

The commission proposes 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 proposed revision to the State Implementation Plan (SIP) concerning this proposal.

EXPLANATION OF PROPOSED RULES

Revisions to Chapter 114, concerning Control of Air Pollution from Motor Vehicles, and the corresponding SIP revision are to implement Senate Bill 681 (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 EPA as part of the SIP; therefore, revisions to these sections are considered to be revisions to the SIP.

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 new *Texas Register* rules (23 TexReg 1289). In §114.1(8), the commission requests specific public comment on the definition of “Law enforcement vehicle.” The commission is considering the option of allowing private law enforcement vehicles to qualify for the

exemption from the fleet vehicle requirements, but is unsure if there are any private vehicles which are truly involved in law enforcement. In order to allow exemptions for private law enforcement vehicles, the phrase “controlled by a local government and primarily” would be deleted from the definition.

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 requests specific public comment on the definition for “normally parked at the residence of the individual.” The intent of the proposed wording is 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) drops the compliance date of September 1, 1996, because the date had already passed. Subsection (c) adds the provision that requirements may be met by using PCCs and MERCs. Subsection (d) changes the term “qualifying vehicles” to include vehicles certified to LEV and EPA standards more stringent than LEV. Subsection (e) combines 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 changes 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)) adds 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, has been repealed, and the applicable requirements and allowances have been 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, incorporates 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, incorporates 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.”

FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period these rules as proposed are in effect, there will be no significant fiscal implications for state

or local government as a result of administration or enforcement of the rules. There will be no significant fiscal implications to the commission.

PUBLIC BENEFIT

Mr. Minick has also determined that for each year of the first five years the rules as proposed are in effect, the public benefit will be minimally changed as a result of enforcement of and compliance with the proposed rules. As more and more LEVs are purchased and operated, the quality of the ambient air will improve slightly in each of the affected areas. There will be no additional economic impact on owners and operators of affected fleets. There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed 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 proposal does not meet the full definition of a major environmental rule. The proposed 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 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. The proposal is not an agreement or contract between the state and the federal government which lays out requirements for this program; and is directed by Chapter 382, Subchapter F, Health and Safety Code, rather than being proposed under the general powers of the commission. The commission invites public comment on the draft 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 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 114.201-202. The primary purpose of this rule 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 proposed 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 proposes that the purchase of vehicles for compliance is in the affected entity's discretion (§382.134(e), Health and Safety Code), and the statute has provisions for a cost-effectiveness exception (§382.136, Health and Safety Code).

COASTAL MANAGEMENT PLAN CONSISTENCY REVIEW

The commission has determined that the proposed rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural 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 proposed action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council and has determined that the proposed 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 proposal does not change existing requirements which already comply with regulations at 40 CFR, and is therefore consistent with this policy. Interested persons may submit comments on the consistency of the proposed rules with the CMP during the public comment period.

PUBLIC HEARINGS

Public hearings on this proposal will be held in Austin on May 19, 1998, at 10:00 a.m., in Building F, Room 2210 of the commission's central office, located at 12100 North IH-35, Park 35 Technology Center, Austin; and in Irving on May 20, 1998, at 7:00 p.m., at the City of Irving Central Library Auditorium located at 801 West Irving Boulevard, Irving. The hearings are 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 occur during the hearings; however, a commission staff member will be available to discuss the proposal 30 minutes prior to each hearing and will answer questions before and after each hearing.

SUBMITTAL OF COMMENTS

Written comments may be mailed to Heather Evans, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 97139-114-AI. Comments must be received by 5:00 p.m., May 26, 1998. For further information or questions concerning this proposal, contact Al Giles, Mobile Source Section, Office of Air Quality, (512) 239-1943. Copies of the proposed SIP revision can be obtained by calling Ms. Evans at (512) 239-1970 or by accessing the "proposals/adoptions" portion of the commission's web site at www.tnrcc.state.tx.us/oprd.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the commission at (512) 239-4900. Requests should be made as far in advance as possible.

