

The Texas Natural Resource Conservation Commission (commission) proposes new §114.6 (Low Emission Fuel Definitions), §114.312 (Low Emission Diesel Standards), §114.313 (Designated Alternative Limits), §114.314 (Registration of Diesel Producers and Importers), §114.315 (Approved Test Methods), §114.316 (Monitoring and Recordkeeping Requirements), §114.317 (Exemptions to Low Emission Diesel Requirements), and §114.319 (Affected Counties and Compliance Dates). The commission proposes these revisions to Chapter 114 and to the State Implementation Plan (SIP) in order to control ground-level ozone in the Dallas-Fort Worth (DFW) ozone nonattainment area.

The commission proposes to rename Subchapter H to “Low Emission Fuels.” New Division 1 (Gasoline Volatility) will include existing §§114.301, 114.302, and 114.305-114.309 and new Division 2 (Low Emission Diesel) will include proposed new §§114.312-114.317 and 114.319. Subchapter A (Definitions) will include proposed new §114.6.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The proposed revisions are one element of the control strategy for the proposed DFW Attainment Demonstration SIP. The purpose of these proposed rules is to establish a low emission diesel (LED) fuel air pollution control strategy in the DFW 12-county consolidated metropolitan statistical area (CMSA) to reduce emissions of oxides of nitrogen (NO_x) necessary for the counties included in the DFW nonattainment area to be able to demonstrate attainment with the National Ambient Air Quality Standards (NAAQS) for ozone.

The proposed revisions would implement an LED fuel program requiring diesel fuel used for both on-road and off-road applications to meet the proposed LED standards. The proposed LED fuel will lower the emissions of NO_x and other pollutants from fuel combustion. Because NO_x is a precursor to ground-level ozone formation, reduced emissions of NO_x will result in ground-level ozone reductions. To comply with the proposed state LED regulations, diesel fuel producers and importers must ensure diesel fuel distributed to the LED fuel zone meets the specifications stated in these rules. The proposed rules require that diesel fuel produced for delivery and ultimate sale to the consumer in the affected area does not exceed 500 parts per million (ppm) sulfur, must contain less than 10.0% by volume of aromatic hydrocarbons, and must have a cetane number of 48 or greater. Also, the proposed rules would require diesel fuel producers and importers who provide fuel to the affected areas to register with the commission and provide monthly status reports.

The proposed new rules will require LED fuel in the 12-county DFW CMSA which includes Collin, Dallas, Denton, Ellis, Henderson, Hood, Hunt, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties.

The commission is aware that the United States Environmental Protection Agency (EPA) is currently evaluating the feasibility and effectiveness of revising nationwide diesel sulfur controls. If the outcome of these evaluations is a federal rule which covers the areas in Texas impacted by this rule, and the federal rule is at least as stringent as any rules adopted as a result of this proposed rulemaking, then the commission will consider compliance with the national rule equally effective and may repeal the state sulfur requirements for diesel fuel.

The North Texas Clean Air Steering Committee (steering committee) representing the DFW ozone nonattainment area counties requested an air pollution control strategy involving the use of an LED fuel to reduce NO_x and other emissions necessary for the counties included in the DFW ozone nonattainment area to be able to demonstrate attainment with the ozone NAAQS.

At the request of the steering committee, the commission developed an LED fuel ozone control strategy which requires diesel fuel content limits more restrictive than federal diesel fuel regulations. The federal regulations governing diesel fuel quality in Title 40 Code of Federal Regulations (CFR) Part 80 (Regulation of Fuels and Fuel Additives), §80.29 (Controls and Prohibitions on Diesel Fuel Quality), establish limits for fuel content for diesel fuel used in on-road motor vehicle applications. These regulations limit sulfur in on-road diesel fuel to 500 ppm and allow the producer to choose between meeting a minimum cetane number of 40 or a maximum aromatic hydrocarbon content of 35.0% by volume. The EPA does not regulate the full content for non-road diesel fuel. Since there is currently no federal limit on content of non-road diesel, the LED fuel requirements developed by the commission for this NO_x emission reduction strategy make no change to the sulfur or other content standards set by federal regulations for non-road diesel fuel. However, they do require aromatic hydrocarbon content to be limited to a maximum of 10.0% by volume, and limits the cetane number to a minimum of 48. In addition, diesel fuel used for both on-road motor vehicles and off-road diesel engines would be subject to the LED fuel requirements developed for this strategy. The commission will be submitting, as part of the SIP, concurrent with this rulemaking, a request for a waiver in accordance with the Federal Clean Air Act (FCAA), §211(c)(4)(C) for the on-road portion of this rule. This SIP submittal is

available to the public by contacting Alan Henderson at (512) 239-1510 or Heather Evans at (512) 239-1970.

Modeling performed for the steering committee assessing the benefits of this NO_x emission reduction strategy demonstrated that significant emission reductions could be achieved from using a low aromatic hydrocarbon/high cetane diesel fuel as specified by the commission's proposed LED fuel requirements.

