The Texas Natural Resource Conservation Commission (commission) adopts new §114.160 (Definitions), §114.161 (Applicability), §114.162 (Emission Requirements and Prohibitions), §114.163 (Exemptions), §114.164 (New Vehicle Certification and Testing), §114.165 (Reporting Requirements), §114.166 (Enforcement), §114.167 (Aftermarket Parts), and §114.169 (Affected Counties). The commission adopts these revisions to Chapter 114 (Control of Air Pollution from Motor Vehicles), Subchapter E (Low Emission Vehicle), Division 2 (California Low Emission Vehicle Requirements), and to the State Implementation Plan (SIP) in order to control ground-level ozone in the State of Texas. The rules will implement the California Low Emission Vehicle (California LEV II) program in the State of Texas beginning with model year 2007. Sections 114.160 - 114.167 are adopted with changes to the proposed text as published in the December 31, 1999 issue of the *Texas Register* (24 TexReg 11924). Section 114.169 is adopted without changes to the proposed text and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The Dallas/Fort Worth (DFW) ozone nonattainment area, an area defined by Collin, Dallas, Denton, and Tarrant Counties, was originally designated “moderate” under the Federal Clean Air Act (FCAA) Amendments of 1990 (42 United States Code (USC)) and thus was required to attain the one-hour national ambient air quality standard (NAAQS) for ozone by November 15, 1996. As required by the FCAA, the state submitted an attainment demonstration plan in 1994 which projected attainment of the ozone NAAQS by 1996. This plan was based on a volatile organic compound (VOC) reduction strategy. DFW did not attain the ozone NAAQS in 1996. The United States Environmental Protection Agency (EPA) is authorized to redesignate an area to the next higher classification (“bump up”) if the area fails to attain by the required date. In March 1998, in accordance with 42 USC, §7511(b)(2), the

EPA reclassified the DFW area from moderate to serious, based on monitored exceedances of the ozone NAAQS between 1994 and 1996. The reclassification required the state to submit a revised SIP that demonstrates that the ozone NAAQS will be met in DFW by November 15, 1999. Because the DFW area continued to exceed the ozone NAAQS in 1999, the EPA may bump up the area to the severe classification. Regardless, the EPA and 42 USC, §7410 and §7502(a)(2), require the state to submit a revised SIP which demonstrates that the area will attain the ozone NAAQS as expeditiously as practicable. The rules adopted for DFW in this notice are one element of the ozone attainment demonstration SIP for DFW being adopted concurrently in this issue of the *Texas Register*. The commission plans to submit this SIP to the EPA in April, 2000.

In 1996, the commission began to develop new modeling for the DFW area and now is using newer air quality models with improved meteorological and emission inputs. The newer modeling since 1996 shows that reductions of oxides of nitrogen (NO_x) in the DFW area and regionally will be necessary to attain the ozone NAAQS. The current modeling also shows that achieving the ozone NAAQS in the DFW area will require strenuous effort because the area's rapid growth has resulted in increasing amounts of emissions due to increased levels of activity in the area. The emissions from increased activity are offsetting the emission reductions being achieved from new emission standards applicable to the on-road and non-road engine source categories which dominate the emissions inventory in the DFW area.

The emission reduction requirements adopted as part of this SIP package are the outcome of a development process which involved the EPA, the commission, local elected officials, citizens,

industrial stakeholders, air quality researchers, and hired consultants. Local officials from the DFW area have formally submitted a resolution to the commission requesting the inclusion of many specific emission reduction strategies, including the one contained in these rules.

The NO_x reductions required for the area to attain the ozone NAAQS have been estimated by extensive use of sophisticated air quality grid modeling which, because of its scientific and statutory grounding, is the chief policy tool for designing emission reductions. Title 42 USC, §7511a(c)(2), requires the use of photochemical grid modeling for ozone nonattainment areas designated serious, severe, or extreme. The modeling has been conducted with input from a technical advisory committee. Hundreds of emission control strategies were considered in developing the modeling. Varying degrees of reductions from point sources and mobile sources were analyzed in at least 50 modeling iterations, to test the effectiveness of different NO_x reductions. The attainment demonstration modeling submitted for public hearing and comment concurrently with these rules shows that, in order for DFW to achieve the ozone NAAQS by 2007, almost all of the practicably achievable NO_x reductions are necessary from each emission source category, including reductions from counties surrounding the DFW nonattainment area. Therefore, each strategy, including significant reductions from new automobiles, is crucial to meet federal requirements for the DFW nonattainment area.

The commission adopts these revisions to Chapter 114 and to the SIP in order to control ground-level ozone in the ozone nonattainment, near-nonattainment, and attainment areas of the state. The revisions are one element of the control strategy for the proposed attainment demonstration SIPs. The purpose of these rules is to adopt California LEV II throughout the state to reduce the NO_x and VOC necessary for

the state to be able to demonstrate and maintain attainment of the ozone NAAQS. The commission is incorporating the California rules (Title 13 of the California Code of Regulations (13 CCR), §1900, as effective on November 27, 1999) by reference so that the Texas program will remain identical to the program in California. For any state program that differs from the federal standards, the FCAA, §177, (42 USC, §7507), requires the state program to be identical to the California program.

The North Texas Clean Air Steering Committee (steering committee) representing the DFW ozone nonattainment area requested an ozone pollution control strategy involving the adoption of the California LEV II program in order to reduce NO_x and VOC emissions necessary for the DFW nonattainment area to be able to demonstrate attainment with the ozone NAAQS. At the request of the steering committee and after a review of other alternatives, the commission proposed the adoption of the California LEV II program as a NO_x control measure for the DFW area. Title 42 USC, §7507, allows states to adopt California motor vehicles emission standards only for the entire state. As federal guidelines only allow California LEV II to be adopted statewide, these rules adopt the California LEV II program for all counties in Texas beginning with model year 2007.

Since the proposal of this rule, the EPA published its final federal Tier 2 standards in the February 10, 2000 issue of the *Federal Register* (65 FR 6697), which will also result in significant emissions reductions statewide. Subsequent to the commission rules being proposed, staff worked with a number of organizations to develop an analysis of the emission reduction potential of each of these programs as they could be implemented in Texas. This comparison was made for the DFW and Houston/Galveston

(HGA) areas. The commission assumed that emission reductions from all other areas of the state would follow a similar trend to the DFW and HGA areas.

Commission staff and a commission contractor, Eastern Research Group (ERG), worked closely with the following organizations to conduct an analysis of NO_x reductions achieved under the California LEV II program and federal Tier 2 program: the EPA; the Alliance of Automobile Manufacturers Association (AAMA) and their contractor Air Improvement Resources (AIR); Public Citizens and their contractors; and two local councils of government, the North Central Texas Council of Governments (NCTCOG) and the Houston/Galveston Area Council (HGAC).

With both programs beginning in model year 2004, the modeling indicates a greater NO_x benefit of 1.5 - 2.0 tons per day (tpd) in 2007 with the federal Tier 2 program. This federal Tier 2 benefit decreases over time and is essentially equivalent to the California LEV II program by about 2018. By 2020 the California LEV II program surpasses the federal Tier 2 program for NO_x reductions by about 0.5 tpd. Regarding VOC reductions, the modeling indicates a greater benefit of less than 2.0 tpd in 2007 with the California LEV II program. By 2020 modeling shows approximately 8.5 - 10 tpd greater VOC benefit with the California LEV II program. The VOC and NO_x benefits remain regardless of inclusion or exclusion of the Zero Emission Vehicle (ZEV) mandate in the California LEV II program.

Since the Tier 2 program's early NO_x reductions are eventually surpassed by those reductions achieved by California LEV II, the commission performed an analysis to determine the optimal year to begin California LEV II in terms of NO_x emission reductions. Staff found that implementation of California

LEV II beginning with model year 2007 provided the most overall NO_x reductions. In this case, NO_x emissions reductions for California LEV II through 2020 for DFW and HGA achieve 0.5 - 1.5 tpd greater benefit over federal Tier 2. As in the initial analysis, the VOC reductions are greater for California LEV II in all years analyzed.

