

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to repeal §§114.640, 114.642, 114.644, 114.646, and 114.648; and simultaneously propose new §§114.640, 114.642, 114.644, 114.646, and 114.648.

If adopted, the sections will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP).

### **Background and Summary of the Factual Basis for the Proposed Rules**

House Bill (HB) 1796, 81st Legislature, 2009, by Representative Warren Chisum, amended the Clean School Bus Program (referred to as the Texas Clean School Bus Program, or TCSB), Texas Health and Safety Code (THSC), Chapter 390, to extend the expiration date for the TCSB Program from August 31, 2013 to August 31, 2019, or later if the program is extended or reauthorized by the Texas Legislature. The proposed rulemaking would allow for the continuance of the existing TCSB Program through August 31, 2019, and provide for administrative cleanup.

The TCSB was originally established by the Texas Legislature in 2005, to fund efforts by school districts and other local or regional planning entities or nonprofit organizations to improve the health of children by reducing emissions of diesel exhaust from school buses. Reduction of emissions from diesel-powered school buses will also benefit the public in ozone nonattainment areas and throughout the state by reducing emissions of

nitrogen oxides, which are important contributors to ozone formation. Under the proposed sections, school districts, charter schools, and regional planning organizations, councils of government or similar regional planning agencies created under the Local Government Code, Chapter 391, or private nonprofit organizations would be eligible to apply for grants for the use of emission reducing catalyts, particulate filters, qualifying fuels, and other emission reducing add-on equipment or technology that the commission finds will reduce emissions.

### **Section by Section Discussion**

The commission proposes to repeal existing §§114.640, 114.642, 114.644, 114.646, and 114.648 as these requirements expired on August 31, 2013, and re-propose new §§114.640, 114.642, 114.644, 114.646, and 114.648 to implement the TCSB.

#### *§114.640, Definitions*

Proposed new §114.640, Definitions, provides definitions for the TCSB Program.

Definitions specific to the TCSB include definitions of diesel exhaust, incremental cost, qualifying fuel, repower, and retrofit.

#### *§114.642, Applicability*

Proposed new §114.642, Applicability, establishes program eligibility for school districts and charter schools, as well as for regional planning commissions, councils of

government or similar regional planning agencies created under the Local Government Code, Chapter 391, or private nonprofit organizations.

*§114.644, Clean School Bus Program Requirements*

Proposed new §114.644, Clean School Bus Program Requirements, establishes basic program requirements. The proposed section addresses the types of emission reduction projects that would be eligible to receive funding, as well as grant funding particulars such as prioritization and other specifics associated with grant eligibility.

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

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

*§114.648, Expiration*

Proposed new §114.648, Expiration, establishes that the TCSB Program will expire on August 31, 2019, unless the program is extended or reauthorized by the Texas Legislature.

**Fiscal Note: Costs to State and Local Government**

Jeffrey Horvath, Analyst in the Chief Financial Officer Division, has determined that for

the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules.

The proposed rules would extend the expiration date for the TCSB Program to August 31, 2019. HB 1796, 81st Legislature, 2009, extended the program's expiration date until August 31, 2019. In order to implement this requirement, the commission proposes to repeal and re-propose Chapter 114, Subchapter K, Division 4, to extend the expiration date to August 31, 2019, or later if the program is extended or reauthorized by the Texas Legislature. A few other minor administrative wording changes are also proposed. No fiscal implications are anticipated for the agency or any other unit of local government to implement the proposed rules. Even though some school districts or charter schools will benefit from the use of Texas Emission Reduction Plan (TERP) funding for the TCSB program, participation in the TCSB program is voluntary. School districts may apply for TERP grant funds which are then awarded to school districts to offset the costs of retrofitting school buses in order to emit lower levels of air contaminants. The 83rd Legislature, 2013, has authorized the agency to allocate up to \$3.1 million in TERP grant funding for the TCSB program each year of the fiscal 2014 - 15 biennium.

### **Public Benefits and Costs**

Mr. Horvath has also determined that for each year of the first five years the proposed

new rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be the potential for the emission of lower levels of air contaminants from school buses and compliance with state law.

In general, the proposed rules are not expected to have fiscal implications for businesses or individuals. Some businesses that retrofit school buses to produce lower emissions may benefit in that there could be a continued demand for their services. School districts that benefit from the use of TERP funding for the TCSB program may contract with these businesses to retrofit their buses. The 83rd Legislature, 2013, has authorized the agency to allocate up to \$3.1 million in TERP grant funding for the TCSB program each year of the fiscal 2014 - 15 biennium.

### **Small Business and Micro-Business Assessment**

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect. The proposed rules would extend the expiration date for the TCSB Program to August 31, 2019 or later if the program is extended or reauthorized by the Texas Legislature. TERP grant funds are awarded to school districts to offset the costs of retrofitting school buses in order to emit lower levels of air contaminants. If there are any small or micro-businesses that retrofit school buses to produce lower emissions, they may benefit in that there could be a continued demand for their

services.

### **Small Business Regulatory Flexibility Analysis**

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules do not adversely affect small or micro-businesses and are required to implement state law and therefore are consistent with the health, safety, or environmental and economic welfare of the state.

### **Local Employment Impact Statement**

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

### **Draft Regulatory Impact Analysis**

The commission reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rulemaking 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, 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. Additionally, the proposed rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Texas Government Code, §2001.0225(a). 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.

The proposal to Chapter 114 would replace expired sections of the TAC with new sections to provide for the continued implementation of the TCSB Program as required by the Texas Legislature. The TCSB Program is intended to reduce diesel exhaust emissions from school buses by funding eligible projects, and is a voluntary incentive program. The Texas Legislature authorized the issuance of grants under the TCSB Program to protect the environment and reduce risks to human health from environmental exposure, but the proposed rulemaking is not expected to 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, since the repeal and replacement with new sections are to provide for continued implementation of the TCSB Program, which is a voluntary program designed to assist school districts in reducing school bus emissions.

The proposed rulemaking implements requirements of 42 United States Code (USC), §7410, which requires states to adopt a SIP that provides for the implementation, maintenance, and enforcement of the national ambient air quality standards (NAAQS) in each air quality control region of the state. Since the TCSB Program was designed to provide emission reductions from school buses and funded by the Texas Legislature, the commission previously submitted the TCSB Program rules to the EPA as a revision to the Texas SIP, which EPA approved. While 42 USC, §7410 generally does not require specific programs, methods, or reductions in order to meet the standard, the SIP must include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter (42 USC, Chapter 85). The provisions of the Federal Clean Air Act (FCAA) recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public, to collaborate on the best methods for attaining the NAAQS for the

specific regions in the state. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 USC, §7410. States are not free to ignore the requirements of 42 USC, §7410, and must develop programs to assure that their contributions to nonattainment areas are reduced so that these areas can be brought into attainment on schedule.

The requirement to provide a fiscal analysis of proposed regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th Legislature, 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These rules are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 concluding that "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted proposed rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law.

As discussed earlier in this preamble, the FCAA does not always require specific programs, methods, or reductions in order to meet the NAAQS; thus, states must develop programs for each area contributing to nonattainment to help ensure that those areas will meet the attainment deadlines. Because of the ongoing need to address nonattainment issues and to meet the requirements of 42 USC, §7410, the commission routinely proposes and adopts SIP rules. The legislature is presumed to understand this federal scheme. If each rule proposed for inclusion in the SIP was considered to be a major environmental rule that exceeds federal law, then every SIP rule would require the full regulatory impact analysis contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes and that presumption is based on information provided by state agencies and the LBB, the commission believes that the intent of SB 633 was only to require the full regulatory impact analysis for rules that are extraordinary in nature. While the SIP rules will have a broad impact, the impact is no greater than is necessary or appropriate to meet the requirements of the FCAA. For these reasons, rules adopted for inclusion in the SIP fall under the exception in Texas Government Code, §2001.0225(a) because they are required by federal law.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government

Code but left this provision substantially un-amended. It is presumed that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." *Central Power & Light Co. v. Sharp*, 919 S.W.2d 485, 489 (Tex. App. Austin 1995), *writ denied with per curiam opinion respecting another issue*, 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.*, 798 S.W.2d 353, 357 (Tex. App. Austin 1990, *no writ*). *Cf. Humble Oil & Refining Co. v. Calvert*, 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.*, 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor*, 24 S.W.3d 581 (Tex. App. Austin 2000, *pet. denied*); and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.*, 563 S.W.2d 916 (Tex. 1978).

The commission's interpretation of the regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance." The legislature specifically identified Texas Government Code, §2001.0225, as falling under this standard. The commission has substantially complied with the requirements of Texas Government Code, §2001.0225.

The specific intent of these rules is to remove expired sections from the TAC and propose new sections to provide for the continued implementation of the TCSB Program as required by the Texas Legislature. As discussed elsewhere in this preamble, the repeal to remove expired sections from the TAC and propose new sections amount to a mere administrative clean-up to ensure that there is no confusion on the part of the public regarding the continuation of the TCSB Program, as intended by the Texas Legislature. Additionally, even if the proposed rulemaking was a major environmental rule, the proposed rulemaking does not exceed a standard set by federal law or exceed an express requirement of state law. No contract or delegation agreement covers the topic that is the subject of this proposed rulemaking. Therefore, this proposed rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b) because the proposed rulemaking does not meet the definition of a "major environmental rule," nor does it meet any of the four applicability criteria for a major environmental rule.

The commission invites public comment regarding the draft regulatory impact analysis determination during the public comment period. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

### **Takings Impact Assessment**

The commission evaluated the proposed rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007 is applicable. The specific intent of these rules is to remove expired sections from the TAC and propose new sections to provide for the continued implementation of the TCSB Program as required by the Texas Legislature. As discussed elsewhere in this preamble, the repeal to remove expired sections from the TAC and propose new sections amount to a mere administrative clean-up to ensure that there is no confusion on the part of the public regarding the continuation of the TCSB Program, as intended by the Texas Legislature. The proposed rules would substantially advance this stated purpose by repealing the original sections in Chapter 114, Division 4 and replacing those sections with new sections prescribing the requirements of the TCSB Program.

Texas Government Code, §2007.003(b)(4), provides that Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking because it is an action reasonably taken to fulfill an obligation mandated by state law. THSC, Chapter 390, Clean School Bus Program, requires the commission to establish and administer a clean school bus program designed to reduce the exposure of school children to diesel exhaust in and around diesel-fueled school buses. Consequently, the proposed rulemaking meets the exemption criteria in Texas Government Code, §2007.003(b)(4).

Nevertheless, the commission further evaluated these proposed rules and performed an assessment of whether these proposed rules constitute a "taking" under Texas Government Code, Chapter 2007. Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulations do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally); nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. These proposed rules create a voluntary program for school districts in the state to apply for and receive grants for the offset of incremental cost of projects that reduce diesel exhaust emissions.

In addition, because the subject proposed regulations do not provide more stringent requirements they do not burden, restrict, or limit an owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, these rules will not constitute a taking under the Texas Government Code, Chapter 2007. For these reasons, Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking.

### **Effect on Sites Subject to the Federal Operating Permits Program**

Chapter 114 does not contain applicable requirements under 30 TAC Chapter 122,

Federal Operating Permits; therefore, owners or operators subject to the Federal Operating Permit Program will not be required to revise their operating permits, consistent with the revision process in Chapter 122, to include the revised Chapter 114 requirements for each emission unit at their sites affected by the revisions to Chapter 114.

### **Consistency with the Coastal Management Program**

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), concerning 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 revises voluntary incentive grant programs and does not govern air pollution emissions.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

### **Announcement of Hearing**

The commission will hold a public hearing on this proposal in Austin on January 21, 2014, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802. Requests should be made as far in advance as possible.

### **Submittal of Comments**

Written comments may be submitted to Michael Parrish, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2014-008-114-AI. The comment period closes January 27, 2014. Copies of the proposed rulemaking can be obtained from the commission's Web site at

*[http://www.tceq.texas.gov/nav/rules/propose\\_adopt.html](http://www.tceq.texas.gov/nav/rules/propose_adopt.html)*. For further information,  
please contact Joe Briseño, Pollution Prevention and Education, (512) 239-6781.

**SUBCHAPTER K: MOBILE SOURCE INCENTIVE PROGRAMS**  
**DIVISION 4: TEXAS CLEAN SCHOOL BUS PROGRAM**  
**§§114.640, 114.642, 114.644, 114.646, 114.648**

**Statutory Authority**

The repeals are proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC, and other laws of this state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The rulemaking is also proposed under Texas Health and Safety Code (THSC), §382.002, policy and purpose of the Texas Clean Air Act (TCAA), §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; and THSC, §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. Finally, the rulemaking is proposed under THSC, Chapter 386, which established the Texas Emissions Reduction Program and THSC, Chapter 390, which established the Texas Clean School Bus Program, and as part of the implementation of House Bill 1796, 81st Legislature, 2009.

The proposed repeals implement TCAA, §§382.002, 382.011, and 382.017 and THSC, Chapter 386 and Chapter 390, and House Bill 1796, 81st Legislature, 2009.

**[§114.640. Definitions.]**

[Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used in this subchapter have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms 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 shall have the following meanings, unless the context clearly indicates otherwise.]

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

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

[(3) Qualifying fuel--Includes any liquid or gaseous fuel or additive registered or verified by the United States Environmental Protection Agency, other than

standard gasoline or diesel, that is ultimately dispensed into a school bus that provides reductions of emissions of particulate matter.]

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

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

**[\$114.642. Applicability.]**

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

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

**[\$114.644. Clean School Bus Program Requirements.]**

[(a) Eligible projects include:]

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

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

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

[(4) the use of qualifying fuel; and]

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

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

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

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

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

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

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

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

[(i) A proposed project as listed in subsection (a) of this section is not eligible if it is required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document. This subsection does not apply to an otherwise qualified project, regardless of the fact that the state implementation plan assumes that the change in equipment, vehicles, or operations will occur, if on the date the grant is awarded the change is not required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document or the purchase of an

on-road diesel or equipment required only by local law or regulation or by corporate or controlling board policy of a public or private entity.]

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

**[\$114.646. Monitoring, Recordkeeping, and Reporting Requirements.]**

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

**[\$114.648. Implementation Schedule.]**

[This division expires August 31, 2013.]

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The proposed new sections implement TCAA, §§382.002, 382.011, and 382.017 and THSC, Chapter 386 and Chapter 390, and House Bill 1796, 81st Legislature, 2009.

**§114.640. Definitions.**

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used in this subchapter have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms 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 shall have the following meanings, unless the context clearly indicates otherwise.

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

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

(3) Qualifying fuel--Includes any liquid or gaseous fuel or additive registered or verified by the United States Environmental Protection Agency, other than

standard gasoline or diesel, that is ultimately dispensed into a school bus that provides reductions of emissions of particulate matter.

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

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

**§114.642. Applicability.**

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

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

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

(a) Eligible projects include:

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

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

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

(4) the use of qualifying fuel; and

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

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

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

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

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

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

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

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

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

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

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

Grant recipients must meet the monitoring, recordkeeping, and reporting requirements of their grant. Reporting requirements must occur no less frequently than annually.

**§114.648. Expiration.**

This division expires August 31, 2019, unless the program is extended or reauthorized by the Texas Legislature.