirements did not occur. However, the exemption was not added to make the rule less stringent than control requirements that were already in place (i.e., the VOC/water separator rules). The amendments clarify this intent.

*Subchapter B, General Volatile Organic Compound Sources*

*Division 5, Municipal Solid Waste Landfills*

The adopted amendment to §115.153, Alternate Control Methods, revises the term "undesignated head" to "division."

The adopted amendments to §115.159, Counties and Compliance Schedule, revise the term "undesignated head" to "division" and revise the phrase "be in compliance" to "demonstrate compliance" to emphasize the testing, monitoring and recordkeeping, and determination of mass emissions and flow rates.

*Subchapter B, General Volatile Organic Compound Sources*

*Division 6, Batch Processes*

The adopted amendment to §115.161, Applicability, adds a reference to §115.167(2)(A). This revision is necessary to ensure that vent gas streams which are currently subject to the requirements of Subchapter B, General Volatile Organic Compound Sources, Division 2, Vent Gas Control, remain controlled under that division if they are not required to be controlled under §115.162, Control Requirements, because they qualify for the exemption under §115.167(2)(A).

The adopted amendment to §115.169, Counties and Compliance Schedule, revises the phrase "be in compliance" to "demonstrate compliance" to emphasize the testing, monitoring and recordkeeping, and determination of mass emissions and flow rates.

*Subchapter C, Volatile Organic Compound Transfer Operations*

*Division 1, Loading and Unloading of Volatile Organic Compounds*

The adopted amendments to §115.214, Inspection Requirements, add the phrase "to or from transport vessels" to the catchlines in subsections (a)(1) and (b)(1) to more accurately describe the requirements of these paragraphs. The amendments to §115.214 also correct a typographical error in §115.214(b)(1)(D)(ii) by changing a reference from §115.213(b) to §115.213(c).

*Subchapter D, Petroleum Refining, Natural Gas Processing, and Petrochemical Processes*

*Division 1, Process Unit Turnaround and Vacuum-Producing Systems in Petroleum Refineries*

The adopted amendments to §115.311, Emission Specifications, correct a typographical error in §115.311(a)(1) and (2) by changing references from §115.312(a) to §115.312(a)(2).

The adopted amendments to §115.312, Control Requirements, change "Centigrade" to "Celsius" in §115.312(a)(2)(A) and (b)(2)(A), and change "vapor recovery system" to "vapor control system" in §115.312(a)(2)(C) and (b)(2)(C). In addition, the amendments to §115.312 replace the phrase "volatile organic compound (VOC)" with the acronym "VOC" because this acronym was previously established within the section.

The adopted amendments to §115.313, Alternate Control Requirements, incorporate Gregg, Nueces, and Victoria Counties into subsection (a), now implied, and delete all of subsection (b), which currently contains the alternate control requirements for these three counties. The amendments to §115.313 also revise the term "undesignated head" to "division."

The adopted amendments to §115.316, Monitoring and Recordkeeping Requirements, delete the existing §115.316(a)(1)(D) and (b)(1)(D), which concern records associated with control device maintenance activities, because maintenance activities are already addressed in §101.7. The amendments to §115.316 also update references from the "Texas Air Control Board" and "TACB" (one of the commission's predecessor agencies) to "executive director" for consistency with the commission's style guidelines and abbreviate "EPA" because this term is defined in §3.2, Definitions.

The adopted amendment to §115.319, Counties and Compliance Schedules, revises the term "undesignated head" to "division."

*Subchapter D, Petroleum Refining, Natural Gas Processing, and Petrochemical Processes*

*Division 2, Fugitive Emission Control in Petroleum Refineries in Gregg, Nueces, and Victoria Counties*

The adopted amendments to §115.322, Control Requirements, revise the phrase "safety pressure relief valves" in §115.322(4) to "pressure relief valves" for consistency with other sections in Chapter 115. The amendments to §115.322 also revise §115.322(5), which requires that pipeline valves and pressure relief valves in gaseous VOC service be marked in some manner that will be readily obvious to monitoring personnel, by adding an option that the owner or operator may choose to monitor all components in liquid service on the schedule for components in gaseous service specified in §115.324(2), Inspection Requirements. This option will result in more frequent monitoring of components in liquid service, but will add flexibility for owners or operators to be able to choose which option will be most efficient and effective for their refinery.

The adopted amendments to §115.325, Testing Requirements, change "Centigrade" to "Celsius" and spell out "American Petroleum Institute."

The adopted amendments to §115.326, Recordkeeping Requirements, spell out and acronym "parts per million by volume (ppmv)" and revise the recordkeeping requirements for consistency with the fugitive emissions monitoring program required by §115.324. Specifically, the amendments add requirements for keeping records of the date the component was monitored, the results of the monitoring (in ppmv), the test method used (Test Method 21, or sight/sound/smell), and the date on which a first attempt at repair was made to a leaking component. In the proposed language, the existing §115.326(2)(H) was to remain but be renumbered to become §115.326(2)(G)(v). However, in the January 4, 2002 issue of the *Texas Register* (27 TexReg 65), the existing language, "those leaks that cannot be repaired until turnaround," was incorrectly struck through as being deleted. A correction was published in the March 29, 2002 issue of the *Texas Register* (27 TexReg 2589). For clarity, this section is adopted with changes to indicate that the existing language is to remain as new §115.326(2)(G)(v).

The adopted amendments to §115.327, Exemptions, revise the term "these sections" (which should have been "this undesignated head") to "division" and spell out and acronym "pounds per square inch absolute (psia)" and "centimeters (cm)." The amendments to §115.327 also correct the formatting of the numerical number "5" to the word "five."

*Subchapter D, Petroleum Refining, Natural Gas Processing, and Petrochemical Processes*

*Division 3, Fugitive Emission Control in Petroleum Refining, Natural Gas/Gasoline Processing, and Petrochemical Processes in Ozone Nonattainment Areas*

The adopted amendment to §115.352, Control Requirements, revises the phrase "safety pressure relief valves" in §115.322(4) to "pressure relief valves" for consistency with other sections in Chapter 115.

The adopted amendment to §115.353, Alternate Control Requirements, revises the term "undesignated head" to "division."

The adopted amendments to §115.355, Testing Requirements, revise the term "undesignated head" to "division," correct the title of the division, and spell out and acronym "American Petroleum Institute (API)." The commission proposed to include a reference in §115.355(1) to calibration at 500 ppmv for Test Method 21 but has determined to retain the current requirement for calibration at 10,000 ppmv because a leak is defined as 10,000 ppmv for certain components.

