

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §114.301 (Control Requirements For Reid Vapor Pressure), §§114.305 - 114.307 (Approved Test Methods, Recordkeeping Requirements, and Exemptions), and §114.309 (Affected Counties); new §114.304 (Registration of Gasoline Producers and Importers); and repeal of §114.302 (Control Requirements for Sulfur), and §114.308 (Alternative Early Implementation). The commission proposes these revisions to Chapter 114 (Control of Air Pollution from Motor Vehicles), Subchapter H (Low Emission Fuels), Division 1 (Gasoline Volatility), and to the state implementation plan (SIP).

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

The commission proposes these revisions to Chapter 114 and the corresponding SIP in order to address the United States Environmental Protection Agency (EPA) concerns regarding the enforceability of the East Texas Regional Low Reid Vapor Pressure (RVP) Gasoline (regional gasoline) program, limit any increase in the use of methyl-tertiary-butyl-ether (MTBE) in gasoline to conform to the low RVP requirements, and remove the state limits on sulfur content which have been supplanted by federal regulations found in Title 40 Code of Federal Regulations (CFR) Part 80, Subpart H (Gasoline Sulfur). All parties in the gasoline distribution chain (producers, importers, terminals, pipelines, truckers, rail carriers, and retailers) will be required to maintain records of the transfer documents, and gasoline producers will be required to submit annual reports certifying that the use of MTBE in gasoline has not increased in order for the producer to conform with the low RVP requirements. The proposed rules will also require gasoline producers and importers to register with the executive director.

The regional gasoline program, as established through the adoption of 30 TAC §§114.301, 114.302, and 114.305 - 114.309 in June 30, 1999, requires all conventional gasoline in 95 central and eastern Texas counties to be limited to a maximum RVP of 7.8 pounds per square inch (psi) from May 1 to October 1 of each year beginning May 1, 2000. These rules established a seasonal limit on gasoline RVP. This proposed rulemaking is a follow-up to those rules to complete the regional gasoline program.

The commission has requested a Federal Clean Air Act (FCAA) waiver from the EPA to allow state implementation of RVP limitations. During its review of rules, the EPA indicated that they would consider the RVP waiver if certain concerns regarding enforceability were addressed. These proposed rule revisions address the EPA concerns over enforceability.

In addition, during the rulemaking for the regional gasoline rules, the issue of MTBE was not addressed. The rules were written to provide refiners with the flexibility to decide for themselves how to best achieve the required RVP/sulfur levels. However, during the rule comment period, numerous comments were received regarding the potential for producers to increase the levels of MTBE to comply with the rule. Concerns were also expressed over the potential risk of MTBE contamination of ground and surface water. The decision was made at that time to delay further action regarding MTBE until the EPA MTBE Blue Ribbon Panel had provided its recommendations. The report ("Achieving Clean Air and Clean Water: The Report of the Blue Ribbon Panel on Oxygenates in Gasoline, EPA 420-R-99-021," dated September 15, 1999) included a recommendation that "...in order to minimize current and future threats to drinking water, the use of MTBE should be reduced substantially." This

issue was addressed during the October 15, 1999 commissioner's work session. Staff was directed to develop proposed revisions to the regional fuel rule that would preclude any increased use of MTBE resulting from compliance with the regional fuel rule requirements. These proposed rule revisions address the concerns over any increase in the use of MTBE in gasoline by producers in order to conform with the low RVP requirements.

The 95 central and eastern Texas counties affected by these proposed rules consists of Anderson, Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bell, Bexar, Bosque, Bowie, Brazos, Burleson, Caldwell, Calhoun, Camp, Cass, Cherokee, Colorado, Comal, Cooke, Coryell, De Witt, Delta, Ellis, Falls, Fannin, Fayette, Franklin, Freestone, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Harrison, Hays, Henderson, Hill, Hood, Hopkins, Houston, Hunt, Jackson, Jasper, Johnson, Karnes, Kaufman, Lamar, Lavaca, Lee, Leon, Limestone, Live Oak, Madison, Marion, Matagorda, McLennan, Milam, Morris, Nacogdoches, Navarro, Newton, Nueces, Panola, Parker, Polk, Rains, Red River, Refugio, Robertson, Rockwall, Rusk, Sabine, San Jacinto, San Patricio, San Augustine, Shelby, Smith, Somervell, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Washington, Wharton, Williamson, Wilson, Wise, and Wood Counties.

