

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AGENDA ITEM REQUEST

for Rulemaking Adoption

AGENDA REQUESTED: April 9, 2014

DATE OF REQUEST: March 21, 2014

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Bruce McAnally, (512) 239-2141

CAPTION: Docket No. 2013-1192-RUL. Consideration of the adoption of proposed amendments to 30 TAC Chapter 114, Control of Air Pollution from Motor Vehicles, Subchapter K, Mobile Source Incentive Programs, Division 3, Diesel Emissions Reduction Incentive Program for On-Road and Non-Road Vehicles, Section 114.622 and Section 114.629 and corresponding revisions to the state implementation plan.

The adoption would implement part of Senate Bill (SB) 1727, 83rd Legislature, 2013, Regular Session, relating to requirements for receiving an incentive grant under the Diesel Emissions Reduction Incentive (DERI) Program and changes to reflect recent action by the United States Environmental Protection Agency (EPA) to add the designation of nonattainment areas for the 2008 eight-hour ozone National Ambient Air Quality Standard (NAAQS). The revisions to Chapter 114, Subchapter K, Division 3, as required by SB 1727, incorporate changes to the DERI Program eligibility criteria to remove the maximum cost-effectiveness limit of \$15,000 per ton of nitrogen oxide emissions reduced in a nonattainment area or affected county. The DERI Program is one of several incentive programs under the Texas Emissions Reduction Plan (TERP). Under the revised EPA rule, the Dallas-Fort Worth Area was designated nonattainment for the 2008 eight-hour ozone NAAQS, and the 1997 eight-hour ozone nonattainment area boundary was expanded to include Wise County. The proposed rules were published in the November 22, 2013, issue of the *Texas Register* (38 TexReg 8392). (Steve Dayton, Terry Salem) (Rule Project No. 2013-036-114-AI)

Steve Hagle, P.E.

Deputy Director

Joyce Nelson *for* David Brymer

Division Director

Bruce McAnally

Agenda Coordinator

Copy to CCC Secretary? NO YES X

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.: 2013-1192-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 114, Control of Air Pollution From Motor Vehicles
SB 1727: Emissions Reduction Incentive Grants Program
Rule Project No. 2013-036-114-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, Subchapter C. This subchapter establishes the Diesel Emissions Reduction Incentive (DERI) 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 amendment of existing rules to revise existing provisions.

In addition, on May 21, 2012, the United States Environmental Protection Agency (EPA) published a revision to Title 40 Code of Federal Regulations (CFR) Part 81 (40 CFR Part 81), effective July 20, 2012, adding a designation for nonattainment areas for the 2008 Ozone National Ambient Air Quality Standard. Under the revised EPA rule, the Dallas-Fort Worth Area was designated nonattainment for the 2008 eight-hour ozone standard, and the 1997 eight-hour ozone nonattainment area was expanded to include Wise County.

According to current commission rules, Wise County automatically became an eligible county under the DERI Program once it was included in the nonattainment area designation. The rule amendment adds Wise County to the list of counties applicable to the DERI Program to make the list consistent with the nonattainment area designation.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do: SB 1727 amended THSC, §386.106(a), to remove the maximum cost-effectiveness limit of \$15,000 per ton of nitrogen oxide (NO_x) emissions reduced. The rule revision removes the cost-effectiveness limits from the rules. The commission may set cost-effectiveness limits as needed to meet the needs of the DERI Program.

Also, the rule revision adds Wise County to the list of applicable counties in the DERI Program to make the list consistent with the EPA's recent addition of Wise County to the counties currently designated nonattainment for ozone in the Dallas-Fort Worth 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; and changes to 40 CFR Part 81 by the EPA to amend the designation of nonattainment areas for the 2008 Ozone National Ambient Air Quality Standard.

C.) Additional staff recommendations that are not required by federal rule or state statute: Staff is not recommending additional changes to the rules.

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, §382.017, 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 DERI Program.

Effect on the:

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

B.) Public: The change to remove the cost-effectiveness limits may result in an increase to the eligible grant applicants and amounts depending on the limits that may be set by the commission.

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 changes are adopted. Program processes, criteria, and forms will need to be updated.

Stakeholder meetings:

Stakeholder meetings were not held for this rulemaking.

Public Comment:

The proposal was published in the November 22, 2013, issue of the *Texas Register* (38 TexReg 8392). A public hearing was held on December 12, 2013. The comment period

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closed December 18, 2013. The commission received comments from Beneficial Results, the EPA, the Regional Transportation Council of the North Central Texas Council of Governments (NCTCOG), Public Citizen, and the Lone Star Chapter of the Sierra Club (Sierra Club).

Beneficial Results, EPA, NCTCOG, Public Citizen, and Sierra Club commented in support of the rulemaking. NCTCOG, Public Citizen, and Sierra Club also recommended additions to the rulemaking or additional rulemaking. Significant comments and recommendations are discussed further.

NCTCOG commented in support of and recommended use of DERI program funds under §114.622(d) for research and development of advanced emission testing technologies and methodologies to support the inclusion of heavy-duty and diesel vehicles into the Inspection and Maintenance program. No changes were made to the proposed text as a result of this comment.

NCTCOG recommended changes to §114.622(e) pertaining to the destruction or removal from the state of vehicles and equipment replaced under the DERI Program. NCTCOG recommended removal of the option to sell the vehicle or engine out of state. No changes were made to the proposed text as a result of this comment.

NCTCOG commented in support of the removal of the \$15,000 per ton cost-effectiveness limit under §114.622(g) and requested that the commission continue to take cost-effectiveness into consideration and aim to fund projects that will result in the largest emissions reductions in order to garner the greatest air quality benefits. No changes were made to the proposed text as a result of this comment.

Sierra Club expressed support for the addition of Wise County to the list of applicable counties under §114.629. No changes were made to the proposed text as a result of this comment.

NCTCOG requested clarification on the intent of §114.629(b), which states that equipment purchased before September 1, 2001, is not eligible for a grant under the program. NCTCOG asked whether this restriction applies to the model year of the vehicle or the date of ownership. In the response to comments section of the rule preamble, it was explained that the provision applies to the purchase date. No changes were made to the proposed text as a result of this comment.

Beneficial Results, Public Citizen, and Sierra Club commented on the authority of the commission under THSC, §386.051(b-1), to implement additional programs under the TERP that may not be specifically outlined in the statutory provisions. Public Citizen recommended guidelines or rule language to implement this authority and to support the retrofit or replacement of trucks and off-road equipment used in fracking operations in oil and gas production fields adjacent to the areas eligible under the regular DERI Program.

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Sierra Club also commented that the commission should implement a rulemaking or add language to this rulemaking to implement a program for reducing emissions from oil and gas development. Sierra Club further commented that it thinks the legislative intent was clear on the ability of the commission to determine eligibility for the additional grant program and that it was intended to be a voluntary program that does not open the oil and gas production facilities to additional regulations. Sierra Club provided proposed language that it indicated could be included in this or other rulemaking. No changes were made to the proposed text as a result of this comment.

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

Significant changes from proposal:

No changes are made from the proposal.

Potential controversial concerns and legislative interest:

This rulemaking does not go further than what is required to comply with statutory changes and to reflect changes to federal rules. Therefore, staff does not anticipate any concerns with the rulemaking. Staff expects legislators involved in SB 1727 to be interested in how the commission implements the changes to the DERI Program criteria.

Does 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 rules.

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

If the rulemaking is not completed, implementation of the programs under the 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 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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Agency contacts:

Steve Dayton, Rule Project Manager, (512) 239-6824, Air Quality Division

Terry Salem, Staff Attorney, (512) 239-0469

Bruce McAnally, Texas Register Coordinator, (512) 239-2141

Attachments

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cc: Chief Clerk, 2 copies
Executive Director's Office
Marshall Coover
Tucker Royall
John Bentley
Office of General Counsel
Steve Dayton
Bruce McAnally

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §114.622 and §114.629 *without changes* to the proposed text as published in the November 22, 2013, issue of the *Texas Register* (38 TexReg 8392) and, therefore, the amendments will not be republished.

The amendments 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 Adopted Rules

The rulemaking amends existing rules implementing the Diesel Emissions Reduction Incentive (DERI) Program established under Texas Health and Safety Code (THSC), Chapter 386, Subchapter C. The DERI Program provides financial incentives for reducing emissions of on-road heavy-duty motor vehicles and non-road equipment.

The DERI Program is one of several incentive programs under the Texas Emissions Reduction Plan (TERP) as listed under THSC, §386.051. The TERP was established by the Texas Legislature to create monetary incentives for the implementation of projects to improve air quality in the state's nonattainment areas. Other eligible counties within the state that may face air quality challenges in the future are also eligible for incentives under the TERP. Projects eligible for funding under the TERP are intended to reduce nitrogen oxide (NO_x) emissions and other pollutants of concern. NO_x is usually a by-

product of high-temperature combustion that can react with volatile organic compounds in the presence of sunlight to form ground-level ozone.

Senate Bill (SB) 1727, 83rd Legislature, 2013 amended THSC, Chapter 386, Subchapter C, to revise existing criteria for receiving an incentive grant under this subchapter. The revision to THSC, §386.106, removed the maximum cost-effectiveness limit of \$15,000 per ton of NO_x reduced in the nonattainment area or affected county for which the project is proposed.

This adoption incorporates the change to THSC, §386.106, under SB 1727.

In addition, on May 21, 2012, the EPA published a revision to 40 Code of Federal Regulations Part 81, effective July 20, 2012, adding the designation of nonattainment areas for the 2008 ozone National Ambient Air Quality Standard (NAAQS). Under the revised EPA rule, the Dallas-Fort Worth Area was designated nonattainment for the 2008 eight-hour ozone NAAQS, and the 1997 eight-hour ozone nonattainment area boundary was expanded to include Wise County.

