

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Rulemaking Adoption

AGENDA REQUESTED: April 9, 2014

DATE OF REQUEST: March 21, 2014

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Derek Baxter, (512) 239-2613

CAPTION: Docket No. 2013-1194-RUL. Consideration for adoption of amendments to 30 Texas Administrative Code Chapter 114, Control of Air Pollution from Motor Vehicles, Subchapter K, Mobile Source Incentive Programs, to add new Division 8, Drayage Truck Incentive Program, Sections 114.680 - 114.682, and corresponding revisions to the state implementation plan.

The adoption would implement part of Senate Bill (SB) 1727, from the 83rd Legislature, 2013, Regular Session, establishing the Drayage Truck Incentive Program (program). The revisions to Chapter 114, as required by SB 1727, establish criteria for the models of drayage trucks eligible for inclusion in the program. The proposed rules were published in the November 22, 2013 issue of the *Texas Register* (38 TexReg 8400). (Steve Dayton, Terry Salem) (Rule Project No. 2013-037-114-AI)

Steve Hagle, P.E.

Deputy Director

Kim Herndon *for* David Brymer

Division Director

Derek Baxter

Agenda Coordinator

Copy to CCC Secretary? NO YES X

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** March 21, 2014

Thru: Bridget C. Bohac, Chief Clerk
Richard A. Hyde, P.E., Executive Director

From: Steve Hagle, P.E., Deputy Director
Office of Air

Docket No.: 2013-1194-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 114, Control of Air Pollution from Motor Vehicles
SB 1727: Drayage Truck Incentive Program
Rule Project No. 2013-037-114-AI

Background and reason(s) for the rulemaking:

Senate Bill (SB) 1727, 83rd Legislature, 2013, Regular Session, by Senators Deuell and Garcia, amends Texas Health and Safety Code (THSC), Chapter 386, to add new Subchapter D-1. This subchapter establishes the Drayage Truck 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 SB 1727 require new rules to establish the criteria for models of drayage trucks eligible for funding under the program.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do: SB 1727 amended THSC, Chapter 386, to add new Subchapter D-1. The program is established to provide financial incentives to encourage owners of drayage trucks operating in seaports and rail yards located in the state's air quality nonattainment areas to replace drayage trucks with pre-2007 model year engines with drayage trucks with 2010 or later model year engines.

Under THSC, §386.182, the commission is to establish by rule the criteria for the models of drayage trucks eligible for inclusion in the program. This rulemaking would define key program terms and establish criteria for the models of drayage trucks eligible for replacement and for purchase under the program.

Under the rules, drayage activities are defined as the transport of cargo, such as containerized, bulk, or break-bulk goods. Vehicles eligible for purchase funding under the program would include heavy-duty on-road vehicles over 26,000 pounds gross vehicle weight rating (GVWR) and with a day cab (i.e., no sleeper berth), and non-road yard trucks. To be considered a drayage truck, a vehicle must be used for drayage activities and operate on or transgress through a seaport or rail yard for the purpose of loading, unloading, or transporting cargo, including transporting empty containers and chassis. Per THSC, §386.183, the seaport or rail yard must be located in a nonattainment area.

Re: Docket No. 2013-1194-RUL

B.) Scope required by federal regulations or state statutes: This rulemaking is required by changes to THSC, Chapter 386, under SB 1727.

C.) Additional staff recommendations that are not required by federal rule or state statute: Staff is not recommending additional provisions beyond those required or authorized by state statute.

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 air 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 and the Drayage Truck Incentive Program.

Effect on the:

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

B.) Public: The public may benefit from improvements to air quality in the nonattainment areas where incentive funding is provided. In addition, individuals and businesses may benefit if an individual or business owns an eligible drayage truck and applies for and receives funding for the purchase of a replacement vehicle.

C.) Agency programs: The executive director will need to develop guidelines, criteria, and procedures to implement the program.

Stakeholder meetings:

No stakeholder meetings were held for this rulemaking.

Public Comment:

The proposal was published in the November 22, 2013 issue of the *Texas Register* (38 TexReg 8400). A public hearing was held on December 12, 2013. The comment period closed December 18, 2013. The commission received comments from Beneficial Results,

Re: Docket No. 2013-1194-RUL

the Environmental Defense Fund (EDF), the United States Environmental Protection Agency Region 6 (EPA), the Regional Transportation Council of the North Central Texas Council of Governments (NCTCOG), the Port of Houston Authority (POHA), Public Citizen, and the Lone Star Chapter of the Sierra Club (Sierra Club).

Beneficial Results, EDF, EPA, NCTCOG, PHOA, Public Citizen, and Sierra Club all expressed support for the rulemaking and the program. Significant comments and recommendations are discussed further.

NCTCOG recommended expanding the definition of ports in §114.680(6) to include both seaports and inland ports. NCTCOG commented that Dallas is home to the International Inland Port of Dallas, which is a public-private partnership serving as a third phase of regional intermodal development. NCTCOG commented on the impact of the inland ports on the regional economy. No changes were made to the proposed text as a result of these comments.

POHA recommended that the definition of a seaport under §114.680(6) be modified to account for the movement of waterborne cargo by barge. POHA recommended adding the term "or barges" after the term "ocean-going vessels" in the definition language. Staff agrees with the recommendation and revised the proposed text to include barges in the definition.

EPA expressed some concern with the authority given to the executive director under §114.682(d) to further define and limit vehicle models or engine model years eligible for purchase or replacement under the program. EPA commented that if, in future attainment or reasonable progress plans, the commission wishes to take credit for this program, the commission may need to further define how the executive director's discretion will be implemented to be able to project the reductions from the program that will be achieved. Staff agrees that the proposed text may have been somewhat unclear. Changes were made to make it clear that the executive director's authority under this provision only extends to placing additional limits on vehicle models and engine model years.

Sierra Club recommended that the requirements of THSC, §386.183(a)(2)(C), requiring destruction of an engine and scrapping of a truck replaced under the program should be incorporated into the rules. In the Response to Comments section of the rule preamble, it is explained that the rules are intended to establish the criteria for eligible vehicles under the program and not the more detailed program implementation criteria. It is also explained that more detailed criteria, including the vehicle and engine destruction requirements will be included in the guidelines to be developed and adopted in accordance with THSC, §386.182(a).

Sierra Club commented to remind the commission that in spending money budgeted for the program, the commission should quickly shift money to other programs if there is not

Re: Docket No. 2013-1194-RUL

demand from applicants. No changes were made to the proposed text as a result of this comment.

NCTCOG commented to encourage full funding of the TERP programs through the appropriation of all revenue collected under the program. NCTCOG encouraged the commission to request full funding of the TERP programs as budgets are prepared for the next biennium. No changes were made to the proposed text as a result of this comment.

EDF commented that including particulate matter reductions in the cost-effectiveness calculations, as well as providing a summary of the health concerns associated with particulate matter in background information that educates the public about the TERP goals, would help the commission to better serve the air quality goals of the TERP (e.g., assure that air is safe to breath and develop multi-pollutant approaches for residents of Texas). No changes were made to the proposed text as a result of this comment.

EDF encouraged the commission staff to review efforts of other regions and states with clean vehicle programs and to take into consideration opportunities to align the TERP programs with similar programs to make it easier for original equipment manufacturers, dealers, and customers to implement clean vehicles in their fleets. EDF referred to a concept of nationwide clean technology vehicle rebate vouchers proposed by CALSTART, a nonprofit organization with members from the vehicle manufacturers and dealers. No changes to the proposed text were made in response to these comments.

Significant Changes from proposal:

Changes from the proposed text under §114.680(1) were made to the definition of the term *day cab*. The proposed text read "Day cab – A conventional truck cab that does not include a sleeper berth." The definition was changed to read "Day cab – A drayage truck cab that does not have a compartment behind the driver's seat intended to be used by the driver for sleeping." This change was made to clarify the type of truck referred to in the definition and to avoid any confusion about the meaning of the term *sleeper berth*.

In response to comments from POHA, changes from the proposed text were made to the definition of a seaport under §114.680(6) to include barges as a type of vessel that may transport cargo and materials to or from an eligible seaport. This change is made in recognition of the significant amount of cargo and materials that are transported through the Texas Intracoastal Waterway.

In response to comments from EPA, changes from the proposed text were made to §114.682(d) to make it clear that authority provided to the executive director to further limit the types of vehicles and engines eligible under the program extends to placing additional limits on the eligibility criteria and not expanding the program to a broader range of vehicles and engines.

Re: Docket No. 2013-1194-RUL

Potential controversial concerns and legislative interest:

There may be some interest, both for or against, limiting eligible vehicles to heavy-duty on-road vehicles over 26,000 pounds GVWR. Entities and individuals that currently operate vehicles with a lighter GVWR or that would want to purchase a lighter vehicle may not agree with the limits. Also, the requirement that the vehicle being purchased has a day cab only and no sleeper berth may generate concern by entities that would want to purchase a long-haul truck with a sleeper berth.

Legislators involved in SB 1727 may be interested in this rulemaking.

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

The executive director will need to develop criteria and procedures to implement the program. Decisions will need to be made regarding how the grant amounts will be determined. Also, specific facilities, properties, and geographic areas will need to be determined to identify eligible rail yards and seaports.

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

If the rulemaking is not completed, the program could not be implemented. Possible alternatives are not adopting the rules or adopting the rules at a later date and delaying implementation of the program.

Key points in the adoption rulemaking schedule:

***Texas Register* proposal publication date:** November 22, 2013

Anticipated *Texas Register* adoption publication date: April 25, 2014

Anticipated effective date: May 1, 2014

Six-month *Texas Register* filing deadline: May 22, 2014

Agency contacts:

Steve Dayton, Rule Project Manager, (512) 239-6824, Air Quality Division

Terry Salem, Staff Attorney, (512) 239-0469

Derek Baxter, Texas Register Coordinator, (512) 239-2613

Attachments

cc: Chief Clerk, 2 copies
Executive Director's Office
Marshall Coover
Tucker Royall
John Bentley
Office of General Counsel
Steve Dayton
Derek Baxter

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts new §§114.680 - 114.682.

Sections 114.680 and 114.682 are adopted *with changes* to the proposed text as published in the November 22, 2013, issue of the *Texas Register* (38 TexReg 8400).

Section 114.681 is adopted *without changes* to the proposed text and will not be republished.

The rules will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP).

Background and Summary of the Factual Basis for the Adopted Rules

The adopted new rules implement the Drayage Truck Incentive Program (program) established under Texas Health and Safety Code (THSC), Chapter 386, Subchapter D-1.

The program provides financial incentives to encourage owners to replace drayage trucks with pre-2007 model year engines with drayage trucks with 2010 or later model year engines.

