

The Texas Commission on Environmental Quality (commission) proposes new §§114.670 - 114.672.

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

Background and Summary of the Factual Basis for the Proposed Rules

Senate Bill (SB) 385, 82nd Legislature, 2011, amended the Texas Health and Safety Code (THSC), by adding Chapter 394, Texas Natural Gas Vehicle Grant Program (program). This program is designed to encourage eligible entities to replace on-road heavy-duty and medium-duty vehicles with natural gas vehicles and to replace on-road heavy-duty and medium-duty vehicle engines with natural gas engines. The program also includes incentives to fund a portion of the costs to install natural gas dispensing equipment at fueling stations along a Clean Transportation Triangle consisting of the interstate highways connecting the cities of Houston, San Antonio, Dallas, and Fort Worth. These rules are proposed to comply with THSC, §394.005(a), which requires the commission to adopt rules to establish criteria for prioritizing qualifying vehicles eligible to receive grants under the new program.

SB 20, 82nd Legislature, 2011, also established the program under a different chapter number in the THSC. However, because SB 385 was enacted last, it is the operative

legislation for this rulemaking.

Section by Section Discussion

§114.670, Purpose

Proposed §114.670 would define the purpose of the proposed rules as the criteria the executive director may use when establishing priorities for funding projects under the program, as required by THSC, §394.005.

§114.671, Criteria for Prioritizing Vehicles Eligible to Receive a Grant

Proposed §114.671 outlines the criteria to be used for prioritizing qualifying vehicles to receive grants under this program, as required by THSC, §394.005.

Proposed subsection (a) lists the criteria that may be used by the executive director to establish priorities for funding. Prior to each grant application period, the executive director would establish specific priorities for funding projects under that application period.

Under proposed subsection (a)(1), the executive director could consider the potential for different types of projects to achieve reductions in nitrogen oxides (NO_x) and/or other pollutants of concern, including consideration of the vehicle types, weight categories, and types of use with the greatest potential to achieve emissions reductions.

Under proposed subsection (a)(2), the cost-effectiveness of a project, as determined by the cost per ton of expected reductions in NO_x and/or other pollutants of concern could be considered by the executive director.

Under proposed subsection (a)(3), the potential for different types of projects to help increase the use of natural gas for transportation in Texas could be considered by the executive director.

Under proposed subsection (a)(4), the areas of use of the grant-funded vehicles could be considered by the executive director, including consideration of the availability of fuel and fueling infrastructure and the need for emissions reductions in those areas in order to meet federal air quality standards.

Under proposed subsection (a)(5), the executive director could consider how a project may support the conversion of large regional vehicle fleets moving goods and materials along interstate highways connecting the cities of Houston, San Antonio, Dallas, and Fort Worth from gasoline or diesel fuel to natural gas.

Under proposed subsection (a)(6), the executive director may assign a priority to projects that will help reduce exposure of vulnerable populations to pollutants of

concern, including the conversion of school bus fleets and other fleets transporting children or the elderly from gasoline or diesel fuel to natural gas.

Under proposed subsection (a)(7), the executive director may assign a priority to projects that would result in the conversion of public transportation fleets, such as school buses, transit buses, airport shuttle buses, and similar vehicle fleets from gasoline or diesel fuel to natural gas.

Under proposed subsection (a)(8), the executive director may assign a priority to projects that would result in the conversion of public utility and service fleets, such as refuse vehicles, maintenance and utility vehicles, and similar fleets from gasoline or diesel fuel to natural gas.

Under proposed subsection (a)(9), the executive director may assign a priority to projects that would support the use of natural gas and natural gas vehicles, engines, and associated technologies produced, manufactured, or otherwise based in Texas.

Under proposed subsection (a)(10), the executive director may assign a priority to projects that would support the implementation of new and innovative natural gas vehicle and engine technologies.

Proposed subsection (b) would authorize the executive director to limit grants under a grant application period according to the priorities established for that application period.

Proposed subsection (c) would require that not less than 60% of the total amount of grants awarded in a fiscal biennium must be awarded to motor vehicles with a gross vehicle weight rating of at least 33,001 pounds. The proposed subsection would also provide that this restriction would not apply if the commission does not receive enough grant applications to satisfy the percentage of funding requirement. These provisions are required by THSC, §394.007(b).

§114.672, Implementation Schedule

Proposed §114.672 would identify the expiration date of the program, as stated in THSC, §394.012. Under this section, the program would expire on August 31, 2017.

Fiscal Note: Costs to State and Local Government

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency as a result of administration or enforcement of the proposed rules. The agency will utilize available funding appropriated out of the Texas Emissions Reduction Plan (TERP) - Account 5071 to implement the proposed

rules. Other state agencies and local governments may experience cost savings as a result of the proposed rules if they are eligible to use the grant funds to replace vehicles or engines in their fleets with natural gas vehicles or engines.

SB 385 requires the agency to adopt rules to create the program using a portion of the funds appropriated in Account 5071 - TERP. The proposed rules would add a new division to Chapter 114 to outline the criteria that will be used to prioritize qualifying vehicles eligible to receive a grant under this voluntary program. The program would be a new type of incentive grant in the overall TERP incentive grant program. To be eligible for this type of grant funding, an entity would be required to replace or repower an existing on-road heavy-duty or medium-duty motor vehicle with a natural gas vehicle or engine. The project must result in a reduction in emissions of NO_x of at least 25%. The grant recipient must also agree to operate the grant funded vehicle for at least 75% of the annual mileage over a period of four years or 400,000 miles along a Clean Transportation Triangle (consisting of the interstate highways connecting the cities of Houston, San Antonio, Dallas, and Fort Worth) and in nonattainment counties. Funds appropriated for the program in Account 5071 - TERP total \$9,146,408 in each year of the 2012 - 2013 biennium.

State agencies or local governments with vehicles that meet the criteria of the grant program may experience cost benefits if they qualify to receive grant funds to purchase

natural gas vehicles or engines to replace existing vehicles or engines. Applying for a grant from the program would be voluntary and it is not known at this time how many state agencies or local governments would do so. Vehicle replacement and repower grant amounts may range between 60% and 90% of the incremental cost of the project. Incremental costs are estimated to range from \$15,000 to over \$80,000 per vehicle replacement or repower project.

Public Benefits and Costs

Nina Chamness also determined that, for each year of the first five years the proposed new rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be improved air quality in the area defined by the interstate highways connecting the cities of Houston, San Antonio, Dallas, and Fort Worth and in non-attainment counties. The proposed rules will provide grant funding to replace older existing vehicles and engines with new natural gas models that have fewer emissions in these areas.

Under the proposed rules, individuals in certain areas of the state may find it more affordable and easier to purchase natural gas vehicles or replacement engines if they meet qualifying criteria.

Businesses that purchase vehicles or engines that meet the criteria of the program may

experience lower costs when making those purchases. Businesses that are sellers of qualifying vehicles and replacement engines and agree to enter into a dealer contract with the commission should experience increased revenue since the program is expected to make the purchase of natural gas vehicles more attractive to potential buyers. The administrative requirements of the grants have not been finalized at this time, but applying for a grant from the program would be voluntary, and a business is not expected to submit an application for grant funds unless it has determined that the grant would be economically beneficial. It is not known at this time how many businesses would apply for a grant or how many businesses would purchase a replacement vehicle or engine under the program. Grant amounts will range from 60% to 90% of the incremental cost of the replacement or repower project, and incremental costs are estimated to range from \$15,000 to over \$80,000 per vehicle replacement or repower project.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. Small or micro-businesses in qualifying areas of the state are expected to experience the same benefits as a large business either when buying a natural gas vehicle or replacement engine or when acting as an authorized dealer natural gas vehicles or engines.

