

The Texas Commission on Environmental Quality (commission or TCEQ) proposes an amendment to §114.318.

The amendment 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 PROPOSED RULE

In April 2000, the commission adopted rules establishing requirements for low emission diesel (LED), and requiring that only LED be sold for on-road and off-road use in the Dallas/Fort Worth (DFW) nonattainment counties as part of that area's ozone attainment demonstration SIP. These new diesel fuel standards were to go into effect May 1, 2002. In December 2000, the commission adopted amendments to the LED rules expanding their coverage to the entire state and made the diesel fuel content limits for sulfur more stringent than federal diesel fuel regulations for on-road vehicles. The commission submitted, as part of that SIP revision, a waiver in accordance with 42 United States Code (USC), §7545(C)(4)(c) for the on-road portion of the rules. The EPA granted the waiver on November 14, 2001 (66 FR 57197), as part of EPA's approval of the SIP revision. Subsequent to this adoption, the 77th Legislature, 2001, passed House Bill (HB) 2912, Article 15, which amended the Texas Clean Air Act (TCAA), §382.039(g) - (i) to restrict the commission from requiring distribution of LED as described in the revised SIP prior to January 1, 2005, and to allow the commission to consider, as an alternative method of compliance with LED standards, fuels to achieve equivalent emission reductions. In September 2001, the commission adopted amendments to the LED rules implementing the changes required by HB 2912,

Article 15, and included new rules allowing the use of alternative emission reduction plans (AERPs) to demonstrate compliance with the LED control requirements. At the direction of the EPA and in order to reduce nitrogen oxide (NO_x) emissions necessary for the Houston/Galveston/Brazoria (HGB) area to demonstrate attainment with the one hour ozone national ambient air quality standards (NAAQS), these amendments also limited the coverage area of the LED rules from statewide to those counties previously included in the regional air pollution control strategy for the HGB nonattainment area. On March 9, 2005, the commission adopted revisions to the LED rules, extending the initial compliance date for LED from April 1, 2005, to October 1, 2005, and also strengthening registration requirements and improving the rules' enforceability, and submitted them as a SIP revision to the EPA on March 23, 2005. This action was in response to an August 2004 petition by the Texas Petroleum Marketers and Convenience Store Association for rulemaking to extend the compliance date for LED to October 1, 2006, and to June 1, 2007, for the ultra low sulfur requirement. Subsequently, the EPA raised concerns with certain provisions of the revised rules that were problematic in regard to EPA's approval of the rule and SIP revision. Under the LED rules adopted in March 2005, the AERPs were required to be approved by both the executive director and the EPA. The EPA had determined that the commission must submit the AERPs in the form of a SIP revision in order to obtain EPA approval, requiring public review of each AERP. However, many of the diesel fuel producers considered their AERPs to be confidential business information. Furthermore, the commission would also be required to submit a new SIP revision any time a producer amended its AERP. On April 26, 2006, the commission adopted revisions to the LED rules to address the EPA's issues with the rules adopted in March 2005, including the issues raised by EPA regarding its consideration of AERPs as allowed under §114.318. The April 2006 revisions amended

§114.318 to establish a method by which all AERPs could be approved by the executive director and the EPA without a SIP revision and specified that all previously approved AERPs would expire December 31, 2006. Producers wishing to use an AERP for compliance with the LED rules were required to submit an AERP under the new protocol by no later than November 15, 2006, to be approved before December 31, 2006. In February 2006, the executive director also approved an AERP for biodiesel producers allowing them to blend biodiesel with LED compliant diesel fuel in the 110 central and eastern Texas counties affected by the LED regulation until December 31, 2006. The AERP for biodiesel producers was issued to provide biodiesel producers sufficient time to complete the testing of their biodiesel blended formations that is necessary to be approved by the executive director in accordance with §114.315 as alternative diesel formulations for LED. Under the current LED regulations, only those biodiesel blended formulations that were approved by the executive director as an alternative diesel formulation for LED in accordance with the testing provisions specified under §114.315 could be used for compliance with the LED regulations after the December 31, 2006, expiration date. As of December 8, 2006, the executive director has not yet received testing documentation sufficient to approve a biodiesel blended alternative diesel formulation for compliance with the LED regulations.

The commission is proposing in this rulemaking a revision to Chapter 114: Control of Air Pollution from Motor Vehicles, Subchapter H: Low Emission Fuels, Division 2: Low Emission Diesel, §114.318.

