

The Texas Commission on Environmental Quality (commission or TCEQ) adopts amendments to §114.6 and §114.319. Sections 114.6 and 114.319 are adopted *without changes* to the proposed text as published in the December 29, 2006, issue of the *Texas Register* (31 TexReg 10521) and will not be republished.

The amendments will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

On June 15, 2004, the Houston-Galveston-Brazoria (HGB) ozone nonattainment area was classified as a moderate nonattainment area under the eight-hour national ambient air quality standard (NAAQS) under the Federal Clean Air Act (FCAA) Amendments of 1990 (42 United States Code (USC), §§7401 *et seq.*). For the HGB area, defined by Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties, the TCEQ has developed this eight-hour ozone SIP revision in accordance with 42 USC, §7410. Hence, this rulemaking and HGB SIP revision is part of the first step in addressing the eight-hour ozone standard for the area.

The one-hour ozone NAAQS, which preceded the eight-hour ozone standard, was revoked June 15, 2005 (69 FR 23951). However, the one-hour ozone control strategies in the HGB area will remain in place. This set of strategies is extensive and will continue to reduce the amount of ozone precursors and ozone in the HGB airshed. On September 6, 2006 (71 FR 52656), EPA published approval of the HGB nonattainment area's one-hour ozone attainment demonstration and associated rules. The

approval was published in six parts, covering the rules for the control of highly-reactive volatile organic compounds (HRVOC), the HRVOC emission cap and trade (HECT) program, the mass emission cap and trade (MECT) program for nitrogen oxides (NO_x), the one-hour ozone attainment plan, the emissions credit banking and trading program, and the discrete emission credit banking and trading program. For a more complete background on the one-hour ozone SIP revisions please see Chapter 1 of the eight-hour ozone SIP revision that has been submitted for adoption concurrent with this rule package (Project Number 2006-027-SIP-NR).

In this rulemaking, the commission is adopting a revision to the definition of diesel fuel in §114.6(7) and §114.319 concerning affected counties and compliance dates as they are used in Subchapter H (relating to Low Emission Fuels). These revisions require that any fuel that is commonly or commercially known, sold, or represented as Marine Distillate fuel X (DMX), Marine Distillate fuel A (DMA), or Marine Gas Oil (MGO) that may ultimately be used to power a diesel-fueled compression-ignition engine located on a marine vessel in any of the counties listed in §114.319(b)(2), specifically: Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties, meet the low emission diesel fuel (LED) requirements. The commission has been made aware that certain owners or operators of marine vessels have been switching from regulated Grade No. 1-D and Grade No. 2-D diesel fuel (LED-compliant fuels) to diesel fuels commonly known as DMX, DMA, or MGO to avoid the LED regulations of Chapter 114. By regulating these marine fuels, the commission will be able to reduce NO_x by an estimated 0.9 tons per day (tpd) in the HGB nonattainment counties as listed in §114.319(b)(2).

DMX, DMA, Grade No. 1-D, and Grade No. 2-D diesel fuels are all light distillates that share many fuel parameters. Therefore, the commission does not anticipate major difficulties in the process of either changing vessel fuels back to LED-compliant Grade No. 1-D or Grade No. 2-D or having DMX or DMA marine fuels use approved additives as tested and approved under the methods of §114.315.

The grades of marine fuel that are included in this adoption are normally only used by harbor craft vessels (e.g., crew and supply boats, charter fishing vessels, commercial fishing vessels, ferry or excursion vessels, pilot vessels, towboats or push boats, tug boats, and work boats). Ocean-going vessels will not be included in these regulations because they typically use heavier marine residual fuels such as Marine Distillate fuel B (DMB), Marine Distillate fuel C (DMC), or other marine residual fuels that have a higher viscosity; therefore, they do not share the characteristics of lighter 1-D and 2-D diesel fuels.

The TCEQ participated in a Houston-Galveston Area Council (HGAC) stakeholder meeting in March 2006 to discuss potential control strategies. The TCEQ also conducted an informational meeting October 5, 2006, to present the rule concepts and answer questions.

SECTION BY SECTION DISCUSSION

The adopted change to §114.6 amends the definition of diesel fuel to include marine grades of fuel commonly known as DMX, DMA, or MGO in accordance with the active version of International Organization for Standardization (ISO) 8217. Currently, the definition only refers to Grade No. 1-D and Grade No. 2-D diesel fuels. This change in definition, along with the change to §114.319

concerning affected counties, will require DMX, DMA, or MGO grades of marine fuel to be compliant with the LED regulations in the eight-county HGB area. By including these fuels in the LED regulation, the commission will reduce NO_x and other emissions in the HGB ozone nonattainment area. These reductions will help this area make positive progress towards attainment of the ozone NAAQS.

The adopted change to §114.319 adds a new subsection (d) to include a compliance schedule for the introduction of LED-compliant diesel fuels commonly known as DMX, DMA, or MGO to the HGB area. The compliance schedule provides sufficient time for refiners to make modifications that may be necessary to produce a compliant LED fuel and provides sufficient time for facilities downstream of the refiner to deplete existing inventories of noncompliant fuels. Compliance is phased in to ensure adequate supply of compliant fuels will be available at the retail level by January 1, 2008. A revision is also made to subsection (a) to refer to the schedule as added in subsection (d).

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking considering 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, 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 specific purpose of the adopted amendments to §114.6 and §114.319 is to subject certain grades of marine fuels used in the HGB nonattainment counties to the LED program requirements. These grades

of marine fuels have been added as part of the strategy to reduce emissions of NO_x. This adopted rulemaking is anticipated to positively affect human health and the environment by reducing NO_x emissions that help form ozone and not adversely affect the economy or productivity in any material manner. Moreover, the adopted rules would make positive progress towards attainment of the federally established eight-hour ozone standard in the HGB area. Therefore, the adopted rulemaking does not constitute a major environmental rule and thus is not subject to a formal regulatory analysis.

In addition, the adopted amendments to Chapter 114 are not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because the adopted rulemaking does not meet any of the four applicability requirements. Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal 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.

Specifically, this rulemaking action, which is designed to reduce NO_x emissions from marine vessels in the HGB area that have not been included in the LED program previously, does not exceed an express requirement under state or federal law. Furthermore, there is no contract or delegation agreement that covers the topic that is the subject of this action. Finally, this rulemaking action was not developed solely under the general powers of the agency, but is authorized by specific sections of Texas Health and Safety Code, Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code,

which are cited in the STATUTORY AUTHORITY section of this preamble, including Texas Health and Safety Code, §§382.012, 382.017, and 382.202. Therefore, the adopted rulemaking does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, nor is adopted solely under the general powers of the agency.

Based on the foregoing, this rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b). The commission solicited comments on the Regulatory Impact Analysis Determination during the public comment period, but did not receive any comments during the public comment period.

TAKINGS IMPACT ASSESSMENT

Under Texas Government Code, §2007.002(5), “taking” means 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 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 percent 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 takings impact assessment for the adopted rulemaking action under Texas Government Code, §2007.043. The specific purpose of these revisions is to achieve reductions of NO_x emissions from marine vessels to reduce ozone formation in the HGB nonattainment area and thus help bring this area into compliance with the air quality standards established under federal law as NAAQS for ozone. As adopted, the amendment to §114.6 adds certain grades of marine fuels to the definition of diesel fuel, thus subjecting the fuels used in the HGB counties to LED requirements according to the schedule adopted in §114.319. These amendments will not place a burden on private, real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution because this action does not require an investment in the permanent installation of new refinery processing equipment. The adoption also will 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 adopted amendments will not cause a taking under Texas Government Code, Chapter 2007.

The commission solicited comments on the Takings Impact Assessment during the public comment period. One comment was received and is addressed in the Response to Comments section.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined the adopted rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural 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 adopted amendments are 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 adopted rulemaking will ensure that the amendments comply 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).

The commission solicited comments on the consistency of the amendment with the CMP during the public comment period but did not receive any comments during the public comment period.

PUBLIC COMMENT

The public hearings for this rulemaking were held on: January 29, 2007, 2:00 p.m. and 6:00 p.m., Houston-Galveston Area Council, 3555 Timmons Lane, Houston; January 31, 2007, 7:00 p.m., J. Erik Jonsson Central Library Auditorium, 1515 Young Street, Dallas; February 1, 2007, 2:00 p.m., Arlington City Hall Council Chambers, 101 W. Abrams Street, Arlington; February 1, 2007, 6:00 p.m., Midlothian Conference Center, 1 Community Circle, Midlothian; February 6, 2007, 2:00 p.m.,

Longview Public Library, 222 W. Cotton Street, Longview; and February 8, 2007, 2:00 p.m., Texas Commission on Environmental Quality, Building E, Room 201S, 12100 Park 35 Circle, Austin.

Energy Business Inc. (EBI), EPA, Harris County Public Health and Environmental Services (Harris County), Houston Sierra Club (HSC), and ORYXE Energy International, Inc. (ORYXE) submitted written or oral comment in support of the rulemaking. EBI, Galveston-Houston Association for Smog Prevention (GHASP), Kirby Inland Marine, LP (Kirby), Port of Houston Authority (Port Authority), and one individual expressed concerns and/or suggested changes to the proposal. The 8-Hour Ozone SIP Coalition (Coalition), Engine Manufacturers Association (EMA), Eternal Springs Wellness, Representative Jessica Farrar, Representative Ana E. Hernandez, one individual, and Mothers for Clean Air in Houston submitted written or oral comment not directly related to the LED marine rulemaking.

RESPONSE TO COMMENTS

Support of Rule

EPA, Harris County, and HSC commented that they support the changes proposed to Chapter 114, thereby ensuring more NO_x reductions. Mothers for Clean Air also commented that they do not oppose extending the use of low emission diesel to marine vessels.

The commission appreciates the support for changes in this rule.

ORYXE commented that they support the proposal to bring marine fuels under the requirements of the low emission diesel program to improve air quality in Texas. ORYXE supports the compliance deadlines and believes the timeline provides more than ample time to phase in the new rule. ORYXE also comments that there should be adequate supply of TxLED fuel, including fuel treated with an additive, available in the market by the proposed deadline.

The commission appreciates the support for changes in this rule and the statement that adequate supplies of LED and/or additives will be available.

In a letter concerning the Dallas-Fort Worth (DFW) SIP, the EPA commented that they support including the TxLED initiative in the SIP.

The commission appreciates the support for the LED program but would like to clarify that the LED marine regulations are only applicable to the marine diesel fuel that may ultimately be used to power a diesel-fueled compression-ignition engine located on a marine vessel in any of the eight counties of the HGB ozone nonattainment area. The LED regulations do not apply to marine diesel used in the DFW nonattainment counties.

EBI commented that they approve of adding harbor craft vessels and the DMA and DMX fuels to the regulations.

The commission appreciates the support for changes in this rule.

Locomotive Reductions

EPA commented that locomotive switcher engine NO_x emission reductions from TxLED were not included in the modeling for the DFW SIP. EPA Region 6 requested that the estimated emission reductions be provided.

The comment does not relate to the proposed LED marine rulemaking, and no changes to the rule have been made in response to it. The comment is related to the DFW Attainment Demonstration SIP (Project 2006-013-SIP-NR). A response to EPA's comment can be found in the DFW Attainment Demonstration SIP response to comments section.

Takings Impact Assessment

EBI commented that they do not agree with the Takings Impact Assessment and also find it inapplicable. EBI points out that a taking can be a taking of real, personal, or intangible property and that no real property is involved. However, EBI comments that they agree with the conclusion that establishment of regulations for harbor class marine vessels do not create a regulatory imposition on real property because a harbor class marine vessel is not real property.

The commission disagrees with the commenter that a Takings Impact Assessment is inapplicable. According to Texas Government Code, §2007.043(a), a governmental entity shall prepare a written takings impact assessment of a proposed governmental action. Part of this assessment is a determination by the agency as to whether the governmental action will constitute a taking. A

rulemaking is defined as a “governmental action.” The Takings Impact Assessment contained in this rulemaking fulfills this statutory requirement. The commission appreciates the commenter’s agreement with the conclusion that this rulemaking does not constitute taking of private real property. However, the Texas Government Code’s requirement to conduct this assessment remains regardless of whether real property is affected.

Expanding Affected Counties

The Port Authority commented that they believe restricting the applicability to only the eight-county nonattainment area of HGB limits the NO_x-reducing benefit and real world effectiveness of the proposed revision. The Port Authority also commented that limiting the counties to HGB would create an economic incentive for owner/operators of vessels to purchase fuel from areas outside the HGB area that are not subject to TxLED regulations and recommended expanding the applicability of the proposed revision to the remainder of the 110 counties, which will also keep the implementation of the rule simple for diesel fuel producers and distributors. Kirby commented that they strongly object to revising the TxLED regulations solely within the HGB nonattainment counties. Kirby stated that this action will create market forces that will lead other marine operators that operate in and through the HGB area to fuel vessels outside the HGB area in order to save up to \$0.04 per gallon. Kirby, who will continue to use TxLED-compliant fuel, will be disadvantaged by this regulation on an annualized basis of \$384,000. Kirby commented that the rulemaking as proposed undermines the emissions reduction from TxLED use. Kirby commented that they support the proposed revision only if TCEQ contemporaneously revises the areas affected to include all 110 TxLED counties. GHASP commented that the TxLED rules should be applied to the entire state.

