The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §§114.301, 114.306, 114.307, and 114.309 and the repeal of §114.304 *without changes* to the proposed text as published in the April 11, 2014, issue of the *Texas Register* (39 TexReg 2753).

The repeal of §114.304, and amended §114.307 and §114.309, will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP).

Background and Summary of the Factual Basis for the Adopted Rules

The current state regulations for the Regional Low Reid Vapor Pressure (RVP) Gasoline Program, as specified under the Chapter 114 gasoline volatility rules in §114.301, prohibit the sale of all gasoline from gasoline-dispensing facilities that has a RVP greater than 7.8 pounds per square inch (psi) within the 95 central and eastern Texas counties affected by these regulations from June 1 through October 1 of each year. This prohibition applies to all other affected entities in the affected 95 counties from May 1 through October 1 of each year. Low RVP gasoline is refined to have a lower evaporation rate and lower volatility than conventional gasoline. Low RVP gasoline reduces the evaporative emissions generated during vehicle refueling and therefore decreases the emissions of volatile organic compounds (VOC) and other ozone-forming emissions. Reducing emissions of VOC benefits the regional 95-county area and the rest of the state and assists in the attainment and maintenance of the National Ambient Air Quality

Standard (NAAQS) for ozone. These rules also prohibit the increased use of methyl-tertiary-butyl-ether (MTBE) in gasoline to comply with the low RVP gasoline requirements during the period of May 1 through October 1 each year over that used in the period May 1 through October 1, 1998, on an average per gallon basis.

The Regional Low RVP Gasoline Program rules, as specified in §114.304, also require all gasoline producers and importers that supply gasoline to the affected counties to register with the TCEQ. In addition, all registered gasoline producers and importers are required, as specified in §114.306, to submit an annual report certifying that the use of MTBE in the gasoline supplied to the affected counties, from May 1, through October 1, of the current reporting year, has not increased on an average per gallon basis from that used during the period of May 1, through October 1, 1998.

The following 95 Texas counties, as specified in §114.309, are affected by the Regional Low RVP Gasoline Program regulations: 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.

The use of MTBE as an oxygenate for compliance with federal reformulated gasoline (RFG) regulations and as a gasoline octane-enhancing additive was common when the Regional Low RVP Gasoline Program regulations in Chapter 114 were originally adopted in June 1999. Concerns over the potential MTBE contamination of groundwater and surface water led the commission to adopt the MTBE prohibition specified in §114.301(c) in April 2000 to prevent gasoline producers from increasing the use of MTBE in gasoline to conform to the low RVP requirements. The gasoline producer and importer registration requirements in §114.304 and the annual reporting requirements specified in §114.306(c) were also adopted in April 2000 to enhance the enforceability of the MTBE prohibition specified in §114.301(c). The EPA approved the Low RVP Gasoline Program rules in Chapter 114 as a SIP control strategy for the one-hour ozone NAAQS in the Houston-Galveston-Brazoria and Dallas-Fort Worth nonattainment areas in the April 26, 2001, issue of the *Federal Register* (66 FR 20927).

Subsequently, with the passage of the Energy Policy Act in 2005, the federal regulations requiring the use of oxygenates, such as MTBE, in RFG were repealed and a new federal renewable fuel standard requiring the use of ethanol in gasoline was enacted. As a result, gasoline producers began to blend ethanol into gasoline to meet the new federal

renewable fuel standard, and MTBE was effectively removed from general use as a gasoline additive by the gasoline refining industry, primarily due to growing concerns over the MTBE contamination of groundwater and surface water. Samples of gasoline collected statewide in 2011 for a summer fuel field study conducted by the TCEQ showed only trace amounts of MTBE in some samples, i.e., less than 0.1% by volume, while every gasoline sample collected contained ethanol ranging from 1.99% to 9.44% by volume.

The adopted amendments to the Regional Low RVP Gasoline Program rules will remove obsolete requirements that provide no benefit to the state and are no longer necessary for the implementation and enforcement of the primary gasoline volatility control requirements of the rule. In addition, the adoption will provide regulatory consistency between the Chapter 114 gasoline volatility requirements and the El Paso Low RVP Gasoline requirements, specified in the 30 TAC Chapter 115 regulations in §§115.252, 115.253, 115.255 - 115.257, and 115.259, which do not prohibit the use of MTBE and do not require registration and annual reporting.

Section 110(l) Anti-backsliding Demonstration

The adopted amendments to the Regional Low RVP Gasoline Program rules are also adopted as revisions to the Texas SIP. The EPA approved the Regional Low RVP Gasoline Program rules effective May 29, 2001, but specifically did not address the MTBE prohibition requirement of the Regional Low RVP Gasoline Program rules since

the commission did not submit that requirement as a SIP revision. The EPA generally approved the registration and recordkeeping and certification requirements. Federal Clean Air Act (FCAA), §11o(l) requires that the EPA not approve revisions to the SIP, if the revision will interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the FCAA. The commission has reviewed the adopted amendments to the Regional Low RVP Gasoline Program rules and determined that the amendments will not interfere with attainment or maintenance of the one-hour ozone NAAQS, since the federal regulations requiring the use of oxygenates, such as MTBE, in RFG were repealed in 2005. Additionally, MTBE has effectively been replaced with ethanol as a gasoline additive by the gasoline refining industry due to concerns with water contamination and for compliance with federal renewable fuel requirements. The repeal of the registration requirements, which were originally adopted to enhance enforcement regarding the MTBE prohibition, is not expected to impact the purpose of the Regional Low RVP Gasoline Program since those rules remain intact. Similarly, the adopted amendments to §§114.306, 114.307, and 114.309 involve minor administrative clarifications necessary for consistency. The Regional Low RVP Gasoline Program rules remain in place as an effective means to provide continued emissions reductions of VOC to assist in attainment and maintenance of the one-hour ozone NAAQS primarily within the 95-county region where the rules apply but also having potential additional benefits throughout the state.

Section by Section Discussion

§114.301, Control Requirements for Reid Vapor Pressure

The adoption will amend §114.301 to delete subsection (c) to remove the prohibition on the increased use of MTBE in gasoline to conform to the low RVP gasoline requirements specified in subsection (a). The prohibition on increased use of MTBE is no longer necessary since the federal regulations requiring the use of oxygenates, such as MTBE, in RFG was repealed in 2005. Also, MTBE has effectively been replaced with ethanol as a gasoline additive by the gasoline refining industry, due to concerns with water contamination and for compliance with federal renewable fuel requirements. In addition, the adopted amendment will provide regulatory consistency with the El Paso Low RVP Gasoline requirements, specified in the Chapter 115 regulations in §§115.252, 115.253, 115.255 - 115.257, and 115.259, which do not contain a prohibition on the increased use of MTBE to comply with the rules.

§114.304, Registration of Gasoline Producers and Importers

The adoption will repeal §114.304 to remove the requirement for gasoline producers and importers that supply gasoline to the affected counties to register with the TCEQ for consistency with the adopted changes to §114.301, since these requirements were adopted by the commission in April 2000 to enhance the enforceability of the MTBE prohibition specified in §114.301(c). Repealing the registration requirements specified in this section will relieve gasoline producers and importers affected by these regulations from an administrative requirement that is no longer necessary for the implementation

of the low RVP gasoline rules. Repealing this section will also provide regulatory consistency with the El Paso Low RVP Gasoline requirements, specified in Chapter 115 regulations in §§115.252, 115.253, 115.255 - 115.257, and 115.259, which do not contain registration requirements.

§114.306, Recordkeeping, Reporting, and Certification Requirements

The adoption will amend §114.306 to delete subsection (c) to remove the reporting and certification requirements regarding the annual report on the use of MTBE in the gasoline, as needed for consistency with the adopted changes to §114.301. Removing the reporting and certification requirements specified in this subsection will relieve gasoline producers affected by these regulations from an administrative requirement that is no longer necessary for the implementation of the Chapter 114 low RVP gasoline rules. In addition, removing this subsection will provide regulatory consistency with the El Paso Low RVP Gasoline requirements, specified in the Chapter 115 regulations in §§115.252, 115.253, 115.255 - 115.257, and 115.259, which do not contain reporting requirements. The adoption will also amend §114.306 to make clarifying changes to the section heading as needed for accuracy and consistency with the adopted changes to the section.

§114.307, Exemptions

The adoption will amend §114.307 to make non-substantive clarifying changes as needed for accuracy and consistency with the adopted changes to §114.306.

§114.309, Affected Counties

The adoption will amend §114.309 to make non-substantive clarifying changes as needed for accuracy and consistency with the adopted changes to §114.306.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the adopted rulemaking does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Additionally, the adopted 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 adopted rulemaking will amend §§114.301, 114.306, 114.307, and 114.309; and will repeal §114.304. The revisions to Chapter 114 will remove the existing prohibition on the increased use of MTBE in gasoline and the registration and reporting requirements that have become effectively obsolete due to the passing of the Energy Policy Act in 2005, which effectuated a phase-out of the use of MTBE as a oxygenate for low RVP fuel. Requiring gasoline producers to register, document, and report use of MTBE is no longer necessary. While the adopted rulemaking addresses revisions to the low emission fuels requirements associated with gasoline volatility that are specifically intended to protect the environment or reduce risks to human health from environmental exposure, the adopted rulemaking is not expected to 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 since the revisions are to address federal requirements associated with the phase-out of the use of MTBE as an oxygenate for low RVP fuel.

The adopted rulemaking implements requirements of 42 United States Code (USC), §7410, which requires states to adopt a SIP that provides for the implementation, maintenance, and enforcement of the NAAQS in each air quality control region of the state. While 42 USC, §7410 generally does not require specific programs, methods, or reductions in order to meet the standard, the SIP must include enforceable emission

limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter (42 USC, Chapter 85). The provisions of the FCAA recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 USC, §7410. States are not free to ignore the requirements of 42 USC, §7410, and must develop programs to assure that their contributions to nonattainment areas are reduced so that these areas can be brought into attainment on schedule.

The requirement to provide a fiscal analysis of adopted 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 rules 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 will seldom apply, the commission provided a cost estimate for SB 633

concluding that "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that will 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 adopted rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law.

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

greater than is necessary or appropriate to meet the requirements of the FCAA. For these reasons, rules adopted for inclusion in the SIP fall under the exception in Texas Government Code, §2001.0225(a) because they are required by federal law.

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

The commission's interpretation of the regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these

sections of the APA against the standard of "substantial compliance." The legislature specifically identified Texas Government Code, §2001.0225, as falling under this standard. The commission has substantially complied with the requirements of Texas Government Code, §2001.0225.

The specific intent of these rules is to remove the existing prohibition on the increased use of MTBE in gasoline, which has effectively been ended by the Energy Policy Act of 2005, and address other administrative requirements for consistency. Requiring gasoline producers to register, document, and report use of MTBE is therefore simply no longer necessary. As discussed elsewhere in this preamble, the amendments to §§114.301, 114.306, 114.307 and 114.309, and the repeal of §114.304, amount to an administrative clean-up to remove outdated and no longer necessary rules and requirements. Additionally, even if the adopted rulemaking was a major environmental rule, the adopted 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 adopted rulemaking. Therefore, this adopted rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b) because the adopted rulemaking does not meet the definition of a "major environmental rule," nor does it meet any of the four applicability criteria for a major environmental rule.

The commission invited public comment regarding the draft regulatory impact analysis

determination during the public comment period, but no comments were received.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007 is applicable. The specific purpose of the adopted rulemaking is to remove outdated and obsolete portions of the low RVP fuel standards. The adopted rules will substantially advance this stated purpose by: removing the prohibition on the increased use of MTBE in gasoline to conform to the low RVP gasoline requirements; removing the registration requirements for gasoline producers and importers that supply low RVP gasoline to the affected counties; removing the annual reporting and certification requirements on the use of MTBE in low RVP gasoline; and by making other non-substantive clarifying changes as needed for accuracy and consistency.

Texas Government Code, §2007.003(b)(4), provides that Texas Government Code, Chapter 2007 does not apply to this adopted rulemaking because it is an action reasonably taken to fulfill an obligation mandated by federal law. With the passage of the Energy Policy Act in 2005, the federal regulations requiring the use of oxygenates, such as MTBE, in RFG were repealed and a new federal renewable fuel standard requiring the use of ethanol in gasoline was enacted. As a result, gasoline producers began to blend ethanol into gasoline to meet the new federal renewable fuel standard, and MTBE was effectively removed from general use as a gasoline additive by the

gasoline refining industry. The adopted rules constitute an "action reasonably taken" to provide administrative conformity with the Energy Policy Act's repeal of the requirements for the use of oxygenates in fuel, as the adopted rules will simply do away with reporting and registration requirements that are no longer necessary due the passage of the Energy Policy Act in 2005. Consequently, the adopted rulemaking meets the exemption criteria in Texas Government Code, §2007.003(b)(4).

