

The Texas Natural Resource Conservation Commission (commission) adopts an amendment to §114.1, concerning Definitions; and new §§114.301, 114.302, and 114.305-114.309, concerning Requirements for Gasoline Volatility and Sulfur Content. The amendments and new sections are adopted with changes to the proposed text as published in the January 1, 1999 issue of the *Texas Register* (24 TexReg 54). The commission adopts these revisions to Chapter 114, concerning Control of Air Pollution from Motor Vehicles, and to the State Implementation Plan (SIP) in order to reduce overall background levels of ground-level ozone in attainment, near-nonattainment, and ozone nonattainment areas.

Cleaner gasoline is one option the state is using to meet the national ambient air quality standards (NAAQS) for ground-level ozone. Cleaner gasoline will help to reduce overall background levels of ozone and help in keeping ozone attainment and near-nonattainment areas, such as Austin, Corpus Christi, Longview/Tyler/ Marshall, San Antonio, and Victoria in compliance with the federal ozone standards. It is also necessary to help the Beaumont/Port Arthur, Dallas/Fort Worth, and Houston/Galveston ozone nonattainment areas move closer to ultimately reaching attainment with the ozone NAAQS. Recent science shows that regional approaches such as clean gasoline may provide improved control of ozone air pollution. In particular, staff has conducted photochemical grid modeling which indicates that implementation of cleaner burning gasoline, Stage I vapor recovery, and national low-emitting vehicles (NLEV) will result in ozone reductions (peak eight-hour average) of one to four parts per billion (ppb) in much of Central and East Texas. Additional modeling conducted specifically for the one-hour standard has shown reductions of up to 3.6 ppb in Central and East Texas. Additional details concerning the need for a regional strategy are given in the BACKGROUND section of this preamble.

The cleaner burning gasoline will lower the evaporative emissions of volatile organic compounds (VOC), as well as improve the catalytic converter performance through reductions in gasoline sulfur, which in turn results in reduced emissions of VOC and oxides of nitrogen (NO_x). There is a provision (§114.302(b)) which would halt the implementation of the state gasoline sulfur regulation provided the federal government acts to control sulfur in gasoline by January 1, 2004. However, early opt-in areas, if acted on by the commission, would continue to receive low sulfur gasoline until EPA's regulation is implemented. Because NO_x and VOC are precursors to ground-level ozone formation, reduced emissions of NO_x and VOC will result in ground-level ozone reductions. To comply with the state cleaner burning gasoline regulations, refiners, gasoline distributors, and retail outlets will need to ensure that gasoline distributed in affected counties meets the specifications set forth in these rules. The rules require that gasoline transferred, placed, stored, or held for use in gasoline engines in the affected area does not exceed 7.8 pounds per square inch (psi) Reid Vapor Pressure (RVP) for the seasonal control period of May 1st through October 1st of each year, beginning May 1, 2000. If EPA does not take action by January 1, 2004, the rules would further require that gasoline sulfur levels do not exceed 150 ppm year-round, beginning January 1, 2004.

The new rules will require cleaner gasoline in the following 95 counties in the eastern half of Texas: 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.

In addition, the low sulfur requirements found in §114.302 cover the counties of the Beaumont/Port Arthur nonattainment area (Hardin, Jefferson, and Orange). Beaumont/Port Arthur has participated in the federal low RVP program since 1992. The federal low RVP program has an RVP level of 7.8 psi, the same RVP level as adopted under these rules. Therefore, requirements of §114.301 will not apply to the Beaumont/Port Arthur area.

The new rules for RVP and sulfur do not apply in the 12 counties of the Dallas/Fort Worth, and Houston/Galveston ozone nonattainment areas: Brazoria, Chambers, Collin, Dallas, Denton, Fort Bend, Galveston, Harris, Liberty, Montgomery, Tarrant, and Waller Counties. Currently, the Houston/Galveston and Dallas/Fort Worth ozone nonattainment areas have their own cleaner burning gasoline, federal reformulated gasoline (RFG). In these areas, federal rules prohibit the sale of gasoline which is not certified by the United States Environmental Protection Agency (EPA) as federal RFG. Consequently, gasoline in these areas will have to continue to meet the federal RFG requirements.

BACKGROUND

At the time the 1990 Federal Clean Air Act (FCAA) Amendments were enacted, the focus on controlling ozone pollution was centered on local controls. However, for many years an increasing number of air quality professionals have felt that ozone is a regional problem requiring regional strategies in addition to local control programs. As nonattainment areas across the United States prepared attainment demonstration SIPs in response to the 1990 FCAA Amendments, several areas found that demonstrating attainment was made much more difficult, if not impossible, because of high ozone and ozone precursor levels entering from the boundaries of their respective modeling domains, commonly called transport.

The commission has conducted air quality modeling and upper air monitoring that found regional air pollution should be considered when studying air quality in Texas' ozone nonattainment areas. This work is supported by research conducted by the Ozone Transport Assessment Group (OTAG), the most comprehensive attempt ever undertaken to understand and quantify the transport of ozone. Both the commission and OTAG study results point to the need to take a regional approach to ozone control.

As part of the Coastal Oxidant Assessment for Southeast Texas (COAST) project, the commission and its contractor Environ, Inc., conducted regional-scale modeling to develop future-year boundary conditions for the COAST modeling domain. The emissions inventory used in this modeling was based on the OTAG emission inventory and the modeling was conducted for a domain covering most of Texas as well as several southern states.

During the OTAG process, the commission's modeling staff ran several sensitivity analyses using this regional modeling setup to assess the impact of potential OTAG reductions on Texas. Applying the OTAG 5c reductions across the domain (60% reduction of point source NO_x, 30% reduction of low level NO_x, 30% reduction of VOC) compared to the case of no reductions, indicated that modeled reductions would significantly reduce ozone throughout most of the eastern half of Texas. Overall, the modeling indicated that a regional reduction strategy would be beneficial across the wide area of the state.

During modeling for the Houston/Galveston attainment demonstration SIP for the one-hour ozone standard, the commission's modeling staff conducted sensitivity analyses to determine the benefits regional reductions might have on Houston/Galveston, when applied simultaneously with local reductions. Unlike the commission's regional modeling exercises discussed in the previous paragraphs, these model runs offer an opportunity to assess separately the benefits of reductions made within and outside a region, since model runs with and without the regional reductions scenarios in Houston/Galveston were conducted. Modeling runs were completed to evaluate the eight-hour average ozone concentrations in the COAST modeling domain for September 8, 1993, with 2007 projected emissions and assuming a 70% reduction of NO_x and a 15% reduction of VOC's in the eight-county Houston/Galveston area. Even with the large reductions in Houston/Galveston, much of the upper Texas Coast is well above the eight-hour standard. Also, Austin, Victoria, and Corpus Christi show eight-hour average concentrations above 85 ppb. The benefit of applying OTAG 5c reductions outside the Houston/Galveston eight-county area clearly showed that the reductions are beneficial to

Houston/Galveston and provided additional ozone benefits of between five and ten ppb in Houston/Galveston.

Additional modeling has been completed by commission staff assessing the potential benefits of regional strategies. This modeling indicates that mobile source reductions (cleaner gasoline, NLEVs, and Stage I vapor recovery) have a potential to reduce peak eight-hour ozone averages of between one and four ppb in much of Central and East Texas, with the greatest reductions seen in the Austin and San Antonio areas. Modeling completed since this rule was proposed further backs the effectiveness of this rule for reducing ozone. The latest modeling indicates one-hour and eight-hour ozone reductions in most of Central and East Texas, with the most benefit seen in Northeast Texas (Tyler/Longview) and central Texas (Austin and San Antonio). This modeling indicates significant reductions in some areas with lesser reductions in others. The main conclusion to be drawn from these models is that the appropriate controls have been selected for reducing ozone levels.

This modeling provides part of the evidence of the benefit of regional reductions on Texas' nonattainment areas and provides further justification that a regional strategy will help maintain air quality in attainment and near-nonattainment areas. Conclusions from the commission's work are supported by OTAG studies that also illustrate the importance of implementing a regional air quality control strategy.

EXPLANATION OF ADOPTED RULES

The change to §114.1, concerning Definitions, adds a definition of reformulated gasoline. This definition is adopted with changes from the proposal to conform the FCAA cite to *Texas Register* style requirements.

The new §114.301, concerning Control Requirements for Reid Vapor Pressure, limits gasoline to an RVP of 7.8 psi in 95 counties in the eastern half of Texas. The RVP limit is seasonal (May 1st through October 1st of each year), beginning May 1, 2000. This section further defines that gasoline wholesale suppliers must start deliveries of this fuel by May 1st of each year. Retailers have until June 1st of each year to ensure only 7.8 RVP fuel is in their tanks. This change from the proposal to have different start dates for wholesalers and retailers was to give gasoline retailers the month of May to turn over their noncompliant winter grade gasoline and to ensure that their retail sales after May 31st meet the 7.8 psi RVP requirement. The rule allows gasoline storage, sales, and transfers within the affected counties during the control period, provided that the gasoline is not ultimately used to power a gasoline engine within the control region during the control period.

The new §114.302, concerning Control Requirements for Sulfur, limits gasoline to a sulfur content of 150 ppm in 98 counties in the eastern half of Texas. This sulfur limit would apply year-round, beginning on January 1, 2004. This section would no longer apply if EPA adopts federal gasoline sulfur limits which are scheduled to be implemented by January 1, 2004. However, any early implementation schedule which has been ordered by the commission under §114.308 would apply up until the time which such federal controls are implemented.

The new §114.305, concerning Approved Test Methods, establishes American Society for Testing and Materials (ASTM) Test Method D5191, 40 Code of Federal Regulations (CFR) Part 80, Appendix D (Sampling Procedures for Fuel Volatility), and 40 CFR Part 80, Appendix E (Test For Determining Reid Vapor Pressure of Gasoline and Gasoline-Oxygenate Blends) as the approved test methods for determining gasoline volatility, and establishes ASTM Test Methods D2622 and D5453 as the approved test methods for determining sulfur content. Section 114.305 also includes a paragraph which authorizes the use of test methods other than those specifically listed in §114.305, provided that any new test method is validated using the procedures in 40 CFR 63, Appendix A, Test Method 301, with the executive director acting as the administrator. This paragraph is included because in some unique situations the listed test methods may be inappropriate. The paragraph increases flexibility by allowing the use of additional test methods which may be more cost-effective and more appropriate in certain unique situations.

The new §114.306, concerning Recordkeeping Requirements, requires 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 to maintain records of the RVP and sulfur content of gasoline. Gasoline retailers are exempt from the recordkeeping requirements, as stated in §114.307(2). Added to the proposed language is a provision allowing off-site recordkeeping, as long as records are made available within five business days at the site in question.

The new §114.307, concerning Exemptions, establishes exemptions for gasoline used in agriculture, aviation, and any tank, reservoir, storage vessel, or other container with a nominal capacity of 500

gallons (1,893 liters) or less. The exemption for aviation gasoline (“av-gas”) is due to the unique fuel performance requirements of aircraft, which cannot be met by gasoline for land-based motor vehicles. The exemptions for agricultural and small-capacity gasoline storage tanks are included because these tanks often have such a low throughput that they might still contain higher RVP gasoline at the start of the seasonal control period. In addition, the new §114.307 establishes an exemption from the recordkeeping requirements for the owner or operator of motor vehicle fuel dispensing facilities (gasoline retailers). For clarity, new subsection (b) has been added since the proposal to make it clear that gasoline that does not meet the requirements of §114.301 and §114.302, may be transferred, placed, stored, and/or held within the affected counties during the control period, as long as it is not ultimately used to power a gasoline engine in the control region during the control period.

The new §114.308, concerning Alternative Early Implementation, allows a county with a population of 200,000 or more located in Central or East Texas, or a city with a population of 200,000 or more in a covered county to request the early implementation of sulfur controls for the area under their jurisdiction. The rule limits the size of counties and cities allowed to opt-in due to gasoline distribution concerns. Early controls, or phased in controls, for sulfur may be available to these areas as long as the levels are not more stringent than those contained within the rule. The new §114.308 further provides that the commission may enter an order adopting some or all of the provisions of an area’s request for accelerated sulfur controls upon a finding that the requested controls are practicable and needed to improve air quality. Early opt-in for RVP controls has been dropped from this adoption to address concerns with notice and the time industry may require for implementation of controls.

The new §114.309, concerning Affected Counties, specifies the counties which are subject to the new requirements. The listing of counties has been narrowed from 110 counties to 98 counties. The eight counties that make up the Houston/Galveston nonattainment area (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller) and the four counties that make up the Dallas/Fort Worth nonattainment area (Collin, Dallas, Denton, and Tarrant) have been removed from this rulemaking. They are removed from the adoption due to their inclusion in the federal RFG program and because of the proposed federal rulemaking regarding gasoline sulfur requirements which will also apply to these counties. Additionally, the three counties which make up the Beaumont/Port Arthur area (Hardin, Jefferson, and Orange) have been removed from the RVP requirements. Beaumont/Port Arthur has received low RVP gasoline for several years under a federal low RVP program and will continue to receive this fuel in the future.

FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225. Although it meets the definition of a “major environmental rule” as defined in the Texas Government Code, it does not meet any of the four applicability requirements listed in §2001.0225(a). Specifically, the emission limitations and control requirements within these rules were developed in order to meet the NAAQS for ozone set by EPA under of the 1990 FCAA, §109 and, therefore, meet a federal requirement. States are primarily responsible for ensuring attainment and maintenance of NAAQS once EPA has established them. Under of the FCAA, §110 and related provisions, states must submit, for approval by EPA, SIPs that provide for the attainment and maintenance of NAAQS through control

programs directed to sources of the pollutants involved. This rule 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 rule will help prevent a real and substantial threat to public health and safety by reducing VOC and NO_x emissions in ozone nonattainment areas. Specifically, the rule is necessary to reduce overall background levels of ozone and help bring ozone nonattainment areas into compliance, and help keep attainment and near-nonattainment areas from going into nonattainment. These rules do not involve an agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program, and were not developed solely under the general powers of the agency. Comments received during the comment period regarding the draft regulatory impact analysis are addressed in the HEARING AND COMMENTERS section of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules pursuant to the Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rulemaking is to establish gasoline RVP limits in 95 counties and sulfur content limits in 98 counties in the eastern half of Texas. The purpose of this rule is to help keep ozone attainment and near-nonattainment areas, such as Austin, Corpus Christi, Longview/Tyler/Marshall, San Antonio, and Victoria in compliance with the federal ozone standard, and to help the Beaumont/Port Arthur, Dallas/Fort Worth, and Houston/Galveston ozone nonattainment areas reach attainment. Promulgation and enforcement of the rules may possibly burden private real property because this rulemaking action may result in investment in the permanent installation of new refinery processing equipment. The rule revisions fulfill a federal mandate under the 1990 Amendments to the FCAA, §110. Specifically, the

emission limitations and control requirements within the rule were developed in order to meet the NAAQS for ozone set by EPA under the FCAA, §109. States are primarily responsible for ensuring attainment and maintenance of the NAAQS once EPA has established them. Under the FCAA, §110 and related provisions, states must submit, for approval by EPA, SIPs that provide for the attainment and maintenance of the NAAQS through control programs directed to sources of the pollutants involved. Therefore, the purpose of the rule is to implement cleaner burning gasoline which is necessary for the state to meet the air quality standards established under federal law as NAAQS. Consequently, the following exemption applies to these rules: an action reasonably taken to fulfill an obligation mandated by federal law. Comments received during the comment period regarding the takings impact assessment are addressed in the HEARING AND COMMENTERS section of this preamble.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has determined that this rulemaking action is 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's 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, agency 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, and has determined that this rulemaking is consistent with the applicable CMP goals and policies. The primary 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. No new sources of air contaminants will be authorized by the rule amendments, and the amendments are expected to result in a reduction in VOC and NO_x emissions by reducing emissions resulting from the fueling and operation of motor vehicles. Additionally, the rule amendments do not authorize any contamination of waters of the state, nor do they modify the petroleum storage tank rules in any way. Therefore, in compliance with 31 TAC §505.22(e), the commission affirms that this rulemaking is consistent with CMP goals and policies. Comments were received during the comment period regarding the consistency of the rules with the CMP are addressed in the HEARING AND COMMENTERS section of this preamble.

HEARINGS AND COMMENTERS

Public hearings on this rule were held in Austin on January 25, 1999 at 11:00 a.m. in Building F, Room 2210 at the TNRCC Complex, located at 12100 Park 35 Circle; in San Antonio on January 25, 1999 at 7:00 p.m. at the San Antonio City Council Chambers located at 103 Main Plaza; in Lufkin on January 26, 1999 at 2:00 p.m. at the Lufkin City Council Chambers located at 300 East Shepherd, Room 102; and in Tyler on January 26, 1999 at 7:00 p.m. at the Tyler Junior College Regional Training and Development Complex located at 1530 South Southwest Loop 323, Room 104. The comment period initially was to close on February 1, 1999, but was extended and ultimately closed on February 15, 1999.

Almost four hundred comments were received. Some commenters commented on the proposal both orally and in writing.

Three-fourths of the commenters commented substantially only in opposition to the use of methyl tertiary butyl ether (MTBE) in Texas and/or in opposition to the rules because MTBE was not banned. The majority of these were individuals, and the remainder were the following organizations: Point Enterprise W.S.C., City of Muenster, Northeast Regional Water Planning Group, West Harrison W.S.C., Sharon Water Supply Corporation, the Panola County Judge, City of Chandler, City of Sealy, City of Kilgore, City of Winnsboro, Gum Springs Water Supply Corporation, City of Sherman, City of Lufkin, the County Judge for Rusk County, City of Sugarland, City of Henderson, the Texas House of Representatives, District 6, City of Dayton, Frankland County, City of Jacksonville, Hopkins County, City of College Station, Atlanta City Development Corporation, City of Bryan, City of Denison, City of Navasota, City of Lewisville, Delta County, Cass County, Northeast Texas Municipal Water District, Liberty City Water Supply Corporation, Northeast Texas Economic Development District, City of Port Neches, Upper Neches River Municipal Water Authority, City of Kaufman, City of Dayton, Sierra Club Lone Star Chapter, SRI Consulting, Texas Center for Policy Studies, Oxybusters of New Jersey, Bistone Municipal Water Supply District, and Rains County, Texas State Inspection Association, East Texas Council of Governments, Tyler Water Utilities, Community Relations City of Tyler, TOSCO, People United for the Environment, Analytical Environmental Labs, Texas Campaign for the Environment, City of Sachse, Franklin County Water District, East Texas Council of Governments, Atlanta Economic Development Board, City of Atlanta, City of Wylie, City of Wake Village, Upper Sabine Basin Water Alliance, and Water Utilities for the City of Lufkin.

Two commenters supported the rule as written: Austin Transportation Study, and the Lower Colorado River Authority.

The remaining commenters commented on aspects of the rule and in most cases also on the use of MTBE. These commenters included: The Cities of Longview, Marshall, and Tyler, Valero Energy Corporation, City of Corpus Christi, EPA, A 2nd Opinion, Inc., Renewable Fuels Association, Oxybusters of Texas, Environmental Defense Fund (EDF), Central Texas Clean Air Force, American Lung Association of Texas, American Corn Growers Association, Volvo Cars of North America, Texas Petrochemicals Corporation, Information Resources Inc., Pennzoil Quaker State Company, Mobile Oil Corporation, Koch Petroleum Group, Exxon Company USA, Citgo, Motiva Enterprises LLC, Enron, Texas Oil and Gas Association (TxOGA), Clean Fuels Development Coalition, Oxygenated Fuels Association Inc., Tosco Corporation (TOSCO), Austin Sierra Club, Ultramar Diamond Shamrock, City of San Antonio, City of Austin, Association of International Automobile Manufacturers, and several individuals.

ANALYSIS OF SPECIFIC COMMENTS

Over 300 individuals and groups submitted comments only in regard to MTBE use. These commenters were mainly in opposition to MTBE use and/or in opposition to the rule due to a lack of MTBE ban due to a threat to water quality through MTBE contamination. Two citizens commented in support of MTBE usage due to its ability to reduce the cost of producing cleaner fuels. One citizen was also concerned about the loss of jobs that may be associated with a ban on MTBE use. TxOGA, the Clean Fuels Development Coalition, the Oxygenated Fuels Association, ENRON, MOTIVA Enterprises, Exxon, Koch, Valero, Mobil, the Texas Center for Policy Studies, Information Resources Inc., Citgo, and Ultramar Diamond Shamrock opposed a ban on MTBE at this time. The Central Texas Clean Air Force recommended that the commission act to minimize the use of MTBE.

The rule was not modified regarding the use of oxygenates. Although it is possible to meet the requirements of this rule with gasoline oxygenated with MTBE, staff's discussions with the Texas gasoline suppliers have determined that the 7.8 RVP requirement will not require them to increase the use of MTBE. Additionally, sulfur reductions will likely not lead to the additional use of MTBE.

Currently, much higher levels of oxygenates are already required in the national RFG program (in place in the Houston/Galveston and Dallas/Fort Worth areas since 1995). Because of the high level of oxygenates used nationwide in RFG and the establishment of EPA's Blue Ribbon Panel on MTBE use in gasoline, the comments on MTBE will be forwarded to this group for their consideration.

The Texas Center for Policy Studies asked the commission to establish minimum taste and odor thresholds for MTBE.

The commission proposed Risk Reduction groundwater rules for MTBE contaminated sites based on taste and odor thresholds of 15 ppb for Class I and Class II groundwaters in the March 26, 1999 issue of the *Texas Register* (24 TexReg 2165).

Valero commented that a multi-step plan may be the way to address potential remediation needs for possible MTBE contamination of ground water.

The Commission's rules do not address the use of MTBE in gasoline. Ground water remediation is handled in other TNRCC rules and not dealt with in this rulemaking. Therefore, this comment is beyond the scope of this rulemaking.

The Renewable Fuels Association recommended fuel pump labeling for pumps which dispense fuel oxygenated with MTBE. The justification given was to so "ethanol is given a fair opportunity to compete."

The Texas Legislature (Texas Civil Statutes, Article 8614, Sales of certain fuel mixtures, Senate Bill 665, Acts of the 71st Legislature, 1989) required fuel pump labeling for pumps which dispense ethanol and methanol oxygenated fuel, but not MTBE oxygenated fuel. Because the Legislature has acted to require fuel pump labeling but has chosen not to cover MTBE, the commission will not require fuel pump labeling for MTBE blended fuels at this time.

One citizen was opposed to benzene use in gasoline due to the potential for water contamination and the cancer concerns with benzene.

The agency has not elected to address benzene use in gasoline with this rulemaking. Therefore, this comment is beyond the scope of this rulemaking.

The Clean Fuels Development Coalition, American Corn Growers Association, Texas Petrochemical Corporation, Valero, Oxygenated Fuels Association, and Information Resources Inc. opposed low

RVP/low sulfur fuels. The commenters suggested that the commission adopt federal RFG in place of low RVP/low sulfur fuel for various reasons including price, emission reduction potential, and low farm product prices. Several of the commenters noted the ability of RFG to reduce toxics including the carcinogen benzene while low RVP/low sulfur rules would not address these contaminants. It was argued by the American Corn Growers Association that low farm prices could be helped by the use of ethanol (a corn product) in RFG. Oxybusters commented in opposition to federal RFG due to the oxygenate requirement.

The commission has been evaluating a cleaner gasoline for the eastern and central parts of Texas. After much research, industry consultation, and communication with local, state, and federal agencies, the commission has arrived at a fuel that we believe will move Texas much closer to achieving its overall air quality goals. The fuel the commission is now adopting, as mentioned previously, is a low RVP gasoline with a sulfur cap. The rule does not prohibit nor require any specific oxygenate, including the use of MTBE or ethanol. Results of evaluation efforts to date are summarized in the following paragraphs.

Automobile manufacturers have made a commitment to introduce cleaner cars to the nation earlier than otherwise would have been required by the Clean Air Act Amendments through the NLEV program. Additionally, EPA has proposed even cleaner cars through the Tier II proposal. The reductions from this action, although significant, may not be enough to get Texas where it needs to be in relation to overall air quality. Improvements in gasoline quality alone also may not be enough. However, an improvement in gasoline quality, combined with the advanced vehicle

technology, will move Texas closer to achieving its overall air quality goals than either step alone could possibly achieve.

Texas refineries supply gasoline not only to the Texas market, but also to markets outside of Texas. One state which will be relying on Texas and other Gulf Coast refineries for its supply of low RVP/low sulfur gasoline is Georgia. Gasoline that is proposed for the Atlanta area is very similar to the type of fuel being adopted by Texas, thereby creating more of a demand for this type of fuel. Also at the national level, sulfur reductions are likely the means most refiners will use to meet the Phase II RFG requirement for NO_x reductions. Phase II RFG will have sulfur levels very close to the fuel adopted for the Texas market. Based on these factors, EPA's proposal of fuel sulfur limits are even more stringent than adopted here (30 ppm average), Phase II RFG with reductions in fuel sulfur, and other states' consideration of sulfur limits, we believe that the low RVP/low sulfur fuel adopted here is consistent with national trends regarding improvements in fuel quality.

Starting in late 1997, staff began to evaluate different types of cleaner burning fuels (gasoline, diesel, etc.) as part of an overall regional strategy. Staff eventually settled its focus on a cleaner burning gasoline. Of the clean gasolines under consideration, four were evaluated thoroughly: federal RFG, a gasoline with equal emissions performance to federal Phase II RFG, a formula based fuel with low RVP and low sulfur content, and California RFG.

After further discussions, staff completed its analysis on the top two fuels of choice, a performance based fuel with emissions limits equal to federal phase II RFG, and a fuel with controls on RVP and sulfur. The formula based low RVP/low sulfur fuel was settled upon for the following reasons.

1. EMISSIONS PERFORMANCE.

Several of the state's areas are in need of significant NO_x reductions along with some level of VOC reduction. Agency modeling shows that NO_x reductions are necessary for the Houston/Galveston, Dallas/Fort Worth, and Beaumont/Port Arthur nonattainment areas to demonstrate attainment of the one-hour ozone standard and are very beneficial for the state's near-nonattainment areas. Therefore, one of the first objectives of a cleaner fuel was that it achieve NO_x reductions.

Additional state and federal modeling has shown that reductions in VOCs, specifically in the urbanized areas, continue to contribute to reductions in ozone. Reduction in RVP will reduce evaporative emissions of VOCs from not only motor vehicles, but from refueling operations, bulk plants, off-road equipment, and refineries. The reduction of sulfur will help existing cars maintain their certified emissions levels and the future's more advanced (NLEV and Tier II) cars reach and maintain their low tailpipe emission limits.

Specific modeling was completed for the agency in September 1997 (Evaluating the Impact of Reformulated Gasoline in the Dallas/Fort Worth Area) evaluating low RVP and RFG. EPA's complex model indicates VOC emission reductions of 14.3% with 7.8 pounds per square inch

absolute (psia) fuel and a 150 cap on sulfur. NO_x reductions of 8.5% are also seen with the low RVP/low sulfur fuel adopted here.

Some national studies regarding the impact of fuel sulfur on current and advanced technology vehicles have been completed. Some of these groups include: private industry, such as the American Automobile Manufacturers Association, the automotive and refining industries (The Auto/Oil Air Quality Research (Auto/Oil) program), the federal government (EPA), state government (California, Georgia, Arizona), and other groups, such as the Coordinating Research Council and OTAG.

Estimates by EPA in their “Staff Paper on Gasoline Sulfur Issues” indicate that in use vehicles, such as Tier 0's which have been available through model year (MY) 1993 and Tier I's which have been available since MY 1994, show reductions in emissions associated with a reduction in gasoline sulfur levels. Figure: 30 TAC Chapter 114 - preamble

Decrease in Emissions with Fuel Sulfur Decreasing from Average In-Use Level (330 ppm) for Tier 0 and Tier I Vehicles (Source EPA)						
	NMHC		CO		NO _x	
Sulfur	150 ppm	40 ppm	150 ppm	40 ppm	150 ppm	40 ppm
Tier 0	4.6 %	13.0 %	4.4 %	12.6 %	5.0 %	11.1 %
Tier I	not tested but assumed to be equivalent to Tier 0	16.3%	not tested but assumed to be equivalent to Tier 0	16.4%	not tested but assumed to be equivalent to Tier 0	11.0 %

Using EPA's Complex Model, Georgia estimated the benefits of their low RVP/low sulfur gasoline. The Complex Model shows the following reductions from conventional fuel (8.7 RVP, 330 ppm sulfur, benzene at 1.53 volume percent, olefins at 9.2 volume percent, and aromatics at 32 volume percent) for the second phase of Georgia's program (RVP at 7.0 psi, 40 ppm sulfur, olefins 4 volume percent, and aromatics 22 volume percent). Figure: 30 TAC Chapter 114 - preamble

Georgia Evaluation of Their Phase II Formula Based Gasoline Using EPA's Complex Model				
	VOC	CO	NO _x	Air Toxics
	23.9 %	NA	14.71 %	20.59 %

It should be noted that the Complex Model assumes a 1990 (Tier 0) technology vehicle. It does not take into consideration Tier I or advanced technology cars (low emission vehicles (LEV), ultra low emission vehicles (ULEV)), nor does it consider the effects on heavier light-duty trucks (LDT) (3's and 4's).

OTAG also evaluated a low sulfur fuel in typical attainment areas (no inspection and maintenance (I/M), etc.) and found that with a 150 ppm sulfur level the following emission reductions were obtainable. Figure: 30 TAC Chapter 114 - preamble

OTAG Evaluation of Low Sulfur (150 ppm) Gasoline				
	VOC	CO	NO _x	Air Toxics
	2.5 - 5.3 %	3.3 - 8.0 %	4.4 %	N/A

2. EFFECT ON ADVANCED TECHNOLOGY CARS.

For advanced technology cars (light-duty vehicles (LDV)) and LDTs covered by the NLEV and the proposed Tier II program (LEVs/ULEVs), EPA estimated emission increases with fuel sulfur above 40 ppm. These numbers are not comparable to the earlier table on Tier 0 and Tier I emissions improvements with low sulfur fuel. It was assumed that a low sulfur fuel would be used to certify advanced technology vehicles; therefore, the emissions impacts of fuel sulfur levels are indicated as percent increases over 40 ppm sulfur certification fuel. Figure: 30 TAC Chapter 114 - preamble

Increase in Emissions with Fuel Sulfur Increases from Baseline (40 ppm) for LEVs and ULEVs (LDVs and LDTs) (Source EPA)						
Pollutant	NMHC		CO		NO _x	
Sulfur, ppm	150 ppm	330 ppm	150 ppm	330 ppm	150 ppm	330 ppm
All LDV/LDT1	26.7 %	43.0 %	58 %	75.8 %	65.7 %	136 %
All LDT2/LDT3	23.0 %	26.4 %	12.5 %	31.2 %	33.7 %	65.5 %

3. IMPACTS ON OFF-ROAD EMISSIONS.

For non-road engines, there will be evaporative VOC and air toxic benefits associated with the low RVP/low sulfur fuel. There may also be some exhaust benefits for VOC. However, NO_x benefits may end up being very minor, mainly because sulfur benefits are associated with catalyst equipped vehicles and engines. VOC emission reductions of upwards of 3% may be seen in off-road sources.

In summary, the commission believes a low RVP/low sulfur fuel is the most cost-effective gasoline control program to implement at this time.

The following commenters commented that the air quality benefits of the rule are “not significant” to air quality in their area: City of Sealy, City of Kilgore, Cities of Longview, Marshall, and Tyler, City of Winnsboro, Gum Springs Water Supply Corporation, City of Sherman, City of Lufkin, Rusk County, City of Sugarland, City of Henderson, the Texas House of Representatives, District 6, City of Dayton, County of Frankland, City of Jacksonville, Hopkins County, City of College Station, Atlanta City Development Corporation, City of Bryan, City of Denison, City of Navasota, City of Lewisville, Delta County, Cass County, Northeast Texas Municipal Water District, Liberty City Water Supply Corporation, North East Texas Economic Development District, Inc., City of Port Neches, Upper Neches River Municipal Water Authority, City of Kaufman, City of Dayton, and County of Rains.

Regional approaches to air quality, as a concept, are designed to reduce the overall background levels of ozone in the eastern part of Texas. It was not developed to focus on specific areas. A combination of the state regional controls, federal control programs, and area-specific local controls are necessary for the vast majority of Texas nonattainment and near-nonattainment areas to reach attainment. Modeling has shown positive ozone benefits across the entire eastern and central parts of Texas. It is an oversimplification of the ozone problem to expect any one program to provide the entire solution. Ozone is a complex regional problem requiring an equally sophisticated solution which includes federal, regional, and local control programs. The commission has made no change in response to these comments.

Koch Petroleum Group does not believe the agency has the authority to set gasoline specifications.

Koch believes that the air quality benefits of the clean gasoline rule are unclear and may not meet the federal criteria for being granted a waiver from the EPA. Koch further believes that other available control programs such as vehicle I/M programs should be evaluated as to their potential for being more cost-effective than a cleaner gasoline program. Exxon also commented that the agency's legal authority to adopt these fuel regulations in attainment areas is "a stretch". TxOGA further commented that the agency's regulation of fuel RVP and sulfur levels are "explicitly pre-empted by federal regulation". TxOGA additionally added that Congress has "pre-empted if not banned" state regulation of RVP in §211(h) of the Clean Air Act. TxOGA finally commented that State regulation of fuel is prohibited to the extent that it may affect interstate commerce under the Commerce Clause.

The agency believes that once EPA waives the federal pre-emption pursuant to FCAA §211(c)(4)(C), the state will have full authority to adopt gasoline control regulations and further, that such an action would not violate the Commerce Clause. The amendments and new sections are adopted under state authority found in the Texas Health and Safety Code (Vernon 1992), §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 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); §382.012, which requires the commission to develop plans for protection of the state's air; §382.019, which provides the commission with the authority to regulate emissions from motor vehicles; and §382.037(g), which governs the conditions under which the commission may adopt fuel content standards.

The commission is confident that it has met all federal criteria for being granted a waiver from EPA. Through the accompanying SIP and photochemical modeling, the commission has demonstrated the effectiveness of this clean gasoline program in reducing levels of ozone in the eastern part of the state. The commission further believes that clean gasoline in combination with other elements of a regional plan are necessary to ultimately achieve the federal air quality standards for ozone.

An additional criteria for being granted a waiver under §211(c)(4)(C) is an evaluation of all other control programs outside of regulating fuels. The agency has completed this analysis in respect to vehicle I/M programs. State law (Texas Health and Safety §382.037(c)) prohibits the Texas Motorist Choice I/M program from expanding to additional areas unless the mayor of the largest city and the county judge requests an expansion of the program. At this time, there is not significant local interest in expanding the Texas Motorist Choice program to attainment areas, making I/M impracticable as a wider control measure.

Lastly, to address TxOGA's comments regarding the state's legal authority to adopt State fuel controls and their potential for challenge under the Clean Air Act or the Commerce Clause, the state of Texas has already adopted fuel control regulations which are included as part of SIPs for control of gasoline RVP and oxygen content. These regulations can be found in Chapters 114 and 115 regarding RVP of gasoline sold in El Paso county and oxygen content of gasoline sold in

El Paso county. EPA has granted the state a waiver to control RVP in El Paso. Precedence for state control of RVP, even Texas regulations for RVP, have been previously approved by the regulating authority, EPA.

Koch and the City of Corpus Christi believe that the Corpus Christi area should be removed from the regional strategy because the Corpus Christi area is already voluntarily using low RVP gasoline during the ozone season as part of a federal flexible attainment plan. In addition, Koch believes that Corpus Christi does not significantly contribute to elevated ozone levels in Austin, San Antonio, or Dallas/Fort Worth, therefore Corpus Christi should not be included as part of these rules. However, TxOGA, Mobil, Exxon, the City of San Antonio, and Enron commented in support of a regional basis for improvements in air quality.

The Commission disagrees with the comment based on modeling and other information that demonstrates that Corpus Christi does in fact contribute to the air quality in these cities. The state's major population centers and, therefore, the most significant air quality challenges, are located in the eastern part of the state. Ozone is a complex widespread regional type of pollutant which requires an integrated strategy to be handled effectively. Regional approaches to air pollution, in the long run, are the most effective types of solutions. The network of highways and their interconnection of the major urban areas leads to significant immigration and emigration of vehicles. Because of this, a cleaner burning gasoline has the potential of making a significant contribution to the overall air quality in the region.

The commission agrees with Mobil that air quality is best approached on a regional basis.

Because the Corpus Christi area already uses low RVP gasoline, and is relatively close to other major areas of the state facing air quality challenges, and because of the ozone exceedances experienced by the Corpus Christi area in the past, the commission does not agree with removing the Corpus Christi area from the clean gasoline regulations. Making the Corpus Christi low RVP program enforceable by the states also adds the benefit of creditable reductions in the SIP.

As noted in the BACKGROUND section of this preamble, the commission staff has conducted modeling which indicates that mobile source reductions (cleaner gasoline, NLEVs, and Stage I vapor recovery) have a potential to reduce peak eight-hour and one-hour ozone averages of between one and four ppb in much of Central and East Texas. While the greatest reductions are seen in the Austin, San Antonio, and Tyler/Longview areas, modeling of the combined point source and mobile source strategies shows a large area, including near-nonattainment areas (such as Corpus Christi) and attainment areas, of additional reductions in peak eight-hour and one-hour ozone averages. Additional modeling shows reduction in peak one-hour concentrations of up to 3.6 ppb in Central and Northeast Texas.

Koch commented that the commission should set VOC and/or NO_x performance standards instead of setting fuel property standards. Koch believes that setting VOC and/or NO_x standards allows refiners the flexibility to create clean gasolines in a more cost-effective manner.

Setting specific standards for refiners to meet enables the commission to ensure that air quality benefits are being achieved while at the same time greatly simplifying enforcement of the program. Enforcement of a performance standard type program would require significantly more oversight from the commission. It would require establishing baseline fuels for refiners, tracking refinery output by parameter (T10, T50, T90, benzene, aromatics, olefins, sulfur, RVP, oxygen and others), establishing performance levels, validating models (such as EPA's complex model or a California fuel model), and then tracking all these throughout the system. It could also cause gasoline mixing problems where comingled performance standard gasolines would not meet the performance requirements. Overall, the commission believes that setting one or two gasoline content parameters, such as RVP and sulfur, will be simpler, more effective, and less costly than a performance standard system as suggested by the commenter. The commission has made no change in response to this comment.

TxOGA, CITGO, Koch, Exxon, Motiva, and Mobil were in favor of splitting the rule into two packages, one for adoption of RVP controls and a second for adoption of sulfur control. Reasons for the split include two different adoption timelines and time for the federal sulfur regulations to come into place, thereby, possibly negating the need for a state sulfur rule. Further, Mobil commented that the state should include language that would terminate the agency's regulation of fuel sulfur levels if EPA were to regulate fuel sulfur levels. In contrast, the Central Texas Clean Air Force and the Environmental Defense Fund argued for keeping the RVP and sulfur components of the rule together to strengthen the state's argument for being granted a §211(c)(4)(C) waiver for regulation of RVP and

sulfur. The City of San Antonio argued that any advantage gained by separating the package into two rules is outweighed by the air quality benefits gained by through VOC and NO_x control.

The commission has elected not to separate the rule into separate packages. To address the commenters' concerns that EPA's regulation of sulfur is emanate, the commission has modified §114.302 to include a new subsection (b), which will end the state's regulation of sulfur if EPA adopts national sulfur limits which are scheduled to be implemented by January 1, 2004. The rule would continue to regulate sulfur for early opt-in areas if the early opt-in requests are acted upon by the commission.

TxOGA, Pennzoil-Quaker State, Motiva Enterprises, CITGO Petroleum Corporation, Exxon, Koch, Ultramar Diamond Shamrock, and Mobil were opposed to state regulation of sulfur and/or wanted any state rule to mirror the future federal sulfur control program. The opposition to state sulfur control mainly centered on the pending federal (EPA) control of gasoline sulfur levels, costs of state sulfur control programs, and the potential of a "patchwork" of different state sulfur control programs.

American Lung Association of Texas commented that Texas should only defer to EPA limits if they are more stringent and sooner than those adopted by the commission. TOSCO supports deferral to EPA limits only if they are more stringent and implemented by May 2004. EDF commented that the commission should not defer to EPA regulation but should adopt the proposed sulfur standard as an interim measure to the national standard.

At the time the commission proposed clean gasoline, there was nothing firm from EPA regarding reduction in sulfur levels. Now that issuance of the EPA's proposal for a lower sulfur gasoline for the entire nation has been published, the commission has added a new §114.302(b), which will end the state's regulation of sulfur if EPA adopts national sulfur limits which are scheduled to be implemented by January 1, 2004. Early opt-in areas would, however, continue with state gasoline sulfur controls where applicable. The commission agrees that a nationwide sulfur standard is preferable to state-by-state regulation. Therefore, the commission has changed the rule to defer to EPA's standards even though they may be later than the standards proposed by the commission.

The commission solicited comment on whether or not to include a 150 ppm sulfur average or a 150 ppm sulfur cap. TxOGA, Koch, Mobile, CITGO, and Exxon supported the American Petroleum Institute (API) proposal of a 150 ppm sulfur average with a 300 ppm cap. TOSCO commented in support of averages because they provide more flexibility to the refiner. EDF commented in support of caps in general because they are easier to enforce than averages.

The commission disagrees with the API proposal of a 150 ppm average with a 300 ppm cap because it is not as protective of air quality as the 150 ppm sulfur cap adopted here. For ease of enforceability, the commission agrees with EDF's comment and has retained the cap as proposed.

Exxon commented that the commission should have a statewide sulfur cap to guard against dumping in western Texas areas. A 2nd Opinion, in commenting for Texas Petrochemical Corporation,

recommended that Texas implement a sulfur cap in 1999, at the same time as other states begin implementing lower sulfur standards to ensure that Texas does not then receive higher sulfur fuel.

The commission disagrees with the comments. Anti-dumping requirements contained in the federal Clean Air Act prevent exceeding a 1990 baseline for fuel emissions performance. Therefore, additional state requirements are not needed to guard against dumping.

Association of International Automobile Manufacturers commented in support of a statewide sulfur standard to protect air quality from cars moving from west Texas into the proposed affected counties.

The agency has made no change in response to this comment and believes that statewide regulation of sulfur is not needed at this time. However, the commission may consider such a regulation at a later date.

Koch commented that sulfur controls are only necessary during the summer ozone season.

The Commission disagrees with this comment and has not made any change. Catalytic converter performance can be permanently compromised by elevated sulfur levels at any time of year. Therefore the commission believes a year round sulfur requirement is necessary to achieve the reductions needed.

The Environmental Defense Fund, Central Texas Clean Air Force, City of San Antonio, City of Austin, American Lung Association of Texas, Volvo Cars of North America, the Association of International Automobile Manufacturers, and A 2nd Opinion, in commenting for Texas Petrochemical Corporation, suggested that Texas should regulate sulfur sooner than 2003 due to Texas refineries supplying lower sulfur fuel to other states (Alabama and Georgia) in 1999. Texas Petrochemical Corporation further recommended that the agency cap sulfur levels at 300 ppm between 1999 and 2003 to prevent the sulfur levels in Texas fuel from rising.

The commission has decided not to regulate sulfur content in gasoline until 2004. Additionally, if the federal government acts to adopt sulfur rules the commission may ultimately not implement any state sulfur levels. The commission has also provided the option for local areas to request early implementation of the sulfur requirements under §114.308.

TxOGA, MOTIVA, CITGO, Exxon, Koch, Mobil, Pennzoil-Quaker State, and the Renewable Fuels Association were opposed to the RVP season being different from the federal RVP control season of May 1st through September 15th of each year, the justification being supply and storage, and lack of legal authority to regulate RVP. Further, they commented that the start of the season should be May 1st for gasoline suppliers and June 1st for gasoline retailers. In contrast, the Environmental Defense Fund and the American Lung Association supported the lengthened ozone season. Ultramar Diamond Shamrock and the City of San Antonio suggested an alternative of May 1st through

October 15th for the RVP control season in acknowledgment of high ozone levels through October 15th in most areas. EDF commented in support of lengthening the RVP season even further to run between April 15th and October 15th.

Last summer, as has happened over the past several years, a number of Texas areas experienced high ozone levels between September 15th, the end of the federal RVP control season, and October 1st. Therefore, the commission believes that the RVP control season should be extended past September 15th. However, based on comments the commission received from refiners and gasoline distributors, October 31st may be too late in the season to obtain substantial benefit. As a compromise between the two, the commission is adopting October 1st as the end of the RVP control season. The commission disagrees with EDF's comment regarding earlier start of the RVP control season due to drivability concerns during potential cold temperatures in early spring. Therefore the commission has not changed the start date of the RVP control season to conform with the comment.

The start of the commission's RVP control season has also been modified to match the federal provisions of May 1st for gasoline wholesalers and June 1st for gasoline retailers in response to comments. The commission believes that an extension of the control season is appropriate, cost-effective, within the commission's legal authority to adopt (after the federal waiver is granted), and necessary for improvement in air quality in the eastern part of Texas.

The Renewable Fuels Association believes the agency is required to incorporate a one psi RVP waiver for ethanol blended fuels under what they believe is a requirement in the Clean Air Act for a state fuel control program to be identical to the federal control program. The Renewable Fuels Association believes that the commission can omit the one psi RVP waiver for ethanol only if it demonstrates that the omission of the waiver is necessary for attainment.

The commission disagrees with the statutory interpretation of the commenter. The requirement that a state fuel control program is identical to the federal control program under federal Clean Air Act §211(c)(4)(A) has to do with whether the program is preempted by federal law. If the program is identical, it is not preempted. The demonstration that the state program is necessary for attainment is required under FCAA §211(c)(4)(C) when a program is not identical. This provision allows EPA to waive preemption if the program as a whole is demonstrated to be necessary. There is no requirement that each aspect of the fuel which differs from federal law be demonstrated necessary. The commission believes that such a reading of the statute confuses two separate concepts. Therefore, the commission is not making any changes in response to this comment.

The American Lung Association of Texas supports 7.0 RVP fuel starting in 1999. The commission also received comment from TxOGA, Koch, Diamond Shamrock, Motiva Enterprises, CITGO, Mobil, TOSCO, and Exxon supporting the proposed level of 7.8 RVP. Additionally, Koch commented that RVP requirements below 7.5 psi could add significant cost due to potential patent payments which could be ordered by courts through current litigations.

The commission has decided to require 7.8 RVP by 2000, since the rule's effective date is after the start of the 1999 ozone season. However, there are several voluntary agreements which have been worked out to supply certain areas with lower RVP fuel starting in 1999. The commission has further not modified the rule to change the RVP from 7.8 to 7.0 psi in response to comment. The reason for not modifying the rule is due to the cost-effectiveness of going down to 7.0, including potential for patent expenses, is not significant for the additional emission reduction achieved by this change. The commission believes that a 7.8 RVP fuel will provide the most benefit for the least cost.

TxOGA, MOTIVA Enterprises, Exxon, and Koch (due to lack of legal authority to overlap federal RFG areas and/or complication of duplicate fuel requirements in RFG areas, and a lack of air quality benefit), and EPA (due to the potential for confusion from the regulated community with overlapping fuel requirements) were opposed to the overlay of the Texas gasoline control program and the federal RFG program in the Houston/Galveston and Dallas/Fort Worth areas.

Based on comments and the potential for confusion, the commission has modified §114.309 to remove Houston/Galveston and Dallas/Fort Worth nonattainment counties and to allow the federal RFG program to take precedence in the areas where it is applicable. This modification will negate any need for both state and federal enforcement of gasoline in these areas. The commission also concludes that the federal RFG program is equally as effective as the state program in the areas where it is applicable, especially if the recently proposed federal sulfur regulations are finally adopted by EPA.

The commission has received resolutions from the Cities of Austin and San Antonio requesting a 150 ppm sulfur average beginning the year 2000. In addition, the commission has received resolutions from the Alamo Area Council of Governments (AACOG) and Bexar County commenting on timing of gasoline sulfur levels. EDF commented in support of the requests from Austin and San Antonio.

The commission will consider the resolutions from the Cities of Austin and San Antonio at a later commission agenda date. The resolution from AACOG will not be considered as it does not qualify under §114.308 as a resolution from a city or county. The resolution from Bexar County does not request early implementation of RVP or sulfur controls and, therefore, requires no action.

TxOGA, Exxon, Koch, MOTIVA Enterprises, Pennzoil-Quaker State, Mobil, and CITGO were opposed to the early implementation for large cities and counties due to the “chaos” it would cause to the fuel distribution system, limits to competition, the proposal being unworkable, and lack of legal authority and perceived lack of public input on early opt-ins. EPA was opposed to this provision due to the time it would take to approve SIPs with this provision. The commission also received comments from Central Clean Air Force, American Lung Association of Texas, EDF, the City of Austin, and the City of San Antonio supporting the concept of allow areas to request early implementation schedules.

The commission has modified the rule to limit early opt-ins to counties with populations of 200,000 or more. The commission also removed early opt-in for RVP partly to address industry concerns about the time needed to meet the requirements. The commission is aware that those areas which

have requested early opt-in, the Cities of Austin and San Antonio, have worked out voluntary arrangements with their major fuel suppliers to have cleaner low RVP/low sulfur gasoline starting in ozone season 1999. Koch Industries, which supplies 90 to 95% of the greater Austin market, has agreed to supply cleaner gasoline to Austin starting in the summer of 1999. In addition, the four major suppliers in the San Antonio market (Koch, Diamond Shamrock, Exxon, and CITGO) have agreed to supply San Antonio with cleaner gasoline in the summer of 1999. Therefore, both Austin and San Antonio will be receiving cleaner gasoline earlier than the rule requires. The commission applauds these organizations' efforts to forge voluntary agreements with the common goal of achieving air quality improvements. The commission believes that ultimately these and other areas may need the ability to take SIP credit for this measure in order to meet their federal mandates under either the eight-hour or one-hour NAAQS. The commission believes that it is fully within its authority to allow for early opt-in through commission order. The public input has occurred through this rulemaking and through the open meeting that's required for the Commission to adopt an order placing any early opt-in into effect. The distribution concerns raised by the commenters can be raised upon commission consideration of each resolution since distribution concerns will vary on a case by case basis. Since the commission must find the early implementation "practicable" in order to approve the request, such concerns would certainly be relevant. In response to the timing issues raised by the EPA concerning approvability of the §211(c)(4)(C) waiver, the commission will work closely with EPA to provide all necessary information to expedite the review.

Motiva Enterprises requested clarification of the meaning of “practicable and needed” in regard to the early implementation provision of §114.308(c).

While these decisions will have to be made on a case-by-case basis, the types of factors the commission would consider in deciding whether or not to grant a request for early opt-in would include distribution, supply, cost, and effectiveness to determine practicability. Need would be based upon factors such as the area’s recent ozone levels and their potential for exceeding a National Ambient Air Quality Standard.

TxOGA, MOTIVA, Mobil, and the Cities of Tyler, Longview, and Marshall believe that this rulemaking exceeds a federal standard and therefore requires a full regulatory impact analysis (RIA).

The commission is adopting this rule to help the state meet the specific federal requirement that the state be in compliance with the ozone NAAQS. The accompanying SIP narrative explains why the commission believes the rule is necessary to meet the NAAQS.

The commission is not required to perform a full RIA for this rulemaking under the Texas Government Code, §2001.0225, because the rules being adopted will not exceed a federal standard. The relevant federal standards in this case are the ozone NAAQS. For each current nonattainment area, the state is required to submit a SIP which demonstrates how it will achieve the NAAQS one-hour standard by its deadline. Additionally, for nonattainment and near-nonattainment areas, the state will be required to submit a SIP which will demonstrate how it will

achieve the NAAQS eight-hour ozone standard. This rulemaking is being submitted to EPA as part of the state's ozone SIP. As part of that SIP submittal, the state is requesting a waiver under 42 United States Code, §7545(c)(4)(C) (also referred to as Clean Air Act, §211(c)(4)(C)). In that package, the state has demonstrated why this rulemaking is necessary for attainment of the NAAQS and why other strategies are either not sufficient or impracticable. Because this package is a necessary part of the ozone SIP demonstration, this package does not exceed a federal standard and, therefore, does not necessitate an RIA.

For those persons interested in the types of information contained in an RIA such as benefits of the rule, anticipated costs to the regulated community, the purpose of the rule, and why other alternatives were not selected, a great deal of that information is contained in the preamble for the proposed rule and the SIP narrative that was made available in the rulemaking process. All of that information has been open to public comment and the commission is responding to any comments received regarding that information.

The commenters also state that an RIA is required because the proposed rule was published without reference to a specific state law as opposed to general agency powers. This is incorrect. In addition to citing Texas Health and Safety Code, §382.017, which provides general rulemaking authority, the rule cites §§382.011, 382.012, and 382.019. Each of these references provide authority beyond the general powers of the agency. Therefore, the Texas Government Code, §2001.0225(a)(4) does not require that the commission perform a full RIA for this rulemaking.

The Cities of Tyler, Longview, and Marshall believe that the commission must complete a full takings impact analysis (TIA).

The commission does not need to complete a full TIA for the same reasons that it is not required to complete a full RIA; i.e., because the rules are being adopted to meet a federal mandate.

The Cities of Tyler, Longview, and Marshall stated that the commission has not met the requirements of the CMP. The commenters suggested that the commission has not considered potential water quality impacts of the rule as required by the CMP.

The commenters stated that water quality concerns should be considered in determining consistency with the CMP. Based upon their concerns stated in other comments, the commission presumes that they are referring to the possibility of MTBE contamination of groundwater due to leaking storage tanks. However, as discussed elsewhere in response to comments regarding MTBE in this preamble, the rule does not require an increase in the use of MTBE or any other specific fuel component. The rule also does not govern leaks from petroleum storage tanks, which is regulated elsewhere in commission rules. The rule itself does not authorize any contamination of waters of the state, nor does it modify the petroleum storage tank rules in any way. Since this rule will reduce air contaminants, the commission's analysis of consistency with the CMP is sufficient to meet statutory and rule requirements.

TxOGA, MOTIVA, Exxon, Pennzoil-Quaker State, and Koch commented that the commission should reword its section regarding gasoline that does not meet requirements of §114.301 and §114.302 being stored, sold to other gasoline wholesalers, and/or transferred within, but not used in motor vehicles within the controlled areas. There is the perception by several commenters that noncompliant gasoline destined for areas outside the affected counties or for a time other than the control period is not allowed by the rules.

The agency has modified the wording of §114.307(b) in response to these comments. Gasoline not meeting the sulfur or RVP standards may be transferred, placed, stored, or held in an affected county is allowed as long as the gasoline is not used to power a gasoline engine within the affected counties during a control period.

TxOGA, MOTIVA , Exxon, and Pennzoil-Quaker State commented that the rule should allow for off-site recordkeeping for gasoline retailers.

The rules regarding recordkeeping requirements do not apply to gasoline retailers, as stated in §114.306.

Hopkins County was of the opinion that the NLEV program would make mandatory the use of MTBE oxygenated gasoline.

The use of cleaner gas may require the use of cleaner gasoline, however, the use of MTBE may or may not be part of the federal clean gasoline program. The NLEV program is a federally mandated program. The rules adopted here do not address NLEV vehicles and, therefore, this comment is beyond the scope of the rulemaking. The commission has made no change in response to this comment.

Pennzoil-Quaker State and Exxon requested that off-site record storage be allowed and that up to seven days be allowed for retrieval of records.

The commission has not designated where records must be stored. Off-site record storage is allowed under this rulemaking, as long as the records are made available to the agency, EPA, and local air pollution control agencies. The commission has modified §114.306 to allow five business days for retrieval of records if they are kept off-site.

Exxon commented that the rule should include language to require the RVP to be listed on the delivery documents. Exxon further commented that the agency should require recordkeeping by gasoline retailers.

The rule currently requires records of the RVP of all gasoline delivered. The rule has not been modified to cover retail gasoline outlets for recordkeeping requirements. The commission believes that the program can be effectively enforced without requiring recordkeeping by gasoline retailers.

TOSCO, American Lung Association of Texas, Volvo Cars of North America, Association of International Automobile Manufacturers, Cities of Austin and San Antonio, Alamo Area Council of Governments, Bexar County, Environmental Defense Fund, one individual, and Oxybusters of Texas commented in support of Texas regulating sulfur in gasoline, and in fact recommended a more stringent sulfur standard. American Lung Association of Texas recommended a 30 ppm sulfur in 2003 whereas TOSCO recommended 80 ppm. Association of International Automobile Manufacturers supports standards similar to those in California, 30 ppm average with an 80 ppm cap as soon as practicable.

The commission has retained the originally proposed 150 ppm sulfur cap. Further, the commission is aware that EPA may adopt a nationwide standard of 30 ppm average. Therefore, if the EPA regulation is adopted, Texas will receive very low sulfur gasoline meeting the demands of these commenters. If EPA does not follow through on its rulemaking, the commission's rule for a 150 ppm cap on sulfur will ensure a lower sulfur fuel for Texas. Additionally, the commission has received early opt-in resolutions from the Cities of Austin and San Antonio which will be considered at a later commission agenda.

Pennzoil-Quaker State recommended that references to psia be changed to psi to match current industry practice and convention.

The commission agrees with the comment and has modified the rule accordingly.

TOSCO supported the agency's decision not to adopt federal RFG for the 95 counties of east Texas mainly due to the benefits of low RVP/low sulfur fuels and the water quality threat from the oxygenates required by federal RFG.

The commission is in concurrence with these comments regarding the benefits of low RVP/low sulfur fuel. However, the commission has elected not to make any decision regarding the oxygenate MTBE, and is deferring any action pending the report from the EPA's Blue Ribbon Panel on MTBE.

The Association of International Automobile Manufacturers, Information Resources Incorporated, Texas Petrochemical Corporation, and A 2nd Opinion, in commenting for Texas Petrochemical Corporation, requested that the commission adopt driveability indices (DI), limits on heavy aromatics, and/or T50 and T90 distillation temperature requirements. Information Resources International commented that low RVP fuels can actually increase tailpipe emissions due to changes in overall volatility and therefore distillation limits of T50 and T90 would address this problem.

To lower RVP, a refiner can remove some of the lighter compounds in gasoline. Removal of these compounds can concentrate the heavier elements of gasoline leading to a possible increase in the DI of the fuels. The commission is also aware that DIs above 1,200 may cause increases in emissions in some vehicles. However, 7.8 psi fuel has been in use since the early 1990's and likely will not require the significant removal of light compounds which would lead to excessively high

DIs and concentration of heavy aromatics. Therefore, the commission is not adopting DIs, limits on heavy aromatics, or distillation temperature requirements at this time.

Exxon questioned the agency's cost analysis of RVP and sulfur control and suggested that the high end of the cost estimates supplied to the agency by various sources would likely be the case. Given the higher cost estimates, Exxon believes that the impact to small businesses will be greater than those identified by the agency. However, the commission did receive alternative comments from the Association of International Automobile Manufacturers which indicated that in its review of nine cost studies for reducing gasoline, sulfur levels are overestimated. Its research shows a cost of 0.2 to 3 cents per gallon for 100-150 ppm sulfur levels.

The commission used the most recent data available for cost analysis. Even more recent technologies have since come to light and all are even less expensive than what was provided in the proposal. As Exxon notes in its comments, most of the costs are associated with control of sulfur which would not be required under this rule for several years. The future will likely bring even further innovations in RVP and sulfur control which may prove that today's cost estimates were over-estimations of the actual cost of control. Today, 25 counties surrounding Atlanta, Georgia and two counties in Birmingham, Alabama, are receiving 7.0 RVP and 150 ppm average sulfur fuel level gasoline. This gasoline is costing an average of 2.0 cents more than conventional gasoline. Likely, by 2004, the costs will be much less than 2.0 cents per gallon. The commission has not modified its cost estimates for large or small businesses in response to this comment.

Exxon and EPA commented on the need for further enforcement efforts to make this program successful.

The agency will enforce the program at the refinery gate and at the bulk terminal. Enforcement of refineries and bulk terminals will also be accomplished through retail level scheduled and unscheduled sampling. With only two parameters to check for (RVP and sulfur), fuel testing will be simplified. The area to be covered by the clean burning gasoline program is very large (98 counties), and a majority of the state's population will be using cleaner fuel.

Stage II inspections are conducted at gas stations in the nonattainment counties on an annual basis. Some of this is done by local air quality agencies through a pass-through grant from EPA. The amount of the grant dedicated to Stage II inspections is \$229,500 matched at 33% by the local areas. Therefore, the total amount spent on annual Stage II inspections by the local area programs is about \$305,235. Commission inspectors inspect the remaining stations (about 3,709) with nine staff members for the 16 counties with Stage II vapor recovery programs. Each person in field operations is considered to cost the agency about \$67,000 per year on average, making the total annual Stage II inspection cost \$908,235 for gasoline stations in 16 counties.

About half of the fuel in the 110 counties of east Texas is consumed in the DFW and HGA areas. The other half is consumed in a remaining area for cleaner burning gasoline. Therefore, about half of the gasoline stations are located in the DFW and HGA area. If this assumption is accurate, it suggests that inspections of the remaining half of the gasoline stations on an annual

basis would approximately double these costs. However, the costs of inspection could be reduced through a reduction of frequency of inspection. This assumes the inspector's can collect a sample of gasoline as they are doing their other inspections. The agency will also have to allocate additional money to either a fuels testing contractor or for a commission-run fuels testing lab. The commission believes that this is an exaggerated amount of enforcement and the actual enforcement costs will be much lower.

Koch suggested that the agency provide rebates or discounts on air permit and emissions fees to refiners who choose to comply early. Further, Koch suggested that tax exemptions for equipment installed to manufacture clean gasoline should apply. Motiva Enterprises and the City of San Antonio, requested streamlining of the permitting process for those refineries that must make modifications to their facilities in order to comply with the rule. Association of International Automobile Manufacturers commented in support of incentives such as emissions trading. The American Lung Association of Texas, the City of San Antonio, and the Environmental Defense Fund also generally supported incentives for compliance and early compliance with this regulation.

Staff will continue to further explore the possibility of rebates or discounts on air permit and emissions fees as well as streamlining of the permit process and other incentives for early compliance. The commission does have rules to make a "positive use determination" which would allow for a tax exemption for pollution control property. See 30 Texas Administrative Code Chapter 17. However, the commission's authority is limited by the enabling statute found in Chapter 11 of the Tax Code. Subsection 11.31(a) states that, "A person is not entitled to an

exemption from taxation under this section solely on the basis that the person manufactures or produces a product or provides a service that prevents, monitors, controls, or reduces air, water, or land pollution.” In this case, a tax exemption would not appear to be available for equipment used to produce a cleaner burning gasoline. Only equipment installed for on-site emission reduction could qualify.

TxOGA and Pennzoil-Quaker State commented that the agency should accept alternative ASTM/EPA test methods where they correlate with the listed test methods. Koch commented that terminals and wholesalers should be able to use other methods that are more suitable for them.

The rule allows flexibility for minor modifications to test methods where approved by the executive director as stated in §114.305(3). Under §114.305(4), alternative methods may also be approved if validated by 40 CFR 63, Appendix A, Test Method 301. Under §114.305, the executive director does not have the discretion to accept alternatives not validated by 40 CFR 63, Appendix A, Test Method 301, because such alternatives have not been accepted by the EPA.

EPA commented that in order to be granted the §211(c)(4)(C) waiver the agency must: 1) quantify the reductions necessary for attainment in areas in violation of the one-hour standard; 2) quantify the reductions necessary for areas that are or will be violating the eight-hour standard; and 3) show that controls in specific areas, based on modeling, are necessary to achieve attainment in neighboring areas under either the one-hour or eight-hour standard.

As part of ongoing SIP revisions, the commission has submitted photochemical modeling showing the reductions necessary to meet the one-hour ozone standard in those areas in violation of the one-hour standard. To date, no area in Texas has been designated nonattainment for the eight-hour standard; however, pre-emptive measures such as clean gasoline are appropriate to be taken at this time. In addition, the commission has submitted photochemical modeling which clearly shows the benefits a clean gasoline provides toward reducing the overall background levels of ozone in the eastern half of Texas.

EPA requested that the commission submit specific modeling data to substantiate the conclusion that a regional fuel control program is necessary for attainment. EPA also commented that it has not seen the results of the detailed modeling done in support of the clean gasoline and this SIP revision.

The commission is including additional modeling reports with this SIP submittal that show the need for a fuels control program. A fuel control program is one part of an overall strategy for reducing overall background levels of ozone in Texas. This fuel control program is necessary for the timely and ultimate attainment of the ozone NAAQS.

EPA commented that the commission should submit a thorough analysis of what alternative measures were considered and why those are unreasonable or impracticable. If timing is a key reason for the decision of current unreasonableness or impracticality, then this should be explained.

The commission has included this analysis in the final SIP package. The commission reviewed several different control programs over the course of SIP development for the state's nonattainment areas. In looking at all the control options available to a state, the most effective programs, from an economic, cost, and impact basis, are those which take effect in the least amount of time, reach out to all sources of emissions from a category, and are relatively inexpensive. Cleaner gasoline provides immediate benefits as opposed to cleaner automobiles, which would take a longer time to impact a significant amount of the vehicle fleet. Cleaner gasoline provides benefits to the entire fleet and is not limited to certain MYs or counties, as are I/M programs. Cleaner gasoline, as adopted here, is also highly cost-effective for both VOC and NO_x reductions. Other types of control programs, such as those on point sources, can be cost-effective, but cannot be implemented as quickly as a fuel improvement. The commission is also working aggressively to implement point source reductions, either on a voluntary basis or through regulation. However, these types of programs will not be as timely as a fuel control program.

EPA commented that the state should fully explore and articulate the rationale for not pursuing other NO_x control measures in lieu of clean fuel. If timing is a key reason, then this should be explained.

The commission has included this analysis in the final SIP package. The state is pursuing other NO_x control measures with appropriate implementation schedules. The agency will consider additional NO_x controls for large industries on a different time line from clean gasoline. Cleaner gasoline will provide for the most timely and cost-effective NO_x controls for the short term and is

necessary for ultimate attainment of the NAAQS and continued reductions in overall background levels of ozone in the eastern part of Texas.

STATUTORY AUTHORITY

The amendment and new rules are adopted under the Texas Health and Safety Code, the TCAA, §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 state's air; §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.012, which requires the commission to develop plans for protection of the state's air; §382.019, which provides the commission with the authority to regulate emissions from motor vehicles; and §382.037(g), which governs the conditions under which the commission may adopt fuel content standards.

SUBCHAPTER A : DEFINITIONS

§114.1

§114.1. Definitions.

Unless specifically defined in the TCAA or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (13) (No change.)

(14) **Reformulated gasoline** - Gasoline that has been certified as a reformulated gasoline under the federal certification regulations adopted in accordance with the Federal Clean Air Act, §211(k)(42 United States Code, §7545(k)).

(15) **Revised Texas I/M State Implementation Plan (SIP)** - The portion of the Texas SIP which includes the procedures and requirements of the vehicle emissions inspection and maintenance program as adopted by the commission May 29, 1996, in accordance with the 40 CFR Part 51, Subpart S, issued November 5, 1992; the EPA flexibility amendments dated September 18, 1995; and the National Highway Systems Designation Act of 1995. A copy of the revised Texas I/M SIP is available at the Texas Natural Resource Conservation Commission,

12100 Park 35 Circle, Austin, Texas, 78753; mailing address: P.O. Box 13087, MC 166, Austin,
Texas 78711-3087.

(16) **Tier I federal emission standards** - The standards are defined in the FCAA as amended in §202, USC Title 42 §7521, and in 40 CFR, Part 86. The phase-in of these standards began in model year 1994.

(17) **Ultra low emission vehicle** - A vehicle as defined by 40 CFR, Part 88.

(18) **Zero emission vehicle** - A vehicle as defined by 40 CFR, Part 88.

SUBCHAPTER H : GASOLINE VOLATILITY

§§114.301, 114.302, 114.305 - 114.307, 115.309

STATUTORY AUTHORITY

The new sections are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §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 state's air; §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.012, which requires the commission to develop plans for protection of the state's air; §382.019, which provides the commission with the authority to regulate emissions from motor vehicles; and §382.037(g), which governs the conditions under which the commission may adopt fuel content standards.

§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 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 which may ultimately be used to power a gasoline engine in the affected counties according to the schedule in subsection (b) of this section.

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

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

and

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

§114.302. Control Requirements for Sulfur.

(a) In the counties listed in §114.309 of this title (relating to Affected Counties), no person shall transfer, allow the transfer, place, store, or hold in any stationary tank, reservoir, or other container any gasoline which may ultimately be used to power any gasoline engine in the affected counties and which exceeds 150 parts per million sulfur, beginning January 1, 2004 and continuing year-round.

(b) If the federal government adopts gasoline sulfur limits, which at a minimum would cover the affected counties, and require compliance by January 1, 2004:

(1) the requirements of subsection (a) of this section will no longer apply upon the compliance date of the EPA rule; and

(2) the requirements of an early implementation schedule issued by commission order under §114.308(c) of this title (relating to Alternative Early Implementation) will continue to apply until the compliance date of such federal limits, unless otherwise specified in the order.

§114.305. Approved Test Methods.

Compliance with the Reid vapor pressure 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) American Society for Testing and Materials (ASTM) Test Method D5191 for the measurement of Reid vapor pressure;

(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.

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

(4) Test methods other than those specified in 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 paragraph, substitute “executive director” each place that Test Method 301 references “administrator.”

§114.306. Recordkeeping Requirements.

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.

§114.307. Exemptions.

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

(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 Requirements):

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

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

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

(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 used to power a gasoline engine in the affected counties during the control period.

§114.308. Alternative Early Implementation.

(a) Counties listed in §114.309 of this title (relating to Affected Counties), and cities located in these counties, with populations of 200,000 or more according to the most recent federal census, may request early implementation of lower sulfur requirements so long as they are not more stringent than the requirements of §114.302 of this title (relating to Control Requirements for Sulfur) through one of the following:

(1) resolution by the City Council requesting that a specific geographic area under its jurisdiction be included. The resolution must include the level of sulfur control requested, and a schedule for which the City Council is requesting that sulfur control be made mandatory; or

(2) resolution by a County Commissioners Court requesting that the county under its jurisdiction be included. The resolution must include the level of sulfur control requested, and a schedule for which the County Commissioners are requesting that sulfur control be made mandatory.

(c) The commission may enter an order adopting some or all the provisions of a resolution submitted under this section requesting sulfur controls upon a finding that the requested controls are practicable and needed to improve air quality.

§114.309. Affected Counties.

(a) All affected persons in the following counties shall be in compliance with §§114.301, 114.302, and 114.305-114.307 of this title (relating to Control Requirements for Reid Vapor Pressure; Control Requirements for Sulfur; Approved Test Methods; Recordkeeping 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.