Based on this analysis, the commission revised these rules to change the California LEV II implementation date to model year 2007. This implementation date change will provide the state with the higher NO_x benefits associated with the federal Tier 2 program during the 2004 - 2007 time frame and then transition to the higher NO_x and VOC benefits associated with the California LEV II program for model year 2007 and later years. However, the commission will conduct a mid-course review of attainment demonstration requirements in 2004 to determine any SIP revisions that need to be accomplished. Included in this mid-course review will be an evaluation of the benefits from the federal Tier 2 program and any associated advanced vehicle technologies being implemented in Texas. At that time the state will reassess the need to implement California LEV II standards in 2007.

The commission requested comment on the pros and cons of the two programs as well as the public's preference with regard to which program the state should follow. These comments are addressed in the ANALYSIS OF TESTIMONY section of the preamble.

There will be some benefit to the NO_x reductions needed for the SIP attainment demonstration because model year 2007 will actually begin entering the fleet in calendar year 2006. In addition to this contribution to the SIP attainment demonstration, the commission adopts these rules for two other

reasons. First, these rules will encourage research into more cost effective ways to meet the ZEV mandate which is part of the California LEV II program. In this way, these rules help advance cleaner vehicle technology. Second, the commission adopts these rules to take advantage of the clearly beneficial VOC reductions of California LEV II over federal Tier 2. While these VOC reductions contribute to the attainment of the ozone NAAQS, they are even more important in their immediate health benefits. VOC emitted from vehicles include many toxic compounds which the commission is specifically mandated to control under the Texas Health and Safety Code (THSC), §382.039. As the implementation of these rules draws closer, the commission will be looking to see if the automobile industry has incorporated the tighter evaporative emission systems into Tier 2 vehicles in order to determine if these rules are still needed for VOC reductions.

Description of the California LEV II Program

For model years 2004 to 2006, under California LEV requirements, there are two low-emission vehicle categories to which a passenger car or lighter light-duty truck may be certified: LEV and ultra low-emission vehicle (ULEV). For medium-duty vehicles, there are three categories: LEV, ULEV, and super ultra low-emission vehicle (SULEV). Each LEV category has a progressively more stringent standard for exhaust emissions of non-methane organic gas (NMOG) which is a precursor of ground-level ozone pollution. For the purpose of characterizing the ozone forming potential of organic emissions from automobiles, NMOG is used interchangeably with VOC. The commission typically uses the term “VOC” rather than the term “NMOG.”

All passenger cars are subject to the same LEV standards, regardless of weight; however, for light-duty trucks and medium-duty vehicles, the numerical standards for each LEV category depend on the weight classification of the vehicle. Basically the heavier the truck, the less stringent the emission standards. When the vehicle categories were first established, the majority of vehicles in the medium-duty category were used primarily for work purposes. More lenient emission standards were developed to account for heavier loads and a potentially more rigorous duty cycle of work trucks. However, it is now very common for trucks and sport utility vehicles (SUV) to be used primarily for personal transportation (i.e., as passenger cars), and light trucks (including SUVs) have more than doubled their share of the vehicle market since the standards were first introduced.

The increased market share from trucks and SUVs has contributed to the California LEV II amendments. The LEV II amendments include three major interrelated elements designed to reduce exhaust emissions: (1) restructuring the light-duty truck category so that most SUVs, mini-vans, and pick-up trucks are subject to the same LEV standards as passenger cars; (2) strengthening the NO_x standard for passenger car and light-duty truck LEVs and ULEVs, and changing other emission standards; and (3) establishing more stringent model year 2004 and subsequent model year phase-in requirements for passenger cars, light-duty trucks, and medium-duty vehicles.

Under the restructuring of vehicle weight classifications, all current light-duty trucks and all current medium-duty vehicles having a gross vehicle weight of less than 8,500 pounds (lbs) would generally be subject to the same LEV and ULEV standards as passenger cars. Only the very heaviest SUVs and pickup trucks, such as the new Ford Excursion, Dodge Ram 2500 and 3500 trucks, and the largest

Chevrolet Suburban model would remain subject to separate medium-duty vehicle standards. Since most pickup trucks and SUVs have a curb weight less than 5,500 lbs and a payload of approximately 1,000 - 2,000 lbs, it is anticipated that the majority of the heavier trucks will fall into the new category.

The LEV II standards are more stringent than the corresponding LEV I standards in several respects. First, the LEV II NO_x standard for passenger cars and light-duty trucks certified to the LEV and ULEV standards have been reduced to 0.05 grams per mile (g/mi) from the current 0.2 g/mi level. The LEV II particulate emission standard is 0.01 g/mi for diesel LEVs, ULEVs, and SULEVs. Second, the overall LEV II emission standards for medium-duty vehicles have been reduced to be substantially equivalent in stringency, although numerically higher, to the light-truck standards. Third, the useful life for LEV II passenger cars and light-duty trucks has been increased from the current 100,000 miles to 120,000 miles. Fourth, a new light-duty SULEV category has been created with an NMOG standard less than one-fourth of the level for ULEVs. Fifth, manufacturers will have the option of certifying any LEV, ULEV, or SULEV to a 150,000-mile certification standard, in which case the vehicle will generate greater NMOG credits for the fleet average NMOG determination. Sixth, manufacturers can receive credit for the early introduction of larger trucks and SUVs meeting a 0.2 g/mi NO_x emission level and certified to the LEV I, LEV II, and ULEV standards. This credit can be used in the model years 2004 to 2008 on like vehicles certifying to the LEV and ULEV 0.05 g/mi NO_x standards. A similar option is available for medium-duty vehicles. There are also various other technical amendments.

The California LEV II standards are phased in from model years 2004 to 2007. During these four years a manufacturer must certify a percentage of the passenger car and light-duty truck fleet to the LEV II standard at a rate of at least 25% in model year 2004, 50% in model year 2005, 75% in model year 2006, and finally 100% in model year 2007. For each model year, a manufacturer may choose the standards to which each passenger car and light-duty truck is certified, provided that the manufacturer's entire fleet of these vehicles meets a specified fleet average NMOG emissions level. Medium-duty vehicles have separate requirements based on a percent phase-in schedule, because the numerous vehicle weight classifications make a fleet average requirement difficult to implement. For medium-duty vehicles, a manufacturer must certify for model year 2004 and subsequent model years 40% of its fleet to LEV and 60% to ULEV standards.

The California LEV II program also requires that at least 10% of the passenger cars and lightest light-duty trucks produced by manufacturers be ZEV. This can be met by producing true ZEVs and through ZEV allowances. The State of California has a number of flexibilities established within its program. The State of Texas by action of the commission is including the ZEV mandate and all of these flexibilities, including the provision of ZEV allowances. ZEV allowances create the ability for an auto manufacturer to produce SULEVs to partially offset the ZEV requirements.

The costs associated with the California LEV II standards have been calculated by the California Air Resources Board (CARB) and include the incremental costs of both exhaust and evaporative controls required on passenger cars, light-duty trucks, and medium duty vehicles. The total cost includes the cost of parts and internal costs to automobile manufacturers. The additional cost per vehicle varies

depending upon the standard to which the vehicle is certified. The CARB has estimated that the retail price increase will range from $68 to $206 with an average additional retail cost of $107, which when based on an average vehicle cost of $19,000, equals an average increase in vehicle cost of less than 1.0%.

The California LEV II program is also very cost-effective. The CARB estimated that the cost-effectiveness of LEV II standards relative to LEV I standards is approximately $1.00 per pound of pollutants reduced. CARB found that, for comparison, other mobile source control measures are in the range of $5.00 per pound of pollutants reduced, and stationary sources are in the range of $10 per pound of pollutants reduced.

Although incremental costs are based on LEV II standards compared to LEV I standards, the costs are still applicable because beginning in 2001 the manufacturers will be selling passenger cars and light-duty trucks nationally, in accordance with the National Low Emission Vehicle (NLEV) program, which on average meet the California LEV I standards.

