

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §§115.227 and 115.240 - 115.249 concerning the control of gasoline vapors from storage vessels and dispensing facilities. The commission also proposes revisions to the state implementation plan (SIP) narrative, Stage II Vapor Recovery Program SIP Revision. The commission proposes to submit these amended rule sections and revised SIP narrative to the United States Environmental Protection Agency (EPA) as proposed revisions to the SIP.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The commission adopted the Stage II rules and SIP narrative on October 16, 1992 (revised on November 10, 1993) to satisfy a requirement of the Federal Clean Air Act amendments of 1990, §182(b)(3) (42 United States Code (USC), §7511a(b)(3)). The original rules followed the California Air Resources Board (CARB) certification procedures for the vapor recovery equipment. 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. In lieu of incorporating the CARB EVR program, the commission is proposing a requirement for more frequent testing of vapor recovery systems at gasoline dispensing facilities. Specifically, the commission proposes to change the five-year requirement for full system tests to a one-year requirement. By doing so, the commission believes that the increased testing frequency will continue to satisfy the federal requirement to maintain a vapor recovery rate of 95%. The commission proposes these amendments to Chapter 115, Control of Air Pollution from Volatile Organic Compounds (VOC).

SECTION BY SECTION DISCUSSION

Throughout this rulemaking the outdated term “undesigned head” is proposed to be replaced with the correct term “division” in response to revised *Texas Register* rules published in the February 13,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 is proposed to be changed to the Texas Commission on Environmental Quality because the rules are anticipated to become effective after the date the name change is to occur, September 1, 2002. The term “commission” is proposed to be changed to “executive director” in each location where the action being taken is directly associated with the executive director or his staff. In addition, various stylistic and editorial changes are proposed to comply with the current *Texas Register* rules and style manual. Justification for these changes will not be discussed any further in this preamble other than to point out where each change has been made.

Subchapter C, Division 2, Stage I Vapor Recovery

The proposed amendments to §115.227, Exemptions, would 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 proposed amendments also add section titles the first time each section is referenced in §115.227.

Subchapter C, Division 4, Stage II Vapor Recovery

The proposed amendments to §115.240, Stage II Vapor Recovery Definitions, include stylistic changes previously discussed in this preamble. The proposed amendments would also delete the definition *independent small business marketer of gasoline* because the term is no longer used in this division.

The proposed amendments would 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 proposed 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 proposed 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 proposed administrative and stylistic amendments to §115.242, Control Requirements, would 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 would change “undesignated head” to “division.” The proposed amendments to §115.242(2) would 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 proposed technical amendments to §115.242 would clarify which CARB-certified Stage II vapor recovery systems would be authorized for use by the executive director. Also, the proposed amendments would 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 should be addressed as this incompatibility may prove to be a new source of emissions. In order to maintain SIP integrity and to prevent new emissions, the proposed amendments include a compliance schedule for gasoline dispensing facilities to upgrade their Stage II vapor recovery systems to be ORVR compatible. The proposed amendments would 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 proposed amendments to §115.243, Alternate Control Requirements, would 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 proposed amendments to §115.244, Inspection Requirements, would 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 word “utilize” is proposed to be replaced with the word “use” in §115.244(2).

The proposed administrative and stylistic amendments to §115.245, Testing Requirements, would 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 proposed amendments would also delete several superfluous references to the acronym TNRCC, and change “TNRCC” to “executive director” in several locations because the executive director (or his staff) is responsible for program management. Finally, the name of the commission is proposed to be changed in one location.

The proposed technical amendments to §115.245 also would provide a directive to use the most recent Stage II vapor recovery test procedures handbook, add language to allow air-to-liquid ratio (A/L ratio) testing for assist systems, and require annual compliance testing of Stage II equipment to ensure that the equipment is operating properly. Full system testing must be accomplished at least once in any 12-month period. The term "12-month period" is used in the calendar sense and is not meant to imply a specific number of days. For example, if a system test was completed in a given month, such as October, 2003, then another inspection must be done at some time in the subsequent 12-month period from November 1, 2003 through the end of October, 2004. If a system test was done on October 5, 2003, then the facility has until October 31, 2004 to complete the next system test. If the facility waited until October 31, 2003 to do the next system test, the following test would still be due no later than October 31, 2004. However, if the facility made an “early” 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 proposes to implement a registry of testers who have certified their knowledge of the *State of Texas Vapor Recovery Test Procedures Handbook*.

