

The commission adopts amendments to Subchapter A, §114.1 and §114.3, concerning Definitions; Subchapter E, §§114.150, 114.151, and 114.153-114.157, and the repeal of §114.152, concerning Low Emission Fleet Vehicle Requirements; Subchapter F, §114.201 and §114.202, concerning Vehicle Retirement and Mobile Emission Reduction Credits; and a revision to the State Implementation Plan (SIP) concerning this adoption. All sections are adopted without changes to the proposed text as published in the April 24, 1998 issue of the *Texas Register* (23 TexReg 3999).

EXPLANATION OF ADOPTED RULES

Revisions to Chapter 114, concerning Control of Air Pollution from Motor Vehicles, and the corresponding SIP revision implement Senate Bill (SB) 681, Acts of the 75th Texas Legislature, 1997, concerning the low emission vehicle (LEV) fleet requirements; the Federal Clean Air Act as amended, Acts of the 101st U.S. Congress, 1990, concerning provisions for attainment and maintenance of health protective, national ambient air quality standards; and for other purposes. Sections 114.1, 114.3, 114.151, 114.153, 114.155-114.157, and 114.201-114.202 have been previously submitted to the United States Environmental Protection Agency (EPA) as part of the SIP; therefore, revisions to these sections are considered to be revisions to the SIP. In addition, §114.150 and §114.154, concerning Requirements for Mass Transit Authorities and Exceptions for Certain Mass Transit Authorities respectively, are considered to be revisions to the SIP because mass transit vehicles are now being used as part of the state's substitute program.

Section 114.1 and §114.3, concerning Definitions, incorporate numerous editorial changes to ensure the definitions are consistent with the Guiding Principles and policies of the commission, and are consistent

in format, style, and tone per commission guidelines. New and amended definitions were also numbered to be consistent with *Texas Register* rules (23 TexReg 1289). In §114.1(8), the commission requested specific public comment on the definition of “Law enforcement vehicle.” The commission considered the option of allowing private law enforcement vehicles to qualify for the exemption from the fleet vehicle requirements, but was unsure if there were any private vehicles which were truly involved in law enforcement. Based on the lack of public comment supporting exemptions for private law enforcement vehicles, the definition for “law enforcement vehicle” was not modified to include private law enforcement vehicles. Additional clarification was added to the definition of “low emission vehicle” in §114.1. The title of §114.3 was changed from “Low Emission Fleet Vehicle Definitions” to “Low Emission Vehicle Fleet Definitions” to better reflect the nature of the program. Several LEV fleet definitions were added to §114.3 to define terms specific to the state’s substitute LEV program and the requirements of SB 681. These added definitions include “affected area,” “affected entity,” “normally operates,” “normally parked at the residence of the individual,” “private entity,” “private fleet,” “projected net costs,” and “purchase date.” The commission requested specific public comment on a new definition for “normally parked at the residence of the individual.” The intent of the proposed wording was to specify how much time a vehicle should be parked at the individual’s residence after duty hours in order to qualify for the exemption from the fleet vehicle requirements. One definition, “mobile emission reduction credit,” was moved to §114.1 because it applied to multiple subchapters of Chapter 114. Finally, several definitions were deleted because they were no longer necessary, or they were defined in other chapters. These deleted definitions include “Beaumont/Port Arthur nonattainment area,” “capable of being centrally fueled,” “centrally fueled,” “clean-fuel

vehicle,” “control,” “Dallas/Fort Worth nonattainment area,” “El Paso nonattainment area,” “Houston/Galveston nonattainment area,” “operate,” “own,” and “private person.”

Revisions to Subchapters E and F incorporate numerous editorial changes to ensure the language is consistent with the Guiding Principles and policies of the commission, and is consistent in format, style, and tone per commission guidelines. In addition, the term “clean fuel vehicle” was changed to “low emission vehicle” or “LEV” throughout the chapter, and the title of Subchapter E was changed from “Low Emission Fleet Vehicles” to “Low Emission Vehicle Fleets” to better reflect the nature of the program. Other revisions to specific sections in Subchapters E and F are discussed below.

Section 114.150, concerning Requirements for Mass Transit Authorities, contains the LEV requirements for mass transit authorities. The basic requirement is for the affected mass transit authorities to have 50% of their total fleet vehicles certified as LEVs. LEVs, in excess of the 50% requirement, may be eligible for Program Compliance Credit (PCC) according to §114.157, or Mobile Emission Reduction Credits (MERCs) according to §114.201. Subsection (a) changed from listing specific nonattainment areas to referring to an affected area as defined in §114.3. Subsection (b) dropped the compliance date of September 1, 1996, because the date had already passed. Subsection (c) added the provision that requirements may be met by using PCCs and MERCs. Subsection (d) changed the term “qualifying vehicles” to include vehicles certified to LEV and EPA standards more stringent than LEV. Subsection (e) combined the old subsections (e) and (f) and extended the date from September 1, 1998, until September 1, 1999, for those vehicles converted, purchased, leased, or otherwise acquired prior to that date to be counted toward compliance with percentage requirements.

Subsection (e) also changed the dual fuel vehicle certification from EPA's Title 40 Code of Federal Regulations (40 CFR), Part 88 to Texas' recognized fuels such as electricity, ethanol, liquefied petroleum gas, methanol, and natural gas; and also added specific emission limits specified by vehicle weight and EPA emissions standards. Subsection (g) (formerly subsection (h)) added specific reporting requirements for mass transit fleets.

Section 114.151, concerning Requirements for Local Governments and Private Entities, contains LEV requirements for local governments and private entities. The LEV requirements for these fleets are 30% of fleet vehicle purchases after September 1, 1998, or at least 10% of the total fleet vehicles as of September 1, 1998; 50% of fleet vehicle purchases after September 1, 2000; 70% of light-duty fleet vehicle purchases after September 1, 2002; and 50% of heavy-duty fleet vehicle purchases after September 1, 2002. Subsection (a) was revised to refer to affected areas, as defined in §114.3 of this title rather than specific nonattainment areas. Subsection (b) was revised to include leased fleet vehicles in the requirements. In addition, subsection (b) deleted the requirement of 20% of existing fleet vehicles as of September 1, 2000; changed the percentages for light-duty fleet vehicles purchased after September 1, 2002, from 90% to 70%; added a 50% percentage for heavy-duty fleet vehicle purchases after September 1, 2002; and removed the requirement of 45% in the total fleet as of September 1, 2002. Subsection (c) reduced the no-purchase exemption from 90 percent to 70 percent. Subsection (e) changed the term "clean-fuel vehicles" to the term "low emission vehicles." Subsection (f) clarifies that this section does not require the conversion and EPA certification of conventional vehicles to the LEV standards. Subsection (g) allows specified Texas fuels and uncertified conversions prior to 1995 instead of 1998 to be used as credit. Subsection (i) deleted the September 1, 1997 date because it had

already passed, and added information to be included in fleet registration. Subsection (k) changed the first reporting year from 1998 to every even-numbered year.

Section 114.152, concerning Use of Certain Vehicles for Compliance, was repealed, and the applicable requirements and allowances were moved into §114.150 and §114.151.

Section 114.153, concerning Exceptions, provides for exceptions from the LEV requirements. Affected entities may be granted an exception from the LEV requirements, on a case-by-case basis, if: 1) a firm is engaged in a fixed price contract with a public works agency where compliance with the fleet implementation schedule requirements of the state's substitution program would cause economic harm to the firm; 2) adequate fueling required for the operation of LEVs is unavailable; 3) financing for the increased cost of operation of LEVs is unavailable from fuel suppliers; 4) the costs, over the lifetime of the LEV's operation, are more than the costs of the operation of a conventional vehicle; or 5) LEVs sufficient to meet business needs are unavailable. Subsection (a) added the fifth provision for exception provided that there are insufficient LEVs to meet business needs. A new subsection (c) states alternatives to applying for an exception to the applicable LEV requirements.

Section 114.154, concerning Exceptions for Certain Mass Transit Authorities, incorporated numerous editorial changes to ensure the language is consistent with the Health and Safety Code as amended by SB 681, 75th Legislature, 1997; with the Guiding Principles and policies of the commission; and in format, style, and tone with commission guidelines. In addition, the term "clean fuel vehicle" was changed to "low emission vehicle" throughout the section.