This program is one of several incentive programs under the Texas Emissions Reduction Plan (TERP) as listed under THSC, §386.051. The TERP was established by the Texas Legislature to create monetary incentives for the implementation of projects to improve

air quality in the state's nonattainment areas. Other eligible counties within the state that may face air quality challenges in the future are also eligible for incentives under the TERP. Projects eligible for funding under the TERP are intended to reduce nitrogen oxide (NO_x) emissions and other pollutants of concern. NO_x is usually a by-product of high-temperature combustion that reacts with volatile organic compounds in the presence of sunlight to form harmful ground-level ozone.

Senate Bill (SB) 1727, 83rd Legislature, 2013, amended THSC, Chapter 386, to add new Subchapter D-1, establishing the program. THSC, §386.182, requires the commission by rule to establish criteria for the models of drayage trucks that are eligible for inclusion in the program.

Section by Section Discussion

§114.680, Definitions

Adopted new §114.680 establishes definitions for terms used in the new Division 8 to Subchapter K of this chapter. In this section, a *drayage truck* is defined as a heavy-duty on-road or non-road vehicle used for drayage activities and that operates on or transgresses through a seaport or rail yard for the purpose of loading, unloading, or transporting cargo, including transporting empty containers and chassis. This definition is intended to include vehicles that operate primarily within the boundaries of a seaport or rail yard and those vehicles that transport a load to or from a seaport or rail

yard. *Drayage activities* are defined as the transport of cargo, such as containerized, bulk, or break-bulk goods.

In this section, a *rail yard* is defined as a rail facility where cargo is routinely transferred from drayage truck to train or vice-versa, including structures that are devoted to receiving, handling, holding, consolidating, and loading or unloading delivery of rail-borne cargo. A *seaport* is defined as a publically or privately owned property associated with the primary movement of cargo or materials from ocean-going vessels or barges to shore or vice-versa, including structures and property devoted to receiving, handling, holding, consolidating, and loading or delivery of waterborne shipments. The term "or barges" was added to the proposed text in response to comments from the Port of Houston Authority (POHA) to account for the movement of waterborne cargo by barge, in addition to ocean-going vessels. These definitions are intended to define the eligible facilities and properties as those primarily associated with the intermodal transfer of cargo from trains or marine vessels to transport by truck. Also, under THSC, Chapter 386, Subchapter D-1, only rail yards and seaports located in a nonattainment area are applicable to this program.

The terms *day cab* and *non-road yard truck* are also defined in this section. The definition of the term *day cab* was changed from the proposed text that read "a conventional truck cab that does not include a sleeper berth." The proposed text was

changed to read "a drayage truck cab that does not have a compartment behind the driver's seat intended to be used by the driver for sleeping." This change was made to clarify the type of truck referred to in the definition and to avoid any confusion about the term *sleeper berth*. These types of vehicles are generally used for local or regional routes since they do not include a sleeper berth to facilitate long distance and overnight travel. A *non-road yard truck* is defined as a mobile utility vehicle used to transport cargo containers with or without chassis. This type of vehicle is also known as a utility tractor rig, yard tractor, or terminal tractor. These types of vehicles are used for movement of cargo containers within the boundaries of a facility or property, generally either from the off-load point to a storage location or to move cargo from one storage location to another within the facility or property. Some models of yard trucks are also manufactured to be registered and meet requirements for on-road use on public roads and highways. An on-road yard truck is considered as a type of on-road heavy-duty vehicle.

§114.681, Applicability

Adopted new §114.681 establishes that the provisions of §§114.680, 114.682, and 114.683 would apply to the new Drayage Truck Incentive Program established under THSC, Chapter 386, Subchapter D-1. Additional language is added from proposal to the definition of a seaport under §114.681(6). The term "or barges" is added to the definition to clarify that a seaport includes property associated with the primary

movement of cargo or materials from either ocean-going vessels or barges to shore or vice-versa. The addition of barges to this definition is intended to account for the fact that a substantial amount of the cargo and materials delivered to or picked up from marine ports in Texas are transported by barge along the Texas Intracoastal Waterway, in addition to transport by ocean-going vessels.

§114.682, Eligible Vehicle Models

THSC, §386.182, requires the commission to establish by rule the criteria for the models of drayage trucks that are eligible for inclusion in the program. Adopted new §114.682 establishes the necessary criteria. Under the criteria, models of drayage trucks eligible for purchase to replace an existing drayage truck include a heavy-duty on-road vehicle with a gross vehicle weight rating (GVWR) of over 26,000 pounds and having a day cab and non-road yard trucks. The minimum limit on the GVWR is intended to exclude from the program large vans and smaller delivery vehicles that, while they may transport cargo from trains or marine vessels, are not generally considered drayage vehicles. Also, larger vehicles generally emit higher levels of pollutants and replacement of larger vehicles used for drayage activities will achieve the most benefit and best address the goals of the program. The requirement that an on-road heavy-duty vehicle must have a day cab is intended to help ensure that vehicles purchased under the program will be used for local and regional drayage activities in and near rail yards and seaports and not for long-haul transport out of the area.

Criteria is also included in this section for the models of existing drayage trucks eligible for replacement under the program, to include a heavy-duty on-road vehicle with a GVWR over 26,000 pounds and a non-road yard truck. The criteria for vehicles being replaced do not require that an existing on-road heavy-duty vehicle only have a day cab. Although a vehicle with a sleeper berth is intended to facilitate long-haul, overnight travel, many older long-haul vehicles have been used for shorter drayage activities as those vehicles become less reliable for long-distance travel. The criteria allows for replacement of these older long-haul vehicles that have a sleeper berth, if those vehicles are currently being used for drayage activities. The vehicle purchased to replace the older vehicle may not have a sleeper berth.

Changes to the proposed text in §114.682(d) make it clear that authority provided to the executive director to further limit vehicle models and engine model years eligible for purchase or replacement under the program allows the executive director to use more restrictive criteria on a grant-round basis and does not provide for expansion of the eligible vehicle models and model years. The phrase "may further define or limit vehicle models and engine model years" is changed to read "may place additional limits on vehicle models and engine model years." The phrase "for a particular grant round" is added to make it clear that additional limits may be applied on a grant-round basis, as needed to improve the effectiveness and further the goals of the program.

Final Regulatory Impact 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 rules are adopted in accordance with SB 1727, which amended THSC, Chapter 386. The rules add eligibility requirements for a voluntary incentive program. Because the rules place no involuntary requirements on the regulated community, the rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. In addition, the rules do not place additional financial burdens on the regulated community.

In addition, a regulatory impact analysis is not required because the rules do not meet any of the four applicability criteria for requiring a regulatory analysis of a "major

environmental rule" as defined in the Texas Government Code. Texas Government Code, §2001.0225, applies only to a major environmental rule the result of which is to:

- 1) exceed a standard set by federal law, unless the rule is specifically required by state law;
- 2) exceed an express requirement of state law, unless the rule is specifically required by federal law;
- 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or
- 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

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

The commission invited public comment on the draft regulatory impact analysis determination during the public comment period. No comments were received on the draft regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated this rulemaking action and performed an analysis of whether the rules are subject to Texas Government Code, Chapter 2007. The primary purpose of the rulemaking is to amend Chapter 114 in accordance with SB 1727. The rules establish criteria for a voluntary program and only affect motor vehicles and equipment that are not considered to be private real property. The promulgation and enforcement of the rules are neither a statutory nor a constitutional taking because the rules do not affect private real property. Therefore, the rules do not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the 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 establishes criteria for a voluntary incentive grant program and does not govern air pollution emissions.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding consistency with the CMP.

Public Comment

A public hearing was held on December 12, 2013. The comment period closed on December 18, 2013. The commission received comments from Beneficial Results, the Environmental Defense Fund (EDF), the EPA, the Regional Transportation Council of the North Central Texas Council of Governments (NCTCOG), the POHA, Public Citizen, and the Lone Star Chapter of the Sierra Club (Sierra Club).

Beneficial Results, EDF, EPA, NCTCOG, POHA, Public Citizen, and Sierra Club commented in support of the rulemaking. EPA also expressed some concern about one provision. Beneficial Results, EDF, NCTCOG, PHOA, and Public Citizen provided suggestions and recommendations for additions or changes to the proposed language.

Response to Comments

Beneficial Results, EDF, EPA, NCTCOG, POHA, Public Citizen, and Sierra Club expressed support for the proposed rulemaking and the program.

EDF commented that the Port of Houston and other Texas ports are major drivers of the Texas economy, as well as the national economy. EDF explained the downside to port activities is that the vehicles, machines, and vessels operating at the ports contribute to pollutants like particulate matter and NO_x affecting the health of surrounding communities and the regional air quality. EDF commented that programs like this will help improve air quality at the Port of Houston and at inland ports in Texas and areas already challenged by air quality issues. EDF included an example that the Port of Houston's most recent emissions inventory from 2008 showed an average number of over 150,000 truck visits per year, based on observations of over 3,000 trucks operating at the port. EDF indicated that the average age of these trucks was between 10 and 11 years old, suggesting that the average truck operating at the port was emitting up to 20 times more NO_x and 10 times more particulate matter than an equivalent truck manufactured today. EDF commented that the heavy-duty diesel fuel vehicle sector was responsible for over 35% of the annual tons of NO_x for port-related emissions, representing over 2,000 tons per year of NO_x and over 50 tons per year of particulate matter.

Beneficial Results and Public Citizen commented that focusing on particulate matter reductions around the Port of Houston is going to be critical to the success of the program and that targeting the old and dirty trucks is going to provide huge benefits, both to the air quality in the area and also to provide economic stimulus in the

community. Beneficial Results and Public Citizen commented that it is a challenge to work with the truck drivers operating at the ports because of economic conditions and that the drivers don't always have the best credit.

The commission appreciates the support expressed for this program and generally agrees with the comments that programs like this can be important tools to address air quality issues near seaports and rail yards. No changes to the proposed text were made in response to these comments.

NCTCOG recommended expanding the definition of ports in §114.680(6) to include both seaports and inland ports. NCTCOG commented that this change would ensure that all major freight hubs in the Dallas-Fort Worth region, including airports that transport freight, would be eligible for funding irrespective of whether it is specifically accessible by rail. NCTCOG commented that Dallas is home to the International Inland Port of Dallas, which is a public-private partnership serving as a third phase of regional intermodal development. NCTCOG further commented that the inland port is a key driver in making Dallas the nation's premier logistics and distribution center and a catalyst for Southern Sector investment, job growth, and development of sustainable communities, with a goal of increasing the local tax base and employment.

The commission agrees that reducing emissions from vehicles operating at a wide range of facilities will help improve air quality in the Dallas-Fort Worth area. However, the rule language implements the specific provisions of THSC, §386.183(a)(2)(B), requiring that drayage trucks funded under the program must be operated in and within a maximum distance of a seaport or rail yard in a nonattainment area of this state. Also, the other TERP incentive programs, including the Diesel Emissions Reduction Incentive Program established under THSC, Chapter 386, Subchapter C, are available to provide funding for replacement of heavy-duty on-road vehicles and non-road equipment in the nonattainment areas and other affected areas, including vehicles and equipment operating at inland ports. No changes to the proposed text were made in response to these comments.