The proposed amendments to §115.246, Recordkeeping Requirements, would 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 proposed amendments include changing the term “undesigned 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 his staff) is the more appropriate recipient of facility records.

The proposed amendments to §115.247, Exemptions, would 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 would delete one superfluous reference to the Texas Natural Resource Conservation Commission.

The proposed amendments to §115.248, Training Requirements, would 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 his staff) is responsible for program management.

The proposed amendments to §115.249, Counties and Compliance Schedules, would 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 proposed amendments would also change the term *undesignated head* to *division*.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeffrey Horvath, Analyst with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed amendments are in effect, no significant fiscal implications are expected for the agency resulting from the implementation of the proposed amendments. However, costs are anticipated for units of state or local government, businesses, or individuals who own or operate gasoline stations or gasoline dispensing facilities in the 16 ozone nonattainment counties in the state.

Although costs per facility are not anticipated to be significant, total overall costs for all facilities in the ozone nonattainment counties are anticipated to be significant.

The proposed amendments would require more frequent testing of vapor recovery systems at gasoline dispensing facilities in ozone nonattainment counties. Vapor recovery systems capture gasoline vapors before the vapors escape into the atmosphere and cause the formation of ozone and smog. The proposed amendments also include a compliance schedule for gasoline dispensing facilities to upgrade their Stage II vapor recovery systems to be compatible with ORVR systems on many vehicles. The proposed amendments are expected to allow the state to continue to satisfy the federal requirement to maintain a vapor recovery rate of 95% in the 16 ozone nonattainment counties of Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller. The proposed amendments will also be submitted to the EPA as proposed revisions to the SIP.

The commission proposes these amendments in lieu of incorporating the new CARB enhanced vapor recovery program. Current rules follow the CARB certification procedures for vapor recovery equipment. The CARB is currently implementing an enhanced vapor recovery program which consists of six modules and would require gasoline dispensing facilities to install new vapor recovery systems including in-station diagnostic computer equipment to monitor emissions. This enhanced vapor recovery program has been estimated to cost between \$30,000 and \$60,000 per facility.

Instead of implementing the CARB enhanced vapor recovery systems, the commission is proposing amendments which will require more frequent testing of vapor recovery systems at gasoline dispensing facilities in the 16 ozone nonattainment counties in the state. The commission believes that the increase in testing and the upgrade of vapor recovery systems to make them ORVR compatible will continue to satisfy federal SIP requirements for vapor recovery.

Currently, gasoline stations in ozone nonattainment areas must perform full system tests every five years to ensure that vapor recovery systems are operating correctly. The proposed amendments would require full system tests every 12 months. There are seven components to the full suite of performance tests. The full suite of tests costs station owners and operators approximately \$550 every five years. An annual pressure decay test is also required for those years when the full suite of tests is not conducted. This stand-alone test normally costs about \$300. The proposed amendments would require testing every 12 months and cost station owners and operators \$550 each year, with the pressure decay test included in the \$550. Therefore, over a five-year period, gas station owners and operators would pay approximately \$200 more each year for the additional testing. There are approximately 7,400

facilities with Stage II vapor recovery equipment installed that will be subject to the proposed testing requirements. The total cost for the additional testing requirements for all of these facilities is estimated to be \$1,480,000.

The proposed amendments include a compliance schedule for gasoline dispensing facilities in the ozone nonattainment counties to upgrade their vapor recovery systems to be compatible with the ORVR systems on many newer vehicles. The upgrade is necessary in order to continue to satisfy the SIP requirements to maintain vapor recovery rates at 95% efficiency. The EPA required a phase-in for new vehicles to have ORVR systems beginning in 1998. Data provided by EPA indicates that ORVR may be more efficient than Stage II vapor recovery, however, when an ORVR vehicle refuels at a facility that uses a vacuum assist Stage II system (the type of vapor recovery system used extensively in Texas), there is a potential to produce significant fugitive emissions. A growing percentage of the total number of vehicles in the ozone nonattainment areas now have ORVR systems.

