

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**  
**AGENDA ITEM REQUEST**  
**for Proposed Rulemaking**

**AGENDA REQUESTED: October 18, 2011**

**DATE OF REQUEST: September 29, 2011**

**INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Charlotte Horn, (512) 239-0779**

**CAPTION: Docket No. 2011-1219-RUL.** Consideration for publication of, and hearing on, a proposed amendment to 30 TAC Chapter 114, Control of Air Pollution from Motor Vehicles, Subchapter K, Mobile Source Incentive Programs, Division 3, Diesel Emissions Reduction Incentive Program for On-Road and Non-Road Vehicles, Section 114.622, Incentive Program Requirements, and corresponding revisions to the state implementation plan.

The proposed rulemaking would implement part of House Bill (HB) 3399, from the 82nd Legislature, 2011, Regular Session, relating to requirements for receiving an incentive grant under the Diesel Emissions Reduction Incentive Program. The revisions to 30 TAC Chapter 114, as required by HB 3399, incorporate changes and additions to the program eligibility criteria, including: changes to the period over which a grant-funded vehicle must be operated; establish specific criteria for decommissioning a vehicle or vehicle engine under the program; and add provisions to allow a vehicle that has been leased or otherwise commercially financed to be replaced under the program. The revisions also include provisions, as required by HB 3399, that the executive director shall waive eligibility requirements on a finding of good cause. (Steve Dayton, Betsy Peticolas) (Rule Project No. 2011-050-114-EN)

Susana M. Hildebrand, P.E.  
**Chief Engineer**

David Brymer  
**Division Director**

Charlotte Horn  
**Agenda Coordinator**

**Copy to CCC Secretary? NO YES X**

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** September 29, 2011

**Thru:** Bridget Bohac, Chief Clerk  
Mark R. Vickery, P.G., Executive Director

**From:** Susana M. Hildebrand, P.E., Chief Engineer

**Docket No.:** 2011-1219-RUL

**Subject:** Commission Approval for Proposed Rulemaking  
Chapter 114, Control of Air Pollution From Motor Vehicles  
HB 3399: Emissions Reduction Incentive Program Rules  
Rule Project No. 2011-050-114-EN

**Background and reason(s) for the rulemaking:**

House Bill (HB) 3399, 82nd Legislature, 2011, Regular Session, by Representatives Legler, Strama, Reynolds, and Chisum, amends sections of Texas Health and Safety Code (THSC), Chapter 386, Subchapter C. This subchapter establishes the Diesel Emissions Reduction Incentive Program (program) to be funded from the Texas Emissions Reduction Plan (TERP) Fund and administered by the Texas Commission on Environmental Quality (commission). The changes enacted under HB 3399 require amendment of existing rules to revise existing provisions and add new provisions.

**Scope of the rulemaking:**

**A.) Summary of what the rulemaking will do:** HB 3399 added new subsections under THSC, §386.104, Eligibility Requirements, for the Diesel Emissions Reduction Incentive Program. The revisions to 30 TAC Chapter 114, as required by HB 3399, incorporate changes and additions to the program eligibility criteria, including: changes to the period over which a grant-funded vehicle must be operated; establish specific criteria for decommissioning a vehicle or vehicle engine under the program; and add provisions to allow a vehicle that has been leased or otherwise commercially financed to be replaced under the program. The revisions also include provisions, as required by HB 3399, that the executive director shall waive eligibility requirements on a finding of good cause.

**B.) Scope required by federal regulations or state statutes:** The proposed rule is required by changes to THSC, Chapter 386, under HB 3399.

**C.) Additional staff recommendations that are not required by federal rule or state statute:** Staff is not recommending additional provisions beyond what is required under THSC, Chapter 386, as amended by HB 3399.

Re: Docket No. 2011-1219-RUL

**Statutory authority:**

- Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties;
- TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of the state;
- TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission;
- THSC, §382.107, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act;
- THSC, §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air;
- THSC, §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and
- THSC, Chapter 386, which establishes the TERP program.

**Effect on the:**

**A.) Regulated community:** This rule will not affect regulated entities.

**B.) Public:** The changes to the eligibility criteria for the grants will potentially expand the number of entities and vehicles eligible to participate in the program. The changes may also make it easier for some entities to participate in the program.

