

The Texas Commission on Environmental Quality (commission) proposes amendments to §114.620 and §114.622. The commission also proposes new §§114.624, 114.640, 114.642, 114.644, 114.646, and 114.648.

The new and amended sections are proposed to be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP).

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

House Bill (HB) 3469, 79th Legislature, 2005, added Chapter 390 to the Texas Health and Safety Code. This new chapter directs the commission to establish and administer a clean school bus program within the financial limits set by amended §386.051 and §386.052 (HB 3469, 79th Legislature). This clean school bus program will fund efforts by school districts to improve the health of children by reducing emissions of diesel exhaust from school buses. Reduction of emissions from diesel-powered school buses will also benefit the public in ozone nonattainment areas by reducing emissions of nitrogen oxides (NO<sub>x</sub>).

The commission is proposing new §§114.640, 114.642, 114.644, 114.646, and 114.648 to establish this program. Under these proposed sections, school districts, charter schools, and regional planning organizations would be eligible for reimbursement grants for the use of emissions reducing catalysts, particulate filters, qualifying fuels, and other emissions reducing add-on equipment or technology that the commission finds will reduce emissions.

House Bill 2481, 79th Legislature, 2005, added §386.117 to the Health and Safety Code to add a rebate grant program under the Texas Emissions Reduction Plan (TERP). New §114.624 is proposed to implement this program. The rebate grant will streamline the grant application process for some applicants and will ease the administrative burden on program staff.

Proposed amendments to §114.622 will clarify that for replacement and repower projects, the baseline vehicle, equipment, or engine must be scrapped or permanently removed from the State of Texas.

Proposed amendments to §114.620 and §114.622 create an option for the commission to use an equivalent measure to the current \$13,000 per ton cost effectiveness standard or an alternative approved by the commission. These amendments will improve TERP program effectiveness by ensuring that high-emitting engines cannot be reintroduced into an affected county and allowing the commission to increase the emissions reductions created by grants.

#### SECTION BY SECTION DISCUSSION

The commission proposes administrative changes throughout this rulemaking to be consistent with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004, and to conform with Texas Register requirements and agency guidelines.

The proposed amendment to §114.620 modifies the definition of “Cost-effectiveness” to clarify how the cost-effectiveness of TERP grant applications will be determined. The proposed amendment to §114.622 clarifies that, for grants entailing replacement or repower of an engine or other equipment, the original equipment must be permanently removed from the State of Texas. The proposed

amendment to §114.622 also clarifies that the commission may establish cost-effectiveness standards lower than the statutory \$13,000 per ton and that the commission may also make project selection decisions on a variety of factors in addition to cost-effectiveness.

Proposed new §114.624, Rebate Grant Process, establishes a process that awards TERP funds as a rebate. This new process would provide for ongoing, first-come, first-served awarding of standardized rebates for designated project types. It would create a simple, streamlined process to award TERP funds.

Proposed new §114.640, Definitions, provides definitions for the Texas Clean School Bus Program. This section provides definitions for important terms in the proposed new division.

Proposed new §114.642, Applicability, establishes program eligibility for school districts and charter schools. This proposed section also allows regional planning organizations, such as Councils of Government, and private nonprofit organizations to apply for and receive grants to improve the program.

Proposed new §114.644, Clean School Bus Program Requirements, establishes basic program requirements, including: the types of projects eligible for a clean school bus grant; the ability of the commission to limit or prioritize funding for the Texas Clean School Bus Program; the minimum useful life of a project under the grant program; a requirement that replaced equipment be permanently removed from the State of Texas; restricting the use of grant funds to pay incremental costs associated

with the project and prohibition against using the grant for administrative expenses; prohibition against recipients using grant funding to meet federal or state legal requirements and using emissions reductions as part of an emissions banking or trading program; grant application requirements; and obligation of the grant recipient to return grant funds if they fail to meet the terms of a project grant or conditions of the proposed division.

Proposed new §114.646, Monitoring, Recordkeeping, and Reporting Requirements, establishes that grant recipients must adhere to the reporting requirements of their grant, which will occur no less frequently than annually.

Proposed new §114.648, Implementation Schedule, establishes that the Texas Clean School Bus program will expire on August 31, 2013.

#### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, 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 government as a result of administration or enforcement of the proposed rules. The proposed rules provide a mechanism to implement the “clean school bus program” and amend some provisions of the existing TERP program to provide more program flexibility and clarification of requirements. Fiscal implications are anticipated for regional planning organizations and local independent school districts if, when funding becomes available, they elect to participate in a “clean school bus program” or apply for a TERP grant.

House Bills 2481 and 3469, 79th Legislature, amended parts of the Texas Health and Safety Code to direct the commission to: 1) add a rebate grant program under the Texas Emissions Reduction Plan (TERP); and 2) establish and administer a clean school bus program if TERP funds are available after achieving the emission reduction objectives of the State Implementation Plan (SIP). One part of the proposed rulemaking provides the mechanism to administer and manage a grant and rebate program to promote the use of cleaner diesel buses in schools. Under this program, independent school districts, charter schools, and regional planning organizations could become recipients of TERP funds (Account 5071) in order to reduce emissions of diesel exhaust from school buses. Another part of the proposed rulemaking clarifies requirements for TERP replacement and repower projects and amends the manner in which the cost effectiveness of projects applying for TERP grant funds will be judged.

Although the proposed rules establish the needed framework for a clean school bus program, two criteria established for making TERP revenue available to fund clean school bus program grants are not expected to be met in the current biennium. The commission does not anticipate that TERP funds will exceed the comptrollers' revenue estimate, nor does the commission anticipate that excess TERP funds will be available after funding projects to meet the SIP objectives for air quality. In addition, the commission was not granted the needed appropriation authority to fund grants under the clean school bus program during the 2006 - 2007 biennium.

Once the commission is given the needed appropriation authority, and TERP revenues reach the levels required to fund a clean school bus program, the estimated 1,255 independent school districts and charter schools in Texas could become eligible to receive funds in the form of reimbursement grants to

reduce emissions from the estimated 35,142 diesel-powered school buses in the state. The proposed rules would also allow regional planning organizations to become grant recipients for the purpose of achieving the goals of the clean school bus program in their region.

Under the clean school bus program, participation is voluntary, and grant funds are intended to offset the costs of using school buses that emit lower levels of air contaminants. Whether grant funding would be sufficient to offset the total cost of complying with grant requirements for these school buses depends on the amount of funding available, the number and age of qualifying buses, and the cost of the methods chosen by grant recipients to meet grant requirements. Options to utilize buses with lower diesel emissions run from a cost of \$0.13 more per gallon of emulsified diesel fuel to \$10,000 for diesel particulate filters.

Currently, local governments can apply for funds under the existing TERP grant program to reduce vehicle emissions in the 41 counties covered by the TERP program. The proposed rulemaking, by making the criteria for judging cost effectiveness more flexible, may allow projects, not currently funded by TERP grants, to receive funding. Given the wide universe of applicants and types of projects that could be funded by TERP grants, the fiscal implications to local governments are not known at this time.

#### **PUBLIC BENEFITS AND COSTS**

Ms. Chamness 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 the establishment of a program, which when funded, will promote lower emissions of air contaminants.

If funding to implement the “clean school bus program” becomes available, school districts or charter schools transporting school children could become recipients of monies which could lower their costs of using buses that have lower diesel emissions. The proposed rulemaking provides a variety of acceptable options to lower diesel emissions from school buses. These options range from a cost of \$0.13 more per gallon of emulsified diesel fuel to \$10,000 for diesel particulate filters.

Due to increased flexibility in judging cost effectiveness, businesses applying for TERP grants may see projects not previously funded receive TERP funding.

#### SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses that serve as third party contractors to transport school children. If funding to implement the program becomes available, small or micro-businesses may qualify to receive grant funding to offset the costs associated with complying with the program’s requirements. Increased flexibility in judging the cost effectiveness of a TERP grant project may increase the amount of TERP funding received by small or micro-businesses.

#### 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 that this proposal is not subject to §2001.0025 because it does not meet the definition of a "major environmental rule" as defined in that statute. 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 proposed amendments to Chapter 114 modify the existing rules in accordance with House Bill 3469, 79th Legislature, which amended Texas Health and Safety Code, §386.051(b) and added Texas Health and Safety Code, Chapter 390 to require the commission to establish a Clean School Bus Program. The Clean School Bus Program is intended to reduce diesel exhaust emissions from school buses by funding eligible projects. These rule amendments are part of a voluntary incentive program with the goal of reducing diesel emissions and as such, the proposed rules will 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.

Further, the proposed amendments to Chapter 114 modify the existing rules in accordance with House Bill 2481, 79th Legislature, which amended Chapter 386, Subchapter C of the Texas Health and Safety Code by adding §386.117, directing the commission to adopt a process to award grants in the form of rebates to streamline the grant application, contracting, reimbursement, and reporting processes for certain projects under the TERP. These rules amendments will implement procedural changes and will have no effect on the environment or human health. These rule amendments are part of a voluntary incentive program with the goal of reducing diesel emissions and as such, the proposed rules will 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.

In addition, a draft regulatory impact analysis is not required because the rules do not meet any of the four applicability criteria for requiring a regulatory analysis of a "major environmental rule" as defined in the Texas Government Code. Section 2001.0225 applies only to a major environmental rule the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not exceed a standard set by federal law, and the proposed technical requirements are consistent with applicable federal standards. In addition, this proposal does not exceed an express requirement of state law and is not proposed solely under the general powers of the agency, but is specifically authorized by the provisions cited in the STATUTORY AUTHORITY section of this

preamble. Finally, this rulemaking does not exceed a requirement of a delegation agreement or contract to implement a state and federal program.

The commission invites public comment on the draft regulatory impact analysis determination.

#### TAKINGS IMPACT ASSESSMENT

The commission evaluated this rulemaking action and performed an analysis of whether the proposed rules are subject to Texas Government Code, Chapter 2007. The primary purpose of the rulemaking is to amend Chapter 114 in accordance with House Bill 3469 and House Bill 2481. These amendments implement a voluntary program and only affect motor vehicles and equipment which are not considered to be private real property. Therefore, promulgation and enforcement of these proposed rules are neither a statutory nor a constitutional taking because they do not affect private real property. Therefore, these rules do not constitute a taking under Texas Government Code, Chapter 2007.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.*, and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22, and found the proposed rulemaking is consistent with the applicable CMP goals and policies.

The applicable goal of the CMP is to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas. The specific CMP policy applicable to these rules is that commission rules comply with 40 Code of Federal Regulations (CFR), to protect and enhance air quality in coastal natural resource areas (31 TAC §501.32). The commission reviewed this proposed rulemaking for consistency with the Texas CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the amendments are consistent with CMP goals and policies because this proposed rulemaking action would reduce air pollution from diesel-powered school buses. No new sources of air contaminants are authorized and nitrogen oxides and particulate air emissions would be reduced as a result of these rules. This proposed rulemaking complies with 40 CFR Part 51. This proposed action is part of the control strategy for ozone nonattainment areas in accordance with SIP requirements in 40 CFR Part 51 and reduces emissions of particulate matter consistent with National Ambient Air Quality Standards set for particulate matter in 40 CFR Part 50.

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed rules are consistent with these CMP goals and policies, because these rules do not create or have a direct or significant adverse effect on any coastal natural resource areas, and because the proposed rules will reduce emissions of air pollutants.

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 May 9, 2006, at 2:00 p.m. at the Texas Commission on Environmental Quality Complex located at 12100 Park 35 Circle in Building F, Room 2210. 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 and will answer questions before and after the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Holly Vierk at (512) 239-0177. Requests should be made as far in advance as possible.

#### SUBMITTAL OF COMMENTS

Comments may be submitted to Holly Vierk, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Project Number 2006-016-114-EN. The proposed rules may be viewed on the commission's Web site at [http://www.tceq.state.tx.us/nav/rules/propose\\_adopt.html](http://www.tceq.state.tx.us/nav/rules/propose_adopt.html). Comments must be received by 5:00 p.m., May 16, 2006. For further information please contact Erik Gribbin, Air Quality Planning and Implementation Division, (512) 239-2590.

**SUBCHAPTER K: MOBILE SOURCE INCENTIVE PROGRAMS**

**DIVISION 3: DIESEL EMISSIONS REDUCTION INCENTIVE PROGRAM FOR ON-ROAD  
AND NON-ROAD VEHICLES**

**§§114.620, 114.622, 114.624**

**STATUTORY AUTHORITY**

The amendments and new section are proposed under Texas Water Code, §5.102, which provides the commission with the general powers to carry out its duties under the Texas Water Code; §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state; and §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendments and new section are also proposed under Texas Health and Safety Code, Texas Clean Air Act, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and Chapter 386, which establishes the TERP. Finally, the amendments and new section are proposed as part of the implementation of House Bill 2481, 79th Legislature, 2005.

The proposed amendments and new section implement Texas Clean Air Act, §§382.002, 382.011, 382.012, 382.017, 386.051, and House Bill 2481, 79th Legislature, 2005.

**§114.620. Definitions.**

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used in this subchapter 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; and §§3.2, 101.1, and 114.1 of this title (relating to Definitions), the following words and terms, when used in this division shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Cost-effectiveness**--The total dollar amount expended divided by the total number of tons of nitrogen oxides emissions reduction attributable to that expenditure. In calculating cost-effectiveness, one-time grants of money at the beginning of a project shall be annualized using a time value of public funds or discount rate determined for each project by the commission, taking into account the interest rate on bonds, interest earned by state funds, and other factors the commission considers appropriate.

(2) - (7) (No change.)

(8) **Qualifying fuel**--Any liquid or gaseous fuel or additives registered or verified by the United States Environmental Protection Agency [EPA] that is ultimately dispensed into a motor vehicle or on-road or non-road diesel that provides reductions of nitrogen oxides emissions beyond reductions required by state or federal law.

(9) (No change.)

(10) **Retrofit**--To equip an engine and fuel system with new emissions-reducing parts or technology verified by the United States Environmental Protection Agency [EPA] after manufacture of the original engine and fuel system.

(11) (No change.)

**§114.622. Incentive Program Requirements.**

(a) - (b) (No change.)

(c) For a proposed project that includes a replacement of equipment or a repower, the old equipment or engine must be recycled, scrapped, or otherwise permanently removed from the State of Texas. [removed from all counties listed in §114.629 of this title (relating to Applicable Counties and Implementation Schedule).]

(d) To be eligible for a grant, the cost-effectiveness of a proposed project as listed in subsection (a) of this section, except for infrastructure projects and infrastructure purchases that are part of a broader retrofit, repower, replacement, or add-on equipment project, must not exceed a cost-effectiveness of \$13,000 per ton of NO<sub>x</sub> emissions reduced. The commission may set lower cost-effectiveness limits as needed to ensure the best use of available funds. The commission may also base

project selection decisions on additional measures to evaluate the effectiveness of projects in reducing NO<sub>x</sub> emissions in relation to the funds to be awarded. [\$13,000 per ton of NO<sub>x</sub> emissions.]

(e) - (i) (No change.)

**§114.624. Rebate Grant Process.**

(a) This section establishes a process to provide fast and simple access to rebate grants, in accordance with Texas Health and Safety Code, §386.117.

(b) The rebate grant process shall:

(1) designate certain types of projects eligible for rebates;

(2) project standardized oxides of nitrogen emissions reductions for each designated project type;

(3) assign a standardized rebate amount for each designated project type;

(4) allow for processing rebates on an ongoing first-come, first-served basis; and

(5) consolidate, simplify, and reduce the administrative work for applicants and the commission associated with grant application, contracting, reimbursement, and reporting processes for designated project types.

(c) The commission may:

(1) award rebate grants as a pilot project for a specific region or may award the grants statewide;

(2) limit or expand the designated project types as necessary to further the goals of the program; and

(3) administer the rebate grants or may designate another entity to administer the grants.

**SUBCHAPTER K: MOBILE SOURCE INCENTIVE PROGRAMS**

**DIVISION 4: TEXAS CLEAN SCHOOL BUS PROGRAM**

**§§114.640, 114.642, 114.644, 114.646, 114.648**

**STATUTORY AUTHORITY**

The new sections are proposed under Texas Water Code, §5.102, which provides the commission with the general powers to carry out its duties under the Texas Water Code; §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state; and §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The new sections are also proposed under Texas Health and Safety Code, Texas Clean Air Act, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; Chapter 386, which establishes the TERP; and Chapter 390, which establishes the Clean School Bus Program. Finally, the new sections are proposed as part of the implementation of House Bill 3469, 79th Legislature, 2005.

The new sections implement Texas Clean Air Act, §§382.002, 382.011, 382.012, 382.017, 386.051, and House Bill 3469, 79th Legislature, 2005.

**§114.640. Definitions.**

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used in this subchapter 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 and §§3.2, 101.1, and 114.1 of this title (relating to Definitions), the following words and terms, when used in this division shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Diesel exhaust**--One or more of the air pollutants emitted from an engine by the combustion of diesel fuel, including particulate matter, nitrogen oxides, volatile organic compounds, air toxics, and carbon monoxide.

(2) **Incremental cost**--The cost of an applicant's project less a baseline cost that would otherwise be incurred by an applicant in the normal course of business. Incremental costs may include added lease or fuel costs as well as additional capital costs.

(3) **Qualifying fuel**--Includes any liquid or gaseous fuel or additive registered or verified by the United States Environmental Protection Agency, other than standard gasoline or diesel, that is ultimately dispensed into a school bus that provides reductions of emissions of particulate matter.

(4) **Repower**--To replace an old engine powering an on-road or non-road diesel with a new engine; a used engine; a remanufactured engine; or electric motors, drives, or fuel cells.

(5) **Retrofit**--To equip an engine and fuel system with new emissions-reducing parts or technology verified by the United States Environmental Protection Agency after manufacture of the original engine and fuel system.

**§114.642. Applicability.**

(a) Any school district or charter school in this state that operates one or more diesel-fueled school buses or a transportation system provided by a countywide school district may apply for and receive a grant under the program.

(b) The commission may allow a regional planning commission, council of governments, or similar regional planning agency created under Local Government Code, Chapter 391, or a private nonprofit organization to apply for and receive a grant to improve the ability of the program to achieve its goals.

**§114.644. Clean School Bus Program Requirements.**

(a) Eligible projects include:

(1) diesel oxidation catalysts for school buses built before 1994;

(2) diesel particulate filters for school buses built from 1994 to 1998;

(3) the purchase and use of emission-reducing add-on equipment for school buses, including devices that reduce crankcase emissions;

(4) the use of qualifying fuel; and

(5) other technologies that the commission finds will bring about significant emissions reductions.

(b) The commission may limit funding under a particular funding round to certain areas of the state, types of applicants, and/or types of projects. The commission may place a priority on funding for projects conducted in areas that do not attain certain national ambient air quality standards.

(c) Prior to each funding period, the commission may establish priorities and other criteria for reductions in diesel exhaust emissions to be achieved by projects funded during that period, including designation of additional pollutants to be addressed. A proposed project must achieve a reduction in emissions of diesel exhaust compared with the baseline emissions according to the percentage reduction level and other priorities established by the commission. The commission may also establish maximum levels for the funding awarded in relation to the emission reductions projected to be achieved by a project, in order to maximize the use of available funds.

(d) A school bus proposed for retrofit must be used on a regular, daily route to and from a school and have at least five years of useful life remaining unless the applicant agrees to remove the retrofit device at the end of the life of the bus and reinstall the device on another bus.

(e) For a proposed project that includes a replacement of equipment or a repower, the old equipment or engine must be recycled, scrapped, or otherwise permanently removed from the State of Texas.

(f) An application for a grant under this program is only eligible if it is made on the form provided by the commission and contains the information required by the commission.

(g) A recipient of a grant under this division shall use the grant to pay incremental costs of the project for which the grant is made, which may include the reasonable and necessary expenses incurred for the labor needed to install emissions-reducing equipment. The recipient may not use the grant to pay the recipient's administrative expenses.

(h) Projects funded with a grant from this program may not be used for credit under any state or federal emissions reduction credit averaging, banking, or trading program except as provided under Texas Health and Safety Code, §386.056.

(i) A proposed project as listed in subsection (a) of this section is not eligible if it is required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding

document. This subsection does not apply to an otherwise qualified project, regardless of the fact that the state implementation plan assumes that the change in equipment, vehicles, or operations will occur, if on the date the grant is awarded the change is not required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document or the purchase of an on-road diesel or equipment required only by local law or regulation or by corporate or controlling board policy of a public or private entity.

(j) If a grant recipient fails to meet the terms of a project grant or the conditions of this division, the executive director can require that the grant recipient return some or all of the grant funding to the extent that emission reductions are not achieved or cannot be demonstrated.

**§114.646. Monitoring, Recordkeeping, and Reporting Requirements.**

Grant recipients must meet the reporting requirements of their grant, which must occur no less frequently than annually.

**§114.648. Implementation Schedule.**

This division expires August 31, 2013.

