The Texas Commission on Environmental Quality (commission) proposes amendments to §§114.21, 114.260, and 114.452 and corresponding revisions to the state implementation plan (SIP). The amendments and revised SIP narrative will be submitted to the United States Environmental Protection Agency (EPA) as proposed revisions to the SIP.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The statutory citation, "Texas Dealer Law, Article 6686, Vernon's Civil Statutes, Title 43, Texas Administrative Code" referenced in §114.21(d) has been repealed by legislative action and recodified in Texas Transportation Code, §503.001 with some changes to the terms used in the original citation. Therefore, the current citation as referenced in §114.21(d) to define the terms "wholesale dealer" and "retail dealer" is no longer valid. In addition, when the statutory language was recodified in the Texas Transportation Code, some terms were combined and their definitions broadened, which will allow the proposed revisions in §114.21(d) to simply reference the term "dealer" instead of the previous two specific terms.

Existing §114.21(e)(2) requires that certain signed statements be retained by certain sellers of vehicles, but does not specify the length of time. Because the documents pertain to the possible need to fix the emissions systems on the sold vehicles, and because there are mechanisms in place to require testing of the emissions systems in ozone nonattainment areas on a periodic basis, the commission believes that the records should be retained for only two years.

The Federal Clean Air Act (FCAA) Amendments of 1990 (42 United States Code (USC), §§7401 *et seq*.) required each state to submit a revision to its SIP by November 25, 1994, establishing enforceable

criteria and procedures for making conformity determinations for metropolitan transportation plans, transportation improvement programs, and projects funded by the Federal Highway Administration or the Federal Transit Administration. Final rules regarding conformity requirements were published by EPA November 24, 1993. The Texas SIP revision which incorporated conformity requirements was adopted October 19, 1994, and was approved by EPA November 8, 1995. EPA has amended the federal transportation conformity rule five times: August 7, 1995; November 14, 1995; August 15, 1997; April 10, 2000; and August 6, 2002. The commission previously incorporated the federal changes up to and including the 1997 amendment. The commission is now updating its rule to incorporate the latest federal amendments.

The Houston/Galveston ozone nonattainment area (HGA) is classified as Severe-17 under 42 USC, §§7401 *et seq*. Therefore, the area is required to attain the one-hour ozone standard of 0.12 parts per million (ppm) by November 15, 2007. Division 6, Lawn Service Equipment Operating Restrictions, of Subchapter I, adopted by the commission in 2000, was part of the HGA Post-1996 Rate-of-Progress (ROP)/Attainment Demonstration SIP that was designed to meet the one-hour ozone standard. Implementation of this control strategy is necessary in order for the HGA nonattainment area to comply with the requirements of the FCAA and achieve attainment for ozone. However, the commission believes that for two reasons the lawn service equipment operating restrictions should be amended to allow those in the lawn and garden industry more time to submit their emission reduction plans.

First, the commission believes that, due to flaws in the Nonroad Assessment Tool and Estimator (NATE) model, the lawn care industry does not have sufficient time to create an emission reduction plan before the current May 31, 2003 deadline. The NATE model was designed to aid the lawn and

garden industry in development of emission reduction plans. However, programming flaws were discovered after the NATE model was made available to the public. These flaws have been corrected, and the program is now back on the commission web site. Second, the commission is seeking to delay the compliance requirements associated with the lawn and garden rules until 2004 to provide commission staff with the time needed to reexamine the need for the rules as part of the mid-course review of the entire HGA SIP. If it is determined that these rules are not needed or can be replaced by more effective emission reduction strategies, the new deadline would reduce the expenditure of unnecessary resources in planning for compliance. Because the proposed amendment to §114.452 only concerns the date by which emission reduction plans must be submitted to the commission, no changes in the amount of emission benefits that were originally estimated to be achieved by the lawn and garden rules are anticipated.

SECTION BY SECTION DISCUSSION

The proposed amendment to §114.21(c)(2) changes the name of the agency to its new name. The proposed amendment to §114.21(d) replaces the terms “wholesale dealers” and “retail dealers” with the term “dealer” and identifies the statutory citation defining this term as "Texas Transportation Code, §503.001." The proposed amendment makes reformatting and textual revisions that appropriately reflect the new broader term. This proposed revision is necessary because the current statutory citation is no longer valid. The “Texas Dealer Law, Article 6686, Vernon’s Texas Civil Statutes, Title 43, Texas Administrative Code” was repealed by legislative action and the regulatory language was recodified with changes in Texas Transportation Code, §503.001. In the proposed amendment to §114.21(e)(2), a period of two years is added for the retention of certain records, rather than the current indefinite period. Because the documents pertain to the possible need to fix the emissions systems on

the sold vehicles, and because there are mechanisms in place to require testing of the emissions systems in ozone nonattainment areas on a periodic basis, the commission believes that the records should be retained for only two years.

The proposed amendment to §114.260(c) incorporates the date (August 6, 2002) that EPA last amended the federal transportation conformity rule. The changes to federal regulations that are incorporated into the rule include the following. 40 Code of Federal Regulations (CFR) §93.102 was amended by adding as paragraph (d) a grace period for new nonattainment areas. 40 CFR §93.102 implements an FCAA amendment, enacted October 27, 2000, that provides a one-year grace period before conformity is required in areas that are designated nonattainment for a given air quality standard for the first time. 40 CFR §93.104(e)(2), relating to the frequency of conformity determinations, was amended to change the point by which a conformity determination must be made following a state's submission of a control strategy implementation plan or maintenance plan for the first time (an "initial" SIP submission). 40 CFR §93.104(e)(2) requires conformity to be determined within 18 months of EPA's affirmative finding that the SIP's motor vehicle emission budgets are adequate. Prior to this action, the conformity rule required a new conformity determination within 18 months of the submission of an initial SIP. In order to take advantage of these positive changes and to provide consistency between state and federal conformity requirements, the commission is proposing to adopt all of the current federal rules with the exception of 40 CFR §93.105, which is met through the remainder of the state conformity rule. The commission is proposing to remove the reference in the rule to 40 CFR §93.102(d) because this reference was originally included in the rule to acknowledge that the grace period at that time had been invalidated by a court challenge. However, the new 40 CFR §93.102(d) is now authorized by

congressional action and the commission is proposing to adopt by reference the grace period which it provides.

The proposed amendments to §114.260(d) correct typographical errors, change the language to be consistent with current agency style and format, and update the name of the agency and the title of the Strategic Assessment Division director. The proposed amendments to §114.260(e) clarify that compliance with the rule must begin upon the date of EPA approval of the SIP and rule revisions under FCAA, §176(c)(4)(C) and remove outdated references to previous adoption dates. The commission notes however, that the one-year conformity grace period currently applies as a statutory matter for all newly designated nonattainment areas, since this grace period was required as a matter of law once the FCAA was amended, and therefore does not require EPA approval before it is effective.

The proposed amendments to §114.452 include changes to make the text consistent with the current agency style and format for rules and to correct typographical errors. The proposed amendment to §114.452(c) changes the deadline to submit an emission reduction plan from May 31, 2003 to May 31, 2004. The affected area would still include the following counties within the HGA nonattainment area: Brazoria, Fort Bend, Galveston, Harris, and Montgomery. The effective date of the lawn and garden rules would remain April 1, 2005. The intent of this amendment is to change the deadline by which emission reduction plans must be submitted to the commission. The proposed amendment to §114.452(c) would also change the deadline for plan approval from May 31, 2004 to March 31, 2005 to account for the later submission deadline but still provide for approval prior to the compliance date. Proposed §114.452(c) would state that commercial operators or persons not exempt under subsection (b) of this section who submit an emissions reduction plan by May 31, 2004, which is approved by the

executive director and the EPA no later than March 31, 2005, are exempt from operating hour restrictions upon implementation of these rules in 2005, and are permitted to operate during the restricted hours. In addition to changing the submission deadline the commission also proposes to delete the sentence which states that the executive director may allow plans to be submitted after May 31, 2003. This change is made in order to resolve the conflict between this date and the proposed new deadline of May 31, 2004.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Yia Hang, Analyst in the Strategic Planning and Appropriations Section, has determined that, for the first five-year period the proposed amendments are in effect, there will be no significant fiscal implications for the agency or any other unit of state and local government as a result of administration or enforcement of the proposed amendments.

The proposed amendments would revise sections relating to air pollution from mobile sources by: simplifying language and updating textual references that are no longer valid; defining a document retention period for vehicle sales by certain sellers; extending a submission deadline for emission reduction plans to be developed by lawn and garden companies; providing a one-year grace period for new nonattainment areas to demonstrate conformity to a SIP's motor vehicle emission budgets; and incorporating changes to federal rules which include changing the timing that conformity is required from 18 months following state submission of an initial SIP to 18 months following EPA finding that the motor vehicle emission budget is adequate for conformity. The proposed amendments would simplify language and update textual references that are no longer valid in rule sections relating to vehicle transactions under motor vehicle anti-tampering requirements for pollution control equipment.

The proposed amendments would replace the terms “wholesale dealers” and “retail dealers” with the general term “dealer,” update statutory references and name changes, and correct insubstantial formatting and typographical errors. No fiscal implications are anticipated as a result of the administration or enforcement of the proposed changes.

Under current rules, commercial vehicle auctions and federal, state, and local agencies or their agents which sell abandoned, confiscated, or seized vehicles are exempt from restrictions on selling vehicles not in compliance with pollution control requirements if they provide buyers with written statements informing the buyers of the liabilities of operating vehicles prior to the restoration of all pollution control systems or devices. Sellers are required to retain copies of these signed statements, but current rules did not specify a length of time for document retention. The proposed amendments would require that the statements be retained for two years. The commission does not know how many vehicles have been sold by federal, state, or local governments which had defective pollution control equipment, nor how many of these entities had been retaining such documents, but it assumes that this proposed revision may potentially result in reduced document storage costs to those units of government or their agents who sell vehicles with defective pollution control equipment, though these costs are not considered significant.

The proposed amendments also extend the deadline by which owners and operators of lawn and garden companies in the HGA ozone nonattainment area must submit their emission reduction plans. The proposed deadline extension would affect owners and operators in Brazoria, Fort Bend, Galveston, Harris, and Montgomery Counties. Submitting an emission reduction plan enables a lawn care company to be eligible for exemption from restrictions on the hours of operation for the lawn care

industry. The proposed amendments would change the submission deadline from May 31, 2003 to May 31, 2004. The commission believes that the lawn care industry did not receive sufficient time to create emission reduction plans and that more time is needed to examine the need for the rule. Because the proposed amendments merely extend the deadline for plans, no fiscal implications are anticipated, though there may be a delay in any costs to those lawn care industry owners or operators who contract for assistance in developing their plans. No changes are anticipated to the amount of previously projected emission benefits achieved by the lawn and garden rules as a result of the deadline extension.

The proposed amendments would also incorporate by reference two amendments to the federal transportation conformity rule, which ensures that transportation spending in nonattainment areas is in compliance with the SIP. The federal amendments provide state and local governments with additional time to demonstrate conformity of transportation planning activities with the SIP. The first federal rule change incorporates an amendment to the FCAA, enacted on October 27, 2000, giving new nonattainment areas a one-year grace period before conformity applies. The second federal rule change incorporates a decision by the United States Court of Appeals for the D.C. Circuit Court by changing the time frame for conforming to the standard. The requirement would change from 18 months following state submission of an initial SIP to 18 months following a finding by the EPA that the motor vehicle emissions budget is adequate for conformity.

The one-year grace period for areas designated nonattainment for the first time is in effect by statute. The revised 18-month conformity trigger would allow metropolitan planning organizations in nonattainment areas up to an additional three months to demonstrate conformity. Currently, Texas has six metropolitan areas that are projected to exceed the new eight-hour ozone standard: Austin, San

Antonio, Longview–Tyler, Dallas–Forth Worth, Beaumont–Port Arthur, and Houston–Galveston. Four of these areas have the potential to be newly designated nonattainment (Austin, San Antonio, Longview–Tyler, and the Dallas perimeter). However, no significant fiscal implications are anticipated for units of state and local governments as the grace period is already a matter of law and an additional three months for the 18-month conformity trigger will not increase the cost of transportation planning requirements.

PUBLIC BENEFITS AND COSTS

Ms. Hang also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated from the enforcement of and compliance with the proposed amendments will be: the clarification and simplification of regulatory language; increased flexibility with a more sufficient amount of time to create emission reduction plans; and overall state compliance with federal rules.

No significant fiscal implications are anticipated for any individual or business due to implementation of the proposed amendments, though there may be cost savings for those businesses or individuals who sell abandoned, confiscated, or seized vehicles or participate in commercial vehicle auctions due to potentially reduced document storage costs. In addition, owners and operators of lawn care businesses in the HGA ozone nonattainment area who contract for assistance in developing their emission reduction plans may experience a delay in any costs associated with developing their plans due to the proposed extension of the deadline for submitting their plans.

The proposed changes would revise sections relating to air pollution from mobile sources by: updating a statutory citation and textual references that are no longer valid; defining a document retention period for vehicle sales by certain sellers; extending a submission deadline for emission reduction plans to be developed by lawn and garden companies; and providing a one-year grace period for new nonattainment areas to reach conformity with federal transportation rules.

Under current rules, commercial vehicle auctions and federal, state, and local agencies or their agents which sell abandoned, confiscated, or seized vehicles are exempt from restrictions on selling vehicles not in compliance with pollution control requirements if they provide buyers with written statements informing the buyers of the liabilities of operating vehicles prior to the restoration of all pollution control systems or devices. Sellers are required to retain copies of these signed statements, but current rules did not specify a length of time for document retention. The proposed amendments would require that the statements be retained for two years. The commission does not know how many vehicles have been sold by agents for federal, state, local governments which had defective pollution control equipment, nor how many of these agents had been retaining such documents, but assumes that this proposed revision may potentially result in reduced document storage costs to those who sell vehicles with defective pollution control equipment, though these costs are not considered significant.

The proposed amendments also extend the deadline by which owners and operators of lawn and garden companies in the HGA ozone nonattainment area must submit their emission reduction plans. The proposed deadline extension would affect owners and operators in Brazoria, Fort Bend, Galveston, Harris, and Montgomery Counties. Submitting an emission reduction plan enables a lawn care company to be eligible for exemption from restrictions on the hours of operation for the lawn care

industry. The proposed amendments would change the submission deadline from May 31, 2003 to May 31, 2004. The commission believes that the lawn care industry did not receive sufficient time to create emission reduction plans and that more time is needed to examine the need for the rule. Because the proposed amendments merely extend the deadline for plans, no fiscal implications are anticipated, though there may be a delay in any costs to those lawn care industry owners or operators who contract for assistance in developing their plans. No changes are anticipated to the amount of previously projected emission benefits achieved by the lawn and garden rules as a result of the deadline extension.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of implementation of the proposed amendments, and any fiscal implications to any small or micro-business resulting from the implementation of the proposed amendments may be positive, though not considered significant.

Under current rules, commercial vehicle auctions and federal, state, and local agencies or their agents which sell abandoned, confiscated, or seized vehicles are exempt from restrictions on selling vehicles not in compliance with pollution control requirements if they provide buyers with written statements informing the buyers of the liabilities of operating vehicles prior to the restoration of all pollution control systems or devices. Sellers are required to retain copies of these signed statements, but current rules did not specify a length of time for document retention. The proposed amendments would require that the statements be retained for two years. The commission does not know how many vehicles have been sold by small or micro-businesses which had defective pollution control equipment, nor how many of these entities had been retaining such documents, but assumes that this proposed revision may

potentially result in reduced document storage costs to those small or micro-businesses that sell vehicles with defective pollution control equipment, though these costs are not considered significant.

The proposed amendments also extend the deadline by which owners and operators of lawn and garden companies in the HGA ozone nonattainment area must submit their emission reduction plans. The proposed deadline extension would affect owners and operators in Brazoria, Fort Bend, Galveston, Harris, and Montgomery Counties. Submitting an emission reduction plan enables a lawn care company to be eligible for exemption from restrictions on the hours of operation for the lawn care industry. The proposed amendments would change the submission deadline from May 31, 2003 to May 31, 2004. The commission believes that the lawn care industry did not receive sufficient time to create emission reduction plans and that more time is needed to examine the need for the rules. The commission does not know how many lawn care industry small or micro-businesses are in the lawn care industry, but because the proposed amendments merely extend the deadline for plans, no fiscal implications are anticipated, though there may be a delay in any costs to those lawn care industry owners or operators who contract for assistance in developing their plans. No changes are anticipated to the amount of previously projected emission benefits achieved by the lawn and garden rules as a result of the deadline extension.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed amendments do not adversely affect a local economy in a material way for the first five years that the proposed amendments are in effect.

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 amendments do not meet the definition of a "major environmental rule." A 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 amended sections would make clarifications regarding the anti-tampering rules, adopt by reference federal changes to the transportation conformity rules, and extend the deadline for filing an emission reduction plan for compliance with the lawn and garden rules. These proposed amendments would not require additional emission controls or new capital expenses.

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. The proposed amendments to Chapter 114 are not subject to the regulatory analysis provisions of §2001.0225(b), because the proposed rules do not meet any of the four applicability requirements. The commission invites public comment regarding the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission completed a takings impact assessment for the proposed rules. Promulgation and enforcement of the rules will not burden private real property. The amended sections will not affect private property in a manner which restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Therefore, the proposed rules do not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined 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 Texas Coastal Management Program. 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 regulations of the Coastal Coordination Council and has determined that the proposed amendments are consistent with the applicable CMP goal expressed in 31 TAC §501.12(1) of protecting and preserving the quality and values of coastal natural resource areas, and the policy in 31 TAC §501.14(q), which requires that the commission protect air quality in coastal areas. If adopted, the amendments will update definitions related to motor vehicle dealers to correspond to changes made in statute, will set a retention period for certain records, will incorporate updates to federal rules on transportation conformity, and will delay by one year the deadline by which lawn and garden companies must submit emission reduction plans to the commission. No new contaminants will be authorized by these proposed amendments, although the submittal of emission

reduction plans will be delayed on the use of lawn and garden equipment in the HGA nonattainment area. Interested persons may submit comments on the consistency of the proposed amendments with the CMP during the public comment period.

