

The Texas Commission on Environmental Quality (commission) proposes amendments to 30 TAC §114.1 and §114.270, and the repeal of §§114.4, 114.201, 114.202, and 114.618. If adopted, the revisions would be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

This rulemaking would align certain transportation–air quality rules and definitions with state and federal statutes by repealing the following rules: the Mobile Emission Reduction Credit (MERC) program and associated fund and definitions, the Light-Duty Motor Vehicle Purchase or Lease Incentive Program Vehicle Emissions Information Brochure, and the Transportation Control Measures (TCM) Substitution Process. These provisions were either repealed by state statute or superseded by federal statute.

The Federal Clean Air Act Amendments of 1990 (FCAA), §182(c)(4), required states to either adopt the Federal Clean Fuel Fleet (FCFF) program outlined in FCAA, §246, or implement a program that demonstrates long-term reductions in ozone-producing and toxic air emissions equal to those achieved under the FCFF program. The FCFF program requires federal, state, and local governments, and private fleets to purchase low-emission vehicles (LEVs) in areas classified by the EPA as being in serious, severe, or extreme nonattainment of the national ambient air quality standards (NAAQS) for ozone and carbon monoxide (CO).

The State of Texas, in a committal SIP revision submitted to the EPA on November 15, 1992, opted out of the FCFF program in order to implement a fleet emission control program designed by the state. In 1994 the commission submitted the state's opt-out program in a SIP revision to the EPA and adopted rules

to implement the Texas Alternative Fuel Fleet (TAFF) program as a substitute to the FCFE program in the areas of Texas classified by EPA as being in serious, severe, or extreme nonattainment of the NAAQS for ozone or CO.

In 1995 the 74th Texas Legislature modified the state's alternative fuels program (Texas Health and Safety Code, Chapter 382, Subchapter F) through the passage of Senate Bill 200 (SB 200). The legislature facilitated fuel neutrality through the incorporation of the federal low emission vehicle (LEV) standards regardless of fuel type for certain affected fleets. The legislation required the commission to adopt regulations to implement the revised program. The commission adopted regulations that established the Texas Clean Fleet (TCF) program. In 1997 the 75th Texas Legislature further modified the state's alternative fuels program through the passage of Senate Bill 681 (SB 681). SB 681 removed the commission's authority to require the program in moderate nonattainment areas, limited the commission's authority to the serious and above ozone nonattainment areas, and modified the state's alternative fuels program. The basic requirement of LEV purchases was retained, but the implementation schedule was modified. This legislation required the commission to adopt regulations to implement the program.

MERCs are part of the commission's TCF economic incentive program to help reduce vehicle emissions of volatile organic compounds (VOC) and nitrogen oxides (NO_x). The program is intended to provide additional flexibility for business, develop innovative strategies to control mobile source emissions, and reduce the cost of compliance with the FCAA. MERCs are enforceable, permanent, and quantifiable emission reductions generated by a mobile source through the TCF program. Emission reductions that remain after an entity satisfies their requirements may be banked as credits.

In 2005 the 79th Texas Legislature passed Senate Bill 1032 (SB 1032), which repealed TCF in its entirety. This action also repealed the MERC program, MERC fund, and corresponding definitions. On April 26, 2006, the commission adopted the repeal of the TCF program as directed by SB 1032. This rulemaking proposes the repeal of the remaining program elements.

In 2001 the 77th Texas Legislature (2001) passed Senate Bill 5 (SB 5) establishing the Texas Emission Reduction Plan (TERP), which provided financial incentives for reducing emissions of on-road and non-road motor vehicles and equipment, grants for the development of new emission control technology, new building energy efficiency standards, and research and development programs. SB 5 programs were estimated to achieve reductions in excess of the reductions expected from the rules that were being repealed. In accordance with SB 5, the state implementation plan (SIP) was revised to replace certain rules with TERP. The adopted TERP rules established a state-wide incentive program for the purchase of new on-road diesel vehicles and light-duty motor vehicles that met emission standards more stringent than those required by federal requirements.

As a result of these new rules, a new §114.618 was adopted in August 2001, which required vehicle manufacturers to publish a brochure of eligible incentive vehicles by September 1 of each year. This brochure is also required to be submitted to the executive director, or his designee, by the same date.

House Bill 1365 (HB 1365) by the 78th Legislature (2003) repealed the requirement for vehicle manufacturers to publish and distribute a brochure annually. The rulemaking proposes the repeal of the rule implementing this requirement.

The federal surface transportation reauthorization act, the *Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users* (SAFETEA-LU), established a transportation control measure substitution process, eliminating the requirement for an EPA-approved state process as found in 30 TAC §114.270(f), relating to the TCM Substitution Process. The SAFETEA-LU provisions supersede the state process. The rulemaking would repeal the state section because it is no longer necessary.

SECTION BY SECTION DISCUSSION

The proposal would amend §114.1 in Subchapter A and §114.270 in Subchapter G; and would repeal §114.4 in Subchapter A; §114.201 and §114.202 in Subchapter F; and §114.618 in Subchapter K.

§114.1(13) and §114.4. Subchapter A, Definitions.

The proposal would amend §114.1 by repealing the definition of MERC in §114.1(13) and repeal the MERC definitions found in §114.4. These sections were elements of the TCF program, which was repealed by the commission on April 26, 2006, in accordance with SB 1032 following a repeal by the legislature in 2005, SB 1032. The legislative repeal made these program definitions no longer necessary. Current definitions in §114.1(14) through (18) will be renumbered (13) through (17).

§114.201 and §114.202. Subchapter F, Division 1, Mobile Emission Reduction Credit Program.

The proposal would repeal the MERC program found in §114.201 and the MERC fund found in §114.202. Both of these sections were program elements of the TCF program, which was repealed by the commission on April 26, 2006, following enactment of SB 1032 in 2005, which repealed the TCF program. The legislative repeal made this program no longer necessary.

§114.270. Subchapter G, Transportation Control Measures.

The proposal would amend §114.270 by deleting §114.270(f), the TCM substitution process. The re-authorization of the SAFETEA-LU eliminated the requirement for an EPA-approved state process for approving TCM substitutions. The provisions of the SAFETEA-LU establish that if there is a conflict between an approved state process and the approval process contained in the SAFETEA-LU, the state must follow the requirements found in the SAFETEA-LU.

§114.618. Subchapter K, Vehicle Emissions Information Brochure.

The proposed rulemaking would repeal the requirement of §114.618 that requires automobile manufacturers to publish a brochure annually and submit it to the TCEQ by September 1st of every year. The proposal would repeal this requirement at the directive of HB 1365, 78th Legislature (2003).

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeff Horvath, Analyst, Strategic Planning and Assessment Section, has determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed rule.

The proposed rule would clarify certain transportation and air quality rules through: 1) the repeal of certain TCF program elements, specifically, MERCs; 2) the repeal of a TCM substitution process, which was superseded by federal requirements; and 3) the repeal of a requirement that vehicle manufacturers publish a brochure listing eligible new light-duty motor vehicles on an annual basis.

Senate Bill 1032, 70th Legislature, 1987, repealed the TCF program. The TCF program was repealed

because there was no longer an air quality benefit that could be achieved from the program, as federal emission standards exceeded the emission standards for low emission vehicles established under the TCF program. Mobile emission reduction credits (MERCs) were enforceable, permanent, and quantifiable emission reductions generated by a mobile source through the TCF program and could be banked as credits. However, due to the fact that the federal standards exceeded the TCF standards, there were no MERCs assigned through the Texas Mobile Emission Credit Fund. No fiscal implications are expected for affected entities.

Under current rule, TCMs address the roles and responsibilities of the metropolitan planning organizations (MPOs) and implementing transportation agencies in nonattainment and maintenance areas and provide a method for the substitution of TCMs without a state implementation plan (SIP) revision. The re-authorization of the federal surface transportation programs, the SAFETEA-LU eliminated this section, which required an EPA-approved state process for approval of substitute TCMs. The provisions of the SAFETEA-LU establish that if there is a conflict between an approved state process and the approval process contained in the SAFETEA-LU, the area must follow the requirements found in the SAFETEA-LU. Removal of the state-required section is expected to reduce the number of steps in the approval process for substitute TCMs but is not expected to result in any significant fiscal implications for affected entities.

