

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §114.421, Emission Specifications, and §114.429, Affected Counties and Compliance Schedules. These amendments to Chapter 114, Control of Air Pollution from Motor Vehicles; Subchapter I, Non-road Engines; Division 3: Non-road Large Spark-ignition Engines; and corresponding revisions to the associated state implementation plan (SIP) are being proposed in order to extend the existing requirements for non-road, large spark-ignition engines to all counties in the state thus controlling ground-level ozone in the state.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

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

The January 1995 SIP consisted of urban airshed model (UAM) modeling for 1988 and 1990 base-case episodes, adopted rules to achieve a 9% rate-of-progress (ROP) reduction in volatile organic compounds (VOC), and a commitment schedule for the remaining ROP and attainment demonstration elements. At the same time, but in a separate action, the State of Texas filed for the temporary nitrogen oxides (NO_x) waiver allowed by 42 USC, §7511a(f). The January 1995 SIP and the NO_x waiver were

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

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

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

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

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

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

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

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

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

The April 19, 2000 SIP revision for HGA contained the following enforceable commitments by the state: to quantify the shortfall of NO_x reductions needed for attainment; to list and quantify potential control measures to meet the shortfall of NO_x reductions needed for attainment; to adopt the majority of the necessary rules for the HGA attainment demonstration by December 31, 2000, and to adopt the rest of the shortfall rules as expeditiously as practical, but no later than July 31, 2001; to submit a Post-99 ROP plan by December 31, 2000; to perform a mid-course review by May 1, 2004; and to perform modeling of mobile source emissions using the EPA mobile source emissions model (MOBILE6), to revise the on-road mobile source budget as needed, and to submit the revised budget within 24 months of the model's release. In addition, if a conformity analysis is to be performed between 12 months and 24 months after the MOBILE6 release, the state will revise the motor vehicle emissions budget (MVEB) so that the conformity analysis and the SIP MVEB are calculated on the same basis.

In order for the state to have an approveable attainment demonstration, the EPA has indicated that the state must adopt those strategies modeled in the November submittal and then adopt sufficient controls to close the remaining gap in NO_x emissions. The modeling included in this proposal indicates a gap of an additional 77.98 tons per day (tpd) of NO_x reductions is necessary for an approveable attainment demonstration. The commission estimates that this measure will achieve a minimum of 2.8 tpd of NO_x

equivalent reductions and is therefore a necessary measure to consider for closing the gap and successfully demonstrating attainment.

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

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

The HGA ozone nonattainment area will need to ultimately reduce NO_x more than 750 tpd to reach attainment with the one-hour standard. In addition, a VOC reduction of about 25% will have to be achieved. Extension of the large spark-ignition non-road engine rules will contribute to attainment and maintenance of the one-hour ozone standard in the HGA area. The extension of these rules to all

counties in the state should also contribute to maintenance of the one-hour ozone standard in the rest of the state.

The EPA has been regulating highway (on-road) cars and trucks since the early 1970s and continues to set increasingly stringent emissions standards for such vehicles. After considerable progress has been made in controlling emissions from on-road vehicles, the EPA has turned its attention to non-road (also called off-road) engines, which also contribute significantly to air pollution. Although emissions from non-road, large spark-ignition (LSI) engines have not yet been regulated by the EPA, the California Air Resources Board (CARB) has adopted exhaust emission standards for these engines. Non-road, LSI engines are primarily used to power industrial equipment such as forklifts, generators, pumps, compressors, aerial lifts, sweepers, and large lawn tractors. The engines are similar to automotive engines and can use similar automotive technology, such as closed-loop engine control and three-way catalysts, to reduce emissions.

