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10th Grade

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Chair
Advisory Board of Athletic Trainers
Earliest possible date of adoption: June 26, 2005
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TITLE 25. HEALTH SERVICES

PART 11. TEXAS CANCER COUNCIL

CHAPTER 701. POLICIES AND PROCEDURES

25 TAC §701.8

The Texas Cancer Council (TCC) proposes amendments to §701.8, concerning charges for copies of public records.

The amendments are proposed to update the name of agency whose rules TCC now uses to establish charges for copies of public records.

Sandra K. Balderrama, MPA, BSW, the Executive Director of the Texas Cancer Council, has determined that for the first five-year period the amendments are in effect there will be no foreseeable implications relating to costs or revenues for state or local government as a result of enforcing or administering the amended rule.

Ms. Balderrama also has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amended rule will be clarification of the policies and procedures the Council will follow to implement the *Texas Cancer Plan*. There are no anticipated economic costs to persons who are required to comply with the amendments as proposed.

Ms. Balderrama has determined that the amended rule shall not have an effect on small businesses or micro businesses.

Comments on the proposed amendments may be submitted to Sandra Balderrama, Executive Director, Texas Cancer Council, P.O. Box 12097, Austin, Texas 78711.

The amendments are proposed under the Texas Health and Safety Code, Annotated, §102.002 and §102.009 which provide the Texas Cancer Council with the authority to develop and implement the *Texas Cancer Plan*, and the Texas Government Code, Annotated, §2001.004.

There is no other statute, article or code that is affected by this proposed amendment.

§701.8. Charges for Copies of Public Records.

(a) The charge to any person requesting copies of any public record of the Council will be the charge established by the Texas Building and Procurement Commission [~~General Services Commission~~] at 1 TAC §§111.61 - 111.70 (relating to Costs of Copies of Open Records).

(b) The Council may reduce or waive these charges at the discretion of the Executive Director if there is a public benefit.

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 May 13, 2005.

TRD-200501945

Sandra K. Balderrama
Executive Director
Texas Cancer Council
Earliest possible date of adoption: June 26, 2005
For further information, please call: (512) 463-3190

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 115. CONTROL OF AIR POLLUTION FROM VOLATILE ORGANIC COMPOUNDS

The Texas Commission on Environmental Quality (commission) proposes amendments to §§115.167, 115.169, 115.219, 115.427, and 115.429; and corresponding revisions to the state implementation plan (SIP).

These amended sections and corresponding revisions to the SIP are proposed to be submitted to the United States Environmental Protection Agency (EPA).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The 1990 Federal Clean Air Act (FCAA) Amendments authorized EPA to designate areas failing to meet national ambient air quality standards (NAAQS) for ozone as nonattainment and to classify them according to severity. The Beaumont-Port Arthur (BPA) one-hour ozone nonattainment area consists of Hardin, Jefferson, and Orange Counties. The BPA area was originally classified as a "serious" one-hour ozone nonattainment area in 1991, and was required to meet the one-hour ozone NAAQS by November 1999. Based on subsequent review of the BPA area's ozone monitoring data showing lower recorded ozone levels, EPA reclassified BPA as "moderate" on April 2, 1996. The commission adopted a series of SIP revisions culminating in the "Super SIP" submitted in July 1996, which contained only controls for volatile organic compounds (VOCs). However, the BPA region did not attain the one-hour ozone standard by the November 1996 deadline for moderate areas. Based on photochemical modeling demonstrating transport from the Houston-Galveston-Brazoria (HGB) ozone nonattainment area, the commission requested an extension of the attainment date to November 2007, the attainment date for HGB.

On April 16, 1999, EPA proposed, in the *Federal Register*, to extend the BPA attainment date to November 15, 2007, based on its ozone transport policy in effect at the time. EPA's transport policy provided that in determining the appropriate attainment date for an area, EPA may consider the effect of transport of ozone or its precursors from an upwind area that interferes with the downwind area's ability to attain. On May 15, 2001, EPA approved the transport demonstration and extended the attainment date for the BPA area to November 15, 2007, while retaining the area's classification as "moderate." Environmental groups subsequently challenged EPA's extension of attainment dates based on transport in the United States Court of Appeals for the Fifth Circuit. BPA was one of three areas in the nation for which suits were filed. On December 11, 2002, the Fifth Circuit Court of Appeals ruled that EPA is not authorized by the FCAA to extend the

area's attainment date based on transport. On June 19, 2003, EPA proposed, in the *Federal Register*, to reclassify BPA to either serious or severe, with a November 2005 attainment date for either classification. EPA published final action in the *Federal Register* on March 30, 2004, effective April 29, 2004, and determined that the BPA area failed to attain the one-hour NAAQS by the deadline for moderate areas (November 15, 1996) as well as for serious areas (November 15, 1999), as set forth in the FCAA. EPA reclassified BPA from moderate to serious nonattainment under the FCAA, as codified in the 42 United States Code (USC), §§7401 *et seq*., with an attainment date of the one-hour ozone standard by November 15, 2005. This reclassification required Texas to submit a SIP revision within one year of the reclassification.

The commission adopted the required SIP revision on October 27, 2004. This proposal fulfills commitments made by the commission in that submittal to address major source applicability cutoffs for purposes of reasonably available control technology (RACT) and to address contingency measures previously adopted under the 15% rate of progress (ROP) requirements.

Under 42 USC, §7511(b), the EPA is required to issue control techniques guideline (CTG) guidance documents for the purpose of assisting states in developing reasonably available control technology (RACT) controls for major sources of VOC emissions. In turn, each state is required to submit a revision to its SIP that implements RACT regulations for VOC sources in moderate or above one-hour ozone nonattainment areas. 42 USC, §7511(b)(2)(A) requires states to submit RACT regulations for VOC sources that are covered by a CTG issued after November 15, 1990 (the enactment date of the 1990 FCAA), but prior to the time of attainment. Similarly, 42 USC, §7511(b)(2)(C), requires that RACT be applied to major VOC sources located in moderate or above one-hour ozone nonattainment areas that are not the subject of a CTG; such sources are known as "non-CTG" sources. Limits in state rules must be at least as stringent as the CTG limits or otherwise must be determined to meet RACT.

The reclassification of BPA from moderate to serious nonattainment resulted in a change in the major source definition from 100 tons per year (tpy) to 50 tpy. Rules in Chapter 115 for two source categories exempt sources at accounts that have less than 100 tpy of VOC. In order to ensure that RACT is applied to all major sources in BPA, the commission is proposing to change the exemption levels in these rules from 100 tpy to 50 tpy of VOC to conform to the major source threshold for sources in serious nonattainment areas. The two source categories are batch process operations and shipbuilding and repair operations. Shipbuilding and repair operations include surface coating of ships and offshore oil or gas drilling platforms. The commission published rules for RACT requirements for batch processes in BPA on November 12, 1999, and published rules for RACT requirements for shipbuilding and repair operations on April 3, 1998.

This proposed rulemaking will also delete §115.219(d), which requires control of VOCs from marine terminals in the BPA nonattainment area. This rule was adopted as a contingency measure in Chapter 115, Subchapter C, Division 1, on January 4, 1995. States are required by 42 USC, §7502(C)(9) to submit a SIP that provides for the implementation of contingency measures to be undertaken if the area fails to make reasonable further progress, or to attain the one-hour NAAQS by the attainment date. This measure has not been implemented by the commission, even though the BPA area failed to achieve attainment of the one-hour NAAQS by the attainment date, November 15, 1996. The 1994 ROP SIP for BPA (November 9, 1994) cited projected VOC emissions of 13.10 tons per day (tpd) from marine vessel loading, and projected emission reductions of 10.02 tpd for the contingency rule. If the measure had become effective and been implemented in 1999, as it would have if EPA had not attempted to extend the attainment date based on its transport policy, affected sources would have been required to comply by 2002 (three years after becoming effective). According to the commission's 2002 emissions inventory, actual emissions from marine vessel loading in 2002 in BPA were 1.92 tpd, which indicates an emission reduction of 11.18 tpd. Even though the contingency measure was not put into effect, equivalent emission reductions were achieved. In addition, photochemical modeling indicates that reductions in nitrogen oxide (NO_x) emissions in BPA are more effective in reducing ozone levels than reductions in VOC emissions. Reductions of 1.0 tpd of NO_x are equivalent to reductions of 3.8 tpd of VOC. For these reasons, the BPA SIP is being revised to remove the marine vessel loading contingency measure. The proposed rule change would delete this contingency measure for the BPA nonattainment area from Chapter 115.

Reductions in NO_x have been implemented in place of the marine vessel loading measure. After expiration of the NO_x §182(f) waivers on December 31, 1997, all major NO_x sources in the BPA one-hour ozone nonattainment area were required to implement RACT. The commission adopted a revised compliance date of November 15, 1999, for these sources to comply with the RACT requirements. The commission also adopted rules establishing NO_x emission limits for gas-fired, lean-burn stationary internal combustion engines rated 300 horsepower or greater. Implementation of this rule resulted in estimated emission reductions of 6.9 tpd below 1997 levels. The reductions from the lean burn engine rules were above and beyond those needed for the ROP demonstration. The reduction of 6.9 tpd of NO_x is equivalent to a reduction of 26.2 tpd VOC, which is greater than the estimated reduction that would have been achieved by implementing the marine vessel loading contingency measure.

SECTION BY SECTION DISCUSSION

Administrative and grammatical changes are proposed throughout the sections to bring the existing rule language into agreement with guidance provided in the *Texas Legislative Council Drafting Manual*, October 2002. This includes, but is not limited to, replacing the term "shall" with "must" and replacing the term "which" with "that." The commission is seeking comment specifically regarding the proposed changes to §§115.167(1)(A), 115.169(a) and (c), 115.219(d), 115.427(a)(3)(H), and 115.429(c). The commission is not seeking comment on, nor does it intend to make changes to, any other subsections of these sections with the exception of the administrative and grammatical changes.

Subchapter B, General Volatile Organic Compound Sources

Division 6, Batch Processes

§115.167, Exemptions

The proposed amendment to §115.167(1)(A) would change the exemption level for sites in BPA from 100 tpy of VOC to 50 tpy of VOC in order to ensure that RACT is applied at all major sources. This change is necessary because of the reclassification of the BPA area to serious nonattainment with respect to the one-hour ozone standard.

§115.169, Counties and Compliance Schedules

The proposed amendment to §115.169 would revise the existing text in §115.169(a) to specify that the owner or operator of batch process operations at an account that has total VOC emissions (determined before control but after the last recovery device) of 100 tpy or more shall continue to comply with this division as required by 30 TAC §115.930. This change would ensure that sources currently subject to the batch process control requirements of this division would continue to comply with the applicable requirements. The reference to the compliance date of December 31, 2001, would be deleted because this date has passed. The proposal would also delete the requirement that these sources continue to comply with the requirements of Subchapter B, Division 2, until the batch process operations are in compliance with the requirements of Subchapter B, Division 6. This wording is no longer necessary because the affected operations are already required to be in compliance with the requirements of Division 6.

The proposed amendment to §115.169 would add a new subsection (c), to specify that the owner or operator of batch process operations in Hardin, Jefferson, and Orange Counties that become subject to the control requirements because of the change in exemption level shall comply with the requirements as soon as practicable, but no later than December 31, 2006. These batch process operations must continue to comply with the requirements of Subchapter B, Division 2, concerning Vent Gas Control, until these batch process operations are in compliance with the requirements of Subchapter B, Division 6.

Subchapter C: Volatile Organic Compound Transfer Operations

Division 1: Loading and Unloading of Volatile Organic Compounds

§115.219, Counties and Compliance Schedules

The proposed amendment to §115.219 would delete subsection (d). Current analyses indicate that this contingency measure is no longer needed in order for the BPA area to reach attainment with the one-hour ozone standard. Measures that have been implemented to reduce NO_x emissions have exceeded the reduction targets needed for reasonable further progress. The excess NO_x reductions are more effective in reducing ozone formation than the VOC reductions from implementation of this contingency measure would have been.

Subchapter E, Solvent-Using Processes

Division 2, Surface Coating Processes

§115.427, Exemptions

The proposed amendment to §115.427(a)(3)(H) would change the exemption level for sources in the BPA from 100 tpy to 50 tpy of VOC in order to ensure that RACT is applied at all major sources. This change is necessary because of the reclassification of the BPA area to serious nonattainment with respect to the one-hour ozone standard.

§115.429, Counties and Compliance Schedules

The proposed amendment to §115.429 would add a new subsection (c), to specify that shipbuilding and repair facilities in Hardin, Jefferson, and Orange Counties that become subject to the control requirements because of the change in exemption level must comply with the requirements as soon as practicable, but no later than December 31, 2006. Shipbuilding and ship repair facilities that are already subject to the control requirements must remain in compliance as specified in §115.429(a).

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Grants Management Section, determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed rules. The proposed rules address a revision in exemption levels for VOC emissions in the BPA area necessitated by EPA's redesignation of the area from moderate to serious for the one-hour ozone standard. None of the facilities anticipated to be affected by the proposed rules are owned or operated by units of state or local governments.

In the past, the BPA one-hour nonattainment area for ozone, consisting of Hardin, Jefferson, and Orange Counties, was classified as moderate. BPA did not meet the 0.12 parts per million standard for the moderate classification by the November 1996 deadline, nor did the BPA area meet the same standard by a November 1999 deadline, which EPA had established for serious nonattainment areas. EPA has now reclassified the BPA area to a serious one-hour nonattainment designation with an attainment deadline of November 15, 2005. The reclassification of BPA from a moderate nonattainment area to a serious nonattainment area changes the definition of a major source of ozone production and the acceptable threshold limits for those sources. These changes must be reflected in the SIP. This means that the BPA area has to adopt, for newly designated major sources, RACT for lower emission levels of VOCs.

Under current rules for moderate nonattainment areas, sites with VOC emissions of 100 tpy or more are designated as major sources and required to apply RACT. Under the proposed rules, sources would be designated as major and trigger RACT at a lower threshold of 50 tpy of VOC emissions. The proposed rules would mean that previously exempt industrial sites would be required to implement RACT to aid in lowering ozone levels in the BPA area to 0.12 parts per million. The types of sites affected by the proposed rules would be batch processing operations, shipbuilding operations, ship repair operations, and surface coating operations for ships and offshore oil or gas drilling platforms.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with FCAA SIP requirements and progress towards achieving attainment with the one-hour ozone NAAQS in the BPA area.

Batch processing operations, shipbuilding operations, ship repair operations, and surface coating operations for ships and offshore oil or gas platforms in Hardin, Jefferson, and Orange Counties that have VOC emissions equal to or greater than 50 tpy, but less than 100 tpy would be affected by the proposed rules.

Available information indicates that, currently, no known batch process operations in the BPA area would be affected by the proposed rules. Batch process operations in the BPA area tend to be located at sites that either emit less than 50 tpy of VOC emissions and would be exempt from the proposed rules, or emit more than 100 tpy of VOC emissions and are already subject to emission standards. Therefore, the proposed rules are expected to have no fiscal impact on batch process operations in the BPA area. However, if a batch process operation is located at a site

that emits between 50 - 100 tpy of VOCs, it would be subject to the proposed rules and would experience a potentially significant fiscal impacts. The actual cost of compliance depends on many factors, but EPA estimates indicate that costs could range from $43,000 - $800,000 per year, or $215,000 - $4 million over a five-year period.

Air permits and emission inventory data indicates that two shipbuilding and ship repair accounts in the BPA area may be affected by the proposed rules. EPA's estimates for shipbuilding/ship repair sites to comply with RACT are an average of $11,000 per year, or $55,000 over a five-year period. Therefore, the proposed rules are not expected to have a significant fiscal impact on BPA sites engaged in shipbuilding, ship repair, or surface coating of ships and offshore rigs whose emission levels fall in the range addressed by the proposed rules.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses under the proposed rules. Small or micro-businesses engaging in activities producing VOCs tend to have ozone emission levels of less than 50 tpy. If a small or micro-business has emission levels of 50 tpy of VOCs, it would experience the same fiscal impact as a large business under the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking action does not meet the definition of a "major environmental rule" as defined in that statute. 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, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rule amendments are one element of the BPA SIP and would require major sources in BPA to apply RACT to obtain VOC emissions reductions and would remove a contingency measure for marine vessel loading in the BPA nonattainment area. These proposed rule amendments are necessary to comply with the requirements of the FCAA and to achieve attainment in the BPA ozone nonattainment area. The proposed rules are not anticipated to 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.

In addition, the proposed amendments do not meet any of the four applicability criteria of a "major environmental rule" as defined in the Texas Government Code. Texas Government Code, §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 rule amendments implement requirements of 42 USC. Under 42 USC, §§7410, *et seq*., states are required to adopt a SIP that provides for "implementations, maintenance, and enforcement" of the primary NAAQS in each air quality control region of the state. For nonattainment areas that are designated as moderate and above, 42 USC, §7511a(b)(2)(C) requires states to submit SIPs that include provisions to require implementation of RACT at major stationary sources of VOCs that are in the nonattainment area. As discussed previously, this rulemaking would amend major source exemptions from 100 tpy to 50 tpy to reflect BPA's reclassification to serious and require RACT at major sources that emit 50 tpy or more VOCs. In addition, this rulemaking would remove a contingency measure for marine vessel loading. This measure was not implemented and, as discussed previously, this measure is unnecessary because equivalent emission reductions were achieved without implementation of the measure.

As discussed earlier in this preamble, this rulemaking implements the requirements of 42 USC. The proposed rules do not exceed a requirement of a delegation agreement or a contract between state and federal government. There is no contract or delegation agreement that covers the topic that is the subject of this rulemaking. The proposed rules were not developed solely under the general powers of the agency, but are proposed under the Texas Clean Air Act (TCAA), as codified in Texas Health and Safety Code (THSC), §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; and §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed rulemaking action and performed an analysis of whether the proposed rules are subject to Texas Government Code, Chapter 2007. The specific purpose of these revisions is to amend major source exemption levels for batch processes and surface coating processes in the BPA nonattainment area due to BPA's reclassification by EPA to a serious ozone nonattainment area and to remove a contingency measure that was never implemented in the BPA ozone nonattainment area.

Texas Government Code, §2007.003(b)(4), provides that Chapter 2007 does not apply to this proposed rulemaking because it is reasonably taken to fulfill an obligation mandated by federal law. States are primarily responsible for ensuring attainment and maintenance of NAAQS once EPA has established them. Under 42 USC, §§7410, *et seq*. and related provisions, states must submit, for approval by EPA, SIPs that provide for the attainment and maintenance of NAAQS through control programs directed to sources of the pollutants involved. For ozone nonattainment areas that are designated moderate or above, 42 USC, §7511a(b)(2)(C), requires that RACT be applied at major stationary sources of VOCs. Through this proposed rulemaking and SIP revision, the commission is implementing RACT at major sources of VOCs in the BPA area by amending the major source exemption levels from 100 tpy to 50 tpy, the level for major stationary sources of VOCs in serious ozone nonattainment areas. This rulemaking is also removing a contingency measure

for loading of VOCs into marine vessels in the BPA area. Under 42 USC, §7502(c)(9), states must submit, as part of their SIP, contingency measures to be implemented if an area fails to make reasonable further progress or fails to attain the NAAQS by the attainment date. As discussed previously, this measure was never implemented and the commission proposes to remove it because equivalent emission reductions have been achieved without implementing the measure.

In addition, Texas Government Code, §2007.003(b)(13), states that Chapter 2007 does not apply to an action that: 1) is taken in response to a real and substantial threat to public health and safety; 2) is designed to significantly advance the health and safety purpose; and 3) does not impose a greater burden than is necessary to achieve the health and safety purpose. Although the purpose of these amendments do not directly prevent a nuisance or prevent an immediate threat to life or property, they do prevent a real and substantial threat to public health and safety and significantly advance the health and safety purpose. This action is taken in response to the BPA area exceeding the federal ozone NAAQS, which adversely affects public health, primarily through irritation of the lungs. This proposed rulemaking will ensure that additional VOC emission reductions will be achieved at major stationary sources through the implementation of RACT in the BPA. VOC is an ozone precursor that reacts with NO_x in sunlight to form ozone. The action will specifically advance the health and safety purpose by reducing VOC levels, and consequently ozone levels in the BPA nonattainment area. In addition, this rulemaking will remove a contingency measure that has not been implemented. The removal of the contingency measure does not specifically advance the health and safety purpose by reducing ozone levels in the BPA nonattainment area, but is part of a larger scheme to reduce ozone levels as expeditiously as possible in the BPA nonattainment area. Consequently, these proposed amendments meet the exemption in Texas Government Code, §2007.003(b)(13). This rulemaking therefore meets the requirements of Texas Government Code, §2007.003(b)(4) and (13). For these reasons, the proposed amendments do not constitute a takings under Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking action and found that the proposal is an action identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, or will affect an action/authorization identified in §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, under 31 TAC §505.22, the 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 and ozone levels will be reduced as a result of these amendments. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations in 40 Code of Federal Regulations (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. Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Chapter 115 is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program; 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 at their sites affected by the revisions to Chapter 115.

ANNOUNCEMENT OF HEARINGS

Two public hearings on this proposal will be held on June 16, 2005, at 2:00 p.m. and 6:00 p.m. in the Swan Room, at the South East Texas Regional Planning Commission, located at 2210 Eastex Freeway in Beaumont, Texas. The hearings will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearings. Individuals may present oral statements when called upon in order of registration. A time limit may be established at each hearing to assure that enough time is allowed for every interested person to speak. There will be no open discussion during the hearings; however, commission staff members will be available to discuss the proposal 30 minutes before each hearing and will answer questions before and after each hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact Lola Brown at (512) 239-0348. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lola Brown, MC 205, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087; faxed to (512) 239-4808; or emailed to *siprules@tceq.state.tx.us* with Rule Project Number 2005-017-115-AI in the subject line. All comments should reference Rule Project Number 2005-017-115-AI. Comments must be received by 5:00 p.m., June 17, 2005. Copies of the proposed rules can be obtained from the commission's Web site at *http://www.tnrcc.state.tx.us/oprd/rules/propadop.html*. For further information, please contact Teresa Hurley of the Air Quality Planning and Implementation Division at (512) 239-5316.

SUBCHAPTER B. GENERAL VOLATILE ORGANIC COMPOUND SOURCES

DIVISION 6. BATCH PROCESSES

30 TAC §115.167, §115.169

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under TWC; §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and the duties under the provisions of TWC and other laws of this state; and §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. These amendments are also proposed under THSC, 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;

§382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of TCAA; §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; and §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air.

These proposed amendments implement TWC, §§5.102, 5.103, and 5.105; and THSC, §§382.002, 382.011, 382.012, and 382.017.

§115.167. Exemptions.
The following exemptions apply.

(1) Batch process operations at an account that [~~which~~] has total volatile organic compound (VOC) emissions (determined before control but after the last recovery device) of less than the following rates from all stationary emission sources included in the account are exempt from the requirements of this division (relating to Batch Processes), except for §115.161(b) and (c) of this title (relating to Applicability):

(A) 50 [~~100~~] tons per year (tpy) in the Beaumont-Port Arthur [~~Beaumont/Port Arthur~~] area; and

(B) 25 tpy in the Houston-Galveston-Brazoria [~~Houston/Galveston~~] area.

(2) The following are exempt from the requirements of this division, except for §§115.161(b) and (c), 115.164, and 115.166(2) and (3) of this title (relating to Applicability; Determination of Emissions and Flow Rates; and Monitoring and Recordkeeping Requirements).

(A) Combined vents from a batch process train that [~~which~~] have the following annual mass emissions total.
Figure: 30 TAC §115.167(2)(A) (No change.)

(B) (No change.)

§115.169. Counties and Compliance Schedules.

(a) The owner or operator of each batch process operation in Hardin, Jefferson, and Orange Counties at an account that has total volatile organic compound (VOC) emissions (determined before control but after the last recovery device) of 100 tons per year or more shall continue to comply [~~shall demonstrate compliance~~] with this division (relating to Batch Processes) as required by §115.930 of this title (relating to Compliance Dates). [~~as soon as practicable, but no later than December 31, 2001. All batch process operations subject to this division in Hardin, Jefferson, and Orange Counties shall continue to comply with the requirements of Division 2 of this subchapter (relating to Vent Gas Control) until these batch process operations are in compliance with the requirements of this division.~~]

(b) The owner or operator of each batch process operation in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties shall demonstrate compliance with this division [~~(relating to Batch Processes)~~] as soon as practicable, but no later than December 31, 2002. All batch process operations subject to this division in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties must [~~shall~~] continue to comply with the requirements of Division 2 of this subchapter (relating to Vent Gas Control) until these batch process operations are in compliance with the requirements of this division.

(c) The owner or operator of each batch process operation in Hardin, Jefferson, and Orange Counties at an account that has total VOC emissions (determined before control but after the last recovery device) of 50 tons per year or more but less than 100 tons per year shall demonstrate compliance with this division as soon as practicable, but no later than December 31, 2006. All batch process operations subject to this division in Hardin, Jefferson, and Orange Counties must continue to comply with the requirements of Division 2 of this subchapter until these batch process operations are in compliance with the requirements of this division.

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 May 13, 2005.

TRD-200501937
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: June 26, 2005
For further information, please call: (512) 239-0348

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SUBCHAPTER C. VOLATILE ORGANIC COMPOUND TRANSFER OPERATIONS

DIVISION 1. LOADING AND UNLOADING OF VOLATILE ORGANIC COMPOUNDS

30 TAC §115.219

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.102, which provides the commission with the general powers to carry out its duties under TWC; §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and the duties under the provisions of TWC and other laws of this state; and §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendment is also proposed under THSC, 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; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of TCAA; §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; and §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air.

These proposed amendments implement TWC, §§5.102, 5.103, and 5.105; and THSC, §§382.002, 382.011, 382.012, and 382.017.

§115.219. Counties and Compliance Schedules.

(a) - (c) (No change.)

[~~(d) The owner or operator of each marine terminal in Hardin, Jefferson, and Orange Counties shall comply with this division as soon as practicable but no later than three years after the earliest of the following occurs:~~]

[~~(1) the commission publishes notification in the *Texas Register* of its determination that this contingency rule is necessary as a result of failure to attain the national ambient air quality standard for ozone by the attainment deadline or failure to demonstrate reasonable further progress as set forth in the 1990 Amendments to the Federal Clean Air Act, §172(c)(9);~~]

[~~(2) the EPA publishes notification in the *Federal Register* of its determination to deny the petition to redesignate the Beaumont-Port Arthur ozone nonattainment area as an ozone attainment area; or~~]

[~~(3) the EPA publishes notification in the *Federal Register* of its determination to deny approval of the demonstration of attainment for the Beaumont/Port Arthur ozone nonattainment area based upon Urban Airshed Model modeling.~~]

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.

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Stephanie Bergeron Perdue
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Texas Commission on Environmental Quality
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SUBCHAPTER E. SOLVENT-USING PROCESSES

DIVISION 2. SURFACE COATING PROCESSES

30 TAC §115.427, §115.429

STATUTORY AUTHORITY

The amendments are proposed under TWC, §5.102, which provides the commission with the general powers to carry out its duties under TWC; §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and the duties under the provisions of TWC and other laws of this state; and §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. These amendments are also proposed under THSC, 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; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of TCAA; §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; and §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air.

These proposed amendments implement TWC, §§5.102, 5.103, and 5.105; and THSC, §§382.002, 382.011, 382.012, and 382.017.

§115.427. Exemptions.

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

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

(3) The following exemptions apply to surface coating operations, except for vehicle refinishing (body shops) controlled by §115.421(a)(8)(B) and (C) of this title. Excluded from the volatile organic compound (VOC) emission calculations are coatings and solvents used in surface coating activities that [~~which~~] are not addressed by the surface coating categories of §115.421(a)(1) - (15) of this title. For example, architectural coatings (i.e., coatings that [~~which~~] are applied in the field to stationary structures and their appurtenances, to portable buildings, to pavements, or to curbs) at a property would not be included in the calculations.

(A) Surface coating operations on a property that [~~which,~~] when uncontrolled[~~,~~] will emit a combined weight of VOC of less than three pounds per hour and 15 pounds in any consecutive 24-hour period are exempt from §115.421(a) of this title and §115.423 of this title (relating to Alternate Control Requirements).

(B) Surface coating operations on a property that [~~which,~~] when uncontrolled[~~,~~] will emit a combined weight of VOC of less than 100 pounds in any consecutive 24-hour period are exempt from §115.421(a) and §115.423 of this title if documentation is provided to and approved by both the executive director and the EPA to demonstrate that necessary coating performance criteria cannot be achieved with coatings that [~~which~~] satisfy applicable emission specifications and that control equipment is not technically or economically feasible.

(C) (No change.)

(D) Mirror backing coating operations located on a property that [~~which,~~] when uncontrolled[~~,~~] emit a combined weight of VOC less than 25 tons in one year (based on historical coating and solvent usage) are exempt from this division (relating to Surface Coating Processes).

(E) Wood furniture manufacturing facilities that [~~which~~] are subject to and are complying with §115.421(a)(14) of this title and §115.422(3) of this title (relating to Control Requirements) are exempt from §115.421(a)(13) of this title. These wood furniture manufacturing facilities must [~~shall~~] continue to comply with §115.421(a)(13) of this title until these facilities are in compliance with §115.421(a)(14) and §115.422(3) of this title.

(F) Wood furniture manufacturing facilities that [~~which,~~] when uncontrolled[~~,~~] emit a combined weight of VOC from wood furniture manufacturing operations less than 25 tons per year are exempt from §115.421(a)(14) and §115.422(3) of this title.

(G) (No change.)

(H) Shipbuilding and ship repair operations in Hardin, Jefferson, and Orange Counties that [~~which,~~] when uncontrolled[~~,~~] emit a combined weight of VOC from ship and offshore oil or gas drilling platform surface coating operations less than 50 [~~100~~] tons per year are exempt from §115.421(a)(15) and §115.422(4) of this title.

(I) Shipbuilding and ship repair operations in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties that [~~which,~~] when uncontrolled[~~,~~] emit a combined weight of VOC from ship and offshore oil or gas drilling platform surface coating operations less than 25 tons per year are exempt from §115.421(a)(15) and §115.422(4) of this title.

(J) The following activities where cleaning and coating of aerospace vehicles or components may take place are exempt from this division: research and development, quality control, laboratory testing, and electronic parts and assemblies, [~~;~~] except for cleaning and coating of completed assemblies.

(4) - (6) (No change.)

(b) For Gregg, Nueces, and Victoria Counties, the following exemptions [~~shall~~] apply.

(1) Surface coating operations located at any property that [~~which,~~] when uncontrolled[~~,~~] will emit a combined weight of VOC less than 550 pounds (249.5 kg) in any continuous 24-hour period are

exempt from §115.421(b) of this title. Excluded from this calculation are coatings and solvents used in surface coating activities that [~~which~~] are not addressed by the surface coating categories of §115.421(b)(1) - (10) of this title. For example, architectural coatings (i.e., coatings that [~~which~~] are applied in the field to stationary structures and their appurtenances, to portable buildings, to pavements, or to curbs) at a property would not be included in the calculation.

(2) - (4) (No change.)

§115.429. Counties and Compliance Schedules.

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

(c) The owner or operator of each shipbuilding and ship repair operation in Hardin, Jefferson, and Orange Counties that when uncontrolled emits a combined weight of volatile organic compounds from ship and offshore oil or gas drilling platform surface coating operations greater than 50 tons per year and less than 100 tons per year shall comply with this division as soon as practicable, but no later than December 31, 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 May 13, 2005.

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Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-0348

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 437. FEES

37 TAC §437.5

The Texas Commission on Fire Protection (TCFP) proposes an amendment to Texas Government Code, Chapter 437, §437.5, Renewal Fees. The purpose of the proposed amendment is to implement a $5.00 increase in the fee charged to renew certifications for certified individuals and certified training facilities, making the renewal fee $25 instead of $20. If adopted, this increase would enable the TCFP to maintain current levels of: 1) regulatory oversight of the certification of fire service personnel (mandated by Texas Government Code, §419.026(d)); and 2) training assistance to fire departments (mandated by Texas Government Code, §419.031), which may be in jeopardy due to potential budget cuts.

The TCFP has determined the amendment to be in compliance with Texas Government Code, §419.022(b) and §419.026(a).

Mr. Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five year period the proposed amendment is in effect there will be a minimal fiscal impact on state and local governments who pay for the renewal of the certifications of their fire protection personnel pursuant to Texas Government Code, §419.026(a). Individuals and organizations that hold a commission certification and pay for their own renewals will also have a minimal increase for the annual renewal.

Mr. Soteriou has also determined that for each of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be the assurance that levels of regulatory oversight will be maintained despite budget constraints, and that high standards will be maintained for certification of fire service personnel, resulting in greater public safety.

Comments on the proposal may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments must be received within 30 days of publication of this proposal in the *Texas Register*.

The amendment is proposed under Texas Government Code, §419.008, which provides the TCFP with the authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.026, which provides the TCFP with authority to set and collect a fee of not more than $35 for each certificate that the TCFP issues or renews.

Texas Government Code, §419.008 and §419.026 are affected by this rulemaking.

§437.5. Renewal Fees.

(a) A $25 [~~$20~~] non-refundable annual renewal fee shall be assessed for each certified individual and certified training facility. If an individual or certified training facility holds more than one certificate, the commission may collect only one $25 [~~$20~~] renewal fee which will renew all certificates held by the individual or certified training facility.

(b) - (p) (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 May 12, 2005.

TRD-200501923
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: June 26, 2005
For further information, please call: (512) 239-4921

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