

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

**AGENDA REQUESTED:** August 3, 2016

**DATE OF REQUEST:** July 15, 2016

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

**CAPTION: Docket No. 2015-1650-RUL.** Consideration of the adoption of proposed amendments to Section 114.680 and Section 114.682 of 30 Texas Administrative Code Chapter 114, Control of Air Pollution from Motor Vehicles, Subchapter K, Division 8, and corresponding revisions to the state implementation plan.

The adoption revises the criteria for the Drayage Truck Incentive Program (DTIP) in order to achieve the program goals. Under Texas Health and Safety Code (THSC), Section 386.183(f), the commission is authorized to modify the DTIP to improve its effectiveness or further the goals of the Texas Emissions Reduction Plan established under THSC, Chapter 386.

The revisions to Division 8 make changes to the DTIP to revise the definition of a drayage truck to include other cargo handling equipment and to revise the definition of a seaport to include publically or privately owned property within a ship channel security district established under Texas Water Code, Chapter 68. The revisions also remove the requirement that the drayage truck being purchased have a day cab only. The proposed rules were published in the March 18, 2016, issue of the *Texas Register* (41 TexReg 2127). (Steve Dayton, Sierra Redding) (Rule Project No. 2016-004-114-AI)

Steve Hagle, P.E.  
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**Deputy Director**

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

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** July 15, 2016

**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.:** 2015-1650-RUL

**Subject:** Commission Approval for Rulemaking Adoption  
Chapter 114, Control of Air Pollution from Motor Vehicles  
Texas Emissions Reduction Incentive Plan  
Rule Project No. 2016-004-114-AI

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

The Texas Emissions Reduction Plan (TERP) is established under Texas Health and Safety Code (THSC), Chapter 386. Under the TERP, the Texas Commission on Environmental Quality (TCEQ or commission) administers several grant programs to achieve reductions in nitrogen oxides to demonstrate compliance with the state implementation plan and prevent areas of the state from being in violation of National Ambient Air Quality Standards. One of the TERP grant programs is the Drayage Truck Incentive Program (DTIP) established under THSC, Chapter 386, Subchapter D-1.

This rulemaking revises DTIP rules under Chapter 114, Subchapter K, Division 8, to expand the types of eligible vehicles and equipment and clarify the areas considered a seaport.

The DTIP provides incentives to reduce emissions from drayage trucks operating in and around seaports and rail yards located in the state's nonattainment areas. The rules developed to implement the DTIP include criteria for the models of drayage trucks eligible for replacement and purchase under the program and definitions of seaports and rail yards.

Current TCEQ rules limit the drayage trucks purchased under the DTIP to those vehicles with a day cab only (i.e., no sleeper berth). Staff, in consultation with Port Authorities and drayage fleet owners, has determined that a significant amount of truck traffic at eligible facilities consists of vehicles with sleeper berths owned by individuals who are contracted to provide drayage services. Independent owner-operators and smaller businesses in particular are prone to buying sleeper cab trucks that are utilized for drayage purposes. This rulemaking removes the day cab requirement in order to expand eligibility to include those individual contract haulers that would not otherwise participate in the program because of that requirement.

Also, the current rules limit the eligible drayage trucks to on-road heavy-duty vehicles and non-road yard trucks. However, other types of non-road equipment used to move cargo, referred to as cargo handling equipment, also contribute to the concentration of emissions in and around seaports and rail yards. This equipment includes, but is not limited to rubber-tired gantry cranes, yard trucks, top handlers, side handlers, reach

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stackers, forklifts, loaders, and aerial lifts. This rulemaking expands the eligibility criteria to include other cargo handling equipment, in addition to non-road yard trucks, in order to improve the ability of the DTIP to achieve its goals and the goals of the TERP.

In addition, based on visits to multiple seaport facilities and discussion with facility administrators and users, staff has determined that the area in which emissions from drayage trucks are concentrated is not limited to just the specific location where cargo is transferred to or from a ship or barge. Particularly in the Port of Houston area, there are multiple businesses and facilities with substantial drayage truck activity located on property and at facilities in proximity to, but not located at, the locations where cargo is loaded on or off a ship or barge. The revision to the definition of a seaport adds publically or privately owned property within a ship channel security district established under Texas Water Code (TWC), Chapter 68. Under this additional language, the property within the Houston Ship Channel Security District, including multiple chemical facilities, warehouses, plants, and other facilities, will be considered part of the seaport for purposes of eligibility under the DTIP.

**Scope of the rulemaking:**

**A.) Summary of what the rulemaking will do:** This rulemaking revises the DTIP rules under Chapter 114, Subchapter K, Division 8, to expand the types of eligible vehicles and equipment and clarify the areas considered a seaport. The changes to the DTIP program eligibility criteria are intended to improve its effectiveness in reducing emissions in and around seaports and rail yards located in the state's nonattainment areas.

The definition of a drayage truck is revised to remove the requirement that the vehicle being purchased may only have a day cab and to include other cargo handling equipment operating at seaports and rail yards in the list of models of drayage trucks eligible for replacement and purchase.

In addition, the definition of a seaport is revised to include publically or privately owned property within a ship channel security district established under TWC, Chapter 68.

**B.) Scope required by federal regulations or state statutes:** The rule revisions are not required by federal regulations or state statutes.

**C.) Additional staff recommendations that are not required by federal rule or state statute:** The following changes are included in the amendments to Chapter 114, Subchapter K, Division 8:

1. remove the requirement that an on-road vehicle purchased under the program may have a day cab only;
2. expand the types of non-road equipment eligible for replacement and purchase under the program to include cargo handling equipment; and
3. expand the definition of "seaport" to include publically or privately owned property within a ship channel security district established under TWC, Chapter 68.

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**Statutory authority:**

- 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, §382.017, 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 DTIP.

**Effect on the:**

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

**B.) Public:** This rulemaking makes changes to an existing TERP grant program. Persons and entities interested in applying to this program will benefit from the changes.