Approximately 30% of the Stage II vapor recovery systems at gasoline dispensing facilities in the nonattainment counties are already ORVR compatible. Some stations will have to only make minor upgrades to become ORVR compatible and depending on the availability of retrofit kits provided by the manufacturers, some systems may have to be completely removed and replaced. The full replacement of Stage II vapor recovery dispenser, hose, and nozzle systems is estimated to be \$1,100 per dispenser. Assuming that 70% of the 7,400 facilities in the ozone nonattainment areas are not ORVR compatible, and each facility has an average of six dispensers, at \$1,100 per dispenser, total costs for those facilities requiring total upgrades are estimated to be \$34,188,000.

There will be additional testing costs for units of state or local government that own or operate gasoline dispensing facilities in the 16-county ozone nonattainment areas. Refueling facilities may be owned by the Texas Department of Transportation, or by cities or counties. It is not known how many of the estimated 7,400 facilities with vapor recovery equipment in the four ozone nonattainment areas are owned or operated by units of state or local government. Many of these facilities may be exempt from the vapor recovery requirements as they may have been constructed prior to November 15, 1992 and have a documented throughput of less than 10,000 gallons per month. Those that are not exempt will pay an additional \$200 per year in testing costs. In addition, those facilities that must replace the Stage II vapor recovery dispenser, hose, and nozzle systems will pay an estimated \$1,100 per dispenser.

For the average gas station owner or operator with six dispensers, costs to become ORVR compatible would be an estimated \$6,600 plus the additional testing costs of \$200 per year. The upgrade costs would be one-time costs, but the testing costs would be recurring.

PUBLIC BENEFITS AND COSTS

Mr. Horvath has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated from the enforcement of and compliance with the proposed amendments would include the maintenance of SIP requirements to keep vapor recovery rates at the 95% prescribed levels of efficiency while implementing a less expensive methodology than the enhanced vapor recovery system under the CARB initiative.

There will be costs to comply with the proposed amendments which could be significant, for businesses and individuals who own or operate gasoline dispensing facilities in the 16-county ozone nonattainment areas.

The proposed amendments will require more frequent testing of vapor recovery systems at gasoline dispensing facilities in the 16 ozone nonattainment counties in the state. Currently, gasoline stations in ozone nonattainment areas must perform full system tests every five years to ensure that vapor recovery systems are operating correctly. The proposed amendments would require full system tests every 12 months. There are seven components to the full suite of performance tests. The full suite of tests costs station owners and operators approximately \$550 every five years. An annual pressure decay test is also required for those years when the full suite of tests is not conducted. This stand-alone test normally costs about \$300. The proposed amendments would require testing every 12 months and cost station owners and operators \$550 each year, with the pressure decay test included in the \$550.

Therefore, over a five-year period, gas station owners and operators would pay approximately \$200 more each year for the additional testing. There are approximately 7,400 facilities with Stage II vapor recovery equipment installed that will be subject to the proposed testing requirements. The total cost for the additional testing requirements for all of these facilities is estimated to be \$1,480,000.

The proposed amendments include a compliance schedule for gasoline dispensing facilities to upgrade their Stage II vapor recovery systems to be ORVR compatible. Most gasoline dispensing facilities in the ozone nonattainment counties will also need to upgrade their vapor recovery systems to be compatible with the ORVR systems on many newer vehicles in order to satisfy the SIP requirements to

maintain vapor recovery rates at 95% efficiency. The EPA required a phase-in for new vehicles to have ORVR systems to begin in 1998. Four years later, a larger percentage of the total number of vehicles in the ozone nonattainment area have ORVR systems. However, the vapor recovery systems used by most gas stations in the nonattainment areas are not compatible with the ORVR systems on newer vehicles, resulting in the failure of both the ORVR and the dispenser vapor recovery systems to maintain required vapor recovery rates. Data provided by EPA indicates that ORVR may be more efficient than Stage II vapor recovery; however, when an ORVR vehicle refuels at a facility that uses a vacuum assist Stage II system, there is a potential to produce significant fugitive emissions.

Approximately 30% of the Stage II vapor recovery systems at gasoline dispensing facilities in the nonattainment counties are already ORVR compatible. Some stations will have to only make minor upgrades to become ORVR compatible and depending on the availability of retrofit kits provided by the manufacturers, some systems may have to be completely removed and replaced. The full replacement of Stage II vapor recovery dispenser, hose, and nozzle systems is estimated to be \$1,100 per dispenser. Assuming that 70% of the 7,400 facilities in the ozone nonattainment areas are not ORVR compatible, and each facility has an average of six dispensers, at \$1,100 per dispenser, total costs for those facilities requiring total upgrades are estimated to be \$34,188,000.