The CARB has determined the exhaust emission standards for non-road, LSI engines to be technologically feasible and a cost effective strategy at \$.25 per pound (\$500 per ton) of NO_x and hydrocarbons (HC) reduced, that will move the state toward reducing NO_x and HC from non-road, LSI engines. HC, also called VOC, and NO_x are precursor chemicals that contribute to the formation of ground-level ozone. The HGA area alone will contain 23% of the state's LSI engines by 2007, or approximately 88,374 engines. Statewide, there will be approximately 371,096 LSI engines by 2007. Adoption and implementation of California standards for non-road, LSI engines throughout the state should reduce the amount of VOC and NO_x emissions from these sources and, therefore, help control

ground-level ozone in nonattainment areas. For the HGA ozone nonattainment area, emission reductions by 2007 will be approximately 2.8 tpd. The program is estimated to cost about \$500 per ton of NO_x reduced, which compares very favorably with the cost per ton of other emission control strategies.

These amendments are proposed in order to control ground-level ozone in the state by restricting the sale and use of non-road, LSI engines 25 horsepower (hp) and larger produced in model year 2004, and all equipment and vehicles produced on or after January 1, 2004 that use such engines; to LSI engines that are certified under Title 13, California Code of Regulations, Chapter 9, concerning Off-Road Vehicles and Engines Pollution Control Devices (13 CCR 9), as adopted by the CARB on October 19, 1999 and effective November 18, 1999. The commission is incorporating the non-road, LSI engine 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 42 USC, §7543(e)(2)(B), requires the state programs to be identical. The rules are proposed to be effective throughout the State of Texas. The proposed amendments are necessary in order to attain and maintain the ozone standard in nonattainment areas, and to establish a single equipment design standard for the state. A single equipment design standard will help to prevent incompatibility and expense which may arise from the distribution of equipment with different emission standards.

The commission solicits comment on additional flexibilities relating to rule content and implementation which have not been addressed in this or other concurrent rulemakings. These flexibilities may be available for both mobile and stationary sources. Additional flexibilities may also be achieved through

innovative and/or emerging technology which may become available in the future. Additional sources of funds for incentive programs may become available to substitute for some of the measures considered here.

SECTION-BY-SECTION DISCUSSION

The intent of these proposed amendments is to extend to all counties in the State of Texas the existing non-road, LSI standards in the Dallas/Fort Worth (DFW) area. These existing standards are identical to the non-road, LSI standards in place in California.

The following sections of Division 3 were adopted during the DFW rule promulgation and cannot be reopened for public comment in this proposal because no changes are being proposed to these sections: §114.420, Definitions; §114.422, Control Requirements; and §114.427, Exemptions. The two sections of the rules being opened for comment will be §114.421 and §114.429. Section 114.421 is proposed to be amended to reflect the statewide applicability of the LSI rules, and §114.429 is proposed to be amended to reflect the compliance dates for the new portions of the state being affected by this rulemaking action.

Additionally, §§114.420, 114.422, and 114.427 may not be reopened because they incorporate by reference the California non-road, LSI rules and all future revisions as those rules are set out in 13 CCR 9, concerning Off-Road Vehicles and Engines Pollution Control Devices, as adopted by the CARB on October 19, 1999 and effective November 18, 1999. The Texas program must remain

identical to the California program, so the sections already incorporated by reference in the DFW rulemaking may not be changed to be different from the California 13 CCR 9 rules.

Existing §114.421 (Emission Specifications) incorporated by reference the 42 definitions found in 13 CCR 9, §2431 (Definitions). This proposal makes no changes to these definitions.

Existing §114.429 applied the control requirements to nine counties in the DFW area which include Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties. These proposed amendments extend the control requirements to all counties within the state. Proposed §114.429 also specifies the compliance schedule for engine manufacturers.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, 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 unless that unit of government replaces between 200 and 1,000 of these engines annually. The proposed amendments to Chapter 114 would require units of state and local government, businesses, and individuals statewide that own or operate non-road LSI engines of 25 hp and larger produced on or after January 1, 2004, and all equipment and vehicles produced on or after January 1, 2004 that use such engines, to use LSI engines certified under 13 CCR 9 as adopted by the CARB on October 19, 1999.

Non-road LSI engines are primarily used to power industrial equipment such as forklifts, generators, pumps, compressors, aerial lifts, sweepers, and large lawn tractors. The engines are similar to automotive engines and can use similar automotive technologies to reduce emissions. The CARB has determined the proposed standards are technologically feasible and has adopted exhaust emission standards for these engines designed to reduce NO_x and VOC emissions. Oxides of nitrogen and VOC are precursor chemicals that contribute to the production of ground-level ozone.