Emission reductions associated with the adopted rules will be statewide and will include reductions in NO_x and VOC. These rules will benefit nonattainment areas, near nonattainment areas, and attainment areas in Texas. These rules will help nonattainment areas reach attainment and will help near nonattainment and attainment areas to stay in attainment. Modeling has shown that through the implementation of the California LEV II program beginning with model year 2007, there will be an additional 0.5 - 1.5 tpd of NO_x reductions and 8.5 - 10.0 tpd of VOC reductions in 2020.

Because of fleet turnover, the emissions reductions associated with California LEV II will increase over time. This provides an additional benefit for transportation conformity purposes. Transportation conformity requires areas to demonstrate, at least every three years, that the estimated emissions from their 20-year, long-range transportation plan are less than or equal to the emissions budget established in the SIP. The time period covered by the SIP is less than that covered by the transportation plan; for example, the DFW Attainment Demonstration SIP addresses the year 1999 to 2007 time period, while the DFW transportation plan addresses the year 2000 to 2025 time period. Because the SIP does not account for growth after the year 2007 and the transportation plan does, control measures that achieve additional reductions after the year 2007 will be the primary way to offset increased emissions due to growth and thus conform to the emissions budget, as required by transportation conformity regulations.

SECTION-BY-SECTION DISCUSSION

The commission adopts all of the following sections, in order to implement a program with standards identical to those of California as required by 42 USC, §7507.

The new §114.160 incorporates by reference definitions in 13 CCR, §1900, as effective on November 27, 1999, and adds definitions for aftermarket part, California Air Resources Board, dealer, emission control labels, emission control system, executive order, manufacturer's advisory correspondence, model-year, new motor vehicle, offset vehicle, recall, recall campaign, replacement part, ultimate purchaser, used vehicle, and zero emissions vehicle. The proposed rule included definitions for advertise and mail-out. These definitions are not considered necessary for this rule and have been deleted.

The new §114.161 adopts the California LEV II program beginning in model year 2007 and incorporates by reference the applicable California regulations and related documents concerning the California LEV II program as they were in effect at the time of this adoption. The section also states that the commission will apply technical guidance issued by the CARB.

The new §114.162 requires, beginning with model year 2007 vehicles, that no person shall sell, import, deliver, purchase, lease, rent, acquire, or receive a new vehicle in Texas that has not received a CARB executive order for being in compliance with the applicable California LEV II standards. The section also requires manufacturers of passenger cars, light-duty trucks, and medium-duty trucks supplying vehicles to Texas in model year 2007 and subsequent model years to comply with the fleet average, phase-in, and ZEV requirements specified in the California LEV II regulations. The California ZEV regulations require that the manufacturers' fleet sales be made up of at least 10% ZEV. The section also prohibits motor vehicle dealers from selling or leasing a vehicle that does not meet certain mechanical standards, such as idle speed and ignition timing. In addition, the section provides anti-tampering provisions.

The new §114.163 specifies exemptions to the California LEV II requirements. These exemptions include vehicles transferred by inheritance or by court decree, vehicles purchased by a nonresident prior to establishing residency in the State of Texas, and rental vehicles where the next rental of said vehicle has a final destination outside the State of Texas. The proposed rule included an exemption for vehicles transferred for the purpose of being scrapped or dismantled and an exemption for a vehicle which is sold or transferred interstate from one dealer to another. These exemptions were not appropriate since

the Voluntary Accelerated Vehicle Retirement (VAVR) program requires eligible vehicles to have been registered in the affected area for the previous 12 months and dealers are not allowed to sell, import, deliver, purchase, lease, rent, acquire or receive a new vehicle in Texas that is not in compliance with California LEV standards. Therefore, these two exemptions have been deleted.

The new §114.164 specifies how testing of vehicles will be performed. The section specifies requirements for new vehicle certification testing, manufacturer inspection testing, in-use vehicle enforcement testing, and new vehicle compliance testing.

The new §114.165 requires that manufacturers submit reports which document compliance with fleet average requirements for passenger cars and light-duty trucks and compliance with the phase-in schedules for passenger cars, light-duty trucks, and medium-duty vehicles. The section also requires recall reports, ZEV reports, and additional reports as needed.

The new §114.166 allows the commission to conduct inspection and surveillance of motor vehicles at vehicle dealerships. The section also allows for enforcement actions taken by the CARB to be applicable to affected vehicles in Texas; however, Texas will enforce these regulations.

The new §114.167 requires aftermarket parts which do not meet the requirements of this division, to not be sold in Texas, unless they have been certified as exempt by the CARB or the commission. Language has been added to clarify that the commission would use California standards to make such a certification. Aftermarket parts include replacement parts, add-on parts, and modified parts. The

section also allows the commission to require, if needed, manufacturers to submit reports and/or parts for purposes of testing for compliance.

The new §114.169 specifies that every county in Texas is affected by the new sections.

FINAL REGULATORY IMPACT ANALYSIS

The commission reviewed this rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not 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. These rules are intended to protect the environment or reduce risks to human health from environmental exposure to ozone, and are 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. While the automobile industry, including dealers, might be considered a sector of the economy of the state, the low cost of compliance with these rules does not reflect an adverse material impact. These rules are expected to cost less than 10% of the vehicle price. That cost is conservative and does not subtract the cost of complying with the federal Tier 2 standards that would be required without these rules. These rules prohibit any corporation, person, or other entity from selling, importing, delivering, purchasing, leasing, renting, acquiring, or receiving a new vehicle in Texas that is not in compliance with 13 CCR standards for the California

LEV II program beginning with model year 2007. This air pollution control program is part of the strategy to reduce NO_x emissions necessary for nonattainment areas to be able to demonstrate attainment with the ozone NAAQS. The steering committee representing the DFW ozone nonattainment area counties requested an air pollution control program, including the use of the 13 CCR standards for the California LEV II program, be established to reduce NO_x emissions necessary for nonattainment areas to be able to demonstrate attainment with the ozone NAAQS. These rules are part of the commission response to the request and one element of the Attainment Demonstration SIP. 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 rulemaking action is not subject to the regulatory analysis provisions of §2001.0225(b), because these rules do not meet any of these four applicability requirements. Specifically, the use of 13 CCR standards for the California LEV II program were developed in order to meet the ozone NAAQS set by the EPA under 42 USC, §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 42 USC, §7410 and related provisions, states must submit, for EPA approval, SIPs that provide for the attainment and maintenance of NAAQS through control programs directed to sources of the pollutants involved. This rulemaking action 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, as authorized under the Texas Clean Air Act (TCAA), §382.012 (State Air Control Plan). This rulemaking action is intended to help bring ozone nonattainment areas into compliance and to help keep attainment and near nonattainment areas from going into nonattainment. Additionally, the commission is required under the TCAA, §382.039 to protect the public from exposure to hazardous air contaminants from motor vehicles. The VOC reductions associated with California LEV II would help achieve that mandate. These rules 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. These rules 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 and authorized under TCAA, §§382.011, 382.012, 382.017, 382.019, and 382.039. There were no comments submitted on the draft regulatory impact analysis during the public comment period.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for these rules in accordance with the Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rulemaking is to implement the California LEV II program in the State of Texas. This rulemaking action will act as an air pollution control strategy to reduce NO_x emissions necessary to demonstrate attainment with the ozone NAAQS. Promulgation and enforcement of the rules will not burden private real property. Although the rules 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 42 USC, §7410. Specifically, the emissions limitations within this rulemaking action were developed in order to meet the ozone NAAQS set by the

EPA under 42 USC, §7409. States are primarily responsible for ensuring attainment and maintenance of the NAAQS, once the EPA has established them. Under 42 USC, §7410 and related provisions, states must submit, for EPA approval, 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 rules is to implement the California LEV II program throughout the state necessary to meet the air quality standards established under federal law as NAAQS. Consequently, the exemption which applies under these rules is that of an action reasonably taken to fulfill an obligation mandated by federal law. Therefore, these rules will not constitute a takings under Chapter 2007 of the Texas Government Code.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission determined that this 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 Resource Code, §§33.201 et. seq.), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. 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 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 policy applicable to this rulemaking action is the policy that commission rules comply with regulations in 40 Code of Federal Regulations, 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.

There were no comments submitted on the consistency of the proposed rules with the CMP during the public comment period.

HEARING AND COMMENTERS

The commission held public hearings on this proposal on January 24, 2000 in El Paso; January 25, 2000 in Austin; January 26, 2000 Longview and Irving; January 27, 2000 in Dallas and Lewisville; January 28, 2000 in Fort Worth; January 31, 2000 in Beaumont and Houston; and February 9, 2000 in Denton. The comment period was originally scheduled to close on February 1, 2000, but was extended until 5:00 p.m. on February 14, 2000. (See the January 21, 2000 issue of the *Texas Register* (25 TexReg 461). The following 764 commenters, provided both oral and/or submitted written testimony: State Representative Tommy Merritt (Representative Merritt); 41 organizations: EPA, Alamo Area Council of Governments (AACOG), City of Dallas (Dallas), Clean Water Action (CWA), AIR, steering committee, Terra Industries Inc. (Terra), Clean Air Force of Central Texas (Clean Air Force), Independent Cattlemen's Association of Texas (Cattlemen), City of Cleburne (Cleburne), U.S. Public Interest Research Group (USPIRG), ExxonMobil Chemical (ExxonMobil), Texas Oil & Gas Association (TxOGA), Methanex, American Methanol Institute (AMI), Sustainable Energy and Economic Development Coalition (SEED), General Motors (GM), Ford, Toyota, Nissan North America (Nissan), Texas Automobile Dealers Association, Texas Coalition of Vehicle Choice, American Automobile Association of Texas (AAA of Texas), Association of International Automobile

Manufacturers (AIAM), AAMA, Alliance of Trade Association of Aluminum Vehicle Manufacturers (ATAAVM), Engine Manufacturers Association (EMA), Electric Vehicle Association of the Americas (EVAA), Neighbors for Neighbors (Neighbors), Texas Citizens for a Sound Economy (Texas Citizens), Massachusetts Public Interest Research Group (MASSPIRG), Natural Resources Council of Maine (NRC-Maine), Union of Concerned Scientists (Concerned Scientists), Dallas Sierra Club (Sierra-Dallas), American Lung Association (ALA), Sierra Club-Lone Star Chapter (Sierra-Lone Star), Public Citizens; 35 auto dealerships: Round Rock Nissan, Highland Autoplex, Town North Nissan-Mitsubishi, Maxwell Chrysler-Plymouth South, Elgin Ford, Maxwell Ford, Maxwell Superstore, Maxwell Automotive Group, Northwest Maxwell Chrysler-Plymouth, Bob Utter Ford, Boerne Superstore, Fred Pilkilton Motors, Elder Chrysler-Plymouth-Dodge-Jeep-Eagle, Keating Chevrolet-Dodge-Chrysler-Plymouth-Jeep, Weyel Buick-Jeep, Kingwood Dodge, Weaver Brothers Motor Co., La Grange Chrysler-Plymouth-Dodge-Jeep, Longhorn Dodge Inc., Russell Whatley Motor Co., Four Stars Auto Ranch, Hooks Ford-Chrysler, El Dorado Chevrolet, Jim McNatt Toyota-Dodge, El Dorado Chrysler-Plymouth-Jeep, Benny Boyd Chrysler-Plymouth-Dodge-Jeep, Patterson Auto Center, Larry Slack Ford-Mercury-Chrysler-Plymouth-Dodge-Jeep, Smith South Plains Dodge-Chrysler-Plymouth-Jeep, Lynn Smith Chrysler-Jeep, Auto Inc., Silsbee Ford-Lincoln-Mercury-Toyota, Berry Chrysler-Plymouth-Dodge-Jeep-Eagle, Huffines Dodge, Fiesta Lincoln-Mercury-Dodge; and 687 individuals.

The following commenters generally supported the proposal: Representative Merritt; 25 organizations: Cleburne, steering committee, AACOG, Dallas, CWA, SEED, AIR, ALA, Terra, AMI, Methanex, Concerned Scientists, EVAA, Clean Air Force, Public Citizens, Neighbors, Sierra-Lone Star, USPIRG, Sierra-Dallas, MASSPIRG, NRC-Maine; and 650 individuals.

The following commenters generally opposed the proposal: 16 organizations: EPA, GM, Nissan, Toyota, Ford, ExxonMobil, AAMA, ATAAVM, TxOGA, EMA, AAA of Texas, AIAM, TADA, Texas Citizens for a Sound Economy, Independent Cattlemen's Association, Texas Coalition of Vehicle Choice; the 35 auto dealerships; and 37 individuals.

ANALYSIS OF TESTIMONY

Emissions Reductions

SEED, MASSPIRG commented that the California LEV II program would achieve better emission reductions than the federal program.

EPA, GM, Toyota, Nissan, Ford, ExxonMobil, AAA Texas, AAMA, ATAAVM, TxOGA, EMA, AIAM; 34 auto dealerships; and 19 individuals commented that the federal Tier 2 program would provide better emission reductions or that the difference between the two programs was negligible and recommended that the state remain with the federal Tier 2 standards.

Subsequent to commission rules being proposed, staff worked with a number of organizations to develop an analysis of the emission reduction potential of each of these programs as they could be implemented in Texas. This comparison was made for the DFW and HGA areas. It was assumed that emission reductions from all other areas of the state would follow a similar trend to the DFW and HGA areas.

The commission staff and ERG worked closely with the following organizations to conduct an analysis of NO_x reductions achieved under the California LEV II program and federal Tier 2 program: the EPA, AAMA and their contractor AIR, Public Citizens and their contractors, and two local council of governments (NCTCOG and HGAC).

With both programs starting in model year 2004, the modeling indicates a NO_x benefit of 1.5 - 2.0 tpd in 2007 with the federal Tier 2 program. This benefit decreases over time and is essentially equivalent to the California LEV II program by about 2018. By 2020 the California LEV II program surpasses the federal Tier 2 program for NO_x reductions by about 0.5 tpd. For VOC reductions, the modeling indicates a benefit of less than 2.0 tpd in 2007 with the California LEV II program. By 2020 there is an approximate 8.5 - 10 tpd benefit in VOCs with the California LEV II program. The VOC and NO_x benefits remain regardless of inclusion or exclusion of the ZEV mandate in the California LEV II program.

Since the early NO_x reductions of the Tier 2 program are eventually surpassed by those reductions achieved by California LEV II program, the commission performed an analysis to determine the optimal year to begin the California LEV II program in terms of NO_x emission reductions. Staff found that implementation of the California LEV II program beginning with model year 2007 provided the most overall NO_x reductions. In this case, NO_x emissions reductions for California LEV II through 2020 for DFW and HGA achieve from 0.5 - 1.5 tpd benefit over federal Tier 2. As in the initial analysis, the reductions in VOC are greater for California LEV II in all years analyzed.

Based on this analysis, the commission has revised these rules to change the implementation date for California LEV II to model year 2007. This will provide the state with the higher NO_x benefits associated with the federal Tier 2 program during the 2004 - 2007 time frame and then transition to the higher NO_x and VOC benefits associated with the California LEV II program for model year 2007 and later years. However, the commission will conduct a mid-course review of Attainment Demonstration requirements in 2004 to determine any SIP revisions that need to be accomplished. Included in this mid-course review will be an evaluation of the benefits from the federal Tier 2 program and any associated advanced vehicle technologies being implemented in Texas. At that time the state will reassess the need to implement California LEV II standards in 2007.

There will be some benefit to the NO_x reductions needed for the SIP attainment demonstration because model year 2007 will actually begin entering the fleet in calendar year 2006. In addition to this contribution to the SIP attainment demonstration, the commission adopts these rules for two other reasons. First, these rules will encourage research into more cost effective ways to meet the ZEV mandate which is part of the California LEV II program. In this way, these rules help advance cleaner vehicle technology. Second, the commission adopts these rules to take advantage of the clearly beneficial VOC reductions of California LEV II over federal Tier 2. While these VOC reductions contribute to the attainment of the ozone NAAQS, they are even more important in their immediate health benefits. VOC emitted from vehicles include many toxic compounds which the commission is specifically mandated to control under the THSC, §382.039. As the implementation of these rules draws closer, the commission will be looking to see if the automobile

industry has incorporated the tighter evaporative emission systems into Tier 2 vehicles in order to determine if these rules are still needed for VOC reductions.

AAMA commented that three additional issues should be considered when evaluating the differences between the California LEV II and federal Tier 2 programs. These included: 1) that the automobile manufacturers have indicated that they intend to build one 50-state evaporative system designed to meet the more stringent California standard; 2) the benefit from the ZEV component is only a reality if the manufacturers sell 10% ZEVs in the state, which is very unlikely; and 3) the electric utility emissions from recharging ZEVs were not included.

The commission encourages the automobile manufacturers to produce one evaporative system for all 50 states that meets the more stringent California LEV II standards. However, as there is no federal mandate for a 50-state system, the commission does not feel it appropriate to include this as a part of the modeled emissions reductions. If the industry actually does implement a 50-state system in the future, the commission may re-evaluate the need for these rules. The advanced vehicle technology (or ZEV) credit for California LEV II was included in the modeling because Texas adopted the ZEV component as a part of California LEV II. The commission is aware of the difficulties manufacturers have had in complying with the ZEV requirements and supports flexibilities that are being offered in meeting these requirements, such as partial offsets by SULEVs. In addition, with the state delaying the implementation of California LEV II, the commission anticipates that there will be additional advances in vehicle technologies by 2007 that will further facilitate complying with the 10% requirements. The commission agrees that the

electric utility emissions resulting from recharging ZEVs may have some impact on the overall emission reduction benefit from these vehicles. However, the actual impact is difficult to quantify and, with SULEVs being used a partial offsets (which do not generate emissions from utilities), the commission anticipates the overall impact will be minimal. Additionally, the commission is implementing more stringent standards for electric generating facilities, which will lower this impact.

ZEV Component

EVAA, Terra, AMI, Methanex, Concerned Scientists, Clean Air Force, MASSPIRG, Public Citizens, and 29 individuals commented that they supported the adoption of the California LEV II program adding that they particularly supported the advance technology vehicle component which requires the auto manufacturers fleet sales be made up of at least 10% ZEV.

The commission agrees with the commenters on the importance of new, cleaner vehicle technologies being introduced into the market.

TxOGA, GM, Nissan, Toyota, Ford, AAMA, 34 auto dealerships, and 21 individuals commented that they opposed the California LEV II program mainly due to the advanced technology vehicle component which requires the auto manufacturers' fleet sales be made up of at least 10% ZEV.

The commission believes it is important for the state to encourage the development and implementation of new vehicle technologies. The commission is also aware of the difficulties

manufacturers have had in complying with the ZEV requirements and supports flexibilities that are being offered in meeting these requirements, such as partial offsets by SULEVs. In addition, with the state delaying the implementation of California LEV II, the commission anticipates that there will be additional advances in vehicle technologies by 2007 that will further facilitate complying with the 10% requirements. The commission will reassess the ZEV requirement during the mid-course review of the attainment demonstrations.

Tier 2 Flexibility

EPA, GM, Toyota, Ford, AAMA, EMA, Cattlemen, Texas Citizens, 34 auto dealers, and 23 individuals commented that Tier 2 is a more flexible program because it allows certification levels above and below the 0.7g/mi as long as the average is met. This could impact the ability of the manufacturers to produce the larger, more specialized vehicles which are more difficult to manufacture to the California LEV II standard.

The commission agrees that the Tier 2 program provides manufacturers with more flexibility for the heavier vehicles. However, with the state delaying the implementation of the California LEV II program until 2007, the commission does not anticipate significant problems with vehicle availability. The commission will take the commenters' concerns into consideration during the mid-course evaluation for the attainment demonstrations.

Commission Statutory Authority

Ford and AAMA questioned the commission's ability to propose regulations which impose a condition precedent on the sale of federally-certified motor vehicles in Texas.

The commission disagrees with the commenters' interpretation of the THSC, §382.019(b), and instead believes that the provision was meant only to prohibit the commission from implementing its own program to approve, certify, or inspect new vehicles when there is already a federally authorized program in place. In this case the federally authorized program is the California LEV II program. A car which is certified under the California LEV II program is issued a federal certification as a California vehicle and is thereby certified under federal law. The Texas Legislature did not prohibit the commission from using a certification from outside the state. The Texas Legislature meant to keep the state from duplicating existing programs.

The commenters noted that previously this section of the THSC contained a requirement for the commission to submit to the 1993 Texas Legislature a report about the feasibility of adopting the California motor vehicle emission standards. That provision referred very specifically to the California program, however, this provision of the THSC has since been repealed. However, the general language of what is now THSC, §382.019(b), does not contain any specific reference to the California program. Under federal law, California standards are the only non-federal standards that Texas can adopt. If the legislature meant to prohibit the commission from adopting California standards, it could have specifically done so in any one of the revisions having to do with the California program.

Given this reasoning the commission believes that THSC, §382.019(b), does not prohibit the adoption of all or part of the California program.

EPA commented that Texas should submit an Attorney General's statement regarding Texas' authority to adopt another state's future rulemaking or other demonstration of legal authority. As an alternative, EPA suggested Texas remove the portions of the California LEV II rule incorporating future rulemakings.

Although the commission disagrees with EPA's concerns regarding the adoption of another state's future rulemakings it deleted the portions of the California LEV II rule that incorporate future California rulemakings in order to give better consideration of each change adopted by the State of California.

Increased Vehicle Cost

SEED, Cleburne, and 26 individuals commented the increased cost of a California LEV II vehicle was small and well worth the emissions reductions that would be achieved.

The commission agrees. Additionally, these estimates are conservative in that they do not subtract the cost of compliance with federal Tier 2 standards which would be required without these rules.

GM, Ford, Cattlemen, and five individuals opposed the California LEV II proposal due to probable increases in vehicle costs and the possibility that this increased cost might cause some individuals to extend the life of older, dirtier vehicles.

The costs associated with the California LEV II standards have been calculated by CARB and include the incremental costs of both exhaust and evaporative controls required on passenger cars, light-duty trucks, and medium duty vehicles. The total cost includes the cost of parts and internal costs to automobile manufacturers. The additional cost per vehicle varies depending upon the standard to which the vehicle is certified. The CARB has estimated that the retail price increase will range from $68 to $206 with an average additional retail cost of $107, which when based on an average vehicle cost of $19,000, equals an average increase in vehicle cost of less than 1.0%. The EPA projects that for the Tier 2 program the average cost will range from less than $100 per passenger car, less than $200 for light-duty trucks. Based on these estimations, the commission does not believe that the increased retail costs for either California LEV II or federal Tier 2 vehicles will be significant. The commission has made no change to the rule language in response to these comments.

State Cost of Administration and Enforcement of California LEV II Program

AIAM, EMA, GM, Toyota, Ford, and one individual expressed concerns about the cost of a California LEV II program if adopted by the State of Texas. These concerns include the costs associated with new vehicle registration (to ensure that only California certified vehicles are allowed to register in Texas)

such as educating and training all employees statewide on system changes, exemptions, monitoring, and enforcement, etc.

The commission does not anticipate new procedures or costs associated with vehicle registration or education/training for that purpose. The commission agrees that there will be additional costs associated with monitoring and enforcing a California LEV II program. The commission does not believe that the additional costs will be excessive in relation to the benefits that will be gained from implementing the California LEV II program. However, the estimated costs associated with implementing a California LEV II program will be reassessed during the mid-course review of the Attainment Demonstrations.

Dealer Inability to Trade Across State Lines

AIAM, GM, Nissan, Toyota, Ford, 35 auto dealers, and 19 individuals commented that the adoption of the California LEV II program would eliminate dealers ability to trade vehicles with dealers in other states.

The commission agrees that some flexibility will be lost under the California LEV II program for dealers to accomplish cross-border trades. However, EPA's policy on cross-border sales allows dealers to sell California LEV II certified vehicles in states that are contiguous to states that have adopted the California LEV II standards. This same policy should apply to Texas dealers beginning with model year 2007. In addition, air quality modeling has shown that significant emission reductions are necessary in the ozone nonattainment areas to reach attainment of the

NAAQS. The modeling has shown that the California LEV II program will provide greater air quality benefits than the federal Tier 2 program if implemented in 2007. The commission believes that, based on the modeling and EPA's policy on cross-border sales, the statewide benefits of the California LEV II program being implemented in 2007 outweigh the loss of some flexibility regarding cross-border trading. The commission has made no change to the rule language in response to these comments.

Dirty SUVs:

Representative Merritt, Concerned Scientists, MASSPIRG, and eight individuals commented that they supported "closing of the loophole" that currently allows SUVs to meet a less strict emission standard.

The commission agrees. Both the California LEV II and federal Tier 2 programs require most SUVs to meet the same emission standards as other passenger vehicles.

"Gas Guzzling" Vehicle Tax

Two individuals commented that a tax should be imposed on "gas guzzling" vehicles.

Establishing a tax on vehicles with poor gas mileage (gas guzzlers) is beyond the scope of this rulemaking. This type of fee initiative would require legislative action.

Early Entry into California LEV II

One individual commented that the state needs to adopt California LEV II in 2002 instead of 2004.

In accordance with the FCAA and EPA regulations, model year 2004 is the earliest that the state could adopt the California standards. Based on modeling that shows the state will get greater NO_x emission reductions initially from the federal Tier 2 program, the commission has adopted rules to implement California LEV II with model year 2007, at which time the California LEV II program provides greater emission benefits. The federal Tier 2 standards start nationwide in 2004. The start date is based on the FCAA requirement to provide a lead-in period to automobile manufacturers which will allow them adequate time to respond to changes in vehicle emission requirements. The commission made no change to the rule language in response to this comment.

Vehicle Emission Control Systems

TxOGA expressed concern regarding the vehicle emission system warranties of California LEVs being voided when being driven on federal fuels. AAA of Texas, mentioned that the California LEV II program requires manufacturers to track warranty repairs to emissions-related components and force recalls if necessary.

Several other states have adopted California LEV standards and continue to use federal fuels. The commission is not aware of any vehicle emission warranty issues that have developed as a result. However, in Texas, with California LEV II being implemented with model year 2007, the California LEV II vehicles will be operated on federal low-sulfur gasoline. In addition, by adopting the California LEV II program, components such as manufacturer recalls will also apply in Texas. The commission has made no change to the rule language in response to these comments.

El Paso Air Quality

Two individuals commented that El Paso would not meet the air quality standards because of pollution from Mexico, adding that El Paso citizens should not be discriminated against because of Mexico's pollution problems.

The purpose of these rules is to adopt the California LEV II program throughout the state to reduce the emissions of NO_x and VOCs necessary for the state to be able to demonstrate and maintain attainment of the ozone NAAQS. These rules will adopt the California LEV II program for all counties in Texas; thus, El Paso will also benefit from the program. The commission has made no change to the rule language in response to this comment.

Section 114.165(f)

EPA commented that the commission California LEV rule, §114.165(f), regarding reporting requirements, is too vague and therefore, cannot be enforced.

The commission amended this subsection to be more specific and added wording to further clarify the reporting requirements. Additionally, the commission added the word "existing" to clarify that these rules would not require manufacturers to keep certain documents prior to receiving notice, only that existing documentation would have to be made available upon request.

Section 114.166(g)

The EPA commented that §114.166(g) regarding recall of motor vehicles potentially raises some due process concerns. EPA acknowledges that Texas would afford due process when it enforces the CARB action, but comments that it may not be adequate due process for vehicle owners in Texas who were not present during the underlying California action.

The commission believes that the California rules provide for sufficient participation by Texas vehicle owners in the California action. The California regulations require that any manufacturer of a vehicle subject to a recall must notify all owners of that vehicle that repairs to the vehicle are available at the manufacturer's expense (See 13 CCR Division 3, Chapter 2, Articles 2.1 and 2.2). This requirement is not limited to California residents, therefore, Texas residents will be afforded the same opportunity for participation in the California recall action as would California residents. For this reason, the commission does not agree that there is a concern regarding due process. No change to the rule has been made in response to this comment.

Section 114.167

The EPA commented that §114.167, which allows the TNRCC to certify modified parts as exempt, must either include CARB criteria for the certification or must allow only CARB to certify modified parts in order to maintain identicalness with the California program.

The commission added CARB criteria to §114.167(c) to address this comment. Therefore, a finding by the commission that a modified part is exempt would use the same criteria as the California program.

STATUTORY AUTHORITY

The new sections are adopted under the Texas Water Code (TWC), §5.103, which provides the commission the authority to adopt rules necessary to carry out its powers and duties under the TWC. The amendments are also adopted under the THSC, 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; and §382.039, which requires that the commission develop and implement transportation programs and other measures necessary to demonstrate and maintain attainment of the national ambient air quality standards and to protect the public from exposure to hazardous air pollutants from motor vehicles.

SUBCHAPTER E: LOW EMISSION VEHICLE

DIVISION 2: CALIFORNIA LOW EMISSION VEHICLE REQUIREMENTS

§§114.160 - 114.167, 114.169

§114.160. 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 this division, shall have the following meanings, unless the context clearly indicates otherwise.

(1) The definitions found in Title 13 of the California Code of Regulations, §1900, as effective on November 27, 1999, are hereby incorporated by reference.

(2) Aftermarket part - Any part of a motor vehicle emission control system sold for installation on a vehicle after the original sale of the vehicle.

(3) California Air Resources Board (CARB) - Defined in the California Health and Safety Code, §39003, (1991), and empowered to regulate sources of air pollution in California, including motor vehicles, in accordance with the California Health and Safety Code, §§39500 et seq.

(4) Dealer - Any person(s) who, in the preceding 12-month period, obtained greater than 50% of their gross income from the sale or lease of new or used passenger cars or light-duty trucks.

(5) Emission control labels - Permanent stickers affixed to all 1979 and subsequent model-year passenger cars and light-duty trucks, certified for sale in California, in accordance with Title 13, California Code of Regulations, §1965, "California Motor Vehicle Emission Control Label Specifications," as effective November 27, 1999, and incorporated herein by reference.

(6) Emission control system - The combination of emission-related parts which controls air pollutant emissions from a motor vehicle or motor vehicle engine, including all associated parts and components.

(7) Executive order - A document issued by the California Air Resources Board certifying that a specified engine family or model year has met all applicable Title 13, California Code of Regulations requirements for certification and sale in California.

(8) Manufacturer's advisory correspondence - A document issued by the California Air Resources Board, which is a policy interpretation for further clarification of the California Code of Regulations applicable to motor vehicles.

(9) Model year - The manufacturer's annual production period for each engine family which includes January 1 of a calendar year or, if the manufacturer has no annual production period, the calendar year. In the case of any motor vehicle manufactured in two or more stages, the time of manufacture shall be the date of completion of the chassis.

(10) New motor vehicle - A motor vehicle, the equitable or legal title to which has never been transferred to the ultimate purchaser.

(11) Offset vehicle - A federally-certified light-duty vehicle that has been certified by the California Air Resources Board as meeting the standards and procedures set forth in the "Guidelines for Certification of 1983 and Subsequent Model Year Federally Certified Light-Duty Motor Vehicles for Sale in California" as effective July 12, 1991.

(12) Recall - A manufacturer's issuing of notices directly to consumers that vehicles in their possession or control should be corrected, or a manufacturer's efforts to actively locate and correct vehicles in the possession or control of consumers.

(13) Recall campaign - A plan approved by the California Air Resources Board or the commission, by which the manufacturer will effect the recall of non-complying vehicles.

(14) Replacement part - Any aftermarket part which is intended to replace an original equipment emissions-related part and which is functionally identical to the original equipment part in all respects which in any way affect emissions (including durability), or a consolidated part.

(15) Ultimate purchaser - With respect to any new motor vehicle or new motor vehicle engine, the first person who in good faith purchases a new motor vehicle or new motor vehicle engine for purposes other than resale.

(16) Used vehicle - Any motor vehicle which is not a new motor vehicle.

(17) Zero emissions vehicle - A passenger car or light-duty truck which produces zero emissions under any and all operation conditions.

§114.161. Applicability.

(a) In accordance with the authority under Title 42 United States Code (42 USC), §7507 (New Motor Vehicle Emission Standards in Nonattainment Areas), the commission incorporates by reference the California Low Emission Vehicle Program as adopted by the California Air Resources Board (CARB) at Title 13, California Code of Regulations (13 CCR), §1956.8(h) as effective May 15, 1999; §1960.1 as effective November 27, 1999; §1960.5 as effective September 30, 1991; §1961 and §1962 as effective November 27, 1999; §1964 as effective February 23, 1990; §§1965, 1976, and 1978 as effective November 27, 1999; §2047 as effective May 31, 1988; §§2101-2107 as effective November

27, 1999; §2108 and §2109 as effective December 30, 1983; §2110 as effective November 27, 1999; §2111 as effective January 26, 1995; §2112 as effective November 27, 1999; §2113 as effective January 26, 1995; §2114 as effective November 27, 1999; §§2115-2118 as effective January 26, 1995; §2119 as effective November 27, 1999; §§2120-2129 as effective January 26, 1995; §2130 as effective November 27, 1999; §§2131-2136 as effective January 26, 1995; §§2137-2140 as effective November 27, 1999; §2141 and §2142 as effective February 23, 1990; §§2143-2148 as effective November 27, 1999; §§2150, 2151, 2176, and 2221 as effective December 30, 1983; and §2222 and §2224 as effective August 16, 1990.

(b) The requirements of this division are applicable to all model year 2007 and subsequent model year passenger cars, light-duty trucks, and medium-duty vehicles sold, leased, offered for sale or lease, imported, delivered, purchased, rented, acquired, or received in the State of Texas.

(c) In accordance with the requirements of 42 USC, §7507, the commission will apply technical guidance issued by the CARB relative to the implementation of 13 CCR, to include, but not limited to, manufacturer's advisory correspondence and mail-outs to all vehicles covered in this division.

§114.162. Emissions Requirements and Prohibitions.

(a) Effective for model year 2007 and subsequent model years, except as provided under §114.163 of this title (relating to Exemptions), no person shall sell, purchase, lease, rent, acquire, or

receive any new motor vehicle subject to the requirements of this division in the State of Texas that has not received a California Air Resources Board (CARB) executive order for all applicable emission requirements of Title 13, California Code of Regulations (13 CCR), §§1956.8(h), 1960.1, 1960.5, 1961, 1962, 1964, 1976, 1978, and 2047, as amended, and incorporated by reference in §114.161 of this title (relating to Applicability).

(b) Effective for model year 2007 and subsequent model years, each manufacturer shall comply with the fleet average requirements in accordance with the procedures in 13 CCR, §1961(b), based on passenger cars and light-duty trucks delivered for sale in Texas.

(c) Effective for 2007 and subsequent model years, each manufacturer shall comply with the phase-in requirements in accordance with 13 CCR, §1961(b), based on passenger cars, light-duty trucks, and medium-duty vehicles delivered for sale in Texas.

(d) Effective for model year 2007 and subsequent model years, each manufacturer shall comply with the zero emission vehicle percentage requirements in accordance with the procedures in 13 CCR, §1962(b).

(1) No motor vehicle manufacturer shall be required to comply with the zero emission vehicle percentage requirements prior to model year 2007.

(2) Small volume manufacturers, as defined in §114.160(1) of this title (relating to Definitions) shall not be required to meet the zero emission vehicle percentage requirements.

(e) No person shall sell, purchase, lease, rent, acquire, or receive any new motor vehicle subject to the requirements of this division unless the vehicle possesses a valid emission control label in accordance with the requirements of 13 CCR, §1965, as effective November 27, 1999.

(f) No dealer shall sell, lease, offer, or deliver for sale any new motor vehicle subject to this division unless the vehicle conforms to the following standards and requirements.

(1) Ignition timing shall be set to manufacturer's specification with an allowable tolerance of ± 3 degrees.

(2) Idle speed shall be set to manufacturer's specification with an allowable tolerance of ± 100 revolutions per minute.

(3) All required exhaust and evaporative emission controls shall be operating properly.

(4) All vacuum hoses and electrical wiring for emission controls shall be correctly routed and connected.

(5) Idle mixture shall be set to manufacturer's specification or according to manufacturer's recommended service procedures.

§114.163. Exemptions.

The following new motor vehicles shall be exempt from the requirements of §114.162 of this title (relating to Emissions Requirements and Prohibitions):

(1) a vehicle transferred by inheritance;

(2) a vehicle transferred by court decree;

(3) a vehicle that is purchased by a nonresident prior to establishing residency in the State of Texas; and

(4) a vehicle which has been certified to standards promulgated in accordance with Title 42 United States Code, §7521, and which is in the possession of a rental agency in Texas and that is next rented with a final destination outside of Texas.

§114.164. New Vehicle Certification and Testing.

(a) All new motor vehicles subject to this division sold or leased in the State of Texas, shall be certified as meeting the motor vehicle emission requirements specified in §114.162 of this title (relating to Emissions Requirements and Prohibitions), as determined by testing conducted in accordance with the testing procedures of Title 13, California Code of Regulations (13 CCR), §1956.8(h) as effective May 15, 1999; and §§1960.1(k), 1961(d), 1962(e), 1976(b) and (c), and 1978(b) as effective November 27, 1999. For the purpose of compliance with this subsection, new vehicle certification testing determinations and findings made by the California Air Resources Board (CARB) shall be applicable to the State of Texas.

(b) All manufacturers of new vehicles subject to the requirements of this division, certified for sale in California and sold or leased in Texas, shall conduct inspection testing in accordance with 13 CCR, §2106 as effective November 27, 1999, and in accordance with the testing procedures incorporated in 13 CCR, §1961(d). For the purposes of compliance with this subsection, inspection testing determinations and findings made by the CARB shall be applicable in the State of Texas.

(c) For the purposes of detection and repair of vehicles in Texas failing to meet the applicable motor vehicle emission requirements specified in §114.162 of this title, the commission may conduct, after consultation with the CARB, in-use vehicle enforcement testing in accordance with the protocol and testing procedures specified in 13 CCR, §2136 as effective January 26, 1995, and §§2137-2140 as effective November 27, 1999, and in accordance with the testing procedures incorporated in 13 CCR,

§§1956.8(h), 1960.1(k), 1961(d), 1962(e), 1976(b) and (c), and 1978(b). For the purpose of progress planning and analysis, in-use surveillance testing determinations and findings made by the CARB shall be applicable in the State of Texas.

(d) New vehicle models subject to the requirements of this division, prior to being offered for sale or lease in Texas, must meet the motor vehicle emission requirements specified in §114.162 of this title as determined by new vehicle compliance testing, conducted in accordance with 13 CCR, §§2101, §2106, and §2107 as effective November 27, 1999; §2108 and §2109 as effective December 30, 1983; §2110 as effective November 27, 1999; and §2150 and §2151 as effective December 30, 1983, and in accordance with the testing procedures incorporated in 13 CCR, §§1956.8(h), 1960.1(k), 1961(d), 1962(e), 1976(b) and (c), and 1978(b).

§114.165. Reporting Requirements.

(a) Effective for model year 2007 and subsequent model years, each manufacturer shall calculate compliance with the fleet average non-methane organic gases (NMOG) value using the number of passenger cars and light-duty trucks delivered for sale to Texas in accordance with Title 13, California Code of Regulations (13 CCR), §1960.1 and §1961 as effective November 27, 1999. Each manufacturer shall calculate and report, in accordance with the procedures specified in 13 CCR, §1960.1 and §1961: the number of vehicles by engine family or test group certified to the standards in 13 CCR, §§1960.1, 1961, and 1962 as effective November 27, 1999; the number of NMOG credits and debits, in grams per mile NMOG, earned for the model year; the devaluation of NMOG credits earned

in previous model years; the transfer of NMOG credits to another manufacturer; and the percent phase-in of vehicles certified to the standards established in 13 CCR, §1961. Each manufacturer shall submit the report to the executive director no later than March 1 after the completed model year. Each manufacturer shall maintain documentation of the fleet average NMOG report for a period of five years.

(b) Effective for model year 2007 and subsequent model years, each manufacturer shall calculate compliance with the medium-duty phase-in requirements using the number of medium-duty vehicles delivered for sale to Texas in accordance with 13 CCR, §1960.1 and §1961. Each manufacturer shall calculate and report, in accordance with the procedures established in 13 CCR §1961: the number of vehicles or engines by engine family or test group; the number of vehicle equivalent credits (VEC) or vehicle equivalent debits (VED) earned for the model year; the devaluation of VEC earned in previous model years; the transfer of VEC to another manufacturer; and the percent phase-in of vehicles certified to the standards established in 13 CCR, §1956.8(g) or (h) as effective May 15, 1999, and §§1960.1, 1961, and 1962. Each manufacturer shall submit the report to the executive director no later than March 1 after the completed model year. Each manufacturer shall maintain documentation of the medium-duty phase-in report for a period of five years.

(c) Commencing with the 2007 model year, each manufacturer shall annually submit to the executive director, within 60 days after the end of each model year, a zero emission vehicle (ZEV) report detailing compliance with the ZEV requirements in §114.162(d) of this title (relating to Emissions Requirements and Prohibitions). This report shall be prepared in accordance with the

procedures specified in 13 CCR, §1962, and shall include, at a minimum, adequate documentation to support findings, trends analysis of previous five years of available sales data, and proposed strategies for future compliance with these strategies. Each manufacturer shall maintain documentation of the ZEV sales report for a period of five years.

(d) Effective for model year 2007 and subsequent model year passenger cars, light-duty trucks, and medium-duty vehicles, each manufacturer shall submit to the executive director recall plans and recall campaign progress reports for vehicles registered in Texas in accordance with the procedures and timelines in 13 CCR, §2109 as effective December 30, 1983; §2110 as effective November 27, 1999; §2111 as effective January 26, 1995; §2112 as effective November 27, 1999; §2113 as effective January 26, 1995; §2114 as effective November 27, 1999; §§2115-2118 as effective January 26, 1995; §2119 as effective November 27, 1999; §§2120-2129 as effective January 26, 1995; §2130 as effective November 27, 1999; §§2131-2136 as effective January 26, 1995; §§2137-2140 as effective November 27, 1999; §2141 and §2142 as effective February 23, 1990; and §§2143-2148 as effective November 27, 1999.

(e) All manufacturers offering vehicles for sale or lease in Texas shall, upon request, submit to the executive director test results or reports obtained and prepared in compliance with §114.164 of this title (relating to New Vehicle Certification and Testing) and in accordance with the reporting requirements specified in 13 CCR, §§1960.1(k), 1961(d), and 1962(e).

(f) All manufacturers or dealers of new motor vehicles sold, offered for sale, or leased in Texas shall, upon request, provide the executive director with any documentation requested by this section, and any other existing pertinent data requested by the commission.

§114.166. Enforcement.

(a) The commission may conduct inspection and surveillance of new and used motor vehicles for the purposes of compliance with the requirements of this division.

(1) Inspections by the commission or its agents, in accordance with this section may be conducted on any premises owned, operated, used, leased, or rented by any dealer. Inspections may extend to all emission-related parts and operations, and may require the on-premises operation and testing of engine or vehicle, and inspection of any related records, including records of emission-related part repair performed under warranty.

(2) The commission or its agents may perform functional tests, steady-state tests, and other tests as reasonably necessary. In addition, the California Motor Vehicle Inspection Program emissions tests standards in Title 13, California Code of Regulations (13 CCR), §2176, as effective December 30, 1983, and applicable to the appropriate model year vehicle, may be used by the commission to verify compliance with the requirements of this division.

(b) Any order or enforcement action taken by the California Air Resources Board (CARB), to correct noncompliance with any section of 13 CCR, which results in the recall of any motor vehicle in accordance with 13 CCR, §2109 as effective December 30, 1983; §2110 as effective November 27, 1999; §2111 as January 26, 1995; §2112 as effective November 27, 1999; §2113 as effective January 26, 1995; §2114 as effective November 27, 1999; §§2115-2118 as effective January 26, 1995; §2119 as effective November 27, 1999; §§2120-2129 as effective January 26, 1995; §2130 as effective November 27, 1999; and §§2131-2135 as effective January 26, 1995, shall be applicable to all vehicles subject to this division, unless the commission determines, within 30 days of the issuance or initiation of the order or enforcement action, that the CARB order or enforcement action is not applicable to those vehicles in Texas.

(c) Any voluntary or influenced emission-related recall campaign initiated by a manufacturer in accordance with 13 CCR, §§2113-2121, shall apply to all vehicles subject to this division unless the commission determines, within 30 days of the commencement of the emission-related recall campaign, that the order or enforcement action is not applicable to those vehicles in Texas.

§114.167. Aftermarket Parts.

(a) The requirements of this section shall apply to all aftermarket parts which are sold, offered for sale, or advertised for sale for use on vehicles which are subject to the requirements of this division.

(b) No person engaged in a business which involves the sale of emission control systems, or associated parts, shall offer for sale, sell, or install, an emission control system, or associated part, unless it meets the requirements specified in this section of this division.

(c) No person shall install, sell, offer for sale, or advertise any device, apparatus, or mechanism intended for use with, or as a part of, any required emission control system which alters or modifies the original design or performance of any such emission control system. The requirements of this subsection shall not apply to an alteration, modification, modifying device, apparatus, or mechanism found by the commission, in accordance with 13 CCR, §§2221-2224 to either:

(1) not reduce the effectiveness of any emission control system; or

(2) result in emissions from any such modified or altered vehicle which are at levels which comply with applicable state or federal standards for that model-year vehicle being modified or converted.

(d) Any replacement part, including consolidated parts, offered for sale or sold in California and subject to Title 13, California Code of Regulations (13 CCR), §§2221-2224 as effective January 26, 1995, shall be presumed to comply with this section unless the California Air Resources Board makes a finding to the contrary in accordance with 13 CCR, §§2221-2224.

(1) Any replacement part, including consolidated parts, not offered for sale or sold in California, shall be presumed to comply with this subsection, unless the commission makes a finding to the contrary in accordance with 13 CCR, §2224(a).

(2) The manufacturer of any replacement part subject to this section shall maintain sufficient records, such as performance specifications, test data, or other information, to substantiate that such a replacement part complies with this section. These records shall be open for reasonable inspection by the commission, and maintained for four years from the year of manufacture of the replacement part.

(e) The commission may require that the manufacturer of any replacement part, subject to this section, submit any records relating to such part which are maintained in accordance with subsection (d)(2) of this section. The commission may require that the manufacturer submit a reasonable number of replacement parts, typical of the manufacturer's production, for testing and evaluation. Replacement parts evaluated in accordance with this section shall be compared to the specifications contained in the applicable vehicle manufacturer application for certification. The commission may also require the manufacturer of any add-on or modified part subject to this section to submit a reasonable number of parts typical of the manufacturer's production for testing and evaluation.

§114.169. Affected Counties.

The requirements of this division shall be in effect in all counties in the State of Texas.