POHA commented that the definition of a seaport under §114.680(6) be modified to account for the movement of waterborne cargo by barge. POHA recommended the addition of the term "or barges" after the term "ocean-going vessels" in the definition language.

The commission agrees with this recommendation, based on the understanding that a substantial amount of cargo and materials are transported by barge along the Texas Intracoastal Waterway, in addition to

transport by ocean-going vessels. The language has been changed from the proposed text to read "... ocean-going vessels or barges . . ."

EDF commented in support of the criteria included in §114.681, regarding eligible vehicle models. EDF commented that heavy-duty trucks operating in ports can be some of the dirtiest vehicles on the road and that limiting eligibility to on-road drayage trucks, generally Class 8B vehicles, and on terminal yard hustlers and terminal tractors makes sense, especially given that some of the terminal tractors may be using off-road engines that can be much dirtier than the same on-road engines. EDF also commented that excluding trucks with sleeper berths allows the program to focus on trucks operating primarily at the port and not on long-haul or regional vehicles that may only visit the port rarely.

The commission appreciates the support expressed for the proposed criteria regarding eligible vehicle models. No changes to the proposed text were made in response to these comments.

EPA expressed some concern with the proposed language under §114.682(d), which states "the executive director may further define or limit vehicle models or engine model years eligible for purchase and replacement under the program in order to improve the effectiveness and further the goals of the program." EPA commented that it is not aware

of any attainment or reasonable progress plans that will be impacted by this provision because it will impact the program going forward. EPA commented that if, in future attainment or reasonable progress plans, the commission wishes to take credit for this program, the commission may need to further define how the executive director's discretion will be implemented to be able to project the reductions from the program that will be achieved.

The commission agrees that the proposal language may have been unclear regarding the extent to which the executive director would have independent authority to revise the vehicle eligibility criteria. This language is not intended to authorize the executive director to expand the program to a broader range of vehicles that do not otherwise fit within the statutory and regulatory criteria and, as a result, negatively impact the amount of emission reductions that may be achieved by the program. Instead, this language is included to ensure that the executive director can make adjustments to the program to target those types of vehicles and engines that will result in the greatest level of emission reductions. Also, any action by the executive director to further limit the types of vehicles and engines that may be considered under the program will not change the methodology and criteria that will be used to calculate emission reductions based on the replacement of an older vehicle with a newer vehicle that

emits less NO_x and other pollutants of concern. This provision has been changed from the proposed text to better define how the executive director's discretion would be implemented. The phrase "may further define or limit vehicle models and engine model years," is changed to read "may place additional limits on vehicle models and engine model years." The phrase "for a particular grant round" is added to make it clear that additional limits may be applied on a grant-round basis, as needed to improve the effectiveness and further the goals of the program.

Sierra Club commented that the requirements of THSC, §386.183(a)(2)(C), requiring destruction of an engine and scrapping of a truck replaced under the program are not included in the proposed rules. Sierra Club recommended that the vehicle and engine destruction requirements be included in the rules themselves to make the requirements abundantly clear to applicants.

The rules are adopted in accordance with THSC, §386.182(b), which requires the commission to establish by rule the criteria for models of drayage trucks that are eligible for inclusion in the program. The broader criteria and requirements necessary for implementation of the program will be included in guidelines adopted in accordance with THSC, §386.182(a), which states that the commission shall adopt guidelines

necessary to implement the program. The guidelines will include the specific requirements for destruction of the vehicles and engines replaced under the program. In addition, the grant contracts will ensure compliance with the destruction requirements and the commission will require reporting and documentation of the vehicle and engine destruction. No changes to the proposed text were made in response to this comment.

Sierra Club commented to remind the commission that in spending money budgeted for this program, the commission should quickly shift money to other programs if there is not demand from applicants.

These comments are outside of the scope of this rulemaking. The commission understands the need to quickly adjust the funding priorities among the various TERP incentive programs to ensure that the funds are used effectively. No changes to the proposed text were made in response to these comments.

NCTCOG commented to encourage full funding of the TERP programs through the appropriation of all revenue collected under the program. NCTCOG encouraged the commission to request full funding for the TERP programs as budgets are prepared for the next biennium.

The commission appreciates NCTCOG's support for funding the TERP programs. These comments are outside of the scope of this rulemaking. Decisions on appropriation levels are made by the Texas Legislature. Also, how the commission structures the biennial appropriations request is guided by direction from the Legislative Budget Board (LBB). The commission will continue to work with members of the legislature and the LBB in regards to the appropriation funding levels for the TERP programs. No changes to the proposed text were made in response to these comments.

EDF commented that diesel particulate matter is especially dangerous for human health and that programs such as TERP should address the reduction of these substances in grant applications to a greater extent than is current practice. EDF commented that including particulate matter reductions in the cost-effectiveness calculations, as well as providing a summary of the health concerns associated with particulate matter in background information that educates the public about the TERP goals, would help the commission to better serve the air quality goals of the TERP (e.g., assure that air is safe to breath and develop multi-pollutant approaches for residents of Texas).

These comments are outside of the scope of this rulemaking. The commission agrees that the goals of the TERP incentive programs,

including this program, may include consideration of other pollutants, such as particulate matter, in addition to reductions in NO_x emissions. The focus of the TERP incentive programs has been the reduction of NO_x emissions because it is a precursor to the formation of ground-level ozone, which is the primary issue in Texas for compliance with federal National Ambient Air Quality Standards. However, the commission is considering ways to better account for reductions in other pollutants, such as particulate matter, when assessing the effectiveness of the TERP incentive programs. No changes to the proposed text were made in response to these comments.

EDF commented to encourage commission staff to review efforts of other regions with their clean vehicle programs and take into consideration opportunities to align the TERP programs with similar programs to make it easier for original equipment manufacturers, dealers, and customers to implement clean vehicles in their fleets. EDF commented that because many of the heavy-duty vehicles are fleet vehicles, fleet managers would more easily be able to deploy clean vehicles and technologies if opportunities were promoted in a nationwide program, such as the concept proposed by CALSTART.

These comments are outside of the scope of this rulemaking. The commission agrees that reviewing other programs when developing and implementing the TERP incentive programs could be helpful. Commission staff review similar incentive programs in other states and regions on a continual basis and have considered those other programs when developing, implementing, and updating the TERP incentive programs. EDF also referenced consideration of a concept proposed by CALSTART for a national network of clean vehicle incentives in the form of voucher rebates. CALSTART is a non-profit organization based in California with a membership of 150 companies representing clean vehicles, fuels, and technologies. Based on CALSTART literature, the organization provides services and consulting help to spur advanced transportation technologies, fuels, and systems and the companies that make them. CALSTART prepared a March 2013 white paper entitled, *Clean Tech Vouchers: An Effective Tool for All Regions*. The main theme of the white paper is the idea of a state and regional incentive network to provide point-of-sale purchase incentives (vouchers) for the purchase of clean technology vehicles. The paper references as an example a voucher program in California for the purchase of hybrid and zero-emission trucks and buses, the Hybrid and Zero-Emission Truck and Bus Voucher Incentive Project. The paper also discusses use of federal Congestion Mitigation and Air

Quality program funding as one source of incentive funds. The commission appreciates EDF's reference to this proposal. Because the incentive programs implemented by states and regional entities have differing goals, criteria, and requirements, as well as different funding time frames, it would be very difficult to bring programs together in some sort of combined incentive initiative. However, staff will continue to review this information and information regarding other incentive programs and will continue to evaluate ways to make this and other TERP incentive programs as accessible and effective as possible. No changes to the proposed text were made in response to these comments.

SUBCHAPTER K: MOBILE SOURCE INCENTIVE PROGRAMS

DIVISION 8: DRAYAGE TRUCK INCENTIVE PROGRAM

§§114.680 - 114.682

Statutory Authority

The new sections are adopted 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 rules are also adopted 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 Emissions Reduction Plan. Finally, the rules are adopted as part of the implementation of Senate Bill 1727.

The adopted rules implement THSC, §386.182.

§114.680. Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used in this division have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms that are defined by the TCAA and §§3.2, 101.1, and 114.1 of this title (relating to Definitions), the following words and terms, when used in this division will have the following meanings, unless the context clearly indicates otherwise.

(1) Day cab--A **drayage** ~~conventional~~ truck cab that does not **have a compartment behind the driver's seat intended to be used by the driver for sleeping** ~~include a sleeper berth.~~

(2) Drayage activities--The transport of cargo, such as containerized, bulk, or break-bulk goods.

(3) Drayage truck--A heavy-duty on-road or non-road vehicle used for drayage activities and that operates on or transgresses through a seaport or rail yard for the purpose of loading, unloading, or transporting cargo, including transporting empty containers and chassis.

(4) Non-road yard truck--A non-road mobile utility vehicle used to transport cargo containers with or without chassis; also known as a utility tractor rig, yard tractor, or terminal tractor.

(5) Rail yard--A rail facility where cargo is routinely transferred from drayage truck to train or vice-versa, including structures that are devoted to receiving, handling, holding, consolidating, and loading or delivery of rail-borne cargo.

(6) Seaport--Publically or privately owned property associated with the primary movement of cargo or materials from ocean-going vessels or barges to shore or vice-versa, including structures and property devoted to receiving, handling, holding, consolidating, and loading or delivery of waterborne shipments.

§114.681. Applicability.

The provisions of §114.680 and §114.682 of this title (relating to Definitions and Eligible Vehicle Models) apply to the Drayage Truck Incentive Program (program) established and implemented under Texas Health and Safety Code (THSC), Chapter 386, Subchapter D-1.

§114.682. Eligible Vehicle Models.

(a) Models of drayage trucks eligible for purchase to replace an existing drayage truck under the program include:

(1) a heavy-duty on-road vehicle with a gross vehicle weight rating (GVWR) over 26,000 pounds and having a day cab only; and

(2) a non-road yard truck.

(b) Models of existing drayage trucks eligible for replacement under the program include:

(1) a heavy-duty on-road vehicle with a GVWR over 26,000 pounds; and

(2) a non-road yard truck.

(c) To be eligible for purchase under the program a drayage truck must have an engine of model year 2010 or later as specified by the agency in the grant solicitation materials and the drayage truck being replaced must have an engine of model year 2006 or earlier.

(d) The executive director may place additional limits on further define or limit vehicle models and engine model years eligible for purchase and replacement under the program for a particular grant round in order to improve the effectiveness and further the goals of the program.

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

(c) The executive director may establish more specific standards for determining grant amounts within the maximum percentage of total costs established under this section consistent with the priorities for project selection, including consideration of the federal emission standards for different model years of heavy-duty engines and light-duty vehicles, decisions on pollutants of concern, and other factors that will help implement the project priorities. [The executive director may revise the standards for determining grant amounts as needed to reflect changes to federal emission standards and decisions on pollutants of concern.]

