The Texas Natural Resource Conservation Commission (commission) adopts an amendment to §114.507, Exemptions. The commission adopts this amendment to Chapter 114, Control of Air Pollution from Motor Vehicles; Subchapter J, Operational Controls for Motor Vehicles; Division 1, Motor Vehicle Idling Limitations; and corresponding revisions to the state implementation plan (SIP). Section 114.507 is adopted *without changes* to the proposed text as published in the June 15, 2001 issue of the *Texas Register* (26 TexReg 4395) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

The Houston/Galveston (HGA) ozone nonattainment area is classified as Severe-17 under the 1990 Amendments to the Federal Clean Air Act (FCAA) as codified in 42 United States Code (USC), §§7401 et seq., and therefore is required to attain the one-hour ozone standard of 0.12 parts per million (ppm) by November 15, 2007. In addition, 42 USC, §7502(a)(2), requires attainment as expeditiously as practicable, and §7511a(d), requires states to submit ozone attainment demonstration SIPs for severe ozone nonattainment areas such as HGA. The HGA area, defined as Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties, has been working to develop a demonstration of attainment in accordance with 42 USC, §7410. On January 4, 1995, the state submitted the first of several Post-1996 SIP revisions for HGA.

The January 1995 SIP consisted of urban airshed model (UAM) modeling for 1988 and 1990 base case episodes, adopted rules to achieve a 9% rate-of-progress (ROP) reduction in volatile organic compounds (VOC), and a commitment schedule for the remaining ROP and attainment demonstration elements. At the same time, but in a separate action, the State of Texas filed for the temporary nitrogen oxides (NO_x)

waiver allowed by 42 USC, §7511a(f). The January 1995 SIP and the NO_x waiver were based on early base case episodes which marginally exhibited model performance in accordance with United States Environmental Protection Agency (EPA) modeling performance standards, but which had a limited data set as inputs to the model. In 1993 and 1994, the commission was engaged in an intensive data-gathering exercise known as the Coastal Oxidant Assessment for Southeast Texas (COAST) study. The commission believed that the enhanced emissions inventory, expanded ambient air quality and meteorological monitoring, and other elements would provide a more robust data set for modeling and other analysis, which would lead to modeling results that the commission could use to better understand the nature of the ozone air quality problem in the HGA area.

Around the same time as the 1995 submittal, the EPA policy regarding SIP elements and timelines went through changes. Two national initiatives in particular resulted in changing deadlines and requirements. The first of these initiatives was a program conducted by the Ozone Transport Assessment Group (OTAG). This group grew out of a March 2, 1995 memo from Mary Nichols, former EPA Assistant Administrator for Air and Radiation, that allowed states to postpone completion of their attainment demonstrations until an assessment of the role of transported ozone and precursors had been completed for the eastern half of the nation, including the eastern portion of Texas. Texas participated in the OTAG program, and OTAG concluded that Texas does not significantly contribute to ozone exceedances in the Northeastern United States. The other major national initiative that impacted the SIP planning process is the revision to the national ambient air quality standard (NAAQS) for ozone. The EPA promulgated a final rule on July 18, 1997 changing the ozone standard to an eight-hour standard of 0.08 ppm. In November 1996, concurrent with the proposal of the standard, the EPA proposed an interim

implementation plan (IIP) it believed would help areas like HGA transition from the old to the new standard. In an attempt to avoid a significant delay in planning activities, Texas began to follow this guidance, and readjusted its modeling and SIP development timelines accordingly. When the new standard was published, the EPA decided not to publish the IIP, and instead stated that, for areas currently exceeding the one-hour ozone standard, the one-hour standard would continue to apply until it is attained. The FCAA requires that HGA attain the one-hour standard by November 15, 2007.