The proposed repeal of the requirement for automobile manufacturers to publish a brochure annually and submit it to the agency by September 1st of every year is a result of HB 1365, 78th Legislature (2003). As this requirement was repealed in 2003, manufacturers have not been required to submit the brochures, and repeal of the rule is not expected to result in any significant fiscal implications for the manufacturers.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state and federal law, clear and concise rules for affected entities, and continued protection of public health and the environment.

No significant fiscal implications are anticipated for businesses or individuals as a result of the implementation of the proposed rule.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rule.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined the rules do not meet the definition of a “major

environmental rule.” Under Texas Government Code, §2001.0225, “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. Furthermore, it does not meet any of the four applicability requirements listed in §2001.0225(a). Section 2001.0225 applies only to a major environmental rule which 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds 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) adopts a rule solely under the general powers of the agency instead of under a specific state law. The proposed rulemaking would remove various outdated requirements and align state rules with federal and state statutes as described in the **BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES** and **SECTION BY SECTION DISCUSSION** sections above. Because the proposed rules are not specifically intended to protect the environment or reduce risks to human health from environmental exposure but to remove outdated rules making state rules consistent with state and federal statutes, this rulemaking is not a major environmental rule and does not meet any of the four applicability requirements. Because these rules remove requirements, they do not result in any new requirements and should not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs. The commission invites public comment regarding this draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and performed a preliminary assessment of whether Texas Government Code, Chapter 2007 is applicable. The commission's preliminary assessment indicates Texas Government Code, Chapter 2007 does not apply to these proposed amendments because this action discontinues requirements as described in the BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES and SECTION BY SECTION DISCUSSION sections of this preamble. Also, the proposed rules would remove various outdated requirements and align state rules with federal and state statutes. Promulgation and enforcement of these proposed amendments would be neither a statutory or constitutional taking of private real property. Specifically, the proposed amendments do not affect a landowner's rights in private real property, because this rulemaking action does not burden, restrict, nor limit the owner's rights to property or reduce its value by 25% or more beyond which would otherwise exist in the absence of the proposed regulations.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4), concerning rules subject to the Texas Coastal Management Program (CMP), and will, therefore, require that goals and policies of the CMP be considered during the rulemaking process. The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the rulemaking is editorial and procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies. Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin on April 3, 2007, at 10:00 a.m. at the Texas Commission on Environmental Quality complex located at 12100 Park 35 Circle in Building B, Room 201A. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Joyce Spencer, Office of Legal Services, at (512) 239-5017. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Joyce Spencer, MC 205, Office of Legal Services, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at <http://www5.tceq.state.tx.us/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2006-050-114-EN. The comment period closes April 9, 2007. Copies of the proposed rule can be obtained from the commission's Web site at http://www.tceq.state.tx.us/nav/rules/propose_adopt.html. For further information, please contact Santos Olivarez, Air Quality Division, (512) 239-4718.

SUBCHAPTER A: DEFINITIONS

§114.1

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.102, concerning General Powers; §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.011, which provides for general powers and duties under the TCAA. The amendment is proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.012, which authorizes the commission to develop a general, comprehensive plan for the proper control of the state's air; and §382.019 which authorizes the commission to adopt rules to control and reduce emissions from engines used to propel land vehicles.

The proposed amendment implements THSC, §§382.002, 382.011, 382.012, and 382.019.

§114.1. Definitions.

Unless specifically defined in Texas Health and Safety Code, Chapter 382, also known as the Texas Clean Air Act (TCAA) or in the rules of the 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, have the following meanings, unless the context clearly indicates otherwise.

(1) **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.

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

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

(4) **First safety inspection certificate**--Initial Texas 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.

(5) **Gross vehicle weight rating**--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.

(6) **Heavy-duty vehicle**--Any passenger vehicle or truck capable of transporting people, equipment, or cargo, that has a gross vehicle weight rating (GVWR) greater than 8,500 pounds, and is

required to be registered under Texas Transportation Code, §502.002. For purposes of the mobile emission reduction credit 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 pounds, but less than or equal to 10,000 pounds.

(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 pounds, but less than or equal to 19,500 pounds.

(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 pounds.

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

(8) **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.

(9) **Light-duty vehicle**--Any passenger vehicle or truck capable of transporting people, equipment, or cargo, that has a gross vehicle weight rating (GVWR) less than or equal to 8,500 pounds, and registered or required to be registered under Texas Transportation Code, §502.002. For purposes of the mobile emission reduction credit 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 pounds.

(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 pounds.

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

(10) **Loaded mode inspection and maintenance 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 United States Environmental Protection Agency requirements for acceleration simulation mode equipment.

(11) **Low emission vehicle (LEV)**--A vehicle in a class or category of vehicles that has been certified by the United States Environmental Protection Agency for any model year to meet:

(A) the LEV standards applicable under 42 United States Code, Part C, Subchapter II, §§7581 *et seq.*; or

(B) emission limits at least as stringent as the applicable LEV standards for the Federal Clean Fuel Fleet program under 40 Code of Federal Regulations §§88.104-94, 88.105-94, and 88.311-93, as published in the *Federal Register* on September 30, 1994 (59 FR 50042).

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

[(13) **Mobile emission reduction credit (MERC)**--A credit representing the amount of emission reductions from a mobile source program. These emission reductions are voluntary and must be in addition to compliance with requirements of state and federal regulations. MERCs are any enforceable, permanent, and quantifiable emission reduction (exhaust and/or evaporative) generated by a mobile source, which has been banked in accordance with the rules of the commission. MERCs can be banked, purchased, traded, and sold to meet clean air mandates for specified air programs, which can be applied to the emission reduction obligations of another air quality source or to air quality attainment goals.]

(13) [(14)] **Reformulated gasoline**--Gasoline that has been certified as a reformulated gasoline under the federal certification regulations adopted in accordance with 42 United States Code, §7545(k).

(14) [(15)] **Texas Inspection and Maintenance State Implementation Plan**--The portion of the Texas state implementation plan that includes the procedures and requirements of the vehicle emissions inspection and maintenance program as adopted by the commission May 29, 1996, in accordance with 40 Code of Federal Regulations Part 51, Subpart S, issued November 5, 1992; the United States Environmental Protection Agency flexibility amendments dated September 18, 1995; and the National Highway Systems Designation Act of 1995. A copy of the Texas Inspection and Maintenance State Implementation Plan is available at the Texas Commission on Environmental Quality, 12100 Park 35 Circle, Austin, Texas, 78753; mailing address: P.O. Box 13087, MC 166, Austin, Texas 78711-3087.

(15) [(16)] **Tier I federal emission standards**--The standards are defined in 42 United States Code, §7521, and in 40 Code of Federal Regulations, Part 86. The phase-in of these standards began in model year 1994.

(16) [(17)] **Ultra low emission vehicle**--A vehicle as defined by 40 Code of Federal Regulations, Part 88.

(17) [(18)] **Zero emission vehicle**--A vehicle as defined by 40 Code of Federal Regulations, Part 88.

SUBCHAPTER A: DEFINITIONS

[\S114.4]

STATUTORY AUTHORITY

The repeal is proposed under Texas Water Code (TWC), §5.102, concerning General Powers; §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.011, which provides for general powers and duties under the TCAA. The repeal is proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.012, which authorizes the commission to develop a general, comprehensive plan for the proper control of the state's air; and §382.019 which authorizes the commission to adopt rules to control and reduce emissions from engines used to propel land vehicles.

The proposed repeal implements THSC, §§382.002, 382.011, 382.012, and 382.019.

[\S114.4. Mobile Emission Reduction Credit Definitions.]

[Unless specifically defined in the TCAA or in the rules of the 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 Mobile Emission Reduction Credits), shall have the following meanings, unless the context clearly indicates otherwise.]

[(1) Designee - A person or entity designated by the enterprise operator to oversee the dismantlers of the vehicles used in conjunction with the voluntary accelerated vehicle retirement program. The enterprise operator still maintains all program liability.]

[(2) Dismantler - The person or business, defined and licensed according to the requirements of the Texas Department of Transportation and other business codes and regulations which may apply, that dismantles or otherwise removes from service those vehicles obtained as part of a voluntary accelerated vehicle retirement program.]

[(3) Enterprise operator - The local agency which conducts a voluntary accelerated vehicle retirement program in accordance with Subchapter F of this chapter. The enterprise operator is responsible for the purchase of vehicles and arrangements for the permanent removal of the vehicles from operation. The enterprise operator will receive any mobile emission reduction credit generated.]

[(4) Voluntary accelerated vehicle retirement - The use of cash payments or other incentives to encourage a vehicle owner to voluntarily retire a vehicle from service earlier than otherwise would have occurred.]

SUBCHAPTER F: VEHICLE RETIREMENT AND MOBILE

EMISSION REDUCTION CREDITS

DIVISION 1: MOBILE EMISSION REDUCTION CREDITS

[\$114.201, §114.202]

STATUTORY AUTHORITY

The repeals are proposed under Texas Water Code (TWC), §5.102, concerning General Powers; §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.011, which provides for general powers and duties under the TCAA. The repeals are proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.012, which authorizes the commission to develop a general, comprehensive plan for the proper control of the state's air; and §382.019 which authorizes the commission to adopt rules to control and reduce emissions from engines used to propel land vehicles.

The proposed repeals implement THSC, §§382.002, 382.011, 382.012, and 382.019.

[\$114.201. Mobile Emission Reduction Credit Program.]

[(a) Mobile Emission Reduction Credits (MERCs) will be based on the difference between the emissions from the replacement of a conventional vehicle with a low emission vehicle (LEV). Program

participation is voluntary. MERCs will be awarded to entities which primarily operate vehicles within the state's nonattainment areas, as identified in §101.1 of this title (relating to Definitions), for any of the following, or combination thereof:]

[(1) The purchase, lease, or acquisition of an LEV which is certified to a more stringent emission standard than the LEV standards. These vehicles include:]

[(A) ultra-low emission vehicle (ULEV) as certified by the EPA;]

[(B) inherently low emission vehicle (ILEV) EPA certified vehicles; and]

[(C) zero emission vehicle (ZEV) EPA certified vehicles; or]

[(2) The purchase, lease, or acquisition of LEVs 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 Entities);]

[(3) The purchase, lease, or acquisition of LEVs not required under §114.150 or §114.151 of this title; or]

[(4) The purchase, lease, or acquisition of LEVs prior to the dates under §114.150 or §114.151 of this title.]

[(5) Entering into a binding contract as specified under §114.202 of this title (relating to Texas Mobile Emission Reduction Credit Fund).]

[(b) MERCs may be used as follows:]

[(1) to demonstrate compliance with any applicable mobile source emissions reductions requirements; or]

[(2) to satisfy Reasonably Available Control Technology and Federal Clean Air Act offset requirements subject to the appropriate trading ratios and other commission rules.]

[(3) traded, sold, or banked for later use by fleet vehicle owners or other mobile or stationary sources of emissions within the same affected area without discount or depreciation of such credits.]

[(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 vehicle 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 vehicle class.]

[(d) MERCs will be determined in accordance with EPA rules and guidance as follows:]

[(1) For fleet to fleet trading or trading from vehicle owners not subject to the requirements for fleets:]

[Figure: 30 TAC §114.201(d)(1)]

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

[where:]

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

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

[F_{optional} = the emission factor for the extra or cleaner than LEVs (ULEV, ILEV, or ZEV)]

[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.]

[(2) 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:]

[Figure: 30 TAC §114.201(d)(2)]

$$\Delta \text{MERC}_{\text{vehicle}} = \frac{(\text{differential vehicle benefit} \times \text{VMT} \times \text{CF})}{n}$$

[where:]

[differential vehicle benefit = difference in emissions between the LEV and the conventional vehicle]

[VMT = estimated total remaining vehicle miles traveled for the vehicle;]

[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 will be in service.]

[(e) In order for credits to be certified as tradable for stationary sources, fleets must have a minimum of one 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. However, no minimum is required for banking credits tradable among fleets.]

[(f) In order to apply for a MERC under subsection (a) of this section, 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 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 required to be submitted under §114.150 of this title or §114.155 of this title (relating to Reporting). The submission of additional vehicle or fleet information may be required at this time.]

[(g) MERCs for trading between fleets will be banked with the Mobile Source Section of the commission.]

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

[(i) Upon certification by the executive director, each credit owner 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 for the fleet;]

[(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.]

[(j) A total emissions credit summary sheet will be issued to the affected entity upon issuance of any MERC certificate.]

[(k) MERCs issued under this section 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.]

[(l) The following are considered violations of the Texas MERC 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.]

[(m) Any person found to be in violation of the Texas MERC Program is subject to penalties and enforcement as defined by the Health and Safety Code, Chapter 382, Subchapter D.]

§114.202. Texas Mobile Emission Reduction Credit Fund.]

[(a) Mobile emission reduction credits may be assigned through the Texas Mobile Emission Reduction Credit Fund as established by this section to entities affected by §114.150 and §114.151 of this title (relating to Requirements for Mass Transit Authorities, and Requirements for Local Governments and Private Persons) provided:]

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

[(2) the 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.]

SUBCHAPTER G: TRANSPORTATION PLANNING

§114.270

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.002 concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, which provides for general powers and duties under the TCAA; §382.012, which authorizes the commission to develop a general, comprehensive plan for the proper control of the state's air; and §382.208, which authorizes the commission to work with federal, state, and local transportation planning agencies to develop and implement transportation programs and other measures necessary to demonstrate and maintain attainment of national ambient air quality standards. The amendment is also proposed under the statutory requirement for transportation conformity found in §176(c) of the 1990 Federal Clean Air Act Amendments. In addition, 40 Code of Federal Regulations (CFR) Part 51, Subpart T and Part 93, Subpart A established criteria and procedures for determining whether transportation plans, programs, and projects in nonattainment and maintenance areas conform with the state implementation plan.

The proposed amendment implements THSC, §§382.002, 382.011, 382.012, 382.017, and 382.019.

§114.270. Transportation Control Measures.

(a) Purpose. The purpose of this section is to implement requirements relating to transportation control measures (TCMs). These requirements address the roles and responsibilities of the metropolitan planning organizations (MPOs) and implementing transportation agencies in nonattainment and maintenance areas and provide a method for the substitution of TCMs without a state implementation plan (SIP) revision.

(b) Applicability. This section applies to MPOs and agencies that implement TCMs in designated nonattainment or maintenance areas. The affected nonattainment and maintenance areas are listed in §101.1 of this title (relating to Definitions).

(c) General. All TCMs shall be developed, coordinated, funded, approved, implemented, tracked, evaluated, and monitored in accordance with §114.260 of this title (relating to Transportation Conformity); Title 40 Code of Federal Regulations, Part 93 (Conformity to State or Federal Implementation Plans of Transportation Plans, Programs and Projects Developed, Funded or Approved Under Title 23 USC or the Federal Transit Laws, as amended); the Federal Clean Air Act, 42 United States Code, 1970, as amended; and the EPA TCM SIP approval criteria listed in the EPA guidance document "Transportation Control Measures: State Implementation Plan Guidance," EPA 450/2-89-020, September 1990.

(d) MPO responsibilities. The MPO shall:

(1) ensure that all responsibilities required by subsection (c) of this section are fulfilled;

(2) maintain, on a rolling basis, complete and accurate records of all TCMs for at least five years. TCM records shall be sufficient to accurately reflect the effectiveness of the TCM program and shall include the following:

(A) the annual status of the implementation of the TCM, including quantification of progress;

(B) an annual estimate of the funding and other resources expended toward implementing the TCM, and a comparison of the actual and projected expenditures;

(C) an annual estimate of the emission reductions achieved from implementation of the TCM, and a comparison of the actual and projected reductions; and

(D) any modifications to the TCM since the last annual report and/or projected modifications for the next reporting period to compensate for a shortfall in the implementation of the TCM or in the associated emissions reductions; and

(3) make such records available to representatives of the commission, the EPA, the Federal Highway Administration, the Federal Transit Administration, the Texas Department of Transportation, local air pollution agencies having jurisdiction in the area, and the public, upon request;

(e) Implementing agency responsibilities. The implementing agency shall have the responsibility to:

(1) ensure that all responsibilities required by subsection (c) of this section are fulfilled;

and

(2) provide to the MPO upon request:

(A) a complete description of the TCMs and their associated estimated emission reduction benefits;

(B) evidence that the TCMs were properly adopted by a jurisdiction with legal authority to commit to and execute the program;

(C) evidence that funding has been, or will be, obligated to implement the TCMs; and

(D) a description of the monitoring program to assess the TCM effectiveness.

[(f) TCM substitution process. If a TCM cannot be implemented by the implementation date specified in the SIP, the parties in the interagency consultation process established under §114.260 of this title shall determine whether the TCM continues to be appropriate. When the MPO and the commission concur that a TCM identified in the SIP is no longer appropriate for any reason, the agencies may initiate

the following process to identify and approve a substitute TCM. This process is the only way in which a TCM may be substituted. Approval of substitute TCMs shall not constitute a SIP revision for the purpose of transportation conformity when this process is followed.]

[(1) A substitute TCM must provide for:]

[(A) equivalent or greater emissions reductions than the TCM to be replaced;]

[(B) implementation in the time frame established for the TCM in the SIP. If the implementation date has already passed, measures that require funding must be included in the first year of the next transportation improvement program and metropolitan transportation plan adopted by the MPO;]

[(C) full implementation not later than two years from the scheduled implementation date of the original TCM in order to meet timely TCM implementation criteria under §114.260 of this title;]

[(D) evidence of adequate personnel, funding, and authority under state or local law to implement, monitor, and enforce the measures in order for the commission to approve the substitute TCM; and]

[(E) evidence of commitments to implement the substitute TCM must be made by the agency with legal authority for implementation.]

[(2) The analysis of substitute TCMs must be consistent with the methodology used for evaluating TCMs in the SIP. If emissions models and/or transportation models have changed since measures in the SIP were evaluated, both the TCM to be replaced and the substitute TCM shall be evaluated using the latest modeling techniques to demonstrate that equivalent or greater emissions reductions will be achieved through implementation of the substitute TCM. Key methodologies and assumptions that must be consistent are:]

[(A) EPA approved regional and hot-spot (for carbon monoxide and particulate matter) emission models;]

[(B) the area transportation model; and]

[(C) population and employment growth projections.]

[(3) To identify and evaluate possible substitute TCMs, the MPO shall convene a committee or working group which shall consult with EPA Region 6. Consultation may be accomplished by sending copies of all draft and final documents, agendas, and reports to EPA Region 6. The committee or working group shall include:]

[(A) members from all affected jurisdictions, including local air agencies;]

[(B) the commission; and]

[(C) state and local transportation agencies.]

[(4) The MPO, the commission, and the EPA Region 6 must concur with the appropriateness and equivalency of the substitute TCM. All agreed upon substitute TCMs must be adopted by the commission following the public comment period and the EPA 14-day concurrence period.]

[(5) Before the commission approves a substitute measure, the substitute TCM(s) must have been subject to a public hearing and comment process conducted by the commission. The TCM substitution process parallels the rulemaking and SIP processes for the purpose of public participation; however, commission approval of a substitute TCM shall not constitute a SIP revision for the purpose of transportation conformity. There must be at least one public hearing on the substitution. The hearing can only be held after reasonable public notice, which will be considered to be a minimum of 30 days prior to the hearing. The public notice shall include:]

[(A) prominent advertising in the affected area announcing the date, time, and place of the hearing; and]

[(B) availability of each proposed substitute TCM for public inspection in at least one location in the affected area.]

[(6) The public notice shall include a description of the substitute TCM and supporting analysis, including assumptions and methodology.]

[(7) Following the close of the public comment period, the commission shall respond to all comments received, and submit to EPA Region 6 a summary of comments received during the public comment period along with the commission responses to all comments. EPA shall notify the commission within 14 days of receipt of the summary of comments and responses if its concurrence with the substitute TCM has changed as a result of the public comments. If EPA fails to notify the commission within 14 days, EPA is deemed to concur.]

[(8) The TCM being replaced shall stay in effect until the substitute TCM has been approved. By approving a substitute TCM, the commission formally rescinds the previously applicable TCM.]

[(9) The commission shall maintain documentation of approved TCM substitutions. The documentation shall consist of a description of the substitute and replaced TCMs, including the requirements and schedules; a description of the substitution process, including a list of the committee or working group members; the public hearing and comment process; EPA concurrence; and commission approval. The documentation shall be submitted to EPA following the approval of the substitute measure by the commission and made available to the public as an attachment to the SIP.]

SUBCHAPTER K: MOBILE SOURCE INCENTIVE PROGRAMS

DIVISION 2: LIGHT-DUTY MOTOR VEHICLE PURCHASE

OR LEASE INCENTIVE PROGRAM

[§114.618]

STATUTORY AUTHORITY

The repeal is proposed under Texas Water Code (TWC), §5.102, concerning General Powers; §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.011, which provides for general powers and duties under the TCAA. The repeal is proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.012, which authorizes the commission to develop a general, comprehensive plan for the proper control of the state's air; and §382.019 which authorizes the commission to adopt rules to control and reduce emissions from engines used to propel land vehicles.

The proposed repeal implements THSC, §§382.002, 382.011, 382.012, and 382.019.

[§114.618. Vehicle Emissions Information Brochure.]

[(a) Beginning September 1, 2002, a manufacturer of new light-duty motor vehicles sold in the state covered under §114.616 of this title (relating to Manufacturer's Report) shall publish and make available to its dealers for distribution to the dealers' customers by September 1 of each year, a brochure that includes at a minimum:]

[(1) a list of eligible new light-duty motor vehicles as required under §114.616 of this title;]

[(2) the emissions and air pollution ratings, not including fuel efficiency, for each eligible new light-duty motor vehicle listed under paragraph (1) of this subsection based on data from the EPA Green Vehicle Guide (<http://www.epa.gov/greenvehicles/index.htm>) and the light-duty motor vehicle Bin certification number;]

[(3) an indication of where the Bin certification information is located on each new light-duty motor vehicle listed under paragraph (1) of this subsection and a clear explanation of how to interpret that information; and]

[(4) information on how the consumer may obtain further information from the EPA Green Vehicle Guide; and]

[(5) the web address of the commission's Texas Emission Reduction Plan (TERP) program and specific information that the commission's website will include a complete list of all eligible light-duty motor vehicles that manufacturers intend to sell in this state.]

[(b) The brochure required under subsection (a) or (d) of this section shall be placed in a location within the dealer's showroom or sales area so that it is clearly visible and available for distribution to the dealer's customers.]

[(c) The brochure required under subsection (a) or (d) of this section shall have a page size no smaller than 8.5 inches by 11 inches and the information required under subsection (a)(1) - (4) of this section shall be printed in no less than 12-point type in a color contrasting with the intended background.]

[(d) Beginning September 1, 2002, a manufacturer of new light-duty motor vehicles sold in this state not covered under §114.616 of this title must publish a brochure that indicates that no eligible new light-duty motor vehicles will be available for purchase or lease within the state from the manufacturer for the upcoming new model year.]

[(e) Beginning September 1, 2002, a manufacturer of new light-duty motor vehicles sold in the state shall submit a copy of the brochure required under subsection (a) or (d) of this section to the executive director, or his designee, by September 1 of each year.]