

The Texas Commission on Environmental Quality (commission) adopts, on an emergency basis, amendments to §114.620, Definitions, §114.621, Applicability; §114.622, Incentive Program Requirements; and §114.629, Affected Counties and Implementation Schedule. The commission also adopts new §114.623, Small Business Incentives. This emergency rulemaking is adopted as partial implementation of House Bill 1365 (relating to the Texas Emissions Reduction Plan), 78th Legislature, 2003.

REASON FOR EMERGENCY

The 77th Legislature, 2001, enacted Senate Bill 5 establishing the Texas Emissions Reduction Plan (TERP) which provides financial incentives for reducing emissions of on-road and non-road motor vehicles and equipment. The program is funded through surcharges and fees established in the bill. House Bill 1365 amended the surcharges and fees, the eligibility criteria, and other provisions of the TERP. This emergency rulemaking is necessary so that funds appropriated for the TERP can be reimbursed and distributed in accordance with House Bill 1365.

Texas Government Code, §2001.034(a), authorizes a state agency to adopt an emergency rule without prior notice or hearing, or abbreviated notice and hearing, if the agency finds that an imminent peril to the public health, safety, or welfare or a requirement of state or federal law requires adoption of a rule. Accordingly, in Texas Health and Safety Code, §386.053(e), the legislature finds that the current state of air quality in the state jeopardizes the state's ability to meet federal air quality requirements and authorizes the commission to adopt emergency rules under Texas Government Code, §2001.034, to implement the TERP. In accordance with Texas Government Code,

§2001.034(c), this emergency rulemaking will be effective for not longer than 120 days with the opportunity for a 60-day renewal.

SUBCHAPTER K: MOBILE SOURCE INCENTIVE PROGRAMS

**DIVISION 3: DIESEL EMISSIONS REDUCTION INCENTIVE PROGRAM FOR ON-ROAD
AND NON-ROAD VEHICLES**

§§114.620 - 114.623, 114.626, 114.629

STATUTORY AUTHORITY

These amendments and new section are adopted under Texas Water Code, §5.102, which provides the commission with the general powers to carry out its duties under Texas Water Code; §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state; and §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. These amendments and new section are also proposed under Texas Health and Safety Code, Texas Clean Air Act, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; §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; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and Chapter 386, which establishes the TERP. Further, this emergency rulemaking is adopted under Texas Government Code, §2001.034, which provides for emergency rulemaking; and Texas Health and Safety Code, §386.053(e), which authorizes the commission to adopt emergency rules to implement the TERP. Finally, these adopted amendments and new section are part of the implementation of House Bill 1365.

§114.620. Definitions.

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

(1) (No change.)

(2) Guidelines - Texas Emissions Reduction Plan: Guidelines for Emissions Reduction Incentive Grants Program (RG-388) adopted by the commission under Texas Health and Safety Code, §386.053, as amended.

(3) [(2)] Incremental cost - The cost of an applicant's project less a baseline cost that would otherwise be incurred by an applicant in the normal course of business and may include added lease or fuel costs as well as additional capital costs.

(4) [(3)] Motor vehicle - A self-propelled device designed for transporting persons or property on a public highway that is required to be registered under Texas Transportation Code, Chapter 502.

(5) [(4)] Non-road diesel - A vehicle or piece of equipment, excluding a motor vehicle or on-road diesel, that is powered by a non-road engine, including: non-road non-recreational

equipment and vehicles; construction equipment; locomotives; marine vessels; and other high-emitting diesel engine categories.

(6) [(5)] Non-road engine - An internal combustion engine that is in or on a piece of equipment that is self-propelled or that propels itself and performs another function, excluding a vehicle that is used solely for competition, or a piece of equipment this is intended to be propelled while performing its function, or a piece of equipment designed to be and capable of being carried or moved from one location to another.

(7) [(6)] On-road diesel - An on-road diesel-powered motor vehicle that has a gross vehicle weight rating of 8,500 [10,000] pounds or more.

(8) [(7)] Qualifying fuel - Any liquid or gaseous fuel or additives registered or verified by the EPA that is ultimately dispensed into a motor vehicle or on-road or non-road diesel that provides reductions of nitrogen oxides emissions beyond reductions required by state or federal law.