Specifically, the commission is revising §114.318(c) to extend the December 31, 2006, expiration date for all AERPs approved by the executive director prior to December 16, 2005. This proposed revision will extend the expiration date by one year to December 31, 2007, in order to provide biodiesel producers

additional time to complete testing necessary to ensure compliance with the LED regulations under Chapter 114, Subchapter H, Division 2. The commission is not soliciting comments on other subsections of §114.318, unless otherwise specified in the SECTION DISCUSSION section of this preamble.

SECTION DISCUSSION

The proposed change to §114.318(c) amends the expiration date of all AERPs approved by the executive director prior to December 16, 2005, by extending the expiration date by one year from December 31, 2006, to December 31, 2007, and applies this new expiration date to all AERPs approved by the executive director prior to May 17, 2006. The May 17, 2006, date is the effective date of the LED regulations adopted by the commission on April 26, 2006. This proposed change will provide biodiesel producers additional time to complete the necessary testing to ensure compliance with the LED regulations. In addition, the proposed change will also provide diesel producers additional time to finalize AERPs as well. The proposed change to §114.318(c) will also remove the exception that allowed a producer operating under an AERP that was attempting to obtain verification under the EPA's Environment Technology Verification Program and EPA's Office of Transportation and Air Quality's Voluntary Diesel Retrofit Program to continue to operate under their AERP for a limited time beyond December 31, 2006. The proposed one year extension should provide sufficient time for producers that had met the exception conditions specified under §114.318(c)(1) - (4) to complete the EPA verification process.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rule is in effect, no fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed rule. The proposed rulemaking would amend the LED rules by extending, to December 31, 2007, the expiration date of AERPs approved by the executive director prior to May 17, 2006.

The proposed rulemaking would amend §114.318 by extending the expiration date for AERPs approved by the executive director prior to December 16, 2005. This proposed rule will extend the current expiration date of December 31, 2006 by one year to December 31, 2007 in order to provide biodiesel producers an additional year to complete testing necessary to ensure compliance with the LED regulations under Chapter 114, Subchapter H, Division 2. Extending the expiration date will not have fiscal implications on any producer or supplier of biodiesel or diesel fuel who may choose to change fuel formulations to meet LED standards for NO_x emissions.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will be support for further development of methods by which biodiesel fuel producers can continue to provide alternate fuels to a tight fuel market and ensure that they meet required emission standards. Public health and environmental safety will be safeguarded by the development of AERPs that result in equivalent reductions in NO_x emissions. This proposed action will also provide citizens with economic flexibility to

utilize non petroleum based fuels when it is cost effective.

Extending the expiration date of AERPs is not anticipated to have any fiscal implications for producers or suppliers of biodiesel, but the proposed extension should give these producers and suppliers more time to comply with LED regulations.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rulemaking. The proposed rule, which extends a deadline, is not anticipated to have a fiscal impact on those producers, but it will give these entities more time to comply with LED regulations.

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 rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed 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 proposed amendment to §114.318 is to provide biodiesel producers additional time to complete the necessary testing to ensure compliance with the LED regulations. In addition, the proposed change will provide diesel producers additional time to finalize alternative emission reduction plans as well. The amendment does not specifically protect human health or the environment. Therefore, the proposed rulemaking does not constitute a major environmental rule, and thus is not subject to a formal regulatory analysis.

In addition, the proposed amendment to Chapter 114 is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because the proposed 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 extend the expiration date of approved alternative emission reduction plans, 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, 382.019, and 382.202. Therefore, the proposed 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 invites public comment on the draft regulatory impact analysis determination.

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% 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 proposed rulemaking action under Texas Government Code, §2007.043. The specific purpose of these revisions is to extend the December 31, 2006, expiration date for all AERPs approved by the executive director before May 17, 2006, by one year to December 31, 2007, to allow biodiesel producers additional time to complete the necessary testing to ensure compliance with LED regulations and thus help bring this area into compliance with the air quality standards established under federal law as NAAQS for ozone. The proposed amendment 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. The proposal 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 proposed amendment will not cause a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined the proposed 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 proposed amendment is consistent with the applicable CMP goal expressed in 31 TAC §501.12(1) of protecting and preserving the quality and values of coastal natural resource areas, and the policy in 31 TAC §501.14(q), which requires that the commission protect air quality in coastal areas. The proposed rulemaking will ensure that the amendment complies with 40 Code of Federal Regulations (CFR) Part 50, National Primary and Secondary Air Quality Standards, and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. This rulemaking action is consistent with CMP goals and policies, in compliance with 31 TAC §505.22(e).

ANNOUNCEMENT OF HEARINGS

The commission will hold public hearings on this proposal at the following times and locations: February 15, 2007, 2:00 p.m., Arlington City Hall Council Chambers, 101 W. Abrams Street, Arlington; February 20, 2007, 2:30 p.m., Council Chambers, City Hall Annex, First Floor, 900 Bagby Street, Houston; and February 22, 2007, 10:00 a.m., Texas Commission on Environmental Quality, Building E, Room 201S, 12100 Park 35 Circle, Austin. The hearings will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearings. Individuals may present oral statements when called upon in order of registration. A time limit may be established at each hearing to assure that enough time is allowed for every interested person to speak. There will be no

open discussion during the hearings; however, commission staff members will be available to informally discuss the proposal 30 minutes before the hearings.

Persons planning to attend the hearings, who have special communication or other accommodation needs, should contact Jennifer Stifflemire, Air Quality Division, at (512) 239-0573. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Patricia Durón, MC 205, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087; or faxed to (512) 239-4808. Electronic comments may be submitted at <http://www5.tceq.state.tx.us/rules/ecomments/>. All comments should reference Rule Project Number 2007-007-114-EN. The comment period closes March 2, 2007. Copies of the proposed rule can be obtained from the commission's Web site at http://www.tceq.state.tx.us/nav/rules/propose_adopt.html. For further information, please contact Morris Brown of the Air Quality Division at (512) 239-1438.

SUBCHAPTER H: LOW EMISSION FUELS

DIVISION 2: LOW EMISSION DIESEL

§114.318

STATUTORY AUTHORITY

The amendment is proposed 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 proposed 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; §382.019, concerning Methods Used to Control and Reduce Emissions from Land Vehicles, which authorizes the commission to adopt rules to control and reduce emissions from engines used to propel land vehicles; 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 proposed amendment implements Texas Water Code, §5.103 and §5.105, and Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.017, 382.019, and 382.202.

§114.318. Alternative Emission Reduction Plan.

(a) Diesel fuel that is sold, offered for sale, supplied, or offered for supply by a producer who submits an alternative emission reduction plan in accordance with subsection (b) of this section that is approved by the executive director will be considered in compliance with the requirements of §114.312(a) of this title (relating to Low Emission Diesel Standards).

(b) An alternative emission reduction plan must demonstrate that the emission reductions associated with compliance of this division (relating to Low Emission Diesel) that are attributable to the volume of diesel fuel that is sold, offered for sale, supplied, or offered for supply by the producer to the affected counties listed under §114.319(b) of this title (relating to Affected Counties and Compliance Dates) each year will be achieved through an equivalent substitute fuel strategy in accordance with either one or a combination of the following procedures.

(1) A producer shall demonstrate for each specific group of affected counties listed under each paragraph of §114.319(b) of this title, using the Unified Model as described in the United States Environmental Protection Agency (EPA) staff discussion document, Strategies and Issues in Correlating Diesel Fuel Properties with Emissions, Publication Number EPA420-P-01-001, published July

2001, and using only the diesel fuel that is sold, offered for sale, supplied, or offered for supply by the producer in the specific counties listed in each group to determine the average fuel properties to be used for the demonstration applicable to each group of affected counties, the following:

(A) the average fuel properties of all on-road diesel fuel produced in any given calendar year that is sold, offered for sale, supplied, or offered for supply by the producer in the applicable group of affected counties achieve at least a 5.5% reduction in oxides of nitrogen (NO_x) emissions for the year 2007; and

(B) the average fuel properties of all non-road diesel produced in any given calendar year that is sold, offered for sale, supplied, or offered for supply by the producer in the applicable group of affected counties achieve at least a 6.2% reduction in NO_x emissions.

(2) A producer shall demonstrate for the counties listed in §114.319(b)(4) of this title, the total number of barrels of noncompliant diesel fuel that may be offset by credits from early gasoline sulfur reduction using the following methodology or the methodology specified in paragraph (3) of this subsection.

(A) The credits from early gasoline sulfur reduction as determined in subparagraph (C) of this paragraph and paragraph (3)(A) of this subsection will be based on the actual level of sulfur in a producer's gasoline that was below the sulfur levels identified in the EPA's MOBILE6

model as the default refinery average and cap for conventional gasoline in each applicable year and as reported by the producer to EPA in accordance with 40 Code of Federal Regulations (CFR) §80.105 for 2003, and 40 CFR §80.370 for 2004 and 2005.

(B) The credits from early gasoline sulfur reduction can only be generated from the gasoline supplied by the producer in calendar years 2003, 2004, and 2005, to the counties listed in §114.319(b)(4) of this title and these credits, as determined in accordance with the applicable gasoline-to-diesel offset ratios calculated under subparagraph (D) of this paragraph, can only be used in the counties listed in §114.319(b)(4) of this title to demonstrate compliance through December 31, 2010.

(C) The credits from early gasoline sulfur reduction will be determined based on the level of sulfur reduction in each year using the following methodologies and subject to the applicable gasoline-to-diesel offset ratios determined using the methodology specified under subparagraph (D) of this paragraph.

(i) Methodology 1 - valid only for 2003 gasoline sulfur values between 259 parts per million (ppm) and 30 ppm.

Figure: 30 TAC §114.318(b)(2)(C)(i)

$$M6 = (0.0000007 \cdot X2) - (0.0007 \cdot X) + (0.137)$$

Where:

M6 = The percent reduction in oxides of nitrogen (NO_x) emission reductions as determined using factors calculated by MOBILE6.2.

X = The gasoline sulfur level in 2003 in parts per million (ppm).

(ii) Methodology 2 - valid only for 2004 gasoline sulfur values between 121 ppm and 30 ppm.

Figure: 30 TAC §114.318(b)(2)(C)(ii)

$$M6 = (0.000003 \cdot X2) - (0.0012 \cdot X) + (0.1042)$$

Where:

M6 = The percent reduction in oxides of nitrogen (NO_x) emission reductions as determined using factors calculated by MOBILE6.2.

X = The gasoline sulfur level in 2004 in parts per million (ppm).

(iii) Methodology 3 - valid only for 2005 gasoline sulfur values between 92 ppm and 30 ppm.

Figure: 30 TAC §114.318(b)(2)(C)(iii)

$$M6 = (0.000005 \cdot X^2) - (0.0016 \cdot X) + (0.1046)$$

Where:

M6 = The percent reduction in oxides of nitrogen (NO_x) emission reductions as determined using factors calculated by MOBILE6.2.

X = The gasoline sulfur level in 2005 in parts per million (ppm).

(D) To determine the number of barrels of noncompliant diesel fuel that may be offset by credits from early gasoline sulfur reduction, the actual number of barrels of lower sulfur gasoline supplied by the producer to the counties listed in §114.319(b)(4) of this title annually in 2003, 2004, and 2005, must be divided by the gasoline-to-diesel offset ratio determined in accordance with the following methodology.

Figure: 30 TAC §114.318(b)(2)(D)

$$(450.56 \cdot (5.78\%))/(GNEI \cdot M6) = \text{Gasoline-to-Diesel Offset Ratio}$$

Where:

GNEI = Total oxides of nitrogen (NO_x) emissions inventory in tons per day attributed to gasoline engines for the counties listed in §114.319(b)(4) of this title as follows: 229.51 tons per day for 2003, 215.37 tons per day for 2004, and 201.24 tons per day for 2005.

M6 = The appropriate percent reduction as determined using the applicable methodology specified under subparagraph (C) of this paragraph.

(3) A producer shall demonstrate for the counties listed in §114.319(b)(4) of this title the total number of barrels of noncompliant diesel fuel that may be offset by credits from early gasoline sulfur reduction using the percentage of NO_x emission reductions attributed to on-road diesel for 2007 calculated with the Unified Model as described in paragraph (1) of this subsection, and the average fuel properties of the diesel fuel that is sold, offered for sale, supplied, or offered for supply by the producer in these specific counties, to determine the applicable offset ratio to be applied to the actual number of barrels of lower sulfur gasoline supplied by the producer to the counties listed in §114.319(b)(4) of this title annually in 2003, 2004, and 2005.

(A) To determine the number of barrels of noncompliant diesel fuel that may be offset by credits from early gasoline sulfur reduction, the actual number of barrels of lower sulfur gasoline supplied by the producer to the counties listed in §114.319(b)(4) of this title annually in 2003, 2004, and 2005, must be divided by the gasoline-to-diesel offset ratio determined in accordance with the following methodology.

Figure: 30 TAC §114.318(b)(3)(A)

$$(450.56 \cdot (5.78\% - UM)) / (GNEI \cdot M6) = \text{Gasoline-to-Diesel Offset Ratio}$$

Where:

UM = Percentage of oxides of nitrogen (NO_x) emission reductions attributed to on-road diesel for 2007 as calculated with the Unified Model.

GNEI = Total NO_x emissions inventory in tons per day attributed to gasoline engines for the counties listed in §114.319(b)(4) of this title as follows: 229.51 tons per day for 2003, 215.37 tons per day for 2004, and 201.24 tons per day for 2005.

M6 = The appropriate percent reduction as determined using the applicable methodology specified under paragraph (2)(C) of this subsection.

(B) The credits from early gasoline sulfur reduction can only be generated from the gasoline supplied by the producer in calendar years 2003, 2004, and 2005, to the counties listed in §114.319(b)(4) of this title and these credits, as determined in accordance with the applicable gasoline-to-diesel offset ratios as calculated in accordance with subparagraph (A) of this paragraph, can only be used in the counties listed in §114.319(b)(4) of this title for compliance through December 31, 2010.

(4) A producer shall demonstrate for the counties listed in §114.319(b)(1) or (2) of this title, respectively, the total number of barrels of noncompliant diesel fuel that may be offset by credits from the residual effects of early gasoline sulfur reduction on the NO_x emission reduction efficiencies of catalytic converters installed in gasoline-powered motor vehicles by using the following methodology.

(A) The credits from the residual effect of early gasoline sulfur reduction may only be generated by the volume of reformulated gasoline supplied by the producer in 2004 and 2005 to the counties listed in §114.319(b)(1) or (2) of this title, that had an average sulfur level reported by the producer to EPA in accordance with 40 CFR §80.370 that was below the sulfur level of 92 ppm in 2004, and 77 ppm in 2005.

(B) The number of barrels of noncompliant diesel fuel that may be offset by credits from the residual effects of early gasoline sulfur reduction will be determined by dividing the actual number of barrels of lower sulfur gasoline determined to be eligible to generate credit in

accordance with subparagraph (A) of this paragraph by the following gasoline-to-diesel offset ratio as applicable.

(i) The gasoline-to-diesel offset ratio for eligible lower sulfur gasoline supplied to the counties listed in §114.319(b)(1) of this title will be 32.0 for calendar years 2006 through 2008.

(ii) The gasoline-to-diesel offset ratio for eligible lower sulfur gasoline supplied to the counties listed in §114.319(b)(2) of this title will be 66.0 for calendar years 2006 through 2008.

(C) The credits from the residual effects of early gasoline sulfur reduction as determined in accordance with subparagraph (B)(i) or (ii) of this paragraph can only be used in the counties listed in §114.319(b)(1) or (2) of this title, respectively, for compliance through December 31, 2008.

(c) All alternative emission reduction plans approved by the executive director prior to May 17, 2006 [December 16, 2005], will expire on December 31, 2007. [December 31, 2006, with the following exception. The executive director may allow a producer operating under an alternative emission reduction plan approved by the executive director prior to December 16, 2005, to continue to operate

under that plan for a limited time beyond December 31, 2006, if all the following conditions are demonstrated to the satisfaction of the executive director:]

[(1) the producer's alternative emission reduction plan relied on the use of an alternative diesel formulation that has not been approved by the executive director under §114.315(c) of this title (relating to Approved Test Methods);]

[(2) the producer has submitted an application to the Air Pollution Control Technologies (APCT) Center, a center under the EPA's Environmental Technology Verification (ETV) Program, and the EPA's Office of Transportation and Air Quality's Voluntary Diesel Retrofit Program to pursue verification of this alternative diesel fuel formulation to demonstrate that it will achieve at least a 5.78% reduction in NO_x emissions when compared against a base diesel fuel with fuel properties within the ranges as described for nationwide average fuel in EPA's Verification Protocol for Determination of Emissions Reductions Obtained by Use of Alternative or Reformulated Liquid Fuels, Fuel Additives, Fuel Emulsions, and Lubricants for Highway and Nonroad Use Diesel Engines and Light Duty Gasoline Engines and Vehicles (Revision No. 03, September 2003);]

[(3) the producer has a contract with the APCT Center to perform the verification testing that is signed by both parties and paid in full by September 1, 2006; and]

[(4) the emissions testing as specified under an ETV test plan approved by both the APCT Center and EPA is completed before December 1, 2006.]

(d) An alternative emission reduction plan must be approved by the executive director prior to the use of that plan for compliance with the requirements of this section.

(e) The executive director shall approve or disapprove alternative emission reduction plans that have been submitted by producers in accordance with subsection (b) of this section within 45 days of submittal.

(f) Alternative emission reduction plans submitted to the executive director in accordance with subsection (b) of this section must contain sufficient documentation to validate the average diesel fuel properties used in accordance with subsection (b)(1) or (2) of this section and, as appropriate, the sulfur properties and volumes of the gasoline that is being used to generate credit in accordance with subsection (b)(3) or (4) of this section.