Section 114.155, concerning Reporting, provides the general reporting requirements for local governments and private entities. Each affected entity will submit their biennial fleet report to the executive director by September 1 of each even numbered year. Subsection (a) changed the reporting requirement from annually to biennially, and changed some of the reporting information.

Section 114.156, concerning Record Keeping, was modified to require the affected entities to maintain copies of all reports submitted in accordance with §114.155.

Section 114.157, concerning Low Emission Vehicle Fleet Program Compliance Credits, incorporated numerous editorial changes to ensure the language is consistent with the Guiding Principles and policies of the commission, and is consistent in format, style, and tone with commission guidelines. The name of §114.157 was changed by adding “Low Emission Vehicle Fleet” in order to clarify the program specific nature of the section. In addition, the term “clean fuel vehicle” was changed to “low emission vehicle” throughout the section.

Section 114.201, concerning the Mobile Emission Reduction Credit Program, incorporated editorial changes to ensure the language is consistent with the Guiding Principles and policies of the commission, and is consistent in format, style, and tone with commission guidelines. In addition, the term “clean fuel vehicle” was changed to “low emission vehicle” throughout the section.

Section 114.202, concerning The Texas Mobile Emission Reduction Credit Fund, was changed to specify “low emission vehicle” in place of “clean fuel vehicle.”

FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in the act, and it does not meet any of the four applicability requirements listed in §2001.0225(a). The specific intent of the rules is to protect the environment and reduce risks to human health from environmental exposure by adopting state requirements which are essentially equivalent to federal requirements regarding low emission fleet vehicles. However, the rules do not adversely affect the economy because they lessen the financial impact of the current rules through exceptions. If EPA determines that this program is not essentially equivalent to the federal program, it will still be protective of the environment and human health because the commission will make up the shortfall through other measures. In this way, there is no adverse impact to the environment or the public health and safety of the state. Therefore, this adoption does not meet the full definition of a major environmental rule. The rulemaking also does not meet any of the four applicability requirements for being subject to §2001.0025 as stated below. It will fulfill an obligation mandated by Part C, Subchapter II of the Federal Clean Air Act (FCAA), which requires states to implement a clean fuel fleet program, and is essentially equivalent to the federal law. The proposal does not exceed requirements specified by Chapter 382, Subchapter F, Health and Safety Code. There is not an agreement or contract between the state and the federal government which lays out requirements for this program; and the program is directed by Chapter 382, Subchapter F, Health and Safety Code, rather than being adopted under the general powers of the commission. The commission received no public comment on the Regulatory Impact Analysis.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. SB 681, Acts of the 75th Legislature, 1997, modified requirements for certain motor vehicle fleets in the Texas Health and Safety Code. Prior to the passage of SB 681, the commission adopted LEV fleet requirements based on the provisions of SB 200, Acts of the 74th Legislature, 1995. The program was adopted as an opt-out of the Federal Clean Fuel Fleet (FCFF) program required by the 1990 FCAA Amendments. SB 681 was intended to replace the existing program requirements of §§114.1, 114.3, 114.150-155, 114.157, and 114.201-114.202. The primary purpose of these rules is to meet requirements for the commission to adopt rules requiring fleets to purchase LEVs. This action is being taken to comply with federal and state legislative mandates. This adopted rulemaking does not affect private real property, since fleet vehicles are not considered to be private real property. Most capital expenditures will involve the purchase of vehicles. However, the regulation states that the purchase of vehicles for compliance is in the affected entity's discretion (Health and Safety Code, §382.134(e)), and the statute has provisions for a cost-effectiveness exception (Health and Safety Code, §382.136).

COASTAL MANAGEMENT PLAN CONSISTENCY REVIEW

The commission has determined that the adopted rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resource Code, §§33.201 et. seq.), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3), 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 has reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council and has determined that the adoption action is consistent with the applicable CMP goals and policies. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations at 40 CFR, to protect and enhance air quality in the coastal area, (31 TAC §501.14(q)). This adoption does not change existing requirements which already comply with regulations at 40 CFR, and is therefore consistent with this policy. No persons submitted comments on the consistency of the proposed rules with the CMP during the public comment period.

HEARINGS AND COMMENTERS

Public hearings on this proposal were held in Austin on May 19, 1998, and in Irving on May 20, 1998. Six persons attended the Austin hearing and one person provided oral comments. Fifteen persons attended the Irving hearing, but no persons provided oral comments. A good question and answer session occurred before and after each of the hearings. Nine persons submitted written comments by the close of the comment date of May 26, 1998.

The following 10 commenters submitted the oral and written comments: the Alternative Fuels Research and Education Division of the Railroad Commission of Texas (AFRED), Amoco Corporation (Amoco), the City of Coppell (Coppell), EPA Region 6 (EPA), City of Farmers Branch (Farmers Branch), Houston Clean Cities (HCC), Houston Industries Incorporated (HII), the City of Plano (Plano), the Port

of Houston Authority (PHA), and the Texas Association of Business and Chambers of Commerce (TABCC).

ANALYSIS OF TESTIMONY

General Comments

HCC supported the cooperation with the state but hopes this is the last rule change. TABCC supported the revisions which clarified program requirements and contradictions of the past plans, as well as the state participation in the National Low Emission Vehicle (NLEV) program. Coppell, HII, and EPA expressed support of portions of the proposal, opposition to portions of the proposal, and suggested changes. Plano, Amoco, Farmers Branch, and AFRED did not express support, but expressed opposition to portions of the proposal and suggested changes. Finally, PHA neither expressed support or opposition to the proposal, but suggested changes. The major concerns for the commenters included a date extension on grandfathering of vehicles, the use of alternative fuels, and purchase requirements. These concerns, issues, and changes are addressed below.

The commission has reviewed these issues and determined that many of the concerns expressed by the commenters cannot be addressed within the scope of this rulemaking, however, because SB 681 has mandated requirements for these areas.

A concern for the commission is that EPA has denied the possibility of using the NLEV program as a backfill for any shortfalls that the Texas Clean Fleet (TCF) program may have with the SIP

requirements. The commission proposes to address this issue by adding the reduction benefits of fugitive emissions and volatile organic compound (VOC) transfer operations at bulk gasoline terminals to offset any shortfalls from the state's substitute program.

SIP Submittal

EPA commented that §114.150 and §114.154, concerning Requirements for Mass Transit Authorities and Exceptions for Certain Mass Transit Authorities respectively, were not included in the SIP submittal; however, mass transit was included in the equivalency determination in Appendix B. EPA stated that to exclude certain mobile vehicles from the state's SIP submittal and then include them in the equivalency determination is inconsistent.

Transit fleets are included in the SIP submittal as stated on page 3 of the SIP document, which specifies, "The state's substitute program covers transit, local government and private fleets operated primarily within the serious, severe, or extreme nonattainment areas of Texas." In addition, the rules governing transit fleets are included in the list of the rules governing the state's program on page 6 of the SIP, which states, "The state's substitute program is codified in 30 TAC §§114.1, 114.3, 114.150-114.151, 114.153-114.157, and 114.201-114.202." However, the proposal preamble inadvertently omitted the two sections in the first paragraph of the section titled "Explanation of Proposed Rules." The two sections were added to the list of SIP rules in the adoption preamble and will be sent to EPA as part of the SIP submittal.

Purchase Deadlines

PHA commented that the September 1, 1998 deadline requiring that 30% of fleet vehicle purchases or 10% of the total fleet vehicles must be LEV should be extended to September 1999, because their 1998 fiscal vehicle budget was not based on these requirements. PHA also requested that if an alternative fuel source is to be implemented, the deadline of September 1, 1998 be extended to September 1, 1999 to allow time to effectively manage a transition to an alternative fuel source.

The September 1, 1998 date, as stated in §114.252(b)(1), is a deadline by which affected fleets must report requested information to the commission (i.e., the number of vehicles and the selection of either the 10% option of total fleet vehicles for 1998 or 30% of future fleet vehicle purchases from September 1, 1998 to September 1, 2000). The September 1, 1998 deadline is a statutory requirement set by the 75th Texas Legislature, through SB 681, and therefore cannot be extended to September 1, 1999.

More Vehicle Manufacturers and Types Listed

PHA questioned if there are plans to increase the selection of manufacturers and vehicle types of gasoline operated LEVs which meet LEV standards in Texas to compare with those available in California. They expressed concern that the limited selection will increase unit cost and might not meet vehicle type requirements that are needed by fleets.

The commission acknowledges the concern for vehicle availability; however, California's LEV program offers a greater selection because auto manufacturers are required to sell a certain

percentage of LEV or cleaner certified vehicles within the State of California. The State of California was allowed, through the 1990 FCAA Amendments, to implement its own clean vehicle certification program, which is more stringent than NLEV and has been operating since 1990. The use of California cleaner burning gasoline, which is not available in Texas, helps auto manufacturers meet the requirements for California certification.

Senate Bill 681 directs the commission to provide exceptions in the TCF program if LEV-certified vehicles are not available or are cost prohibitive to an organization. These exceptions are stated in §114.153(a)(1) and (5).

Alternative Fuel Issues

The City of Coppel is concerned that fueling infrastructure for alternative fuels has never been addressed by the TCF program.

As the requirements of the TCF program are based on the LEV standard or cleaner, fleets can meet the program requirements by using any fuel they choose, as long as the vehicle/fuel configuration meets the LEV standard. Fueling infrastructure therefore is not addressed in the rule. However, §114.153(a)(2) and (3) of the rule covers exceptions for non-availability of fuel and inability to secure financing for fuels.

AFRED commented that, although not directly on point with this rulemaking, the commission should amend its Texas Clean Air Strategy to include LEVs that operate on alternative fuels. AFRED believes any clean air strategy that does not emphasize the use of alternative fuels is incomplete.

The commission feels that this is beyond the scope of this rulemaking. The rulemaking is based upon SB 681 which does not focus on fuel type, but on emission levels.

PHA requested that if an alternative fuel source is to be implemented, the deadline of September 1, 1998 be extended to September 1, 1999 to allow time to effectively manage a transition to an alternative fuel source.

The commission has made no change in response to this comment. The 75th Texas Legislature, through SB 681, directs the deadlines associated with the TCF program. The TCF program is an emission based program and does not require the use of an alternative fuel.

Outreach Issues

AFRED commented that because of the substantial changes to Texas' alternative fuels and clean fuel fleet programs during the last five years, affected entities should be educated about the requirements of the TCF program.

The commission agrees with this comment. Briefings on the TCF program have been held in conjunction with Clean Cities meetings in Houston and Dallas. Plans are being made to

coordinate workshops in all the affected areas regarding the TCF program. A guidance document that includes the TCF program requirements and compliance guidelines will also be distributed to all affected organizations. The commission has a website dedicated to the TCF program at <http://www.tnrcc.state.tx.us/air/ms/tcf.htm> that is updated regularly. In addition, periodic updates will also be sent via mail to participating organizations.

The HCC program commented that they would be willing to work with commission staff in trying to disseminate information to the public in Houston with regard to the TCF program.

The commission appreciates the interest and proposed participation of the HCC program in disseminating information on the TCF program.

NLEV Issues

The TABCC commented that when the NLEV program is implemented in Texas, it will decrease mobile source emissions, and that the TCF program should be revised or revoked when the NLEV program can demonstrate emission reductions needed by the TCF program.

The commission concurs that the NLEV program will have a positive impact on air quality, beginning with model year 2001 vehicles. However, the TCF program is a state program mandated by the 75th Texas Legislature, through SB 681, and can only be changed or repealed by the Texas Legislature.

EPA commented that the program, as proposed, uses emission reductions achieved through the NLEV program to offset the identified shortfall in emission reductions resulting from the state's substitute TCF program as compared to the FCFF program. EPA further stated that it has recently been determined that the NLEV program cannot be used in an area outside of the Ozone Transport Commission area to make up an anticipated shortfall in a state's substitute program for the Clean Fuel Fleet Program (CFFP).

EPA also commented that the state, in the event where the NLEV program cannot be used, can use specific control programs in its SIP, or which can be incorporated into its SIP, to meet the shortfall in emission reductions. The control programs can be part of the existing SIP, such as in the state's 15% or 9% Rate of Progress Plan, as long as the measures are not otherwise required by the FCAA.

The commission prefers the use of the NLEV program to make up any shortfalls resulting from the TCF program. However, in the event that it is EPA's final determination that the NLEV program cannot be used, the commission will use the emission reductions achieved through the state requirements codified in 30 TAC §§115.352-115.359 and 115.211(a)(1) (respectively concerning fugitive emission control in petroleum refining, natural gas/gasoline processing, petrochemical processes and VOC transfer operations at gasoline terminals in ozone nonattainment areas) to offset any shortfall in emission reductions resulting from the state's substitute TCF program as compared to the FCFF program. Both of these programs are identified in the state's 15% Rate of Progress Plan and go above and beyond the requirements of Reasonably Available Control Technology (RACT) and other FCAA requirements.

Follow-on Fleet Tracking Issues

Concerning surveying covered fleets, EPA suggested that the state continue to survey, register, and track the actual covered fleet aggregation in both state and federal program areas. The state should continue to quantify actual baseline data and emission reductions, taking into account the differences associated with each program, for accurate compliance/enforcement strategy information.

The commission agrees with this comment, and will continue to survey, register, and track the actual fleets in both state and federal program areas.

Grandfather Issues

With regards to §114.151(g)(1-5), the cities of Plano, Coppell, and Farmers Branch commented that all vehicles converted to an acceptable alternative fuel in good faith at the time of conversion should be “grandfathered” by the proposed legislation. These vehicles should count toward any percentage of fleet vehicles mandated to be alternatively fueled or any compliance requirement with no time limit. The cities stated that there is a perception that fleets continuing vehicle conversions beyond September 1, 1995 are punished by not allowing these vehicles to be grandfathered, and that organizations which have proactively continued with conversions after September 1, 1995 have not been given the appropriate credit for their efforts. HII commented that all vehicles converted to compressed natural gas between 1996 and 1998 must undergo certification testing at a projected cost of \$1400 per vehicle; that this testing is cost prohibitive; and that EPA certification to LEV standards should not be applied retroactively to vehicles purchased from 1996 to 1998.

The September 1, 1995 conversion deadline for vehicles which can be grandfathered is a statutory requirement established in SB 681. The TCF program allows vehicles converted to any one of the five approved alternative fuels (electricity; ethanol, or ethanol/gasoline blends of 85% or greater ethanol; liquefied petroleum gas, commonly referred to as propane; methanol or methanol/gasoline blends of 85% or greater methanol; or natural gas) prior to September 1, 1995 to be counted toward the 10% total fleet vehicle option on September 1, 1998. There are no retroactive LEV requirements mandated by the TCF program.

EPA expressed a concern that mass transit non-LEV vehicles (grandfathered vehicles) acquired before September 1, 1999, are to be counted toward mass transit fleet purchase requirements as part of their 50% of total fleet LEV requirement. EPA also expressed a concern that local governments and private fleet grandfathered vehicles (non-LEV) can be counted towards the 10% of total fleet LEV requirements in 1998. EPA suggested that the state account for and track the above differences as compared to the federal program to accurately determine and track program equivalency. EPA is concerned that the grandfathered vehicles will create an additional emissions shortfall that will hinder the state in its equivalency demonstration.

The commission agrees with this comment and will track grandfathered vehicles.

MERC Issues/Light Rail Issues

EPA commented concerning the operation of light rail cars which have no direct emissions, but which are eligible for MERCs. EPA is concerned that the inclusion of the light rail cars (non-road) would

produce MERCs that would not be credited under the federal program, and that the state will need to account for their MERCs generating differences (i.e., for non-road and RACT) to accurately determine and track equivalency between the state and federal programs.

The commission disagrees with this comment. The state is allowing light rail systems to generate MERCs through the direct replacement of diesel powered transit buses with electric powered rail systems. These MERCs would be the same as those credits generated through a vehicle retirement or scrappage program.

Definitions (§114.1, §114.3)

With regard to §114.1, AFRED commented on the commissioners' request to consider the option of allowing private law enforcement vehicles to qualify for the exemption from the fleet vehicle requirements. AFRED stated that private law enforcement vehicles should not be exempt from the fleet vehicle requirements unless the vehicles are operated by a private agency under contract with a municipality, county, or other political subdivision specifically and solely to perform law enforcement duties.

The commission agrees with this comment and will make no change to the definition as proposed. The definition of a law enforcement vehicle will continue to refer to any vehicle controlled by a local government and primarily operated by a civilian or military law enforcement agency, which is used for the purpose of law enforcement activities.