STATUTORY AUTHORITY

The amendments are proposed under the 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.

The proposed amendments implement TCAA, §382, Subchapter F and Texas Transportation Code (TTC), Chapter 451, Subchapter G.

SUBCHAPTER A : DEFINITIONS

§114.1, §114.3

§114.1. Definitions.

Unless specifically defined in the TCAA or in the rules of the commission [Texas Natural Resource Conservation Commission (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 40₂ [of the] 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 [the] 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 [as defined by 40 CFR, Part 88.] 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, [Acts of the] 63rd Legislature, [Regular Session,] 1973 as defined in the Texas Transportation Code, Chapters 451- 453 (relating to Metropolitan Rapid Transit Authorities []), [452 (] Regional Transportation Authorities [])], and [453 (] 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 [Fleet] Vehicle Fleet Definitions.

Unless specifically defined in the TCAA or in the rules of the commission [Texas Natural Resource Conservation Commission (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 [Fleet] 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.

[Beaumont/Port Arthur nonattainment area - Hardin, Jefferson, and Orange Counties.]

[Capable of being centrally fueled - A fleet or that part of a fleet consisting of vehicles that could be refueled 100% of the time at a location that is owned, operated, or controlled by the fleet operator or that is under contract with the fleet operator. The fact that one or more vehicles in a fleet are not centrally fueled does not exempt an entire fleet from the program.]

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

[Centrally fueled - A fleet or that part of a fleet consisting of vehicles that are refueled 100% of the time at a location that is owned, operated, or controlled by the fleet operator or that is under contract with the fleet operator. The fact that one or more vehicles in a fleet are not centrally fueled does not exempt an entire fleet from the program. The term does not include retail credit card purchases or commercial fleet card purchases.]

(4) Certified - A vehicle that has been issued a certificate of conformity [The process established] 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 [40 (CFR)].

[Clean-fuel vehicle - A vehicle in a class or category of vehicles that has been certified to meet for any model year:]

[(A) the clean-fuel vehicle standards applicable under the FCAA as amended Part C, Subchapter II, (U.S.C. 42 Section 7581 et seq.);]

[(B) emission limits at least as stringent as the applicable low-emission vehicle standards for the clean-fuel fleet program under 40 CFR, Sections 88.104-94, 88.105-94, and as published in the *Federal Register* of September 30, 1994; and]

[(C) vehicles certified to the inherently low-emission vehicle standards under 40 CFR, Section 88.311-93 as published in the *Federal Register*, March 1, 1993, will also be considered clean-fuel vehicles.]

[Control -]

[(A) When it is used to join all entities under common management, means any one or a combination of the following:]

[(i) a third person or firm has equity ownership of 51% or more in each of two or more firms;]

[(ii) two or more firms have common corporate officers, in whole or in substantial part, who are responsible for the day-to-day operation of the companies;]

[(iii) one firm leases, operates, supervises, or in 51% or greater part owns equipment and/or facilities used by another person or firm, or has equity ownership of 51% or more of another firm.]

[(B) When it is used to refer to the management of vehicles, means a person has the authority to decide who can operate a particular vehicle, and the purposes for which the vehicle can be operated.]

[(C) When it is used to refer to the management of people, means a person has the authority to direct the activities of another person or employee in a precise situation, such as the workplace.]

(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 [clean-fuel] vehicle.

[Dallas/Fort Worth nonattainment area - Collin, Dallas, Denton, and Tarrant Counties.]

[El Paso nonattainment area - El Paso County.]

(6) Fleet - The aggregate of the [all] vehicles under the authority of a mass transit authority, local government, or private entity [that are owned, operated, or controlled by an affected entity and are registered under the Texas Transportation Code, §502.002] and operated primarily within an affected [any one nonattainment] area.