The EPA issued revised draft guidance for areas such as HGA that do not attain the one-hour ozone standard. The commission adopted on May 6, 1998 and submitted to the EPA on May 19, 1998 a revision to the HGA SIP which contained the following elements in response to EPA's guidance: UAM modeling based on emissions projected from a 1993 baseline out to the 2007 attainment date; an estimate of the level of VOC and NO_x reductions necessary to achieve the one-hour ozone standard by 2007; a list of control strategies the state could implement to attain the one-hour ozone standard; a schedule for completing the other required elements of the attainment demonstration; a revision to the Post-1996 9% ROP SIP that remedied a deficiency that the EPA believed made the previous version of that SIP unapprovable; and evidence that all measures and regulations required by Subpart 2 of Title I of the FCAA to control ozone and its precursors have been adopted and implemented, or are on an expeditious schedule to be adopted and implemented.

In November 1998, the SIP revision submitted to the EPA in May 1998 became complete by operation of law. However, the EPA stated that it could not approve the SIP until specific control strategies were modeled in the attainment demonstration. The EPA specified a submittal date of November 15, 1999 for

this modeling. In a letter to the EPA dated January 5, 1999, the state committed to model two strategies showing attainment.

As the HGA modeling protocol evolved, the commission eventually selected and modeled seven basic modeling scenarios. As part of this process, a group of HGA stakeholders worked closely with commission staff to identify local control strategies for the modeling. Some of the scenarios for which the stakeholders requested evaluation included options such as California-type fuel and vehicle programs as well as an acceleration simulation mode equivalent motor vehicle inspection and maintenance program. Other scenarios incorporated the estimated reductions in emissions that were expected to be achieved throughout the modeling domain as a result of the implementation of several voluntary and mandatory state-wide programs adopted or planned independently of the SIP. It should be made clear that the commission did not propose that any of these strategies be included in the ultimate control strategy submitted to the EPA in 2000. The need for and effectiveness of any controls which may be implemented outside the HGA eight-county area will be evaluated on a county-by-county basis.

The SIP revision was adopted by the commission on October 27, 1999, submitted to the EPA by November 15, 1999, and contained the following elements: photochemical modeling of potential specific control strategies for attainment of the one-hour ozone standard in the HGA area by the attainment date of November 15, 2007; an analysis of seven specific modeling scenarios reflecting various combinations of federal, state, and local controls in HGA (additional scenarios H1 and H2 build upon Scenario VIf); identification of the level of reductions of VOC and NO_x necessary to attain the one-hour ozone standard by 2007; a 2007 mobile source budget for transportation conformity; identification of specific source

categories which, if controlled, could result in sufficient VOC and/or NO_x reductions to attain the standard; a schedule committing to submit by April 2000 an enforceable commitment to conduct a mid-course review; and a schedule committing to submit modeling and adopted rules in support of the attainment demonstration by December 2000.

The April 2000 SIP revision for HGA contained the following enforceable commitments by the state: to quantify the shortfall of NO_x reductions needed for attainment; to list and quantify potential control measures to meet the shortfall of NO_x reductions needed for attainment; to adopt the majority of the necessary rules for the HGA attainment demonstration by December 31, 2000, and to adopt the rest of the shortfall rules as expeditiously as practical, but no later than July 31, 2001; to submit a Post-1999 ROP plan by December 31, 2000; and to perform a mid-course review by May 1, 2004.

The emission reduction requirements included as part of the December 2000 SIP revision represented substantial, intensive efforts on the part of stakeholder coalitions in the HGA area. These coalitions, involving local governmental entities, elected officials, environmental groups, industry, consultants, and the public, as well as the commission and the EPA, worked diligently to identify and quantify potential control strategy measures for the HGA attainment demonstration. Local officials from the HGA area formally submitted a resolution to the commission, requesting the inclusion of many specific emission reduction strategies.

A SIP revision for HGA was adopted by the commission on December 6, 2000 and was submitted to the EPA by December 31, 2000. The December 2000 SIP contained rules, enforceable commitments, and

photochemical modeling analyses in support of the HGA ozone attainment demonstration. In addition, this SIP contained Post-1999 ROP plans for the milestone years 2002 and 2005, and for the attainment year 2007. The SIP also contained enforceable commitments to implement further measures, if needed, in support of the HGA attainment demonstration, as well as a commitment to perform and submit a mid-course review.

