

The commission proposes amendments to §114.1, concerning Definitions; and new §§114.301, 114.302, 114.305-114.309, concerning Requirements for Gasoline Volatility and Sulfur Content. The commission proposes these revisions to Chapter 114, concerning Control of Air Pollution from Motor Vehicles, and to the State Implementation Plan (SIP) in order to control ground-level ozone in attainment and near-nonattainment areas and ozone nonattainment areas.

The proposed revisions are one element of the new Texas Clean Air Strategy (TCAS), which includes a variety of options in order to meet the national ambient air quality standards (NAAQS) for ground-level ozone. The purpose of the strategy is to help keep attainment and near-nonattainment areas, such as Austin, Corpus Christi, Longview/Tyler/Marshall, San Antonio, and Victoria in compliance with the federal eight-hour ozone standard of 80 parts per billion (ppb). The new strategy is also designed to help the Beaumont/Port Arthur, Dallas/Fort Worth, and Houston/Galveston ozone nonattainment areas reach attainment. The TCAS takes into account recent science which shows that regional approaches 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 8-hour average) of one to four ppb in much of east and southeast Texas. Additional details concerning the need for a regional strategy are given in the Background section of this preamble.

The proposed revisions would implement the cleaner burning gasoline option of the TCAS. The proposed 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) from fuel combustion. 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 proposed state cleaner burning gasoline regulations, refiners will need to ensure gasoline distributed to the cleaner burning gasoline zone meets the specifications set forth in these rules. The proposed rules require that gasoline produced for delivery and ultimate sale to the consumer in the affected area does not exceed 7.8 pounds per square inch absolute (psia) Reid vapor pressure (RVP) for the seasonal control period of May 1 through October 31 of each year, beginning May 1, 2000. The commission specifically seeks comment on the length of the seasonal control period. The proposed rules further require that gasoline sulfur levels do not exceed 150 parts per million (ppm) year-round, beginning May 1, 2003. The rules would further provide for counties or large cities to opt into these regulations earlier than proposed here provided certain conditions are met.

The proposed 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.

The proposed new rules would also apply in the 15 counties of the Beaumont/Port Arthur, Dallas/Fort Worth, and Houston/Galveston ozone nonattainment areas: Brazoria, Chambers, Collin, Dallas, Denton, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, 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 in addition to the proposed cleaner gasoline rules.

The commission solicits comments regarding possible city, county, or state incentives for the early implementation of the RVP and/or sulfur requirements proposed by this rule. The commission further solicits comments on the feasibility and benefit of requiring a 150 part per million sulfur average instead of the proposed 150 ppm cap, and input on an appropriate level to set a corresponding sulfur cap to ensure a 150 ppm average sulfur level.

The commission is also soliciting comment on the timing and level of the federal gasoline sulfur regulations and their impact on these rules. Specifically: 1) if the EPA promulgates by May 1, 2001, regulations to limit sulfur in gasoline, and 2) these federal regulations are for a sulfur level equal to or below what is proposed by this rule, and 3) the federal rules are finalized to require implementation

within one year of the implementation date proposed in these rules today, and 4) the federal rules cover an area equal to or greater than the coverage area proposed in today's rules; then should the commission modify, withdraw, or repeal these sulfur rules or should the rules be revised upon adoption to automatically expire.

The commission solicits comments on the separation of the RVP and sulfur requirements of this rule proposal into two separate rule packages for adoption. The advantage of separation is the commission's ability to have the two elements, RVP and sulfur, move forward at different speed if necessary. The disadvantage of separation would be the need to request separate waivers under the Federal Clean Air Act (FCAA) §211(c)(4)(C) for each rule thus losing the ability to claim the combined air quality benefits in the waiver request.

The commission's proposed rules do not address the use of the controversial gasoline additive methyl tertiary butyl ether (MTBE). MTBE has beneficial gasoline blending characteristics which allow some gasoline refiners to meet these requirements more readily, however, it also has some negative water quality impacts if gasoline with MTBE is spilled and contaminates the groundwater. Therefore, the commission solicits comments on the prohibition of the use of MTBE in gasoline for the 110 counties affected by these rules.

BACKGROUND

At the time the 1990 FCAA Amendments were enacted, the focus on controlling ozone pollution was centered on local controls. However, for many years an ever 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 modeling 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, such as that proposed in the TCAS, to controlling air pollutants.

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 reductions across the domain (clean gasoline (federal reformulated gasoline) stationary source

controls, the NLEV program, ozone action days, and a series of national rules to be promulgated by the EPA among others), 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, 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 above, 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 run. Modeling runs were completed to evaluate the 8-hour average ozone concentrations in the COAST modeling domain for September 8, 1993 with 2007 projected emissions and assuming a reduction of 70% NO_x and 15% VOC in the 8-county Houston/Galveston area. Even with the large reductions in Houston/Galveston much of the upper Texas Coast is well above the 8-hour standard. Also, Austin, Victoria, and Corpus Christi show 8-hour average concentrations above 80 ppb. The benefit of applying OTAG reductions outside the Houston/Galveston 8-county area clearly showed 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 the TCAS. This modeling indicates that mobile source reductions (cleaner gasoline, NLEVs, and Stage I vapor recovery) have a potential to reduce peak 8-hour ozone averages of between one and four ppb in

much of east and southeast Texas, with the greatest reductions seen in the Austin and San Antonio areas. Modeling of the combined point source and mobile source strategies shows a large area, including near-nonattainment and attainment areas, of reductions in peak 8-hour average ozone above three ppb.

This modeling provides part of the evidence of the benefit of regional reductions on Texas' nonattainment areas and further provides 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 PROPOSED RULES

The proposed changes to §114.1, concerning Definitions, add a new definition of reformulated gasoline.

The proposed new §114.301, concerning Control Requirements for Reid Vapor Pressure, limits gasoline to an RVP of 7.8 psia in 95 counties in the eastern half of Texas and in the 15 counties of the Beaumont/Port Arthur, Dallas/Fort Worth, and Houston/Galveston ozone nonattainment areas. This proposed RVP limit is seasonal (May 1 through September 16 of each year), beginning May 1, 2000. In addition, the proposed new §114.301 specifies that requirements such as federal RFG will also continue to apply in the four-county Dallas/Fort Worth ozone nonattainment area (Collin, Dallas,

Denton, and Tarrant Counties) and the 8-county Houston/Galveston ozone nonattainment area (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties).

The proposed new §114.302, concerning Control Requirements for Sulfur, limits gasoline to a sulfur content of 150 ppm in 95 counties in the eastern half of Texas and in the 15 counties of the Beaumont/Port Arthur, Dallas/Fort Worth, and Houston/Galveston ozone nonattainment areas. This sulfur limit would apply year-round, beginning on May 1, 2003. In addition, the proposed new §114.302 specifies that requirements such as federal RFG will also continue to apply in the four-county Dallas/Fort Worth ozone nonattainment area and the 8-county Houston/Galveston ozone nonattainment area.

The proposed 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. The proposed new §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 new paragraph is being proposed because in some unique situations the listed test methods may be inappropriate. The new

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 proposed 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.

The proposed new §114.307, concerning Exemptions, establishes exemptions for gasoline used in agriculture, aviation, and any tank, reservoir, storage vessel, or other stationary container with a nominal capacity of 500 gallons (1,893 liters) or less. The exemption for aviation gasoline (“av-gas”) is proposed because aircraft have fuel performance requirements which can not be met by gasoline for land-based motor vehicles. The exemptions for agricultural and small capacity gasoline storage tanks are proposed 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 proposed new §114.307 establishes an exemption from the recordkeeping requirements for the owner or operator of motor vehicle fuel dispensing facilities.

The proposed new §114.308, concerning Alternative Early Implementation, allows a county, or a city with a population of 200,000 or more, according to the most recent federal census, in a covered county to request the early implementation of RVP and/or sulfur controls for the area under their jurisdiction.

The commission has proposed to limit this ability to cities of 200,000 or more due to gasoline distribution concerns. Early controls, or phased in controls, for RVP and/or sulfur are available to

these areas as long as the levels are not more stringent than those proposed by this rule. The proposed 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 RVP and/or sulfur controls upon a finding that the requested controls are practicable and needed to improve air quality.

The commission has received final resolutions from the cities of San Antonio and Austin, and the Alamo Area Council of Governments requesting RVP and/or sulfur controls early. The commission is soliciting comments on these requests. If additional final resolutions are received prior to the close of comments (February 1, 1999, 5 p.m.), the commission will act on these requests concurrent with the final adoption of this rulemaking and SIP revision. If the commission adopts some or all of the timely requests, the commission order would become effective upon the effective date of the rules, and would be codified in the adopted rule language.

The proposed new §114.309, concerning Affected Counties, specifies the counties which are subject to the new requirements.

FISCAL NOTE

Jeff Grymkoski, Director, Strategic Planning and Appropriations Division, has determined that for the first five-year period the sections are in effect there will be insignificant fiscal implications for state and local governments as a result of enforcing or administering the proposed rules. Enforcement of the proposed rules would primarily occur through inspection of on-site records at gasoline distribution facilities which are currently routinely inspected. Specifically, local air pollution control programs and

the Field Operations and Enforcement Divisions of the Office of Compliance and Enforcement are responsible for enforcing the Chapter 115 gasoline terminal rules in the regional affected area. (These rules are anticipated to be proposed in concurrent rulemaking.) Most of the gasoline terminals which will have to comply with the Chapter 115 gasoline terminal rules are currently subject to air permits and/or to similar requirements under 40 CFR 63, Subpart R (the Gasoline Distribution National Emission Standard for Hazardous Air Pollutants), and therefore are already being inspected for compliance. The remainder will be inspected for compliance as a result of the proposed Chapter 115 gasoline terminal rules. Consequently, no additional gasoline terminals in the affected area will need to be inspected for compliance as a result of the proposed cleaner gasoline rules. Therefore, if the field inspectors enforce the gasoline requirements when conducting their routine inspections at gasoline terminals, the fiscal implications for state and local governments as a result of enforcing or administering the proposed cleaner gasoline rules will be insignificant.

PUBLIC BENEFIT

Mr. Grymkoski has also determined that for each year of the first five years the proposed revisions are in effect, the public benefit anticipated as a result of implementing the sections will be satisfaction of requirements of the FCAA, and reductions of ground-level ozone in the 110 counties for which the cleaner gasoline rules are proposed. The costs to small businesses, persons, or businesses who are required to comply with the rules as proposed are as follows.

EPA has estimated the cost of limiting the sulfur content in gasoline to 150 ppm to be approximately 1.1 to 1.8 cents per gallon for Gulf Coast and East Coast refiners. (See *EPA Staff Paper on Gasoline*

Sulfur Issues, EPA420-R-98-005 (May 1, 1998), Tables E2 and 6.) EPA's cost estimates include the cost of potential decreases in fuel economy due to the use of oxygenates for reducing sulfur content for those refiners who may choose to use oxygenates to reduce sulfur. The costs are based upon estimates of summer production costs, since the summer season is a refiner's most severe sulfur control period. Since the proposed sulfur limitations are year-round requirements, the costs were projected over the entire year. A separate cost estimate performed by MathPro, a contractor for the American Petroleum Institute, estimated the cost of limiting the sulfur content in gasoline to 150 ppm to be approximately 2.7 cents per gallon. (See *EPA Staff Paper on Gasoline Sulfur Issues, EPA420-R-98-005* (May 1, 1998), Tables E2 and 7.) The MathPro study resulted in higher estimated costs due to different inputs. For example, the MathPro study included the cost of sulfur control at refiners in the Upper Midwest, which are expected to be higher than those of the Gulf Coast and East Coast refiners. According to the calculations for EPA's *Final Regulatory Impact Analysis for Reformulated Gasoline* (December 13, 1993) found in Table VI-A5: Cost-Effectiveness Analysis for VOC Control Region 1, the estimated cost-effectiveness of limiting the sulfur content in gasoline to 150 ppm is approximately \$1297 per ton of VOC and NO_x reduced. (The area identified as VOC Control Region 1 includes Texas.) OTAG estimated the costs and effectiveness of 150 ppm sulfur. OTAG estimated the cost to be between 1.2 and 3.0 cents per gallon and the cost-effectiveness to range between \$2,200 - \$8,500 per ton of VOC and NO_x reduced. (See: *Mobile Source Assessment: NO_x and VOC Reduction Technologies for Application by the Ozone Transport Assessment Group.*)

A number of cost estimates for limiting the RVP of gasoline to 7.8 psia were completed by EPA and other groups in the late 1980's and early 1990's. Since that time, most low RVP fuel cost estimates

have been analyzed for lowering RVP from 9.0 to around 7.0 psia. Up-to-date cost estimates for 7.8 psia fuel are therefore unavailable. However, there are several recent cost estimates for 7.2 to 6.5 psia fuels. It is logical to assume that cost estimates for 7.2 to 6.5 psia fuel will be overestimated for 7.8 psia fuel. Therefore, the following OTAG and EPA cost estimates for low RVP gasoline are likely to be higher than for the 7.8 psia gasoline proposed. OTAG estimated that lowering the RVP of gasoline from 9.0 psia to 7.1 psia would cost between 0.7 and 1.6 cents per gallon and have a cost-effectiveness of between \$710 and \$1,600 dollars per ton of VOC reduced. (See: *Mobile Source Assessment: NO_x and VOC Reduction Technologies for Application by the Ozone Transport Assessment Group*).

According to the calculations for EPA's *Final Regulatory Impact Analysis for Reformulated Gasoline* (December 13, 1993) found in Table VI-A5, the incremental cost increase for 7.2 psia RVP fuel was 0.12 cents per gallon. EPA estimated the cost-effectiveness for VOC Control Region 1 to be approximately \$270 per ton of VOC reduced. By comparison, the EPA estimated the cost-effectiveness of recently promulgated motor vehicle control programs in EPA's *Tier 2 Study, EPA420-R-98-008* (July 31, 1998) as follows: 1) \$6000 per ton of VOC reduced and \$1380 to \$1800 per ton of NO_x reduced for Tier 1 standards for light-duty vehicles and light-duty trucks; 2) \$457 to \$552 per ton of VOC reduced and \$150 to \$172 per ton of NO_x reduced for supplemental federal test procedure (SFTP) standards for aggressive driving; 3) \$2050 to \$2574 per ton of NO_x reduced for SFTP standards for emissions with the air conditioner on; and 4) \$1974 per ton of VOC reduced and \$1974 per ton of NO_x reduced for on-board diagnostics requirements.

The commission's analysis revealed that the smallest refiner affected by the proposed sulfur and RVP limits has well over \$1 million in annual gross receipts. Consequently, the refiners which would have

to comply with the proposed sulfur and RVP limits do not meet the definition of “small business” as defined in Texas Government Code, §2006.001, concerning Definitions. Using EPA cost estimates and assuming a retail gasoline price of \$1.00 per gallon and a throughput of 5000 gallons per month, the smallest gasoline stations affected by the proposed sulfur limits would incur a cost of approximately \$1.10 to \$1.80 per \$100 of annual gasoline sales. By comparison, the largest gasoline station affected by the proposed sulfur limits (those with a throughput of at least 200,000 gallons per month) would likewise incur a cost of approximately \$1.10 to \$1.80 per \$100 of annual gasoline sales. Using EPA cost estimates and assuming a retail gasoline price of \$1.00 per gallon and a throughput of 5000 gallons per month, the smallest gasoline stations affected by the proposed RVP limits would incur a cost of approximately \$.12 per \$100 of annual gasoline sales. By comparison, the largest gasoline station affected by the proposed RVP limits (those with a throughput of at least 200,000 gallons per month) would also incur a cost of approximately \$.12 per \$100 of annual gasoline sales. In fact, the cost of the proposed sulfur and RVP limits per \$100 of annual gasoline sales for all gasoline stations will be the same, regardless of the estimated increase in the price of gasoline. A similar analysis for other businesses in the gasoline distribution network, such as gasoline bulk plants and gasoline terminals, and businesses which must purchase retail gasoline as part of their operations likewise revealed that the cost per \$100 of annual sales for large and small businesses will be the same, again regardless of the estimated increase in the price of gasoline.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to

§2001.0225 because although it meets the definition of a “major environmental rule” as defined in the act, it does not meet any of the four applicability requirements listed in §2001.0225(a). Specifically, the emission limitations and control requirements within this proposal were developed in order to meet the NAAQS for ozone set by EPA under §109 of the 1990 FCAA, and therefore meet a federal requirement. States are primarily responsible for ensuring attainment and maintenance of NAAQS once EPA has established them. Under §110 of the FCAA 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 proposal is not an express requirement of state law, but was developed specifically in order to meet the air quality standards established under federal law as NAAQS. Specifically, this proposal is intended to help bring ozone nonattainment areas into compliance, and help keep attainment and near-nonattainment areas from going into nonattainment. This proposal does 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 was not developed solely under the general powers of the agency. The commission invites public comment on the draft regulatory impact analysis.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated, §2007.043. The following is a summary of that assessment. The specific purpose of the rulemaking is to establish gasoline RVP and sulfur content limits in 95 counties in the eastern half of Texas and in the 15 counties of the Beaumont/Port Arthur, Dallas/Fort Worth, and Houston/Galveston ozone nonattainment areas. This rulemaking is part of the new TCAS which

includes a variety of options to control ground-level ozone to achieve the NAAQS for ozone. The purpose 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. Although the rule revisions do not directly prevent a nuisance, prevent an immediate threat to life or property, or prevent a real and substantial threat to public health and safety, the rule revisions fulfill a federal mandate under §110 of the 1990 Amendments to the FCAA. Specifically, the emission limitations and control requirements within this proposal were developed in order to meet the NAAQS for ozone set by EPA under §109 of the FCAA. States are primarily responsible for ensuring attainment and maintenance of the NAAQS once EPA has established them. Under §110 of the FCAA 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 proposal 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.

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 at 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. Therefore, in compliance with 31 TAC §505.22(e), the commission affirms that this rulemaking is consistent with CMP goals and policies. Interested persons may submit comments on the consistency of the proposed rules with the CMP during the public comment period.

PUBLIC HEARINGS

Public hearings on this proposal will be held in Austin on January 25, 1999 at 11:00 a.m. in Building F, Room 2210 at the Texas Natural Resource Conservation Commission 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. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearings; however, an agency staff member will be available to discuss the proposal 30 minutes before each hearing and will answer questions before and after the hearings.

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

SUBMITTAL OF COMMENTS

Written comments may be mailed to Heather Evans, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 98058-114-AI. Comments must be received by 5:00 p.m., February 1, 1999. For further information, please contact Bill Jordan, Air Policy and Regulations Division, at (512) 239-2583, or Eddie Mack, Air Policy and Regulations Division, at (512) 239-1488.

STATUTORY AUTHORITY

The amendments and new sections are proposed under the Texas Health and Safety Code (Vernon 1992), 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; and §382.019, which provides the commission with the authority to regulate emissions from motor vehicles.

The proposed amendments and new sections implement the Health and Safety Code, §382.017.

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 §211 (k) of the Federal Clean Air Act (42 USC §7545 (k)).

(15) [(14)] **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) [(15)] **Tier I federal emission standards** - The standards are defined in the FCAA as amended in Section 202, USC Title 42 Section 7521, and in 40 CFR, Part 86. The phase-in of these standards began in model year 1994.

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

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

**SUBCHAPTER H : GASOLINE VOLATILITY
AND SULFUR CONTENT**

§§114.301, 114.302, 114.305-114.309

STATUTORY AUTHORITY

The new sections are proposed under the Texas Health and Safety Code (Vernon 1992), 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; and §382.019, which provides the commission with the authority to regulate emissions from motor vehicles.

The proposed new sections implement the Health and Safety Code, §382.017.

§114.301. Control Requirements for Reid Vapor Pressure.

(a) In the counties listed in §114.309 of this title (relating to Affected Counties), no person shall sell, offer for sale, transfer, 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 which exceeds 7.8 pounds per square inch Reid vapor pressure from May 1 through October 31 of each year, beginning May 1, 2000.

(b) The requirements in subsection (a) of this section are in addition to and do not override any other requirements for fuel content in these counties, such as the requirements for federal reformulated gasoline.

§114.302. Control Requirements for Sulfur.

(a) In the counties listed in §114.309 of this title (relating to Affected Counties), no person shall sell, offer for sale, transfer, 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 which exceeds 150 parts per million sulfur, beginning May 1, 2003 and continuing year-round.

(b) The requirements in subsection (a) of this section are in addition to and do not override any other requirements for fuel content in these counties, such as the requirements for federal reformulated gasoline.

§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, U.S. Environmental Protection Agency, and local air pollution control agencies.

§114.307. Exemptions.

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 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.

§114.308. Alternative Early Implementation.

(a) A county, or a city with a population of 200,000 or more according to the most recent federal census located in a county, specified in §114.309 of this title (relating to Affected Counties) may request early implementation of Reid Vapor Pressure (RVP) requirements so long as they are not more stringent than the requirements of §114.301 of this title (relating to Control Requirements for Reid Vapor Pressure), through one of the following:

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

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

(b) A county, or a city with a population of 200,000 or more according to the most recent federal census located in a county, specified in §114.309 of this title (relating to Affected Counties) 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 their 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 their 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 RVP and/or 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, 114.305, 114.306, and 114.307 of this title (relating to Control Requirements for Reid Vapor

Pressure; Control Requirements for Sulfur; Approved Test Methods; Recordkeeping Requirements; and Exemptions) as soon as practicable, but no later than the dates specified in §114.301(a) and §114.302(a) 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 Brazoria, Chambers, Collin, Dallas, Denton, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties shall be in compliance with §§114.301, 114.302, 114.305, 114.306, and 114.307 of this title as soon as practicable, but no later than the dates specified in §114.301(a) and §114.302(a) of this title.