

The Texas Commission on Environmental Quality (commission) proposes amendments to §§115.222, 115.223, 115.240, 115.242, 115.243, 115.245, 115.248, and 115.249.

The commission proposes to submit the amendments and corresponding revisions to the state implementation plan (SIP) to the United States Environmental Protection Agency 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 and on November 22, 2002) 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 vapor recovery equipment. The CARB is currently implementing an enhanced vapor recovery (EVR) program and therefore no longer certifies non-EVR vapor recovery systems. In lieu of incorporating the CARB EVR program, the commission adopted 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. In order to provide additional ORVR compatibility options to owners and operators of gasoline dispensing facilities, the commission is proposing expanding the definition of ORVR compatible. Additionally, the commission is proposing language that will enhance the commission's ability to approve vapor recovery systems and components certified by independent third parties. The commission is also

proposing to make changes to the rule language, which should result in requirements that are easier to understand and enforce.

SECTION BY SECTION DISCUSSION

Throughout this rulemaking, the phrase “or third-party certification” is proposed to be added after every reference to a CARB executive order in order to allow for vapor recovery equipment or systems approved for use by the executive director outside of the CARB certification program, except after §115.242(2)(F). Additionally, throughout this rulemaking, administrative changes to the use of the word “shall” in the rule language are made as needed to conform to the drafting guidelines in the *Texas Legislative Council Drafting Manual*, October 2002. In cases where a requirement is a condition precedent, the word “must” is substituted. In other cases, present tense is substituted when this construction is clearer. In the cases where an obligation is placed on a person by the rule, “shall” is retained. Justification for these changes will not be discussed further in this preamble other than to point out where each change was made.

Subchapter C, Division 2, Stage I Vapor Recovery

The proposed amendment to §115.222, Control Requirements, would add “or third-party certification” to §115.222(5) and would change “shall” to “must” in §115.222 (1), (10), and (11), as previously discussed in this preamble. In §115.222(7), the word “tank” would be inserted to state more clearly which vapors are covered by the provision. In §115.222(9) the phrase “combustible gas detector” is being replaced with the term “hydrocarbon gas analyzer”. The proposed revision to §115.222(12) clarifies that the exemption limits in §115.227 do not establish applicability to the rule. The

requirement has been rewritten to state that if a motor vehicle fuel dispensing facility does not meet an exemption in §115.227, then the owner or operator has 120 days to come into compliance with the provisions of this division. Also, §115.222(12), the word “subsection” is replaced with “section” to conform to Texas Register guidelines.

The proposed amendment to §115.223, Alternate Control Requirements, would remove the language referencing §115.910 for demonstrating an alternate control requirement (ACR) and would replace it with language comparable to that given in §115.243, which regulates ACRs for Stage II. This amendment would make the approval of new Stage I equipment easier and more commensurate with the approval process in place for Stage II equipment.

Subchapter C, Division 4, Stage II Vapor Recovery

The proposed amendment to §115.240, Stage II Vapor Recovery Definitions and List of California Air Resources Board Certified Stage II Equipment, would revise the definition of “Onboard refueling vapor recovery (ORVR) compatible.” Following the promulgation of the last Stage II rule revision (November 2002), new vapor recovery technologies have been developed, which are limited by the prior definition. The new definition would consider any vapor recovery system certified by CARB as ORVR compatible, regardless of whether it is vacuum assisted, to also be ORVR compatible in Texas. In addition, a system certified, using test methods approved by the executive director, by an independent third-party evaluator to maintain an overall efficiency of at least 95% while dispensing fuel to both ORVR-equipped and non-ORVR-equipped vehicles may be considered ORVR compatible in Texas. The use of the acronym “ORVR” in the title is also deleted to conform to agency guidelines.

The amendment also changes “shall” in §115.240(a) to present tense, as previously discussed in this preamble. The amendment to §115.240(b) removes the phrase “in the following figure” and replaces it with “contained in this subsection” to conform to Texas Register guidelines.

