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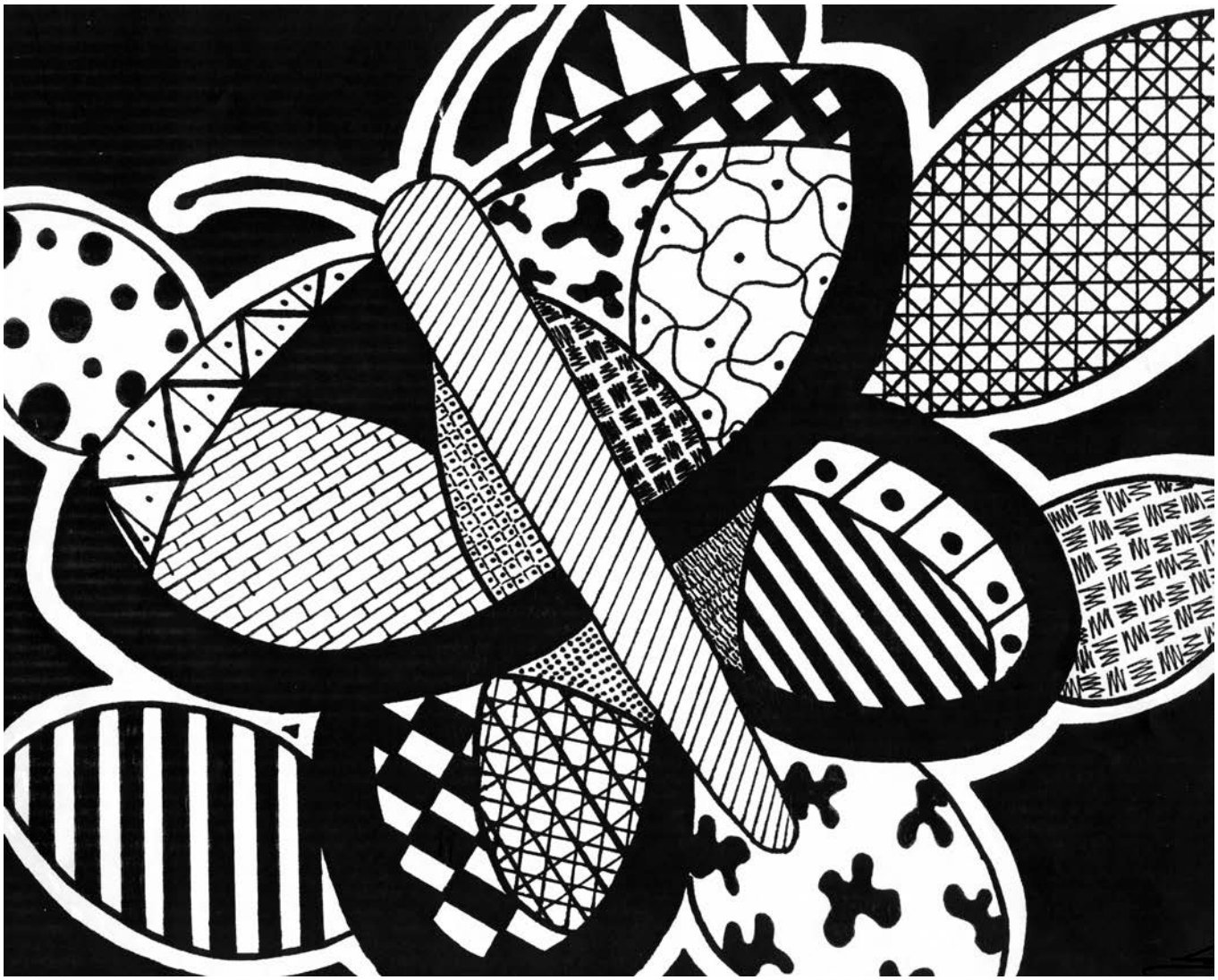

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31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rule is not subject to the Texas Coastal Management Program.

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.

Submittal of Comments

Written comments may be submitted to Bruce McAnally, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2013-019-007-LS. The comment period closes July 8, 2013. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.texas.gov/nav/rules/propose_adopt.html.* For further information, please contact Angela Burnett, (512) 239-6005.

