APPENDIX B

MOST RECENT ANTI-TAMPERING RULE REVISION
APPROVED IN THE STATE IMPLEMENTATION PLAN FOR
TEXAS, ADOPTED JULY 26, 1985
PROPOSAL: PUBLISHED IN THE TEXAS REGISTER ON MARCH 1, 1985
The Texas Air Control Board (TACB) proposes amendments to §§114.1, 114.3, and 114.5, concerning motor vehicles. In §114.1, concerning maintenance and operation of air pollution control systems or devices used to control emissions from motor vehicles, the proposed amendments extend the provisions of subsection (c) to include any person offering for sale a motor vehicle in the State of Texas and add a new paragraph (3) to require motor vehicle facilities in Dallas, El Paso, Harris, and Tarrant Counties to display the notice of the prohibitions and requirements of this subsection. The proposed amendments also extend the provisions of subsection (e), which requires posting of a notice of the prohibition and requirements on the dispensing of leaded gasoline at motor vehicle dispensing facilities, to include facilities in Dallas, El Paso, and Tarrant Counties. The proposed amendments also require persons affected by subsection (f) in Dallas, El Paso, Harris, and Tarrant Counties to display a notice of the prohibitions and requirements regarding the sale, offering for sale, or use of any system or device to circumvent any pollution control system or device originally designed by the manufacturer for use in motor vehicles.

In §114.3, concerning inspection requirements, the proposed amendments delete subsection (b) which requires the seller of any 1980 or newer model year motor vehicle to provide upon transfer of ownership to any resident of Harris County a certification that the vehicle complies with the air pollution emission control requirements included in the annual vehicle safety inspection administered in Harris County by the Texas Department of Public Safety.

In §114.5, concerning exclusions and exceptions, the proposed amendments more precisely identify the vehicles used solely or primarily on a farm or ranch which are exempted from the requirements of this chapter by subsection (a), and those vehicles registered as farm vehicles with the Motor Vehicle Division of the Texas Department of Highways and Public Transportation. The proposed amendments also add oxygen sensors to the list of devices which may be removed in accordance with the provisions of subsection (b) for vehicles belonging to members of the United States Department of Defense (DOD) regarding DOD-Privately Owned Vehicle Import Program. The provisions of subsection (b) are also expanded to include vehicles belonging to other federal government employees being transferred overseas. The proposed amendments add subsection (d), which establishes procedures and requirements for applying to the executive director for a waiver from §114.1(a) and (b), regarding the operation and sale of a motor vehicle without specified pollution control systems or devices; subsection (e), which establishes an exemption for registered farm vehicles and vehicles which have been granted a waiver in accordance with the provisions of the new subsection (d) from the requirements of §114.3, regarding annual inspection of pollution control systems or devices; subsection (f), which exempts motor vehicle service or repair facilities from the provisions of §114.1(b), regarding removal or alteration of any pollution control system or device on any vehicle which is exempted in accordance with the provisions of subsections (a), (b), or (d) of this section; subsection (g), which exempts municipalities from the provisions of §114.1(c), regarding the sale of abandoned vehicles; and a subsection (h), which exempts a vehicle owner from the provisions of §114.1(c), regarding the sale of a motor vehicle which has been totally disabled and would no longer be operated.

These proposed amendments are intended to clarify the intent, improve the enforceability, and remedy the inequities and inconsistencies in Regulation IV. The proposed amendments also provide supplemental measures in support of the motor vehicle emission control and inspection programs in Dallas, El Paso, Harris, and Tarrant Counties.

Bennie L. Engelke, management and staff services director, has determined that for the first five-year period the rules as proposed are in effect there will be a cost savings to state and local units of government resulting from the deletion of the requirement to provide certification of conformance forms to used car dealers in Harris County. The anticipated economic credit is $2,400 in 1985, $2,600 in 1986, $2,800 in 1987, $3,000 in 1988, and $3,300 in 1989, for all government units affected, adjusting for 5.4% annual inflation and a 2.8% annual population increase in Harris County. There are no fiscal implications to any small business identified in the 1982 Small Business Directory.

Steve Spaw, P.E., Central Regulatory Operations Program director, has determined that for each year of the first five years the rules as proposed are in effect the public benefit anticipated as a result of enforcing the rules as proposed is improved public awareness, improved public compliance with existing motor vehicle emission control programs. In addition, the removal of certain inequities within the regulation may provide some relief for persons unfairly impacted by the regulation. The anticipated economic credit to individuals who are required to comply with the rule as proposed is $7,500 in 1985, $55,200 in 1986, $56,600 in 1987, $61,200 in 1988, and $66,300 in 1989 for all facilities affected, adjusting for 5.4% annual inflation, a 2.2% average annual population increase in all affected counties, and a 2.8% annual population increase in Harris County. Additional capital costs associated with the placement of signs at used car dealers, parts and service facilities, and gasoline dispensing facilities in Dallas, El Paso, Harris, and Tarrant Counties are offset after the first year by the savings resulting from the deletion of the annual administrative requirement for certification of conformance upon resale of 1980 and newer model year vehicles in Harris County.
Public hearings on this proposal are scheduled for 7 p.m. on March 25, 1985, in the auditorium, Bureau of Air Quality Control, 7411 Park Place, Houston; at 8:30 p.m. on March 26, 1985, in Room N-401, Dallas Convention Center, 650 South Griffin Street, Dallas; at 8:30 p.m. on March 27, 1985, in the city council chambers, second floor, 2 Civic Center Plaza, El Paso; and at 8:30 p.m. on March 28, 1985, in the city council chambers, 1000 Throckmorton Street, Fort Worth.

Copies of the proposed changes are available at the central office of the Texas Air Control Board, 8330 Highway 290 East, Austin, Texas 78723, and at all TABC regional offices. Public comment, both oral and written, on the proposed changes is invited at the hearings. The TABC would appreciate receiving five copies of testimony prior to or at the hearing. Written testimony received by 4 p.m. on April 12, 1985, at the TABC central office will be included in the hearing record. Written comments should be sent to the Regulation Development Division, Texas Air Control Board, 8330 U.S. Highway 290 East, Austin, Texas 78723.

These amendments are proposed under Texas Civil Statutes, Article 4477-5, §3.09(a), which provide the Texas Air Control Board with the authority to make rules and regulations consistent with the general intent and purposes of the Texas Clean Air Act to amend any rule or regulation the Texas Air Control Board makes.

§114.1 Maintenance and Operation of Air Pollution Control Systems or Devices Used to Control Emissions from Motor Vehicles.

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

(c) No person may sell or offer for sale in the State of Texas any motor vehicle which was originally equipped with a control system in accordance with federal requirements unless all of the following conditions are met.

(1) The motor vehicle shall be equipped with either the emission control systems or devices that were a part of the motor vehicle or motor vehicle engine when sold by the manufacturer in accordance with federal requirements or an alternate control system or device as designated in subsection (b) of this section.

(2) (No change.)

(3) A notice of the prohibition and requirements of this subsection shall be displayed at any motor vehicle sales facility in Dallas, El Paso, Harris, and Tarrant Counties which sells or offers for sale more than three used vehicles. The notice shall be displayed in a conspicuous and prominent location near each customer entrance way and in each sales office. The notice shall read:

State law prohibits any person from selling or offering for sale any vehicle not equipped with all emission control systems or devices in good operable condition. Violators are subject to penalties under the Texas Clean Air Act of up to $1,000 per violation.

This notice shall be no smaller than eight inches by 10 inches (20.32 centimeters by 25.4 centimeters) and shall be clearly visible to all customers.

(d)* (No change.)

(e) No person may introduce leaded gasoline into a motor vehicle certified by the Environmental Protection Agency for use of unleaded gasoline. A notice of the prohibitions and requirements of this subsection shall be prominently displayed at all facilities in Dallas, El Paso, Harris, and Tarrant Counties [County], which dispense motor vehicle fuel. The notice shall be displayed in the immediate area of each gasoline pump island, and shall be posted in a prominent and conspicuous location. The notice shall read:

State law prohibits any person from introducing any gasoline containing lead into any motor vehicle certified for use of "unleaded gasoline only." Violators are subject to a penalty of up to $1,000 per violation.

This notice shall be no smaller than eight inches by 10 inches (20.32 centimeters by 25.4 centimeters) and shall be clearly visible from each refueling location.

(f) No person may sell, offer for sale, or use any system or device for the purpose of circumventing any system or device, or any part thereof, installed by a vehicle manufacturer to comply with the Federal Motor Vehicle Control Program. A notice of the prohibitions and requirements of this subsection shall be displayed at all motor vehicle parts, supply, repair, or service facilities in Dallas, El Paso, Harris, and Tarrant Counties which sell, offer for sale, install, or offer to install any vehicle emission control or exhaust system or device. The notice shall be displayed in a prominent and conspicuous location near each customer entrance way and service counter. The notice shall read:

State law prohibits any person from selling, offering for sale, or using any system or device for the purpose of circumventing any emission control device on a vehicle or vehicle engine. State law also prohibits any person from removing or disconnecting any part of the emission control system of a motor vehicle, except to install replacement parts which are equally effective in reducing emissions. Violators are subject to penalties under the Texas Clean Air Act of up to $1,000 per violation.

This notice shall be no smaller than eight inches by 10 inches (20.32 centimeters by 25.4 centimeters) and shall be clearly visible to all customers.

§114.3. Inspection Requirements.

[a)] All motor vehicles must comply with air pollution emission control related requirements included in the annual vehicle safety inspection requirements administered by the Texas Department of Public Safety.

[b) At the time of resale of a 1984 or newer model year motor vehicle to a resident of Harris County, the seller of the vehicle must, prior to transfer of ownership, provide the purchaser of such vehicle, certification that the vehicle complies with the air pollution emission control related requirements applicable to Harris County administered by the Texas Department of Public Safety under the provisions of the Uniform Act Regulating Traffic on Highways, Article XV, Texas Civil Statutes, Article 670d.]

§114.5. Exclusions and Exceptions.

This chapter does not apply to motor vehicles or motor vehicle engines which are registered as farm vehicles with the Motor Vehicle Division of the Texas Department of Highways and Public Transportation and are intended solely or primarily for use on a farm or ranch; or are intended solely or primarily for legally sanctioned motor competitions, or [] for research and development uses,[] or for instruction in a bona fide vocational training program where the use of a system or device would be detrimental to the purpose for which the vehicle or engine is intended to be used.

(b) Vehicles belonging to members of the U.S. Department of Defense (DOD) participating in the DOD Privately Owned Vehicle Import Program or other federal government employees being transferred overseas are exempt from the provisions of §114.1 of this title (relating to Maintenance and Operation of Air Pollution Control Systems or Devices Used to Control Emissions from Motor Vehicles) if the following conditions are met.

(1) Only the catalytic converter, oxygen sensor, and/or the fuel filler inlet restrictor [inlet] are removed from the vehicle.

(2)-(3) (No change.)

(c) (No change.)

(d) Any person owning or operating a motor vehicle or motor vehicle engine may apply to the executive director for a waiver from the provisions of §114.1(a)-(b) of this title (relating to Maintenance and Operation of Air Pollution Control Systems or Devices Used to Control Emissions from Motor Vehicles). Such a waiver may be granted if the following conditions are met.

(1) A single vehicle and vehicle engine shall be specified in the application and must be identified by the unique vehicle identification number assigned to that vehicle by the manufacturer and by the unique engine serial number.

(2) The air pollution control systems or devices on the vehicle or vehicle engine which would be covered by the waiver shall be specified in the application.
A demonstration shall be made in the application that the use of the specified pollution control systems or devices on the specified vehicle would result in a clear danger to persons or property or would be detrimental to the purpose for which the vehicle or engine is intended to be used.