The adopted amendments to §115.356, Recordkeeping Requirements, revise the recordkeeping requirements for consistency with the fugitive emissions monitoring program required by §115.354 by adding a requirement for keeping records of the date on which a first attempt at repair was made to a leaking component. The amendments to §115.356 also abbreviate "EPA" because this term is defined in §3.2.

The adopted amendments to §115.357, Exemptions, revise the term "undesignated head" to "division" in §115.357(2) and (6) - (8) and add the title of the division to §115.357(2). In addition, the

amendments to §115.357 spell out and acronym "volatile organic compound (VOC)" and "parts per million by volume (ppmv)" and acronym the term "pounds per square inch absolute" as "psia."

The adopted amendments to §115.359, Counties and Compliance Schedules, add a reference to the division in place of a reference to the sections in the division for brevity and clarity, and replace language which is obsolete due to the passing of a November 15, 1996 compliance date with new language stating that all affected persons in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties shall continue to comply with this division (relating to Fugitive Emission Control in Petroleum Refining, Natural Gas/Gasoline Processing, and Petrochemical Processes in Ozone Nonattainment Areas) as required by §115.930 (relating to Compliance Dates).

*Subchapter E, Solvent-Using Processes*

*Division 2, Surface Coating Processes*

The adopted amendments to Subchapter E include revising the subchapter title from "Solvent- Using Process" to "Solvent-Using Processes" in order to more accurately describe the contents of this subchapter.

The adopted amendments to §115.420, Surface Coating Definitions, add a definition of hydrocarbon-based cleaning solvent to §115.420(b)(1) which is consistent with the requirements for hydrocarbon-based cleaning solvents specified in Table 1 - Composition Requirements for Approved Cleaning Solvents of 40 Code of Federal Regulations (CFR) §63.744, Standards: Cleaning operations. The EPA's *Control of Volatile Organic Compound Emissions from Coating Operations at Aerospace Manufacturing and Rework Operations* (aerospace Control Techniques Guideline (CTG)) was the basis for the adoption of the aerospace coating requirements which were added to the Surface Coating Processes Division effective July 20, 2000, as published in the July 14, 2000 issue of the *Texas Register* (25 TexReg 6752). The July 2000 adopted rule language was based on rule language provided in the Aerospace Manufacturing and Rework Operations Model Rule, found in Appendix B of the aerospace CTG. In the aerospace CTG's model rule, however, hydrocarbon-based cleaning solvents specified in Table 1 of 40 CFR §63.744 were inadvertently not exempted from the housekeeping measures, thereby creating an inconsistency between the Chapter 115 aerospace rules and 40 CFR §63.744.

The adopted amendments to §115.420(b)(1) also renumber subsequent definitions to accommodate the new definition of "hydrocarbon-based cleaning solvent," correct the abbreviation for "basecoat/clearcoat" in §115.420(b)(12)(B)(i), and correct the variable "i" to "e" in the first summation sign in the denominator of the definition of "VOC composite vapor pressure" in the renumbered §115.420(b)(1)(EEEE).

The adopted amendments to §115.421, Emission Specifications, revise §115.421(a)(11) to clarify that the exemption for separate coating formulations in volumes less than 50 gallons per year to a maximum of 200 gallons per year for all such formulations applies to the total usage of these coatings at the account. The amendments also clarify that the term "formulations" refers to coating formulations and clarify that the term "antique aerospace" refers to antique aerospace vehicles.

The adopted amendment to §115.422, Control Requirements, adds "hydrocarbon-based cleaning solvents" to the list of cleaning solvents that are exempt from the housekeeping measures for the reasons explained in the discussion of §115.420.

*Subchapter E, Solvent-Using Processes*

*Division 4, Offset Lithographic Printing*

The adopted amendment to §115.440, Offset Printing Definitions, adds a new §115.440(10) to define "VOC composite partial pressure," which is necessary due to the adopted new §115.442(1)(F)(iii).

The amendments to §115.442, Control Requirements, add a new §115.442(1)(F)(iii) to give an additional option for meeting VOC reduction requirements by using cleaning solutions with a VOC composite partial vapor pressure less than or equal to ten millimeters of mercury (mm Hg) at 20 degrees Celsius (68 degrees Fahrenheit). This revision is needed to provide additional flexibility in this rule to encourage the use of low vapor pressure cleaning solutions which have lower VOC emissions than conventional cleaning solutions. The amendments also spell out and acronym "parts per million by volume (ppmv)" in §115.442(2).

The adopted amendments to §115.445, Approved Test Methods, abbreviate "EPA" in §115.445(5) because this term is defined in §3.2, and add a needed section symbol for a federal regulation citation along with the effective date of October 18, 1983 for the federal regulations.

The adopted amendments to §115.446, Monitoring and Recordkeeping Requirements, revise the temperature monitoring device accuracy requirement in §115.446(1) to include an option that the accuracy be ±1.0% of the temperature being monitored. In response to comment, §115.446(3) was revised to clarify that the requirement that the dryer be maintained at negative pressure applies only when the press is operating. The amendments to §115.446 also revise §115.446(5) to add an option for the monitoring and recording of temperature readings with respect to fountain solutions. These revisions are needed to provide additional flexibility in the rule for consistency with the offset printing CTG and other federal guidance. In addition, the amendments to §115.446 change a reference from "§115.442(1)(A) - (D)" to "§115.442(1)(A), (C), or (D) " because §115.442(1)(B) does not include fountain solution refrigeration as an option. Also in response to comment, a reference in §115.446(6) was corrected from "continuous cleaning equipment" to "automatic cleaning equipment" for consistency with the terminology used in the offset printing industry.

*Subchapter F, Miscellaneous Industrial Sources*

*Division 2, Pharmaceutical Manufacturing Facilities*

The adopted amendments to §115.532, Control Requirements, update the old term "standard exemption" with the correct term "permit by rule" and correct the reference to the title of Chapter 106 to "Permits by Rule."

The adopted amendments to §115.533, Alternate Control Requirements, incorporate Gregg, Nueces, and Victoria Counties into subsection (a), now implied, and delete all of subsection (b) which currently contains the alternate control requirements for these three counties. The amendments to §115.533 also revise the term "undesignated head" to "division."