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

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 7, 2013.

TRD-201305125

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: December 22, 2013

For further information, please call: (512) 239-2141



DIVISION 8. DRAYAGE TRUCK INCENTIVE PROGRAM

30 TAC §§114.680 - 114.682

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes new §§114.680 - 114.682.

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

Background and Summary of the Factual Basis for the Proposed Rules

The purpose of this rulemaking is to add new rules for implementing the Drayage Truck Incentive Program (program) established under Texas Health and Safety Code (THSC), Chapter 386, Subchapter D-1. The program provides financial incentives to encourage owners to replace drayage trucks with pre-2007 model year engines with drayage trucks with 2010 or later model year engines.

Senate Bill (SB) 1727, 83rd Legislature, 2013, amended THSC, Chapter 386, to add new Subchapter D-1, establishing the program. THSC, §386.182, requires the commission by rule to establish criteria for the models of drayage trucks that are eligible for inclusion in the program.

Section by Section Discussion

§114.680, Definitions

New §114.680 is proposed to establish definitions for terms used in new Division 8 of Subchapter K. In this section, a *drayage truck*

would be defined as a heavy-duty on-road or non-road vehicle used for drayage activities and that operates on or transgresses through a seaport or rail yard for the purpose of loading, unloading, or transporting cargo, including transporting empty containers and chassis. This definition is intended to include vehicles that operate primarily within the boundaries of a seaport or rail yard and those vehicles that transport a load to or from a seaport or rail yard. *Drayage activities* would be defined as the transport of cargo, such as containerized, bulk, or break-bulk goods.

In this section, a *rail yard* would be defined as a rail facility where cargo is routinely transferred from drayage truck to train or vice versa, including structures that are devoted to receiving, handling, holding, consolidating, and loading or unloading delivery of rail-borne cargo. A *seaport* would be defined as a publically or privately owned property associated with the primary movement of cargo or materials from ocean-going vessels to shore or vice versa, including structures and property devoted to receiving, handling, holding, consolidating, and loading or delivery of waterborne shipments. These proposed definitions are intended to define the eligible facilities and properties as those primarily associated with the intermodal transfer of cargo from trains or marine vessels to transport by truck. Also, under THSC, Chapter 386, Subchapter D-1, only rail yards and seaports located in a nonattainment area are applicable to this program.

The terms *day cab* and *non-road yard truck* would also be defined in this section. In the proposed definitions, the term *day cab* would mean a conventional truck cab that does not include a sleeper berth. These types of vehicles are generally used for local or regional routes since they do not include a sleeper berth to facilitate long distance and overnight travel. A *non-road yard truck* would be defined as a mobile utility vehicle used to transport cargo containers with or without chassis; also known as a utility tractor rig, yard tractor, or terminal tractor. These types of vehicles are used for movement of cargo containers within the boundaries of a facility or property, generally either from the off-load point to a storage location or to move cargo from one storage location to another within the facility or property. Some models of yard trucks are also manufactured to be registered and meet requirements for on-road use on public roads and highways. An on-road yard truck would be considered as a type of on-road heavy-duty vehicle.

§114.681, Applicability

New §114.681 is proposed to establish that the provisions of new §§114.680, 114.682, and 114.683 would apply to the new Drayage Truck Incentive Program established under THSC, Chapter 386, Subchapter D-1.

§114.682, Eligible Vehicle Models

THSC, §386.182, requires the commission to establish by rule the criteria for the models of drayage trucks that are eligible for inclusion in the program. New §114.682 establishes the necessary criteria. Under the proposed criteria, models of drayage trucks eligible for purchase to replace an existing drayage truck would include a heavy-duty on-road vehicle with a gross vehicle weight rating (GVWR) of over 26,000 pounds and having a day cab and a non-road yard truck. The proposed minimum limit on the GVWR is intended to exclude from the program large vans and smaller delivery vehicles that, while they may transport cargo from trains or marine vessels, are not generally considered drayage vehicles. Also, larger vehicles generally emit higher levels of pollutants and replacement of larger vehicles used for drayage activities will achieve the most bene-

fit and best address the goals of the program. The requirement that an on-road heavy-duty vehicle must have a day cab is intended to help ensure that vehicles purchased under the program will be used for local and regional drayage activities in and near rail yards and seaports and not for long-haul transport out of the area.

Criteria is also proposed in this section for the models of existing drayage trucks eligible for replacement under the program, to include a heavy-duty on-road vehicle with a GVWR over 26,000 pounds and a non-road yard truck. The proposed criteria for vehicles being replaced do not require that an existing on-road heavy-duty vehicle only have a day cab. Although a vehicle with a sleeper berth is intended to facilitate long-haul, overnight travel, many older long-haul vehicles have been used for shorter drayage activities as those vehicles become less reliable for long-distance travel. The proposed criteria would allow for replacement of these older long-haul vehicles that have a sleeper berth, if those vehicles are currently being used for drayage activities. The vehicle purchased to replace the older vehicle may not have a sleeper berth.

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 rules are in effect, no significant fiscal implications are anticipated for the agency as a result of administration or enforcement of the proposed rules. The agency will use available funding appropriated out of the Texas Emissions Reduction Plan (TERP) - Account 5071 to implement the new drayage truck program. For the 2014 - 2015 biennium, appropriated funding for the program is a minimum of \$1,551,923 each year.

The proposed rules would amend Chapter 114 to implement the portions of SB 1727 concerning drayage truck replacement. Specifically, the proposed rules would define key program terms and establish criteria for the models of drayage trucks eligible for replacement and for purchase under the program.

Public port and rail authorities operating a seaport or rail yard in a nonattainment area may own and operate heavy-duty on-road vehicles and non-road yard trucks to transfer cargo in and near a seaport or rail yard under their jurisdiction. Those entities and other state agencies and local governments that own and operate eligible drayage trucks in and through the applicable rail yards or seaports may benefit if those entities apply for and receive a grant to replace an older drayage truck with a newer model.

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. Per the requirements of THSC, §386.182(d), an incentive provided under this program may be used to fund no more than 80% of the purchase price of the drayage truck. Based on this criterion, eligible incentive amounts are expected to range between \$60,000 and \$100,000.

Public Benefits and Costs

Ms. Chamness also determined that for each of the first five years the proposed rules are in effect, the anticipated public benefit will be an improvement in air quality in the areas of the state designated as nonattainment areas by the EPA under the Federal Clean Air Act and where incentive funding is awarded. The currently designated nonattainment areas include: El Paso PM₁₀ Nonattainment Area (City of El Paso); Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area (ten counties surrounding the

cities of Dallas and Fort Worth); and Houston-Galveston-Brazoria Eight-Hour Ozone Nonattainment Area (eight counties surrounding the cities of Houston and Galveston). A portion of Collin County is also designated nonattainment for the 2008 Lead National Ambient Air Quality Standard.

The proposed rules may benefit individuals that own or operate an eligible drayage truck if the individual applies for and receives a financial incentive under the program. Individuals that can utilize the funding should experience the same cost benefits as a local government or large business.

Businesses interested in applying for the program may benefit if their projects qualify for an incentive grant. Applying for a grant would be voluntary, and it is not known at this time how many businesses would do so. Per the requirements of THSC, §386.182(d), an incentive provided under this program may be used to fund no more than 80% of the purchase price of the drayage truck. Based on this criterion, eligible incentive amounts are expected to range between \$60,000 and \$100,000.

Staff is not able to determine how many businesses may be eligible to apply for a grant as a result of these proposed rules.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. Small or micro-businesses are expected to experience the same benefits as a large business. Staff is not able to determine how many small and micro-businesses would be eligible to apply for a grant as a result of these proposed rules.

Small Business Regulatory Flexibility Analysis

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

Draft Regulatory Impact Analysis Determination

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that this rulemaking 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 new Chapter 114 rules are proposed in accordance with SB 1727, which amended THSC, Chapter 386. The proposed rules add eligibility requirements for a voluntary incentive program. Because the proposed rules place no involuntary requirements on the regulated community, the proposed rules will not adversely affect in a material way the economy, a sector of the

economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. In addition, the proposed rules do not place additional financial burdens on the regulated community.

In addition, a regulatory impact analysis is not required because the proposed rules do not meet any of the four applicability criteria for requiring a regulatory analysis of a "major environmental rule" as defined in the Texas Government Code. Texas Government Code, §2001.0225, applies only to a major environmental rule the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not exceed a standard set by federal law. In addition, this rulemaking does not exceed an express requirement of state law and is not 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 and performed an analysis of whether the proposed rules are subject to Texas Government Code, Chapter 2007. The primary purpose of the rulemaking is to amend Chapter 114 in accordance with SB 1727. The rules establish criteria for 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 rules are neither a statutory nor a constitutional taking because the rules do not affect private real property. Therefore, the rules do not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the 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 establishes criteria for 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 December 12, 2013, 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 Michael Parrish, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2013-037-114-AI. The comment period closes December 18, 2013. 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. For further information, please contact Steve Dayton, Implementation Grants Section, at (512) 239-6824.

Statutory Authority

The new sections are proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The new sections are 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 Plan. Finally, the new sections are proposed as part of the implementation of Senate Bill 1727.

The proposed rules implement THSC, §386.182.

§114.680. Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used in this division have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms that are defined by the TCAA and §§3.2, 101.1, and 114.1 of this title (relating to Definitions), the following words and terms, when used in this division will have the following meanings, unless the context clearly indicates otherwise.

(1) Day cab--A conventional truck cab that does not include a sleeper berth.

(2) Drayage activities--The transport of cargo, such as containerized, bulk, or break-bulk goods.

(3) Drayage truck--A heavy-duty on-road or non-road vehicle used for drayage activities and that operates on or transgresses through a seaport or rail yard for the purpose of loading, unloading, or

transporting cargo, including transporting empty containers and chassis.

(4) Non-road yard truck--A non-road mobile utility vehicle used to transport cargo containers with or without chassis; also known as a utility tractor rig, yard tractor, or terminal tractor.

(5) Rail yard--A rail facility where cargo is routinely transferred from drayage truck to train or vice versa, including structures that are devoted to receiving, handling, holding, consolidating, and loading or delivery of rail-borne cargo.

(6) Seaport--Publically or privately owned property associated with the primary movement of cargo or materials from ocean-going vessels to shore or vice versa, including structures and property devoted to receiving, handling, holding, consolidating, and loading or delivery of waterborne shipments.

§114.681. Applicability.

The provisions of §114.680 and §114.682 of this title (relating to Definitions and Eligible Vehicle Models) apply to the Drayage Truck Incentive Program established and implemented under Texas Health and Safety Code, Chapter 386, Subchapter D-1.

§114.682. Eligible Vehicle Models.