In order for the HGA area to have an approvable attainment demonstration, the EPA indicated that the state must adopt those strategies modeled in the November 15, 1999 submittal and then adopt sufficient controls to close the remaining gap in NO_x emissions. The predicted emission reductions from these rules are necessary to successfully demonstrate attainment.

The HGA nonattainment area will need to ultimately reduce NO_x more than 750 tons per day (tpd) to reach attainment of the one-hour standard. In addition, a VOC reduction of about 25% will have to be achieved. Adoption of this rule amendment to the motor vehicle idling limitation rules will have no effect on the reduction of emissions, because the amendment merely specifies which entity is responsible for compliance in the case of rented or leased vehicles.

The commission adopts these revisions to Chapter 114 and to the SIP to address the concern that the current rule language may hold the owner of a vehicle leasing operation responsible for the actions of the lessee. The changes to the exemption section will clarify that the operator of rented and leased vehicles, not the owner, will be held responsible for complying with these rules, if the operator is not employed by the owner.

The truck leasing industry specifically expressed concern that the current language was similar to idling restrictions adopted in other states which resulted in the owner of a leased vehicle receiving notices of violation in the mail due to the actions of a lessor/operator not employed by the owner. In most cases, the owner of a leased or rented vehicle does not control the direct operation of that vehicle. The adopted changes are designed to clarify who is responsible for complying with the provisions in §114.502 in situations that involve rented or leased vehicles operated by a person not employed by the owner of the vehicle. The amendments to the rule are not expected to have a significant impact on air quality.

The motor vehicle idling limitations as established through the adoption of §§114.500, 114.502, 114.507, and 114.509 on December 6, 2000, states that no person shall cause, suffer, allow, or permit the primary propulsion engine of a motor vehicle to idle for more than five consecutive minutes in the counties listed in §114.509 of this title (relating to Affected Counties and Compliance Dates) when the vehicle is not in motion during the period of April 1 through October 31 of each calendar year. The eight Texas counties affected by these rules are Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties.

SECTION DISCUSSION

The amendments to §114.507 contain a new paragraph (10) which will clarify who is responsible for complying with the provisions in §114.502 in situations that involve a rented or leased vehicle operated by a person not employed by the owner of the vehicle.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking action does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" is one, the specific intent of which, is 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.

In addition, this amendment does not meet any of the four applicability criteria for requiring a regulatory analysis of "major environmental rule" as defined in the Texas Government Code. Section 2001.0225 applies only 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 amendment to Chapter 114 is not anticipated to 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, because it merely clarifies who is held responsible for compliance with the rules in the case of rented or leased vehicles, the owner/lessor or the lessee.

This amendment does not exceed an express standard set by federal law, because it implements requirements of 42 USC. Under 42 USC, §7410, states are required to adopt a SIP which provides for "implementation, maintenance, and enforcement" of the primary NAAQS in each air quality control region of the state. This proposed amendment was specifically developed as part of an overall control strategy to meet the ozone NAAQS set by the EPA under 42 USC, §7409. While §7410 does not require specific programs, methods, or reductions in order to meet the standard, SIPs must include "enforceable emission limitations and other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter," (meaning 42 USC, Chapter 85, Air Pollution Prevention and Control). It is true that 42 USC does require some specific measures for SIP purposes, such as the inspection and maintenance program, but those programs are the exception, not the rule, in the SIP structure of 42 USC. The provisions of 42 USC recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public, to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though 42 USC allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of §7410. In order to avoid federal sanctions, states are not free to ignore the requirements of §7410 and must develop programs to assure that the nonattainment areas of the state will be brought into attainment on schedule. Thus, while specific measures are not prescribed, both a plan and emission reductions are required to assure that the nonattainment areas of the state will be able to meet the attainment deadlines set by 42 USC. The EPA provided the criteria for both the submission and evaluation of attainment demonstrations developed by

states to comply with 42 USC. This criteria requires states to provide, in addition to other information, photochemical modeling and an analysis of specific emission reduction strategies necessary to attain the NAAQS. The commission's photochemical modeling and other analysis indicate that substantial emission reductions from both mobile and point source categories are necessary in order to demonstrate attainment. In this case, this rulemaking action is intended to achieve emission reductions in the HGA nonattainment area. Specifically, as noted elsewhere in this rule preamble, the emission reductions associated with these rules are a necessary element of the attainment demonstration required by the 42 USC.

In addition, 42 USC, §7502(a)(2), requires attainment as expeditiously as practicable, and, §7511a(d), requires states to submit ozone attainment demonstration SIPs for severe ozone nonattainment areas such as HGA. By policy, the EPA requires photochemical grid modeling to demonstrate whether the §7511a(f), NO_x measures would contribute to ozone attainment. The commission has performed photochemical grid modeling which predicts that NO_x emission reductions, such as those required by these rules, will result in reductions in ozone formation in the HGA ozone nonattainment area and help bring HGA into compliance with the air quality standards established under federal law as NAAQS for ozone. The §7511a(f) exemption from NO_x measures for HGA expired on December 31, 1997. The expiration of the exemption under §7511a(f), was based on the finding that NO_x reductions in HGA are necessary for attainment of the ozone standard. Therefore, the amendment is a necessary component of and consistent with the ozone attainment demonstration SIP for HGA, required by 42 USC, §7410.

During the 75th Legislative Session (1997), Senate Bill (SB) 633 amended the Texas Government Code to require agencies to perform a regulatory impact analysis (RIA) of certain rules. The intent of SB 633 was to require agencies to conduct a RIA of extraordinary rules. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted proposed rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law. As previously discussed, 42 USC does not require specific programs, methods, or reductions in order to meet the NAAQS; thus, states must develop programs for each nonattainment area to ensure that area will meet the attainment deadlines. Because of the ongoing need to address nonattainment issues, the commission routinely proposes and adopts SIP rules. The legislature is presumed to understand this federal scheme. If each rule proposed for inclusion in the SIP was considered to be a major environmental rule that exceeds federal law, then every SIP rule would require the full RIA contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Because the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the LBB, the commission believes that the intent of SB 633 was only to require the full RIA for rules that are extraordinary in nature. While the SIP rules will have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of 42 USC.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code, but left this provision substantially unamended. It is presumed that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." *Central Power & Light Co. v. Sharp*, 919 S.W.2d 485, 489 (Tex. App. - Austin 1995), *writ denied with per curiam opinion respecting another issue*, 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.*, 798 S.W.2d 353, 357 (Tex. App. - Austin 1990, no writ); *Cf. Humble Oil & Refining Co. v. Calvert*, 414 S.W.2d 172 (Tex. 1967); *Sharp v. House of Lloyd*, Inc., 815 S.W.2d 245 (Tex. 1991); *Southwestern Life Ins. Co. v. Montemayor*, 24 S.W.3d 581 (Tex App. - Austin 2000, *pet. denied*); and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.*, 563 S.W.2d 916 (Tex. 1978).

The commission's interpretation of the RIA requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance" (Texas Government Code, §2001.035). The legislature specifically identified Texas Government Code, §2001.0225 as falling under this standard. The commission has substantially complied with the requirements of §2001.0225.

Therefore, in addition to not exceeding an express standard set by federal law, this rule amendment does not exceed state requirements, and is not adopted solely under the general powers of the agency because the provisions of the Texas Clean Air Act (TCAA), §§382.011, 382.012, 382.017, 382.019, 382.039, and

382.051(d) authorize the commission to implement a plan for the control of the state's air quality, including measures necessary to meet federal requirements. The remaining applicability criteria, pertaining to exceeding a delegation agreement or contract between the state and the federal government does not apply. Thus, the commission is not required to conduct an RIA as provided in Texas Government Code, §2001.0225.

The commission invited public comment on the draft RIA determination, but received no comment.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this rulemaking action and performed an analysis of whether the amendment is subject to Texas Government Code, Chapter 2007. The following is a summary of that analysis. The specific purposes of the vehicle idling limitation rules are to achieve reductions in ozone formation in the HGA ozone nonattainment area and help bring HGA into compliance with the air quality standards established under federal law as NAAQS for ozone and to implement NO_x reasonably available control technology required by 42 USC, §7511a(f) for certain source categories. The specific purpose of the adopted amendment to the vehicle idling limitation rules is to clarify who is responsible for complying with the provisions in §114.502 in situations that involve rented or leased vehicles operated by a person not employed by the owner of the vehicle. Texas Government Code, §2007.003(b)(4), provides that Chapter 2007 does not apply to the vehicle idling limitation rules, because it was an action reasonably taken to fulfill an obligation mandated by federal law. The emission limitations and control requirements within the vehicle idling limitations rulemaking were developed in order to meet the NAAQS for ozone set by the EPA under 42 USC, §7409. States are primarily responsible for ensuring attainment and maintenance of

NAAQS once the EPA has established them. Under 42 USC, §7410, and related provisions, states must submit, for approval by the EPA, SIPs that provide for the attainment and maintenance of NAAQS through control programs directed to sources of the pollutants involved. Therefore, one purpose of the vehicle idling limitations rulemaking action was to meet the air quality standards established under federal law as NAAQS. The purpose of this amendment is to clarify a requirement of the vehicle idling limitations rules. Attainment of the ozone standard will eventually require substantial NO_x reductions as well as VOC reductions. Any NO_x reductions resulting from the vehicle idling limitations rulemaking are no greater than what scientific research indicates is necessary to achieve the desired ozone levels. However, the rulemaking is only one step among many necessary for attaining the ozone standard.

In addition, Texas Government Code, §2007.003(b)(13), states that Chapter 2007 does not apply to an action that: 1.) is taken in response to a real and substantial threat to public health and safety; 2.) is designed to significantly advance the health and safety purpose; and 3.) does not impose a greater burden than is necessary to achieve the health and safety purpose. Although the rules and the amendment do not directly prevent a nuisance or prevent an immediate threat to life or property, they do prevent a real and substantial threat to public health and safety and significantly advance the health and safety purpose. The vehicle idling limitations rules were developed in response to the HGA area exceeding the NAAQS for ground-level ozone, which adversely affects public health, primarily through irritation of the lungs. The vehicle idling limitations rules significantly advance the health and safety purpose by reducing ozone levels in the HGA nonattainment area. Consequently, the amended rule meets the exemption in §2007.003(b)(13).

The commission included elsewhere in this preamble its reasoned justification for this strategy and explained why it is a necessary component of the SIP, which is federally mandated. This discussion, as well as the HGA SIP which is being adopted concurrently, explains in detail that every rule in the HGA SIP package is necessary and that none of the reductions in those packages represent more than is necessary to bring the area into attainment with the NAAQS. This rulemaking action therefore meets the requirements of Texas Government Code, §2007.003(b)(4) and (13). For these reasons, the vehicle idling limitations rules and the adopted amendment do not constitute a takings under Chapter 2007 and do not require additional analysis.

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 30 TAC §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to actions and rules subject to the CMP, 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 this rulemaking 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(1)). No new sources of air contaminants will be authorized as a result of this action. The CMP policy applicable to this rulemaking action is the policy that

commission rules comply with regulations in 40 Code of Federal Regulations (CFR), to protect and enhance air quality in the coastal area (31 TAC §501.14(q)). This rulemaking action complies with 40 CFR Part 50, National Primary and Secondary Ambient Air Quality Standards, and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal Of Implementation Plans. Therefore, in compliance with 31 TAC §505.22(e), this rulemaking action is consistent with CMP goals and policies.

The commission invited public comment on the consistency of the proposed rule amendment with the CMP during the public comment period, but received no comment.