**C.) Agency programs:** Program procedures and documents will need to be updated.

**Stakeholder meetings:**

The commission did not hold any stakeholder meetings related to this rulemaking; however, rule public hearings were held during the comment period in Austin and Houston.

**Public comment:**

The proposed rules were published in the March 18, 2016, issue of the *Texas Register* (41 TexReg 2127). Public hearings were held on April 12, 2016, in Austin, and April 14, 2016, in Houston. The comment period closed April 18, 2016. The commission received comments from North Central Texas Council of Governments (NCTCOG), Port of Houston Authority (POHA), Regional Transportation Council of the Dallas-Fort Worth Metropolitan Planning Organization (RTC), and Texas Farm Patch LLC (TFP).

NCTCOG and POHA expressed support for the rulemaking. POHA provided further explanation of its support for each of the changes made to the rules. NCTCOG supported the changes and provided additional recommendations for changes. TFP made a recommendation that is outside the scope of this rulemaking. Significant comments and recommendations are discussed further.

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NCTCOG recommended integration of the definition of a non-road yard truck into the added definition of cargo handling equipment under amended §114.680(1) and combining non-road yard trucks with other cargo handling equipment in the list of drayage trucks eligible for purchase under §114.682(a) because a non-road yard truck is considered cargo handling equipment. Staff responded that the commission anticipates considering non-road yard trucks separate from other cargo handling equipment when establishing standardized usage rates and grant amounts, and in allowing for possible replacement of an on-road vehicle with a non-road yard truck. Retaining the definitions as written will help the commission with implementation of the program. No changes were made to the proposed text as a result of these comments.

NCTCOG recommended additional expansion of the definition of "Seaport" under §114.680(6), or addition of another definition, to accommodate eligibility of inland ports and airports to ensure that all major freight hubs would be eligible for funding. NCTCOG commented that the drayage trucks and cargo handling equipment targeted by the DTIP are critical to operations at all of these types of facilities and that including these locations would ensure that funded projects address emissions from the highest-polluting, highest-activity vehicles and equipment, regardless of whether the facility is accessible by air, rail, or ocean. Staff responded that the rule language implements statutory provisions regarding operation of vehicles and equipment at seaports and rail yards in a nonattainment area and that other TERP grant programs are available for projects involving heavy-duty on-road vehicles and non-road equipment at other facilities in the nonattainment areas and other affected areas. No changes were made to the proposed text as a result of these comments.

NCTCOG recommended adding language to §114.682(a)(2) to include emissions tier certification requirements for non-road yard trucks to match the tier provisions in the DTIP guidelines, entitled *Texas Emissions Reduction Plan: Guidelines for the Drayage Truck Incentive Program (RG-524)*. The DTIP guidelines include supplemental criteria that the engine on a non-road yard truck be certified to meet the final federal Tier 4 non-road engine emission standards, in addition to the requirement that a drayage truck being purchased have an engine of model year 2010 or later. Staff responded with an explanation of why the tier provisions were added to the DTIP guidelines and that those criteria are supplemental to the requirements in the rules. It is not necessary to add the supplemental criteria to the rules in order for those criteria to apply. No changes were made to the proposed text as a result of this comment.

NCTCOG recommended that eligible technologies for new drayage trucks include, but not be limited to, alternative fuel vehicles, battery-electric trucks, fuel-cell trucks, and battery-electric trucks utilizing fuel cells or internal combustion engines acting as range extenders. Staff responded that these fuel types and power sources are already eligible if the drayage truck and engine otherwise meet the eligibility criteria. No changes were made to the proposed text as a result of this comment.

NCTCOG recommended that the commission consider a revision that would give preference to projects involving use of zero or near-zero emission vehicles. NCTCOG expressed its opinion that such a change would support commercialization of near-zero

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emission technologies, encourage consideration of the cleanest available technology options, and contribute to additional incremental emission reductions. Staff responded that, in implementing the DTIP and other TERP incentive programs, the commission has remained fuel-neutral unless the legislature has specifically directed that certain fuels and types of engines be targeted. No changes were made to the proposed text as a result of these comments.

NCTCOG and RTC encouraged the commission to request full funding of the TERP programs as budgets are prepared for the next biennium. These comments are outside of the scope of this rulemaking. No changes were made to the proposed text as a result of this comment.

TFP requested that Atascosa County be included in the counties eligible for operation of grant-funded equipment. The equipment identified by TFP does not meet the definition of a drayage truck. Also, these rules do not list the counties eligible for operation of the grant-funded vehicles and equipment under the DTIP, those counties are listed in the DTIP guidelines. It appears that TFP was referring to the list of affected counties for eligibility under the TERP Diesel Emissions Reduction Incentive Program. This recommendation is outside of the scope of this rulemaking. No changes were made to the proposed text as a result of this comment.

**Significant changes from proposal:**

No changes were made from the proposal.

**Potential controversial concerns and legislative interest:**

This rulemaking will help make the DTIP more effective in achieving the goals of the TERP. Staff does not anticipate any concerns regarding the changes. Staff anticipates positive responses from legislators interested in the DTIP.

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

Corresponding revisions to the DTIP guidelines are scheduled to be considered for adoption by the commission after consideration of this rulemaking.

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

This rulemaking could be delayed or postponed. The changes are proposed to help make the DTIP more effective in achieving the program goals. The consequence of not proceeding with this rulemaking will be that the DTIP will continue to be implemented under the existing criteria with the limitations as noted.

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

*Texas Register* proposal publication date: March 18, 2016

Anticipated *Texas Register* adoption publication date: August 19, 2016

Anticipated effective date: August 25, 2016

Six-month *Texas Register* filing deadline: September 19, 2016

Commissioners

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**Agency contacts:**

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Sierra Redding, Attorney, (512) 239-2496

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

**Attachments**

cc: Chief Clerk, 2 copies  
Executive Director's Office  
Marshall Coover  
Erin Chancellor  
Stephen Tatum  
Jim Rizk  
Office of General Counsel  
Steve Dayton  
Derek Baxter  
Sierra Redding

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §114.680 and §114.682.