Statutory Authority

This amendment is proposed under Texas Water Code (TWC), §5.102, which establishes the general authority of the Texas Commission on Environmental Quality (TCEQ, commission) necessary to carry out its jurisdiction; §5.103, which establishes that the commission, by rule, shall establish and approve all general policy of the commission; §5.104, which establishes the authority of the commission to enter memoranda of understanding with any other state agency and adopt by rule the memoranda of understanding; §5.105, which establishes the general authority of the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of this state; Texas Health and Safety Code, §382.035, Memorandum of Understanding, which requires the commission to adopt, by rule, any memorandum of understanding between the commission and another state agency in relation to the Texas Clean Air Act; and Texas Transportation Code, §201.607, Environmental, Historical, or Archeological Memorandum of Understanding, which requires the Texas Department of Transportation and the TCEQ to examine and revise their memorandum of understanding relating to the TCEQ review of highway projects for potential environmental effects.

The proposed amendment implements requirements in Sections 1 and 5 of Senate Bill (SB) 548, Section 18 of SB 1420, and Sections 1 and 5 of House Bill 630, 82nd Legislature, 2011. In addition, the proposed amendment implements requirements in Texas Transportation Code, §201.607.

§7.119. Memorandum of Understanding Between the Texas Department of Transportation and the Texas Commission on Environmental Quality [~~Texas Natural Resource Conservation Commission~~].

The commission adopts by reference the rules of the Texas Department of Transportation in 43 TAC §§2.301 - 2.308 [~~§2.23~~] (relating to Memorandum of Understanding with the Texas Commission on Environmental Quality [~~Texas Natural Resource Conservation Commission~~]).

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 23, 2013.

TRD-201302059
David Timberger
Director, General Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: July 7, 2013
For further information, please call: (512) 239-2141

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CHAPTER 115. CONTROL OF AIR POLLUTION FROM VOLATILE ORGANIC COMPOUNDS

SUBCHAPTER E. SOLVENT-USING PROCESSES

DIVISION 5. CONTROL REQUIREMENTS FOR SURFACE COATING PROCESSES

30 TAC §115.453

The Texas Commission on Environmental Quality (TCEQ, commission, or agency) proposes amendments to §115.453.

If adopted, the amended section will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP).

Background and Summary of the Factual Basis for the Proposed Rule

The 1990 Federal Clean Air Act (FCAA) Amendments (42 United States Code (USC), §§7401 *et seq.)* require the EPA to establish primary National Ambient Air Quality Standards (NAAQS) that protect public health and to designate areas exceeding the NAAQS as nonattainment areas. For each designated nonattainment area, the state is required to submit a SIP revision to the EPA that provides for attainment and maintenance of the NAAQS.

FCAA, §172(c)(1) requires that the SIP incorporate all reasonably available control measures, including reasonably available control technology (RACT), for sources of relevant pollutants. The EPA defines RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53761, September 17, 1979). For nonattainment areas classified as moderate and above, FCAA, §182(b)(2) requires the state to submit a SIP revision that implements RACT for sources of volatile organic compounds (VOC) addressed in a control techniques guidelines (CTG) document issued between November 15, 1990 and the area's attainment date. Under the 1997 eight-hour ozone NAAQS, the Dallas-Fort Worth (DFW) area (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties) is classified as a serious nonattainment area and the Houston-Galveston-Brazoria (HGB) area (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties) is classified as a severe nonattainment area.

CTG documents provide information to assist states and local air pollution control authorities in determining RACT for specific emission sources. The CTG documents describe the EPA's evaluation of available information, including emission control options and associated costs, and provide the EPA's RACT recommendations for controlling emissions from these sources. The CTG documents do not impose any legally binding regula-

tions or change any applicable regulations. The EPA's guidance on RACT indicates that states can choose to implement the CTG recommendations, implement an alternative approach, or demonstrate that additional control for the CTG emission source category is not technologically or not economically feasible in the area.

