

# 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.:** 2013-1193-RUL

**Subject:** Commission Approval for Proposed Rulemaking  
Chapter 114, Control of Air Pollution From Motor Vehicles  
SB 1727: Texas Clean Fleet Program  
Rule Project No. 2013-038-114-AI

### **Background and reason(s) for the rulemaking:**

Senate Bill (SB) 1727, 83rd Legislature, 2013, Regular Session, by Senators Deuell and Garcia, amended Texas Health and Safety Code (THSC), Chapters 386 and 392, to make changes to the criteria for the Texas Clean Fleet 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 amendment of existing rules to revise existing criteria and add new criteria.

### **Scope of the rulemaking:**

**A.) Summary of what the rulemaking will do:** SB 1727 amended THSC, §392.007(a), to remove the different standards for the percentage of incremental costs that may be covered by a grant based on the model year of the heavy-duty diesel engine or light-duty diesel vehicle being replaced. Under the revised subsection, the amount the commission is to award under a grant for each vehicle being replaced is up to 80%, as determined by the commission, of the total cost for replacement of a heavy-duty or light-duty diesel engine.

SB 1727 also amended THSC, Chapter 386, to add §386.0515. This new section defines "agricultural product transportation" and directs the commission to provide by rule or policy specific eligibility requirements under the program for projects related to agricultural product transportation. Under this section, the determining factor for eligibility for a project related to agricultural product transportation is the overall accumulative net reduction in nitrogen oxide emissions in a nonattainment area, affected county, or the clean transportation triangle.

The proposed rules would incorporate the changes to THSC, Chapters 386 and 392, under SB 1727.

**B.) Scope required by federal regulations or state statutes:** The proposed rule is required by changes to THSC, Chapter 386 and Chapter 392, under SB 1727.

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**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;
- THSC, Chapter 386, which establishes the Texas Emissions Reduction Plan; and
- THSC, Chapter 392, which establishes the Texas Clean Fleet Program.

**Effect on the:**

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

**B.) Public:** The change to the limits on the percentage of costs that may be covered by a grant may result in an increase to the eligible grant amounts depending on the limits that may be set by the executive director for a particular grant round. The additional criteria for projects related to the transportation of agricultural products may result in an increase in the number of projects eligible to be considered for grant funds to replace a vehicle used to transport raw agricultural products.

**C.) Agency programs:** Program processes, criteria, and forms will need to be updated.

**Stakeholder meetings:**

Stakeholder meetings are not proposed for this rulemaking.

**Potential controversial concerns and legislative interest:**

The proposed rule does not go further than what is required to comply with statutory changes. Therefore, staff does not anticipate any concerns with the rule. Staff expects legislators involved in SB 1727 to be interested in how the commission implements the changes to the program criteria.

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

The program processes, criteria, and forms will need to be updated.

**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 program under the existing rule would be inconsistent with the statutory provisions. Possible alternatives are not adopting the rule or adopting the rule 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:**

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**Attachments**

cc: Chief Clerk, 2 copies  
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