(4) The applicant shall agree and ensure that a copy of the waiver shall be kept with the vehicle at all times and shall be available for inspection by representatives of the Texas Air Control Board, the Texas Department of Public Safety, or any other law enforcement agency upon request. The approved waiver shall also be presented to the certified vehicle inspector before each annual vehicle safety inspection of the vehicle as administered by the Texas Department of Public Safety.

(5) The applicant shall agree and ensure that the waiver shall be void and all pollution control systems and devices replaced on the vehicle and/or engine covered by the waiver when the vehicle changes ownership or is no longer used for the purpose for which the waiver application is intended. The executive director shall be informed in writing prior to the change of ownership of usage.

(e) A motor vehicle is exempt from §114.3 of this title (relating to Inspection Requirements) if the vehicle is registered with the Motor Vehicle Division of the Texas Department of Highways and Public Transportation as a farm vehicle or has been granted a waiver from the executive director in accordance with subsection (d) of this section.

(f) A vehicle service or repair facility is exempt from the provisions of §114.1(b) of this title (relating to Maintenance and Operation of Air Pollution Control Systems or Devices Used to Control Emissions from Motor Vehicles) if the following conditions are met.

(1) Removal or alteration of any pollution control system or device shall be performed only on those vehicles which are exempted by the provisions of subsection (a) or subsection (b) of this section, or have received a waiver from the executive director in accordance with subsection (d) of this section.

(2) The vehicle service or repair facility shall keep a copy of the vehicle registration document or approved waiver required for each vehicle affected by this subsection on file for three years and shall make such documentation available to representatives of the Texas Air Control Board or any local air pollution control agency upon request.

(g) Municipalities selling abandoned vehicles are exempt from the provisions of §114.1(c) of this title (relating to Maintenance and Operation of Air Pollution Control Systems or Devices Used to Control Emissions from Motor Vehicles) if the following conditions are met.

The inspection certificate must be removed from the vehicle and destroyed before the vehicle may be offered for sale or displayed for public examination.

(2) All potential buyers of the vehicle must be informed of all deficiencies in the vehicle pollution control systems on the vehicle and all liabilities to the buyer under §114.1 of this title (relating to Maintenance and Operation of Air Pollution Control Systems or Devices Used to Control Emissions from Motor Vehicles), and §114.3 of this title (relating to Inspection Requirements) of operating the vehicle prior to the adequate restoration of all pollution control systems or devices on the vehicle in compliance with federal motor vehicle rules.

(h) The owner of a motor vehicle which has been totally disabled by accident, age, or malfunction and which will no longer be operated, is exempt from the provisions of §114.1(c) of this title (relating to Maintenance and Operation of Air Pollution Control Systems or Devices Used to Control Emissions from Motor Vehicles) if the inspection certificate is removed and destroyed before the vehicle is offered for sale or displayed for public examination.

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

Issued in Austin, Texas, on February 20, 1985

TRD 851595 Bill Stewart, P.E.
Executive Director
Texas Air Control Board

Proposed date of adoption: July 31, 1985
For further information, please call (512) 451-5711, ext 354

Chapter 115. Volatile Organic Compounds
Facilities for Loading and Unloading of Volatile Organic Compounds in Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties

31 TAC §115.111, §115.113

The Texas Air Control Board (TACB) proposes amendments to §115.111 and §115.113, concerning facilities for loading and unloading of volatile organic compounds in Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties. In §115.111, concerning throughput and control requirements, the proposed amendments add new subparagraph (E) to §115.111(2) which limits gasoline terminals in Dallas, El Paso, and Tarrant Counties having 100,000 gallons or more throughput per day to an emission limitation of 0.33 pounds of volatile organic compounds per 1,000 gallons of gasoline transferred. The proposed amendments also add new subparagraph (F) to §115.111(2) to ensure that after December 31, 1982, but before December 31, 1987, gasoline terminals affected by new paragraph (2)(E) remain in compliance with paragraph (2)(A). In §115.113, concerning compliance schedule and counties, the proposed amendments add a final compliance date of December 31, 1987, and a final control plan submittal date of December 31, 1985, for new control requirements of §115.111(2)(E) and §115.111(2)(F) that apply to affected gasoline terminals in Dallas, El Paso, and Tarrant Counties.

These proposed amendments are part of a series of proposed revisions to Chapter 115 to provide in Dallas, El Paso, and Tarrant Counties the additional volatile organic compound (VOC) emission reductions needed to satisfy the U.S. Environmental Protection Agency (EPA) requirements for post-1982 state implementation plan (SIP) revisions.

Ecenie L. Engkel, management and staff services director, has determined that for the first five-year period the rules as proposed will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the rules.

Steve Spaw, P.E., Central Regulatory Operations Program director, has determined that for each year of the first five years the rules as proposed are in effect the public benefit anticipated as a result of enforcing the rules is improved air quality as a result of a reduction of 390 tons per year of VOC emissions in Dallas, El Paso, and Tarrant Counties after December 31, 1987. In addition, these and other VOC emission reductions proposed elsewhere are necessary to satisfy EPA requirements for post-1982 SIPs and to avoid possible growth sanctions in Dallas, El Paso, and Tarrant Counties.

In 1985 and 1986 there will be no economic cost to individuals who are required to comply with the proposed rules; however, the cost will be $154,000 in 1987, $215,000 in 1988, and $263,000 in 1989 for all facilities affected, adjusting for 5.4% annual inflation.

Public hearings on the proposed amendments will be held at 2:30 and 6:30 p.m. on March 27, 1985, in the city council chambers, second floor, 2 Civic Center Plaza, El Paso; at 2:30 and 6:30 p.m. on
ADOPTION: PUBLISHED IN THE TEXAS REGISTER ON SEPTEMBER 6, 1985
Adopted Rules

An agency may take final action on a rule 30 days after a proposal has been published in the Register. The rule becomes effective 20 days after the agency files the correct document with the Texas Register, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the rule without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the rule with changes to the proposed text, the proposal will be republished with the changes.

