

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** September 29, 2011

**Thru:** Bridget Bohac, Chief Clerk  
Mark R. Vickery, P.G., Executive Director

**From:** Susana M. Hildebrand, P.E., Chief Engineer

**Docket No.:** 2011-1219-RUL

**Subject:** Commission Approval for Proposed Rulemaking  
Chapter 114, Control of Air Pollution From Motor Vehicles  
HB 3399: Emissions Reduction Incentive Program Rules  
Rule Project No. 2011-050-114-EN

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

House Bill (HB) 3399, 82nd Legislature, 2011, Regular Session, by Representatives Legler, Strama, Reynolds, and Chisum, amends sections of Texas Health and Safety Code (THSC), Chapter 386, Subchapter C. This subchapter establishes the Diesel Emissions Reduction 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 HB 3399 require amendment of existing rules to revise existing provisions and add new provisions.

**Scope of the rulemaking:**

**A.) Summary of what the rulemaking will do:** HB 3399 added new subsections under THSC, §386.104, Eligibility Requirements, for the Diesel Emissions Reduction Incentive Program. The revisions to 30 TAC Chapter 114, as required by HB 3399, incorporate changes and additions to the program eligibility criteria, including: changes to the period over which a grant-funded vehicle must be operated; establish specific criteria for decommissioning a vehicle or vehicle engine under the program; and add provisions to allow a vehicle that has been leased or otherwise commercially financed to be replaced under the program. The revisions also include provisions, as required by HB 3399, that the executive director shall waive eligibility requirements on a finding of good cause.

**B.) Scope required by federal regulations or state statutes:** The proposed rule is required by changes to THSC, Chapter 386, under HB 3399.

**C.) Additional staff recommendations that are not required by federal rule or state statute:** Staff is not recommending additional provisions beyond what is required under THSC, Chapter 386, as amended by HB 3399.

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**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 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 program.

**Effect on the:**

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

**B.) Public:** The changes to the eligibility criteria for the grants will potentially expand the number of entities and vehicles eligible to participate in the program. The changes may also make it easier for some entities to participate in the program.

**C.) Agency programs:** The TERP guidance document, *Guidelines for Emissions Reduction Incentive Grants*, (guidelines) will need to be amended. The revised guidelines will need to be adopted by the commission after the rule is adopted. Program processes, criteria, and forms will need to be updated. Also, a process will need to be developed for considering waivers to the eligibility requirements.

**Stakeholder meetings:**

Stakeholder meetings are not proposed for this rulemaking.

**Potential controversial concerns and legislative interest:**

The proposed rule incorporates provisions required under THSC, Chapter 386, as amended by HB 3399. The proposal does not go further than what is required to comply with the statutory changes. Therefore, staff does not anticipate any concerns being raised about the rule. Staff expects that the legislators involved in HB 3399 and stakeholders will be interested in how the commission implements the new provisions.

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

The TERP guidelines will need to be amended to incorporate the changes to the eligibility criteria. Program application materials and contract shells will need to be updated. Also, a process will need to be developed for considering waivers to the eligibility requirements.

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

This rulemaking is required to amend the criteria for implementing the Diesel Emissions Reduction Incentive Program under THSC, Chapter 386. If rulemaking is not completed, implementation of the program under the existing rule would be inconsistent with the statutory provisions. Possible alternatives are not adopting the rule or adopting the rule at a later date and delaying implementation of the program.

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

**Anticipated proposal date:** October 18, 2011

**Anticipated *Texas Register* publication date:** November 4, 2011

**Public hearing date:** November 29, 2011

**Public comment period:** November 4, 2011 - December 5, 2011

**Anticipated adoption date:** March 28, 2012

**Agency contacts:**

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**Attachments**

cc: Chief Clerk, 2 copies  
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