With regard to §114.3, Amoco commented on the deletion of the word “control.” Amoco requested that the commission retain the word “control” to be consistent with the definition of “private entity,” which uses the term “control.” Amoco believes individual facilities that have control of their fleets in an affected area should not necessarily be subject to this regulation solely because they are a part of a larger organization. Amoco feels this will require a fleet that utilizes a centralized purchasing group to participate in the TCF program.

The commission agrees with the comment that individual facilities have control of their fleets in an affected area and should not necessarily be subject to this regulation solely because they are a part of a larger organization. Staff believes that the definition for control was confusing and limiting, and thus deleted it from the rule. Fleets within the same nonattainment area are not necessarily subject to the TCF program because they are part of a larger organization. Organizations may choose to combine locations and report as one fleet or to report each location as an individual fleet dependent upon who has final authority to make vehicle purchase decisions.

Fleet Reporting Requirements (§114.155)

Concerning §114.155(6)(A)-(B), EPA commented that the state changed local government and private fleets from annual vehicle miles traveled (VMT) reporting to an estimated VMT reporting. Two consecutive years averaged will be used for the biennial report. For dual-fueled vehicles, an estimation of the percent of VMT or time operated on each fuel is reported. Again, two consecutive years averaged will be used for the biennial report. Mass transits submit annual reports of VMT or time, but this is only an estimate. The state dropped from an annual reporting for fleet operators to biennial.

EPA is concerned that the estimation of mileage and time operated would promote non-compliance from the fleet operators who deliberately underestimate mileage and time to keep a fleet vehicle out of the state program.

The commission notes that operators are only required to report VMT for those LEVs or grandfathered vehicles they are claiming for compliance with the program. The estimation of VMT or time for dual-fueled vehicles is also reported for those vehicles used for compliance with the program, and is only collected for statistical analysis. VMT or time in the context of reporting requirements does not reflect whether the fleet is required to participate in the state's program. Therefore, the commission sees no reason for fleet operators to underestimate these numbers.

SIP Section d.1)c)(2)(c). Grandfathering of Vehicles

Regarding the section of the proposed SIP covering the grandfathering of vehicles, EPA commented that on page 15, the last paragraph, second sentence should read, “The EPA addendum to Mobile Source Enforcement Memorandum No. 1A....”

EPA further stated that the commission needs to communicate clearly in the SIP and in the state program that the September 4, 1997 addendum to the Mobile Source Enforcement Memorandum 1A revised the “reasonable basis” under paragraph 3 of Memo 1A. The revised policy on what may be relied on as a “reasonable basis” by any person, including a manufacturer, installer or operator, when converting or causing the conversion of, a motor vehicle or motor vehicle engine to operate on an alternative fuel, is limited to one of the three options, (C)(1), (2), or (3), listed in the addendum to

Memo 1A. Consequently, any future installations after September 4, 1997, of an alternative fuel conversion system, or the modification of any motor vehicle or motor vehicle engine in compliance with Title II of the FCAA to operate exclusively or in part with an alternative fuel, or the causing thereof, and not meeting one of the three options, may constitute tampering under the FCAA §203(a).

The commission agrees with this comment. The text will be changed to reflect the correct title, as well as EPA's recent revision, dated June 1, 1998, which provides the most recent policy and guidance for the enforcement of tampering prohibitions and conversions of vehicles.

SIP, Appendix B. Assumptions for Modeling Inputs. Turnover Rate

Regarding the technical evaluation of the TCF program in Appendix B, EPA commented that the state may want to consider a turnover rate of four years instead of three be applied equally to the light-duty vehicle calculation for both programs. EPA also commented that a four-year turnover rate would harmonize and support the modeled 250 ozone day input calculation and the 100,000 miles lifetime emission standards for LEVs.

The commission will consider this change in future equivalency analyses. However, the emission reductions achieved through the state controls on fugitive emission and VOC transfer operations that are used to make up any shortfalls resulting from the TCF program will far exceed the amount of emission reductions needed to demonstrate equivalency with the FCFF program even if a four-year turnover rate is applied to the light-duty vehicle calculations for both programs.

Centralized Refueling Rate

Regarding the centralized refueling rate in Appendix B, EPA commented that the methodology used to calculate the centralized refueling rate (69%) under the federal program did not include the portion of the surveyed fleet that could be centrally refueled. EPA stated that the 69% is the percentage of fleets surveyed that can or could refuel all of their fleet vehicles all of the time in the nonattainment area, and that the remaining surveyed fleets have a portion of their fleet not capable of 100% centralized refueling and a portion that is or could be capable of 100% centralized refueling all of the time. EPA stated that the portion of the surveyed fleet that is or could be 100% centralized refueled all of the time needs to be included by using a weighted average calculation methodology.

EPA also noted that the state centralized refueling rate of 100% does not account for the vehicles exempted from the program by rule (law enforcement and emergency vehicles) and fleet vehicles exempted by operating less than 50% of its total annual miles or operating time in the affected area.

Finally, EPA recommended an 80% centralized refueling rate for both the state and federal programs in the Houston/Galveston and Dallas/Fort Worth nonattainment areas and an 80% centralized refueling rate for both programs in the El Paso nonattainment area.

The commission will consider this change in future equivalency analyses. However, the emission reductions achieved through the state controls on fugitive emission and VOC transfer operations that are used to make up any shortfalls resulting from the TCF program will far exceed the amount of emission reductions needed to demonstrate equivalency with the FCFF program even if

an 80% centralized refueling rate is applied to the light-duty vehicle calculations for both programs.

SIP, Appendix B. Calculation Processes. Emission Reductions

Concerning Appendix B, page 13, EPA commented on an inconsistency with the second sentence of the first paragraph. It states, “The emission reductions are determined in grams per mile...” In the formula, however, the definition of emission reductions is grams per day. In addition, EPA stated that to be consistent with the spreadsheet model in calculating the emission reductions, a 250 ozone day factor should be included in the formula.

The commission agrees with this comment regarding inconsistency with the term, “grams per mile,” and will revise the text for consistency. However, a 250 ozone day factor is not required in this formula since the emission reductions “per day” are derived from the calculation of VMT “per day.” A 250 ozone day factor would only be useful if this formula was demonstrating emission reductions “per ozone year.”

Concerning Appendix B, page 15, Table E, EPA commented that the estimated emission reductions in tons per day needs more meaning and validity, and that the table can be more consistent with the spreadsheet model if results were also shown in tons per ozone year (250 days).

The commission understands the concern; however, the spreadsheet model used to determine the emission reductions in the equivalency determination only calculates emission reductions in tons

per day, which is consistent with Table E. To illustrate the long-term tons of VOC reduced from the two programs, Table E also summarizes the total emissions reduced by the program over the span of 10 years by multiplying the total tons reduced per day by a 250-day ozone year. The text in Table E has been modified to clearly identify the difference between the tons per day accumulated reduction total and the long-term (10-year) reduction summary.

STATUTORY AUTHORITY

The amendments are adopted under the Texas Clean Air Act (TCAA), Texas Health and Safety Code, §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA; TCAA, §382.019, which provides the commission with the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles; §382.133, which provides the commission with the authority to adopt rules regarding fuels in Mass Transit Fleet Vehicles; §382.134, which provides the commission with the authority to adopt rules regarding fuels in local government and private fleet vehicles; §382.136, which provides the commission with the authority to adopt rules regarding exceptions to participation in the clean fuel fleet program; §382.142, which provides the commission with the authority to adopt rules regarding the granting and use of program compliance credits; and §382.143, which provides the commission with the authority to adopt rules regarding the Texas mobile emissions reduction credit program.

SUBCHAPTER A : DEFINITIONS

§114.1, §114.3

§114.1. Definitions.

Unless specifically defined in the TCAA or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) **Dual-fuel vehicle** - Any motor vehicle or motor vehicle engine engineered and designed to be operated on two different fuels, but not a mixture of the two.

(2) **Emergency vehicle** - A vehicle defined as an authorized emergency vehicle according to Texas Transportation Code, §541.201(1).

(3) **Emissions** - The emissions of oxides of nitrogen, volatile organic compounds, carbon monoxide, particulate, or any combination of these substances.

(4) **First safety inspection certificate** - Initial Department of Public Safety (DPS) certificates issued through DPS certified inspection stations for every new vehicle found to be in compliance with the rules and regulations governing safety inspections.

(5) **Gross vehicle weight rating (GVWR)** - The value specified by the manufacturer as the maximum design loaded weight of a vehicle. This is the weight as expressed on the vehicle's registration, and includes the weight the vehicle can carry or draw.

(6) **Heavy-duty vehicle** - Any passenger vehicle or truck capable of transporting people, equipment, or cargo, that has a GVWR greater than 8,500 lbs., and is required to be registered under the Texas Transportation Code, Section 502.002. For purposes of the Mobile Emission Reduction Credit (MERC) trading program the heavy-duty class is divided into the following subclasses:

(A) **Light heavy-duty vehicle** - Any passenger vehicle or truck capable of transporting people, equipment, or cargo that has a GVWR greater than 8,500 lbs., but less than or equal to 10,000 lbs.

(B) **Medium heavy-duty vehicle** - Any passenger vehicle or truck capable of transporting people, equipment, or cargo that has a GVWR greater than 10,000 lbs. but less than or equal to 19,500 lbs.

(C) **Heavy heavy-duty vehicle** - Any passenger vehicle or truck capable of transporting people, equipment, or cargo that has a GVWR greater than 19,500 lbs.

(7) **Inherently low emission vehicle** - A vehicle as defined by Title 40, Code of Federal Regulations (40 CFR), Part 88.

(8) **Law enforcement vehicle** - Any vehicle controlled by a local government and primarily operated by a civilian or military police officer or sheriff, or by state highway patrols, or other similar law enforcement agencies, and which is used for the purpose of law enforcement activities including, but not limited to, chase, apprehension, surveillance, or patrol of people engaged in or potentially engaged in unlawful activities.

(9) **Light-duty vehicle** - Any passenger vehicle or truck capable of transporting people, equipment, or cargo, that has a GVWR less than or equal to 8,500 lbs., and registered or required to be registered under Texas Transportation Code, §502.002. For purposes of the MERC trading program the light-duty class is divided into the following subclasses:

(A) **Light-duty vehicle** - Any passenger vehicle capable of seating 12 or fewer passengers that has a GVWR less than or equal to 6,000 lbs.

(B) **Light-duty truck 1** - Any passenger truck capable of transporting people, equipment, or cargo, that has a GVWR less than or equal to 6,000 lbs.

(C) **Light-duty truck 2** - Any passenger truck capable of transporting people, equipment, or cargo, that has a GVWR greater than 6,000 lbs. but less than 8,500 lbs.

(10) **Loaded mode inspection and maintenance (I/M) test** - A measurement of the tailpipe exhaust emissions of a vehicle while the drive wheel rotates on a dynamometer, which simulates the full weight of the vehicle driving down a level roadway. Loaded test equipment specifications shall meet EPA requirements for Acceleration Simulation Mode equipment.

(11) **Low emission vehicle (LEV)** - A vehicle in a class or category of vehicles that has been certified by the EPA for any model year to meet:

(A) the LEV standards applicable under the Federal Clean Air Act as amended Part C, Subchapter II, (U.S.C. 42 Section 7581 et seq.); or

(B) emission limits at least as stringent as the applicable LEV standards for the Federal Clean Fuel Fleet program under 40 CFR, Parts 88.104-94, 88.105-94, and 88.311-93 as published in the *Federal Register* on September 30, 1994 (59 FR 50042).

(12) **Mass transit authority** - A transportation or transit authority or department established under Chapter 141, 63rd Legislature, 1973 as defined in the Texas Transportation Code, Chapters 451- 453 (relating to Metropolitan Rapid Transit Authorities, Regional Transportation Authorities, and Municipal Transportation Authorities), that operates a mass transit system under any of those laws.

(13) **Mobile emission reduction credit (MERC)** - The credit obtained from a quantifiable, permanent, enforceable, and surplus (with respect to other federal and state regulations) emission reduction generated by a mobile source as set forth in Subchapter F of this chapter (relating to Vehicle Retirement and Mobile Emission Reduction Credits) and which has been banked in accordance with §101.29 of this title (relating to Emissions Credit Banking and Trading).

(14) **Revised Texas I/M State Implementation Plan (SIP)** - The portion of the Texas SIP which includes the procedures and requirements of the vehicle emissions inspection and maintenance program as adopted by the commission May 29, 1996, in accordance with the 40 CFR Part 51, Subpart S, issued November 5, 1992; the EPA flexibility amendments dated September 18, 1995; and the National Highway Systems Designation Act of 1995. A copy of the revised Texas I/M SIP is available at the Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas, 78753; mailing address: P.O. Box 13087, MC 166, Austin, Texas 78711-3087.

(15) **Tier I federal emission standards** - The standards are defined in the FCAA as amended in Section 202, USC Title 42 Section 7521, and in 40 CFR, Part 86. The phase-in of these standards began in model year 1994.

(16) **Ultra low emission vehicle** - A vehicle as defined by 40 CFR, Part 88.

(17) **Zero emission vehicle** - A vehicle as defined by 40 CFR, Part 88.

§114.3. Low Emission Vehicle Fleet Definitions.

Unless specifically defined in the TCAA or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, the following words and terms, when used in Subchapter E of this chapter (relating to Low Emission Vehicle Fleet Requirements), shall have the following meanings, unless the context clearly indicates otherwise:

(1) **Affected area** - Any consolidated metropolitan statistical area or metropolitan statistical area with a population of 350,000 or more that, under national ambient air quality standards provided by Federal Clean Air Act §181, as amended (42 United States Code Section 7511 and Table 1), is a serious, severe, or extreme nonattainment area.

(2) **Affected entity** - Any individual, partnership, firm, company, business trust, corporation, organization, or association which operates a fleet within an affected area.

(3) **Capable of operating** - Having the necessary permanently installed equipment that enables a vehicle to use a specified fuel.

(4) **Certified** - A vehicle that has been issued a certificate of conformity by the EPA to ensure compliance, throughout the entire useful life of a vehicle, with the required emission standards as defined in Title 40, Code of Federal Regulations, Parts 86 and 88.

(5) **Conventional vehicle** - A vehicle which meets all applicable federal emission standards in place at the time of manufacture, but is not certified as a low emission vehicle.

(6) **Fleet** - The aggregate of the vehicles under the authority of a mass transit authority, local government, or private entity and operated primarily within an affected area.

(7) **Fleet vehicle** - A vehicle registered or required to be registered under Texas Transportation Code (TTC), Chapter 502, except a motor bus used to transport pre-primary, primary, or secondary students to or from school or for approved extracurricular activities, or a vehicle registered under TTC, §502.006(c). The term does not include:

(A) a vehicle that, when not in use, is normally parked at the residence of the individual who normally operates it;

(B) a vehicle that has a gross vehicle weight rating (GVWR) of greater than 26,000 pounds;

(C) a vehicle used in the maintenance or repair of underground mass transit facilities which is required by federal law or regulation to operate on diesel fuel; or

(D) a law enforcement or emergency vehicle, as defined by the Texas Transportation Code (TTC) §541.201.

(8) **Lessor** - A private entity who leases or rents vehicles to other entities for the purpose of short-term rental or an extended term leasing with or without a maintenance agreement, without a driver, and under a contract. Fleets or vehicles operated by lessors for operations other than lease or rental to other entities may be subject to the requirements of this chapter.

(9) **Local government** - A city, county, municipality, or political subdivision of a state. This term does not include school districts.

(10) **Non-road vehicle** - A vehicle which is not required to be registered under the Texas Transportation Code, §502.002.

(11) **Normally operates** - A person is considered to normally operate a vehicle if they operate the vehicle more than 50% of the time.

(12) **Normally parked at the residence of the individual** - A vehicle that is parked more than 75% of the time that it is parked after business hours at the residence of the individual who normally operates it.

(13) **Operates primarily** - Use of a fleet in any one affected nonattainment area more than 50% of the total annual vehicle miles traveled or time as measured from January 1 through December 31 of each year.

(14) **Private entity** - Any individual, partnership, firm, company, business trust, corporation, organization, or association which owns, operates, or controls a fleet.

(15) **Private fleet** - All fleet vehicles operated by a private person.

(16) **Program compliance credits** - Credits that may be granted to a fleet operator for a vehicle which exceeds the low emission vehicle provisions and requirements of this chapter.

(17) **Projected net costs** - All expenses associated with the operation of fleet vehicles after deduction of any available state or federal funding or incentives for the use of low emission vehicles.

(18) **Public works agency** - A governmental body established by the legislative branch, including municipalities and counties acting by ordinance, charged with administering the construction and maintenance of improvements constructed with public funds for public use, protection, or enjoyment, and those who oversee provision of public services.

(19) **Purchase date** - The date the buyer and seller are in a legally binding purchase or lease agreement. Payment or delivery of the vehicle is not required to have taken place.

(20) **Vehicle** - A self propelled device designed to operate with four or more wheels in contact with the ground, in or by which a person or property is or may be transported, and which is registered under the TTC, §502.002 excluding vehicles registered under TTC, §502.006(c).

SUBCHAPTER E : LOW EMISSION VEHICLE FLEET REQUIREMENTS

§§114.150, 114.151, 114.153-114.157

STATUTORY AUTHORITY

The amendments are adopted under the Texas Clean Air Act (TCAA), Texas Health and Safety Code, §382.017, which provides the Texas Natural Resource Conservation Commission (commission) with the authority to adopt rules consistent with the policy and purposes of the TCAA; and TCAA, §382.019, which provides the commission with the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles.

§114.150. Requirements for Mass Transit Authorities.

(a) Mass transit authorities, as defined in §114.1 of this title (relating to Definitions), that operate in an affected area are subject to the low emission vehicle (LEV) provisions and requirements of this section.

(b) Mass transit authorities must ensure that at least 50% of their fleet vehicles are certified to meet or certified to exceed the LEV standards.

(c) The requirements of subsection (b) of this section may be met using Program Compliance Credits (PCCs) or Mobile Emission Reduction Credit (MERCs) under §§114.157, 114.201, or 114.202

of this title (relating to Low Emission Vehicle Fleet Program Compliance Credits; Mobile Emission Reduction Credit Program; and Texas Mobile Emission Reduction Credit Fund.

(d) The early acquisition of LEVs or acquisition of cleaner LEVs, such as ultra low emission vehicles, inherently low emission vehicles, or zero emission vehicles may qualify for both PCCs and MERCs. However, only one type of credit may be used per generating vehicle.

(e) Vehicles converted, purchased, leased, or otherwise acquired before September 1, 1999, but not certified to the LEV standards, may be counted towards a mass transit authority's compliance with the percentage requirements of subsection (b) of this section, if the vehicles:

(1) are capable of operating on a fuel or power source recognized by any State of Texas fleet or mass transit fuel program prior to September 1, 1995. These fuels are as follows:

(A) electricity;

(B) ethanol, or ethanol/gasoline blends of 85% or greater ethanol;

(C) liquefied petroleum gas, commonly referred to as propane;

(D) methanol or methanol/gasoline blends of 85% or greater methanol; or

(E) natural gas; and

(2) meet at a minimum the following emission standards:

(A) for vehicles under 8,500 pounds gross vehicle weight rating (GVWR), the federal Tier I emission standards under Federal Clean Air Act, §202 as amended (42 U.S.C. Section 7521); or

(B) for vehicles over 8,500 pounds GVWR, the federal emission standards in place at the time of the chassis' manufacture.

(f) Exceptions from the requirements of subsection (b) of this section may be granted under §114.153 of this title (relating to Exceptions).

(g) Affected transit authorities must submit annual fleet reports by September 1 of each year. The report shall be submitted to the executive director and must contain, at a minimum:

(1) the total number of vehicles registered according to Texas Transportation Code (TTC), §502.002, excluding vehicles registered under TTC, §502.006(c);

(2) the total number of LEVs;

- (3) make, model, year, vehicle license numbers, vehicle identification numbers, GVWR, fuel type(s) and certified emission standards of each vehicle used for compliance;
- (4) vehicles offered for lease to the public;
- (5) an estimate of the annual vehicle miles traveled (VMT) for each vehicle used for compliance;
- (6) if the vehicle is a dual-fuel vehicle, a percent estimate of the vehicle's annual operation on each fuel, measured in VMT or time; and
- (7) a demonstration of compliance with the requirements of subsection (b) of this section.
- (h) Mass transit authorities must maintain records under §114.156 of this title (relating to Record Keeping).
- (i) Mass transit authorities are eligible for MERCs under Subchapter F of this chapter (relating to Mobile Emission Reduction Credits) for the operation of light rail cars which have been demonstrated by the mass transit authority to have no direct emissions.

§114.151. Requirements for Local Governments and Private Entities.

(a) Local governments that operate a fleet of more than 15 vehicles, excluding law enforcement and emergency vehicles, and private entities that operate a fleet of more than 25 fleet vehicles, excluding law enforcement and emergency vehicles, are subject to the low emission vehicle (LEV) provisions and requirements of this chapter when operated primarily in an affected area.

(b) Beginning September 1, 1998, local governments and private entities, as specified by subsection (a) of this section, must ensure that their fleet vehicles, including leased fleet vehicles, are certified to meet or are certified to exceed the LEV standards in accordance with the following schedule:

(1) 30% of fleet vehicles purchased after September 1, 1998; or at least 10% of the fleet vehicles in the total fleet as of September 1, 1998;

(2) 50% of fleet vehicles purchased after September 1, 2000; and

(3) 70% of light-duty fleet vehicles purchased after September 1, 2002; and at least 50% of the heavy-duty fleet vehicles purchased after September 1, 2002.

(c) A local government or private entity is not required to purchase any additional fleet vehicles certified to meet or certified to exceed the LEV standards if there are 70% or more LEVs maintained in the fleet.

(d) Program Compliance Credits (PCCs) or Mobile Emission Reduction Credits (MERCs) under §§114.157, 114.201, or 114.202 of this title (relating to Low Emission Vehicle Fleet Program Compliance Credits; Mobile Emission Reduction Credit Program; and Texas Mobile Emission Reduction Credit Fund) may be used to meet the percentage requirements of subsection (b) of this section.

(e) The acquisition of LEVs may qualify for both PCCs and MERCs; however, only one type of credit may be used per generating vehicle.

(f) The percentage requirements of subsection (b) of this section may be met by an EPA certified conversion of currently owned or newly purchased conventional vehicles to meet or exceed the LEV standards. For purposes of this section, the conversion and EPA certification of conventional vehicles to the LEV standards shall be treated the same as the purchase of an original equipment manufacturer's LEV. Nothing in this section shall be construed as to require the conversion and EPA certification of conventional vehicles to the LEV standards.

(g) Fleet vehicles converted, purchased, leased, or otherwise acquired before September 1, 1995 but not certified to the LEV standards may be counted towards a local government's or a private

entity's compliance with the percentage requirements of subsection (b) of this section if the vehicles are capable of operating on a fuel or power source recognized by any State of Texas fleet fuel program prior to September 1, 1995. These fuels are as follows:

- (1) electricity;
- (2) ethanol, or ethanol/gasoline blends of 85% or greater ethanol;
- (3) liquefied petroleum gas, commonly referred to as propane;
- (4) methanol or methanol/gasoline blends of 85% or greater methanol; or
- (5) natural gas.

(h) Exceptions from the requirements of subsection (b) of this section may be granted under §114.153 of this title (relating to Exceptions).

(i) Within 90 days of meeting the minimum fleet size, where applicable, affected local governments and private entities specified under subsection (a) of this section must register with the executive director for identification and compliance tracking. Registration must include the submission of the following information:

- (1) the affected entity's name, mailing address, telephone and fax numbers;
 - (2) the name, title, mailing address and telephone number of the specific person responsible for the fleet;
 - (3) the total number of vehicles operated primarily in an affected area, including exempted vehicles; and
 - (4) affected area counties of operation for all fleet vehicles.
- (j) Upon registration, the executive director will assign each fleet a unique identification number for data tracking purposes.
- (k) By September 1 of each even numbered year, affected local governments and private entity fleets must submit reports to the executive director, as required under §114.155 of this title (relating to Reporting).
- (l) Affected local governments and private entity fleets must maintain records as required under §114.156 of this title (relating to Record Keeping).

(m) The requirements contained in §114.1 of this title (relating to Definitions); Subchapter E of this chapter (relating to Low Emission Vehicle Fleet Requirements); and §114.201 and §114.202 of this title do not apply to lessors of vehicles with regard to vehicles they lease or rent to other entities.

§114.153. Exceptions.

(a) Exceptions from the applicable low emission vehicle (LEV) requirements of this chapter may be granted for a period of up to two years. Exceptions are based on the determination by the executive director that one of the following conditions exist:

(1) A firm engaged in fixed price contracts with public works agencies can demonstrate that compliance with the LEV requirements would result in substantial economic harm to the firm under a contract entered into before September 1, 1997. The following documentation must be submitted to the executive director when applying for this exception:

(A) copies of the relevant contracts; and

(B) a demonstration of how and by what means the firm would be harmed by complying with the LEV requirements of this chapter.

(2) Fuels required for LEV operation that meet the normal requirements of the principal business of the affected entity are not available in the affected areas in which the vehicles are

to be operated. The affected area where the entity's fleet operates must be indicated when applying for this exception.

(3) The affected entity is unable to secure financing provided by or arranged through the proposed supplier or suppliers of the fuels required for the operation of LEVs as required by the provisions of this chapter sufficient to cover the additional costs of such fueling. The following information must be submitted to the executive director when applying for this exception:

(A) a description of the financing required by the affected entity;

(B) a description of the financing offered by the proposed supplier(s) of the fuels necessary for the operation of LEVs; and

(C) a demonstration of why the affected entity is unable to secure such financing as provided by the fuel supplier sufficient to cover the additional costs of fueling LEVs.

(4) The projected net costs of the fueling for EPA certified conversion or replacement and operation of LEVs are reasonably expected to exceed comparable costs of conventional vehicles measured over the expected useful life of such vehicles. Included in such cost calculations are any available state or federal funding or incentives for the use of fuels required to operate LEVs. The following information must be submitted to the executive director when applying for this exception:

(A) the types of vehicles needed; and

(B) a demonstration of how the projected net costs of fueling for LEVs exceeds the comparable costs of conventional vehicles over the useful life of such vehicles, after the identification of any available state or federal funding or incentives for the use of fuels required to fuel LEVs.

(5) Original equipment manufacturer's vehicles, or converted vehicles, that meet the normal requirements and practices of the local government or private entity and have been certified by the EPA as LEVs are not available. The following information must be submitted to the executive director when applying for this exception:

(A) the types of vehicles needed and proof of nonavailability; and

(B) a justification of why the normal requirements and practices of the local government or private entity cannot be met by the use of currently available LEVs.

(b) Exception applications will be reviewed by the executive director in accordance with the following process and are subject to the following provisions:

(1) Exception applications will be reviewed on a case by case basis;

(2) All currently available LEVs must be evaluated by the affected entity before an exception application will be reviewed;

(3) The executive director may request additional information in order to evaluate an exception application;

(4) Applications will be accepted by the executive director at any point within the 12 months preceding a compliance deadline, provided a current fleet report containing the information in §114.155 of this title (relating to Reporting) is also provided;

(5) The affected entity receiving a notice of exception must maintain a copy of the notice on-site at the reported fleet address for the duration of the exception period and must make such copies available to the executive director upon request;

(6) Affected entities which have been granted an exception may not trade or sell Program Compliance Credits or Mobile Emission Reduction Credits (MERCs), or enter into a contract according to §114.202 of this title (relating Texas Mobile Emission Reduction Credit Fund), for the duration of the exception period; and

(7) Affected entities will not be considered in violation of the applicable LEV requirements of this chapter while an exception application is under review by the executive director, if

the exception application has been submitted to the executive director within the 12 months preceding the applicable compliance date.

(c) Alternatives to applying for an exception to the applicable LEV requirements of this chapter are:

(1) to meet the requirements through the acquisition of equivalent MERC credits under Subchapter F of this chapter (relating to Mobile Emission Reduction Credits). Equivalent MERCs are those credits necessary to meet a fleet's LEV requirements according to §114.150 and §114.151 of this title (relating to Requirements for Mass Transit Authorities, and to Local Governments and Private Entities); or

(2) to meet the requirements through the acquisition of equivalent Program Compliance Credits (PCCs) under §114.157 of this title (relating to Low Emission Vehicle Fleet Program Compliance Credits). Equivalent PCCs are those credits necessary to meet a fleet's LEV requirements according to §114.150 and §114.151 of this title.

§114.154. Exceptions for Certain Mass Transit Authorities.

(a) This section applies only to a mass transit authority confirmed at a tax election before July 1, 1985, and in which the principal city has a population of less than 750,000, according to the most recent federal census.

(b) The executive director may reduce any percentage specified by, or waive the requirements of, Texas Transportation Code (TTC), §451.3015 for up to two years, for an authority on receipt of certification supported by evidence acceptable to the executive director that:

(1) the authority's vehicles will be operating primarily in an area in which neither the authority nor a supplier has or can reasonably be expected to establish a central refueling station necessary for the operation of low emission vehicles (LEVs); or

(2) the authority is unable to acquire or be provided equipment or refueling facilities necessary to operate LEVs at a projected cost that is reasonably expected to result in no greater net costs than the continued use of equipment or refueling facilities used to operate conventional vehicles, measured over the expected useful life of the equipment or facilities supplied.

(c) Certification by the executive director that an authority confirmed at a tax election before July 1, 1985, and in which the principal city has a population of less than 750,000, according to the most recent federal census, is unable to comply. This is accomplished through development of a proposal to be submitted to the executive director. The proposal must:

(1) contain an alternative implementation schedule for meeting the percentage requirements of TTC §451.3015; and

(2) have been the subject of a public meeting held to discuss the authority's inability to comply with TTC §451.3015, and the alternative implementation schedule.

§114.155. Reporting.

(a) Entities affected by §114.151 of this title (relating to Requirements for Local Governments and Private Entities) must submit biennial fleet reports by September 1 of each even numbered year.

The report shall be submitted to the executive director and must contain, at a minimum:

- (1) the fleet identification number (when assigned);
- (2) the total number of vehicles registered according to the Texas Transportation Code (TTC), §502.002, excluding vehicles registered under TTC, §502.006(c);
- (3) the total number of vehicles registered according to the TTC, §502.002 used for compliance;
- (4) the affected areas in which the affected fleet vehicles operate primarily;
- (5) the total number of purchases for the applicable period, starting with the biennial report in the year 2000;

(6) the following information for each vehicle being used for compliance with the requirements of §114.151 of this title:

(A) purchase date, make, model, model year, vehicle license numbers, vehicle identification numbers, gross vehicle weight rating, fuel type(s), certified emissions standards, and an estimate of the annual vehicle miles traveled (VMT) measured from January 1 through December 31 of each year, and averaged over the two consecutive years; and

(B) if the vehicle used for compliance is a dual-fuel vehicle, an estimate of the percentages of the vehicle's annual operation on each fuel measured from January 1 through December 31 of each year, measured in VMT or time operated on each fuel. Two consecutive years averaged will be used for the biennial fleet report; and

(7) a demonstration of compliance with the applicable implementation schedule under §114.151 of this title.

(b) Affected entities may submit the information required in subsection (a) of this section for all vehicles in their fleet if the vehicles being used for compliance are so indicated.

§114.156. Record Keeping.

Affected entities must maintain copies of submitted reports required by §114.155 of this title (relating to Reporting) on-site at the reported fleet address for a minimum of three years and shall make such reports available to the executive director or local air pollution control agencies having jurisdiction in the area upon request.

§114.157. Low Emission Vehicle Fleet Program Compliance Credits.

(a) Program Compliance Credits (PCCs) may be awarded only to entities affected by §114.150 or §114.151 of this title (relating to Requirements for Mass Transit Authorities, and Requirements for Local Governments and Private Persons) for one or any combination of the following actions:

(1) The purchase, lease, or acquisition of a low emission vehicle (LEV) which is certified to a more stringent emission standard than the LEV standards. These vehicles include:

(A) ultra low emission vehicle (ULEV) as certified by the EPA;

(B) inherently low emission vehicle (ILEV) EPA certified vehicles; or

(C) zero emission vehicle (ZEV) EPA certified vehicles.

(2) The purchase, lease, or acquisition of LEVs in greater numbers than otherwise required under §114.150 or §114.151 of this title;

(3) The purchase, lease, or acquisition of LEVs in a category not otherwise required under §114.150 or §114.151 of this title; or

(4) The purchase, lease, or acquisition of an LEV before the dates required under §114.150 or §114.151 of this title.

(b) PCCs will be awarded according to the estimated remaining useful life of the vehicle.