For the average gas station owner or operator with six dispensers, costs to become ORVR compatible would be an estimated \$6,600 plus the additional testing costs of \$200 per year. Businesses that own multiple facilities will have higher costs depending upon the number of facilities owned. The commission assumes that these costs will be passed on to consumers in the form of higher gasoline costs.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There are adverse fiscal implications anticipated as a result of the implementation and enforcement of the proposed amendments for small and micro-businesses that own or operate gas stations and gasoline dispensing facilities in the 16-county ozone nonattainment areas in the state.

The agency estimates that of the 7,400 facilities in the 16-county ozone nonattainment areas, there are 4,221 owners of gas stations that own ten facilities or less. It is not known how many of these would be small or micro-businesses, but those that are will pay \$200 more per year in testing costs, and for those that need to upgrade their systems to become ORVR compatible will incur an expense of an additional \$1,100 per dispenser. Assuming all 4,221 owners are small or micro-businesses, they would pay an estimated total of \$844,200 per year for additional testing costs and assuming there were an average of six dispensers that needed to be upgraded, an additional \$27,858,600 to become ORVR compatible.

The following is an analysis of the cost per employee for small or micro-businesses affected by the proposed amendments. Small and micro-businesses are defined as having fewer than 100 or 20 employees respectively. Owners of gas stations that own ten facilities or less with an average of six dispensers at each facility, with 100 or fewer employees would incur additional costs of \$200 per year per facility for the testing and \$6,600 per facility for the ORVR upgrade. Total costs for these facilities is estimated at \$68,000 or \$680 per employee. A micro-business with five gas stations with an average of six dispensers per facility with 20 or less employees would incur estimated additional costs of \$34,000 or \$1,700 per employee. The projected costs for affected facilities is the same for small

businesses as for larger businesses and the portion of costs attributed to the ORVR upgrade are assumed to be one-time costs.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has review this proposed rulemaking and determined that a local employment impact statement is not required because the proposed amendments do not adversely affect a local economy in a material way for the first five years that the proposed amendments are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed 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 proposed 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 proposed 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 \$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 an additional \$1,100 per dispenser.

Although the proposed 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 proposed rulemaking is not subject to the regulatory analysis provisions of §2001.0225(b), because the proposed amendments do not meet any of the four applicability requirements. Specifically, the proposed 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 invites public comment on the draft regulatory impact analysis determination.

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 reasonably being taken to fulfill an obligation mandated by federal law, and therefore is exempt under Texas Government Code, §2007.003(b)(4). Specifically, this proposed 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 proposed amendments would 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 proposed rulemaking action and performed an analysis of whether this action would constitute a takings under Chapter 2007. The specific purpose of these proposed amendments is to continue to satisfy federal requirements for vapor recovery from gasoline dispensing facilities in nonattainment areas of the state. The proposed amendments would 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 proposed amendments would be neither a statutory or constitutional taking of private real property. Specifically, the proposed 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 proposed regulations. In other words, these amendments are proposed 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, as described in the FISCAL NOTE section of this preamble, 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 proposed in these amendments to Chapter 115. In addition, the alternative proposed in these amendments will continue to provide benefits to society by maintaining vapor recovery rates at 95% efficiency. Therefore, these proposed 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 proposed 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 solicits comments on the consistency of the proposed rules with the CMP during the public comment period.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS 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.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin, Texas, on August 8, 2002, at 2:00 p.m., at the Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Building F, Room 2210.

The hearing will be structured for the receipt of oral or written comments by interested persons.

Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, a commission staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

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

SUBMITTAL OF COMMENTS

Comments may be submitted to Ms. Lola Brown, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 2002-012-115-AI. Comments must be received by 5:00 p.m., August 12, 2002. For further information, please contact Ashley Forbes of the Registration, Review, and Reporting Division at (512) 239-0493 or Alan Henderson of the Policy and Regulations Division at (512) 239-1510.

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 proposed under Texas Water Code (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 Texas Clean Air Act (TCAA).

The amendment is also proposed 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 §382.039, 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.

The proposed amendment implements THSC, §§382.002, 382.011, 382.012, and 382.039.

§115.227. Exemptions.

The following exemptions apply:

[(1) In the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, stationary gasoline storage containers with a nominal capacity less than or equal to 1,000 gallons, at motor vehicle fuel dispensing facilities 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; and]

[(C) §115.224(1) of this title (relating to Inspection Requirements) as it applies to liquid gasoline leaks.]

