

The Texas Commission on Environmental Quality (commission or TCEQ) adopts amendments to §§115.167, 115.169, 115.219, 115.427, and 115.429; and corresponding revisions to the state implementation plan (SIP). Section 115.429 is adopted *with change* to the proposed text as published in the May 27, 2005, issue of the *Texas Register* (30 TexReg 3078). Sections 115.167, 115.169, 115.219, and 115.427 are adopted *without changes* to the proposed text and will not be republished.

These amendments will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the SIP.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED 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 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 adoption 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 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 adopting a change in 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 adopted rulemaking also deletes §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 was not 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.

Photochemical modeling indicates that reductions in nitrogen oxide (NO<sub>x</sub>) emissions in BPA are more effective in reducing ozone levels than reductions in VOC emissions. Therefore, the BPA SIP is being revised to remove the marine vessel loading contingency measure. The adopted rule change deletes this contingency measure for the BPA nonattainment area from Chapter 115. Voluntary reductions in NO<sub>x</sub> emissions that have been made by three companies in the BPA area and additional voluntary reductions that have occurred as a result of the Texas Emissions Reduction Plan (TERP) exceed the reductions in VOC emissions that would have resulted from implementation of the marine vessel loading measure. EPA has indicated that NO<sub>x</sub> emission reductions equivalent to 3% of the target level for 1996 could be used to replace the marine vessel loading contingency measure. A target level for 1996 was not

available. The initial reasonable further progress requirement for 1990 - 1996 was VOC only; NO<sub>x</sub> reductions were allowed to be used as part of ROP for target year 1999. The NO<sub>x</sub> target level for 1999 (as reported in the post-1996 ROP demonstration SIP for BPA, adopted October 27, 2004) is 303.37 tons per day (tpd). That SIP indicates that the 9% reduction from 1996 to 1999 was 7% VOC and 2% NO<sub>x</sub>. Thus, the "target" 1996 NO<sub>x</sub> value would have been 2% higher than the 1999 target, or 309.56 tpd. The 3% reduction required for the contingency measure would thus be 9.3 tpd.

In 2004, three companies in the BPA area (Mobil Chemical Company, Division of Exxon Mobil Oil Corporation; Motiva Enterprises LLC; and Premcor Refining Group, Inc.) agreed to make voluntary reductions in emissions. On December 15, 2004, the commission adopted a revision to the BPA SIP incorporating the agreed orders to make these voluntary reductions federally enforceable. The agreed orders included NO<sub>x</sub> reductions of 2,359 tpy, which is equivalent to 6.46 tpd.

The TERP program provides grants to eligible projects in nonattainment areas and affected counties to offset the incremental costs associated with reducing emissions of NO<sub>x</sub>. Projects in the BPA area that have been funded thus far together with future TERP projects are projected to result in NO<sub>x</sub> reductions of 3.0 tpd by 2007.

Total NO<sub>x</sub> emission reductions from the agreed orders and TERP projects total 9.46 tpd. These reductions were not relied upon in any pre-2004 ROP or attainment demonstration. These reductions are real, permanent, and federally enforceable. They will occur within the same time frame as reductions from the contingency measure would have occurred, or sooner. For these reasons, the NO<sub>x</sub>

emissions reductions resulting from the agreed orders and TERP projects are sufficient to replace the marine vessel loading contingency measure.

#### SECTION BY SECTION DISCUSSION

Administrative and grammatical changes are adopted throughout the sections to bring the existing rule language into agreement with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004. This includes, but is not limited to, replacing the term “shall” with “must” and replacing the term “which” with “that.”

#### *Subchapter B, General Volatile Organic Compound Sources*

##### *Division 6, Batch Processes*

##### *§115.167, Exemptions*

The adopted amendment to §115.167(1)(A) changes 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 adopted amendment to §115.169 revises 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 ensures that sources currently subject to the batch

process control requirements of this division continue to comply with the applicable requirements. The reference to the compliance date of December 31, 2001, is deleted because this date has passed. The rulemaking also deletes 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 adopted amendment to §115.169 adds 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 adopted amendment to §115.219 deletes 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<sub>x</sub> emissions have exceeded the reduction targets needed for reasonable further progress. The excess NO<sub>x</sub> 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 adopted amendment to §115.427(a)(3)(H) changes 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 adopted amendment to §115.429 adds 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). The wording of §115.429(c) has been revised from proposal to add the words “equal to or” before “greater than 50 tons per year” to clarify that shipbuilding and ship repair operations in Hardin, Jefferson, and Orange Counties with emissions of 50 tpy must comply with the requirements as soon as practicable, but no later than December 31, 2006.

#### FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the 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 adopted rule amendments are one element of the BPA SIP and require major sources in BPA to apply RACT to obtain VOC emissions reductions and remove a contingency measure for marine vessel loading in the BPA nonattainment area. These adopted rule amendments are necessary to comply with the requirements of the FCAA and to achieve attainment in the BPA ozone nonattainment area. The adopted 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 adopted 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 adopted rule amendments implement requirements of 42 USC, §7410 and §7511. 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 amends 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 removes a contingency measure for marine vessel loading. This measure was not implemented and, as discussed previously, the commission has demonstrated that NO<sub>x</sub> emission reductions resulting from the agreed orders concerning voluntary emission reductions at three companies in the BPA area and TERP projects are sufficient to replace the marine vessel loading contingency measure.

As discussed earlier in this preamble, this rulemaking implements the requirements of 42 USC, §7410 and §7511. The adopted 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 adopted rules were not developed solely under the general powers of the agency, but are adopted 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 rulemaking action and performed an analysis of whether the adopted 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 adopted 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 adopted 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 adopted rulemaking also removes 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 has demonstrated that NO<sub>x</sub> emission reductions resulting from the agreed orders concerning voluntary emission reductions at three companies in the BPA area and TERP projects are sufficient to replace the marine vessel loading contingency.

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 does 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 adopted 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<sub>x</sub> 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 adopted rulemaking removes 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 adopted 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 adopted 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 rulemaking 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 considered the applicable goals and policies of the Texas Coastal Management Program (CMP) 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.

#### 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.

#### PUBLIC COMMENT

Public hearings were held on the proposed rules in Beaumont on June 16, 2005, at 2:00 p.m. and 6:00 p.m. No oral comments were received at the hearings. The public comment period ended at 5:00 p.m. on June 17, 2005. The commission received one written comment from EPA.

#### RESPONSE TO COMMENTS

EPA expressed appreciation that the commission had proposed rule changes for shipbuilding and repair and batch processes. These were two source categories where EPA had determined a possibility that not all major sources were covered by RACT.

**The commission appreciates the support.**

EPA requested that TCEQ review the point source inventory to confirm that all major sources had been covered by RACT rules and provide the documentation.

**Staff has reviewed the point source inventory to confirm that all major sources are covered by RACT rules in this chapter and 30 TAC Chapter 117. Documentation of the review is provided in**

**Appendix T of the SIP revision to be submitted to EPA in September 2005. The commission has confirmed that, with the exception of the batch process rules and the shipbuilding and ship repair rules, there are no exemptions for VOC sources that have potential to emit greater than or equal to 50 tpy but less than 100 tpy. With this rulemaking, the exemption levels for these rules are being changed to 50 tpy. The review of the inventory indicated only nine sites that might be classified as major sources of VOC at the 50 tpy definition that were not already considered major at the 100 tpy definition. One of these sites would be covered by RACT rules in this rulemaking. The other sites are covered by appropriate RACT rules in this chapter. The rules in Chapter 117 regarding control of NO<sub>x</sub> emissions define a major source in the BPA area at 50 tpy. Thus, all major sources of NO<sub>x</sub> emissions in the BPA area are covered by RACT rules in Chapter 117.**

EPA commented that the reduction in emissions for marine vessel loading from 13.10 tpd in 1990 to 1.92 tpd in 2002 must be documented as real, permanent, and federally enforceable in order to be creditable as a contingency measure.

**The commission is no longer using the actual reduction in VOC emissions from marine vessel loading as a contingency measure. Instead, the commission has documented that equivalent reductions in NO<sub>x</sub> emissions have been used to replace the marine vessel loading contingency measure as discussed previously in this preamble. The reductions used to replace the marine vessel loading contingency measure are real, permanent, and federally enforceable.**

EPA commented that if the TCEQ wishes to substitute the reductions from the lean burn engine rule for the marine vessel loading contingency measure, then it must show a 3% reduction of the target level from 1996 because that is the attainment year that triggered the reclassification from “moderate” to “serious” for the one-hour standard. Further, EPA stated that TCEQ must show that the reductions occurred in 2004 or earlier, were not relied upon in any pre-2004 ROP plans and attainment demonstrations, and were above the level of reductions required for RACT.

**A target level for 1996 was not available. The initial reasonable further progress requirement for 1990 - 1996 was VOC only; NO<sub>x</sub> reductions were allowed to be used as part of ROP for target year 1999. The target level for 1999 (as reported in the post-1996 ROP demonstration SIP for BPA, adopted October 27, 2004) is 303.37 tpd. That SIP indicates that the 9% reduction from 1996 to 1999 was 7% VOC and 2% NO<sub>x</sub>. Thus, the "target" 1996 NO<sub>x</sub> value would have been 2% higher than the 1999 target, or 309.56 tpd. The 3% reduction required for the contingency measure would thus be 9.3 tpd. Instead of using NO<sub>x</sub> emission reductions from gas-fired, lean-burn stationary internal combustion engines rated 300 horsepower or greater to replace the marine vessel loading contingency measure, the commission is relying upon voluntary reductions in NO<sub>x</sub> emissions that have been made by three companies in the BPA area and additional voluntary reductions that will occur as a result of TERP projects. In 2004, three companies in the BPA area agreed to make voluntary reductions in emissions. On December 15, 2004, the commission adopted a revision to the BPA SIP incorporating the agreed orders to make these voluntary reductions federally enforceable. The agreed orders included NO<sub>x</sub> reductions of 2,359 tpy, which is equivalent to 6.46 tpd. TERP projects in the BPA area that have been funded thus**