**C.) Agency programs:** The TERP guidance document, *Guidelines for Emissions Reduction Incentive Grants*, (guidelines) will need to be amended. The revised guidelines will need to be adopted by the commission after the rule is adopted. Program processes, criteria, and forms will need to be updated. Also, a process will need to be developed for considering waivers to the eligibility requirements.

**Stakeholder meetings:**

Stakeholder meetings are not proposed for this rulemaking.

**Potential controversial concerns and legislative interest:**

The proposed rule incorporates provisions required under THSC, Chapter 386, as amended by HB 3399. The proposal does not go further than what is required to comply with the statutory changes. Therefore, staff does not anticipate any concerns being raised about the rule. Staff expects that the legislators involved in HB 3399 and stakeholders will be interested in how the commission implements the new provisions.

Re: Docket No. 2011-1219-RUL

**Will this rulemaking affect any current policies or require development of new policies?**

The TERP guidelines will need to be amended to incorporate the changes to the eligibility criteria. Program application materials and contract shells will need to be updated. Also, a process will need to be developed for considering waivers to the eligibility requirements.

**What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?**

This rulemaking is required to amend the criteria for implementing the Diesel Emissions Reduction Incentive Program under THSC, Chapter 386. If rulemaking is not completed, implementation of the program under the existing rule would be inconsistent with the statutory provisions. Possible alternatives are not adopting the rule or adopting the rule at a later date and delaying implementation of the program.

**Key points in the proposal rulemaking schedule:**

**Anticipated proposal date:** October 18, 2011

**Anticipated *Texas Register* publication date:** November 4, 2011

**Public hearing date:** November 29, 2011

**Public comment period:** November 4, 2011 - December 5, 2011

**Anticipated adoption date:** March 28, 2012

**Agency contacts:**

Steve Dayton, Rule Project Manager, 239-6824, Air Quality Division

Betsy Peticolas, Staff Attorney, 239-1439

Charlotte Horn, Texas Register Coordinator, 239-0779

**Attachments**

cc: Chief Clerk, 2 copies  
Executive Director's Office  
Susana M. Hildebrand, P.E.  
Anne Idsal  
Curtis Seaton  
Ashley Morgan  
Office of General Counsel  
Steve Dayton  
Charlotte Horn

The Texas Commission on Environmental Quality (TCEQ or commission) proposes an amendment to §114.622.

If adopted, the amendment will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan.

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

The 77th Legislature, 2001, enacted Senate Bill 5 establishing the Texas Emissions Reduction Plan (TERP). The TERP provides financial incentives for reducing emissions of on-road heavy-duty motor vehicles and non-road equipment. House Bill (HB) 3399, 82nd Legislature, 2011, amended Texas Health and Safety Code (THSC), Chapter 386, Subchapter C, to revise existing criteria and add additional criteria for receiving an incentive grant under this subchapter. The changes made under HB 3399 are as summarized in the following paragraphs.

Under THSC, §386.104(i), if the commission determines that a heavy-duty motor vehicle or engine must be decommissioned as part of the incentive grant requirements, the new subsection outlines specific criteria for how the vehicle or engine must be destroyed, including making a hole in the engine block and permanently destroying the frame of the vehicle. These requirements are consistent with current practice of the commission in administering the grant programs. In addition, the new subsection

requires the commission to provide a means for an applicant to propose an alternative method for complying with the destruction requirements.

Under THSC, §386.104(j), the executive director of the TCEQ is to waive any eligibility requirements established under THSC, §386.104, on a finding of good cause, which may include a waiver for short lapses in registration or operation attributable to economic conditions, seasonal work, or other circumstances. In addition to the new language outlining how vehicles and engines are to be destroyed under a grant, this section includes requirements for the operation and use of grant-funded vehicles and equipment in nonattainment areas and affected counties for five years, provisions for meeting cost-effectiveness requirements and other provisions pertaining to the emissions reductions to be achieved by a projects, and provisions related to grant payments for the incremental costs of a project. Under the additional language of THSC, §386.104(j), any of these provisions could potentially be waived by the executive director, on a finding of good cause.

