The Texas Commission on Environmental Quality (TCEQ or commission) adopts the repeal of §§114.3, 114.150, 114.151, and 114.153 - 114.157 *without change*s as published in the November 25, 2005, issue of the *Texas Register* (30 TexReg 7824).

The commission will submit to the United States Environmental Protection Agency (EPA) revisions to the state implementation plan (SIP) addressing the repeal of these rules.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

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 federal program mandates increasing percentages of LEV purchases by the affected fleets in the covered nonattainment areas in vehicle model years 1999, 2000, and 2001.

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 Program as a substitute to the FCFF 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 Legislature modified the state's alternative fuels program through the passage of Senate Bill (SB) 200. The legislature facilitated fuel neutrality through the incorporation of the federal LEV standards for certain affected fleets regardless of fuel type. The legislation required the commission to adopt regulations to implement the program in all ozone nonattainment areas.

In response, the commission adopted regulations to implement the modified program and developed a revision to the SIP outlining the state's substitute program to the FCFF Program. However, the 75th Legislature met in 1997 and removed the commission's authority to require the program in moderate nonattainment areas through passage of SB 681. This new legislation limited the commission's authority to the serious and above ozone nonattainment areas. In addition, SB 681 modified the state's alternative fuels program. The legislature retained the basic requirement of LEV purchases, but modified the implementation schedule, added an additional exception from the program, and altered the grandfathering provisions of the statute. This new legislation required the commission to adopt regulations to implement the program.

On December 16, 1997, the EPA finalized federal regulations for the National Low Emission Vehicle (NLEV) Program. The NLEV Program was developed to allow manufacturers to commit to meet tailpipe standards for cars and light-duty trucks that were more stringent than the EPA could mandate

prior to 2004. The EPA made a final determination on implementation of NLEV on March 2, 1998. With the NLEV Program successfully implemented nationally, the commission was able to use emission reductions achieved through the NLEV Program to offset any shortfall in emission reductions resulting from the state's substitute for the FCFF Program.

On July 29, 1998, the commission adopted regulations and a revision of the Texas Clean Fleet (TCF) SIP to set forth the LEV requirements for mass transit fleets in each of the serious and above nonattainment areas, and for local government and private fleets operated primarily within the serious and above nonattainment areas. These rules satisfied the state requirements to adopt rules to implement SB 681.

On February 10, 2000, the EPA finalized federal regulations for the Tier II emission standards for all passenger vehicles, including sport utility vehicles (SUVs), minivans, vans, and light-duty trucks that were 77% - 95% cleaner than the current emission standards. The new emission standards set a corporate average standard for nitrogen oxides of 0.07 grams per mile for all classes of passenger vehicles beginning in 2004. This includes all light-duty trucks, as well as the largest SUVs. Vehicles weighing less than 6,000 pounds will be phased-in to this standard between 2004 and 2007. Later that same year on October 6, 2000, the EPA finalized federal regulations for emission standards for model year 2004 and newer heavy-duty diesel engines (HDDE) and vehicles that were equivalent to the ultra low emission vehicle (ULEV) standards under the FCFF Program.

In June 2005, the state statutes requiring the commission to establish and implement LEV requirements for mass transit fleets and for private and local government fleets (i.e., the TCF Program) as codified in

Texas Health and Safety Code (THSC), Chapter 382, Subchapter F, were repealed by SB 1032 by the 79th Legislature, 2005. The commission's rules in §§114.3 and 114.150, 114.151, and 114.153 - 114.157 implementing these statutes required mass transit authorities, private companies, and local government fleets in the Houston-Galveston-Brazoria (HGB), Dallas-Fort Worth (DFW), and El Paso ozone nonattainment areas to ensure that a specified percentage of their new fleet vehicle purchases were vehicles that had been certified by the EPA to the federal LEV standards.

The commission recommended that the Texas Legislature repeal these enabling statutes because the LEV standards have been superseded by the cleaner federal Tier II emission standards that were promulgated in February 2000 and the federal 2004 heavy-duty engine emission standards that were promulgated in October 2000. As a result of these new emission standards, requiring fleets to comply with a mandatory LEV percent-of-purchase requirement is no longer an effective method to reduce emissions from fleet vehicles. In addition, the continued implementation of a mandatory vehicle purchase program is diminished due to programs such as the Texas Emissions Reduction Plan (TERP), the commission's Emissions Reduction Incentive Grants Program, Clean Cities, Congestion Mitigation and Air Quality (CMAQ) Improvement Program, and EPA fund programs that provide financial incentives to private, local government (including school districts), and mass transit fleets to voluntarily purchase the cleanest vehicles possible that meet their operational needs.

The repeal of these rules has no impact on the emissions from fleets since new fleet vehicles are being certified by the EPA to either the federal Tier II emission standards or the federal 2004 heavy-duty engine emission standards, both of which are cleaner than the federal LEV standards currently required

under these rules. In addition, the repeal removes an administrative burden since the affected fleets will no longer be required to submit biennial fleet compliance reports to the commission.

In conjunction with the repeal of these rules, the commission has revised the SIP to remove the TCF Program as an ozone control strategy since the federal emission standards for model year 2004 and later light-duty and heavy-duty motor vehicles are more stringent than those required by the FCFF Program as outlined in the FCAA. The federal emission standards for HDDE in model years 2004 - 2006 are equivalent to the heavy-duty ULEV standards under the FCFF Program and the federal standards for HDDE in model years 2007 and later are approximately 90% cleaner than ULEV. The emission reductions achieved by the Tier II and HDDE standards far surpass the emission reductions that would be expected from implementation of the TCF Program in any of the state's ozone nonattainment areas.

SECTION BY SECTION DISCUSSION

This rulemaking action repeals §114.3 in Subchapter A and §§114.150, 114.151, and 114.153 - 114.157, Subchapter E, in its entirety, in accordance with the directive indicated by SB 1032 by the 79th Legislature.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the repeals in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the repeals 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. The repeal eliminates commission rules that require mass transit authorities, private companies, and local government fleets in the HGB, DFW, and El Paso ozone nonattainment areas to ensure that a specified percentage of their new fleet vehicle purchases are vehicles certified by the EPA as LEVs under the federal LEV standards. The adopted action is a rules repeal, and it is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The TCF Program regulated a sector of the economy. Repeal of the program is unlikely to adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs. Under TERP, the commission's Emissions Reduction Incentive Grants Program provides financial incentives to private, local government (including school districts), and mass transit fleets to voluntarily purchase the cleanest vehicles possible that meet their operational needs. This means that the repeal is also unlikely to adversely affect in a material way the environment or public health and safety. Because the repeal does not 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 repeal does not fit the Texas Government Code, §2001.0225, definition of "major environmental rule."

Under Texas Government Code, §2001.0225, only a major environmental rule requires a regulatory impact analysis. Because the adopted repeals do not constitute a major environmental rule, a regulatory impact analysis is not required.

TAKINGS IMPACT ASSESSMENT

Under Texas Government Code, §2007.002(5), "taking" means: 1) a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or §17 or §19, Article I, Texas Constitution; or 2) a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The commission completed a taking impact analysis for the repeal. The repeal of the rules does not affect private real property in a manner that requires compensation to private real property owners under the United States Constitution or the Texas Constitution. The repeals also do not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the repeal does not cause a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that the repeal relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq.*), and the commission rules in 30 TAC Chapter 281,

Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 30 TAC §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the repeal is consistent with the applicable CMP goal expressed in 31 TAC §501.12(1) of protecting and preserving the quality and values of coastal natural resource areas, and the policy in 31 TAC §501.14(q), which requires that the commission protect air quality in coastal areas. The rulemaking action and SIP revision ensures that the repeal complies with 40 Code of Federal Regulations (CFR) Part 50, National Primary and Secondary Air Quality Standards, and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. This rulemaking action is consistent with CMP goals and policies, in compliance with 31 TAC §505.22(e).

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Chapter 114 is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program; therefore, owners or operators subject to the federal operating permit program must, consistent with the revision process in Chapter 122, revise their operating permit to include the revised Chapter 114 requirements at their sites affected by the revisions to Chapter 114.

PUBLIC COMMENT

A public hearing on this rulemaking proposal was held in Austin, Texas, on January 10, 2006, at 10:00 a.m. in Building E, Room 201S, at the Texas Commission on Environmental Quality complex located at 12100 Park 35 Circle, but no oral comments were received. The public comment period closed at 5:00 p.m. on January 17, 2006. Written comments were submitted by the Houston Regional Group of Sierra Clubs (Sierra Club-Houston) and EPA. Sierra Club-Houston and EPA did not indicate whether they were for or against the adoption of the rule but provided specific comments on the rule.

RESPONSE TO COMMENTS

Sierra Club-Houston commented that the commission's constant changes to the Low Emission Vehicle Fleet requirements have resulted in economic and operational inefficiencies, higher costs for businesses and consumers, disillusionment with the law, and temporary or nonexistent reductions in air pollutants from motor vehicle fleets. Sierra Club-Houston commented that although these proposed repeals are predicated by Texas Legislature, the commission should look at its control strategies to determine whether the strategies will be needed in the long term or are just short-term stop-gap efforts.

The commission has made every effort to balance the effectiveness of the Texas Clean Fleet (TCF) program with the development of cleaner vehicles. As emissions standards for vehicles and engines have improved and become as stringent or more stringent than the TCF program, the commission has recognized the need for consistency and clarity with the Clean Fuel Fleet (CFF) requirements. At its inception, the TCF program was the state's substitute for the federal Clean Fuel Fleet program, and was developed to provide greater long-term emissions reductions through participation by private and government entities. With the development of cleaner running vehicles through the Tier II and heavy-duty diesel engines (HDDE) standards requirements, these

same participating entities are continuing to provide for long-term emissions reductions by purchasing and replenishing their fleets with these cleaner vehicles. The commission did not revise the rule in response to this comment.

EPA commented that although they do not oppose the repeal of the Texas Clean Fleet program, they do take issue with the substitute measures that are proposed to be used in its place. EPA commented that, as allowed by §182(c)(4)(B) of the 1990 Clean Air Act, the State of Texas could substitute its TCF program with any program that results in as much or greater long-term emissions reductions as the federal Clean Fuel Fleet program. However, EPA further commented that Tier II or heavy-duty diesel engines (HDDE) standards programs could not be used as substitute programs. EPA commented that only certain vehicles and engines certified to current Part 86 emissions standards are either as stringent or more stringent than federal CFF emissions standards, and that it would be premature to assert that either Tier II or HDDE standards have superseded the CFF standards. EPA recommended that a demonstration be provided to show what federal CFF credits need to be substituted by the state rule credits that are beyond reasonably available control technology (RACT) to fulfill this requirement.

The commission appreciates the comment and EPA's concern related to the substitute measures to be used in place of the TCF program. As stated in the comments, §182(c)(4)(B) of the 1990 Clean Air Act permits a state to submit a revision to the state implementation plan which "will achieve long-term reductions in ozone-producing and toxic air emissions *equal to* those achieved under part C of subchapter II of this chapter, or the percentage thereof attributable to the portion of the clean-fuel vehicle program for which the revision is to substitute." (*emphasis added*) Through this rulemaking, the TCEQ is repealing its Clean Fleet Program. As described more fully in the

following paragraph, this revision will result in emission reductions in at least equal amounts to those achieved prior to the repeal of the TCF program.

The August 1998 *Clean Fuel Fleet Program Implementation Guidance* (EPA420-R-98-011) states that "Clean-Fuel Fleet light duty standards are the same as for Low Emission Vehicles (LEVs). . . ." With the advent of the National Low Emission Vehicle (NLEV) program beginning in the 2001 model year, the majority of the light-duty vehicles purchased around the country met LEV or better requirements. Therefore, if subject fleets were going to purchase "LEV-or-better" vehicles anyway, the CFF requirements were redundant for most light-duty purchases beginning with the 2001 model year. Certainly, there were exceptions to this, but the phase-in of the Tier 2 standards from the 2004 - 2007 model years make the CFF requirements redundant for all subject vehicles.

The primary benefits of the TCF program are the result of subject fleets having purchased "LEV-or-better" vehicles in the 1999 and 2000 model years, prior to introduction of the NLEV program. Without the TCF program, these subject fleets would have purchased higher emitting Tier 1 vehicles.

The TCEQ is simply proposing to repeal the redundant "LEV-or-better" requirement for new vehicle purchases. In short, there are no new additional benefits to be gained from the TCF program, but the current benefits from existing TCF vehicles shall remain.

Due to various factors, including existing vehicle emission requirements, the TCF program does not currently provide for, or result in reductions in ozone-producing and/or toxic air emissions. The Texas Clean Fleet SIP dated July 29, 1998, listed total volatile organic compounds (VOC) reductions of 4.937 tons per day for Houston-Galveston-Brazoria, Dallas-Fort Worth, and El Paso County combined. The VOC benefits were not broken out by area in this SIP or any other subsequent SIP. No Attainment Demonstration SIP benefit was ever claimed because no NO_x benefits were provided in the TCF SIP. One reason for not claiming an Attainment Demonstration SIP benefit is that the NLEV program was initiated at the same time, thus introducing LEV vehicles nationwide with the 2001 model year. Further, the TCEQ submitted the following interpretation of results in the TCF SIP: "The fleet analysis presented in the Results section clearly indicates that the state's substitute program, when combined with the reductions attributed to the NLEV program as shown in Table F, or with the reductions attributed to the state controls on fugitive emissions and VOC transfer operations as shown in Table G, will result in significant more emission reductions than the FCFF program in all affected nonattainment areas in Texas when examined over the long term (10 years)." (*Revisions to the State Implementation Plan (SIP) for the Substitution of the Federal Clean Fuel Fleets Program, July 29, 1998, Appendix B, Page 14*). Consequently, the repeal of this program results in reductions which are equal to those achieved prior to the repeal. No additional substitute emission reduction strategies are necessary in order to fully satisfy the §182(c)(4)(B) statutory requirements.

Staff has determined that the Houston-Galveston-Brazoria (HGB), Dallas-Fort Worth (DFW), and El Paso SIPs will not be affected by the repeal because no reduction credits attributable to the TCF program have been claimed or credited in attainment demonstrations for these SIPs.

Additionally, due to the timing of the development of the Beaumont-Port Arthur (BPA) Eight-Hour Ozone Attainment Demonstration SIP adopted by the commission on September 28, 2005, the region did not benefit from the TCF program and is also not affected by this repeal. As stated in the BPA SIP, LEV emissions standards outlined in the FCAA and referenced in the TCF program were surpassed by federal Tier 2 standards beginning with model year 2004 vehicles making the TCF requirements redundant. This occurred well before the development of the BPA SIP. Reduction credits claimed in the BPA attainment demonstration SIP were limited to those achieved through the NLEV program to avoid the possibility of "double counting" credits.

The availability and purchase of NLEV and Tier 2 vehicles have provided more reductions than the TCF program, thus making these programs more accurately identifiable as the most current reasonably available control measures (RACM). Repealing the TCF program, a program for which "zero" credits have been accounted in SIP attainment demonstrations, does not interfere with attainment and maintenance measures and does not constitute a "backsliding" activity.

An analysis of the TCF program and the NLEV program is available on the TCEQ website at *www.tceq.state.tx.us/implementation/air/sip/apr2006txled.html*.

Additionally, the TCEQ points to emission-reducing control strategies, not required under the Clean Air Act, which result in emission reductions beyond those achieved through the TCF program. Specifically, reductions achieved through the state's rules in 30 TAC §§115.352 - 115.359 in Subchapter D, Division 3, Fugitive Emission Control in Petroleum Refining, Natural Gas/Gasoline Processing, and Petrochemical Processes in Ozone Nonattainment Areas, in

conjunction with requirements in §115.211(a)(1) in Subchapter C, Volatile Organic Compound Transfer Operations, provide additional emission reductions in furtherance of buttressing the repeal of the Clean Fleet Program with substantive credits. These identified reductions totaled more than 535.3 tons per day of VOC statewide. These requirements, identified in the TCF SIP, continue to be effective and provide reductions. Additionally, identified excess NO_x emission reductions resulting from state mandated reduction requirements placed on electric generating facilities (EGFs) by the 76th Texas Legislature in Senate Bill 7 for the HGB and DFW areas and identified as reductions used to make up any shortfall between the TCF and the federal CFF programs continue to be effective. The abundance of credits, beyond those necessary to conform with the implementation of a substitute program, was acknowledged by the EPA in its approval of the state's Clean Fleet Program. (See the February 7, 2001, issue of the *Federal Register* (66 FR 9203)). Irrespective of the fact that the repeal will not result in a loss of reductions, the use of these emissions to cover any shortfall in the Texas Clean Fleet Program was articulated in the state's 1998 SIP revision for Federal Clean Fuel Fleet substitute program. Such reductions not previously claimed or credited in SIP attainment demonstrations, along with reductions incurred as a result of the currently existing NLEV and Tier 2 programs, should amply satisfy the concerns raised by the EPA in connection with the Clean Fleet Program repeal. The commission does not consider the currently existing NLEV and Tier 2 programs as substitute measures for the TCF program. Additionally, the Clean Cities, CMAQ, and TERP programs provide funding for replacing older equipment or vehicles with newer, cleaner vehicles or equipment. These voluntary programs will continue to encourage turnover at a more accelerated pace. The commission did not revise the rule as a result of this comment.

SUBCHAPTER A: DEFINITIONS

[§114.3]

STATUTORY AUTHORITY

The repeal is adopted under Texas Water Code (TWC), §5.102, concerning General Powers; §5.103, concerning Rules; and §5.105, concerning General Policy, which provide the commission with the general powers to carry out its duties and authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of THSC, Chapter 382 (also known as the Texas Clean Air Act). The repeal is also adopted 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; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the 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. Specifically, the repeal is adopted to implement the legislative mandate under SB 1032, 79th Legislature, 2005.

The adopted repeal implements THSC, §§382.002, 382.011, 382.012, and 382.019, and SB 1032, 79th Legislature, 2005.

[§114.3. Low Emission Vehicle Fleet 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 E of this chapter (relating to Low Emission Vehicle Fleet Requirements), shall have the following meanings, unless the context clearly indicates otherwise:

(1) Affected area - Any consolidated metropolitan statistical area or metropolitan statistical area with a population of 350,000 or more that, under national ambient air quality standards provided by Federal Clean Air Act §181, as amended (42 United States Code Section 7511 and Table 1), is a serious, severe, or extreme nonattainment area.

(2) Affected entity - Any individual, partnership, firm, company, business trust, corporation, organization, or association which operates a fleet within an affected area.

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

(4) Certified - A vehicle that has been issued a certificate of conformity by the EPA to ensure compliance, throughout the entire useful life of a vehicle, with the required emission standards as defined in Title 40, Code of Federal Regulations, Parts 86 and 88.

(5) Conventional vehicle - A vehicle which meets all applicable federal emission standards in place at the time of manufacture, but is not certified as a low emission vehicle.

(6) Fleet - The aggregate of the vehicles under the authority of a mass transit authority, local government, or private entity and operated primarily within an affected area.

(7) Fleet vehicle - A vehicle registered or required to be registered under Texas Transportation Code (TTC), Chapter 502, except a motor bus used to transport pre-primary, primary, or secondary students to or from school or for approved extracurricular activities, or a vehicle registered under TTC, §502.006(c). The term does not include:

(A) a vehicle that, when not in use, is normally parked at the residence of the individual who normally operates it;

(B) a vehicle that has a gross vehicle weight rating (GVWR) of greater than 26,000 pounds;

(C) a vehicle used in the maintenance or repair of underground mass transit facilities which is required by federal law or regulation to operate on diesel fuel; or

(D) a law enforcement or emergency vehicle, as defined by the Texas Transportation Code (TTC) §541.201.

(8) Lessor - A private entity who leases or rents vehicles to other entities for the purpose of short-term rental or an extended term leasing with or without a maintenance agreement,

without a driver, and under a contract. Fleets or vehicles operated by lessors for operations other than lease or rental to other entities may be subject to the requirements of this chapter.

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

(10) Non-road vehicle - A vehicle which is not required to be registered under the Texas Transportation Code, §502.002.

(11) Normally operates - A person is considered to normally operate a vehicle if they operate the vehicle more than 50% of the time.

(12) Normally parked at the residence of the individual - A vehicle that is parked more than 75% of the time that it is parked after business hours at the residence of the individual who normally operates it.

(13) Operates primarily - Use of a fleet in any one affected nonattainment area more than 50% of the total annual vehicle miles traveled or time as measured from January 1 through December 31 of each year.

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

(15) Private fleet - All fleet vehicles operated by a private person.

(16) Program compliance credits - Credits that may be granted to a fleet operator for a vehicle which exceeds the low emission vehicle provisions and requirements of this chapter.

(17) Projected net costs - All expenses associated with the operation of fleet vehicles after deduction of any available state or federal funding or incentives for the use of low emission vehicles.

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

(19) Purchase date - The date the buyer and seller are in a legally binding purchase or lease agreement. Payment or delivery of the vehicle is not required to have taken place.

(20) 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 TTC, §502.002 excluding vehicles registered under TTC, §502.006(c).]

[SUBCHAPTER E: LOW EMISSION VEHICLE FLEET REQUIREMENTS]

[§§114.150, 114.151, 114.153 - 114.157]

STATUTORY AUTHORITY

The repeals are adopted under TWC, §5.102, concerning General Powers; §5.103, concerning Rules; and §5.105, concerning General Policy, which provide the commission with the general powers to carry out its duties and authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of THSC, Chapter 382 (also known as the Texas Clean Air Act). The repeals are also adopted 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; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the 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. Specifically, the repeals are adopted to implement the legislative mandate under SB 1032, 79th Legislature, 2005.

The adopted repeals implement THSC, §§382.002, 382.011, 382.012, and 382.019, and SB 1032, 79th Legislature, 2005.

[§114.150. Requirements for Mass Transit Authorities.]

[(a) Mass transit authorities, as defined in §114.1 of this title (relating to Definitions), that operate in an affected area are subject to the low emission vehicle (LEV) provisions and requirements of this section.

(b) Mass transit authorities must ensure that at least 50% of their fleet vehicles are certified to meet or certified to exceed the LEV standards.

(c) The requirements of subsection (b) of this section may be met using Program Compliance Credits (PCCs) or Mobile Emission Reduction Credit (MERCs) under §§114.157, 114.201, or 114.202 of this title (relating to Low Emission Vehicle Fleet Program Compliance Credits; Mobile Emission Reduction Credit Program; and Texas Mobile Emission Reduction Credit Fund.

(d) The early acquisition of LEVs or acquisition of cleaner LEVs, such as ultra low emission vehicles, inherently low emission vehicles, or zero emission vehicles may qualify for both PCCs and MERCs. However, only one type of credit may be used per generating vehicle.

(e) Vehicles converted, purchased, leased, or otherwise acquired before September 1, 1999, but not certified to the LEV standards, may be counted towards a mass transit authority's compliance with the percentage requirements of subsection (b) of this section, if the vehicles:

(1) are capable of operating on a fuel or power source recognized by any State of Texas fleet or mass transit fuel program prior to September 1, 1995. These fuels are as follows:

(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

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

(A) for vehicles under 8,500 pounds gross vehicle weight rating (GVWR), the federal Tier I emission standards under Federal Clean Air Act, §202 as amended (42 U.S.C. Section 7521); or

(B) for vehicles over 8,500 pounds GVWR, the federal emission standards in place at the time of the chassis' manufacture.

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

(g) Affected transit authorities must submit annual fleet reports by September 1 of each year. The report shall be submitted to the executive director and must contain, at a minimum:

(1) the total number of vehicles registered according to Texas Transportation Code (TTC), §502.002, excluding vehicles registered under TTC, §502.006(c);

(2) the total number of LEVs;

(3) make, model, year, vehicle license numbers, vehicle identification numbers, GVWR, fuel type(s) and certified emission standards of each vehicle used for compliance;

(4) vehicles offered for lease to the public;

(5) an estimate of the annual vehicle miles traveled (VMT) for each vehicle used for compliance;

(6) if the vehicle is a dual-fuel vehicle, a percent estimate of the vehicle's annual operation on each fuel, measured in VMT or time; and

(7) a demonstration of compliance with the requirements of subsection (b) of this section.