Nevertheless, the commission further evaluated these adopted rules and performed an assessment of whether these adopted rules constitute a "taking" under Texas Government Code, Chapter 2007. Promulgation and enforcement of these adopted rules will be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulations do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally), nor restrict or limit, the owner's right to property and reduce its value by 25% or more beyond that which will otherwise exist in the absence of the regulations. These adopted rules will simply remove obsolete requirements that provide no benefit to the state and are no longer necessary for the implementation and enforcement of the primary gasoline volatility control requirements of the rule.

In addition, because the subject adopted regulations do not provide more stringent requirements they do not burden, restrict, or limit an owner's right to property and reduce its value by 25% or more beyond that which will otherwise exist in the absence of

the regulations. Therefore, these rules will not constitute a taking under the Texas Government Code, Chapter 2007. For these reasons, Texas Government Code, Chapter 2007 does not apply to this adopted rulemaking.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found the adoption is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process. 31 TAC §505.11(b)(2) applies only to air pollutant emissions, on-site sewage disposal systems, and underground storage tanks. 31 TAC §505.11(b)(4) applies to all other actions. The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council Advisory Committee and determined that the revisions are consistent with CMP goals and policies because the adopted rulemaking is to remove outdated and obsolete portions of the low RVP fuel standards; will not have direct or significant adverse effect on any coastal natural resource areas; will not have a substantive effect on commission actions subject to the CMP; and promulgation and enforcement of the revisions will not violate (exceed) any standards identified in the applicable CMP goals and policies.

The commission invited public comment regarding the consistency with the coastal

management program during the public comment period, but no comments were received.

Effect on Sites Subject to the Federal Operating Permits Program

Chapter 114 does not contain applicable requirements under 30 TAC Chapter 122, Federal Operating Permits; therefore, owners or operators subject to the Federal Operating Permit Program will not be required to revise their operating permits, consistent with the revision process in Chapter 122, to include the revised Chapter 114 requirements for each emission unit at their sites affected by the revisions to Chapter 114.

Public Comment

The commission offered a public hearing on May 8, 2014, in Austin, Texas. The hearing was not officially opened because no one registered to provide oral comments. The comment period closed on May 12, 2014. The commission received written comments from the Texas Food and Fuel Association (TFFA) and the Texas Oil and Gas Association (TXOGA). Both commenters were in support of the rule changes.

Response to Comments

TFFA commented that it supports the changes to the rules. TXOGA commented that it supports the revisions to the rules removing obsolete requirements that provide no benefit to the state and are unnecessary to regulation of the primary gasoline volatility

control requirements of the rule.

The commission appreciates the support.

SUBCHAPTER H: LOW EMISSION FUELS
DIVISION 1: GASOLINE VOLATILITY
§§114.301, 114.306, 114.307, and 114.309

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §28.011, concerning Underground Water: Regulations, which provides the commission with the authority to adopt and enforce rules to protect and preserve underground water quality. The amendments are also adopted under Texas Health and Safety Code (THSC), §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; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; and THSC, §382.202, concerning Vehicle Emissions Inspection and Maintenance Program, which authorizes the commission to establish vehicle fuel content standards after January 1, 2004.

The amendments implement THSC, §§382.002, 382.011, 382.012, 382.017, and 382.202.

§114.301. Control Requirements for Reid Vapor Pressure.

(a) In the counties listed in §114.309 of this title (relating to Affected Counties), no person shall sell, offer for sale, supply, offer for supply, dispense, transfer, allow the transfer, place, store, or hold in any stationary tank, reservoir, or other container any gasoline with a Reid vapor pressure greater than 7.8 pounds per square inch, on a per gallon basis, which may ultimately be used to power a gasoline engine in the affected counties according to the schedule in subsection (b) of this section.