(c) PCCs may be used to demonstrate compliance with LEV provisions and requirements of this chapter, may be banked for later use, or they may be traded, sold, or purchased, for use by any other entity in the same nonattainment area, to demonstrate compliance with the LEV provisions and requirements of this chapter.

(d) PCCs generated under subsection (a) of this section have the following values:

(1) LEV - one credit;

(2) ULEV - two credits; and

(3) ILEV and ZEV - three credits.

(e) Entities affected by §114.150 or §114.151 of this title proposing to generate PCCs under this chapter may apply at any time to the executive director. A current fleet report containing the information in §114.150 of this title or §114.155 of this title (relating to Reporting) must accompany the application. Affected entities may also indicate their desire to obtain PCCs concurrent with fleet registration or annual reporting. The submission of additional vehicle or fleet information may also be required.

(f) PCCs will be banked with the Mobile Source Section of the commission.

(g) Upon verification by the executive director:

(1) each fleet will be issued a certificate, where applicable; and

(2) a total credit summary sheet will be issued to the fleet.

SUBCHAPTER E : LOW EMISSION VEHICLE FLEET REQUIREMENTS

§114.152

STATUTORY AUTHORITY

This repeal is adopted under the Texas Clean Air Act (TCAA), Texas Health and Safety Code, §382.017, which provides the Texas Natural Resource Conservation Commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§114.152. Use of Certain Vehicles for Compliance.

SUBCHAPTER F : MOBILE EMISSION REDUCTION CREDITS

MOBILE EMISSION REDUCTION CREDITS

§114.201, §114.202

STATUTORY AUTHORITY

The amendments are adopted under the Texas Clean Air Act (TCAA), Texas Health and Safety Code, §382.017, which provides the Texas Natural Resource Conservation Commission (commission) with the authority to adopt rules consistent with the policy and purposes of the TCAA; and TCAA, §382.019, which provides the commission with the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles.

§114.201. Mobile Emission Reduction Credit Program.

(a) Mobile Emission Reduction Credits (MERCs) will be based on the difference between the emissions from the replacement of a conventional vehicle with a low emission vehicle (LEV). Program participation is voluntary. MERCs will be awarded to entities which primarily operate vehicles within the state's nonattainment areas, as identified in §101.1 of this title (relating to Definitions), for any of the following, or combination thereof:

(1) The purchase, lease, or acquisition of an LEV which is certified to a more stringent emission standard than the LEV standards. These vehicles include:

(A) ultra-low emission vehicle (ULEV) as certified by the EPA;

(B) inherently low emission vehicle (ILEV) EPA certified vehicles, and

(C) zero emission vehicle (ZEV) EPA certified vehicles; or

(2) The purchase, lease, or acquisition of LEVs in greater numbers than otherwise required under §114.150 or §114.151 of this title (relating to Requirements for Mass Transit Authorities, and Requirements for Local Governments and Private Entities);

(3) The purchase, lease, or acquisition of LEVs not required under §114.150 or §114.151 of this title; or

(4) The purchase, lease, or acquisition of LEVs prior to the dates under §114.150 or §114.151 of this title.

(5) Entering into a binding contract as specified under §114.202 of this title (relating to Texas Mobile Emission Reduction Credit Fund).

(b) MERCs may be used as follows:

(1) to demonstrate compliance with any applicable mobile source emissions reductions requirements; or

(2) to satisfy Reasonably Available Control Technology and Federal Clean Air Act offset requirements subject to the appropriate trading ratios and other commission rules.

(3) traded, sold, or banked for later use by fleet vehicle owners or other mobile or stationary sources of emissions within the same affected area without discount or depreciation of such credits.

(c) The following restrictions apply to the trading or purchasing of fleet to fleet MERCs:

(1) Trades are restricted to the nonattainment area in which they are generated;

(2) Light-duty vehicle MERCs are restricted to trading within the light-duty vehicle class; and

(3) Heavy-duty vehicle MERCs may be traded within their specific subclass or from a heavier vehicle to a lighter vehicle (downward trading) within the heavy-duty vehicle class.

(d) MERCs will be determined in accordance with EPA rules and guidance as follows:

(1) For fleet to fleet trading or trading from vehicle owners not subject to the requirements for fleets:

$$credit = \frac{F_{required} - F_{optional}}{F_{CV} - F_{LEV}}$$

where:

credit = the credit generated by the vehicle for a fleet to fleet trade;

$F_{required}$ = the emission factor for the vehicle that is required;

$F_{optional}$ = the emission factor for the extra or cleaner than LEVs (ULEV, ILEV, or ZEV);

F_{cv} = for light-duty vehicles and trucks, the emission factor for a conventional light-duty vehicle; and for heavy-duty vehicles, the emission factor for a conventional vehicle in the same weight class as the credit generating vehicle; and

F_{LEV} = for light duty vehicles and trucks, the emission factor for a light-duty vehicle LEV; and for heavy duty vehicles, the emission factor for an LEV in the same weight class as the credit generating vehicle.

(2) For trades to stationary sources, the following methodology is used for the calculation of MERCs for volatile organic compounds (VOCs) or oxides of nitrogen (NO_x) trades:

$$MERC_{\text{grams/year}} = \frac{(\text{differential vehicle benefit} \times VMT \times CF)}{n}$$

where:

differential vehicle benefit = difference in emissions between the LEV and the conventional vehicle

VMT = estimated total remaining vehicle miles traveled for the vehicle;

CF = conversion factor used only for heavy-duty vehicles, defined as brake specific fuel consumption multiplied by fuel economy multiplied by fuel density; and

n = estimated number of years the vehicle will be in service.

(e) In order for credits to be certified as tradable for stationary sources, fleets must have a minimum of one ton per year reduction of VOCs or NO_x. Affected entities may aggregate VOCs or NO_x MERCs generated under this section in order to make the minimum one ton of emission reductions

for trades to stationary sources. However, no minimum is required for banking credits tradable among fleets.

(f) In order to apply for a MERC under subsection (a) of this section, an affected entity or individual must submit the following information to the executive director:

(1) the certified emission standard of the vehicle for which the affected entity or individual wishes to make an application for credit;

(2) the annual VMT by the vehicle;

(3) the amount of time in years this vehicle is expected to be in service; and

(4) a current fleet report containing the information required to be submitted under §114.150 of this title or §114.155 of this title (relating to Reporting). The submission of additional vehicle or fleet information may be required at this time.

(g) MERCs for trading between fleets will be banked with the Mobile Source Section of the commission.

(h) MERCs for trading between fleets and stationary sources will be banked with the commission Emissions Bank.

(i) Upon certification by the executive director, each credit owner will be issued a certificate indicating, where applicable:

- (1) the standard to which the vehicle is certified;
- (2) the weight class of the vehicle;
- (3) the amount of emissions reduced per year in tons for the fleet;
- (4) the number of years the emission reductions will be credited; and
- (5) the number of light-duty or heavy-duty vehicle fleet to fleet MERCs.

(j) A total emissions credit summary sheet will be issued to the affected entity upon issuance of any MERC certificate.

(k) MERCs issued under this section will be awarded in two-year increments for the period of 1998 through 2002. After 2002, MERCs will be awarded according to the expected remaining useful life of the vehicle.

(l) The following are considered violations of the Texas MERC Program:

- (1) claiming a MERC without meeting the appropriate acquisition requirements;
- (2) submission of false data as information requested by commission rules; or
- (3) counterfeiting or dealing commercially in counterfeit MERC certificates.

(m) Any person found to be in violation of the Texas MERC Program is subject to penalties and enforcement as defined by the Health and Safety Code, Chapter 382, Subchapter D.

§114.202. Texas Mobile Emission Reduction Credit Fund.

(a) Mobile emission reduction credits may be assigned through the Texas Mobile Emission Reduction Credit Fund as established by this section to entities affected by §114.150 and §114.151 of this title (relating to Requirements for Mass Transit Authorities, and Requirements for Local Governments and Private Persons) provided:

(1) the entity enters into a binding contract with the commission, agreeing to purchase and place in service in designated program areas low emission vehicles in accordance with the number of credits issued and the time frame specified by the commission; and

(2) the entity agrees to name the EPA as a third-party beneficiary of its contract with the commission.

(b) Contracts entered into under this section may be enforced in the courts of the State of Texas by an order of specific performance.