This adoption adds Wise County to the list of applicable counties for the DERI Program.

Section by Section Discussion

§114.622, Incentive Program Requirements

Section 114.622 is amended to incorporate a change to the program eligibility criteria required by THSC, §386.106(a).

Subsection (g) is amended to be consistent with amended THSC, §386.106(a), by removing the maximum cost-effectiveness limit of \$15,000 per ton of NO_x emissions reduced. With the change to this subsection, the commission will be authorized to set cost-effectiveness limits as needed to ensure the best use of available funds.

§114.629, Affected Counties and Implementation Schedule

Section 114.629 is amended to update the list of applicable counties in the TERP incentive program to be consistent with the latest designation of nonattainment areas for the 2008 ozone NAAQS by the EPA. Subsection (a) is amended to add Wise County to the list of applicable counties based on the addition of Wise County to the Dallas-Fort Worth 2008 Eight-Hour Ozone Nonattainment Area.

Final Regulatory Impact Determination

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that this rulemaking 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 adopted in accordance with SB 1727, 83rd Legislature, 2013, Regular Session, which amended THSC, Chapter 386. The rules add or revise eligibility requirements for a voluntary grant program. Because the rules place no involuntary requirements on the regulated community, the 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. In addition, the amendments do not place additional financial burdens on the regulated community.

In addition, a regulatory impact analysis is not required because the 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 adopted 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 and federal program.

The commission invited public comment on the draft regulatory impact analysis determination. No comments were received on the draft regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated this rulemaking action and performed an analysis of whether the 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, 83rd Legislature, 2013, Regular Session. The rules make revisions to voluntary programs and only affect motor vehicles and equipment that are not considered to be private real property. The

promulgation and enforcement of the rules are neither a statutory nor a constitutional taking because the rules do 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 adopted rulemaking and found the adoption 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 revises a voluntary incentive grant program and does not govern air pollution emissions.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding consistency with the CMP.

Public Comment

The commission held a public hearing on December 12, 2013. The comment period closed December 18, 2013. The commission received comments from Beneficial Results,

the EPA, the Regional Transportation Council of the North Central Texas Council of Governments (NCTCOG), Public Citizen, and the Lone Star Chapter of the Sierra Club (Sierra Club).

Beneficial Results, EPA, NCTCOG, Public Citizen, and Sierra Club commented in support of the rulemaking. NCTCOG, Public Citizen, and Sierra Club also recommended additions to the rulemaking or additional rulemaking.

Response to Comments

Beneficial Results, EPA, NCTCOG, Public Citizen and Sierra Club expressed support for the proposed rulemaking and the DERI Program.

The commission appreciates the support expressed for this program. No changes to the proposed text were made in response to these comments.

NCTCOG commented in support of and recommended use of DERI Program funds under §114.622(a)(9) for research and development of advanced emission testing technologies and methodologies to support the inclusion of heavy-duty and diesel vehicles into the Inspection and Maintenance (I/M) program since those vehicles currently contribute 38% of the on-road NO_x emissions in the Dallas-Fort Worth area.

The proposed rulemaking did not include any proposed changes to §114.622(a)(9), and the requested change would be beyond the identified scope of this rulemaking. No changes to the proposed text were made in response to these comments.

NCTCOG recommended changes to §114.622(e) pertaining to the destruction or removal of vehicles and equipment replaced under the program from the state. NCTCOG recommended removal of the option to sell the vehicle or engine out of state. NCTCOG commented that transporting a vehicle or equipment to another state does not ensure that the vehicle or equipment will not again travel through or be operated in Texas.

The proposed rulemaking did not include changes to §114.622(e). The commission agrees with NCTCOG's concern about ensuring that vehicles and equipment replaced under the DERI program are not later returned to operation in Texas. The language in the rules is consistent with the statutory language under THSC, §386.104(i). As provided for under THSC, §386.053, the guidelines adopted by the commission of the DERI program, *Texas Emissions Reduction Plan: Guidelines for Emissions Reduction Incentive Grants (RG-388)*, contain more specific criteria for implementation of the statutory and regulatory requirements. The guidelines currently only allow the out-of-state sale or transfer of replaced

equipment for projects involving the replacement of a locomotive. The guidelines require permanent destruction of the vehicle or equipment for other types of projects. The commission will continue to assess the effectiveness of the DERI program criteria as it implements the program in the future and will make changes to the guidelines as needed. No changes to the proposed text were made in response to these comments.

NCTCOG commented in support of the removal of the \$15,000 per ton cost-effectiveness limit under §114.622(g). NCTCOG commented that the removal of the limit on cost-effectiveness will allow local governments to compete better through the DERI program. NCTCOG also requested that the commission continue to take cost-effectiveness into consideration and aim to fund projects that will result in the largest emissions reductions in order to garner the greatest air quality results.

The commission appreciates the support for the change to remove the cost-effectiveness limits. The commission shares NCTCOG's interest in ensuring that projects funded under the DERI program result in the greatest air quality benefits. The commission will consider appropriate cost-effectiveness limits and other program requirements on a grant-round basis to help best achieve the goals of the program. No changes to the proposed text were made in response to these comments.

Sierra Club expressed support for the addition of Wise County to the list of applicable counties under §114.629.

The commission appreciates the support for the addition of Wise County to the list. No changes to the proposed text were made in response to this comment.

NCTCOG requested more clarification on the intent of §114.629(b), which states that equipment purchased before September 1, 2001, is not eligible for a grant under the program. NCTCOG asked whether this restriction applies to the model year of the vehicle or the date of ownership.

The proposed rulemaking did not include changes to §114.629(b). This provision implements THSC, §386.111(e), which limits the funding to purchases and installation of equipment completed on or after September 1, 2001. This provision applies to the purchase date and not to the model year of the vehicle or equipment being purchased. No changes to the proposed text were made in response to this comment.

Sierra Club commented in support for the extension of the Texas Clean School Bus Program until 2019.

Although the extension of the Texas Clean School Bus Program rules is not part of this rulemaking, the commission appreciates the support.

Beneficial Results, Public Citizen, and Sierra Club commented on the authority of the commission under THSC, §386.051(b-1), to implement additional programs under the TERP that may not be specifically outlined in statutory provisions. Beneficial Results and Public Citizen recommended guidelines or rule language to implement authority under THSC, §386.051(b-1), to support retrofit or replacement of trucks and off-road equipment used in fracking operations in oil and gas production fields adjacent to the areas eligible under the DERI program. Sierra Club also commented that the commission should implement a rulemaking or add language to this rulemaking to implement a program under THSC, §386.051(b-1), for reducing emissions from oil and gas development. Sierra Club further commented that it thinks the legislative intent was clear on the ability of the commission to determine eligibility for the additional grant program and that it was intended to be a voluntary program that does not open the oil and gas production facilities to additional regulations. Sierra Club provided proposed language that it indicated could be included in this or other rulemaking. The proposed language reads as follows:

"TCEQ may develop, administer and fund other programs as necessary to fulfill its duties and achieve the objectives under Section 386.052 and specifically to achieve reductions in ozone precursors or particulate matter. To the extent practicable, TCEQ will apply the criteria and requirements applicable to other programs – like the Diesel Emission Reduction Plan – to programs established under this subsection. Specifically, the commission is authorized to begin programs that: (1) reduce emissions of oxides of nitrogen or particulate matter from heavy-duty on-road vehicles and non-road equipment, including drayage vehicles, locomotives and marine vessels, at seaport facilities or servicing seaport facilities in nonattainment areas, or affected counties; and (2) reduce emissions from the operation of drilling, production, completions, and related heavy-duty on-road vehicles or non-road equipment in oil and gas production fields. The commission must determine that such a voluntary incentive program is needed in addition to regulatory efforts to reduce pollutants that otherwise could contribute to an area, or an adjacent area, from being in violation of national ambient air quality standards.

To be eligible for any incentives for on-road or non-road equipment under these programs, an applicant must be primarily located in a nonattainment area, affected county, or a county adjacent to an affected county or nonattainment area. The incentive may not be used to meet a regulatory requirement."

These comments refer to authority of the commission under THSC, §386.051(b-1), to implement additional incentive programs separate from the other TERP incentive programs, including the DERI program.

Implementation of the additional statutory authority is outside of the scope of this rulemaking, which is specifically to amend the rules for the DERI program. No changes to the proposed text were made in response to these comments.

Sierra Club commented to remind the commission that in spending money budgeted for the DERI Program, the commission should quickly shift money to other programs if there is inadequate demand from applicants for this program.

These comments are outside of the scope of this rulemaking. The commission appreciates the comment and understands the need to adjust the funding priorities among the various TERP incentive programs to ensure that the funds are used effectively. No changes to the proposed text were made in response to these comments.

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.

The commission appreciates NCTCOG's support for funding the TERP programs; however, these comments are outside of the scope of this rulemaking. Decisions on appropriation levels are made by the Texas Legislature. Also, how the commission structures the biennial appropriations request is guided by direction from the Legislative Budget Board (LBB). The commission will continue to work with members of the legislature and the LBB regarding the appropriation funding levels for the TERP programs. No changes to the proposed text were made in response to these comments.

SUBCHAPTER K: MOBILE SOURCE INCENTIVE PROGRAMS

DIVISION 3: DIESEL EMISSIONS REDUCTION INCENTIVE PROGRAM

FOR ON-ROAD AND NON-ROAD VEHICLES

§114.622 and §114.629

Statutory Authority

The amendments are adopted 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. The amendments are also adopted 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; 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 Texas Emission Reduction Plan. Finally, the amendments are part of the implementation of Senate Bill 1727, 83rd Legislature, 2013.

