Summary of Revisions to
Texas Emissions Reduction Plan:
Guidelines for Emissions Reduction Incentive Grants (RG-388)

The Texas Commission on Environmental Quality (TCEQ) proposes revisions to *Texas Emissions Reduction Plan: Guidelines for Emissions Reduction Incentive Grants (RG-388)*. The Texas Emissions Reduction Plan (TERP) is established in Texas Health and Safety Code (THSC), Chapter 386, to provide grant funding for projects to reduce the emissions of nitrogen oxides (NO_X) and other pollutants. The revisions to the guidelines implement statutory changes to the TERP Diesel Emissions Reduction Incentive Program under House Bill 3399, 82nd Texas Legislature, 2011, Regular Session.

Additional revisions are proposed to provide greater flexibility in how certain criteria are implemented in a particular grant round. In addition, several nonsubstantive changes are proposed to clarify language in the guidelines.

The proposed revisions are explained below.

A. IMPLEMENTATION OF STATUTORY CHANGES

House Bill 3399 amended THSC, §386.104, adding new criteria for implementation of the Diesel Emissions Reduction Incentive Grants Program under the TERP.

Revisions incorporating the changes have been proposed to agency rules under 30 Texas Administrative Code (TAC) Chapter 114, Subchapter K, Division 3: Diesel Emissions Reduction Program For On-Road and Non-Road Vehicles, §114.622.

The revisions to the guidelines listed below incorporate the changes from HB 3399 and the proposed rule revisions.

1. House Bill 3399 added a new THSC, §386.104(i), that reads:

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

   Revisions are proposed to the program rules to add a new subsection (e) in §114.622 to incorporate these provisions. Revisions are also proposed to the sections of the guidelines outlined below to incorporate the changes.

- Chapter 4: Emissions Reduction Incentive Grants Program
  Vehicle, Equipment, and Engine Disposition Verification
  (page 17)
- Chapter 5: Rebate Grants Program
  Vehicle, Equipment, and Engine Disposition Verification
  (page 23)
- Chapter 6: Small-Business Grants Program
  Vehicle, Equipment, and Engine Disposition Verification
  (page 29)
- Chapter 7: Third-Party Grants Program
  Vehicle, Equipment, and Engine Disposition Verification
  (page 37)

Proposed Changes

The disposition requirements for vehicles, equipment, and engines under the grant programs included in the guidelines are revised to allow crushing of the vehicle as a viable destruction approach. Language is also added to allow applicants to propose an alternative method of disposing of the vehicle, equipment, or engine replaced under the program.

2. House Bill 3399 added a new THSC, §386.104(j), that reads:

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

   Revisions are proposed to the program rules to add a new subsection (h) in §114.622 to incorporate these provisions. Revisions are also proposed to the sections of the guidelines outlined below to incorporate the changes.

- Appendix 1, On-Road Heavy-Duty Vehicles
  (pages 41 & 43)
- Appendix 2, Non-Road Equipment
  (pages 59 & 61)
- Appendix 3, Marine Vessels
  (pages 75 & 77)
- Appendix 4, Locomotives
  (pages 91 & 93)
- Appendix 5, Stationary Equipment
  (pages 105 & 107)
- Appendix 6, Refueling Infrastructure
  (page 121)
- Appendix 7, On-Site Electrification and Idle-Reduction Infrastructure
  (page 129)

- Appendix 8, On-Vehicle Electrification and Idle-Reduction Infrastructure (page 141)
- Appendix 9, Rail Relocation and Improvements (page 151)
- Appendix 10, Use of Qualifying Fuel (page 159)
- Appendix 11, Demonstration of New Technology (page 165)

Proposed Changes

Pages 41, 59, 75, 91, 105, 121, 129, 141, and 165

Language is added to the appendices that specifically acknowledge that the executive director has the authority to consider waivers to certain eligibility requirements, based on a finding of good cause. The revisions state that situations where good cause may be determined and a waiver granted are explained in the discussion of the eligibility requirements of the appendices. Language is also added to authorize the executive director to identify other eligibility criteria for which a waiver may be considered and that the waiver options will be explained in the grant application materials. The language states that the granting of a waiver will be at the discretion of the executive director or the executive director's designee. This provision also states that, in determining good cause and deciding whether to grant a waiver, the executive director shall ensure that the emissions reductions that will be attributable to the project will still be valid and, where applicable, meet the conditions for assignment for credit to the state implementation plan.

