

The Texas Commission on Environmental Quality (commission) adopts amendments to §§116.770, 116.772, and 116.776 *without changes* to the proposed text as published in the October 10, 2003 issue of the *Texas Register* (28 TexReg 8814). Sections 116.770, 116.772, and 116.776 will not be republished.

Sections 116.770 and 116.772 are adopted as revisions to the state implementation plan (SIP) and will be submitted to the United States Environmental Protection Agency (EPA).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

When the legislature first created the Texas Clean Air Act in 1971, the legislature did not require existing significant sources of air emissions to comply with (i.e., were grandfathered from) the then new requirement to obtain a permit. These existing sources are commonly known as grandfathered facilities. If grandfathered facilities had not been modified since 1971, they continued to be authorized to operate without a permit. The legislature addressed the issue of grandfathered facilities in 1997 and 1999, requiring the creation of: 1) a voluntary emissions reduction plan for the permitting of grandfathered facilities; and 2) directing the commission to implement directives regarding the permitting of grandfathered electric generating facilities. Then, the 77th Legislature, 2001, amended the Texas Health and Safety Code, Texas Clean Air Act, to require that all grandfathered facilities obtain permits. The mandatory permitting requirements of House Bill 2912 were the culmination of legislative efforts, beginning in 1997, to permit or otherwise authorize all grandfathered facilities. House Bill 2912 created four new types of permits for grandfathered facilities: existing facility permits, small business stationary source permits, electric generating facility permits, and pipeline facility

permits. House Bill 2912 also mandated the dates by which grandfathered facilities must apply for a permit and have controls operational or submit a shutdown notice. Grandfathered reciprocating internal combustion engines that are part of the processing, treating, compression, or pumping facilities connected to, or part of, a gathering or transmission pipeline may apply for a pipeline facilities permit.

Additionally, House Bill 2914, §78, created a new incentive program to assist in retrofitting reciprocating internal combustion engines associated with pipelines. To implement this incentive program, the commission adopted §116.776, Distribution of Funds from the Emissions Reductions Incentives Account for Control of Emissions from Grandfathered Reciprocating Internal Combustion Engines Located in the East Texas Region. In order to be eligible for reimbursement under this program, the owner or operator of a grandfathered reciprocating internal combustion engine was required to make an annual reduction in emissions of nitrogen oxides (NO_x) as compared to the emissions reported for the facility in the 1997 industrial point source emissions inventory.

Most recently, the 78th Legislature, 2003, enacted House Bill 638, relating to emissions reductions incentives and the emissions reductions incentives account. House Bill 638 changed the reimbursement eligibility requirement from a 50% reduction in annual emissions to the 50% reduction in NO_x emissions rate needed to obtain a pipeline facilities permit. It also prohibited the commission from requiring more stringent emissions reduction criteria than the reductions already required to obtain a pipeline facilities permit in order to receive money from the emissions reductions incentives account; prohibited persons, or affiliates of persons, who contribute money to the emissions reductions incentives account from receiving money from the fund; and allowed grandfathered reciprocating

internal combustion engines associated with pipelines that meet certain criteria to be considered permitted by statute.

To implement these revisions to the Texas Clean Air Act, the commission adopts amendments to the rules in Chapter 116, Subchapter H, Permits for Grandfathered Facilities.

SECTION BY SECTION DISCUSSION

Section 116.770, Requirement to Apply

The commission adopts an amendment to this section that changes the section title from “Requirement to Apply” to “Requirement to Apply or Register” to better specify the purpose of the section.

Adopted §116.770 adds new subsections (b) and (c), which specify that certain facilities are considered permitted and that the owners and operators of those facilities must submit registrations. Adopted §116.770(b) implements Texas Health and Safety Code, §382.05186(j). Specifically, adopted §116.770(b) states that a reciprocating internal combustion engine required to obtain a pipeline facility permit that is subject to a mass emissions cap established by the commission is considered permitted if the facility is located in an ozone nonattainment area and is in compliance with all state and federal requirements for that area by June 20, 2003. 30 TAC §101.351(a) currently specifies that a mass emissions cap applies to the Houston/Galveston ozone nonattainment area. Adopted §116.770(b)(2) requires that the grandfathered reciprocating internal combustion engines satisfy any currently applicable state or federal regulations in effect as of June 20, 2003, the effective date of House Bill 638, in order to be considered permitted. In addition, the commission adopts new §116.770(c), which requires owners and operators of facilities that are considered permitted under §116.770(b) to submit

registrations on or before July 1, 2004. The registration requirement is necessary for the executive director to determine whether all facilities that are considered to be permitted meet the criteria outlined in House Bill 638. The adopted subsections require registration rather than require those facilities to obtain a permit under Chapter 116, qualify for a permit by rule, or shut down. Registrations must be submitted by July 1, 2004. This date allows owners and operators of facilities that are considered permitted to submit registrations one year after the effective date of House Bill 638. This date is also approximately six months after the anticipated adoption date of these rules.

Section 116.772, Notice of Shutdown

The commission adopts a change to the cross-references in §116.772(a) and (b) to parallel changes made in §116.770.

Section 116.776, Distribution of Funds from the Emission Reductions Incentives Account for Control of Emissions from Grandfathered Reciprocating Internal Combustion Engines Located in the East Texas Region.

The commission adopts an amendment to the title of §116.776 from “Distribution of Funds from the Emissions Reductions Incentives Account for Control of Emissions from Grandfathered Reciprocating Internal Combustion Engines Located in the East Texas Region” to “Emissions Reductions Incentives for Control of Emissions from Grandfathered Reciprocating Internal Combustion Engines Located in the East Texas Region.” In addition, the commission adopts new §116.776(a) specifying that incentives will be made available through a grant program administered under §116.776 and 30 TAC Chapter 14, Grants. The commission also adopts new §116.776(b)(6) to specify that, to seek a distribution from the

account, the owner or operator must enter a contract with the commission in accordance with a request for grant applications. The remaining paragraphs are renumbered accordingly. Also, the commission adopts amendments to §116.776(b) to specify that reimbursement is based on eligibility criteria and grant program requirements. The commission also adopts amendments to §116.776(c) and (d) to use the term “incentive criteria” rather than “criteria for distribution.” The adopted amendments make it clear that the commission is implementing the statute through a grant program. The commission adopts amendments to §116.776(b)(1) to specify that eligibility for reimbursement of the cost of controls from the emissions reductions incentives account is based on hourly emissions reductions rather than annual emissions reductions. Specifically, §116.776(b)(1) requires owners or operators of grandfathered reciprocating internal combustion engines associated with pipelines to reduce hourly NO_x emission rates, expressed in terms of grams per brake horsepower-hour, by at least 50%, in order to be eligible for reimbursement. The existing section, adopted as subsection (b)(1), requires owners or operators to make a 50% reduction in the annual emissions of NO_x as compared to the 1997 Industrial Point Source Emissions Inventory. Adopted §116.776(b)(1) is consistent with Texas Health and Safety Code, §382.051865(a), as amended. The commission adopts amendments to §116.776(b)(3) to specify that an owner or operator who opts to achieve the 50% reduction in NO_x by replacing a grandfathered engine will also be eligible for reimbursement. The commission adopts amendments to §116.776(b)(8) to clarify that, if an owner or operator elects to achieve reductions via replacement of an engine, the owner or operator must obtain authorization under Chapter 116 or 30 TAC Chapter 106. Since turbines may also be considered engines or combustion engines, the replacement of a reciprocating internal combustion engine with a turbine is also eligible for reimbursement. In addition, the commission adopts amendments to §116.776(b)(8) to delete language that specifies when the registration of

replacement for an electric engine should be submitted. Also, the commission adopts amendments to §116.776(b)(10) to specify that engines with a NO_x emission rate at least 50% lower than the rate of the grandfathered engine, in addition to electric engines, must be installed and operated and the grandfathered engine be permanently shut down before the executive director can authorize payment from the emissions reductions incentive account. The commission also adopts new §116.776(b)(12), which specifies that a person or an affiliate of a person who pays or contributes to the emissions reductions incentives account is ineligible to receive money from the account. This new paragraph implements Texas Health and Safety Code, §382.051866(e). The commission also adopts an amendment to §116.776(c) by adding the word “rate” when specifying that the commission may reimburse costs associated with achieving emissions reductions between 30% and 50% of an engine’s hourly NO_x emissions rate. The adopted amendment to §116.776(c) is consistent with Texas Health and Safety Code, §382.051865(c), as amended. Lastly, the commission changes the criteria for distribution of funds based on the statutory changes outlined by House Bill 638 and stakeholder meetings held during the summer of 2002. House Bill 638 modifies Texas Health and Safety Code, §382.051865(d), to prohibit the commission from requiring any more stringent reduction criteria than the 50% reduction in grams per brake horsepower-hour for determining the eligibility for an emissions reduction project under the reimbursement program. The commission eliminates paragraphs (1) - (3) from existing §116.776(c), and adds a new criterion in §116.776(d)(2) specifying that the executive director will put a cap on the amount of reimbursement for each engine, if it determines it is appropriate in order to maximize equitable distribution of the fund. After discussions with participants in the stakeholder meetings, the commission originally decided to implement the criteria by reimbursing owners and operators of engines for 40% of the cost of controls up to a maximum of \$100,000 per

engine. The commission anticipated signing contracts for more engines than can be covered by the amount of money appropriated to the agency for this purpose. However, the number of requests for reimbursement was lower than anticipated. Based on General Appropriations Act (2003), Article IX, §8.01(d), the unexpended balance in the emissions reductions incentives account at the end of Fiscal Year 2003 is available for distribution in Fiscal Year 2004 and 2005. Therefore, the commission will distribute up to \$100,000 per eligible engine once the owner or operator installs controls and submits the necessary verification to the commission. After verification information has been received for all eligible engines or the final date for submission of verification information specified in all individual contracts, whichever occurs first, the commission will distribute any funds remaining in the account between all eligible grantees according to the criteria specified in the request for grant application and contracts issued under it. If, during the grant review process, the commission determines that there will not be enough eligible costs to distribute all of the funds in the account, the commission may also issue a subsequent request for grant applications. In order to allow for adequate time to process payment requests under either of these options, the commission concluded that the individual grant contracts will need to reflect earlier project completion dates.

House Bill 638 and §116.776(b)(5) requires that the projects to control emissions be completed before March 1, 2007. However, Texas Health and Safety Code, §382.051865(g), also requires that the commission may not pay or otherwise provide a financial incentive for an emissions reduction project before the project is complete, and that the commission may not pay or otherwise provide a financial incentive on or after March 1, 2007. If the commission were to receive project verification information immediately prior to the deadline, there would be no time to process the request prior to the deadline

for payment. In addition, as discussed previously, the commission will distribute the funds in two separate rounds of payments: the first round of up to \$100,000 being paid upon review of the verification information supplied by the grantee; and the second round to equitably distribute any funds remaining in the account to those owners or operators who have eligible costs of over \$100,000. In no case will payments from the fund exceed 40% of the actual capital cost of controls for an individual engine. In order to address both the completion deadline and the payment deadline equitably, the commission will negotiate deadlines for project completion in the grant contracts. The commission determined that use of the contract mechanism will provide necessary flexibility for individual circumstances, while assuring that project verification information will be received in time to allow for processing prior to the payment deadline. The commission will decide on a final date for submission of verification information in individual contracts after additional discussions with internal staff and the Office of the Comptroller of Public Accounts regarding the time needed to process the payments. However, in order to provide certainty for early planning purposes, November 1, 2006 is the earliest date by which the commission will require submittal of verification information in an individual contract.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in accordance with the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a major environmental rule. A “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, productivity,

competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted rulemaking implements requirements from House Bill 638, 78th Legislature, 2003, which prohibits the commission from requiring more stringent emissions reduction criteria than the reductions already required to obtain a pipeline facilities permit in order to receive money from the emissions reductions incentives account; prohibits persons, or affiliates of persons, who contribute money to the emissions reductions incentives account from receiving money from the fund; and allows grandfathered reciprocating internal combustion engines associated with pipelines that meet certain criteria to be considered permitted by statute. The adopted rules allow more grandfathered reciprocating internal combustion engines associated with pipelines to be eligible for reimbursement from the emissions reductions incentives account.

The adopted rules are not anticipated to have adverse effects on the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, since the rules allow more engines to be eligible for reimbursement. Similarly, the requirements of the adopted rules are expected to result in little or no impacts on the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. All grandfathered reciprocating internal combustion engines associated with pipelines affected by the rules are already required to meet control requirements specified by House Bill 2912.

Additionally, the analysis required by Texas Government Code, §2001.0225(c), does not apply because the adopted rules do not meet any of the four applicability requirements of a major environmental rule. The adopted rules do not exceed a standard set by federal law, exceed an express requirement of state

law, exceed a requirement of a delegation agreement, or adopt a rule solely under the general powers of the agency. The adopted rules do not exceed the requirements of the Federal Clean Air Act or the Texas Clean Air Act. Additionally, the adopted rules do not exceed a requirement of a delegation agreement, since there is no agreement that is applicable to this rulemaking, and are not adopted solely under the general powers of the agency.

The commission received no public comments regarding the draft regulatory impact analysis determination during the public comment period.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the adopted rules and performed an analysis of whether the rules are subject to Texas Government Code, Chapter 2007. The purpose of the adopted rules is to fulfill the commission's obligation to implement House Bill 638. The adopted rules advance this purpose by prohibiting the commission from requiring more stringent emissions reduction criteria than the reductions already required to obtain a pipeline facilities permit in order to receive money from the emissions reductions incentives account; prohibiting persons, or affiliates of persons, who contribute money to the emissions reductions incentives account from receiving money from the fund; and allowing grandfathered reciprocating internal combustion engines associated with pipelines that meet certain criteria to be considered permitted by statute. The adopted rules will not burden private real property. The ability of an owner or operator to claim a reimbursement or be considered permitted by statute will not affect private property in a manner which restricts or limits an owner's right to the

property that would otherwise exist in the absence of governmental action. Consequently, the adopted rules do not meet the definition of a taking under Texas Government Code, §2007.002(5).

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found it is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to rules subject to the Coastal Management Program, and, therefore, required that goals and policies of the Texas Coastal Management Program be considered during the rulemaking process. The commission reviewed this action for consistency and determined that the adopted rules do not impact any Texas Coastal Management Program goals or policies. The prohibition against requiring more stringent emissions reduction criteria than the reductions already required to obtain a pipeline facilities permit in order to receive money from the emissions reductions incentives account; the prohibition against persons, or affiliates of persons, who contribute money to the emissions reductions incentives account from receiving money from the fund; and allowing grandfathered reciprocating internal combustion engines associated with pipelines that meet certain criteria to be considered permitted by statute will not change any otherwise applicable requirement associated with controls of the affected engines. No comments on the consistency of this rulemaking were submitted during the comment period.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

This adoption has no impact on owners and operators of sites subject to the operating permit program unless they also own or operate grandfathered reciprocating internal combustion engines associated with pipelines. If so, the owners and operators of sites subject to the operating permit program will be

required to revise their permits or permit applications. 30 TAC §122.10(2) specifies that all of the requirements of Chapter 116 are applicable requirements. Therefore, owners and operators of grandfathered reciprocating internal combustion engines associated with pipelines will be required to revise the operating permit to reflect that the facilities are considered permitted, rather than grandfathered.

PUBLIC COMMENT

A public hearing on this proposal was held October 30, 2003, and the public comment period closed on November 10, 2003. No oral comments were received at the public hearing. The commission received written comments on the rule proposal from the Houston Regional Group of the Sierra Club (Sierra Club) and the EPA. Sierra Club opposed the rule proposal, while EPA supported the rule proposal, but requested clarification.

RESPONSE TO COMMENTS

Sierra Club commented that it opposes any permit program that the commission has, regardless of the direction of the state legislature, that does not require appropriate new source review or a similar permitting program to ensure that all permitted sources do emit the lowest amount of air pollution possible, within the cost and technological constraints of best available control technology.

The commission made no change in response to this comment. The commission is adopting rule changes directly implementing the statutory changes specified in House Bill 638. Section 116.770(b) specifies that reciprocating internal combustion engines subject to a mass emissions

cap, located in an ozone nonattainment area, and achieving compliance with all state and federal requirements will be considered permitted. Although a specific facility authorized under §116.770(b) will not be required to get a permit, it will be required to register with the commission in order to be considered permitted. Registered facilities will also be required to make emission reductions under the Mass Cap and Trade Program or obtain allowances. Each facility may not specifically be required to emit the lowest amount of air pollution possible, but, as a whole, facilities that are subject to the Mass Cap and Trade Program will be required to make emission reductions. As noted, these facilities were previously “grandfathered” from the requirement to meet preconstruction permitting requirements when the Texas Clean Air Act was first created in 1971. The legislature determined in House Bill 638 that it would be appropriate for these facilities to meet different permitting requirements.

The EPA asked how the state will ensure that the appropriate permit application is submitted if an emissions increase occurs as the result of modifying one or more grandfathered reciprocating internal combustion engines, and if the increases trigger any federal requirements.

The commission made no change in response to this comment. The commission is adopting amendments to the permit requirements for grandfathered facilities in §§116.770, 116.772, and 116.776. These sections of the commission rules do not authorize emission increases. Rather, these sections establish the requirement to register a facility that is considered permitted and the requirement to obtain a permit for a grandfathered facility. The validity of any registration issued for facilities eligible under House Bill 638 to be “considered permitted” is dependent upon

the information submitted by the facility. If that information is determined to be incorrect, the registration would be invalid.

The EPA commented that the proposed rules do not document how an owner or operator of a grandfathered facility must demonstrate initial and ongoing compliance with all current applicable state and federal requirements for the Houston/Galveston ozone nonattainment area as of June 20, 2003, and requested that the methods of compliance be documented. Sierra Club also asked how the commission can consider a reciprocating internal combustion engine for a pipeline facility permitted when there is no documentation to demonstrate that the source is achieving compliance with all state and federal requirements. Sierra Club further commented that all the commission requires is that compliance be achieved, and that there should be a requirement for a site visit by the commission or a local air pollution control agency to ensure that the facility is in compliance before a permit is issued to the facility.

The commission made no change in response to these comments. Facilities eligible to be “considered permitted” under §116.770(b) are subject to the Mass Cap and Trade Program, which requires an annual determination regarding the status of emission allowances for those facilities. This will provide a mechanism for determining compliance with the emission limitations that apply to these facilities. The commission does not agree that a site visit is necessary to determine compliance, since the Mass Cap and Trade Program is a SIP-approved program that is already subject to other compliance reviews.

SUBCHAPTER H: PERMITS FOR GRANDFATHERED FACILITIES

DIVISION 1: GENERAL APPLICABILITY

§116.770, §116.772

STATUTORY AUTHORITY

The amendments are adopted under Texas Health and Safety Code, Texas Clean Air Act, §382.011, which authorizes the commission to administer the requirements of the Texas Clean Air Act; §382.012, which provides the commission the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; §382.051, which authorizes the commission to issue a permit for numerous similar sources; §382.0518, which authorizes the commission to issue permits for construction of new facilities or modifications of existing facilities; §382.05181, which requires grandfathered facilities to apply for a permit and comply with its conditions by certain dates, and requires certain actions of the commission; §382.05186, which requires pipeline facilities permits; §382.051865, which requires a reimbursement program for certain emissions reductions from reciprocating internal combustion engines associated with pipelines; §382.051866, which requires an emissions reductions incentives account; and Texas Water Code, §5.103, which authorizes the commission to adopt rules.

§116.770. Requirement to Apply or Register.

(a) The owner or operator of a grandfathered facility must apply for a permit to operate that facility under this chapter, qualify for a permit by rule under Chapter 106 of this title (relating to Permits by Rule), or submit a notice of shutdown before September 1, 2003 for facilities located in the

East Texas region as defined in §101.330 of this title (relating to Definitions), and before September 1, 2004 for facilities located in the West Texas region as defined in §101.330 of this title or El Paso County.

(b) A reciprocating internal combustion engine that is subject to the requirement to obtain a pipeline facilities permit and to a mass emissions cap as established by commission rule is considered permitted with respect to all air contaminants if the facility is:

(1) located in an area designated as a nonattainment area for an ozone national ambient air quality standard; and

(2) achieving compliance with all state and federal requirements designated for that area by June 20, 2003.

(c) The owner or operator of a reciprocating internal combustion engine that is considered permitted under subsection (b) of this section must submit a registration to the commission on or before July 1, 2004, which must include Form PI-1G, Grandfathered Facility Permit Application.

§116.772. Notice of Shutdown.

(a) The owner or operator of a grandfathered facility who chooses to shut the facility down rather than obtain a permit under this chapter or qualify for a permit by rule under Chapter 106 of this

title (relating to Permits by Rule), shall notify the executive director in writing by completing Form PI-1GSD, Notice of Shutdown, prior to the deadlines specified in §116.770(a) or §116.774 of this title (relating to Requirement to Apply; and Eligibility for Small Business Stationary Source Permits). The owner or operator of a grandfathered facility who submits a Form PI-1GSD, Notice of Shutdown, prior to the deadlines specified in §116.770(a) or §116.774 of this title shall cease emitting air contaminants by:

(1) March 1, 2007, if the facility is not eligible for a small business stationary source permit and is located in the East Texas region as defined in §101.330 of this title (relating to Definitions); or

(2) March 1, 2008, if the facility is eligible for a small business stationary source permit or is located in the West Texas region as defined in §101.330 of this title or El Paso County.

(b) The owner or operator of a grandfathered facility who applies for a permit prior to the deadlines specified in §116.770(a) or §116.774 of this title, but prior to permit issuance, decides to shut the facility down must submit a Form PI-1GSD, Notice of Shutdown, prior to withdrawal of the permit application and must cease emitting air contaminants by the date specified in subsection (a)(1) or (2) of this section.

(c) The owner or operator of a facility that has been shut down and for which a Notice of Shutdown has been submitted must obtain the proper authorization under this chapter or Chapter 106 of this title prior to operating the facility.

(d) The Notice of Shutdown shall include, as a minimum, an identification of the facility to be shut down, the date the owner or operator intends to cease operating the facility, and an inventory of the type and amount of emissions that will be eliminated when the facility ceases to operate.

SUBCHAPTER H: PERMITS FOR GRANDFATHERED FACILITIES

**DIVISION 2: SMALL BUSINESS STATIONARY SOURCE PERMITS,
PIPELINE FACILITIES PERMITS, AND EXISTING FACILITY PERMITS**

§116.776

STATUTORY AUTHORITY

The amendment is adopted under Texas Health and Safety Code, Texas Clean Air Act, §382.011, which authorizes the commission to administer the requirements of the Texas Clean Air Act; §382.012, which provides the commission the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; §382.051, which authorizes the commission to issue a permit for numerous similar sources; §382.0518, which authorizes the commission to issue permits for construction of new facilities or modifications of existing facilities; §382.05181, which requires grandfathered facilities to apply for a permit and comply with its conditions by certain dates, and requires certain actions of the commission; §382.05186, which requires pipeline facilities permits; §382.051865, which requires a reimbursement program for certain emissions reductions from reciprocating internal combustion engines associated with pipelines; §382.051866, which requires an emissions reductions incentives account; and Texas Water Code, §5.103, which authorizes the commission to adopt rules.

§116.776. Emissions Reductions Incentives for Control of Emissions from Grandfathered Reciprocating Internal Combustion Engines Located in the East Texas Region.

(a) Emissions reductions incentives will be made available to eligible facilities through a grant program administered under this section and Chapter 14 of this title (relating to Grants).

(b) Eligible facilities. Owners or operators of grandfathered reciprocating internal combustion engines are eligible for reimbursement of a portion of the cost of controls from the emissions reductions incentive account based on the following eligibility criteria and grant program requirements.

(1) The owner or operator of grandfathered reciprocating internal combustion engine or engines associated with pipelines must reduce the hourly emissions rate of nitrogen oxides (NO_x), expressed in terms of grams per brake horsepower-hour, by at least 50%.

(2) The grandfathered reciprocating internal combustion engine or engines must be located in the East Texas region as defined in §101.330 of this title (relating to Definitions).

(3) The owner or operator must apply for and receive a pipeline facilities permit or replace the grandfathered reciprocating internal combustion engine with an engine with a NO_x emission rate which is at least 50% lower than the emission rate of the grandfathered engine or an electric engine.

(4) The project to control emissions must be initiated on or before September 1, 2006.

(5) The project to control emissions must be completed before March 1, 2007.

(6) The owner or operator of the grandfathered reciprocating internal combustion engine for which a distribution from the emissions reductions incentives account is sought, must enter a contract with the commission in accordance with a request for proposals (grant applications) under Chapter 14 of this title.

(7) The owner or operator of the grandfathered reciprocating internal combustion engine for which a distribution from the emissions reductions incentives account is sought, must identify, at the time the permit application is filed, the facilities for which reimbursement is requested.

(8) The owner or operator who elects to replace a grandfathered reciprocating internal combustion engine with an electric engine must submit a Registration of Replacement of a Grandfathered Reciprocating Internal Combustion Engine with an Electric Engine. The owner or operator who elects to achieve the 50% reduction in NO_x emissions rate by replacing a grandfathered engine or engines with new combustion engines must obtain authorization for the new engines under this chapter or Chapter 106 of this title (relating to Permits by Rule).

(9) The emissions controls identified in the permit must be operating before the executive director can authorize payment from the emissions reductions incentives account.

(10) For grandfathered reciprocating internal combustion engines replaced by electric engines or engines with a NO_x emission rate which is at least 50% lower than the emission rate of the grandfathered engine, the replacement engine must be installed and operating and the grandfathered reciprocating internal combustion engine must be permanently shut down before the executive director can authorize payment from the emissions reductions incentives account.

(11) Facilities required by any other state or federal law to make reductions in emissions of NO_x are not eligible for reimbursement.

(12) A person or an affiliate of a person who pays or contributes money to the emissions reductions incentives account is ineligible to receive money from the account.

(c) Limitations on reimbursement. The commission may reimburse the owner or operator of a grandfathered reciprocating internal combustion engine or engines for no more than the cost associated with achieving emissions reductions between 30% and 50% of the engine's hourly emissions rate of NO_x before the addition of controls. The commission may distribute less than the amount calculated in this manner based on the amount of money contributed to the fund and the incentive criteria for distribution outlined in subsection (d) of this section.

(d) Incentive criteria. The commission will distribute any money in the fund based on the following incentive criteria:

(1) when the reductions are actually achieved; and

(2) if the executive director determines that a cap is appropriate in order to maximize equitable distribution of the fund, a cap on the amount to be reimbursed for each engine.

(e) Verification of emissions reductions. Prior to reimbursement from the emissions reductions incentives account, the owner or operator of each grandfathered reciprocating internal combustion engine must provide documentation verifying the amount of actual emission reductions achieved.

