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*Kelli Machost  
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by laws and regulations adopted in §229.420 of this title (relating to Applicable Laws and Regulations).

(e) Adulterated or misbranded prescription drug. If the department identifies an adulterated or misbranded prescription drug, the department may impose the applicable enforcement provisions of subchapter C of the Act including, but not limited to: detention, emergency order, recall, condemnation, destruction, injunction, civil penalties, criminal penalties, and/or administrative penalties. Administrative and civil penalties will be assessed using the Severity Levels contained in §229.251 of this title (relating to Minimum Standards for Licensure).

(f) Order to cease distribution.

(1) The commissioner shall issue an order requiring a person, including a manufacturer, distributor, or retailer of a prescription drug, to immediately cease distribution of the drug if the commissioner determines there is a reasonable probability that:

(A) a wholesale distributor has:

(i) violated these sections or the Act;

(ii) falsified a pedigree; or

(iii) sold, distributed, transferred, manufactured, repackaged, handled, or held a counterfeit prescription drug intended for human use that could cause serious adverse health consequences or death; and

(B) other procedures would result in unreasonable delay.

(2) An order under this subsection must provide the person subject to the order with an opportunity for an informal hearing on the actions required by the order to be held not later than the 10th day after the date of issuance of the order.

(3) If, after providing an opportunity for a hearing, the commissioner determines that inadequate grounds exist to support the actions required by the order, the commissioner shall vacate the order.

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 June 30, 2006.

TRD-200603577

Cathy Campbell

General Counsel

Department of State Health Services

Earliest possible date of adoption: August 13, 2006

For further information, please call: (512) 458-7111 x6972



## TITLE 30. ENVIRONMENTAL QUALITY

### PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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

The Texas Commission on Environmental Quality (TCEQ or commission) proposes amendments to §§115.10, 115.119,

115.129, 115.139, 115.149, 115.219, 115.239, 115.319, 115.359, 115.419, 115.439, 115.449, 115.519, and 115.539.

These amended sections and corresponding revisions to the state implementation plan (SIP) will be submitted to the United States Environmental Protection Agency (EPA).

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The Federal Clean Air Act (CAA) Amendments of 1990 as codified in 42 United States Code (USC), §§7401 *et seq.* require EPA to set national ambient air quality standards (NAAQS) to ensure public health, and to designate areas as either in attainment or nonattainment with the NAAQS, or as unclassifiable. States are primarily responsible for ensuring attainment and maintenance of the NAAQS once the EPA has established them. Each state is required to submit a SIP to the EPA that provides for attainment and maintenance of the NAAQS.

The Dallas-Fort Worth area, consisting of four counties (Collin, Dallas, Denton, and Tarrant), was designated nonattainment and classified as moderate for the one-hour ozone NAAQS in accordance with the 1990 CAA Amendments, and was required to attain the one-hour ozone NAAQS by November 15, 1996. A SIP was submitted based on a volatile organic compound (VOC) reduction strategy, but the Dallas-Fort Worth area did not attain the NAAQS by the mandated deadline. Consequently, in 1998 the EPA reclassified the Dallas-Fort Worth area from "moderate" to "serious," resulting in a requirement to submit an additional SIP revision demonstrating attainment by the new deadline of November 15, 1999.

The Dallas-Fort Worth area also failed to reach attainment by the November 15, 1999, deadline. In the attainment demonstration SIP revision adopted by the commission in April 2000, the importance of local nitrogen oxides (NO<sub>x</sub>) reductions as well as the transport of ozone and its precursors from the Houston-Galveston-Brazoria ozone nonattainment area (HGB area) were considered. Based on photochemical modeling demonstrating transport from the HGB area, the agency requested an extension of the Dallas-Fort Worth area attainment date to November 15, 2007, the same attainment date as for the HGB area, in accordance with an EPA policy allowing extension of attainment dates due to transport of pollutants from other areas.

The EPA transport policy was later overturned by three federal courts, including the Court of Appeals for the 5th Circuit, which ruled in *Sierra Club et. al v. EPA*, 314 F. 3d 735 (2002), that EPA did not have authority to extend an area's attainment date based on transport. Although the Dallas-Fort Worth area was not the specific subject of any of these suits, the Dallas-Fort Worth area one-hour ozone attainment demonstration SIP, including an extended attainment date, was not approvable by EPA.

On July 18, 1997, EPA promulgated a revised ozone standard (the eight-hour ozone NAAQS) (62 FR 38856). The eight-hour ozone NAAQS was challenged by numerous litigants and ultimately upheld by the United States Supreme Court in February 2001. On April 30, 2004, EPA promulgated the first phase of the implementation rules for the eight-hour ozone NAAQS (Phase I Implementation Rule) (69 FR 23951). Also on April 30, 2004, the Dallas-Fort Worth area was designated as nonattainment and classified as moderate for the eight-hour ozone NAAQS. Five additional counties (Ellis, Johnson, Kaufman, Parker, and Rockwall) were added to the Dallas-Fort Worth eight-hour ozone nonattainment area (DFW area). Effective June 15, 2004, the DFW area consists of nine counties (Collin, Dallas, Denton, El-

lis, Johnson, Kaufman, Parker, Rockwall, and Tarrant) that are nonattainment for the eight-hour ozone NAAQS. The DFW area must attain the eight-hour ozone NAAQS by June 15, 2010.

EPA's Phase I Implementation Rule provided three options for eight-hour ozone nonattainment areas that do not have an approved one-hour ozone attainment SIP: 1) submit a one-hour ozone attainment demonstration no later than one year after the effective date of the eight-hour ozone designation (June 15, 2005); 2) submit an eight-hour ozone attainment demonstration no later than one year after the effective date of the eight-hour ozone designation, which is June 15, 2005, that provides for a 5% increment of progress (IOP) emission reduction from the area's 2002 emissions baseline that is in addition to federal and state measures already approved by EPA, and to achieve these reductions by June 15, 2007; or 3) submit an eight-hour ozone attainment demonstration by June 15, 2005. Options one and three required successful photochemical grid modeling performance. Based on poor model performance, the commission, in consultation with EPA, determined that option two was the most expeditious approach to achieve the emission reductions ultimately needed to meet the June 15, 2005, transportation conformity deadline and attain the eight-hour ozone NAAQS by June 15, 2010. Therefore, the commission adopted a 5% IOP Plan in April 2005 and submitted it to EPA.

On November 29, 2005, EPA subsequently finalized its Phase II Implementation Rule for the eight-hour ozone NAAQS (Phase II Implementation Rule) (70 FR 71612). The Phase II Implementation Rule provides guidance and requirements for the remaining elements of the program to implement the eight-hour ozone NAAQS.

FCCA, §182(b)(2)(C), requires that reasonably available control technology (RACT) be implemented in nonattainment areas designated as moderate and above for the ozone NAAQS. The purpose of this rulemaking is to implement RACT controls for VOC emission sources in the five newly designated nonattainment counties. RACT for NO<sub>x</sub> emission sources will be addressed, if necessary, in other rulemaking actions.

