The Texas Commission on Environmental Quality (TCEQ, commission, or agency) proposes amendments to §§115.240, 115.242 - 115.246; new §115.241; and repeal of §§115.241, 115.247 and 115.249.

If adopted, the commission will submit the amendments, new section, and repeals to the United States Environmental Protection Agency (EPA) as a proposed revision to the State Implementation Plan (SIP).

Background and Summary of the Factual Basis for the Proposed Rules

Under the Federal Clean Air Act (FCAA) amendments of 1990, states were required to submit a revision to the SIP no later than November 15, 1992, that included a Stage II Vapor Recovery Program to control gasoline vapors from the refueling of motor vehicles. A Stage II vapor recovery SIP was first approved for Texas on October 16, 1992, and later revised on November 10, 1993. The Stage II Vapor Recovery Program involves the use of technology that prevents gasoline vapors from escaping during refueling. Gasoline vapors are volatile organic compounds (VOC) that react with nitrogen oxides in the presence of sunlight to form ozone. As part of the control strategy for ozone attainment, the EPA mandated that Stage II refueling requirements apply to all public and private gasoline dispensing facilities (GDFs) that dispense 10,000 gallons or more of gasoline per month. The TCEQ applied a more stringent throughput standard in the 16 ozone nonattainment counties by requiring all GDFs constructed after November 15,

1992, to install Stage II vapor recovery regardless of throughput. The original Stage II vapor recovery rules relied upon the California Air Resources Board (CARB) certification procedures for vapor recovery equipment. The Stage II SIP was revised in 2002 to require more frequent testing and more on-site evaluation of testing performed on vapor recovery systems at GDFs as well as a phase-in schedule to retrofit or install onboard-refueling vapor-recovery (ORVR) compatible Stage II vapor recovery systems. Stage II vapor system efficiency was compromised by ORVR equipped vehicles unless the system had ORVR compatible hardware. The Stage II SIP was then revised on March 23, 2005, to offer an expanded definition for "ORVR compatible" that allowed for the use of other technologies for controlling gasoline vapors. On June 27, 2007, the Stage II SIP was also revised to add language to exempt facilities from installing Stage II equipment if the facility could demonstrate that refueling at that facility involved a fleet of 95% or more ORVR-equipped vehicles. This SIP is still under consideration by the EPA and has not been approved. The EPA expressed concerns that the language justifying the exemption needed to be more descriptive and explanatory. If this proposed rulemaking is adopted by the commission and the subsequent submitted SIP revision is approved by EPA, the commission will request the withdrawal of the June 27, 2007, pending SIP submittal since revisions to that SIP will no longer be necessary.

FCAA, §202(a)(6) also provides that the EPA may revise or waive the application of Stage II requirements if the EPA determines that ORVR is in widespread use through

the motor vehicle fleet. Recently, the EPA finalized a rulemaking (published in the May 16, 2012, *Federal Register*, 77 FR 28772) for 40 Code of Federal Regulations (CFR) Part 51, determining that vehicle ORVR technology is in widespread use for the purposes of controlling motor vehicle refueling emissions throughout the motor vehicle fleet. Vehicle ORVR systems are passive systems that force gasoline vapors displaced from a vehicle's fuel tank during refueling to be directed into a carbon canister holding system within the vehicle and ultimately to the engine where the vapors are consumed. The EPA required ORVR systems to be phased in beginning with 1998 model-year light-duty gasoline vehicles and since 2006, all new light- and medium-duty gasoline vehicles are equipped with ORVR. An initial analysis using the EPA Motor Vehicle Emissions Simulator 2010a model shows that the benefits from ORVR alone will be greater than the benefits from Stage II alone by the year 2010 in the Houston-Galveston-Brazoria (HGB) area, 2012 in the Dallas-Fort Worth (DFW) area, 2013 in the Beaumont-Port Arthur (BPA) area, and 2014 in the El Paso area. Vehicle ORVR systems are monitored through a vehicle's on-board diagnostic system making the system much more cost-effective than the required monitoring and testing of Stage II systems.

The determination that ORVR technology is in widespread use allows the EPA to waive the requirement for states to implement Stage II gasoline vapor recovery systems at GDFs in nonattainment areas classified as serious and above for the ozone National Ambient Air Quality Standard (NAAQS). States that have implemented a Stage II

program may revise their Stage II SIP demonstrating that the air quality will be maintained after removing the Stage II equipment. The proposed rule revision would revise Chapter 115, Subchapter C, Division 4 to specify that owners of new GDFs are not required to install Stage II equipment and to require owners of existing GDFs in the current program areas to properly decommission Stage II equipment. According to the EPA's guidance document, *Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures*, issued on August 7, 2012, the commission will need to demonstrate under FCAA, §110(l) that the air quality will not be affected by the decommissioning of, or failure to install, Stage II equipment. This demonstration will be incorporated into the corresponding SIP revision and is discussed further in the *Demonstrating Noninterference under Federal Clean Air Act, Section 110(l)* portion of this preamble.

Demonstrating Noninterference under Federal Clean Air Act, Section 110(l)

The Stage II program is a FCAA-specified VOC control strategy for certain ozone nonattainment areas. Under FCAA, §110(l), the EPA cannot approve a SIP revision if it would interfere with attainment of the NAAQS, reasonable further progress toward attainment, or any other applicable requirement of the FCAA. The EPA has to approve a SIP revision that removes or modifies Stage II gasoline refueling vapor control measure(s) if the EPA concludes that a state's submittal provides that the removal of Stage II controls would not interfere with attainment of the NAAQS, reasonable further

progress, or any other applicable requirement of the FCAA. The executive director has performed an assessment of the exact amount of benefit loss from removing Stage II and any effect on air quality programs in the four Texas Stage II areas using the method documented in the EPA's *Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures,* August 7, 2012. An analysis for years 2012 through 2030 found that for all years the losses represent less than one-half of one percent of the total VOC inventory. The benefit losses for removing Stage II are small in 2012 and decrease rapidly as the percentage of vehicles equipped with ORVR increase over time. The assessment found that small changes to the VOC inventories due to the removal of Stage II do not significantly change any of the results of the Texas air quality plans. The detailed analysis to demonstrate that removal of Stage II requirements does not interfere with attainment or maintenance of the NAAQS will be included in the Stage II SIP revision (Project Number 2013-002-SIP-NR) that corresponds with this rule revision.

Section by Section Discussion

§115.240, Stage II Vapor Recovery Definitions and List of California Air Resources Board Certified Stage II Equipment

The commission proposes to amend §115.240 by adding the definitions for "decommission" and "gasoline dispensing facility." The term "decommission" would be defined as the permanent removal of Stage II vapor recovery controls at a GDF. The

term "gasoline dispensing facility" would be defined as a location that dispenses gasoline to motor vehicles and includes retail outlets and private and commercial outlets. The definitions in this section would be re-numbered as needed.

§115.241, Emission Specifications

The commission proposes the repeal of existing §115.241. The emission specifications in §115.241 would no longer be necessary because Stage II equipment would not be required to be installed at any GDF after the adoption of this proposed rulemaking. This section requires that the transfer of gasoline from a stationary storage container to a motor vehicle fuel tank be allowed only if an approved Stage II vapor recovery system has been installed at the GDF. Owners of GDFs must maintain their Stage II equipment according to §115.242, until they complete decommissioning which ensures that the emissions specifications of this section continue to be met.