(b) Beginning May 1, 2000, all adjustments in the operation of affected facilities and all transfers or alterations of gasoline not meeting the requirements of this section must be completed as necessary to conform with the provisions of subsection (a) of this section during the following periods of each calendar year:

(1) June 1 through October 1 of each year for gasoline dispensing facilities; and

(2) May 1 through October 1 of each year for all other affected facilities.

[(c) No producer shall the increase the use of methyl-tertiary-butyl-ether in gasoline on an average per gallon basis during the period of May 1 through October 1 of

any calendar year over that used in the period May 1 through October 1, 1998 to conform with subsection (a) of this section.]

§114.306. Recordkeeping[, Reporting, and Certification] Requirements.

(a) The owner or operator of any gasoline storage vessel, gasoline terminal, or gasoline bulk plant subject to the provisions of §114.301 of this title (relating to Control Requirements for Reid Vapor Pressure) shall maintain records of the Reid vapor pressure of all gasoline stored or transferred during the compliance period. All records shall be maintained for two years and be made available for review by the executive director, United States Environmental Protection Agency (EPA), and local air pollution control agencies. Records do not have to be stored on-site, but must be made available for inspection at the site within five business days.

(b) All parties in the distribution chain (producers, importers, terminals, pipelines, truckers, rail carriers, and retail fuel dispensing outlets) subject to the provisions of §114.301 of this title must maintain copies or records of product transfer documents for a minimum of two years and shall upon request, make such copies or records available to representatives of the commission, EPA, or local air pollution agency having jurisdiction in the area. The product transfer documents must contain, at a minimum, the following information:

(1) the date of transfer;

(2) the name and address of the transferor;

(3) the name and address of the transferee;

[(4) in the case of transferors or transferees who are producers or importers, the registration number of those persons as assigned by the commission under §114.304 of this title (relating to Registration of Gasoline Producers and Importers);]

(4) [(5)] the volume of gasoline being transferred;

(5) [(6)] the location of the gasoline at the time of transfer; and

(6) [(7)] the following certification statement: "This product complies with the requirements for Reid vapor pressure specified in Title 30 Texas Administrative Code, §114.301 and may be used in any Texas county requiring gasoline with a maximum RVP of 7.8 pounds per square inch."

[(c) Each producer and importer subject to the provisions of §114.301 of this title shall submit to the executive director, or his designated representative, by November 30 of each year, a report which includes a quantification of the total gallons of gasoline and the total gallons of MTBE contained in gasoline for which the transfer documents contain the statement in subsection (b)(7) of this section during the periods May 1 through October 1 of 1998 and May 1 through October 1 of the current calendar year.

The certifying report shall attest that all information contained in the report is true and accurate and is based on knowledge of the certifying official. The report must also include either:]

[(1) a certification statement that the use of MTBE in gasoline for which the transfer documents contain the statement in subsection (b)(7) of this section during the period May 1 through October 1 of the current calendar year has not increased on an average per gallon basis over that in the period May 1 through October 1, 1998; or]

[(2) if the average per gallon use of MTBE during the period May 1 through October l of the current calendar year exceeds the average per gallon use of MTBE during the period May 1 through October 1, 1998, documentation and explanation of the basis for the increased use in a manner sufficient to demonstrate that the producer or importer did not increase the use of MTBE during the period covered by the certification to conform with §114.301(a) of this title.]

§114.307. Exemptions.

(a) The following uses are exempt from §§114.301, 114.305, and 114.306 of this title (relating to Control Requirements for Reid Vapor Pressure; Approved Test Methods; and Recordkeeping[, Reporting, and Certification] Requirements):

(1) any stationary tank, reservoir, or other container:

(A) used exclusively for the fueling of implements of agriculture; or

(B) with a nominal capacity of 500 gallons (1,893 liters) or less; and

(2) all gasoline solely intended for use as aviation gasoline ("av-gas").

(b) Any gasoline that is either in a research, development, or test status; or is sold to petroleum, automobile, engine, or component manufacturers for research, development, or test purposes; or any gasoline to be used by, or under the control of petroleum, additive, automobile, engine, component manufacturers for research, development, or test purposes; or any independent research laboratories or academic institutions for use in research, development, or testing of petroleum, additive, automobile, engine, component products, is exempt from the provisions of this division (relating to Gasoline Volatility), provided that:

(1) the gasoline is kept segregated from non-exempt product, and the person possessing the product maintains documentation identifying the product as research, development, or testing fuel, as applicable, and stating that it is to be used only for research, development, or testing purposes; and

(2) the gasoline is not sold, dispensed, or transferred, or offered for sale, dispensing, or transfer from a retail fuel dispensing facility. It shall also not be sold, dispensed, or transferred, or offered for sale, dispensing, or transfer from a wholesale

purchaser-consumer facility, unless such facility is associated with fuel, automotive, or engine research, development, or testing.

(c) Any gasoline that is refined, sold, dispensed, transferred, or offered for sale, dispensing, or transfer as competition racing fuel is exempted from the provisions of this division, provided that:

(1) the fuel is kept segregated from non-exempt fuel, and the party possessing the fuel for the purposes of refining, selling, dispensing, transferring, or offering for sale, dispensing, or transfer as competition racing fuel maintains documentation identifying the product as racing fuel, restricted for non-highway use in competition racing motor vehicles or engines;

(2) each pump stand at a regulated facility, from which the fuel is dispensed, is labeled with the applicable fuel identification and use restrictions described in paragraph (1) of this subsection; and

(3) the fuel is not sold, dispensed, transferred, or offered for sale, dispensing, or transfer for highway use in a motor vehicle.

(d) The owner or operator of a retail fuel dispensing outlet is exempt from all requirements of §114.306 of this title, except §114.306(b) of this title.

(e) Gasoline that does not meet the requirements of §114.301 of this title is not prohibited from being transferred, placed, stored, and/or held within the affected counties so long as it is not ultimately used to power:

(1) a gasoline-powered spark-ignition engine in a motor vehicle in the counties listed in §114.309 of this title (relating to Affected Counties), except for that used in conjunction with purposes stated in subsections (a) - (c) of this section; or

(2) a gasoline-powered spark-ignition engine in non-road equipment in the counties listed in §114.309 of this title, except for that used in conjunction with purposes stated in subsections (a) - (c) of this section.

§114.309. Affected Counties.

All affected persons in the following counties shall be in compliance with §§114.301 and 114.305 [114.304] - 114.307 of this title (relating to Control Requirements for Reid Vapor Pressure; [Registration of Gasoline Producers and Importers;] Approved Test Methods; Recordkeeping[, Reporting, and Certification] Requirements; and Exemptions) no later than the dates specified in §114.301(b) of this title: 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,[San Augustine,] Shelby, Smith, Somervell, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Washington, Wharton, Williamson, Wilson, Wise, and Wood.

SUBCHAPTER H: LOW EMISSION FUELS
DIVISION 1: GASOLINE VOLATILITY
[§114.304]

Statutory Authority

The repeal is adopted under Texas Water Code (TWC), §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §28.011, concerning Underground Water: Regulations, which provides the commission with the authority to adopt and enforce rules to protect and preserve underground water quality. The repeal is also adopted under Texas Health and Safety Code (THSC), §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; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; and THSC, §382.202, concerning Vehicle Emissions Inspection and Maintenance Program, which authorizes the commission to establish vehicle fuel content standards after January 1, 2004.

The adopted repeal implements THSC, §§382.002, 382.011, 382.012, 382.017, and 382.202.

[§114.304. Registration of Gasoline Producers and Importers.]

[Each producer and importer that, as of May 1, 2000, sells, offers for sale, supplies, or offers for supply from its production facility or import facility gasoline to counties listed in §114.309 of this title (relating to Affected Counties) shall register with the executive director, or his designated representative, by July 1, 2000. Beginning July 1, 2000, gasoline producers and importers that are not supplying gasoline to the affected counties as of May 1, 2000, shall register within 30 days after the first date that such person will produce or import gasoline intended to be sold, offered for sale, supplied, or offered for supply from its production or import facility to counties listed in §114.309 of this title. Registration shall be on forms prescribed by the executive director, or his designated representative, and shall include a statement of acceptance of the standards and enforcement provisions of this division; and shall include a statement of consent by the registrant that the executive director, or his designated representative, shall be permitted access to documentation and records. The executive director, or his designated representative, shall maintain a listing of all registered producers and importers.]