The proposed rulemaking would subject owners or operators of certain VOC-emitting facilities located in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties to the same control, monitoring, testing, recordkeeping, and reporting requirements to which owners or operators of facilities in the other four counties in the DFW nonattainment area are subject. The definition of "Dallas/Fort Worth area" in §115.10 would be amended to include the five additional counties. The definition of "Covered attainment counties" would also be amended to remove these five counties. Compliance dates would be added to specify when the owners or operators of newly affected facilities must achieve compliance with the requirements. The EPA eight-hour ozone Phase II Implementation Rule (70 FR 71701) requires the implementation of RACT as expeditiously as practicable, but no later than the first ozone season (or portion of) that occurs 57 months after designation for the eight-hour ozone standard. Since the five additional counties were designated on June 15, 2004, the required compliance date for RACT is March 1, 2009.

Rules in Subchapter C, Volatile Organic Compound Transfer Operations, Division 2, Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities and Subchapter E, Solvent-Using Processes, Division 2, Surface Coating Processes, were made applicable to the additional counties as part of the 5% IOP SIP adopted on April 27, 2005, and are not part of this proposed rulemaking. Rules in Subchapter B, General

Volatile Organic Compound Sources, Division 5, Municipal Solid Waste Landfills, are not part of this rulemaking because information in permit and emission inventory files indicates that no existing municipal solid waste landfills in Ellis, Johnson, Kaufman, Parker, or Rockwall Counties would be subject to the control requirements in this division. Rules in Subchapter C, Volatile Organic Compound Transfer Operations, Division 4, Control of Vehicle Refueling Emissions (Stage II) at Motor Vehicle Fuel Dispensing Facilities, are not part of this proposed rulemaking because of the decreased cost-effectiveness of these controls with the increased market penetration of motor vehicles equipped with on-board refueling vapor recovery. The Stage II rules continue to apply to the four-county one-hour ozone nonattainment area.

## SECTION BY SECTION DISCUSSION

Grammatical, style, and other non-substantive corrections are made throughout the rulemaking to be consistent with Texas Register requirements, to improve readability, and to conform to the drafting standards in the *Texas Legislative Council Drafting Manual*, November 2004.

### *Subchapter A, Definitions*

The proposed amendment to §115.10 would revise the definitions of "Covered attainment counties" and "Dallas/Fort Worth area" by moving Ellis, Johnson, Kaufman, Parker, and Rockwall Counties from the "Covered attainment counties" definition to the "Dallas/Fort Worth area" definition. The current definitions include these counties as part of the "Dallas/Fort Worth area" definition only for the purposes of Subchapter C, Division 2, and Subchapter E, Division 2. The proposed amendment would include the five counties as part of the "Dallas/Fort Worth area" definition for all sections of Chapter 115, except Subchapter B, Division 5. Information in permit and emission inventory files indicates that no existing municipal solid waste landfills in Ellis, Johnson, Kaufman, Parker, or Rockwall Counties would be subject to the control requirements in this division. Any new landfills would be subject to federal control requirements. For these reasons, no emission reductions would be expected from extension of the landfill control requirements to the five counties. Therefore, applying the requirements to the five counties is not required for RACT.

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

#### *Division 1, Storage of Volatile Organic Compounds*

The proposed amendment to §115.119, Counties and Compliance Schedule, would delete language in subsections (a) and (b) that is no longer needed due to the passing of the specified compliance dates. Subsection (a) would be changed to specify that the owner or operator of each stationary tank, reservoir, or other container in which any VOC is placed, stored, or held shall continue to comply with the division as required by §115.930. Subsection (b) would be changed to specify that the owner or operator of each stationary tank, reservoir, or other container in which any VOC is placed, stored, or held in Ellis, Johnson, Kaufman, Parker, or Rockwall County shall comply with the applicable requirements as soon as practicable, but no later than March 1, 2009. This change is necessary to ensure that RACT requirements for control of VOC emissions in these five counties are implemented no later than the first ozone season (or portion of) that occurs 57 months after designation for the eight-hour ozone standard, as specified in the EPA eight-hour ozone Phase II Implementation Rule (70 FR 71701).

#### *Division 2, Vent Gas Control*

The proposed amendment to §115.129, Counties and Compliance Schedule, would add subsection (d) to specify that the owner or operator of each vent gas stream in Ellis, Johnson, Kaufman, Parker, or Rockwall County shall comply with the applicable requirements as soon as practicable, but no later than March 1, 2009. This change is necessary to ensure that RACT requirements for control of VOC emissions in these five counties are implemented no later than the first ozone season (or portion of) that occurs 57 months after designation for the eight-hour ozone standard, as specified in the EPA eight-hour ozone Phase II Implementation Rule (70 FR 71701).

#### *Division 3, Water Separation*

The proposed amendment to §115.139, Counties and Compliance Schedule, would designate the existing language as subsection (a) and add subsection (b) to specify that the owner or operator of each VOC water separator in Ellis, Johnson, Kaufman, Parker, or Rockwall County shall comply with the applicable requirements as soon as practicable, but no later than March 1, 2009. This change is necessary to ensure that RACT requirements for control of VOC emissions in these five counties are implemented no later than the first ozone season (or portion of) that occurs 57 months after designation for the eight-hour ozone standard, as specified in the EPA eight-hour ozone Phase II Implementation Rule (70 FR 71701).

#### *Division 4, Industrial Wastewater*

The proposed amendment to §115.149, Counties and Compliance Schedule, would delete language in subsections (a) - (g) that is no longer needed due to the passing of the specified compliance dates. Subsection (a) would be changed to specify that the owner or operator of each affected source category within a plant in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Hardin, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties shall continue to comply with the division as required by §115.930. Subsection (b) would be changed to specify that the owner or operator of each affected source category within a plant in Ellis, Johnson, Kaufman, Parker, or Rockwall County shall comply with the applicable requirements as soon as practicable, but no later than March 1, 2009. This change is necessary to ensure that RACT requirements for control of VOC emissions in these five counties are implemented no later than the first ozone season (or portion of) that occurs 57 months after designation for the eight-hour ozone standard, as specified in the EPA eight-hour ozone Phase II Implementation Rule (70 FR 71701).

#### *Subchapter C, Volatile Organic Compound Transfer Operations*

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

The proposed amendment to §115.219, Counties and Compliance Schedule, would add subsection (d) to specify that the owner or operator of each VOC transfer operation in Ellis, Johnson, Kaufman, Parker, or Rockwall County shall comply with the applicable requirements as soon as practicable, but no later than March 1, 2009. This change is necessary to ensure that RACT requirements for control of VOC emissions in these five counties are implemented no later than the first ozone season (or portion of) that occurs 57 months after designation for the eight-hour ozone standard, as specified in the EPA eight-hour ozone Phase II Implementation Rule (70 FR 71701). Because gasoline terminals and gasoline bulk plants in Ellis, Johnson,

Kaufman, Parker, or Rockwall Counties are already subject to control requirements specified for covered attainment counties, the proposed rule would also specify that owners or operators of gasoline terminals and gasoline bulk plants shall continue to comply with those requirements until the facility achieves compliance with the newly applicable requirements.

##### *Division 3, Control of Volatile Organic Compound Leaks from Transport Vessels*

The proposed amendment to §115.239, Counties and Compliance Schedule, would add subsection (c) to specify that the owner or operator of each tank-truck tank in Ellis, Johnson, Kaufman, Parker, or Rockwall County shall comply with the applicable requirements as soon as practicable, but no later than March 1, 2009. This change is necessary to ensure that RACT requirements for control of VOC emissions in these five counties are implemented no later than the first ozone season (or portion of) that occurs 57 months after designation for the eight-hour ozone standard, as specified in the EPA eight-hour ozone Phase II Implementation Rule (70 FR 71701). Because gasoline tank-truck tanks in Ellis, Johnson, Kaufman, Parker, or Rockwall Counties are already subject to control requirements specified for covered attainment counties, the proposed rule would also specify that owners or operators of gasoline tank-truck tanks shall continue to comply with those requirements until the facility achieves compliance with the newly applicable requirements.

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

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

The proposed amendment to §115.319, Counties and Compliance Schedule, would designate the existing language as subsection (a) and add subsection (b) to specify that the owner or operator of each affected source in Ellis, Johnson, Kaufman, Parker, or Rockwall County shall comply with the applicable requirements as soon as practicable, but no later than March 1, 2009. This change is necessary to ensure that RACT requirements for control of VOC emissions in these five counties are implemented no later than the first ozone season (or portion of) that occurs 57 months after designation for the eight-hour ozone standard, as specified in the EPA eight-hour ozone Phase II Implementation Rule (70 FR 71701).

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

The proposed amendment to §115.359, Counties and Compliance Schedule, would delete language in paragraphs (2) and (3) that is no longer needed due to the passing of the specified compliance dates. The remaining existing language and the language in paragraph (1) would be designated as subsection (a). Subsection (b) would be added to specify that the owner or operator of each affected source in Ellis, Johnson, Kaufman, Parker, or Rockwall County shall comply with the applicable requirements as soon as practicable, but no later than March 1, 2009. This change is necessary to ensure that RACT requirements for control of VOC emissions in these five counties are implemented no later than the first ozone season (or portion of) that occurs 57 months after designation for the eight-hour ozone standard, as specified in the EPA eight-hour ozone Phase II Implementation Rule (70 FR 71701).

##### *Subchapter E, Solvent-Using Processes*

### *Division 1, Degreasing Processes*

The proposed amendment to §115.419, Counties and Compliance Schedule, would add subsection (c) to specify that all affected persons in Ellis, Johnson, Kaufman, Parker, or Rockwall County shall comply with the applicable requirements as soon as practicable, but no later than March 1, 2009. This change is necessary to ensure that RACT requirements for control of VOC emissions in these five counties are implemented no later than the first ozone season (or portion of) that occurs 57 months after designation for the eight-hour ozone standard, as specified in the EPA eight-hour ozone Phase II Implementation Rule (70 FR 71701).

### *Division 3, Flexographic and Rotogravure Printing*

The proposed amendment to §115.439, Counties and Compliance Schedule, would designate the existing language as subsection (a) and add subsection (b) to specify that all affected persons in Ellis, Johnson, Kaufman, Parker, or Rockwall County shall comply with the applicable requirements as soon as practicable, but no later than March 1, 2009. This change is necessary to ensure that RACT requirements for control of VOC emissions in these five counties are implemented no later than the first ozone season (or portion of) that occurs 57 months after designation for the eight-hour ozone standard, as specified in the EPA eight-hour ozone Phase II Implementation Rule (70 FR 71701).

### *Division 4, Offset Lithographic Printing*

The proposed amendment to §115.449, Counties and Compliance Schedule, would add subsection (f) to specify that the owner or operator of all offset lithographic printing presses on a property that, when uncontrolled, emit a combined weight of VOC equal to or greater than 50 tons per calendar year in Ellis, Johnson, Kaufman, Parker, or Rockwall County shall comply with the applicable requirements as soon as practicable, but no later than March 1, 2009. This change is necessary to ensure that RACT requirements for control of VOC emissions in these five counties are implemented no later than the first ozone season (or portion of) that occurs 57 months after designation for the eight-hour ozone standard, as specified in the EPA eight-hour ozone Phase II Implementation Rule (70 FR 71701).

### *Subchapter F, Miscellaneous Industrial Sources*

#### *Division 1, Cutback Asphalt*

The proposed amendment to §115.519, Counties and Compliance Schedule, would add subsection (c) to specify that all affected persons in Ellis, Johnson, Kaufman, Parker, or Rockwall County shall comply with the applicable requirements as soon as practicable, but no later than March 1, 2009. This change is necessary to ensure that RACT requirements for control of VOC emissions in these five counties are implemented no later than the first ozone season (or portion of) that occurs 57 months after designation for the eight-hour ozone standard, as specified in the EPA eight-hour ozone Phase II Implementation Rule (70 FR 71701).

#### *Division 2, Pharmaceutical Manufacturing Facilities*

The proposed amendment to §115.539, Counties and Compliance Schedule, would designate the existing language as subsection (a) and add subsection (b) to specify that the owner or operator of each affected pharmaceutical manufacturing facility in Ellis, Johnson, Kaufman, Parker, or Rockwall County shall comply with the applicable requirements as soon as practicable, but

no later than March 1, 2009. This change is necessary to ensure that RACT requirements for control of VOC emissions in these five counties are implemented no later than the first ozone season (or portion of) that occurs 57 months after designation for the eight-hour ozone standard, as specified in the EPA eight-hour ozone Phase II Implementation Rule (70 FR 71701).

#### **FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT**

Nina Chamness, Analyst, Strategic Planning and Assessment Section, has determined that, for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed rules. The proposed rules are one part of a control strategy designed for the DFW area to reduce VOC air emissions and attain the eight-hour ozone NAAQS mandated by EPA. The proposed rules would amend requirements of mature regulatory programs by extending their coverage areas to five additional counties. Governmental entities may be affected by additional limitations on the use of cutback asphalt for paving activities, but since alternative materials are available at comparable prices, they are not expected to see an increase in costs. If a governmental entity in the affected area has VOC wastewater streams at a waste facility, the proposed rules could have fiscal implications for that entity.

The proposed rules would subject the owners or operators of certain VOC-emitting facilities located in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties to the same control, monitoring, testing, recordkeeping, and reporting requirements to which owners or operators of facilities in the other four counties in the DFW nonattainment area are subject by amending emission reduction requirements in Chapter 115, Subchapters B - F. These requirements are one component of the DFW attainment demonstration SIP that Texas shall submit to the EPA. Owners or operators of facilities addressed by the proposed rules would have to comply with the proposed requirements no later than March 1, 2009; the deadline required by EPA for major air emission sources to comply with RACT in these counties.

The proposed rules in Subchapter B, Division 4, would apply emission specifications and control, monitoring, and recordkeeping requirements to owners or operators of affected VOC wastewater streams. The rules would only affect facilities in the following source categories: organic chemicals, plastics, and synthetic fibers manufacturing industry under Standard Industrial Classification (SIC) codes 2821, 2823, 2824, 2865, and 2869; pesticides manufacturing industry under SIC code 2879; petroleum refining industry under SIC code 2911; pharmaceutical manufacturing industry under SIC codes 2833, 2834, and 2836; and hazardous waste treatment, storage, and disposal facilities industry under SIC codes 4952, 4953, and 4959. Only one regulated entity is known to operate in the five counties in any of these SIC codes (4953). This regulated entity is a municipal solid waste landfill that may not have affected VOC wastewater streams. The specifications for determining whether a wastewater stream is affected are complex. Methods and control costs for wastewater streams would vary widely depending on the flow rate of the stream and on the type and concentration of VOC.

The proposed rules in Subchapter F, Division 1, would require users and sellers of cutback asphalt containing VOC to limit its sale and use when paving roads, driveways, and parking lots. This rule would affect state, municipal, or county governmental entities that use or specify the type of asphalt application. The

commission does not anticipate any increase in cost to private or governmental entities from limiting the use of cutback asphalt because alternative materials are available at comparable prices.

#### PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with the Clean Air Act and a reduction in VOC emissions in the DFW nonattainment area.

The proposed rules in Subchapter B, Division 1, would apply to owners or operators of stationary tanks, reservoirs, or other containers in which any VOC is placed, stored, or held. The owners or operators of a storage vessel shall meet certain equipment specifications or control requirements along with inspection and recordkeeping requirements. Baseline data from regulated entities required to report emissions indicates that approximately 35 tanks may be affected by the requirements. Additional tanks may also be affected at regulated entities that have not been previously required to report emissions. The actual costs of the proposed rules would depend on the properties of the material stored and the type of equipment used to meet the control requirements, but based on available data, costs could be as much as \$50,000 per control unit, \$15,000 per organic compound monitoring unit, and \$200 per seal inspection.

The proposed rules in Subchapter B, Division 2, would apply emission specifications and control, monitoring, and recordkeeping requirements to owners or operators of vent gas streams containing VOC. Affected vent gas streams could come from a variety of different processes, including commercial bakeries, so an estimate of the number of affected facilities is not available. The proposed rules would not apply to vent gas streams that are specifically regulated by another division in Chapter 115 (such as surface coating or printing) nor to combustion unit exhaust streams (unless the combustion unit is used as a control device for an affected vent gas stream). The proposed rules would apply to commercial bakeries if the total weight of uncontrolled VOC emitted from all bakery ovens on the property is greater than or equal to 50 tons per year. Reported baseline data indicates there are four bakeries located in the five counties affected by the proposed rule. Using available data, estimated costs to install a catalytic incinerator to control emissions from bakery ovens would be in the range of \$150,000 to \$300,000, with annual operational costs of \$15,000 to \$35,000. Available estimated costs of a control device to abate emissions from a vent stream are \$600,000 for capital equipment and \$360,000 for annual operational costs. Actual control costs would depend on the size, VOC concentration, and other characteristics of the specific vent stream to be controlled.

The proposed rules in Subchapter B, Division 3, would apply emission specifications and control, monitoring, and recordkeeping requirements to owners or operators of VOC water separators. The number of facilities that might be affected is expected to be small because there are few chemical or petrochemical processing facilities that would require VOC water separators in the five counties. Available data indicates that operators of VOC water separators could pay as much as \$50,000 per control unit and \$15,000 per organic compound monitoring unit. Actual equipment costs would depend on the properties of the material separated and the type of equipment used to meet the control requirements.

The proposed rules in Subchapter C, Division 1, would apply emission specifications and control, monitoring, and recordkeeping requirements to owners or operators of VOC transfer operations. Affected transfer operations may occur at gasoline terminals and at other facilities where liquid VOCs are loaded onto or unloaded from tank trucks or rail cars. Transfer operations at gasoline terminals are already subject to control requirements in this division because the five affected counties are included as covered attainment counties. The proposed rulemaking would make the emission specification for gasoline terminals more stringent and would subject loading of non-gasoline VOC to control requirements. Some existing facilities may be able to meet the more stringent standard with their existing control devices at no additional cost. For owners or operators of facilities that install new controls to meet the standard, a vendor has estimated that costs could be in the range of \$75,000 to \$200,000 for a new combustor or \$300,000 to \$1 million for a new vapor recovery unit depending on the size.

The proposed rules in Subchapter C, Division 3, would require owners or operators of tank-truck tanks carrying gasoline or non-gasoline VOC to pass annual leak-tight tests. Tank-truck tanks carrying gasoline are already subject to the requirements because the five counties are included as covered attainment counties. For tank-truck tanks not currently subject to the requirements, available data suggests that the capital cost for trucks not equipped to meet the vapor recovery requirements would be approximately \$1,700 to \$2,700 per truck and that the cost of the annual vapor tightness testing would be \$360 to \$650 per truck.

The proposed rules in Subchapter D, Division 1, would apply emission specifications and control, monitoring, and recordkeeping requirements to owners or operators of vacuum-producing systems in petroleum refineries and petroleum refinery processes during process unit shutdowns and turnarounds. No adverse fiscal implication is anticipated from the proposed rules in Subchapter D, Division 1, because currently there are no petroleum refineries in the five affected counties.

The proposed rules in Subchapter D, Division 3, would apply emission specifications and control, monitoring, inspection, and recordkeeping requirements for control of fugitive emissions from equipment leaks to owners or operators of petroleum refining, natural gas/gasoline processing, and petrochemical processes. Currently, only four regulated entities are known to exist in the five affected counties that would be impacted by the proposed rules. The principal impact of the proposed rules would be the requirement to monitor for fugitive emissions, and the estimated labor cost for conducting the required fugitive monitoring is \$0.50 to \$1.00 per component.

The proposed rules in Subchapter E, Division 1, would apply emission specifications and control, monitoring, and recordkeeping requirements to owners or operators of cold solvent cleaners or degreasers. The controls are already applied for new degreasing facilities that have been placed in service since 1994 as a condition of their authorization under 30 TAC §106.454, but the proposed rules would extend the control requirements to existing facilities. Costs to owners or operators of facilities that have not previously been required to comply with these conditions are estimated to be approximately \$500 - \$1,000 for the smaller units that are most frequently used. The compliance cost for larger conveyORIZED facilities could be as much as \$20,000, but not as many of these larger units are in use.

The proposed rules in Subchapter E, Division 3, would apply emission specifications and control, monitoring, and recordkeep-

ing requirements to owners or operators of flexographic and roto gravure printing processes that have a combined potential to emit 50 tons per year or more of VOC if uncontrolled. There are no known flexographic or roto gravure printing processes in the five affected counties, and this part of the proposed rules is not expected to have an immediate fiscal impact in the region.

The proposed rules in Subchapter E, Division 4, would apply emission specifications and control, monitoring, and recordkeeping requirements to owners or operators of offset lithographic printing processes that have a combined potential to emit 50 tons per year or more of VOC if uncontrolled. There are no known offset lithographic printing processes in the five affected counties, and this part of the proposed rules is not expected to have an immediate fiscal impact in the region.

The proposed rules in Subchapter F, Division 1, would require users and sellers of cutback asphalt containing VOC to limit its sale and use when paving roads, driveways, and parking lots. The commission does not anticipate any increase in cost to private entities from limiting the use of cutback asphalt because alternative materials are available at comparable prices.

The proposed rules in Subchapter F, Division 2, would apply emission specifications and control, monitoring, and recordkeeping requirements to owners or operators of pharmaceutical processes. There are no known pharmaceutical facilities in the five affected counties, and this part of the proposed rules is not expected to have an immediate fiscal impact in the region.

#### SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No significant adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. Most of the proposed rules have exemption provisions based on emission level or size of equipment and are not anticipated to impact small or micro-businesses. However, the proposed rules for degreasing processes may affect small or micro-businesses, although the fiscal implications are not anticipated to be significant. Typically small or micro-businesses use commercial services to supply solvents and equipment used for degreasing operations, and the major suppliers of equipment and solvents in surrounding counties are already required to comply with similar requirements.

#### 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 rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

#### DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined 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 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 proposed rulemaking is intended to protect the environment and to reduce risks to human health from environmental exposure. However, as discussed in the fiscal note, the commission finds the proposed rulemaking will not adversely affect in a ma-

terial way the economy, productivity, competition, jobs, the environment, or the public health and safety in the DFW area. Therefore, the proposed rulemaking does not meet the definition of a "major environmental rule."

Even if the proposed rulemaking is determined to meet the definition of a major environmental rule, 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 rulemaking is proposed to implement RACT controls for VOC emissions sources in the five newly designated nonattainment counties. Specifically, the proposed rulemaking would subject owners or operators of certain VOC-emitting facilities in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties to the same control, monitoring, testing, recordkeeping, and reporting requirements to which owners or operators of facilities in the other four counties in the DFW eight-hour ozone nonattainment area are subject.

The proposed rule is intended to protect the environment and to reduce risks to human health and safety from environmental exposure by reducing VOC emissions from sources subject to control requirements in Chapter 115, Subchapter B, Divisions 1 - 4; Subchapter C, Divisions 1 and 3; Subchapter D, Divisions 1 and 3; Subchapter E, Divisions 1, 3, and 4; and Subchapter F, Divisions 1 and 2.

The proposed rulemaking would implement requirements of the FCAA. Under 42 USC, §7410, each state is required to adopt and implement a SIP containing adequate provisions to implement, maintain, and enforce the NAAQS within the state. While 42 USC, §7410 generally does not require specific programs, methods, or reductions in order to meet the standard, state SIPs shall 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" (meaning Chapter 85, Air Pollution Prevention and Control, otherwise known as the FCAA). The provisions of the FCAA recognize 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 shall develop programs to assure their SIPs provide for implementation, maintenance, and enforcement of the NAAQS within the state.

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 that concluded "based on an assessment of rules adopted by the agency in the past, it is not anticipated the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted 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 shall develop programs for each area contributing to nonattainment to help ensure 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 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, that 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 "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 agen-

cies are required to meet these sections of the APA against the standard of "substantial compliance" (Texas Government Code, §2001.035). 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 protect the environment and to reduce risks to human health by adoption of proposed rules to implement RACT controls for VOC emissions sources in the five newly designated nonattainment counties. 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 rulemaking. Finally, this rulemaking was not developed solely under the general powers of the agency, but is required by the Texas Clean Air Act, as codified in Texas Health and Safety Code, §382.0173. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because, even if the proposed rulemaking meets the definition of a "major environmental rule," it does not meet any of the four applicability criteria for a major environmental rule.

The commission invites public comment regarding the draft regulatory impact analysis determination during the public comment period.

#### TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. The specific purpose of the proposed rulemaking is to implement RACT controls for VOC emissions sources in the five newly designated nonattainment counties. Texas Government Code, §2007.003(b)(4), provides that Chapter 2007 does not apply to this proposed rulemaking because it is an action reasonably taken to fulfill an obligation mandated by federal law and by state law.

In addition, the commission's assessment indicates Texas Government Code, Chapter 2007 does not apply to these proposed rules because this is an action that is taken in response to a real and substantial threat to public health and safety; that is designed to significantly advance the health and safety purpose; and that does not impose a greater burden than is necessary to achieve the health and safety purpose. Thus, this action is exempt under Texas Government Code, §2007.003(b)(13). As addressed elsewhere in this preamble, 42 USC, §7410 specifically requires states to adopt and implement SIPs that provide for implementation, maintenance, and enforcement of the NAAQS within the state. This proposed rulemaking is a required component of the Texas SIP. The action will specifically advance the health and safety purpose by reducing VOC emissions in the DFW area. The rulemaking specifically targets sources with VOC emissions. Consequently, the proposed rulemaking meets the exemption criteria in Texas Government Code, §2007.003(b)(4) and (13). For these reasons, Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code,

§§33.201 *et seq.*), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined the 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(l)). No new sources of air contaminants will be authorized and the proposed amendments will maintain at least the same level of or increase the level of emissions control as the existing rules. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with federal regulations in 40 Code of Federal Regulations (CFR), to protect and enhance air quality in the coastal areas (31 TAC §501.32). This rulemaking action complies with 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms this rulemaking action is consistent with CMP goals and policies.

The commission solicits comments on the consistency of the proposed rulemaking with the CMP during the public comment period.

#### EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

The requirements of Chapter 115 are applicable requirements of 30 TAC Chapter 122. Owners or operators of sites that are subject to the Federal Operating Permit Program will be required to obtain, revise, reopen, and renew their Federal Operating Permits as appropriate in order to include the requirements of this proposed rulemaking, if it is adopted by the commission.

#### ANNOUNCEMENT OF HEARINGS

Two public hearings on this proposal will be held on August 8, 2006, at 2:30 p.m. and 6:30 p.m., Waxahachie City Hall Council Chambers, 401 S. Rogers, Waxahachie, Texas. The hearings will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearings. Individuals may present oral statements when called upon in order of registration. A time limit may be established at each hearing to assure that enough time is allowed for every interested person to speak. There will be no open discussion during the hearings; however, commission staff members will be available to informally discuss the proposal 30 minutes before each hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearings should contact Teresa Hurley at (512) 239-5316. Requests should be made as far in advance as possible.

#### SUBMITTAL OF COMMENTS

Comments may be submitted to Patricia Durón, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, e-mailed to [TRRules@tceq.state.tx.us](mailto:TRRules@tceq.state.tx.us), or faxed to (512) 239-4808. All comments should reference Rule Project Number 2006-011-115-EN. The comment period closes August 14, 2006. Copies of the

proposed rules can be obtained from the commission's Web site at [http://www.tceq.state.tx.us/nav/rules/propose\\_adopt.html](http://www.tceq.state.tx.us/nav/rules/propose_adopt.html). For further information, please contact Teresa Hurley of the Air Quality Planning and Implementation Division at (512) 239-5316.

## SUBCHAPTER A. DEFINITIONS

### 30 TAC §115.10

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.051(d), concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Texas Health and Safety Code, Chapter 382; and FCAA, 42 USC, §§7401 *et seq.*

The proposed amendment implements Texas Water Code, §5.103 and §5.105; Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051(d); and FCAA, 42 USC, §§7401 *et seq.*

#### §115.10. Definitions.

Unless specifically defined in Texas Health and Safety Code, Chapter 382, (also known as the Texas Clean Air Act) or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the Texas Clean Air Act, the following terms, when used in this chapter (relating to Control of Air Pollution from Volatile Organic Compounds), have the following meanings, unless the context clearly indicates otherwise. Additional definitions for terms used in this chapter are found in §3.2 and §101.1 of this title (relating to Definitions).

(1) - (8) (No change.)

(9) Covered attainment counties--~~[For purposes of Subchapter C, Volatile Organic Compound Transfer Operations, Division 2, Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities,]~~ Anderson, Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bell, Bexar, Bosque, Bowie, Brazos, Burleson, Caldwell, Calhoun, Camp, Cass, Cherokee, Colorado, Comal, Cooke, Coryell, De Witt, Delta, Falls, Fannin, Fayette, Franklin, Freestone, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Harrison, Hays, Henderson, Hill, Hood, Hopkins, Houston, Hunt, Jackson, Jasper, Karnes, Lamar, Lavaca, Lee, Leon, Limestone, Live Oak, Madison, Marion, Matagorda, McLennan, Milam, Morris, Nacog-

doches, Navarro, Newton, Nueces, Panola, Polk, Rains, Red River, Refugio, Robertson, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, Shelby, Smith, Somervell, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Washington, Wharton, Williamson, Wilson, Wise, and Wood Counties. [For all other divisions, Anderson, Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bell, Bexar, Bosque, Bowie, Brazos, Burleson, Caldwell, Calhoun, Camp, Cass, Cherokee, Colorado, Comal, Cooke, Coryell, De Witt, Delta, Ellis, Falls, Fannin, Fayette, Franklin, Freestone, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Harrison, Hays, Henderson, Hill, Hood, Hopkins, Houston, Hunt, Jackson, Jasper, Johnson, Karnes, Kaufman, Lamar, Lavaca, Lee, Leon, Limestone, Live Oak, Madison, Marion, Matagorda, McLennan, Milam, Morris, Nacogdoches, Navarro, Newton, Nueces, Panola, Parker, Polk, Rains, Red River, Refugio, Robertson, Rockwall, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, Shelby, Smith, Somervell, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Washington, Wharton, Williamson, Wilson, Wise, and Wood Counties.]

(10) Dallas/Fort Worth area--For purposes of Subchapter B of this chapter, General Volatile Organic Compound Sources, Division 5, Municipal Solid Waste Landfills, Collin, Dallas, Denton, and Tarrant Counties. For all other divisions, [C, Volatile Organic Compound Transfer Operations, Division 2, Filling of Gasoline Storage Vessels (Stage 1) for Motor Vehicle Fuel Dispensing Facilities, and Subchapter E, Solvent-Using Processes, Division 2, Surface Coating Processes,] Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties. [For all other divisions, Collin, Dallas, Denton, and Tarrant Counties.]

(11) - (48) (No change.)

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

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Robert Martinez

Acting Director, Environmental Law Division

Texas Commission on Environmental Quality

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For further information, please call: (512) 239-6087



## SUBCHAPTER B. GENERAL VOLATILE ORGANIC COMPOUND SOURCES

### DIVISION 1. STORAGE OF VOLATILE ORGANIC COMPOUNDS

#### 30 TAC §115.119

##### STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources,

consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.051(d), concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Texas Health and Safety Code, Chapter 382; and FCAA, 42 USC, §§7401 *et seq.*

The proposed amendment implements Texas Water Code, §5.103 and §5.105; Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051(d); and FCAA, 42 USC, §§7401 *et seq.*

#### §115.119. Counties and Compliance Schedules.

(a) The owner or operator of each stationary tank, reservoir, or other container in which any volatile organic compound (VOC) is placed, stored, or held [All persons] in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Harris, Hardin, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties shall continue to comply with this division (relating to Storage of Volatile Organic Compounds) as required by §115.930 of this title (relating to Compliance Dates). [affected by the requirement to calculate and report emissions resulting from secondary seal gaps that exceed 1/8 inch (0.32 cm) where the accumulated area of such gaps is greater than 1.0 square inch per foot (21 square centimeters per meter) of tank diameter as specified in §115.116(a)(2) of this title (relating to Monitoring and Recordkeeping Requirements) shall be in compliance with these calculation and emission reporting requirements beginning with the calendar year that starts on January 1, 1996.]

(b) The owner or operator of each stationary tank, reservoir, or other container in which any VOC is placed, stored, or held in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties shall comply with this division as soon as practicable, but no later than March 1, 2009. [All persons in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Harris, Hardin, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties affected by the requirement to conduct annual visual inspections of internal floating roof storage tanks as specified in §115.114(a)(1) of this title (relating to Inspection Requirements) shall be in compliance with these inspection requirements as soon as practicable, but no later than March 7, 1997.]

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

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Robert Martinez

Acting Director, Environmental Law Division

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For further information, please call: (512) 239-6087



## DIVISION 2. VENT GAS CONTROL

### 30 TAC §115.129

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.051(d), concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Texas Health and Safety Code, Chapter 382; and FCAA, 42 USC, §§7401 *et seq.*

The proposed amendment implements Texas Water Code, §5.103 and §5.105; Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051(d); and FCAA, 42 USC, §§7401 *et seq.*

#### §115.129. *Counties and Compliance Schedules.*

(a) (No change.)

(b) The owner or operator of each bakery in Collin, Dallas, Denton, and Tarrant Counties subject to §115.122(a)(3)(C) of this title (relating to Control Requirements) shall comply with §§115.121(a)(3), 115.122(a)(3)(C), and 115.126(6) of this title (relating to Emission Specifications; Control Requirements; and Monitoring and Record-keeping Requirements) as soon as practicable, but no later than one year, after 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 (NAAQS) for ozone by the attainment deadline or failure to demonstrate reasonable further progress as set forth in Federal Clean Air Act (FCAA) [~~the FCAA~~], §172(c)(9).