TITLE 31. NATURAL RESOURCES AND CONSERVATION
Part III. Texas Air Control Board
Chapter 114. Motor Vehicles
★ 31 TAC §§114.1, 114.3, 114.5

The Texas Air Control Board (TACB) adopts amendments to §114.1 and §114.5, with changes to the proposed text as published in the March 1, 1985, issue of the Texas Register (10 Texas Register 726). Section 114.3 is adopted without changes and will not be republished.

The amendments to §114.1, concerning maintenance and operation of air pollution control systems or devices used to control emissions from motor vehicles, prohibit the offering for sale of any motor vehicle without appropriate emission control devices or systems in place and operating, and require the posting of signs at certain motor vehicle sales, service, and supply facilities and fuel dispensing facilities in Dallas, El Paso, Harris, and Tarrant Counties which describe the applicable provisions of Regulation IV and the potential penalties for violation of those rules. The amendments to §114.3, concerning inspection requirements, remove the requirement for the seller of a used vehicle to provide to the buyer in Harris County a written certification that all emission control systems and devices on the vehicle are present and operating to design specifications. The amendments to §114.5, concerning exclusions and exemptions, further clarify existing exemption conditions and establish a procedure for applying to the executive director for a waiver from §114.1(a) and (b) to allow the limited operation of a motor vehicle without specified pollution control equipment under certain hazardous or inappropriate conditions.

The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5(b)(1), requires categorization of comments as being for or against a proposal. A commenter who suggested any changes in the proposal is categorized as against the proposal, while a commenter who agreed with the proposal is categorized as for the proposal.

Seventeen commenters (Brandt Mannchen, Texas Independent Automobile Dealers Association, including local chapters in Dallas, Houston, Fort Worth/Tarrant County, and El Paso, City of Dallas, William Canterbury, Greater Fort Worth Chapter of the Sierra Club, John Davis, U.S. Environmental Protection Agency (EPA), Gerald W. Jones, Paul P. Douglas, B. J. Wheless, Dr. Harry M. Walker, John Fafoutakis, D. T. Mosley), either suggested changes or expressed a general disagreement with the proposal and are categorized as against. One commenter, Texas Oil Marketers Association, was for the proposal.

Regarding the proposed amendments to §114.5, concerning exclusions and exemptions, Mr. Mannchen opposed any new waiver provisions or exemptions. EPA expressed concern that the provisions of the proposed new waiver procedures of §114.5(d) were too broad and requested additional information regarding the type and number of vehicles which may qualify for the waivers and the related air quality impacts. The EPA also recommended any conflicts with provisions of the Federal Clean Air Act (FCAA) be examined and resolved. Mr. Douglas and Mr. Wheless requested that provisions be added to the proposed waiver procedures to allow for temporary or seasonal waivers and/or to allow vehicles used only occasionally on a farm or ranch to receive an exemption. Dr. Harry M. Walker and Mr. Fafoutakis presented technical information and personal opinions regarding issues which were not directly related to the subject of these hearings. While they did not provide any objections or suggestions concerning any proposed amendment to Regulation IV, both indicated a general disagreement with the purpose and concept of the regulation.

Copies of the written comments and the transcripts of the hearings are available for inspection at the TACB office, 6330 U.S. Highway 290 East, Austin. The evaluation of testimony is organized into three sections to correspond to the three sections for which action was proposed in the Texas Register. Where appropriate, general issues have been discussed under certain specific issues.

The majority of testimony on the proposed revisions to TACB Regulation IV (31 TAC Chapter 114) addressed the amendments to §114.1, concerning main-
tenance and operation of air pollution control systems or devices used to control emissions from motor vehicles. These proposed amendments, in the case of §114.1(c), would prohibit the offering for sale of any motor vehicle unless it is equipped with all required emission control systems or devices and would require vehicle sales signs at fuel dispensing facilities in Dallas, El Paso, Harris, and Tarrant Counties to display signs describing the applicable prohibitions and potential penalties included in the regulation. In addition, the proposed amendments, in the case of §114.1(e) and (f), would require in Dallas, El Paso, Harris, and Tarrant Counties the posting of signs at all fuel dispensing facilities and motor vehicle service, supply, and repair facilities which also describe the prohibitions and potential penalties associated with the unauthorized use of leaded gasoline, the illegal sale of devices designed to circumvent vehicle pollution control equipment, and the false or fraudulent alteration of any pollution control system or device originally designed by the vehicle manufacturer.

Comments from affected vehicle dealer associations argued that only the sale of 1980 and newer model year vehicles which have been tampered with should be prohibited by §114.1(c). They asserted that this would minimize the adverse economic impacts on lower income buyers who cannot afford the price of new vehicles or the inflated price of older vehicles. No new controls were proposed which would increase the existing requirements regarding the sale of older vehicles. Regulation IV was amended in January 1972 to prohibit any person from selling a motor vehicle with any of its emission control systems or devices missing or inoperable. The current proposal would simply ensure that dealers inform their customers of these existing requirements.

The City of Dallas requested a clarification of the intent of the proposed amendments to §114.1(c), regarding the size of motor vehicle sales facilities required to post signs. The commenter expressed concern that individuals who sell more than three used vehicles per year may be required to post signs at a private residence. The proposed language has been altered to include any person who sells three or more vehicles per year at a commercial sales facility.

The City of Dallas also urged the TABC to require statewide posting of signs at fuel dispensing facilities (§114.4(e)) and at vehicle parts, supply, repair, and service facilities (§114.1(f)). The regulations affecting these facilities are currently applicable statewide, but the posting of signs at every facility in the state appears economically impractical without any direct impact on the air quality problems associated with urban nonattainment areas.

Affected automobile dealer associations encouraged the TABC to address the sale of vehicles by individuals as well as by dealers. Present certification procedures and proposed sign posting requirements impose no enforceable controls on transactions by individuals. The direct control of individual sales of used vehicles would be costly and difficult to administer and essentially impossible to enforce. The TABC lacks the administrative authority to require compliance with appropriate emission control provisions prior to vehicle registration, as suggested by one commenter. Increasing efforts to inform the general public of the legal requirements, as well as the benefits of the proper maintenance of vehicle emission control systems, is possible and can be very effective in achieving compliance. Requiring individuals to complete a written certification of conformance with all applicable rules was attempted in Harris County. The program proved impractical. Proposed amendments to §114.3 would delete that requirement and are discussed in the following section.