Sections 114.680 and 114.682 are adopted *without changes* to the proposed text as published in the March 18, 2016, issue of the *Texas Register* (41 TexReg 2127) and will not be republished.

The amendments 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 rulemaking amends existing rules implementing the Drayage Truck Incentive Program (DTIP) established under Texas Health and Safety Code (THSC), Chapter 386, Subchapter D-1.

Under THSC, §386.183(f), the commission may modify the DTIP to improve its effectiveness or further the goals of the Texas Emissions Reduction Plan (TERP). The amendments to the DTIP rules are intended to improve the effectiveness of the DTIP to reduce emissions at and near seaports and rail yards in the state's nonattainment areas. The amendments include non-road cargo handling equipment as eligible for replacement under the program and remove the requirement that the drayage truck being purchased must have a day cab only. In addition, language is added to the definition of a seaport to include publically or privately owned property within a ship channel security district

established under Texas Water Code (TWC), Chapter 68. The Houston Ship Channel Security District (HSCSD) is the only district established in Texas under this provision.

### **Section by Section Discussion**

#### *§114.680, Definitions*

Section 114.680(1) is amended to remove the definition term, "Day cab," under the DTIP and replace it with the term, "Cargo handling equipment." The removal of "Day cab" is made because, with the change to §114.682 to remove the requirement that a new drayage truck purchased under the DTIP have a day cab only, the definition is no longer needed. The term "Cargo handling equipment" is added in conjunction with the addition of cargo handling equipment to §114.682 as eligible for replacement and purchase under the DTIP. The definition of cargo handling equipment includes any heavy-duty, non-road, self-propelled vehicle or equipment used at a seaport or rail yard to lift or move cargo, such as containerized, bulk, or break-bulk goods. The equipment includes, but is not limited to, rubber-tired gantry cranes, yard trucks, top handlers, side handlers, reach stackers, forklifts, loaders, and aerial lifts.

Section 114.680(6) is amended to add language to the definition of "Seaport" to include publically or privately owned property within a ship channel security district established under TWC, Chapter 68.

In the Port of Houston area, there are multiple businesses and facilities with substantial drayage truck activity located in proximity to, but not at, the cargo transfer locations.

The HSCSD includes property where many businesses and facilities associated with port activities in some manner are located and provides an appropriate defined boundary that can be used to delineate an expanded area considered a seaport under the DTIP. The addition to the definition of "Seaport" in §114.680(6) makes drayage trucks operating on or transgressing through the properties included in the HSCSD eligible for replacement under the DTIP.

*§114.682, Eligible Vehicle Models*

Section 114.682(a)(1) is amended to remove the requirement that a heavy-duty on-road vehicle eligible for purchase under the DTIP have a day cab only. Based on visits to many of the rail and port facilities and discussion with port administrators and drayage truck owners, the commission has determined that the goals of the DTIP will be better addressed by allowing on-road heavy-duty vehicles with sleeper cabs to be eligible for purchase under the program. The commission has determined that a number of the drayage truck owners are individual truck owners who contract to provide drayage services and that use vehicles with sleeper berths. The day cab requirement is removed in order to improve the ability of the DTIP to achieve its goals and the goals of the TERP.

Section 114.682(a)(3) and (b)(3) are amended to add "other cargo handling equipment" to the list of drayage truck models eligible for replacement and purchase under the DTIP. Along with the addition of a definition for cargo handling equipment in §114.680, this change expands the program to include replacement and purchase of heavy-duty non-road, self-propelled vehicles or equipment used at a seaport or rail yard to lift or move

cargo, such as containerized, bulk, or break-bulk goods. As noted under the definition, this equipment includes, but is not limited to, rubber-tired gantry cranes, yard trucks, top handlers, side handlers, reach stackers, forklifts, loaders, and aerial lifts. The commission has determined that expanding the program to include other cargo handling equipment at seaports and rail yards helps achieve the goals of the DTIP and the TERP by further reducing the concentrated emissions associated with the movement of cargo at those facilities.

#### **Final Regulatory Impact Analysis Determination**

The commission reviewed the rulemaking in light of the regulatory impact analysis (RIA) 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 rules add or revise eligibility requirements for a voluntary grant program. Because the proposed 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 amendments do not place additional financial burdens on the regulated community.

In addition, a RIA is not required because the rules do not meet any of the four applicability criteria for requiring a RIA 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 invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the RIA.

### **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 rules make revisions to voluntary programs 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 rulemaking 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, therefore, require that goals and policies of the CMP be considered during the rulemaking process. The commission reviewed this action for consistency and determined the rulemaking for Chapter 114 does not impact any CMP goals or policies, because it revises voluntary incentive grant programs and does not govern air pollution emissions.

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

### **Public Comment**

The commission held public hearings on April 12, 2016, in Austin and on April 14, 2016, in Houston. The comment period closed on April 18, 2016. The commission received comments from North Central Texas Council of Governments (NCTCOG), Port of Houston Authority (POHA), Regional Transportation Council of the Dallas-Fort Worth Metropolitan Planning Organization (RTC), and Texas Farm Patch LLC (TFP). NCTCOG, RTC, and POHA commented in support of the rulemaking. NCTCOG recommended additional changes to the rules. NCTCOG, RTC, and TFP also provided recommendations that were outside of the scope of this rulemaking.

### **Response to Comments**

#### *Comment*

NCTCOG and POHA commented in support of the rule changes. NCTCOG agreed that the revisions are key to reducing emissions from all vehicles employed in drayage activities and best accomplishing the goals of the program. POHA expressed appreciation that the commission recognizes emissions in the port sector and that there is a program like this, because there are plenty of diesel engines in the port area.