The commission disagrees with the comments for applying the amended LED rules to the marine fuels used in all 110 counties. The commission considers the applicability of the rule to certain marine fuels in the eight-county HGB ozone nonattainment area to be sufficient at this time. This rule revision is part of the SIP strategy that is the first step in addressing the eight-hour ozone standard in the HGB area. The TCEQ is committed to attaining the standard as expeditiously as practicable. As a part of developing the HGB Eight-Hour Ozone Attainment Demonstration SIP revision, the TCEQ will determine the most cost-effective and feasible strategies to obtain the needed emission reductions of NO_x and/or volatile organic compounds (VOC).

Fuel Grade Expansion

GHASP commented that they welcome the expansion of low emissions diesel fuels, but believe the TCEQ could do more to reduce harmful fuel emissions. GHASP commented that they are concerned that owners and operators will switch to marine fuels not included in the proposed revised definition. GHASP recommended applying this standard to any ocean-going vessel and stated that having one fuel standard would facilitate implementation and inspection.

Most ocean-going vessels use fuels of a different grade called residual fuels that do not share many properties of distillate fuels covered under the LED regulations. Since the fuel properties are not similar, the emission reductions from applying the LED requirements to residual fuels cannot be estimated. The commission made no changes as a result of this comment.

One individual commented that with the opening of the Bayport container facility, there are more ships burning low grade diesel fuel adding pollution to our air.

The focus of this rule revision is to reduce emissions from vessels that use certain marine diesel fuels. Some of the vessels impacted by this regulation will be using the Bayport container facility and will be subject to using LED fuel. The commission made no changes as a result of this comment.

Non-LED Comments

The Coalition, EMA, Eternal Springs Wellness, Representative Farrar, Representative Hernandez, one individual, and Mothers for Clean Air in Houston commented on various air quality issues and the lack of controls in the Houston area.

The Coalition commented that they support the process that the TCEQ has used to select the control strategies associated with this SIP revision and the conclusions reached. Individual Coalition members and other industry groups provided technical comments on the specific point source measures. Subject to those technical comments, the Coalition supports the proposal and believes that these control strategies, combined with reductions from federal rules, will effectively move the HGB region towards attainment.

EMA submitted comments regarding the proposed rule changes affecting stationary internal combustion engines. EMA commented that they support the adoption of feasible and cost-effective emission standards for stationary engines when necessary to achieve ambient air quality standards.

Representative Farrar and Representative Hernandez commented that the TCEQ should take another look at the measures that have been suggested and develop a plan to obtain compliance by 2010.

Representative Hernandez and Representative Farrar also commented that they are pleased with the progress that has been made in reduction emissions and the apparent trend of fewer ozone exceedances of both the one-hour and eight-hour standards.

Eternal Springs Wellness, one individual, and Mothers for Clean Air commented that they oppose delaying the plan until 2018 and would like to see cleaner air now. Eternal Springs Wellness commented that they would like to see the implementation of California standards and VOC storage tank/degassing regulations strengthened and implemented by January 1, 2009.

The commission appreciates the commenters' interest in air quality. The comments do not relate to the proposed LED marine rulemaking, and no changes to the rule have been made in response to them. The comments have been considered together with other comments on the Chapter 117 rulemaking, published in this issue of the *Texas Register*, or HGB SIP and a response can be found in the corresponding preamble or SIP document.

SUBCHAPTER A: DEFINITIONS

§114.6

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code. The amendment is also adopted under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, 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; §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; and §382.202, concerning Vehicle Emissions Inspection and Maintenance Program, which authorizes the commission to establish vehicle fuel content standards after January 1, 2004, as long as distribution of LED as described in the SIP is not required prior to February 1, 2005. The amendment is adopted under federal mandates contained in 42 United States Code, §7410, that require states to introduce pollution control measures in order to reach specific air quality standards in particular areas of the state.

The adopted amendment implements Texas Water Code, §5.103 and §5.105, and Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.017, and 382.202.

§114.6. Low Emission Fuel Definitions.

