

(ii) a non-road diesel with an engine with uncontrolled emissions; and

(B) has owned the on-road or non-road diesel for more than one year.

§114.621. Applicability.

Any person that owns or leases, or intends to own or lease, one or more on-road or non-road diesels that operate, or will operate, within counties listed in [an affected county as defined by] §114.629 of this title (relating to Applicable [Affected] Counties and Implementation Schedule) may apply for a grant under the diesel emissions reduction incentive program. Subject to the criteria included in the commission's Texas Emissions Reduction Plan: Guidelines for Emissions Reduction Incentive Grants Program (RG-388), a person other than the owner or lessee may also apply for and receive a grant.

§114.622. Incentive Program Requirements.

(a) Eligible projects include:

(1) purchase or lease of on-road and non-road diesels;

(2) - (6) (No change.)

(7) implementation of infrastructure projects; [and]

(8) replacement of on-road and non-road diesels with newer on-road and non-road diesels; and

(9) [(8)] other projects that have the potential to reduce anticipated NO_x emissions from diesel engines.

(b) (No change.)

(c) For a proposed project that includes a replacement of equipment or a repower, the old equipment or engine must be recycled, scrapped, or otherwise removed from all [affected] counties listed in [as defined by] §114.629 of this title (relating to Applicable [Affected] Counties and Implementation Schedule).

(d) To be eligible for a grant, the cost-effectiveness of a proposed project as listed in subsection (a) of this section, except for infrastructure projects and infrastructure purchases that are part of a broader retrofit, repower, replacement, or add-on equipment project, must not exceed \$13,000 per ton of NO_x emissions.

(e) - (f) (No change.)

(g) A proposed retrofit, repower, replacement, or add-on equipment project must achieve a reduction in NO_x emissions to the level established in the commission's Texas Emissions Reduction Plan: Guidelines for Emissions Reduction Incentive Grants Program (RG-388) for that type of project [of at least 30%] compared with the baseline emissions adopted by the commission for the relevant engine year and application.

(h) (No change.)

(i) Criteria established in the guidelines, including revisions to the commission's Texas Emissions Reduction Plan: Guidelines for Emissions Reduction Incentive Grants Program (RG-388), apply to the Texas Emissions Reduction Plan program. Notwithstanding the provisions of this chapter, as authorized under Texas Health and Safety Code, §386.053(d), revisions to the guidelines may include, among other changes, adding additional pollutants; adding stationary engines or engines used in stationary applications; adding vehicles and equipment that use fuels other than diesel; or adjusting eligible program categories; as appropriate, to ensure that incentives established under this program achieve the maximum possible emission reductions.

§114.623. Small Business Incentives.

(a) This section establishes a process to provide fast and simple access to grants for small businesses, in accordance with Texas Health and Safety Code, §386.116, as amended.

(b) The grant process for a small business may include:

(1) a simplified grant application and other forms;

(2) pre-approval or pre-authorization of certain types of grant purchases and expenses;

(3) a simplified expense reimbursement process, which may include procedures for the grant recipient to assign grant payments directly to the vendor; and

(4) promotional activities and instructional materials targeted at small businesses to encourage them to participate in the program and to inform them of how to access the grants.

(c) The commission's Texas Emissions Reduction Plan: Guidelines for Emissions Reduction Incentive Grants Program (RG-388) shall include details to implement methods identified in subsection (b) of this section.

(d) Other methods for providing fast and simple access to grants for small businesses may be developed through guidelines.

§114.629. Applicable [Affected] Counties and Implementation Schedule.

(a) Applicable counties in the incentive program include: Bastrop, Bexar, Brazoria, Caldwell, Chambers, Collin, Comal, Dallas, Denton, El Paso, Ellis, Fort Bend, Galveston, Gregg, Guadalupe, Harris, Hardin, Harrison, Hays, Henderson, Hood, Hunt, Jefferson, Johnson, Kaufman, Liberty, Montgomery, Nueces, Orange, Parker, Rockwall, Rusk, San Patricio, Smith, Tarrant, Travis, Upshur, Victoria, Waller, Williamson, [and] Wilson, and any other county located within an area of Texas designated as a nonattainment area for ground-level ozone under Federal Clean Air Act, §107(d), as amended.

(b) (No change.)

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

Filed with the Office of the Secretary of State on October 24, 2003.

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Stephanie Bergeron

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: December 7, 2003

For further information, please call: (512) 239-5017



CHAPTER 115. CONTROL OF AIR POLLUTION FROM VOLATILE ORGANIC COMPOUNDS
SUBCHAPTER H. HIGHLY-REACTIVE VOLATILE ORGANIC COMPOUNDS
DIVISION 2. COOLING TOWER HEAT EXCHANGE SYSTEMS
30 TAC §115.769

The Texas Commission on Environmental Quality (commission) proposes an amendment to §115.769; Subchapter H, Highly-Reactive Volatile Organic Compounds; Division 2, Cooling Tower Heat Exchange Systems. This amended section and corresponding revision to the state implementation plan (SIP) will be submitted to the United States Environmental Protection Agency (EPA).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