(7) Fleet vehicle - A vehicle registered or required to be registered under [the] 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) [§502.002, and that is centrally fueled, capable of being centrally fueled, or fueled at facilities serving both business customers and the general public]. The term does not include:

(A) a [fleet] vehicle that, when not in use, is normally parked at the residence of the individual who normally [usually] operates it [and that is available to such individual for personal use];

(B) a [fleet] vehicle that has a gross vehicle weight rating (GVWR) of greater than 26,000 pounds [, when not in use, is normally parked at the residence of the individual who usually operates it and who does not report to a central location]; [or]

(C) a [fleet] 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 [that has a gross vehicle weight rating (GVWR) greater than 26,000 pounds except vehicles owned or operated by mass transit authorities.]

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

[Houston/Galveston nonattainment area - Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties.]

(8) Lessor - A private entity [person] 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 D)], without a driver, and under a contract. Fleets or vehicles [that are owned,] operated[, or controlled] 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.

[Mobile emission reduction credit - The credit obtained from an enforceable, permanent, quantifiable, and surplus (to other federal and state regulations) emission reduction generated by a mobile source as set forth in §114.201 and §114.202 of this title (relating to the Mobile Emission Reduction Credit Program, and The Texas Mobile Emission Reduction Credit Fund) and

which has been banked in accordance with §101.29 of this title (relating to Emissions Banking and Trading).]

(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.

[Operate - Use of a vehicle on any public road.]

(13) Operates primarily - Use of a fleet in any one affected nonattainment area more than 50% of the total [average] annual vehicle miles traveled or [operating] time as measured from January 1 through December 31 [documented by the affected entity from July 1 through June 30th] of each year.

[Own - Having legal title to a vehicle.]

(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.

[Private person - Any individual, partnership, firm, company, business trust, corporation, organization, or association which owns, operates, or controls a fleet.]

(16) Program compliance credits - Credits that may be granted to a fleet [vehicle owner/] operator for a vehicle which [who] exceeds the low emission [clean-fuel] 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 [Texas Transportation Code], §502.002 excluding vehicles registered under TTC, §502.006(c).

SUBCHAPTER E : LOW EMISSION [FLEET] VEHICLE FLEET REQUIREMENTS

§§114.150, 114.151, 114.153-114.157

STATUTORY AUTHORITY

The amendments are proposed 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; 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.

The proposed amendments implement TCAA, §382, Subchapter F; Texas Transportation Code (TTC), Chapter 451, Subchapter G; TTC, Chapter 452, Subchapter F; and TTC, Chapter 453, Subchapter F.

§114.150. Requirements for Mass Transit Authorities.

(a) Mass transit authorities, as defined in §114.1 of this title (relating to Definitions), that [own,] operate[, or control vehicles in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston nonattainment areas, as defined in §101.1 of this title (relating to Definitions),] in an affected area are subject to the low emission [fleet] vehicle (LEV) provisions and requirements of this section [chapter].

(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 [low emission fleet vehicle fleets by September 1, 1996].

(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 [The] Texas Mobile Emission Reduction Credit Fund) [may be used to meet the percentage requirements of subsection (b) of this section].

(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 [qualifying low emission fleet vehicles] may qualify for both PCCs and MERCs. [,] However, [however] only one type of credit may be used per generating vehicle.

[(e) The percentage requirements of subsection (b) of this section may be met by the dual-fuel conversion or capability of conventional gasoline-powered or diesel-powered vehicles to be certified as low emission fleet vehicles under the dual-fuel standards found in 40 Code of Federal Regulations, Part 88.]

(e) [(f) Vehicles converted, purchased, leased, or otherwise acquired before September 1, 1999, but not certified to the LEV standards, [1998] may be counted towards a mass transit authority's compliance with the percentage requirements of subsection (b) of this section, if the vehicles: [in accordance with §114.152 of this title (relating to Use of Certain Vehicles for Compliance).]

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

(g) [(h)] Affected [By September 30 of each year starting in 1996, mass] transit authorities must submit annual fleet reports by September 1 of each year. [as required under §114.155 of this title (relating to Reporting).] 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) [(i)] Mass transit authorities must maintain records under §114.156 of this title (relating to Record Keeping).

(i) [(j)] Mass transit authorities are eligible for MERCs under Subchapter F of this chapter (relating to Mobile Emission Reduction Credits) [§114.201 or §114.202 of this title] 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 [Persons].

(a) Local governments that [own,] operate [, or control] a fleet of more than 15 vehicles, excluding law enforcement and emergency vehicles, and private entities [persons] that [own,] operate [, or control] a fleet of more than 25 fleet vehicles, excluding law enforcement and emergency vehicles, are subject to the low emission [clean-fuel] vehicle (LEV) provisions and requirements of this chapter when operated primarily in an affected area [the El Paso and Houston/Galveston nonattainment areas].

(b) Beginning September 1, 1998, local governments and private entities [persons], 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 [clean-fuel vehicles] 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 [at least 20% of the fleet vehicles in the total fleet as of September 1, 2000; and]

(3) 70% [90%] of light-duty fleet vehicles purchased after September 1, 2002; and at least 50% [45%] of the heavy-duty fleet vehicles purchased after [in the total fleet as of] September 1, 2002.

(c) A local government or private entity [person] is not required to purchase any additional fleet vehicles certified to meet or certified to exceed the LEV standards [clean-fuel vehicles] if there are 70% [a proportion of 90%] or more LEVs [clean-fuel vehicles is] maintained in the [their] 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 [The] 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 [qualifying clean-fuel vehicles] 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 [dual-fuel] an EPA certified conversion of currently owned or newly purchased conventional vehicles to meet or exceed the LEV standards [or capability of conventional gasoline-powered or diesel-powered vehicles to be certified as clean-fuel vehicles under the dual fuel standards found in 40 Code of Federal Regulations, Part 88]. 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 [Vehicles] converted, purchased, leased, or otherwise acquired before September 1, 1995 [1998] but not certified to the LEV standards may be counted towards a local government's or a private entity's [person'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: [in accordance with §114.152 of this title (relating to Use of Certain Vehicles for Compliance).]

(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 [By September 1, 1997, or within] 90 days of meeting the minimum fleet size, where applicable, affected local governments and private entities [persons] 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 [affected] fleet; [and]

(3) the total number of vehicles [owned,] operated primarily in an affected area, [or controlled,] including [non-covered and] 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, [starting in 1998,] affected local governments and private entity fleets [persons] 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 [persons] 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) [§§114.150-114.157 of this title (relating to Requirements for Mass Transit Authorities; Requirements for Local Governments and Private Persons; Use of Certain Vehicles for Compliance; Exceptions; Exceptions for Certain Mass Transit Authorities; Reporting; Record Keeping; and Program Compliance Credits)]; and §114.201 and §114.202 of this title [(relating to Mobile Emission Reduction Credit Program and the Texas Mobile

Emission Reduction Credit Fund)] 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 [clean-fuel] 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 [of clean-fuel vehicle provisions and requirements of this chapter] 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 the clean-fuel vehicle provisions and 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 entity's vehicles will be operating primarily in an area that does not have or cannot reasonably be expected to establish adequate refueling for the operation of clean-fuel vehicles as required by the clean-fuel vehicle provisions and requirements of this chapter.] The affected area where the entity's fleet operates must be indicated [following information must be submitted to the executive director] when applying for this exception. [:]

[(A) the name of the county where the affected entity's fleet primarily operates;]

[(B) the physical address of the nearest refueling station that provides fuels necessary for clean-fuel operation; and]

[(C) a demonstration of the normal operating range of the affected entity's fleet sufficient for the executive director to determine that the fleet will be operating primarily in an area that does not have or cannot be reasonably expected to establish adequate refueling for the fleet's normal operational needs.]