§115.241, Decommissioning of Stage II Vapor Recovery Equipment

The commission proposes new §115.241 to provide for the time line and process for decommissioning of Stage II vapor recovery controls at GDFs. The new section would establish that the decommissioning process may begin 30-calendar days after the EPA approval of the repeal of the Stage II vapor recovery requirement and of the decommissioning requirement and the EPA approval of the revised corresponding SIP revision. The 30-calendar day time frame would allow TCEQ regional office staff,

licensed contractors, and owners and operators of GDFs to coordinate decommissioning activities in an affected area. The commission is proposing this delayed implementation for decommissioning because the EPA has stipulated that Stage II controls cannot be removed until the EPA has approved a State's Stage II decommissioning rule and SIP revisions.

The new language would include notification requirements and procedural activities that must occur during the decommissioning process. Owners and operators of GDFs electing to decommission their Stage II vapor recovery would be required to notify the appropriate TCEQ regional office and local government with jurisdiction where the GDF is located 30-calendar days prior to the beginning of the activity. The notification would provide information on the GDF, the owner or operator of the GDF, the contractor who will perform the decommissioning, and the type of system installed at the GDF. The proposed requirements include the proper procedures from disconnecting and capping parts of the system and a list of test procedures to ensure the prevention of leaking of vapors and fluids. The TCEQ plans to develop a checklist, Stage II Decommissioning Checklist and Submittal Form, that will include all applicable decommissioning requirements included in this proposed rulemaking that must be performed and completed. The proposed requirements were developed using the Decommissioning Stage II Vapor Recovery Piping section in the Petroleum Equipment Institute's (PEI) publication, *Recommended Practices for Installation and Testing of Vapor Recovery*

Systems at Vehicle-Fueling Sites, PEI/RP300-09, as a reference. PEI's practices are generally accepted and regarded by industry stakeholders as the appropriate methods for successfully decommissioning the equipment.

The section would also provide new requirements for closing out all Stage II activities, including decommissioning by the affected GDF. These requirements would include notification of completed decommissioning and maintaining the notification forms that include the names of licensed contractors used in the decommissioning of Stage II equipment at the GDF.

§115.242, Control Requirements

The commission proposes the revision to §115.242 by providing that owners of newly constructed GDFs after May 16, 2012, and owners and operators of GDFs, that as of May 16, 2012, were exempt from installing Stage II vapor recovery due to an exemption from the requirements because of low monthly gasoline throughput, would no longer have to install Stage II vapor recovery equipment. Owners and operators of GDFs would have the option of decommissioning Stage II equipment under the requirements proposed in §115.241 of this chapter, or continuing to operate with the current Stage II equipment until the mandatory removal date of August 31, 2018. The proposed mandatory removal date was established after stakeholders expressed that the commission provide five to six years prior to decommissioning to allow for Stage II equipment installed at the time

of the EPA's rule being finalized to be used through its expected life use. The mandatory date has also been established since finding compliant replacement equipment will be more difficult and the number of licensed testers will be reduced which will make it difficult for owners and operators of GDFs with Stage II equipment to comply with existing requirements. The TCEQ is requesting comment on the mandatory decommissioning date of August 31, 2018.

The proposed language also states that if an owner or operator elects to retain the Stage II vapor controls, the GDF would continue to meet the requirements of this division, until the Stage II vapor controls are properly removed from the GDF. To address the voluntary installation of Stage II equipment at GDFs not located in the affected counties, new language would be incorporated that would require all owners of GDFs, regardless of location in the state to remove all Stage II equipment by August 31, 2018. The proposed language would replace existing language that is being proposed for repeal that requires all GDFs in the counties listed in §115.249 to comply with this division. This rule revision proposes that no GDF in any county would have Stage II equipment installed or operational after August 31, 2018. Voluntary Stage II installations at GDFs outside of the affected counties have not been included in any modeling for past SIP activities and have no impact on the proposed SIP revision affected by this rulemaking.

The proposed revisions to §115.242 would also delete paragraphs (10) - (12) because

GDFs would no longer need to meet these requirements. Paragraph (10) corresponds to exemptions in §115.247 which is also proposed for repeal. Paragraph (11) relates to the installation of approved systems in the case that CARB certification of a previously installed system was revoked. Finally, paragraph (12) requires facilities to notify the regional office with jurisdiction of any Stage II vapor recovery system installation.

§115.243, Alternate Control Requirements

The proposed revision to §115.243 would update references to §115.242, which would be revised to authorize the decommissioning of Stage II vapor controls.

§115.244, Inspection Requirements

The proposed revision to §115.244 would update references to §115.242, which would be revised to authorize the decommissioning of Stage II vapor controls.

§115.245, Testing Requirements

The commission proposes to amend §115.245 to require owners of GDFs that elect to install, repair, replace, or retain the Stage II equipment after the date that decommissioning is authorized, but before the mandatory removal date, would still be required to comply with this section, because the Stage II equipment would continue to be maintained and tested to ensure it is working properly and capturing gasoline vapors.

§246.246, Recordkeeping Requirements

The proposed revision to §115.246 would add the Stage II decommissioning notifications, records sufficient to demonstrate compliance with decommissioning requirements, and test results to recordkeeping items that would be maintained on site. Although other recordkeeping requirements in this subchapter are only required to be maintained for two years, the high level of decommissioning activity especially as August 31, 2018, draws near would require inspections and investigations beyond a two-year time frame.

§115.247, Exemptions

The commission is proposing to repeal §115.247, because exemptions from the Stage II requirements would no longer be applicable to this division. Since Stage II would no longer be required, the exemptions for GDFs that dispense gasoline to aircraft, watercraft, and agricultural equipment; GDFs that began construction before November 15, 1992, and dispense less than 10,000 gallons a month; and GDFs that refuel a motor fleet that is 95% ORVR equipped would no longer be needed. The proposed language in §115.242(a) makes clear that GDFs that did not have Stage II vapor controls installed as of May 16, 2012 are not subject to this division. Therefore, GDFs that qualified for these exemptions would not be subject to the rule by the proposed repeal of this exemption section.

§115.249, Counties and Compliance Schedules

The commission is proposing to repeal §115.249, because Stage II would no longer be required upon EPA approval of the proposed SIP revision at GDFs in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Harris, Hardin, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties. Additionally, GDFs in these counties have already met the compliance date of April 1, 2007, to become ORVR compatible.

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Strategic Planning and Assessment Section, has determined that for the first five-year period the proposed rules are in effect, fiscal implications are anticipated for the agency and for some units of state or local government that participate in the Stage II Vapor Recovery Program in nonattainment areas as a result of the administration or enforcement of the proposed rules. Cost savings may be significant for those businesses or local governments that do not have to install vapor recovery equipment at GDFs that they own or operate. In addition, beginning in 2018 and perhaps earlier, the University of Texas at Arlington and four other units of local government currently under contract with the agency to conduct Stage II Vapor Recovery Program inspections, monitoring, and enforcement activities may see reductions in funding if their contracts are terminated or modified as a result of the implementation of the proposed rules. Local governments that own or operate GDFs

will have some costs to decommission their Stage II vapor recovery equipment but are expected to experience cost savings in the long run. The agency is anticipated to experience cost savings in 2018 and perhaps earlier due to the proposed elimination of the requirement to inspect certain gasoline vapor recovery systems installed at GDFs in nonattainment areas.