Pages 43, 61, 73, 77, and 107

Language is also added to Appendix 1 through 5, stating that the TCEQ may waive the two-year registration and/or use requirements for short lapses in registration or operation attributable to economic conditions, seasonal work, or other circumstances, based on a finding of good cause. The historical usage described by the applicant on the grant application forms must reflect the lapses in use of the vehicle or equipment in those activities.

Also, in Appendix 1: On-Road Heavy-Duty Vehicles, the language on page 41 referring to a waiver of the two-year registration requirement for seasonal agricultural activities is removed. This waiver provision is superseded by the new waiver language.

Language is also added to the paragraph referring to a waiver to the registration and safety inspection requirements for vehicles used exclusively for off-road purposes. The additional language requires that the historical usage described by the applicant in the grant application reflect the use of the vehicle for those off-road purposes.

3. House Bill 3399 added a new THSC, §386.104(k), that reads:

   (k) The commission shall consider an application under this chapter for the replacement of a vehicle that has been owned, leased, or otherwise commercially financed by the applicant. If the commission determines that a heavy-duty motor vehicle or engine that is leased or otherwise commercially financed must be decommissioned, the commission shall ensure that the applicant has a legal right to decommission the vehicle or engine before awarding a grant to the applicant.

   Revisions are proposed to the program rules to add a new subsection (b) in §114.622 to incorporate these provisions. Revisions are also proposed to the sections of the guidelines outlined below to incorporate the changes.

   - Appendix 1: On-Road Heavy-Duty Vehicles
     Replacement of On-Road Heavy-Duty Vehicles
     (pages 42 and 43)

     Proposed Changes

     The current language in the guidelines requires that the vehicle has been owned by the applicant for the preceding two years. Language is added to allow the vehicle being replaced under the replacement project category to also be leased or otherwise commercially financed for the preceding two years.

     Also, the current language in the guidelines requires that the applicant be named as the owner on the front of the title of the vehicle being replaced. The revisions allow consideration of other documentation, as determined by the executive director, to show that the applicant has the authority to dispose of the vehicle and engine being replaced.

4. House Bill 3399 added a new THSC, §386.104(l), that reads:

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

   Revisions are proposed to the program rules to amend §114.622(b) and to add a new subsection (c) to §114.622 to incorporate these provisions. Revisions are also proposed to the sections of the guidelines outlined below to incorporate the changes.

   - Chapter 2: Glossary
     Definition of Activity Life
     (page 5)
   - Appendix 1: On-Road Heavy-Duty Vehicles
     Project Criteria
     (page 48)

Proposed Changes

The current language in the guidelines requires that all activities have a minimum activity life of five years. Language is added to state that for activities involving the replacement, purchase, or lease of an on-road heavy-duty vehicle, the activity life must be five years or more, or 400,000 miles of operation, whichever occurs earlier.

B. OTHER PROPOSED SUBSTANTIVE CHANGES

In addition to the implementation of statutory changes, several additional changes are proposed to assist the agency in best implementing the program. These changes are outlined below.

1. Reporting Requirements

- Chapter 4: Emissions Reduction Incentive Grants Program
  Monitoring and Reporting
  (page 19)
- Chapter 5: Rebate Grants Program
  Monitoring and Reporting
  (page 25)
  Chapter 6: Small-Business Grants Program
  Monitoring and Reporting
  (page 30)
- Chapter 7: Third-Party Grants Program
  Monitoring and Reporting
  (page 39)

Proposed Changes

Language is added to allow the TCEQ to authorize an alternative reporting schedule for grant recipients. The current language requires a semi-annual reporting schedule. Under the new language, the TCEQ could authorize an annual or longer reporting schedule, including suspending the reporting requirements, if the grant recipient is meeting the reporting requirements and is otherwise complying with all program requirements.

These changes allow for more flexibility in reporting schedules. With the increasing number of grant-funded projects reporting to the TCEQ, the workload of TCEQ staff to administer the reporting requirements has continued to grow. In addition, the reporting requirements create a burden on grant recipients. For those grant recipients that are meeting their commitments, this change allows the TCEQ to reduce or suspend the reporting requirements, freeing up staff resources to spend more time dealing with projects having problems meeting the program requirements.

2. Purchase of a Used Vehicle or Equipment

- Appendix 1: On-Road Heavy-Duty Vehicles
  Replacement of On-Road Heavy-Duty Vehicles
  (page 43)
- Appendix 2: Non-Road Equipment
  Replacement of Non-Road Equipment
  (page 61)
- Appendix 3: Marine Vessels
  Replacement of Marine Vessels
  (page 78)
- Appendix 4: Locomotives
  Replacement of Locomotives
  (page 93)
- Appendix 5: Stationary Equipment
  Replacement of Stationary Equipment
  (page 107)

Proposed Changes

Language is added to Appendix 1 to require that the model year of the replacement vehicle may not be more than three years prior to the current calendar year, unless an alternative age limit is established by the TCEQ for a particular grant round. The new language would also authorize the TCEQ to waive the age limit requirements, case-by-case, in instances where the vehicle has a unique or specialized use and where a recently manufactured model is not available.

Language is added to the other appendices to require that the year of manufacture of the engine installed on the replacement equipment, locomotive, or marine vessel may not be more than three years prior to the current calendar year, unless an alternative age limit is established by the TCEQ for a particular grant round. The new language would also authorize the TCEQ to waive the age limit requirements, case-by-case, in instances where the equipment, locomotive, or marine vessel has a unique or specialized use and where a model with a recently-manufactured engine is not available.

With recent changes to federal emission standards, many newer heavy-duty engines emit much less NO_X and other pollutants than engines that are only four or five years old. The changes will help ensure that the TERP grants are being used to replace older vehicles and equipment with the newest, lowest-emission models available.

Also, the condition of used vehicles and equipment varies widely. The changes to limit the age of the vehicle or engine being purchased under a replacement grant will help ensure that the grant-funded vehicles and equipment are in good condition and will remain operational for the period that must be committed to by the grant recipient without the need for substantial maintenance and repairs.

The requirements for vehicles apply to the model year of the vehicle, while the requirements for the other grant categories apply to the year of manufacture of the engine. The difference in language is because vehicles are normally sold by model year, while the model year of equipment, marine vessels, and locomotives may not always be apparent or clearly defined. For these other categories, the manufacture year of the engine will be easier to verify for compliance with the requirements.

3. Percentage of Costs Eligible for Reimbursement

- Appendix 1: On-Road Heavy-Duty Vehicles
  Replacement of On-Road Heavy-Duty Vehicles
  (page 44)
  Repower of On-Road Heavy-Duty Vehicles
  (page 44)
  Retrofit or Add-On of Emissions-Reduction Technology
  (page 45)
- Appendix 2: Non-Road Equipment
  Replacement of Non-Road Equipment
  (page 61)
  Repower of Non-Road Equipment
  (page 62)
  Retrofit or Add-On of Emissions-Reduction Technology
  (page 63)
- Appendix 3: Marine Vessels
  Replacement of Marine Vessels
  (page 78)
  Repower of Marine Vessels
  (page 79)
  Retrofit or Add-On of Emissions Reduction Technology
  (page 79)
- Appendix 4: Locomotives
  Replacement of Locomotives
  (page 94)
  Repower of Locomotives
  (page 94)
  Retrofit or Add-On of Emissions-Reduction Technology
  (page 95)
- Appendix 5: Stationary Equipment
  Replacement of Stationary Equipment
  (page 107)
  Repower of Stationary Equipment
  (page 108)
  Retrofit or Add-On of Emissions-Reduction Technology
  (page 109)

Proposed Changes

Under the changes, the TCEQ will be able to establish lower limits on the percentage of costs that may be covered by a TERP grant than are listed in the guidelines, in order to best meet the goals of the program. These revisions provide the executive director greater flexibility to adjust the cost percentages under different grant rounds, based on consideration of the available funding, the expected types of projects that will be applied for, and other factors.

C. NONSUBSTANTIVE CHANGES

Several nonsubstantive changes are proposed to clarify the language in the guidelines.

1. Reference to Other TERP Grant Programs

    - Chapter 1: Summary
      Grant Program Descriptions
      (page 2)

    Proposed Changes

    A subsection is added, entitled "Other Programs." This new subsection explains that other programs, not covered by these guidelines, are funded through the TERP Fund. Because the number of programs funded through the TERP Fund and not covered under these guidelines has grown since the establishment of the TERP, this language will make it clear to readers that not all TERP programs, including several other grant programs, are covered by these guidelines.

2. Documentation of Continued Vehicle or Equipment Use

    - Appendix 1: On-Road Heavy-Duty Vehicles
      Replacement of On-Road Heavy-Duty Vehicles
      (page 43)
    - Appendix 2: Non-Road Equipment
      Replacement of Non-Road Equipment
      (page 61)
    - Appendix 3: Marine Vessels
      Replacement of Marine Vessels
      (page 77)
    - Appendix 4: Locomotives
      Replacement of Locomotives
      (page 93)
    - Appendix 5: Stationary Equipment
      Replacement of Stationary Equipment
      (page 107)

Proposed Changes

These sections currently include a paragraph stating that the TCEQ may require additional documentation to verify that the vehicle or equipment being replaced would have been used within the eligible counties. This paragraph is replaced with more explanatory language stating that in order for a replacement activity to result in creditable emissions reductions, the applicant must intend to continue using the vehicle or equipment being replaced, absent the award of a grant.

The revised language also makes it clear that the TCEQ may require additional assurances, certifications, and documentation to verify that the applicant would continue to use the vehicle or equipment being replaced if the grant is not awarded.

These revisions are intended to clarify the requirements for achieving emissions reductions under a replacement activity and to explain the basis for the TCEQ asking for information to help verify that the required conditions are met.

3. Purpose of Appendices

- Appendix 1: On-Road Heavy-Duty Vehicles (page 41)
- Appendix 2: Non-Road Equipment (page 59)
- Appendix 3: Marine Vessels (page 75)
- Appendix 4: Locomotives (page 91)
- Appendix 5: Stationary Equipment (page 105)
- Appendix 6: Refueling Infrastructure (page 121)
- Appendix 7: On-Site Electrification and Idle-Reduction Infrastructure (page 129)
- Appendix 8: On-Vehicle Electrification and Idle-Reduction Infrastructure (page 141)
- Appendix 9: Rail Relocation and Improvements (page 151)
- Appendix 10: Use of Qualifying Fuel (page 159)

Proposed Changes

Nonsubstantive changes are made to the opening sentence of each appendix to make the language consistent for all of the appendices.

4. Vehicle Retrofit Example

    - Appendix 1: On-Road Heavy-Duty Vehicles
      Project Criteria
      Retrofits and add-ons
      (page 47)

      Proposed Changes

      The reference to a date for when the example retrofit project would take place is removed. The date reference is not current and it is not needed for the explanation of the example project.