The commission proposes this amendment to Chapter 115 and the associated revision to the SIP in order to change the compliance date for cooling tower heat exchange systems in the eight-county Houston/Galveston (HGA) ozone nonattainment area from no later than December 31, 2004 to no later than December 31, 2005. The proposed amendment would make the compliance date for cooling tower heat exchange systems in highly-reactive volatile organic compound (HRVOC) service the same as the potential compliance dates for HRVOC flares and HRVOC vent gas streams, but would not affect the compliance date for the site-wide cap in 30 TAC §115.761, Site-wide Cap. The proposed change is necessary to provide sufficient time for owners and operators of cooling tower heat exchange systems to purchase and install the required monitoring equipment, and is consistent with commission objectives to achieve the intended volatile organic compound emission reductions of the HGA ozone SIP.

The scope of the rulemaking is limited to the proposed change to the compliance date for cooling tower heat exchange systems in the eight-county HGA ozone nonattainment area. No additional changes are being proposed to the cooling tower rules or other HRVOC rules at this time.

SECTION DISCUSSION

The proposed amendment to §115.769, Counties and Compliance Schedules, would change the compliance date for cooling tower heat exchange systems in the eight-county HGA ozone nonattainment area from no later than December 31, 2004 to no later than December 31, 2005. The proposed amendment would make the compliance date for cooling tower heat exchange systems with HRVOC in the water the same as the potential compliance dates for HRVOC flares and HRVOC vent gas streams, but would not affect the compliance date for the site-wide cap in §115.761.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Analyst with Strategic Planning and Appropriations, determined that, for each year of the first five-year period the proposed rule revision is in effect, there will be no fiscal implications to the agency or any other unit of state or local government due to administration or enforcement of the proposed revision.

The proposed rulemaking would extend the compliance date for cooling tower heat exchange systems containing HRVOCs from December 31, 2004 to December 31, 2005. No other changes are proposed in this rulemaking. None of the sources required to comply with the proposed Chapter 115 requirements are owned or operated by units of state or local government.

PUBLIC BENEFITS AND COSTS

Mr. Davis also determined that for each year of the first five years the proposed rule revision is in effect, the public benefit

anticipated from enforcement of and compliance with the proposed revision would be potentially increased compliance with air emission standards due to an extension of the compliance date for owners and operators of cooling tower heat exchange systems containing HRVOCs.

The commission estimates that approximately 68 privately owned and operated facilities (primarily large petrochemical and industrial businesses) in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties would be subject to the proposed rule revision. The primary purpose of the proposed rule revision is to extend the compliance date for cooling tower heat exchange systems with HRVOCs in order to provide additional time for affected owners and operators to purchase and install the required monitoring equipment. This rulemaking is limited to the compliance date change, and no other regulatory changes are proposed. Therefore, the commission does not anticipate additional fiscal implications for affected owners and operators beyond what is already anticipated due to existing regulations.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

The commission does not anticipate adverse fiscal implications for small or micro-businesses due to implementation of the proposed rule amendment. The commission has not identified any small or micro-businesses which would be affected by the proposed rule revision. The majority of sites affected by the proposed rule revision are large petrochemical and industrial businesses. If there are affected small or micro-businesses, however, no adverse fiscal implications are anticipated for small or micro-businesses as a result of implementation of the proposed rule revision.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule revision would not adversely affect a local economy in a material way for the first five years that the proposed revision is in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rulemaking does not meet the definition of a "major environmental rule." A "major environmental rule" is 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, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This proposal is not a major environmental rule because its primary purpose is to extend the compliance date for cooling tower heat exchange systems with HRVOC contained in the water and does not implement additional regulations that are not already required by the commission and the EPA.

In addition, a draft regulatory impact analysis is not required because the rule does not meet any of the four applicability criteria for requiring a regulatory analysis of a "major environmental rule" as defined in Texas Government Code, §2001.0225. 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. The proposed amendment does not exceed a standard set by federal law nor exceed an express requirement of state law. There is no contract or delegation agreement that covers the topic that is the subject of this rulemaking. Finally, this rulemaking was not developed solely under the general powers of the agency, but is authorized by specific sections of the Texas Health and Safety Code and the Texas Water Code which are cited in the STATUTORY AUTHORITY section of this preamble. Finally, this proposal does not exceed a requirement of a delegation agreement or contract to implement a state and federal program. The commission invites public comment on the draft regulatory impact analysis determination during the public comment period.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this rulemaking action and performed an analysis of whether the proposed rule revision is subject to Texas Government Code, Chapter 2007. The primary purpose of the rulemaking is to extend the compliance date for cooling tower heat exchange systems with HRVOC contained in the water. Promulgation and enforcement of this proposed rule revision would be neither a statutory nor a constitutional taking because it does not affect private real property. Specifically, the proposed rule revision does not affect a landowner's rights in private real property because this proposal 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 rule. Therefore, this rule revision will not constitute a takings under the Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the proposal is a rulemaking 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 determined that the proposed rulemaking action 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 Title 40 Code of Federal Regulations, to protect and enhance air quality in the coastal area (31 TAC §501.14(q)). This rulemaking action complies with Title 40 Code of Federal Regulations; therefore, in compliance with 31 TAC §505.22(e), this rulemaking action is consistent with CMP goals and policies. Interested persons may submit comments on the consistency of the proposed rule revision with the CMP during the public comment period.

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 permit to include the revised Chapter 115 requirements for each emission unit at their sites affected by the revision to Chapter 115.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin on December 2, 2003 at 2:00 p.m. at the Texas Commission on Environmental Quality, 12100 Park 35 Circle, Building F, Room 2210. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lola Brown, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 2004-008-115-AI. Comments must be received by 5:00 p.m., December 8, 2003. For further information, please contact Ashley Forbes of the Strategic Assessment Division at (512) 239-0493.

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, 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, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; and §382.016, concerning Monitoring Requirements Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants.

The proposed amendment implements THSC, §§382.002, 382.011, 382.012, and 382.017.

§115.769. Counties and Compliance Schedules.

The owner or operator of each cooling tower heat exchange system in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties shall demonstrate compliance with this division (relating to Cooling Tower Heat Exchange Systems) as soon as practicable, but no later than December 31, 2005 [2004], with the

exception of the site-wide cap in §115.761 of this title (relating to Site-wide Cap) for which the owner or operator shall demonstrate compliance as soon as practicable, but no later than April 1, 2006.

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

Filed with the Office of the Secretary of State on October 24, 2003.

TRD-200307177

Stephanie Bergeron

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: December 7, 2003

For further information, please call: (512) 239-0348



TITLE 34. PUBLIC FINANCE

PART 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

CHAPTER 63. BOARD OF TRUSTEES

34 TAC §63.19

The Employees Retirement System of Texas (ERS) proposes new §63.19 which is concerning Standard of Conduct for Financial Advisors and Service Providers.

In accordance with Texas Government Code §2263.004 (as added by Act of June 1, 2003, 78th Leg. R.S., ch. 932, §2), the proposed amendment to Chapter 63 formally restates the standard of conduct that ERS has required of financial advisors and financial service providers who have a business relationship with ERS.

Paula A. Jones, General Counsel, has determined for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule; small businesses and individuals will not be affected.

Ms. Jones has also determined that for each year of the first five years the proposed section is in effect, the public benefit anticipated as a result of enforcing the rule will be that any uncertainty regarding applicability of ERS' existing standards of conduct imposed on its financial advisors and financial service providers will be settled by reference to the rule.

Comments on the proposed section may be submitted to Paula A. Jones, General Counsel, P.O. Box 13207, Austin, Texas, 78711-3207. The deadline for receiving comments is December 8, 2003, at 12:00 p.m.

This section is proposed under Texas Government Code §2263.004(a), which authorizes the ERS Board of Trustees to enact this rule, as well as Texas Government Code §§815.102(2) and (4), which authorize the ERS Board of Trustees to adopt rules for the administration of the funds of the retirement system and for the transaction of any other business of the board.

The proposed section does not affect any other statutes, articles, or codes.

§63.19. Standard of Conduct for Financial Advisors and Service Providers.

In accordance with Tex. Gov't Code §2263.004, financial advisors and service providers ("Financial Advisors") who receive, directly or indirectly, more than \$10,000.00 in compensation from the System during a fiscal year, and who provide financial services to the System, the System's Board of Trustees, or the individual members of the Board of Trustees regarding the management or investment of the System's funds, shall comply with all applicable standards of conduct with which they are required to comply in accordance with federal or state laws and regulations, relevant trade and professional associations and the System's Investment Policy. Financial Advisors must agree to comply with these standards of conduct as a prerequisite to establishing and continuing any business relationship with the System. Failure to comply with applicable standards of conduct authorizes the System to terminate any business or contractual relationship at the System's discretion.

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

Filed with the Office of the Secretary of State on October 23, 2003.

TRD-200307168

Paula A. Jones

General Counsel

Employees Retirement System of Texas

Earliest possible date of adoption: December 7, 2003

For further information, please call: (512) 867-7125



CHAPTER 71. CREDITABLE SERVICE

34 TAC §§71.2, 71.19, 71.31

The Employees Retirement System of Texas (ERS) proposes new Sections 71.2 and 71.31, of Title 34, Texas Administrative Code. Section 71.2 concerns the waiting period that must be completed prior to becoming eligible for employee class membership. Section 71.31 concerns procedures for the establishment of and purchase option for certain waiting period service credit. An amendment to Section 71.19, Title 34, Texas Administrative Code is also proposed concerning the purchase of refunded service. This amendment is pursuant to the repeal of Texas Government Code §805.002(e). These sections are added or amended to comply with and conform to House Bill 2359, 78th Legislature, Regular Session, as it relates to changes under Texas Government Code, Chapters 805, 812, and 813.

Paula A. Jones, General Counsel, has determined that for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules, and small businesses and individuals will not be affected.

Ms. Jones also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be updated information and clarification of the rules to establish waiting period service credit or to purchase service prior to its transfer. There are no known anticipated economic costs to persons who are required to comply with the rules as proposed.