**far together with future TERP projects are projected to result in NO<sub>x</sub> reductions of 3.0 tpd. Total NO<sub>x</sub> emission reductions from the agreed orders and TERP projects total 9.46 tpd. These reductions were not relied upon in any pre-2004 ROP or attainment demonstration. These reductions are real, permanent, and federally enforceable and will occur within the same time frame as reductions from the contingency measure would have occurred, or sooner. For these reasons, the NO<sub>x</sub> emissions reductions resulting from the agreed orders and TERP projects are sufficient to replace the marine vessel loading contingency measure.**

**SUBCHAPTER B: GENERAL VOLATILE ORGANIC COMPOUND SOURCES**

**DIVISION 6: BATCH PROCESSES**

**§115.167, §115.169**

**STATUTORY AUTHORITY**

The amendments are adopted 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 adopted 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 adopted amendments implement 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>Volatility Range</b>	<b>Lower Limit of Annual Mass Emissions Total in pounds per year (lb/yr)</b>
Low	26,014
Moderate	15,935
High	23,154

(B) Single unit operations that have an annual mass emissions total of 500 pounds per year or less.

**§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.

**SUBCHAPTER C: VOLATILE ORGANIC COMPOUND TRANSFER OPERATIONS**

**DIVISION 1: LOADING AND UNLOADING OF VOLATILE ORGANIC COMPOUNDS**

**§115.219**

**STATUTORY AUTHORITY**

The amendment is adopted 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 adopted 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.

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

**§115.219. Counties and Compliance Schedules.**

(a) The owner or operator of each volatile organic compound (VOC) transfer operation in Aransas, Bexar, Brazoria, Calhoun, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Gregg, Hardin, Harris, Jefferson, Liberty, Matagorda, Montgomery, Nueces, Orange, San Patricio, Tarrant, Travis, Victoria, and Waller Counties shall continue to comply with this division (relating to Loading and Unloading of Volatile Organic Compounds) as required by §115.930 of this title (relating to Compliance Dates).

(b) The owner or operator of each gasoline bulk plant in the covered attainment counties, as defined in §115.10 of this title (relating to Definitions), shall continue to comply with this division as required by §115.930 of this title.

(c) The owner or operator of each gasoline terminal in the covered attainment counties, as defined in §115.10 of this title, shall continue to comply with this division as required by §115.930 of this title.

[(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.]

**SUBCHAPTER E: SOLVENT-USING PROCESSES**

**DIVISION 2: SURFACE COATING PROCESSES**

**§115.427, §115.429**

**STATUTORY AUTHORITY**

The amendments are adopted 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 adopted 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 adopted amendments implement 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) The following coating operations are exempt from §115.421(a)(9) of this title (relating to Emission Specifications):

(A) aerospace vehicles and components;

(B) vehicle refinishing (body shops), except as required by §115.421(a)(8)(B) and (C) of this title; and

(C) ships and offshore oil or gas drilling platforms, except as required by §115.421(a)(15) of this title.

(2) The following coating operations are exempt from §115.421(a)(10) of this title:

(A) the manufacture of exterior siding;

(B) tile board; or

(C) particle board used as a furniture component.

(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) Surface coating operations on a property for which total coating and solvent usage does not exceed 150 gallons in any consecutive 12-month period are exempt from §115.421(a) and §115.423 of this title.

(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) Wood parts and products coating facilities in Hardin, Jefferson, and Orange Counties are exempt from §115.421(a)(13) of this title.

(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<sub>2</sub> [;] except for cleaning and coating of completed assemblies.

(4) Vehicle refinishing (body shops) in Hardin, Jefferson, and Orange Counties are exempt from §115.421(a)(8)(B) and §115.422(1) and (2) of this title.

(5) The coating of vehicles at in-house (fleet) vehicle refinishing operations and the coating of vehicles by private individuals are exempt from §115.421(a)(8)(B) and §115.422(1) and (2) of this title. This exemption is not applicable if the coating of a vehicle by a private individual occurs at a commercial operation.

(6) Aerosol coatings (spray paint) are exempt from this division.

(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) The following coating operations are exempt from §115.421(b)(8) of this title:

(A) aerospace vehicles and components;

(B) vehicle refinishing (body shops); and

(C) ships and offshore oil or gas drilling platforms.

(3) The following coating operations are exempt from §115.421(b)(9) of this title:

- (A) the manufacture of exterior siding;
- (B) tile board; or
- (C) particle board used as a furniture component.

(4) Aerosol coatings (spray paint) are exempt from this division.

**§115.429. Counties and Compliance Schedules.**

(a) The owner or operator of each surface coating operation in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Gregg, Hardin, Harris, Jefferson, Liberty, Montgomery, Nueces, Orange, Tarrant, Victoria, and Waller Counties shall continue to comply with this division (relating to Surface Coating Processes) as required by §115.930 of this title (relating to Compliance Dates).

(b) The owner or operator of each surface coating operation in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties shall comply with this division as soon as practicable, but no later than June 15, 2007.

(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 equal to or 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.