Under THSC, §386.104(k), the commission is to consider an application for the replacement of a vehicle that has been owned, leased, or otherwise commercially financed by the applicant. Under this new subsection, if a vehicle or engine that is leased or otherwise commercially financed must be decommissioned, the commission is

to ensure that the applicant has the legal right to decommission the vehicle or engine before a grant is awarded.

Under THSC, §386.104(l), the commission is to consider an application for a vehicle replacement or fleet expansion for a project with an activity life of five years or more, or 400,000 miles, whichever is earlier. This change modifies the previous requirements that vehicles be operated in the nonattainment areas and eligible counties for at least five years, without regard to the accrued mileage.

Finally, under THSC, §386.104(m), the commission is to provide a form that minimizes, to the maximum extent possible, the amount of paperwork required.

The proposed rule incorporates the changes to THSC, §386.104, under HB 3399.

### **Section Discussion**

#### *§114.622, Incentive Program Requirements*

Section 114.622 would be amended to incorporate changes and additions to the program eligibility criteria under THSC, §386.104(i), (k), and (l). This section would also be amended to incorporate the provisions of THSC, §386.622(j), directing the executive director to waive project eligibility requirements on a finding of good cause.

Changes are proposed to subsection (b) and a subsection (c) is proposed to implement the requirements from THSC, §386.104(l), which require that for a project involving the replacement, purchase, or lease of a motor vehicle, at least 75% of the vehicle mileage traveled must occur within a nonattainment area or affected county, and including designated highways and roadways, for five or more years, or 400,000 miles, whichever occurs earlier.

Subsection (e) is proposed to establish the requirements for how a vehicle or engine replaced under a grant must be destroyed, in accordance with THSC, §386.104(i). This proposed subsection would also include a provision for the executive director of the TCEQ to allow an applicant to propose an alternative method for complying with the destruction requirements, as required by THSC, §386.104(i).

Subsection (f) is proposed to implement the requirements of THSC, §386.104(k). The proposed subsection would require that a motor vehicle to be replaced under a grant may have been owned, leased, or otherwise commercially financed by the applicant and that the applicant must have a legal right to replace and recycle or scrap the vehicle and engine before a grant is awarded.

Subsection (h) is proposed to direct the executive director of the TCEQ to waive eligibility requirements under subsections (b) - (f) on a finding of good cause, as required by THSC, §386.104(j).

Existing subsections under this section would also be renumbered to account for the addition of subsections.

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

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that for the first five-year period the proposed rule is in effect, no significant fiscal implications are anticipated for the agency as a result of administration or enforcement of the proposed rule. The agency will continue to utilize available funding appropriated out of the TERP - Account 5071 to implement the changes made to the program in the proposed rule. For the 2012 - 2013 biennium, appropriated funding for TERP incentive grants is approximately \$32 million each year.

The proposed rule would amend Chapter 114 to implement parts of HB 3399.

Specifically, the proposed rule will: establish the criteria for decommissioning a heavy-duty motor vehicle or engine; allow the executive director to consider an alternative method of decommissioning; allow the replacement of leased or commercially financed on-road motor vehicles; change the projected period of use for on-road motor vehicles

purchased with TERP funds from five years to the earlier of five years or 400,000 miles; and allow the executive director to waive eligibility requirements on a finding of good cause.

Under current TERP grant guidelines, the projected period of use is five years or more regardless of mileage, and the replacement of leased vehicles is not allowed. State agencies and local governments with leased vehicles or vehicles that meet the new use criteria could experience cost benefits if they qualify for a grant that allows them to purchase or lease a replacement vehicle at a reduced cost. Some examples of qualifying vehicles include commercial trucks, school buses, and transit buses. Applying for a grant would be voluntary, and it is not known at this time how many state agencies or local governments would do so. Under current rules, the typical grant award ranges from \$50,000 to \$100,000.

### **Public Benefits and Costs**

Nina Chamness also determined that for each of the first five years the proposed rule is in effect, the anticipated public benefit will be an improvement in air quality in the 41 counties eligible to receive TERP incentive grant funding since a greater number of vehicles will become eligible for replacement using grant funds.

