

The Texas Natural Resource Conservation Commission (commission) proposes 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 proposes 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 proposed sections will implement the California Low Emission Vehicle (California LEV) program in the state of Texas beginning with model year 2004.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The commission proposes 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 proposed revisions are one element of the control strategy for the proposed attainment demonstration SIPs. The purpose of these proposed rules is to adopt the California LEV throughout the state to reduce the emissions of oxides of nitrogen (NO_x) and volatile organic compounds (VOC) necessary for the state to be able to demonstrate and maintain attainment of the ozone national ambient air quality standard (NAAQS). The commission is incorporating the California rules by reference including all future revisions due to the need for the Texas program to remain identical to the program in California. For any state program that differs from the federal standards, the Federal Clean Air Act (FCAA), §177, requires the state programs to be identical.

The North Texas Clean Air Steering Committee (steering committee) representing the Dallas/Fort Worth (DFW) ozone nonattainment area requested an ozone pollution control strategy involving the adoption of the California LEV 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 proposes the adoption of the California LEV program as a NO_x control measure for the DFW area. The FCAA, Title 42 United States Code (42 USC), §7507, allows states to adopt California motor vehicles emission standards only for the entire state. The proposed rules will adopt the California LEV program for all counties in Texas. Other areas of the state face significant challenges in meeting the federal NAAQS for ozone. However, due to federal guidelines, California LEV is only allowed to be adopted statewide. The United States Environmental Protection Agency (EPA) is currently in the process of finalizing its federal Tier II standards, which will also result in significant emissions reductions statewide. There are differences between the two programs as shown in the following figure. The commission is explicitly seeking comment on the pros and cons of the two programs, especially with regard to the parameters laid out in the figure as well as the public's preference with regard to which program the state should follow.

Figure : 30 TAC Chapter 114 - Preamble

California LEV II vs. Federal Tier II

	California LEV II	Federal Tier II
Emissions	<p>Has progressively stringent VOC fleet average requirements for all vehicles. NOx standards must be also be met. Has more stringent evaporative standards.</p> <p>Additional NOx and VOC benefits over the federal program which increase over time due to progressively more stringent fleet emission reduction averages</p> <p>LEV II allows manufacturers to continue to certify to the LEV I standards up to 4% light-duty trucks (up to 8,500 lbs.) to be sold as “work trucks”.</p>	<p>Has interim and final NOx fleet averages</p>
Price	<p>About \$250 over today’s federal car</p>	<p>About \$150 more than today's federal car</p>
Availability	<p>Today, California has the full range of makes and models available in their LEV I program. It’s expected that the same range of makes and models will be available under LEV II</p>	<p>No apparent availability concerns.</p>
Advanced Technology Vehicle Sales	<p>Minimum 10% advanced vehicle requirement (zero emission vehicles) with flexibility for production of super clean conventionally powered vehicles to partially offset the 10% requirement</p>	<p>No advanced vehicle requirement</p> <p>Advanced technology vehicles may not be available for sale in Texas, as is the case today</p>

<p>Opt-in/Opt-out</p>	<p>Opt-in: States required to give manufactures a 2 model year lead time. Earliest Tx could adopt is model year 2004.</p> <p>Opt-out: A state can opt-out at any time through rule repeal</p>	<p>Opt-in: None required</p> <p>Opt-out: Elect to participate in Cal LEV</p>
<p>Coverage of Lighter Trucks and SUVs (6,000 - 8,500 lbs)</p>	<p>California LEV II covers all these vehicles by 2007 with the 4% exception mentioned above.</p>	<p>EPA has proposed to cover these vehicles fully by 2009 under Tier II.</p>
<p>Coverage of Heavy Trucks and SUVs (8,501-14,000 lbs)</p>	<p>California LEV II covers all vehicles from 0 to 14,000 lbs.</p>	<p>Tier II coverage stops at 8,500 lbs.</p> <p>EPA has come out with a proposal to cover vehicles between 8,501 and 14,000 lbs.</p>
<p>Fuel Requirement</p>	<p>Requires 30 ppm sulfur gasoline</p>	<p>Requires 30 ppm sulfur gasoline</p>
<p>Cross border Trades</p>	<p>Restricted to California and states which have adopted California standards</p> <p>Staff's understanding is that states surrounding states which have adopted Cal LEV can receive California cars and offer them for sale.</p>	<p>Allowed among states not participating in the California car program</p>