The amendments implement THSC, §386.104 and §386.106.

§114.622. Incentive Program Requirements.

(a) Eligible projects include:

- (1) purchase or lease of on-road and non-road diesels;
- (2) emissions-reducing retrofit projects for on-road or non-road diesels;
- (3) emissions-reducing repower projects for on-road or non-road diesels;
- (4) purchase and use of emissions-reducing add-on equipment for on-road or non-road diesels;
- (5) development and demonstration of practical, low-emissions retrofit technologies, repower options, and advanced technologies for on-road or non-road diesels with lower nitrogen oxides (NO_x) emissions;
- (6) use of qualifying fuel;
- (7) implementation of infrastructure projects;

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

(9) other projects that have the potential to reduce anticipated NOX emissions from diesel engines.

(b) For a proposed project as listed in subsection (a) of this section, other than a project involving a marine vessel or engine, a project involving non-road equipment used for natural gas recovery purposes, a project involving replacement of a motor vehicle, or a project involving the purchase or lease of a motor vehicle, not less than 75% of vehicle miles traveled or hours of operation projected for the five years immediately following the award of a grant must be projected to take place in a nonattainment area or affected county of this state. The commission may also allow vehicle travel on highways and roadways, or portions of a highway or roadway, designated by the commission and located outside a nonattainment area or affected county to count towards the percentage of use requirement.

(c) For a proposed motor vehicle replacement, purchase, or lease project, the period used to determine the emissions reductions and cost-effectiveness of each replacement, purchase, or lease activity included in the project must extend for five

years or more, or 400,000 miles, whichever occurs earlier. Not less than 75% of the vehicle miles traveled projected for the period used to determine the emissions reductions must be projected to take place in a nonattainment area or affected county of this state. The commission may also allow vehicle travel on highways and roadways, or portions of a highway or roadway, designated by the commission and located outside of a nonattainment county or affected county to count towards the percentage of use requirement.

(d) For a proposed project that includes a replacement of equipment or a repower, the old equipment or engine must be recycled or scrapped provided, however, that the executive director may allow permanent removal from the State of Texas in specific grants where the applicant has provided sufficient assurances that the old locomotive will not be returned to the State of Texas.

(e) For a proposed project to replace a motor vehicle, the vehicle and engine must be decommissioned by crushing the vehicle and engine, by making a hole in the engine block and permanently destroying the frame of the vehicle, or by another method approved by the executive director that permanently removes the vehicle and engine from operation in this state. For a proposed project to repower a motor vehicle, the engine being replaced must be decommissioned in a manner consistent with the requirements for decommissioning an engine as part of a vehicle replacement project.

The executive director shall allow an applicant for a motor vehicle replacement or repower project to propose an alternative method for complying with the requirements of this subsection.

(f) For a project to replace a motor vehicle, the vehicle being replaced may have been owned, leased, or otherwise commercially financed by the applicant. The applicant must have a legal right to replace and recycle or scrap the vehicle and engine before a grant is awarded for that project.

(g) [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 a cost-effectiveness of \$15,000 per ton of NO_x emissions reduced.] The commission may set [lower] cost-effectiveness limits as needed to ensure the best use of available funds. The commission may also base project selection decisions on additional measures to evaluate the effectiveness of projects in reducing NO_x emissions in relation to the funds to be awarded.

(h) The executive director shall waive eligibility requirements established under subsections (b) - (f) of this section on a finding of good cause, which may include a waiver of any ownership and use requirements established for replacement of a motor

vehicle 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.

(i) Projects funded with a grant from this program may not be used for credit under any state or federal emissions reduction credit averaging, banking, or trading program except as provided under Texas Health and Safety Code, §386.056.

(j) A proposed project as listed in subsection (a) of this section is not eligible if it is required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document. This subsection does not apply to:

(1) an otherwise qualified project, regardless of the fact that the state implementation plan assumes that the change in equipment, vehicles, or operations will occur, if on the date the grant is awarded the change is not required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document; or

(2) the purchase of an on-road diesel or equipment required only by local law or regulation or by corporate or controlling board policy of a public or private entity.

(k) 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 compared with the baseline emissions adopted by the commission for the relevant engine year and application.

(l) If a grant recipient fails to meet the terms of a project grant or the conditions of this division, the executive director can require that the grant recipient return some or all of the grant funding to the extent that emission reductions are not achieved or cannot be demonstrated.

(m) 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.

§114.629. 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, Wilson, Wise, 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) Equipment purchased before September 1, 2001 is not eligible for a grant under this program.

director, or his designee, at the beginning, but no later than July 1, of each year preceding the new vehicle model year.

(c) A manufacturer of new light-duty motor vehicles may supplement the list required by subsection (a) of this section to include additional new light-duty motor vehicle models the manufacturer intends to sell in this state during the model year.

(d) All new light-duty motor vehicle dealers and leasing agents statewide shall make copies of the list required under this section available to prospective purchasers or lessees of new light-duty motor vehicles.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 7, 2013.

TRD-201305137

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: December 22, 2013

For further information, please call: (512) 239-2548



30 TAC §114.619

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

Statutory Authority

The repeal is 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. The repeal is 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; 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 Texas Emissions Reduction Plan.

The repeal is proposed as part of the implementation of Senate Bill 1727, 83rd, Legislature, 2013, and implements THSC, §386.153.

§114.619. *Light-Duty Motor Vehicle Purchase or Lease Incentive Schedule.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

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For further information, please call: (512) 239-2548



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

30 TAC §114.622, §114.629

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §114.622 and §114.629.

If adopted, the amendments 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 implementing the Diesel Emissions Reduction Incentive (DERI) Program established under Texas Health and Safety Code (THSC), Chapter 386, Subchapter C. The DERI Program provides financial incentives for reducing emissions of on-road heavy-duty motor vehicles and non-road equipment.

Senate Bill (SB) 1727, 83rd Legislature, 2013, amended THSC, Chapter 386, Subchapter C, to revise existing criteria for receiving an incentive grant under this subchapter. The revision to THSC, §386.106, removed the maximum cost-effectiveness limit of \$15,000 per ton of nitrogen oxides (NO_x) reduced in the nonattainment area or affected county for which the project is proposed.

The proposed rulemaking would incorporate the change to THSC, §386.106, under SB 1727.

In addition, on May 21, 2012, the EPA published a revision to 40 Code of Federal Regulations Part 81, effective July 20, 2012 amending the designation of nonattainment areas for the 2008 Ozone National Ambient Air Quality Standard. Under the revised EPA rule, Wise County was added to the designation of the Dallas-Fort Worth 2008 Eight-Hour Ozone Nonattainment Area.

The proposed rulemaking would add Wise County to the list of applicable counties for the DERI Program.

Section by Section Discussion

§114.622, *Incentive Program Requirements*

The commission proposes to amend §114.622 to incorporate a change to the program eligibility criteria under THSC, §386.106(a).

Proposed subsection (g) would be consistent with amended THSC, §386.106(a), by removing the maximum cost-effectiveness limit of \$15,000 per ton of NO_x emissions reduced. Under the proposed change to this subsection, the commission would be authorized to set cost-effectiveness limits as needed to ensure the best use of available funds.

§114.629, *Affected Counties and Implementation Schedule*

The commission proposes to amend §114.629 to update the list of applicable counties in the Texas Emissions Reduction Program (TERP) incentive program to be consistent with the latest designation of nonattainment areas for the 2008 Ozone National Ambient Air Quality Standard by the EPA. Subsection (a) would be amended to add Wise County to the list of applicable counties based on the addition of Wise County to the Dallas-Fort Worth 2008 Eight-Hour Ozone Nonattainment Area.

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 rulemaking is 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 use funding appropriated out of the TERP - Account 5071 to implement the changes made to the DERI Program in the proposed rule. For the 2014 - 2015 biennium, appropriated funding for DERI Program grants is approximately \$34 million each year.

The proposed rulemaking would amend Chapter 114 to implement parts of SB 1727 and to update the list of applicable counties in the DERI Program as a result of changes to the EPA designation of nonattainment areas for the 2008 Ozone National Ambient Air Quality Standard. Specifically, the proposed rulemaking would remove the maximum limits on the cost-effectiveness of a project and add Wise County to the list of applicable counties.

If the commission establishes a cost-effectiveness limit for the DERI Program that is higher than the original limit of \$15,000 per ton of NO_x reduced, state agencies and local governments interested in applying for the program may benefit if their projects qualify for a larger incentive amount. Applying for a grant would be voluntary, and it is not known at this time how many state agencies or local governments would do so. Under current rules, the typical grant award ranges from \$50,000 to \$100,000. Under the proposed changes, the average grant award could increase depending on the limits established by the commission.

Public Benefits and Costs

Nina Chamness also determined that for each year of the first five years the proposed rulemaking is in effect, the anticipated public benefit will be an improvement in air quality in the 42 counties eligible to receive DERI Program grant funding since a greater number of vehicles and equipment will become eligible for replacement or upgrade using grant funds.

The proposed rulemaking may not have a significant fiscal impact on individuals unless they qualify for a DERI Program grant. Individuals that can utilize DERI Program funding should experience the same cost benefits as a local government or large business.

If the commission establishes a cost-effectiveness limit for the DERI Program that is higher than the original limit of \$15,000 per ton of NO_x reduced, businesses interested in applying for the program may benefit if their projects qualify for a larger incentive amount. Applying for a grant would be voluntary, and it is not known at this time how many businesses would do so. Under current rules, the typical grant award ranges from \$50,000 to \$100,000. Under the proposed changes, the average grant award could increase depending on the limits established by the commission.

Staff is not able to determine how many additional businesses may become eligible to apply for a grant as a result of these changes.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. The proposed rulemaking may make it easier for a small or micro-business to qualify for a grant under the DERI Program. Small or micro-businesses are expected to experience the same benefits as a large business. Staff is not able to determine how many additional small and micro-businesses may become eligible to apply for a DERI Program grant as a result of these changes.

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 rulemaking is required by state law and does not adversely affect a small or micro-business in a material way for the first five years that the proposed rulemaking is 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 rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rulemaking is 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 rulemaking 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, 83rd Legislature, 2013, which amended THSC, Chapter 386. The proposed rules add or revise eligibility requirements for a voluntary grant program. 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. In addition, the amendments do not 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 and 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, 83rd Legislature, 2013. The rules make revisions to voluntary programs and only affect motor vehicles and equipment that are not considered to be private real property. The promulgation and enforcement of the proposed rules are neither a statutory nor a constitutional taking because the proposed rules do 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 revises voluntary incentive grant programs 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 2013-036-114-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_adapt.html. For further information, please contact Steve Dayton, Implementation Grants Section, at (512) 239-6824.

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. The 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; 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 Texas Emission Reduction Plan. Finally, the amendments are proposed as part of the implementation of Senate Bill 1727, 83rd Legislature, 2013.

The proposed amendments implement THSC, §386.104 and §386.106.

§114.622. Incentive Program Requirements.

(a) Eligible projects include:

- (1) purchase or lease of on-road and non-road diesels;
- (2) emissions-reducing retrofit projects for on-road or non-road diesels;
- (3) emissions-reducing repower projects for on-road or non-road diesels;
- (4) purchase and use of emissions-reducing add-on equipment for on-road or non-road diesels;
- (5) development and demonstration of practical, low-emissions retrofit technologies, repower options, and advanced technologies for on-road or non-road diesels with lower nitrogen oxides (NO_x) emissions;
- (6) use of qualifying fuel;
- (7) implementation of infrastructure projects;
- (8) replacement of on-road and non-road diesels with newer on-road and non-road diesels; and
- (9) other projects that have the potential to reduce anticipated NO_x emissions from diesel engines.

(b) For a proposed project as listed in subsection (a) of this section, other than a project involving a marine vessel or engine, a project involving non-road equipment used for natural gas recovery purposes, a project involving replacement of a motor vehicle, or a project involving the purchase or lease of a motor vehicle, not less than 75% of vehicle miles traveled or hours of operation projected for the five years immediately following the award of a grant must be projected to take place in a nonattainment area or affected county of this state. The commission may also allow vehicle travel on highways and roadways,

or portions of a highway or roadway, designated by the commission and located outside a nonattainment area or affected county to count towards the percentage of use requirement.

(c) For a proposed motor vehicle replacement, purchase, or lease project, the period used to determine the emissions reductions and cost-effectiveness of each replacement, purchase, or lease activity included in the project must extend for five years or more, or 400,000 miles, whichever occurs earlier. Not less than 75% of the vehicle miles traveled projected for the period used to determine the emissions reductions must be projected to take place in a nonattainment area or affected county of this state. The commission may also allow vehicle travel on highways and roadways, or portions of a highway or roadway, designated by the commission and located outside of a nonattainment county or affected county to count towards the percentage of use requirement.

(d) For a proposed project that includes a replacement of equipment or a repower, the old equipment or engine must be recycled or scrapped provided, however, that the executive director may allow permanent removal from the State of Texas in specific grants where the applicant has provided sufficient assurances that the old locomotive will not be returned to the State of Texas.

(e) For a proposed project to replace a motor vehicle, the vehicle and engine must be decommissioned by crushing the vehicle and engine, by making a hole in the engine block and permanently destroying the frame of the vehicle, or by another method approved by the executive director that permanently removes the vehicle and engine from operation in this state. For a proposed project to repower a motor vehicle, the engine being replaced must be decommissioned in a manner consistent with the requirements for decommissioning an engine as part of a vehicle replacement project. The executive director shall allow an applicant for a motor vehicle replacement or repower project to propose an alternative method for complying with the requirements of this subsection.

(f) For a project to replace a motor vehicle, the vehicle being replaced may have been owned, leased, or otherwise commercially financed by the applicant. The applicant must have a legal right to replace and recycle or scrap the vehicle and engine before a grant is awarded for that project.

(g) ~~[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 a cost-effectiveness of \$15,000 per ton of NO_x emissions reduced.]~~ The commission may set ~~[lower]~~ cost-effectiveness limits as needed to ensure the best use of available funds. The commission may also base project selection decisions on additional measures to evaluate the effectiveness of projects in reducing NO_x emissions in relation to the funds to be awarded.

(h) The executive director shall waive eligibility requirements established under subsections (b) - (f) of this section on a finding of good cause, which may include a waiver of any ownership and use requirements established for replacement of a motor vehicle 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.

(i) Projects funded with a grant from this program may not be used for credit under any state or federal emissions reduction credit averaging, banking, or trading program except as provided under Texas Health and Safety Code, §386.056.

(j) A proposed project as listed in subsection (a) of this section is not eligible if it is required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document. This subsection does not apply to:

(1) an otherwise qualified project, regardless of the fact that the state implementation plan assumes that the change in equipment, vehicles, or operations will occur, if on the date the grant is awarded the change is not required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document; or

(2) the purchase of an on-road diesel or equipment required only by local law or regulation or by corporate or controlling board policy of a public or private entity.

(k) 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 compared with the baseline emissions adopted by the commission for the relevant engine year and application.

(l) If a grant recipient fails to meet the terms of a project grant or the conditions of this division, the executive director can require that the grant recipient return some or all of the grant funding to the extent that emission reductions are not achieved or cannot be demonstrated.

(m) 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.

§114.629. 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, Wilson, ~~Wise~~, 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) Equipment purchased before September 1, 2001 is not eligible for a grant under this program.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 7, 2013.

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Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: December 22, 2013

For further information, please call: (512) 239-2141

AN ACT

relating to the use of the Texas emissions reduction plan fund.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 386.051, Health and Safety Code, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

(b) Under the plan, the commission and the comptroller shall provide grants or other funding for:

(1) the diesel emissions reduction incentive program established under Subchapter C, including for infrastructure projects established under that subchapter;

(2) the motor vehicle purchase or lease incentive program established under Subchapter D;

(3) the air quality research support program established under Chapter 387;

(4) the clean school bus program established under Chapter 390;

(5) the new technology implementation grant program established under Chapter 391;

(6) the regional air monitoring program established under Section 386.252(a) [~~386.252(a)(5)~~];

(7) a health effects study as provided by Section 386.252(a) [~~386.252(a)(7)~~];

(8) air quality planning activities as provided by

1 Section 386.252(a) [~~386.252(a)(8)~~]; [~~and~~]

2 (9) a contract with the Energy Systems Laboratory at
3 the Texas Engineering Experiment Station for computation of
4 creditable statewide emissions reductions as provided by Section
5 386.252(a)(14);

6 (10) the clean fleet program established under Chapter
7 392;

8 (11) the alternative fueling facilities program
9 established under Chapter 393;

10 (12) the natural gas vehicle grant program and clean
11 transportation triangle program established under Chapter 394;

12 (13) other programs the commission may develop that
13 lead to reduced emissions of nitrogen oxides, particulate matter,
14 or volatile organic compounds in a nonattainment area or affected
15 county;

16 (14) other programs the commission may develop that
17 support congestion mitigation to reduce mobile source ozone
18 precursor emissions; and

19 (15) the drayage truck incentive program established
20 under Subchapter D-1 [~~386.252(a)(9)~~].

21 (b-1) Under the plan, the commission may establish and
22 administer other programs, including other grants or funding
23 programs, as determined by the commission to be necessary or
24 effective in fulfilling its duties and achieving the objectives
25 described under Section 386.052. The commission may apply the
26 criteria and requirements applicable to the programs under
27 Subsection (b) to programs established under this subsection, or

1 the commission may establish separate criteria and requirements as
2 necessary to achieve the commission's objectives. The additional
3 programs shall be consistent with and comply with all applicable
4 laws, regulations, and guidelines pertaining to the use of state
5 funds, the awarding and administration of grants and contracts, and
6 achieving reductions in ozone precursors or particulate matter.
7 Under this subsection, the commission may place a priority on
8 programs that address the following goals:

9 (1) reduction of emissions of oxides of nitrogen or
10 particulate matter from heavy-duty on-road vehicles and non-road
11 equipment, including drayage vehicles, locomotives, and marine
12 vessels, at seaport facilities or servicing seaport facilities in
13 nonattainment areas; and

14 (2) reduction of emissions from the operation of
15 drilling, production, completions, and related heavy-duty on-road
16 vehicles or non-road equipment in oil and gas production fields
17 where the commission determines that the programs can help prevent
18 that area or an adjacent area from being in violation of national
19 ambient air quality standards.

20 SECTION 2. Subchapter B, Chapter 386, Health and Safety
21 Code, is amended by adding Section 386.0515 to read as follows:

22 Sec. 386.0515. AGRICULTURAL PRODUCT TRANSPORTATION
23 PROJECTS. (a) In this section, "agricultural product
24 transportation" means the transportation of a raw agricultural
25 product from the place of production using a heavy-duty truck to:

26 (1) a nonattainment area;

27 (2) an affected county;

1 (3) a destination inside the clean transportation
2 triangle; or

3 (4) a county adjacent to a county described by
4 Subdivision (2) or that contains an area described by Subdivision
5 (1) or (3).

6 (b) Notwithstanding other eligibility requirements, the
7 commission shall by rule or policy provide specific eligibility
8 requirements under the Texas Clean Fleet Program established under
9 Chapter 392 and under the Texas natural gas vehicle grant program
10 established under Chapter 394, as added by Chapter 892 (Senate Bill
11 No. 385), Acts of the 82nd Legislature, Regular Session, 2011, for
12 projects relating to agricultural product transportation.

13 (c) The determining factor for eligibility for
14 participation in a program established under Chapter 392 or Chapter
15 394, as added by Chapter 892 (Senate Bill No. 385), Acts of the 82nd
16 Legislature, Regular Session, 2011, for a project relating to
17 agricultural product transportation is the overall accumulative
18 net reduction in emissions of oxides of nitrogen in a nonattainment
19 area, an affected county, or the clean transportation triangle.

20 SECTION 3. Subsection (b), Section 386.058, Health and
21 Safety Code, is amended to read as follows:

22 (b) The governor shall appoint to the advisory board:

23 (1) a representative of the trucking industry;

24 (2) a representative of the air conditioning
25 manufacturing industry;

26 (3) a representative of the electric utility industry;

27 (4) a representative of regional transportation; and

1 (5) a representative of the nonprofit organization
2 described by Section 387.002 [~~386.252(a)(2)~~].

3 SECTION 4. Section 386.104, Health and Safety Code, is
4 amended by adding Subsection (f-1) to read as follows:

5 (f-1) The commission may establish minimum percentage
6 reduction standards alternative to the standards established under
7 Subsection (f) as an incentive for the conversion of heavy-duty
8 diesel on-road vehicle engines or non-road engines to operate under
9 a dual-fuel configuration that uses natural gas and diesel fuels
10 through an alternative fuel conversion system certified by the
11 United States Environmental Protection Agency or the California Air
12 Resources Board. In determining the emissions rate of the
13 converted vehicle and engine to compute the emissions reductions
14 that can be attributed to the conversion system, the commission may
15 take into account whether the emissions certification requirements
16 for the conversion system prevent fully accounting for the
17 emissions reductions. If the commission determines it to be
18 necessary and appropriate, the commission may consider under this
19 subsection certified engine test information that demonstrates
20 reductions of emissions of nitrogen oxides and other pollutants and
21 other information to verify the emissions reductions.

22 SECTION 5. Section 386.106, Health and Safety Code, is
23 amended to read as follows:

24 Sec. 386.106. COST-EFFECTIVENESS CRITERIA; DETERMINATION
25 OF GRANT AMOUNT. (a) Except as otherwise provided by statute, the
26 ~~[as provided by Section 386.107 and except for infrastructure~~
27 ~~projects and infrastructure purchases that are part of a broader~~

1 ~~retrofit, repower, replacement, or add-on equipment project, the~~
2 ~~commission may not award a grant for a proposed project the~~
3 ~~cost-effectiveness of which, calculated in accordance with Section~~
4 ~~386.105 and criteria developed under that section, exceeds \$15,000~~
5 ~~per ton of oxides of nitrogen emissions reduced in the~~
6 ~~nonattainment area or affected county for which the project is~~
7 ~~proposed. This subsection does not restrict commission authority~~
8 ~~under other law to require emissions reductions with a~~
9 ~~cost-effectiveness that exceeds \$15,000 per ton.~~

10 [(b) ~~The~~] commission may not award a grant that, net of
11 taxes, provides an amount that exceeds the incremental cost of the
12 proposed project.

13 (b) [(c)] The commission shall adopt guidelines for
14 capitalizing incremental lease costs so those costs may be offset
15 by a grant under this subchapter.

16 (c) [(d)] In determining the amount of a grant under this
17 subchapter, the commission shall reduce the incremental cost of a
18 proposed new purchase, lease, retrofit, repower, or add-on
19 equipment project by the value of any existing financial incentive
20 that directly reduces the cost of the proposed project, including
21 tax credits or deductions, other grants, or any other public
22 financial assistance.

23 SECTION 6. Sections 386.152 and 386.153, Health and Safety
24 Code, are amended to read as follows:

25 Sec. 386.152. [~~COMPTROLLER AND~~] COMMISSION DUTIES
26 REGARDING LIGHT-DUTY MOTOR VEHICLE PURCHASE OR LEASE INCENTIVE
27 PROGRAM. (a) The [~~comptroller and the~~] commission shall develop a

1 purchase or lease incentive program for new light-duty motor
2 vehicles and shall adopt rules necessary to implement the program.

3 (b) The program shall authorize statewide incentives for
4 the purchase or lease [~~according to the schedule provided by~~
5 ~~Section 386.153,~~] of new light-duty motor vehicles powered by
6 compressed natural gas, liquefied petroleum gas, or electric drives
7 ~~[that are certified by the United States Environmental Protection~~
8 ~~Agency to meet an emissions standard that is at least as stringent~~
9 ~~as those provided by Section 386.153]~~ for a purchaser or lessee who
10 agrees to register [~~the vehicle in this state]~~ and [~~to~~] operate the
11 vehicle in this state for a minimum period of time to be established
12 by the commission [~~not less than 75 percent of the vehicle's annual~~
13 ~~mileage)].~~

14 (c) Only one incentive will be provided for each new
15 light-duty motor vehicle. The incentive shall be provided to the
16 lessee and not to the purchaser if the motor vehicle is purchased
17 for the purpose of leasing the vehicle to another person.

18 Sec. 386.153. LIGHT-DUTY MOTOR VEHICLE PURCHASE OR LEASE
19 INCENTIVE REQUIREMENTS [~~SCHEDULE~~]. (a) A new light-duty motor
20 vehicle powered by compressed natural gas or liquefied petroleum
21 gas is eligible for a \$2,500 incentive if the vehicle:

22 (1) has four wheels;

23 (2) was originally manufactured to comply with and has
24 been certified by an original equipment manufacturer or
25 intermediate or final state vehicle manufacturer as complying with,
26 or has been altered to comply with, federal motor vehicle safety
27 standards, state emissions regulations, and any additional state

1 regulations applicable to vehicles powered by compressed natural
2 gas or liquefied petroleum gas;

3 (3) was manufactured for use primarily on public
4 streets, roads, and highways;

5 (4) is rated at not more than 9,600 pounds unloaded
6 vehicle weight;

7 (5) has a dedicated or bi-fuel compressed natural gas
8 or liquefied petroleum gas fuel system with a range of at least 125
9 miles as estimated, published, and updated by the United States
10 Environmental Protection Agency;

11 (6) has, as applicable, a:

12 (A) compressed natural gas fuel system that
13 complies with the:

14 (i) 2013 NFPA 52 Vehicular Gaseous Fuel
15 Systems Code; and

16 (ii) American National Standard for Basic
17 Requirements for Compressed Natural Gas Vehicle (NGV) Fuel
18 Containers, commonly cited as "ANSI/CSA NGV2"; or

19 (B) liquefied petroleum gas fuel system that
20 complies with:

21 (i) the 2011 NFPA 58 Liquefied Petroleum
22 Gas Code; and

23 (ii) Section VII of the 2013 ASME Boiler and
24 Pressure Vessel Code; and

25 (7) was acquired on or after September 1, 2013, or a
26 later date established by the commission, by the person applying
27 for the incentive under this subsection and for use or lease by that

1 person and not for resale.

2 (b) If the commission determines that an updated version of
3 a code or standard described by Subdivision (a)(6) is more
4 stringent than the version of the code or standard described by
5 Subdivision (a)(6), the commission by rule may provide that a
6 vehicle for which a person applies for an incentive under
7 Subsection (a) is eligible for the incentive only if the vehicle
8 complies with the updated version of the code or standard.

9 (b-1) The incentive under Subsection (a) is limited to 2,000
10 vehicles for the state fiscal biennium beginning September 1, 2013.

11 (c) A new light-duty motor vehicle powered by electric drive
12 is eligible for a \$2,500 incentive if the vehicle:

13 (1) has four wheels;

14 (2) was manufactured for use primarily on public
15 streets, roads, and highways;

16 (3) has not been modified from the original
17 manufacturer's specifications;

18 (4) is rated at not more than 8,500 pounds unloaded
19 vehicle weight;

20 (5) has a maximum speed capability of at least 55 miles
21 per hour;

22 (6) is propelled to a significant extent by an
23 electric motor that draws electricity from a battery that:

24 (A) has a capacity of not less than four kilowatt
25 hours; and

26 (B) is capable of being recharged from an
27 external source of electricity; and

1 (7) was acquired on or after September 1, 2013, or a
2 later date as established by the commission, by the person applying
3 for the incentive under this subsection and for use or lease by that
4 person and not for resale.

5 (d) The incentive under Subsection (c) is limited to 2,000
6 vehicles for the state fiscal biennium beginning September 1, 2013.
7 ~~[A new light-duty motor vehicle is eligible for an incentive~~
8 ~~according to the following schedule:~~

9	[Incentive emissions standard and incentive amount
10	[Model year 2003-2007
11	[Bin 4 — \$1,250
12	[Bin 3 — \$2,225
13	[Bin 2 — \$3,750
14	[Bin 1 — \$5,000]

15 SECTION 7. Section 386.156, Health and Safety Code, is
16 amended to read as follows:

17 Sec. 386.156. LIST OF ELIGIBLE MOTOR VEHICLES. (a) On
18 August 1 each year the commission shall publish ~~[and provide to the~~
19 ~~comptroller]~~ a list of ~~[the]~~ new model motor vehicles eligible for
20 inclusion in an incentive under this subchapter as listed for the
21 commission under Section 386.155. The commission shall publish
22 ~~[and provide to the comptroller]~~ supplements to that list as
23 necessary to include additional new vehicle models ~~[listed in a~~
24 ~~supplement to the original list provided by a manufacturer under~~
25 ~~Section 386.155]~~.

26 (b) The commission ~~[comptroller]~~ shall publish ~~[distribute]~~
27 the list of eligible motor vehicles on the commission's Internet

1 website [~~to all new motor vehicle dealers and leasing agents in this~~
2 ~~state~~].

3 SECTION 8. Subsections (a) and (c), Section 386.158, Health
4 and Safety Code, are amended to read as follows:

5 (a) A person who purchases or leases a new light-duty motor
6 vehicle described by Section 386.153 and [~~that has been~~] listed
7 under Section 386.156(a) [~~386.155~~] is eligible to apply for an
8 incentive under this subchapter.

9 (c) To receive money under an incentive program provided by
10 this subchapter, the purchaser or lessee of a new light-duty motor
11 vehicle who is eligible to apply for an incentive under this
12 subchapter shall apply for the incentive in the manner provided by
13 law or by rule of the commission [~~comptroller~~].

14 SECTION 9. Section 386.160, Health and Safety Code, is
15 amended to read as follows:

16 Sec. 386.160. COMMISSION [~~COMPTROLLER~~] TO ACCOUNT FOR MOTOR
17 VEHICLE PURCHASE OR LEASE INCENTIVES. (a) The commission
18 [~~comptroller~~] by rule shall develop a method to administer and
19 account for the motor vehicle purchase or lease incentives
20 authorized by this subchapter and to pay incentive money to the
21 purchaser or lessee of a new motor vehicle, on application of the
22 purchaser or lessee as provided by this subchapter.

23 (b) The commission [~~comptroller~~] shall develop and publish
24 forms and instructions for the purchaser or lessee of a new motor
25 vehicle to use in applying to the commission [~~comptroller~~] for an
26 incentive payment under this subchapter. The commission
27 [~~comptroller~~] shall make the forms available to new motor vehicle

1 dealers and leasing agents. Dealers and leasing agents shall make
2 the forms available to their prospective purchasers or lessees.

3 (c) In addition to other forms developed and published under
4 this section, the commission [~~comptroller~~] shall develop and
5 publish a verification form by which, with information provided by
6 the dealer or leasing agent, the commission [~~comptroller~~] can
7 verify the sale of a vehicle covered by this subchapter. The
8 verification form shall include at least the name of the purchaser,
9 the vehicle identification number of the vehicle involved, the date
10 of the purchase, and the name of the new motor dealer or leasing
11 agent involved in the transaction. At the time of sale or lease of a
12 vehicle eligible for an incentive under this subchapter, the dealer
13 or leasing agent shall complete the verification form supplied to
14 the dealer by the commission [~~comptroller~~]. The purchaser or
15 lessee shall include the completed verification form as part of the
16 purchaser's application for an incentive. The dealer shall
17 maintain a copy of the completed verification form for at least two
18 years from the date of the transaction.

19 SECTION 10. The heading to Section 386.161, Health and
20 Safety Code, is amended to read as follows:

21 Sec. 386.161. [~~REPORT TO COMMISSION,~~] SUSPENSION OF
22 PURCHASE OR LEASE INCENTIVES.

23 SECTION 11. Subsections (b), (c), and (d), Section 386.161,
24 Health and Safety Code, are amended to read as follows:

25 (b) If the balance available for motor vehicle purchase or
26 lease incentives falls below 15 percent of the total allocated for
27 the incentives during that fiscal year, the commission

1 ~~[comptroller]~~ by order shall suspend the incentives until the date
2 the comptroller can certify that the balance available in the fund
3 for incentives is an amount adequate to resume the incentives or the
4 beginning of the next fiscal year, whichever is earlier. If the
5 commission ~~[comptroller]~~ suspends the incentives, the commission
6 ~~[comptroller]~~ shall immediately notify ~~[the commission and]~~ all new
7 motor vehicle dealers and leasing agents that the incentives have
8 been suspended.

9 (c) The commission ~~[comptroller]~~ shall establish a
10 toll-free telephone number available to motor vehicle dealers and
11 leasing agents for the dealers and agents to call to verify that
12 incentives are available. The commission ~~[comptroller]~~ may provide
13 for issuing verification numbers over the telephone line.

14 (d) Reliance by a dealer or leasing agent on information
15 provided by the ~~[comptroller or]~~ commission is a complete defense
16 to an action involving or based on eligibility of a vehicle for an
17 incentive or availability of vehicles eligible for an incentive.

18 SECTION 12. Subchapter D, Chapter 386, Health and Safety
19 Code, is amended by adding Section 386.162 to read as follows:

20 Sec. 386.162. EXPIRATION. This subchapter expires August
21 31, 2015.

22 SECTION 13. Chapter 386, Health and Safety Code, is amended
23 by adding Subchapter D-1 to read as follows:

24 SUBCHAPTER D-1. DRAYAGE TRUCK INCENTIVE PROGRAM

25 Sec. 386.181. DEFINITION; RULES. (a) In this subchapter,
26 "drayage truck" means a truck that transports a load to or from a
27 seaport or rail yard.

1 (b) The commission may include more specific definitions in
2 the rules or guidelines developed to implement the program
3 established by this subchapter in order to reduce emissions in and
4 around seaports in a nonattainment area.

5 Sec. 386.182. COMMISSION DUTIES. (a) The commission shall
6 develop a purchase incentive program to encourage owners to replace
7 drayage trucks with pre-2007 model year engines with newer drayage
8 trucks and shall adopt guidelines necessary to implement the
9 program.

10 (b) The commission by rule shall establish criteria for the
11 models of drayage trucks that are eligible for inclusion in an
12 incentive program under this subchapter. The guidelines must
13 provide that a drayage truck owner is not eligible for an incentive
14 payment under this subchapter unless the truck being replaced
15 contains a pre-2007 model year engine and the replacement truck's
16 engine is from model year 2010 or later as determined by the
17 commission and that the truck operates at a seaport or rail yard.

18 Sec. 386.183. DRAYAGE TRUCK PURCHASE INCENTIVE. (a) To be
19 eligible for an incentive under this subchapter, a person must:

20 (1) purchase a replacement drayage truck that under
21 the guidelines adopted by the commission under Section 386.182 is
22 eligible for inclusion in the program for an incentive under this
23 subchapter; and

24 (2) agree to:

25 (A) register the truck in this state;

26 (B) operate the truck in and within a maximum
27 distance established by the commission of a seaport or rail yard in

1 a nonattainment area of this state for not less than 50 percent of
2 the vehicle's annual mileage or hours of operation, as determined
3 by the commission; and

4 (C) permanently remove a pre-2007 drayage truck
5 containing a pre-2007 engine owned by the person from operation in a
6 nonattainment area of this state by destroying the engine and
7 scrapping the truck after the purchase of the new truck in
8 accordance with guidelines established by the commission.

9 (b) To receive money under an incentive program provided by
10 this subchapter, the purchaser of a drayage truck eligible for
11 inclusion in the program must apply for the incentive in the manner
12 provided by law, rule, or guideline of the commission.

13 (c) Not more than one incentive may be provided for each
14 drayage truck purchased.

15 (d) An incentive provided under this subchapter may be used
16 to fund not more than 80 percent of the purchase price of the
17 drayage truck.

18 (e) The commission shall establish procedures to verify
19 that a person who receives an incentive:

20 (1) has operated in a seaport or rail yard and owned or
21 leased the drayage truck to be replaced for at least two years prior
22 to receiving the grant; and

23 (2) permanently destroys the engine and scraps the
24 drayage truck that contained the pre-2007 engine owned or leased by
25 the person, in accordance with guidelines established by the
26 commission, after the purchase of the new truck.

27 (f) The commission may modify this program to improve its

1 effectiveness or further the goals of Subchapter B.

2 SECTION 14. The heading to Subchapter E, Chapter 386,
3 Health and Safety Code, is amended to read as follows:

4 SUBCHAPTER E. EVALUATION OF UTILITY COMMISSION AND COMPTROLLER
5 ENERGY EFFICIENCY PROGRAMS [~~GRANT PROGRAM~~]

6 SECTION 15. Section 386.205, Health and Safety Code, is
7 amended to read as follows:

8 Sec. 386.205. EVALUATION OF UTILITY COMMISSION AND
9 COMPTROLLER [~~STATE~~] ENERGY EFFICIENCY PROGRAMS. In cooperation
10 with the laboratory, the utility commission shall provide an annual
11 report to the commission that, by county, quantifies the reductions
12 of energy demand, peak loads, and associated emissions of air
13 contaminants achieved from [~~the~~] programs implemented by the state
14 energy conservation office [~~under this subchapter~~] and from
15 programs [~~those~~] implemented under Section 39.905, Utilities Code.

16 SECTION 16. Subsection (a), Section 386.252, Health and
17 Safety Code, as amended by Chapter 28 (S.B. 527), Acts of the 82nd
18 Legislature, Regular Session, 2011, is amended to read as follows:

19 (a) Money in the fund may be used only to implement and
20 administer programs established under the plan. Money appropriated
21 to the commission to be used for the programs under Section
22 386.051(b) [~~and the total appropriation~~] shall be allocated as
23 follows:

24 (1) not more than four percent may be used for the
25 clean school bus program under Chapter 390;

26 (2) not more than three percent [~~not more than 10~~
27 ~~percent may be used for on-road diesel purchase or lease~~

1 ~~incentives,~~

2 ~~[(3) a specified amount]~~ may be used for the new
3 technology implementation grant program under Chapter 391, from
4 which at least \$1 million will ~~[a defined amount may]~~ be set aside
5 for electricity storage projects related to renewable energy;

6 (3) ~~[(4)]~~ five percent shall be used for the clean
7 fleet program under Chapter 392;

8 (4) ~~[(5)]~~ not more than ~~[\$7 million shall be allocated~~
9 ~~in 2012 and 2013 and not more than]~~ \$3 million may ~~[shall]~~ be used by
10 the commission ~~[allocated in 2014 and in subsequent years]~~ to fund a
11 regional air monitoring program in commission Regions 3 and 4 to be
12 implemented under the commission's oversight, including direction
13 regarding the type, number, location, and operation of, and data
14 validation practices for, monitors funded by the program through a
15 regional nonprofit entity located in North Texas having
16 representation from counties, municipalities, higher education
17 institutions, and private sector interests across the area;

18 (5) not less than 16 percent shall be used for the
19 Texas natural gas vehicle grant program under Chapter 394;

20 (6) not more than five percent may be used to provide
21 grants for natural gas fueling stations under the clean
22 transportation triangle program under Section 394.010;

23 (7) not more than five percent may be used for the
24 Texas alternative fueling facilities program under Chapter 393;

25 (8) a specified amount may be used ~~[is to be allocated]~~
26 each year to support research related to air quality as provided by
27 Chapter 387;

1 (9) not more than [(7) up to] \$200,000 may be used [is
2 allocated] for a health effects study;

3 (10) [(8) up to] \$500,000 is to be deposited in the
4 state treasury to the credit of the clean air account created under
5 Section 382.0622 to supplement funding for air quality planning
6 activities in affected counties;

7 (11) at least \$4 million and up to four percent to a
8 maximum of \$7 million, whichever is greater, is allocated to the
9 commission for administrative costs;

10 (12) at least two percent and up to five percent of the
11 fund is to be used by the commission for the drayage truck incentive
12 program established under Subchapter D-1;

13 (13) not more than five percent may be used for the
14 light-duty motor vehicle purchase or lease incentive program
15 established under Subchapter D;

16 (14) [(9)] not more than \$216,000 is allocated to the
17 commission to contract with the Energy Systems Laboratory at the
18 Texas Engineering Experiment Station annually for the development
19 and annual computation of creditable statewide emissions
20 reductions obtained through wind and other renewable energy
21 resources for the state implementation plan;

22 (15) [(10) not more than \$3,400,000 is allocated to
23 the commission for administrative costs incurred by the commission;

24 [(11)] 1.5 percent of the money in the fund is
25 allocated for administrative costs incurred by the laboratory; and

26 (16) [(12)] the balance is to be used by [is allocated
27 to] the commission for the diesel emissions reduction incentive

1 program under Subchapter C as determined by the commission.

2 SECTION 17. Section 386.252, Health and Safety Code, is
3 amended by amending Subsections (b), (c), (d), and (e) and adding
4 Subsection (e-1) to read as follows:

5 (b) The commission may allocate unexpended money designated
6 for the clean fleet program under Chapter 392 to other programs
7 described under Subsection (a) after the commission allocates money
8 to recipients under the clean fleet program.

9 (c) The commission may allocate unexpended money designated
10 for the Texas alternative fueling facilities program under Chapter
11 393 to other programs described under Subsection (a) after the
12 commission allocates money to recipients under the alternative
13 fueling facilities program.

14 (d) The commission may reallocate money designated for the
15 Texas natural gas vehicle grant program under Chapter 394 to other
16 programs described under Subsection (a) if:

17 (1) the commission, in consultation with the governor
18 and the advisory board, determines that the use of the money in the
19 fund for that program will cause the state to be in noncompliance
20 with the state implementation plan to the extent that federal
21 action is likely; and

22 (2) the commission finds that the reallocation of some
23 or all of the funding for the program would resolve the
24 noncompliance.

25 (e) Under Subsection (d), the commission may not reallocate
26 more than the minimum amount of money necessary to resolve the
27 noncompliance.

1 (e-1) Money [~~money~~] allocated under Subsection (a) to a
2 particular program may be used for another program under the plan as
3 determined by the commission.

4 [~~(c) Money in the fund may be allocated to the clean school
5 bus program only if:~~

6 [~~(1) the money is available for that purpose after
7 money is allocated for the other purposes of the fund as required by
8 the state implementation plan; or~~

9 [~~(2) the amount of money deposited to the credit of the
10 fund in a state fiscal year exceeds the amount the comptroller's
11 biennial revenue estimate shows as the comptroller's estimated
12 amount to be deposited to the credit of the fund in that year.~~

13 [~~(d) The commission may allocate unexpended money
14 designated for the clean fleet program to other programs described
15 under Subsection (a) after the commission allocates money to
16 recipients under the clean fleet program.~~

17 [~~(e) The commission may allocate unexpended money
18 designated for the Texas alternative fueling facilities program to
19 other programs described under Subsection (a) after the commission
20 allocates money to recipients under the alternative fueling
21 facilities program.]~~

22 SECTION 18. Subsection (f), Section 386.252, Health and
23 Safety Code, as added by Chapter 892 (S.B. 385), Acts of the 82nd
24 Legislature, Regular Session, 2011, is amended to read as follows:

25 (f) Money in the fund may be used by the commission for
26 programs under Sections 386.051(b)(13), (b)(14), and (b-1) as may
27 be appropriated for those programs [~~Notwithstanding Subsection~~

1 ~~(a), the commission may reallocate money in the fund if:~~

2 ~~[(1) the commission, in consultation with the governor~~
3 ~~and the advisory board, determines that the use of the money in the~~
4 ~~fund for the program established under Chapter 394 will cause the~~
5 ~~state to be in noncompliance with the state implementation plan to~~
6 ~~the extent that federal action is likely; and~~

7 ~~[(2) the commission finds that the reallocation of~~
8 ~~some or all of the funding for the program established under Chapter~~
9 ~~394 would resolve the noncompliance].~~

10 SECTION 19. Section 386.252, Health and Safety Code, is
11 amended by amending Subsection (g) and adding Subsection (h) to
12 read as follows:

13 (g) If the legislature does not specify amounts or
14 percentages from the total appropriation to the commission to be
15 allocated under Subsection (a) or (f), the commission shall
16 determine the amounts of the total appropriation to be allocated
17 under each of those subsections, such that the total appropriation
18 is expended while maximizing emissions reductions ~~[Under~~
19 ~~Subsection (f), the commission may not reallocate more than the~~
20 ~~minimum amount of money necessary to resolve the noncompliance].~~

21 (h) Subject to the limitations outlined in this section and
22 any additional limitations placed on the use of the appropriated
23 funds, money allocated under this section to a particular program
24 may be used for another program under the plan as determined by the
25 commission.

26 SECTION 20. Section 391.002, Health and Safety Code, is
27 amended to read as follows:

1 Sec. 391.002. GRANT PROGRAM. (a) The commission shall
2 establish and administer a new technology implementation grant
3 program to assist the implementation of new technologies to reduce
4 emissions from facilities and other stationary sources in this
5 state. The commission may establish a minimum capital expenditure
6 threshold for projects under Subsection (b)(2). Under the program,
7 the commission shall provide grants or other financial incentives
8 for eligible projects to offset the incremental cost of emissions
9 reductions.

10 (b) Projects that may be considered for a grant under the
11 program include:

12 (1) advanced clean energy projects, as defined by
13 Section 382.003;

14 (2) new technology projects that reduce emissions of
15 regulated pollutants from point sources [~~and involve capital~~
16 ~~expenditures that exceed \$500 million~~]; and

17 (3) electricity storage projects related to renewable
18 energy, including projects to store electricity produced from wind
19 and solar generation that provide efficient means of making the
20 stored energy available during periods of peak energy use.

21 SECTION 21. Subsection (a), Section 392.007, Health and
22 Safety Code, is amended to read as follows:

23 (a) The amount the commission shall award for each vehicle
24 being replaced is up to[+]

25 [~~(1)~~] 80 percent, as determined by the commission, of
26 the total [~~incremental~~] cost for replacement of a heavy-duty or
27 light-duty diesel engine[+]

1 ~~[(A) manufactured prior to implementation of~~
2 ~~federal or California emission standards; and~~

3 ~~[(B) not certified to meet a specific emission~~
4 ~~level by either the United States Environmental Protection Agency~~
5 ~~or the California Air Resources Board;~~

6 ~~[(2) 70 percent of the incremental cost for~~
7 ~~replacement of a heavy-duty diesel engine certified to meet the~~
8 ~~federal emission standards applicable to engines manufactured in~~
9 ~~1990 through 1997;~~

10 ~~[(3) 60 percent of the incremental cost for~~
11 ~~replacement of a heavy-duty diesel engine certified to meet the~~
12 ~~federal emission standards applicable to engines manufactured in~~
13 ~~1998 through 2003;~~

14 ~~[(4) 50 percent of the incremental cost for~~
15 ~~replacement of a heavy-duty diesel engine certified to meet the~~
16 ~~federal emission standards applicable to engines manufactured in~~
17 ~~2004 and later;~~

18 ~~[(5) 80 percent of the incremental cost for~~
19 ~~replacement of a light-duty diesel vehicle;~~

20 ~~[(A) manufactured prior to the implementation of~~
21 ~~certification requirements; and~~

22 ~~[(B) not certified to meet either mandatory or~~
23 ~~voluntary emission certification standards;~~

24 ~~[(6) 70 percent of the incremental cost for~~
25 ~~replacement of a light-duty diesel vehicle certified to meet~~
26 ~~federal Tier 1 emission standards phased in between 1994 and 1997;~~
27 ~~and~~

1 ~~[(7) 60 percent of the incremental cost for~~
2 ~~replacement of a light-duty diesel vehicle certified to meet~~
3 ~~federal Tier 2 emission standards phased in between 2004 and 2009].~~

4 SECTION 22. Subsection (a), Section 394.007, Health and
5 Safety Code, as amended by Chapter 892 (S.B. 385), Acts of the 82nd
6 Legislature, Regular Session, 2011, is amended to read as follows:

7 (a) The commission shall develop a grant schedule that:

8 (1) assigns a standardized grant in an amount up to
9 ~~[between 60 and]~~ 90 percent of the incremental cost of a natural gas
10 vehicle purchase, lease, other commercial finance, or repowering;

11 (2) is based on:

12 (A) the certified emission level of nitrogen
13 oxides, or other pollutants as determined by the commission, of the
14 engine powering the natural gas vehicle; and

15 (B) the usage of the natural gas vehicle; and

16 (3) may take into account the overall emissions
17 reduction achieved by the natural gas vehicle.

18 SECTION 23. Section 394.010, Health and Safety Code, as
19 amended by Chapter 892 (S.B. 385), Acts of the 82nd Legislature,
20 Regular Session, 2011, is amended by amending Subsections (a), (b),
21 (c), and (d) and adding Subsection (f-1) to read as follows:

22 (a) To ensure that natural gas vehicles purchased, leased,
23 or otherwise commercially financed or repowered under the program
24 have access to fuel, and to build the foundation for a
25 self-sustaining market for natural gas vehicles in Texas, the
26 commission shall award grants to support the development of a
27 network of natural gas vehicle fueling stations along the

1 interstate highways connecting Houston, San Antonio, Dallas, and
2 Fort Worth, and in nonattainment areas and affected counties of the
3 state. In awarding the grants, the commission shall provide for:

4 (1) strategically placed natural gas vehicle fueling
5 stations in and between the Houston, San Antonio, and Dallas-Fort
6 Worth areas, and in nonattainment areas and affected counties of
7 the state, to enable a natural gas vehicle to travel in those areas
8 ~~[along that triangular area]~~ relying solely on natural gas fuel;

9 (2) grants to be dispersed through a competitive
10 bidding process to offset a portion of the cost of installation of
11 the natural gas dispensing equipment;

12 (3) contracts that require the recipient stations to
13 meet operational, maintenance, and reporting requirements as
14 specified by the commission; and

15 (4) a listing, to be maintained by the commission and
16 made available to the public online, of all natural gas vehicle
17 fueling stations that have received grant funding, including
18 location and hours of operation.

19 (b) The commission may not award more than ~~[+~~
20 ~~[(1) three station grants to any entity, or~~
21 ~~[(2)]~~ one grant for each station.

22 (c) Grants awarded under this section may not exceed:

23 (1) \$400,000 ~~[\$100,000]~~ for a compressed natural gas
24 station;

25 (2) \$400,000 ~~[\$250,000]~~ for a liquefied natural gas
26 station; or

27 (3) \$600,000 ~~[\$400,000]~~ for a station providing both

1 liquefied and compressed natural gas.

2 (d) Stations funded by grants under this section must be
3 publicly accessible [~~and located not more than three miles from an~~
4 ~~interstate highway system~~]. The commission shall give preference
5 to:

6 (1) stations providing both liquefied natural gas and
7 compressed natural gas at a single location; [~~and~~]

8 (2) stations located not more than one mile from an
9 interstate highway system; and

10 (3) stations located in the triangular area between
11 the Houston, San Antonio, and Dallas-Fort Worth areas.

12 (f-1) An application for a grant under this section must
13 include a certification that the applicant complies with laws,
14 rules, guidelines, and requirements applicable to taxation of fuel
15 provided by the applicant at each fueling facility owned or
16 operated by the applicant. The commission may terminate a grant
17 awarded under this section without further obligation to the grant
18 recipient if the commission determines that the recipient did not
19 comply with a law, rule, guideline, or requirement described by
20 this subsection. This subsection does not create a cause of action
21 to contest an application or award of a grant.

22 SECTION 24. Section 393.006, Health and Safety Code, as
23 amended by Chapter 892 (S.B. 385), Acts of the 82nd Legislature,
24 Regular Session, 2011, is amended to read as follows:

25 Sec. 393.006. AMOUNT OF GRANT. For each eligible facility
26 for which a recipient is awarded a grant under the program, the
27 commission shall award the grant in an amount equal to the lesser

1 of:

2 (1) 50 percent of the sum of the actual eligible costs
3 incurred by the grant recipient within deadlines established by the
4 commission to construct, reconstruct, or acquire the facility; or

5 (2) \$600,000 [~~\$500,000~~].

6 SECTION 25. The following provisions are repealed:

7 (1) Subsection (c), Section 386.051, Health and Safety
8 Code;

9 (2) Subdivision (1), Section 386.151, Health and
10 Safety Code;

11 (3) Section 386.154, Health and Safety Code;

12 (4) Subsection (a), Section 386.161, Health and Safety
13 Code;

14 (5) Sections 386.201, 386.202, and 386.203, Health and
15 Safety Code;

16 (6) Section 386.204, Health and Safety Code;

17 (7) Subsection (a), Section 386.252, Health and Safety
18 Code, as amended by Chapters 589 (Senate Bill No. 20) and 892
19 (Senate Bill No. 385), Acts of the 82nd Legislature, Regular
20 Session, 2011;

21 (8) Subsection (f), Section 386.252, Health and Safety
22 Code, as added by Chapter 589 (Senate Bill No. 20), Acts of the 82nd
23 Legislature, Regular Session, 2011; and

24 (9) Chapters 393 and 394, Health and Safety Code, as
25 amended by Chapter 589 (Senate Bill No. 20), Acts of the 82nd
26 Legislature, Regular Session, 2011.

27 SECTION 26. This Act takes effect immediately if it

S.B. No. 1727

1 receives a vote of two-thirds of all the members elected to each
2 house, as provided by Section 39, Article III, Texas Constitution.
3 If this Act does not receive the vote necessary for immediate
4 effect, this Act takes effect September 1, 2013.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1727 passed the Senate on May 2, 2013, by the following vote: Yeas 29, Nays 1, one present not voting; and that the Senate concurred in House amendments on May 25, 2013, by the following vote: Yeas 28, Nays 2, one present not voting.

Secretary of the Senate

I hereby certify that S.B. No. 1727 passed the House, with amendments, on May 21, 2013, by the following vote: Yeas 107, Nays 39, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor

Texas Commission on Environmental Quality



ORDER ADOPTING AMENDED RULES AND REVISIONS TO THE STATE IMPLEMENTATION PLAN

**Docket No. 2013-1192-RUL
Rule Project No. 2013-036-114-AI**

On April 9, 2014, the Texas Commission on Environmental Quality (Commission), during a public meeting, considered adoption of amendments to 30 TAC Chapter 114, Control of Air Pollution from Motor Vehicles, Subchapter K, Mobile Sources Incentive Programs, Division 3, Diesel Emissions Reduction Incentive Program for On-Road and Non-Road Vehicles, §§ 114.622 and 114.629 and corresponding revisions to the SIP. The adopted rules implement part of Senate Bill (SB) 1727, 83rd Legislature, 2013, Regular Session, relating to requirements for receiving an incentive grant under the Diesel Emissions Reduction Incentive (DERI) program in addition to adding Wise County to the list of counties applicable to the Emission Reduction Incentive Grant program. Wise County was included in the U.S. Environmental Protection Agency's recent nonattainment designation for the Dallas-Fort Worth Area for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard. Under Tex. Health & Safety Code Ann. §§ 382.011, 382.012, and 382.023 (Vernon 2010), the Commission has the authority to control the quality of the state's air and to issue orders consistent with the policies and purposes of the Texas Clean Air Act, Chapter 382 of the Tex. Health & Safety Code. The proposed rules were published for comment in the November 22, 2013, issue of the *Texas Register* (38 TexReg 8392).

Pursuant to Tex. Health & Safety Code Ann. § 382.017 (Vernon 2010), Tex. Gov't Code Chapter 2001 (Vernon 2008), and 40 Code of Federal Regulations § 51.102, and after proper notice, the Commission conducted a public hearing to consider the repealed and new rules and revisions to the SIP. Proper notice included prominent advertisement in the areas affected at least 30 days prior to the date of the hearing. A public hearing was held in Austin, Texas on December 12, 2013.

The Commission circulated hearing notices of its intended action to the public, including interested persons, the Regional Administrator of the EPA, and all applicable local air pollution control agencies. The public was invited to submit data, views, and recommendations on the proposed repealed and new rules and SIP revisions, either

orally or in writing, at the hearing or during the comment period. Prior to the scheduled hearing, copies of the proposed repealed and new rules and SIP revisions were available for public inspection at the Commission's central office and on the Commission's Web site.

Data, views, and recommendations of interested persons regarding the proposed repealed and new rules and SIP revisions were submitted to the Commission during the comment period, and were considered by the Commission as reflected in the analysis of testimony incorporated by reference to this Order. The Commission finds that the analysis of testimony includes the names of all interested groups or associations offering comment on the proposed repealed and new rules and the SIP revisions and their position concerning the same.

IT IS THEREFORE ORDERED BY THE COMMISSION that the amended rules and revisions to the SIP incorporated by reference to this Order are hereby adopted. The Commission further authorizes staff to make any non-substantive revisions to the rules necessary to comply with *Texas Register* requirements. The adopted rules and the preamble to the adopted rules and the revisions to the SIP are incorporated by reference in this Order as if set forth at length verbatim in this Order.

IT IS FURTHER ORDERED BY THE COMMISSION that on behalf of the Commission, the Chairman should transmit a copy of this Order, together with the adopted rules and revisions to the SIP, to the Regional Administrator of EPA as a proposed revision to the Texas SIP pursuant to the Federal Clean Air Act, codified at 42 U.S. Code Ann. §§ 7401 - 7671q, as amended.

This Order constitutes the Order of the Commission required by the Administrative Procedure Act, Tex. Gov't Code, § 2001.033 (Vernon 2008).

If any portion of this Order is for any reason held to be invalid by a court of competent jurisdiction, the invalidity of any portion shall not affect the validity of the remaining portions.

Date Issued:

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Bryan W. Shaw, Ph.D., P.E., Chairman