The proposed rule may not have a significant fiscal impact on individuals unless they qualify for a TERP grant. Individuals that can utilize TERP funding should experience the same cost benefits as a local government or large business.

Businesses that operate leased vehicles and vehicles that meet the reduced period of use under the proposed rule could experience cost benefits if they are eligible to purchase replacement vehicles or engines with TERP funds. Under current rule, the typical grant award for replacement vehicles or engines ranges from \$50,000 to \$100,000. Sellers of replacement vehicles or engines could see revenue increase since the proposed rule has the potential to increase the sales volumes of qualifying vehicles. Staff is not able to determine how many additional businesses or individuals would experience increases in sales or become eligible to apply for a grant as a result of these changes.

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

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rule. The proposed rule may make it easier for a small or micro-business to qualify for a grant under the program, especially if they lease qualifying vehicles or their vehicles meet the revised period of use criteria. Small or micro-businesses are expected to experience the same benefits as a large business either when buying a vehicle or replacement engine or when selling or leasing a replacement vehicle or engine. Staff is not able to determine how many additional small and micro-businesses

may become eligible to apply for a grant or experience increased sales as a result of these changes.

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

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rule is required by state law and does not adversely affect a small or micro-business in a material way for the first five years that the proposed rule is in effect.

### **Local Employment Impact Statement**

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

### **Draft Regulatory Impact Analysis Determination**

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that this rule action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" means a rule the specific intent of which is to protect the

environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The amended Chapter 114 rule is proposed in accordance with HB 3399, which amended THSC, Chapter 386. The proposed rule adds or revises eligibility requirements for a voluntary grant. Because the proposed rule places no involuntary requirements on the regulated community, the proposed rule will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. In addition, this amendment does not place additional financial burdens on the regulated community.

In addition, a regulatory impact analysis is not required because the proposed rule does not meet any of the four applicability criteria for requiring a regulatory analysis of a "major environmental rule" as defined in the Texas Government Code. Texas Government Code, §2001.0225, applies only to a major environmental rule the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general

powers of the agency instead of under a specific state law. This rulemaking does not exceed a standard set by federal law. In addition, this rulemaking does not exceed an express requirement of state law and is not proposed solely under the general powers of the agency, but is specifically authorized by the provisions cited in the Statutory Authority section of this preamble. Finally, this rulemaking does not exceed a requirement of a delegation agreement or contract to implement a state and federal program.

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

### **Takings Impact Assessment**

The commission evaluated this rulemaking action and performed an analysis of whether the proposed rule is subject to Texas Government Code, Chapter 2007. The primary purpose of the rulemaking is to amend Chapter 114 in accordance with HB 3399. The rule makes revisions to a voluntary program and only affects motor vehicles and equipment that are not considered to be private real property. The promulgation and enforcement of the proposed rule is neither a statutory nor a constitutional taking

because it does not affect private real property. Therefore, the rule does not constitute a taking under Texas Government Code, Chapter 2007.

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

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), concerning rules subject to the Texas Coastal Management Program (CMP), and will, therefore, require that goals and policies of the CMP be considered during the rulemaking process. The commission reviewed this action for consistency and determined the rulemaking for Chapter 114 does not impact any CMP goals or policies, because it revises a voluntary incentive grant program and does not govern air pollution emissions.

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

### **Announcement of Hearing**

The commission will hold a public hearing on this proposal in Austin on November 29, 2011, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written

comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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

### **Submittal of Comments**

Written comments may be submitted to Charlotte Horn, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2011-050-114-EN. The comment period closes December 5, 2011. Copies of the proposed rulemaking can be obtained from the commission's Web site at [http://www.tceq.texas.gov/nav/rules/propose\\_adopt.html](http://www.tceq.texas.gov/nav/rules/propose_adopt.html). For further information, please contact Stephen Dayton, Implementation Grants Section, (512) 239-6824.