For model years 2004 to 2006, under California LEV I requirements, there are two low-emission vehicle categories to which a passenger car or lighter light-duty truck may be certified: low-emission vehicle (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 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 program also requires that at least 10% of the passenger cars and lightest light-duty trucks produced by manufacturers be zero emission vehicles (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 proposing to include 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 rule proposes to adopt the California LEV program in Texas beginning in model year 2004. The LEV II standards also begin that year. Just because the California LEV program begins in Texas at the same time the LEV II standards begin does not mean that only be LEV II vehicles will be sold in Texas. The LEV II standards do not become fully implemented until model year 2007. This phased implementation of the LEV II standards will allow manufacturers to still certify some of their vehicles in model years 2004 to 2006 under LEV I standards, as long as their fleet meets the NMOG fleet average for the applicable model year. Meeting the NMOG fleet average will also achieve significant NO_x reductions.

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 program is also very cost-effective. The CARB has 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 proposed rules will be statewide and will include reductions in NO_x and VOC. The proposed rules will benefit nonattainment areas, near nonattainment areas, and attainment areas in Texas. The proposed 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 program, there will be a 1.73% reduction in NO_x as compared to the NLEV program by 2007.

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

It is the intent of the commission to adopt 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 proposed new §114.160 incorporates by reference definitions in Title 13 of the California Code of Regulations (13 CCR), §1900, as effective on November 27, 1999, and adds definitions for advertise, aftermarket part, California Air Resources Board, dealer, emission control labels, emission control system, executive order, mail-out, 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 new §114.161 adopts the California LEV program beginning in model year 2004 and incorporates by reference the applicable California regulations and related documents concerning the California LEV program. The proposed section also requires the commission to apply technical guidance issued by the CARB.

The proposed new §114.162 will require, beginning with model year 2004 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 standards. The proposed section also requires manufacturers of passenger cars, light-duty trucks, and medium-duty trucks supplying vehicles to Texas in model year 2004 and subsequent model years to comply with the fleet average, phase-in, and ZEV requirements specified in the California LEV regulations. The California ZEV regulations require that the manufacturers' fleet sales be made up of at least 10% ZEV. The proposed 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 proposed section provides anti-tampering provisions.

The proposed new §114.163 specifies exemptions to the proposed California LEV 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 vehicles transferred for the purpose of being scrapped or dismantled in accordance with Chapter 114, Subchapter F, Division 2 (Voluntary Accelerated Vehicle Retirement).

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

The proposed 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 proposed section also requires recall reports, ZEV reports, and additional reports as needed.

The proposed new §114.166 allows the commission to conduct inspection and surveillance of motor vehicles at vehicle dealerships. The proposed 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 proposed new §114.167 requires aftermarket parts which do not meet the requirements of this proposed division, to not be sold in Texas, unless they have been certified as exempt by the CARB or the commission. Aftermarket parts include replacement parts, add-on parts, and modified parts. The proposed section also allows the commission to require, if needed, manufacturers to submit reports and/or parts for purposes of testing for compliance.

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

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 be no significant fiscal implications for any single unit of state and local government as a result of administration or enforcement of the proposed amendments. The proposed amendments to Chapter 114

would 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 program beginning with model year 2004. Units of state and local government, businesses, and individuals in Texas that own, rent, lease, register or operate vehicles after the introduction of model year 2004 will be affected, however, significant fiscal implications are not anticipated unless the entity or unit has a fleet of over 1,000 affected vehicles.

The proposed amendments would adopt the California LEV program by reference beginning with model year 2004 so that the standards and requirements in Texas will be **identical** to those in California. The California LEV program consists of the original LEV I standards and, most recently, the more stringent LEV II standards which will apply to new passenger cars, light-duty trucks, and medium-duty vehicles. In addition to the requirement for all registered vehicles in Texas to comply with the standards in the program, starting with model year 2004, automobile manufacturers will be required to comply with the fleet average NMOG exhaust emission requirements and phase-in requirements in the program for passenger cars and light-duty trucks delivered for sale in Texas. Beginning with model year 2004, automobile manufacturers will also be required to comply with the phase-in requirements in the program for medium-duty trucks delivered for sale in Texas and must also produce 10% of their fleet as ZEVs or meet other alternative criteria for compliance. Although the California LEV program begins at the same time that LEV II standards become effective, the California program phases-in LEV II standards until model year 2007. This will allow manufacturers to certify some of their vehicles in the 2004 to 2006 model years under LEV I standards as long as their fleet meets the NMOG fleet average for the applicable year. The proposed amendments also specify testing requirements and warranty

obligations; prescribe reporting requirements from vehicle manufacturers; allows the commission to conduct inspection and surveillance of motor vehicles at dealerships; and requires replacement parts, add-on parts, and modified parts to be certified as exempt by the CARB or the commission.