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

(i) Mass transit authorities are eligible for MERCs under Subchapter F of this chapter (relating to Mobile Emission Reduction Credits) 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 Entities.]

[(a) Local governments that operate a fleet of more than 15 vehicles, excluding law enforcement and emergency vehicles, and private entities that operate a fleet of more than 25 fleet vehicles, excluding law enforcement and emergency vehicles, are subject to the low emission vehicle (LEV) provisions and requirements of this chapter when operated primarily in an affected area.

(b) Beginning September 1, 1998, local governments and private entities, as specified by subsection (a) of this section, must ensure that their fleet vehicles, including leased fleet vehicles, are certified to meet or are certified to exceed the LEV standards 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

(3) 70% of light-duty fleet vehicles purchased after September 1, 2002; and at least 50% of the heavy-duty fleet vehicles purchased after September 1, 2002.

(c) A local government or private entity is not required to purchase any additional fleet vehicles certified to meet or certified to exceed the LEV standards if there are 70% or more LEVs maintained in the fleet.

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

(e) The acquisition of LEVs may qualify for both PCCs and MERCs; however, only one type of credit may be used per generating vehicle.

(f) The percentage requirements of subsection (b) of this section may be met by an EPA certified conversion of currently owned or newly purchased conventional vehicles to meet or exceed the LEV standards. For purposes of this section, the conversion and EPA certification of conventional vehicles to the LEV standards shall be treated the same as the purchase of an original equipment manufacturer's LEV. Nothing in this section shall be construed as to require the conversion and EPA certification of conventional vehicles to the LEV standards.

(g) Fleet vehicles converted, purchased, leased, or otherwise acquired before September 1, 1995 but not certified to the LEV standards may be counted towards a local government's or a private entity's compliance with the percentage requirements of subsection (b) of this section if the vehicles are capable of operating on a fuel or power source recognized by any State of Texas fleet fuel program prior to September 1, 1995. These fuels are as follows:

(1) electricity;

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

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

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

(5) natural gas.

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

(i) Within 90 days of meeting the minimum fleet size, where applicable, affected local governments and private entities 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 fleet;

(3) the total number of vehicles operated primarily in an affected area, including exempted vehicles; and

(4) affected area counties of operation for all fleet 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 even numbered year, affected local governments and private entity fleets must submit reports to the executive director, as required under §114.155 of this title (relating to Reporting).

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

(m) The requirements contained in §114.1 of this title (relating to Definitions); Subchapter E of this chapter (relating to Low Emission Vehicle Fleet Requirements); and §114.201 and §114.202 of this title do not apply to lessors of vehicles with regard to vehicles they lease or rent to other entities.]

[§114.153. Exceptions.]

[(a) Exceptions from the applicable low emission vehicle (LEV) requirements of this chapter may be granted for a period of up to two 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 LEV requirements 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 LEV requirements of this chapter.

(2) Fuels required for LEV operation that meet the normal requirements of the principal business of the affected entity are not available in the affected areas in which the vehicles are to be operated. The affected area where the entity's fleet operates must be indicated when applying for this exception.

(3) The affected entity is unable to secure financing provided by or arranged through the proposed supplier or suppliers of the fuels required for the operation of LEVs as required by the

provisions 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 LEVs; 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 LEVs.

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

(A) the types of vehicles needed; and

(B) a demonstration of how the projected net costs of fueling for LEVs exceeds the comparable costs of 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 LEVs.

(5) Original equipment manufacturer's vehicles, or converted vehicles, that meet the normal requirements and practices of the local government or private entity and have been certified by the EPA as LEVs are not available. The following information must be submitted to the executive director when applying for this exception:

(A) the types of vehicles needed and proof of nonavailability; and

(B) a justification of why the normal requirements and practices of the local government or private entity cannot be met by the use of currently available LEVs.

(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 LEVs 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 upon request;

(6) Affected entities which have been granted an exception may not trade or sell Program Compliance Credits or Mobile Emission Reduction Credits (MERCs), or enter into a contract according to §114.202 of this title (relating 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 LEV 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 within the 12 months preceding the applicable compliance date.

(c) Alternatives to applying for an exception to the applicable LEV requirements of this chapter are:

(1) to meet the requirements through the acquisition of equivalent MERC credits under Subchapter F of this chapter (relating to Mobile Emission Reduction Credits). Equivalent MERCs are

those credits necessary to meet a fleet's LEV requirements according to §114.150 and §114.151 of this title (relating to Requirements for Mass Transit Authorities, and to Local Governments and Private Entities); or

(2) to meet the requirements through the acquisition of equivalent Program Compliance Credits (PCCs) under §114.157 of this title (relating to Low Emission Vehicle Fleet Program Compliance Credits). Equivalent PCCs are those credits necessary to meet a fleet's LEV requirements according to §114.150 and §114.151 of this title.]

[§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 (TTC), §451.3015 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 low emission vehicles (LEVs); or

(2) the authority is unable to acquire or be provided equipment or refueling facilities necessary to operate LEVs 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 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, is unable to comply. This 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 TTC §451.3015; and

(2) have been the subject of a public meeting held to discuss the authority's inability to comply with TTC §451.3015, and the alternative implementation schedule.]

[§114.155. Reporting.]

[(a) Entities affected by §114.151 of this title (relating to Requirements for Local Governments and Private Entities) must submit biennial fleet reports by September 1 of each even numbered year. The report shall be submitted to the executive director and 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 (TTC), §502.002, excluding vehicles registered under TTC, §502.006(c);

(3) the total number of vehicles registered according to the TTC, §502.002 used for compliance;

(4) the affected areas in which the affected fleet vehicles operate primarily;

(5) the total number of purchases for the applicable period, starting with the biennial report in the year 2000;

(6) the following information for each vehicle being used for compliance with the requirements of §114.151 of this title:

(A) purchase date, make, model, model year, vehicle license numbers, vehicle identification numbers, gross vehicle weight rating, fuel type(s), certified emissions standards, and an estimate of the annual vehicle miles traveled (VMT) measured from January 1 through December 31 of each year, and averaged over the two consecutive years; and

(B) if the vehicle used for compliance is a dual-fuel vehicle, an estimate of the percentages of the vehicle's annual operation on each fuel measured from January 1 through December 31 of each year, measured in VMT or time operated on each fuel. Two consecutive years averaged will be used for the biennial fleet report; and

(7) a demonstration of compliance with the applicable implementation schedule under §114.151 of this title.

(b) Affected entities may submit the information required in subsection (a) of this section for all vehicles in their fleet if the vehicles being used for compliance are so indicated.]

[§114.156. Record Keeping.]

[Affected entities must maintain copies of submitted 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. Low Emission Vehicle Fleet Program Compliance Credits.]

[(a) Program Compliance Credits (PCCs) may be awarded only to entities affected by §114.150 or §114.151 of this title (relating to Requirements for Mass Transit Authorities, and Requirements for Local Governments and Private Persons) for one or any combination of the following actions:

(1) The purchase, lease, or acquisition of a low emission vehicle (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; or

(C) zero emission vehicle (ZEV) EPA certified vehicles.

(2) The purchase, lease, or acquisition of LEVs in greater numbers than otherwise required under §114.150 or §114.151 of this title;

(3) The purchase, lease, or acquisition of LEVs in a category not otherwise required under §114.150 or §114.151 of this title; or

(4) The purchase, lease, or acquisition of an LEV before the dates required under §114.150 or §114.151 of this title.

(b) PCCs will be awarded according to the estimated remaining useful life of the vehicle.

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

(d) PCCs generated under subsection (a) of this section have the following values:

(1) LEV - one credit;

(2) ULEV - two credits; and

(3) ILEV and ZEV - three credits.

(e) Entities affected by §114.150 or §114.151 of this title proposing to generate PCCs under this chapter may apply at any time to the executive director. A current fleet report containing the information in §114.150 of this title or §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 also be required.

(f) PCCs will be banked with the Mobile Source Section of the commission.

(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.]