

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes new §§114.680 - 114.682.

If adopted, the rules 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 add new rules for implementing the Drayage Truck Incentive Program (program) established under Texas Health and Safety Code (THSC), Chapter 386, Subchapter D-1. The program provides financial incentives to encourage owners to replace drayage trucks with pre-2007 model year engines with drayage trucks with 2010 or later model year engines.

Senate Bill (SB) 1727, 83rd Legislature, 2013, amended THSC, Chapter 386, to add new Subchapter D-1, establishing the program. THSC, §386.182, requires the commission by rule to establish criteria for the models of drayage trucks that are eligible for inclusion in the program.

Section by Section Discussion

§114.680, Definitions

New §114.680 is proposed to establish definitions for terms used in new Division 8 of Subchapter K. In this section, a *drayage truck* would be defined as a heavy-duty on-road or non-road vehicle used for drayage activities and that operates on or transgresses through a seaport or rail yard for the purpose of loading, unloading, or transporting cargo, including transporting empty containers and chassis. This definition is intended to include vehicles that operate primarily within the boundaries of a seaport or rail yard and those vehicles that transport a load to or from a seaport or rail yard. *Drayage activities* would be defined as the transport of cargo, such as containerized, bulk, or break-bulk goods.

In this section, a *rail yard* would be defined as a rail facility where cargo is routinely transferred from drayage truck to train or vice versa, including structures that are devoted to receiving, handling, holding, consolidating, and loading or unloading delivery of rail-borne cargo. A *seaport* would be defined as a publically or privately owned property associated with the primary movement of cargo or materials from ocean-going vessels to shore or vice versa, including structures and property devoted to receiving, handling, holding, consolidating, and loading or delivery of waterborne shipments. These proposed definitions are intended to define the eligible facilities and properties as those primarily associated with the intermodal transfer of cargo from trains or marine vessels to transport by truck. Also, under THSC, Chapter 386,

Subchapter D-1, only rail yards and seaports located in a nonattainment area are applicable to this program.

The terms *day cab* and *non-road yard truck* would also be defined in this section. In the proposed definitions, the term *day cab* would mean a conventional truck cab that does not include a sleeper berth. These types of vehicles are generally used for local or regional routes since they do not include a sleeper berth to facilitate long distance and overnight travel. A *non-road yard truck* would be defined as a mobile utility vehicle used to transport cargo containers with or without chassis; also known as a utility tractor rig, yard tractor, or terminal tractor. These types of vehicles are used for movement of cargo containers within the boundaries of a facility or property, generally either from the off-load point to a storage location or to move cargo from one storage location to another within the facility or property. Some models of yard trucks are also manufactured to be registered and meet requirements for on-road use on public roads and highways. An on-road yard truck would be considered as a type of on-road heavy-duty vehicle.

§114.681, Applicability

New §114.681 is proposed to establish that the provisions of new §§114.680, 114.682, and 114.683 would apply to the new Drayage Truck Incentive Program established under THSC, Chapter 386, Subchapter D-1.

§114.682, Eligible Vehicle Models

THSC, §386.182, requires the commission to establish by rule the criteria for the models of drayage trucks that are eligible for inclusion in the program. New §114.682 establishes the necessary criteria. Under the proposed criteria, models of drayage trucks eligible for purchase to replace an existing drayage truck would include a heavy-duty on-road vehicle with a gross vehicle weight rating (GVWR) of over 26,000 pounds and having a day cab and a non-road yard truck. The proposed minimum limit on the GVWR is intended to exclude from the program large vans and smaller delivery vehicles that, while they may transport cargo from trains or marine vessels, are not generally considered drayage vehicles. Also, larger vehicles generally emit higher levels of pollutants and replacement of larger vehicles used for drayage activities will achieve the most benefit and best address the goals of the program. The requirement that an on-road heavy-duty vehicle must have a day cab is intended to help ensure that vehicles purchased under the program will be used for local and regional drayage activities in and near rail yards and seaports and not for long-haul transport out of the area.

Criteria is also proposed in this section for the models of existing drayage trucks eligible for replacement under the program, to include a heavy-duty on-road vehicle with a GVWR over 26,000 pounds and a non-road yard truck. The proposed criteria for vehicles being replaced do not require that an existing on-road heavy-duty vehicle only have a day cab. Although a vehicle with a sleeper berth is intended to facilitate long-

haul, overnight travel, many older long-haul vehicles have been used for shorter drayage activities as those vehicles become less reliable for long-distance travel. The proposed criteria would allow for replacement of these older long-haul vehicles that have a sleeper berth, if those vehicles are currently being used for drayage activities. The vehicle purchased to replace the older vehicle may not have a sleeper berth.

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 use available funding appropriated out of the Texas Emissions Reduction Plan (TERP) - Account 5071 to implement the new drayage truck program. For the 2014 - 2015 biennium, appropriated funding for the program is a minimum of \$1,551,923 each year.

The proposed rules would amend Chapter 114 to implement the portions of SB 1727 concerning drayage truck replacement. Specifically, the proposed rules would define key program terms and establish criteria for the models of drayage trucks eligible for replacement and for purchase under the program.

Public port and rail authorities operating a seaport or rail yard in a nonattainment area may own and operate heavy-duty on-road vehicles and non-road yard trucks to transfer cargo in and near a seaport or rail yard under their jurisdiction. Those entities and other state agencies and local governments that own and operate eligible drayage trucks in and through the applicable rail yards or seaports may benefit if those entities apply for and receive a grant to replace an older drayage truck with a newer model.

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. Per the requirements of THSC, §386.182(d), an incentive provided under this program may be used to fund no more than 80% of the purchase price of the drayage truck. Based on this criterion, eligible incentive amounts are expected to range between \$60,000 and \$100,000.

Public Benefits and Costs

Ms. Chamness also determined that for each of the first five years the proposed rules are in effect, the anticipated public benefit will be an improvement in air quality in the areas of the state designated as nonattainment areas by the EPA under the Federal Clean Air Act and where incentive funding is awarded. The currently designated nonattainment areas include: El Paso PM₁₀ Nonattainment Area (City of El Paso); Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area (ten counties surrounding the cities of Dallas and Fort Worth); and Houston-Galveston-Brazoria Eight-Hour Ozone Nonattainment

Area (eight counties surrounding the cities of Houston and Galveston). A portion of Collin County is also designated nonattainment for the 2008 Lead National Ambient Air Quality Standard.

The proposed rules may benefit individuals that own or operate an eligible drayage truck if the individual applies for and receives a financial incentive under the program. Individuals that can utilize the funding should experience the same cost benefits as a local government or large business.

Businesses interested in applying for the program may benefit if their projects qualify for an incentive grant. Applying for a grant would be voluntary, and it is not known at this time how many businesses would do so. Per the requirements of THSC, §386.182(d), an incentive provided under this program may be used to fund no more than 80% of the purchase price of the drayage truck. Based on this criterion, eligible incentive amounts are expected to range between \$60,000 and \$100,000.

Staff is not able to determine how many businesses may be eligible to apply for a grant as a result of these proposed rules.

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 are expected to experience the same benefits as a large business. Staff is not able to determine how many small and micro-businesses would be eligible to apply for a grant as a result of these proposed rules.

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 by 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

rulemaking 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 1727, which amended THSC, Chapter 386. The proposed rules add eligibility requirements for a voluntary incentive 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 proposed rules 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 and performed an analysis of whether the proposed rules are subject to Texas Government Code, Chapter 2007. The primary purpose of the rulemaking is to amend Chapter 114 in accordance with SB 1727. The rules establish criteria for a voluntary program and only affects 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 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 establishes criteria for a voluntary incentive grant program and does not govern air pollution emissions.

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

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on December 12, 2013 at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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

Submittal of Comments

Written comments may be submitted to Michael Parrish, 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 2013-037-114-AI. The comment period closes December 18, 2013. Copies of the proposed rulemaking can be obtained from the commission's Web site at

http://www.tceq.texas.gov/nav/rules/propose_adopt.html. For further information,
please contact Steve Dayton, Implementation Grants Section, at (512) 239-6824.

SUBCHAPTER K: MOBILE SOURCE INCENTIVE PROGRAMS

DIVISION 8: DRAYAGE TRUCK INCENTIVE PROGRAM

§§114.680 - 114.682

Statutory Authority

The new sections 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 new sections 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 new sections are proposed as part of the implementation of Senate Bill 1727.

The proposed rules implement THSC, §386.182.

§114.680. Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used in this division have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms that are defined by the TCAA and §§3.2, 101.1, and 114.1 of this title (relating to Definitions), the following words and terms, when used in this division will have the following meanings, unless the context clearly indicates otherwise.

(1) Day cab--A conventional truck cab that does not include a sleeper berth.

(2) Drayage activities--The transport of cargo, such as containerized, bulk, or break-bulk goods.

(3) Drayage truck--A heavy-duty on-road or non-road vehicle used for drayage activities and that operates on or transgresses through a seaport or rail yard for the purpose of loading, unloading, or transporting cargo, including transporting empty containers and chassis.

(4) Non-road yard truck--A non-road mobile utility vehicle used to transport cargo containers with or without chassis; also known as a utility tractor rig, yard tractor, or terminal tractor.

(5) Rail yard--A rail facility where cargo is routinely transferred from drayage truck to train or vice versa, including structures that are devoted to receiving, handling, holding, consolidating, and loading or delivery of rail-borne cargo.

(6) Seaport--Publically or privately owned property associated with the primary movement of cargo or materials from ocean-going vessels to shore or vice versa, including structures and property devoted to receiving, handling, holding, consolidating, and loading or delivery of waterborne shipments.

§114.681. Applicability.

The provisions of §114.680 and §114.682 of this title (relating to Definitions and Eligible Vehicle Models) apply to the Drayage Truck Incentive Program established and implemented under Texas Health and Safety Code, Chapter 386, Subchapter D-1.

§114.682. Eligible Vehicle Models.

(a) Models of drayage trucks eligible for purchase to replace an existing drayage truck under the program include:

(1) a heavy-duty on-road vehicle with a gross vehicle weight rating over 26,000 pounds and having a day cab only; and

(2) a non-road yard truck.

(b) Models of existing drayage trucks eligible for replacement under the program include:

(1) a heavy-duty on-road vehicle with a gross vehicle weight rating over 26,000 pounds; and

(2) a non-road yard truck.

(c) To be eligible for purchase under the program a drayage truck must have an engine of model year 2010 or later as specified by the agency in the grant solicitation materials and the drayage truck being replaced must have an engine of model year 2006 or earlier.

(d) The executive director may further define or limit vehicle models and engine model years eligible for purchase and replacement under the program in order to improve the effectiveness and further the goals of the program.