The proposed amendments include exemptions for: 1.) Engines less than 175 hp used in construction and agriculture; 2.) Engines operated on or in any device used exclusively upon stationary rails or tracks; 3.) Engines used to propel marine vessels; 4.) Internal combustion engines attached to a foundation at a location for at least 12 consecutive months; 5.) Recreational vehicles and snowmobiles; and 6.) Stationary or transportable gas turbines for power generation.

The commission is required to submit a new SIP revision by the end of 2000 which will bring the HGA nonattainment area into attainment with the ozone NAAQS by 2007. The rule proposed for the HGA nonattainment area in this notice is one element of the HGA Post-1999 ROP/Attainment Demonstration SIP. A SIP is a plan developed for any region where existing (measured and/or modeled) ambient levels of pollutants exceed 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. The proposed set of rules are necessary for the HGA nonattainment area to be able to demonstrate attainment with the ozone NAAQS.

The cost of the technology needed to reduce emissions from these engines to comply with the standards is projected by an environmental consultant (Environ) to be approximately \$100 to \$500 per engine depending upon the engine size and typical engine type. Engines that currently apply closed-loop control would require less additional equipment reducing the overall cost of meeting the new standard. The commission estimated that the total cost impact of reducing emissions from the 176,522 engines to be purchased during calendar years 2004 through 2007 will be in the range of \$18 million to \$88 million or an average of approximately \$4 million to \$22 million per year from 2004 through 2007. A breakdown of the total number of engines bought by owner (i.e. state and local government, individuals or businesses) is not available at this time. However, the costs are not anticipated to be significant to any single unit of state or local government, unless that unit of government replaces between 200 and 1,000 of these engines annually.

PUBLIC BENEFIT AND COSTS

Mr. Davis also determined that for each year of the first five years the proposed amendments to Chapter 114 are in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendments will be the potential reduction of NO_x and VOC emissions, potentially improved air quality, and contribution toward demonstration of attainment with the ozone NAAQS.

There are no significant fiscal implications anticipated to individuals, state and local government agencies, and businesses statewide that own or operate affected equipment powered by LSI engines as a result of implementing the proposed amendments unless an entity replaces between 200 and 1,000 of these engines annually. The proposed amendments to Chapter 114 would require units of state and

local government, businesses, and individuals statewide that own or operate non-road LSI engines of 25 hp and larger produced on or after January 1, 2004, and all equipment and vehicles produced on or after January 1, 2004 that use such engines to use LSI engines certified under 13 CCR 9 as adopted by the CARB on October 19, 1999. Affected owners and operators of this equipment will not be required to retrofit or purchase new engines for their existing inventory. However, if equipment is replaced with equipment produced after January 1, 2004, the new equipment must meet the proposed standards.

The proposed amendments allow manufacturers to continue to sell in-stock equipment that predates the proposed amendments in a phase-down manner. The phase-down requires that 25% of the equipment sold in year 2004 must have CARB-certified engines; 50% in year 2005; and 100% in year 2006 and thereafter. It is estimated that 25% of the engines sold in year 2004 will be CARB-certified engines that meet the proposed standards. The commission also estimated that 50% of the engines sold in year 2005 will be CARB-certified engines. In years 2006 and thereafter, the commission estimated that all engines sold will be CARB-certified engines. The commission estimated that 12,089 CARB-certified engines will be purchased statewide during year 2004; 27,098 certified engines in year 2005; 65,189 certified engines in 2006; and 72,146 certified engines in 2007, for a total of 176,522 CARB-certified engines during calendar years 2004 through 2007.

The cost of the technology needed to reduce emissions from these engines to comply with the standards is projected by an environmental consultant (Environ) to be approximately \$100 to \$500 per engine depending upon the engine size and typical engine type. Engines that currently apply closed-loop control would require less additional equipment reducing the overall cost of meeting the new standard.

It is estimated that the total cost impact of reducing emissions from the 176,522 engines projected to be purchased during calendar years 2004 through 2007 will be in the range of \$18 million to \$88 million or an average of approximately \$4 million to \$22 million per year from 2004 through 2007.

These costs may be mitigated by improved performance of these types of engines. The following is quoted from an EPA Engine Programs and Compliance Division Memorandum dated January 29, 1999, titled *California Requirements for Large SI Engines and Possible EPA Approaches*: “Upgrading to modern engine technologies greatly improves the capability of these engines to control emissions and will generally improve engine performance. Electronically-controlled closed-loop operation also provides the potential for great improvement in engine operation. For example, improving control of combustion may allow a fuel economy improvement of 15% to 20%. Also, feedback control of air-fuel ratios eliminates much of the need to maintain and adjust a large number of fuel system calibrations, resulting in reduced product inventories and, more importantly, less downtime and maintenance for equipment in the field. Finally, improved control of the upgraded engines should lead to significantly longer engine lifetimes. The net present value of these benefits would likely be considerably greater than the incremental cost of improving the engines.”

SMALL AND MICRO-BUSINESS ASSESSMENT

There are no significant fiscal implications anticipated to small and micro-businesses as a result of implementing the proposed amendments because there are no known small or micro-businesses that would need to replace from 200 to 1,000 of these engines annually. Estimates of the number of small and micro-businesses statewide that own and operate non-road equipment powered by LSI engines of 25

hp and larger are not available at this time; however, it is anticipated that costs would be similar to those for business in general as indicated in the Public Benefit and Costs Section of this preamble. The cost of the technology needed to reduce emissions from these engines to comply with the standards is projected by an environmental consultant (Environ) to be approximately \$100 to \$500 per engine depending upon the engine size and typical engine type. Engines that currently apply closed-loop control would require less additional equipment reducing the overall cost of meeting the new standard. The costs will depend less on the relative size of the company, and more on the size and number of non-road equipment powered by LSI engines that they own and operate.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed 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. The new sections to Chapter 114 are one element of the HGA attainment SIP. While the new rules are intended to protect the environment, based on the analysis provided in the preamble, including the discussion in the Public Benefit and Costs section of this preamble, the commission does not believe the rules will adversely affect, in a material way, the sale or use of non-road large spark-ignition (LSI) engines. The commission does not believe these entities comprise a sector of the economy, or that these rules will adversely affect in a material way the economy,

productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Provisions of 42 USC, §7410 require states to adopt a SIP which provides for “implementation, maintenance, and enforcement” of the primary NAAQS in each air quality control region of the state. While §7410 does not require specific programs, methods, or reductions in order to meet the standard, state SIPs must include “enforceable emission limitations and other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter,” (meaning Chapter 85, Air Pollution Prevention and Control). It is true that 42 USC does require some specific measures for SIP purposes, like the inspection and maintenance program, but those programs are the exception, not the rule, in the SIP structure of 42 USC. The provisions of 42 USC recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public, to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though 42 USC allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of §7410. Thus, while specific measures are not generally required, the emission reductions are required. States are not free to ignore the requirements of §7410 and must develop programs to assure that the nonattainment areas of the state will be brought into attainment on schedule.

The requirement to provide a fiscal analysis of proposed regulations in the Texas Government Code was amended by Senate Bill 633 (SB 633) during the 75th Legislative Session, 1999. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis (RIA) of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded “based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application.” The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted proposed rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law. As previously discussed, 42 USC does not require specific programs, methods, or reductions in order to meet the NAAQS; thus, states must develop programs for each nonattainment area to ensure that area will meet the attainment deadlines. Because of the ongoing need to address nonattainment issues, the commission routinely proposes and adopts SIP rules. The legislature is presumed to understand this federal scheme. If each rule proposed for inclusion in the SIP was considered to be a major environmental rule that exceeds federal law, then every SIP rule would require the full RIA contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the LBB, the commission believes that the intent of

SB 633 was only to require the full RIA for rules that are extraordinary in nature. While the SIP rules will have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA. For these reasons, rules proposed for inclusion in the SIP fall under the exception in Texas Government Code, §2001.0225(a), because they are required by federal law.