HEARINGS AND COMMENTERS

The commission held public hearings on this proposal at the following dates and locations: June 13, 2001, Galveston; June 14, 2001, Rosenberg and Houston; June 15, 2001, Austin; and July 2, 2001, Houston. The public comment period closed on July 2, 2001.

The following commenters provided oral testimony and/or submitted written testimony: American Trucking Associations (ATA); Galveston-Houston Association for Smog Prevention (GHASP); Houston Metropolitan Transit Authority (Metro); Sierra Club Houston Regional Group (Sierra-Houston); Texas Motor Transportation Association (TMTA); and one individual. Metro and GHASP generally supported the proposal, while ATA, Sierra-Houston, TMTA, and one individual generally opposed the proposal. ATA, GHASP, Sierra-Houston, TMTA, and one individual suggested changes to the existing idling rules, but did not suggest changes to the proposed rule language in the section that was open for comment.

RESPONSE TO COMMENTS

Sierra-Houston and one individual stated that due to the idling rules' high personnel requirements, high time commitments, difficulty of enforcement, and relatively low pollution reduction potential the rule will be poorly implemented and become a low priority among the enforcing agencies. These two commenters further stated that the idling rules should be repealed and greater emission reductions found elsewhere. ATA and TMTA commented that the idling rules would not produce significant environmental benefit. While generally supporting the idling rules, GHASP expressed concern in regard to the possible lack of legality of the state's enforcement authority, and would like to see more adequate direction and funding be in place for the enforcement of the idling rules.

The concerns raised by these comments were addressed in the previous rulemaking for the motor vehicle idling limitations rules adopted by the commission on December 6, 2000 and do not pertain specifically to this rulemaking action. Therefore, the commission made no changes to the rule revision language in response to these comments.

ATA and TMTA also commented that they felt that the responsibility for compliance with idling restrictions must be placed upon truck operators rather than the owners.

As noted in the preamble, the commission's reason for this rulemaking was to address this particular issue and the intent of the added language to §114.507 is to clarify that the owner is not responsible for compliance in certain situations. The commission agrees that in the case of rented or leased vehicles that are operated by a person not employed by the owner of the

vehicle, that the owner should not be held responsible for compliance of the provisions in §114.502.

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under Texas Health and Safety Code, TCAA, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also adopted under TCAA, §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 protection of the state’s air; §382.019, concerning Methods Used to Control and Reduce Emissions from Land Vehicles, which authorizes the commission to adopt rules to control and reduce emissions from engines used to propel land vehicles; 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.

SUBCHAPTER J: OPERATIONAL CONTROLS FOR MOTOR VEHICLES

DIVISION 1: MOTOR VEHICLE IDLING LIMITATIONS

§114.507

§114.507. Exemptions.

The provisions of §114.502 of this title (relating to Control Requirements for Motor Vehicle Idling) shall not apply to:

(1) a motor vehicle that has a gross vehicle weight rating of 14,000 pounds or less;

(2) a motor vehicle forced to remain motionless because of traffic conditions over which the operator has no control;

(3) a motor vehicle being used as an emergency or law enforcement motor vehicle;

(4) the primary propulsion engine of a motor vehicle providing a power source necessary for mechanical operation other than propulsion, passenger compartment heating or air conditioning;

(5) the primary propulsion engine of a motor vehicle being operated for maintenance or diagnostic purposes;

(6) the primary propulsion engine of a motor vehicle being operated solely to defrost a windshield;

(7) the primary propulsion engine of a motor vehicle that is being used to supply heat or air conditioning necessary for passenger comfort/safety in those vehicles intended for commercial passenger transportation or school buses in which case idling up to a maximum of 30 minutes is allowed;

(8) the primary propulsion engine of a motor vehicle used for transit operations in which case idling up to a maximum of 30 minutes is allowed;

(9) the primary propulsion engine of a motor vehicle being used as airport ground support equipment; or

(10) the owner of a motor vehicle rented or leased to a person who operates the vehicle and is not employed by the owner.