The adopted amendments to §115.535, Testing Requirements, revise the term "undesignated head" to "division."

The adopted amendment to §115.539, Counties and Compliance Schedules, revises the term "undesignated head" to "division."

*Subchapter F, Miscellaneous Industrial Sources*

*Division 3, Degassing or Cleaning of Stationary, Marine, and Transport Vessels*

The adopted amendments to §115.541, Emission Specifications, update references in §115.541(b) and (b)(5) to the definition of "marine vessel," which was previously relocated from §115.10 to §101.1.

The adopted amendment to §115.542, Control Requirements, corrects a reference in §115.542(b)(4) to reflect the common usage of the term "lower explosive limit (LEL)."

The adopted amendments to §115.543, Alternate Control Requirements, revise the term "undesignated head" to "division," and change "executive director" to lowercase for consistency with other divisions.

The adopted amendments to §115.545, Approved Test Methods, reference an additional vapor-tightness test available under 40 CFR §63.565(c). The inclusion of this second test method for determining marine vessel vapor tightness will provide additional flexibility. The amendments also add effective dates for the federal regulations cited.

The adopted amendments to §115.546, Monitoring and Recordkeeping Requirements, update a reference from the "Texas Natural Resource Conservation Commission" to "executive director" for consistency with the commission's style guidelines and abbreviate "EPA" because this term is defined in §3.2. The amendments to §115.546 also delete the existing §115.546(2)(D), which concerns records associated with control device maintenance activities, because maintenance activities are already addressed in §101.7 and add an effective date for the federal regulation cited.

The adopted amendments to §115.547, Exemptions, revise the term "undesignated head" to "division" in §115.547(1), (2), and (5), add the division title to the first reference to the division, add language necessary to complete the sentence in paragraph (3), and revise paragraph (4) by correcting a reference from §115.541(3) to §115.541(b).

The adopted amendments to §115.549, Counties and Compliance Schedules, delete an incorrect reference to "El Paso" in §115.549(a), revise the term "undesignated head" to "division," and revise references to "Texas Natural Resource Conservation Commission" or "TNRCC" to "commission" for consistency with the commission's style guidelines. The amendments to §115.549 also replace language in §115.549(a) which is obsolete due to the passing of a November 15, 1996 compliance date with new language stating that all affected persons in Brazoria, Chambers, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, and Waller Counties shall continue to comply with this division (relating to Degassing or Cleaning of Stationary, Marine, and Transport Vessels) as required by §115.930 (relating to Compliance Dates).

*Subchapter F, Miscellaneous Industrial Sources*

*Division 4, Petroleum Dry Cleaning Systems*

The adopted amendments to §115.552, Control Requirements, update the old term "standard exemption" with the correct term "permit by rule" and correct the reference to the title of Chapter 106 to "Permits by Rule." In addition, the amendments to §115.552 correct the phrase "concerning" in §115.552(b)(1) to the phrase "relating to" for consistency with other divisions.

The adopted amendments to §115.559, Counties and Compliance Schedules, revise a reference from "Texas Natural Resource Conservation Commission" to "commission" for consistency with the commission's style guidelines, add a reference to the division in place of a reference to the sections in the division for brevity and clarity, and change "National Ambient Air Quality Standard" to lowercase for consistency with other divisions.

*Subchapter J, Administrative Provisions*

*Division 1, Alternate Means of Control*

The adopted amendments to §115.910, Availability of Alternate Means of Control, revise the term "undesignated head" to "division" and reference the division title, abbreviate "EPA" because this term is defined in §3.2, and correct references to titles of sections in Division 1.

The adopted amendments to §115.911, Criteria for Approval of Alternate Means of Control, delete an unnecessary reference to "Texas Natural Resource Conservation Commission" in §115.910(1), correct the formatting of section references in §115.910(6), delete unnecessary references to the title of Chapter 115 in §115.910(4) and (6), and revise references from "TNRCC" to "commission" in §115.910(10) for consistency with the commission's style guidelines.

The adopted amendments to §115.912, Calculations for Determining AMOC Reductions, revise the title of this section to "Calculations for Determining Alternate Means of Control Reductions" for consistency with the other section titles in Division 1. The amendments to §115.912 also spell out and acronym "alternate means of control (AMOC)" in §115.912(a)(1), abbreviate this term in §115.912(b), and revise §115.912(c) by correcting a reference to the title of §115.911.

The adopted amendments to §115.913, Procedures for Alternate Means of Control Plan Submittal, abbreviate "EPA" because this term is defined in §3.2, and delete unnecessary references to "Texas Natural Resource Conservation Commission" or "TNRCC" in §115.913(a) and (b)(1) and (9).

The adopted amendments to §115.914, Procedures for Alternate Means of Control Plan Approval, abbreviate "EPA" because this term is defined in §3.2, revise references from "TNRCC" to "commission" in §115.914(8) for consistency with the commission's style guidelines, and delete unnecessary references to "Texas Natural Resource Conservation Commission" or "TNRCC."

The adopted amendments to §115.915, Public Notice Format, delete unnecessary references to "Texas Natural Resource Conservation Commission" or "TNRCC" in §115.915(a), (b)(7) and (11) , and (c). The amendments to §115.915 also abbreviate "EPA" in §115.915(b)(7) because this term is defined in §3.2, and revise references from "TNRCC" to "executive director" in §115.915(b)(1) and (c) for consistency with the commission's style guidelines. It has come to the commission's attention that a parentheses in §115.915(b)(7) was inadvertently proposed for deletion. The commission has corrected this error.

The adopted amendments to §115.916, Review of Approved Alternate Means of Control Plans and Termination of Alternate Means of Control Plans, revise the term "undesignated head"

to "division," add the division title to the first reference to the division, and revise a reference from "TNRCC" to "executive director" in §115.916(d) for consistency with the commission's style guidelines. The amendments to §115.916 also add EPA and any local air pollution control agency having jurisdiction as entities to which a copy of an approved AMOC plan must be provided upon request. This is consistent with the underlying recordkeeping requirements of Chapter 115.

*Subchapter J, Administrative Provisions*

*Division 2, Early Reductions*

The adopted amendments to §115.920, Applicability, revise a reference from "Texas Natural Resource Conservation Commission (TNRCC)" to "executive director" for consistency with the commission's style guidelines, correct a referenced section title in §115.920(3), and spell out "Code of Federal Regulations."

