

The Texas Natural Resource Conservation Commission (commission) proposes an amendment to §114.21 (Exclusions and Exceptions). This amendment is proposed to Subchapter B (Motor Vehicle Anti-tampering Requirements) of Chapter 114 (Control of Air Pollution from Motor Vehicles) and to the State Implementation Plan (SIP). The commission proposes these revisions in order to align the statewide anti-tampering provisions for motor vehicle air pollution control systems with the federal requirements outlined in §203(a)(3) of the Federal Clean Air Act (FCAA), (42 United States Code, §7522(a)(3)).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

Federal anti-tampering provisions regarding emission control equipment on motor vehicles and motor vehicle engines prohibit any person from removing or rendering inoperative any emission control device. The only federal exemptions to this requirement are for vehicles used primarily for sanctioned motor sports competition, research, or training purposes. In addition to the federally approved exemptions, §114.21 currently allows for exemptions for vehicles registered as farm vehicles (such as pickup trucks). In addition, exclusions are allowed for vehicles whose owners believe the continued operation of certain emission control equipment will result in a clear danger to persons or property. Historically, the most common emission control equipment being addressed is the catalytic converter. Section 114.21 was adopted in the mid-1980s in response to reported incidents of grass fires resulting from high-operating temperatures believed to be associated with catalytic converters.

In correspondence and discussions in April 1998, the United States Environmental Protection Agency (EPA) requested that the commission phase out the tampering exclusions in §114.21 within two years or face possible sanctions. This request was based on the fact that: 1) Texas is not in compliance with Title 40 Code of Federal Regulations (CFR), Part 85 (Control of Air Pollution from Mobile Sources), 2) Texas is the only state that offers waivers to allow removal of catalytic converters, and 3) newer model year vehicles now have improvements and advancements in technology in both engines and exhaust systems. These improvements include the positioning of the catalytic converter to areas closer to the engine compartment which provides greater ground clearance beneath the vehicle, and new catalytic converter technologies.

As a result, the Technical Analysis Division (formerly the Air Quality Planning and Assessment Division) completed a contract study to re-examine the long-standing concern that hot vehicle exhaust systems, specifically the catalytic converter, can create a potentially hazardous fire-starting situation. The scope of the contract was to determine the risk of fire-starting with new and emerging vehicle engine and catalytic converter technologies. The contract awarded to Wallace Environmental Testing Laboratories, Inc. of Houston, Texas was completed June 30, 1999. The final report submitted by Wallace Environmental Testing Laboratories, Inc. showed that of the 11 vehicles tested, the hottest point on the exhaust system was consistently that point closest to the engine, with or without the catalytic converter. The study indicated that “while peak exhaust system temperatures crossed piloted ignition thresholds for dry grass and pine needles, catalyst removal did not reduce exhaust system temperatures.” In addition, removal of the catalytic converter did not change the location of the hottest point on the exhaust system. It was also noted that, in all but one vehicle, the pipe installed to replace

the catalytic converter reached a higher temperature than the converter it replaced. In some cases, these temperatures were substantially higher. The report also quantified the effect of the removal of the catalytic converter on a vehicle exhaust emissions. The study showed that after the catalytic converters were removed, carbon monoxide emissions increased by an average of 4,732%, hydrocarbons by an average of 15,730%, and nitrogen oxides by an average of 5,070%.

SECTION BY SECTION DISCUSSION

The proposed rule would revise §114.21(a)(1) by removing the exemption for registered farm vehicles. Section 114.21(b) would be amended by adding the word “Control” to the phrase “DoD Privately Owned Vehicle Import Program” before the word “Program.” Section 114.21(c) would be revised by removing the language allowing exclusions and the conditions which must be met to claim an exclusion. In addition, new provisions are proposed in §114.21(c) to exempt registered farm vehicles that have had their emission control equipment modified or removed prior to June 1, 2000, and vehicles that were granted an exclusion prior to June 1, 2000, from the requirements of §114.20 (relating to Maintenance and Operation of Air Pollution Control Systems or Devices Used to Control Emissions from Motor Vehicles). Section 114.21(e)(2) is proposed to be amended to correctly refer to the title of §114.50 as “Vehicle Emissions Inspection Requirements.”

FISCAL NOTE

Bob Orozco, Technical Specialist with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed amendments are in effect, there will be no significant fiscal implications for units of state and local government as a result of administration or enforcement of the proposed amendments.