(1) [(2)] 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) [(3)] 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 [(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; and

(C) §115.224(1) of this title [(relating to Inspection Requirements)] as it applies to liquid gasoline leaks.

(3) [(4)] 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 [(relating to Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities)], 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 [(relating to Recordkeeping Requirements)].

(4) [(5)] Transfers to the following stationary receiving containers are exempt from the requirements of this division [(relating to Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities)]:

(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 proposed 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 proposed 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 §382.039, 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.

The proposed amendments implement TCAA, §§382.002, 382.011, 382.012, and 382.039.

§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 [§115.10 of this title (relating to Definitions), §101.1 of this title (relating to Definitions), and §3.2] of this title (relating to Definitions).

[1) **Independent small business marketer of gasoline** - A person engaged in the marketing of gasoline who owns the dispensing equipment at a motor vehicle fuel dispensing facility and receives at least 50% of his annual income from the marketing of gasoline. A person is not an independent small business marketer of gasoline if such person:]

[(A) is a refiner; or]

[(B) controls (i.e., owns more than 50% of a business or corporation's stock), is controlled by, or is under common control with, a refiner; or]

[(C) is otherwise directly or indirectly affiliated with a refiner or with a person who controls, is controlled by, or is under common control with a refiner (unless the sole affiliation is by means of a supply contract or an agreement or contract to use a trademark, trade name, service mark, or other identifying symbol or name owned by such refiner or any such person).]

(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) [(2)] 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-70-118-AB	Certification of the Amoco V-1 Vapor Recovery System
G-70-125-AA	Modification of Certification of the Husky Model V Balance Phase II Vapor Recovery Nozzle

CARB Executive Order Number	Certified System
G-70-127	Certification of the OPW Model 111-V Phase Vapor Recovery Nozzle
G-70-134	Certification of the E-Z Flo Rebuilt A-4000 Series and 11V-Series Vapor Recovery Nozzle
G-70-150-AE	Modification to the Certification of the Marconi Commerce Systems, Inc. (MCS) "Formerly Gilbarco" VaporVac Phase II Vapor Recovery System
G-70-153-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 Phase II 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-70-163-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-70-169-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-70-177-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
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-70-188	Certification of the Catlow ICVN Vapor Recovery Nozzle System for use with the Gilbarco VaporVac Vapor Recovery System

CARB Executive Order Number	Certified System
G-70-191-AA	Relating to Language Correction in Existing Executive Order G-70-191 (Healy 600 ORVR/800)
G-70-196	Certification of the Saber Technologies, LLC SaberVac VR Phase II Vapor Recovery System

§115.241. Emission Specifications.

No person in the counties listed in §115.249 of this title (relating to Counties and Compliance Schedules) [Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas as defined in §115.10 of this title (relating to Definitions)] 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 [Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas] affected by this division [undesigned head] (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 [that has been] certified by a California Air Resources Board (CARB) Executive Order [concerning Stage II vapor recovery systems] 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 [August 1993], 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; [and]

(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 [§§334.401 - 334.428 of this title (relating to Underground Storage Tank Contractor Registration and Installer Licensing)]. 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) [§334.45(c)(1)(A) - (C) and (3)] of this title (relating to Technical Standards for New Underground Storage Tank [UST] Systems) [and §334.45(e)(1) of this title].

(B) Noncorrodible [Noncorrosive] 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) - (E) (No change.)

(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 [UL] 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) - (I) (No change.)

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

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

(4) - (5) (No change.)

(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 [10] 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) - (8) (No change.)

(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); and]

[(C) the telephone number of the Texas Natural Resource Conservation Commission (TNRCC) Stage II Vapor Recovery Hotline (1-800-533-3AIR) to be used for questions, comments, or the reporting of any problems experienced with the system.]

(10) Any motor vehicle fuel dispensing facility that becomes subject to the provisions of this division [undesigned head] by exceeding the throughput limits of §115.247 [§§115.247, 115.249(2), or 115.249(3)] of this title (relating to Exemptions [, and Counties and Compliance Schedules]) shall have 120 days to come into compliance and will remain subject to the provisions of this division [undesigned head] even if its gasoline throughput later falls below throughput limits, except that:

(A) (No change.)

(B) at a facility exempted under §115.247(2) of this title [or having an extended compliance schedule under §115.249(3) 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 [or extended compliance schedule] 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) [components(s)] previously certified by CARB via an Executive Order, for which certification was [has been] revoked by CARB, prior to January 1, 2002 [as of August 1993], must install and have operational an [a different] approved system(s) or component(s) as referenced in paragraph (1) of this section [§115.242(1) of this title (relating to Emission Specifications)] as soon as practicable, but no later than September 1, 2006 [three years from the date that CARB revoked the certification].

(12) After November 15, 1993, the owner or operator shall provide written notification of any Stage II vapor recovery system installation to the appropriate [TNRCC] 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 [TNRCC] Petroleum Storage Tank [Division] Facility ID number and Owner ID number (if known);

(B) - (C) (No change.)

§115.243. Alternate Control Requirements.

Alternate [For all persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas affected by this undesignated head (relating to Control of Vehicle Refueling Emissions (Stage II) at Motor Vehicle Fuel Dispensing Facilities), 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 [substantially] 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, 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 [certified by the California Air Resources Board (CARB)].

§115.244. Inspection Requirements.

The [For the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, the] owner or operator of any motor vehicle fuel dispensing facility subject to the control requirements of this division [undesignated head] (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), (I) [(H) - (I)], and (K) and (4) of this title.

(2) For assist systems that use [utilize] 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) - (4) (No change.)

§115.245. Testing Requirements.

For all affected persons [in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas], 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 [utilizing] the test procedures as found in the State of Texas Vapor Recovery Test Procedures Handbook (handbook) (March 2002) [Texas Natural Resource Conservation Commission Stage II Vapor Recovery Test Procedure Handbook (August 1993)].

(A) (No change.)

(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 handbook [Texas Natural Resource Conservation Commission (TNRCC) Stage II Vapor Recovery Test Procedure Handbook (August 1993)] specified in paragraph (1)

[subparagraph (A)] of this section [paragraph] shall take precedence for applicable tests where performance criteria exist in both the Executive Order and the handbook [Stage II Vapor Recovery Test Procedure Handbook]; otherwise, the Executive Order specific criteria shall take precedence.

(D) The owner or operator₂ or his or her representative₂ shall provide written notification to the appropriate [TNRCC] 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 [agency] at least ten [10] working days in advance of the test, and the notification must contain the information and be in the format as found in the handbook [TNRCC Stage II Vapor Recovery Test Procedure Handbook (August 1993)]. Notification may take the form of a facsimile or telecopier transmission, as long as the facsimile is received by the appropriate regional office [TNRCC] and any local air pollution program with jurisdiction at least ten [10] working days prior to the test and it is followed up within two weeks of the transmission with a written notification. The owner or operator₂ or his or her representative₂ shall give at least 24-hour notification to the appropriate [TNRCC] 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 operator₂ or his or her representative₂ shall notify the appropriate [TNRCC] regional office and any local air pollution program with jurisdiction as soon in advance of the scheduled test as is practicable.

[(2) Pressure decay testing shall be conducted annually and in accordance with the test procedures referenced in paragraph (1) of this section.]

(2) [(3)] 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 every twelve months [five years] 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. The owner or operator₂ or his or her representative₂ shall provide written notification to the appropriate [TNRCC] 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 [agency] at least ten [10] working days in advance of the test, and the notification must contain the information and be in the format as found in the handbook [TNRCC Stage II Vapor Recovery Test Procedure Handbook (August 1993)]. Notification may take the form of a facsimile or telecopier transmission, as long as the facsimile is received by the appropriate regional office [TNRCC] and any local air pollution program with jurisdiction at least ten [10] working days prior to the test and it is followed up within two weeks of the transmission with a written notification. The owner or operator₂ or his or her representative₂ shall give at least 24-hour notification to the appropriate [TNRCC] 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 operator₂ or his or her representative₂ shall notify the appropriate [TNRCC] 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]

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

(4) [(5)] All required tests shall be conducted either in the presence of a Texas Commission on Environmental Quality [TNRCC] or local program inspector with jurisdiction, or by a person who is registered with the executive director to conduct Stage II vapor recovery tests [TNRCC by successfully completing a TNRCC proficiency test relating to Stage II Vapor Recovery Test Procedures and Methods]. The requirement to be registered shall begin on November 15, 1993, or 60 days after the executive director [TNRCC] has established the registry, whichever occurs later. The

executive director [TNRCC] may remove an individual from the registry of testers for any of the following causes:

