To: Commissioners

Date: December 20, 2019

Thru: Bridget C. Bohac, Chief Clerk
Toby Baker, Executive Director

From: Tonya Baer, Deputy Director
Office of Air

Docket No.: 2019-1091-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 114, Control of Air Pollution from Motor Vehicles
HB 1346 and HB 1627: Diesel Emissions Reduction Incentive Program
Rule Project No. 2019-122-114-AI

Background and reason(s) for the rulemaking:
The Texas Emissions Reduction Plan (TERP) was established under Texas Health and Safety Code (THSC), Chapter 386, by Senate Bill 5, during the 77th Texas Legislature, 2001. The TERP was created to provide financial incentives for reducing emissions of on-road heavy-duty motor vehicles and non-road equipment, with the Diesel Emissions Reduction Incentive Program (DERIP) established under THSC, Chapter 386, Subchapter C as the primary incentive program. The DERIP includes the Emissions Reduction Incentive Grants Program, Rebate Grants Program, and third-party grants.

The purpose of the rulemaking is to amend Chapter 114 in accordance with the amendments to THSC, Chapter 386 as a result of House Bill (HB) 1346 and HB 1627, 86th Texas Legislature, 2019. HB 1346 provided the commission with the authority to set a minimum percentage of vehicle miles traveled or hours of operation required to take place in a nonattainment area or affected county under the TERP DERIP as low as 55%. HB 1627 removed Victoria County from the list of affected counties eligible for grants under the TERP DERIP.

Scope of the rulemaking:
The proposed rulemaking would amend DERIP provisions to align current regulations with statute.

A.) Summary of what the rulemaking would do:
The proposed rulemaking would amend §114.622 to change the minimum percentage of usage in a nonattainment area or affected county from 75% to 55% and would amend §114.629 to remove Victoria County from the list of affected counties eligible for grants under the TERP DERIP.

B.) Scope required by federal regulations or state statutes:
The proposed rulemaking would implement HB 1346 and HB 1627.

C.) Additional staff recommendations that are not required by federal rule or state statute:
None.
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Statutory authority:
The amendments would be 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 would also be proposed under 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 TERP.

Effect on the:

A.) Regulated community:
The programs affected by this rulemaking are voluntary programs. The proposed rulemaking is not anticipated to have any implications on the regulated community.

B.) Public:
Public entities located within Victoria County are no longer eligible for these programs.

C.) Agency programs:
Agency publications and websites relating to these programs would need to be updated.

Stakeholder meetings:
The commission did not hold any stakeholder meetings related to this rulemaking; however, a public hearing would be offered in Austin during the rulemaking comment period.

Potential controversial concerns and legislative interest:
There is legislative interest regarding the implementation of HB 1346 and HB 1627.

Would this rulemaking affect any current policies or require development of new policies?
The rulemaking would require current internal policies and procedures for DERIP to be revised to align with amended rules. Existing guidelines available to the public would also need to be updated.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?
HB 1346 and HB 1627 require the commission to amend DERIP provisions. This rulemaking complies with that requirement and there are no alternatives to rulemaking. If the rulemaking does not move forward, commission rules would not align with statute.
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Key points in the proposal rulemaking schedule:
  Anticipated proposal date: January 15, 2020
  Anticipated Texas Register publication date: January 31, 2020
  Anticipated public hearing date (if any): February 25, 2020
  Anticipated public comment period: January 31, 2020 - March 3, 2020
  Anticipated adoption date: June 10, 2020

Agency contacts:
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Attachments:
HB 1346
HB 1627

c: Chief Clerk, 2 copies
   Executive Director’s Office
   Jim Rizk
   Morgan Johnson
   Brody Burks
   Office of General Counsel
   Amancio Gutierrez
   Kris Hogan