The Stage II Vapor Recovery Program involves the use of technology that prevents gasoline vapors from escaping during refueling. Gasoline vapors are VOC emissions that can react with nitrogen oxides in the presence of sunlight to form ozone. The EPA recently finalized a rulemaking that determined that because vehicle ORVR technology is in widespread use for the purposes of controlling motor vehicle refueling emissions, Stage II vapor recovery systems are no longer necessary at GDFs in nonattainment areas. Because of these vehicle systems, the EPA will allow states to waive the requirement for Stage II vapor recovery systems to be installed at GDFs in nonattainment areas classified as serious and above for the ozone NAAQS. The EPA will also require states with a Stage II program to revise their Stage II SIP to demonstrate that the air quality will be maintained after the Stage II equipment is decommissioned.

GDFs that do not have to install the Stage II equipment will realize a cost savings. Staff estimates that costs for new Stage II vapor recovery equipment installation would range from $40,000 for a four-dispenser GDF to $120,000 for a 12-dispenser GDF with $350

to $1,000 in annual maintenance costs.

The proposed rules would require owners of GDFs with Stage II equipment already in place to decommission the equipment by August 31, 2018. However, the EPA has stipulated that decommissioning would not be able to begin until the EPA has approved the proposed rulemaking and SIP revision that authorizes the removal of the Stage II equipment. If the proposed rulemaking is adopted, EPA approval of the revised SIP may not take place until the beginning of 2015 at the earliest. Owners of GDFs would be allowed to keep their Stage II equipment until August 31, 2018, but would continue to maintain, test, and monitor the equipment. Owners of GDFs that decide to decommission their equipment would be required to submit a notice to the appropriate TCEQ regional office requesting approval for decommissioning. The TCEQ regional offices, or the local government with jurisdiction, would continue to inspect GDFs with Stage II equipment and would also inspect and monitor decommissioning activities at GDFs during the five-year period covered by this fiscal note.

At this time, certified Stage II vapor recovery systems are required at GDFs in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties in the HGB area; Collin, Dallas, Denton, and Tarrant Counties in the DFW area; El Paso County; and Hardin, Jefferson, and Orange Counties in the BPA area.

There are an estimated 420 Stage II facilities that are owned by units of local government (including counties, cities, school districts, etc.) that would have to comply with the decommissioning requirements. The costs for removing this equipment will vary and likely depend upon the number of gasoline dispensers located at each GDF. However, staff estimates that the one-time cost would be approximately $600 per gasoline dispenser. The Stage II equipment is inspected by the agency annually with a more comprehensive inspection every three years. Staff estimates that it costs $250 to $350 each year for a GDF to test the Stage II equipment and $350 every three years for a more comprehensive Stage II equipment test. Staff also estimates an additional $350 to $1,000 each year in costs for maintenance and repair of the equipment. Removal of the equipment would result in a net cost savings for each GDF over the long term but may represent a cost increase to the facilities over the short term. Owners of GDFs including local governments may begin decommissioning their GDFs 30-calendar days after the EPA provides SIP approval, but they may choose to wait until the proposed 2018 deadline in order to maximize the initial and ongoing cost of installing and maintaining the equipment.

Four local governments currently perform Stage II enforcement, inspections, and monitoring activities in their local jurisdictions through a contract with the TCEQ. The four local governments are the cities of Dallas, Fort Worth, and El Paso and the Galveston County Health District. These particular contracts also include other air

pollution investigation activities in addition to the Stage II investigations. The contracts require the local government to provide a 33% funding match. The TCEQ also contracts with the University of Texas at Arlington to perform Stage II investigations in the city of Houston. This contract is for approximately $500,000 and does not require a funding match. If the proposed decommissioning begins, these contracts would need to be re-evaluated to account for the decrease and eventual elimination of the Stage II investigations and associated activities. Once the Stage II equipment is removed from GDFs, local governments and the TCEQ would see a cost savings associated with the costs to monitor and inspect these systems.

Public Benefits and Costs

Mr. Horvath has 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 the continued protection of public health and safety while eliminating unnecessary requirements and maintaining compliance with federal rules.

The proposed rules are not expected to have fiscal implications for individuals and businesses during the first five years the proposed rules are implemented unless they are constructing new GDFs or unless they perform Stage II testing for GDFs. For those owners of GDFs that choose to decommission their Stage II equipment after EPA approval but before the 2018 deadline, there would be some costs depending upon the

number of gasoline dispensers at each GDF. There are approximately 282 registered Stage II testers and 61 companies that perform testing services as part of their operations. Because most of them do other types of testing and provide other services, they are not expected to experience significant fiscal impacts as a result of the proposed rulemaking.

Currently, approved and certified Stage II vapor recovery systems are required at GDFs in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties in the HGB area; Collin, Dallas, Denton, and Tarrant Counties in the DFW area; El Paso County; and Hardin, Jefferson, and Orange Counties in the BPA area. There are approximately 6,600 GDFs in these counties that are required to have Stage II vapor recovery equipment installed. These owners of GDFs will have to pay to decommission the Stage II equipment if the proposed rules are adopted. These costs are estimated to be $600 per dispenser. Total decommissioning costs for each GDF will depend upon the number of dispensers at each facility. Over time, owners of each GDF will experience cost savings because they will not have to pay testing, inspection, and maintenance and repair costs. These cost savings for each GDF are not anticipated to be significant but would be at least $250 to $350 each year for inspection and testing and $350 to $1,000 in annual cost savings for maintenance and repair. There would be cost savings for those GDFs that do not have to install the Stage II equipment. Staff estimates that costs for new Stage II vapor recovery equipment installation would range from

$40,000 for a four-dispenser GDF to $120,000 for a 12-dispenser GDF.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the administration or enforcement of the proposed rules. The agency estimates that there are 692 small businesses and 574 micro-businesses that would have to comply with the proposed rules for decommissioning. Some of these small and micro-businesses may begin decommissioning 30-calendar days after the EPA provides SIP approval, but they may choose to wait until the proposed August 31, 2018 deadline in order to maximize the initial and ongoing cost of installing and maintaining the equipment. Costs to decommission the Stage II equipment and cost savings due to the elimination of testing, inspection, maintenance, and repair costs are the same as those for large businesses. Cost savings for those small or micro-businesses who install new facilities would also be the same as those identified for large businesses.

There are approximately 282 registered Stage II testers and 61 companies that perform testing services as part of their operations. It is not known how many of these companies are small or micro-businesses, but most of them are thought to provide additional Petroleum Storage Tank/Vapor Recovery-related services such as line and tank testing, release detection monitoring, and routine equipment inspections to ensure compliance. While there is a possibility that some companies may be required to reduce

staff, it is unlikely as most of these companies provide other services and have been anticipating the change in Vapor Recovery requirements.

Small Business Regulatory Flexibility Analysis

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

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 impact analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rulemaking does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from

environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Additionally, the proposed rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The proposed rulemaking would amend §§115.240, 115.242-115.246, create new §115.241, and repeal §§115.241, 115.247, and 115.249. The revisions to Chapter 115 would specify that new GDFs are not required to install Stage II equipment and to allow existing GDFs in the current program areas to properly decommission Stage II equipment.

FCAA, §182(b)(3) provides that for certain nonattainment areas, states must revise their SIP to require all owners or operators of gasoline dispensing systems operating after

November 15, 1990 to install a system for gasoline vapor recovery of emissions from the fueling of motor vehicles. FCAA, §202(a)(6) requires the EPA to implement requirements for ORVR. Both Stage II and vehicle ORVR are types of emission control systems that capture fuel vapors from vehicle gas tanks during refueling. FCAA, §202(a)(6) also provides that the EPA may revise or waive the application of Stage II requirements if it determined that ORVR was in widespread use throughout the motor vehicle fleet. The EPA finalized a rulemaking on May 16, 2012 (*Federal Register*, <77 FR 28772>) for 40 CFR Part 51, determining that vehicle ORVR technology is in widespread use for the purposes of controlling motor vehicle refueling emissions throughout the motor vehicle fleet. This action allows the EPA to waive the requirement for states to implement Stage II gasoline vapor recovery systems at GDFs in nonattainment areas classified as serious and above for the ozone NAAQS.

The proposed 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 proposed rulemaking will implement the EPA's rulemaking that was published May 16, 2012 (*Federal Register*, 77 FR 28772) for 40 CFR Part 51, determining that vehicle ORVR technology is in widespread use for the purposes of controlling motor vehicle refueling emissions throughout the motor vehicle fleet and waiving the requirement for states to implement Stage II gasoline vapor recovery systems at GDFs in nonattainment areas classified as serious and above for the ozone NAAQS. Revisions to Chapter 115 specifying that owners of new GDFs are not required to install Stage II equipment and to allow existing owners of GDFs in the current program areas to properly decommission Stage II equipment is a necessary and required component of developing the SIP for nonattainment areas as required by 42 USC, §7410.

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 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 would seldom apply, the commission provided a cost estimate for SB 633 concluding that "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted proposed rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law.

As discussed earlier in this preamble, the FCAA does not always require specific programs, methods, or reductions in order to meet the NAAQS; thus, states must develop programs for each area contributing to nonattainment to help ensure that those areas will meet the attainment deadlines. Because of the ongoing need to address nonattainment issues and to meet the requirements of 42 USC, §7410, the commission

routinely proposes and adopts SIP rules. The legislature is presumed to understand this federal scheme. If each rule proposed for inclusion in the SIP was considered to be a major environmental rule that exceeds federal law, then every SIP rule would require the full regulatory impact analysis contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes and that presumption is based on information provided by state agencies and the LBB, the commission believes that the intent of SB 633 was only to require the full regulatory impact analysis for rules that are extraordinary in nature. While the SIP rules will have a broad impact, the impact is no greater than is necessary or appropriate to meet the requirements of the FCAA. For these reasons, rules adopted for inclusion in the SIP fall under the exception in Texas Government Code, §2001.0225(a) because they are required by federal law.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code but left this provision substantially 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 the proposed rulemaking would allow owners of new GDFs not to install Stage II equipment and allow owners of existing GDFs in the current program areas to properly decommission Stage II equipment. The EPA may grant the removal and waiver of Stage II equipment due to the widespread use of ORVR in the overall vehicle fleet. The proposed rules would permit these changes to occur in Texas. As

explained previously in this preamble, vehicles equipped with ORVR technology provide greater pollution reduction benefits than Stage II control systems and are more cost-effective. The proposed rulemaking does not exceed a standard set by federal law or exceed an express requirement of state law. No contract or delegation agreement covers the topic that is the subject of this proposed rulemaking. Therefore, this proposed rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b) because although 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. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

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 specifying that new GDFs are not required to install Stage II equipment and to allow existing GDFs in the current program areas to properly decommission Stage II equipment as required by 42 USC, §7410. FCAA, §182(b)(3)

provides that for certain nonattainment areas, states must revise their SIP to require all owners or operators of GDFs operating after November 15, 1990, to install a system for gasoline vapor recovery of emissions from the fueling of motor vehicles. FCAA, §202(a)(6) also required the EPA to implement requirements for vehicle ORVR. Both Stage II and vehicle ORVR are types of emission control systems that capture fuel vapors from vehicle gas tanks during refueling. FCAA, §202(a)(6) also provided that the EPA may revise or waive the application of Stage II requirements if it determined that ORVR was in widespread use throughout the motor vehicle fleet.

The EPA finalized a rulemaking on May 16, 2012 (*Federal Register, 77 FR 28772*), for 40 CFR Part 51, determining that vehicle ORVR technology is in widespread use for the purposes of controlling motor vehicle refueling emissions throughout the motor vehicle fleet. This action allows the EPA to waive the requirement for states to implement Stage II gasoline vapor recovery systems at GDFs in nonattainment areas classified as serious and above for the ozone NAAQS. The EPA may grant the removal and waiver of Stage II equipment due to the widespread use of ORVR in the overall vehicle fleet. The proposed rulemaking and corresponding SIP would permit these changes to occur in Texas. As explained previously in the preamble, vehicles equipped with ORVR technology provide greater pollution reduction benefits than Stage II control systems and are more cost-effective. Texas Government Code, §2007.003(b)(4), provides that Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking because it is an action

reasonably taken to fulfill an obligation mandated by federal law.

In addition, the commission's assessment indicates that Texas Government Code, Chapter 2007 does not apply to these proposed rules because this action 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). The proposed rules fulfill the FCAA requirement to decommission Stage II equipment in nonattainment areas. These revisions will result in VOC emission reductions in ozone nonattainment areas, which may contribute to the timely attainment of the ozone standard and reduced public exposure to 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 reviewed the proposed rulemaking and found the proposal 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 rulemaking is a fee rule, which is a procedural mechanism for paying for commission programs; 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.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the submittal of comments section of this preamble.

Effect on Sites Subject to the Federal Operating Permits Program

Chapter 115 contains applicable requirements under 30 TAC Chapter 122, Federal Operating Permits; therefore, owners or operators subject to the Federal Operating Permit Program must, consistent with the revision process in Chapter 122, revise their

operating permits to include the revised Chapter 115 requirements for each emission unit at their sites affected by the revisions to Chapter 115.

Announcement of Hearings

The commission will hold public hearings on this proposal in El Paso on May 28, 2013, at 2:00 P.M., El Paso Public Library Auditorium, 501 N. Oregon; Beaumont at 2:00 P.M. on May 30, 2013, Texas Commission on Environmental Quality Region 10 Office, 3870 Eastex Freeway; Houston at 2:00 P.M, Houston-Galveston Area Council, 3555 Timmons, 2nd Floor, Room A. on May 31, 2013; Arlington at 2:00 P.M. on June 3, 2013, Arlington City Council Chamber, 101 West Abram; Austin at 2:00 P.M. on June 4, 2013, Texas Commission on Environmental Quality, 12100 Park 35 Circle, Building E, Room 201S; The hearings are structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearings; however, commission staff members will be available to discuss the proposal 30 minutes prior to each hearing.

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

Submittal of Comments

Comments may be submitted to Bruce McAnally, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.texas.gov/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2013-001-115-AI. The comment period closes June 10, 2013. Copies of the proposed rulemaking can be obtained from the commission's website at *http://www.tceq.texas.gov/nav/rules/propose_adopt.html*. For further information, please contact Santos Olivarez, Air Quality Planning Section (512) 239-4718.

SUBCHAPTER C: VOLATILE ORGANIC COMPOUND TRANSFER OPERATIONS
DIVISION 4: CONTROL OF VEHICLE REFUELING EMISSIONS (STAGE II)
AT MOTOR VEHICLE FUEL DISPENSING FACILITIES

§§115.240, 115.241, 115.242 - 115.246

Statutory Authority

The amendments and new section are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act.

The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; and §382.208, concerning

Attainment Program, which authorizes the commission to develop and implement transportation programs and other measures necessary to demonstrate attainment and protect the public from exposure to hazardous air contaminants from motor vehicles.