The commission is requesting comment on sliding the start date of the requirements of §114.301 for this upcoming ozone season by one month, from June 1, 2000 to July 1, 2000 for gasoline dispensing facilities and from May 1, 2000 to June 1, 2000 for all other affected facilities, due to the timing of this rulemaking. This postponement will allow more time for gasoline producers to gear up their production facilities to produce gasoline which will comply with the proposed rules.

When adopting the control requirement on sulfur content on June 30, 1999, the commission was aware that the EPA was evaluating the feasibility and effectiveness of nationwide gasoline sulfur controls.

The commissioners agreed that if the outcome of those evaluations was a federal rule which covered the areas in Texas impacted by the state sulfur rule, then the commission would consider compliance with the national rule equally effective and would take steps to repeal the state sulfur requirements. These proposed rule revisions address the removal of the state gasoline sulfur requirements from the regional gasoline program since the EPA has adopted national sulfur controls which will include the counties of eastern Texas. These proposed rules will repeal the year-round state requirement that gasoline sulfur levels do not exceed 150 parts per million, that was scheduled to begin May 1, 2004.

The rule revisions regarding the enforceability of the RVP requirements and the removal of the state sulfur requirements are being submitted to the EPA to be considered in conjunction with the July 1999 SIP submittal entitled, "Requirements for Gasoline Volatility in East and Central Texas and Federal Clean Air Act §211(c)(4)(C) Waiver Request." However, proposed new §114.301(c) and §114.306(c) are not being submitted to the EPA as revisions to the SIP and the commission is not requesting a waiver regarding those sections. Pursuant to the FCAA, §211(c)(4)(A), states may not, "prescribe or attempt to enforce, *for purposes of motor vehicle emission control*, any control or prohibition respecting any characteristic component of a fuel or fuel additive in a motor vehicle or motor vehicle engine..." (emphasis added). The commission is proposing §114.301(c) and §114.306(c) under state authority to protect underground water resources, not air emissions from motor vehicles. Therefore, the preemption language in the FCAA does not apply to this portion of the rulemaking and a waiver is not necessary.

#### SECTION BY SECTION DISCUSSION

The proposed changes to §114.301 add language to prohibit the sale, supply, and dispensing of non-conforming gasoline in addition to the transfer and storage of gasoline. The proposal also adds language to require RVP limits to be addressed on a "per gallon" basis in order to address the EPA concerns regarding enforcement. The changes also prohibit producers from increasing the use of MTBE in gasoline on an average per gallon basis during the period of May 1 through October 1 of any calendar year over that used in the period May 1 through October 1, 1998 to conform with the low RVP requirements.

The proposed amendments to the regional gasoline rules repeal §114.302 because the newly adopted federal low sulfur regulations are applicable in the same 95 counties.

The proposed new §114.304 requires all gasoline producers and importers that currently supply gasoline to the affected area to register with the executive director by May 1, 2000. Beginning June 1, 2000, gasoline producers and importers that are not supplying gasoline to the affected counties as of May 1, 2000, shall register 30 days in advance of producing or importing gasoline intended for the affected counties. This change is proposed to address the EPA concerns with enforcement of the current low RVP program.

The proposed changes to §114.305 add language to specify a single RVP test method in response to EPA and stakeholder comments, delete optional RVP test methods, and delete the two sulfur test methods. Also in response to EPA comments, the proposal adds a correlation correction formula to

the American Society for Testing Materials Test Method D5191-99 to calculate RVP equivalent to that determined by test methods prescribed in Title 40 CFR Part 80, Appendix E, Method 3, dated March 17, 1993.

The proposed changes to §114.306 delete references to sulfur limits. Two new subsections are proposed. Subsection (b) requires that records of transfer documents be kept by all parties in the distribution chain, including the retail outlets, to address EPA concerns regarding enforcement of the current low RVP program. New subsection (c) enforces the MTBE limitation in §114.301(c) and requires producers to submit annual reports certifying that during the period May 1 through October 1 of the current calendar year the use of MTBE has not increased on an average per gallon basis over that produced for the affected counties in the period May 1 through October 1, 1998 in order to conform with the low RVP requirements. In addition, the title of §114.306 is proposed to be changed to “Recordkeeping and Certification Requirements.”

The proposed changes to §114.307 delete language referring to sulfur and language exempting retail outlets from the recordkeeping requirements in response to EPA concerns regarding enforcement of the low RVP program. The proposed changes also reformat the section to improve readability.

The proposed amendments to the regional gasoline rules also repeal §114.308, because this section has to do with sulfur controls and will no longer be relevant if §114.302 is repealed as proposed.

The proposed changes to §114.309 add clarifying language, delete references regarding sulfur controls, and delete subsection (b) which refers to compliance dates for Hardin, Jefferson, and Orange Counties. These three counties are no longer considered to be part of the affected area.

#### FISCAL NOTE

Bob Orozco, Technical Specialist with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed amendments to Chapter 114 are in effect there will be no significant fiscal implications to any single unit of state and local government as a result of administration or enforcement of the proposed amendments.

The proposed amendments to Chapter 114 would affect gasoline producers that supply gasoline to the 95 central and eastern Texas counties previously listed in the **BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES** section of this preamble. In addition, all entities in the gasoline distribution system from refiners to retailers in the 95-county area will be directly affected. The proposed amendments are part of the regional gasoline program which is an air pollution control program developed as part of a regional emission reduction strategy to enable the nonattainment and near-nonattainment areas in eastern and central Texas to meet the ozone national ambient air quality standard (NAAQS).

The proposed amendments establish a seasonal limit on gasoline RVP of 7.8 psi on a per gallon basis; repeal the existing state standard for sulfur content because the EPA has adopted national sulfur controls that will include the counties of eastern and central Texas; and would prohibit gasoline producers from

increasing the use of MTBE in gasolines in order to conform to the RVP requirements established in the proposed amendments. The proposed seasonal period for control is May 1 to October 1 of each year beginning May 1, 2000. The proposed amendments provide a one-month lead time for refiners to begin shipping low RVP fuel prior to retail sale of the low RVP fuel. The proposed amendments will require gasoline producers and importers to register with the commission and will require gasoline producers to submit annual reports certifying that the use of MTBE in gasoline has not increased in order for the producer to conform with the proposed RVP requirements. In addition, the proposed amendments will require gasoline producers, importers, terminals, pipelines, truckers, rail carriers, and retailers to maintain records of the transfer documents.

Stationary tanks, reservoirs, or other containers used exclusively for the fueling of agricultural implements or with a nominal capacity of 500 gallons or less, and gasoline solely intended for use as aviation gasoline are exempt from the RVP control, test methods, and recordkeeping and certification requirements of the proposed amendments. Also, gasoline that is being transferred, placed, stored, or held within the affected counties, is exempt from the requirements of the proposed amendments, provided the gasoline is not ultimately used to power a gasoline-fueled engine in the affected counties during the control period.

The existing state standards for sulfur content in gasolines is proposed for repeal because the EPA has established a national sulfur content standard that includes the eastern and central Texas counties. The proposed amendments repeal the current state standard to avoid confusion and clarify that the federal standard is the requirement that must be met.

There are no anticipated significant additional costs attributable to this rulemaking beyond those that currently exist for individuals or units of state or local government associated with administration or enforcement of the proposed amendments.

#### PUBLIC BENEFIT

Mr. Orozco also has determined that for each year of the first five years the proposed amendments to Chapter 114 are in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendments will be the potential reduction of evaporative emissions from gasoline as a result of the reduced RVP, potential reduction in volatile organic compound emissions, potentially improved air quality, and contribution toward demonstration of attainment with the ozone NAAQS. In addition, there are potential water quality benefits from the limitation on the use of MTBE in gasoline.

There are no fiscal implications anticipated to individuals and businesses as a result of implementing the proposed amendments. It is anticipated that gasoline producers that supply fuel to the 95 affected counties in central and east Texas will not incur additional costs as a result of this rulemaking to produce gasolines that meet the proposed standard. The cost of producing gasolines that meet the 7.8 psi RVP without increasing the use of MTBE is not anticipated to cost more than producing the current gasolines. The proposed amendments repeal the current state sulfur content standard to avoid confusion and clarify that the federal standard is the requirement that must be met. The costs for producer's annual report and certification is not anticipated to be significant. There are no anticipated significant additional costs for fuel producers and importers associated with registering with the commission.

Current rules require owners and/or operators of gasoline storage facilities to keep records of the RVP

and sulfur content of all gasoline stored or transferred during the compliance period and keep these records for two years. The proposed amendments would expand the documentation requirements to all entities in the gasoline distribution system and specifically identify what documents are required to be maintained. The additional cost of the proposed recordkeeping provisions for individuals and businesses in the gasoline distribution system are not anticipated to be significant.

#### SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

There are no anticipated fiscal implications to small businesses and micro-businesses as a result of implementing the proposed amendments. There are no known gasoline producers or importers that would be considered small or micro-businesses. However, it is anticipated that some gasoline transporters and many independent retailers of gasoline in the affected 95-county area are small or micro-businesses. Current rules require owners and/or operators of gasoline storage facilities to keep records of the RVP and sulfur content of all gasoline stored or transferred during the compliance period and keep these records for two years. The proposed amendments would expand the documentation requirements to all entities in the gasoline distribution system and specifically identify what documents are required to be maintained. The additional cost of the proposed recordkeeping provisions for small and micro-businesses in the gasoline distribution system are not anticipated to be significant. Costs associated with the more stringent EPA standards for sulfur content are not attributable to this rulemaking because that federal standard preempts state rules and those costs were addressed in the EPA rulemaking process. In addition, costs associated with the new sulfur standards are not anticipated to affect the independent transporters or retailers of gasoline except for passing increased costs of production through to consumers.

The fiscal implications for small businesses and micro-businesses to purchase gasoline that meets the proposed requirements is not anticipated to be significant. While purchasers of low RVP gasoline will be indirectly affected by the proposed amendments, there are no anticipated significant additional costs for small or micro-businesses as a result of the proposed amendments.

#### DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking does not meet the definition of a “major environmental rule” as defined in the Texas Government Code, and it does not meet any of the four applicability requirements listed in §2001.0225(a). The revisions proposed in this rulemaking will not have a significant impact on a sector of the economy. Specifically, the enforcement changes may add some paperwork responsibilities to parties in the gasoline production and distribution chain, but these responsibilities do not represent significant costs. The removal of the sulfur provisions of the rule should have no impact since they are mooted by the recent EPA adoption of federal sulfur controls. The prohibition on an increase in MTBE use to meet the RVP requirements and its corresponding certification requirements should not adversely impact fuel producers. According to industry representatives, there is no need to increase MTBE use to achieve the 7.8 psi RVP limit. The certification requirements are minimal and will not cost significant amounts of money to meet. Therefore, the proposed rules do not meet the definition of a “major environmental rule.”

The proposed rules also do not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Section 2001.0225 only applies to a major environmental rule, the

result of which is to: 1. exceed a standard set by federal law, unless the rule is specifically required by state law; 2. exceed an express requirement of state law, unless the rule is specifically required by federal law; 3. exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4. adopt a rule solely under the general powers of the agency instead of under a specific state law.

Specifically, the requirements within this proposal were developed in order to address EPA concerns regarding the enforceability of the regional gasoline program, limit any increase in the use of MTBE in gasoline to conform to the low RVP requirements, and remove the state controls on sulfur which have been supplanted by federal regulations. The proposed rules will also require gasoline producers and importers to register with the executive director. All parties in the gasoline distribution chain (producers, importers, terminals, pipelines, truckers, rail carriers, and retailers) will be required to maintain records of the transfer documents and gasoline producers will be required to submit annual reports certifying that no increase in the use of MTBE in gasoline has occurred in order for the producer to conform with the low RVP requirements. The regional gasoline program is a necessary element of the Texas SIP to enable nonattainment and near-nonattainment areas to achieve and maintain the ozone NAAQS. These proposed rules are therefore authorized by the Texas Health and Safety Code, §382.011, which provides the commission with the authority to establish the level of quality to be maintained in the state's air and the authority to control the quality of the states' air; §382.012, which requires the commission to develop plans for protection of the state's air; §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the Texas Clean Air Act (TCAA); §382.019, which provides the commission with the authority to regulate emissions from motor vehicles; §382.037(g), which governs the conditions under which the commission

may adopt fuel content standards; and §382.039, which provides the commission the authority 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 proposed rules are also authorized by the Texas Water Code (TWC), §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the TWC; and §28.011, which provides the commission with the authority to adopt and enforce rules to protect and preserve underground water quality. Specifically, the low RVP requirements within this proposal were developed in order to meet the ozone NAAQS set by the EPA under the FCAA, §7409, and therefore meet a federal requirement. States are primarily responsible for ensuring attainment and maintenance of NAAQS once EPA has established those standards. Under the FCAA, §7410 and related provisions, states must submit, for EPA approval, SIPs that provide for the attainment and maintenance of NAAQS through a control program directed to sources of the pollutants involved. This proposal is not an express requirement of state law, but was developed specifically in order to meet the air quality standards established under federal law as NAAQS. This proposal is intended to help bring ozone nonattainment areas into compliance and to help keep attainment and near nonattainment areas from going into nonattainment. The proposed amendments do not exceed a requirement of a delegation agreement. The proposed amendments were not developed solely under the general powers of the agency, but were specifically developed to meet the air quality standards established under federal law as NAAQS. The commission invites public comment on the draft regulatory impact analysis.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these proposed rules in accordance with to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purposes of this rulemaking are to address EPA concerns regarding the enforceability of the regional gasoline program, limit any increase in the use of MTBE in gasoline to conform to the low RVP requirements, and remove the state controls on sulfur which have been supplanted by federal regulations. The proposed rules will also require gasoline producers and importers to register with the executive director. All parties in the gasoline distribution chain (producers, importers, terminals, pipelines, truckers, rail carriers, and retailers) will be required to maintain records of the transfer documents and gasoline producers will be required to submit annual reports certifying that no increase in the use of MTBE in gasoline has occurred in order for the producer to conform with the low RVP requirements. Promulgation and enforcement of the proposed rulemaking should not burden private real property.

The requirements within this proposal will limit any increase in the use of MTBE in gasoline to conform to the low RVP requirements. This action is being reasonably taken to prevent a public or private nuisance.

#### COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et seq.), the rules of the Coastal Coordination

Council (31 TAC Chapters 501-506), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this action for consistency in accordance with the rules of the Coastal Coordination Council, and has determined that this rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal in 31 TAC §501.12(l) to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas. A reduction of air pollutant emissions would enhance the quality and values of coastal natural resource areas. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations in 40 CFR, to protect and enhance air quality in the coastal area (31 TAC §501.14(q)). No new sources of air contaminants will be authorized by the rule amendments. Another CMP policy applicable to this rulemaking action is the policy that state agencies with authority to manage non-point source (NPS) pollution shall cooperate in the development of a coordinated program to reduce NPS in order to restore and protect coastal waters (31 TAC §501.14(g)) and the amendments are expected to reduce the potential risk of MTBE contamination of water resources as a result of the limitation on any increase in the use of MTBE in gasoline by gasoline producers in order to conform with the low RVP requirements. Therefore, in compliance with 31 TAC §505.22(e), the commission affirms that this rulemaking is consistent with CMP goals and policies.

Interested persons may submit comments on the consistency of the proposed rules with the CMP during the public comment period.

#### PUBLIC HEARING

The commission will hold public hearings on this proposal at the following times and locations: March 22, 2000, 7:00 p.m. in the Longview City Hall Council Chambers, 300 West Cotton Street, Longview; and March 23, 2000, 2:00 p.m. in Building E, Room 201S, Texas Natural Resource Conservation Commission Complex, 12100 Park 35 Circle, Austin. 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, agency staff members will be available to discuss the proposal 30 minutes before each hearing and will answer questions before and after the hearings.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the Office of Environmental Policy Analysis and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

#### SUBMITTAL OF COMMENTS

Written comments may be mailed to Ms. Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 2000-002-114-AI. Comments must be received by 5:00 p.m., March 27, 2000. For further

information, please contact Bob Reese, Technical Analysis Division, at (512) 239-1439; or Alan Henderson, Policy and Regulations Division, at (512) 239-1510.

#### STATUTORY AUTHORITY

The amendments and new sections are proposed under the Texas Health and Safety Code, TCAA, §382.011, which provides the commission the authority to establish the level of quality to be maintained in the state's air and the authority to control the quality of the state's air; §382.012, which provides the commission the authority to prepare and develop a general, comprehensive plan for the control of the state's air; §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.019, which provides the commission with the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles; §382.037(g), which provides the commission the authority to regulate fuel content if it is necessary for attainment of the national ambient air quality standards; and §382.039, which provides the commission the authority 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 proposed amendments and new sections are also authorized by the TWC, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the TWC; and §28.011, which provides the commission with the authority to adopt and enforce rules to protect and preserve underground water quality.

The proposed amendments and new sections implement the Texas Health and Safety Code, §382.002, relating to Policy and Purpose; §382.011, relating to General Powers and Duties; §382.012, relating to

State Air Control Plan; §382.017, relating to Rules; §382.019, relating to Methods Used to Control and Reduce Emissions from Land Vehicles; §382.037(g), relating to Vehicle Emissions Inspection and Maintenance Program; and §382.039, relating to Attainment Program. The proposed amendments and new sections also implement the TWC, §5.103, relating to Rules; and §28.011, relating to Underground Water: Regulations.

**SUBCHAPTER H: LOW EMISSION FUELS**

**DIVISION 1: GASOLINE VOLATILITY**

**§§114.301, 114.304 - 114.307, 114.309**

**§114.301. Control Requirements for Reid Vapor Pressure.**

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

(b) (No change.)

(c) No producer shall the increase the use of methyl-tertiary-butyl-ether in gasoline on an average per gallon basis during the period of May 1 through October 1 of any calendar year over that used in the period May 1 through October 1, 1998 to conform with subsection (a) of this section.

**§114.304. Registration of Gasoline Producers and Importers.**

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

**§114.305. Approved Test Methods.**

(a) Compliance with the Reid vapor pressure (RVP) [and sulfur content] limitations of [§] §114.301 [and 114.302] of this title (relating to Control Requirements for Reid Vapor Pressure [; and Control Requirements for Sulfur]) shall be determined by [applying one or more of the following test methods and procedures, as appropriate.]

[(1) Use the following test methods for determining gasoline volatility:]

[A] the American Society for Testing and Materials (ASTM) Test Method [D5191] D5191-99 (Standard Test Method for Vapor Pressure of Petroleum Products (Mini Method)) for the measurement of RVP [Reid vapor pressure;] using the following correlation correction equation to calculate RVP equivalent to that determined by test methods prescribed in Title 40 Code of Federal Regulations Part 80, Appendix E, Method 3, dated March 17, 1993.

Figure: 30 TAC §114.305(a)

$$RVPE = 0.956(x) - 0.347;$$

where:

RVPE = equivalent RVP with units in pounds per square inch (psi)  
x = measured total vapor pressure in psi

[(B) Sampling Procedures for Fuel Volatility (40 Code of Federal Regulations (CFR) Part 80, Appendix D); and]

[(C) Test for Determining Reid Vapor Pressure of Gasoline and Gasoline-Oxygenate Blends (40 CFR Part 80, Appendix E).]

[(2) Use ASTM Test Methods D2622 or D5453 for determining sulfur content.]

(b) [(3)] Minor modifications to these test methods may be used, if approved by the executive director.

(c) [(4)] Test methods other than those specified in subsection (a) [paragraphs (1) and (2)] of this section, may be used if validated by 40 CFR 63, Appendix A, Test Method 301 (effective December 29, 1992). For the purposes of this subsection [paragraph], substitute “executive director” each place that Test Method 301 references “administrator.”

**§114.306. Recordkeeping and Certification Requirements.**

(a) The owner or operator of any gasoline storage vessel, gasoline terminal, or gasoline bulk plant subject to the provisions of §114.301 [and §114.302] of this title (relating to Control Requirements for Reid Vapor Pressure [; and Control Requirements for Sulfur]) shall maintain records of the Reid vapor pressure [and sulfur content] of all gasoline stored or transferred during the compliance period. All records shall be maintained for two years and be made available for review by the executive director, EPA, and local air pollution control agencies. Records do not have to be stored on-site, but must be made available for inspection at the site within five business days.

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

jurisdiction in the area. The records must contain, at a minimum, the type and date of transfer, names and addresses of the transferers and transferees, blend identity, blend batch numbers (producers and importers only), volume of transfer, container or transport type, test results, and certification that the fuel complies with the requirements specified in §114.301 of this title.

(c) Each producer subject to the provisions of §114.301 of this title shall submit to the executive director, or his designated representative, by October 15 of each year, a report which includes a quantification of the total gallons of gasoline and the total gallons of methyl-tertiary-butyl-ether (MTBE) contained in gasoline produced for the affected counties listed in §114.309 of this title (relating to Affected Counties) during the periods May 1 through October 1 of 1998 and May 1 through October 1 of the current calendar year. The producer's certifying report shall attest that all information contained in the report is true and accurate and is based on knowledge of the certifying official. The report must also include either:

(1) a certification that the use of MTBE in gasoline produced for the affected counties during the period May 1 through October 1 of the current calendar year has not increased on an average per gallon basis over that produced for the affected counties in the period May 1 through October 1, 1998; or

(2) if the average per gallon use of MTBE during the period May 1 through October 1 of the current calendar year exceeds the average per gallon use of MTBE during the period May 1 through October 1, 1998, documentation and explanation of the basis for the increased use in a manner

sufficient to demonstrate that the producer did not increase the use of MTBE during the period covered by the certification to conform with §114.301(a) of this title.

**§114.307. Exemptions.**

[(a) The following exemptions apply in the counties listed in §114.309 of this title (relating to Affected Counties).]

(a) [(1)] The following uses are exempt from §§114.301, [114.302,] 114.305, and 114.306 of this title (relating to Control Requirements for Reid Vapor Pressure; [Control Requirements for Sulfur;] Approved Test Methods; and Recordkeeping and Certification Requirements):

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

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

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

(2) [(B)] all gasoline solely intended for use as aviation gasoline (“av-gas”).

[(2) The owner or operator of a motor vehicle fuel dispensing facility is exempt from the recordkeeping requirements of §114.306 of this title.]

(b) Gasoline that does not meet the requirements of §114.301 [or §114.302] of this title is not prohibited from being transferred, placed, stored, and/or held within the affected counties and during the control period so long as it is not ultimately intended for use or used to power a gasoline engine in the affected counties during the control period.

**§114.309. Affected Counties.**

[(a)] All affected persons in the following counties shall be in compliance with §§114.301, [114.302,] and 114.304 [114.305]-114.307 of this title (relating to Control Requirements for Reid Vapor Pressure; [Control Requirements for Sulfur;] Registration of Gasoline Producers and Importers; Approved Test Methods; Recordkeeping and Certification Requirements; and Exemptions) no later than the dates specified in [§] §114.301(b) [, 114.302, and 114.308 (relating to Alternative Early Implementation)] of this title: Anderson, Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bell, Bexar, Bosque, Bowie, Brazos, Burleson, Caldwell, Calhoun, Camp, Cass, Cherokee, Colorado, Comal, Cooke, Coryell, De Witt, Delta, Ellis, Falls, Fannin, Fayette, Franklin, Freestone, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Harrison, Hays, Henderson, Hill, Hood, Hopkins, Houston, Hunt, Jackson, Jasper, Johnson, Karnes, Kaufman, Lamar, Lavaca, Lee, Leon, Limestone, Live Oak, Madison, Marion, Matagorda, McLennan, Milam, Morris, Nacogdoches, Navarro, Newton, Nueces, Panola, Parker, Polk, Rains, Red River, Refugio, Robertson, Rockwall, Rusk, Sabine, San Jacinto, San Patricio, San Augustine, Shelby, Smith, Somervell, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Washington, Wharton, Williamson, Wilson, Wise, and Wood.

[(b) All affected persons in the following counties shall be in compliance with §§114.302 and 114.305-114.307 of this title no later than the dates specified in §114.302, and §114.308 of this title:

Hardin, Jefferson, Orange.]

**SUBCHAPTER H: LOW EMISSION FUELS**

**DIVISION 1: GASOLINE VOLATILITY**

**§114.302, §114.308**

**STATUTORY AUTHORITY**

The repeals are proposed under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.011, which provides the commission the authority to establish the level of quality to be maintained in the state's air and the authority to control the quality of the state's air; §382.017, which provides the commission with the authority to adopt rules; and Texas Water Code (TWC), §5.103, which requires the commission to adopt rules any time it is repealing any agency statement of general applicability that describes its procedure or practice requirements.

The proposed repeals implement Texas Health and Safety Code, §382.011, relating to General Powers and Duties; §382.017, relating to Rules; and TWC, §5.103, relating to Rules.

**§114.302. Control Requirements for Sulfur.**

**§114.308. Alternative Early Implementation.**

