

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§114.650, 114.653, and 114.656.

If adopted, the amended sections will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan.

Background and Summary of the Factual Basis for the Proposed Rules

The purpose of this rulemaking is to amend existing rules for implementing the Texas Clean Fleet Program (program) established under Texas Health and Safety Code (THSC), Chapter 392. This program is designed to encourage owners of eligible vehicle fleets to replace diesel vehicles with alternative fuel or hybrid vehicles. Senate Bill (SB) 1727, 83rd Legislature, 2013, amended THSC, Chapter 392, to revise current standards for determining eligible grant amounts. SB 1727 also amended THSC, Chapter 386, to include additional eligibility criteria for projects related to transportation of raw agricultural products under the program. The changes made under SB 1727 are as summarized in the following paragraphs.

THSC, §386.0515, was added by SB 1727. This section defines "Agricultural product transportation" and directs the commission to provide by rule or policy specific eligibility requirements under the Texas Clean Fleet Program for projects related to agricultural product transportation. Under this section, the determining factor for

eligibility for participation in the program for a project related to agricultural product transportation is the overall accumulative net reduction in nitrogen oxide (NO_x) emissions in a nonattainment area, an affected county, or the clean transportation triangle established under THSC, Chapter 394.

THSC, §392.007(a), was revised to remove the different standards for the percentage of incremental costs that may be covered by a grant based on the model year of the heavy-duty diesel engine or light-duty diesel vehicle being replaced. The revision to this subsection specifies that the amount the commission is to award under a grant for each vehicle being replaced is up to 80%, as determined by the commission, of the total cost for replacement of a heavy-duty or light-duty diesel engine.

These proposed rules incorporate the changes to THSC, Chapters 386 and Chapter 394, under SB 1727.

Section by Section Discussion

§114.650, Definitions

Proposed revisions to §114.650 would modify paragraph (1) to include a definition for "Agricultural product transportation," as established under THSC, §386.0515, and renumber the subsequent paragraphs accordingly. The proposed paragraph would define agricultural product transportation as the transportation of a raw agricultural

product from the place of production using a heavy-duty on-road vehicle to: a nonattainment area; an affected county, as defined under THSC, §386.001; a destination inside the clean transportation triangle established under THSC, §394.010; or a county adjacent to an affected county or that contains an area in a nonattainment area or the clean transportation triangle.

§114.653, Grant Eligibility

Proposed amendment to §114.653(a) would replace the phrase "a reduction in emissions of nitrogen oxides" with "nitrogen oxide emission reductions." This change is proposed for editorial purposes.

Proposed amendment to §114.653 would also add a subsection (f) to direct that in establishing more specific requirements or additional criteria, as authorized under this section, for projects related to agricultural product transportation, the executive director shall use as a determining factor for eligibility the overall accumulative net reduction in NO_x emissions in a nonattainment area, an affected county, or the clean transportation triangle.

§114.656, Eligible Grant Amounts

Proposed amendment to §114.656(a) and (b) would delete provisions in paragraphs (1) - (4) of subsection (a) and paragraphs (1) - (3) of subsection (b) that established different

percentages of the incremental cost of replacement of a vehicle that may be covered by the grant award, based on the model year of the heavy-duty diesel engine or light-duty diesel vehicle. Proposed subsection (a) would establish a new maximum grant amount for replacement of a heavy-duty vehicle of up to 80%, as determined by the executive director, of the total cost for replacement. Proposed subsection (b) would establish a new maximum grant amount for replacement of a light-duty on-road vehicle of up to 80%, as determined by the executive director, of the total cost for replacement.

Proposed amendment to §114.656(c) would update the provisions to be consistent with the changes to subsections (a) and (b). Under existing language, the executive director is authorized to revise the standards for determining the grant amounts, as listed in subsections (a) and (b), to reflect changes to federal emission standards and decisions on pollutants of concern. Under the proposed changes to subsections (a) and (b), the maximum limits on grant amounts would no longer be specifically linked to the different model years of heavy-duty engines or light-duty vehicles being replaced, which correspond to the different federal emission standards for NO_x based on engine or vehicle model years. Instead, a single maximum limit on the grant amount for all projects, regardless of model year of the engine or vehicle, would be set at up to 80% of the total cost of the replacement. The proposed changes to subsection (c) would authorize the executive director to set more specific standards for determining grant amounts, within the new maximum limit of 80% of the total cost, consistent with the

priorities for project selection, including consideration of the federal emissions standards for different model years of engines and vehicles, decisions on pollutants of concern, and other factors that will help implement the project priorities that may be established by the executive director under THSC, §386.056.

