

The commission proposes the repeal of Chapter 114, §§114.1, 114.3-114.7, 114.13, 114.23, 114.25, 114.27, and 114.29-114.40, concerning Control of Air Pollution From Motor Vehicles; a new Chapter 114, concerning Control of Air Pollution From Motor Vehicles, §§114.1-114.5, concerning Definitions; §§114.20-114.21, concerning Motor Vehicle Anti-Tampering Requirements; §§114.50-114.53, concerning Vehicle Inspection and Maintenance; §114.100, concerning Oxygen Requirements for Gasoline; §§114.150-114.157, concerning Low Emission Fleet Vehicle Requirements; §§114.200-114.202, concerning Vehicle Retirement and Mobile Emission Reduction Credits; and §§114.250, 114.260, and 114.270, concerning Transportation Planning; and a proposed revision to the State Implementation Plan concerning this proposal.

EXPLANATION OF PROPOSED RULES

Several new state and federal requirements for the control of air pollutants from motor vehicles must be incorporated into Chapter 114 within the next twelve months. The implementation of these requirements will require several rulemaking efforts, some of which will be on overlapping, but not necessarily simultaneous schedules. In order to better accommodate overlapping schedules, the existing Chapter 114 must be reformatted into subchapters, each of which may then be revised independently of the others. This is accomplished by repealing the existing sections and reinserting them into new subchapters without substantial technical changes. The existing Chapter 114 sections will also be renumbered to create a cleaner, more logical organization.

The new Chapter 114 will be divided into seven new subchapters (A through G). The proposed Subchapter A, §§114.1-114.5, contains the definitions for the entire chapter. The definitions were

taken from several existing sections and placed into §114.1 for general definitions and four other sections, §§114.2-114.5, which cover major mobile source program definitions. Each of the remaining six subchapters contains a specific requirement which pertains to specific motor vehicle programs. The proposed Subchapter B, §§114.20-114.21, contains the requirements for the motor vehicle anti-tampering program. The proposed new §114.20 does not contain the original subsection (e), concerning leaded gasoline, because leaded fuel has been banned for on-road sales by the FCAA beginning December 31, 1995. Proposed Subchapter C, §§114.50-114.53, contains the requirements for the vehicle inspection and maintenance program. Proposed Subchapter D, §114.100, contains the requirements for the oxygenated fuels program. Proposed Subchapter E, §§114.150-114.157, contains the requirements for the low emission fleet vehicle program. Proposed Subchapter F, §§114.200-114.202, contains the requirements for the vehicle retirement and mobile emission reduction credits program. Proposed Subchapter G, §§114.250, 114.260, and 114.270, contains the requirements for the transportation planning program. Section 114.250, concerning Memorandum of Understanding (MOU) with the Texas Department of Transportation, contains the MOU as an exhibit under subsection (c). The Mobile Source Division is planning to incorporate the MOU into Chapter 7, concerning Memoranda of Understanding, in a follow-on rulemaking.

Finally, this proposed rulemaking is a regulatory reform action which incorporates numerous editorial changes to ensure the chapter is consistent with the Guiding Principles and policies of the commission, and is consistent in format, style, and tone per commission guidelines.

FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period these rules as proposed are in effect, there will be no significant fiscal implications for state or local government as a result of administration or enforcement of the rules. The proposed rules do not include the requirement for signs on each gasoline pump which state a prohibition on the use of leaded gasoline, because unleaded fuel has been banned for on-road sales by the FCAA since December 31, 1995. This will remove the requirement for state and local government to enforce the sign requirements for leaded gasoline. With the exception of the reduced cost to maintain the leaded gasoline signs on all gasoline pumps, there will be no additional economic impact on owners and operators of affected sources already subject to the requirements of the existing sections because the requirements themselves will not be changed.

PUBLIC BENEFIT

Mr. Minick also has determined that for each year of the first five years the proposed rules are in effect the public benefit anticipated as a result of the reorganization of Chapter 114 will be a more logically organized chapter which will be able to accommodate new state and federal requirements to be incorporated in overlapping but separate rulemakings. There will be no additional anticipated economic costs to persons or small businesses required to comply with the rules as proposed, because the requirements themselves will not be changed.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for this rule proposal under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rulemaking is to reorganize Chapter 114, by creating subchapters and reorganizing the sections into the new subchapters, in order to facilitate implementation of further rule revisions by the state. Promulgation and enforcement of this reorganization will not affect private real property.

COASTAL MANAGEMENT PLAN

The commission has 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 Resource Code, §§33.201 et. seq.), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this proposed action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council and has determined that the proposed action is consistent with the applicable CMP goals and policies. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations at Title 40, Code of Federal Regulations (CFR), to protect and enhance air quality in the coastal area, (31 TAC §501.14(q)). This proposal does not change existing requirements which already comply with regulations at Title 40, CFR, and is therefore consistent with this policy.

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

PUBLIC HEARING

A public hearing on this proposal will be held in Austin on September 30, 1997 at 10:00 a.m. in Building F, Room 2210 of the commission's central office, located at 12100 North IH-35, Park 35 Technical Center, Austin, Texas 78753. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, a commission staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS

Written comments may be mailed to Heather Evans, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 97163-114-AI. Comments must be received by 5:00 p.m., October 6, 1997. For further information or questions concerning this proposal, contact Candy Garrett, Mobile Source Division, Office of Air Quality, (512) 239-1489.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the commission at (512) 239-4900. Requests should be made as far in advance as possible.

STATUTORY AUTHORITY

The repeals are proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The proposed repeals implement Texas Health and Safety Code, §382.017.

CHAPTER 114

CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES

§114.1. Maintenance and Operation of Air Pollution Control Systems or Devices Used to Control Emissions from Motor Vehicles.

§114.3. Vehicle Emissions Inspection Requirements.

§114.4. Equipment Evaluation Procedures for Vehicle Exhaust Gas Analyzers.

§114.5. Exclusions and Exceptions.

§114.6. Waivers and Extensions for Inspection Requirements.

§114.7. Inspection and Maintenance Fees.

§114.13. Oxygenated Fuels.

§114.23. Transportation Control Measures.

§114.25. Memorandum of Understanding with the Texas Department of Transportation.

§114.27. Transportation Conformity.

§114.29. Accelerated Vehicle Retirement Program.

§114.30. Definitions.

§114.31. Requirements for Mass Transit Authorities.

§114.32. Requirements for Local Governments and Private Persons.

§114.33. Use of Certain Vehicles for Compliance.

§114.34. Exceptions.

§114.35. Exceptions for Certain Mass Transit Authorities.

§114.36. Reporting.

§114.37. Record Keeping.

§114.38. Program Compliance Credits.

§114.39. Mobile Emission Reduction Credit Program.

§114.40. The Texas Mobile Emission Reduction Credit Fund.

This commission hereby certifies that the proposal has been reviewed by legal counsel and found to be within the commission's authority to adopt.

Issued in Austin, Texas, on August 20, 1997.

SUBCHAPTER A : DEFINITIONS

The new rules are proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA because the primary purpose of this rulemaking is to reformat Chapter 114 into subchapters. Proposed Subchapter B, concerning Motor Vehicle Anti-Tampering Requirements, does not contain the leaded gasoline requirements of the former Section 114.1(e); therefore, Subchapter B is proposed under the TCAA, §382.011, which provides the commission with the authority to control the quality of the state's air; §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examinations of records; and §382.019, which provides the commission with the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles.

The proposed new rules, Subchapters A and C-G, are only a reformatting of existing rules and therefore do not implement any new state or federal requirements. The proposed Subchapter B, does not contain the leaded gasoline requirements of the former Section 114.1(e), and has become unnecessary due to the FCAA, §§203(a)(3) and 211(n).

§114.1. Definitions.

Unless specifically defined in the TCAA or in the rules of the Texas Natural Resource Conservation Commission (commission), the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

Dual-fuel vehicle - Any motor vehicle or motor vehicle engine engineered and designed to be operated on two different fuels, but not a mixture of the two.

Emergency vehicle - A vehicle defined as an authorized emergency vehicle according to Texas Transportation Code, §541.201(1).

Emissions - The emissions of oxides of nitrogen, volatile organic compounds, carbon monoxide, particulate, or any combination of these substances.

First safety inspection certificate - Initial Department of Public Safety (DPS) certificates issued through DPS certified inspection stations for every new vehicle found to be in compliance with the rules and regulations governing safety inspections.

Gross vehicle weight rating (GVWR) - The value specified by the manufacturer as the maximum design loaded weight of a vehicle. This is the weight as expressed on the vehicle's registration, and includes the weight the vehicle can carry or draw.

Heavy-duty vehicle - Any passenger vehicle or truck capable of transporting people, equipment, or cargo, that has a GVWR greater than 8,500 lbs., and is required to be registered under

the Texas Transportation Code, Section 502.002 . For purposes of the Mobile Emission Reduction Credit (MERC) trading program the heavy-duty class is divided into the following subclasses:

(A) Light heavy-duty vehicle - Any passenger vehicle or truck capable of transporting people, equipment, or cargo that has a GVWR greater than 8,500 lbs. but less than or equal to 10,000 lbs.

(B) Medium heavy-duty vehicle - Any passenger vehicle or truck capable of transporting people, equipment, or cargo that has a GVWR greater than 10,000 lbs. but less than or equal to 19,500 lbs.

(C) Heavy heavy-duty vehicle - Any passenger vehicle or truck capable of transporting people, equipment, or cargo that has a GVWR greater than 19,500 lbs.

Inherently low emission vehicle - A vehicle as defined by Title 40 of the Code of Federal Regulations (40 CFR), Part 88.

Law enforcement vehicle - Any vehicle controlled by a local government and primarily operated by a civilian or military police officer or sheriff, or by state highway patrols, or other similar law enforcement agencies, and which is used for the purpose of law enforcement activities including, but not limited to, chase, apprehension, surveillance, or patrol of people engaged in or potentially engaged in unlawful activities.

Light-duty vehicle - Any passenger vehicle or truck capable of transporting people, equipment, or cargo, that has a GVWR less than or equal to 8,500 lbs, and required to be registered under the Texas Transportation Code, Section 502.002. For purposes of the MERC trading program the light-duty class is divided into the following subclasses:

(A) Light-duty vehicle - Any passenger vehicle capable of seating 12 or fewer passengers that has a GVWR less than or equal to 6,000 lbs.

(B) Light-duty truck 1 - Any passenger truck capable of transporting people, equipment or cargo, that has a GVWR less than or equal to 6,000 lbs.

(C) Light-duty truck 2 - Any passenger truck capable of transporting people, equipment or cargo, that has a GVWR greater than 6,000 lbs. but less than 8,500 lbs.

Loaded mode inspection and maintenance (I/M) test - A measurement of the tailpipe exhaust emissions of a vehicle while the drive wheel rotates on a dynamometer, which simulates the full weight of the vehicle driving down a level roadway. Loaded test equipment specifications shall meet EPA requirements for Acceleration Simulation Mode equipment.

Low emission vehicle - A vehicle as defined by 40 CFR, Part 88.

Mass Transit Authority - A transportation or transit authority or department established under Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973 as defined in the Texas Transportation Code, Chapters 451 (Metropolitan Rapid Transit Authorities), 452 (Regional Transportation Authorities), and 453 (Municipal Transportation Authorities), that operates a mass transit system under any of those laws.

Revised Texas I/M State Implementation Plan (SIP) - The portion of the Texas SIP which includes the procedures and requirements of the vehicle emissions inspection and maintenance program as adopted by the commission May 29, 1996, in accordance with the 40 CFR Part 51, Subpart S, issued November 5, 1992; the EPA flexibility amendments dated September 18, 1995; and the National Highway Systems Designation Act of 1995. A copy of the revised Texas I/M SIP is available

at the Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas, 78753;
mailing address: P.O. Box 13087, MC 166, Austin, Texas 78711-3087.

Tier I federal emission standards - The standards are defined in the FCAA as amended in Section 202, USC Title 42 Section 7521, and in 40 CFR, Part 86. The phase-in of these standards began in model year 1994.

Ultra low emission vehicle - A vehicle as defined by 40 CFR, Part 88.

Zero emission vehicle - A vehicle as defined by 40 CFR, Part 88.

§114.2. Inspection and Maintenance (I/M) Definitions.

Unless specifically defined in the TCAA or in the rules of the Texas Natural Resource Conservation Commission (commission), the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, the following words and terms, when used in this Subchapter C of this chapter (relating to Vehicle Inspection and Maintenance), shall have the following meanings, unless the context clearly indicates otherwise:

Adjusted annually - Percentage, if any, by which the Consumer Price Index (CPI) for the preceding calendar year differs (as of August 31) from the CPI for 1989; adjustments shall be effective on January 1 of each year.

Basic program area - Collin, Dallas, Denton, and Tarrant Counties.

Core program area - Dallas, El Paso, Harris, and Tarrant Counties.

Emissions tune-up - A basic tune-up along with functional checks and any necessary replacement or repair of emissions control components.

Enhanced program areas - Harris, Waller, Galveston, Montgomery, Chambers, Liberty, Fort Bend, Brazoria, and El Paso Counties.

Motorist - A person or other entity responsible for the inspection, repair, and maintenance of a motor vehicle, which may include, but is not limited to, owners and lessees.

On-road test - Utilization of remote sensing technology to identify vehicles operating within the core I/M program area that have a high probability of being high-emitters.

