

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Commissioners **Date:** September 18, 2009
Thru: LaDonna Castañuela, Chief Clerk
Mark R. Vickery, P.G., Executive Director
From: Susana M. Hildebrand, P.E., Chief Engineer
Chief Engineer's Office
Docket No.: 2009-1185-RUL
Subject: Commission Approval for Proposed Rulemaking
Chapter 114, Control of Air Pollution From Motor Vehicles
SB 1759: Texas Clean Fleet Program
Rule Project No. 2009-047-114-EN

Reasons for the rule package:

Senate Bill (SB) 1759, 81st Legislative Session, requires the commission to adopt rules as required by Texas Health and Safety Code, Chapter 391.

Under what authority are we proposing these changes?

- Texas Water Code, §5.102, which provides the commission with the general powers to carry out its duties;
- Texas Water Code; §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state;
- Texas Water Code, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission
- Texas Health and Safety Code, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act;
- Texas Health and Safety Code, §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;
- Texas Health and Safety Code, §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air;
- Texas Health and Safety Code, Chapter 386, which establishes the Texas Emissions Reduction Plan (TERP) program.

Is this rulemaking required by federal rule or state statute? Yes. Which ones? SB 1759.

Are there any legal deadlines by which these rules must be proposed, adopted, or effective? No.

What issue(s) or problem(s) are we trying to solve? This rulemaking implements the new Texas Clean Fleet Program authorized by SB 1759.

Why is it important that we do this rule package? To implement requirements of SB 1759.

Other important background or historical information. N/A.

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Scope of the rulemaking:

The rulemaking implements the new Texas Clean Fleet Program. This voluntary grant program is designed to encourage eligible fleets to replace diesel-powered vehicles with alternative fuel or hybrid vehicles.

Changes required by federal rule: N/A

Changes required by state statute: SB 1759 requires the commission to adopt rules to implement this new program as soon as practicable.

Staff recommendations that are not expressly required by federal rule or state statute: N/A.

Impact on the regulated community:

Who will be affected? The Texas Clean Fleet program is a voluntary diesel emissions incentive grant program. Any eligible entity in the state can participate in the program.

Does it create a group of affected persons who were not affected previously? This rulemaking creates a new grant program in which eligible entities can voluntarily participate.

Will there be a fiscal impact? No. **If so, estimate.**

Impact on the public:

Who will be affected? The Texas Clean Fleet program is a voluntary diesel emissions incentive grant program. Any eligible entity in the state can participate in the program.

Does it create a group of affected persons who were not affected previously? This rulemaking creates a new grant program in which eligible entities can voluntarily participate.

Will there be a fiscal impact? No. **If so, estimate.**

Impact on agency programs:

This rulemaking will require new grant program procedures. Application forms will need to be created for this program. A funding plan will also be developed that will further outline eligibility and selection criteria. The rules will not impact agency funding or full-time equivalent requirements.

Stakeholder meetings:

Have any stakeholder meetings been held? No meetings have been held to date. Stakeholders have the opportunity to provide input during the public comment process for this rulemaking.

With whom? N/A

What were the general sentiments? N/A

Were any changes made in response to stakeholder concerns? N/A

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Policy issues:

What policy issues are affected? N/A

Are any policies that are not currently based on rule being made into a rule? No.

What are the consequences if this rulemaking is not approved to go forward? Legislation will not be implemented as required.

Are there alternatives? Possible alternatives are not adopting the rules and being inconsistent with statute or adopting the rules at a later date.

Potentially controversial matters:

Due to the limited funding that has been allocated to the Texas Clean Fleet Program there is a potential for controversy regarding the number of entities that will ultimately get selected for grant funding. SB 1759 established that only five percent of the overall TERP funds be allocated to the program. This results in approximately \$6.8 million in Fiscal Year 2010 and \$5.2 million for Fiscal Year 2011.

This program is designed such that each project would involve the replacement of a minimum of 25 vehicles at a time. Additionally, the broad language of the bill results in a potentially large pool of eligible entities that may seek grant funds. Given all of these factors it is likely that all of the program funds will be allocated to a small number of applicants.

Key points in proposed rulemaking schedule:

Anticipated proposal date: October 7, 2009

Anticipated *Texas Register* publication date: October 23, 2009

Public hearing date (if any): November 16, 2009

Public comment period: October 23, 2009 - November 23, 2009

Anticipated adoption date: March 2010

Agency contacts:

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Attachments

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cc: Chief Clerk, 5 copies
Executive Director's Office
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