The adopted amendments to §115.923, Documentation, revise the term "undesignated head" to "division" and reference the division title, delete an unnecessary reference to "TNRCC" in §115.923(b) for consistency with the commission's style guidelines.

*Subchapter J, Administrative Provisions*

*Division 3, Compliance and Control Plan Requirements*

The adopted amendments to §115.930, Compliance Dates, revise the term "undesignated head" to "division" for consistency with the commission's style guidelines.

The adopted amendments to §115.932, Control Plan Procedure, revise a reference from "Texas Natural Resource Conservation Commission (TNRCC)" to "executive director" for consistency with the commission's style guidelines, delete an unnecessary reference to the title of Chapter 115, and correct the term "regulation" to "chapter."

The adopted amendments to §115.934, Control Plan Deviation, update references from the "Texas Air Control Board" and "TACB" (one of the commission's predecessor agencies) to "executive director" for consistency with the commission's style guidelines, correct the term "regulation" to "chapter," and abbreviate "EPA" because this term is defined in §3.2.

The adopted amendment to §115.940, Equivalency Determination, abbreviates "EPA" because this term is defined in §3.2.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that this rulemaking is not subject to §2001.0025 because it does not meet the definition of a "major environmental rule" as defined in that statute. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

This rulemaking is not a major environmental rule because its primary purpose is to clarify procedural and technical requirements for facilities subject to Chapter 115 rules. Specifically, the amended sections clarify and add flexibility to existing requirements, correct technical and typographical errors, update references to terms, delete redundant language, and ensure adequate recordkeeping to document compliance with the Chapter 115 fugitive monitoring programs. Also, the fiscal impacts associated with this rulemaking are not anticipated to be significant.

In addition, a regulatory impact analysis is not required because the adopted rules do not meet any of the four applicability criteria for requiring a regulatory analysis of a "major environmental rule" as defined in the Texas Government Code. Section 2001.0225 applies only to a major environmental rule the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not exceed a standard set by federal law, and the adopted technical requirements are consistent with applicable federal standards. In addition, this rulemaking does not exceed an express requirement of state law and is not adopted solely under the general powers of the agency, but is specifically authorized by the provisions cited in the STATUTORY AUTHORITY section of this preamble. Finally, this rulemaking does not exceed a requirement of a delegation agreement or contract to implement a state and federal program. The commission invited public comment on the draft regulatory impact analysis determination, and no comments were received.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this rulemaking action and performed an analysis of whether the adopted rules are subject to Texas Government Code, Chapter 2007. The primary purpose of the rulemaking is to revise specific rules in Chapter 115 to clarify and add flexibility to existing requirements, correct errors, update references, and delete redundant and obsolete language. Promulgation and enforcement of these adopted rules would be neither a statutory nor a constitutional taking because they do not affect private real property. Specifically, the adopted rules do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally), nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the rules. Therefore, these adopted rules will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed these adopted rules and found that they are identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, or will affect an action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, and therefore will require that applicable goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission prepared a preliminary consistency determination for the rulemaking pursuant to 31 TAC §505.22 and found the rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(1)). No new sources of air contaminants will be authorized. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations in 40 CFR, to protect and enhance air quality in the coastal area

(31 TAC §501.14(q)). This rulemaking action complies with 40 CFR. Therefore, in compliance with 31 TAC §505.22(e), this rulemaking action is consistent with CMP goals and policies. The commission invited public comment on the consistency of the rulemaking with the CMP, and no comments were received.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMIT PROGRAM

Chapter 115 is an applicable requirement under 30 TAC Chapter 122; therefore, owners or operators subject to the Federal Operating Permit Program must, consistent with the revision process in Chapter 122, revise their operating permits to include the revised Chapter 115 requirements for each emission unit affected by the revisions to Chapter 115 at their sites.

HEARING AND COMMENTERS

A public hearing was offered in Austin, Texas on January 23, 2002, and the public comment period closed on January 23, 2002. Three commenters submitted testimony on the proposal. Dow Chemical Company (Dow); Graphic Arts Technical Foundation (GATF); and Sierra Club - Houston Regional Group (Sierra-Houston) supported the proposed revisions to Chapter 115, but suggested changes or clarifications.

RESPONSE TO COMMENT

Sierra-Houston supported the proposed revisions to the definition of marine terminal in §115.10(20).

The commission appreciates the support.

Sierra-Houston objected to the proposed deletion of §§115.116(a)(3)(D) and (b)(3)(D); 115.136(a)(2)(D) and (b)(2)(D); and 115.316(a)(1)(D) and (b)(1)(D), which currently requires records of the date and reason for any maintenance and repair of the required control devices and the estimated quantity and duration of VOC emissions during such activities. Sierra-Houston commented that while maintenance activities are already addressed in §101.7, these existing rules are more comprehensive than §101.7 and should be retained because they provide a clear record to inspectors of how control devices have been operating.

The commission made no changes in response to the comment. The commission believes that there are other more appropriate locations within the rules that already contain requirements concerning recordkeeping related to maintenance activities; for example, the maintenance rules in §101.7. In a separate rulemaking, the commission proposed revisions to the Chapter 101 upset and maintenance rules (Rule Log No. 2001-075-101-AI) to address the requirements of House Bill 2912, 77th Legislature, 2001 (see the April 26, 2002 issue of the *Texas Register*(27 TexReg 3475)) . This rulemaking will provide an opportunity for comments on possible improvements to the maintenance activity requirements, including recordkeeping. The commission is also considering requiring that routine maintenance be incorporated into new source review permits in a separate rulemaking (Rule Log No. 2001-043-116-AI). There is also a permit by rule, §106.263, that addresses routine maintenance activities.

Dow stated that a common control device is often used to control emissions from storage tanks, process vents, and VOC transfer operations and that it is not cost-effective for industry to comply with different monitoring requirements under two or more divisions within Chapter 115. Dow suggested that §115.116(a)(3) and (b)(3) be revised to include temperature monitoring of pressure swing adsorption (PSA) carbon adsorption systems as an alternative to monitoring VOC concentration. Dow recommended that the suggested changes for §115.116(a)(3) and (b)(3) also be made to §§115.126(1)(A), 115.136(a)(2) and (b)(2), 115.144(3), 115.166(1)(A), 115.216(1)(A), and 115.546(2) to ensure that the requirements of these rules are as consistent as possible for PSA units. In addition, Dow noted that §115.126(1)(C) and §115.216(1)(C) establish the requirements for maintaining records of appropriate operating parameters for control devices other than the common control devices (direct-flame incinerators, chillers, catalytic incinerators, carbon adsorption systems, flares, and vapor combustors) listed in §115.126(1)(A) and (B) and §115.216(1)(A) and (B). Dow suggested that similar language be added to §§115.116(a)(3) and (b)(3), 115.136(a)(2) and (b)(2), and 115.546(2).

No changes were proposed to §§115.126, 115.144, 115.166, and 115.216; therefore, the commission is prohibited by the Administrative Procedure Act (APA) from making any changes to these sections in the current rulemaking. However, the commission may evaluate the suggested changes in the future and, if appropriate, consider them for possible inclusion in future rulemaking.

In order for the consistency that the commenter desires to be put in place, specific requirements for flares and vapor combustors would have to be added to a number of sections, including some for which no changes were proposed and some which are currently open. However, the scope of the current rulemaking in the currently-open sections is limited to minor administrative and/or minor cleanup. Changes to add specific requirements for flares and vapor combustors cannot be made at this time since affected parties would not have had an opportunity for notice and comment on these potentially significant changes. Likewise, the commission believes that potential changes concerning PSA units would be best addressed comprehensively in the future. Therefore, the commission has made no changes in response to the comments.

Sierra-Houston supported the proposed revisions to §115.214(a)(1) and (b)(1) which clarify that transfer refers to both loading and unloading.

The commission appreciates the support.

Dow commented on §115.217 and suggested that an exemption from the vapor-tight testing requirements be provided for marine vessels certified to carry liquefied petroleum gas (LPG) by an appropriate regulatory body or agency (i.e., flag state, United States Coast Guard, classification society, etc.). Dow asserted that marine vessels that are suitable for carrying LPG will be essentially leak-free, because otherwise the vessel would be venting cargo as it sailed across the ocean, thereby having a cargo discrepancy as well as the possibility of a fire or explosion. Dow stated that if a vessel can carry LPG without annual vapor-tightness testing under §115.215(7), then the annual vapor- tightness test should not be required if the vessel also carries other VOCs that do not meet the definition of LPG.

No changes were proposed to §115.217; therefore, the commission is prohibited by the APA from making any changes to this section in the current rulemaking since affected parties would not have had an opportunity for notice and comment. However, the commission may evaluate the suggested changes in the future and, if appropriate, consider them for possible inclusion in future rulemaking. It should be noted that the LPG exemption dates from 1972, and that a closer examination potentially could result

in a conclusion that the exemption should be deleted, rather than expanded as Dow has suggested.

Sierra-Houston supported the proposed revisions to §115.326(2)(D) - (G) and §115.356(1)(G)(ii), which require more comprehensive documentation for the leak detection and repair programs.

The commission appreciates the support.

GATF commented on §115.446(3), which requires that a heatset offset printing press dryer be operated at a lower pressure than the press room air pressure such that the air flows into the dryer at all times, with an air flow direction measuring device used to demonstrate 100% capture efficiency. GATF stated that most dryers are equipped with an interlocking system that automatically shuts down the press if the dryer fails or malfunctions. GATF suggested that §115.446(3) be revised such that a dryer equipped with an interlock is considered to be in compliance with the air direction flow monitoring requirement as well as the requirement for the dryer to be at negative pressure. GATF submitted a July 9, 1997 EPA letter from John Seitz, Director, Office of Air Quality Planning and Standards, to GATF which addresses capture efficiency at heatset offset printing presses.

Section 115.446(3) is included in the Chapter 115 offset printing rules to ensure that 100% of the emissions are captured and directed to the dryer. The commenter's suggested "interlock" language would simply confirm that the dryer is operating when the heatset press is in use, but would not ensure that the dryer is under negative pressure. The July 9, 1997 EPA letter states that the EPA's position is that "*if a heatset web offset dryer is operating at negative pressure,* then all of the heatset web offset lithographic printing ink oils that are not retained in the substrate can be assumed to be captured in the dryer and available for delivery from the dryer to a control device." (emphasis added) Consequently, it is clearly important to ensure that the dryer operates at a negative pressure.

The letter further states that the EPA's position is "that there is no need and no benefit in having heatset web offset lithographic printers conduct temporary total enclosure, or any other type of capture tests, to establish heatset web offset lithographic ink oil capture efficiency." The context of EPA's statement indicates that capture efficiency testing using either a temporary total enclosure or permanent total enclosure is not necessary, provided that the dryer operates at a negative pressure.

The air flow direction measuring device required by §115.446(3) provides a mechanism for demonstrating 100% capture efficiency without having to resort to the expense of conducting capture efficiency testing using either a temporary total enclosure or permanent total enclosure. For the reasons described earlier in the response to GATF's comment, the commission believes that it is appropriate to retain the requirement for using an air flow direction measuring device to demonstrate 100% capture efficiency. However, as currently written, §115.446(3) could be misinterpreted to mean that the dryer must be at negative pressure even when the press is not operating. Therefore, the commission has revised §115.446(3) to clarify that the requirement that the dryer be maintained at negative pressure applies only when the press is operating.

GATF commented on §115.446(6), which requires flow meters for offset printing presses equipped with continuous cleaning equipment, and stated that automatic cleaning systems do not continuously clean the blankets or rollers. GATF suggested that §115.446(6) be revised to include a reference to the cleaning solution requirements of §115.442(1)(F).

The requirements of §115.442(1)(F) apply in addition to the requirements of §115.446(6). Consequently, there is no reason to add the suggested reference. However, the commission has corrected §115.446(6) to refer to "automatic cleaning equipment" rather than "continuous cleaning equipment" for consistency with the terminology used in the offset printing industry.

## SUBCHAPTER A. DEFINITIONS

### 30 TAC §115.10

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under TWC; Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which provides the commission authority to adopt rules consistent with the policy and purposes of TCAA; §382.002, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to develop plans to protect the state's air; and §382.016, which authorizes the commission to require that records of the air contaminant emissions from a source or activity be made and maintained.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER B. GENERAL VOLATILE ORGANIC COMPOUND SOURCES
## DIVISION 1. STORAGE OF VOLATILE ORGANIC COMPOUNDS

### 30 TAC §§115.113, 115.116, 115.117

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under TWC; Texas Health and Safety Code, TCAA, §382.017, which provides the commission authority to adopt rules consistent with the policy and purposes of TCAA; §382.002, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to control the quality of the

state's air; §382.012, which authorizes the commission to develop plans to protect the state's air; and §382.016, which authorizes the commission to require that records of the air contaminant emissions from a source or activity be made and maintained.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## DIVISION 3. WATER SEPARATION

### 30 TAC §§115.132, 115.133, 115.136, 115.137, 115.139

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under TWC; Texas Health and Safety Code, TCAA, §382.017, which provides the commission authority to adopt rules consistent with the policy and purposes of TCAA; §382.002, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to develop plans to protect the state's air; and §382.016, which authorizes the commission to require that records of the air contaminant emissions from a source or activity be made and maintained.