The proposed amendment to §115.242, Control Requirements, adds “or third-party certification” to §115.242(2), (3), (3)(B) and(G), and (12)(C); changes “shall” to “must” in §115.242(2), (2)(A) - (F), (5), (6), and (9), changes “shall” to “may” in §115.242(1)(A) and(B),; and changes “shall” to present tense in §115.242(2)(B) and (D), as previously discussed in this preamble. The amendment would remove “vacuum assist” from §115.242(1)(C) because this distinction is no longer necessary because CARB has determined that all previously certified balance systems are ORVR compatible. In §115.242(2), a grammatical error would be corrected by inserting “and” into a series of sections. The amendment to §115.242(2)(C) would remove the phrase “one-eighth of an” and replace it with “1/8” to conform to Texas Register guidelines. In §115.242(2)(D), the provision for the minimum size of vapor piping is rephrased to be consistent with the rule drafting guideline. Additionally, the phrase “and shall slope towards the storage tank at all points” would be added to §115.242(2)(E) to augment the requirements for riser piping. This language would ensure that the piping within and below the dispenser will be free of liquid traps. The words “or control” would be added to §115.242(3)(H) to cover newer vapor recovery system designs that are not necessarily considered “vapor processors.” In §115.242(6), language concerning the removal of out-of-order tags and returning equipment to service is changed to be more understandable. The proposed revision to §115.242(10) would clarify that the exemption limits in §115.247 do not establish applicability to the rule. The requirement has been rewritten to state that if a motor vehicle fuel dispensing facility does not meet an exemption on

§115.247, then the owner or operator has 120 days to come into compliance with the provisions of this division. In §115.242(12), the phrase “with jurisdiction” would be inserted after the phrase “local air pollution program” to add specificity. In §115.242(12)(C), the word “number(s)” would be added after the phrase “CARB Executive Order” to show that the entire CARB Executive Order does not need to be submitted.

The only proposed amendment to §115.243(2), Alternate Control Requirements, is a change from the word “verified” to “certified.” This change is needed both to strengthen the ACRs and to make this language consistent with the rest of the rule.

The proposed amendment to §115.245, Testing Requirements, would reconfigure the entire section, but would result in only a minor additional requirement. Language would be reconfigured to make §115.245(1) applicable only to initial or full system testing; §115.245(2) applicable to only annual testing; and new §115.245(3) applicable only to pre-test notification and reporting of test results. Also, the amendment to §115.245(2) would remove “twelve” and replace it with “12” to conform to Texas Register guidelines. The provisions in new §115.245(3) are broken out of §115.245(2) and modified because the current language in this section is redundant, confusing, and somewhat difficult to enforce. The remaining paragraphs would be renumbered. Other changes would add “or third-party certification” to §115.245(1)(A)(i) and (C) and would change “shall” to “must” in §115.245(1), (1)(A)(i) - (iv), (B) and (C), (2), (5), and (6), as previously discussed in this preamble. In §115.245(1), the word “commission’s” would be added before the title “Vapor Recovery Test Procedure Handbook” to add specificity. Additionally, the changes would add the applicable Texas

test procedure number after the description of each required test and would add test time as a required item for pre-test notifications in new §115.245(3).

The proposed amendment to §115.248, Training Requirements, would add “and testing” to §115.248(3)(C) to better ensure that testing requirements are included in the curriculum of approved Stage II training courses. The commission proposes to change “shall” to the present tense in §115.248(1) and (4)(B)(ii) and change “shall” to “must” in §115.248(1), as previously discussed in this preamble. The proposed amendment would also correct a typographic error in §115.248(4)(B)(ii).

The proposed amendment to §115.249, Counties and Compliance Schedules, would remove “vacuum assist” from §115.249(c), (c)(1), and (2). This distinction is no longer necessary because CARB has determined that all previously certified balance systems are ORVR compatible.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Grants Management Section, determined that, for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or other units of state and local government as a result of administration or enforcement of the proposed rules. Stage I and Stage II Vapor Recovery Controls were promulgated by the agency in November 2002. These controls affected approximately 7,000 gasoline dispensing facilities in Texas, requiring them to install Stage I and II vapor recovery controls. This rulemaking proposes to strengthen the commission’s third-party certification program for Stage I and II control equipment, to make current rule language concerning vapor recovery system testing more understandable and easier

