

Texas Commission on Environmental Quality

4 Chapter 114 - Control of Air Pollution from Motor Vehicles

4K Subchapter K : Mobile Sources Incentive Programs

4K3 DIVISION 3 : DIESEL EMISSION REDUCTION INCENTIVE PROGRAM FOR ON-ROAD AND NON-ROAD VEHICLES

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**DIVISION 3: DIESEL EMISSIONS REDUCTION INCENTIVE PROGRAM  
FOR ON-ROAD AND NON-ROAD VEHICLES**

**§§114.620 - 114.624, 114.626, 114.629**

~~**EFFECTIVE MAY 1, 2014**~~

**§114.620. Definitions.**

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used in this subchapter have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA and §§3.2, 101.1, and 114.1 of this title (relating to Definitions), the following words and terms, when used in this division shall have the following meanings, unless the context clearly indicates otherwise.

(1) Cost-effectiveness--The total dollar amount expended divided by the total number of tons of nitrogen oxides emissions reduction attributable to that expenditure. In calculating cost-effectiveness, one-time grants of money at the beginning of a project shall be annualized using a time value of public funds or discount rate determined for each project by the commission, taking into account the interest rate on bonds, interest earned by state funds, and other factors the commission considers appropriate.

(2) Guidelines--*Texas Emissions Reduction Plan: Guidelines for Emissions Reduction Incentive Grants Program* (RG-388) adopted by the commission under Texas Health and Safety Code, §386.053, as amended.

(3) Incremental cost--The cost of an applicant's project less a baseline cost that would otherwise be incurred by an applicant in the normal course of business and may include added lease or fuel costs as well as additional capital costs.

(4) Motor vehicle--A self-propelled device designed for transporting persons or property on a public highway that is required to be registered under Texas Transportation Code, Chapter 502.

(5) Non-road diesel--A vehicle or piece of equipment, excluding a motor vehicle or on-road diesel, that is powered by a non-road engine, including: non-road non-recreational equipment and vehicles; construction equipment; locomotives; marine vessels; and other high-emitting diesel engine categories.

(6) Non-road engine--An internal combustion engine that is in or on a piece of equipment that is self-propelled or that propels itself and performs another function, excluding a vehicle that is used solely for competition, or a piece of equipment

that is intended to be propelled while performing its function, or a piece of equipment designed to be and capable of being carried or moved from one location to another.

(7) On-road diesel--An on-road diesel-powered motor vehicle that has a gross vehicle weight rating of 8,500 pounds or more,

(8) Qualifying fuel--Any liquid or gaseous fuel or additives registered or verified by the United States Environmental Protection Agency that is ultimately dispensed into a motor vehicle or on-road or non-road diesel that provides reductions of nitrogen oxides emissions beyond reductions required by state or federal law.

(9) Repower--To replace an old engine powering an on-road or non-road diesel with a new engine; a used engine; a remanufactured engine; or electric motors, drives, or fuel cells.

(10) Retrofit--To equip an engine and fuel system with new emissions-reducing parts or technology verified by the United States Environmental Protection Agency after manufacture of the original engine and fuel system.

(11) Small business--A business owned by a person who:

(A) owns and operates not more than two vehicles, one of which is:

(i) an on-road diesel with a pre-1994 engine model; or

(ii) a non-road diesel with an engine with uncontrolled

emissions; and

(B) has owned the on-road or non-road diesel for more than one year.

(12) Stationary engine--A machine used in non-mobile applications that converts fuel into mechanical motion, including turbines and other internal combustion devices.

Adopted February 24, 2010

Effective March 21, 2010

**§114.621. Applicability.**

Any person that owns or leases, or intends to own or lease, one or more on-road or non-road diesels that operate, or will operate, within counties listed in §114.629 of this title (relating to Applicable Counties and Implementation Schedule) may apply for a grant under the diesel emissions reduction incentive program. Subject to the criteria

included in the commission's *Texas Emissions Reduction Plan: Guidelines for Emissions Reduction Incentive Grants Program* (RG-388), a person other than the owner or lessee may also apply for and receive a grant.