(c) The owner or operator of each bakery in El Paso County subject to §115.122(a)(3)(D) of this title shall comply with §§115.121(a)(3), 115.122(a)(3)(D), and 115.126(6) of this title as soon as practicable, but no later than one year, after 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 NAAQS for ozone by the attainment deadline or failure to demonstrate reasonable further progress as set forth in [~~the~~] FCAA, §172(c)(9).

(d) The owner or operator of each vent gas stream in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties shall comply with this division as soon as practicable, but no later than March 1, 2009.

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

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For further information, please call: (512) 239-6087



### DIVISION 3. WATER SEPARATION

#### 30 TAC §115.139

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.051(d), concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Texas Health and Safety Code, Chapter 382; and FCAA, 42 USC, §§7401 *et seq.*

The proposed amendment implements Texas Water Code, §5.103 and §5.105; Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051(d); and FCAA, 42 USC, §§7401 *et seq.*

#### §115.139. *Counties and Compliance Schedules.*

(a) The owner or operator of each volatile organic compound (VOC) water separator [~~All affected persons~~] 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 Water Separation) as required by §115.930 of this title (relating to Compliance Dates).

(b) The owner or operator of each VOC water separator in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties shall comply with this division as soon as practicable, but no later than March 1, 2009.

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

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## DIVISION 4. INDUSTRIAL WASTEWATER

### 30 TAC §115.149

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.051(d), concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Texas Health and Safety Code, Chapter 382; and FCAA, 42 USC, §§7401 *et seq.*

The proposed amendment implements Texas Water Code, §5.103 and §5.105; Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051(d); and FCAA, 42 USC, §§7401 *et seq.*

§115.149. *Counties and Compliance Schedules.*

(a) The owner or operator of each affected source category within a plant in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Hardin, Galveston, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties shall continue to comply with this division (relating to Industrial Wastewater) as required by §115.930 of this title (relating to Compliance Dates).

(b) The owner or operator of each affected source category within a plant in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties shall comply [Hardin, Jefferson, and Orange Counties shall be in compliance] with this division as soon as practicable, but no later than March 1, 2009 [December 31, 2002].

~~[(e) The owner or operator of each affected source category within a plant in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties shall control all junction boxes equipped with pumps in accordance with §115.142(1)(D)(ii)(H) of this title (relating to Control Requirements) as soon as practicable, but no later than December 31, 2002.]~~

~~[(d) The owner or operator of each affected source category within a plant in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties shall control all biotreatment units in accordance with §115.142(3) and §115.144(4) of this title (relating to Control Requirements; and Inspection and Monitoring Requirements) as soon as practicable, but no later than December 31, 2002.]~~

~~[(e) The owner or operator of each affected source category within a plant in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties shall comply with the requirement in §115.142(1)(A) of this title for gasketed seals or tightly-fitting caps or plugs on process drains not equipped with water seal controls as soon as practicable, but no later than December 31, 2003.]~~

~~[(f) The owner or operator of each affected source category within a plant in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties shall comply with the requirement in §115.142(1)(H) of this title for a first attempt at repair within five calendar days and for follow-up monitoring as soon as practicable, but no later than December 31, 2003.]~~

~~[(g) The owner or operator of each affected source category within a plant in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties shall comply with the requirements in §115.144(5) and (6) of this title for water seal inspections and inspections of process drains not equipped with water seals as soon as practicable, but no later than December 31, 2003.]~~

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

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## SUBCHAPTER C. VOLATILE ORGANIC COMPOUND TRANSFER OPERATIONS

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

#### 30 TAC §115.219

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare,

and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.051(d), concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Texas Health and Safety Code, Chapter 382; and FCAA, 42 USC, §§7401 *et seq.*

The proposed amendment implements Texas Water Code, §5.103 and §5.105; Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051(d); and FCAA, 42 USC, §§7401 *et seq.*

*§115.219. Counties and Compliance Schedules.*

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

(d) The owner or operator of each gasoline terminal, gasoline bulk plant, and VOC transfer operation in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties shall comply with this division as soon as practicable, but no later than March 1, 2009. The owner or operator of each gasoline terminal, gasoline bulk plant, and VOC transfer operation in these counties shall continue to comply with the applicable requirements in §§115.211(2), 115.212(b), and 115.214(b) of this title (relating to Emission Specifications; Control Requirements; and Inspection Requirements) until the facility achieves compliance with the newly applicable requirements in §§115.211(1), 115.212(a), and 115.214(a) of this title.

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

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### DIVISION 3. CONTROL OF VOLATILE ORGANIC COMPOUND LEAKS FROM TRANSPORT VESSELS

#### 30 TAC §115.239

##### STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes

the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.051(d), concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Texas Health and Safety Code, Chapter 382; and FCAA, 42 USC, §§7401 *et seq.*

The proposed amendment implements Texas Water Code, §5.103 and §5.105; Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051(d); and FCAA, 42 USC, §§7401 *et seq.*

*§115.239. Counties and Compliance Schedules.*

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

(c) The owner or operator of each tank-truck tank in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties shall comply with this division as soon as practicable, but no later than March 1, 2009. The owner or operator of each gasoline tank-truck tank in these counties shall continue to comply with the applicable requirements in §115.234(b) and §115.235(b) of this title (relating to Inspection Requirements and Approved Test methods) until the facility achieves compliance with the newly applicable requirements in §115.234(a) and §115.235(a) of this title.

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

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

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

#### 30 TAC §115.319

##### STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules,

which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.051(d), concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Texas Health and Safety Code, Chapter 382; and FCAA, 42 USC, §§7401 *et seq.*

The proposed amendment implements Texas Water Code, §5.103 and §5.105; Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051(d); and FCAA, 42 USC, §§7401 *et seq.*

§115.319. *Counties and Compliance Schedules.*

(a) All affected persons 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 Process Unit Turnaround and Vacuum-Producing Systems in Petroleum Refineries) as required by §115.930 of this title (relating to Compliance Dates).

(b) All affected persons in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties shall comply with this division as soon as practicable, but no later than March 1, 2009.

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

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

**30 TAC §115.359**

**STATUTORY AUTHORITY**

The amendment is proposed under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which

authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.051(d), concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Texas Health and Safety Code, Chapter 382; and FCAA, 42 USC, §§7401 *et seq.*

The proposed amendment implements Texas Water Code, §5.103 and §5.105; Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051(d); and FCAA, 42 USC, §§7401 *et seq.*

§115.359. *Counties and Compliance Schedules.*

(a) The owner or operator of each affected source in Brazoria, Chambers, Collin, El Paso, Dallas, Denton, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties shall ~~must~~

~~[(1)]~~ continue to comply with this division (relating to Fugitive Emission Control in Petroleum Refining, Natural Gas/Gasoline Processing, and Petrochemical Processes in Ozone Nonattainment Areas) as required by §115.930 of this title (relating to Compliance Dates).~~[(2)]~~

~~[(2)]~~ ~~comply with §115.356(2)(C) of this title (relating to Recordkeeping Requirements) as soon as practicable, but no later than March 31, 2004; and~~

~~[(3)]~~ ~~develop and make available upon request to the executive director, United States Environmental Protection Agency, and any local air pollution control agency having jurisdiction the recordkeeping required by §115.356(1) and (3) of this title as soon as practicable, but no later than March 31, 2004.]~~

(b) The owner or operator of each affected source in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties shall comply with this division as soon as practicable, but no later than March 1, 2009.

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

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SUBCHAPTER E. SOLVENT-USING  
PROCESSES  
DIVISION 1. DEGREASING PROCESSES

**30 TAC §115.419**

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.051(d), concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Texas Health and Safety Code, Chapter 382; and FCAA, 42 USC, §§7401 *et seq.*

The proposed amendment implements Texas Water Code, §5.103 and §5.105; Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051(d); and FCAA, 42 USC, §§7401 *et seq.*

*§115.419. Counties and Compliance Schedules.*

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

(c) All affected persons in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties shall comply with the applicable sections of this division as soon as practicable, but no later than March 1, 2009.

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

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DIVISION 3. FLEXOGRAPHIC AND  
ROTOGRAVURE PRINTING

**30 TAC §115.439**

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.051(d), concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Texas Health and Safety Code, Chapter 382; and FCAA, 42 USC, §§7401 *et seq.*

The proposed amendment implements Texas Water Code, §5.103 and §5.105; Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051(d); and FCAA, 42 USC, §§7401 *et seq.*

*§115.439. Counties and Compliance Schedules.*

(a) All affected persons 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 applicable sections of this division (relating to Flexographic and Rotogravure Printing) as required by §115.930 of this title (relating to Compliance Dates).

(b) All affected persons in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties shall comply with this division as soon as practicable, but no later than March 1, 2009.

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

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DIVISION 4. OFFSET LITHOGRAPHIC  
PRINTING

**30 TAC §115.449**

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.051(d), concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Texas Health and Safety Code, Chapter 382; and FCAA, 42 USC, §§7401 *et seq.*

The proposed amendment implements Texas Water Code, §5.103 and §5.105; Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051(d); and FCAA, 42 USC, §§7401 *et seq.*

§115.449. *Counties and Compliance Schedules.*

(a) In El Paso County, all offset lithographic printing presses must [shall] be in compliance with §§115.442, 115.443, 115.445, and 115.446 of this title (relating to Control Requirements; Alternate Control Requirements; Approved Test Methods [Testing Requirements]; and Monitoring and Recordkeeping Requirements) as soon as practicable, but no later than November 15, 1996.

(b) In Collin, Dallas, Denton, and Tarrant Counties, all offset lithographic printing presses on a property that [which], when uncontrolled, emit a combined weight of volatile organic compound (VOC) equal to or greater than 50 tons per calendar year, must [shall] be in compliance with §§115.442, 115.443, 115.445, and 115.446 of this title as soon as practicable, but no later than December 31, 2000.

(c) In Collin, Dallas, Denton, and Tarrant Counties, all offset lithographic printing presses on a property that [which], when uncontrolled, emit a combined weight of VOC less than 50 tons per calendar year, must [shall] be in compliance with §§115.442, 115.443, 115.445, and 115.446 of this title as soon as practicable, but no later than one year, after 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 (NAAQS) 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 (FCAA), §172(c)(9).

(d) In Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties, all offset lithographic printing presses on a property that [which], when uncontrolled, emit a combined weight of VOC equal to or greater than 25 tons per calendar year, must [shall] be in compliance with §§115.442, 115.443, 115.445, and 115.446 of this title as soon as practicable, but no later than December 31, 2002.

(e) In Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties, all offset lithographic printing presses on a property that [which], when uncontrolled, emit a combined weight of VOC less than 25 tons per calendar year, must [shall] be in compliance with §§115.442, 115.443, 115.445, and 115.446 of this title as soon as practicable, but no later than one year, after 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 NAAQS for ozone by the attainment deadline or failure to demonstrate reasonable further progress as set forth in the FCAA, §172(c)(9).

(f) In Ellis, Johnson, Kaufman, Parker, and Rockwall Counties, the owner or operator of all offset lithographic printing presses on a property that when uncontrolled, emit a combined weight of VOC equal to or greater than 50 tons per calendar year, shall comply with §§115.442, 115.443, 115.445, and 115.446 of this title as soon as practicable, but no later than March 1, 2009.

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

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## SUBCHAPTER F. MISCELLANEOUS INDUSTRIAL SOURCES DIVISION 1. CUTBACK ASPHALT

### 30 TAC §115.519

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.051(d), concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Texas Health and Safety Code, Chapter 382; and FCAA, 42 USC, §§7401 *et seq.*

The proposed amendment implements Texas Water Code, §5.103 and §5.105; Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051(d); and FCAA, 42 USC, §§7401 *et seq.*

§115.519. *Counties and Compliance Schedules.*

(a) (No change.)

(b) All affected persons in Bastrop, Caldwell, Hays, Travis, and Williamson Counties shall comply with applicable sections of this division [~~(relating to Cutback Asphalt)~~] as soon as practicable, but no later than December 31, 2005.

(c) All affected persons in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties shall comply with applicable sections of this division as soon as practicable, but no later than March 1, 2009.

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

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## DIVISION 2. PHARMACEUTICAL MANUFACTURING FACILITIES

### 30 TAC §115.539

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.051(d), concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Texas Health and Safety Code, Chapter 382; and FCAA, 42 USC, §§7401 *et seq.*

The proposed amendment implements Texas Water Code, §5.103 and §5.105; Texas Health and Safety Code, §§382.002,

382.011, 382.012, 382.016, 382.017, and 382.051(d); and FCAA, 42 USC, §§7401 *et seq.*

§115.539. *Counties and Compliance Schedules.*

(a) All affected persons 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 Pharmaceutical Manufacturing Facilities) as required by §115.930 of this title (relating to Compliance Dates).

(b) All affected persons in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties shall comply with this division as soon as practicable, but no later than March 1, 2009.

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

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## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 3. TAX ADMINISTRATION

##### SUBCHAPTER F. MOTOR VEHICLE SALES TAX

#### 34 TAC §3.84

The Comptroller of Public Accounts proposes amendments to §3.84, concerning exemption for orthopedically handicapped person. The proposed amendments make the rule consistent with legislative changes effective October 1, 2003 concerning the time period during which modifications allowed under the exemption must be completed. A new subsection (e) is added accordingly. The amendments also clarify in subsection (d) what documentation is necessary to claim the exemption. The definitions in subsection (a) clarify what types of modifications are covered by the exemption and what it means for any motor vehicle to be primarily driven by, or primarily used to transport, an orthopedically handicapped person. Additional non-substantive changes, including the adding of a new subsection (c) relating to persons eligible for the exemption, are made for clarity.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be in identifying the tax responsibilities of sellers and purchasers of motor vehicles modified for orthopedically handicapped persons. This rule is adopted un-