By the year 2007, the proposed LED fuel program will reduce NO_x emissions in the affected area by 3.71 tons per day. The steering committee estimated the cost effectiveness of this strategy to be approximately \$7,454 per ton of NO_x reduced.

The commission, at the request of the steering committee, has developed this NO_x emission control strategy to cover the 12-county region comprising the DFW CMSA. The coverage area includes the four ozone nonattainment counties of Collin, Dallas, Denton, and Tarrant Counties, as well as the surrounding eight adjacent counties of Ellis, Henderson, Hood, Hunt, Johnson, Kaufman, Parker, and Rockwall Counties. The involvement of all 12 counties as part of the NO_x emission control strategy is necessary for the area to demonstrate attainment of the ozone NAAQS. This coverage will also provide a greater market for diesel fuel producers and importers to provide the fuel required by these proposed regulations and should help alleviate concerns regarding out of area refueling practices. The commission solicits comments on expanding these cleaner diesel rules to east and central Texas. Fuel distribution may be simplified, and fueling with conventional diesel prior to transit through DFW may be minimized. In addition, Texas has several other non-attainment areas in central and east Texas which could benefit from an improvement in diesel fuel.

SECTION BY SECTION DISCUSSION

Subchapter H is proposed to be renamed from “Gasoline Volatility” to “Low Emission Fuels” to more accurately reflect the contents of the subchapter. A new Division 1 is proposed which will include the existing gasoline volatility rules found in §§114.301, 114.302, and 114.305-114.309. The rule language in these sections will not be revised in this rule proposal. A new Division 2 is being proposed which will include the new LED fuel rules being proposed in this rule package.

A new §114.6 is being proposed for definitions applicable to the low emission fuel rules. These definitions include: barrel, bulk plant, bulk purchaser/consumer, designated alternative limit, diesel fuel, final blend, further process, gasoline, imported, import facility, importer, low emission diesel, motor vehicle fuel, produce, producer, production facility, refiner, refinery, retail fuel dispensing outlet, and supply.

The proposed new §114.312 establishes standards for diesel fuel content for sulfur, aromatic hydrocarbons, and cetane in the 12-county DFW CMSA. Sulfur is limited to 500 ppm, aromatic hydrocarbons are limited to 10.0% by volume, and the cetane number must be 48 or greater. The proposed new §114.312 also allows diesel fuel which has been produced to comply with all specifications for a Certified Diesel Fuel Formulation as approved by an executive order issued by the California Air Resources Board to be used in place of fuel meeting the specified content standards. In addition, diesel fuel which demonstrates equivalent emission reductions to California diesel to the satisfaction of the executive director may also be used to comply with these regulations.

The proposed new §114.313 provides flexibility to diesel fuel producers and importers by allowing alternative limits to be designated for aromatic hydrocarbon content. The designated alternative limits allow a specified amount of diesel fuel to be produced or imported with an aromatic hydrocarbon content in excess of the standard, if within 90 days diesel fuel is produced or imported with an aromatic hydrocarbon content sufficiently below the standard and in a sufficient volume to offset the excess.

The proposed new §114.314 requires diesel fuel producers and importers that provide fuel to the affected areas to register with the commission using forms prescribed by the executive director. Registrants are also required to sign a statement of acceptance of the rules and a statement of consent allowing the commission to collect samples and access documentation and records.

The proposed new §114.315 establishes American Society for Testing and Materials (ASTM) Test Method D2622-98 as the approved test method for determining sulfur content, ASTM Test Method D5186-99 as the approved test method for determining aromatic hydrocarbon content, ASTM Test Method D2425-99 as the approved test method for determining polycyclic aromatic hydrocarbon content, ASTM Test Method D4629-96 as the approved test method for determining nitrogen content, and ASTM Test Method D613-95 as the approved test method for determining the cetane number of the diesel fuel. The proposed new §114.315 also includes a paragraph which authorizes the use of test methods other than those specifically listed, provided the alternate test method is validated in accordance with federal regulations. This paragraph is being proposed because in some specific unique situations the listed test methods may be inappropriate. The paragraph increases flexibility by allowing

the use of additional test methods which may be more cost-effective and more appropriate in certain unique situations.

The proposed new §114.316 requires diesel fuel producers and importers subject to the provisions of §114.312 to maintain records of the sulfur and aromatic hydrocarbon content and the cetane number of the diesel fuel produced for or imported into the affected areas. The proposed new §114.316 also contains a provision requiring all parties in the distribution chain (producer, importer, terminals, pipelines, truckers, rail carriers, and retailers) to maintain transfer document records for a minimum of two years. In addition, the proposed new §114.316 requires producers and importers to provide the executive director with a monthly report summarizing the month's transactions relative to the testing and recordkeeping requirements.

The proposed new §114.317 establishes exemptions from all testing and recordkeeping requirements of the proposed new §114.316, except the provision for keeping transfer document records for owners or operators of retail motor vehicle diesel fuel dispensing facilities. The proposed new §114.317 also contains a provision allowing for the transfer or storage of diesel fuel, which does not meet the requirements of the proposed new §114.312, within the affected areas as long as the fuel is not ultimately used in these areas.