Adopted January 28, 2004

Effective February 17, 2004

~~§114.622. Incentive Program Requirements.~~

~~(a) Eligible projects include:~~

- ~~(1) purchase or lease of on road and non road diesels;~~
- ~~(2) emissions reducing retrofit projects for on road or non road diesels;~~
- ~~(3) emissions reducing repower projects for on road or non road diesels;~~
- ~~(4) purchase and use of emissions reducing add on equipment for on road or non road diesels;~~
- ~~(5) development and demonstration of practical, low emissions retrofit technologies, repower options, and advanced technologies for on road or non road diesels with lower nitrogen oxides (NOX) emissions;~~
- ~~(6) use of qualifying fuel;~~
- ~~(7) implementation of infrastructure projects;~~
- ~~(8) replacement of on road and non road diesels with newer on road and non road diesels; and~~
- ~~(9) other projects that have the potential to reduce anticipated NOX emissions from diesel engines.~~

~~(b) For a proposed project as listed in subsection (a) of this section, other than a project involving a marine vessel or engine, a project involving non road equipment used for natural gas recovery purposes, a project involving replacement of a motor vehicle, or a project involving the purchase or lease of a motor vehicle, not less than 75% of vehicle miles traveled or hours of operation projected for the five years immediately following the award of a grant must be projected to take place in a nonattainment area or affected county of this state. The commission may also allow vehicle travel on highways and roadways, or portions of a highway or roadway, designated by the commission and located outside a nonattainment area or affected county to count towards the percentage of use requirement.~~

**§114.622. Incentive Program Requirements.**

(a) Eligible projects include:

(1) purchase or lease of on-road and non-road diesels;

(2) emissions-reducing retrofit projects for on-road or non-road diesels;

(3) emissions-reducing repower projects for on-road or non-road diesels;

(4) purchase and use of emissions-reducing add-on equipment for on-road or non-road diesels;

(5) development and demonstration of practical, low-emissions retrofit technologies, repower options, and advanced technologies for on-road or non-road diesels with lower nitrogen oxides (NO<sub>x</sub>) emissions;

(6) use of qualifying fuel;

(7) implementation of infrastructure projects;

(8) replacement of on-road and non-road diesels with newer on-road and non-road diesels; and

(9) other projects that have the potential to reduce anticipated NO<sub>x</sub> emissions from diesel engines.

(b) For a proposed project as listed in subsection (a) of this section, other than a project involving a marine vessel or engine, a project involving non-road equipment used for natural gas recovery purposes, a project involving replacement of a motor vehicle, or a project involving the purchase or lease of a motor vehicle, not less than 75% of vehicle miles traveled or hours of operation projected for the five years immediately following the award of a grant must be projected to take place in a nonattainment area or affected county of this state. The commission may also allow vehicle travel on highways and roadways, or portions of a highway or roadway, designated by the commission and located outside a nonattainment area or affected county to count towards the percentage of use requirement.

(c) For a proposed motor vehicle replacement, purchase, or lease project, the period used to determine the emissions reductions and cost-effectiveness of each replacement, purchase, or lease activity included in the project must extend for five years or more, or 400,000 miles, whichever occurs earlier. Not less than 75% of the vehicle miles traveled projected for the period used to determine the emissions reductions must be projected to take place in a nonattainment area or affected county of this state. The commission may also allow vehicle travel on highways and roadways, or portions of a highway or roadway, designated by the commission and located outside of

a nonattainment county or affected county to count towards the percentage of use requirement.

(d) For a proposed project that includes a replacement of equipment or a repower, the old equipment or engine must be recycled or scrapped provided, however, that the executive director may allow permanent removal from the State of Texas in specific grants where the applicant has provided sufficient assurances that the old locomotive will not be returned to the State of Texas.

(e) For a proposed project to replace a motor vehicle, the vehicle and engine must be decommissioned by crushing the vehicle and engine, by making a hole in the engine block and permanently destroying the frame of the vehicle, or by another method approved by the executive director that permanently removes the vehicle and engine from operation in this state. For a proposed project to repower a motor vehicle, the engine being replaced must be decommissioned in a manner consistent with the requirements for decommissioning an engine as part of a vehicle replacement project. The executive director shall allow an applicant for a motor vehicle replacement or repower project to propose an alternative method for complying with the requirements of this subsection.

(f) For a project to replace a motor vehicle, the vehicle being replaced may have been owned, leased, or otherwise commercially financed by the applicant. The applicant

must have a legal right to replace and recycle or scrap the vehicle and engine before a grant is awarded for that project.

(g) To be eligible for a grant, the cost-effectiveness of a proposed project as listed in subsection (a) of this section, except for infrastructure projects and infrastructure purchases that are part of a broader retrofit, repower, replacement, or add-on equipment project, must not exceed a cost-effectiveness of \$15,000 per ton of NO<sub>x</sub> emissions reduced. The commission may set lower cost-effectiveness limits as needed to ensure the best use of available funds. The commission may also base project selection decisions on additional measures to evaluate the effectiveness of projects in reducing NO<sub>x</sub> emissions in relation to the funds to be awarded.

(h) The executive director shall waive eligibility requirements established under subsections (b) - (f) of this section on a finding of good cause, which may include a waiver of any ownership and use requirements established for replacement of a motor vehicle for short lapses in registration or operation attributable to economic conditions, seasonal work, or other circumstances. In determining good cause and deciding whether to grant a waiver, the executive director shall ensure that the emissions reductions that will be attributed to the project will still be valid and, where applicable, meet the conditions for assignment for credit to the state implementation plan.



(i) Projects funded with a grant from this program may not be used for credit under any state or federal emissions reduction credit averaging, banking, or trading program except as provided under Texas Health and Safety Code, §386.056.

(j) A proposed project as listed in subsection (a) of this section is not eligible if it is required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document. This subsection does not apply to:

(1) an otherwise qualified project, regardless of the fact that the state implementation plan assumes that the change in equipment, vehicles, or operations will occur, if on the date the grant is awarded the change is not required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document; or

(2) the purchase of an on-road diesel or equipment required only by local law or regulation or by corporate or controlling board policy of a public or private entity.

(k) A proposed retrofit, repower, replacement, or add-on equipment project must achieve a reduction in NO<sub>x</sub> emissions to the level established in the commission's *Texas Emissions Reduction Plan: Guidelines for Emissions Reduction Incentive Grants Program* (RG-388) for that type of project compared with the baseline emissions adopted by the commission for the relevant engine year and application.

(l) If a grant recipient fails to meet the terms of a project grant or the conditions of this division, the executive director can require that the grant recipient return some or all of the grant funding to the extent that emission reductions are not achieved or cannot be demonstrated.

(m) Criteria established in the guidelines, including revisions to the commission's *Texas Emissions Reduction Plan: Guidelines for Emissions Reduction Incentive Grants Program* (RG-388), apply to the Texas Emissions Reduction Plan program.

Notwithstanding the provisions of this chapter, as authorized under Texas Health and Safety Code, §386.053(d), revisions to the guidelines may include, among other changes, adding additional pollutants; adding stationary engines or engines used in stationary applications; adding vehicles and equipment that use fuels other than diesel; or adjusting eligible program categories; as appropriate, to ensure that incentives established under this program achieve the maximum possible emission reductions.

~~Adopted April 9, 2014~~

~~Effective May 1, 2014~~

**§114.623. Small Business Incentives.**

(a) This section establishes a process to provide fast and simple access to grants for small businesses, in accordance with Texas Health and Safety Code, §386.116, as amended.

(b) The grant process for a small business may include:

- (1) a simplified grant application and other forms;
- (2) pre-approval or pre-authorization of certain types of grant purchases and expenses;
- (3) a simplified expense reimbursement process, which may include procedures for the grant recipient to assign grant payments directly to the vendor; and
- (4) promotional activities and instructional materials targeted at small businesses to encourage them to participate in the program and to inform them of how to access the grants.

(c) The commission's *Texas Emissions Reduction Plan: Guidelines for Emissions Reduction Incentive Grants Program* (RG-388) shall include details to implement methods identified in subsection (b) of this section.

(d) Other methods for providing fast and simple access to grants for small businesses may be developed through guidelines.

Adopted January 28, 2004

Effective February 17, 2004

**§114.624. Rebate Grant Process.**

(a) This section establishes a process to provide fast and simple access to rebate grants, in accordance with Texas Health and Safety Code, §386.117.

(b) The rebate grant process shall:

- (1) designate certain types of projects eligible for rebates;
- (2) project standardized oxides of nitrogen emissions reductions for each designated project type;

- (3) assign a standardized rebate amount for each designated project type;
- (4) allow for processing rebates on an ongoing first-come, first-served basis; and
- (5) consolidate, simplify, and reduce the administrative work for applicants and the commission associated with grant application, contracting, reimbursement, and reporting processes for designated project types.

(c) The commission may:

- (1) award rebate grants as a pilot project for a specific region or may award the grants statewide;
- (2) limit or expand the designated project types as necessary to further the goals of the program; and
- (3) administer the rebate grants or may designate another entity to administer the grants.

Adopted September 20, 2006

Effective October 12, 2006

#### **§114.626. Monitoring, Recordkeeping, and Reporting Requirements.**

Grant recipients must meet the reporting requirements of their grant which must occur no less frequently than annually.

Adopted August 22, 2001

Effective September 13, 2001

#### ~~**§114.629. Affected Counties and Implementation Schedule.**~~

~~(a) Applicable counties in the incentive program include: Bastrop, Bexar, Brazoria, Caldwell, Chambers, Collin, Comal, Dallas, Denton, El Paso, Ellis, Fort Bend, Galveston, Gregg, Guadalupe, Harris, Hardin, Harrison, Hays, Henderson, Hood, Hunt, Jefferson, Johnson, Kaufman, Liberty, Montgomery, Nueces, Orange, Parker, Rockwall, Rusk, San Patricio, Smith, Tarrant, Travis, Upshur, Victoria, Waller, Williamson, Wilson, Wise, and any other county located within an area of Texas designated as a nonattainment area for ground level ozone under Federal Clean Air Act, §107(d), as amended.~~

~~(b) Equipment purchased before September 1, 2001 is not eligible for a grant under this program.~~

~~(1) a simplified grant application and other forms;~~

~~(2) pre-approval or pre-authorization of certain types of grant purchases and expenses;~~

~~(3) a simplified expense reimbursement process, which may include procedures for the grant recipient to assign grant payments directly to the vendor; and~~

~~(4) promotional activities and instructional materials targeted at small businesses to encourage them to participate in the program and to inform them of how to access the grants.~~

~~(c) The commission's *Texas Emissions Reduction Plan: Guidelines for Emissions Reduction Incentive Grants Program (RG-388)* shall include details to implement methods identified in subsection (b) of this section.~~

~~(d) Other methods for providing fast and simple access to grants for small businesses may be developed through guidelines.~~

**§114.629. Applicable Counties and Implementation Schedule.**

(a) Applicable counties in the incentive program include: Bastrop, Bexar, Brazoria, Caldwell, Chambers, Collin, Comal, Dallas, Denton, El Paso, Ellis, Fort Bend, Galveston, Gregg, Guadalupe, Harris, Hardin, Harrison, Hays, Henderson, Hood, Hunt, Jefferson, Johnson, Kaufman, Liberty, Montgomery, Nueces, Orange, Parker, Rockwall, Rusk, San

Patricio, Smith, Tarrant, Travis, Upshur, Victoria, Waller, Williamson, Wilson, and any other county located within an area of Texas designated as a nonattainment area for ground-level ozone under Federal Clean Air Act, §107(d), as amended.

(b) Equipment purchased before September 1, 2001 is not eligible for a grant under this program.