Out-of-cycle test - Required emissions test not associated with vehicle safety inspection testing cycle.

Primarily operated - Use of a motor vehicle greater than 60 calendar days per testing cycle in a county. Motorists shall comply with emissions requirements for such county. It is presumed that a vehicle is primarily operated in the county which it is registered.

Program area - County or counties in which the Texas Department of Public Safety, in coordination with the commission, administers the vehicle emissions inspection and maintenance program contained in the revised Texas I/M State Implementation Plan. These counties include Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Harris, Galveston, Liberty, Montgomery, Tarrant, and Waller.

Retests - Successive vehicle emissions inspections following the failing of an initial test by a vehicle during a single testing cycle.

Testing cycle - Annual or biennial cycle commencing with the first safety inspection certificate expiration date for which a motor vehicle is subject to a vehicle emissions inspection.

Two-speed idle I/M test - A measurement of the tailpipe exhaust emissions of a vehicle while the vehicle idles, first at a lower speed and then again at a higher speed.

Uncommon part - A part that takes more than 30 days for expected delivery and installation, where a motorist can prove that a reasonable attempt made to locate necessary emission control parts by retail or wholesale part suppliers will exceed the remaining time prior to expiration of the vehicle safety inspection certificate or the 30 day period following an out-of-cycle inspection.

§114.3. Low Emission Fleet Vehicle Definitions.

Unless specifically defined in the TCAA or in the rules of the Texas Natural Resource Conservation Commission (commission), the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, the following words and terms, when used in Subchapter E of this chapter (relating to Low Emission Fleet Vehicle Requirements), shall have the following meanings, unless the context clearly indicates otherwise:

Beaumont/Port Arthur nonattainment area - Hardin, Jefferson, and Orange Counties.

Capable of being centrally fueled - A fleet or that part of a fleet consisting of vehicles that could be refueled 100% of the time at a location that is owned, operated, or controlled by the fleet operator or that is under contract with the fleet operator. The fact that one or more vehicles in a fleet are not centrally fueled does not exempt an entire fleet from the program.

Capable of operating - Having the necessary permanently installed equipment that enables a vehicle to use a specified fuel.

Centrally fueled - A fleet or that part of a fleet consisting of vehicles that are refueled 100% of the time at a location that is owned, operated, or controlled by the fleet operator or that is under contract with the fleet operator. The fact that one or more vehicles in a fleet are not centrally fueled does not exempt an entire fleet from the program. The term does not include retail credit card purchases or commercial fleet card purchases.

Certified - The process established by the EPA to ensure compliance, throughout the entire useful life of a vehicle, with the required standards as defined in Title 40 Code of Federal Regulations (40 CFR).

Clean-fuel vehicle - A vehicle in a class or category of vehicles that has been certified to meet for any model year:

(A) the clean-fuel vehicle standards applicable under the FCAA as amended Part C, Subchapter II, (U.S.C. 42 Section 7581 et seq.);

(B) emission limits at least as stringent as the applicable low-emission vehicle standards for the clean-fuel fleet program under 40 CFR, Sections 88.104-94, 88.105-94, and as published in the *Federal Register* of September 30, 1994; and

(C) vehicles certified to the inherently low-emission vehicle standards under 40 CFR, Section 88.311-93 as published in the *Federal Register*, March 1, 1993, will also be considered clean-fuel vehicles.

Control -

(A) When it is used to join all entities under common management, means any one or a combination of the following:

(i) a third person or firm has equity ownership of 51 percent or more in each of two or more firms;

(ii) two or more firms have common corporate officers, in whole or in substantial part, who are responsible for the day-to-day operation of the companies;

(iii) one firm leases, operates, supervises, or in 51 percent or greater part owns equipment and/or facilities used by another person or firm, or has equity ownership of 51 percent or more of another firm.

(B) When it is used to refer to the management of vehicles, means a person has the authority to decide who can operate a particular vehicle, and the purposes for which the vehicle can be operated.

(C) When it is used to refer to the management of people, means a person has the authority to direct the activities of another person or employee in a precise situation, such as the workplace.

Conventional vehicle - A vehicle which meets all applicable federal emission standards in place at the time of manufacture but is not certified as a clean-fuel vehicle.

Dallas/Fort Worth nonattainment area - Collin, Dallas, Denton, and Tarrant Counties.

El Paso nonattainment area - El Paso County.

Fleet - all vehicles that are owned, operated, or controlled by an affected entity and are registered under the Texas Transportation Code, §502.002 and operated primarily within any one nonattainment area.

Fleet vehicle - A vehicle required to be registered under the Texas Transportation Code, §502.002, and that is centrally fueled, capable of being centrally fueled, or fueled at facilities serving both business customers and the general public. The term does not include:

(A) a fleet vehicle that, when not in use, is normally parked at the residence of the individual who usually operates it and that is available to such individual for personal use;

(B) a fleet vehicle that, when not in use, is normally parked at the residence of the individual who usually operates it and who does not report to a central location; or

(C) a fleet vehicle that has a gross vehicle weight rating (GVWR) greater than 26,000 pounds except vehicles owned or operated by mass transit authorities.

Houston/Galveston nonattainment area - Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties.

Lessor - A person who leases or rents vehicles to other entities for the purpose of short-term rental or an extended term leasing (with or without maintenance), without a driver, under a contract. Fleets that are owned, operated, or controlled by lessors for operations other than lease or rental to other entities may be subject to the requirements of this chapter.

Local government - A city, county, municipality, or political subdivision of a state. This term does not include school districts.

Mobile emission reduction credit - The credit obtained from an enforceable, permanent, quantifiable, and surplus (to other federal and state regulations) emission reduction

generated by a mobile source as set forth in §114.201 and §114.202 of this title (relating to the Mobile Emission Reduction Credit Program, and The Texas Mobile Emission Reduction Credit Fund) and which has been banked in accordance with §101.29 of this title (relating to Emissions Banking and Trading).

Non-road vehicle - A vehicle which is not registered under the Texas Transportation Code, Section 502.002.

Operate - Use of a vehicle on any public road.

Operates primarily - Use of a fleet in any one affected nonattainment area more than 50% of the average annual vehicle miles traveled or operating time as documented by the affected entity from July 1 through June 30th of each year.

Own - Having legal title to a vehicle.

Private person - Any individual, partnership, firm, company, business trust, corporation, organization, or association which owns, operates, or controls a fleet.

Program compliance credits - Credits that may be granted to a vehicle owner/operator who exceeds the clean-fuel vehicle provisions and requirements of this chapter.

Public works agency - A governmental body established by the legislative branch, including municipalities and counties acting by ordinance, charged with administering the construction and maintenance of improvements constructed with public funds for public use, protection, or enjoyment, and those who oversee provision of public services.

Vehicle - A self propelled device 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 which is registered under the Texas Transportation Code, Section 502.002.

§114.4. Vehicle Retirement and Mobile Emission Reduction Credit Definitions.

Unless specifically defined in the TCAA or in the rules of the Texas Natural Resource Conservation Commission (commission), the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, the following words and terms, when used in Subchapter F of this chapter (relating to Vehicle Retirement and Mobile Emission Reduction Credits), shall have the following meanings, unless the context clearly indicates otherwise:

Area wide fleet - All the automobiles and light duty trucks covered under the Texas Inspection and Maintenance program as set forth in §114.50 of this title (relating to the Vehicle Emission Inspection and Maintenance program) in the ozone nonattainment area.

High-emitting vehicle - A vehicle that fails the Texas Inspection and Maintenance emission test.

Dealer - The entity that locates the potential scrappage vehicles, purchases the vehicles, sells the mobile source emission reduction credits, and initiates the proper recycling and reclamation of the vehicle by a scrapper; the broker or middleman that may exist between the scrappage sponsor and the scrapper.

Mobile Source Emission Reduction Credit (MERC) - The credit obtained from an enforceable, permanent, quantifiable, and surplus (to other federal and state regulations) emission reduction that results from the permanent removal of a high-emitting vehicle from the area wide vehicle

fleet and which has been banked in accordance with §101.29 of this title (relating to Emissions Banking and Trading).

On testing cycle - The vehicle's required emission test is within the six months preceding the deadline for emission testing and vehicle registration under the Texas Inspection and Maintenance program. The 18 months following the vehicle registration expiration date are the off cycle months.

Recycling - Refer to the Code of Federal Regulations, Title 40, §261.1.

Replacement vehicle - The vehicle the motorist is assumed to drive after his/her original vehicle is sold to a scrapper. The replacement vehicle is equal to the average fleet vehicle for that ozone nonattainment area as calculated from the most current auto registrations and the most recent version of the EPA MOBILE Model.

Scrappage sponsor - Any organization that funds the purchase of high-emitting vehicles for the purpose of obtaining mobile source emission reduction credits. The sponsor and the dealer can be the same enterprise.

Scrappage vehicle - An automobile or light-duty truck in the area wide fleet that is sold or will be sold to a scrapper for recycling and reclamation.

Scrapper - The entity, such as a salvage yard, automotive dismantler, or parts recycler, that recycles and reclaims the scrappage vehicle under the Accelerated Vehicle Retirement program. The scrapper can also purchase the vehicle from the motorist, making the scrapper and the dealer the same enterprise. Each scrapper shall be certified by the commission in accordance with §114.200(d) of this title (relating to Accelerated Vehicle Retirement Program).

Stationary source (applies only to nonattainment area, new source review rules under FCAA provisions) - Any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the FCAA.

§114.5 Transportation Planning Definitions.

Unless specifically defined in the TCAA or in the rules of the Texas Natural Resource Conservation Commission (commission), the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, the following words and terms, when used in Subchapter G of this chapter (relating to Transportation Planning), shall have the following meanings, unless the context clearly indicates otherwise:

Implementing agency - An entity, transportation provider, organization, agency, or individual responsible for the design, procurement of funds, construction, operation, maintenance, management, monitoring, and, in conjunction with the metropolitan planning organization, compliance with transportation control measures.

Metropolitan Planning Organization - As defined under the Intermodal Surface Transportation Efficiency Act, Title 23, §134.

Transportation Control Measure - Any category or group of actions, programs, or transportation services or facilities which reduce on-road mobile source emissions.

This commission hereby certifies that the proposal has been reviewed by legal counsel and found to be within the commission's authority to adopt.

Issued in Austin, Texas, on August 20, 1997.

SUBCHAPTER B : MOTOR VEHICLE ANTI-TAMPERING REQUIREMENTS

The new rules are proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA because the primary purpose of this rulemaking is to reformat Chapter 114 into subchapters. Proposed Subchapter B, concerning Motor Vehicle Anti-Tampering Requirements, does not contain the leaded gasoline requirements of the former Section 114.1(e); therefore, Subchapter B is also proposed under the TCAA, §382.011, which provides the commission with the authority to control the quality of the state's air; §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examinations of records; and §382.019, which provides the commission with the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles.

The proposed Subchapter B does not contain the leaded gasoline requirements of the former Section 114.1(e), and therefore implements the provisions of the FCAA, §§203(a)(3) and 211(n).

§114.20. Maintenance and Operation of Air Pollution Control Systems or Devices Used to Control Emissions from Motor Vehicles.

(a) Any person owning or operating any motor vehicle or motor vehicle engine on which is installed or incorporated a system or device used to control emissions from the motor vehicle in

compliance with federal motor vehicle rules shall maintain the system or device in good operable condition and shall use it at all times that the motor vehicle or motor vehicle engine is operated.

(b) No person may remove or make inoperable any system or device used to control emissions from a motor vehicle or motor vehicle engine or any part thereof, except where the purpose of removal of the system or device, or part thereof, is to install another system or device, or part thereof, which is equally effective in reducing emissions from the vehicle. Acceptable removal and/or installation practices include:

(1) Replacement of the engine of a vehicle if:

(A) the design of the replacement engine has received prior approval of the EPA;

(B) the design of the replacement engine is compatible with the vehicle chassis such that all applicable pollution control systems and devices are properly installed and operable; and

(C) the resulting vehicle is identical, with regard to all emission-related parts and emission-related engine design parameters and calibrations, to the same or a newer model year vehicle, as originally equipped.

(2) Replacement of a catalytic converter on a vehicle if:

(A) the replacement catalyst is an original equipment manufacturer's catalyst or an aftermarket catalyst accepted by EPA; and

(B) conformance with subparagraph (A) of this paragraph is documented during the inspection of the vehicle, or upon request.

(3) Installation of conversion equipment to allow the use of an approved alternative fuel, if the conversion kit components are recognized by the Texas Railroad Commission as complying with applicable safety requirements.

(4) Replacement or installation of any other system or device if:

(A) the system or device can be demonstrated to be at least as effective in reducing emissions as the original equipment; and

(B) conformance with subparagraph (A) of this paragraph is documented, upon request.

(c) No person may sell, offer for sale, lease, or offer to lease in the State of Texas any motor vehicle unless all of the following conditions are met:

(1) The motor vehicle shall be equipped with either the control systems or devices that were originally a part of the motor vehicle or motor vehicle engine or an alternate control system or device as designated in subsection (b) of this section.

(2) The control systems or devices required in paragraph (1) of this subsection shall be in good operable condition.

(3) A notice of the prohibition and requirements of this subsection shall be displayed at all commercial motor vehicle sales facilities, vehicle consignment lots, and other businesses in Texas which sell, offer for sale, lease, or offer to lease more than three used vehicles per year. The notice shall be displayed in a conspicuous and prominent location near each customer entrance way and in each sales or lease office. The notice shall read, "State law prohibits any person from selling, offering for sale, leasing, or offering to lease any vehicle not equipped with all emission control systems or devices in good operable condition. Violators are subject to penalties under the TCAA of up to \$25,000 per violation." This notice shall be no smaller than 8 inches by 10 inches (20.32 cm by 25.4 cm) and shall be clearly visible to all customers.

(d) Any part or component of an air pollution control system or device of a motor vehicle or motor vehicle engine equipped with such air pollution control system or device in compliance with federal motor vehicle rules shall not be replaced with a different part or component unless such part or component is designated as a replacement for the specific make and model of the vehicle or vehicle engine.

(e) No person may sell, offer for sale, or use any system or device which circumvents or alters any system, device, engine, or any part thereof, installed by a vehicle manufacturer to comply with the Federal Motor Vehicle Control Program during actual in-use operation of a motor vehicle on Texas roadways. A notice of the prohibitions and requirements of this subsection shall be displayed at all motor vehicle parts, supply, repair, alternative fuel conversion, or other vehicle service facilities in Texas which sell, offer for sale, install, or offer to install any vehicle emission control, exhaust system or device, aftermarket alternative fuel conversion, or engine. The notice shall be displayed in a prominent and conspicuous location near each consumer entrance way and service counter. The notice shall read: "State law prohibits any person from selling, offering for sale, or using any system or device for the purpose of circumventing the emission control device on a vehicle or vehicle engine. State law also prohibits any person from removing or disconnecting any part of the emission control system of a motor vehicle, except to install replacement parts which are equally effective in reducing emissions. Violators are subject to penalties under the TCAA of up to \$25,000 per violation." This notice shall be no smaller than 8 by 10 inches (20.32 cm by 25.4 cm) and shall be clearly visible to all customers.

§114.21. Exclusions and Exceptions.

(a) The following exemptions shall apply to specified motor vehicles or motor vehicle engines:

(1) Motor vehicles or motor vehicle engines which are registered as farm vehicles with the Motor Vehicle Division of the Texas Department of Highways and Public Transportation and are

intended solely or primarily for use on a farm or ranch; or are intended solely or primarily for legally sanctioned motor competitions, for research and development uses, or for instruction in a bona fide vocational training program where the use of a system or device would be detrimental to the purpose for which the vehicle or engine is intended to be used are exempt from the provisions of §114.20(a), (b), and (d) of this title (relating to Maintenance and Operation of Air Pollution Control Systems or Devices Used to Control Emissions From Motor Vehicles).

(2) Motor vehicles or motor vehicle engines intended solely or primarily for research and development uses, or for instruction in a bona fide vocational training program where the introduction of leaded gasoline or the circumvention of an emission control system or device is necessary for the intended purposes of the program are exempt from the provisions of §114.20(e) of this title.

(b) Vehicles belonging to members of the U.S. Department of Defense (DoD) participating in the DoD Privately Owned Vehicle Import Program or other persons being transferred to a foreign country are exempt from the provisions of §114.20(a), (b), and (d) of this title if the following conditions are met:

(1) Only the catalytic converter, oxygen sensor, and/or the fuel filler inlet restrictor are removed from the vehicle.

(2) The vehicle is delivered to the appropriate port for overseas shipment within 30 days after the emission control device(s) is removed.

(3) If the vehicle is returned to the United States, all systems or devices used to control emissions from the vehicle are restored to good operable condition within 30 days of pick-up of the vehicle from the appropriate port of importation.

(4) Documentation shall be kept with the vehicle at all times while the vehicle is operated in Texas which provides sufficient information to demonstrate compliance with all appropriate qualifications and conditions of this exemption, including the following:

(A) the unique vehicle identification number (VIN) of the subject vehicle;

(B) the agency, company, or organization which employs the owner of the subject vehicle;

(C) the country to which the owner of the subject vehicle is being transferred;

(D) the dates when applicable alterations were performed on the subject vehicle;

(E) the date when the subject vehicle is scheduled to be delivered to the appropriate port for shipment out of the United States; and

(F) the date when the subject vehicle is picked up from the port of importation upon returning to the United States.

(c) Any person owning or operating a motor vehicle or motor vehicle engine may apply to the executive director for an exclusion from the provisions of §114.20(a) and (b) of this title. Such an exclusion may be granted if the following conditions are met.

(1) The application shall include the applicant's full name, business address, and telephone number. A single vehicle and vehicle engine shall be specified in the application and must be identified by the unique vehicle identification number assigned to that vehicle by the manufacturer and by the manufacturer's engine family number.

(2) The air pollution control systems or devices on the vehicle or vehicle engine which would be covered by the exclusion shall be specified in the application.

(3) A demonstration shall be made in the application that provides adequate justification for special consideration of the specified vehicle under the provisions of this chapter. This demonstration shall include, but shall not be limited to, the following information necessary to determine that the use of certain pollution control devices or systems on the vehicle to be covered by

the exclusion would result in a clear danger to persons or property or would be detrimental to the purpose for which the vehicle is intended to be used.

(A) Proposed use of the vehicle and description of adverse circumstances;

(B) Locations where the vehicle will primarily be operated;

(C) Estimated length of time the vehicle is expected to be operated in adverse circumstances;

(D) Estimated percentages of the time the vehicle will primarily be operated in adverse circumstances and on public roadways;

(E) History of problems related to the use of specified control devices or systems;

(F) Evidence of the potential hazards and consequences of operating the vehicle for the intended use with the identified control devices or systems in place.

(4) The applicant shall agree and ensure that a copy of the exclusion shall be kept with the vehicle at all times and shall be available for inspection by representatives of the Texas Natural Resource Conservation Commission, the Texas Department of Public Safety (DPS), or any other law

enforcement agency upon request. The approved exclusion shall also be presented to the certified vehicle inspector before each annual vehicle safety inspection of the vehicle as administered by the DPS.

(5) The applicant shall agree and ensure that the exclusion shall be void and all pollution control systems and devices replaced on the vehicle and/or engine covered by the exclusion when the vehicle changes ownership or is no longer used for the purpose identified in the exclusion application. The executive director shall be informed in writing prior to the change of ownership or usage.

(6) The applicant shall comply with all special provisions and conditions specified by the executive director in the exclusion.

(d) The following vehicle transactions involving "wholesale dealers" and "retail dealers" as defined in 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;

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

(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) The DPS motor vehicle safety inspection certificates must be removed from the vehicle and destroyed before the vehicle may be offered for sale or displayed for public examination.

(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 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 and shall make it available, upon request.

(f) The owner of a motor vehicle which has been totally disabled by accident, age, or malfunction and which will no longer be operated is exempt from the provisions of §114.20(c) of this title if the DPS motor vehicle safety inspection certificate is removed and destroyed before the vehicle is offered for sale or displayed for public examination.

This commission hereby certifies that the proposal has been reviewed by legal counsel and found to be within the commission's authority to adopt.

Issued in Austin, Texas, on August 20, 1997.

SUBCHAPTER C : VEHICLE INSPECTION AND MAINTENANCE

The new rules are proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The proposed new rules are only a reformatting of existing rules and therefore do not implement any new state or federal requirements.

§114.50. Vehicle Emissions Inspection Requirements.

(a) Applicability. The requirements of this section and those contained in the revised Texas Inspection and Maintenance (I/M) State Implementation Plan (SIP) shall be applied to model years 24 years and newer of gasoline-powered motor vehicles, excluding motorcycles and dual-fueled vehicles which cannot be operated using gasoline, and safety inspection facilities and inspectors certified by the Texas Department of Public Safety (DPS) to inspect vehicles, in the program areas in accordance with the following schedule:

(1) annual or biennial emissions inspection of vehicles registered and primarily operated in Dallas and Tarrant Counties beginning on July 1, 1996, beginning with the first safety inspection certificate expiration date;

(2) annual or biennial emissions inspection of vehicles registered and primarily operated in Harris County beginning on January 1, 1997, beginning with the first safety inspection certificate expiration date;

(3) annual emissions inspection of vehicles registered and primarily operated in El Paso County beginning on January 1, 1997, beginning with the first safety inspection certificate expiration date; and

(4) on-road tests of vehicles registered in a program area and operating in a core program area beginning on September 1, 1997.

(b) Control requirements.

(1) No person may operate any motor vehicle which does not comply with:

(A) all applicable air pollution emissions control related requirements included in the annual vehicle safety inspection requirements administered by DPS, as evidenced by a current valid inspection certificate affixed to the vehicle windshield; and

(B) the vehicle emissions inspection and maintenance requirements contained in the revised Texas I/M SIP.

(2) No person or entity may own, operate, or allow the operation of a vehicle registered in a program area, unless the vehicle has complied with all applicable vehicle emissions I/M requirements contained in the revised Texas I/M SIP.

(3) All federal government agencies shall require a motor vehicle operated by any federal government agency employee on any property or facility under the jurisdiction of the agency and located in a program area to comply with all vehicle emissions I/M requirements contained in the revised Texas I/M SIP. Commanding officers or directors of federal facilities shall certify annually to the executive director that all subject vehicles have been tested and are in compliance with the FCAA. This requirement shall not apply to visiting agency, employee, or military personnel vehicles as long as such visits do not exceed 60 calendar days per year.

(4) Any motorist in an enhanced program area who has received a notice from an emissions inspection station that there are recall items unresolved on their motor vehicle should furnish proof of compliance with the recall notice prior to having their vehicle emissions inspection for their next testing cycle. The motorist may present a written statement from the dealership or leasing agency indicating that emissions repairs have been completed as proof of compliance.

(5) A motorist whose vehicle has failed an emissions test may request a challenge retest through DPS. If the retest is conducted within 15 days of the initial inspection, the retest is free.

(6) A motorist whose vehicle has failed an emissions test and has not requested a challenge retest or has failed a challenge retest must have emissions-related repairs performed and must submit a properly completed Vehicle Repair Form (VRF) in order to receive a retest, a minimum expenditure waiver, or a parts availability time extension.

(7) A motorist whose vehicle is registered in a program area and has failed an on-road test administered by the DPS shall:

(A) submit the vehicle for an out-of-cycle vehicle emissions inspection within 30 days of written notice by the DPS; and

(B) satisfy all inspection, extension, or waiver requirements of the vehicle emissions I/M program contained in the revised Texas I/M SIP within 60 days of written notice by the DPS.

(8) State, governmental, and quasi-governmental agencies which fall outside the normal registration or inspection process shall be required to comply with all vehicle emissions I/M requirements contained in the Texas I/M SIP for vehicles primarily operated in I/M program areas.

(c) Waivers and extensions. A motorist may apply to the DPS for a waiver or an extension as specified in §114.52 of this title (relating to Waivers and Extensions for Inspection Requirements),

which defer the need for full compliance with vehicle emissions standards for a specified period of time after failing a vehicle emissions inspection.

(d) Biennial testing. If a vehicle has passed a loaded mode I/M test, the vehicle is exempt from the emissions testing requirement for the following year. This does not include out-of-cycle tests.

(e) Prohibitions.

(1) No person may issue or allow the issuance of a vehicle inspection report (VIR), as authorized by DPS, unless all applicable air pollution emissions control related requirements of the annual vehicle safety inspection and the vehicle emissions I/M requirements and procedures contained in the revised Texas I/M SIP are completely and properly performed in accordance with the rules and regulations adopted by DPS and the commission. Prior to taking any enforcement action regarding this provision, the commission shall consult with DPS.

(2) No person may allow or participate in the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen safety inspection certificates, VIRs, VRFs, vehicle emissions repair documentation, or other documents which may be used to circumvent the vehicle emissions I/M requirements and procedures contained in the revised Texas I/M SIP.

(3) No organization, business, person, or other entity may represent itself as an emissions inspector certified by the DPS, unless such certification has been issued under the certification requirements and procedures contained in the revised Texas I/M SIP.

(4) No person may act as or offer to perform services as a Recognized Emissions Repair Technician of Texas, (as defined in this section), without first obtaining and maintaining DPS recognition.

(f) Requirements for Recognized Emissions Repair Technician of Texas.

(1) The following requirements must be met before DPS recognition:

(A) demonstration to the National Institute of Automotive Service Excellence (ASE) of a minimum of three years of full-time automotive repair service experience;

(B) certification in the following four tests offered by the ASE: Engine Repair (Test A1), Electrical Systems (Test A6), Engine Performance (Test A8), and beginning January 1, 1998 Advanced Engine Performance Specialist (Test L1);

(C) notification by DPS that verification of certification by the National Institute of Automotive Service Excellence is completed; and

(D) any other demonstration required by DPS rule.

(2) A Recognized Emissions Repair Technician shall perform the following duties:

(A) certify the emissions related repairs on the VRF form to be submitted to the DPS;

(B) complete and certify the VRF form for customers;

(C) notify the DPS in writing within 14 days of changes in the technician's ASE testing status.

(g) Certified Emissions Inspection Station Requirements. The following requirements must be met for DPS certification to be issued and renewed:

(1) meet all requirements established by DPS rules and regulations;

(2) purchase or lease emissions testing equipment that has been certified as specified in §114.51 of this title (relating to Equipment Evaluation Procedures for Vehicle Exhaust Gas Analyzers);

(3) have a dedicated phone line for each vehicle exhaust gas analyzer to be used to inspect vehicles;

(4) enter a business arrangement with the Texas Data Link contractor to obtain a telecommunications link to the Texas Data Link System Vehicle Identification Database for each vehicle exhaust gas analyzer to be used to inspect vehicles;

(5) for inspection stations using equipment conditionally approved under §114.51(f)(1) of this title, the inspection station must have the equipment ordered from the manufacturer by June 30, 1996 in order to operate using the conditional approval; and

(6) for inspection stations using equipment conditionally approved under §114.51(f)(1) of this title, remit to the Texas Data Link contractor the amount of \$.88 for each test conducted prior to securing a telecommunications link to the Texas Data Link System Vehicle Identification Database.

§114.51. Equipment Evaluation Procedures for Vehicle Exhaust Gas Analyzers.

(a) Any manufacturer or distributor of vehicle testing equipment may apply to the executive director of the Texas Natural Resource Conservation Commission (commission) or his appointee, for approval of an exhaust gas analyzer or analyzer system for use in the Texas Inspection and Maintenance (I/M) program administered by the Texas Department of Public Safety. Each manufacturer shall submit a formal certificate to the commission stating that any analyzer sold or leased by the manufacturer or its authorized representative for use in the I/M program will satisfy all design and performance criteria set forth in "Specifications for Preconditioned Two Speed Idle Vehicle Exhaust Gas Analyzer Systems for Use in the Texas Motorist's Choice Vehicle Emissions Testing Program," dated April 26, 1996.

Copies of this document are available at the commission's Central Office, located at 12100 Park 35 Circle, Austin, Texas 78753. The manufacturer shall also provide sufficient documentation to demonstrate conformance with these criteria including a complete description of all hardware components, the results of appropriate performance testing, and a point-by-point response to each specific requirement.

(b) All equipment shall be tested by an independent test laboratory. The cost of the certification shall be absorbed by the manufacturer. The conformance demonstration shall include, but is not limited to:

- (1) certification that equipment design and construction conforms with the specifications referenced in subsection (a) of this section;
- (2) documentation of successful results from appropriate performance testing;
- (3) evidence of necessary changes to internal computer programming, display format, and data recording sequence;
- (4) a commitment to fulfill all maintenance, repair, training, and other service requirements described in the specifications referenced in subsection (a) of this section. A copy of the minimum warranty agreement to be offered to the purchaser of an approved vehicle exhaust gas analyzer shall be included in the demonstration of conformance; and

(5) documentation of communication ability using protocol provided by the commission or the commission Texas Data Link contractor.

(c) If a review of the demonstration of conformance and all related support material indicates compliance with the criteria listed in subsections (a) and (b) of this section, the executive director or his appointee may issue a notice of approval to the analyzer manufacturer which endorses the use of the specified analyzer or analyzer system in the Texas I/M program.

(d) The applicant shall comply with all special provisions and conditions specified by the executive director or his appointee in the notice of approval.

(e) Any manufacturer or distributor which receives a notice of approval from the executive director or his appointee for a vehicle exhaust gas analyzer for use in the Texas I/M program may be subject to appropriate enforcement action and penalties prescribed in the TCAA or the rules and regulations promulgated thereunder if:

(1) Any information included in the conformance demonstration as required in subsection (b) of this section is misrepresented resulting in the purchase or operation of equipment in the Texas I/M program which does not meet the specifications referenced in subsection (a) of this section, or

(2) The applicant fails to comply with any requirement or commitment specified in the notice of approval issued by the executive director or implied by the representations submitted by the applicant in the conformance demonstration required by subsection (b) of this section.

(f) The executive director may issue conditional notice of approval for an analyzer which does not meet every requirement of subsections (a) and (b) of this section in accordance with the following schedule and stipulations:

(1) For the purpose of phasing in the program, the executive director or his appointee may issue to the analyzer manufacturer a notice of approval which endorses the use of the specified analyzer system during the month of July 1996 in the Texas I/M program conditional upon the equipment meeting subsections (a) and (b) of this section by July 31, 1996.

(2) For use in a pilot program, the executive director or his appointee may issue to the analyzer manufacturer a notice of approval which endorses the use of the specified analyzer system prior to October 31, 1996 in the Texas I/M program conditional upon the equipment meeting subsections (a) and (b) of this section by October 31, 1996.

§114.52. Waivers and Extensions for Inspection Requirements.

(a) Applicability. The waivers and extensions apply to any motorist who can satisfy the conditions of a specific waiver or extension. Applications must be made to the Department of Public

Safety (DPS). For the minimum expenditure waiver, individual vehicle waiver, and parts availability time extension, the motorist may apply only once for each testing cycle. For the low income time extension, the motorist may apply every other test cycle.

(b) Minimum expenditure waiver. A motorist shall use any available warranty coverage to obtain needed repairs before expenditures shall be used in calculating the minimum repair expenditures to qualify for a minimum expenditure waiver, unless the warranty remedy has been denied in writing from the manufacturer or authorized dealer. A motorist may not use or attempt to use expenditures for tampering-related repairs in calculating the minimum repair expenditures to qualify for a minimum expenditure waiver. A minimum expenditure waiver shall be valid for the remaining portion of the testing cycle. Tampering includes, but is not limited to, engine modifications, emissions system modifications, or fuel-type modifications disapproved by the Texas Natural Resource Conservation Commission or EPA. A minimum expenditure waiver may be granted in accordance with the following conditions:

(1) The applicant must have a valid retest Vehicle Inspection Report (VIR), a valid Vehicle Repair Form (VRF), and the vehicle must have failed a retest after all qualifying repairs. Qualifying repairs must meet the following conditions:

(A) The minimum expenditure shall be:

(i) at least \$300 until December 31, 1997 and beginning January 1, 1998 a minimum of \$450, adjusted annually, in enhanced program areas; or

(ii) at least \$75 for pre-1981 model year vehicles and at least \$200 for 1981 and later model year vehicles in basic program areas;

(B) After January 1, 1997, for 1981 and newer model year vehicles, all qualifying repairs shall be performed by a Recognized Emissions Repair Technician of Texas in order to count labor cost and/or diagnostic costs;

(C) Qualifying repairs must be directly applicable to the cause for the test failure (repairs conducted up to 60 days prior to the initial test may count towards the waiver amount); and

(D) After January 1, 1997, when repairs are not performed by a Recognized Emissions Repair Technician of Texas, only the purchase price of parts, applicable to the failure, qualify as a repair expenditure for the minimum expenditure waiver.

(2) The motorist provides to the DPS an original retest VIR, a properly completed VRF, and an original itemized receipt indicating the emissions-related repairs performed. If labor and/or diagnostic charges are being claimed towards the minimum expenditure, the VRF shall be completed by a Recognized Emissions Repair Technician of Texas after January 1, 1997.

(c) Low income time extension. A low income time extension may be granted in accordance with the following conditions:

(1) A motorist must supply proof that the subject vehicle failed the initial emissions inspection test in the form of an original failed vehicle inspection report.

(2) A motorist shall provide proof in writing to the DPS that the registered vehicle owner(s) meets the following conditions:

(A) the low income time extension applicant is the owner of the vehicle that has failed an inspection and maintenance (I/M) test; and

(B) the vehicle has not been granted a low income time extension waiver in the previous inspection cycle; and

(C) the applicant meets one of the following:

(i) the applicant receives financial assistance from the Texas Department of Human Services (subject to approval by the director of DPS); or

(ii) the applicant's adjusted gross income is within the current federal poverty income guidelines.

(D) the applicant shows proof of conformity with paragraph (2)(C) of this subsection by providing to the DPS one of the following, which the applicant certifies are true and correct:

(i) a federal income tax return; or

(ii) other documentation authorized by the director of the DPS.

(3) After a motorist receives an initial low income time extension, the vehicle must pass an emissions test prior to receiving another low income time extension or any waiver or extension.

(d) Parts availability time extension. The parts availability time extension does not exempt the vehicle from the compliance requirements of the I/M program but merely extends the period for compliance. By the end of the time extended, the vehicle must be repaired, retested, and receive a passing VIR or comply with paragraph (4) of this subsection. Only one parts availability time extension is allowed in each test cycle for each vehicle. A parts availability time extension may be granted in accordance with the following conditions:

(1) The motorist can document that emissions-related repairs cannot be completed before the expiration of the safety inspection certificate or before the 30-day period following an out-of-cycle inspection because the repairs require an uncommon part;

(2) The motorist shall provide to the DPS an original VIR indicating that the vehicle failed the emissions test and an original itemized documentation by a Recognized Emissions Repair Technician of Texas (after January 1, 1997), indicating parts ordered by name; description and catalog number; order number; source of parts, including address and phone number; and expected delivery and installation dates of uncommon parts before a parts availability time extension can be issued.

(3) The motorist shall return the motor vehicle to the DPS for a retest and verification of repairs upon completion of the repairs.

(4) The motorist shall provide to the DPS, prior to expiration of a parts availability time extension, adequate documentation that one of the following conditions exists:

(A) the motor vehicle passed a retest;

(B) the motorist qualifies for a Minimum Expenditure Waiver or Low Income Time Extension; or

(C) the motor vehicle shall no longer be operated in the program area.

(5) A vehicle which receives a parts availability time extension in one test cycle must have the vehicle repaired and retested prior to the expiration of such extension or the vehicle shall be

ineligible for a parts availability time extension in the subsequent test cycle in addition to other penalties authorized for non-compliance.

(6) The length of a parts availability time extension shall depend upon expected delivery and installation dates of uncommon parts as determined by the DPS representative on a case by case basis and issued for either 30, 60, or 90 days or longer if necessary, but shall not exceed one test cycle.

(e) Individual vehicle waiver. If a vehicle has failed an I/M test, a motorist may petition the director of the DPS for an individual vehicle waiver. Upon demonstration that the motorist has taken reasonable measures to comply with the requirements of the vehicle emissions I/M program contained in the revised Texas I/M State Implementation Plan and that such waiver shall have minimal impact on air quality, the director may approve the petition, and the motorist may receive a waiver. Motorists may apply for the individual vehicle waiver each test cycle.

§114.53. Inspection and Maintenance Fees.

(a) The following fees must be paid for an emissions inspection of a vehicle at an inspection station. This fee shall include one free retest should the vehicle fail the emissions inspection, provided that the motorist has the retest performed at the same station where the vehicle originally failed and submits, prior to the retest, a properly completed Vehicle Repair Form showing that emissions-related

repairs were performed and the retest is conducted within 15 days of the initial emissions test. For vehicles registered in Dallas, Tarrant, Harris, and El Paso Counties:

(1) Emissions Inspection Stations (Two Speed Idle / Annual Test): \$13. The inspection station shall remit \$1.75 to the Department of Public Safety (DPS).

(2) Emissions Inspection Stations (Loaded or Transient / Biennial Test): \$26. The inspection station shall remit \$1.75 to the DPS.

(3) The collection of inspection fees set forth in this subsection will coincide with the program start dates outlined in §114.50(a) of this title (relating to Applicability).

(b) The per-vehicle fee and the amount the inspection station remits to the DPS for a challenge test, at an inspection station designated by the DPS, shall be the same as the amounts set forth in subsection (a) of this section. The challenge fee shall not be charged if the vehicle is retested within 15 days of the initial test.

(c) Inspection stations performing out-of-cycle vehicle emissions inspections for the state's remote sensing element shall charge a motorist for an out-of-cycle emissions inspection in the amount specified in subsection (a) of this section, resulting from written notification that subject vehicle failed on-road testing, only, if such vehicle fails the emissions inspection and is registered outside the core

program area. Inspection stations shall charge the DPS for all other vehicle emissions inspections resulting from on-road testing.

This commission hereby certifies that the proposal has been reviewed by legal counsel and found to be within the commission's authority to adopt.

Issued in Austin, Texas, on August 20, 1997.

SUBCHAPTER D : OXYGEN REQUIREMENTS FOR GASOLINE

The new rules are proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The proposed new rules are only a reformatting of existing rules and therefore do not implement any new state or federal requirements.

§114.100. Oxygenated Fuels.

(a) Beginning October 1, 1992, no person shall supply, sell, or dispense any gasoline for use as motor vehicle fuel in El Paso County during the period of October 1 through March 31 of each year, unless the gasoline has a minimum oxygen content of 2.7% by weight, except as allowed under subsection (g) of this section.

(b) No averaging, banking, or trading of oxygenate credits will be allowed until such time as a mechanism for the reporting and tracking of these credits is established by the Texas Natural Resource Conservation Commission (commission).

(c) All gasoline storage, refining, and blending facilities; gasoline terminal and bulk plants; and gasoline transporters affected by this section shall be registered with the commission and the El

Paso City-County Health District. The owner or operator of each affected facility shall provide the following information to the commission and shall update this information, as necessary, by September 1 of each year:

- (1) company name, mailing address, local street address, and telephone number;
- (2) name and title of the company's chief executive officer and a local contact;
- (3) type of facility;
- (4) commission account numbers, if applicable; and
- (5) description of the affected operation.

(d) All facilities affected by this section shall maintain complete and accurate records for at least two years and shall make such records available to representatives of the commission, EPA, or local air pollution agency having jurisdiction in the area upon request. The information in the records shall include, but shall not be limited to, the following:

- (1) for refiners/importers of oxygenated gasoline,

(A) copies of all results of tests for oxygen content performed on batches of gasoline prior to transfer. For purposes of this rule, a batch of gasoline is considered any quantity greater than one gallon;

(B) copies of all bills of lading or transfer documents for each batch; and

(C) documents stating whether or not shipments of gasoline to any facility in a control area for use during a control period were oxygenated or non-oxygenated and stating oxygen content by weight of the gasoline, type of oxygenate used, and oxygenate content by volume.

(2) for blenders, gasoline terminals, and bulk plants,

(A) copies of all results of tests for oxygen content performed on batches of gasoline prior to transfer, or records of automated blending operations;

(B) copies of all documents stating the quantity and oxygen content of the gasoline received and the type of oxygenate received by the facility; and

(C) copies of all documents stating the quantity of gasoline shipped, whether gasoline shipments from the facility were oxygenated or non-oxygenated, and the type of oxygenate used.

(3) for gasoline transporters,

(A) copies of all documents stating the quantity of gasoline received by the transporter, whether the gasoline is oxygenated or non-oxygenated, and the type of oxygenate used; and

(B) copies of all bills of lading or transfer documents for each batch.

(4) for retailer and wholesale purchaser-consumer,

(A) copies of all documents stating the quantity of gasoline received by the facility, whether the gasoline is oxygenated or non-oxygenated, and the type of oxygenate used; and

(B) copies of all bills of lading or transfer documents for each batch.

(e) The oxygen content of gasoline at facilities affected by this section shall be determined by the following test methods:

(1) gasoline sampling methodology described in 40 CFR, Part 80, Appendix D;

(2) American Society for Testing and Materials Method D4815 for the control periods beginning in 1992 and thereafter;

(3) EPA Oxygenate Flame Ionization Detector Test Method; or

(4) other test methods approved by EPA beginning in 1995 and thereafter.

(f) Each gasoline pump at a retail outlet from which oxygenated gasoline is dispensed shall display a legible and conspicuous label on which either the statement in paragraph (1) or the statement in paragraph (2) of this subsection is printed in 36-point bold type in a color contrasting with the intended background. This label shall be placed so it is clearly legible from each side of the pump from which fuel can be dispensed.

(1) A label on which the following statement is printed shall be displayed only during the period of October 1 through March 31: "The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles."

(2) A label on which the following statement is printed shall be displayed during the period of October 1 through March 31 and may be displayed at any other time up to year-round: "From October 1 through March 31, the gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles."

(g) The sale or distribution of non-oxygenated gasoline in a control area during the control period shall be allowed only under the following conditions:

(1) such gasoline is segregated from oxygenated gasoline;

(2) the documents which accompany such gasoline are clearly marked as "non-oxygenated gasoline, not for sale to ultimate consumers in a control area," and shall accompany the gasoline at all times;

(3) the product is clearly labeled as "blendstock," "export," "storage," or a similar statement to prohibit improper distribution; and

(4) the non-oxygenated gasoline is in fact not sold or dispensed to ultimate consumers during the control period in the control area.

This commission hereby certifies that the proposal has been reviewed by legal counsel and found to be within the commission's authority to adopt.

Issued in Austin, Texas, on August 20, 1997.

SUBCHAPTER E : LOW EMISSION FLEET VEHICLE REQUIREMENTS

The new rules are proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The proposed new rules are only a reformatting of existing rules and therefore do not implement any new state or federal requirements.

§114.150. Requirements for Mass Transit Authorities.

(a) Mass transit authorities, as defined in §114.1 of this title (relating to Definitions), that own, operate, or control vehicles in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston nonattainment areas, as defined in §101.1 of this title (relating to Definitions), are subject to the low emission fleet vehicle provisions and requirements of this chapter.

(b) Mass transit authorities must ensure that at least 50% of their fleet vehicles are low emission fleet vehicles by September 1, 1996.

(c) Program Compliance Credits (PCCs) or Mobile Emission Reduction Credit (MERCs) under §§114.157, 114.201, or 114.202 of this title (relating to Program Compliance Credits; Mobile Emission

Reduction Credit Program; and The Texas Mobile Emission Reduction Credit Fund) may be used to meet the percentage requirements of subsection (b) of this section.

(d) The acquisition of qualifying low emission fleet vehicles may qualify for both PCCs and MERCs, however only one type of credit may be used per vehicle.

(e) The percentage requirements of subsection (b) of this section may be met by the dual-fuel conversion or capability of conventional gasoline-powered or diesel-powered vehicles to be certified as low emission fleet vehicles under the dual-fuel standards found in 40 Code of Federal Regulations, Part 88.

(f) Vehicles converted, purchased, leased, or otherwise acquired before September 1, 1998 may be counted towards a mass transit authority's compliance with the percentage requirements of subsection (b) of this section, in accordance with §114.152 of this title (relating to Use of Certain Vehicles for Compliance).

(g) Exceptions from the requirements of subsection (b) of this section may be granted under §114.153 of this title (concerning Exceptions).

(h) By September 30 of each year starting in 1996, mass transit authorities must submit annual reports as required under §114.155 of this title (relating to Reporting).

(i) Mass transit authorities must maintain records under §114.156 of this title (relating to Record Keeping).

(j) Mass transit authorities are eligible for MERCs under §114.201 or §114.202 of this title for the operation of light rail cars which have been demonstrated by the mass transit authority to have no direct emissions.

§114.151. Requirements for Local Governments and Private Persons.

(a) Local governments that own, operate, or control a fleet of more than 15 vehicles, excluding law enforcement and emergency vehicles, and private persons that own, operate, or control a fleet of more than 25 fleet vehicles, excluding emergency vehicles, are subject to the clean-fuel vehicle provisions and requirements of this chapter when operated primarily in the El Paso and Houston/Galveston nonattainment areas.

(b) Beginning September 1, 1998, local governments and private persons, as specified by subsection (a) of this section, must ensure that their fleet vehicles are clean-fuel vehicles in accordance with the following schedule:

(1) 30% of fleet vehicles purchased after September 1, 1998; or at least 10% of the fleet vehicles in the total fleet as of September 1, 1998;

(2) 50% of fleet vehicles purchased after September 1, 2000; and at least 20% of the fleet vehicles in the total fleet as of September 1, 2000; and

(3) 90% of fleet vehicles purchased after September 1, 2002; and at least 45% of the fleet vehicles in the total fleet as of September 1, 2002.

(c) A local government or private person is not required to purchase clean-fuel vehicles if a proportion of 90% or more clean-fuel vehicles is maintained in their fleet.

(d) Program Compliance Credits (PCCs) or Mobile Emission Reduction Credit (MERCs) under §§114.157, 114.201, or 114.202 of this title (relating to Program Compliance Credits; Mobile Emission Reduction Credit Program; and The Texas Mobile Emission Reduction Credit Fund) may be used to meet the percentage requirements of subsection (b) of this section.

(e) The acquisition of qualifying clean-fuel vehicles may qualify for both PCCs and MERCs, however only one type of credit may be used per vehicle.

(f) The percentage requirements of subsection (b) of this section may be met by dual-fuel conversion or capability of conventional gasoline-powered or diesel-powered vehicles to be certified as clean-fuel vehicles under the dual fuel standards found in 40 Code of Federal Regulations, Part 88.

(g) Vehicles converted, purchased, leased, or otherwise acquired before September 1, 1998 may be counted towards a local government's or a private person's compliance with the percentage requirements of subsection (b) of this section in accordance with §114.152 of this title (relating to Use of Certain Vehicles for Compliance).

(h) Exceptions from the requirements of subsection (b) of this section may be granted under §114.153 of this title (relating to Exceptions).

(i) By September 1, 1997, or within 90 days of meeting the minimum fleet size where applicable, affected local governments and private persons specified under subsection (a) of this section must register with the executive director for identification and compliance tracking. Registration must include the submission of the following information:

(1) the affected entity's name, mailing address, telephone and fax numbers;

(2) the name, title, mailing address and telephone number of the specific person responsible for the affected fleet; and

(3) the total number of vehicles owned, operated, or controlled, including non-covered and exempted vehicles.

(j) Upon registration, the executive director will assign each fleet a unique identification number for data tracking purposes.

(k) By September 1 of each year, starting in 1998, affected local governments and private persons must submit reports to the executive director, as required under §114.155 of this title (relating to Reporting).

(l) Affected local governments and private persons must maintain records under §114.156 of this title (relating to Record Keeping).

(m) The requirements §114.1 of this title (relating to Definitions); §§114.150-114.157 of this title (relating to Requirements for Mass Transit Authorities; Requirements for Local Governments and Private Persons; Use of Certain Vehicles for Compliance; Exceptions; Exceptions for Certain Mass Transit Authorities; Reporting; Record Keeping; and Program Compliance Credits); and §§114.201-114.202 of this title (relating to Mobile Emission Reduction Credit Program and the Texas Mobile Emission Reduction Credit Fund) do not apply to lessors of vehicles with regard to vehicles they lease or rent to other entities.

§114.152. Use of Certain Vehicles for Compliance.

Vehicles converted, purchased, leased, or otherwise acquired before September 1, 1998, may be counted toward compliance with the applicable fleet percentage requirements of §114.150 or

§114.151 of this title (relating to Requirements for Mass Transit Authorities, and Requirements for Local Governments and Private Persons) if the vehicles:

(1) do not exceed 30% of an affected entity's fleet on September 1, 1998;

(2) are capable of operating on one of the following fuels;

(A) electricity;

(B) ethanol, or ethanol/gasoline blends of 85% or greater ethanol;

(C) liquefied petroleum gas, commonly referred to as propane;

(D) methanol or methanol/gasoline blends of 85% or greater methanol; or

(E) natural gas; and

(3) meet at a minimum the following emission standards:

(A) for light-duty vehicles, the federal Tier I emission standards under the FCAA as amended, Section 202, U.S.C. 42 Section 7521, and 40 Code of Federal Regulations, Part 86; or

(B) for heavy-duty vehicles, the federal emission standards in place at the time of their manufacture.

§114.153. Exceptions.

(a) Exceptions from the applicable clean-fuel vehicle requirements of this chapter may be granted for a period of up to 2 years. Exceptions are based on the determination by the executive director that one of the following conditions exist:

(1) A firm engaged in fixed price contracts with public works agencies can demonstrate that compliance with the requirements of clean-fuel vehicle provisions and requirements of this chapter would result in substantial economic harm to the firm under a contract entered into before September 1, 1997. The following documentation must be submitted to the executive director when applying for this exception:

(A) copies of the relevant contracts; and

(B) a demonstration of how and by what means the firm would be harmed by complying with the requirements of the clean-fuel vehicle provisions and requirements of this chapter.

(2) The affected entity's vehicles will be operating primarily in an area that does not have or cannot reasonably be expected to establish adequate refueling for the operation of clean-fuel

vehicles as required by the clean-fuel vehicle provisions and requirements of this chapter. The following information must be submitted to the executive director when applying for this exception:

(A) the name of the county where the affected entity's fleet primarily operates;

(B) the physical address of the nearest refueling station that provides fuels necessary for clean-fuel operation; and

(C) a demonstration of the normal operating range of the affected entity's fleet sufficient for the executive director to determine that the fleet will be operating primarily in an area that does not have or cannot be reasonably expected to establish adequate refueling for the fleet's normal operational needs.

(3) The affected entity is unable to secure financing provided by or arranged through the proposed supplier or suppliers of the fuel necessary for the operation of the clean-fuel vehicles required by the clean-fuel vehicle provisions and requirements of this chapter sufficient to cover the additional costs of such fueling. The following information must be submitted to the executive director when applying for this exception:

(A) a description of the financing required by the affected entity;

(B) a description of the financing offered by the proposed supplier(s) of the fuels necessary for the operation of clean-fuel vehicles; and

(C) a demonstration of why the affected entity is unable to secure such financing as provided by the fuel supplier sufficient to cover the additional costs of fueling clean-fuel vehicles.

(4) The projected net costs of the fueling, conversion or replacement, and operation of clean-fuel vehicles reasonably is expected to exceed comparable costs of the fueling, replacement, and operation of conventional vehicles when measured over the expected useful life of such vehicles and after including in such cost calculations any available state or federal funding or incentives for the use of fuels required to operate clean-fuel vehicles. The following information must be submitted to the executive director when applying for this exception:

(A) types of vehicles needed; and

(B) a demonstration of how the projected net costs of using clean-fuel vehicles exceeds the comparable costs of using conventional vehicles over the useful life of such vehicles, after the identification of any available state or federal funding or incentives for the use of fuels required to fuel clean-fuel vehicles.

(b) Exception applications will be reviewed by the executive director in accordance with the following process and are subject to the following provisions:

- (1) Exception applications will be reviewed on a case by case basis;
- (2) All currently available vehicle/fuel configurations must be evaluated by the affected entity before an exception application will be reviewed;
- (3) The executive director may request additional information in order to evaluate an exception application;
- (4) Applications will be accepted by the executive director at any point within the 12 months preceding a compliance deadline, provided a current fleet report containing the information in §114.155 of this title (relating to Reporting) is also provided;
- (5) The affected entity receiving a notice of exception must maintain a copy of the notice on-site at the reported fleet address for the duration of the exception period and must make such copies available to the executive director or local air pollution control agencies upon request;
- (6) Affected entities who are operating under an exception may not trade or sell Program Compliance Credits or Mobile Emission Reduction Credits, or enter into a contract according to §§114.157, 114.201, or 114.202 of this title (relating to Program Compliance Credits; Mobile

Emission Reduction Credit Program; and the Texas Mobile Emission Reduction Credit Fund), for the duration of the exception period; and

(7) Affected entities will not be considered in violation of the applicable clean-fuel vehicle requirements of this chapter while an exception application is under review by the executive director, if the exception application has been submitted to the executive director before the applicable compliance date.

§114.154. Exceptions for Certain Mass Transit Authorities.

(a) This section applies only to a mass transit authority confirmed at a tax election before July 1, 1985, and in which the principal city has a population of less than 750,000, according to the most recent federal census.

(b) The executive director may reduce any percentage specified by, or waive the requirements of, Texas Transportation Code, Section 451.301 for up to two years, for an authority on receipt of certification supported by evidence acceptable to the executive director that:

(1) the authority's vehicles will be operating primarily in an area in which neither the authority nor a supplier has or can reasonably be expected to establish a central refueling station necessary for the operation of clean-fuel vehicles; or

(2) the authority is unable to acquire or be provided equipment or refueling facilities necessary to operate clean-fuel vehicles at a projected cost that is reasonably expected to result in no greater net costs than the continued use of equipment or refueling facilities used to operate conventional vehicles, measured over the expected useful life of the equipment or facilities supplied.

(c) Certification by the executive director that an authority covered by Texas Transportation Code, Section 451.301, is unable to comply is accomplished through development of a proposal to be submitted to the executive director. The proposal must:

(1) contain an alternative implementation schedule for meeting the percentage requirements of Texas Transportation Code, Section 451.301; and

(2) have been the subject of a public meeting held to discuss the authority's inability to comply with Texas Transportation Code, Section 451.301, and the alternative implementation schedule.

§114.155. Reporting.

(a) Affected entities must submit annual fleet reports to the executive director. The report must contain, at a minimum:

(1) the fleet identification number (when assigned);

(2) the total number of vehicles registered according to the Texas Transportation Code, §502.002;

(3) the total number of fleet vehicles registered according to the Texas Transportation Code, §502.002;

(4) vehicle license numbers, model years, manufacturers, model types, vehicle identification numbers, gross vehicle weight rating, fuel type(s) and certified emission standards of each vehicle being used for compliance with the requirements of §114.150 or §114.151 of this title (relating to Requirements for Mass Transit Authorities and Requirements for Local Governments and Private Persons);

(5) an estimate of the annual vehicle miles traveled (VMT) for each clean-fuel vehicle;

(6) if the vehicle is a dual-fuel vehicle, documentation demonstrating the percentages of the vehicle's operation on each fuel, as documented by the VMT operated on each fuel; and

(7) a demonstration of compliance with the applicable implementation schedule.

(b) Affected entities may submit the information required in section (a) of this section for all vehicles in their fleet.

§114.156. Record Keeping.

Affected entities must maintain copies of the reports required by §114.155 of this title (relating to Reporting) on-site at the reported fleet address for a minimum of three years and shall make such reports available to the executive director or local air pollution control agencies having jurisdiction in the area upon request.

§114.157. Program Compliance Credits.

(a) Program Compliance Credits (PCCs) may be awarded only to affected entities for any of the following, or any combination thereof:

(1) The acquisition of a clean-fuel vehicle which is certified to a more stringent emission standard than the low emission vehicle (LEV) standards, which include;

(A) ultra low emission vehicle (ULEV) certified clean-fuel vehicles;

(B) inherently low emission vehicle (ILEV) certified clean-fuel vehicles; or

(C) zero emission vehicle (ZEV) certified clean-fuel vehicles.

(2) The acquisition of clean-fuel vehicles in greater numbers than otherwise required under §114.150 or §114.151 of this title (relating to Requirements for Mass Transit Authorities and Requirements for Local Governments and Private Persons);

(3) The acquisition of clean-fuel vehicles in a category not otherwise required under §114.150 or §114.151 of this title; or

(4) The acquisition of a clean-fuel vehicle before the dates required under §114.150 or 114.151 of this title.

(b) PCCs will be awarded in two-year increments from 1998 until 2002. After 2002, credits will be awarded according to the estimated remaining useful life of the vehicle.

(c) PCCs may be used to demonstrate compliance with clean-fuel vehicle provisions and requirements of this chapter, or may be banked for later use, or they may be traded, sold, or purchased, for use by any other person in the same nonattainment area, to demonstrate compliance with the clean-fuel vehicle provisions and requirements of this chapter.

(d) PCCs have the following values:

(1) LEV - one credit;

(2) ULEV - two credits; and

(3) ILEV and ZEV - three credits.

(e) Affected entities proposing to generate PCCs under this chapter may apply at any time to the executive director. A current fleet report containing the information in §114.155 of this title (relating to Reporting) must accompany the application. Affected entities may also indicate their desire to obtain PCCs concurrent with fleet registration or annual reporting. The submission of additional vehicle or fleet information may be required.

(f) PCCs will be banked with the Mobile Source Division.

(g) Upon verification by the executive director:

(1) each fleet will be issued a certificate where applicable; and

(2) a total credit summary sheet will be issued to the fleet.

This commission hereby certifies that the proposal has been reviewed by legal counsel and found to be within the commission's authority to adopt.

Issued in Austin, Texas, on August 20, 1997.

**SUBCHAPTER F: VEHICLE RETIREMENT AND
MOBILE EMISSION REDUCTION CREDITS**

VEHICLE RETIREMENT

The new rule is proposed under the Texas Health and Safety Code, the Texas Clean Air Act (Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The proposed new rule is only a reformatting of existing rules and therefore do not implement any new state or federal requirements.

114.200. Accelerated Vehicle Retirement Program.

(a) The purpose of this program is to reduce mobile source emissions of volatile organic compounds (VOCs) and oxides of nitrogen (NO_x), and provide additional flexibility for stationary sources in the following ozone nonattainment counties: Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Harris, Liberty, Montgomery, Tarrant, and Waller. A scrappage program reduces VOC, NO_x, and carbon monoxide emissions from mobile sources, such as automobiles and light duty trucks, by permanently removing high-emitting vehicles from the area wide fleet. With this rule, stationary sources will have the opportunity to select the most cost-effective

approach to comply with federal and state regulations for ozone reductions. The Accelerated Vehicle Retirement program is a voluntary program for both the stationary source and the motorist.

(b) In order for a mobile source emission reduction to be creditable under these rules and certified in accordance with §101.29 of this title (relating to Emissions Banking and Trading), the following procedures and requirements must be met.

(1) Entities seeking to obtain mobile emission reduction credits (MERCs) through automobile scrappage shall submit a scrappage plan to the executive director at least 45 days prior to planned initiation of vehicle scrapping. The executive director reserves the right to reject a scrappage plan if it does not meet the requirements outlined in this regulation. The sponsor will be notified within 30 days of receipt of the plan by the commission if it is rejected, otherwise the plan is acceptable. The plan should include, to the extent applicable, the following items:

(A) the purpose of the scrappage program;

(B) the planned number of cars to be scrapped;

(C) the proposed purchase price for the vehicles;

(D) the targeted number of tons per year of MERCs to be generated by the scrappage program;

(E) the manner in which the sponsor will locate potential scrappage vehicles;

(F) the location and dates for the vehicle screening and documentation review,
if there is a prescreening prior to the purchase of the vehicle;

(G) the name and address of the dealer;

(H) the name and location of the scrapper recycling and reclaiming the
scrappage vehicles;

(I) the date the scrappage sponsor will initiate the program and the proposed
end date; and

(J) the scrappage sponsor contact person, address, and phone number.

(2) To be eligible for the scrappage program, a vehicle must have been registered to an address within an ozone nonattainment area for at least 12 months prior to the sale of the vehicle. Proof of insurance for the same 12-month period is required at the point of sale. The vehicle is eligible for scrappage only in the nonattainment area in which it is registered.

(3) The owner of the scrappage vehicle or legal representative of the owner must be present at the time of the sale. The certificate of title must contain the current owner's name. The

vehicle title is surrendered to the dealer at the time of the sale. The scrapper shall take possession of the certificate of title when the vehicle is transferred to the scrapper from the dealer. The vehicle owner must have lived in the same nonattainment area in which the vehicle is registered for the 12 months prior to the sale of the vehicle and present proof to this effect. The owner must present at the time of sale a picture identification to verify vehicle ownership and a voter registration card, driver's license, utility bill, property tax bill/payment, or a school tuition receipt to verify residency in the nonattainment area. Other documentation may be requested to verify the identity and address of the owner.

(4) The scrapperage vehicle must be in operable condition and driven to the scrapper's location. Vehicles cannot be towed or trailered to the scrapper's site.

(5) The owner of the scrapperage vehicle must have obtained an IM240 vehicle emission certificate (VEC), at a referee facility, prior to the sale of the vehicle. A purge and pressure test will be required as specified by the Texas Inspection and Maintenance (I/M) program. The vehicle is eligible for scrapperage for up to 90 calendar days following the IM240 emission test. A motorist must submit the vehicle to an emissions test according to the following procedures.

(A) If the vehicle is on testing cycle, the owner shall first go to an emission testing center for the required emission test. If the vehicle fails the test, the owner should obtain a repair estimate from a certified emission repair technician of Texas operating at a certified facility, as specified in §114.50 of this title (relating to Vehicle Emissions Inspection Requirements). If the owner

chooses to scrap the vehicle rather than register or repair it, she/he shall take the vehicle to a referee facility for an IM240 emission test, unless an IM240 test was conducted at the emission testing center. Appointments for emission tests will be required at all referee facilities and a fee will be charged, as specified by the Texas I/M program. The owner shall obtain a vehicle emission certificate at the referee facility or the emission testing center for newer model vehicles, which must be presented to the scrappage dealer, along with the repair estimate, at the time the vehicle is sold.

(B) If the vehicle is off-cycle or the vehicle owner has received a minimum expenditure waiver or hardship waiver within the last 18 months, the owner should go directly to the referee facility for an IM240 emission test. Appointments for emission tests will be required at all referee facilities and a fee will be charged, as specified by the Texas I/M program. The owner shall obtain a vehicle emission certificate at the referee facility, which must be presented to the scrappage dealer at the time the vehicle is sold.

(C) Scrappage sponsors may solicit vehicle owners for potential scrappage vehicles at any time during the year. Vehicles solicited by the sponsor will be required to follow the same procedures specified in subparagraphs (A) and (B) of this paragraph.

(6) The scrappage sponsor, dealer, or scrapper is responsible for setting the price for each scrappage vehicle. The sponsor or dealer may not set vehicle purchase prices based on the emission level of any individual vehicle.

(7) All scrappage vehicles shall be scrapped by a scrapper certified by the Commission.

(c) Following the scrappage event or as MERCs are needed in a continuous program, the scrappage sponsor shall submit the following documents for each scrapped vehicle to the commission Emissions Bank to obtain certified MERCs. The executive director reserves the right to eliminate any vehicle from the MERC calculation that does not comply with the requirements outlined in subsection (b) of this section or for which proper documentation, as described in paragraphs (1)-(5) of this subsection, is not provided:

- (1) the vehicle emission certificate;
- (2) where applicable, a repair estimate signed by a certified repair technician;
- (3) a copy of the vehicle title;
- (4) a copy of the owner's driver's license, plus copies of any other identification documentation provided to the dealer; and
- (5) all information listed in subsection (h)(1)(A)-(H) of this section.

(d) In order for a scrapper to obtain and maintain certification under the Accelerated Vehicle Retirement program, the facility must comply with the following requirements.

(1) The facility must be a licensed motor vehicle salvage dealer as required by the Texas Department of Transportation.

(2) The facility must have a customer parking area for at least 30 vehicles.

(3) The facility must be able to process the paperwork for 25 scrappage vehicles and move them out of the parking area within 24 hours of their arrival.

(4) The facility must be open at least one night a week until 7:00 p.m. and from 9:00 a.m. until 1:00 p.m. on Saturday during a scrappage event.

(5) The facility must handle all automotive material in a manner that protects the environment and is in accordance with all local, state, and federal regulations for waste management and clean water. At a minimum, the facility must comply with the following procedures:

(A) process all scrappage vehicles in the following manner:

(i) drain the crankcase of all motor oil and properly recycle the oil with a registered used oil handler. If the oil filter is removed, it should also be properly recycled;

(ii) evacuate the air conditioning system of all refrigerant and properly recycle with a certified reclaimer as specified in the Code of Federal Regulations, Title 40, Part 82;

(iii) drain the antifreeze or coolant and properly recycle;

(iv) drain the transmission fluid, brake fluid, and power steering fluid to the extent possible and properly recycle;

(v) drain all fuel and reuse or properly recycle; and

(vi) remove the battery and store on raised shelves in a covered shelter.

The shelter must have a cement floor. Good batteries may be recycled. Bad batteries shall be disposed of in accordance with §330.1103 of this title (relating to Disposal of Batteries);

(B) drain and capture all the automotive fluids, as described in subparagraph (A)(i)-(v) of this paragraph, within four business days of the vehicle's arrival at the facility's location;

(C) prevent leaks and spills of any automotive fluid, and immediately remediate spills at all scrapper locations;

(D) where available, recycle automotive fluids with a registered recycler;

(E) provide a complete listing of all the companies that the certified scrapper uses to manage the automotive fluids and batteries. The facility shall provide any revisions to this list within 14 days of the change; and

(F) maintain manifests for all the fluids transported from the scrapper's location. These manifests shall be made available to commission staff upon request.

(6) A certified scrapper is allowed to recycle or sell all parts of the vehicle with the following exceptions:

(A) the exhaust system, including the catalytic converter, tailpipe, muffler, exhaust inlet pipe, vapor storage canister, vapor liquid separator, and resonator. These items must be destroyed. The catalytic converter can be recycled for the precious metals, but cannot be reused; and

(B) the engine with all the components attached. The cylinder block and other engine components can be recycled only if the component parts are removed and recycled individually.

(7) A scrapper must renew its certification every five years. A scrapper's certification may be suspended or revoked for good cause at any time by order of the commission after notice and opportunity for public hearing is provided under the Texas Government Code, §2001.054. Good cause includes, but is not limited to, failure to comply with the certification, operating conditions, and requirements contained in this subsection. The commission may refuse to issue a certification under

this subsection if the applicant has a history of noncompliance with the provisions of this subsection or for other good cause shown.

(e) Each scrappage vehicle creates a measurable emission reduction of VOCs, NO_x, and carbon monoxide (CO).

(1) The emission reduction is calculated using the following equation for VOC, NO_x, or CO:

Emission reduction (grams/vehicle/year) =

$$[(Emissions_{tailpipe} + Emissions_{evaporative}) - Emissions_{replacement}] \times VMT$$

where:

Emissions_{tailpipe} (TE) = VOC, NO_x, or CO, for the scrappage vehicle as measured by the IM240 emission test.

Emissions_{evaporative} = VOC for the scrappage vehicle as estimated by model year by the most recent version of the EPA MOBILE Model. This is only included if the vehicle fails the purge/pressure test.

$Emissions_{replacement}$ = average tailpipe and evaporative emissions for the replacement vehicle as defined in §114.4 of this title (relating to Vehicle Retirement and Mobile Emission Reduction Credit Definitions).

VMT = vehicle miles traveled per year. This is calculated by subtracting the recorded vehicle mileage on the old (prior year) safety sticker from the current odometer reading. This figure will either represent the VMT for the preceding 12 months or will be used to estimate annual VMT, depending on the date on the safety inspection sticker. If the odometer is not functioning properly, VMT will be estimated by the vehicle owner by providing average weekly and annual mileage for the previous 12 months.

(2) The emission reduction generated by each scrappage vehicle is converted into a MERC that can then be deposited in the commission Emissions Bank or transferred directly to the scrappage sponsor. The commission Emissions Bank calculates the MERC value for the pool of vehicles or each individual vehicle in tons per year as the dealer submits the supporting documentation (application) to the commission Emissions Bank. The application for MERCs must occur within 10 months of the date each vehicle is purchased by the dealer. The commission Emissions Bank has two months to certify the credits requested in the application. The MERCs expire 36 months following its certification by the commission Emissions Bank.

(3) The emission reduction, as calculated in paragraph (1) of this subsection for VOC, NO_x, or CO, is multiplied by a factor that converts grams per year into tons per year. The MERC calculation for stationary source usage for year one is as follows:

MERC (tons/year) =

$$(Emission\ reduction_{car\ 1} + Emission\ Reduction_{car\ 2} + \dots + Emission\ reduction_{car\ n}) \times 1.102E-6$$

(4) The following restrictions apply to the MERC calculation:

(A) for a failed vehicle with a repair estimate less than the minimum expenditure as set forth in the Vehicle Emission Inspection and Maintenance (I/M) program, TE equals the IM240 emission standard by model year, as reported in the EPA High-Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications, Final Technical Guidance, §85.2205;

(B) for a failed vehicle with a repair estimate greater than or equal to the minimum expenditure as set forth in the Vehicle Emission (I/M) program, TE equals the IM240 emission measurement;

(C) for a vehicle that has received a one-time hardship waiver or a minimum expenditure waiver within the last 18 months, TE equals the IM240 emission measurement;

(D) for a failed vehicle with no repair estimate, TE equals the IM240 emission standard by model year, as reported in the EPA High-Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications, Final Technical Guidance, §85.2205;

(E) for a vehicle that is tested off cycle or is not required to be emission tested, TE equals the IM240 emission measurement;

(F) for a vehicle that passes, TE equals the IM240 emission measurement; and

(G) for a vehicle that fails due to tampering, TE equals the emission standard by model year, as reported in the EPA High-Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications, Final Technical Guidance, §85.2205.

(5) The MERC value for year two is 20% lower than the MERC value for year one. The MERC value for year three is 20% lower than the MERC value for year two. The discounting in year two and year three adjusts the MERC value for the natural attrition in the vehicle fleet that occurs over time. The MERC purchaser has the option of averaging the discounts over the 36-month life of the credit, in 12-month increments, or applying the discount in year two and year three, thereby

reducing the MERC value in each succeeding year. The MERCs cannot be distributed across the 36-month life of the credit in any manner that may cause excessive emissions in year one, two, or three.

(f) The MERCs can be used to achieve compliance as provided for in any provision of Chapter 115 of this title (relating to Control of Air Pollution from Volatile Organic Compounds) and §117.540 of this title (relating to Phased Reasonably Available Control Technology) and as offsets as set forth in §101.29 of this title. The MERCs shall be banked in accordance with §101.29 of this title.

(g) The commission scrappage program will begin on January 1, 1995 in the three ozone nonattainment areas in Texas: Houston/Galveston, Dallas/Fort Worth, and El Paso.

(h) The MERCs may be generated in the ozone nonattainment counties of Hardin, Jefferson, and Orange in accordance with the EPA Interim Guidelines on the Generation of Mobile Source Emission Reduction Credits, EPA Guidance for Implementation of Accelerated Retirement of Vehicle programs, February 1993, and subsections (b)(2)-(4), (b)(6)-(7), (c)(3)-(5), (d), (e)(2), (e)(5), and (f) of this section. A scrappage plan, as described in subsection (b)(1), must be submitted to the executive director for approval 120 days prior to the initiation of vehicle scrapping.

(i) The commission Emissions Bank will maintain a data base containing the following information:

(1) for each scrappage vehicle purchased:

(A) the model year, model, make, transmission type, engine size, and vehicle identification number;

(B) the scrappage vehicle owner's name, address, telephone number, and driver's license number;

(C) the final odometer reading, the date on the old safety inspection sticker, and the mileage on the old safety inspection sticker. If the odometer is not functioning properly, refer to subsection (e)(1) of this section for the methodology to calculate VMT;

(D) the date purchased by the dealer;

(E) the purchase price;

(F) the IM240 emission test results and purge/pressure test results;

(G) the dealer/scrapper that processed the vehicle;

(H) in the case of a scrappage event, the scrappage sponsor that purchased the vehicle;

(I) the repair estimate from the certified repair technician; and

(J) the MERC value for that vehicle;

(2) for each MERC sold:

(A) the purchase price;

(B) the name and location of the seller;

(C) the name, location, and the commission account of the buyer;

(D) tons per year for year one, two, and three; and

(E) creation, certification, and expiration dates.

This commission hereby certifies that the proposal has been reviewed by legal counsel and found to be within the commission's authority to adopt.

Issued in Austin, Texas, on August 20, 1997.

SUBCHAPTER F : VEHICLE RETIREMENT AND MOBILE EMISSIONS CREDITS

MOBILE EMISSIONS CREDITS

The new rules are proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The proposed new rules are only a reformatting of existing rules and therefore do not implement any new state or federal requirements.

§114.201. Mobile Emission Reduction Credit Program.

(a) Mobile Emission Reduction Credits (MERCs) will be based on the difference between the emissions from the clean-fuel vehicle and the conventional vehicle, and will be awarded to affected entities and to individuals located within the state's nonattainment areas for any of the following, or combination thereof:

(1) The acquisition of a clean-fuel vehicle which is certified to a more stringent emission standard than the low emission vehicle (LEV) standards, which include:

(A) ultra-low emission vehicle certified clean-fuel vehicles,

(B) inherently low emission vehicle certified clean-fuel vehicles, and

(C) zero emission vehicle certified clean-fuel vehicles; or

(2) The acquisition of clean-fuel vehicles in greater numbers than otherwise required under §114.150 or §114.151 of this title (relating to Requirements for Mass Transit Authorities, and Requirements for Local Governments and Private Persons);

(3) The acquisition of clean-fuel vehicles in a category not required under §114.150 or §114.151 of this title; or

(4) The acquisition of clean-fuel vehicles before the dates under §114.150 or §114.151 of this title.

(b) MERCs may be:

(1) used to demonstrate compliance with the clean-fuel vehicle provisions and requirements of this chapter or any other mobile source program that has marketable credits;

(2) banked for later use; or

(3) traded, sold, or purchased for use by any other person in the same nonattainment area to demonstrate compliance with the clean-fuel vehicle provisions and requirements of this chapter.

(c) The following restrictions apply to the trading or purchasing of fleet to fleet MERCs:

(1) Trades are restricted to the nonattainment area in which they are generated;

(2) Light-duty vehicle MERCs are restricted to trading within the light-duty class; and

(3) Heavy-duty vehicle MERCs may be traded within their specific subclass or from a heavier vehicle to a lighter vehicle (downward trading) within the heavy-duty class.

(d) For fleet to fleet trading or demonstration of compliance, MERCs will be quantified in terms of fleet to fleet credits using the following equation:

$$credit = \frac{F_{base} - F_{optional}}{F_{CV} - F_{LEV}}$$

where:

credit = the credit generated by the vehicle for a fleet to fleet trade;

F_{base} = the emission factor for the base vehicle that is required;

F_{optional} = the emission factor for the extra or cleaner clean-fuel vehicle;

F_{cv} = for light-duty vehicles and trucks, the emission factor for a conventional light-duty vehicle;
and for heavy-duty vehicles, the emission factor for a conventional vehicle in the same
weight class as the credit generating vehicle; and

F_{LEV} = for light duty vehicles and trucks, the emission factor for a light-duty vehicle LEV; and for
heavy duty vehicles, the emission factor for an LEV in the same weight class as the credit
generating vehicle.

(e) For trades to stationary sources, the following methodology is used for the calculation of
MERCs for volatile organic compounds (VOCs) or oxides of nitrogen (NO_x) trades:

$$MERC_{\text{grams}_{\text{year}}} = \frac{(\text{differential vehicle benefit} \times VMT \times CF)}{n}$$

where:

differential vehicle benefit = difference in emissions between the clean-fuel and conventional vehicle

VMT = estimated total remaining vehicle miles traveled;

CF = conversion factor used only for heavy-duty vehicles, defined as brake specific fuel consumption multiplied by fuel economy multiplied by fuel density; and

n = estimated number of years the vehicle is in service.

(f) In order for credits to be certified as tradable for stationary sources, fleets must have a minimum of 1 ton per year reduction of VOCs or NO_x. Affected entities may aggregate VOCs or NO_x MERCs generated under this section in order to make the minimum one ton of emission reductions for trades to stationary sources.

(g) In order to apply for a MERC, an affected entity or individual must submit the following information to the executive director:

(1) the certified emission standard of the vehicle for which the affected entity or individual wishes to make an application for credit;

(2) the annual VMT traveled by the vehicle;

(3) the amount of time in years this vehicle is expected to be in service; and

(4) a current fleet report containing the information in §114.155 of this title (relating to Reporting). The submission of additional vehicle or fleet information may be required at this time.

(h) MERCs for trading between fleets will be banked with the Mobile Source Division.

(i) MERCs for trading between fleets and stationary sources will be banked with the commission Emissions Bank.

(j) Upon certification by the executive director, each vehicle will be issued a certificate indicating, where applicable:

(1) the standard to which the vehicle is certified;

(2) the weight class of the vehicle;

(3) the amount of emissions reduced per year in tons;

(4) the number of years the emission reductions will be credited; and

(5) the number of light-duty or heavy-duty vehicle fleet to fleet MERCs.

(k) A total emissions credit summary sheet will be issued to the fleet upon issuance of any MERC certificate.

(l) MERCs will be awarded in two-year increments for the period of 1998 through 2002. After 2002, MERCs will be awarded according to the expected remaining useful life of the vehicle.

(m) The following are considered violations of the Texas Mobile Emission Reduction Credit Program:

- (1) claiming a MERC without meeting the appropriate acquisition requirements;
- (2) submission of false data as information requested by commission rules; or
- (3) counterfeiting or dealing commercially in counterfeit MERC certificates.

(n) Any person found to be in violation of the Texas Mobile Emission Reduction Credit Program is subject to a civil penalty of not more than \$25,000 per violation.

§114.202. The Texas Mobile Emission Reduction Credit Fund.

(a) Mobile emission reduction credits may be assigned through the Texas Mobile Emission Reduction Credit Trading Fund as established by this section to affected entities provided:

(1) the affected entity enters into a binding contract with the commission, agreeing to purchase and place in service in designated program areas clean-fuel vehicles in accordance with the number of credits issued and the time frame specified by the commission; and

(2) the affected entity agrees to name the EPA as a third-party beneficiary of its contract with the commission.

(b) Contracts entered into under this section may be enforced in the courts of the State of Texas by an order of specific performance.

This commission hereby certifies that the proposal has been reviewed by legal counsel and found to be within the commission's authority to adopt.

Issued in Austin, Texas, on August 20, 1997.