The steering committee representing the DFW ozone nonattainment area counties requested an air pollution control program, including the use of 13 CCR standards for the California LEV program, be established 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 proposed amendments are part of the commission response to the request from the steering committee and one element of the proposed Attainment Demonstration SIP. In addition, other areas of the state face significant challenges in meeting the ozone standards. This regulation would lead to statewide reductions in ozone precursor emissions. 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 standards.

PUBLIC BENEFIT

Mr. Orozco also has 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 of NO_x and VOC (NMOG) emissions throughout Texas, potentially improved air quality, and contribution toward demonstration of attainment with the ozone NAAQS.

There are no anticipated fiscal implications to individuals, state and local government agencies, and businesses as a result of implementing the proposed amendments unless one or more of these units or entities own and operate a fleet of approximately 1,000 affected vehicles. The proposed amendments to Chapter 114 would 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 program beginning with model year 2004.

The proposed amendments would adopt the California LEV program by reference beginning in model year 2004 so that the standards and requirements in Texas will be identical to those in California. The California LEV program consists of the original LEV I standards and, most recently, the more stringent LEV II standards which will apply to new passenger cars, light-duty trucks, and medium-duty vehicles. In addition to the requirement for all registered vehicles to comply with the standards in the program, starting with model year 2004, automobile manufacturers will be required to comply with the fleet average NMOG exhaust emission requirements and phase-in requirements in the program for passenger cars and light-duty trucks delivered for sale in Texas. Beginning with model year 2004, automobile manufacturers will also be required to comply with the phase-in requirements in the program for medium-duty trucks delivered for sale in Texas and must also produce 10% of their fleet as ZEVs or meet other alternative criteria for compliance. Although the California LEV program begins at the same time that LEV II standards become effective, the California program phases-in LEV II standards until model year 2007. This will allow manufacturers to certify some of their vehicles in model years 2004 to 2006 under LEV I standards as long as their fleet meets the NMOG fleet average for the applicable year.

The estimated costs of the California LEV II standards have been calculated by the CARB in relation to the LEV I standards and include the incremental costs of both exhaust and evaporative controls required on passenger cars, light-duty trucks, and medium duty vehicles. Estimated cost data came from two CARB reports, "Staff Report: Initial Statement of Reasons: Proposed Amendments to California Exhaust and Evaporative Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles 'LEV II' and Proposed Amendments to California Motor Vehicle Certification, Assembly-Line and In-Use Test Requirements 'CAP 2000,' " dated September 18, 1998; and " 'LEV II' and 'CAP 2000' Amendments to the California Exhaust and Evaporative Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles, and to the Evaporative Emission Requirements for Heavy-Duty Vehicles: Final Statement of Reasons," dated September, 1999. The total costs included cost of parts and internal costs to automobile manufacturers. The additional cost per vehicle varies depending upon the standards to which the vehicle is certified. It is anticipated that the manufacturers will pass on the increased manufacturing costs to vehicle purchasers in the form of higher purchase prices. The CARB has estimated that the retail price increase will range from \$68 to \$206 with an average additional retail cost of \$107. This equals an average percent increase in vehicle cost of less than 1.0% (based on an average vehicle cost of \$19,000).

The California LEV program is also very cost-effective. The CARB has estimated that the cost-effectiveness of LEV II standards relative to LEV I standards is on the average \$2,000 per ton of pollutants reduced. Although incremental costs are based on LEV II standards compared to LEV I standards, the costs are still applicable because beginning with model year 2001, the manufacturers will

be selling passenger cars and light-duty trucks nationally, in accordance with the NLEV program, that on average meet the California LEV I standards.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSES

There are no significant fiscal implications anticipated for small businesses and micro-businesses as a result of implementing the proposed amendments because small and micro-businesses will only have significant fiscal implications if they own and operate a business-owned vehicle fleet of approximately 1,000 affected vehicles. There are no known small or micro-businesses with a fleet of vehicles this size. The proposed amendments would adopt the California LEV program in Texas by reference beginning in model year 2004 so that the standards and requirements will be identical. The California LEV program consists of the original LEV I standards and, most recently, the more stringent LEV II standards which will apply to new passenger cars, light-duty trucks, and medium-duty vehicles. In addition to the requirement for all registered vehicles to comply with the standards in the program, starting with model year 2004, automobile manufacturers will be required to comply with the fleet average NMOG exhaust emission requirements and phase-in requirements in the program for passenger cars and light-duty trucks delivered for sale in Texas. Beginning with model year 2004, automobile manufacturers will also be required to comply with the phase-in requirements in the program for medium-duty trucks delivered for sale in Texas and must also produce 10% of their fleet as ZEVs or meet other alternative criteria for compliance. Although the California LEV program begins at the same time that LEV II standards become effective, the California program phases in LEV II standards until model year 2007. This will allow manufacturers to certify some of their vehicles in 2004 to 2006

model years under LEV I standards as long as their fleet meets the NMOG fleet average for the applicable year.

The costs of the California LEV II standards have been calculated by the CARB in relation to the LEV I standards and include the incremental costs of both exhaust and evaporative controls required on passenger cars, light-duty trucks, and medium duty vehicles. The total costs included cost of parts and internal costs to automobile manufacturers. The additional cost per vehicle varies depending upon the standards to which the vehicle is certified. It is anticipated that the manufacturers will pass on the increased manufacturing costs to vehicle purchasers in the form of higher purchase prices. The CARB has estimated that the retail price increase will range from \$68 to \$206 with an average additional retail cost of \$107. This equals an average percent increase in vehicle cost of less than 1.0% (based on an average vehicle cost of \$19,000). For a small or micro-business with a fleet of 15 business-owned vehicles, the additional costs will be in the range of approximately \$1,020 to \$3,090 if all 15 vehicles are replaced beginning in model year 2004. There is no feasible way for the rules to be written to mitigate the costs to small and micro-businesses.

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 meets 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, but are 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. The proposed amendments would 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 program beginning with model year 2004. 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 program, be established to reduce NO_x emissions necessary for nonattainment areas to be able 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 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 is not subject to the regulatory analysis provisions of §2001.0225(b), because the proposed rules do not meet any of these

four applicability requirements. Specifically, the use of 13 CCR standards for the California LEV program 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 control programs 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, as authorized under the Texas Clean Air Act (TCAA), §382.012 (concerning State Air Control Plan). 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 and authorized under TCAA, §§382.011, 382.012, 382.017, 382.019, and 382.039. 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 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 program in the State of Texas. This proposed

rulemaking 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 proposed rules will not burden private real property. Although the proposed 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 the FCAA, §7410. Specifically, the emissions limitations 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 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 proposed rules is to implement the California LEV program throughout the state necessary to meet the air quality standards established under federal law as NAAQS. Consequently, the exemption which applies under these proposed rules is that of an action reasonably taken to fulfill an obligation mandated by federal law. Therefore, these proposed rules will not constitute a takings under Chapter 2007 of the Texas Government Code.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has 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 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 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.

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 be permitted during the hearings; however, agency staff members will be available to discuss the proposal 30 minutes prior to the hearings and will answer questions before and after the hearings.

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 99055K-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 Ken Gathright at (512)-239-0599.

STATUTORY AUTHORITY

The new sections are proposed under the Texas Health and Safety Code, 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 provides the commission the authority to 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.

The new sections implement TCAA, §382.011, relating to General Powers and Duties; §382.012, relating to State Air Control Plan; §382.017, relating to Rules; §382.019, relating to Methods Used to Control and Reduce Emissions from Land Vehicles, §382.039, relating to Attainment Program; and the FCAA, 42 USC, §7507, relating to New Motor Vehicle Emission Standards in Nonattainment Areas.

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 amended on November 27, 1999 and all future revisions, are hereby incorporated by reference.

(2) **Advertise** - The terms "advertise" and "advertisement" include, but are not limited to, any notice, announcement, information, publication, catalog, listing for sale, or other statement concerning a product or service communicated to the public for the purpose of furthering the sale of the product or service.

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

(4) 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.

(5) 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.

(6) 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, and "California Motor Vehicle Emission Control Label Specifications," as amended on November 27, 1997 and all future revisions, and incorporated herein by reference.

(7) 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.

(8) 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.

(9) Mail-out - A widely distributed general correspondence issued by the California Air Resources Board (CARB) whenever the CARB needs information from the public, or when the CARB wishes to inform the public of new information.

(10) 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.

(11) 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.

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

(13) 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 amended on July 12, 1991 and all future revisions.

(14) 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.

(15) 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.

(16) 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.

(17) 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.

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

(19) 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 amended on May 15, 1999 and all future revisions; §1960.1 as amended on November 27, 1999 and all future revisions; §1960.5 as amended on September 30, 1991 and all future revisions; §1961 and §1962 as amended on November 27, 1999 and all future revisions; §1964 as amended on February 23, 1990 and all future revisions; §§1965, 1976, and 1978 as amended on November 27, 1999 and all future revisions; §2047 as amended on May 31, 1988 and all future revisions; §§2101-2107 as amended on November 27, 1999 and all future revisions; §2108 and §2109 as amended on December 13, 1983 and all future revisions; §2110 as amended on November 27, 1999 and all future revisions; §2111 as amended on January 26, 1999 and all future revisions; §2112 as amended on November 27, 1999 and all future revisions; §2113 as amended on January 26, 1995 and all future revisions; §2114 as amended on November 27, 1999 and all future revisions; §§2115-2118 as amended on January 26, 1995 and all future revisions; §2119 as amended on November 27, 1999 and all future revisions; §§2120-2129 as amended on January 26, 1995 and all future revisions; §2130 as amended on November 27, 1999 and all future revisions; §§2131-2136 as amended on January 26, 1995 and all future revisions; §§2137-1140 as amended on November 27, 1999 and all future revisions; §2141 and §2142 as amended on February 23, 1990 and all future revisions; §§2143-2148 as amended on November 27, 1999 and all future revisions; §§2150, 2151,

2176, and 2221 as amended on December 13, 1983 and all future revisions; and §2222 and §2224 as amended on August 16, 1990 and all future revisions.

(b) The requirements of this division are applicable to all model year 2004 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 2004 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 2004 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 2004 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 2004 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 2004.

(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 amended on November 27, 1999 and all future revisions.

(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;

(4) a vehicle transferred for the purpose of being scrapped or dismantled in accordance with Subchapter F, Division 2 of this chapter (relating to Voluntary Accelerated Vehicle Retirement);

(5) 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 that is next rented with a final destination outside of Texas; and

(6) a vehicle which is sold or transferred interstate from one dealer to another.

§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 amended on

May 15, 1999 and all future revisions; and §§1960.1(k), 1961(d), 1962(e), 1976(b) and (c), and 1978(b) as amended on November 27, 1999 and all future revisions. 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 amended on November 27, 1999 and all future revisions, 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 amended on January 26, 1995 and all future revisions, and §§2137-2140 as amended on November 27, 1999 and all future revisions, 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 amended on November 27, 1999 and all future revisions; §2108 and §2109 as amended on December 13, 1983 and all future revisions; §2110 as amended on November 27, 1999 and all future revisions; and §2150 and §2151 as amended on December 13, 1983 and all future revisions, 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 2004 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 as amended on September 30, 1991 and all future revisions, and §1961 as amended on November 27, 1999 and all future revisions. 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 amended on November 27, 1999 and all future revisions; 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 2004 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 amended on May 19, 1999 and all future revisions, 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 2004 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 2004 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 amended on December 13, 1983 and all future revisions; §2110 as amended on November 27, 1999 and all future revisions; §2111 as amended on January 26, 1999 and all future revisions; §2112 as amended on November 27, 1999 and all future revisions; §2113 as amended on January 26, 1995 and all future revisions; §2114 as amended on November 27, 1999 and all future revisions; §§2115-2118 as amended on January 26, 1995 and all future revisions; §2119 as amended on November 27, 1999 and all future revisions; §§2120-2129 as amended on January 26, 1995 and all future revisions; §2130 as amended on November 27, 1999 and all future revisions; §§2131-2136 as amended on January 26, 1995 and all future revisions; §§2137-1140 as amended on November 27, 1999 and all future revisions; §2141 and §2142 as amended on February 23, 1990 and all future revisions; and §§2143-2148 as amended on November 27, 1999 and all future revisions.

(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 that the commission determines to be necessary for the effective administration or enforcement of the requirements of this division.

§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 amended on December 13, 1983 and all future revisions, 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 amended on December 13, 1983 and all future revisions; §2110 as amended on November 27, 1999 and all future revisions; §2111 as amended on January 26, 1999 and all future revisions; §2112 as amended on November 27, 1999 and all future revisions; §2113 as amended on January 26, 1995 and all future revisions; §2114 as amended on November 27, 1999 and all future revisions; §§2115-2118 as amended on January 26, 1995 and all future revisions; §2119 as amended on November 27, 1999 and all future revisions; §§2120-2129 as amended on January 26, 1995 and all future revisions; §2130 as amended on November 27, 1999 and all future revisions; and §§2131-2135 as amended on January 26, 1995 and all future revisions, 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 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 amended on January 26, 1995 and all future revisions, 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.