(A) the executive director [TNRCC] 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)~~ [(6)] The owner or operator, or his or her representative, shall submit the results of all tests required by this section to the appropriate [TNRCC] regional office and any local air pollution control program with jurisdiction within ten [10] working days of the completion of the test(s) using the format specified in the handbook [TNRCC Stage II Vapor Recovery Test Procedure Handbook (August 1993)]. For purposes of on-site recordkeeping, the Test Procedures [Cover] 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 handbook [Stage II Vapor Recovery Test Procedure Handbook], shall be submitted to the appropriate [TNRCC] regional office and any local air pollution control program with jurisdiction.

§115.246. Recordkeeping Requirements.

The [For the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, the] owner or operator of any motor vehicle fuel dispensing facility subject to the control requirements of this division [undesignated head] (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 [pursuant to] §115.243 of this title (relating to Alternate Control Requirements) and any executive director approval issued under [pursuant to] §115.243 of this title;

(3) - (6) (No change.)

(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 [Texas Natural Resource Conservation Commission (TNRCC), the United States Environmental Protection Agency (EPA)], or any local air pollution control program with jurisdiction;
or

(B) [made available for review at the site by authorized representatives of TNRCC, EPA, or any local air pollution control program with jurisdiction within 48 hours after being requested by the representative] for facilities [ordinarily] 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 [during business hours].

§115.247. Exemptions.

The [For the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, the] following are exempt from the requirements of this division [undesignated head] (relating to Control of Vehicle Refueling Emissions (Stage II) at Motor Vehicle Fuel Dispensing Facilities):

(1) (No change.)

(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 his designated representative [appropriate Texas Natural Resource Conservation Commission regional office and any local air pollution control program with jurisdiction].

§115.248. Training Requirements.

For all persons [in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas] affected by this division [undesignated head] (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 [Texas Natural Resource Conservation Commission (TNRCC)]. Successful [Such 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) - (B) (No change.)

(2) (No change.)

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

(A) - (E) (No change.)

(4) The executive director [TNRCC] 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 [TNRCC] to provide such training; or

(B) fails to notify the executive director [TNRCC] 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 [TNRCC] 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 [TNRCC] 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 [TNRCC].

§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 [in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Harris, Hardin, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties] shall continue to comply [be in compliance] with this division as required by §115.930 of this title (relating to Compliance Dates). [undesigned head (relating to Control of Vehicle Refueling Emissions (Stage II) at Motor Vehicle Fuel Dispensing Facilities) according to the following schedules:]

(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, 2004, must be ORVR compatible; and

(2) all vacuum assist Stage II vapor recovery systems installed before April 1, 2004, must be upgraded to an ORVR compatible system no later than April 1, 2007.

[(1) as soon as practicable, but no later than May 15, 1993, or upon initial start-up, whichever is later, for facilities for which construction began after November 15, 1990;]

[(2) as soon as practicable, but no later than November 15, 1993, for facilities with a monthly throughput of at least 100,000 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;]

[(3) as soon as practicable, but no later than November 15, 1994, for all other facilities, except that individual independent small business marketers of gasoline (ISBMG), as defined in §115.10 of this title (relating to Definitions), may petition the executive director for an extension of the compliance deadline to December 22, 1998, or until one or more of the facility's gasoline storage tanks are replaced and/or equipped with corrosion protection as required by the Petroleum Storage Tank

(PST) Division of the Texas Natural Resource Conservation Commission (TNRCC), whichever occurs first, provided that the petition is submitted no later than January 15, 1994, and approved by the executive director. The availability of an extended compliance schedule for independent small business marketers of gasoline only applies to individual facilities for which the monthly gasoline throughput is less than 50,000 gallons per month, based on the maximum monthly gasoline throughput for any calendar month after January 1, 1991. In order for the station to maintain ISBMG compliance date extension status under this paragraph, the facility shall not exceed the 50,000 gallons per month gasoline throughput limit, and the owner or operator shall submit the facility's monthly gasoline throughput on an annual basis no later than January 31 of each year to the appropriate TNRCC regional office and any local air pollution control program with jurisdiction until such time as the Stage II vapor recovery system is installed; and]

[(4) if more than one of the compliance schedules in paragraphs (1) - (3) of this section applies to a facility, the earliest compliance schedule shall take precedence.]