Federal anti-tampering provisions regarding emission control equipment on motor vehicles and motor vehicle engines prohibit any person from removing or rendering inoperative any emission control device. The proposed amendments to Chapter 114 would make this chapter conform with federal regulations by repealing the current state exemptions for farm vehicles and repealing the exemption for vehicles whose owners allege that the continued operation of certain emission control equipment will result in a clear danger to persons or property. Recent research and testing by Wallace Environmental Testing Laboratories, Inc. has indicated that these exemptions are no longer useful nor necessary. The EPA has requested that the commission phase out the state tampering exemptions or face possible sanctions. Sanctions may include the loss of significant federal funding for transportation projects provided to nonattainment areas.

The proposed amendments would, however, allow existing exempt registered farm vehicles that have had their emission control equipment modified or removed prior to June 1, 2000 to maintain their exemptions. In addition, other vehicles that were granted an exemption prior to June 1, 2000 from the requirements in Chapter 114, may maintain their exemption until such time as the vehicle is sold.

When an exempted vehicle is sold, it is the seller's responsibility to bring the vehicle back to its original

certified emission control configuration prior to sale. In most situations, the catalytic converter has to be re-installed to bring a vehicle back to its original configuration. The cost of re-installing the catalytic converter is approximately \$100 to \$250 per converter depending on the vehicle make, model, etc. According to agency records, 832 vehicles have been granted exemptions and the agency has been notified of 37 vehicles that have re-installed the catalytic converter. The provision requiring the vehicle to be configured to its original emission control configuration exists in the current rule and has not changed so there is no fiscal implication attributable to the proposed amendments.

PUBLIC BENEFIT

Mr. Orozco has also determined that for each year of the first five years the proposed amendments to Chapter 114 are in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendments will be potentially improved air quality associated with eliminating the option to remove catalytic converters from motor vehicles, potential reductions in emissions of carbon monoxide, hydrocarbons, nitrogen oxides, and potential reductions in ozone.

The intent of the proposed amendments to Chapter 114 is to make state rules conform to federal regulations by repealing the current state exemption for farm vehicles and the exclusion for vehicles whose owners allege that the continued operation of certain emission control equipment will result in a clear danger to persons or property. Recent research and testing by Wallace Environmental Testing Laboratories, Inc. has indicated that these exemptions are no longer useful nor necessary. The EPA has requested that the commission phase out the tampering exemptions or face possible sanctions.

The proposed amendments apply to persons in Texas owning or operating a motor vehicle or motor vehicle engine who maintain or request an exemption from the rules regarding a system or device used to control emissions from the motor vehicle in compliance with federal motor vehicle rules.

Specifically, the amendments apply to registered farm vehicles and vehicles whose owners allege that the continued operation of certain emission control equipment will result in a clear danger to persons or property. There are no significant fiscal implications anticipated to individuals or businesses as a result of administration or enforcement of the proposed amendments because vehicles which hold an exemption prior to June 1, 2000 will be allowed to maintain/continue their exemption until such time as they sell the vehicle.

SMALL BUSINESS AND MICRO-BUSINESS ANALYSES

There are no anticipated fiscal implications to small businesses and micro-businesses as a result of implementing the proposed amendments. The proposed amendments to Chapter 114 repeal the current state exemptions for farm vehicles and the exemption for vehicles whose owners allege that the continued operation of certain emission control equipment will result in a clear danger to persons or property. Recent research and testing by Wallace Environmental Testing Laboratories, Inc. has indicated that these exemptions are no longer useful nor necessary. The EPA has requested that the commission phase out the tampering exemption or face possible sanctions.

The proposed amendments allow existing exempt registered farm vehicles that have had their emission control equipment modified or removed prior to June 1, 2000 to maintain their exemptions. In addition, other vehicles that were granted an exemption prior to June 1, 2000 from the requirements in

Chapter 114, may maintain their exemption until such time as the vehicle is sold. When an exempted vehicle is sold, it is the seller's responsibility to bring the vehicle back to its original certified emission control configuration prior to sale. In most situations, the catalytic converter has to be re-installed to bring a vehicle back to its original configuration. The cost of re-installing the catalytic converter is approximately \$100 to \$250 per converter depending on the vehicle make, model, etc. According to agency records, 832 vehicles have been granted exemptions and the agency has been notified of 37 vehicles that have re-installed the catalytic converter. The provision requiring the vehicle to be configured to its original emission control configuration exists in the current rule, §114.20(c), and has not changed so there is no fiscal implication attributable to the proposed amendments.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and has determined that the rulemaking does not meet the definition of a "major environmental rule" as defined in that statute. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments to Chapter 114 repeal certain exemptions while allowing existing exemptions until the vehicle is sold. The proposed amendments do not impose additional fiscal requirements to existing requirements and may have the positive effect of preventing the cost of removing pollution control devices on certain motor vehicles. The proposed amendments are not anticipated to have an adverse affect in a material way on the economy, a sector of the

economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. In addition, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program or; 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability requirements of a “major environmental rule.”