SUBCHAPTER G : TRANSPORTATION PLANNING

The new rules are proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The proposed new rules are only a reformatting of existing rules and therefore do not implement any new state or federal requirements.

§114.250. Memorandum of Understanding with the Texas Department of Transportation.

(a) The Texas Natural Resource Conservation Commission (commission) adopts as Exhibit A a Memorandum of Understanding (MOU) between the commission and the Texas Department of Transportation (TxDOT) concerning:

(1) the review of TxDOT projects which may affect air quality, in order to assist TxDOT in making environmentally sound decisions; and

(2) the development of a system by which information developed by TxDOT and the commission may be exchanged to the mutual benefit of both agencies.

(b) The MOU follows as Exhibit A.

(c) Copies of the MOU are available at the Texas Natural Resource Conservation Commission, Mobile Source Division, P.O. Box 13087, Austin, Texas 78711-3087.

§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 51, Subpart T (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 Act), which are the regulations developed by the EPA under the FCAA Amendments of 1990, §176(c). It includes policy, criteria, and procedures for demonstrating and assuring conformity of transportation planning activities with the State Implementation Plan (SIP).

(b) Applicability. This section applies to transportation-related pollutants for which an area is designated nonattainment or is subject to a maintenance plan. The pollutants include ozone, carbon monoxide, nitrogen dioxide, particles with an aerodynamic diameter of less than or equal to ten micrometers (PM₁₀), and the precursors of those pollutants. The affected nonattainment and maintenance areas are listed in §101.1 of title (relating to Definitions).

(c) CFR incorporation. The provisions promulgated in the following listed sections of 40 CFR, Part 51, Subpart T, dated November 24, 1993, are hereby incorporated by reference: §§51.392, 51.394, 51.398, 51.400, 51.404, 51.406, 51.408, 51.410, 51.412, 51.414, 51.416, 51.418, 51.420,

51.422, 51.424, 51.426, 51.428, 51.430, 51.432, 51.434, 51.436, 51.438, 51.440, 51.442, 51.444, 51.446, 51.448, 51.450, 51.452, 51.454, 51.456, 51.458, 51.460, 51.462, and 51.464.

(d) Consultation. Under 40 CFR, §51.402 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) EPA;

(ii) Federal Highway Administration (FHWA);

(iii) Federal Transit Administration (FTA);

(iv) Texas Department of Transportation (TxDOT);

(v) metropolitan planning organizations (MPOs) in nonattainment or maintenance areas;

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

(vii) Texas Natural Resource Conservation Commission (commission);

(viii) local air quality agencies in nonattainment or maintenance areas (recipients of FCAA, §105 funds);

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

(i) MPO: executive director or designee;

(ii) commission: executive director or designee;

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

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

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

(vi) FTA: Director of Office of Program Development - FTA Region

6, or designee;

(vii) EPA: Regional Administrator - EPA Region 6, or designee;

(viii) TxDOT District: District Engineer or designee;

(ix) local publicly-owned transit services (the designated recipient of FTA §9 funds): General Manager or designee;

(x) local air quality agencies (recipients of FCAA, §105 funds):

Director or designee; and

(xi) commission regions in nonattainment or maintenance areas:

regional director or designee.

(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 Mobile Source Division Director, or a designated representative, to participate in meetings 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. Such 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 may 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 their rationale. The MPO shall consider the views of each agency that comments, and respond in writing prior to 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 51, §51.460 and §51.462. 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. If no comments are received as part of the 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, §51.460;

(vii) as required by 40 CFR, §51.424 and §51.454 of the final EPA transportation conformity rule, make a preliminary identification of those projects located at sites in PM₁₀ nonattainment and maintenance areas that require quantitative PM₁₀ 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 or Regional Emissions Analysis, provide an opportunity for the agencies specified in paragraph (1)(A) of this subsection to review and comment;

(ix) in coordination with TxDOT and the local transit agencies, disclose all known, regionally significant, non-federal projects, even if the sponsor has not made a final decision on its implementation; include all disclosed, or otherwise known, regionally significant non-

federal projects in the regional emissions analysis for the nonattainment area; respond in writing to any comments that known plans for a regionally significant non-federal project have not been properly reflected in the regional emissions analysis; and have recipients of federal funds determine annually that their regionally significant non-federal projects are included in a conforming MTP or TIP, or are included in a regional emissions analysis of the MTP and TIP. The MPO shall consult with project sponsors to determine the non-federal projects' location and design concept and scope to be used in the regional emissions analysis, particularly for projects for which the sponsor does not report a single intent because the sponsor's alternatives selection process is not yet complete. If the MPO assumes a design concept and scope which is different from the sponsor's ultimate choice, the next regional emissions analysis for a conformity determination must reflect the most recent information regarding the project's design concept and scope;

(x) under §114.270 of this title (relating to Transportation Control Measures), ensure the timely implementation of TCMs and report to the commission annually on the status of adopted TCMs. If alternative TCMs or other reduction measures are deemed necessary, and these are not already included in the SIP, the MPO shall develop new TCMs with equal or greater emissions reductions consistent with the MTP, TIP, SIP, and conformity requirements, under §114.270(d) of this title. Any changes in TCMs will be coordinated with the affected agencies specified in paragraph (1)(A) of this subsection;

(xi) cooperatively share the responsibility for conducting conformity determinations on transportation activities which cross the borders of MPOs or nonattainment and

maintenance areas. The affected MPOs will enter into a Memorandum of Agreement (MOA) which will define the effective boundary and the respective responsibilities of each MPO for regional emissions analysis. The MPOs will be responsible within their respective metropolitan area boundaries and, at their option, beyond to the boundaries of the nonattainment/maintenance areas, for regional emissions analysis. Adjacent MPOs or nonattainment/maintenance areas or basins will share information concerning air quality modeling assumptions and emission rates that affect both areas; and

(xii) for the purpose of determining the conformity of all projects outside the metropolitan planning area, but within the nonattainment or maintenance area, enter into an MOA involving the MPO and TxDOT for cooperative planning and analysis of projects.

(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 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 SIP revisions;

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

(iii) provide copies of final documents, including applicable adopted or approved 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 under §114.270(a) of this title, 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 substitute TCMs or other emission reduction measures.

(3) General procedures.

(A) The MPO, TxDOT, or the commission, as applicable, shall respond to comments of affected agencies on MTPs, TIPs, projects, or SIP revisions in accordance with the public

involvement procedures that govern the involved action. The MPO, TxDOT, or the commission, as applicable, shall include all comments and the replies to those comments with final documents when they are submitted for adoption by the agency's governing board. In the event that comments are not adequately resolved, the procedures outlined in paragraph (4) of this subsection regarding conflict resolution shall apply.

(B) Because the validity of the regional emissions analysis depends on transportation modeling assumptions which need periodic updates, the MPO, with the assistance of TxDOT and local publicly owned transit agencies, will conduct meetings with the agencies specified in paragraph (1)(A) of this subsection to cooperatively establish research and data collection efforts and regional model development (e.g., household/transportation surveys).

(C) For the purposes of evaluating and choosing a model (or models) and associated methods and assumptions to be used in Hot-Spot and Regional Emissions Analyses, the commission shall establish a working group identified as the Transportation and Air Quality Technical (TAQT) Working Group. The TAQT Working Group shall include the agencies specified in paragraph (1)(A) of this subsection. The frequency of meetings and agendas for them will be determined by the commission in cooperation with 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, 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, §51.400 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.

(4) Conflict resolution.

(A) The commission and the MPO (or TxDOT where appropriate) shall make a good-faith effort to address the major concerns of the other party in the event they are unable to reach agreement on the conformity determination of a proposed MTP or TIP. The efforts shall include meetings of the agency executive directors if necessary.

(B) In the event that the MPO or TxDOT determines that every effort has been made to address the commission concerns, and that no further progress is possible, the MPO or TxDOT shall notify the 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) The commission has 14 calendar days from date of receipt of notification as required in subparagraph (B) of this paragraph to appeal to the Governor. If the commission appeals to the Governor, the final conformity determination must then have the concurrence of the Governor.

The Governor may delegate his or her role in this process, but not to the commission or staff of the commission, a local air quality agency, the Texas Transportation Commission or staff of TxDOT, or an MPO. This subparagraph shall be cited by the commission in any notification of a conflict which may require action by the Governor or his or her delegate. If the commission does not appeal to the Governor within 14 calendar days from receipt of written notification, the MPO or TxDOT may proceed with the final conformity determination.

(5) Public comment on conformity determinations. Consistent with the requirements of 23 CFR, Part 450 concerning public involvement, the agencies specified in paragraph (1)(A) of this subsection shall establish a public involvement process which provides opportunity for public review and comment prior to taking formal action on conformity determinations for all MTPs and TIPs. 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 a MTP or TIP. Also, 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 effort made by the consulting agencies to comply.

§114.270. Transportation Control Measures.

(a) The metropolitan planning organization (MPO) for any designated nonattainment area shall be responsible for the identification, evaluation, coordination, tracking, and periodic revision, as necessary, of transportation control measures (TCMs) required for inclusion in the Texas State Implementation Plan (SIP) adopted by the Texas Natural Resource Conservation Commission (commission). The MPO shall obtain and submit to the commission the necessary commitments from applicable implementing agencies and shall ensure adequate, timely funding of such projects through the development, management, and annual revision of the Transportation Improvement Program (TIP) and, through the long-range transportation plan, ensuring conformity of the regional transportation network with the SIP. Such implementing agency commitments shall include, but not be limited to, the following information:

(1) a complete description of the program of measures and estimated emission reduction benefits from the program of measures adopted;

(2) evidence that the measure was properly adopted by a jurisdiction with legal authority to commit to and execute the program of measures;

(3) evidence that funding has been, or will be, obligated to implement the measure;

(4) evidence that all necessary funding approvals have been obtained from all appropriate implementing agencies, including the Texas Department of Transportation (TxDOT), if applicable; and all parties intend to implement specific control measures upon final environmental clearance. Programming within the TIP will serve as sufficient evidence of commitment.

(5) evidence that a complete schedule to plan, adopt, fund, implement, monitor, and ensure compliance with the TCM has been adopted by the implementing agencies; and

(6) a description of the monitoring program to assess the measure's effectiveness and to allow for necessary in-place corrections or alterations.

(b) MPOs required to comply with the provisions of this rule include the:

(1) El Paso MPO for the El Paso Urban Transportation Study - responsible for the El Paso nonattainment areas, as defined in §101.1 of this title (relating to Definitions);

(2) Houston-Galveston Area Council - responsible for the Houston/Galveston nonattainment area, as defined in §101.1 of this title;

(3) North Central Texas Council of Governments - responsible for the Dallas/Fort Worth nonattainment area, as defined in §101.1 of this title; and

(4) Southeast Texas Regional Planning Commission - responsible for the Beaumont/Port Arthur nonattainment area, as defined in §101.1 of this title.

(c) The responsible MPO shall obtain information from implementing agencies responsible for TCMs included in the SIP; shall maintain complete and accurate records for at least five years; and shall make such records available to representatives of the commission, the EPA, the Federal Highway Administration, the Federal Transit Administration, the TxDOT, and local air pollution agencies having jurisdiction in the area, upon request. The information in the records shall be sufficient to accurately reflect the effectiveness of the TCM program and shall include, but not be limited to, the following:

(1) the annual status of the implementation of the program of TCMs and the categories of TCMs, including quantifying progress based on the measurable criteria established in implementing agency commitments;

(2) an annual estimate of the funding and other resources expended toward implementing the program of TCMs and a comparison of the actual and projected expenditures;

(3) an annual estimate of the emission reductions achieved from implementation of the program of TCMs and a comparison of actual and projected reductions; and

(4) any modifications to the program of TCMs since the last annual report and/or projected in the next reporting period to compensate for a short-fall in the implementation of the program of TCMs or in the associated emission reductions.

(d) If information regarding the status of the program of TCMs in the SIP indicates that any TCM included in the SIP has not been adequately implemented in accordance with the projected schedule, the responsible MPO shall within the next 12 months after TIP approval by the MPO or regional transportation policy body:

(1) ensure that the responsible implementing agencies have instituted supplemental efforts as necessary to demonstrate compliance with commitments, future TCM milestones, or goals;

(2) develop, submit, and initiate an alternative TCM in coordination with the same or other responsible implementing agencies, which, as part of the program of TCMs in the SIP, demonstrates at least an equivalent emission reduction, in the same time frame, to the existing program;

(3) initiate a revision the TIP as necessary, but no more frequently than annually, to ensure that sufficient funding and authorization has been provided to correct the deficiency; and

(4) submit to the commission new or modified TCMs as proposed SIP revisions if the alternative TCMs are not within the same category, or if required emission reductions can not be met with the planned alternative TCMs.

(e) If the commission makes a determination that the process described in subsection (d) of this section has not resolved the identified deficiency, or that an egregious or knowing failure to comply with the TCM commitments included in the SIP has occurred, the MPO:

(1) shall amend the TIP to facilitate the expeditious implementation of contingency measures previously identified by the MPO and approved by the commission; and

(2) shall withhold all or part of the funding for non-TCM projects from the applicable implementing agency.

(f) The commission shall seek a financial penalty against the MPO or an implementing agency only in the case of an egregious or knowing violation of the provisions of this section.

This commission hereby certifies that the proposal has been reviewed by legal counsel and found to be within the commission's authority to adopt.

Issued in Austin, Texas, on August 20, 1997.