

The Texas Commission on Environmental Quality (commission) adopts new §§114.650 - 114.658.

Sections 114.650 and 114.656 are adopted *with changes* to the proposed text as published in the October 23, 2009, issue of the *Texas Register* (34 TexReg 7295). Sections 114.651 - 114.655, 114.657, and 114.658 are adopted *without changes* to the proposed text and the text will not be republished.

The new sections 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

Senate Bill (SB) 1759, 81st Legislature, 2009, amended the Texas Health and Safety Code by adding Chapter 391, Texas Clean Fleet Program. This program is designed to encourage eligible fleets to replace diesel vehicles with alternative fuel or hybrid vehicles. Eligible entities that replace 25 or more on-road diesel vehicles with alternative fuel or hybrid vehicles may apply for a grant under the program to offset the cost of replacing those vehicles.

SECTION BY SECTION DISCUSSION

§114.650, Definitions

Section 114.650 establishes the definitions specific to the Texas Clean Fleet Program, as required by Texas Health and Safety Code, §391.001. Since proposal, the commission revised the language in §114.650(1) to make it clear that only the fuels listed in this section are considered alternative fuels for purposes of this program.

§114.651, Applicability

Section 114.651 establishes the applicability requirements as required by Texas Health and Safety Code, §391.002. These requirements outline entities that are eligible to apply for a grant under the program.

§114.652, Qualifying Vehicles

This section clarifies the types of vehicles that are and are not eligible for participation in the program, as required by Texas Health and Safety Code, §391.003.

§114.653, Grant Eligibility

Section 114.653 establishes grant eligibility requirements, as required by Texas Health and Safety Code, §391.005. These requirements establish use and ownership criteria of any vehicles being replaced, as well as the level of emissions that must be achieved in order to receive a grant under the program. Subsection (d) provides that the executive director may establish additional criteria for purposes of prioritizing projects for selection, which may include, but are not limited to, nonattainment status of the primary location in which the eligible vehicles are used or cost per ton benefits of the overall emissions being reduced.

§114.654, Usage and Disposition

This section outlines requirements regarding the use of new vehicles purchased through the program, as well as the disposal of vehicles being replaced, as required by Texas Health and Safety Code, §391.005.

§114.655, Grant Restrictions

As required by Texas Health and Safety Code, §391.006, this section outlines the allowable use of grant

funds awarded under the program.

§114.656, Eligible Grant Amounts

As required by Texas Health and Safety Code, §391.007, this section outlines the various eligible grant amounts allowed under the program based on the age and type of each vehicle being replaced. Since proposal, the commission revised the language for the funding categories to refer to the year of manufacture for heavy-duty vehicle engines and the model year for light-duty vehicles. The change was made to clarify the funding categories and make it easier for potential grant applicants to determine which category applies to their vehicle. The commission also added language to make it clear that vehicles manufactured in other countries that did not meet the emissions certification requirements for that vehicle and, therefore were imported illegally, are not eligible for replacement under this program.

§114.657, Reporting Requirements

Section 114.657 identifies the reporting requirements, as required by Texas Health and Safety Code, §391.005.

§114.658, Implementation Schedule

Section 114.658 identifies the expiration date of the program, as stated in Texas Health and Safety Code, §391.008.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that this rule action is not subject to §2001.0225 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 new Chapter 114 rules are adopted in accordance with SB 1759, which added Texas Health and Safety Code, Chapter 391. The adopted rules add a new voluntary incentive program with the goal of reducing diesel emissions. The program offers financial incentives for the voluntary replacement of diesel engines. Because the adopted rules place no involuntary requirements on the regulated community, the adopted 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. Also, none of the adopted new sections place additional financial burdens on the regulated community.

In addition, a regulatory impact analysis is not required because the adopted 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. Texas Government Code, §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. In addition, this rulemaking does not exceed an express requirement of state law and is not adopted 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 invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received regarding the commission's determination of regulatory impact.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this rulemaking action and performed an analysis of whether the adopted rules are subject to Texas Government Code, Chapter 2007. The primary purpose of the rulemaking is to amend Chapter 114 in accordance with SB 1759. The new rules implement a voluntary program and only affect motor vehicles, which are not considered to be private real property. Therefore, promulgation and enforcement of the adopted rules is neither a statutory nor a constitutional taking because it does not affect private real property. Therefore, the rules do not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found the adoption is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), concerning Actions and Rules Subject to the Texas Coastal Management Program (CMP), and will, therefore, require that goals

and policies of the CMP be considered during the rulemaking process. The commission reviewed this action for consistency and determined the rulemaking for Chapter 114 does not impact any CMP goals or policies, because it adds a voluntary incentive grant program and does not govern air pollution emissions.

The commission invited public comment regarding the consistency of the rules with the CMP. No comments were received regarding the consistency of the rules with the CMP.

PUBLIC COMMENT

The public hearing for this rulemaking was held on November 16, 2009, at 2:00 p.m. in Austin at the commission's central office at 12100 Park 35 Circle. The comment period closed on November 23, 2009. The commission received comments from Clean Energy (Clean Energy) and EPA Region 6 (EPA).

Clean Energy submitted oral and written comments in support of the rulemaking and provided recommendations for implementation of the new program. EPA submitted written comments in support of the rulemaking and recommended changes to clarify the provisions.

RESPONSE TO COMMENTS

EPA and Clean Energy both expressed support for the rules and the implementation of the new Texas Clean Fleet Program.

The commission appreciates the support expressed for the rules and the new program.

EPA commented that the new rules will contribute to the enhancement of air quality in the nonattainment

areas where they are implemented. EPA also commented that emissions reductions claimed in the SIP from these new rules must be quantifiable, surplus, permanent, and enforceable.

The commission will ensure that any emissions reductions from this new program used to show progress towards meeting the SIP emissions reductions goals meet the creditability requirements.

The commission did not make any changes to the rules in response to this comment.

Clean Energy commented on the commission's request for public comment under the discussion in the SECTION BY SECTION DISCUSSION of the proposed preamble. The commission solicited comments on a proposal to establish prioritizing criteria that would limit the commission to initially consider only grant projects that include vehicles with a primary location in a county that is located within an eight-hour ozone nonattainment area or near-nonattainment area that has submitted an early action compact plan.

Clean Energy expressed support for giving prioritized consideration to projects in nonattainment and near-nonattainment areas. Clean Energy further commented that there are eligible fleets that operate for a substantial portion of the time traveling between nonattainment and near-nonattainment areas. Clean Energy recommended that these fleets be given the same consideration as a fleet operating only in a nonattainment or near-nonattainment area.

The commission appreciates the support expressed for the program and the input provided regarding how the commission could best prioritize the selection of grant projects. The commission will consider these comments when developing the implementation plans and criteria for the initial grant round.

Clean Energy commented that the estimates of the cost for alternative fuel vehicles in the FISCAL NOTE section of the proposed preamble were high. The preamble provided a cost estimate of between \$20,000 and \$150,000 for alternative fuel vehicles. Clean energy stated that the cost of an alternatively fueled vehicle ranges from \$6,000 for light-duty vehicles such as the Honda Civic, \$24,000 for medium-duty shuttles, and up to \$100,000 for heavy-duty, Class 8, tractor trucks with 14.9L engines.

Clean Energy appears to be referring to the difference in cost between an alternative-fuel vehicle and a similar gasoline-fuel or diesel-fuel vehicle. The cost estimates in the preamble were general estimates of the total costs for the purchase of an alternative-fuel vehicle. The commission did not change the cost estimates.

Clean Energy agreed with the statement in the FISCAL NOTE section of the proposed preamble that the public benefit will be improved air quality statewide since there will be additional opportunities to apply for grant funds to replace diesel vehicles with alternative-fuel options that have fewer emissions.

The commission appreciates the support expressed for the program and agreement with the assessment of potential benefits of the program.

EPA commented that it is an unfortunate coincidence that this program has the same name as a previous *Texas Clean Fleet Program* adopted in Texas, and subsequently repealed, under §182(c)(4) of the Texas Clean Air Act as amended in 1990. EPA expressed hope that the use of the same name for this new program does not confuse the public.

The name of the program was specified by SB 1759. Where appropriate, the commission will include statements in the grant materials to make it clear that this program is different from the earlier Texas Clean Fleet Program.

Clean Energy expressed support for the proposed definitions in §114.650 tracking the statutory definitions.

The commission appreciates the support expressed for the program.

EPA questioned whether there is a typographical error in the definition of alternative fuel in §114.650(1), where it refers to "a mixture of fuels containing at least 85% methanol." The EPA asked whether this should read "ethanol" instead of "methanol."

The definition in the rule is the same as stated in Texas Health and Safety Code, §391.001(1), as added by SB 1759. Ethanol is not included in the list.

EPA asked whether the specified list of alternative fuels in §114.650(1) is all-inclusive or does the program allow for the use of other unspecified alternative fuels.

The specified list of alternative fuels is all-inclusive. The commission has revised the language in §114.650(1) to make it clear that only the fuels listed are considered alternative fuels for purposes of this program.

Clean Energy expressed support for the proposed language in §114.651 and also suggested including clarifying language that local governments, such as regional transit agencies or school districts, may also apply for a grant.

The commission appreciates the support expressed for the program. The definition of an eligible entity is included in §114.650(2) and is based on the statutory language. The commission will provide information in the grant materials to explain that all types of entities, including local governments, may be eligible to apply for a grant. The commission did not make any changes to the rules as a result of this comment.

Clean Energy expressed support for the language in §114.652 regarding qualifying vehicles. Clean Energy also commented regarding the limited amount of funding available for this program. Clean Energy recommended that the commission consider whether other Texas Emission Reduction Program (TERP) grant funding might be used to supplement a grant application that meets the requirements of both the TERP grant program and this program. In discussing the other TERP grant funding, Clean Energy is referring to the Diesel Emissions Reduction Incentive Program established under Texas Health and Safety Code, Chapter 386. Clean Energy also commented that there may also be other sources of funding from other state or local sources that might be used in conjunction with this program, including programs of the Texas General Land Office Natural Gas Vehicle Incentive Program, the Federal American Recovery Reinvestment Act of 2009, and the Congestion Mitigation Air Quality Improvement Program implemented by the Federal Highway Administration.

The commission appreciates the support expressed for the program. Regarding the

recommendation about using other grants or financial incentives in conjunction with a grant from this program, joint funding with other TERP grants may not be feasible due to the unique requirements of each program, including funding allocation requirements, timing of the grants and purchases, location and use requirements, and the calculation and use of the emissions reductions under the different programs. The feasibility of joint funding with other financial incentive programs will depend upon the requirements of those programs. Also, any joint funding would need to be consistent with §114.652(c)(3), which states that a qualifying vehicle does not include a vehicle that has qualified for a similar grant or tax credit in another jurisdiction. The commission will consider Clean Energy's recommendations when implementing the program and will include guidance in the grant implementation materials on the possible use of other financial incentives in conjunction with a grant from this program.

Clean Energy expressed support for the language in §114.653 regarding grant eligibility, including language allowing the executive director to adapt and modify implementation of the program quickly and respond to changing conditions. Clean Energy specifically expressed support for the flexibility granted the executive director to set baseline emission levels and to establish criteria which the vehicle being replaced must meet, including minimum annual mileage or fuel usage requirements, minimum percentage of annual usage requirements, and criteria for determining that the vehicle was in operating condition with at least two years of remaining useful life.

The commission appreciates the support expressed for the program.

Clean Energy expressed support for the language in §114.653(c), authorizing the executive director to also consider, at the executive director's discretion, projects that result in a 25% reduction in pollutants other than nitrogen oxides (NO_x), and the language in §114.653(d)(2), authorizing the executive director to prioritize projects based on the cost per ton benefits of the overall emissions being reduced.

The commission appreciates the support expressed for the program.

EPA also commented regarding authority granted the executive director in §114.653(c) to consider other pollutants in addition to NO_x. The EPA questioned how the state would keep the emissions reductions in other pollutants separate from the NO_x emissions reductions.

The commission appreciates the support expressed for the program. Regarding the question raised by the EPA, the commission maintains a detailed database of all TERP project information and the emissions reductions associated with each project. If, in the future, the commission bases the grant eligibility on reductions in other pollutants in addition to or in place of NO_x, the commission will be able to distinguish between and track the projects and the types of emissions that will be reduced by each project.

EPA also asked about situations where the reduction in the other pollutant resulted in an increase in NO_x.

Regardless of the pollutant addressed under this program, the NO_x emissions standards for vehicles purchased under this program will be more stringent or, at a minimum, the same as the standards for the vehicles being replaced. Therefore, the commission does not anticipate a

circumstance where the replacement of a vehicle under this program would result in an increase in NO_x emissions when compared to the emissions of the vehicle being replaced. The commission did not make any changes to the rule in response to this comment.

Clean Energy expressed support for the language in §114.654 regarding usage and disposition.

The commission appreciates the support expressed for the program.

Clean Energy expressed support for the language in §114.655 regarding grant restrictions and also recommended that the commission clarify that a grant may also be used for labor to install emissions-reducing equipment, which is consistent with the statute.

The commission agrees that SB 1759 authorizes the commission to include the reasonable and necessary expenses incurred for the labor needed to install emissions-reducing equipment.

However, the purchase of emissions-reducing equipment is not an eligible grant activity under this program. Therefore, this language does not apply and would be confusing if included in the rules.

The commission did not make a change to the rules as a result of this comment.

EPA commented that clarification is needed in §114.656(a)(1) listing the eligible grant amounts based on the emissions certification of the vehicle or engine being replaced. EPA suggested that it would be helpful if the year of manufacture is specified for both federal and California emission standards.

The commission agrees that the references to the categories of emissions standards for determining

the eligible percentage of costs should be clarified. The commission has amended the language in §114.656(a) to refer to the year of manufacture of the heavy-duty on-road engines and in §114.656(b) to the model year of the light-duty on-road vehicles. Under the federal and California emissions certification requirements, heavy-duty on-road engines must have met the emissions standards applicable to the manufacture year of the engine and light-duty vehicles must have met the emissions standards applicable to the model year of the vehicle. The change in the rule language will help clarify the appropriate funding category of the vehicle being replaced.

EPA also commented that §114.656(a)(1)(B) and §114.656(b)(1)(A) and (B) could be interpreted to allow vehicles illegally imported into the United States to be eligible for replacement under the program. EPA explained that vehicles imported after the implementation of emission standards were required to meet the certification requirements in order to legally be imported into the United States. EPA expressed concern that the language authorizing funding for vehicles and engines not certified to a federal or California emissions standard could result in funding for imported vehicles that were required to, but did not meet, the emissions standards applicable to that vehicle. EPA recommended specifying the year of manufacture of heavy-duty on-road engines and the model year of light-duty on-road vehicles for federal and California emission standards and clarifying the requirements.

The commission agrees that the language should be clarified. The commission has amended the language in §114.656(a) to refer to the year of manufacture of the heavy-duty on-road engines and in §114.656(b) to the model year of the light-duty on-road vehicles. Heavy-duty on-road engines must have met the emissions standards applicable to the manufacture year of the engine and light-duty vehicles must have met the emissions standards applicable to the model year of the vehicle.

The commission has removed the language referring to vehicles and engines not certified to meet a specific emissions standard. The commission has also added §114.656(d) to make it clear that non-compliant vehicles and engines imported into the country illegally would not be eligible for replacement under the program.

EPA also asked what is meant by "voluntary emission certification standards" under §114.656(b)(1)(B).

The references to voluntary emission certification standards pertain to the voluntary National Low Emission Vehicle (NLEV) standards. The NLEV came into effect through an agreement by northeastern states and the auto manufacturers to provide more stringent emission standards for the transitional period before the Tier 2 standards were introduced. The commission has amended the language in §114.656(b) to refer to the model year of the light-duty on-road vehicles and removed the references to voluntary emission certification standards.

Clean Energy expressed support for the language in §114.656 regarding eligible grant amounts. Clean Energy also expressed support for §114.656(c) authorizing the executive director to revise the standards for determining grant amounts in order to reflect changes to federal emissions standards and decisions on pollutants of concern.

The commission appreciates the support expressed for this program.

Clean Energy expressed support for the language in §114.657 regarding reporting requirements.

The commission appreciates the support expressed for this program.

Clean Energy expressed support for the language in §114.658 regarding the expiration date of these rules.

The commission appreciates the support expressed for this program.

Clean Energy expressed support for development of new grant program procedures and new grant application forms that are different from the other TERP grant forms. Clean Energy recommended that the procedures and application requirements be tailored to large fleets and that many of the details currently required in an application for a TERP grant may not be necessary for an application under this program. Clean Energy expressed its opinion that the needs of the applicants under the TERP grants and the applicants under this program are very different and that the application process should also be different.

This comment pertains to implementation procedures and requirements and not a rule provision.

The commission is cognizant of the need to not make the application process any more complicated than is necessary to effectively implement the program. The commission will consider these comments when developing the application materials, requirements, and procedures.

Clean Energy commented that for a TERP grant, the applicant is required to expend the time and resources needed to compile and submit a substantial amount of information on each vehicle identified in the application. Clean Energy expressed its opinion that this amount of information may be appropriate for an applicant with one or two vehicles. Clean Energy explained that because an applicant under this

program will be providing information on 25 or more vehicles, the applicant may have a substantial investment in compiling that information without any indication whether the investment in compiling the application may be worthwhile. Clean Energy recommended that the commission consider allowing an applicant under this program to initially just provide basic information and that the commission pre-review the application to let the applicant know if it appears that the applicant will qualify for a grant. Clean Energy expressed its opinion that a pre-review of an application would be useful in attracting good projects from fleet operators who may not otherwise be willing to submit a grant application, given the time and resources it takes to submit an application.

This comment pertains to implementation procedures and requirements and not a rule provision. The commission is cognizant of the need to not make the application process any more complicated than is necessary to effectively implement the program. The commission will consider these comments when developing the application materials, requirements, and procedures. However, because vehicle eligibility and the eligible grant amount is dependent on the specific characteristics of the vehicle being replaced, a pre-review of the applicant's information will be of limited value unless detailed information about each vehicle to be included in the application is provided.

Clean Energy also expressed support for the provisions of SB 1759 directing the commission to study the amount of emissions reductions achieved from alternative-fueling infrastructure and to request that the EPA consider whether emissions reduction credit can be attributed to the installation and use of the infrastructure. Clean Energy stated that it is prepared to assist in any way it can.

This comment is beyond the scope of this rulemaking. The commission appreciates the support expressed for the infrastructure study and the offer of assistance.

SUBCHAPTER K: MOBILE SOURCE INCENTIVE PROGRAMS

DIVISION 5: TEXAS CLEAN FLEET PROGRAM

§§114.650 - 114.658

STATUTORY AUTHORITY

These new rules are adopted under Texas Water Code, §5.102, which provides the commission with the general powers to carry out its duties under the Texas Water Code; 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 Texas Water Code, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. These new rules are also adopted 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; Texas Health and Safety Code, 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; and Texas Health and Safety Code, Texas Clean Air Act, §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air. Finally, the adopted new rules are specifically authorized by SB 1759, 81st Legislature, 2009.

The adopted new rules implement Texas Health and Safety Code, Chapter 391, as added by SB 1759 of the 81st Legislature, 2009.

§114.650. 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 that 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 will have the following meanings, unless the context clearly indicates otherwise.

(1) Alternative fuel--A fuel, other than gasoline or diesel fuel. When used in this division, this definition is limited to the following: electricity, compressed natural gas, liquefied natural gas, hydrogen, propane, or a mixture of fuels containing at least 85% methanol by volume.

(2) Eligible entity--Any person or entity with a fleet of 100 or more vehicles that:

(A) are registered in Texas; and

(B) include at least 25 vehicles that are eligible for replacement.

(3) Golf cart--A motor vehicle designed by the manufacturer primarily for transporting persons on a golf course.

(4) Heavy-duty vehicle--A motor vehicle with a gross vehicle weight rating greater than 8,500 pounds and containing an engine certified to the United States Environmental Protection Agency's heavy-duty engine standards.

(5) Hybrid vehicle--A motor vehicle with at least two different energy converters and two different energy storage systems on board the vehicle for the purpose of propelling the vehicle.

(6) Light-duty motor vehicle--A motor vehicle with a gross vehicle weight rating of less than 10,000 pounds and certified to the United States Environmental Protection Agency's light-duty vehicle emission standards.

(7) Motor vehicle--A self-propelled device designed for transporting persons or property on a public highway that is required to be registered under Texas Transportation Code, Chapter 502.

(8) Neighborhood electric vehicle--A motor vehicle that:

(A) is originally manufactured to meet, and does meet, the equipment requirements and safety standards established for "low-speed vehicles" in Federal Motor Vehicle Safety Standard No. 500 (49 Code of Federal Regulations §571.500);

(B) is a slow-moving vehicle, as defined by Texas Transportation Code, §547.001 that is able to attain a speed of more than 20 miles per hour but not more than 25 miles per hour in one mile on a paved, level surface;

(C) is a four-wheeled motor vehicle;

(D) is powered by electricity or alternative power sources;

(E) has a gross vehicle weight rating of less than 3,000 pounds; and

(F) is not a golf cart.

(9) Program--The Texas Clean Fleet Program established under this division.

§114.651. Applicability.

(a) Any eligible entity that will replace 25 or more on-road diesel vehicles within a twelve-month period with qualifying vehicles may apply for a grant under the Texas Clean Fleet Program to offset the cost of replacing those vehicles with alternative fuel or hybrid vehicles.

(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.

§114.652. Qualifying Vehicles.

(a) A qualifying vehicle is one that:

(1) is certified to current federal emissions standards;

(2) replaces a diesel-powered on-road vehicle of the same weight classification and use;

and

(3) is a hybrid vehicle or fueled by an alternative fuel.

(b) As a condition of receiving a grant the qualifying vehicle must be continuously owned, registered, and operated in Texas by the grant recipient for at least five years from the date of reimbursement of the grant-funded expenses.

(c) A vehicle is not a qualifying vehicle if it:

(1) is a neighborhood electric vehicle;

(2) has been used as a qualifying vehicle to qualify for a grant under this division for a previous reporting period or by another entity; or

(3) has qualified for a similar grant or tax credit in another jurisdiction.

§114.653. Grant Eligibility.

(a) To be eligible for a grant under the program a project must result in a reduction in emissions of nitrogen oxides of at least 25%, based on:

- (1) the baseline emission level set by the executive director; and
- (2) the certified emission rate of the new vehicle or engine.

(b) The vehicle being replaced must:

- (1) be an on-road vehicle that has been owned, registered, and operated by the applicant in Texas for at least the two years immediately preceding the submission of a grant application;
- (2) satisfy any minimum average annual mileage or fuel usage requirements established by the executive director;
- (3) satisfy any minimum percentage of annual usage requirements established by the executive director; and
- (4) be in operating condition with at least two years of remaining useful life, as determined in accordance with criteria established by the executive director.

(c) At the discretion of the executive director, projects that result in a 25% reduction in other pollutants may be considered eligible for funding under this program.

(d) The executive director may establish additional criteria for purposes of prioritizing projects for selection. Such criteria may include, but are not limited to:

(1) nonattainment status of the primary location in which the eligible vehicles are used; or

(2) cost per ton benefits of the overall emissions being reduced.

§114.654. Usage and Disposition.

(a) Not less than 75% of the annual use of the qualifying vehicle, either mileage or fuel use as determined by the executive director, must occur in Texas.

(b) A vehicle or engine replaced under this program must be rendered permanently inoperable in accordance with criteria established by the executive director.

§114.655. Grant Restrictions.

A recipient of a grant under this division shall use the grant to pay the costs of the project for which the grant is made, which may include the initial cost of the alternative fuel or hybrid vehicle. The recipient shall not use the grant to pay the recipient's administrative expenses.

§114.656. Eligible Grant Amounts.

(a) The eligible grant amount for each heavy-duty on-road vehicle being replaced is determined as follows:

(1) 80% of the cost for replacement of a vehicle with an engine manufactured prior to 1988 and certified to meet the federal emissions standards, if any, applicable to the year of manufacture;

(2) 70% of the cost for replacement of a vehicle with an engine manufactured after 1987 and before 1998 and certified to meet the federal emission standards applicable to the year of manufacture;

(3) 60% of the cost for replacement of a vehicle with an engine manufactured after 1997 and before 2004 and certified to meet the federal emission standards applicable to year of manufacture; and

(4) 50% of the cost for replacement of a vehicle with an engine manufactured after 2003

and certified to meet the federal emission standards applicable to the year of manufacture.

(b) The eligible grant amount for each light-duty on-road vehicle being replaced is determined as follows:

(1) 80% of the cost for replacement of a light-duty diesel vehicle of a model year prior to 1994 and certified to meet the federal emissions standards, if any, applicable to the model year of the vehicle;

(2) 70% of the cost for replacement of a light-duty diesel vehicle of a model year after 1993 and before 2004 and certified to meet the federal emission standards applicable to the model year of the vehicle; and

(3) 60% of the cost for replacement of a light-duty diesel vehicle of a model year after 2003 and certified to meet the federal emission standards applicable to the model year of the vehicle .

(c) The executive director may revise the standards for determining grant amounts as needed to reflect changes to federal emission standards and decisions on pollutants of concern.

(d) To be eligible for replacement, vehicles and engines imported into the United States from another country must have met all applicable emissions certification requirements for importation.

§114.657. Reporting Requirements.

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

§114.658. Implementation Schedule.

This division expires on August 31, 2017.