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## DIVISION 4. INDUSTRIAL WASTEWATER

### 30 TAC §§115.140, 115.145, 115.147

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under TWC; Texas Health and Safety Code, TCAA, §382.017, which provides the commission authority to adopt rules consistent with the policy and purposes of TCAA; §382.002, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to develop plans to protect the state's air; and §382.016, which authorizes the commission to require that records of the air contaminant emissions from a source or activity be made and maintained.

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## DIVISION 5. MUNICIPAL SOLID WASTE LANDFILLS

### 30 TAC §115.153, §115.159

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under TWC; Texas Health and Safety Code, TCAA, §382.017, which provides the commission authority to adopt rules consistent with the policy and purposes of TCAA; §382.002, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to develop plans to protect the state's air; and §382.016, which authorizes the commission to require that records of the air contaminant emissions from a source or activity be made and maintained.

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## DIVISION 6. BATCH PROCESSES

**30 TAC §115.161, §115.169**

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under TWC; Texas Health and Safety Code, TCAA, §382.017, which provides the commission authority to adopt rules consistent with the policy and purposes of TCAA; §382.002, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to develop plans to protect the state's air; and §382.016, which authorizes the commission to require that records of the air contaminant emissions from a source or activity be made and maintained.

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## SUBCHAPTER C. VOLATILE ORGANIC COMPOUND TRANSFER OPERATIONS

## DIVISION 1. LOADING AND UNLOADING OF VOLATILE ORGANIC COMPOUNDS

**30 TAC §115.214**

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under TWC; Texas Health and Safety Code, TCAA, §382.017, which provides the commission authority to adopt rules consistent with the policy and purposes of TCAA; §382.002, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to develop plans to protect the state's air; and §382.016, which authorizes the commission to require that records of the air contaminant emissions from a source or activity be made and maintained.

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## SUBCHAPTER D. PETROLEUM REFINING, NATURAL GAS PROCESSING, AND PETROCHEMICAL PROCESSES

## DIVISION 1. PROCESS UNIT TURNAROUND AND VACUUM-PRODUCING SYSTEMS IN PETROLEUM REFINERIES

**30 TAC §§115.311 - 115.313, 115.316, 115.319**

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under TWC; Texas Health and Safety Code, TCAA, §382.017, which provides the commission authority to adopt rules consistent with the policy and purposes of TCAA; §382.002, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to develop plans to protect the state's air; and §382.016, which authorizes the commission to require that records of the air contaminant emissions from a source or activity be made and maintained.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## DIVISION 2. FUGITIVE EMISSION CONTROL IN PETROLEUM REFINERIES IN GREGG, NUECES, AND VICTORIA COUNTIES

**30 TAC §§115.322, 115.325 - 115.327**

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under TWC; Texas Health and Safety Code, TCAA, §382.017, which provides the commission authority to adopt rules consistent with the policy and purposes of TCAA;

§382.002, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to develop plans to protect the state's air; and §382.016, which authorizes the commission to require that records of the air contaminant emissions from a source or activity be made and maintained.

*§115.326. Recordkeeping Requirements.*

For Gregg, Nueces, and Victoria Counties, the owner or operator of a petroleum refinery shall have the following recordkeeping requirements.

(1) Submit to the executive director a monitoring program plan. This plan shall contain, at a minimum, a list of the refinery units and the quarter in which they will be monitored, a copy of the log book format, and the make and model of the monitoring equipment to be used.

(2) Maintain a leaking-components monitoring log for all leaks of more than 10,000 parts per million by volume (ppmv) of volatile organic compound (VOC) detected by the monitoring program required by §115.324 of this title (relating to Inspection Requirements). This log shall contain, at a minimum, the following data:

(A) the name of the process unit where the component is located;

(B) the type of component (e.g., valve or seal);

(C) the tag number of the component;

(D) the date the component was monitored;

(E) the results of the monitoring (in ppmv);

(F) a record of the calibration of the monitoring instrument;

(G) if a component is found leaking:

*(i)* the date on which a leaking component is discovered;

*(ii)* the date on which a first attempt at repair was made to a leaking component;

*(iii)* the date on which a leaking component is repaired;

*(iv)* the date and instrument reading of the recheck procedure after a leaking component is repaired; and

*(v)* those leaks that cannot be repaired until turnaround;

(H) the total number of components checked and the total number of components found leaking; and

(I) the test method used (Test Method 21, or sight/sound/smell).

(3) Retain copies of the monitoring log for a minimum of two years after the date on which the record was made or the report prepared.

(4) Maintain all monitoring records for at least two years and make them available for review upon request by authorized representatives of the executive director, EPA, or local air pollution control agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## DIVISION 3. FUGITIVE EMISSION CONTROL IN PETROLEUM REFINING, NATURAL GAS/GASOLINE PROCESSING, AND PETROCHEMICAL PROCESSES IN OZONE NONATTAINMENT AREAS

### 30 TAC §§115.352, 115.353, 115.355 - 115.357, 115.359

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under TWC; Texas Health and Safety Code, TCAA, §382.017, which provides the commission authority to adopt rules consistent with the policy and purposes of TCAA; §382.002, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to develop plans to protect the state's air; and §382.016, which authorizes the commission to require that records of the air contaminant emissions from a source or activity be made and maintained.