Specifically, the proposed amendments do not exceed federal standards but were developed to make state rules conform to federal regulations. This proposal does not exceed an express requirement of state law nor exceed a requirement of a delegation agreement. The proposed amendments were not developed solely under the general powers of the agency but were specifically developed to make state rules conform to federal regulations. The commission invites public comment on the draft regulatory impact analysis.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for this rule in accordance with Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rulemaking is to remove specific exemptions and exclusions relating to the removal of air pollution control systems (catalytic converters) from motor vehicles and does not create a burden on private real property. Therefore, this revision will not constitute a takings under Texas Government Code, Chapter 2007.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has determined that this rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resource Code, §§33.201 et seq.), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3), relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and has determined that the action is consistent with the applicable CMP goals and policies. The CMP policy applicable to this rulemaking action is the policy (31 TAC §501.14(q)) that commission rules comply with federal regulations at 40 CFR 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans) and 40 CFR 85 (Control of Air Pollution from Mobile Sources) to protect and enhance air quality in the coastal area (31 TAC §501.14(q)). The effect of the proposed rules will be to make the state rules, which are currently less stringent than the federal rules, essentially equivalent to the federal rules found in 40 CFR 85. No new sources of air contaminants will be authorized by the proposed rule amendments, and emissions from mobile sources will be reduced as a result of not allowing vehicles to remove emissions control equipment. Therefore, in compliance with 31 TAC §505.22(e), the commission affirms that this rulemaking is consistent with CMP goals and policies.

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

PUBLIC HEARING

A public hearing on this proposal will be held in Austin on February 22, 2000, at 2:00 p.m., in Building F, Room 3202A at the Texas Natural Resource Conservation Commission Complex, located at 12100 Park 35 Circle. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs, who are planning to attend the hearing, should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Angela Slupe, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 99066-114-AI. Comments must be submitted no later than 5:00 p.m. on February 28, 2000. For further information, please contact Alan Henderson at (512) 239-1510 or Bob Reese at (512) 239-1439.

STATUTORY AUTHORITY

The amendment is proposed under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.019, which authorizes the commission to adopt rules to control and reduce emissions from engines used to propel land vehicles; and §382.039, which authorizes the commission to develop and implement transportation programs and other measures necessary to demonstrate attainment and protect the public from exposure to hazardous air contaminants from motor vehicles.

This amendment implements TCAA, §382.012, relating to State Air Control Plan; §382.019, relating to Methods Used to Control and Reduce Emissions from Land Vehicles; and §382.039, relating to Attainment Program.

SUBCHAPTER B : MOTOR VEHICLE ANTI-TAMPERING REQUIREMENTS

§114.21

§114.21. Exemptions [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 [To] Control Emissions From Motor Vehicles).

(2) (No change.)

(b) Vehicles belonging to members of the U.S. Department of Defense (DoD) participating in the DoD Privately Owned Vehicle Import Control 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) - (4) (No change.)

(c) Motor vehicles are exempt from the provisions of §114.20(a), (b), and (d) of this title if the following conditions apply: [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 motor vehicles are registered as farm vehicles with the Vehicle Titles and Registration Division of the Texas Department of Transportation, are intended solely or primarily for use on a farm or ranch, and their air pollution control devices or systems were removed or made inoperable prior to June 1, 2000; or [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 motor vehicles were granted an exemption from the provisions of §114.20(a) and (b) of this title by the Texas Natural Resource Conservation Commission (commission) or its predecessor agency prior to June 1, 2000. [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.]

(A) A [(4) The applicant shall agree and ensure that a] copy of the exemption [exclusion] shall be kept with the vehicle at all times and shall be available for inspection by representatives of the commission [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.

(B) [(5)] The exemption [applicant shall agreed 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) (No change.)

(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 [Texas Department of Public Safety (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 Vehicle Emissions Inspection Requirements) of operating the vehicle prior to the adequate restoration of all pollution control systems or devices on the vehicle as originally equipped. The seller of the vehicle shall provide to the buyer a written acknowledgment of the receipt of this information which must be signed by the buyer prior to completion of the sales transaction. The seller shall retain a copy of this signed acknowledgment and shall make it available, upon request.

(f) (No change.)