to enforce, and to modify the definition of ORVR compatible so that newer VOC control technologies are available for use by owners of gasoline dispensing facilities. The proposed rulemaking offers more equipment options to gasoline dispensing facilities in complying with vapor recovery requirements and may allow them to comply with vapor recovery rules at a lower cost, depending on the control equipment chosen. Since these facilities must currently implement vapor recovery controls, and since the proposed rulemaking offers them more flexibility in doing so, no negative fiscal impact to governmental or privately owned gasoline dispensing facilities is anticipated as a result of this proposed rulemaking.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be improved air quality in ozone nonattainment areas because the rules allow for the use of new vapor control technologies.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses. Small and micro-businesses should expect to see the same flexibility in implementing vapor recovery controls as governmental or large business entities.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules 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 do not meet the definition of a “major environmental rule” as defined in that statute. Furthermore, it does not meet any of the four applicability requirements listed in §2001.0225(a). 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 correct errors and change definitions in the rules to match emerging control technologies. The proposed amendments will provide additional ORVR compatibility options to owners and operators of gasoline dispensing facilities by expanding the definition of “Onboard refueling vapor recovery compatible” to include new technologies. Additionally, the commission is proposing language that will enhance the commission’s ability to approve vapor recovery systems and components certified by independent third parties. The commission is also proposing to make changes to the rule language, which should result in requirements that are easier to understand and enforce. The proposed amendments to Chapter 115 do not increase the stringency of existing rules and will not 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 proposed amendments are primarily procedural. No additional fiscal impacts are expected from these amendments to those gasoline dispensing facilities that are currently required to have Stage I or Stage II vapor recovery systems installed.

In addition, 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 Texas Government Code, §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 proposed 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 I and II gasoline vapor recovery rules and SIP narrative required under 42 USC, §7511a(b)(3), (c), and (d). The specific purpose of the proposed rulemaking is to provide additional ORVR compatibility options to owners and operators of gasoline dispensing facilities by expanding the definition of “Onboard refueling vapor recovery (ORVR) compatible” to include new technologies. Additionally, the commission is proposing language that will enhance the commission’s ability to approve vapor recovery systems and components certified by independent third parties. The commission is also proposing to make changes to the rule language, which should result in requirements that are easier to understand and enforce.

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. 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. The proposed

amendments will enhance the commission's ability to approve vapor recovery systems and components certified by independent third parties and allow the use of new technologies. An alternative would be to implement the CARB EVR program in Texas at a substantially increased cost to facility owners and operators in order to meet the requirements of the Federal Clean Air Act. 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, to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking action complies with

40 Code of Federal Regulations Part 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 CMP 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 January 3, 2005, at 2:00 p.m., at the Texas Commission on Environmental Quality, 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 Patricia Durón, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Project Number 2005-001-115-AI. Comments must be received by 5:00 p.m., January 3, 2005. For further information, please contact Joe Thomas of the Policy and Regulations Division at (512) 239-4580.

SUBCHAPTER C: VOLATILE ORGANIC COMPOUND TRANSFER OPERATIONS

DIVISION 2: FILLING OF GASOLINE STORAGE VESSELS

(STAGE I) FOR MOTOR VEHICLE FUEL DISPENSING FACILITIES

§115.222, §115.223

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.103, and §5.105, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendments are also proposed under THSC, §382.002, 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, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and §382.208, 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 TWC, §5.103, concerning Rules and §5.105, General Policy; and under THSC, §382.002, relating to Policy and Purpose, §382.011, General Powers and Duties, §382.012, State Air Control Plan, §382.017, Rules, and §382.208 Attainment Program.

§115.222. Control Requirements.

A vapor balance system will be assumed to comply with the specified emission limitation of §115.221 of this title (relating to Emission Specifications) if the following conditions are met:

(1) the container is equipped with a submerged fill pipe as defined in §101.1 of this title (relating to Definitions). The path through the submerged fill pipe to the bottom of the tank must [shall] not be obstructed by a screen, grate, or similar device whose presence would preclude the determination of the submerged fill pipe's proximity to the tank bottom while the submerged fill tube is properly installed;

(2) a vapor-tight return line is connected before gasoline can be transferred into the storage container;

(3) no avoidable gasoline leaks, as detected by sight, sound, or smell, exist anywhere in the liquid transfer or vapor balance systems;

(4) the vapor return line's cross-sectional area is at least one-half [(1/2)] of the product drop line's cross-sectional area;

(5) in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, the only atmospheric emission during gasoline transfer into the storage container is through a

storage container vent line equipped with a pressure-vacuum relief valve set to open at a pressure of no more than eight ounces per square inch (3.4 kPa) or in accordance with the facility's Stage II system as defined in the California Air Resources Board (CARB) Executive Order(s) or third-party certification for the facility;

(6) in the covered attainment counties, as defined in §115.10 of this title (relating to Definitions), the only atmospheric emission during gasoline transfer into the storage container is through a storage container vent line equipped with a pressure-vacuum relief valve set to open at a pressure of no more than eight ounces per square inch (3.4 kPa);

(7) after unloading, the tank-truck tank is kept vapor-tight until the vapors in the tank-truck tank are returned to a loading, cleaning, or degassing operation and discharged in accordance with the control requirements of that operation;

(8) the gauge pressure in the tank-truck tank does not exceed 18 inches of water (4.5 kPa) or vacuum exceed six inches of water (1.5 kPa);

(9) no leak, as defined in §101.1 of this title, exists from potential leak sources when measured with a hydrocarbon gas analyzer [combustible gas detector];

(10) in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, any storage tank installed after November 15, 1993 which is required to

install Stage I control equipment must [shall] be equipped with a non-coaxial Stage I connection. In addition, any modification to a storage tank existing prior to November 15, 1993 requiring excavation of the top of the storage tank must [shall] be equipped with a non-coaxial Stage I connection, even if the original installation utilized coaxial Stage I connections. At any facility for which a Stage II system was installed prior to November 15, 1993, the Stage I system utilized must be consistent with the relevant requirements of the CARB Executive Order for the Stage II system installed at that facility;

(11) in the covered attainment counties, any storage tank installed after December 22, 1998 which is required to install Stage I control equipment must [shall] be equipped with a non-coaxial Stage I connection. In addition, any modification to a storage tank existing prior to December 22, 1998 requiring excavation of the top of the storage tank must [shall] be equipped with a non-coaxial Stage I connection, even if the original installation utilized coaxial Stage I connections; and

(12) any motor vehicle fuel dispensing facility that does not meet an exemption in [becomes subject to the provisions of paragraphs (1) - (11) of this section by exceeding the throughput limits of] §115.227 of this title (relating to Exemptions) shall have 120 days to come into compliance with the provisions of this subsection and will remain subject to the provisions of this section [subsection], even if its gasoline throughput later falls below exemption limits. However, if gasoline throughput exceeds the exemption limit due to a natural disaster or emergency condition for a period not to exceed one month, upon written request, the executive director may grant a facility continued exempt status.

§115.223. Alternate Control Requirements.

Alternate methods of complying with §115.222 of this title (relating to Control Requirements) may be approved by the executive director if: [Alternate methods of demonstrating and documenting continuous compliance with the applicable control requirements or exemption criteria in this division (relating to Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities) may be approved by the executive director in accordance with §115.910 of this title (relating to Availability of Alternate Means of Control) if emission reductions are demonstrated to be substantially equivalent.]

(1) emission reductions are demonstrated to be equivalent or greater than those afforded by the requirements in §115.222 of this title; and

(2) the Stage I vapor recovery system is capable of meeting the applicable performance requirements prescribed in this division (relating to Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities), as certified 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.

SUBCHAPTER C: VOLATILE ORGANIC COMPOUND TRANSFER OPERATIONS

DIVISION 4: CONTROL OF VEHICLE REFUELING EMISSIONS (STAGE II)

AT MOTOR VEHICLE FUEL DISPENSING FACILITIES

§§115.240, 115.242, 115.243, 115.245, 115.248, 115.249

STATUTORY AUTHORITY

The amendments are proposed under TWC, §5.103, and §5.105, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendments are also proposed under THSC, §382.002, 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, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.019, which authorizes the commission to adopt rules requiring Stage II vapor recovery systems in nonattainment areas; and §382.208, 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 TWC, §5.103, concerning Rules and §5.105, General Policy; and under THSC §382.002, relating to Policy and Purpose, §382.011, General Powers and Duties,

§382.012, State Air Control Plan, §382.017, Rules, §382.018, Methods Used to Control and Reduce Emissions from Land Vehicles, and §382.208, Attainment Program.