(9) [(8)] Repower - To replace an old engine powering an on-road or non-road diesel with a new engine; a used engine; a remanufactured engine; or electric motors, drives, or fuel cells. [:]

[(A) a new engine that emits at least 30% less than the nitrogen oxides (NO_x) emissions standard required by federal regulation for the current model year for that engine;]

[(B) an engine manufactured later than 1987 that emits at least 30% less than the NO_x emissions standard emitted by a new engine certified to the baseline NO_x emissions standard for that engine;]

[(C) an engine manufactured before 1988 that emits not more than 50% of the NO_x emissions standard emitted by a new engine certified to the baseline NO_x emissions standard for that engine; or]

[(D) electric motors, drives, or fuel cells.]

(10) [(9)] Retrofit - To equip an engine and fuel system with new emissions-reducing parts or technology verified by the EPA after manufacture of the original engine and fuel system.

(11) Small business - A business owned by a person who:

(A) owns and operates not more than two vehicles, one of which is:

(i) an on-road diesel with a pre-1994 engine model; or

(ii) a non-road diesel with an engine with uncontrolled emissions; and

(B) has owned the on-road or non-road diesel for more than one year.

§114.621. Applicability.

Any person that owns or leases, or intends to own or lease, one or more on-road or non-road diesels that operate, or will operate, within counties listed in [an affected county as defined by] §114.629 of this title (relating to Applicable [Affected] Counties and Implementation Schedule) may apply for a grant under the diesel emissions reduction incentive program. Subject to the criteria included in the commission's Texas Emissions Reduction Plan: Guidelines for Emissions Reduction Incentive Grants Program (RG-388), a person other than the owner or lessee may also apply for and receive a grant.

§114.622. Incentive Program Requirements.

(a) Eligible projects include:

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

(2) - (6) (No change.)

(7) implementation of infrastructure projects; [and]

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

(9) [(8)] other projects that have the potential to reduce anticipated NO_x emissions from diesel engines.

(b) (No change.)

(c) For a proposed project that includes a replacement of equipment or a repower, the old equipment or engine must be recycled, scrapped, or otherwise removed from all [affected] counties listed in [as defined by] §114.629 of this title (relating to Applicable [Affected] Counties and Implementation Schedule).

(d) To be eligible for a grant, the cost-effectiveness of a proposed project as listed in subsection (a) of this section, except for infrastructure projects and infrastructure purchases that are part of a broader retrofit, repower, replacement, or add-on equipment project, must not exceed \$13,000 per ton of NO_x emissions.

(e) - (f) (No change.)

(g) A proposed retrofit, repower, replacement, or add-on equipment project must achieve a reduction in NO_x emissions to the level established in the commission's *Texas Emissions Reduction Plan: Guidelines for Emissions Reduction Incentive Grants Program* (RG-388) for that type of project [of at least 30%] compared with the baseline emissions adopted by the commission for the relevant engine year and application.

(h) (No change.)

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

§114.623. Small Business Incentives.

(a) This section establishes a process to provide fast and simple access to grants for small businesses, in accordance with Texas Health and Safety Code, §386.116, as amended.

(b) The grant process for a small business may include:

(1) a simplified grant application and other forms;

(2) pre-approval or pre-authorization of certain types of grant purchases and expenses;

(3) a simplified expense reimbursement process, which may include procedures for the grant recipient to assign grant payments directly to the vendor; and

(4) promotional activities and instructional materials targeted at small businesses to encourage them to participate in the program and to inform them of how to access the grants.

(c) The commission's *Texas Emissions Reduction Plan: Guidelines for Emissions Reduction Incentive Grants Program* (RG-388) shall include details to implement methods identified in subsection (b) of this section.

(d) Other methods for providing fast and simple access to grants for small businesses may be developed through guidelines.

§114.629. Applicable [Affected] Counties and Implementation Schedule.

(a) Applicable counties in the incentive program include: Bastrop, Bexar, Brazoria, Caldwell, Chambers, Collin, Comal, Dallas, Denton, El Paso, Ellis, Fort Bend, Galveston, Gregg, Guadalupe, Harris, Hardin, Harrison, Hays, Henderson, Hood, Hunt, Jefferson, Johnson, Kaufman, Liberty, Montgomery, Nueces, Orange, Parker, Rockwall, Rusk, San Patricio, Smith, Tarrant, Travis, Upshur, Victoria, Waller, Williamson, [and] Wilson, and any other county located within an area of Texas designated as a nonattainment area for ground-level ozone under Federal Clean Air Act, §107(d), as amended.

(b) (No change.)