**SUBCHAPTER K: MOBILE SOURCE INCENTIVE PROGRAMS**

**DIVISION 3: DIESEL EMISSIONS REDUCTION INCENTIVE PROGRAM**

**FOR ON-ROAD AND NON-ROAD VEHICLES**

**§114.622**

**Statutory Authority**

The amendment is proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendment is also proposed under Texas Health and Safety Code (THSC), Texas Clean Air Act, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the THSC; THSC, §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; THSC, §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and THSC, Chapter 386, which establishes the Texas Emission Reduction Program. Finally, the amendment is proposed as part of the implementation of House Bill 3399.

The proposed amendment implements THSC, §386.104.

**§114.622. Incentive Program Requirements.**

(a) Eligible projects include:

(1) purchase or lease of on-road and non-road diesels;

(2) emissions-reducing retrofit projects for on-road or non-road diesels;

(3) emissions-reducing repower projects for on-road or non-road diesels;

(4) purchase and use of emissions-reducing add-on equipment for on-road or non-road diesels;

(5) development and demonstration of practical, low-emissions retrofit technologies, repower options, and advanced technologies for on-road or non-road diesels with lower nitrogen oxides (NO<sub>x</sub>) emissions;

(6) use of qualifying fuel;

(7) implementation of infrastructure projects;

(8) replacement of on-road and non-road diesels with newer on-road and non-road diesels; and

(9) other projects that have the potential to reduce anticipated NO<sub>x</sub> emissions from diesel engines.

(b) For a proposed project as listed in subsection (a) of this section, other than a project involving a marine vessel or engine, [or] a project involving non-road equipment used for natural gas recovery purposes, a project involving replacement of a motor vehicle, or a project involving the purchase or lease of a motor vehicle, not less than 75% of vehicle miles traveled or hours of operation projected for the five years immediately following the award of a grant must be projected to take place in a nonattainment area or affected county of this state. The commission may also allow vehicle travel on highways and roadways, or portions of a highway or roadway, designated by the commission and located outside a nonattainment area or affected county to count towards the percentage of use requirement.

(c) For a proposed motor vehicle replacement, purchase, or lease project, the period used to determine the emissions reductions and cost-effectiveness of each

replacement, purchase, or lease activity included in the project must extend for five years or more, or 400,000 miles, whichever occurs earlier. Not less than 75% of the vehicle miles traveled projected for the period used to determine the emissions reductions must be projected to take place in a nonattainment area or affected county of this state. The commission may also allow vehicle travel on highways and roadways, or portions of a highway or roadway, designated by the commission and located outside of a nonattainment county or affected county to count towards the percentage of use requirement.

(d) [(c)] For a proposed project that includes a replacement of equipment or a repower, the old equipment or engine must be recycled or scrapped provided, however, that the executive director may allow permanent removal from the State of Texas in specific grants where the applicant has provided sufficient assurances that the old locomotive will not be returned to the State of Texas.

(e) For a proposed project to replace a motor vehicle, the vehicle and engine must be decommissioned by crushing the vehicle and engine, by making a hole in the engine block and permanently destroying the frame of the vehicle, or by another method approved by the executive director that permanently removes the vehicle and engine from operation in this state. For a proposed project to repower a motor vehicle, the engine being replaced must be decommissioned in a manner consistent with the

requirements for decommissioning an engine as part of a vehicle replacement project.

The executive director shall allow an applicant for a motor vehicle replacement or repower project to propose an alternative method for complying with the requirements of this subsection.

(f) For a project to replace a motor vehicle, the vehicle being replaced may have been owned, leased, or otherwise commercially financed by the applicant. The applicant must have a legal right to replace and recycle or scrap the vehicle and engine before a grant is awarded for that project.

(g) [(d)] To be eligible for a grant, the cost-effectiveness of a proposed project as listed in subsection (a) of this section, except for infrastructure projects and infrastructure purchases that are part of a broader retrofit, repower, replacement, or add-on equipment project, must not exceed a cost-effectiveness of \$15,000 per ton of NO<sub>x</sub> emissions reduced. The commission may set lower cost-effectiveness limits as needed to ensure the best use of available funds. The commission may also base project selection decisions on additional measures to evaluate the effectiveness of projects in reducing NO<sub>x</sub> emissions in relation to the funds to be awarded.