ANNOUNCEMENT OF HEARINGS

Public hearings on this proposal will be held in Houston on February 27, 2003, at 2:00 p.m. at the City Hall Annex, Council Agenda Briefing Room, 900 Bagby (between McKinney and Walker), and in Austin on February 28, 2003, at 2:00 p.m. at the Texas Commission on Environmental Quality, Building F, Room 2210, 12100 Park 35 Circle. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearings; however, a staff member will be available to discuss the proposal 30 minutes before 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 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 2003-008-114-AI. Comments must be received by 5:00 p.m., February 28, 2003. For further information or questions concerning this proposal, please contact Joseph Thomas, Office of Environmental Policy, Analysis, and Assessment, (512) 239-4580.

SUBCHAPTER B: MOTOR VEHICLE ANTI-TAMPERING REQUIREMENTS

§114.21

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under Texas Clean Air Act (TCAA), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also proposed under TCAA, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to develop a general, comprehensive plan for control of the state's air; §382.019, which provides the commission the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles; and §382.208, which provides the commission the authority to coordinate with federal, state, and local transportation planning agencies to develop and implement transportation programs and other measures necessary to demonstrate and maintain attainment of NAAQS and to protect the public from exposure to hazardous air contaminants from motor vehicles.

The proposed amendment implements TWC, §5.103 and §5.105 and TCAA, §§382.002, 382.011, 382.012, 382.019, and 382.208.

§114.21. Exemptions.

(a) - (b) (No change.)

(c) Motor vehicles are exempt from the provisions of §114.20(a), (b), and (d) of this title if the following conditions apply:

(1) (No change.)

(2) the motor vehicles were granted an exemption from the provisions of §114.20(a) and (b) of this title by the commission [Texas Natural Resource Conservation Commission (commission)] or its predecessor agency prior to June 1, 2000.

(A) - (B) (No change.)

(d) The following vehicle transactions involving a "dealer" ["wholesale dealers" and "retail dealers"] as defined in Texas Transportation Code, §503.001 [the Texas Dealer Law, Article 6686, Vernon's Texas Civil Statutes, Title 43, Texas Administrative Code], are exempt from the requirements of §114.20(c) of this title:

(1) sales or transfers from one [vehicle wholesale] dealer to another; and

[(2) sales or transfers from a vehicle wholesale dealer to a vehicle retail dealer;]

(2) [(3)] sales, transfers, or trade-ins from an individual to a [vehicle wholesale or retail] dealer. [;]

[(4) sales or transfers from one retail dealer to another retail dealer; and]

[(5) sales or transfers from a retail dealer to a wholesale dealer.]

(e) Federal, state, and local agencies or their agents which sell abandoned, confiscated, or seized vehicles and any commercial vehicle auction facilities are exempt from the provisions of §114.20(c) of this title if the following conditions are met.

(1) (No change.)

(2) All potential buyers of the vehicle must be informed that deficiencies may be present in the vehicle pollution control systems on the vehicle. The buyer must also be informed of the liabilities to the buyer under §114.20 of this title and §114.50 of this title (relating to Vehicle Emissions Inspection Requirements) of operating the vehicle prior to the adequate restoration of all pollution control systems or devices on the vehicle as originally equipped. The seller of the vehicle shall provide to the buyer a written acknowledgment of the receipt of this information which must be signed by the buyer prior to completion of the sales transaction. The seller shall retain a copy of this signed acknowledgment for two years and shall make it available, upon request.

(f) (No change.)

SUBCHAPTER G: TRANSPORTATION PLANNING

§114.260

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under TCAA, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also proposed under TCAA, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to develop a general, comprehensive plan for control of the state's air; §382.019, which provides the commission the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles; and §382.208, which provides the commission the authority to coordinate with federal, state, and local transportation planning agencies to develop and implement transportation programs and other measures necessary to demonstrate and maintain attainment of NAAQS and to protect the public from exposure to hazardous air contaminants from motor vehicles.

The proposed amendment implements TWC, §5.103 and §5.105 and TCAA, §§382.002, 382.011, 382.012, 382.019, and 382.208.

§114.260. Transportation Conformity.

(a) Purpose. The purpose of this section is to implement the requirements set forth in Title 40 [of the] Code of Federal Regulations ([40] CFR) Part 93, Subpart A (relating to Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded, or Approved Under Title 23 United States Code or the Federal Transit Laws), which are the regulations developed by the EPA under the FCAA Amendments of 1990, §176(c). It includes policy, criteria, and procedures to demonstrate and assure conformity of transportation planning activities with the state implementation plan [State Implementation Plan] (SIP).

(b) (No change.)

(c) CFR incorporation. The Transportation Conformity Rules, as specified in 40 CFR Part 93, Subpart A, (62 FR 43780) dated August 15, 1997 and amended through August 6, 2002, are incorporated by reference with the exception of [§93.102(d) and] §93.105. The requirements of §93.105 are addressed in this section.

(d) Consultation. Under 40 CFR[,] §93.105, regarding consultation, the following procedures shall be undertaken in nonattainment and maintenance areas before making conformity determinations and before adopting applicable SIP revisions.

(1) General factors.

(A) For the purposes of this subsection, concerning consultation, the affected agencies shall include:

(i) - (v) (No change.)

(vi) local publicly owned [publicly-owned] transit services in nonattainment or maintenance areas (the designated recipient of FTA §5307 (formerly §9 funds);

(vii) Texas Commission on Environmental Quality (TCEQ or commission) [Texas Natural Resource Conservation Commission (commission)];

(viii) (No change.)

(B) All correspondence with the affected agencies in subparagraph (A) of this paragraph shall be addressed to the following designated points of contact:

(i) - (ii) (No change.)

(iii) TxDOT: director [Director] of Transportation Planning and Programming or designee;

(iv) TxDOT: director [Director] of Environmental Affairs Division or designee;

(v) FHWA: administrator [Administrator] of Texas Division or designee;

(vi) FTA: director [Director] of Office of Program Development or designee - FTA Region 6;

(vii) EPA: regional administrator [Regional Administrator] or designee - EPA Region 6;

(viii) TxDOT District: district engineer [District Engineer] or designee;

(ix) local publicly owned [publicly-owned] transit services (the designated recipient of FTA §5307 (formerly §9) funds): general manager [General Manager] or designee;

(x) local air quality agencies (recipients of FCAA, §105 funds): director [Director] or designee; and

(xi) (No change.)

(2) Roles and responsibilities of affected agencies.

(A) The MPO, in cooperation with TxDOT and publicly owned transit services, shall consult with the agencies in paragraph (1)(A) of this subsection in the development of

Metropolitan Transportation Plans (MTPs), Transportation Improvement Programs (TIPs), projects, technical analyses, travel demand or other modeling, and data collection. Specifically, the MPOs shall:

(i) allow the commission's Strategic Assessment Division director [Air Quality Planning and Assessment Division Director], or a designated representative, to be a voting member of technical committees on surface transportation and air quality in each nonattainment and maintenance area in order to consult directly with the particular committee during the development of the transportation plans, programs, and projects;

(ii) send information on time and location, an agenda, and supporting materials (including preliminary versions of MTPs and TIPs) for all regularly scheduled meetings on surface transportation or air quality to each of the agencies specified in paragraph (1)(B) of this subsection. This information shall be provided in accordance with the locally adopted public involvement process as required by 23 CFR[, Part 450,] §450.316(b)(1);

(iii) after preparation of final draft versions of MTPs and TIPs, and before adoption and approval by the affected governing body, ensure that the agencies specified in paragraph (1)(B) of this subsection receive a copy, and that they are included in the local area's public participation process as required by the Metropolitan Planning Rule, 23 CFR[,] §450.316(b)(1). Upon approval of MTPs and TIPs, MPOs shall distribute final approved copies of the documents to the agencies specified in paragraph (1)(B) of this subsection;

(iv) for the purposes of regional emissions analysis, initiate a consultation process with the affected agencies specified in paragraph (1)(A) of this subsection during the development stage of new or revised MTPs and TIPs to determine which transportation projects should be considered regionally significant and which projects should be considered to have a significant change in design concept and scope from the effective MTP and TIP. Regionally significant projects will include, at a minimum, all facilities classified as principal arterial or higher, or fixed guideway systems or extensions that offer an alternative to regional highway travel. Also, these include minor arterials included in the travel demand modeling process which serve significant interregional and intraregional travel, and connect rural population centers not already served by a principal arterial, or connect with intermodal transportation terminals not already served by a principal arterial. A significant change in design concept and scope is defined as a revision of a project in the MTP or TIP that would significantly affect model speeds, vehicle miles traveled, or network connections. In addition to new facilities, examples include changes in the number of through lanes or length of project (more than one mile), access control, addition of major intermodal terminal facilities (such as new international bridges, park-and-ride lots, and transfer terminals), addition/deletion of interchanges, or changing between free and toll facilities. When a significant change in the design and scope of a project is proposed, the MPO shall document the rationale for the change and give the affected agencies specified in paragraph (1)(A) of this subsection a 30-day opportunity to comment on <u>the</u> [their] rationale. The MPO shall consider the views of each agency that comments, and respond in writing before any final action on these issues. If the MPO receives no comments within 30 days, the MPO may assume concurrence by the agencies specified in paragraph (1)(A) of this subsection;

(v) include in the TIP a list of projects exempted from the requirements of a conformity determination under 40 CFR[, Part 93,] §93.126 and §93.127. The MPO shall consult with the affected agencies specified in paragraph (1)(A) of this subsection in determining if a project on the list has potentially adverse emissions for any reason, including whether or not the exempt project will interfere with implementation of an adopted transportation control measure (TCM). The MPO shall respond in writing to all comments within 30 days on final MTP and TIP documents. In addition, if no comments are received as part of the subsequent public involvement process for the TIP, the MPO may proceed with implementation of the exempt project; [.]

(vi) notify the affected agencies specified in paragraph (1)(A) of this subsection in writing of any MTP or TIP revisions or amendments which add or delete the exempt projects identified in 40 CFR[,] §93.126;

(vii) as required by 40 CFR[,] §93.116 and §93.123, and in cooperation with TxDOT, make a preliminary identification of those projects located at sites in PM_{10} nonattainment and maintenance areas that require quantitative PM_{10} hot spot [Hot Spot] analyses. After these projects have been identified, the MPO shall submit a list of these projects and sufficient data to the agencies specified in paragraph (1)(A) of this subsection for review and comment;

(viii) before adoption of any new or substantially different methods or assumptions used in the hot spot [Hot Spot] or regional emmissions analysis [Regional Emissions Analysis], provide an opportunity for the agencies specified in paragraph (1)(A) of this subsection to review and comment;

(ix) - (xii) (No change.)

(B) The commission, as the lead air quality planning agency, shall work in consultation with the agencies specified in paragraph (1)(A) of this subsection in developing applicable transportation-related [transportation related] SIP revisions, air quality modeling, general emissions analysis, emissions inventory, and all related activities. Specifically, the commission shall:

(i) set agendas and schedule meetings to seek advice and comments from all agencies specified in paragraph (1)(A) of this subsection during preparation of applicable transportation-related [transportation related] SIP revisions;

(ii) schedule public hearings in order to gather public input on the applicable transportation-related SIP revisions in accordance with 40 CFR[,] §51.102 and notify the agencies specified in paragraph (1)(B) of this subsection of the hearings;

(iii) provide copies of final documents, including applicable adopted or approved transportation-related [transportation related] SIP revisions and supporting information, to all agencies specified in paragraph (1)(B) of this subsection; [and]

(iv) after consultation with the MPO regarding TCMs, distribute to all agencies specified in paragraph (1)(B) of this subsection and other interested persons the list of TCMs proposed for inclusion in the SIP. In consultation with the agencies specified in paragraph (1)(A) of this subsection, the commission shall determine whether past obstacles to implementation of TCMs have

been identified and are being overcome, and determine whether the MPOs and the implementing agencies are giving maximum priority to approval or funding for TCMs. Also, the commission shall consider, in consultation with the affected agencies, whether delays in TCM implementation necessitate a SIP revision to remove TCMs or to substitute TCMs or other emission reduction measures; and [.]

(v) consult with the applicable agencies specified in paragraph (1)(A) of this subsection, in order to cooperatively choose conformity tests and methodologies for isolated rural nonattainment and maintenance areas, as required by 40 CFR[,] §93.109(g)(2)(iii).

(C) Any group, entity, or individual planning to construct a regionally significant transportation project which is not an FHWA-FTA project (including projects for which alternative locations, design concept and scope, or the no-build option are still being considered) must disclose project plans to the MPO on a regular basis and disclose any changes to those plans immediately. This requirement also applies to recipients of funds designated under Title 23 United States Code [U.S.C.] or the Federal Transit Laws.

(3) General procedures.

(A) - (B) (No change.)

(C) For the purposes of evaluating and choosing a model (or models) and associated methods and assumptions to be used in hot spot [Hot Spot] and regional emissions analyses [Regional Emissions Analyses], agencies specified in paragraph (1)(A) of this subsection shall

participate in a working group identified as the Technical Working Group for Mobile Source Emissions [(TWG)]. The frequency of meetings and agendas for them will be cooperatively determined by the agencies specified in paragraph (1)(A) of this subsection. The function of this working group may be delegated to an existing group with similar composition and purpose.

(D) The commission, affected MPOs, affected local air quality agencies, and TxDOT shall cooperatively evaluate events which will trigger the need for new conformity determinations. New conformity determinations may be triggered by events established in 40 CFR[,] §93.104 as well as other events, including emergency relief projects that require substantial functional, locational, and capacity changes, or in the event of any other unforeseeable circumstances.

(E) The MPO and its governing body, or TxDOT if applicable, shall make conformity determinations for all MTPs, TIPs, regionally significant projects, and all other events as required by 40 CFR[,] Part 93, Subpart A and this section. Upon completion of the transportation conformity determination review process (including consultation, public participation, and all other requirements of this section), FHWA and FTA will issue a joint conformity finding, indicating the transportation conformity status of the document(s) under review. The effective date of the conformity determination for an area is the date of the joint conformity finding made by FHWA-FTA.

(4) Conflict resolution.

(A) (No change.)

(B) In the event that the MPO or TxDOT determines that every effort has been made to address the commission's concerns, and that no further progress is possible, the MPO or TxDOT shall notify the TCEQ [commission] executive director in writing to this effect. This subparagraph shall be cited by the MPO or TxDOT in any notification of a conflict which may require action by the Governor, or his or her delegate under subparagraph (C) of this paragraph.

(C) (No change.)

(5) Public comment on conformity determinations. Consistent with the requirements of 23 CFR[,] Part 450, concerning public involvement, the agencies making conformity determinations on transportation plans, programs, and projects shall establish a proactive public involvement process which provides opportunity for public review and comment. This process shall, at a minimum, provide reasonable public access to technical and policy information considered by the agency at the beginning of the public comment period and before taking formal action on conformity determinations for all MTPs and TIPs, as required by 23 CFR §450.316(b) and this section. Any charges imposed for public inspection and copying should be consistent with the fee schedule contained in 49 CFR §7.95. In addition, these agencies shall address in writing any public comment claiming that a non-FHWA/FTA funded, regionally significant project has not been properly represented in the conformity determination for an MTP or TIP. Finally, these agencies shall provide opportunity for public involvement in conformity determinations for projects where otherwise required by law.

(6) In formulating an enforcement policy regarding a violation [of a rule] of this subsection (relating to the consultation process) the commission may consider any good-faith [good faith] effort made by the consulting agencies to comply.

(e) Compliance date. Compliance with this section shall begin [Effective date. The revisions to this section adopted by the commission on November 18, 1998, and filed with the Secretary of State on November 23, 1998, shall be in effect] on the date of EPA approval of the transportation conformity SIP associated with this rule.

SUBCHAPTER I: NON-ROAD ENGINES

DIVISION 6: LAWN SERVICE EQUIPMENT OPERATING RESTRICTIONS

§114.452

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under TCAA, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also proposed under TCAA, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to develop a general, comprehensive plan for control of the state's air; §382.019, which provides the commission the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles; and §382.208, which provides the commission the authority to coordinate with federal, state, and local transportation planning agencies to develop and implement transportation programs and other measures necessary to demonstrate and maintain attainment of NAAQS and to protect the public from exposure to hazardous air contaminants from motor vehicles.

The proposed amendment implements TWC, §5.103 and §5.105 and TCAA, §§382.002, 382.011, 382.012, 382.019, and 382.208.

§114.452. Control Requirements.

(a) No handheld or non-handheld[,] lawn and garden service equipment powered by spark-ignition engines of 25 horsepower (hp) and below shall be started or operated between the hours of 6:00 a.m. and noon, during the time period from April 1 to October 31, in the counties listed in §114.459 of this title (relating to Affected Counties and Compliance Dates), except as specified in subsections (b) and (c) of this section.

(b) The following uses of lawn and garden service equipment powered by spark-ignition engines of 25 hp and below are exempt from the requirements of this division:

(1) (No change.)

(2) any use by a noncommercial [non-commercial] operator; or

(3) (No change.)

(c) Commercial operators or persons not exempt under subsection (b) of this section who submit an emissions reduction plan by May 31, 2004 [2003], (which is approved by the executive director and the EPA no later than March [May] 31, 2005 [2004]) are exempt from operating hour restrictions upon implementation of these rules in 2005, and are permitted to operate during the restricted hours. [The executive director may allow plans to be submitted after May 31, 2003.] In any event, a plan must be approved prior to the use of that plan for compliance with the requirements of this

division. In order to be approved, the plan must demonstrate nitrogen oxide and volatile organic compound reductions equivalent to those required by the rules being requested for exemption, and must contain adequate enforcement provisions.

(d) Commercial operator is defined as any person who receives payment or compensation in exchange for operating lawn and garden service equipment powered by spark-ignition engines of 25 hp or below where the payment or compensation is required to be reported as income by the United States Internal Revenue Code. This term also includes any employees or contractors of any person as defined in the Texas Health and Safety Code [Clean Air Act], §382.003(10).