§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 certified by the California Air Resources Board or other acceptable independent third-party evaluator, using test methods approved by the executive director, as onboard refueling vapor recovery (ORVR) compatible or a system listed in subsection (b) of this section, either of which maintains a required minimum overall system efficiency of 95% (as certified under third-party evaluation) while dispensing fuel without difficulty to both ORVR-equipped and non ORVR-equipped vehicles [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 contained in this subsection [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

CARB Executive Order Number	Certified 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
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

CARB Executive Order Number	Certified System
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 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

CARB Executive Order Number	Certified 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
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

CARB Executive Order Number	Certified System
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

§115.242. Control Requirements.

For all persons in the counties listed in §115.249 of this title (relating to Counties and Compliance Schedules [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 may [shall] not be installed;

(B) Stage II vapor recovery systems which include dual-hang (non-coaxial) hoses may [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, and 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 must [shall] be in compliance with the applicable CARB Executive Order(s) or third-party certification 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) or third-party certification.

(A) All underground piping must [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 must [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 must [shall] be 1/8 [one-eighth of an] inch per foot from the dispenser to the storage tank. Piping installed after January 1, 2002 must [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 must [shall] be [not less than] two inches or greater in diameter, and when there are more than four fueling points connected to one vapor line, the minimum vapor piping size must [shall] be three inches in diameter. For the purposes of this paragraph, a single nozzle dispenser constitutes [shall constitute] one fueling point and a multi-nozzle dispenser constitutes [shall constitute] two fueling points.

(E) Riser piping must [shall] have a minimum inside diameter of one inch and must slope towards the storage tank at all points. 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 must [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)

or third-party certification, 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) or third-party certification;

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

(i) a triangular-shaped or similar tear more than 1/2 inch [0.5 inches] on a side;

(ii) a hole more than 1/2 inch [0.5 inches] in diameter; or

(iii) a slit more than one [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) or third-party certification;

(H) a vapor processing or control 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 must [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 must [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 must [shall] remain out of service until such time as the equipment has been properly repaired, replaced, or adjusted, as necessary. After repairs are completed and verbal notification is given to the agency that originally tagged the equipment out of service, the "Out-of-Order" tag may be removed by the owner or operator or the facility representative

and the equipment may be returned to service. Within ten days of placing the equipment back in service, written notification that the equipment has been returned to service must be provided by the owner or operator or the facility representative to the agency that originally tagged the equipment out-of-service. [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 does not meet an exemption in [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 with the provisions of this division 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 with jurisdiction 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) or third-party certification 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 certified [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.

§115.245. 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) Within 30 days of installation, at least once every 36 months thereafter, and upon major system replacement or modification, Stage II vapor recovery systems must [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 commission's 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 must [shall] be consistent with the Executive Order or third-party certification requirements for the installed system (Texas test procedure TXP-101 or equivalent);

(ii) the sum of the vapor leaks in the system must [shall] not exceed acceptable limits for the system as defined in the pressure decay test (Texas test procedure TXP-102 or equivalent);

(iii) the maximum acceptable backpressure through a given vapor path must [shall] not exceed the limits as found in the backpressure/liquid blockage test applicable for the vapor path for the system (Texas test procedure TXP-103 or equivalent); and

(iv) the maximum gasoline flow rate through the nozzle must [shall] not exceed the limits found in the Executive Order or third-party certification for the system (Texas test procedure TXP-104 or equivalent).

(B) For bootless nozzle assist systems, the volume-to-liquid ratio (V/L ratio) or air-to-liquid ratio (A/L ratio) must [shall] be within acceptable limits (Texas test procedure TXP-106 or equivalent).

(C) Each system must [shall] meet minimum performance criteria specific to the individual system as defined in the California Air Resources Board (CARB) Executive Order or third-party certification. The criteria and test methods contained in the test procedures handbook specified in paragraph (1) of this section must [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 must [shall] take precedence.

(D) For the purposes of this section, a major system replacement or modification is defined as: [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.]

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

(ii) 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;

(iii) 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

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

(2) Verification of proper operation of the Stage II equipment must [shall] be performed in accordance with the test procedures referenced in paragraph (1) of this section at least once every 12 [twelve] months [or upon major system replacement or modification, whichever occurs first]. The verification must [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) 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 time and of whom 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.

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

(5) [(4)] All required tests must [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.

(6) [(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, must [shall] be submitted to the appropriate regional office and any local air pollution control program with jurisdiction.

§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 constitutes [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 must [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 and testing 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 in-house [inhouse] training, the 21-day advance notice does [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.