

The Texas Natural Resource Conservation Commission (commission) proposes new Subchapter E, *Consolidated Federal Air Rules (CAR): Synthetic Organic Chemical Manufacturing Industry (SOCMI)* {FCAA, §112, 40 CFR Part 65}, §§113.3000, 113.3020, 113.3030, 113.3040, 113.3050, and 113.3060.

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

In new Subchapter E, the commission proposes to adopt by reference, without any changes, all six United States Environmental Protection Agency (EPA) requirements in 40 Code of Federal Regulations (CFR) Part 65 - *Consolidated Federal Air Rule (CAR): Synthetic Organic Chemical Manufacturing Industry (SOCMI)*. In promulgating the CAR regulations, the EPA consolidated major portions of several new source performance standards (NSPS) and national emission standards for hazardous air pollutants (NESHAP) applicable to storage vessels, process vents, transfer operations, and equipment leaks within the SOCMI. The promulgated rule pulled together applicable federal SOCMI rules into one integrated set of rules in order to simplify, clarify, and improve implementation of the existing rules with which source owners or operators must comply. The CAR is an optional compliance alternative for a SOCMI source.

As other CAR standards continue to be promulgated, they will be reviewed for compatibility with current state regulations and policies. The commission will then incorporate them into Chapter 113 through formal rulemaking procedures.

## SECTION BY SECTION DISCUSSION

### *Section 113.3000, General Provisions (40 CFR Part 65, Subpart A)*

The commission proposes new §113.3000, which will adopt by reference and without change 40 CFR Part 65, Subpart A. On December 14, 2000, EPA issued the final rule for 40 CFR Part 65, Subpart A. This new subpart addresses the administrative aspects of the regulation (for example, where to send reports, timing of periodic reports, definitions, or how to request an alternative means of emission limitation) and those provisions which are widely applicable to all sources (for example, prohibitions and operation/maintenance requirements).

### *Section 113.3020, Storage Vessels (40 CFR Part 65, Subpart C)*

The commission proposes new §113.3020, which will adopt by reference and without change 40 CFR Part 65, Subpart C. On December 14, 2000, EPA issued the final rule for 40 CFR Part 65, Subpart C. This new subpart addresses the compliance options for storage vessels.

### *Section 113.3030, Process Vents (40 CFR Part 65, Subpart D)*

The commission proposes new §113.3030, which will adopt by reference and without change 40 CFR Part 65, Subpart D. On December 14, 2000, EPA issued the final rule for 40 CFR Part 65, Subpart D. This new subpart addresses the compliance options for process vents.

*Section 113.3040, Transfer Racks (40 CFR Part 65, Subpart E)*

The commission proposes new §113.3040, which will adopt by reference and without change 40 CFR Part 65, Subpart E. On December 14, 2000, EPA issued the final rule for 40 CFR Part 65, Subpart E. This new subpart addresses the compliance options for transfer racks.

*Section 113.3050, Equipment Leaks (40 CFR Part 65, Subpart F)*

The commission proposes new §113.3050, which will adopt by reference and without change 40 CFR Part 65, Subpart F. On December 14, 2000, EPA issued the final rule for 40 CFR Part 65, Subpart F. This new subpart addresses the compliance options for equipment leaks.

*Section 113.3060, Closed Vent Systems, Control Devices, and Routing to a Fuel Gas System or a Process (40 CFR Part 65, Subpart G)*

The commission proposes a new §113.3060, which will adopt by reference and without change 40 CFR Part 65, Subpart G. On December 14, 2000, EPA issued the final rule for 40 CFR Part 65, Subpart G. This new subpart contains the compliance options for closed-vent systems, control devices, and the routing of vent streams to fuel gas systems or process equipment, including testing, monitoring, data handling, reporting and recordkeeping, and chemical manufacturing process unit provisions.

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

Since Chapter 113 is an applicable requirement under 30 TAC Chapter 122, *Federal Operating Permits*, owners or operators subject to the Federal Operating Permit Program must be consistent with the revision process in Chapter 122 and revise their operating permits to include the revised requirements for each emission unit affected by the revisions to Chapter 113 at their sites.

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

John Davis, Technical Specialist with Strategic Planning and Appropriations, 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 and local government due to administration and enforcement of the proposed rules. The purpose of the proposed rules is to adopt by reference new CAR SOCOMI regulations, which consolidated major portions of several NSPS and NESHAP applicable to storage vessels, process vents, transfer operations, and equipment leaks within synthetic organic chemical manufacturing operations. The proposed rules are not anticipated to result in additional costs to the regulated community beyond what is already required to comply with current federal and state regulations.

#### PUBLIC BENEFITS AND COSTS

Mr. Davis also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from enforcement of and compliance with the proposed rules will be increased consistency between federal and state air quality regulations, and conformance with the requirements of the FCAA.

There are no additional fiscal implications anticipated to affected owners and operators beyond what is already required to comply with current state and federal regulations. This rulemaking is intended to adopt by reference new CAR SOCOMI regulations, which consolidated major portions of several NSPS and NESHAP applicable to storage vessels, process vents, transfer operations, and equipment leaks within synthetic organic chemical manufacturing operations. The proposed rules affect certain sources which will be required to comply with current state and federal standards whether or not the commission adopts the standards or takes delegation from EPA.

#### SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small and micro-businesses as a result of implementation and enforcement of the proposed rules, which are intended to adopt by reference new CAR SOCOMI regulations, which consolidated major portions of several NSPS and NESHAP applicable to storage vessels, process vents, transfer operations, and equipment leaks within synthetic organic chemical manufacturing operations. The proposed rules are not anticipated to result in additional costs to the regulated community beyond what is already required to comply with current federal and state regulations.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

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

#### DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a “major environmental rule” as defined in that statute. “Major environmental rule” means a rule, with the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific intent of the proposed rules is to adopt EPA’s optional CAR without addition or revision. Certain sources will be affected, but these sources are required to comply with the federal standards whether or not the commission adopts the standards or obtains delegation from EPA. The proposed rules are not anticipated to add any significant additional costs to affected individuals or businesses beyond the existing requirements to comply with the federal standards. The proposed rules are intended to protect the environment but are not anticipated to have material adverse effects on the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state beyond what is already required by federal standards. In addition, §2001.0225 only applies 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.

This rulemaking does not meet any of these four applicability requirements of a “major environmental rule.” Specifically, the standards in this proposal are federal standards that will be adopted by reference without modification or substitution, and therefore will not exceed any standard set by federal law. This proposal is not an express requirement of state law. It contains only regulations developed by the EPA. The proposed rules do not exceed a requirement of a delegation agreement or a contract between state and federal government. The proposed rules were not developed solely under the general powers of the agency, but are proposed under the Texas Health and Safety Code (THSC) and the Texas Clean Air Act (TCAA), §382.011, which requires the commission to establish the level of quality to be maintained in the state’s air; §382.012, which requires the commission to prepare and develop a general, comprehensive plan for the proper control of the state’s air; and §382.051, which requires the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to air permits.

#### TAKINGS IMPACT ASSESSMENT

The commission evaluated this rulemaking and did an analysis of whether the proposed rules are subject to Texas Government Code, Chapter 2007. The specific intent of the proposed rules is to adopt EPA’s optional CAR without addition or revision. Under federal law, the affected industries will have the option to implement CAR standards regardless of whether the commission or EPA is the agency responsible for administration of the standards. This rulemaking will not burden private real property. Therefore this rulemaking will not constitute a takings under Texas Government Code, Chapter 2007.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that the proposed rulemaking 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's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Coastal Management Program. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3), relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this proposed action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the proposed action is consistent with the applicable CMP goals and policies. This proposed rulemaking is consistent with the goal expressed in 31 TAC §501.12(1) of protecting and preserving the quality and value of coastal natural resource areas. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations in 40 CFR to protect and enhance air quality in the coastal area (31 TAC §501.14(q)). This proposal will adopt by reference, all subparts presently adopted under 40 CFR Part 65 without changes, and is therefore, consistent with this policy. Interested persons may submit comments on the consistency of the proposed rules with the CMP during the public comment period.

#### PUBLIC HEARING

A public hearing on this proposal will be held in Austin on June 4, 2002, at 2:00 p.m. in Building B, Room 201A of the commission's central office, located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present

oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

#### SUBMITTAL OF COMMENTS

Comments may be submitted to Patricia Durón, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 2002-036b-113-AI. Comments must be received by 5:00 p.m., June 10, 2002. For further information or questions concerning this proposal, contact Keith Sheedy, Office of Compliance and Enforcement at (512) 239-1556 or Auburn Mitchell, Office of Environmental Policy, Analysis and Assessment, (512) 239-1873.

**SUBCHAPTER E: Consolidated Federal Air Rules (CAR):**

**Synthetic Organic Chemical Manufacturing Industry (SOCMI)**

**{FCAA, §112, 40 CFR Part 65}**

**§§113.3000, 113.3020, 113.3030, 113.3040, 113.3050, 113.3060**

STATUTORY AUTHORITY

The new sections are proposed under THSC, TCAA, §382.011, which requires the commission to establish the level of quality to be maintained in the state's air; §382.012, which requires the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examination of records; §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA; and §382.051, which requires the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the TCAA.

These proposed new sections implement THSC, §382.012, State Air Control Plan; §382.017, Rules; and §382.051, Permitting Authority of Commission; Rules.

**§113.3000. General Provisions (40 CFR Part 65, Subpart A).**

The general provisions for the Consolidated Federal Air Rule as specified in 40 Code of Federal Regulations Part 65, Subpart A, are incorporated by reference as adopted December 14, 2000 (65 FR 78285).

**§113.3020. Storage Vessels (40 CFR Part 65, Subpart C).**

The storage vessels standards for the Consolidated Federal Air Rule as specified in 40 Code of Federal Regulations Part 65, Subpart C, are incorporated by reference as adopted December 14, 2000 (65 FR 78285).

**§113.3030. Process Vents (40 CFR Part 65, Subpart D).**

The process vents standards for the Consolidated Federal Air Rule as specified in 40 Code of Federal Regulations Part 65, Subpart D, are incorporated by reference as adopted December 14, 2000 (65 FR 78285).

**§113.3040. Transfer Racks (40 CFR Part 65, Subpart E).**

The transfer racks standards for the Consolidated Federal Air Rule as specified in 40 Code of Federal Regulations Part 65, Subpart E, are incorporated by reference as adopted December 14, 2000 (65 FR 78285).

**§113.3050. Equipment Leaks (40 CFR Part 65, Subpart F).**

The equipment leaks standards for the Consolidated Federal Air Rule as specified in 40 Code of Federal Regulations Part 65, Subpart F, are incorporated by reference as adopted December 14, 2000 (65 FR 78285).

**§113.3060. Closed Vent Systems, Control Devices, and Routing to a Fuel Gas System or a Process**

**(40 CFR Part 65, Subpart G).**

The closed vent systems, control devices, and routing to a fuel gas system or a process standards for the Consolidated Federal Air Rule as specified in 40 Code of Federal Regulations Part 65, Subpart G, are incorporated by reference as adopted December 14, 2000 (65 FR 78285).