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 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. The proposed amendments would require units of state and local government, businesses, and individuals statewide that own or operate model year 2004 and subsequent non-road LSI engines of 25 hp and larger, and all equipment and vehicles that use such engines to use LSI engines certified under 13 CCR 9 as adopted by the CARB on October 19, 1999.

The increased cost of \$100 to \$500 per engine would not cause material impact given the high total cost of this type of equipment. This air pollution control program is part of the strategy to reduce emissions of NO_x necessary for the counties included in the HGA nonattainment area to be able to demonstrate attainment with the ozone NAAQS. The commission is required to submit a new SIP revision by the end of 2000 which will bring the HGA nonattainment area into attainment by 2007. The rules proposed for HGA nonattainment area in this notice is one element of the ozone attainment demonstration SIP for HGA. The proposed set of rules are necessary for the HGA nonattainment area to be able to demonstrate attainment with the ozone NAAQS. In addition, §2001.0225 only applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is

specifically required by federal law; 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 adopt a rule solely under the general powers of the agency instead of under a specific state law.

This proposal is not an express requirement of state law. This proposal is intended to help bring ozone nonattainment areas into compliance, and to help keep attainment and near nonattainment areas from becoming nonattainment areas. 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, as authorized under Texas Clean Air Act (TCAA), §§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 Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rulemaking is to establish emission requirements on model year 2004 and subsequent non-road, LSI engines 25 hp and larger and all equipment and vehicles that use such engines by requiring these engines to be certified under 13 CCR 9 throughout the state. This proposed rulemaking will act as an

air pollution control strategy to reduce NO_x emissions in the ozone nonattainment areas so that they may demonstrate attainment with the ozone NAAQS and maintain air quality in near nonattainment areas across the state. 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 42 USC, §7410. Specifically, the emissions limitations and delays within this proposal 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 rule proposal is to implement a cleaner-burning, non-road, LSI engine program necessary for the entire state to meet air quality standards established under federal law as NAAQS. Consequently, the exemption which applies to these proposed rules is that of an action reasonably taken to fulfill an obligation mandated by federal law. Therefore, these proposed revisions will not constitute a taking under the Texas Government Code, Chapter 2007.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission determined that the proposed rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et seq.), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the CMP. As required by 30 TAC

§281.45(a)(3) and 31 TAC §505.11(b)(2), relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(1)). No new sources of air contaminants will be authorized and NO_x air emissions will be reduced as a result of these rules. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations in 40 Code of Federal Regulations (CFR), to protect and enhance air quality in the coastal area (31 TAC §501.14(q)). This rulemaking action complies with 40 CFR 50, National Primary and Secondary Ambient Air Quality Standards, and 40 CFR 51, Requirements for Preparation, Adoption, and Submittal Of Implementation Plans. Therefore, in compliance with 31 TAC §505.22(e), this rulemaking action is consistent with CMP goals and policies.

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

ANNOUNCEMENT OF HEARINGS

The commission will hold public hearings on this proposal at the following times and locations:
September 18, 2000, 10:00 a.m., Lone Star Convention Center, 9055 Airport Road (FM 1484),
Conroe; September 18, 2000, 7:00 p.m., Lake Jackson Civic Center, 333 Highway 332 East, Lake

