

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.: 2011-1220-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 114, Control of Air Pollution from Motor Vehicles
HB 3399 – Texas Clean Fleet Program Rules
Rule Project No. 2011-051-114-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 391. This chapter establishes the Texas Clean Fleet 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 under HB 3399 require amendment of existing rules to revise current provisions and add new provisions.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do: HB 3399 added new subsections and revised existing sections of THSC, §391, Texas Clean Fleet 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 number of vehicles that must be included in a grant and that may be awarded funding by the commission; changes to allow a vehicle that has been leased or commercially financed to be replaced under the program; and establishing criteria for decommissioning a vehicle or vehicle engine replaced under the program. The revisions also include provisions, as required under HB 3399, that the executive director shall waive the ownership and use requirements for the vehicle being replaced, upon a finding of good cause.

B.) Scope required by federal regulations or state statutes: The proposed rules are required by changes to THSC, Chapter 391, 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 391, 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;
- THSC, Chapter 386, which establishes the TERP program; and
- THSC, Chapter 391, which establishes the Texas Clean Fleet Program.

Effect on the:

A.) Regulated community: These rules 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 grants. The changes may also make it easier for some entities to participate in the program.

C.) Agency programs: 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 rules incorporate provisions required under THSC, Chapter 391, 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 rules. 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?

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 Texas Clean Fleet Program under THSC, Chapter 391. If rulemaking is not completed, implementation of the program under existing rules would be inconsistent with the statutory provisions. 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 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

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Attachments

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