The proposed new §114.319 specifies the counties which are subject to the new requirements and by which date these counties are to become subject to these new requirements.

FISCAL NOTE

Bob Orozco, Technical Specialist with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed amendments to Chapter 114 are in effect, there will not be significant fiscal implications to any single unit of state or local governments as a result of administration or enforcement of the proposed amendments. The proposed amendments to Chapter 114 would implement an LED fuel air pollution control program as part of the strategy to reduce emissions of NO_x necessary for the counties included in the DFW ozone nonattainment area to be able to demonstrate attainment with the NAAQS for ozone. The steering committee representing the DFW ozone nonattainment area counties has requested an air pollution control strategy, including the use of LED fuel, to reduce NO_x emissions necessary to demonstrate attainment with the NAAQS. Collin, Dallas, Denton, and Tarrant Counties are in the DFW nonattainment area. The proposed amendments are part of the commission response to the request from the DFW nonattainment area steering committee and one element of the proposed DFW Attainment Demonstration SIP. A SIP is a plan developed for any region where existing (measured and/or modeled) ambient levels of pollutant exceeds the levels specified in a national standard. The plan sets forth a control strategy that provides emission reductions necessary for attainment and maintenance of the national standard.

The proposed amendments would establish an LED fuel standard for both on-road and off-road applications in the 12-county DFW CMSA. The DFW CMSA consists of Collin, Dallas, Denton, Ellis, Henderson, Hood, Hunt, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties. To comply with the proposed LED regulations, beginning May 1, 2002, diesel fuel producers and importers must ensure diesel fuel distributed to the DFW CMSA does not exceed 500 ppm sulfur, must contain less than 10%

by volume of aromatic hydrocarbons, and must have a cetane number of 48 or greater. This standard is commonly referred to as the California Diesel Standard. It is anticipated that the cost of producing diesel fuel to this standard will result in an estimated \$.04 increase in cost for this fuel at the pump. The increase in fuel cost was calculated in an analysis published by Northeast States for Coordinated Air Use Management (NESCAUM) comparing the cost of California diesel fuel to federal diesel fuel. Federal diesel is the term used for diesel fuel which meets federal standards and is used to fuel diesel-powered compression-ignition engines in on-road and non-road applications. In addition, the proposed amendments will require diesel fuel producers and importers who provide fuel to the DFW CMSA to register with the commission, test their fuel for compliance, and provide monthly status reports to the commission. It is anticipated that approximately 90,000 diesel vehicles in the DFW CMSA will be affected by the additional \$.04 per gallon cost for diesel fuel. It is also anticipated that all producers, importers, retailers, and purchasers of diesel fuel in the DFW CMSA will be affected by the proposed amendments.

Units of state and local government within the DFW CMSA that own or operate vehicles that use diesel fuel will likely be required to pay an additional \$.04 per gallon for diesel fuel that meets the proposed LED requirements. There are approximately 1,269 state and local government diesel vehicles in the DFW CMSA. The total fiscal impact to state and local government diesel vehicles is estimated to be approximately \$225,000 or approximately \$178 per year per diesel vehicle.

PUBLIC BENEFIT

Mr. Orozco has also determined that for each year of the first five years the proposed amendments to Chapter 114 are in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendments will be the potential reduction and/or stabilization of on-road and non-road mobile source emissions, potential reduction in NO_x emissions, potentially improved air quality, and contribution toward demonstration of attainment with the ozone NAAQS.

There are economic implications anticipated to individuals, state and local government agencies, and businesses as a result of implementing the proposed amendments. It is anticipated that LED fuel producers that supply fuel to the DFW CMSA will incur additional costs to produce diesel fuel that meets the proposed LED standards. The cost of producing this LED fuel is estimated to be approximately \$.04 per gallon more than for the current diesel fuel. It is also anticipated that this additional cost will be passed on to consumers in the form of higher prices at the pump. There are no anticipated significant additional costs for diesel fuel producers and importers associated with registering with the commission or supplying monthly status reports. Likewise, there are no anticipated additional costs to producers for testing LED fuel because producers are already testing their fuel for compliance with federal regulations and industry standards.

It is estimated that approximately 90,000 diesel vehicles in the DFW CMSA consume approximately 417 million gallons of diesel fuel on an annual basis. It is anticipated that individual motorists, state and local government agencies, and businesses with vehicles that use diesel fuel in the DFW CMSA will likely pay approximately \$.04 more per gallon of diesel fuel that meets the proposed LED

requirements than current costs for diesel. The total fiscal impact for the price increase in LED fuel associated with the proposed amendments in the DFW CMSA is estimated at approximately \$16 million or \$178 per year per diesel vehicle.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

There are anticipated fiscal implications to small businesses and micro-businesses as a result of implementing the proposed amendments. There are no known diesel fuel producers or importers that would be considered small businesses or micro-businesses. However, it is anticipated that many independent retailers of diesel fuel in the DFW CMSA are small businesses or micro-businesses. Therefore, production costs of approximately \$.04 per gallon are not anticipated to affect small businesses or micro-business except for passing increased costs of production through to consumers. The fiscal implications for small businesses and micro-businesses would include additional costs of approximately \$.04 per gallon for LED fuel for business-owned diesel vehicles. The additional costs would depend on the amount of fuel used by the businesses. On an average basis, the annual cost to businesses in the DFW CMSA is estimated to be approximately \$178 per vehicle.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is subject to §2001.0225 because it could meet the definition of a “major environmental rule” as defined in that statute. “Major environmental rule” means a rule 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. The proposed amendments to Chapter 114 are intended to protect the environment or reduce risks to human health from environmental exposure to ozone and could affect in a material way, a sector of the economy, competition, and the environment due to its impact on the fuel manufacturing and distribution network of the state. The proposed amendments are intended to implement an LED fuel air pollution control program as part of the strategy to reduce emissions of NO_x necessary for the counties included in the DFW nonattainment area to be able to demonstrate attainment with the ozone NAAQS. The steering committee representing the DFW ozone nonattainment area counties has requested an air pollution control strategy, including the use of an LED fuel, to reduce NO_x emissions necessary to demonstrate attainment with the ozone NAAQS. The proposed amendments are part of the commission response to the request and one element of the proposed DFW Attainment Demonstration SIP. Although the proposed amendments could meet the definition of a “major environmental rule” as defined in the Texas Government Code, §2001.0225, only applies to a major environmental rule, the result of which is to: 1. exceed a standard set by federal law, unless the rule is specifically required by state law; 2. exceed an express requirement of state law, unless the rule is specifically required by federal law; 3. exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program or; 4. adopt a rule solely under the general powers of the agency instead of under a specific state law.

This rulemaking does not meet any of these four applicability requirements. Specifically, the LED fuel requirements within this proposal were developed in order to meet the ozone NAAQS set by the EPA

under the FCAA, §7409, and therefore meet a federal requirement. States are primarily responsible for ensuring attainment and maintenance of NAAQS once EPA has established those standards. Under the FCAA, §7410 and related provisions, states must submit, for EPA approval, SIPs that provide for the attainment and maintenance of NAAQS through a control program directed to sources of the pollutants involved. This proposal is not an express requirement of state law, but was developed specifically in order to meet the air quality standards established under federal law as NAAQS. This proposal is intended to help bring ozone nonattainment areas into compliance and to help keep attainment and near nonattainment areas from going into nonattainment. The proposed amendments do not exceed a standard set by federal law, exceed an express requirement of state law unless specifically required by federal law, nor exceed a requirement of a delegation agreement. The proposed amendments were not developed solely under the general powers of the agency, but were specifically developed to meet the air quality standards established under federal law as NAAQS. The commission invites public comment on the draft regulatory impact analysis.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules in accordance with Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the proposed rulemaking is to establish a LED fuel program which will act as an air pollution control strategy to reduce NO_x emissions necessary for the four counties included in the DFW ozone nonattainment area to be able to demonstrate attainment with the ozone NAAQS. The proposed affected area consists of the four-county DFW ozone nonattainment area as well as the eight additional counties of the CMSA which include Ellis, Henderson, Hood, Hunt, Johnson, Kaufman, Parker, and

Rockwall Counties. Promulgation and enforcement of the rules may possibly burden private, real property because this proposed rulemaking action may result in investment in the permanent installation of new refinery processing equipment. Although the proposed rule revisions 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 partially fulfill a federal mandate under the FCAA, §7410.

Specifically, the emission limitations and control requirements within this proposal were developed in order to meet the ozone NAAQS set by the EPA under the FCAA, §7409. States are primarily responsible for ensuring attainment and maintenance of the NAAQS once the EPA has established them. Under the FCAA, §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, the purpose of the rule proposal is to implement cleaner burning diesel fuel which is necessary for the DFW nonattainment area to meet the air quality standards established under federal law as NAAQS. Consequently, the exemption which applies to these proposed rules is that of an action reasonably taken to fulfill an obligation mandated by federal law. Therefore, these proposed revisions will not constitute a takings under the Texas Government Code, Chapter 2007.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has determined that the proposed rulemaking 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's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the CMP. As required by 31 TAC

§505.11(b)(2) and 30 TAC §281.45(a)(3), relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and has determined that the action is consistent with the applicable CMP goals and policies. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations in 40 CFR, to protect and enhance air quality in the coastal area (31 TAC §501.14(q)). No new sources of air contaminants will be authorized by the rule amendments. Therefore, in compliance with 31 TAC §505.22(e), the commission affirms that this rulemaking is consistent with CMP goals and policies.

Interested persons may submit comments on the consistency of the proposed rules with the CMP during the public comment period.

PUBLIC HEARING

The commission will hold public hearings on this proposal at the following times and locations:

January 24, 2000, 2:00 p.m., City of El Paso Council Chambers, 2 Civic Center Plaza, 2nd floor, El Paso; January 25, 2000, 10:00 a.m., Building E, Room 201S, Texas Natural Resource Conservation Commission Complex, 12100 Park 35 Circle, Austin; January 26, 2000, 10:00 a.m., Longview City Hall Council Chambers, 300 West Cotton Street, Longview; January 26, 2000, 7:00 p.m., City of Irving Central Library Auditorium, 801 West Irving Boulevard, Irving; January 27, 2000, 10:00 a.m., Dallas Public Library Auditorium, 1515 Young Street, Dallas; January 27, 2000, 7:00 p.m.; Lewisville City Council Chambers, Municipal Center, Lewisville; January 28, 2000, 10:00 a.m., Council

Chambers, 2nd floor, Fort Worth City Hall, 1000 Throckmorton Street, Fort Worth; January 31, 2000, 1:30 p.m., John Gray Institute, 855 Florida Avenue, Beaumont; and January 31, 2000, 7:00 p.m., Houston-Galveston Area Council, 3555 Timmons Lane, Houston. The hearings are structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, agency staff members will be available to discuss the proposal 30 minutes before 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

Written comments may be submitted to Ms. Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808.

All comments should reference Rule Log Number 99055A-114-AI. Comments must be received by 5:00 p.m., February 1, 2000. For further information, please contact Alan Henderson at (512) 239-1510 or Morris Brown at (512) 239-1438.

STATUTORY AUTHORITY

The new section is proposed under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.011, which provides the commission the authority to control the quality of the state's air; §382.012, which provides the commission the authority to prepare and develop a general, comprehensive plan for the control of the state's air; §382.017, which provides the commission the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.019, which provides the commission the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles; §382.037(g), which provides the commission the authority to regulate fuel content if it is demonstrated to be necessary for attainment of the NAAQS; and §382.039, which provides the commission the authority 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 new section implements TCAA, §382.002, relating to Policy and Purpose; §382.011, relating to General Powers and Duties; §382.012, relating to State Air Control Plan; §382.019, relating to Methods Used to Control and Reduce Emissions from Land Vehicles; §382.037(g), relating to Vehicle Emissions Inspection and Maintenance Program; and §382.039, relating to Attainment Program.

SUBCHAPTER A : DEFINITIONS

§114.6

§114.6. Low Emission Fuel Definitions.

Unless specifically defined in the TCAA or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, the following words and terms, when used in Subchapter H of this chapter (relating to Low Emission Fuels), shall have the following meanings, unless the context clearly indicates otherwise:

(1) **Barrel** - A unit of measure equal to 42 United States gallons.

(2) **Bulk plant** - An intermediate motor vehicle distribution facility where delivery of motor vehicle fuel to and from the facility is solely by truck.

(3) **Bulk purchaser/consumer** - A person who purchases or otherwise obtains motor vehicle fuel in bulk and then dispenses it into the fuel tanks of motor vehicles owned or operated by the person.

(4) Designated alternative limit (DAL) - An alternative specification limit for a specific fuel standard, which is assigned by a producer or importer to a final blend of low emission diesel fuel (LED) in accordance with §114.313 of this title (relating to Designated Alternative Limits).

(5) Diesel fuel - Any fuel that is commonly or commercially known, sold, or represented as diesel fuel Number 1-D or Number 2-D, in accordance with the American Society for Testing and Materials (ASTM) Test Method D975-98b (Standard Specification for Diesel Fuel Oils), dated 1998.

(6) Final blend - A distinct quantity of LED which is introduced into commerce without further alteration which would tend to affect a regulated LED specification of the fuel.

(7) Further process - To perform any activity on motor vehicle fuel, including distillation, treating with hydrogen, or blending, for the purpose of bringing the motor vehicle fuel into compliance with the requirements of Subchapter H of this chapter.

(8) Gasoline - Any fuel that is commonly or commercially known, sold, or represented as gasoline, in accordance with ASTM Test Method D4814-99 (Standard Specification for Automotive Spark-Ignition Engine Fuel), dated 1999.

(9) Imported - The process by which motor fuel is transported into counties listed in §114.319 of this title (relating to Affected Counties and Compliance Dates) via tank ship, rail car, tank truck, or trailer.

(10) Import facility - The stationary motor vehicle fuel transfer point from which fuel is transferred into the cargo tank truck, pipeline, or other delivery vessel from which the fuel will be delivered to the retail fuel dispensing facility, at which the fuel will be dispensed into motor vehicles.

(11) Importer - Any person who transports, stores, or causes the transportation or storage of motor vehicle fuel, produced by another person, at any point between any producer's facility and any retail fuel dispensing outlet or bulk purchaser/consumer's facility.

(12) Low emission diesel (LED) - Any diesel fuel:

(A) sold, intended for sale, or made available for sale which may ultimately be used to power a diesel fueled compression-ignition engine in the counties listed in §114.319 of this title;

(B) that the producer knows, or reasonably should know, may ultimately be used to power a diesel fueled compression-ignition engine in counties listed in §114.319 of this title;
and

(C) complies with the standards specified in §114.312 of this title (relating to Low Emission Diesel Standards).

(13) Motor vehicle fuel - Any gasoline or diesel fuel used to power gasoline fueled spark-ignition or diesel fueled compression-ignition engines.

(14) Produce - Perform the process to convert liquid compounds which are not motor vehicle fuel into motor vehicle fuel, except where a person supplies motor vehicle fuel to a refiner who agrees in writing to further process the motor vehicle fuel at the refiner's refinery and to be treated as a producer of the motor vehicle fuel, only the refiner shall be deemed for all purposes under Subchapter H of this chapter to be the producer of the motor vehicle fuel.

(15) Producer - Any person who owns, leases, operates, controls, or supervises a production facility and/or produces motor vehicle fuel.

(16) Production facility - A facility at which motor vehicle fuel is produced.

(17) Refiner - Any person who owns, leases, operates, controls, or supervises a refinery.

(18) Refinery - A facility that manufactures liquid fuels by distilling petroleum.

(19) Retail fuel dispensing outlet - Any establishment at which gasoline and/or diesel fuel is sold or offered for sale for use in motor vehicles, and the fuel is directly dispensed into the fuel tanks of the motor vehicles using the fuel.

(20) Supply - To provide or transfer fuel to a physically separate facility, vehicle, or transportation system.

SUBCHAPTER H: LOW EMISSION FUELS. [GASOLINE VOLATILITY]

DIVISION 2: LOW EMISSION DIESEL

§§114.312 - 114.317, 114.319

STATUTORY AUTHORITY

The new sections are proposed under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.011, which provides the commission the authority to control the quality of the state's air; §382.012, which provides the commission the authority to prepare and develop a general, comprehensive plan for the control of the state's air; §382.017, which provides the commission the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.019, which provides the commission the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles; §382.037(g), which provides the commission the authority to regulate fuel content if it is demonstrated to be necessary for attainment of the NAAQS; and §382.039, which provides the commission the authority 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 new sections implement TCAA, §382.002, relating to Policy and Purpose; §382.011, relating to General Powers and Duties; §382.012, relating to State Air Control Plan; §382.019, relating to Methods Used to Control and Reduce Emissions from Land Vehicles; §382.037(g), relating to Vehicle Emissions Inspection and Maintenance Program; and §382.039, relating to Attainment Program.

§114.312. Low Emission Diesel Standards.

(a) No person shall sell, offer for sale, supply, or offer for supply, dispense, transfer, allow the transfer, place, store, or hold any diesel fuel in any stationary tank, reservoir, or other container in the counties listed in §114.319 of this title (relating to Affected Counties and Compliance Dates), which may ultimately be used to power a diesel fueled compression-ignition engine in the affected counties, that does not meet either the low emission diesel (LED) standards of subsections (b) - (d) of this section, or the requirements of subsection (f) or (g) of this section.

(b) The maximum sulfur content of LED is 500 parts per million by weight per gallon.

(c) The maximum aromatic hydrocarbon content of LED is 10.0% by volume per gallon; or the LED has been reported in accordance with all of the requirements of §114.313 of this title (relating to Designated Alternative Limits), where:

(1) the aromatic hydrocarbon content does not exceed the designated alternative limit (DAL); and

(2) the designated alternative limit exceeds 10.0% by volume, the excess aromatic hydrocarbon content is fully offset in accordance with §114.313 of this title.

(d) The minimum cetane number for LED is 48.

(e) Subsection (a) of this section shall not apply to a sale, offer for sale, or supply of diesel fuel to a refiner where the refiner further processes the diesel fuel at the refiner's refinery prior to any subsequent sale, offer for sale, or supply of the diesel fuel.

(f) Diesel fuel which has been produced to comply with all specifications for a Certified Diesel Fuel Formulation as approved by an executive order by the California Air Resources Board may be used to satisfy the requirements of subsection (a) of this section.

(g) Diesel fuel which has demonstrated to the executive director's satisfaction, through emissions testing programs with supporting data, as meeting comparable or better oxides of nitrogen, volatile organic compounds, toxic compounds, and particulate matter emissions may be used to satisfy the requirements of subsection (a) of this section.

§114.313. Designated Alternative Limits.

(a) A producer or importer may assign a designated alternative limit (DAL) for aromatic hydrocarbon content to a final blend of low emission diesel fuel (LED) produced or imported by the producer or importer, except for that LED produced in accordance with §114.312(g) of this title (relating to Low Emission Diesel Standards), if the following conditions are met.

(1) In no case shall the aromatic hydrocarbon content of the final blend shown by the sample and test conducted in accordance with §114.315 of this title (relating to Approved Test Methods) exceed the assigned DAL.

(2) The producer or importer shall notify the executive director of the volume (in barrels) and the DAL of the final blend. This notification shall be received by the executive director before the start of physical transfer of the LED from the production or import facility, and in no case less than 12 hours before the producer either completes physical transfer of the final blend.

(3) Within 90 days before or after the start of physical transfer of any final blend of LED to which a producer or importer has assigned a DAL exceeding the limit for aromatic hydrocarbon content specified in §114.312(c) of this title (relating to Low Emission Diesel Standards), the producer or importer shall complete physical transfer from the production or import facility of LED in sufficient quantity and with a DAL sufficiently below the standard specified in §114.312(c) of this title to offset the volume of aromatic hydrocarbons in the LED reported in excess of the standard.

(b) No person shall sell, offer for sale, or supply LED, in a final blend to which a producer or importer has assigned a DAL:

(1) exceeding the standard specified in §114.312(c) of this title for aromatic hydrocarbon content, where the total volume of the final blend sold, offered for sale, or supplied

exceeds the volume reported to the executive director in accordance with subsection (a)(2) of this section; nor

(2) less than the standard specified in §114.312(c) of this title for aromatic hydrocarbon content, where the total volume of the final blend sold, offered for sale, or supplied is less than the volume reported to the executive director in accordance with subsection (a)(2) of this section.

(c) Whenever the final blend of a producer or importer includes volumes of diesel fuel the producer or importer has produced or imported and volumes it has not produced or imported, the producer's or importer's DAL shall apply only to the volume of diesel fuel the producer or importer has produced or imported. In such a case, the producer or importer shall report to the executive director in accordance with subsection (a)(2) of this section both the volume of diesel fuel produced or imported and the total volume of the final blend.

§114.314. Registration of Diesel Producers and Importers.

Each producer and importer that sells, offers for sale, supplies, or offers for supply from its production facility or import facility low emission diesel (LED) to counties listed in §114.319 of this title (relating to Affected Counties and Compliance Dates) shall register with the executive director by December 1, 2001; or after May 31, 2002, 30 days in advance of the first date that such person will produce or import LED. Registration shall be on forms prescribed by the executive director and shall include a statement of acceptance of the standards and enforcement provisions of this chapter; and shall

include a statement of consent by the registrant that the executive director shall be permitted to collect samples and access documentation and records. The executive director shall maintain a listing of all registered suppliers.

§114.315. Approved Test Methods.

(a) Compliance with the diesel fuel content requirements of §114.312 of this title (relating to Low Emission Diesel Standards) shall be determined by applying the following test methods and procedures, as appropriate.

(1) The sulfur content of low emission diesel (LED) shall be determined by the American Society for Testing and Materials (ASTM) Test Method D2622-98 (Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-ray Fluorescence Spectrometry), dated 1998.

(2) The aromatic hydrocarbon content of LED shall be determined by ASTM Test Method D5186-99 (Standard Test Method for Determination of Aromatic Content and Polynuclear Aromatic Content of Diesel Fuels and Aviation Turbine Fuels by Supercritical Fluid Chromatography), dated 1999.

(3) The cetane number of LED shall be determined by ASTM Test Method D613-95 (Standard Test Method for Cetane Number of Diesel Fuel Oil), dated 1995.

(4) The polycyclic aromatic hydrocarbon content of LED shall be determined by ASTM Test Method D2425-99 (Standard Test Method for Hydrocarbon Types in Middle Distillates by Mass Spectrometry), dated 1999.

(5) The nitrogen content of LED shall be determined by ASTM Test Method D4629-96 (Standard Test Method for Trace Nitrogen in Liquid Petroleum Hydrocarbons by Syringe/Inlet Oxidative Combustion and Chemiluminescence Detection), dated 1996.

(b) Alternatives to the test methods prescribed in subsection (a) of this section may be used if validated by Title 40 Code of Federal Regulations, Part 63, Appendix A (related to Test Methods), Method 301 (related to Field Validation of Pollutant Measurement Methods from Various Waste Media), dated December 29, 1992. For the purposes of this subsection, substitute "executive director" in each location that Test Method 301 references "administrator."

§114.316. Monitoring and Recordkeeping Requirements.

(a) Every producer or importer that has elected to sell, offer for sale, supply, or offer for supply low emission diesel fuel (LED) in counties listed in §114.319 of this title (relating to Affected Counties and Compliance Dates) is subject to the requirements of this section. Under these requirements LED which has been produced or imported must conform with the standards for sulfur content, aromatic hydrocarbon content, and minimum cetane number as specified in §114.312 of this title (relating to Low Emission Diesel Standards). All records relating to LED must contain a statement

declaring whether the aromatic hydrocarbon content of the sample conforms to the basic standard, to a designated alternative limit (DAL) in accordance with §114.313 of this title (relating to Designated Alternative Limits), or to a limit specified in a Certified Diesel Fuel Formulation as approved by an executive order issued by the California Air Resources Board (CARB).

(b) Each producer or importer shall sample and test for the sulfur content, aromatic hydrocarbon content, and minimum cetane number in each final blend of LED which the producer or importer has produced or imported, by collecting and analyzing a representative sample of diesel fuel taken from the final blend, using the methodologies specified in §114.315 of this title (relating to Approved Test Methods). If a producer or importer blends diesel fuel components directly to pipelines, tank ships, railway tank cars, or trucks and trailers, the loading(s) shall be sampled and tested for the sulfur content, aromatic hydrocarbon content, and minimum cetane number by the producer or importer or authorized contractor. The producer or importer shall maintain, for two years from the date of each sampling, records showing the sample date, identity of blend sampled, container or other vessel sampled, final blend volume, and the sulfur content, aromatic hydrocarbon content, and minimum cetane number. All diesel fuel produced by the producer or imported by the importer and not tested as LED by the producer or importer as required by this section shall be deemed to exceed the standards specified in §114.312 of this title, unless the producer or importer demonstrates that the diesel fuel meets those standards and limits.

(c) A producer or importer shall provide to the executive director any records required to be maintained by the producer or importer in accordance with this section within five days of a written

request from the executive director, if the request is received before expiration of the period during which the records are required to be maintained. Whenever a producer or importer fails to provide records regarding a final blend of LED in accordance with the requirements of this section, the final blend of diesel fuel shall be presumed to have been sold by the producer or importer in violation of the standards specified in §114.312 of this title, to which the producer or importer has elected to be subject.

(d) All parties in the distribution chain (producer, importer, terminals, pipelines, truckers, rail carriers, and retailers) must maintain transfer documents for a minimum of two years. The records, at a minimum, must contain the type and date of transfer, blend identity, blend batch numbers, volume of transfer, container or transport type, test results, and certification that the fuel meets the standards specified in §114.312 of this title.

(e) For each final blend which is sold or supplied by a producer or importer from the party's production facility or import facility, and which contains volumes of diesel fuel that the party has produced and imported and volumes that the party neither produced nor imported, the producer or importer shall establish, maintain, and retain adequately organized records containing the following information.

(1) The volume of diesel fuel in the final blend that was not produced or imported by the producer or importer, the identity of the persons(s) from whom such diesel fuel was acquired, the date(s) on which it was acquired, and the invoice(s) representing the acquisition(s).

(2) The sulfur content, aromatic hydrocarbon content, and the cetane number of the volume of diesel in the final blend that was not produced or imported by the producer or importer, determined either by:

(A) sampling and testing by the producer or importer of the acquired diesel fuel represented in the final blend; or

(B) written results of sampling and test of the diesel fuel supplied by the person(s) from whom the diesel fuel was acquired.

(3) A producer or importer subject to subsection (e) of this section shall establish such records by the time the final blend triggering the requirements is sold or supplied from the production or import facility, and shall retain such records for two years from such date. During the period of required retention, the producer or importer shall make any of the records available to the executive director upon request.

(f) Each producer or importer electing to sell, offer for sale, supply, or offer to supply LED in accordance with §114.312 of this title shall provide a monthly summation report to the executive director no later than the fifteenth of the following month. This report shall provide, at a minimum, reconciliation of the month's transactions relative to the requirements of subsections (b) and (e) of this section. Updates or revisions to estimated transaction volumes required by subsection (b) of this section shall be included in this report.

(g) Each producer or importer electing to sell, offer for sale, supply, or offer to supply LED under §114.312(f) of this title shall provide to the executive director a copy of the executive order issued by the CARB for the Certified Diesel Fuel Formulation used to produce the LED and shall comply with the requirements of subsections (b) and (e) of this section using the fuel specifications for aromatic hydrocarbon, sulfur, and cetane set by this executive order.

(h) Each producer or importer electing to sell, offer for sale, supply, or offer to supply LED under §114.312(f) of this title shall sample and test for the polycyclic aromatic hydrocarbon content and nitrogen content in each final blend of LED which the producer or importer has produced or imported using the fuel specifications for polycyclic aromatic hydrocarbons and nitrogen set by the executive order issued by the CARB for the Certified Diesel Fuel Formulation used to produce the LED, by collecting and analyzing a representative sample of diesel fuel taken from the final blend using the methodologies specified in §114.315 of this title and shall include a record of these tests in the report required by subsection (f) of this section.

§114.317. Exemptions to Low Emission Diesel Requirements.

(a) The following exemption applies in the counties listed in §114.319 of this title (relating to Affected Counties and Compliance Dates). The owner or operator of a retail fuel dispensing outlet is exempt from all requirements of §114.316 of this title (relating to Monitoring and Recordkeeping Requirements) except §114.316(d) of this title.

(b) Diesel fuel that does not meet the requirements of §114.312 of this title (relating to Low Emission Diesel Standards) is not prohibited from being transferred, placed, stored, and/or held within the affected counties so long as it is not ultimately used to power a diesel fueled compression-ignition engine in the affected counties.

§114.319. Affected Counties and Compliance Dates.

Beginning May 1, 2002, affected persons in the following counties shall be in compliance with §§114.312 - 114.317 of this title (relating to Low Emission Diesel Standards; Designated Alternative Limits; Registration of Diesel Producers and Importers; Approved Test Methods; Monitoring and Recordkeeping Requirements; and Exemptions to Low Emission Diesel Requirements): Collin, Dallas, Denton, Ellis, Henderson, Hood, Hunt, Johnson, Kaufman, Parker, Rockwall, and Tarrant.