(h) The executive director shall waive eligibility requirements established under subsections (b) - (f) of this section on a finding of good cause, which may include a

waiver of any ownership and use requirements established for replacement of a motor vehicle for short lapses in registration or operation attributable to economic conditions, seasonal work, or other circumstances.

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

(j) [(f)] A proposed project as listed in subsection (a) of this section is not eligible if it is required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document. This subsection does not apply to:

(1) an otherwise qualified project, regardless of the fact that the state implementation plan assumes that the change in equipment, vehicles, or operations will occur, if on the date the grant is awarded the change is not required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document; or

(2) the purchase of an on-road diesel or equipment required only by local law or regulation or by corporate or controlling board policy of a public or private entity.

(k) [(g)] A proposed retrofit, repower, replacement, or add-on equipment project must achieve a reduction in NO<sub>x</sub> emissions to the level established in the commission's *Texas Emissions Reduction Plan: Guidelines for Emissions Reduction Incentive Grants Program* (RG-388) for that type of project compared with the baseline emissions adopted by the commission for the relevant engine year and application.

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

(m) [(i)] Criteria established in the guidelines, including revisions to the commission's *Texas Emissions Reduction Plan: Guidelines for Emissions Reduction Incentive Grants Program* (RG-388), apply to the Texas Emissions Reduction Plan program. Notwithstanding the provisions of this chapter, as authorized under Texas Health and Safety Code, §386.053(d), revisions to the guidelines may include, among other changes, adding additional pollutants; adding stationary engines or engines used in stationary applications; adding vehicles and equipment that use fuels other than diesel; or adjusting eligible program categories; as appropriate, to ensure that incentives established under this program achieve the maximum possible emission reductions.

AN ACT

relating to the requirements for grant programs funded through the Texas emissions reduction plan.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 386.104, Health and Safety Code, is amended by adding Subsections (i), (j), (k), (l), and (m) to read as follows:

(i) If the commission determines that a heavy-duty motor vehicle or engine under this chapter must be decommissioned, the commission shall require the decommissioning to be carried out by crushing the vehicle, by making a hole in the engine block and permanently destroying the frame of the vehicle, or by another method approved by the commission that permanently removes the vehicle from operation in this state. The commission shall provide a means for an applicant to propose an alternative method for complying with the requirements of this subsection. The commission shall enforce the requirements of this subsection.

(j) The executive director shall waive any eligibility requirements established under this section on a finding of good cause, which may include a waiver for short lapses in registration or operation attributable to economic conditions, seasonal work, or other circumstances.

(k) The commission shall consider an application under this chapter for the replacement of a vehicle that has been owned,

1 leased, or otherwise commercially financed by the applicant. If  
2 the commission determines that a heavy-duty motor vehicle or engine  
3 that is leased or otherwise commercially financed must be  
4 decommissioned, the commission shall ensure that the applicant has  
5 a legal right to decommission the vehicle or engine before awarding  
6 a grant to the applicant.

7 (l) The commission shall consider an application for a  
8 vehicle replacement or a fleet expansion for a project with an  
9 activity life of five years or more, or 400,000 miles, whichever is  
10 earlier.

11 (m) The commission shall provide a form that minimizes, to  
12 the maximum extent possible, the amount of paperwork required.

13 SECTION 2. Section 391.002, Health and Safety Code, as  
14 added by Chapter 1232 (S.B. 1759), Acts of the 81st Legislature,  
15 Regular Session, 2009, is amended by amending Subsection (b) and  
16 adding Subsection (c) to read as follows:

17 (b) An entity that places 20 [~~25~~] or more qualifying  
18 vehicles in service for use entirely in this state during a calendar  
19 year is eligible to participate in the program.

20 (c) Notwithstanding Subsection (b), an entity that submits  
21 a grant application for 20 or more qualifying vehicles is eligible  
22 to participate in the program even if the commission denies  
23 approval for one or more of the vehicles during the application  
24 process.

25 SECTION 3. Section 391.004, Health and Safety Code, as  
26 added by Chapter 1232 (S.B. 1759), Acts of the 81st Legislature,  
27 Regular Session, 2009, is amended by amending Subsection (a) and

1 adding Subsection (d) to read as follows:

2 (a) An entity operating in this state that operates a fleet  
3 of at least 75 [~~100~~] vehicles may apply for and receive a grant  
4 under the program.

5 (d) The commission shall minimize, to the maximum extent  
6 possible, the amount of paperwork required for an application. An  
7 applicant may be required to submit a photograph or other  
8 documentation of a vehicle identification number, registration  
9 information, inspection information, tire condition, or engine  
10 block identification only if the photograph or documentation is  
11 requested by the commission after the commission has decided to  
12 award a grant to the applicant under this chapter.

13 SECTION 4. Section 391.005, Health and Safety Code, as  
14 added by Chapter 1232 (S.B. 1759), Acts of the 81st Legislature,  
15 Regular Session, 2009, is amended by amending Subsections (b), (c),  
16 (d), and (f) and adding Subsection (i) to read as follows:

17 (b) To be eligible for a grant under the program, a project  
18 must:

19 (1) result in a reduction in emissions of nitrogen  
20 oxides or other pollutants, as established by the commission, of at  
21 least 25 percent, based on:

22 (A) the baseline emission level set by the  
23 commission under Subsection (g); and

24 (B) the certified emission rate of the new  
25 vehicle; and

26 (2) replace a vehicle that:

27 (A) is an on-road vehicle that has been owned,

1 leased, or otherwise commercially financed and registered~~[7]~~ and  
2 operated by the applicant in Texas for at least the two years  
3 immediately preceding the submission of a grant application;

4 (B) satisfies any minimum average annual mileage  
5 or fuel usage requirements established by the commission;

6 (C) satisfies any minimum percentage of annual  
7 usage requirements established by the commission; and

8 (D) is in operating condition and has at least  
9 two years of remaining useful life, as determined in accordance  
10 with criteria established by the commission.

11 (c) As a condition of receiving a grant, the qualifying  
12 vehicle must be continuously owned, registered, and operated in the  
13 state by the grant recipient until the earlier of the fifth  
14 anniversary of [~~for at least five years from~~] the date of  
15 reimbursement of the grant-funded expenses or until the date the  
16 vehicle has been in operation for 400,000 miles after the date of  
17 reimbursement. Not less than 75 percent of the annual use of the  
18 qualifying vehicle, either mileage or fuel use as determined by the  
19 commission, must occur in the state.

20 (d) The commission shall include and enforce the usage  
21 provisions in the grant contracts. The commission shall monitor  
22 compliance with the contract [~~ownership and usage~~] requirements,  
23 including submission of reports on at least an annual basis, or more  
24 frequently as determined by the commission.

25 (f) A vehicle or engine replaced under this program must be  
26 rendered permanently inoperable by crushing the vehicle, by [~~or~~]  
27 making a hole in the engine block and permanently destroying the

1 frame of the vehicle, or by another method approved by the  
2 commission that permanently removes the vehicle from operation in  
3 this state. The commission shall provide a means for an applicant to  
4 propose an alternative method of complying with the requirements of  
5 this subsection. [~~The commission shall establish criteria for~~  
6 ~~ensuring the permanent destruction of the engine and vehicle.~~] The  
7 commission shall [~~monitor and~~] enforce the [~~destruction~~]  
8 requirements of this subsection.

9 (i) The executive director shall waive the requirements of  
10 Subsection (b)(2)(A) on a finding of good cause, which may include a  
11 waiver for short lapses in registration or operation attributable  
12 to economic conditions, seasonal work, or other circumstances.

13 SECTION 5. Sections 386.104, 391.002, 391.004, and 391.005,  
14 Health and Safety Code, as amended by this Act, apply only to a  
15 grant application submitted to the Texas Commission on  
16 Environmental Quality on or after the effective date of this Act. A  
17 grant application submitted to the Texas Commission on  
18 Environmental Quality before the effective date of this Act is  
19 governed by the law in effect on the date the application was  
20 submitted, and the former law is continued in effect for that  
21 purpose.

22 SECTION 6. This Act takes effect September 1, 2011.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 3399 was passed by the House on May 11, 2011, by the following vote: Yeas 148, Nays 1, 1 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 3399 was passed by the Senate on May 25, 2011, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor