

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners

Date: October 18, 2013

Thru: Bridget C. Bohac, Chief Clerk
Zak Covar, Executive Director

From: Steve Hagle, P.E., Deputy Director
Office of Air

Docket No.: 2013-1194-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 114, Control of Air Pollution From Motor Vehicles
SB 1727: Drayage Truck Incentive Program
Rule Project No. 2013-037-114-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, to add new Subchapter D-1. This subchapter establishes the Drayage Truck Incentive Program (program) to be funded from the Texas Emissions Reduction Plan (TERP) Fund and administered by the Texas Commission on Environmental Quality (commission). The changes enacted under SB 1727 require new rules to establish the criteria for models of drayage trucks eligible for funding under the program.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do: SB 1727 amended THSC, Chapter 386, to add new Subchapter D-1. The program is established to provide financial incentives to encourage owners of drayage trucks operating in seaports and rail yards located in the state's air quality nonattainment areas to replace drayage trucks with pre-2007 model year engines with drayage trucks with 2010 or later model year engines.

Under THSC, §386.182, the commission is to establish by rule the criteria for the models of drayage trucks eligible for inclusion in the program. 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.

Under the proposed rules, drayage activities would be defined as the transport of cargo, such as containerized, bulk, or break-bulk goods. Vehicles eligible for purchase funding under the program would include heavy-duty on-road vehicles over 26,000 pounds gross vehicle weight rating (GVWR) and with a day cab (i.e., no sleeper berth), and non-road yard trucks. To be considered a drayage truck, a vehicle must be used for drayage activities and operate on or transgress through a seaport or rail yard for the purpose of loading, unloading, or transporting cargo, including transporting empty containers and chassis. Per THSC, §386.183, the seaport or rail yard must be located in a nonattainment area.

Re: Docket No. 2013-1194-RUL

B.) Scope required by federal regulations or state statutes: The proposed rules are required by changes to THSC, Chapter 386, under SB 1727.

C.) Additional staff recommendations that are not required by federal rule or state statute: Staff is not recommending additional provisions beyond those required or authorized by state statute.

Statutory authority:

- Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties;
- TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of the state;
- TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission;
- THSC, §382.107, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act;
- THSC, §382.011, which authorizes the commission to establish the level of 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 TERP and the Drayage Truck Incentive Program.

Effect on the:

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

B.) Public: The public may benefit from improvements to air quality in the nonattainment areas where incentive funding is provided. In addition, individuals and businesses may benefit if an individual or business owns an eligible drayage truck and applies for and receives funding for the purchase of a replacement vehicle.

C.) Agency programs: The executive director will need to develop guidelines, criteria, and procedures to implement the program.

Stakeholder meetings:

Stakeholder meetings are not proposed for this rulemaking.

Potential controversial concerns and legislative interest:

There may be some interest, both for or against, the proposal to limit eligible vehicles to heavy-duty on-road vehicles over 26,000 pounds GVWR. Entities and individuals that currently operate vehicles with a lighter GVWR or that would want to purchase a lighter

Re: Docket No. 2013-1194-RUL

vehicle may not agree with the proposed limits. Also, the proposed requirement that the vehicle being purchased have a day cab only and no sleeper berth may generate concern by entities that would want to purchase a long-haul truck with a sleeper berth. Also, although the issue is not discussed in the proposed rule, there will be interest in decisions by the commission regarding the maximum distance a vehicle may be operated for at least 50% of its annual mileage.

Legislators involved in SB 1727 may be interested in the proposed rules.

Will this rulemaking affect any current policies or require development of new policies?

The executive director will need to develop criteria and procedures to implement the program. Decisions will need to be made regarding how the grant amounts will be determined. Also, specific facilities, properties, and geographic areas will need to be determined to identify eligible rail yards and seaports.

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

If the rulemaking is not completed, the program could not be implemented. Possible alternatives are not adopting the rules or adopting the rules at a later date and delaying implementation of the program.

Key points in the proposal rulemaking schedule:

Anticipated proposal date: November 6, 2013

Anticipated *Texas Register* publication date: November 22, 2013

Anticipated public hearing date (if any): December 12, 2013

Anticipated public comment period: November 8, 2013 - December 18, 2013

Anticipated adoption date: April 9, 2014

Agency contacts:

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

Betsy Peticolas, Staff Attorney, (512) 239-1439

Charlotte Horn, Texas Register Coordinator, (512) 239-0778

Attachments

cc: Chief Clerk, 2 copies
Executive Director's Office
Anne Idsal
Tucker Royall
Office of General Counsel
Steve Dayton
Charlotte Horn