Unless specifically defined in Texas Health and Safety Code, Chapter 382, also known as the Texas Clean Air Act (TCAA), or in the rules of the commission, the terms used in this subchapter have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms that are defined by TCAA, §3.2, and §101.1 of this title (relating to Definitions), the following words and terms, when used in Subchapter H of this chapter (relating to Low Emission Fuels), have the following meanings, unless the context clearly indicates otherwise.

(1) **Additive**--Any substance that is intentionally added to gasoline or diesel fuel, including any added to a motor vehicle fuel system, and that is not intentionally removed prior to sale or use and that is:

(A) registered with the United States Environmental Protection Agency (EPA) in accordance with 40 Code of Federal Regulations Part 79; or

(B) added to gasoline or diesel for the purpose of reducing exhaust emissions from motor vehicles or non-road equipment and is exempted from the EPA registration requirements in accordance with 40 Code of Federal Regulations Part 79.

(2) **Barrel**--A unit of measure equal to 42 United States gallons.

(3) **Bulk plant**--An intermediate motor vehicle fuel distribution facility where delivery of motor vehicle fuel to and from the facility is solely by truck or pipeline.

(4) **Bulk purchaser/consumer**--A person who purchases or otherwise obtains motor vehicle fuel in bulk and then dispenses it into the fuel tanks of motor vehicles owned or operated by the person.

(5) **Common carrier**--A person engaged in the transportation of goods or products of another person for compensation and is available to the public for hire.

(6) **Designated alternative limit (DAL)**--An alternative specification limit for a specific fuel standard, which is assigned by a producer or importer to a final blend of low emission diesel fuel (LED) in accordance with §114.313 of this title (relating to Designated Alternative Limits).

(7) **Diesel fuel**-- Any fuel that is commonly or commercially known, sold, or represented as:

(A) Grade No. 1-D or Grade No. 2-D diesel fuel, in accordance with the active version of American Society for Testing and Materials (ASTM) D975 (Standard Specification for Diesel Fuel Oils), except for lubricity; and

(B) Marine Distillate fuel X (DMX), Marine Distillate fuel A (DMA), or Marine Gas Oil (MGO) diesel fuel in accordance with the active version of the International Organization for Standardization (ISO) 8217 Specifications of Marine Fuels.

(8) **Final blend**--A distinct quantity of low emission diesel fuel (LED) that is introduced into commerce without further alteration, which would tend to affect a regulated specification of LED.

(9) **Further process**--To perform any activity on motor vehicle fuel, including distillation, treating with hydrogen, blending, or addition of an approved additive, for the purpose of bringing the motor vehicle fuel into compliance with the requirements of Subchapter H of this chapter.

(10) **Gasoline**--Any fuel that is commonly or commercially known, sold, or represented as gasoline, in accordance with American Society for Testing and Materials (ASTM) D4814-99 (Standard Specification for Automotive Spark-Ignition Engine Fuel), dated 1999.

(11) **Import**--The process by which motor vehicle fuel is transported into the State of Texas by any means or method whatsoever, including transport via pipeline, railway, truck, motor vehicle, barge, boat, or railway tank car.

(12) **Import facility**--The stationary motor vehicle fuel transfer point wherein the importer takes delivery of imported motor vehicle fuel and from which imported motor vehicle fuel is transferred into the cargo tank truck, pipeline, or other delivery vessel from which the fuel will be delivered to a bulk plant or retail fuel dispensing facility.

(13) **Importer**--Any person, except a person acting as a common carrier, who imports motor vehicle fuel.

(14) **Low emission diesel fuel (LED)**--Any diesel fuel:

(A) sold, intended for sale, or made available for sale that may ultimately be used to power a diesel fueled compression-ignition engine in the counties listed in §114.319 of this title (relating to Affected Counties and Compliance Dates);

(B) that the producer knows, or reasonably should know, may ultimately be used to power a diesel fueled compression-ignition engine in counties listed in §114.319 of this title;
and

(C) complies with the standards specified in §114.312 of this title (relating to Low Emission Diesel Standards).

(15) **Motor vehicle**--Any self-propelled device powered by a gasoline fueled spark-ignition engine or a diesel fueled compression-ignition engine in or by which a person or property is or may be transported, and is required to be registered under Texas Transportation Code (TTC), §502.002, excluding vehicles registered under TTC, §502.006(c).

(16) **Motor vehicle fuel**--Any gasoline or diesel fuel used to power gasoline fueled spark-ignition or diesel fueled compression-ignition engines.

(17) **Non-road equipment**--Any device powered by a gasoline fueled spark-ignition engine or a diesel fueled compression-ignition engine that is not required to be registered under Texas Transportation Code, §502.002.

(18) **Produce**--Perform the process to convert liquid compounds that are not motor vehicle fuel into motor vehicle fuel, except where a person supplies motor vehicle fuel to a producer who agrees in writing to further process the motor vehicle fuel at the production facility and to be treated as a producer of the motor vehicle fuel, only the final producer shall be deemed for all purposes under Subchapter H of this chapter to be the producer of the motor vehicle fuel.

(19) **Producer**--Any person who owns, leases, operates, controls, or supervises a production facility and/or produces motor vehicle fuel.

(20) **Production facility**--A facility at which motor vehicle fuel is produced or that manufactures liquid fuels by distilling petroleum.

(21) **Retail fuel dispensing outlet**--Any establishment at which gasoline and/or diesel fuel is sold or offered for sale for use in motor vehicles, and the fuel is directly dispensed into the fuel tanks of the motor vehicles using the fuel.

(22) **Supply**--To provide or transfer fuel to a physically separate facility, vehicle, or transportation system.

SUBCHAPTER H: LOW EMISSION FUELS

DIVISION 2: LOW EMISSION DIESEL

§114.319

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code. The amendment is also adopted under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, 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; §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; and §382.202, concerning Vehicle Emissions Inspection and Maintenance Program, which authorizes the commission to establish vehicle fuel content standards after January 1, 2004, as long as distribution of LED as described in the SIP is not required prior to February 1, 2005. The amendment is adopted under federal mandates contained in 42 United States Code, §7410, that require states to introduce pollution control measures in order to reach specific air quality standards in particular areas of the state.

The adopted amendment implements Texas Water Code, §5.103 and §5.105, and Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.017, and 382.202.

§114.319. Affected Counties and Compliance Dates.

(a) Affected persons in the counties listed in subsection (b) of this section shall be in compliance in accordance with the schedule listed in subsection (c) of this section with §§114.312 - 114.317 of this title (relating to Low Emission Diesel Standards; Designated Alternate Limits; Registration of Diesel Producers and Importers; Approved Test Methods; Monitoring, Recordkeeping, and Reporting Requirements; and Exemptions to Low Emission Diesel Requirements), as applicable, for diesel fuel defined under §114.6(7)(A) of this title (relating to Low Emission Fuel Definitions) that may ultimately be used to power a diesel-fueled compression-ignition engine in a motor vehicle or in non-road equipment.

(b) The following counties are subject to subsection (a) of this section:

(1) Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant;

(2) Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and

Waller;

(3) Hardin, Jefferson, and Orange; and

(4) Anderson, Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bell, Bexar, Bosque, Bowie, Brazos, Burleson, Caldwell, Calhoun, Camp, Cass, Cherokee, Colorado, Comal, Cooke, Coryell, De Witt, Delta, Falls, Fannin, Fayette, Franklin, Freestone, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Harrison, Hays, Henderson, Hill, Hood, Hopkins, Houston, Hunt, Jackson, Jasper, Karnes, Lamar, Lavaca, Lee, Leon, Limestone, Live Oak, Madison, Marion, Matagorda, McLennan, Milam, Morris, Nacogdoches, Navarro, Newton, Nueces, Panola, Polk, Rains, Red River, Refugio, Robertson, Rusk, Sabine, San Jacinto, San Patricio, San Augustine, Shelby, Smith, Somervell, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Washington, Wharton, Williamson, Wilson, Wise, and Wood.

(c) Affected persons subject to subsection (a) of this section shall be in compliance with this division according to the following schedule:

(1) beginning October 1, 2005, for producers and importers;

(2) beginning November 15, 2005, for bulk plant distribution facilities; and

(3) beginning January 1, 2006, for retail fuel dispensing outlets, wholesale bulk purchaser/consumer facilities, and all other affected persons.

(d) Affected persons in the counties listed in subsection (b) of this section shall be in compliance in accordance with the schedule listed in paragraph (1), (2), or (3) of this subsection with §§114.312 – 114.317 of this title, as applicable, for any diesel as defined under §114.6(7)(B) of this title, that may ultimately be used to power a diesel-fueled compression-ignition engine located on a marine vessel in any of the counties listed in subsection (b)(2) of this section:

(1) beginning October 1, 2007, for producers and importers;

(2) beginning November 15, 2007, for bulk plant distribution facilities; and

(3) beginning January 1, 2008, for retail fuel dispensing outlets, wholesale bulk purchaser/consumer facilities, and all other affected persons.