FCAA, §183(e) directs the EPA to regulate VOC emissions from certain consumer and commercial product categories by issuing national regulations or by issuing CTG documents in lieu of regulations. In 2008, the EPA published CTG documents in lieu of national regulations for VOC emissions from Miscellaneous Metal and Plastic Parts Coatings (EPA-453/R-08-003).

In December 2011, the commission adopted rules (Rule Project No. 2010-016-115-EN) to implement the EPA's 2008 Miscellaneous Metal and Plastic Parts Coating CTG recommendations that the commission determined to be RACT in the DFW and HGB 1997 eight-hour ozone nonattainment areas. The preamble to the 2011 rulemaking specifically discusses any differences between the EPA's CTG recommendations and the RACT rules adopted by the commission. The 2011 rulemaking required affected owners and operators to use one of the approved application systems listed in §115.453(c)(1) - (6) or another application system capable of achieving a transfer efficiency equivalent to or better than the transfer efficiency of high-volume, low-pressure (HVLP) spray, which for the purpose of this rule is assumed to be 65%.

Although the EPA's 2008 CTG recommended airless spray and air-assisted airless spray application systems as RACT, the 2011 rulemaking omitted these two types of systems from the list of approved application systems under the consideration that companies using these systems could demonstrate equivalency to HVLP systems. However, demonstrating equivalency to HVLP systems may be more difficult for airless spray and air-assisted airless spray application systems than was anticipated during the 2011 rulemaking. The intent of the 2011 rulemaking was to implement RACT requirements consistent with the EPA's CTG recommendations except for the specific deviations explicitly discussed in the rule preamble. The rule preamble did not discuss the omission of airless and air-assisted airless spray application systems for the miscellaneous metal and plastic parts coating CTG category. For these reasons, the commission has determined that incorporating airless and air-assisted airless spray systems into §115.453(c) is consistent with the EPA's 2008 CTG recommendations and implements RACT as intended by the December 2011 rulemaking.

The proposed rulemaking would revise §115.453(c) to incorporate airless and air-assisted airless spray systems into the list of approved application systems. The proposed rulemaking would eliminate the need for affected owners and operators to perform testing under existing §115.453(c)(7) or purchase a new application system in order to demonstrate compliance with the application system rule requirement. The proposed rulemaking would also include non-substantive changes that are necessary to conform to *Texas Register* formatting requirements.

Section Discussion

The commission proposes revising §115.453(c) to accommodate listing airless and air-assisted airless spray application systems. The commission proposes adding paragraph (7) to incorporate airless spray and air-assisted airless spray systems into the approved list of coating application systems for metal and plastic parts surface coating processes specified in §115.450(a)(3) and (4). Proposed paragraph (7) would allow the use of airless or air-assisted airless coating applications systems for the coating of miscellaneous metal parts and products, miscellaneous plastic parts and products, automotive/transportation and business machine plastic parts, and motor vehicle materials.

The commission also proposes renumbering existing paragraph (7) to proposed paragraph (8) without changes to the existing language.

Fiscal Note: Costs to State and Local Government

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rule is in effect, no significant fiscal implications are anticipated for the agency as a result of administration or enforcement of the proposed rule. For other units of state or local government, the proposed rule will have no fiscal implications.

The proposed rulemaking would revise the RACT requirements for the DFW and HGB 1997 eight-hour ozone nonattainment areas by revising §115.453(c) to specifically add airless and air-assisted airless spray systems into the list of approved coating application systems for miscellaneous metal and plastic parts. The proposed rulemaking would eliminate the need for affected owners and operators to conduct tests or purchase a different system to demonstrate compliance with the requirements for application systems per current RACT requirements.

The proposed rule would not have a significant fiscal impact on the agency since currently available resources would be used to implement rule provisions. Other state agencies and units of local government do not typically use coating application systems, and the proposed rule would not have any fiscal impacts on these governmental entities.

Public Benefits and Costs

Nina Chamness also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will be cost-effective administration of the rule that is protective of the environment and public health and safety.

The proposed rule will be consistent with the EPA's 2008 Miscellaneous Metal and Plastic Parts Coating CTG that the agency had determined to be RACT for the DFW and HGB 1997 eight-hour ozone nonattainment areas by specifically adding airless and air-assisted airless spray coating systems to the current list of approved application systems.