Small Business Regulatory Flexibility Analysis

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

Local Employment Impact Statement

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

Draft Regulatory Impact Analysis Determination

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

The new Chapter 114 rules are proposed in accordance with SB 385, which added THSC, Chapter 394. The proposed rules are part of the implementation of a new voluntary incentive program with the goal of encouraging the use of natural gas in on-road heavy-duty and medium-duty vehicles and reducing emissions through the replacement or repower of older existing vehicles and engines with new cleaner models powered by natural gas. The program offers financial incentives for the voluntary replacement of vehicles and engines. Because the proposed rules place no involuntary requirements on the regulated community, the proposed rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Also, none of the proposed rule 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 385. The new rules establish criteria for prioritizing vehicles eligible to receive a grant as part of the implementation of a voluntary program and only affect motor vehicles which are not considered to be private real property. The promulgation and enforcement of the

proposed rules is neither a statutory nor a constitutional taking because it does not affect private real property. Therefore, the rules do not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

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

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

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on November 29, 2011, at 10:00 a.m. in Building E, Room 201A, 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 2011-053-114-EN. The comment period closes December 5, 2011. Copies of the proposed rulemaking can be obtained from the commission's Web site at http://www.tceq.texas.gov/nav/rules/propose_adopt.html. For further information, please contact Stephen Dayton, Implementation Grants Section, (512) 239-6824.

SUBCHAPTER K: MOBILE SOURCE INCENTIVE PROGRAMS

DIVISION 7: TEXAS NATURAL GAS VEHICLE GRANT PROGRAM

§§114.670 - 114.672

Statutory Authority

These new rules are proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. These new rules are also proposed under Texas Health and Safety Code (THSC), Texas Clean Air Act, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the THSC; THSC, §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; and THSC, §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air. Finally, these proposed new rules are proposed under THSC, §394.005(a), as added by Senate Bill 385, directing the commission to establish by rule the criteria for prioritizing qualifying vehicles eligible to receive a grant.

The proposed rules implement THSC, §394.005.

§114.670. Purpose.

(a) These rules establish the criteria that the executive director may use for prioritizing qualifying vehicles eligible to receive grants under the Texas Natural Gas Vehicle Grant Program, established under Texas Health and Safety Code, Chapter 394.

(b) The requirements of Texas Health and Safety Code, Chapter 394, apply to grants awarded under this program.

§114.671. Criteria for Prioritizing Vehicles Eligible to Receive a Grant.

(a) Prior to each grant application period, the executive director will establish priorities for funding projects under that application period. Criteria that may be considered in establishing the funding priorities include, but are not limited to:

(1) the potential for different types of projects to achieve reductions in nitrogen oxides (NO_x) and/or other pollutants of concern over the required period of use of the grant-funded vehicles, including consideration of the vehicle types, weight categories, and types of use with the greatest potential to achieve emissions reductions;

(2) the cost-effectiveness of potential projects, as determined by the cost per ton of expected reductions in NO_x and/or other pollutants of concern;

(3) the potential for different types of projects to help increase the use of natural gas for transportation in Texas;

(4) the areas of use of the grant-funded vehicles, including consideration of the availability of fuel and fueling infrastructure and the need for emissions reductions in those areas in order to meet federal air quality standards;

(5) support for conversion of large regional vehicle fleets moving goods and materials along interstate highways connecting the cities of Houston, San Antonio, Dallas, and Fort Worth from gasoline or diesel fuel to natural gas;

(6) support for projects to reduce exposure of vulnerable populations to pollutants of concern, including conversion of school bus fleets and other fleets transporting children or the elderly from gasoline or diesel fuel to natural gas;

(7) support for conversion of public transportation fleets, such as school buses, transit buses, airport shuttle buses, and similar vehicle fleets from gasoline or diesel fuel to natural gas;

(8) support for conversion of public utility and service fleets, such as refuse vehicles, maintenance and utility vehicles, and similar fleets from gasoline or diesel fuel to natural gas;

(9) support for the use of natural gas and natural gas vehicles, engines, and associated technologies produced, manufactured, or otherwise based in Texas; and

(10) support for implementation of new and innovative natural gas vehicle and engine technologies.

(b) The executive director may limit the grants under a grant application period according to the priorities established for that grant application period.

(c) Not less than 60% of the total amount of grants awarded in a fiscal biennium must be awarded to motor vehicles with a gross vehicle weight rating of at least 33,001 pounds. However, this restriction does not apply if the commission does not receive enough grant applications to satisfy the percentage of funding requirement.

§114.672. Implementation Schedule.

This division expires on August 31, 2017.