Fiscal Note: Costs to State and Local Government

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency as a result of administration or enforcement of the proposed rules. The agency will implement the proposed rules using currently available resources. Other units of state or local government may experience cost benefits from the proposed rules if they qualify for grant funds to replace a diesel vehicle with a vehicle that qualifies for grant funding under the Texas Clean Fleet Program in Account 5071 - Texas Emission Reduction Plan (TERP). The 83rd Legislature appropriated an estimated \$3.9 million for the program in each year of the 2014 - 2015 biennium.

The proposed rules would amend Chapter 114, per the requirements of SB 1727, to amend the criteria for the Texas Clean Fleet Program, add a definition for "Agricultural product transportation," and provide direction to the executive director in establishing eligibility criteria for projects related to agricultural product transportation. The

proposed rules will also delete the different limits on the percentage of incremental costs that may be covered by a grant based on the model year of the heavy-duty engine or light-duty vehicle being replaced. The new maximum limit on the grant amounts would be set at up to 80%, as determined by the executive director, of the total cost for replacement of a heavy-duty or light-duty on-road vehicle. The proposed rules may also increase the number of eligible projects related to the transportation of raw agricultural products. The program is a voluntary statewide incentive program, and staff is not able to determine how many state agencies or units of local government would become eligible to apply for a Texas Clean Fleet Program grant at this time. Grants are not expected to be awarded until Fiscal Year 2015.

State agencies or units of local government may experience cost benefits from the proposed rules if they qualify for grant funds to replace a light-duty or heavy-duty diesel vehicle with a vehicle that qualifies for funding under the program. The proposed rules are expected to increase the eligible grant amounts for a project funded under the program from a current award range of \$15,000 to \$140,000. Under the proposed rules, grantees are expected to experience similar or greater cost savings. The cost for a light-duty vehicle is estimated to be \$30,000, and for a large heavy-duty truck, costs are estimated to be to \$180,000 or more. If the maximum limit of 80% for grant awards is used, grants could range from \$24,000 to \$144,000 or more.

Public Benefits and Costs

Ms. Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be improved air quality in the state. The proposed rules are expected to encourage greater participation in the Texas Clean Fleet Grant Program by allowing the commission to fund a greater percentage of the costs of the vehicle replacement and to increase the number of eligible projects related to the transportation of raw agricultural products.

The program is a voluntary statewide grant incentive program. Most grants are expected to be awarded in Fiscal Year 2015, and most eligible grantees are expected to be governmental agencies or businesses that own vehicle fleets.

The proposed rules may not have a direct fiscal benefit for individuals, unless they are a sole proprietor that meets the requirement that an applicant own and operate at least 75 vehicles in Texas. However, any eligible individual or entity should experience the same cost benefits as those experienced by a local government or large business as detailed below.

The proposed rules are expected to increase the eligible grant amounts, which may increase participation in the program. The proposed rules are also expected to increase

the number of eligible projects related to the transportation of raw agricultural products. Costs for vehicles could range from \$30,000 for a light-duty vehicle to \$180,000 or more for a large heavy-duty truck. Currently, eligible grant awards offsetting the replacement costs of these vehicles range from \$15,000 to \$140,000. Under the proposed rules, grantees are expected to experience similar or greater cost savings. At a maximum replacement rate of 80% (if so determined by the executive director), grants could range from \$24,000 to \$144,000 or more.

The proposed rules could increase revenue for sellers and lessors of qualifying replacement vehicles since there may be more entities that apply for grants that allow them to purchase eligible vehicles at a lower cost.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. If a small business meets the eligibility requirements, it should experience the same type of cost savings as a large business when replacing a vehicle. If a small business sells or leases qualifying replacement vehicles to others, it should expect to see the same type of revenue increases as a large business.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that this rule action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The amended Chapter 114 rules are proposed in accordance with SB 1727, which amended THSC, Chapter 386 and Chapter 392. The program offers financial incentives for the voluntary replacement of diesel engines. Because the proposed rules place no involuntary requirements on the regulated community, the proposed rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Also, none of the proposed amendments place additional financial burdens on the regulated community.

In addition, a regulatory impact analysis is not required because the proposed rules do not meet any of the four applicability criteria for requiring a regulatory analysis of a "major environmental rule" as defined in the Texas Government Code. Texas Government Code, §2001.0225, applies only to a major environmental rule the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not exceed a standard set by federal law. In addition, this rulemaking does not exceed an

express requirement of state law and is not proposed solely under the general powers of the agency but is specifically authorized by the provisions cited in the Statutory Authority section of this preamble. Finally, this rulemaking does not exceed a requirement of a delegation agreement or contract to implement a state or federal program.

The commission invites public comment on the draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated this rulemaking action and performed an analysis of whether the proposed rules are subject to Texas Government Code, Chapter 2007. The primary purpose of the rulemaking is to amend Chapter 114 in accordance with SB 1727. The rules amend the criteria for implementing a voluntary program and only affect motor vehicles that are not considered to be private real property. The promulgation and enforcement of the proposed rules is neither a statutory nor a constitutional taking because it does not affect private real property. Therefore, the rules do not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), concerning rules subject to the Texas Coastal Management Program (CMP), and will, therefore, require that goals and policies of the CMP be considered during the rulemaking process. The commission reviewed this action for consistency and determined the rulemaking for Chapter 114 does not impact any CMP goals or policies because it amends a voluntary incentive grant program and does not govern air pollution emissions.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on December 12, 2013, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing;

however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802. Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Bruce McAnally, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2013-038-114-AI. The comment period closes December 18, 2013. Copies of the proposed rulemaking can be obtained from the commission's Web site at http://www.tceq.texas.gov/nav/rules/propose_adopt.html. For further information, please contact Stephen Dayton, Implementation Grants Section, (512) 239-6824.

SUBCHAPTER K: MOBILE SOURCE INCENTIVE PROGRAMS

DIVISION 5: TEXAS CLEAN FLEET PROGRAM

§§114.650, 114.653, 114.656

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; 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 this state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. These amendments are also proposed under Texas Health and Safety Code (THSC), Texas Clean Air Act, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the THSC; 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; and THSC, §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air. Finally, these amendments are proposed under THSC, Chapter 392, and are part of the implementation of Senate Bill 1727.

§114.650. Definitions.

Unless specifically defined in the Texas Clean Air Act (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 that 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 will have the following meanings, unless the context clearly indicates otherwise.

(1) Agricultural product transportation--The transportation of a raw agricultural product from the place of production using a heavy-duty on-road vehicle to:

(A) a nonattainment area;

(B) an affected county as defined under Texas Health and Safety Code (THSC), §386.001;

(C) a destination inside the clean transportation triangle established under THSC, §394.010; or

(D) a county adjacent to a county described by subparagraph (B) of this paragraph or that contains an area described by subparagraph (A) or (C) of this paragraph.

(2) [(1)] Alternative fuel--A fuel, other than gasoline or diesel fuel. When used in this division, this definition is limited to the following: electricity, compressed natural gas, liquefied natural gas, hydrogen, propane, or a mixture of fuels containing at least 85% methanol by volume.

(3) [(2)] Eligible entity--Any person or entity with a fleet of 75 or more vehicles that:

(A) are registered in Texas; and

(B) include at least 20 vehicles that are eligible for replacement.

(4) [(3)] Golf cart--A motor vehicle designed by the manufacturer primarily for transporting persons on a golf course.

(5) [(4)] Heavy-duty vehicle--A motor vehicle with a gross vehicle weight rating greater than 8,500 pounds and containing an engine certified to the United States Environmental Protection Agency's heavy-duty engine standards.

(6) [(5)] Hybrid vehicle--A motor vehicle with at least two different energy converters and two different energy storage systems on board the vehicle for the purpose of propelling the vehicle.

(7) [(6)] Light-duty motor vehicle--A motor vehicle with a gross vehicle weight rating of less than 10,000 pounds and certified to the United States Environmental Protection Agency's light-duty vehicle emission standards.

(8) [(7)] 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.

(9) [(8)] Neighborhood electric vehicle--A motor vehicle that:

(A) is originally manufactured to meet, and does meet, the equipment requirements and safety standards established for "low-speed vehicles" in Federal Motor Vehicle Safety Standard No. 500 (49 Code of Federal Regulations §571.500);

(B) is a slow-moving vehicle, as defined by Texas Transportation Code, §547.001 that is able to attain a speed of more than 20 miles per hour but not more than 25 miles per hour in one mile on a paved, level surface;

(C) is a four-wheeled motor vehicle;

(D) is powered by electricity or alternative power sources;

(E) has a gross vehicle weight rating of less than 3,000 pounds; and

(F) is not a golf cart.

(10) [(9)] Program--The Texas Clean Fleet Program established under this division.

§114.653. Grant Eligibility.

(a) To be eligible for a grant under the program a project must result in nitrogen oxide emission reductions [a reduction in emissions of nitrogen oxides] of at least 25%, based on:

(1) the baseline emission level set by the executive director; and

(2) the certified emission rate of the new vehicle or engine.

(b) The vehicle being replaced must:

(1) be an on-road vehicle that has been owned, leased, or otherwise commercially financed, and registered and operated by the applicant in Texas for at least the two years immediately preceding the submission of a grant application;

(2) satisfy any minimum average annual mileage or fuel usage requirements established by the executive director;

(3) satisfy any minimum percentage of annual usage requirements established by the executive director; and

(4) be in operating condition with at least two years of remaining useful life, as determined in accordance with criteria established by the executive director.

(c) At the discretion of the executive director, projects that result in a 25% reduction in other pollutants may be considered eligible for funding under this program.

(d) The executive director may establish additional criteria for purposes of prioritizing projects for selection. Such criteria may include, but are not limited to:

(1) nonattainment status of the primary location in which the eligible vehicles are used; or

(2) cost per ton benefits of the overall emissions being reduced.

(e) The executive director shall waive the requirements of subsection (b)(1) of 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. In determining good cause and deciding whether to grant a waiver, the executive director shall ensure that the emissions reductions that will be attributed to the project will still be valid and, where applicable, meet the conditions for assignment for credit to the state implementation plan.

(f) In establishing more specific requirements or additional criteria, as authorized under this section, for projects related to agricultural product transportation, the executive director shall use as a determining factor for eligibility for participation in the program established under this division the overall accumulative net reduction in

nitrogen oxide emissions in a nonattainment area, an affected county, or the clean transportation triangle.

§114.656. Eligible Grant Amounts.

(a) The eligible grant amount for each heavy-duty on-road vehicle being replaced is up to 80%, as determined by the executive director, of the total cost for replacement.

[is determined as follows:]

[(1) 80% of the cost for replacement of a vehicle with an engine manufactured prior to 1988 and certified to meet the federal emissions standards, if any, applicable to the year of manufacture;]

[(2) 70% of the cost for replacement of a vehicle with an engine manufactured after 1987 and before 1998 and certified to meet the federal emission standards applicable to the year of manufacture;]

[(3) 60% of the cost for replacement of a vehicle with an engine manufactured after 1997 and before 2004 and certified to meet the federal emission standards applicable to year of manufacture; and]

[(4) 50% of the cost for replacement of a vehicle with an engine manufactured after 2003 and certified to meet the federal emission standards applicable to the year of manufacture.]

(b) The eligible grant amount for each light-duty on-road vehicle being replaced is up to 80%, as determined by the executive director, of the total cost for replacement.

[determined as follows:]

[(1) 80% of the cost for replacement of a light-duty diesel vehicle of a model year prior to 1994 and certified to meet the federal emissions standards, if any, applicable to the model year of the vehicle;]

[(2) 70% of the cost for replacement of a light-duty diesel vehicle of a model year after 1993 and before 2004 and certified to meet the federal emission standards applicable to the model year of the vehicle; and]

[(3) 60% of the cost for replacement of a light-duty diesel vehicle of a model year after 2003 and certified to meet the federal emission standards applicable to the model year of the vehicle.]

(c) The executive director may establish more specific standards for determining grant amounts within the maximum percentage of total costs established under this section consistent with the priorities for project selection, including consideration of the federal emission standards for different model years of heavy-duty engines and light-duty vehicles, decisions on pollutants of concern, and other factors that will help implement the project priorities. [The executive director may revise the standards for determining grant amounts as needed to reflect changes to federal emission standards and decisions on pollutants of concern.]

(d) To be eligible for replacement, vehicles and engines imported into the United States from another country must have met all applicable emissions certification requirements for importation.