*§115.355. Approved Test Methods.*

For all affected persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, compliance with this division (relating to Fugitive Emission Control in Petroleum Refining, Natural Gas/Gasoline Processing, and Petrochemical Processes in Ozone Nonattainment Areas) shall be determined by applying the following test methods, as appropriate:

(1) Test Method 21 (40 CFR 60, Appendix A) for determining volatile organic compound leaks;

(2) determination of true vapor pressure using American Society for Testing and Materials Test Methods D323-89, D2879, D4953, D5190, or D5191 for the measurement of Reid vapor pressure, adjusted for 68 degrees Fahrenheit (20 degrees Celsius) in accordance with American Petroleum Institute (API) Publication 2517, Third Edition, 1989;

(3) minor modifications to these test methods approved by the executive director; or

(4) equivalent determinations using published vapor pressure data or accepted engineering calculations.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER E. SOLVENT-USING PROCESSES

## DIVISION 2. SURFACE COATING PROCESSES

### 30 TAC §§115.420 - 115.422

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under TWC; Texas Health and Safety Code, TCAA, §382.017, which provides the commission authority to adopt rules consistent with the policy and purposes of TCAA; §382.002, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to develop plans to protect the state's air; and §382.016, which authorizes the commission to require that records of the air contaminant emissions from a source or activity be made and maintained.

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## DIVISION 4. OFFSET LITHOGRAPHIC PRINTING

### 30 TAC §§115.440, 115.442, 115.445, 115.446

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under TWC; Texas Health and Safety Code, TCAA, §382.017, which provides the commission authority to adopt rules consistent with the policy and purposes of TCAA; §382.002, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to develop plans to protect the state's air; and §382.016, which authorizes the commission to require that records of the air contaminant emissions from a source or activity be made and maintained.

*§115.446. Monitoring and Recordkeeping Requirements.*

For the Dallas/Fort Worth, El Paso, and Houston/Galveston areas as defined in §115.10 of this title (relating to Definitions), the following monitoring and recordkeeping requirements shall apply.

(1) The owner or operator of a heatset offset lithographic printing press shall install, calibrate, maintain, and operate a temperature monitoring device, according to the manufacturer's instructions, at the outlet of the control device. The temperature monitoring device shall be equipped with a continuous recorder and shall have an accuracy of ±0.5 degrees Fahrenheit, or alternatively ±1.0% of the temperature being monitored.

(2) The owner or operator of any offset lithographic printing press shall install and maintain monitors to continuously measure and record operational parameters of any emission control device installed to meet applicable control requirements on a regular basis. Such records must be sufficient to demonstrate proper functioning of those devices to design specifications, including:

(A) the exhaust gas temperature of direct-flame incinerators and/or the gas temperature immediately upstream and downstream of any catalyst bed;

(B) the total amount of volatile organic compound (VOC) recovered by a carbon adsorption or other solvent recovery system during a calendar month; and

(C) the exhaust gas VOC concentration of any carbon adsorption system, as defined in §115.10 of this title, to determine if breakthrough has occurred.

(3) The dryer pressure shall be maintained lower than the press room air pressure such that air flows into the dryer at all times when the offset lithographic printing press is operating. A 100% emissions capture efficiency for the dryer shall be demonstrated using an air flow direction measuring device.

(4) The owner or operator of any offset lithographic printing press shall monitor fountain solution alcohol concentration with a refractometer or a hydrometer that is corrected for temperature at least once per eight-hour shift or once per batch, whichever is longer. The refractometer or hydrometer shall have a visual, analog, or digital readout with an accuracy of 0.5% VOC. A standard solution shall be used to calibrate the refractometer for the type of alcohol used in the fountain. The VOC content of the fountain solution may be monitored with a conductivity meter if it is determined that a refractometer or hydrometer cannot be used for the type of VOCs in the fountain solution. The conductivity meter reading for the fountain solution shall be referenced to the conductivity of the incoming water.

(5) The owner or operator of any offset lithographic printing press using refrigeration equipment on the fountain solution in order to comply with §115.442(1)(A), (C), or (D) of this title (relating to Control Requirements) shall monitor the temperature of the fountain solution reservoir at least once per hour. Alternatively, the owner or operator of any offset lithographic printing press using refrigeration equipment on the fountain solution shall install, maintain, and continuously operate a temperature monitor of the fountain solution reservoir.

The temperature monitor shall be attached to a continuous recording device such as a strip chart, recorder, or computer.

(6) For any offset lithographic printing press with automatic cleaning equipment, flow meters are required to monitor water and cleaning solution flow rates. The flow meters shall be calibrated so that the VOC content of the mixed solution complies with the requirements of §115.442 of this title.

(7) The owner or operator of any offset lithographic printing press shall maintain the results of any testing conducted at an affected facility in accordance with the provisions specified in §115.445 of this title (relating to Approved Test Methods).

(8) The owner or operator of any offset lithographic printing press shall maintain all records at the affected facility for at least two years and make such records available upon request to representatives of the executive director, EPA, or any local air pollution agency having jurisdiction in the area.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Stephanie Bergeron
Director, Environmental Law Division
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## SUBCHAPTER F. MISCELLANEOUS INDUSTRIAL SOURCES

## DIVISION 2. PHARMACEUTICAL MANUFACTURING FACILITIES

### 30 TAC §§115.532, 115.533, 115.535, 115.539

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; Texas Health and Safety Code, TCAA, §382.017, which provides the commission authority to adopt rules consistent with the policy and purposes of the TCAA; §382.002, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to develop plans to protect the state's air; and §382.016, which authorizes the commission to require that records of the air contaminant emissions from a source or activity be made and maintained.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## DIVISION 3. DEGASSING OR CLEANING OF STATIONARY, MARINE, AND TRANSPORT VESSELS

### 30 TAC §§115.541 - 115.543, 115.545 - 115.547, 115.549

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under TWC; Texas Health and Safety Code, TCAA, §382.017, which provides the commission authority to adopt rules consistent with the policy and purposes of TCAA; §382.002, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to develop plans to protect the state's air; and §382.016, which authorizes the commission to require that records of the air contaminant emissions from a source or activity be made and maintained.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## DIVISION 4. PETROLEUM DRY CLEANING SYSTEMS

### 30 TAC §115.552, §115.559

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under TWC; Texas Health and Safety Code, TCAA, §382.017, which provides the commission authority to adopt rules consistent with the policy and purposes of TCAA; §382.002, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to control the quality of the

state's air; §382.012, which authorizes the commission to develop plans to protect the state's air; and §382.016, which authorizes the commission to require that records of the air contaminant emissions from a source or activity be made and maintained.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER J. ADMINISTRATIVE PROVISIONS

## DIVISION 1. ALTERNATE MEANS OF CONTROL

### 30 TAC §§115.910 - 115.916

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under TWC; Texas Health and Safety Code, TCAA, §382.017, which provides the commission authority to adopt rules consistent with the policy and purposes of TCAA; §382.002, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to develop plans to protect the state's air; and §382.016, which authorizes the commission to require that records of the air contaminant emissions from a source or activity be made and maintained.

*§115.915. Public Notice Format.*

(a) Public notice shall be published in the public notice section of two successive issues of a newspaper of general circulation in or closest to the municipality in which the facility with the account affected by the alternative means of control (AMOC) plan is located.

(b) Public notice shall contain the following information:

(1) AMOC plan application number assigned by the executive director;

(2) AMOC applicant name;

(3) type of facility;

(4) a description of the location of the facility;

(5) a brief description of the AMOC plan;

(6) the executive director's preliminary determination to approve such plan;

(7) the locations and availability of copies of the proposed AMOC plan, related documentation, and the executive director's preliminary analysis of the plan (including the Austin and appropriate regional offices, any local pollution control program with jurisdiction over the account affected by the AMOC plan, and the EPA regional office);

(8) an announcement of the opportunity to submit written comments on the AMOC plan;

(9) the length of the public comment period (30 days from the final publication of this notice);

(10) the procedure for submission of written public comments concerning the proposed AMOC plan; and

(11) the name, address, and phone number of the regional office to be contacted for further information.

(c) The AMOC plan submitter shall provide proof of adequate notice to the executive director, EPA, and any local pollution control program with jurisdiction over the account affected by the AMOC plan before the executive director may take final action on the AMOC plan.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## DIVISION 2. EARLY REDUCTIONS

### 30 TAC §115.920, §115.923

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under TWC; Texas Health and Safety Code, TCAA, §382.017, which provides the commission authority to adopt rules consistent with the policy and purposes of TCAA; §382.002, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to develop plans to protect the state's air; and §382.016, which authorizes the commission to require that records of the air contaminant emissions from a source or activity be made and maintained.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## DIVISION 3. COMPLIANCE AND CONTROL PLAN REQUIREMENTS

### 30 TAC §§115.930, 115.932, 115.934, 115.940

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under TWC; Texas Health and Safety Code, TCAA, §382.017, which provides the commission authority to adopt rules consistent with the policy and purposes of TCAA; §382.002, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to develop plans to protect the state's air; and §382.016, which authorizes the commission to require that records of the air contaminant emissions from a source or activity be made and maintained.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## CHAPTER 290. PUBLIC DRINKING WATER

The Texas Natural Resource Conservation Commission (TNRCC or commission) adopts the amendments to Subchapter D, *Rules and Regulations for Public Water Systems*, §§290.38, 290.39, 290.41, 290.42, and 290.44 - 290.47; and Subchapter F, *Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Supply Systems*, §§290.102 - 290.104, 290.106 - 290.115, 290.117 - 290.119, 290.121, and 290.122. Sections 290.38, 290.42, 290.44, 290.46, 290.47, 290.102, 290.110, 290.111, and 290.122 are adopted *with change* to the proposed text as published in the February 1, 2002 issue of the *Texas Register* (27 TexReg 679). Sections 290.39, 290.41, 290.45, 290.103, 290.104, 290.106 - 290.109, 290.112 - 290.115, 290.117 - 290.119, and 290.121 are adopted *without change* to the proposed text and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The commission adopted major revisions to Chapter 290 in the September 8, 2000 issue of the *Texas Register* (25 TexReg 8881), to implement state rules conforming to the federal Interim Enhanced Surface Water Treatment Rule (IESWTR) and the Stage I Disinfectant and Disinfection By-Product Rule (Stage 1 DBPR) as required by federal law (Safe Drinking Water Act (SDWA), 42 United States Code (USC), §§300g *et seq*.), and federal regulations under 40 Code of Federal Regulations (CFR) Parts 9, 141, and 142. After adopting these amendments, the commission discovered several minor typographical errors that needed to be corrected. With the current amendments, the commission adopts primarily technical and grammatical corrections to Chapter 290, Subchapters D and F. In addition to these corrections, the commission adopts amendments to incorporate the federal Public Notification Rule (40 CFR Parts 9, 141, 142, and 143; 65 Federal Register (FR) 25981 - 26049, May 4, 2000); incorporate the federal Lead/Copper Minor Revisions Rule (40 CFR Parts 9, 141, and 142; 65 FR 1949 - 2015, January 12, 2000); implement House Bill (HB) 217, Article 2, 77th Legislature, 2001; comply with Opinion JC-0453 issued on January 28, 2002, by the Office of the Attorney General; update references to lab related terminology prompted by HB 2912, §18.02, transferring certification of drinking water laboratories from the Texas Department of Health (TDH) to TNRCC; and adopt language from SDWA, 42 USC, §300g-1(b)(10), allowing two-year extensions to the effective dates for new regulations for maximum contaminant levels (MCLs) and treatment technique (TT) requirements when capital improvements are necessary to comply with the new requirements.

The executive director (ED) has reviewed the public health effects of using treatment techniques other than the control of total organic carbon (TOC) for limiting the formation of disinfection by-products. These alternatives may involve the use of disinfectants such as ozone, ultraviolet light, and chloramine that form fewer regulated disinfection by-products than chlorine, the primary disinfectant used by many public water systems. In the preamble to the proposed rulemaking, published in the February 1, 2002 issue of the *Texas Register* (27 TexReg 679), the commission stated that it might submit a proposal under the "Joint EPA/State Agreement to Pursue Regulatory Innovation" to pursue regulatory innovations designed to protect public health from disinfection by- products and requested comments regarding this idea. The commission received one comment regarding this request and addresses it in the RESPONSE TO COMMENTS portion of this preamble.

SECTION BY SECTION DISCUSSION

The commission has revised some of the proposed rule language for Chapter 290. Additionally, certain rewording is adopted throughout the two affected subchapters. The term "public drinking water program," which was used in the previous adoption to make clear to the regulated community the group within the commission that accepted their forms, letters, and other correspondence related to public water systems, has been replaced with the term "executive director," to conform to usage in other agency rules and the definitions in 30 TAC Chapter 3, *Definitions*, of the commission's rules. The term "Water Permits and Resource Management Division" has been replaced with "Water Supply Division" to reflect the most recent reorganization of the agency.

*Subchapter D, Rules and Regulations for Public Water Systems*

Adopted §290.38, *Definitions*, deletes the reference to "Glossary, Water and Wastewater Control Engineering," prepared by