#### *Response*

**The commission appreciates the support expressed for the rulemaking. No changes to the proposed text were made as a result of these comments.**

#### *Comment*

POHA commented in support of the change to §114.680(1) to remove the definition of "Day cab" and the change to §114.682(a)(1) to remove the requirement that a heavy-duty on-road vehicle eligible for purchase under the DTIP have a day cab only. POHA explained that it supports the change because the majority of drayage truck owners are independent owner-operators and that the truck owners want to be as flexible as possible in what they want to do with their trucks. POHA further commented that removing the day cab requirement will give the truck owners some comfort in knowing that after they meet their grant requirements they could use those trucks for long-haul purposes and any other purpose where a sleeper cab would help them. POHA stated that, at the same time, the change will help ensure that the DTIP results in more emissions reductions.

*Response*

**The commission appreciates the POHA's support for the changes. The commission agrees that the removal of the day cab requirement will encourage more independent owner-operators to participate in the DTIP. The commission also hopes that after completion of the grant commitment period participants will continue to use the grant-funded vehicles in the areas where the use of the lower-emitting vehicles can help keep the air clean. No changes to the proposed text were made as a result of these comments.**

*Comment*

POHA also commented in support of adding a new definition of "Cargo handling equipment" to §114.680(1) and to adding "other cargo handling equipment" to the list of

drayage trucks eligible for purchase under §114.682(a)(3) and to the list of drayage trucks eligible for replacement under §114.682(b)(3). POHA commented that adding cargo handling equipment to the DTIP will give POHA and its tenants and any other port-related facilities an additional opportunity to reduce emissions.

*Response*

**The commission appreciates the support expressed for the addition of the term cargo handling equipment and agrees that this change will provide port facilities an additional opportunity to reduce emissions. No changes were made to the proposed text in response to the comments.**

*Comment*

NCTCOG recommended that §114.680(4) containing the definition of "Non-road yard truck" be deleted. NCTCOG recommended that non-road yard trucks be specifically integrated into the new definition of "Cargo handling equipment" added to §114.680(1). NCTCOG commented that integrating non-road yard trucks into the definition of cargo handling equipment would define all non-road equipment together and could be more simply referenced. NCTCOG also recommended that §114.682(a)(2), listing a non-road yard truck as eligible for purchase under the DTIP, and §114.682(a)(3), listing other cargo handling equipment as eligible for purchase under the DTIP, be combined because non-road yard trucks are a type of cargo handling equipment and therefore do not need to be listed as a distinct vehicle type.

*Response*

**The commission agrees that non-road yard trucks are a type of cargo handling equipment. However, the commission does not agree with the proposed changes. The commission anticipates continuing to consider non-road yard trucks separate from other cargo handling equipment when establishing standardized usage rates and grant amounts, and in allowing for possible replacement of an on-road vehicle with a non-road yard truck. Retaining the separate definition of a non-road yard truck in §114.680(4) and separate listing of non-road yard trucks as eligible for purchase in §114.682(a)(2) will help the commission with implementation of the program. No changes to the proposed text were made as a result of this comment.**

*Comment*

NCTCOG recommended additional expansion of the definition of "Seaport" under §114.680(6), or addition of another definition, to accommodate eligibility of inland ports and airports to ensure that all major freight hubs would be eligible for funding. NCTCOG commented that the drayage trucks and cargo handling equipment targeted by the DTIP are critical to operations at all of these types of facilities and ensuring eligibility for all locations would best ensure that funded projects address emissions from the highest-polluting, highest-activity vehicles and equipment, regardless of whether they operate at facilities specifically accessible by air, rail, or ocean. NCTCOG provided a suggested definition of "Logistic center/intermodal facility" be added to the rules. *"Logistic center/intermodal facility - Any publically or privately owned property associated with the primary movement of cargo or materials to or from a multi-model facility, including*

*structures and property devoted to receiving, handling, consolidating, and loading or delivery through the use of drayage truck operations."*

*Response*

**The commission agrees that reducing emissions from vehicles and equipment operating at a wide range of freight hubs will help improve air quality in the nonattainment areas and other affected counties. 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 (DERI) 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 and airports. No changes to the proposed text were made in response to these comments.**

*Comment*

NCTCOG recommended streamlining §114.682 by deleting §114.682(c) requiring that replacement drayage trucks have an engine model year 2010 or later and that the drayage truck being replaced have an engine of model year 2006 or earlier. NCTCOG further recommended that those requirements then be added to §114.682(a)(1) and (b)(1), respectively.

*Response*

**The commission does not agree with the changes proposed by NCTCOG. Section 114.682(c) pertains to the model year of the drayage truck engine, while §114.682(a) and (b) pertain to the model year of the drayage truck. The eligibility requirements for the model year of the drayage truck engine are listed separate from the requirements for the model year of the drayage truck in order to make sure that the different requirements are clearly understood. Combining the provisions could make the provisions less clear. No changes to the proposed text were made as a result of this comment.**

*Comment*

NCTCOG commented that for consistency of requirements between on-road vehicles and non-road equipment, the commission should add emissions tier certification requirements to §114.682(a)(2), which lists non-road yard trucks as eligible for purchase under the program. NCTCOG commented that this change would create consistency with the DTIP guidelines, *Texas Emissions Reduction Plan: Guidelines for the Drayage Truck Incentive Program (RG-524)*, which specify that eligible non-road yard trucks must be certified under an EPA certificate of conformity to meet the final Tier 4 non-road engine emission standards.

*Response*

**The commission does not agree with the change recommended by NCTCOG. Under §114.682(c), the drayage truck purchased must have an engine of model year 2010 or later. This provision in the rules implements a statutory requirement established in THSC, §386.182(b). The implementation deadline for meeting the final federal Tier 4 emission standards for a heavy-duty non-road engine in certain horsepower categories was extended through 2014. Therefore, a non-road yard truck with a non-road engine of model year 2010 or later still might not meet the latest federal emission standards or otherwise be certified to a nitrogen oxides emission rate that is substantially lower than the engine on a non-road yard truck being replaced. In recognition of this issue, the commission determined it was appropriate to include supplemental criteria in the DTIP guidelines to also require that the engine on a non-road yard truck purchased under the program meet the final federal Tier 4 emission standards, to help ensure that the project would result in a significant reduction in emissions and that the engine would meet the latest federal emission standards. It is not necessary to add the language proposed by NCTCOG to the rules in order for the supplemental criteria already included in the guidelines to apply. No changes to the proposed text were made as a result of this comment.**

*Comment*

POHA commented in support of the addition of other cargo handling equipment as eligible for purchase under §114.682(a)(3) and eligible for replacement under §114.682(b)(3). POHA commented that the changes will give the POHA, its tenants, and any other port-related facilities the opportunity to reduce emissions.

*Response*

**The commission appreciates the support expressed for the addition of other cargo handling equipment as eligible under the DTIP. No changes to the proposed text were made as a result of this comment.**

*Comment*

NCTCOG recommended that eligible technologies for new drayage trucks or cargo handling equipment should include, but not be limited to, alternative fuel vehicles, battery-electric trucks, fuel-cell trucks, and battery-electric trucks utilizing fuel cells or internal combustion engines acting as range extenders.

*Response*

**The commission agrees that providing for a full range of fuel options can help encourage potential applicants to apply to the DTIP. The DTIP is fuel-neutral and any fuel type or power source is already eligible if the drayage truck and engine otherwise meet the eligibility criteria. No changes to the proposed text were made as a result of this comment.**

*Comment*

NCTCOG recommended that the commission consider a revision that would give preference to projects involving use of zero or near-zero emission vehicles. NCTCOG commented that the EPA has recently initiated such preferential consideration in the

Clean Diesel Funding Assistance Program Announcement, in which the cleanest technologies qualify for slightly higher funding levels. NCTCOG expressed its opinion that such a change would support commercialization of near-zero emission technologies, encourage program applicants to consider the cleanest available technology options, and contribute to additional incremental emission reductions.

*Response*

**The commission agrees that increased use of zero or near-zero emission vehicles could further contribute to achieving emission reductions. However, in implementing the DTIP and other TERP incentive programs, the commission has remained fuel-neutral unless the legislature has specifically directed that certain fuels and types of engines be targeted. Under this approach, the commission has encouraged applicants to select the type of technology that the applicant determines will work best for its particular needs, as long as the project meets the eligibility criteria. No changes to the proposed text were made as a result of this comment.**

*Comment*

NCTCOG and RTC commented in support of the TERP and encouraged the commission to request full funding of the program as budgets are prepared for the next biennium.

*Response*

**The commission appreciates the comments in support of funding the TERP programs; however, 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 Legislature Budget Board (LBB). The commission will continue to work with members of the legislature and the LBB regarding the appropriation funding levels for the TERP programs. No changes to the proposed text were made in response to these comments.**

*Comment*

TFP requested that the commission include Atascosa County as an eligible county for the program. TFP commented that it is a grower, packer, shipper operation that sells fresh Texas produce to HEB, Walmart, Kroger, Target, and some other smaller retailers. TFP explained that it is currently upgrading irrigation pumps and well motors from diesel to electric and old tractors to newer, more energy efficient ones. TFP commented that this program may help in its quest to achieve the upgrades and make Texas a better place to live and work.

*Response*

**The commission appreciates TFP's efforts to upgrade its equipment; however, this recommendation is outside of the scope of this rulemaking. The counties eligible for operation of grant-funded vehicles and equipment are included in the DTIP guidelines and are not listed in the rules. In addition, the equipment identified by TFP does not meet the definition of a drayage truck and is not eligible under the DTIP. TFP might be confusing the DTIP with the TERP DERI Program established under THSC, Chapter**

**386, Subchapter C, which includes funding for replacement or upgrade of irrigation pumps and tractors. The counties eligible for operation of grant-funded vehicles under the DERI Program include nonattainment areas and affected counties listed in THSC, §386.051(2). Atascosa County is not included in that list of eligible counties. Under THSC, §386.051(2)(Z), the commission may designate additional affected counties by rule. However, any consideration of adding counties to the list would be separate from this rulemaking. No changes to the proposed text were made as a result of this comment.**

**SUBCHAPTER K: MOBILE SOURCE INCENTIVE PROGRAMS**

**DIVISION 8: DRAYAGE TRUCK INCENTIVE PROGRAM**

**§114.680 and §114.682**

**Statutory Authority**

The amendments 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 the state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendments 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.

The amendments implement the Drayage Truck Incentive Program established under THSC, Chapter 386, Subchapter D-1.

**§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) Cargo handling equipment--Any heavy-duty non-road, self-propelled vehicle or equipment used at a seaport or rail yard to lift or move cargo, such as containerized, bulk, or break-bulk goods. Equipment includes, but is not limited to, rubber-tired gantry cranes, yard trucks, top handlers, side handlers, reach stackers, forklifts, loaders, and aerial lifts. [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].

(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. A seaport also includes publically or privately owned property within a ship channel security district established under Texas Water Code, Chapter 68.

**§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; and.]

(3) other cargo handling equipment.

(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; and.]

(3) other cargo handling equipment.

(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 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.

(ii) For a complete list of body system and body structure non-musculoskeletal body areas, refer to the appropriate AMA Guides.

(iii) When the examining doctor refers testing for non-musculoskeletal body area(s) to a specialist, then the following shall apply:

(I) The examining doctor (e.g., the referring doctor) shall bill using the appropriate MMI CPT code with modifier "SP" and indicate one unit in the units column of the billing form. Reimbursement shall be \$50 for incorporating one or more specialists' report(s) information into the final assignment of IR. This reimbursement shall be allowed only once per examination.

(II) The referral specialist shall bill and be reimbursed for the appropriate CPT code(s) for the tests required for the assignment of IR. Documentation is required.