(a) Models of drayage trucks eligible for purchase to replace an existing drayage truck under the program include:

(1) a heavy-duty on-road vehicle with a gross vehicle weight rating over 26,000 pounds and having a day cab only; and

(2) a non-road yard truck.

(b) Models of existing drayage trucks eligible for replacement under the program include:

(1) a heavy-duty on-road vehicle with a gross vehicle weight rating over 26,000 pounds; and

(2) a non-road yard truck.

(c) To be eligible for purchase under the program a drayage truck must have an engine of model year 2010 or later as specified by the agency in the grant solicitation materials and the drayage truck being replaced must have an engine of model year 2006 or earlier.

(d) The executive director may further define or limit vehicle models and engine model years eligible for purchase and replacement under the program in order to improve the effectiveness and further the goals of the program.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 7, 2013.

TRD-201305122

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: December 22, 2013

For further information, please call: (512) 239-0779



AN ACT

relating to the use of the Texas emissions reduction plan fund.

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

SECTION 1. Section 386.051, Health and Safety Code, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

(b) Under the plan, the commission and the comptroller shall provide grants or other funding for:

(1) the diesel emissions reduction incentive program established under Subchapter C, including for infrastructure projects established under that subchapter;

(2) the motor vehicle purchase or lease incentive program established under Subchapter D;

(3) the air quality research support program established under Chapter 387;

(4) the clean school bus program established under Chapter 390;

(5) the new technology implementation grant program established under Chapter 391;

(6) the regional air monitoring program established under Section 386.252(a) [~~386.252(a)(5)~~];

(7) a health effects study as provided by Section 386.252(a) [~~386.252(a)(7)~~];

(8) air quality planning activities as provided by

1 Section 386.252(a) [~~386.252(a)(8)~~]; [~~and~~]

2 (9) a contract with the Energy Systems Laboratory at
3 the Texas Engineering Experiment Station for computation of
4 creditable statewide emissions reductions as provided by Section
5 386.252(a)(14);

6 (10) the clean fleet program established under Chapter
7 392;

8 (11) the alternative fueling facilities program
9 established under Chapter 393;

10 (12) the natural gas vehicle grant program and clean
11 transportation triangle program established under Chapter 394;

12 (13) other programs the commission may develop that
13 lead to reduced emissions of nitrogen oxides, particulate matter,
14 or volatile organic compounds in a nonattainment area or affected
15 county;

16 (14) other programs the commission may develop that
17 support congestion mitigation to reduce mobile source ozone
18 precursor emissions; and

19 (15) the drayage truck incentive program established
20 under Subchapter D-1 [~~386.252(a)(9)~~].

21 (b-1) Under the plan, the commission may establish and
22 administer other programs, including other grants or funding
23 programs, as determined by the commission to be necessary or
24 effective in fulfilling its duties and achieving the objectives
25 described under Section 386.052. The commission may apply the
26 criteria and requirements applicable to the programs under
27 Subsection (b) to programs established under this subsection, or

1 the commission may establish separate criteria and requirements as
2 necessary to achieve the commission's objectives. The additional
3 programs shall be consistent with and comply with all applicable
4 laws, regulations, and guidelines pertaining to the use of state
5 funds, the awarding and administration of grants and contracts, and
6 achieving reductions in ozone precursors or particulate matter.
7 Under this subsection, the commission may place a priority on
8 programs that address the following goals:

9 (1) reduction of emissions of oxides of nitrogen or
10 particulate matter from heavy-duty on-road vehicles and non-road
11 equipment, including drayage vehicles, locomotives, and marine
12 vessels, at seaport facilities or servicing seaport facilities in
13 nonattainment areas; and

14 (2) reduction of emissions from the operation of
15 drilling, production, completions, and related heavy-duty on-road
16 vehicles or non-road equipment in oil and gas production fields
17 where the commission determines that the programs can help prevent
18 that area or an adjacent area from being in violation of national
19 ambient air quality standards.

20 SECTION 2. Subchapter B, Chapter 386, Health and Safety
21 Code, is amended by adding Section 386.0515 to read as follows:

22 Sec. 386.0515. AGRICULTURAL PRODUCT TRANSPORTATION
23 PROJECTS. (a) In this section, "agricultural product
24 transportation" means the transportation of a raw agricultural
25 product from the place of production using a heavy-duty truck to:

26 (1) a nonattainment area;

27 (2) an affected county;

1 (3) a destination inside the clean transportation
2 triangle; or

3 (4) a county adjacent to a county described by
4 Subdivision (2) or that contains an area described by Subdivision
5 (1) or (3).

6 (b) Notwithstanding other eligibility requirements, the
7 commission shall by rule or policy provide specific eligibility
8 requirements under the Texas Clean Fleet Program established under
9 Chapter 392 and under the Texas natural gas vehicle grant program
10 established under Chapter 394, as added by Chapter 892 (Senate Bill
11 No. 385), Acts of the 82nd Legislature, Regular Session, 2011, for
12 projects relating to agricultural product transportation.

13 (c) The determining factor for eligibility for
14 participation in a program established under Chapter 392 or Chapter
15 394, as added by Chapter 892 (Senate Bill No. 385), Acts of the 82nd
16 Legislature, Regular Session, 2011, for a project relating to
17 agricultural product transportation is the overall accumulative
18 net reduction in emissions of oxides of nitrogen in a nonattainment
19 area, an affected county, or the clean transportation triangle.

20 SECTION 3. Subsection (b), Section 386.058, Health and
21 Safety Code, is amended to read as follows:

22 (b) The governor shall appoint to the advisory board:

23 (1) a representative of the trucking industry;

24 (2) a representative of the air conditioning
25 manufacturing industry;

26 (3) a representative of the electric utility industry;

27 (4) a representative of regional transportation; and

1 (5) a representative of the nonprofit organization
2 described by Section 387.002 [~~386.252(a)(2)~~].

3 SECTION 4. Section 386.104, Health and Safety Code, is
4 amended by adding Subsection (f-1) to read as follows:

5 (f-1) The commission may establish minimum percentage
6 reduction standards alternative to the standards established under
7 Subsection (f) as an incentive for the conversion of heavy-duty
8 diesel on-road vehicle engines or non-road engines to operate under
9 a dual-fuel configuration that uses natural gas and diesel fuels
10 through an alternative fuel conversion system certified by the
11 United States Environmental Protection Agency or the California Air
12 Resources Board. In determining the emissions rate of the
13 converted vehicle and engine to compute the emissions reductions
14 that can be attributed to the conversion system, the commission may
15 take into account whether the emissions certification requirements
16 for the conversion system prevent fully accounting for the
17 emissions reductions. If the commission determines it to be
18 necessary and appropriate, the commission may consider under this
19 subsection certified engine test information that demonstrates
20 reductions of emissions of nitrogen oxides and other pollutants and
21 other information to verify the emissions reductions.

22 SECTION 5. Section 386.106, Health and Safety Code, is
23 amended to read as follows:

24 Sec. 386.106. COST-EFFECTIVENESS CRITERIA; DETERMINATION
25 OF GRANT AMOUNT. (a) Except as otherwise provided by statute, the
26 ~~[as provided by Section 386.107 and except for infrastructure~~
27 ~~projects and infrastructure purchases that are part of a broader~~

1 ~~retrofit, repower, replacement, or add-on equipment project, the~~
2 ~~commission may not award a grant for a proposed project the~~
3 ~~cost-effectiveness of which, calculated in accordance with Section~~
4 ~~386.105 and criteria developed under that section, exceeds \$15,000~~
5 ~~per ton of oxides of nitrogen emissions reduced in the~~
6 ~~nonattainment area or affected county for which the project is~~
7 ~~proposed. This subsection does not restrict commission authority~~
8 ~~under other law to require emissions reductions with a~~
9 ~~cost-effectiveness that exceeds \$15,000 per ton.~~

10 [(b) ~~The~~] commission may not award a grant that, net of
11 taxes, provides an amount that exceeds the incremental cost of the
12 proposed project.

13 (b) [~~(c)~~] The commission shall adopt guidelines for
14 capitalizing incremental lease costs so those costs may be offset
15 by a grant under this subchapter.

16 (c) [~~(d)~~] In determining the amount of a grant under this
17 subchapter, the commission shall reduce the incremental cost of a
18 proposed new purchase, lease, retrofit, repower, or add-on
19 equipment project by the value of any existing financial incentive
20 that directly reduces the cost of the proposed project, including
21 tax credits or deductions, other grants, or any other public
22 financial assistance.

23 SECTION 6. Sections 386.152 and 386.153, Health and Safety
24 Code, are amended to read as follows:

25 Sec. 386.152. [~~COMPTROLLER AND~~] COMMISSION DUTIES
26 REGARDING LIGHT-DUTY MOTOR VEHICLE PURCHASE OR LEASE INCENTIVE
27 PROGRAM. (a) The [~~comptroller and the~~] commission shall develop a

1 purchase or lease incentive program for new light-duty motor
2 vehicles and shall adopt rules necessary to implement the program.

3 (b) The program shall authorize statewide incentives for
4 the purchase or lease [~~, according to the schedule provided by~~
5 ~~Section 386.153,~~] of new light-duty motor vehicles powered by
6 compressed natural gas, liquefied petroleum gas, or electric drives
7 ~~[that are certified by the United States Environmental Protection~~
8 ~~Agency to meet an emissions standard that is at least as stringent~~
9 ~~as those provided by Section 386.153]~~ for a purchaser or lessee who
10 agrees to register [~~the vehicle in this state]~~ and [~~to~~] operate the
11 vehicle in this state for a minimum period of time to be established
12 by the commission [~~not less than 75 percent of the vehicle's annual~~
13 ~~mileage]~~.

14 (c) Only one incentive will be provided for each new
15 light-duty motor vehicle. The incentive shall be provided to the
16 lessee and not to the purchaser if the motor vehicle is purchased
17 for the purpose of leasing the vehicle to another person.

