The Texas Natural Resource Conservation Commission (commission) proposes new §114.500, Definitions; §114.502, Control Requirements for Motor Vehicle Idling; §114.507, Exemptions; and §114.509, Affected Counties and Compliance Dates. The commission proposes these new sections to Chapter 114, Control of Air Pollution From Motor Vehicles; new Subchapter J, Operational Controls for Motor Vehicles; new Division 1, Motor Vehicle Idling Restrictions; and corresponding revisions to the state implementation plan (SIP) in order to control ground-level ozone in the Houston/Galveston (HGA) ozone nonattainment area.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The 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 oxide (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 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 VIf); 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 approvable 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 approvable attainment demonstration. The commission estimates that this measure will achieve a minimum of 0.92 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. Adoption of the proposed rules limiting idling of heavy-duty motor vehicles can contribute to attainment of the one-hour ozone standard in the HGA area. The proposed rules limiting idling of heavy-duty motor vehicles also may contribute to a successful demonstration of transportation conformity in the HGA area.

These proposed rules are one element of the control strategy for the HGA Attainment Demonstration SIP. The purpose of these proposed rules is to establish heavy-duty motor vehicle idling restrictions as one element of an air pollution control strategy in the eight counties of the HGA ozone nonattainment area to reduce NO_x necessary for the counties to be able to demonstrate attainment with the ozone NAAQS.

These proposed rules will implement idling limits for gasoline and diesel powered engines in heavy-duty motor vehicles in the HGA area. The proposed idling limits will lower NO_x emissions and other pollutants from fuel combustion. Because NO_x is a precursor to ground-level ozone formation, reduced emissions of NO_x will result in ground-level ozone reductions. To comply with the motor vehicle idling regulations, no person in the affected counties may cause, suffer, allow, or permit the primary propulsion engine of a heavy-duty motor vehicle to idle for more than five consecutive minutes when the vehicle is not in motion during the time from April 1 through October 31.

The commission developed an ozone control strategy which limits the time allowed for the engines of heavy-duty motor vehicles to idle when not in motion. Currently, there are no federal regulations governing idle time for heavy-duty motor vehicles. Therefore, the state has the authority to control motor vehicle idling and the proposed idling requirements developed by the commission for this NO_x emission reduction strategy will result in restrictions on the time allowed for motor vehicle idling.

Modeling assessing the benefits of this NO_x emission reduction strategy demonstrated that emission reductions could be achieved by limiting the idling time of heavy-duty motor vehicles. By the year

2007, the idling limits will reduce NO_x emissions in the affected area by 0.92 tpd. The commission estimates the daily cost savings benefit of this strategy to be approximately $126,150 per ton of NO_x reduced. This figure was calculated from the estimated NO_x reductions from this strategy of 0.92 tpd, the estimated reduction in fuel consumption per hour, and the current price per gallon of fuel sold in the affected area.

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 proposed new §114.500 contains the definitions of idle, motor vehicle, and primary propulsion engine.

The proposed new §114.502 establishes the control requirements that limit motor vehicle idling to five consecutive minutes when the vehicle is not in motion during the time from April 1 through October 31.

The proposed new §114.507 provides exemptions to the control requirements of §114.502 for motor vehicles that have a gross vehicle weight rating of 14,000 pounds or less, that are forced to remain

motionless because of traffic conditions over which the operator has no control; are being used as an emergency or law enforcement motor vehicle; or when the engine of a motor vehicle is providing power takeoff for refrigeration, lift gate pumps or other auxiliary uses; or when the engine of a motor vehicle is being operated for maintenance or diagnostic purposes; or when the engine of a motor vehicle is being operated solely to defrost a windshield.

The proposed new §114.509 establishes a compliance date of April 1, 2001, and identifies the eight HGA counties covered by the motor vehicle idle control requirements of §114.502.

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 rules 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 these proposed rules.

The proposed rules will implement idling limits for state and local government owned and operated gasoline and diesel powered engines in heavy-duty motor vehicles with a gross vehicle weight rating (GVWR) greater than 14,000 pounds in the HGA ozone nonattainment area. The proposed rules would affect approximately 3,200 state and local government and 92,718 privately-owned or operated gas and diesel powered heavy-duty vehicles registered in the HGA ozone nonattainment area. To comply with the motor vehicle idling regulations, the primary propulsion engine for any state and local government owned and operated heavy-duty vehicle operating in the HGA nonattainment area must not be allowed

to idle for more than five consecutive minutes when the vehicle is not in motion during the period of April 1 through October 31 of each calendar year.

The proposed rules will implement idling limits for gasoline and diesel powered engines in heavy-duty motor vehicles with a GVWR greater than 14,000 pounds in the HGA ozone nonattainment area. Exemptions to these proposed rules include the following: vehicles with a GVWR of 14,000 pounds or less; vehicles that are forced to remain motionless because of traffic conditions over which the operator has no control; vehicles that are being used as an emergency or law enforcement motor vehicle; when the primary propulsion engine is providing power takeoff for refrigeration, lift gate pumps or other auxiliary uses; when the primary propulsion engine is being operated for maintenance or diagnostic purposes; or when the primary propulsion engine is being operated solely to defrost a windshield.

There will be no significant fiscal impacts to units of state and local government as a result of administration or enforcement of the proposed rules; however, adhering to the proposed idling restrictions could provide cost savings by reducing fuel consumption. Heavy-duty diesel and gasoline powered vehicles can consume up to one gallon of fuel per hour while idling. The Eastern Research Group (ERG) conducted a study titled *Determination of NO_x Benefits from Proposed Idle Shut-Off Rule*, July 2000, to determine the benefits of idle restrictions. Assuming two five-minute idle periods per day, approximately 88 hours of idle time could be saved per diesel and gasoline vehicle per year, resulting in a cost savings of approximately $132 per vehicle per year. There are approximately 3,200 state and local government gas and diesel powered heavy-duty vehicles registered in the HGA ozone

nonattainment area. The commission anticipates that the total annual savings to units of state and local government in the HGA ozone nonattainment area will be approximately $422,400.

PUBLIC BENEFIT AND COSTS

Mr. Davis also determined that for the first five years the proposed rules are in effect, the public benefit anticipated from enforcement of and compliance with the proposed rules will be the potential reduction of NO_x, which contributes to the formation of ground-level ozone, potentially improved air quality, and contribution toward demonstration of attainment with the NAAQS for the HGA ozone nonattainment area. There are no significant fiscal implications as a result of administration or enforcement of the proposed rules for any single person or business which owns and operates heavy-duty gasoline and diesel vehicles within the HGA ozone nonattainment area.

The proposed rules will implement idling limits for privately-owned and operated gasoline and diesel powered engines in heavy-duty motor vehicles with a gross vehicle weight rating greater than 14,000 pounds in the HGA nonattainment area. To comply with the motor vehicle idling regulations, the primary propulsion engine for any person or business-owned and operated heavy-duty vehicle operating in the HGA nonattainment area must not be allowed to idle for more than five consecutive minutes when the vehicle is not in motion during the period of April 1 through October 31 of each calendar year. Exemptions to this rule affecting persons and businesses are the same as those described in the Cost to State and Local Government section of this fiscal note.

There will be no significant fiscal impacts to any person or business as a result of administration or enforcement of the proposed rules; however, adhering to the proposed idling restrictions could provide cost savings by reducing fuel consumption. Heavy-duty diesel and gasoline powered vehicles can consume up to one gallon of fuel per hour while idling. The ERG conducted a study titled *Determination of NO_x Benefits from Proposed Idle Shut-Off Rule*, in July 2000 to determine the benefits of idle restrictions. Assuming two five-minute idle periods per day, approximately 88 hours of idle time could be saved per vehicle per year, resulting in a cost savings of approximately $132 per vehicle per year. There are approximately 92,718 privately-owned and operated gas and diesel powered heavy-duty vehicles registered in the HGA ozone nonattainment area. It is anticipated that the total annual savings to persons and businesses in the HGA ozone nonattainment area will be approximately $12 million.

SMALL AND MICRO-BUSINESS ASSESSMENT

No significant adverse effects are anticipated to small or micro-businesses as a result of implementing the proposed rules. The proposed rules will implement idling limits for small and micro-business owned and operated gasoline and diesel powered engines in heavy-duty motor vehicles with a gross vehicle weight rating greater than 14,000 pounds in the HGA nonattainment area. To comply with the motor vehicle idling regulations, the primary propulsion engine for any persons or business-owned and operated heavy-duty vehicle operating in the HGA nonattainment area must not be allowed to idle for more than five consecutive minutes when the vehicle is not in motion during the period of April 1 through October 31 of each calendar year.

There will be no significant fiscal impacts to any small or micro-business as a result of administration or enforcement of the proposed rules; however, adhering to the proposed idling restrictions could provide cost savings by reducing fuel consumption. Heavy-duty diesel and gasoline powered vehicles can consume up to one gallon of fuel per hour while idling. The ERG conducted a study titled *Determination of NO_x Benefits from Proposed Idle Shut-Off Rule*, in July 2000 to determine the benefits of idle restrictions. Assuming two five-minute idle periods per day, approximately 88 hours of idle time could be saved per vehicle per year, resulting in a cost savings of approximately $132 per vehicle per year. Of the 92,718 privately-owned and operated gas and diesel powered heavy-duty vehicles registered in the HGA ozone nonattainment area, some of these vehicles are owned by small or micro-businesses. The total savings to small and micro-businesses would depend on the number of heavy-duty vehicles owned and operated.

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 proposed rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. "Major environmental rule" means a rule of which the specific intent 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 new sections to Chapter 114 are intended to protect the environment or reduce risks to human health from environmental exposure to ozone but the proposed control requirements within this proposal should not

adversely affect in any 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 rules are intended to implement heavy-duty motor vehicle idle limitations as part of the strategy to reduce emissions of NO_x necessary for the counties included in the HGA ozone nonattainment area to be able to demonstrate attainment with the ozone NAAQS. The proposed rules are part of the commission response to the request and one element of the proposed Attainment Demonstration SIP. 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.

Specifically, the motor vehicle idle requirements within these proposed rules were developed in order to meet the ozone NAAQS set by the EPA under 42 USC, §7409, and therefore meet a federal requirement. States are primarily responsible for ensuring attainment and maintenance of NAAQS once the EPA has established those standards. Under 42 USC, §7410 and related provisions, states must submit, for EPA approval, SIPs that provide for the attainment and maintenance of NAAQS through a control program directed to sources of the pollutants involved. These proposed rules are not an express requirement of state law, but were developed specifically in order to meet the air quality standards established under federal law as NAAQS. These proposed rules are intended to help bring ozone nonattainment areas into compliance and to help keep attainment and near nonattainment areas from reaching nonattainment. The proposed rules do not exceed a standard set by federal law, exceed an express requirement of state law unless specifically required by federal law, nor exceed a requirement of a delegation agreement. The proposed rules were not developed solely under the general powers of the agency, but were specifically developed to meet the air quality standards established under federal law as NAAQS.

The commission invites public comment on the draft regulatory impact analysis.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for these proposed rules in accordance with Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the proposed rulemaking is to establish motor vehicle idle limits which will act as an air pollution control strategy to reduce NO_x emissions necessary for the eight-county HGA ozone nonattainment area to be able to demonstrate attainment with the ozone NAAQS. Promulgation and enforcement of the proposed rules should not burden private, real property because this proposed rulemaking action should not result in any increased costs. 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 emission limitations and control requirements within this proposal have been 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 proposed rules is to implement motor vehicle idle limits which are necessary for the HGA ozone nonattainment areas to meet the air quality standards established under federal law as NAAQS. Consequently, the exemption which applies to these proposed rules is that of an action reasonably taken to fulfill an obligation mandated by federal

law; therefore, these proposed rules do not constitute a takings under the Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

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 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3), relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is 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., TNRCC, 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 2000-011N-114-AI. Comments must be received by 5:00 p.m., September 25, 2000. For further information, please contact Scott Carpenter at (512) 239-1757 or Alan Henderson at (512) 239-1510.

STATUTORY AUTHORITY

The new sections 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 authority to adopt rules consistent with the policy and purposes of the TCAA. The new sections 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 new sections implement TCAA, §382.002, relating to Policy and Purpose; §382.011, relating to General Powers and Duties; §382.012, relating to State Air Control Plan; §382.019, relating to Methods Used to Control and Reduce Emissions from Land Vehicles; and §382.039, relating to Attainment Program.

SUBCHAPTER J: OPERATIONAL CONTROLS FOR MOTOR VEHICLES

DIVISION 1: MOTOR VEHICLE IDLING LIMITATIONS

§§114.500, 114.502, 114.507, 114.509

§114.500. Definitions.

Unless specifically defined in the TCAA or in the rules of the commission, the terms used in this subchapter have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, §3.2 of this title (relating to Definitions); §101.1 of this title (relating to Definitions); and §114.1 of this title (relating to Definitions), the following words and terms, when used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise.

(1) Idle - The operation of an engine in the operating mode where the engine is not engaged in gear, where the engine operates at a speed at the revolutions per minute specified by the engine or vehicle manufacturer for when the accelerator is fully released, and there is no load on the engine.

(2) Motor vehicle - Any self-propelled device powered by an internal combustion engine and designed to operate with four or more wheels in contact with the ground, in or by which a person or property is or may be transported, and is required to be registered under Texas Transportation Code (TTC), §502.002, excluding vehicles registered under TTC, §502.006(c).

(3) Primary propulsion engine - The internal combustion engine attached to a motor vehicle that provides the power to propel the motor vehicle into and maintain motion.

§114.502. Control Requirements for Motor Vehicle Idling.

No person shall cause, suffer, allow, or permit the primary propulsion engine of a motor vehicle to idle for more than five consecutive minutes in the counties listed in §114.509 of this title (relating to Affected Counties and Compliance Dates) when the vehicle is not in motion during the period of April 1 through October 31 of each calendar year.

§114.507. Exemptions.

The provisions of §114.502 of this title (relating to Control Requirements for Motor Vehicle Idling) shall not apply to:

(1) a motor vehicle that has a gross vehicle weight rating of 14,000 pounds or less;

(2) a motor vehicle forced to remain motionless because of traffic conditions over which the operator has no control;

(3) a motor vehicle being used as an emergency or law enforcement motor vehicle;

(4) the primary propulsion engine of a motor vehicle providing power takeoff for refrigeration, lift gate pumps or other auxiliary uses;

(5) the primary propulsion engine of a motor vehicle being operated for maintenance or diagnostic purposes; or

(6) the primary propulsion engine of a motor vehicle being operated solely to defrost a windshield.

§114.509. Affected Counties and Compliance Dates.

Beginning April 1, 2001, all affected persons in the following counties shall comply with §114.502 of this title (relating to Control Requirements): Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller.