

The Texas Commission on Environmental Quality (commission) adopts amendments to §§115.227 and 115.240 - 115.249, concerning the control of gasoline vapors from storage vessels and dispensing facilities. The commission also adopts revisions to the state implementation plan (SIP) narrative, Stage II Vapor Recovery Program SIP Revision. The commission will submit these amended rule sections and revised SIP narrative to the United States Environmental Protection Agency (EPA) as revisions to the SIP. Sections 115.240, 115.243 - 115.245, 115.247, and 115.249 are adopted *with changes* to the proposed text as published in the July 12, 2002 issue of the *Texas Register* (27 TexReg 6197). Sections 115.227, 115.241, 115.242, 115.246, and 115.248 are adopted *without changes* and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The commission adopted the Stage II rules and SIP narrative on October 16, 1992 (revised on November 10, 1993) to satisfy gasoline vapor recovery requirements of the Federal Clean Air Act (FCAA), §182(b)(3) (codified as 42 United States Code (USC), §7511a(b)(3)). EPA requires that all Stage II vapor recovery systems be capable of achieving at least 95% vapor control efficiency. As an alternative to testing each station for 95% control efficiency, states can require that installed systems be certified by the California Air Resources Board (CARB), certified using CARB test procedures and methods, or certified by equivalent test procedures and methods developed by the state and submitted as a SIP revision. Texas' current rules follow the CARB certification procedures. The CARB is currently implementing an enhanced vapor recovery (EVR) program with a completion date of April 2003, after which it will no longer certify non-EVR systems. The purpose of the CARB EVR program is to increase control efficiency to 98%. In lieu of incorporating the CARB EVR program, the commission

is adopting requirements for more frequent testing of vapor recovery systems at gasoline dispensing facilities and for installing or retrofitting Stage II systems in order to be compatible with onboard refueling vapor recovery (ORVR) equipment required on newer vehicles. Specifically, the commission is changing the five-year requirement for full system tests to a one-year requirement, with the exception of the TXP-101 vapor space manifold and the TXP-103 dynamic back-pressure test in the *Vapor Recovery Test Procedures Handbook* (test procedures handbook or RG-399), which will be required every three years. Also, to decrease the amount of excess emissions caused by incompatibility between ORVR and Stage II vapor recovery systems, the commission will require new Stage II systems to be ORVR compatible beginning in 2005 and existing vacuum assist Stage II systems to be retrofit or replaced to be ORVR compatible by 2007. By doing so, the commission believes that the increased testing frequency and ORVR compatibility requirement will continue to satisfy the federal requirement to maintain a vapor recovery rate of 95%. The commission adopts these amendments to Chapter 115, Control of Air Pollution from Volatile Organic Compounds (VOC).

SECTION BY SECTION DISCUSSION

Throughout this rulemaking the outdated term “undesignated head” has been replaced with the correct term “division” in response to revised *Texas Register* rules published in the February 13, 1998 issue of the *Texas Register* (23 TexReg 1289). The name of the commission has been changed to the Texas Commission on Environmental Quality because the rules will become effective after the date the name change occurred, September 1, 2002. The term “commission” has been changed to “executive director” in each location where the action being taken is directly associated with the executive director or staff. In addition, various stylistic and editorial changes have been made to comply with the current

Texas Register Form and Style Manual. Justification for these changes will not be discussed any further in this preamble other than to point out where each change was made.

Subchapter C, Division 2, Stage I Vapor Recovery

The amendments to §115.227, Exemptions, remove language that could potentially provide a Stage I exemption for a facility that is required to have Stage II vapor recovery. All Stage II vapor recovery systems must include Stage I vapor recovery in order to operate properly. The amendments also add section titles the first time each section is referenced in §115.227.

Subchapter C, Division 4, Stage II Vapor Recovery

The amendments to §115.240, Stage II Vapor Recovery Definitions, include stylistic changes previously discussed in this preamble. The amendments delete the definition *independent small business marketer of gasoline* because the term is no longer used in this division. The amendments also provide additional definitions for industry-specific terminology presented in the rules, which include the definitions for *onboard refueling vapor recovery* and *onboard refueling vapor recovery (ORVR) compatible*. The amendments add a table listing the Stage II vapor recovery systems certified by a CARB Executive Order and change the section title to Stage II Vapor Recovery Definitions and List of California Air Resources Board Certified Stage II Equipment.

The amendments to §115.241, Emissions Specifications, remove the reference to specific nonattainment areas as being subject to the controls of the division and place the reference in §115.249, Counties and Compliance Schedules, where it more appropriately belongs.

The administrative and stylistic amendments to §115.242, Control Requirements, remove the reference to specific nonattainment areas as being subject to the controls of the division and place the reference in §115.249 where it more appropriately belongs, and change “undesignated head” to “division.” The amendments to §115.242(2) correct two section numbers and titles in reference citations to 30 TAC Chapter 334; delete two reference citations to §115.249 which no longer apply; spell out the acronym “UL” as “Underwriters Laboratories”; and delete one superfluous reference to the acronym TNRCC.

The technical amendments to §115.242 clarify which CARB-certified Stage II vapor recovery systems would be authorized for use by the executive director. Also, the amendments allow the executive director to continue to recognize any Executive Orders which CARB decertifies in the future. Due to the federal mandate requiring motor vehicle manufacturers to make vehicles equipped with ORVR, the incompatibility between ORVR and Stage II vapor recovery is addressed because this incompatibility may prove to be a new source of emissions. In order to maintain SIP integrity and to prevent new emissions, the amendments include a compliance schedule for gasoline dispensing facilities to upgrade their Stage II vapor recovery systems to be ORVR compatible. The amendments also eliminate the requirement to post the “TNRCC Stage II Vapor Recovery Hotline” on each gasoline dispensing pump equipped with a Stage II vapor recovery system. The majority of the calls received on this hotline should be directed to either the Texas Department of Agriculture Weights and Measures for issues involving price discrepancies at the pump or to the facility owner or operator for customer service inquiries. Finally, other control requirements have been updated to ensure that the vapor recovery systems operate at the prescribed 95% level of efficiency.

The amendments to §115.243, Alternate Control Requirements, remove the reference to specific nonattainment areas as being subject to the controls of the division and place the reference in §115.249, where it more appropriately belongs. In addition, the title of the division was added to §115.243(2).

The amendments to §115.244, Inspection Requirements, remove the reference to specific nonattainment areas as being subject to the controls of the division and place the reference in §115.249, where it more appropriately belongs. The reference to §115.242(3)(I) in §115.244(1) was deleted because it is unreasonable for facility representatives with vacuum assist systems to determine whether or not a vacuum producing device is “inoperative or defective” under all circumstances. The word “utilize” has been replaced with the word “use” in §115.244(2).

The administrative and stylistic amendments to §115.245, Testing Requirements, remove the reference to specific nonattainment areas as being subject to the controls of the division and place the reference in §115.249, where it more appropriately belongs. The title of the test procedures handbook has been changed to “Vapor Recovery Test Procedures Handbook” and the regulatory guidance number (RG-399) and date of the current handbook have been added. The amendments also delete several superfluous references to the acronym TNRCC, and change “TNRCC” to “executive director” in several locations because the executive director (or staff) is responsible for program management. Finally, the name of the commission has been changed in one location.

The technical amendments to §115.245 provide a directive to use the most recent vapor recovery test procedures handbook, add language to allow air-to-liquid ratio (A/L ratio) testing for assist systems,

add references to third-party certification, and require annual compliance testing of Stage II equipment to ensure that the equipment is operating properly. Full system testing, with the exception of TXP-101 vapor space manifold testing and TXP-103 dynamic back-pressure testing, must be accomplished at least once in each 12-month period. TXP-101 and TXP-103 testing must be performed at least once in each 36-month period. The terms "12-month period" and "36-month period" are used in the calendar sense and are not meant to imply a specific number of days. For example, if a full system test was completed in a given month, such as October 2003, then another full system test must be done at some time in the subsequent 12-month period from November 1, 2003 through the end of October 2004. If a full system test was done on October 5, 2003, then the facility has until October 31, 2004 to complete the next full system test. If the facility waited until October 31, 2003 to do the next full system test, the following test would still be due no later than October 31, 2004. However, if the facility made an "early" full system test on August 15, 2004, regardless of the reason the test was conducted earlier than required, then the following system test would be due no later than August 31, 2005. Finally, the commission will implement a registry of testers who have certified their knowledge of the test procedures handbook.

The amendments to §115.246, Recordkeeping Requirements, remove the reference to specific nonattainment areas as being subject to the controls of the division and place the reference in §115.249, where it more appropriately belongs. Other amendments include changing the term "undesignated head" to "division" in accordance with *Texas Register* rules, changing the legalistic term "pursuant to" to "under" in two places to comply with the current style guidance, and changing references from the

“TNRCC” to the “executive director” in two locations because the executive director (or staff) is the more appropriate recipient of facility records.

The amendments to §115.247, Exemptions, remove the reference to specific nonattainment areas as being subject to the controls of the division and place the reference in §115.249, where it more appropriately belongs, and delete one superfluous reference to the Texas Natural Resource Conservation Commission. In addition, the word “his” has been deleted from §115.247(2).

The amendments to §115.248, Training Requirements, remove the reference to specific nonattainment areas as being subject to the controls of the division and place the reference in §115.249, where it more appropriately belongs; delete one superfluous reference to the TNRCC; and change “TNRCC” to “executive director” in several locations because the executive director (or staff) is responsible for program management.

The amendments to §115.249, Counties and Compliance Schedules, specify the counties in which these rules apply; delete the compliance dates which have passed and change the language to “shall continue to comply with”; and add the compliance schedule for ORVR compatibility. The compliance schedule for ORVR compatibility has been changed from proposal because the commission will be conducting a mid-course review for the Beaumont/Port Arthur, Dallas/Fort Worth, and Houston/Galveston ozone nonattainment areas, which will be submitted to EPA by May 2004. The commission has committed to perform modeling with MOBILE6, the latest version of EPA's emission factor model for mobile sources, as part of this review. Establishing a motor vehicle emissions budget using MOBILE6 is one

of the key components of the mid-course review. In addition, the mid-course review will address all aspects of the SIP including the Stage I and Stage II vapor recovery program. Therefore, the commission has changed the compliance deadline for the installation of all new ORVR compatible systems from April 1, 2004 to April 1, 2005 to accommodate any policy changes that may arise from the mid-course review. The amendments also changed the term “undesigned head” to “division.”

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the amendments meet the definition of a “major environmental rule” as defined in that statute. A “major environmental rule” is a rule which is specifically intended to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of this rulemaking action is to protect the environment and reduce risks to human health from environmental exposure to ozone by keeping gasoline vapor recovery rates at the 95% prescribed level of efficiency. The amendments may have an adverse material impact on a sector of the economy or a sector of the state. Gas station owners and operators in the four ozone nonattainment areas (16 counties) in the state will be required to pay approximately \$200 more per year in testing costs, and those that need to upgrade their gas dispensing systems to become ORVR compatible will incur an expense of approximately \$1,100 per dispenser, or up to approximately \$20,000 per facility, depending on the specific technology they choose to implement.

Although the amendments meet the definition of a “major environmental rule” as defined in the Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking action is not subject to the regulatory analysis provisions of §2001.0225(b), because the amendments do not meet any of the four applicability requirements. Specifically, the amendments implement requirements of 42 USC, §7511a(b)(3), (c), and (d) and Texas Health and Safety Code (THSC), §§382.002, 382.011, 382.012, 382.019, and 382.208. The commission invited public comment on the draft regulatory impact analysis determination, but received no comments.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this rulemaking action and performed an analysis of whether Texas Government Code, Chapter 2007 is applicable. The analysis indicates this action is being taken to reasonably fulfill an obligation mandated by federal law, and therefore is exempt under Texas Government Code, §2007.003(b)(4). Specifically, this rulemaking action amends the Stage II gasoline vapor recovery rules and SIP narrative required under 42 USC, §7511a(b)(3), (c), and (d). The specific purpose of this rulemaking action is to continue to satisfy the provisions of 42 USC and to maintain a vapor recovery rate of 95%. The amendments substantially advance this stated purpose by updating control requirements of vapor recovery systems at gasoline dispensing facilities, requiring

more frequent testing of these systems, and requiring these facilities to upgrade their Stage II vapor recovery systems to be compatible with newer, ORVR-equipped vehicles. Facilities that do not upgrade their incompatible Stage II vapor recovery systems may prove to be a new source of emissions, thus weakening the SIP integrity.

Nevertheless, the commission further evaluated this rulemaking action and performed an analysis of whether this action would constitute a takings under Chapter 2007. The specific purpose of these amendments is to continue to satisfy federal requirements for vapor recovery from gasoline dispensing facilities in nonattainment areas of the state. The amendments substantially advance this stated purpose by requiring more frequent testing and upgrading of vapor recovery systems at these gasoline stations. Promulgation and enforcement of these amendments would be neither a statutory nor constitutional taking of private real property. Specifically, the amendments do not affect a landowner's rights in private real property, because this rulemaking action does not burden, restrict, nor limit the owner's rights to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. In other words, these amendments are adopted to continue to meet the requirements of 42 USC, §7511a(b)(3) and THSC, §382.019 and §382.208, but in a less financially burdensome manner on owners and operators of gasoline dispensing facilities. Some gas station owners and operators may be required to install or modify Stage II vapor control equipment that will make the gas dispensing systems ORVR compatible; however, the existing Stage II rules follow the CARB certification process for vapor recovery equipment. CARB is implementing an enhanced program that will require installation of more costly equipment than the alternative adopted in these amendments to Chapter 115. In addition, the alternative in these amendments will continue to provide benefits to

society by maintaining vapor recovery rates at 95% efficiency. Therefore, these amendments will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq.*), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the CMP. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). No new sources of air contaminants will be authorized and the adopted revisions will maintain the same level of emissions control as the existing rules. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with federal regulations in 40 Code of Federal Regulations (CFR), to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking action complies with 40 CFR 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in compliance with 31 TAC §505.22(e), the commission affirms that this rulemaking action

is consistent with CPM goals and policies. The commission solicited comments on the consistency of the proposed rules with the CMP during the public comment period, but received no comments.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMIT PROGRAM

Chapter 115 contains applicable requirements under 30 TAC Chapter 122, Federal Operating Permits; therefore, owners or operators subject to the Federal Operating Permit Program must, consistent with the revision process in Chapter 122, revise their operating permits to include the revised Chapter 115 requirements for each emission unit at their sites affected by the revisions to Chapter 115.

PUBLIC COMMENT

The commission held a public hearing on this proposal in Austin, Texas, on August 8, 2002, at 2:00 p.m., at the commission central office located at 12100 Park 35 Circle, Building F, Room 2210. The comment period closed at 5:00 p.m. on August 12, 2002. The following commenters submitted testimony on the proposal: B & B Testing, Inc. (B & B); EPA; Industry Council on the Environment (ICE); Oncor, formerly TXU Electric & Gas (Oncor); Rice Christ Incorporated (RCI); Sierra Club, Houston Regional Group (Sierra-Houston); Tanknology; UST Services, Inc. (UST Services); Valero Energy Corporation (Valero); Strasburger & Price, LLP, on behalf of 7-Eleven, Inc. (7-Eleven); and one individual.

The commission also received, 39 days after the close of the comment period, an American Petroleum Institute (API) sponsored report entitled *Refueling Emission Controls at Retail Gasoline Dispensing Stations in Texas*, dated July 16, 2002. This report will be evaluated during the mid-course review of

the SIP, which will be submitted to EPA by May 2004, because the report is based on the new EPA MOBILE6 model, the latest version of EPA's emission factor model for mobile sources.

RESPONSE TO COMMENTS

EPA and RCI expressed general support of the proposal. No commenter expressed general opposition to the proposal. B & B, ICE, Oncor, Sierra-Houston, Tanknology, UST Services, Valero, 7-Eleven, and one individual suggested changes and/or expressed concerns regarding the proposed rule language.

General Comments

Valero commented that it generally supports the proposed rules as stated as a financially less burdensome method to maintain compliance with Stage II systems at 95% efficiency. EPA commented that it agrees in principle with the proposed rule changes and supports the proposed changes to the testing requirements in §115.245(2). RCI stated that it is in favor of the proposed rule change for personal and business reasons. ICE commented that it believes the proposed changes to the regulations will accomplish the objectives defined in the preamble and help owners and operators of gasoline dispensing facilities achieve the prescribed efficiency of their Stage I and Stage II vapor recovery systems. UST Services stated that it generally believes the proposal will improve the quality of operation of Stage II systems.

The commission appreciates the support and agrees that the adopted rules will improve the quality of operation of Stage II systems, will better ensure Stage II system compliance, and are financially less burdensome than the CARB EVR program.

Sierra-Houston commented that the commission should implement the California EVR program.

The commission appreciates the comment. However, the commission has determined that a theoretical 3% increase in efficiency using developing technologies, such as in-station diagnostics and dripless nozzles, does not appear to warrant such substantial capital costs to owners and operators of gasoline dispensing facilities in the State of Texas. Nevertheless, the commission acknowledges that dispensing gasoline from a Stage II vapor recovery system into ORVR-equipped vehicles presents pressure-related concerns in addition to the pressure-related fugitive emissions normally occurring at gasoline dispensing facilities. Therefore, the commission opted to implement an ORVR compatibility requirement. ORVR compatible Stage II vapor recovery systems are currently available in the market; therefore, the commission determined that implementing ORVR compatibility in concert with more frequent compliance testing is the best course of action to ensure that fugitive emissions do not increase as a result of a changing vehicle population. The commission made no changes in response to this comment.

Compliance Date

Sierra-Houston commented that the proposed implementation date of April 1, 2007 for recently installed vacuum assisted systems will leave little time for these controls to begin reducing VOC levels, and little time for the commission and other air enforcement agencies to ensure the controls have been installed.

Sierra-Houston recommended November 15, 2005 as an alternative compliance date.

Regarding the determination of compliance deadlines, the commission's initial concern was determining when, or if, the federal requirement for Stage II vapor recovery would be repealed as a result of the introduction of ORVR systems on motor vehicles. Under the FCAA, the EPA administrator has the exclusive authority to rescind the Stage II vapor recovery requirement once EPA has determined that vehicles equipped with ORVR controls are in "widespread use." Pending official guidance from the EPA on this matter, the commission referred to the EPA document, *Frequently Asked Questions on MOBILE6*, January 16, 2002, which states, "...the full fleet effect of ORVR will not be in place until 2030, assuming all vehicles over 25 years are negligible." The commission also referred to the EPA document entitled, *Stage II Vapor Recovery and the Revised National Ambient Air Quality Standards (NAAQS)*, November 3, 1998, which states, "It will take 15 to 20 years for onboard controls to be fully phased in depending on fleet turnover rates for an area." Therefore, the commission does not believe that EPA intends to repeal the Stage II requirement for at least 15 to 30 years. Due to the uncertainty of a widespread use determination, the commission decided the environmentally responsible solution would be to retrofit or replace existing Stage II vapor recovery systems to be ORVR compatible, and to require all systems installed in the future to be ORVR compatible.

In order to frame appropriate compliance deadlines, the commission examined the current population of registered vehicles in Texas, examined the availability of replacement assist systems (currently CARB certified as ORVR compatible), and contacted Stage II vapor recovery manufacturers to project when potential retrofits (including CARB EVR systems which meet the ORVR compatibility requirements) may be available. Based on the review of all available

information, the commission is confident that the 2007 compliance date will ensure continued VOC reductions and provide a reasonable amount of time for the Stage II industry to design, test, certify, market, and install new technologies that meet, and perhaps even surpass, the requirements.

ORVR Compatibility Requirement

EPA requested support documentation that replacement nozzles with a check valve will solve the ORVR vapor growth problem. EPA stated that nozzle manufacturers indicate they will solve the ORVR vapor growth problem, but underground storage tank vent line manufacturers allege the systems will require a control device on the vent line (permeable filter, carbon absorber, or afterburner are proven technologies) to mitigate vent line emissions. Valero also raised concerns about the cost of meeting ORVR compatibility requirements, citing \$1,100 per dispenser for nozzle sensor technology as cost effective, whereas vapor processor (membrane) methods may cost up to \$30,000 per facility. ICE expressed concern about the cost and availability of equipment for upgrading existing systems by 2007.

The commission is confident that both nozzle technologies and membrane technologies are viable solutions to the ORVR compatibility issue. At the beginning of the rulemaking process, the commission estimated a \$1,100 nozzle replacement cost in anticipation that replacement nozzle technologies would be developed and marketed by manufacturers of existing vacuum assist systems. Healy Systems, Inc. currently holds two CARB certifications, CARB Executive Orders G-70-186 and G-70-191, for ORVR-compatible vacuum assist Stage II systems. Both of these systems utilize a patented technology dubbed the “smart nozzle.” This nozzle uses a device that

senses the change in the vehicle fill pipe pressure when fueling ORVR-equipped motor vehicles using a specialized vapor escape guard and a pressure-sensing diaphragm.

Furthermore, Gilbarco indicated to the commission that it is developing several technologies to address the ORVR compatibility issue. One option is a nozzle that employs the use of hydrocarbon sensor technology. Another option is a membrane processor. The commission has been assured by Gilbarco that it intends to test these and other technologies for CARB certification. Based on Stage II test results submitted for fiscal year 2001, over 50% of the Stage II systems in Texas are a Gilbarco/Marconi VaporVac model.

Presently, there are no Stage II systems with membrane processors certified to meet the ORVR compatibility requirement. However, the commission understands that one manufacturer is currently testing a membrane system with CARB and other membrane system manufacturers are expected to test with CARB in the near future.

The commission reiterates that it is important for owner/operators to communicate with their respective manufacturers to determine what kind of retrofit, if any, will be made available to them. The commission has taken measures to facilitate every possible option; nonetheless, if manufacturers do not produce retrofits, then the owner/operators must replace their Stage II vapor recovery systems with either balance systems or vacuum assist systems certified to be ORVR compatible. The commission is confident that should this unlikely scenario occur, the implementation time line in these rules will allow gasoline dispensing facility owners/operators

sufficient time to find the most cost-effective solution available. The EPA-requested documentation regarding replacement nozzles with check valves will be provided to EPA under separate cover.

RCI commented that for every 10,000 gallons of fuel dispensed where all motor vehicles are equipped with ORVR, approximately 20 gallons of fuel will be lost in the form of vapors.

The commission appreciates the comment. Information made available by manufacturers and other industry experts has been valuable to the commission, particularly the information regarding the Stage II/ORVR compatibility issue. CARB estimates emissions reductions of 4.5 tons per day in California by instituting an ORVR compatibility requirement. A CARB District Survey dated October 2, 1998, stated that approximately 17% of gasoline dispensing facilities in the State of California are vacuum assist systems. However, approximately 90% of the gasoline dispensing facilities in the Texas nonattainment areas are vacuum assist systems. Therefore, the commission believes that the projected emissions savings resulting from the ORVR compatibility requirement will be significantly greater in Texas than those anticipated in California. The commission made no changes in response to this comment.

Stage II System Certification

EPA asked if Texas has a solution to the certification of new equipment if CARB does not continue to certify systems that do not meet CARB's enhanced rules.

The commission maintains that if EPA accepts third-party evaluations conducted by qualified independent testing organizations as appropriate for the purposes of certifying release detection methods for gasoline dispensing facilities, similar third-party evaluations for vapor recovery systems should be acceptable.

To date, an alternative to the CARB certification program has not been made available to Texas or other states. Most vapor recovery systems manufactured in the future will be CARB-certified under California's legislatively mandated EVR standards. These new standards are not currently required in Texas or in most other states. However, CARB has agreed, for a limited time, to certify systems for the ORVR compatibility module, independent of the certification testing for a complete EVR system (all six CARB modules).

In order to allow for fair market competition and to satisfy Texas' SIP requirements, the commission is allowing industry to certify vapor recovery systems via a third party using pre-EVR CARB methodology (CP-201, 1996 version). The CARB certification process requires that most of the costs to test and certify equipment be absorbed by the equipment manufacturers. However, CARB does fund some of the testing equipment and staff to oversee the testing. In the commission's third-party certification program, the third-party laboratory or engineering firm would provide the staff to oversee the testing at the expense of the equipment manufacturer. The commission staff will review a final report and provide an approval letter if the third-party company meets the agreed criteria. The commission has made no changes in response to this comment.

Stage II Tester Registry

Valero stated that it supports the certification of all testing companies and their personnel by the commission, an independent laboratory, or an industry trade association. ICE and Tanknology also stated that they support the registration (certification) of testers and the requirement that testers pass a proficiency test. 7-Eleven expressed some ambivalence about the proposed tester registry, but supported a stronger tester certification program with requisite training and an enforceable system to ensure tester competence and accountability. Based on the proposed annual Stage II testing requirements, 7-Eleven predicted that new testing companies will be attracted to the Texas market, and further stated that these new testing companies may not be competent in this field and will only be made accountable if they are faced with “imminent de-registration.” 7-Eleven also cited the existing facility representative training requirements in §115.248 as a resource for the commission to review and approve Stage II-related curriculum. B & B stated that Stage II vapor recovery testing is just as important as tank, line, cathodic protection, and other tests that are performed at gasoline dispensing facilities, but that Stage II is the only testing that is currently allowed to be performed without a certification. B & B supported mandated certification of testers with independent training and a standard state test. UST Services stated that in order to achieve 95% efficiency, it is essential that the Stage II testers achieve a level of competency and that the state should have some degree of authority and jurisdiction in this area.

The commission shares the commenters’ concern that Stage II vapor recovery equipment should be properly tested by competent technicians; however, the commission cannot implement their recommendations at this time. The Stage II vapor recovery program is authorized by THSC,

Chapter 382, but there are no provisions in the THSC that explicitly authorize any type of occupational licensing or certification program for vapor recovery equipment installers, repair technicians, or testers. It is not commission practice to establish and regulate a licensing program without explicit statutory authority. The commission's licensing programs are based on the authority provided in Texas Water Code (TWC), Chapter 37. Although there is a precedent for requiring explicit statutory authority for the licensing or certification of occupational programs related to gasoline dispensing facilities that the commission currently administers, such as Underground Storage Tank Contractor Registration/Installers and Leaking Petroleum Storage Tank Corrective Action Specialist/Project Managers, there are no provisions in the TWC for the licensing of Stage II vapor recovery equipment testers.

An additional concern is the issue of staffing. The two primary methods of regulating such an activity are to hold the facilities accountable for the proper function of their equipment or to license the persons performing the function. The first method can be accomplished with the commission's current staffing while implementation of a licensing program will require additional staffing. Due to current staffing constraints, the commission is not presently in a position to dedicate the additional staff required to establish a new licensing program. Therefore, the commission made no changes in response to this comment.

Stage I Vapor Recovery

Valero supported the elimination of the potential Stage I vapor recovery exemption for a Stage II vapor recovery facility, but suggested that the commission eliminate the 125,000-gallon throughput exemption

and require Stage I vapor recovery statewide to improve air quality. Valero commented that this would standardize the procedures used by fuel carriers and enhance the proper use of existing Stage I vapor recovery equipment. 7-Eleven commented that the commission should enact and enforce more stringent standards for documentation of vapor recovery during fuel deliveries and/or promote more stringent standards for the measurement of vapors returned to the gasoline terminals and gasoline bulk plants after delivery. 7-Eleven indicated that the resultant decreases in VOC emissions should be used to authorize SIP flexibility in Stage II vapor recovery implementation.

The commission disagrees that Stage I vapor recovery standards should be required throughout the state. While the commission agrees that implementing the Stage I vapor recovery criteria might standardize the procedures used by fuel carriers and enhance the proper use of existing Stage I vapor recovery equipment, the commission does not believe that promulgating Stage I vapor recovery standards statewide is crucial in achieving compliance with the NAAQS in the state's ozone nonattainment areas. The commission is also concerned that promulgating the Stage I vapor recovery standards throughout the state may place an unnecessary hardship on facilities which are located in counties that are in compliance with the NAAQS and in which aggregate gasoline emissions from the filling of storage tanks at motor vehicle dispensing facilities do not have a significant impact on the ozone nonattainment areas and near-nonattainment areas. With regard to 7-Eleven's comment about SIP flexibility, Stage II vapor recovery is a federally mandated VOC control and as such, it cannot be substituted with another VOC control to meet the NAAQS. However, at the request of stakeholders the commission may reevaluate the Stage I requirements for the 95 attainment counties in central and eastern Texas in a subsequent

rulemaking action. At that time, the commission would consider the comments provided by Valero and 7-Eleven regarding Stage I vapor recovery, including 7-Eleven's comment that the commission should include more stringent standards for gasoline distributors, terminals, and bulk plants when determining VOC reduction strategies. Therefore, the commission made no changes to the Stage I vapor recovery standards in response to these comments.

Equipment Issues

Valero stated that the proposed language regarding malfunctioning printers in §115.242(3)(K) will result in unfair enforcement for owners and operators who may have a properly functioning Stage II vapor recovery system.

Some systems are required in their CARB Executive Orders to possess system monitors because prior versions of these systems have demonstrated problems generating adequate vacuum thereby creating excess venting episodes. If the system monitor is out of paper or is malfunctioning in such a way that prevents the investigator from determining proper system operation, there has to be a mechanism in place that requires the owner/operator to replace or repair the monitor.

Without a specific enforceable requirement, the problem may go unresolved. The commission agrees that, technically speaking, there may be no decrease in a system's ability to recover vapors, but the certification of a system requires that the operational status be available for inspection at all times. The commission inspection protocols would consider any infraction of this nature to be a recordkeeping violation.

Valero raised concerns that the proposed language in §115.244(1) was unreasonable for facility representatives with vacuum assist systems to be able to determine whether or not a vacuum-producing device is “inoperative or defective” or to determine if a crimped or flattened hose is affecting the performance of a Stage II system.

The commission concurs that it is unreasonable for facility representatives with vacuum assist systems to determine whether or not a vacuum producing device is “inoperative or defective” under all circumstances. Therefore, the commission deleted the reference to §115.242(3)(I) in §115.244(1). However, crimped or flattened hoses should be noted during daily inspections. It is the owner’s/operator’s responsibility to determine whether or not the crimped or flattened hose has created a vapor blockage. It is left to the discretion of the owner/operator to determine whether or not a crimped or flattened hose should be tested for a vapor blockage or replaced as a precautionary measure. If, upon inspection, a crimped or flattened hose is found, through test, to be blocked, a notice of violation can be issued.

Test Observation Program (TOP)

ICE and UST Services commented that the TOP will take up a lot of the commission’s time, and will cost owners and operators more money. ICE and UST Services commented that the commission and the city (local programs) will only inspect about 20% of the facilities, as opposed to the previous program whereby the city inspected 100% of all facilities. ICE and UST Services commented that TOP will reduce compliance. UST Services commented that the commission needs to maintain a program to identify which sites are not complying. ICE commented that TOP will lead to greater vapor emissions.