(iv) When there is no test to determine an IR for a non-musculoskeletal condition:

(I) The IR is based on the charts in the AMA Guides. These charts generally show a category of impairment and a range of percentage ratings that fall within that category.

(II) The impairment rating doctor must determine and assign a finite whole percentage number rating from the range of percentage ratings.

(III) Use of these charts to assign an IR is equivalent to assigning an IR by the DRE method as referenced in subparagraph (C)(ii)(I) of this paragraph.

(v) The MAR for the assignment of an IR in a non-musculoskeletal body area shall be \$150.

(5) If the examination for the determination of MMI and/or the assignment of IR requires testing that is not outlined in the AMA Guides, the appropriate CPT code(s) shall be billed and reimbursed in addition to the fees outlined in paragraphs (3) and (4) of this section.

(6) The treating doctor is required to review the certification of MMI and assignment of IR performed by another doctor, as stated in the Labor Code and Chapter 130 of this title. The treating doctor shall bill using CPT code 99455 with modifier "VR" to indicate a review of the report only, and shall be reimbursed \$50.

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 March 4, 2016.

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Marisa Lopez Wagley

Acting General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Earliest possible date of adoption: April 17, 2016

For further information, please call: (512) 804-4703



## TITLE 30. ENVIRONMENTAL QUALITY

### PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

## CHAPTER 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES

### SUBCHAPTER K. MOBILE SOURCE INCENTIVE PROGRAMS

#### DIVISION 8. DRAYAGE TRUCK INCENTIVE PROGRAM

##### 30 TAC §114.680, §114.682

The Texas Commission on Environmental Quality (TCEQ, agency, commission) proposes amendments to §114.680 and §114.682.

If adopted, the amendments 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 amend existing rules implementing the Drayage Truck Incentive Program (DTIP) established under Texas Health and Safety Code (THSC), Chapter 386, Subchapter D-1.

Under THSC, §386.183(f), the commission may modify the DTIP to improve its effectiveness or further the goals of the Texas Emissions Reduction Plan (TERP). The proposed amendments to the DTIP rules are intended to improve the effectiveness of the DTIP to reduce emissions at and near seaports and rail yards in the state's nonattainment areas. The proposed amendments would include non-road cargo handling equipment as eligible for replacement under the program and would remove the requirement that the drayage truck being purchased must have a day cab only. In addition, language would be added to the definition of a seaport to include publically or privately owned property within a ship channel security district established under Texas Water Code (TWC), Chapter 68. The Houston Ship Channel Security District (HSCSD) is the only district established in Texas under this provision.

In conjunction with this proposed rulemaking, the commission also anticipates proposing changes to the guidelines developed to help implement the DTIP affected by this proposed rulemaking and the guidelines developed to help implement the Diesel Emissions Reduction Incentive (DERI) Program established under THSC, Chapter 386, Subchapter C. The guideline documents are entitled *Texas Emissions Reduction Plan: Guidelines for the Drayage Truck Incentive Program (RG-524)* and *Texas Emissions Reduction Plan: Guidelines for Emissions Reduction Incentive Grants (RG-388)*. The revisions to the DTIP guidelines would incorporate changes to be consistent with the changes proposed in this rulemaking, as well as other changes. The commission anticipates making the draft guideline revisions available for public review and comment concurrent with the public comment period for this proposed rulemaking. The commission will accept oral or written comments on the proposed guideline changes at the public hearings on this proposed rulemaking.

#### Section by Section Discussion

##### §114.680, Definitions

The commission proposes to amend §114.680(1) to remove the definition term, "Day cab," under the DTIP and to replace it with the term, "Cargo handling equipment." The removal of "Day cab" is proposed because, with the proposed change to

§114.682 to remove the requirement that a new drayage truck purchased under the DTIP have a day cab only, the definition would no longer be needed. The term "Cargo handling equipment" would be added in conjunction with the proposed addition of cargo handling equipment to §114.682 as eligible for replacement and purchase under the DTIP. The proposed definition of cargo handling equipment includes any heavy-duty, non-road, self-propelled vehicle or equipment used at a seaport or rail yard to lift or move cargo, such as containerized, bulk, or break-bulk goods. The equipment includes, but is not limited to, rubber-tired gantry cranes, yard trucks, top handlers, side handlers, reach stackers, forklifts, loaders, and aerial lifts.

The commission proposes to amend §114.680(6) to add language to the definition of "Seaport" to include publically or privately owned property within a ship channel security district established under TWC, Chapter 68.

In the Port of Houston area, there are multiple businesses and facilities with substantial drayage truck activity located in proximity to, but not at, the cargo transfer locations. The HSCSD includes property where many businesses and facilities associated with port activities in some manner are located and provides an appropriate defined boundary that can be used to delineate an expanded area considered a seaport under the DTIP. The proposed addition to the definition of "Seaport" in §114.680(6) would make drayage trucks operating on or transgressing through the properties included in the HSCSD eligible for replacement under the DTIP.

#### *§114.682, Eligible Vehicle Models*

The commission proposes to amend §114.682(a)(1) to remove the requirement that a heavy-duty on-road vehicle eligible for purchase under the DTIP have a day cab only. Based on visits to many of the rail and port facilities and discussion with port administrators and drayage truck owners, the commission has determined that the goals of the DTIP could be better addressed by allowing on-road heavy-duty vehicles with sleeper cabs to be eligible for purchase under the program. The commission has determined that a number of the drayage truck owners are individual truck owners who contract to provide drayage services and that use vehicles with sleeper berths. The commission proposes to remove the day cab requirement in order to improve the ability of the DTIP to achieve its goals and the goals of the TERP.

The commission also proposes to amend §114.682(a)(3) and (b)(3) to add "other cargo handling equipment" to the list of drayage truck models eligible for replacement and purchase under the DTIP. Along with the proposed addition of a definition for cargo handling equipment in §114.680, this change would expand the program to include replacement and purchase of heavy-duty non-road, self-propelled vehicles or equipment used at a seaport or rail yard to lift or move cargo, such as containerized, bulk, or break-bulk goods. As noted under the proposed definition, this equipment would include, but would not be limited to, rubber-tired gantry cranes, yard trucks, top handlers, side handlers, reach stackers, forklifts, loaders, and aerial lifts. The commission has determined that expanding the program to include other cargo handling equipment at seaports and rail yards would help achieve the goals of the DTIP and the TERP by further reducing the concentrated emissions associated with the movement of cargo at those facilities.

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Chief Financial Officer's Division, has determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules. The TERP programs that are the subject of this rulemaking are voluntary and the proposed changes would impose no new requirements or responsibilities on the regulated community.

The proposed rules would revise the DTIP to help the program achieve reductions in emissions from a broader range of sources associated with the movement of cargo to and from seaports and rail yards.

The DTIP provides incentives to reduce emissions from drayage trucks operating in and around seaports and rail yards located in the state's nonattainment areas. The rules developed to implement the DTIP include criteria for the models of drayage trucks eligible for replacement and purchase under the program and definitions of seaports and rail yards.

Current rules limit the drayage trucks purchased under the DTIP to those vehicles with a day cab only (no sleeper berth). Staff has determined that much of the drayage truck traffic at the eligible facilities is by individual truck owners contracting to provide drayage services. These truck owners commonly operate vehicles with sleeper berths. Staff proposes to remove the day cab requirement to expand eligibility to include those individual contract haulers that would not otherwise participate because of that requirement.

Also, current rules limit the DTIP eligible drayage trucks to on-road heavy-duty vehicles and non-road yard trucks. Other types of non-road equipment used to move cargo, referred to as cargo handling equipment, also contribute to the concentration of emissions in and around seaports and rail yards due to the movement of cargo. Staff proposes to expand the eligibility criteria to include other cargo handling equipment in order to improve the ability of the DTIP to achieve its goals and the goals of the TERP.

In addition, based on visits to multiple seaport facilities and discussion with facility administrators and users, staff has determined that the area in which emissions from drayage trucks are concentrated is not limited to just the specific location where cargo is transferred to or from a ship or barge. Particularly in the Port of Houston area, there are multiple businesses and facilities with substantial drayage truck activity located on property and at facilities in proximity to, but not located at, the locations where cargo is loaded on or off a ship or barge. The proposed revision to the definition of a seaport would include publically or privately owned property within a ship channel security district established under TWC, Chapter 68. Under this additional language, the property within the HSCSD, including multiple chemical facilities, warehouses, plants, and other facilities, would be considered part of the seaport for purposes of eligibility under the DTIP.

No fiscal implications are anticipated for the agency or for any other units of state or local government that own or operate affected facilities. The expansion of the eligibility requirements is not expected to impact the current level of TERP grants awarded for these programs as grant appropriations for these programs is statutorily capped. These programs are voluntary and the proposed changes would impose no new requirements or responsibilities on regulated entities. The changes to the DTIP

rules will expand the eligibility for grants under the program to include other cargo handling equipment. The governmental entities operating seaports and that own and operate cargo handling equipment that would become eligible for a grant under the program could benefit if they apply for and receive a grant to replace that equipment. Port Authorities and local governments owning and operating seaports in the Houston-Galveston-Brazoria nonattainment area may benefit from additional grant funding and would include three governmental entities, the Port of Houston - Port of Houston Authority; the Port of Galveston - City of Galveston; and the Port of Freeport - City of Freeport.

#### Public Benefits and Costs

Mr. Horvath has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated from the changes seen in the proposed rules will be improved air quality in the state's nonattainment areas, especially in and near rail yards and seaports.

The proposed rules are not anticipated to result in fiscal implications for businesses or individuals. These are voluntary grant programs open to any individual, business, governmental entity and other legal entity owning and operating eligible vehicles and equipment in the eligible areas of the state. The proposed rulemaking would expand eligibility criteria, thereby making more entities eligible to apply for a grant under the programs.

The changes to the DTIP rules would expand the types of vehicles and equipment that may be eligible for replacement under the program. The number of businesses that may benefit from this change would depend upon which businesses apply for and receive grant funding. It is not known how many businesses, including individual drayage truck owners, operate drayage trucks and equipment at the eligible seaports and rail yards.

Also, the number of businesses and facilities located within the area considered a seaport would be expanded to include those located in the HSCSD. There are 280 facilities that are part of the HSCSD representing approximately 197 businesses. To the extent these businesses own drayage trucks and equipment eligible for replacement under the DTIP, these businesses could benefit from the proposed changes if they receive grant funding to replace some of those drayage trucks. In addition, the expansion of the eligible area considered a seaport will also benefit the additional businesses, including individual drayage truck owners, who operate at those facilities and receive grant funding.

#### Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect for small or micro-businesses. The proposed rules impose no new requirements or regulations on small or micro-businesses and impose no new costs. It is not known how many small businesses will benefit from the proposed changes.

#### Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect and are intended to enhance the public health, safety, environmental and economic welfare of the state.

#### Local Employment Impact Statement

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

#### Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed 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 proposed rules add or revise eligibility requirements for a voluntary grant 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 amendments 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 action and performed an analysis of whether the proposed rules are subject to Texas Government Code, Chapter 2007. The rules make revisions to voluntary programs and only affect 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 proposed 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 revises voluntary incentive grant programs and does not govern air pollution emissions.

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

#### Announcement of Hearings

The commission will hold public hearings on this proposal in Austin on April 12, 2016, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle, and in Houston on April 14, 2016, at 6:00 p.m. in Conference Room B, at the Houston-Galveston Area Council located at 355 Timmons, Suite 120. The hearings will be 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 hearings; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Subject to the commission releasing proposed revisions to the guidelines for the DERI Program and the DTIP concurrent with the public comment period for this proposed rulemaking, the commission will also receive oral or written comments on proposed revisions to the guidelines at the same public hearings.

Persons who have special communication or other accommodation needs who are planning to attend a hearing should contact Sandy Wong, Office of Legal Services, at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

#### Submittal of Comments

Written comments may be submitted to Derek Baxter, 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://www1.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 2016-004-114-AI. The comment period closes on April 18, 2016. Copies of the proposed rulemaking can be obtained from the commission's website at [http://www.tceq.texas.gov/rules/propose\\_adopt.html](http://www.tceq.texas.gov/rules/propose_adopt.html).

Subject to concurrent release for comment by the commission, copies of proposed revisions to the guidelines will be available from the commission's TERP website at <http://www.terp-grants.org>. The guideline documents are entitled *Texas Emissions Reduction Plan: Guidelines for the Drayage Truck Incentive Program (RG-524)* and *Texas Emissions Reduction Plan: Guidelines for Emissions Reduction Incentive Grants (RG-388)*. If the proposed guideline revisions are released for public comment concurrently with this proposed rulemaking,

comments on the proposed guideline revisions may be included with comments on the proposed rulemaking or may be submitted separately. Separate electronic comments pertaining solely to the guideline revisions should reference Non-Rule Project Number 2016-011-OTH-NR and may be submitted at: <http://www1.tceq.texas.gov/rules/ecomments/>. Separate written comments pertaining solely to the guideline revisions may be submitted to Steve Dayton, MC 204, Implementation Grants Section, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-0077.

For further information, please contact Steve Dayton of the Implementation Grants Section at (512) 239-6824.

#### Statutory Authority

The amendments 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 the state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendments 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 Emissions Reduction Plan.

The proposed amendments help implement the Drayage Truck Incentive Program established under THSC, Chapter 386, Subchapter D-1.

#### §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) Cargo handling equipment--Any heavy-duty non-road, self-propelled vehicle or equipment used at a seaport or rail yard to lift or move cargo, such as containerized, bulk, or break-bulk goods. Equipment includes, but is not limited to, rubber-tired gantry cranes, yard trucks, top handlers, side handlers, reach stackers, forklifts, loaders, and aerial lifts [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].

(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. A seaport also includes publically or privately owned property within a ship channel security district established under Texas Water Code, Chapter 68.

*§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; and[-]

(3) other cargo handling equipment.

(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; and[-]

(3) other cargo handling equipment.

(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 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.

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 March 4, 2016.

TRD-201601107

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: April 17, 2016

For further information, please call: (512) 239-2613



## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

##### SUBCHAPTER D. CLAIMS PROCESSING--PAYROLL

### 34 TAC §5.49

The Comptroller of Public Accounts proposes new §5.49, concerning longevity pay. The new section clarifies longevity pay provisions for state agencies and their employees.

Subsection (a) provides applicable definitions.

Subsection (b) sets forth the legal authority that governs longevity pay.

Subsection (c) requires state agencies to verify the amount of lifetime service credit that their current employees have accrued in previous employments.

Subsection (d) sets forth the process for establishing a state employee's "effective service date," which is used to determine the amount of the employee's lifetime service credit.

Subsections (e) - (l) address certain longevity pay issues that arise when a state employee works part of a workday; terminates employment after the first workday of the calendar month; returns to work as a state employee after retiring from state employment; retires under a public retirement system; receives hazardous duty pay; works for a state agency under a contract for less than 12 calendar months each year; and leaves a position that accrues lifetime service credit to serve in the military and is later reemployed with the state.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by memorializing the administrative procedures for longevity pay. The proposed rule would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Rob Coleman, Director, Fiscal Management Division, at [rob.coleman@cpa.texas.gov](mailto:rob.coleman@cpa.texas.gov) or at P.O. Box 13528 Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The section is proposed under Government Code, §659.047, which requires the comptroller to adopt rules to administer longevity pay.

This section implements Government Code, Chapter 659, Subchapter D, regarding longevity pay.

#### §5.49. Longevity Pay.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Calendar month--The period from the first day through the last day of January, February, March, April, May, June, July, August, September, October, November, or December.

(2) Day--The 24 consecutive hour period beginning at 12:00 midnight and ending at 11:59 p.m.

(3) Full-time state employee--Has the meaning assigned by Government Code, §659.041.

**ORDER ADOPTING AMENDED RULES AND  
REVISIONS TO THE STATE IMPLEMENTATION PLAN**

**Docket No. 2015-1650-RUL  
Rule Project No. 2016-004-114-AI**

On August 3, 2016, the Texas Commission on Environmental Quality (Commission), during a public meeting, considered adoption of amended § 114.680 and § 114.682. The Commission adopts this amendment, in 30 Texas Administrative Code Chapter 114, Subchapter K, Mobile Sources Incentive Programs, Division 8, Drayage Truck Incentive Program; and corresponding revisions to the state implementation plan (SIP). The adopted rules expand the types of eligible vehicles and equipment and clarify the areas considered a seaport. Under Tex. Health & Safety Code Ann. §§ 382.011, 382.012, and 382.023 (West 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 March 18, 2016, issue of the *Texas Register* (41 TexReg 2127).

Pursuant to Tex. Health & Safety Code Ann. § 382.017 (West 2010), Tex. Gov't Code Ann. Chapter 2001 (West 2008 and West Supp. 2014), and 40 Code of Federal Regulations § 51.102, and after proper notice, the Commission conducted public hearings to consider the amended rules and revisions to the SIP. Proper notice included prominent advertisement in the areas affected at least 30 days prior to the dates of the hearings. Public hearings were held in Austin, Texas on April 12, 2016, and Houston, Texas on April 14, 2016.

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 amended rules and SIP revisions, either orally or in writing, at the hearings or during the comment period. Prior to the scheduled hearings, copies of the proposed amended rules and SIP revisions were available for public inspection at the Commission's central office and on the Commission's website.

Data, views, and recommendations of interested persons regarding the proposed amended 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 amended 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 Tex. Gov't Code Ann., Chapter 2001 (West 2008 and West Supp. 2014).

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.

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

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

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Date Signed