The proposed rule would save individuals that own a business in the DFW and HGB 1997 eight-hour ozone nonattainment areas and that use these technologies the cost of purchasing a different system or the cost of testing current systems to demonstrate compliance as required by current §115.453(c)(7). The agency does not maintain records of how many individuals or businesses own or use these systems, and the magnitude of the cost savings under the proposed rule will vary widely and depend on application system design, the types of coating used, and the size and shape of the miscellaneous metal or plastic part coated. The agency has received cost estimates regarding the options under current rule regarding testing and purchasing a new, compliant system to provide some information regarding cost savings. According to two different automobile and light-duty truck manufacturing sites in the state, cost savings for testing on parts analogous to a miscellaneous metal or plastic part could range from $7,500 to $10,000 per test. These estimates include those

for an outside contractor to travel, to develop testing protocols, to determine VOC content and densities, and to configure equipment. According to vendor estimates regarding the savings from not having to purchase an average HVLP system, savings could range from $2,500 to $3,000.

If a large business uses airless and air-assisted airless spray systems, they too are expected to save testing or new system costs, the significance of which would vary widely depending on the same factors that will affect the magnitude of cost savings for individuals. Large businesses are expected to experience the same types of savings under the proposed rule that individuals would experience.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rule. The agency does not track the number or types of entities that might use these coating systems, but it is expected that the proposed rule will mostly benefit small businesses as discussed in the analysis of the fiscal impacts to individuals.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years that the proposed rule is in effect.

Local Employment Impact Statement

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

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of the Texas Government Code, §2001.0225, and determined that the proposed rulemaking does not meet the definition of a "major environmental rule" as defined in that statute. A "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, 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. The specific intent of the proposed rulemaking is to incorporate airless and air-assisted airless spray systems into the list of approved application systems in §115.453(c) and eliminate the need for affected owners and operators to perform testing under existing §115.453(c)(7) or purchase a new system in order to demonstrate compliance with the application system rule requirement. As discussed in the Fiscal Note section of this preamble, the proposed rulemaking is not anticipated to add any significant additional costs to affected individuals or businesses beyond what is already required to comply with current standards on 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.

Additionally, the proposed rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Texas Government Code, §2001.0225(a). 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 rulemaking implements requirements of 42 USC, §7410, which requires states to adopt a SIP that provides for the implementation, maintenance, and enforcement of the NAAQS in each air quality control region of the state. While 42 USC, §7410 generally does not require specific programs, methods, or reductions in order to meet the standard, the SIP must include enforceable emission limitations and other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter (42 USC, Chapter 85, Air Pollution Prevention and Control). The provisions of the FCAA recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public, to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 USC, §7410. States are not free to ignore the requirements of 42 USC, §7410, and must develop programs to assure that their contributions to nonattainment areas are reduced so that these areas can be brought into attainment on schedule.

Additionally, states have further obligations under FCAA, §172(c)(1) and §182(b)(2) to provide for RACT, for sources of relevant pollutants in nonattainment areas, such as DFW and HGB 1997 eight-hour ozone nonattainment areas. The EPA defines RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53761, September 17, 1979). For nonattainment areas classified as moderate and above, FCAA, §182(b)(2) requires the state to submit a SIP revision that implements RACT for sources of VOC addressed in a CTG document issued between November 15, 1990 and the area's attainment date. FCAA, §183(e) directs the EPA to regulate VOC emissions from certain consumer and commercial product categories by issuing national regulations or by issuing CTG documents in lieu of regulations. The EPA published CTG documents in lieu of national regulations for VOC emissions in 2008 for Miscellaneous Metal and Plastic Parts Coatings (EPA-453/R-08-003).