Jackson; September 19, 2000, 10:00 a.m. and 7:00 p.m., George Brown Convention Center, 1001 Avenida de Las Americas, Houston; September 20, 2000, 9:00 a.m., VFW Hall, 6202 George Bush Drive, Katy; September 20, 2000, 6:00 p.m., East Harris County Community Center, 7340 Spencer, Pasadena; September 21, 2000, 10:00 a.m., Southeast Texas Regional Airport Media Room, 6000 Airline Drive, Beaumont; September 21, 2000, 2:00 p.m., Amarillo City Commission Chambers, City Hall, 509 East 7th Avenue, Amarillo; September 21, 2000, 6:00 p.m., Charles T. Doyle Convention Center, 21st Street at Phoenix Lane, Texas City; September 22, 2000, 10:00 a.m., Dayton High School, 2nd Floor Lecture Room, 3200 North Cleveland Street, Dayton; September 22, 2000, 11:00 a.m., El Paso City Council Chambers, 2 Civic Center Plaza, 2nd Floor, El Paso; September 22, 2000, 2:00 p.m., North Central Texas Council of Governments, 2nd Floor Board Room, 616 Six Flags Drive, Suite 200, Arlington; and September 25, 2000, 10:00 a.m., Texas Natural Resource Conservation Commission, 12100 North I-35, Building E, Room 201S, Austin. The hearings are structured for the receipt of oral or written comments by interested persons. Registration will begin one hour prior to each hearing. Individuals may present oral statements when called upon in order of registration. A four-minute time limit will be established at each hearing to assure that enough time is allowed for every interested person to speak. Open discussion will not occur during each hearing; however, agency staff members will be available to discuss the proposal one hour before each hearing, and will answer questions before and after each hearing.

Persons with disabilities who have special communication or other accommodation needs, who are planning to attend a 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 Heather Evans, Office of Environmental Policy, Analysis, and Assessment, MC 206, P.O. Box 13087, Austin, Texas 78711-3087, faxed to (512) 239-4808, or emailed to *siprules@tnrcc.state.tx.us*. All comments should reference Rule Log Number 2000-011G-114-AI. Comments must be received by 5:00 p.m., September 25, 2000. For further information, please contact Roland Castaneda, II at (512) 239-0774, or Alan Henderson at (512) 239-1510.

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC, and under the Texas Health and Safety Code, TCAA, §382.017, which provides the commission the authority to adopt rules consistent with the policy and purposes of the TCAA. The amendments are also proposed under TCAA, §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.019, which authorizes the commission to adopt rules to control and reduce emissions from engines used to propel land vehicles; and §382.039, which authorizes the commission to develop and implement transportation programs and other measures necessary to demonstrate attainment and protect the public from exposure to hazardous air contaminants from motor vehicles.

The proposed amendments implement TCAA, §382.002, relating to Policy and Purpose; §382.011, relating to General Powers and Duties; §382.012, relating to State Air Control Plan; §382.019, relating

to Methods Used to Control and Reduce Emissions from Land Vehicles; and §382.039, relating to
Attainment Program.

CHAPTER 114 : CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES

SUBCHAPTER I : NON-ROAD ENGINES

DIVISION 3 : NON-ROAD LARGE SPARK-IGNITION ENGINES

§114.421, §114.429

§114.421. Emission Specifications.

(a) (No change.)

(b) Exhaust emissions from new non-road, LSI engines manufactured for sale, sold, or offered for sale, or that are introduced, delivered or imported for introduction into commerce in the State of Texas [counties listed in §114.429 of this title (relating to Affected Counties and Compliance Schedules)] shall not exceed the requirements of Title 13, California Code of Regulations, Chapter 9 (13 CCR 9), §2433(b), concerning Exhaust Emission Standards and Test Procedures -- Off-Road Large Spark-Ignition Engines, as effective on November 18, 1999.

(c) New non-road, LSI engines operated in the State of Texas [counties listed in §114.429 of this title] shall not exceed the requirements of 13 CCR 9, §2433(b).

(d) (No change.)

§114.429. Affected Counties and Compliance Schedules.

[(a) The provisions of this division shall apply in the following counties: Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties.]

(a) [(b)] Beginning with model year 2004₂, but no later than January 1, 2004₂, all sales of new non-road, large spark-ignition (LSI) engines in the State of Texas [affected counties] shall comply with §114.421(b) of this title (relating to Emissions Specifications) and §114.422 of this title (relating to Control Requirements).

(b) [(c)] Beginning January 1, 2004, new non-road, LSI engines as defined in §114.420 of this title (relating to Definitions) which are used in the State of Texas [affected counties] shall comply with §114.421(c) of this title.