ICE and UST Services suggested that the commission should randomly inspect 3.5% of the locations that have already been tested to assure they were properly tested. ICE and UST Services commented that, assuming that it would take about 2-1/2 hours to observe a test and that there are 2,500 sites, their plan would save the agency 6,031 man-hours. ICE and UST Services commented that the inspections would not have to be invasive and could be completed in 30 minutes; for example, the agency could conduct random nozzle tests or inspect the Stage I adapters with gauges. ICE and UST Services also commented that the data gathered via their program would provide the commission with information for new regulations and/or the SIP.

The commission believes that TOP activities will not occupy as much time as ICE and UST Services assume. The commission realizes that the rule will increase costs for owners and operators of the affected facilities, but believes that the costs will create no great burden. The commission believes that observing Stage II tests at 20% of the affected facilities is equivalent to inspecting 100% of the facilities because commission statistics show that when Stage II tests are observed by qualified enforcement officials, malfunctioning vapor recovery systems are more likely to be detected and repaired. This program will allow the commission to definitively determine which vapor recovery systems are operating at the certified efficiency, and will also allow the commission to ascertain which testers are following proper testing procedures. The commission also believes that working in conjunction with the local programs will provide sufficient work force to ensure full compliance with these rules and thereby, fewer vapor emissions.

The commission did not replace the TOP with the commenters' suggested program to randomly inspect 3.5% of the affected facilities that have already performed the required tests. The commission believes that the observation method that it has chosen to adopt will provide greater compliance by those affected by these rules, as it is more thorough, yet not as time consuming as the commenters suggested. The commission believes that it can also obtain more data to use in related future rules or SIPs by using the TOP as opposed to utilizing the commenters' random testing procedure. The commission has made no changes in response to this comment.

Vapor Recovery Test Procedures Handbook

Valero indicated that it welcomes changes to the test procedures handbook, but raised concerns that the handbook does not mention the 12-month test period that is stated in §115.245. Valero stated that the testing policy describing the 12-month period should be communicated clearly to all commission inspectors and owners/operators.

The commission agrees with the comment. Language which parallels wording in §115.245 regarding testing frequency will be added to the introduction of the published test procedures handbook.

Valero commented that the test procedures handbook defines the volume-to-liquid (V/L) test (TXP 106.1), but does not define the CARB A/L test procedure (TP-201.5) required in the CARB Executive Order G-70-150-AE for the Marconi (Gilbarco) VaporVac System. Valero requested further clarification or examples regarding what kind of vapor volume meter will be acceptable for use.

In accordance with §115.245(1), the test procedures handbook takes precedence over any test procedure listed in the CARB Executive Order; however, several alternatives to TXP-106 have been approved by the executive director including CARB TP-201.5, VacuChek, and VacuSmart. If the TXP-106 or TP-201.5 tests are chosen, a RootsMeter is required. The VacuChek and VacuSmart alternative procedures require the VacuChek or VacuSmart, respectively.

Stage II Testing Issues

Valero, ICE, Tanknology, and UST Services commented that they support annual testing of Stage II systems for A/L, V/L, and pressure decay, but do not support an annual TXP-103 blockage test. 7-Eleven also challenged the necessity of an annual blockage test. Valero recommended that the blockage test be required only every three years. ICE and Tanknology recommended that the blockage test be required every three to five years. Valero, 7-Eleven, and UST Services stated that performing a blockage test more than once every five years is in excess of what needs to be done to maintain the 95% operating efficiency requirement at the site. They cited that the blockage test is designed to verify proper installation of the system, not necessarily proper system operation. 7-Eleven and UST Services also stated that the blockage testing requirement will cost facility owners approximately \$150 to \$200 per site per year to perform. Valero, ICE, and Tanknology all stated that they were concerned that opening the vapor lines under each dispenser in most facilities to introduce fuel into the line to perform the blockage test will compromise the integrity of the system.

The commission appreciates the comments regarding the proposed annual testing requirements.

The commission's goal is to ensure that Stage II vapor recovery systems are maintained and tested

to ensure the 95% operating efficiency requirement. It is important to test for blockages not only at the time of installation, but also periodically, because even properly installed Stage II systems have the possibility to develop problems over time, such as vapor blockages. Nevertheless, the commission shares the commenters' concerns about system integrity and has changed the requirement in §115.245(2) to require the TXP-103 test at least once every 36 months. However, in order to better ensure potential blockages are detected on a timely basis, the annual TXP-106 test procedure will be modified to include the introduction of a minimum quantity of gasoline at the termination of vapor return lines to provide an annual indication regarding system blockage without breaking piping junctions at each dispenser. Furthermore, any alternative method approved by the executive director (e.g., CARB TP-201.5) must also include an introduction of gasoline at the termination of the vapor return lines. Because TXP-101 poses similar problems for system integrity as TXP-103, the commission will also change the testing frequency requirement for TXP-101 to at least every 36 months.

Oncor stated that the existing language in the proposed rule establishes and by inference sets the price per year for the full system test at \$550, and suggested changes to the preamble language. Oncor suggested that words such as "an average" be used in the language used to describe testing costs.

The commission agrees with the commenter. The commission did not intend to establish set costs for Stage II testing, and the preamble language has been changed to reflect estimated testing costs.

Aboveground Storage Tank (AST) Executive Orders

One individual noted the erroneous exclusion of AST Executive Orders in §115.240.

The commission agrees and has added the AST CARB Executive Orders to §115.240.

Recordkeeping Requirements

Valero, ICE, 7-Eleven, and UST Services commented on the proposed recordkeeping requirements. ICE and 7-Eleven commented that requiring records to be maintained on-site was too burdensome. Valero, 7-Eleven, and ICE commented that the proposed rule should allow owners and operators to maintain annual system testing records off-site, and 7-Eleven commented that records could be kept off-site and delivered to the regional office at the time of the ten-day notification of system testing. Valero and ICE commented that the on-site recordkeeping requirements should be minimized to the daily inspection logs, maintenance logs, and facility representative training records. Valero and ICE asserted that the remaining documents could be archived at a central location and made available within 48 hours. ICE and Valero commented that the enforcement of regulations regarding recordkeeping could take away from the commission's ability to enforce vapor recovery system compliance, postulating that recordkeeping violations could take up an inordinate amount of the commission's time that would otherwise be utilized to inspect noncompliant facilities. ICE and UST Services commented that the commission should consider following the recordkeeping requirements outlined in 30 TAC Chapter 334 for the Stage II test reports so as to provide consistency and simplification. They pointed out that if the rules for Stage II testing were consistent with the rules for tank and line testing, they would have time to produce the test results to the agency, or the agency could review its own files before performing the

site inspections. Tanknology, Valero, and ICE commented that they support the testing requirements; however, they felt that the agency should examine the submitted test results to assure compliance with the regulations and create a database of the test results that is reconciled monthly. Tanknology, Valero, and ICE expressed the belief that such a process could be used to identify facilities that either have not submitted the results or have not performed the testing activity, which would thereby improve the efficiency of the agency inspections, improve compliance among facility owners, and ultimately improve the air quality.

The commission does not agree with the comments by 7-Eleven, Valero, and ICE that the recordkeeping requirements should be further modified to allow for off-site record retention. The amendments allow owners/operators 48 hours to produce records for unmanned facilities. The commission also does not agree that retention of these records on-site will place any undue burden on those affected by the rule, and believes that this requirement is crucial to enforcement of these rules. The commission also believes that these rules will be most effectively enforced if all required records are kept on-site as specified. Records must be kept on-site and made immediately available for review upon request by authorized representatives of the executive director, EPA, or any local air pollution control program with jurisdiction so as to allow for proper administration of the rules by authorized personnel. The commission believes that on-site review of test records during inspections provides Field Operations Division personnel a perspective on the operation and maintenance at a particular facility over time. The commission prefers that records be kept on-site so as to facilitate unannounced inspections required in accordance with the SIP. The commission also disagrees with the comment by Valero and ICE

that recordkeeping violations could take up too much of the commission's time that would otherwise be utilized to inspect noncompliant facilities. The commission believes that there are adequate resources to enforce all aspects of the Stage I and II rules. The commission does not agree with the comments of ICE and UST Services that the proposed recordkeeping requirements should conform to the recordkeeping requirements outlined in Chapter 334 for the Stage II test reports. There are differences in the recordkeeping requirements because there are significant differences between Chapter 334 rules and these rules. The commission appreciates comments from Tanknology, Valero, and ICE that suggested the commission should examine the test results submitted to assure compliance with the regulations and create a test results database that is reconciled monthly. The commission believes that the current procedures are sufficient to assure compliance with the regulations. However, because the SIP has historically required 100% of the facilities to be inspected, commission and local program investigators have ordinarily reviewed test results on-site during annual Stage II investigations. During the pilot TOP, the commission tracked and recorded test results in a database. Due to staffing constraints, this practice was discontinued shortly after the pilot program final report was issued. With the implementation of the TOP, regional offices and contracted local programs will be independently tracking test results in databases. These databases will be used to determine which facilities have not performed the required testing according to the prescribed schedule.

SUBCHAPTER C: VOLATILE ORGANIC COMPOUND TRANSFER OPERATIONS

**DIVISION 2: FILLING OF GASOLINE STORAGE VESSELS (STAGE I)
FOR MOTOR VEHICLE FUEL DISPENSING FACILITIES**

§115.227

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and §382.208, concerning Attainment Program, which authorizes the commission to develop and implement transportation programs and other measures necessary to demonstrate attainment and protect the public from exposure to hazardous air contaminants from motor vehicles.

§115.227. Exemptions.

The following exemptions apply:

(1) In the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, transfers to stationary storage tanks located at a motor vehicle fuel dispensing facility which has dispensed no more than 10,000 gallons of gasoline in any calendar month after January 1, 1991, and for which construction began prior to November 15, 1992, are exempt from the requirements of this division (relating to Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities), except for:

(A) §115.222(7) of this title (relating to Control Requirements);

(B) §115.222(3) of this title as it applies to liquid gasoline leaks;

(C) §115.224(1) of this title (relating to Inspection Requirements) as it applies to liquid gasoline leaks; and

(D) §115.226(2)(B) of this title (relating to Recordkeeping Requirements).

(2) In the covered attainment counties, as defined in §115.10 of this title (relating to Definitions), stationary gasoline storage containers with a nominal capacity less than or equal to 1,000 gallons at motor vehicle fuel dispensing facilities are exempt from the requirements of this division, except for:

(A) §115.222(7) of this title;

(B) §115.222(3) of this title as it applies to liquid gasoline leaks; and

(C) §115.224(1) of this title as it applies to liquid gasoline leaks.

(3) In the covered attainment counties, transfers to stationary storage tanks located at a motor vehicle fuel dispensing facility which has dispensed less than 125,000 gallons of gasoline in any calendar month after January 1, 1999 are exempt from the requirements of this division, except for:

(A) §115.222(7) of this title;

(B) §115.222(3) of this title as it applies to liquid gasoline leaks;

(C) §115.224(1) of this title as it applies to liquid gasoline leaks; and

(D) §115.226(2)(C) of this title.

(4) Transfers to the following stationary receiving containers are exempt from the requirements of this division:

(A) containers used exclusively for the fueling of implements of agriculture;

and

(B) storage tanks equipped with external floating roofs, internal floating roofs,
or their equivalent.

SUBCHAPTER C: VOLATILE ORGANIC COMPOUND TRANSFER OPERATIONS

**DIVISION 4: CONTROL OF VEHICLE REFUELING EMISSIONS (STAGE II)
AT MOTOR VEHICLE FUEL DISPENSING FACILITIES**

§§115.240 - 115.249

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendments are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and §382.208, concerning Attainment Program, which authorizes the commission to develop and implement transportation programs and other measures necessary to demonstrate attainment and protect the public from exposure to hazardous air contaminants from motor vehicles.

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

Certified Stage II Equipment.

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

(1) **Onboard refueling vapor recovery** - A system on motor vehicles designed to recover hydrocarbon vapors that escape during refueling.

(2) **Onboard refueling vapor recovery (ORVR) compatible** - A vacuum assist Stage II vapor recovery system designed to prevent the ingestion of ambient air during the fueling of motor vehicles equipped with ORVR.

(3) **Owner or operator of a motor vehicle fuel dispensing facility** - Any person who owns, leases, operates, or controls the motor vehicle fuel dispensing facility.

(b) The table in the following figure is a list of the Stage II vapor recovery systems certified by a California Air Resources Board (CARB) Executive Order in effect as of January 1, 2002.

Figure: 30 TAC §115.240(b)

CARB Certified Stage II Vapor Recovery Systems in Effect as of January 1, 2002.

CARB Executive Order Number	Certified System
G-70-25-AA	Recertification of the Atlantic Richfield Balance Phase II Vapor Recovery System
G-70-33-AB	Certification of the Modified Hirt VCS-200 Vacuum Assist Phase II Vapor Recovery System
G-70-36-AD	Modification of Certification of the OPW Balance Phase II Vapor Recovery System
G-70-37-B	Modification of Certification of the Chevron Balance Phase II Vapor Recovery System with OPW nozzles for Service
G-70-38-AB	Recertification of the Texaco Balance Phase II Vapor Recovery System
G-70-48-AA	Recertification of the Mobil Oil Balance Phase II Vapor Recovery System
G-70-49-AA	Recertification of the Union Balance Phase II Vapor Recovery System
G-70-52-AM	Certification of Components for Red Jacket, Hirt, and Balance Phase II Vapor Recovery System
G-70-53-AA	Recertification of the Chevron Balance Phase II Vapor Recovery System
G-70-70-AC	Certification of the Healy Phase II Vapor Recovery System for Service Stations
G-70-77	Certification of the OPW Repair/Replacement Parts and Modification of the Certification of the OPW Balance Phase II Vapor Recovery System
G-70-78	Certification of the E-Z Flo Nozzle Company Rebuilt Vapor Recovery Nozzles and Vapor Recovery Components
G-70-101-B	Certification of the E-Z Flo Model 3006 and 3007 Vapor Recovery Nozzles and Use of E-Z Flo Components with OPW Models 11VC and 11VE Vapor Recovery Nozzles
G-70-107	Certification of Rainbow Petroleum Products Model RA3003, RA3005, RA3006 and RA3007 Vapor Recovery Nozzles and Vapor Recovery Components
G-70-110	Certification of Stage I and II Vapor Recovery Systems for Methanol Fueling Facilities
G-70-116-F	ConVault Aboveground Tank Vapor Recovery System
G-70-118-AB	Certification of the Amoco V-1 Vapor Recovery System

CARB Executive Order Number	Certified System
G-70-125-AA	Modification of Certification of the Husky Model V Balance Phase II Vapor Recovery Nozzle
G-70-127	Certification of the OPW Model 111-V Phase Vapor Recovery Nozzle
G-70-128	Bryant Fuel Cell Aboveground Tank Vapor Recovery System
G-70-130A	Petrovault Aboveground Tank Vapor Recovery System
G-70-131A	Tank Vault Aboveground Tank Vapor Recovery System
G-70-132-A	Supervault Aboveground Tank Vapor Recovery System
G-70-132-B	Supervault Aboveground Tank Vapor Recovery System
G-70-134	Certification of the E-Z Flo Rebuilt A-4000 Series and 11V-Series Vapor Recovery Nozzle
G-70-136	FireSafe Aboveground Tank Vapor Recovery System
G-70-137	FuelSafe Aboveground Tank Vapor Recovery System
G-70-138	Phase II Vapor Recovery Systems Installed on Gasoline Bulk Plants/Dispensing Facilities with Aboveground Tanks
G-70-139	Addition to the Certification of the Hirt Model Phase II Vapor Recovery System
G-70-140-A	Integral Phase I and Phase II Aboveground Configurations with the Healy Phase II Vapor Recovery System
G-70-142-B	Phase I Vapor Recovery System for Aboveground Gasoline Storage Tanks
G-70-143	P/T Vault Aboveground Tank Vapor Recovery System
G-70-148-A	Lube Cube Aboveground Tank Vapor Recovery System
G-70-150-AE	Modification to the Certification of the Marconi Commerce Systems, Inc. (MCS) "Formerly Gilbarco" VaporVac Phase II Vapor Recovery System
G-70-152	Moiser Brothers Tanks and Manufacturing Aboveground Tank Vapor Recovery System
G-70-153-AD	Modification to the Certification of the Dresser/Wayne WayneVac Phase II Vapor Recovery System
G-70-154-AA	Modification to the Certification of the Tokheim MaxVac

CARB Executive Order Number	Certified System
	Phase II Vapor Recovery System
G-70-155	Petroleum Marketing Aboveground Tank Vapor Recovery System
G-70-156	Ecovault Aboveground Tank Vacuum Assist Vapor Recovery System
G-70-157	Ecovault Aboveground Tank Balance Vapor Recovery System
G-70-158-A	Firesafe Aboveground Tank Vapor Recovery System
G-70-159-AB	Modification to the Certification of the Saber Nozzle for Use with the Gilbarco VaporVac Phase II Vapor Recovery System
G-70-160	Above Ground Tank Vault Vapor Recovery System
G-70-161	Hoover Containment Systems, Incorporated Aboveground Tank Vapor Recovery System
G-70-162-A	Steel Tank Institute Fireguard Aboveground Tank Vapor Recovery System
G-70-163-AA	Certification of the OPW VaporEZ Phase II Vapor Recovery System
G-70-164-AA	Modification to the Certification of the Hasstech VCP-3A Vacuum Assist Phase II Vapor Recovery System
G-70-165	Healy Vacuum Assist Phase II Vapor Recovery System
G-70-167	EnviroVault Aboveground Tank Vapor Recovery System
G-70-168	Bryant Fuel Systems Phase I Vapor Recovery System
G-70-169-AA	Modification to the Certification of the Franklin Electric INTELLIVAC Phase II Vapor Recovery System
G-70-170	Certification of the E-Z Flo Rebuilt 5005 and 5015 Nozzles for use with the Balance Phase II Vapor Recovery System
G-70-175	Hasstech VCP-3A Vacuum Assist Phase II Vapor Recovery System for Aboveground Tank Systems
G-70-177-AA	Modification to the Certification of the Hirt VCS400-7 Vacuum Assist Phase II Vapor Recovery System
G-70-179	Certification of the Catlow ICVN-V1 Vacuum Assist Phase II Vapor Recovery System
G-70-180	Order Revoking Certification of Healy Phase II Vapor Recovery Systems for Gasoline Dispensing Facilities

CARB Executive Order Number	Certified System
G-70-181	Hirt VCS400-7 Bootless Nozzle Phase II Vapor Recovery System for Aboveground Storage Tank Systems
G-70-183-AA	Relating to Language Correction in Existing Executive Order G-70-183 (Healy/ Franklin System)
G-70-186	Certification of the Healy 400 ORVR Vapor Recovery System
G-70-187	Healy Model 400 ORVR Vapor Recovery System Aboveground Tank Systems
G-70-188	Certification of the Catlow ICVN Vapor Recovery Nozzle System for use with the Gilbarco VaporVac Vapor Recovery System
G-70-190	Guardian Containment, Corporation Armor Cast Aboveground Tank Vapor Recovery System
G-70-191-AA	Relating to Language Correction in Existing Executive Order G-70-191 (Healy 600 ORVR/800)
G-70-192	Certification of the Healy Model 400 ORVR Nozzle for Existing Aboveground Storage Tank Systems
G-70-193	Certification of the Hill-Vac Vapor Recovery System for Cargo Tank Motor Vehicle Fueling Systems
G-70-194	Containment Solutions Hoover Vault Aboveground Vapor Recovery System
G-70-195	Cretex Companies, Inc FuelVault Aboveground Tank Vapor Recovery System
G-70-196	Certification of the Saber Technologies, LLC SaberVac VR Phase II Vapor Recovery System
G-70-197	Synchrotek Fastflo 3 Phase II Vapor Recovery System
G-70-200	Oldcastle Aboveground Below-Grade Fuel Vault with Balance Vapor Recovery System and Buried Vapor Return Piping
G-70-201	Oldcastle Aboveground Below-Grade Fuel Vault with Balance Vapor Recovery System and Trenched Vapor Return Piping
G-70-202	Oldcastle Aboveground Below-Grade Fuel Vault with Gilbarco VaporVac Phase II Recovery System and Trenched Vapor Return Piping

§115.241. Emission Specifications.

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

§115.242. Control Requirements.

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

(1) The facility is equipped with a Stage II vapor recovery system certified by a California Air Resources Board (CARB) Executive Order in effect as of January 1, 2002 (as specified in §115.240(b) of this title (relating to Stage II Vapor Recovery Definitions and List of California Air Resources Board Certified Stage II Equipment)); or certified by a CARB Executive Order in effect after January 1, 2002, except that the executive director reserves the right to continue to recognize any CARB Executive Orders decertified after January 1, 2002; or certified by an alternative procedure

which meets the requirements specified in §115.243 of this title (relating to Alternate Control Requirements). In addition:

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

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

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

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

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

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

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

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

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

(D) Vapor piping on balance systems shall be not less than two inches in diameter, and when there are more than four fueling points connected to one vapor line, the minimum vapor piping size shall be three inches in diameter. For the purposes of this paragraph, a single nozzle

dispenser shall constitute one fueling point and a multi-nozzle dispenser shall constitute two fueling points.

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

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

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

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

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

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

(i) a triangular-shaped or similar tear more than 0.5 inches on a side;

(ii) a hole more than 0.5 inches in diameter; or

(iii) a slit more than 1.0 inch in length;

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

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

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

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

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

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

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

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

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

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

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

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

Once repaired, the equipment may be returned to service by the owner or operator or his or her representative.

(6) Upon identification of any of the defects described in paragraphs (3) and (4) of this section, any inspector with jurisdiction shall tag the impaired equipment out-of-order. The "Out-of-Order" tag shall state "use of this device is prohibited under state law, and unauthorized removal of this tag or use of this equipment will constitute a violation of the law punishable by a maximum civil penalty of up to \$25,000 per day or a maximum criminal penalty of \$50,000 and/or up to 180 days in jail." The impaired equipment shall remain out of service until such time as the equipment has been properly repaired, replaced, or adjusted, as necessary. Once repairs are completed, the "Out-of-Order" tag may be removed, and the equipment shall be returned to service by the owner or operator or facility representative upon notification to the agency that originally tagged the equipment out-of-service in the following manner: verbal notification prior to placing the equipment back in service followed by written notification received by the agency within ten days of placing the equipment back in service. For the purposes of this paragraph, "facility representative" has the meaning ascribed to it in §115.248(1) of this title (relating to Training Requirements).

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

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

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

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

and

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

(10) Any motor vehicle fuel dispensing facility that becomes subject to the provisions of this division by exceeding the throughput limits of §115.247 of this title (relating to Exemptions) shall have 120 days to come into compliance and will remain subject to the provisions of this division even if its gasoline throughput later falls below throughput limits, except that:

(A) at a facility exempted under §115.247(2) of this title for which an exceedance occurred between January 1, 1991, and November 15, 1992, the owner or operator may petition the executive director to permit a continuance of the facility's exempt status provided that the average monthly throughput calculated from January 1, 1991, to November 15, 1992, remained below

10,000 gallons. If exempt status is continued by the executive director, the annual verification of exempt status as required in §115.247(2) of this title must be fulfilled; and

(B) at a facility exempted under §115.247(2) of this title for which an exceedance occurred for any consecutive 30-day period due to an emergency condition or natural disaster after November 15, 1992, the owner or operator may petition the executive director to permit the continuance of the facility's exempt status or extended compliance schedule status. If exempt status is continued by the executive director, the requirement of annual verification of the status as stated in §115.247(2) of this title must be fulfilled.

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

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

(A) facility name, location (physical and mailing address); name, address, and phone number of owner(s) and operator(s); name and phone number of owner's representative; name,

address, and phone number of contractor(s); and the Petroleum Storage Tank Facility ID number and Owner ID number (if known);

(B) proposed start date; and

(C) type of Stage II system to be installed, including CARB Executive Order number(s) and the number of gasoline nozzles at the facility.

§115.243. Alternate Control Requirements.

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

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

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

§115.244. Inspection Requirements.

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

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

(2) For assist systems that use a processor, indicating mechanisms designed by the Stage II vapor recovery equipment manufacturer to verify proper operation shall be inspected daily. Examples of these indicating mechanisms include flame detection sensors, remote (from the processor) visual or audible displays indicating system operation, or other means as described in the applicable Executive Order for the system.

(3) For all systems, the components listed in §115. 242(3)(J) of this title shall be inspected at least monthly.

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

§115.245. Testing Requirements.

For all affected persons, compliance with §115.241 and §115.242 of this title (relating to Emission Specifications and Control Requirements) shall be determined at each facility within 30 days of installation of the Stage II equipment by testing as follows.

(1) Stage II vapor recovery systems shall successfully meet the performance criteria proper to the system by successfully completing the following testing requirements using the test procedures as found in the Vapor Recovery Test Procedures Handbook (test procedures handbook) (RG-399, November 2002).

(A) For balance and assist systems:

(i) the manifolding or interconnectivity of the vapor space shall be consistent with the Executive Order requirements for the installed system;

(ii) the sum of the vapor leaks in the system shall not exceed acceptable limits for the system as defined in the pressure decay test;

(iii) the maximum acceptable backpressure through a given vapor path shall not exceed the limits as found in the backpressure/liquid blockage test applicable for the vapor path for the system; and

(iv) the maximum gasoline flow rate through the nozzle shall not exceed the limits found in the Executive Order or third-party certification for the system.

(B) For bootless nozzle assist systems, the volume-to-liquid ratio (V/L ratio) or air-to-liquid ratio (A/L ratio) shall be within acceptable limits.

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

(D) The owner or operator, or his or her representative, shall provide written notification to the appropriate regional office and any local air pollution program with jurisdiction of the testing date and who will conduct the test. The notification must be received by the appropriate regional office and any local air pollution program with jurisdiction at least ten working days in advance of the test, and the notification must contain the information and be in the format as found in the test procedures handbook. Notification may take the form of a facsimile or telecopier transmission, as long as the facsimile is received by the appropriate regional office and any local air pollution program with jurisdiction at least ten working days prior to the test and it is followed up within two weeks of the transmission with a written notification. The owner or operator, or his or her representative, shall give at least 24-hour notification to the appropriate regional office and any local air

pollution program with jurisdiction if a scheduled test is cancelled. In the event that the test cancellation is not anticipated prior to 24 hours before the scheduled test, the owner or operator, or his or her representative, shall notify the appropriate regional office and any local air pollution program with jurisdiction as soon in advance of the scheduled test as is practicable.

(2) Verification of proper operation of the Stage II equipment shall be performed in accordance with the test procedures referenced in paragraph (1) of this section at least once every twelve months or upon major system replacement or modification, whichever occurs first. The verification shall include all functional tests that were required for the initial system test, except for TXP-101, Determination of Vapor Space Manifolding of Vapor Recovery Systems at Gasoline Dispensing Facilities, and TXP-103, Determination of Dynamic Pressure Performance (Dynamic Back-Pressure) of Vapor Recovery Systems at Gasoline Dispensing Facilities, which must be performed at least once every 36 months. The owner or operator, or his or her representative, shall provide written notification to the appropriate regional office and any local air pollution program with jurisdiction of the testing date and who will conduct the test. The notification must be received by the appropriate regional office and any local air pollution program with jurisdiction at least ten working days in advance of the test, and the notification must contain the information and be in the format as found in the test procedures handbook. Notification may take the form of a facsimile or telecopier transmission, as long as the facsimile is received by the appropriate regional office and any local air pollution program with jurisdiction at least ten working days prior to the test and it is followed up within two weeks of the transmission with a written notification. The owner or operator, or his or her representative, shall give at least 24-hour notification to the appropriate regional office and any local air

pollution program with jurisdiction if a scheduled test is cancelled. In the event that the test cancellation is not anticipated prior to 24 hours before the scheduled test, the owner or operator, or his or her representative, shall notify the appropriate regional office and any local air pollution program with jurisdiction as soon in advance of the scheduled test as is practicable. For the purposes of this paragraph, a major system replacement or modification is defined as:

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

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

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

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

(3) Minor modifications of these test methods may be approved by the executive director.

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

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

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

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

§115.246. Recordkeeping Requirements.

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

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

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

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

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

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

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

(7) all records shall be maintained for at least two years, except that the CARB Executive Order(s) or third-party certification(s) specified in paragraph (1) of this section, any applicable alternate method of control requirement approval specified in paragraph (2) of this section, and testing results specified in paragraph (5) of this section shall be kept on-site indefinitely. These records shall be:

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

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

§115.247. Exemptions.

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

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

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

§115.248. Training Requirements.

For all persons affected by this division (relating to Control of Vehicle Refueling Emissions (Stage II) at Motor Vehicle Fuel Dispensing Facilities), the following training requirements apply.

(1) The owner or operator of a motor vehicle fuel dispensing facility shall ensure that at least one facility representative receive training and instruction in the operation and maintenance of the Stage II vapor recovery system by successfully completing a training course approved by the executive director. Successful completion shall constitute certification of the facility representative. Each such facility representative is then responsible for making every current and future employee aware of the purposes and correct operating procedures of the system. The required training shall be completed as soon as practicable prior to the initiation of operation of the facility's Stage II equipment. The following additional requirements apply to the designation of the facility representative.

(A) For normally unattended facilities such as unattended card-lock facilities, or for normally unattended refueling facilities not open to the public, a single person may fulfill the facility representative role at more than one facility.

(B) For facilities normally attended, a single person shall not fulfill the facility representative role at more than one facility at a time.

(2) If the facility representative who received the approved training is no longer employed at that facility, another facility representative must successfully complete approved training within three months of the departure of the previously trained employee.

(3) An approved training course will include, but is not limited to, the following:

(A) federal and state Stage I and Stage II regulations (including enforcement consequences of noncompliance) and vapor recovery health effects and benefits;

(B) equipment operation and function of each type of vapor recovery system;

(C) general overview of maintenance schedules and requirements for Stage II vapor recovery equipment;

(D) general overview of structure and content of California Air Resources Board (CARB) Executive Orders; and

(E) recordkeeping and inspection requirements for Stage I and Stage II vapor recovery systems.

(4) The executive director may revoke approval of a training course if the training provider:

(A) fails to administer the training course as proposed in the application made to the executive director to provide such training; or

(B) fails to notify the executive director of upcoming courses in writing at least 21 days prior to the date of the training as to the date, time, and place the training is to be held, or in

the event of a scheduled course cancellation, fails to notify the executive director at least 24 hours in advance of the cancellation, except:

(i) for all training providers, if conditions exist such that 24-hour notice of course cancellation is impossible or impracticable, notice must be given to the executive director as soon as practicable, preferably prior to the time the course was originally scheduled; and

(ii) for training courses provided at no charge to the persons who attend, such as company-provided inhouse training, the 21-day advance notice shall not apply, and advance notice of upcoming courses is only required when such notice is requested, in writing, by the executive director.

§115.249. Counties and Compliance Schedules.

(a) The rules in this division (relating to Control of Vehicle Refueling Emissions (Stage II) at Motor Vehicle Fuel Dispensing Facilities) apply to affected persons in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Harris, Hardin, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties.

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

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

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

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