

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** December 22, 2021

Thru: Laurie Gharis, Chief Clerk
Toby Baker, Executive Director

From: Tonya Baer, Director
Office of Air

Docket No.: 2021-1099-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 114, Control of Air Pollution from Motor Vehicles
HB 4472: TERP Amendments
Rule Project No. 2021-032-114-AI

Background and reason(s) for the rulemaking:

The purpose of the rulemaking is to amend 30 Texas Administrative Code (TAC) Chapter 114 in accordance with the amendments to Texas Health and Safety Code (THSC), Chapter 386 as a result of House Bill (HB) 4472, 87th Texas Legislature, 2021 and to align with the existing statute. HB 4472 provided the commission with the authority to set a minimum percentage of annual hours of operation required for TERP-funded marine vessels or engines at 55% under the Diesel Emissions Reduction Incentive Program (DERIP). Existing statute requires that, over the lifetime of a project, the marine vessels or engines must be operated in the intercoastal waterways or bays adjacent to a nonattainment area or affected county of this state by the percentage established by the commission.

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 30 TAC §114.622, creating a new subsection (c), establishing that proposed projects involving marine vessels or engines must be operated in the intercoastal waterways or bays adjacent to a nonattainment area or affected county of this state for not less than 55% over the lifetime of the project to implement HB 4472. Also, the commission proposes to amend subsequent subsections to align with the new subsection (c).

B.) Scope required by federal regulations or state statutes:

The proposed rulemaking would implement HB 4472 and existing statute.

C.) Additional staff recommendations that are not required by federal rule or state statute:

None.

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 TERP.

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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:

The programs affected by this rulemaking are voluntary programs. The proposed rulemaking is not anticipated to have any implications on the public.

C.) Agency programs:

Agency publications and websites relating to these programs will need to be updated.

Stakeholder meetings:

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

Potential controversial concerns and legislative interest:

None.

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

The rulemaking will require revisions to internal policies and procedures for DERIP to align with amended rules. Existing guidelines available to the public will also be updated.

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

HB 4472 requires 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 will not align with statute.

Key points in the proposed rulemaking schedule:

Anticipated proposal date: January 12, 2022

Anticipated *Texas Register* publication date: January 28, 2022

Anticipated public hearing date: February 18, 2022

Anticipated public comment period: January 28, 2022 - March 1, 2022

Anticipated adoption date: June 1, 2022

Agency contacts:

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Attachments:

House Bill 4472

cc: Chief Clerk, 2 copies
Executive Director's Office
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