The new section is also proposed under THSC, §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions. The new section is also proposed under THSC, §382.019, concerning methods used to control and reduce emissions from land vehicles, which authorizes the commission to adopt Stage II rules in nonattainment areas if demonstrated as necessary for attainment of the ozone National Ambient Air Quality Standard (NAAQS) or upon a determination that it is necessary to protect public health. The new section is also proposed under FCAA, 42 USC, §§7401, *et seq.*, which requires states to submit SIP revisions that specify the manner in which the NAAQS will be achieved and maintained within each air quality control region of the state.

The amendments and new section implement THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, 382.208 and FCAA, 42 USC, §§7401 *et seq*.

§115.240. Stage II Vapor Recovery Definitions and List of California Air Resources Board Certified Stage II Equipment.

(a) The following words and terms, when used in this division, have the following meanings, unless the context clearly indicates otherwise. Additional definitions for terms used in this division are found in §§115.10, 101.1, and 3.2 of this title (relating to Definitions).

(1) Decommission--The permanent removal of the Stage II vapor control equipment at a gasoline dispensing facility.

(2) Gasoline dispensing facility--A location that dispenses gasoline to motor vehicles and includes retail, private, and commercial outlets.

(3) [(1)] Major system replacement or modification:

(A) the repair or replacement of any stationary storage tank equipped with a Stage II vapor recovery system;

(B) the replacement of an existing California Air Resources Board (CARB) certified Stage II vapor recovery system with a system certified by CARB under a different CARB Executive Order, or certified by an approved third-party;

(C) the repair or replacement of any part of a piping system attached to a stationary storage tank equipped with a Stage II vapor recovery system, excluding the repair or replacement of piping which is accessible for such repair or replacement without excavation or modification of the vapor recovery equipment; or

(D) the replacement of at least one fuel dispenser.

(4) [(2)] Onboard refueling vapor recovery--A system on motor vehicles designed to recover hydrocarbon vapors that escape during refueling.

(5) [(3)] Onboard refueling vapor recovery compatible--A Stage II vapor recovery system certified by CARB or other acceptable independent third-party evaluator, using test methods approved by the executive director, as onboard refueling vapor recovery (ORVR) compatible or a system listed in subsection (b) of this section, either of which maintains a required minimum overall system efficiency of 95% (as certified under third-party evaluation) while dispensing fuel without difficulty to both ORVR-equipped and non ORVR-equipped vehicles.

(6) [(4)] Owner or operator of a motor vehicle fuel dispensing facility--Any person who owns, leases, operates, or controls the gasoline [motor vehicle fuel] dispensing facility.

(b) The table contained in this subsection is a list of the Stage II vapor recovery systems certified by a CARB Executive Order in effect as of January 1, 2002.

Figure: 30 TAC §115.240(b) (No change to the figure as it currently exists in TAC)

§115.241. Decommissioning of Stage II Vapor Recovery Equipment.

(a) The owner or operator of a gasoline dispensing facility may decommission Stage II vapor recovery equipment beginning 30-calendar days after the United States Environmental Protection Agency's approval of the repeal of the Stage II vapor recovery requirement and decommissioning requirements.

(b) Owners or operators of gasoline dispensing facilities decommissioning Stage II vapor recovery equipment shall comply with the following.

(1) The owner or operator shall submit written notification of decommissioning of the Stage II vapor recovery equipment at least 30-calendar days prior to the beginning of the activity to the appropriate Texas Commission on Environmental Quality (TCEQ) regional office and local government with jurisdiction where the gasoline dispensing facility is located.

(2) The owner or operator shall notify by either telephone, e-mail, or facsimile, the appropriate TCEQ regional office and local government with jurisdiction where the gasoline dispensing facility is located 24 to 72 hours prior to the beginning of decommissioning.

(3) The owner or operator shall provide with the written notification:

(A) dispensing facility name and location address;

(B) owner name, address, and phone number;

(C) operator name, address, and phone number;

(D) contractor name, address, phone number, and Underground Storage Contractor License number; and

(E) Stage II vapor recovery system information.

(4) The owner or operator shall perform and complete all of the following decommissioning activities, as applicable:

(A) initiating safety procedures;

(B) relieving pressure in the tank ullage by removing all pressure/vacuum vent valves;

(C) draining all liquid collection points;

(D) disconnecting all electrical components of the Stage II system so that no electrical hazards are created including but not limited to all vapor pumping or processing units and dispenser electronics;

(E) reprogramming the dispenser electronics to reflect that Stage II Vapor Recovery is no longer in service;

(F) securely sealing off the below-grade vapor piping at a height below the level of the base of the dispenser using only threaded plugs, threaded caps, or glued fittings;

(G) disconnecting and sealing off the vapor piping at the tank top if this can be done without excavation and without interfering with the vent line using only threaded plugs, threaded caps, or glue fittings;

(H) securely sealing the lower end of the vapor piping inside the dispenser cabinet using only threaded plugs, threaded caps, or glue fittings;

(I) replacing the Stage II hanging hardware with conventional, industry-standard hanging hardware;

(J) installing appropriate pressure/vacuum vent valve(s);

(K) removing any Stage II instructions from the dispenser cabinet;

(L) visually inspecting and verifying that the visible components of the storage system are left in a condition that will reliably prevent the release of any vapors or liquids from any components of the storage system;

(M) conducting the Texas test procedures TXP-102 (*Vapor Recovery Test Procedures Handbook*, RG-399, November 2002) and recording results

on Form 102 indicating that the storage system is in a condition that will prevent leaking of vapors or liquids prior to restoring the facility to operating status;

(N) conducting the Texas test procedures TXP-103, Procedure 2, (*Vapor Recovery Test Procedures Hand Book*, RG-399, November 2002) recording results on Form 103 indicating that the vent lines are functioning in a condition that will prevent the leaking of vapors or liquids prior to restoring the facility to operating status;

(O) disconnecting the OPW VaporSavor or Arid Permeater vapor recovery systems if they are present on the Stage II system and sealing piping using only threaded plugs, threaded caps, or glue fittings; and

(P) disconnecting the central vacuum motor if present on the Stage II system and sealing piping using only threaded plugs, threaded caps, or glue fittings.

(5) The owner or operator shall notify the TCEQ regional office and local government with jurisdiction where the gasoline dispensing facility is located no later than ten calendar days after completion of decommissioning. Notification must include:

(A) a certified and signed document with the name, address, and license number of the licensed contractor who performed the decommissioning;

(B) name, address, and license number of the licensed contractor who performed the testing to ensure that no leaks have been detected; and

(C) copies of all required test results including the TX-102 and TX-103 tests.

(c) Owners or operators of all gasoline dispensing facilities, regardless of location in the state, shall have completed the decommissioning of all Stage II vapor recovery control equipment no later than August 31, 2018.

§115.242. Control Requirements.

(a) After May 16, 2012, the owner or operator of a newly constructed gasoline dispensing facility is no longer required to install Stage II vapor controls on its gasoline dispensing equipment in any county in the state of Texas. Gasoline dispensing facilities that did not have Stage II vapor controls as of May 16, 2012 due to a confirmed exemption because of low monthly throughput or low average monthly throughput are not subject to the requirements of this division.

(b) The owner or operator of every gasoline dispensing facility that has installed Stage II vapor controls shall complete decommissioning of Stage II vapor controls no later than August 31, 2018.

(c) All owners or operators of gasoline dispensing facilities decommissioning installed Stage II vapor controls shall comply with the requirements of §115.241 of this title (relating to Decommissioning of Stage II Vapor Recovery Equipment).

(d) Until the owner or operator of a gasoline dispensing facility decommissions Stage II vapor recovery controls that are installed at the gasoline dispensing facility, the owner or operator shall be subject to the following requirements of this section as well as the requirements of this division.

[For all persons in the counties listed in §115.249 of this title (relating to Counties and Compliance Schedules) and affected by this division (relating to Control of Vehicle Refueling Emissions (Stage II) at Motor Vehicle Fuel Dispensing Facilities), a vapor recovery system will be assumed to comply with the specified emission limitation of §115.241 of this title (relating to Emission Specifications) if the following conditions are met.]

(1) All installed [The facility is equipped with a] Stage II vapor recovery systems must be [system] certified by a California Air Resources Board (CARB) Executive Order in effect as of January 1, 2002 (as specified in §115.240(b) of this title (relating to Stage II Vapor Recovery Definitions and List of California Air Resources Board Certified Stage II Equipment)); or certified by a CARB Executive Order in effect after January 1, 2002, except that the executive director reserves the right to continue to recognize any CARB Executive Orders decertified after January 1, 2002; or certified by an alternative procedure that [which] meets the requirements specified in §115.243 of this title (relating to Alternate Control Requirements). In addition:

(A) Stage II vapor recovery balance systems that [which] include vapor check valves in a location other than the nozzle may not be installed;

(B) Stage II vapor recovery systems that [which] include dual-hang (non-coaxial) hoses may not be installed; and

(C) all Stage II vapor recovery systems must be onboard refueling vapor recovery (ORVR) compatible, as defined in §115.240 of this title [in accordance with the schedules in §115.249 of this title].

(2) All underground piping must be installed by a person holding a valid License A as defined in §§334.401, 334.407, and 334.424 of this title (relating to License and Registration Required; Other Requirements for an Underground Storage Tank Contractor ; and Other Requirements for an On-Site Supervisor). Piping specifications must be in compliance with the applicable CARB Executive Order(s) or third-party certification for the Stage II vapor recovery system. For any facility newly constructed after November 15, 1993, or at any facility undergoing a major modification to the Stage II vapor recovery system after November 15, 1993, the following requirements apply where piping specifications are not provided in the applicable CARB Executive Order(s) or third-party certification.

(A) All underground piping must be constructed of rigid material and conform to the applicable portions of the technical standards for new piping defined by §334.45(c) and (e) of this title (relating to Technical Standards for New Underground Storage Tank Systems).

(B) Noncorrodible piping or cathodically protected metallic piping must be used. In the event metallic piping is used, the applicable portions of the general requirements for corrosion protection defined by §334.49(a)(1) - (5) and (c)(1) - (4) of this title (relating to Corrosion Protection) apply.

(C) Minimum slope on vapor piping must be 1/8 inch per foot from the dispenser to the storage tank. Piping installed after January 1, 2002 must not include liquid collection points (condensate traps) unless the associated underground storage tanks:

(i) were installed prior to November 15, 1992; and

(ii) are not at sufficient depth to allow for minimum slope requirements.

(D) Vapor piping on balance systems must be two inches or greater in diameter, and when there are more than four fueling points connected to one vapor line, the minimum vapor piping size must be three inches in diameter. For the purposes of this paragraph, a single nozzle dispenser constitutes one fueling point and a multi-nozzle dispenser constitutes two fueling points.

(E) Riser piping must have a minimum inside diameter of one inch and must slope towards the storage tank at all points. Riser piping is defined as the predominantly vertically oriented vapor recovery piping that enters the gasoline dispenser base, which connects the dispenser mounted piping with the buried vapor recovery piping that leads to one or more storage tanks.

(F) If a fire protection agency with jurisdiction requires a vapor shear valve on the vapor return line at the base of a dispenser, the shear valve must be CARB-certified and/or Underwriters Laboratories listed for use in vapor recovery systems.

(3) The owner or operator shall maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable CARB Executive Order(s) or third-party certification, and free of defects that would impair the effectiveness of the system, including, but not limited to:

(A) absence or disconnection of any component that is a part of the approved system;

(B) a vapor hose that is crimped or flattened such that the vapor passage is blocked, or the backpressure through the vapor system exceeds the value as certified in the approved system's CARB Executive Order(s) or third-party certification;

(C) a nozzle boot that is torn in one or more of the following ways:

(i) a triangular-shaped or similar tear more than 1/2 inch on a side;

(ii) a hole more than 1/2 inch in diameter; or

(iii) a slit more than one inch in length;

(D) for balance nozzles, a faceplate that is damaged such that the capability to achieve a seal with a fill pipe interface is affected for a total of at least one-fourth of the circumference of the faceplate;

(E) for booted nozzles in vacuum assist type systems, a flexible cone for which a total of at least one-fourth of the cone is damaged or missing;

(F) a nozzle shut-off mechanism that malfunctions in any manner;

(G) vapor return lines, including such components as swivels, anti-recirculation valves, and underground piping, that malfunction, are blocked, or are restricted such that the pressure decay and/or dynamic backpressure through the line exceeds the value as certified in the approved system's CARB Executive Order(s) or third-party certification;

(H) a vapor processing or control unit that is inoperative or defective;

(I) a vacuum producing device that is inoperative or defective;

(J) pressure/vacuum relief valves, vapor check valves, or Stage I dry breaks that are inoperative or defective;

(K) a system monitor or printer that is malfunctioning or out of paper;

(L) a nozzle, hose, break-away, or any other component that is not approved for use with the certified vapor recovery system in use; and

(M) any equipment defect that is identified in the certification of an approved system as substantially impairing the effectiveness of the system in reducing refueling vapor emissions.

(4) No gasoline leaks, as detected by sampling, sight, sound, or smell, exist anywhere in the dispensing equipment or Stage II vapor recovery system.

(5) Upon identification of any of the defects described in paragraphs (3) and (4) of this section, the owner or operator or his or her representative shall remove from service all dispensing equipment for which vapor recovery has been impaired. The impaired equipment must remain out of service until such time as the equipment has been properly repaired, replaced, or adjusted, as necessary. Once repaired, the equipment may be returned to service by the owner or operator or his or her representative.

(6) Upon identification of any of the defects described in paragraphs (3) and (4) of this section, any inspector with jurisdiction shall tag the impaired equipment out-of-order. The "Out-of-Order" tag must state "use of this device is prohibited under state law, and unauthorized removal of this tag or use of this equipment will constitute a violation of the law punishable by a maximum civil penalty of up to $25,000 per day or a maximum criminal penalty of $50,000 and/or up to 180 days in jail." The impaired equipment must remain out of service until such time as the equipment has been properly repaired, replaced, or adjusted, as necessary. After repairs are completed and verbal notification is given to the agency that originally tagged the equipment out of service, the "Out-of-Order" tag may be removed by the owner or operator or the facility representative and the equipment may be returned to service. Within ten days of placing the equipment back in service, written notification that the equipment has been

returned to service must be provided by the owner or operator or the facility representative to the agency that originally tagged the equipment out-of-service. For the purposes of this paragraph, "facility representative" has the meaning ascribed to it in §115.248(1) of this title (relating to Training Requirements).

(7) No person shall repair, modify, or permit the repair or modification of the Stage II vapor recovery system or its components such that they are different from their approved configuration, and only original equipment manufacturer (OEM) parts or CARB-certified non-OEM aftermarket parts shall be used as replacement parts.

(8) No person shall tamper with, or permit tampering with, any part of the Stage II vapor recovery system in a manner that would impair the operation or effectiveness of the system.

(9) The owner or operator of a <u>gasoline</u> [motor vehicle fuel] dispensing facility shall post operating instructions conspicuously on the front of each gasoline dispensing pump equipped with a Stage II vapor recovery system. These instructions, at a minimum, include:

(A) a clear description of how to correctly dispense gasoline using the system; and

(B) a warning against attempting to continue to refuel after initial automatic shutoff of the system (an indication that the vehicle fuel tank is full).

[(10) Any motor vehicle fuel dispensing facility that does not meet an exemption in §115.247 of this title (relating to Exemptions) shall have 120 days to come into compliance with the provisions of this division and will remain subject to the provisions of this division even if its gasoline throughput later falls below throughput limits, except that:]

[(A) at a facility exempted under §115.247(2) of this title for which an exceedance occurred between January 1, 1991, and November 15, 1992, the owner or operator may petition the executive director to permit a continuance of the facility's exempt status provided that the average monthly throughput calculated from January 1, 1991, to November 15, 1992, remained below 10,000 gallons. If exempt status is continued by the executive director, the annual verification of exempt status as required in §115.247(2) of this title must be fulfilled; and]

[(B) at a facility exempted under §115.247(2) of this title for which an exceedance occurred for any consecutive 30-day period due to an emergency condition or natural disaster after November 15, 1992, the owner or operator may

petition the executive director to permit the continuance of the facility's exempt status or extended compliance schedule status. If exempt status is continued by the executive director, the requirement of annual verification of the status as stated in §115.247(2) of this title must be fulfilled.]

[(11) Any facility having installed Stage II vapor recovery system(s) or component(s) previously certified by CARB via an Executive Order, for which certification was revoked by CARB, prior to January 1, 2002, must install and have operational an approved system(s) or component(s) as referenced in paragraph (1) of this section as soon as practicable, but no later than September 1, 2006.]

[(12) After November 15, 1993, the owner or operator shall provide written notification of any Stage II vapor recovery system installation to the appropriate regional office and any local air pollution program with jurisdiction at least 30 days prior to start of construction. The information in the notification shall include, but is not limited to:]

[(A) facility name, location (physical and mailing address); name, address, and phone number of owner(s) and operator(s); name and phone number of owner's representative; name, address, and phone number of contractor(s); and the Petroleum Storage Tank Facility ID number and Owner ID number (if known);]

[(B) proposed start date; and]

[(C) type of Stage II system to be installed, including CARB Executive Order number(s) or third-party certification number(s) and the number of gasoline nozzles at the facility.]

§115.243. Alternate Control Requirements.

Alternate methods of complying with §115.242(d)(1) [§115.242(1)] of this title (relating to Control Requirements) may be approved by the executive director if:

(1) emission reductions are demonstrated to be equivalent or greater than those afforded by the requirements in §115.242(d)(1) [§115.242(1)] of this title; and

(2) the Stage II vapor recovery system is capable of meeting the applicable performance requirements prescribed in this division [(relating to Control of Vehicle Refueling Emissions (Stage II) at Motor Vehicle Fuel Dispensing Facilities),] as certified by third-party evaluation conducted by a qualified independent testing organization using a code or standard of practice, acceptable to the executive director, which has been

developed by a nationally recognized agency, association, or independent testing laboratory.

§115.244. Inspection Requirements.

The owner or operator of any gasoline [motor vehicle fuel] dispensing facility subject to the control requirements of this division [(relating to Control of Vehicle Refueling Emissions (Stage II) at Motor Vehicle Fuel Dispensing Facilities)] shall conduct daily inspections of the Stage II vapor recovery system for the defects specified in §115.242(d)(3) and (4) [§115.242(3) and (4)] of this title (relating to Control Requirements) as follows.

(1) For all systems, the daily inspections must [shall] include the applicable portions of §115.242(d)(3)(A) - (F), (H), and (K), and (4) [§115.242(d)(3)(A) - (F), (H), and (K), and (4)] of this title.

(2) For assist systems that use a processor, indicating mechanisms designed by the Stage II vapor recovery equipment manufacturer to verify proper operation must [shall] be inspected daily. Examples of these indicating mechanisms include flame detection sensors, remote (from the processor) visual or audible displays

indicating system operation, or other means as described in the applicable Executive Order for the system.

(3) For all systems, the components listed in §115.242(d)(3)(J) [§115.242(3)(J)] of this title must [shall] be inspected at least monthly.

(4) For all systems, the components listed in §115.242(d)(3)(G) [§115.242(3)(G)] of this title must [shall] be inspected at least annually.

§115.245. Testing Requirements.

For owners or operators of gasoline dispensing facilities that have not yet decommissioned Stage II vapor controls and must repair, replace, or retain Stage II vapor controls up to the decommissioning deadline of August 31, 2018, compliance with §115.242 of this title (relating to Control Requirements) must be determined at the gasoline dispensing facility as follows. [For all affected persons, compliance with §115.241 and §115.242 of this title (relating to Emission Specifications and Control Requirements) shall be determined at each gasoline dispensing facility by testing as follows.]

(1) Within 30 days of installation, at least once every 36 months thereafter, and upon major system replacement or modification, Stage II vapor recovery systems must successfully meet the performance criteria proper to the system by successfully completing the following testing requirements using the test procedures as found in the commission's Vapor Recovery Test Procedures Handbook (test procedures handbook) (RG-399, November 2002).

(A) For balance and assist systems:

(i) the manifolding or interconnectivity of the vapor space must be consistent with the Executive Order or third-party certification requirements for the installed system (Texas test procedure TXP-101 or equivalent);

(ii) the sum of the vapor leaks in the system must not exceed acceptable limits for the system as defined in the pressure decay test (Texas test procedure TXP-102 or equivalent);

(iii) the maximum acceptable backpressure through a given vapor path must not exceed the limits as found in the backpressure/liquid blockage test applicable for the vapor path for the system (Texas test procedure TXP-103 or equivalent); and

(iv) the maximum gasoline flow rate through the nozzle must not exceed the limits found in the Executive Order or third-party certification for the system (Texas test procedure TXP-104 or equivalent).

(B) For bootless nozzle assist systems, the volume-to-liquid ratio (V/L ratio) or air-to-liquid ratio (A/L ratio) must be within acceptable limits (Texas test procedure TXP-106 or equivalent).

(C) Each system must meet minimum performance criteria specific to the individual system as defined in the California Air Resources Board (CARB) Executive Order or third-party certification. The criteria and test methods contained in the test procedures handbook specified in paragraph (1) of this section must take precedence for applicable tests where performance criteria exist in both the Executive Order and the test procedures handbook; otherwise, the Executive Order specific criteria must take precedence.

(2) Verification of proper operation of the Stage II equipment must be performed in accordance with the test procedures referenced in paragraph (1) of this section at least once every 12 months. The verification must include all functional tests that were required for the initial system test, except for TXP-101, Determination of

Vapor Space Manifolding of Vapor Recovery Systems at Gasoline Dispensing Facilities, and TXP-103, Determination of Dynamic Pressure Performance (Dynamic Back-Pressure) of Vapor Recovery Systems at Gasoline Dispensing Facilities, which must be performed at least once every 36 months.

(3) The owner or operator, or his or her representative, shall provide written notification to the appropriate regional office and any local air pollution program with jurisdiction of the testing date and time and of whom will conduct the test. The notification must be received by the appropriate regional office and any local air pollution program with jurisdiction at least ten working days in advance of the test, and the notification must contain the information and be in the format as found in the test procedures handbook. Notification may take the form of a facsimile or telecopier transmission, as long as the facsimile is received by the appropriate regional office and any local air pollution program with jurisdiction at least ten working days prior to the test and it is followed up within two weeks of the transmission with a written notification. The owner or operator, or his or her representative, shall give at least 24-hour notification to the appropriate regional office and any local air pollution program with jurisdiction if a scheduled test is cancelled. In the event that the test cancellation is not anticipated prior to 24 hours before the scheduled test, the owner or operator, or his or her representative, shall notify the appropriate regional office and any local air

pollution program with jurisdiction as soon in advance of the scheduled test as is practicable.

(4) Minor modifications of these test methods may only be used if they have been approved by the executive director.

(5) All required tests must be conducted either in the presence of a Texas Commission on Environmental Quality or local program inspector with jurisdiction, or by a person who is registered with the executive director to conduct Stage II vapor recovery tests. The requirement to be registered must [shall] begin on November 15, 1993, or 60 days after the executive director has established the registry, whichever occurs later. The executive director may remove an individual from the registry of testers for any of the following causes:

(A) the executive director can demonstrate that the individual has failed to conduct the test(s) properly in at least three separate instances; or

(B) the individual falsifies test results for tests conducted to fulfill the requirements of this section.

(6) The owner or operator, or his or her representative, shall submit the results of all tests required by this section to the appropriate regional office and any local air pollution control program with jurisdiction within ten working days of the completion of the test(s) using the format specified in the test procedures handbook. For purposes of on-site recordkeeping, the Test Procedures Results Cover Sheet, properly completed with the summary of the testing, is acceptable. The detailed results from each test conducted along with a properly completed summary sheet, as provided for in the test procedures handbook, must be submitted to the appropriate regional office and any local air pollution control program with jurisdiction.

§115.246. Recordkeeping Requirements.

The owner or operator of any gasoline [motor vehicle fuel] dispensing facility subject to the control requirements of this division [(relating to Control of Vehicle Refueling Emissions (Stage II) at Motor Vehicle Fuel Dispensing Facilities)] shall maintain the following records:

(1) a copy of the California Air Resources Board (CARB) Executive Order(s) or third-party certification(s) for the Stage II vapor recovery system and any related components installed at the facility;

(2) a copy of any owner or operator request for executive director approval under §115.243 of this title (relating to Alternate Control Requirements) and any executive director approval issued under §115.243 of this title;

(3) a record of any maintenance conducted on any part of the Stage II equipment, including a general part description, the date and time the equipment was taken out of service, the date of repair or replacement, the replacement part manufacturer's information, a general description of the part location in the system (e.g., pump or nozzle number, etc.), and a description of the problem;

(4) proof of attendance and completion of the training specified in §115.248 of this title (relating to Training Requirements), with the documentation of all Stage II training for each employee to be maintained as long as that employee continues to work at the facility;

(5) a record of the results of testing conducted at the gasoline [motor vehicle fuel] dispensing facility in accordance with the provisions specified in §115.245 of this title (relating to Testing Requirements);

(6) a record of the results of the daily inspections conducted at the gasoline [motor vehicle fuel] dispensing facility in accordance with the provisions specified in §115.244 of this title (relating to Inspection Requirements); [and]

(7) copies of all notifications and records sufficient to demonstrate compliance with the applicable decommissioning steps listed in §115.241 of this title (relating to Decommissioning of Stage II Vapor Recovery Equipment), including all required test results, kept on site for five years following the completion of the decommissioning activity; and

(8) [(7)] the CARB Executive Order(s) or third party certification(s) specified in paragraph (1) of this section, any applicable alternate method of control requirement approval specified in paragraph (2) of this section, and testing results specified in paragraph (5) of this section be kept on site indefinitely. Records of all maintenance conducted on Stage II equipment specified in paragraph (3) of this section, proof of attendance and completion of training as specified in paragraph (4) of this section, and records of daily inspections as specified in paragraph (6) of this section must be maintained for at least two years. Decommissioning records in paragraph (7) of this section must be maintained for at least five years. [all records shall be maintained for at least two years, except that the CARB Executive Order(s) or third-party certification(s) specified in paragraph (1) of this section, any applicable alternate

method of control requirement approval specified in paragraph (2) of this section, and testing results specified in paragraph (5) of this section shall be kept on-site indefinitely.] These records shall be:

(A) kept on site [on-site] at facilities ordinarily manned during business hours[,] and made immediately available for review upon request by authorized representatives of the executive director, United States Environmental Protection Agency (EPA) [EPA] or any local air pollution control program with jurisdiction; or

(B) for gasoline dispensing facilities unmanned at the time of inspection, made available at the site within 48 hours after being requested by authorized representatives of the executive director, EPA, or any local air pollution control program with jurisdiction.

SUBCHAPTER C: VOLATILE ORGANIC COMPOUND TRANSFER OPERATIONS
DIVISION 4: CONTROL OF VEHICLE REFUELING EMISSIONS (STAGE II) AT MOTOR VEHICLE FUEL DISPENSING FACILITIES
§§115.241, 115.247, 115.249

Statutory Authority

The repealed sections are proposed under Texas Water Code (TWC), §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 TWC; and under the Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The repealed sections are also proposed under 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; §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 control of the state's air; and §382.208, concerning Attainment Program, which authorizes the commission to develop and implement transportation programs and other measures necessary to demonstrate attainment and protect the public from exposure to hazardous air contaminants from motor vehicles.

The repealed sections implement THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, 382.208 and FCAA, 42 USC, §§7401 *et seq*.

[§115.241. Emission Specifications.]

[No person in the counties listed in §115.249 of this title (relating to Counties and Compliance Schedules) shall transfer or allow the transfer of gasoline from any stationary storage container into a motor vehicle fuel tank, unless an approved Stage II vapor recovery system has been installed which is certified to reduce the emissions of volatile organic compound to the atmosphere by at least 95%.]

[§115.247. Exemptions.]

[The following are exempt from the requirements of this division (relating to Control of Vehicle Refueling Emissions (Stage II) at Motor Vehicle Fuel Dispensing Facilities):]

[(1) gasoline dispensing equipment used exclusively for the fueling of aircraft, watercraft, or implements of agriculture;]

[(2) any motor vehicle fuel dispensing facility for which construction began prior to November 15, 1992, and which has a monthly throughput of less than 10,000 gallons of gasoline. For the purposes of this paragraph, the monthly throughput shall be based on the maximum monthly gasoline throughput for any calendar month after January 1, 1991. To maintain a facility's exempt status under this paragraph, the owner or operator must submit the facility's monthly gasoline throughput on an annual basis no later than January 31 of each year to the executive director or designated representative; and]

[(3) any motor vehicle dispensing facility where 95% or more of the motor vehicle fleet being fueled onsite is equipped with onboard refueling vapor recovery equipment. To maintain a facility's exempt status under this paragraph, the owner or operator must submit documentation showing the fleet meets the requirements under this paragraph on an annual basis no later than January 31 of each year to the executive director or designated representative.]

[§115.249. Counties and Compliance Schedules.]

[(a) The rules in this division (relating to Control of Vehicle Refueling Emissions (Stage II) at Motor Vehicle Fuel Dispensing Facilities) apply to affected persons in

Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Harris, Hardin, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties.]

[(b) All affected persons shall continue to comply with this division as required by §115.930 of this title (relating to Compliance Dates).]

[(c) All Stage II vapor recovery systems must be onboard refueling vapor recovery (ORVR) compatible according to the following schedules:]

[(1) all installations of Stage II vapor recovery systems installed on or after April 1, 2005, must be ORVR compatible; and]

[(2) all Stage II vapor recovery systems installed before April 1, 2005, must be upgraded to an ORVR compatible system no later than April 1, 2007.]