(3) The affected entity is unable to secure financing provided by or arranged through the proposed supplier or suppliers of the fuels required [fuel necessary] for the operation of LEVs as [the clean-fuel vehicles] required by the [clean-fuel vehicle] provisions [and requirements] 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 [clean-fuel vehicles]; 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. [clean-fuel vehicles.]

(4) The projected net costs of the fueling [,] for EPA certified conversion or replacement [,] and operation of LEVs are [clean-fuel vehicles] reasonably [is] expected to exceed comparable costs [of the fueling, replacement, and operation] of conventional vehicles [when] measured over the expected useful life of such vehicles. Included [and after including] in such cost calculations are any available state or federal funding or incentives for the use of fuels required to operate LEVs. [clean-fuel vehicles.] 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 [using clean-fuel vehicles] exceeds the comparable costs of [using] 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. [clean-fuel vehicles.]

(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 [vehicle/fuel configurations] 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 [or local air pollution control agencies] upon request;

(6) Affected entities which have been granted [who are operating under] an exception may not trade or sell Program Compliance Credits or Mobile Emission Reduction Credits (MERCs), or enter into a contract according to [§§114.157, 114.201, or] §114.202 of this title (relating to [Program Compliance Credits; Mobile Emission Reduction Credit Program; and the] 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 [clean-fuel vehicle] 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 [before] 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 [§451.301] 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) [clean-fuel vehicles]; or

(2) the authority is unable to acquire or be provided equipment or refueling facilities necessary to operate LEVs [clean-fuel vehicles] 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, [covered by Texas Transportation Code, §451.301,] 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 [Texas Transportation Code, §451.301]; and

(2) have been the subject of a public meeting held to discuss the authority's inability to comply with TTC §451.3015 [Texas Transportation Code, §451.301], 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) [Affected entities] must submit biennial [annual] fleet reports by September 1 of each even numbered year. The report shall be submitted to the executive director and [. The report] 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 [fleet] vehicles registered according to the TTC [Texas Transportation Code], §502.002 used for compliance;

(4) the affected areas in which the affected fleet vehicles operate primarily; [vehicle license numbers, model years, manufacturers, model types, vehicle identification numbers, gross vehicle weight rating, fuel type(s) and certified emission standards of each vehicle being used for

compliance with the requirements of §114.150 or §114.151 of this title (relating to Requirements for Mass Transit Authorities and Requirements for Local Governments and Private Persons)];

(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) [(5)] 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 [for each clean-fuel vehicle;]

(B) [(6)] if the vehicle used for compliance is a dual-fuel vehicle, an estimate of [documentation demonstrating] the percentages of the vehicle's annual operation on each fuel measured from January 1 through December 31 of each year, measured in [as documented by the] 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 [section] (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 [the] 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 [entities] 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 [any of the following,] or any combination of the following actions: [thereof:]

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

(A) ultra low emission vehicle (ULEV) as certified by the EPA [certified clean-fuel vehicles];

(B) inherently low emission vehicle (ILEV) EPA certified [clean-fuel] vehicles;
or

(C) zero emission vehicle (ZEV) EPA certified [clean-fuel] vehicles.

(2) The purchase, lease, or acquisition of LEVs [clean-fuel vehicles] 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 Persons)];

(3) The purchase, lease, or acquisition of LEVs [clean-fuel vehicles] 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 [a clean-fuel vehicle] before the dates required under §114.150 or §114.151 of this title.

(b) PCCs will be awarded [in two-year increments from 1998 until 2002. After 2002, credits will be awarded] according to the estimated remaining useful life of the vehicle.

(c) PCCs may be used to demonstrate compliance with LEV [clean-fuel vehicle] provisions and requirements of this chapter, [or] may be banked for later use, or they may be traded, sold, or purchased, for use by any other entity [person] in the same nonattainment area, to demonstrate compliance with the LEV [clean-fuel vehicle] 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 [Affected entities] 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 [Division].

(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 [FLEET] VEHICLE FLEET REQUIREMENTS

§114.152

STATUTORY AUTHORITY

This repeal is proposed 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.

The proposed repeal implements Texas Health and Safety Code, §382.017.

§114.152. Use of Certain Vehicles for Compliance.

SUBCHAPTER F : [VEHICLE RETIREMENT AND]

MOBILE EMISSION REDUCTION CREDITS

MOBILE EMISSION REDUCTION CREDITS

§114.201, §114.202

STATUTORY AUTHORITY

The amendments are proposed 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; 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.

The proposed amendments implement TCAA, §382, Subchapter F; Texas Transportation Code (TTC), Chapter 451, Subchapter G (relating to Metropolitan Rapid Transit Authorities); TTC, Chapter 452, Subchapter F (relating to Regional Transportation Authorities); and TTC, Chapter 453, Subchapter F (relating to Municipal Transportation Authorities).

§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). [clean-fuel vehicle and the conventional vehicle.] Program participation is voluntary. MERCs [, and] will be

awarded to [affected] entities which primarily operate vehicles [and to individuals located] 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 [a clean-fuel vehicle] which is certified to a more stringent emission standard than the LEV [low emission vehicle (LEV)] standards. These vehicles include: [, which include:]

(A) ultra-low emission vehicle (ULEV) as certified by the EPA [certified clean-fuel vehicles];

(B) inherently low emission vehicle (ILEV) EPA certified [clean-fuel] vehicles,
and

(C) zero emission vehicle (ZEV) EPA certified [clean-fuel] vehicles; or

(2) The purchase, lease, or acquisition of LEVs [clean-fuel vehicles] 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 [Persons]);

(3) The purchase, lease, or acquisition of LEVs [clean-fuel vehicles in a category] not required under §114.150 or §114.151 of this title; or

(4) The purchase, lease, or acquisition of LEVs [clean-fuel vehicles before] 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) [used] to demonstrate compliance with [the clean-fuel vehicle provisions and requirements of this chapter or] any applicable [other] mobile source emissions reductions requirements [program that has marketable credits]; 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. [banked for later use; or]

(3) traded, sold, or banked [purchased] 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 [by any other person in the same nonattainment area to demonstrate compliance with the clean-fuel vehicle provisions and requirements of this chapter].

(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) [For fleet to fleet trading or demonstration of compliance,] MERCs will be determined in accordance with EPA rules and guidance as follows: [quantified in terms of fleet to fleet credits using the following equation:]

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

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

$$\left[credit = \frac{F_{base} - F_{optional}}{F_{CV} - F_{LEV}} \right]$$

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_{base} = the emission factor for the base vehicle that is required;]

F_{optional} = the emission factor for the extra or cleaner than LEVs (ULEV, ILEV, or ZEV) [clean-fuel vehicle];

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) [(e)] 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 [clean-fuel] 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 [is] in service.

(e) [(f)] In order for credits to be certified as tradable for stationary sources, fleets must have a minimum of one [1] 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) [(g)] 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 [traveled] 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) [(h)] MERCs for trading between fleets will be banked with the Mobile Source Section of the commission [Division].

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

(i) [(j)] Upon certification by the executive director, each credit owner [vehicle] 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) [(k)] A total emissions credit summary sheet will be issued to the affected entity [fleet] upon issuance of any MERC certificate.

(k) [(l)] 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) [(m)] The following are considered violations of the Texas MERC [Mobile Emission Reduction Credit] 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) [(n)] Any person found to be in violation of the Texas MERC [Mobile Emission Reduction Credit] Program is subject to penalties and enforcement as defined by the Health and Safety Code, Chapter 382, Subchapter D. [a civil penalty of not more than \$25,000 per violation.]

§114.202. [The] 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 [entities] 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 [affected] entity enters into a binding contract with the commission, agreeing to purchase and place in service in designated program areas low emission [clean-fuel] vehicles in accordance with the number of credits issued and the time frame specified by the commission; and

(2) the [affected] 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.