

Texas Commission on Environmental Quality

Interoffice Memorandum

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

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

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

Docket No.: 2013-1194-RUL

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

Background and reason(s) for the rulemaking:

Senate Bill (SB) 1727, 83rd Legislature, 2013, Regular Session, by Senators Deuell and Garcia, amends Texas Health and Safety Code (THSC), Chapter 386, to add new Subchapter D-1. This subchapter establishes the Drayage Truck Incentive Program (program) to be funded from the Texas Emissions Reduction Plan (TERP) Fund and administered by the Texas Commission on Environmental Quality (commission). The changes enacted under SB 1727 require new rules to establish the criteria for models of drayage trucks eligible for funding under the program.

Scope of the rulemaking:

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

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

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

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

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

Statutory authority:

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

Effect on the:

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

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

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

Stakeholder meetings:

No stakeholder meetings were held for this rulemaking.

Public Comment:

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

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

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

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

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

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

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

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

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

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

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

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

Significant Changes from proposal:

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

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

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

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Potential controversial concerns and legislative interest:

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

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

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

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

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

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

Key points in the adoption rulemaking schedule:

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

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

Anticipated effective date: May 1, 2014

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

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