18 Sec. 386.153. LIGHT-DUTY MOTOR VEHICLE PURCHASE OR LEASE
19 INCENTIVE REQUIREMENTS [~~SCHEDULE~~]. (a) A new light-duty motor
20 vehicle powered by compressed natural gas or liquefied petroleum
21 gas is eligible for a \$2,500 incentive if the vehicle:

- 22 (1) has four wheels;
23 (2) was originally manufactured to comply with and has
24 been certified by an original equipment manufacturer or
25 intermediate or final state vehicle manufacturer as complying with,
26 or has been altered to comply with, federal motor vehicle safety
27 standards, state emissions regulations, and any additional state

1 regulations applicable to vehicles powered by compressed natural
2 gas or liquefied petroleum gas;

3 (3) was manufactured for use primarily on public
4 streets, roads, and highways;

5 (4) is rated at not more than 9,600 pounds unloaded
6 vehicle weight;

7 (5) has a dedicated or bi-fuel compressed natural gas
8 or liquefied petroleum gas fuel system with a range of at least 125
9 miles as estimated, published, and updated by the United States
10 Environmental Protection Agency;

11 (6) has, as applicable, a:

12 (A) compressed natural gas fuel system that
13 complies with the:

14 (i) 2013 NFPA 52 Vehicular Gaseous Fuel
15 Systems Code; and

16 (ii) American National Standard for Basic
17 Requirements for Compressed Natural Gas Vehicle (NGV) Fuel
18 Containers, commonly cited as "ANSI/CSA NGV2"; or

19 (B) liquefied petroleum gas fuel system that
20 complies with:

21 (i) the 2011 NFPA 58 Liquefied Petroleum
22 Gas Code; and

23 (ii) Section VII of the 2013 ASME Boiler and
24 Pressure Vessel Code; and

25 (7) was acquired on or after September 1, 2013, or a
26 later date established by the commission, by the person applying
27 for the incentive under this subsection and for use or lease by that

1 person and not for resale.

2 (b) If the commission determines that an updated version of
3 a code or standard described by Subdivision (a)(6) is more
4 stringent than the version of the code or standard described by
5 Subdivision (a)(6), the commission by rule may provide that a
6 vehicle for which a person applies for an incentive under
7 Subsection (a) is eligible for the incentive only if the vehicle
8 complies with the updated version of the code or standard.

9 (b-1) The incentive under Subsection (a) is limited to 2,000
10 vehicles for the state fiscal biennium beginning September 1, 2013.

11 (c) A new light-duty motor vehicle powered by electric drive
12 is eligible for a \$2,500 incentive if the vehicle:

13 (1) has four wheels;

14 (2) was manufactured for use primarily on public
15 streets, roads, and highways;

16 (3) has not been modified from the original
17 manufacturer's specifications;

18 (4) is rated at not more than 8,500 pounds unloaded
19 vehicle weight;

20 (5) has a maximum speed capability of at least 55 miles
21 per hour;

22 (6) is propelled to a significant extent by an
23 electric motor that draws electricity from a battery that:

24 (A) has a capacity of not less than four kilowatt
25 hours; and

26 (B) is capable of being recharged from an
27 external source of electricity; and

1 (7) was acquired on or after September 1, 2013, or a
2 later date as established by the commission, by the person applying
3 for the incentive under this subsection and for use or lease by that
4 person and not for resale.

5 (d) The incentive under Subsection (c) is limited to 2,000
6 vehicles for the state fiscal biennium beginning September 1, 2013.
7 ~~[A new light-duty motor vehicle is eligible for an incentive~~
8 ~~according to the following schedule:~~

9	[Incentive emissions standard and incentive amount
10	[Model year 2003-2007
11	[Bin 4 — \$1,250
12	[Bin 3 — \$2,225
13	[Bin 2 — \$3,750
14	[Bin 1 — \$5,000]

15 SECTION 7. Section 386.156, Health and Safety Code, is
16 amended to read as follows:

17 Sec. 386.156. LIST OF ELIGIBLE MOTOR VEHICLES. (a) On
18 August 1 each year the commission shall publish ~~[and provide to the~~
19 ~~comptroller]~~ a list of ~~[the]~~ new model motor vehicles eligible for
20 inclusion in an incentive under this subchapter as listed for the
21 commission under Section 386.155. The commission shall publish
22 ~~[and provide to the comptroller]~~ supplements to that list as
23 necessary to include additional new vehicle models ~~[listed in a~~
24 ~~supplement to the original list provided by a manufacturer under~~
25 ~~Section 386.155]~~.

26 (b) The commission ~~[comptroller]~~ shall publish ~~[distribute]~~
27 the list of eligible motor vehicles on the commission's Internet

1 website [~~to all new motor vehicle dealers and leasing agents in this~~
2 ~~state~~].

3 SECTION 8. Subsections (a) and (c), Section 386.158, Health
4 and Safety Code, are amended to read as follows:

5 (a) A person who purchases or leases a new light-duty motor
6 vehicle described by Section 386.153 and [~~that has been~~] listed
7 under Section 386.156(a) [~~386.155~~] is eligible to apply for an
8 incentive under this subchapter.

9 (c) To receive money under an incentive program provided by
10 this subchapter, the purchaser or lessee of a new light-duty motor
11 vehicle who is eligible to apply for an incentive under this
12 subchapter shall apply for the incentive in the manner provided by
13 law or by rule of the commission [~~comptroller~~].

14 SECTION 9. Section 386.160, Health and Safety Code, is
15 amended to read as follows:

16 Sec. 386.160. COMMISSION [~~COMPTROLLER~~] TO ACCOUNT FOR MOTOR
17 VEHICLE PURCHASE OR LEASE INCENTIVES. (a) The commission
18 [~~comptroller~~] by rule shall develop a method to administer and
19 account for the motor vehicle purchase or lease incentives
20 authorized by this subchapter and to pay incentive money to the
21 purchaser or lessee of a new motor vehicle, on application of the
22 purchaser or lessee as provided by this subchapter.

23 (b) The commission [~~comptroller~~] shall develop and publish
24 forms and instructions for the purchaser or lessee of a new motor
25 vehicle to use in applying to the commission [~~comptroller~~] for an
26 incentive payment under this subchapter. The commission
27 [~~comptroller~~] shall make the forms available to new motor vehicle

1 dealers and leasing agents. Dealers and leasing agents shall make
2 the forms available to their prospective purchasers or lessees.

3 (c) In addition to other forms developed and published under
4 this section, the commission [~~comptroller~~] shall develop and
5 publish a verification form by which, with information provided by
6 the dealer or leasing agent, the commission [~~comptroller~~] can
7 verify the sale of a vehicle covered by this subchapter. The
8 verification form shall include at least the name of the purchaser,
9 the vehicle identification number of the vehicle involved, the date
10 of the purchase, and the name of the new motor dealer or leasing
11 agent involved in the transaction. At the time of sale or lease of a
12 vehicle eligible for an incentive under this subchapter, the dealer
13 or leasing agent shall complete the verification form supplied to
14 the dealer by the commission [~~comptroller~~]. The purchaser or
15 lessee shall include the completed verification form as part of the
16 purchaser's application for an incentive. The dealer shall
17 maintain a copy of the completed verification form for at least two
18 years from the date of the transaction.

19 SECTION 10. The heading to Section 386.161, Health and
20 Safety Code, is amended to read as follows:

21 Sec. 386.161. [~~REPORT TO COMMISSION,~~] SUSPENSION OF
22 PURCHASE OR LEASE INCENTIVES.

23 SECTION 11. Subsections (b), (c), and (d), Section 386.161,
24 Health and Safety Code, are amended to read as follows:

25 (b) If the balance available for motor vehicle purchase or
26 lease incentives falls below 15 percent of the total allocated for
27 the incentives during that fiscal year, the commission

1 ~~[comptroller]~~ by order shall suspend the incentives until the date
2 the comptroller can certify that the balance available in the fund
3 for incentives is an amount adequate to resume the incentives or the
4 beginning of the next fiscal year, whichever is earlier. If the
5 commission ~~[comptroller]~~ suspends the incentives, the commission
6 ~~[comptroller]~~ shall immediately notify ~~[the commission and]~~ all new
7 motor vehicle dealers and leasing agents that the incentives have
8 been suspended.

9 (c) The commission ~~[comptroller]~~ shall establish a
10 toll-free telephone number available to motor vehicle dealers and
11 leasing agents for the dealers and agents to call to verify that
12 incentives are available. The commission ~~[comptroller]~~ may provide
13 for issuing verification numbers over the telephone line.

14 (d) Reliance by a dealer or leasing agent on information
15 provided by the ~~[comptroller or]~~ commission is a complete defense
16 to an action involving or based on eligibility of a vehicle for an
17 incentive or availability of vehicles eligible for an incentive.

18 SECTION 12. Subchapter D, Chapter 386, Health and Safety
19 Code, is amended by adding Section 386.162 to read as follows:

20 Sec. 386.162. EXPIRATION. This subchapter expires August
21 31, 2015.

22 SECTION 13. Chapter 386, Health and Safety Code, is amended
23 by adding Subchapter D-1 to read as follows:

24 SUBCHAPTER D-1. DRAYAGE TRUCK INCENTIVE PROGRAM

25 Sec. 386.181. DEFINITION; RULES. (a) In this subchapter,
26 "drayage truck" means a truck that transports a load to or from a
27 seaport or rail yard.

1 (b) The commission may include more specific definitions in
2 the rules or guidelines developed to implement the program
3 established by this subchapter in order to reduce emissions in and
4 around seaports in a nonattainment area.

5 Sec. 386.182. COMMISSION DUTIES. (a) The commission shall
6 develop a purchase incentive program to encourage owners to replace
7 drayage trucks with pre-2007 model year engines with newer drayage
8 trucks and shall adopt guidelines necessary to implement the
9 program.

10 (b) The commission by rule shall establish criteria for the
11 models of drayage trucks that are eligible for inclusion in an
12 incentive program under this subchapter. The guidelines must
13 provide that a drayage truck owner is not eligible for an incentive
14 payment under this subchapter unless the truck being replaced
15 contains a pre-2007 model year engine and the replacement truck's
16 engine is from model year 2010 or later as determined by the
17 commission and that the truck operates at a seaport or rail yard.

18 Sec. 386.183. DRAYAGE TRUCK PURCHASE INCENTIVE. (a) To be
19 eligible for an incentive under this subchapter, a person must:

20 (1) purchase a replacement drayage truck that under
21 the guidelines adopted by the commission under Section 386.182 is
22 eligible for inclusion in the program for an incentive under this
23 subchapter; and

24 (2) agree to:

25 (A) register the truck in this state;

26 (B) operate the truck in and within a maximum
27 distance established by the commission of a seaport or rail yard in

1 a nonattainment area of this state for not less than 50 percent of
2 the vehicle's annual mileage or hours of operation, as determined
3 by the commission; and

4 (C) permanently remove a pre-2007 drayage truck
5 containing a pre-2007 engine owned by the person from operation in a
6 nonattainment area of this state by destroying the engine and
7 scrapping the truck after the purchase of the new truck in
8 accordance with guidelines established by the commission.

9 (b) To receive money under an incentive program provided by
10 this subchapter, the purchaser of a drayage truck eligible for
11 inclusion in the program must apply for the incentive in the manner
12 provided by law, rule, or guideline of the commission.

13 (c) Not more than one incentive may be provided for each
14 drayage truck purchased.

15 (d) An incentive provided under this subchapter may be used
16 to fund not more than 80 percent of the purchase price of the
17 drayage truck.

18 (e) The commission shall establish procedures to verify
19 that a person who receives an incentive:

20 (1) has operated in a seaport or rail yard and owned or
21 leased the drayage truck to be replaced for at least two years prior
22 to receiving the grant; and

23 (2) permanently destroys the engine and scraps the
24 drayage truck that contained the pre-2007 engine owned or leased by
25 the person, in accordance with guidelines established by the
26 commission, after the purchase of the new truck.

27 (f) The commission may modify this program to improve its

1 effectiveness or further the goals of Subchapter B.

2 SECTION 14. The heading to Subchapter E, Chapter 386,
3 Health and Safety Code, is amended to read as follows:

4 SUBCHAPTER E. EVALUATION OF UTILITY COMMISSION AND COMPTROLLER
5 ENERGY EFFICIENCY PROGRAMS [~~GRANT PROGRAM~~]

6 SECTION 15. Section 386.205, Health and Safety Code, is
7 amended to read as follows:

8 Sec. 386.205. EVALUATION OF UTILITY COMMISSION AND
9 COMPTROLLER [~~STATE~~] ENERGY EFFICIENCY PROGRAMS. In cooperation
10 with the laboratory, the utility commission shall provide an annual
11 report to the commission that, by county, quantifies the reductions
12 of energy demand, peak loads, and associated emissions of air
13 contaminants achieved from [~~the~~] programs implemented by the state
14 energy conservation office [~~under this subchapter~~] and from
15 programs [~~those~~] implemented under Section 39.905, Utilities Code.

16 SECTION 16. Subsection (a), Section 386.252, Health and
17 Safety Code, as amended by Chapter 28 (S.B. 527), Acts of the 82nd
18 Legislature, Regular Session, 2011, is amended to read as follows:

19 (a) Money in the fund may be used only to implement and
20 administer programs established under the plan. Money appropriated
21 to the commission to be used for the programs under Section
22 386.051(b) [~~and the total appropriation~~] shall be allocated as
23 follows:

24 (1) not more than four percent may be used for the
25 clean school bus program under Chapter 390;

26 (2) not more than three percent [~~not more than 10~~
27 ~~percent may be used for on-road diesel purchase or lease~~

1 ~~incentives,~~

2 ~~[(3) a specified amount]~~ may be used for the new
3 technology implementation grant program under Chapter 391, from
4 which at least \$1 million will ~~[a defined amount may]~~ be set aside
5 for electricity storage projects related to renewable energy;

6 (3) ~~[(4)]~~ five percent shall be used for the clean
7 fleet program under Chapter 392;

8 (4) ~~[(5)]~~ not more than ~~[\$7 million shall be allocated~~
9 ~~in 2012 and 2013 and not more than]~~ \$3 million may ~~[shall]~~ be used by
10 the commission ~~[allocated in 2014 and in subsequent years]~~ to fund a
11 regional air monitoring program in commission Regions 3 and 4 to be
12 implemented under the commission's oversight, including direction
13 regarding the type, number, location, and operation of, and data
14 validation practices for, monitors funded by the program through a
15 regional nonprofit entity located in North Texas having
16 representation from counties, municipalities, higher education
17 institutions, and private sector interests across the area;

18 (5) not less than 16 percent shall be used for the
19 Texas natural gas vehicle grant program under Chapter 394;

20 (6) not more than five percent may be used to provide
21 grants for natural gas fueling stations under the clean
22 transportation triangle program under Section 394.010;

23 (7) not more than five percent may be used for the
24 Texas alternative fueling facilities program under Chapter 393;

25 (8) a specified amount may be used ~~[is to be allocated]~~
26 each year to support research related to air quality as provided by
27 Chapter 387;

1 (9) not more than [(7) up to] \$200,000 may be used [is
2 allocated] for a health effects study;

3 (10) [(8) up to] \$500,000 is to be deposited in the
4 state treasury to the credit of the clean air account created under
5 Section 382.0622 to supplement funding for air quality planning
6 activities in affected counties;

7 (11) at least \$4 million and up to four percent to a
8 maximum of \$7 million, whichever is greater, is allocated to the
9 commission for administrative costs;

10 (12) at least two percent and up to five percent of the
11 fund is to be used by the commission for the drayage truck incentive
12 program established under Subchapter D-1;

13 (13) not more than five percent may be used for the
14 light-duty motor vehicle purchase or lease incentive program
15 established under Subchapter D;

16 (14) [(9)] not more than \$216,000 is allocated to the
17 commission to contract with the Energy Systems Laboratory at the
18 Texas Engineering Experiment Station annually for the development
19 and annual computation of creditable statewide emissions
20 reductions obtained through wind and other renewable energy
21 resources for the state implementation plan;

22 (15) [(10) not more than \$3,400,000 is allocated to
23 the commission for administrative costs incurred by the commission;

24 [(11)] 1.5 percent of the money in the fund is
25 allocated for administrative costs incurred by the laboratory; and

26 (16) [(12)] the balance is to be used by [is allocated
27 to] the commission for the diesel emissions reduction incentive

1 program under Subchapter C as determined by the commission.

2 SECTION 17. Section 386.252, Health and Safety Code, is
3 amended by amending Subsections (b), (c), (d), and (e) and adding
4 Subsection (e-1) to read as follows:

5 (b) The commission may allocate unexpended money designated
6 for the clean fleet program under Chapter 392 to other programs
7 described under Subsection (a) after the commission allocates money
8 to recipients under the clean fleet program.

9 (c) The commission may allocate unexpended money designated
10 for the Texas alternative fueling facilities program under Chapter
11 393 to other programs described under Subsection (a) after the
12 commission allocates money to recipients under the alternative
13 fueling facilities program.

14 (d) The commission may reallocate money designated for the
15 Texas natural gas vehicle grant program under Chapter 394 to other
16 programs described under Subsection (a) if:

17 (1) the commission, in consultation with the governor
18 and the advisory board, determines that the use of the money in the
19 fund for that program will cause the state to be in noncompliance
20 with the state implementation plan to the extent that federal
21 action is likely; and

22 (2) the commission finds that the reallocation of some
23 or all of the funding for the program would resolve the
24 noncompliance.

25 (e) Under Subsection (d), the commission may not reallocate
26 more than the minimum amount of money necessary to resolve the
27 noncompliance.

1 (e-1) Money [~~money~~] allocated under Subsection (a) to a
2 particular program may be used for another program under the plan as
3 determined by the commission.

4 [~~(c) Money in the fund may be allocated to the clean school
5 bus program only if:~~

6 [~~(1) the money is available for that purpose after
7 money is allocated for the other purposes of the fund as required by
8 the state implementation plan; or~~

9 [~~(2) the amount of money deposited to the credit of the
10 fund in a state fiscal year exceeds the amount the comptroller's
11 biennial revenue estimate shows as the comptroller's estimated
12 amount to be deposited to the credit of the fund in that year.~~

13 [~~(d) The commission may allocate unexpended money
14 designated for the clean fleet program to other programs described
15 under Subsection (a) after the commission allocates money to
16 recipients under the clean fleet program.~~

17 [~~(e) The commission may allocate unexpended money
18 designated for the Texas alternative fueling facilities program to
19 other programs described under Subsection (a) after the commission
20 allocates money to recipients under the alternative fueling
21 facilities program.]~~

22 SECTION 18. Subsection (f), Section 386.252, Health and
23 Safety Code, as added by Chapter 892 (S.B. 385), Acts of the 82nd
24 Legislature, Regular Session, 2011, is amended to read as follows:

25 (f) Money in the fund may be used by the commission for
26 programs under Sections 386.051(b)(13), (b)(14), and (b-1) as may
27 be appropriated for those programs [~~Notwithstanding Subsection~~

1 ~~(a), the commission may reallocate money in the fund if:~~

2 ~~[(1) the commission, in consultation with the governor~~
3 ~~and the advisory board, determines that the use of the money in the~~
4 ~~fund for the program established under Chapter 394 will cause the~~
5 ~~state to be in noncompliance with the state implementation plan to~~
6 ~~the extent that federal action is likely; and~~

7 ~~[(2) the commission finds that the reallocation of~~
8 ~~some or all of the funding for the program established under Chapter~~
9 ~~394 would resolve the noncompliance].~~

10 SECTION 19. Section 386.252, Health and Safety Code, is
11 amended by amending Subsection (g) and adding Subsection (h) to
12 read as follows:

13 (g) If the legislature does not specify amounts or
14 percentages from the total appropriation to the commission to be
15 allocated under Subsection (a) or (f), the commission shall
16 determine the amounts of the total appropriation to be allocated
17 under each of those subsections, such that the total appropriation
18 is expended while maximizing emissions reductions ~~[Under~~
19 ~~Subsection (f), the commission may not reallocate more than the~~
20 ~~minimum amount of money necessary to resolve the noncompliance].~~

21 (h) Subject to the limitations outlined in this section and
22 any additional limitations placed on the use of the appropriated
23 funds, money allocated under this section to a particular program
24 may be used for another program under the plan as determined by the
25 commission.

26 SECTION 20. Section 391.002, Health and Safety Code, is
27 amended to read as follows:

1 Sec. 391.002. GRANT PROGRAM. (a) The commission shall
2 establish and administer a new technology implementation grant
3 program to assist the implementation of new technologies to reduce
4 emissions from facilities and other stationary sources in this
5 state. The commission may establish a minimum capital expenditure
6 threshold for projects under Subsection (b)(2). Under the program,
7 the commission shall provide grants or other financial incentives
8 for eligible projects to offset the incremental cost of emissions
9 reductions.

10 (b) Projects that may be considered for a grant under the
11 program include:

12 (1) advanced clean energy projects, as defined by
13 Section 382.003;

14 (2) new technology projects that reduce emissions of
15 regulated pollutants from point sources [~~and involve capital~~
16 ~~expenditures that exceed \$500 million~~]; and

17 (3) electricity storage projects related to renewable
18 energy, including projects to store electricity produced from wind
19 and solar generation that provide efficient means of making the
20 stored energy available during periods of peak energy use.

21 SECTION 21. Subsection (a), Section 392.007, Health and
22 Safety Code, is amended to read as follows:

23 (a) The amount the commission shall award for each vehicle
24 being replaced is up to[+]

25 [~~(1)~~] 80 percent, as determined by the commission, of
26 the total [~~incremental~~] cost for replacement of a heavy-duty or
27 light-duty diesel engine[+]

1 ~~[(A) manufactured prior to implementation of~~
2 ~~federal or California emission standards; and~~

3 ~~[(B) not certified to meet a specific emission~~
4 ~~level by either the United States Environmental Protection Agency~~
5 ~~or the California Air Resources Board;~~

6 ~~[(2) 70 percent of the incremental cost for~~
7 ~~replacement of a heavy-duty diesel engine certified to meet the~~
8 ~~federal emission standards applicable to engines manufactured in~~
9 ~~1990 through 1997;~~

10 ~~[(3) 60 percent of the incremental cost for~~
11 ~~replacement of a heavy-duty diesel engine certified to meet the~~
12 ~~federal emission standards applicable to engines manufactured in~~
13 ~~1998 through 2003;~~

14 ~~[(4) 50 percent of the incremental cost for~~
15 ~~replacement of a heavy-duty diesel engine certified to meet the~~
16 ~~federal emission standards applicable to engines manufactured in~~
17 ~~2004 and later;~~

18 ~~[(5) 80 percent of the incremental cost for~~
19 ~~replacement of a light-duty diesel vehicle;~~

20 ~~[(A) manufactured prior to the implementation of~~
21 ~~certification requirements; and~~

22 ~~[(B) not certified to meet either mandatory or~~
23 ~~voluntary emission certification standards;~~

24 ~~[(6) 70 percent of the incremental cost for~~
25 ~~replacement of a light-duty diesel vehicle certified to meet~~
26 ~~federal Tier 1 emission standards phased in between 1994 and 1997;~~
27 ~~and~~

1 ~~[(7) 60 percent of the incremental cost for~~
2 ~~replacement of a light-duty diesel vehicle certified to meet~~
3 ~~federal Tier 2 emission standards phased in between 2004 and 2009].~~

4 SECTION 22. Subsection (a), Section 394.007, Health and
5 Safety Code, as amended by Chapter 892 (S.B. 385), Acts of the 82nd
6 Legislature, Regular Session, 2011, is amended to read as follows:

7 (a) The commission shall develop a grant schedule that:

8 (1) assigns a standardized grant in an amount up to
9 ~~[between 60 and]~~ 90 percent of the incremental cost of a natural gas
10 vehicle purchase, lease, other commercial finance, or repowering;

11 (2) is based on:

12 (A) the certified emission level of nitrogen
13 oxides, or other pollutants as determined by the commission, of the
14 engine powering the natural gas vehicle; and

15 (B) the usage of the natural gas vehicle; and

16 (3) may take into account the overall emissions
17 reduction achieved by the natural gas vehicle.

18 SECTION 23. Section 394.010, Health and Safety Code, as
19 amended by Chapter 892 (S.B. 385), Acts of the 82nd Legislature,
20 Regular Session, 2011, is amended by amending Subsections (a), (b),
21 (c), and (d) and adding Subsection (f-1) to read as follows:

22 (a) To ensure that natural gas vehicles purchased, leased,
23 or otherwise commercially financed or repowered under the program
24 have access to fuel, and to build the foundation for a
25 self-sustaining market for natural gas vehicles in Texas, the
26 commission shall award grants to support the development of a
27 network of natural gas vehicle fueling stations along the

1 interstate highways connecting Houston, San Antonio, Dallas, and
2 Fort Worth, and in nonattainment areas and affected counties of the
3 state. In awarding the grants, the commission shall provide for:

4 (1) strategically placed natural gas vehicle fueling
5 stations in and between the Houston, San Antonio, and Dallas-Fort
6 Worth areas, and in nonattainment areas and affected counties of
7 the state, to enable a natural gas vehicle to travel in those areas
8 ~~[along that triangular area]~~ relying solely on natural gas fuel;

9 (2) grants to be dispersed through a competitive
10 bidding process to offset a portion of the cost of installation of
11 the natural gas dispensing equipment;

12 (3) contracts that require the recipient stations to
13 meet operational, maintenance, and reporting requirements as
14 specified by the commission; and

15 (4) a listing, to be maintained by the commission and
16 made available to the public online, of all natural gas vehicle
17 fueling stations that have received grant funding, including
18 location and hours of operation.

19 (b) The commission may not award more than ~~[+~~
20 ~~[(1) three station grants to any entity, or~~
21 ~~[(2)]~~ one grant for each station.

22 (c) Grants awarded under this section may not exceed:

23 (1) \$400,000 ~~[\$100,000]~~ for a compressed natural gas
24 station;

25 (2) \$400,000 ~~[\$250,000]~~ for a liquefied natural gas
26 station; or

27 (3) \$600,000 ~~[\$400,000]~~ for a station providing both

1 liquefied and compressed natural gas.

2 (d) Stations funded by grants under this section must be
3 publicly accessible [~~and located not more than three miles from an~~
4 ~~interstate highway system~~]. The commission shall give preference
5 to:

6 (1) stations providing both liquefied natural gas and
7 compressed natural gas at a single location; [~~and~~]

8 (2) stations located not more than one mile from an
9 interstate highway system; and

10 (3) stations located in the triangular area between
11 the Houston, San Antonio, and Dallas-Fort Worth areas.

12 (f-1) An application for a grant under this section must
13 include a certification that the applicant complies with laws,
14 rules, guidelines, and requirements applicable to taxation of fuel
15 provided by the applicant at each fueling facility owned or
16 operated by the applicant. The commission may terminate a grant
17 awarded under this section without further obligation to the grant
18 recipient if the commission determines that the recipient did not
19 comply with a law, rule, guideline, or requirement described by
20 this subsection. This subsection does not create a cause of action
21 to contest an application or award of a grant.

22 SECTION 24. Section 393.006, Health and Safety Code, as
23 amended by Chapter 892 (S.B. 385), Acts of the 82nd Legislature,
24 Regular Session, 2011, is amended to read as follows:

25 Sec. 393.006. AMOUNT OF GRANT. For each eligible facility
26 for which a recipient is awarded a grant under the program, the
27 commission shall award the grant in an amount equal to the lesser

1 of:

2 (1) 50 percent of the sum of the actual eligible costs
3 incurred by the grant recipient within deadlines established by the
4 commission to construct, reconstruct, or acquire the facility; or

5 (2) \$600,000 [~~\$500,000~~].

6 SECTION 25. The following provisions are repealed:

7 (1) Subsection (c), Section 386.051, Health and Safety
8 Code;

9 (2) Subdivision (1), Section 386.151, Health and
10 Safety Code;

11 (3) Section 386.154, Health and Safety Code;

12 (4) Subsection (a), Section 386.161, Health and Safety
13 Code;

14 (5) Sections 386.201, 386.202, and 386.203, Health and
15 Safety Code;

16 (6) Section 386.204, Health and Safety Code;

17 (7) Subsection (a), Section 386.252, Health and Safety
18 Code, as amended by Chapters 589 (Senate Bill No. 20) and 892
19 (Senate Bill No. 385), Acts of the 82nd Legislature, Regular
20 Session, 2011;

21 (8) Subsection (f), Section 386.252, Health and Safety
22 Code, as added by Chapter 589 (Senate Bill No. 20), Acts of the 82nd
23 Legislature, Regular Session, 2011; and

24 (9) Chapters 393 and 394, Health and Safety Code, as
25 amended by Chapter 589 (Senate Bill No. 20), Acts of the 82nd
26 Legislature, Regular Session, 2011.

27 SECTION 26. This Act takes effect immediately if it

S.B. No. 1727

1 receives a vote of two-thirds of all the members elected to each
2 house, as provided by Section 39, Article III, Texas Constitution.
3 If this Act does not receive the vote necessary for immediate
4 effect, this Act takes effect September 1, 2013.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1727 passed the Senate on May 2, 2013, by the following vote: Yeas 29, Nays 1, one present not voting; and that the Senate concurred in House amendments on May 25, 2013, by the following vote: Yeas 28, Nays 2, one present not voting.

Secretary of the Senate

I hereby certify that S.B. No. 1727 passed the House, with amendments, on May 21, 2013, by the following vote: Yeas 107, Nays 39, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor

Texas Commission on Environmental Quality



ORDER ADOPTING AMENDED RULES AND REVISIONS TO THE STATE IMPLEMENTATION PLAN

**Docket No. 2013-1194-RUL
Rule Project No. 2013-037-114-AI**

On April 9, 2014, the Texas Commission on Environmental Quality (Commission), during a public meeting, considered adoption of amendments to 30 TAC Chapter 114, Control of Air Pollution from Motor Vehicles, Subchapter K, Mobile Sources Incentive Programs, to add new Division 8, Drayage Truck Incentive Program, §§ 114.680 - 114.682 and corresponding revisions to the SIP. The adopted rules implement part of Senate Bill (SB) 1727, 83rd Legislature, 2013, Regular Session, establishing the Drayage Truck Incentive Program. Under Tex. Health & Safety Code Ann. §§ 382.011, 382.012, and 382.023 (Vernon 2010), the Commission has the authority to control the quality of the state's air and to issue orders consistent with the policies and purposes of the Texas Clean Air Act, Chapter 382 of the Tex. Health & Safety Code. The proposed rules were published for comment in the November 22, 2013, issue of the *Texas Register* (38 TexReg 8400).

Pursuant to Tex. Health & Safety Code Ann. § 382.017 (Vernon 2010), Tex. Gov't Code Chapter 2001 (Vernon 2008), and 40 Code of Federal Regulations § 51.102, and after proper notice, the Commission conducted a public hearing to consider the repealed and new rules and revisions to the SIP. Proper notice included prominent advertisement in the areas affected at least 30 days prior to the date of the hearing. A public hearing was held in Austin, Texas on December 12, 2013.

The Commission circulated hearing notices of its intended action to the public, including interested persons, the Regional Administrator of the EPA, and all applicable local air pollution control agencies. The public was invited to submit data, views, and recommendations on the proposed repealed and new rules and SIP revisions, either orally or in writing, at the hearing or during the comment period. Prior to the scheduled hearing, copies of the proposed repealed and new rules and SIP revisions were available for public inspection at the Commission's central office and on the Commission's Web site.

Data, views, and recommendations of interested persons regarding the proposed repealed and new rules and SIP revisions were submitted to the Commission during the comment period, and were considered by the Commission as reflected in the analysis of testimony incorporated by reference to this Order. The Commission finds that the analysis of testimony includes the names of all interested groups or associations offering comment on the proposed repealed and new rules and the SIP revisions and their position concerning the same.

IT IS THEREFORE ORDERED BY THE COMMISSION that the amended rules and revisions to the SIP incorporated by reference to this Order are hereby adopted. The Commission further authorizes staff to make any non-substantive revisions to the rules necessary to comply with *Texas Register* requirements. The adopted rules and the preamble to the adopted rules and the revisions to the SIP are incorporated by reference in this Order as if set forth at length verbatim in this Order.

IT IS FURTHER ORDERED BY THE COMMISSION that on behalf of the Commission, the Chairman should transmit a copy of this Order, together with the adopted rules and revisions to the SIP, to the Regional Administrator of EPA as a proposed revision to the Texas SIP pursuant to the Federal Clean Air Act, codified at 42 U.S. Code Ann. §§ 7401 - 7671q, as amended.

This Order constitutes the Order of the Commission required by the Administrative Procedure Act, Tex. Gov't Code, § 2001.033 (Vernon 2008).

If any portion of this Order is for any reason held to be invalid by a court of competent jurisdiction, the invalidity of any portion shall not affect the validity of the remaining portions.

Date Issued:

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Bryan W. Shaw, Ph.D., P.E., Chairman