In December 2011, the commission adopted rules (Rule Project No. 2010-016-115-EN) that implemented requirements based on recommendations in the EPA's 2008 Miscellaneous Metal and Plastic Parts Coating CTG that the commission had determined to be RACT in the DFW 1997 serious eight-hour ozone nonattainment area and in the HGB 1997 severe eight-hour ozone nonattainment area. The intent of the 2011 rulemaking was to implement requirements consistent with the EPA's RACT recommendations except where explicitly discussed in the rule preamble. Airless and air-assisted airless spray application systems were not discussed in the preamble for the miscellaneous

metal and plastic parts coating CTG category. The purpose of this proposed rulemaking is to incorporate airless and air-assisted airless spray systems into the approved list in §115.453(c) consistent with the EPA's 2008 Miscellaneous Metal and Plastic Parts Coating CTG recommendations and implement RACT as intended by the December 2011 rulemaking. The proposed rulemaking would incorporate airless and air-assisted airless spray systems into the list of approved application systems in §115.453(c) and would eliminate the need for affected owners and operators to perform testing under existing §115.453(c)(7) or purchase a new system in order to demonstrate compliance with the application system rule requirement.

The requirement to provide a fiscal analysis of proposed regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th Legislature, 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 concluding that "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted proposed rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law.

As discussed earlier in this preamble, the FCAA does not always require specific programs, methods, or reductions in order to meet the NAAQS; thus, states must develop programs for each area contributing to nonattainment to help ensure that those areas will meet the attainment deadlines. Because of the ongoing need to address nonattainment issues, and to meet the requirements of 42 USC, §7410, the commission routinely proposes and adopts SIP rules. The legislature is presumed to understand this federal scheme. If each rule proposed for inclusion in the SIP was considered to be a major environmental rule that exceeds federal law, then every SIP rule would require the full regulatory impact analysis contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the LBB, the commission believes that the intent of SB 633 was only to require the full regulatory impact analysis for rules that are extraordinary in nature. While the SIP rules will have a broad impact, the impact is no greater than is necessary or appropriate to meet the requirements of the FCAA. For these reasons, rules adopted for inclusion in the SIP fall under the exception in Texas Government Code, §2001.0225(a), because they are required by federal law.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code, but left this provision substantially unamended. It is presumed that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." *Central Power & Light Co. v. Sharp,* 919 S.W.2d 485, 489 (Tex. App. Austin 1995), *writ denied with per curiam opinion respecting another issue,* 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.,* 798 S.W.2d 353, 357 (Tex. App. Austin 1990, *no writ). Cf. Humble Oil & Refining Co. v. Calvert,* 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.,* 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor,* 24 S.W.3d 581 (Tex. App. Austin 2000, *pet. denied);* and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.,* 563 S.W.2d 916 (Tex. 1978).

The commission's interpretation of the regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance." The legislature specifically identified Texas Government Code, §2001.0225, as falling under this standard. The commission has substantially complied with the requirements of Texas Government Code, §2001.0225.

The specific intent of the proposed rulemaking is to incorporate airless and air-assisted airless spray systems into the list of approved application systems in §115.453(c) and eliminate the need for affected owners and operators to perform testing under §115.453(c)(7) in order to demonstrate compliance with the application system rule requirement. The proposed rulemaking does not exceed a standard set by federal law or exceed an express requirement of state law. No contract or delegation agreement covers the topic that is the subject of this proposed rulemaking. Therefore, this proposed rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), taking means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or §17 or §19, Article I, Texas Constitution; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The commission completed a takings impact analysis for the proposed rulemaking under Texas Government Code, §2007.043. The specific purpose of the proposed rulemaking is to incorporate airless and air-assisted airless spray systems into the list of approved application systems in §115.453(c) and eliminate the need for affected owners and operators to perform testing under existing §115.453(c)(7) or purchase another system in order to demonstrate compliance with the application system rule requirement. As discussed in the Fiscal Note section of this pre-

amble, the proposed rulemaking is not anticipated to add any significant additional costs to affected individuals or businesses beyond what is already required to comply with current standards. The proposed rulemaking will not create any additional burden on private real property. The proposed rulemaking will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.,* and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rule in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22, and found the proposed rulemaking is consistent with the applicable CMP goals and policies.

The CMP goal applicable to the proposed rulemaking 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)). The CMP policy applicable to the proposed rulemaking is the policy that commission rules comply with federal regulations in 40 CFR, to protect and enhance air quality in the coastal areas (31 TAC §501.32). The proposed rulemaking would not increase emissions of air pollutants and is therefore consistent with the CMP goal in 31 TAC §501.12(1) and the CMP policy in 31 TAC §501.32.

Promulgation and enforcement of the rule will not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed rule is consistent with these CMP goals and policies and because the rule does not create or have a direct or significant adverse effect on any coastal natural resource areas. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that 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. If the proposed rule is adopted, owners or operators subject to the federal operating permit program must, consistent with the revision process in Chapter 122, upon the effective date of the rulemaking, revise their operating permit to include the adopted Chapter 115 requirements.

Announcement of Hearing

The commission will hold public hearings on this proposal in Austin on June 25, 2013 at 10:00 a.m. at the Texas Commission on Environmental Quality, Building E, Room 201S, 12100 Park 35 Circle Drive, Austin, Texas 78753; in Fort Worth, Texas on June 27, 2013 at 6:00 p.m. at the Texas Commission on Environmental Quality Region 4 Office, DFW Public Meeting Room, 2309 Gravel Road, Fort Worth, Texas 76118; and in Houston, Texas on July 2, 2013 at 6:00 p.m. at the Houston-Galveston Area Council, Conference Room A, 3555 Timmons Lane, Houston, Texas 77027. The hearings are structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearings; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearings.

Persons who have special communication or other accommodation needs who are planning to attend the hearings should contact Sandy Wong, Office of Legal Services, at (512) 239-1802. Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Michael Parrish, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2013-012-115-AI. The comment period closes July 8, 2013. Copies of the proposed rulemaking can be obtained from the commission's website at *http://www.tceq.texas.gov/nav/rules/propose_adopt.html.* For further information, please contact Frances Dowiak, Air Quality Planning Section, at (512) 239-3931.

Statutory Authority

The amended section is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amended section is also proposed under THSC, §382.002, concerning Policy and Purpose, that 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, that authorizes the commission to control the quality of the state's air; and §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. The amended section is also proposed under THSC, §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions; and §382.021, concerning Sampling Methods and Procedures, that authorizes the commission to prescribe the sampling methods and procedures to determine compliance with its rules. The amended section is also proposed under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401, *et seq.,* which requires states to submit SIP revisions that specify the manner in which the National Ambient Air Quality Standards will be achieved and maintained within each air quality control region of the state.

The amended section implements THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021; and FCAA, 42 USC, §§7401 *et seq.*

§115.453. Control Requirements.

(a) The following control requirements apply to surface coating processes subject to this division. Except as specified in paragraph (3) of this subsection, these limitations are based on the daily weighted average of all coatings, as defined in §101.1 of this title (relating to Definitions), as delivered to the application system.

(1) The following limits must be met by applying low-volatile organic compound (VOC) coatings to meet the specified VOC content limits on a pound of VOC per gallon of coating basis (lb VOC/gal coating) (minus water and exempt solvent), or by applying coatings in combination with the operation of a vapor control system, as defined in §115.10 (relating to Definitions), to meet the specified VOC emission limits on a pound of VOC per gallon of solids basis (lb VOC/gal solids). If a coating meets more than one coating type definition, then the coating with the least stringent VOC limit applies.

(A) Large appliances. If a coating does not meet a specific coating type definition, then it can be assumed to be a general-use coating and the VOC limit for general coating applies.
Figure: 30 TAC §115.453(a)(1)(A) (No change.)

(B) Metal furniture. If a coating does not meet a specific coating type definition, then it can be assumed to be a general-use coating and the VOC limit for general coating applies.
Figure: 30 TAC §115.453(a)(1)(B) (No change.)

(C) Miscellaneous metal parts and products. If a coating does not meet a specific coating type definition, then it can be assumed to be a general-use coating and the VOC limit for general coating applies.
Figure: 30 TAC §115.453(a)(1)(C) (No change.)

(D) Miscellaneous plastic parts and products. If a coating does not meet a specific coating category definition, then it can be assumed to be a general-use coating and the VOC limit for general coating applies.
Figure: 30 TAC §115.453(a)(1)(D) (No change.)

(E) Automotive/transportation and business machine plastic parts. For red, yellow, and black automotive/transportation coatings, except touch-up and repair coatings, the VOC limit is determined by multiplying the appropriate limit in Table 1 of this subparagraph by 1.15.
Figure: 30 TAC §115.453(a)(1)(E) (No change.)

(F) Pleasure craft. If a coating does not meet a specific coating category definition, then it can be assumed to be a general-use coating and the VOC limits for other coatings applies.
Figure: 30 TAC §115.453(a)(1)(F) (No change.)

(2) The coating VOC limits for motor vehicle materials applied to the metal and plastic parts in paragraph (1)(C) - (F) of this subsection, as delivered to the application system, must be met using low-VOC coatings (minus water and exempt solvent).
Figure: 30 TAC §115.453(a)(2) (No change.)

(3) The coating VOC limits for automobile and light-duty truck assembly surface coating processes must be met by applying low-VOC coatings.
Figure: 30 TAC §115.453(a)(3) (No change.)

(A) The owner or operator shall determine compliance with the VOC limits for electrodeposition primer operations on a monthly weighted average in accordance with §115.455(a)(2)(D) of this title (relating to Approved Test Methods and Testing Requirements).

(B) As an alternative to the VOC limit in Table 1 of this paragraph for final repair coatings, if an owner or operator does not compile records sufficient to enable determination of the daily weighted average, compliance may be demonstrated each day by meeting a standard of 4.8 lb VOC/gal coating (minus water and exempt solvent) on an occurrence weighted average basis. Compliance with the VOC limits on an occurrence weighted average basis must be determined in accordance with the procedure specified in §115.455(a)(2) of this title.

(C) The owner or operator shall determine compliance with the VOC limits in Table 2 of this paragraph in accordance with §115.455(a)(1) or (2)(C) of this title, as appropriate.

(4) The coating VOC limits for paper, film, and foil surface coating processes must be met by applying low-VOC coatings to meet the specified VOC content limits on a pound of VOC per pound of coating basis, as delivered to the application system, or by applying coatings in combination with the operation of a vapor control system to meet the specified VOC emission limits on a pound of VOC per pound of solids basis, as delivered to the application system.
Figure: 30 TAC §115.453(a)(4) (No change.)

(5) An owner or operator applying coatings in combination with the operation of a vapor control system to meet the VOC emission limits in paragraph (1) or (4) of this subsection shall use the following equation to determine the minimum overall control efficiency necessary to demonstrate equivalency. Control device and capture efficiency testing must be performed in accordance with the testing requirements in §115.455(a)(3) and (4) of this title.
Figure: 30 TAC §115.453(a)(5) (No change.)

(b) Except for the surface coating process in subsection (a)(2) of this section, the owner or operator of a surface coating process may operate a vapor control system capable of achieving a 90% overall control efficiency, as an alternative to subsection (a) of this section. Control device and capture efficiency testing must be performed in accordance with the testing requirements in §115.455(a)(3) and (4) of this title. If the owner or operator complies with the overall control efficiency option under this subsection, then the owner or operator is exempt from the application system requirements of subsection (c) of this section.

(c) The owner or operator of any surface coating process subject to this division shall not apply coatings unless one of the following coating application systems is used:

(1) electrostatic application;

(2) high-volume, low-pressure (HVLP) spray;

(3) flow coat;

(4) roller coat;

(5) dip coat;

(6) brush coat or hand-held paint rollers; [~~or~~]

(7) for metal and plastic parts surface coating processes specified in §115.450(a)(3) and (4) of this title (relating to Applicability and Definitions), airless spray or air-assisted airless spray; or

(8) [~~(7)~~] other coating application system capable of achieving a transfer efficiency equivalent to or better than that achieved by HVLP spray. For the purpose of this requirement, the transfer efficiency of HVLP spray is assumed to be 65%.

(d) The following work practices apply to the owner or operator of each surface coating process subject to this division.

(1) For all coating-related activities including, but not limited to, solvent storage, mixing operations, and handling operations for coatings and coating-related waste materials, the owner or operator shall:

(A) store all VOC-containing coatings and coating-related waste materials in closed containers;

(B) minimize spills of VOC-containing coatings;

(C) convey all coatings in closed containers or pipes;

(D) close mixing vessels and storage containers that contain VOC coatings and other materials except when specifically in use;

(E) clean up spills immediately; and

(F) for automobile and light-duty truck assembly coating processes, minimize VOC emissions from the cleaning of storage, mixing, and conveying equipment.

(2) For all cleaning-related activities including, but not limited to, waste storage, mixing, and handling operations for cleaning materials, the owner or operator shall:

(A) store all VOC-containing cleaning materials and used shop towels in closed containers;

(B) ensure that storage containers used for VOC-containing cleaning materials are kept closed at all times except when depositing or removing these materials;

(C) minimize spills of VOC-containing cleaning materials;

(D) convey VOC-containing cleaning materials from one location to another in closed containers or pipes;

(E) minimize VOC emissions from cleaning of storage, mixing, and conveying equipment;

(F) clean up spills immediately; and

(G) for metal and plastic parts surface coating processes specified in §115.450(a)(3) - (5) of this title [~~(relating to Applicability and Definitions)~~], minimize VOC emission from the cleaning of application, storage, mixing, and conveying equipment by ensuring that equipment cleaning is performed without atomizing the cleaning solvent and all spent solvent is captured in closed containers.

(3) The owner or operator of automobile and light-duty truck assembly surface coating processes shall implement a work practice plan containing procedures to minimize VOC emissions from cleaning activities and purging of coating application equipment. Properties with a work practice plan already in place to comply with requirements specified in 40 Code of Federal Regulations (CFR) §63.3094(b) (as amended through April 20, 2006 (71 FR 20464)), may incorporate procedures for minimizing non-hazardous air pollutant VOC emissions to comply with the work practice plan required by this paragraph.

(e) A surface coating process that becomes subject to subsection (a) of this section by exceeding the exemption limits in §115.451 of this title (relating to Exemptions) is subject to the provisions in subsection (a) of this section even if throughput or emissions later fall below exemption limits unless emissions are maintained at or below the controlled emissions level achieved while complying with subsection (a) of this section and one of the following conditions is met.

(1) The project that caused throughput or emission rate to fall below the exemption limits in §115.451 of this title must be authorized by a permit, permit amendment, standard permit, or permit by rule required by Chapters 106 or 116 of this title (relating to Permits by Rule; and Control of Air Pollution by Permits for New Construction or Modification, respectively). If a permit by rule is available for the project, the owner or operator shall continue to comply with subsection (a) of this section for 30 days after the filing of documentation of compliance with that permit by rule.

(2) If authorization by permit, permit amendment, standard permit, or permit by rule is not required for the project, the owner or operator shall provide the executive director 30 days notice of the project in writing.

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 23, 2013.

TRD-201302063
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: July 7, 2013
For further information, please call: (512) 239-2548

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER O. STATE SALES AND USE TAX

34 TAC §3.305

The Comptroller of Public Accounts proposes an amendment to §3.305, concerning criminal offenses and penalties. This section is being amended to implement provisions of Senate Bill 934, 82nd Legislature, 2011.

Subsection (b)(2) is amended to implement Section 17 of Senate Bill 934, 82nd Legislature, 2011, which amended Tax Code, §151.707(b) to apply to all offenses described under Tax Code, §151.707(a). Tax Code, §151.707(b) had applied only to offenses described under Tax Code, §151.707(a)(1) and (2). Subsection (b)(2) is further amended to follow the statutory language more closely.

Subsection (b)(4) is amended to implement Section 16 of Senate Bill 934, 82nd Legislature, 2011, which amended Tax Code, §151.7032 to change the grading of offenses prescribed by that section and to provide that when tax is collected and not paid pursuant to one scheme or continuous course of conduct, all such conduct may be considered as one offense and the amounts aggregated in determining the grade of the offense.

Subsection (b)(7) is amended and new subsection (b)(8) is added to implement Section 18 of Senate Bill 934, 82nd Legislature, 2011, which added Tax Code, §151.7075. This new section defines a new criminal offense for intentionally failing to produce records required to be kept under Tax Code, §151.025 to document a taxpayer's taxable sale of certain items that the taxpayer obtained using a resale certificate when such records are requested by the comptroller or her authorized representa-