The EPA and several automobile dealer associations commented on the proposed deletion of §114.3(b) which requires the seller of a used 1980 and newer model year vehicle to provide to a buyer in Harris County a certification that all emission control systems are present and operating in accordance with the manufacturer's specifications. The EPA advocated retaining the certification requirement, at least at the request of the buyer, to ensure adequate consumer protection. The four representatives of the automobile dealer associations did not expressly support the certification but implied that certification procedures should be retained and expanded if necessary to ensure equal control of vehicle sales transactions between individuals. The proposed deletion of §114.3(b) was in response to objections from the used vehicle dealers in Harris County that the certification procedures were awkward and long and were being ignored by the majority of small dealers and individuals. No effective procedures for collecting, compiling, or evaluating the certifications were established to provide assessment or enforcement of the rule. In addition, any consumer can require a written reassurance of conformance or a new vehicle inspection certificate prior to finalizing any sales transaction.

Three individuals commented on the proposed amendments to §114.5, concerning exclusions and exemptions, which would establish procedures for applying to the executive director for a waiver from §114.1(a) and (b) to allow the limited operation of a motor vehicle without specified pollution control equipment under certain hazardous or inappropriate conditions. While one individual objected to the adoption of any mechanism to allow waivers to existing vehicle regulations, two other individuals requested the addition of a provision to provide for waivers to allow the removal of the catalytic converter on vehicles used only occasionally or seasonally on a farm or ranch when danger of fire is present.

The proposed waiver provisions were intended to provide a method to allow an individual or firm to remove specific pollution control equipment from a vehicle when it can be demonstrated that the use of the equipment would pose a serious hazard or would be detrimental to the intended function of the vehicle. Primarily, the proposed provisions in response to the danger of fire resulting from the use of a catalytic converter under certain conditions. The TABC has already recognized the potential for this type of danger by adoption of §114.5(a), regarding exemption of farm and ranch vehicles. Provisions for seasonal or temporary waivers have been added for vehicles for which it can be demonstrated that normal precautions are inadequate to avoid potentially serious hazards during certain limited operations. Such a waiver will impose supplemental conditions such as a requirement to agree to and confirm scheduled reinstallation of necessary equipment at the end of the waiver period or to satisfy all applicable annual vehicle inspection requirements.

The EPA also expressed concern regarding the proposed waiver provisions of §114.5(d) and requested a more detailed description of the type of vehicles expected to be granted waivers, the air quality impact estimated to result, and the information required in the waiver application. The EPA believes that the waiver provisions provide protection to a limited number of vehicles operated under conditions similar to farm and ranch applications. The TABC does not expect the number of vehicles affected by these waivers, especially in urban areas, to exceed several hundred per county; therefore, the impact on emission reductions or ambient air quality would be minute in areas with vehicle populations of hundreds of thousands of vehicles. Detailed information is required in the application for a waiver.

Finally, the EPA recommended that the TABC examine and resolve any potential conflicts with the vehicle control provisions of the FCAA. The proposed §114.5 (f) would have exempted vehicle service and repair facilities removing emission control equipment in accordance with approved waivers or general exemptions. The FCAA, however, prohibits any commercial facility or fleet operator from removing or disabling any vehicle emission control device. The TABC, while retaining the authority to regulate or exempt individuals regarding these requirements, recognizes the federal requirements for commercial facilities and has...
withdrawn this part of the proposal from final adoption.

These amendments are adopted under Texas Civil Statutes, Article 4477.5, §3.09(a), which provide the TACB with the authority to make rules and regulations consistent with the general intent and purpose of the Texas Clean Air Act and to amend any rule or regulation the TACB makes.

§114.1. Maintenance and Operation of Air Pollution Control Systems or Devices Used to Control Emissions from Motor Vehicles
(a)(b) (No change.)
(c) No person may sell or offer for sale in the State of Texas any motor vehicle which was originally equipped with a control system in accordance with federal requirements unless all of the following conditions are met:
(1) The motor vehicle shall be equipped with either the control systems or devices that were a part of the motor vehicle or motor vehicle engine when sold by the manufacturer in accordance with federal requirements or an alternate control system or device as designated in subsection (b) of this section.
(2) (No change.)
(3) A notice of the prohibition and requirements of this subsection shall be displayed at any commercial motor vehicle sales facility in Dallas, El Paso, Harris, and Tarrant Counties which sells or offers for sale more than three used vehicles per year. The notice shall be displayed in a conspicuous and prominent location near each customer entrance way and in each sales office. The notice shall read, 'State law prohibits any person from selling or offering for sale any vehicle not equipped with all emission control systems or devices in good operable condition. Violators are subject to penalties under the Texas Clean Air Act of up to $25,000 per violation.' This notice shall be no smaller than eight inches by 10 inches (20.32 centimeters by 25.4 centimeters) and shall be clearly visible to all customers.
(d) (No change.)
(e) No person may introduce leaded gasoline into a motor vehicle certified by the Environmental Protection Agency for use of unleaded gasoline. A notice of the prohibitions and requirements of this subsection shall be prominently displayed at all facilities in Dallas, El Paso, Harris, and Tarrant Counties which dispense motor vehicle fuel. The notice shall be displayed in the immediate area of each gasoline pump island and shall be posted in a prominent and conspicuous location. The notice shall read, 'State law prohibits any person from introducing any gasoline containing lead into any motor vehicle certified for use of unleaded gasoline only. Violators are subject to a penalty of up to $25,000 per violation.' This notice shall be no smaller than eight inches by 10 inches (20.32 centimeters by 25.4 centimeters) and shall be clearly visible from each refueling location.
(f) No person may sell, offer for sale, or use any system or device for the purpose of circumventing any system or device, or any part thereof, installed by a vehicle manufacturer to comply with the Federal Motor Vehicle Control Program. A notice of the prohibitions and requirements of this subsection shall be displayed at all motor vehicle parts, supply, repair, or service facilities in Dallas, El Paso, Harris, and Tarrant Counties which sell, offer for sale, install, or offer to install any vehicle emission control or exhaust system or device. The notice shall be displayed in a prominent and conspicuous location near each customer entrance way and service counter. The notice shall read, 'State law prohibits any person from selling, offering for sale, or using any system or device for the purpose of circumventing any emission control device on a vehicle or vehicle engine. State law prohibits any person from removing or disconnecting any part of the emission control system of a motor vehicle except to install replacement parts which are equally effective in reducing emissions. Violators are subject to penalties under the Texas Clean Air Act of up to $25,000 per violation.' This notice shall be no smaller than eight inches by 10 inches (20.32 centimeters by 25.4 centimeters) and shall be clearly visible to all customers.

114.5. Exclusions and Exceptions
(a) This chapter does not apply to motor vehicles or motor vehicle engines which are registered as farm vehicles with the Motor Vehicle Division of the Texas Department of Highways and Public Transportation and are intended solely or primarily for use on a farm or ranch; or are intended solely or primarily for legally sanctioned motor competitions, for research and development uses, or for instruction in a bona-fide vocational training program where the use of a system or device would be detrimental to the purpose for which the vehicle or engine is intended to be used.
(b) Vehicles belonging to members of the U.S. Department of Defense (DOD) participating in the DOD Privately Owned Vehicle Import Program or other federal government employees being transferred overseas are exempt from the provisions of §114.1 of this title (relating to Maintenance and Operation of Air Pollution Control Systems or Devices Used to Control Emissions from Motor Vehicles) if the following conditions are met:
(1) Only the catalytic converter, oxygen sensor, and/or the fuel filler inlet restrictor are removed from the vehicle.
(2)-(3) (No change.)
(c) (No change.)
(d) Any person owning or operating a motor vehicle or motor vehicle engine may apply to the executive director for a waiver from the provisions of §114.1(a)-(b) of this title (relating to Maintenance and Operation of Air Pollution Control Systems or Devices Used to Control Emissions from Motor Vehicles). Such a waiver may be granted if the following conditions are met:
(1) The application shall include the applicant's full name, business address, and telephone number. A single vehicle and vehicle engine shall be specified in the application and must be identified by the unique vehicle identification number assigned to that vehicle by the manufacturer and by the manufacturer's engine family number.
(2) The air pollution control systems or devices on the vehicle or vehicle engine which would be covered by the waiver shall be specified in the application.
(3) A demonstration shall be made in the application that provides adequate justification for special consideration of the specified vehicle under the provisions of Regulation IV. This demonstration shall include, but shall not be limited to, the following information necessary to determine that the use of certain pollution control devices or systems on the vehicle to be covered by the waiver would result in a clear benefit to persons or property or would be detrimental to the purpose for which the vehicle is intended to be used:
(A) proposed use of the vehicle and description of adverse circumstances;
(B) locations where the vehicle will primarily be operated;
(C) estimated length of time the vehicle is expected to be operated in adverse circumstances;
(D) estimated percentages of the time the vehicle will primarily be operated in adverse circumstances and on public roadways;
(E) history of problems related to the use of specified control devices or systems;
(F) evidence of the potential hazards and consequences of operating the vehicle for the intended use with the identified control devices or systems in place.
(4) The applicant shall agree and ensure that a copy of the waiver shall be kept with the vehicle at all times and shall be available for inspection by representatives of the Texas Air Control Board, the Texas Department of Public Safety, or any other law enforcement agency upon request. The approved waiver shall also be presented to the certified vehicle inspector before each annual vehicle safety inspection of the vehicle as administered by the Texas Department of Public Safety.
(5) The applicant shall agree and ensure that the waiver shall be void and all pollution control systems and devices replaced on the vehicle and/or engine covered by the waiver when the vehicle changes ownership or is no longer used for the purpose identified in the waiver application. The executive director shall be informed in writing prior to the change of ownership or usage.
(6) The applicant shall comply with all special provisions and conditions specified by the executive director in the waiver.

(e) A motor vehicle is exempt from §114.3 of this title (relating to Inspection Requirements) if the vehicle is registered with the Motor Vehicle Division of the Texas Department of Highways and Public Transportation as a farm vehicle or has been granted a waiver from the executive director in accordance with subsection (d) of this section.

(f) Municipalities selling abandoned vehicles are exempt from the provisions of §114.1(c) of this title (relating to Maintenance and Operation of Air Pollution Control Systems or Devices Used to Control Emissions from Motor Vehicles) if the following conditions are met:

(1) The inspection certificate must be removed from the vehicle and destroyed before the vehicle may be offered for sale or displayed for public examination.

(2) All potential buyers of the vehicle must be informed of all deficiencies in the vehicle pollution control systems on the vehicle and all liabilities to the buyer under §114.1 of this title (relating to Maintenance and Operation of Air Pollution Control Systems or Devices Used to Control Emissions from Motor Vehicles) and §114.3 of this title (relating to Inspection Requirements) of operating the vehicle prior to the adequate restoration of all pollution control systems or devices on the vehicle in compliance with federal motor vehicle rules.

(g) The owner of a motor vehicle which has been totally disabled by accident, age, or malfunction and which will no longer be operated is exempt from the provisions of §114.1(c) of this title (relating to Maintenance and Operation of Air Pollution Control Systems or Devices Used to Control Emissions from Motor Vehicles) if the inspection certificate is removed and destroyed before the vehicle is offered for sale or displayed for public examination.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 26, 1985.

TRD-857810
Bill Stewart, P.E.
Executive Director
Texas Air Control Board

Effective date: January 1, 1986
Proposal publication date: March 1, 1985
For further information, please call (512) 451-5711, ext. 354.

Chapter 115. Volatile Organic Compounds
Facilities for Loading and Unloading of Volatile Organic Compounds in Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties

§31 TAC §115.111, §115.113

The Texas Air Control Board (TACB) adopts amendments to §115.111 and §115.113, concerning facilities for loading and unloading of volatile organic compounds (VOC) in Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties, with changes to the proposed text published in the March 1, 1985, issue of the Texas Register (10 TexReg 728).

The amendments to §115.111, concerning throughput and control requirements, add new subparagraph (E) to §115.111(2) which limits gasoline terminals in Dallas and Tarrant Counties having 100,000 gallons or more throughout per day to an emission limitation of 0.33 pounds of volatile organic compounds per 1,000 gallons of gasoline transferred. The amendments also add new subparagraph (F) to §115.111(2) to ensure that after December 31, 1982, but before December 31, 1987, gasoline terminals affected by new paragraph (2)(E) remain in compliance with paragraph (2)(A).

The amendments to §115.113, concerning compliance schedule and counties, add a final compliance date of December 31, 1987, and a final control plan submittal date of December 31, 1985, for new control requirements of §115.111(2)(E) and §115.111(2)(F) that apply to affected gasoline terminals in Dallas and Tarrant Counties.

The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5(C)(1), requires categorization of comments as being for or against a proposal. A commenter who suggests any changes in the proposal is categorized as against the proposal, while a commenter who agreed with the proposal in its entirety is categorized as being for the proposal.

Three commenters, Texas Mid-Continent Oil and Gas Association, Mobil Oil Corporation, and Phillips Petroleum Company, testified against the proposed amendments to §115.111. No commenters testified for the proposal. No comments were received regarding the amendments to §115.113.

A complete summary of comments and a discussion of issues will follow. Copies of the written testimony and of the hearing transcript are available for inspection at the TACB office, 8330 U.S. Highway 290 East, Austin, Texas 78723.

All three commenters objected to the proposed provisions of §115.111(2)(E) which required gasoline terminals in Dallas, El Paso, and Tarrant Counties with 100,000 gallons or more throughout per day to reduce emissions of VOC vapors to not more than 0.33 pounds per 1,000 gallons of gasoline transferred. They claimed the cost of redesigning and installing equipment to meet the 40 milligrams per liter limit was understated and that the requirement essentially represented application of a level of control equivalent to new source performance standards (NSPS) at existing sources. While EPA has determined that applying NSPS controls to all existing sources nationwide is impractical, implementation of similar controls to specific urban nonattainment areas may be considered reasonable when the resultant VOC reductions are necessary to demonstrate attainment or reasonable progress toward attainment. Compliance with the regulation can be accomplished by addition of supplemental control equipment ranging in cost from $25,000 to $80,000 which has been determined to be economically reasonable for the affected nonattainment areas. Demonstration of attainment is not possible for Dallas or Tarrant Counties, all reasonable control measures, including these vapor recovery requirements, must be adopted.

In El Paso County, however, a demonstration of attainment can be accomplished without these controls and, therefore, are not included in this adoption.

These amendments are adopted under Texas Civil Statutes, Article 4477-5, §3.09(a), which provides the TACB with the authority to make rules and regulations consistent with the general intent and purposes of the Texas Clean Air Act and to amend any rule or regulation the TACB makes.

§115.111. Throughput and Control Requirements. No person shall permit the loading or unloading of or from any facility having 20,000 gallons (75,708 liters) or more throughout per day (averaged over any consecutive 30-day period) of volatile organic compounds with a true vapor pressure equal to or greater than 1.5 psia (10.3 kPa) under actual storage conditions, unless the following emission control requirements are met by the dates specified in §115.113 of this title (relating to Compliance Schedule and Counties).

(1) (No change.)

(2) Gasoline terminal size and additional emission control requirements are as follows:

(A)(D) (No change.)

(E) Volatile organic compound vapors from gasoline terminals located in Dallas and Tarrant Counties and having 100,000 gallons (378,541 liters) or more throughout per day (averaged over any consecutive 30-day period) shall be reduced to a level not to exceed 0.33 pounds of volatile organic compounds from the vapor recov-
APPROVAL BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:
PUBLISHED IN THE FEDERAL REGISTER ON FEBRUARY 9, 1989
ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section.

6. Section 2704.306 is revised to read as follows:

§ 2704.306 Further proceedings on the application.

(a) The determination of an award will be made on the basis of the record made during the proceeding for which fees and expenses are sought, except as provided in paragraphs (b) and (c) of this section.

(b) On request of either the applicant or the Secretary, or on the administrative law judge's own initiative, the judge may order further proceedings, such as an informal conference, oral argument, additional written submissions or, as to issues other than substantial justification (such as the applicant's eligibility or substantiation of fees and expenses), pertinent discovery or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application and shall be conducted as promptly as possible.

(c) If the proceeding for which fees and expenses are sought was conceded by the Secretary on the merits, withdrawn by the Secretary, or otherwise settled before any of the merits were heard, the applicant and the Secretary may supplement the administrative record with affidavits or other documentary evidence.

(d) A request that the judge order further proceedings under this section shall specifically identify the information sought on the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.


Ford B. Ford,
Chairman, Federal Mine Safety and Health Review Commission.

[FR Doc. 89-3127 Filed 2-8-89; 8:45 am]
BILLING CODE 6735-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FR-3508-8]

Approval and Promulgation of Implementation Plan, Texas

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is approving the anti-tampering (parameter) portion of the vehicle inspection and maintenance (I/M) program and certain Transportation Control Measures (TCMs) submitted as part of the Ozone State Implementation Plan (SIP) for Dallas and Tarrant (DFW) Counties. Elsewhere in today's Federal Register, EPA is proposing to approve commitments made by the State of Texas to expand the I/M program and to adopt additional TCMs. EPA is approving the previously proposed (July 14, 1987) portions of the I/M program and the TCMs as part of the Post-62 Ozone SIP for Dallas and Tarrant Counties as these regulations will assist in further control of volatile organic compound (VOC) emissions.

EFFECTIVE DATE: This rule will become effective on March 13, 1989.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

Air Programs Branch, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202.

Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.


FOR FURTHER INFORMATION CONTACT: Gerald Fontenot, Chief, Air Programs Branch, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202 (214) 653-7204.

SUPPLEMENTARY INFORMATION: A comprehensive description of the requirements of the Clean Air Act and EPA's policies under the Act was set forth in the proposal published in the Federal Register on July 14, 1987, (52 FR 26421). Other actions EPA is taking on other portions of the submittal are described elsewhere in today's Federal Register.

Background

On February 24, 1984, the EPA Region 6 Regional Administrator sent the Governor of Texas a formal notice for a revision to the ozone (O3) SIP for Dallas and Tarrant Counties, Texas. Texas submitted a revision for Dallas and Tarrant Counties in several parts in 1985 and 1986. The Texas plan did not provide for sufficient VOC emission reductions to demonstrate timely attainment of the O3 National Ambient Air Quality Standards (NAAQS). EPA, therefore, proposed to find that Texas had failed to respond adequately to the 1984 SIP call, and hence proposed sanctions on July 14, 1987. The reader is referred to EPA's proposed action discussed elsewhere in today's Federal Register.

The Texas Air Control Board (TACB) submitted an additional revision in December 1987 referred to as the Post-62 Interim SIP. The anti-tampering portion of the I/M program and certain TCMs found in the 1985, 1986, and 1987 revisions are approvable by EPA. EPA will approve these regulations because they assist in further control of VOC emissions.

1. I/M Requirements

The July 14, 1987, notice proposed to approve the parameter I/M program SIP revision if certain conditions were fulfilled. The notice also described the details of the program. On December 21, 1987, the State of Texas met the certain conditions by submitting letters of commitment from the local law enforcement agencies, recordkeeping requirements, quality control commitments, mechanic training and public information commitments, and the final rules. EPA is approving the anti-tampering portion of the I/M program as found in the 1985, 1986 and 1987 revisions since it will strengthen the existing SIP.

Elsewhere in today's Federal Register, EPA describes the commitments made by the State of Texas to expand the DFW I/M program to include an exhaust emissions [tailpipe] inspection program. EPA will review the entire expanded I/M program for approvability upon completion of the commitments.

2. Transportation Control Measures

The July 14, 1987, Federal Register notice proposed approval of the TCMs submitted in the 1985 and 1986 SIP revisions for the Post-82 SIP call contingent upon documentation of the evaluation of the TCMs specified under section 108(f) of the Clean Air Act. Texas submitted documentation in the 1987 SIP revision that provided sufficient justification that additional TCMs were not feasible during the timeframe covered by the 1985 and 1986 Post-82 SIP submittal, i.e., 1983 through 1987.

EPA is approving the TCMs which were proposed in the July 14, 1987, Federal Register notice and the additional infeasibility documentation submitted in the 1987 submittal since these measures contribute toward the reduction in VOCs and strengthen the existing SIP. The credit reduction for...
TCMs in the 1985 and 1986 Post-82 SIP submittals was revised. However, the expansion of the control of gasoline vapor pressure associated with the Post-82 Interim SIP affect the amount of credit each measure will provide for a given area. These controls will make the fleet more efficient and emit less pollutants, thereby reducing the amount of emission reduction attributed to TCMs.

In the 1987 SIP revision, Texas has submitted additional TCM commitments for 1987 through 1992. The commitment to adopt additional TCMs is discussed elsewhere in today’s Federal Register.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 10, 1989. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52
Air pollution control, Ozone, Hydrocarbons, Intergovernmental relations, Incorporation by reference.

Not: Incorporation by reference of the Texas Air Control Board on December 18, 1987.

Lee M. Thomas,
Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart SS—Texas

1. Section 52.2270 is amended by adding paragraph (c) (66) to read as follows:

§ 52.2270 Identification of Plan.

(c) * * *

(66) Revisions to the plan for attainment of the standard for ozone in Hamilton County, Ohio; and (2) called upon the State to submit to USEPA a SIP revision to correct the deficiency.

DATES: The State of Ohio must submit by February 20, 1989, a schedule setting forth dates and increments of progress for correcting the Hamilton County SIP deficiencies. The State must correct the plan deficiency elements and submit its fully approved Hamilton County SO2 plan to USEPA not later than June 22, 1990.

ADDRESSES: Copies of the documents associated with this notice are available for inspection at: It is recommended that you telephone Maggie Greene, at (312) 886-6088, before visiting the Region V, Office, U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.


SUPPLEMENTARY INFORMATION: USEPA approved portions of the Ohio SO2 SIP for Hamilton County on January 27, 1981 (46 FR 8481), and April 20, 1982 (47 FR 16784), and the remaining portion on May 13, 1982 (47 FR 20586). The portion of Hamilton County which was originally designated nonattainment was redesignated to attainment on March 19, 1982 (47 FR 11850). Hamilton County was divided into two separate attainment areas on May 13, 1982 (47 FR 20586). However, since the time of these rulemakings, three modeling analyses were submitted to USEPA (one to support an Indiana SO2 SIP and two others to support two separate permits for new sources in Ohio). The modeling analyses have each predicted violations of the SO2 NAAQS due to existing sources that are located in Hamilton County, Ohio. The SO2 NAAQS are violated whenever the following standards are exceeded more than once a year per site:

SULFUR DIOXIDE NAAQS

<table>
<thead>
<tr>
<th>Primary</th>
<th>Secondary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual arithmetic average</td>
<td>80 μg/m³</td>
</tr>
<tr>
<td>Maximum 24-hour concentration</td>
<td>365 μg/m³</td>
</tr>
<tr>
<td>Maximum 3-hour concentration</td>
<td>1300 μg/m³</td>
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</tbody>
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*Micrograms per cubic meter.*

The modeling analyses predicted the highest annual and the highest, second high 24-hour and 3-hour concentrations to be approximately: