



## States' Biofuels Statutes

### STATE OF TEXAS

*This project was undertaken in partnership with the USDA Office of the Chief Economist, The Office of Energy Policy and New Uses. For information on the full project, visit [States' Biofuels Statutory Citations](#).*

*Current through the 2014 Legislative Session of the Texas State Legislature.*

#### **§ 386.001. Definitions**

<Chapter 386 expires Aug. 31, 2019, pursuant to V.T.C.A., Health & Safety Code § 386.002.>

In this chapter:

- (1) "Advisory board" means the Texas Emissions Reduction Plan Advisory Board.
- (2) "Affected county" includes:
  - (A) Bastrop County;
  - (B) Bexar County;
  - (C) Caldwell County;
  - (D) Comal County;
  - (E) Ellis County;
  - (F) Gregg County;
  - (G) Guadalupe County;
  - (H) Harrison County;
  - (I) Hays County;
  - (J) Henderson County;
  - (K) Hood County;
  - (L) Hunt County;
  - (M) Johnson County;
  - (N) Kaufman County;
  - (O) Nueces County;
  - (P) Parker County;
  - (Q) Rockwall County;
  - (R) Rusk County;
  - (S) San Patricio County;

- (T) Smith County;
  - (U) Travis County;
  - (V) Upshur County;
  - (W) Victoria County;
  - (X) Williamson County;
  - (Y) Wilson County; and
  - (Z) any other county designated as an affected county by commission rule because of deteriorating air quality.
- (3) "Commission" means the Texas Natural Resource Conservation Commission.
- (4) Repealed by Acts 2005, 79th Leg., ch. 1125, § 22.
- (5) "Fund" means the Texas emissions reduction plan fund.
- (6) "Incremental cost" means 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. Incremental costs may include added lease or fuel costs as well as additional capital costs.
- (7) "Laboratory" means the Energy Systems Laboratory at the Texas Engineering Experiment Station of The Texas A&M University System.
- (8) "Nonattainment area" means an area so designated under Section 107(d) of the federal Clean Air Act (42 U.S.C. Section 7407), as amended.
- (9) "Plan" means the Texas emissions reduction plan.
- (10) "Site" means the total of all stationary sources located on one or more contiguous or adjacent properties, which are under common control of the same person or persons under common control.
- (10-a) "Stationary engine" means a machine used in a nonmobile application that converts fuel into mechanical motion, including turbines and other internal combustion devices.
- (11) "Utility commission" means the Public Utility Commission of Texas.

**§ 386.002. Expiration**

This chapter expires August 31, 2019.

**§ 386.051. Texas Emissions Reduction Plan**

- (a) The utility commission, the commission, and the comptroller shall establish and administer the Texas emissions reduction plan in accordance with this chapter.
- (b) Under the plan, the commission and the comptroller shall provide grants or other funding for:
  - (1) the diesel emissions reduction incentive program established under Subchapter C,1 including for infrastructure projects established under that subchapter;
  - (2) the motor vehicle purchase or lease incentive program established under Subchapter D;2
  - (3) the air quality research support program established under Chapter 387;
  - (4) the clean school bus program established under Chapter 390;
  - (5) the new technology implementation grant program established under Chapter 391;

- (6) the regional air monitoring program established under Section 386.252(a) ;
  - (7) a health effects study as provided by Section 386.252(a) ;
  - (8) air quality planning activities as provided by Section 386.252(a) ;
  - (9) a contract with the Energy Systems Laboratory at the Texas Engineering Experiment Station for computation of creditable statewide emissions reductions as provided by Section 386.252(a)(14);
  - (10) the clean fleet program established under Chapter 392;
  - (11) the alternative fueling facilities program established under Chapter 393;
  - (12) the natural gas vehicle grant program and clean transportation triangle program established under Chapter 394;
  - (13) other programs the commission may develop that lead to reduced emissions of nitrogen oxides, particulate matter, or volatile organic compounds in a nonattainment area or affected county;
  - (14) other programs the commission may develop that support congestion mitigation to reduce mobile source ozone precursor emissions; and
  - (15) the drayage truck incentive program established under Subchapter D-1 .
- (b-1) Under the plan, the commission may establish and administer other programs, including other grants or funding programs, as determined by the commission to be necessary or effective in fulfilling its duties and achieving the objectives described under Section 386.052. The commission may apply the criteria and requirements applicable to the programs under Subsection (b) to programs established under this subsection, or the commission may establish separate criteria and requirements as necessary to achieve the commission's objectives. The additional programs shall be consistent with and comply with all applicable laws, regulations, and guidelines pertaining to the use of state funds, the awarding and administration of grants and contracts, and achieving reductions in ozone precursors or particulate matter. Under this subsection, the commission may place a priority on programs that address the following goals:
- (1) reduction of emissions of oxides of nitrogen or particulate matter from heavy-duty on-road vehicles and non-road equipment, including drayage vehicles, locomotives, and marine vessels, at seaport facilities or servicing seaport facilities in nonattainment areas; and
  - (2) reduction of emissions from the operation of drilling, production, completions, and related heavy-duty on-road vehicles or non-road equipment in oil and gas production fields where the commission determines that the programs can help prevent that area or an adjacent area from being in violation of national ambient air quality standards.
- (c) Repealed by Acts 2013, 83rd Leg., ch. 1230 (S.B. 1727), § 25(1).
- (d) Equipment purchased before September 1, 2001, is not eligible for a grant or other funding under the plan.

**§ 386.052. Commission Duties**

- (a) In administering the plan established under this chapter and in accordance with the requirements of this chapter, the commission:
- (1) shall:
    - (A) manage plan funds and oversee the plan;
    - (B) produce guidelines, protocols, and criteria for eligible projects;
    - (C) develop methodologies for evaluating project cost-effectiveness;
    - (D) prepare reports regarding the progress and effectiveness of the plan; and
    - (E) take all appropriate and necessary actions so that emissions reductions achieved through the plan are credited by the United States Environmental Protection Agency to the appropriate emissions reduction objectives in the state implementation plan; and
  - (2) may hire staff and consultants needed to complete the commission's duties under this section and ensure timely review of applications and reimbursement of grant applicants' eligible project costs.
- (b) Appropriate commission objectives include:
- (1) achieving maximum reductions in oxides of nitrogen to demonstrate compliance with the state implementation plan;
  - (2) preventing areas of the state from being in violation of national ambient air quality standards;
  - (3) achieving cost-saving and multiple benefits by reducing emissions of other pollutants;
  - (4) achieving reductions of emissions of diesel exhaust from school buses; and

(5) advancing new technologies that reduce oxides of nitrogen and other emissions from facilities and other stationary sources.

### **§ 386.053. Guidelines and Criteria**

a) The commission shall adopt grant guidelines and criteria consistent with the requirements of this chapter.

(b) Guidelines must include protocols to calculate projected emissions reductions, project cost-effectiveness, and safeguards to ensure that funded projects generate emissions reductions not otherwise required by state or federal law.

(c) The commission shall make draft guidelines and criteria available to the public and the United States Environmental Protection Agency before the 30th day preceding the date of final adoption and shall hold at least one public meeting to consider public comments on the draft guidelines and criteria before final adoption. The public meeting shall be held in the affected state implementation plan area, and if the guidelines affect more than one state implementation plan area, a public meeting shall be held in each affected state implementation plan area affected by the guidelines.

(d) The commission may propose revisions to the guidelines and criteria adopted under this section as necessary to improve the ability of the plan to achieve its goals. Revisions 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 chapter achieve the maximum possible emissions reductions. The commission shall make a proposed revision available to the public before the 30th day preceding the date of final adoption of the revision and shall hold at least one public meeting to consider public comments on the proposed revision before final adoption.

(e) Because the legislature finds that the current state of air quality in the state jeopardizes the state's ability to meet federal air quality requirements, the commission and the comptroller may adopt emergency rules under Section 2001.034, Government Code, with abbreviated notice, to carry out any rulemaking necessary to implement this chapter.

(f) Except as provided by Subsection (e), the rulemaking requirements of Chapter 2001, Government Code, do not apply to the adoption or revision of guidelines and criteria under this section.

### **§ 386.054. Monitoring Procedures**

(a) The commission shall develop procedures for monitoring whether the emissions reductions projected for projects awarded grants under this chapter are actually achieved. Monitoring procedures may include project reviews and contract requirements that the grant recipient provide information semiannually about the project. If the commission requires an annual report, the report shall contain a minimum amount of information required from a recipient and the report format shall be simple and convenient.

(b) Monitoring and reviewing procedures must be sufficient to enable emissions reductions generated by funded projects to be fully credited to air quality plans.

(c) The commission may revise monitoring and review procedures from time to time as necessary or appropriate to enhance the effectiveness of the plan.

### **§ 386.055. Availability of Emissions Reduction Credits Generally**

(a) A project funded under a program established under this chapter may not be used for credit under any state or federal emissions reduction credit averaging, banking, or trading program.

(b) An emissions reduction generated by a program established under this chapter:

(1) may not be used as a marketable emissions reduction credit or, except as provided by Section 386.056, to offset any emissions reduction obligation; and

(2) may be used to demonstrate conformity with the state implementation plan.

(c) A project involving a new emissions reduction measure that would otherwise generate marketable credits under state or federal emissions reduction credit averaging, banking, or trading programs is not eligible for funding under a program established under this chapter unless:

- (1) the project includes the transfer of the reductions that would otherwise be marketable credits to the state implementation plan or the owner or operator as provided by Section 386.056; and
- (2) the reductions are permanently retired.

### **§ 386.056. Availability of Emissions Reductions in Certain Nonattainment Areas**

(a) An owner or operator of a site located in the Houston-Galveston or Dallas-Fort Worth nonattainment area may use emissions reductions generated by a program established under this chapter to offset the requirements of commission rules relating to control of air pollution from oxides of nitrogen if:

- (1) the owner or operator of the site contributes to the fund \$75,000 for each ton of emissions that is used, not to exceed 25 tons annually and not to exceed one-half ton per day;
  - (2) the owner or operator of the site demonstrates to the commission's satisfaction that the site will be in full compliance with the commission's emissions reduction rules not later than the fifth anniversary of the date on which the emissions reductions would otherwise be required;
  - (3) emissions from the site are reduced by at least 80 percent from the established baseline; and
  - (4) the commission approves a petition by the owner or operator that demonstrates that it is technically infeasible to comply with the commission's emissions reduction requirements above 80 percent.
- (b) Funds collected under this section shall be used to generate emissions reductions needed to meet the commission's attainment demonstration.
- (c) The commission shall verify that emissions reductions generated from funds collected under this section occur in the same nonattainment area in which the site that purchased the emissions reductions is located.
- (d) The commission shall assure that the emissions reductions funded under the programs authorized by this subchapter used to offset commission requirements under this section benefit the community in which the site using the emissions reductions is located. If there are no eligible emissions reduction projects within the community, the commission may authorize projects in an adjacent community. In this subsection, "community" means a justice of the peace precinct.
- (e) The commission shall assure that emission reduction credits may be received in the Houston-Galveston nonattainment area for energy efficiency and urban heat island programs in connection with the State Implementation Plan for the eight-hour ozone standard.

### **§ 386.057. Review and Reporting Requirements**

- (a) The commission, in consultation with the advisory board, annually shall review programs established under the plan, including each project funded under the plan, the amount granted for the project, the emissions reductions attributable to the project, and the cost-effectiveness of the project.
- (b) Not later than December 1, 2002, and not later than December 1 of each subsequent second year, the commission, in consultation with the advisory board, shall publish and submit to the legislature a biennial plan report. The report must include:
- (1) the information included in the annual reviews conducted under Subsection (a);
  - (2) specific information for individual projects as required by Subsection (c);
  - (3) information contained in reports received under Sections 386.205, 388.003(e), 388.006, and 391.104; and
  - (4) a summary of the commission's activities under Section 386.052.

- (c) For projects funded as part of the infrastructure program under Subchapter C,1 the report must:
  - (1) describe and evaluate:
    - (A) the infrastructure facilities funded under that subchapter;
    - (B) the degree to which the funded facilities are supporting on-road or non-road diesel projects;
    - (C) the amount of fuel or electricity dispensed for each facility; and
    - (D) associated emissions reductions and cost-effectiveness; and
  - (2) make a finding regarding the need for additional appropriations from the fund to improve the ability of the program to achieve its goals.
- (d) The report must:
  - (1) account for money received, money disbursed as grants, money reserved for grants based on project approvals, and any recommended transfer of money between allocations and must estimate future demand for grant funds under the plan;
  - (2) describe the overall effectiveness of the plan in delivering the emissions reductions that may be credited to air quality plans;
  - (3) evaluate the effectiveness of the plan in soliciting and evaluating project applications, providing awards in a timely manner, and monitoring project implementation;
  - (4) describe adjustments made to project selection criteria and recommend any further needed changes or adjustments to the grant programs, including changes in grant award criteria, administrative procedures, or statutory provisions that would enhance the plan's effectiveness and efficiency;
  - (5) describe adjustments made to the maximum cost-effectiveness amount and award amount;
  - (6) evaluate the benefits of addressing additional pollutants as part of the plan; and
  - (7) include legislative recommendations necessary to improve the effectiveness of the plan.
- (e) Repealed by Acts 2005, 79th Leg., ch. 1125, § 22.

**§ 386.058. Texas Emissions Reduction Plan Advisory Board**

- (a) The Texas Emissions Reduction Plan Advisory Board consists of 15 members appointed as provided by this section and seven ex officio members as provided by this section.
- (b) The governor shall appoint to the advisory board:
  - (1) a representative of the trucking industry;
  - (2) a representative of the air conditioning manufacturing industry;
  - (3) a representative of the electric utility industry;
  - (4) a representative of regional transportation; and
  - (5) a representative of the nonprofit organization described by Section 387.002 .
- (c) The lieutenant governor shall appoint to the advisory board:
  - (1) a representative of the engine manufacturing industry;
  - (2) a representative of the air transportation industry;
  - (3) a representative of the environmental community;
  - (4) a representative of the fuel cell industry; and
  - (5) a representative of the energy-efficient construction industry.
- (d) The speaker of the house of representatives shall appoint to the advisory board:
  - (1) a representative of consumer groups;
  - (2) a representative of the construction industry;
  - (3) a representative of the automobile industry;
  - (4) a representative of the agriculture industry; and
  - (5) a representative of the fuel industry.
- (e) Appointed members of the advisory board serve staggered four-year terms, with the terms of seven or eight appointed members expiring February 1 of each odd-numbered year. An appointed member may be reappointed to a subsequent term.
- (f) Ex officio members of the advisory board are:
  - (1) one member of the senate appointed by the lieutenant governor;
  - (2) the presiding officer of the house standing committee having primary jurisdiction over matters related to environmental regulation;
  - (3) a representative of the commission, designated by the executive director;

- (4) a representative of the General Land Office, designated by the Commissioner of the General Land Office;
- (5) a representative of the comptroller's office, designated by the comptroller;
- (6) a representative of the Railroad Commission of Texas, designated by the presiding officer of the agency; and
- (7) a representative of the United States Environmental Protection Agency's Region 6 office, designated by the United States Environmental Protection Agency Region 6 administrator.
- (g) The advisory board annually shall elect a presiding officer.
- (h) The advisory board shall review the plan and shall recommend to the commission changes to revenue sources or financial incentives or any legislative, regulatory, or budgetary changes needed.
- (i) The commission shall provide necessary staff support to the advisory board.

**§ 386.101. Definitions**

In this subchapter:

- (1) "Cost-effectiveness" means the total dollar amount expended divided by the total number of tons of oxides of nitrogen emissions reduction attributable to that expenditure. Cost-effectiveness for the program as a whole and for particular projects under the program is calculated as provided by Sections 386.105 and 386.106.
- (2) "Fuel cell" means an electrochemical device that uses fuel and oxidant to continuously generate electricity.
- (3) "Motor vehicle" means a self-propelled device designed for transporting persons or property on a public highway that is required to be registered under Chapter 502, Transportation Code.
- (4) "Non-road diesel" means a vehicle or piece of equipment, excluding a motor vehicle or on-road diesel, that is powered by a non-road engine, including:
  - (A) non-road nonrecreational equipment and vehicles;
  - (B) construction equipment;
  - (C) locomotives;
  - (D) marine vessels; and
  - (E) other high-emitting diesel engine categories established by the commission.
- (5) "Non-road engine" means an internal combustion engine that is:
  - (A) 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;
  - (B) in or on a piece of equipment that is intended to be propelled while performing its function; or
  - (C) designed to be and capable of being carried or moved from one location to another.
- (6) "On-road diesel" means an on-road diesel-powered motor vehicle that has a gross vehicle weight rating of 8,500 pounds or more.
- (7) "Program" means the diesel emissions reduction incentive program established under this subchapter.
- (8) "Qualifying fuel" includes 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 emissions of oxides of nitrogen beyond reductions required by state or federal law.
- (9) "Repower" means 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" means 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.

**§ 386.102. Program**

(a) The commission shall establish and administer a diesel emissions reduction incentive program. Under the program, the commission shall provide grants for eligible projects to offset the incremental cost of projects that reduce emissions of oxides of nitrogen from high-emitting diesel sources in nonattainment areas and affected counties of the state. The commission shall determine the eligibility of projects.

(b) Projects that may be considered for a grant under the program include:

- (1) purchase or lease of on-road or 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 emissions of oxides of nitrogen;
- (6) use of qualifying fuel;
- (7) implementation of infrastructure projects; and
- (8) replacement of on-road or non-road diesels with newer on-road or non-road diesels.

(c) A project listed in Subsection (b) 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.

(d) Blank.

(e) To improve the success of the program the commission:

- (1) shall establish cost-effective limits for grants awarded under the program to an owner or operator of a locomotive or marine vessel that are lower than the cost-effectiveness limits applied to other emissions reductions grants;
- (2) shall determine the maximum amount of reductions available from the locomotive and marine sectors and develop strategies to facilitate the maximum amount of reductions in these sectors; and
- (3) shall include in the report required by Section 386.057(b) that is due not later than December 1, 2006, an analysis of the cost-effectiveness of the grants in these sectors.

### **§ 386.103. Application for Grant**

(a) Any person as defined by Section 382.003 that owns one or more on-road or non-road diesels that operate primarily within a nonattainment area or affected county of this state or that otherwise contributes to the state inventory of emissions of oxides of nitrogen may apply for a grant under the program. The commission may adopt guidelines to allow a person other than the owner to apply for and receive a grant in order to improve the ability of the program to achieve its goals.

(b) An application for a grant under this subchapter must be made on an application provided by the commission and must contain information required by the commission, including:

- (1) a detailed description of the proposed project;
- (2) information necessary for the commission to determine whether the project meets eligibility requirements for the type of project proposed, including a statement of the amounts of any other public financial assistance the project will receive; and
- (3) other information the commission may require.

### **§ 386.104. Eligibility Requirements**

(a) The commission shall establish criteria for setting priorities for projects eligible to receive grants under this subchapter. The commission shall review and may modify the criteria and priorities as appropriate.

(b) A proposed project as described in Section 386.102 must meet the requirements of this section to be eligible for a grant under the program.



(c) For a proposed project as described by Section 386.102(b), other than a project involving a marine vessel or engine, not less than 75 percent 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 in this subsection. For a proposed project involving a marine vessel or engine, the vessel or engine must be operated in the intercoastal waterways or bays adjacent to a nonattainment area or affected county of this state for a sufficient amount of time over the lifetime of the project, as determined by the commission, to meet the cost-effectiveness requirements of Section 386.105. For a proposed project involving non-road equipment used for natural gas recovery purposes, the equipment must be operated in a nonattainment area or affected county for a sufficient amount of use over the lifetime of the project, as determined by the commission, to meet the cost-effectiveness requirements of Section 386.105.

(d) Each proposed project must meet the cost-effectiveness requirements of Sections 386.105 and 386.106.

(e) A proposed repower project must exceed commission requirements relating to baseline emissions levels of the engines being replaced under the project.

(f) A proposed retrofit, repower, replacement, or add-on equipment project must document, in a manner acceptable to the commission, a reduction in emissions of oxides of nitrogen of at least 30 percent compared with the baseline emissions adopted by the commission for the relevant engine year and application. After study of available emissions reduction technologies, after public notice and comment, and after consultation with the advisory board, the commission may revise the minimum percentage reduction in emissions of oxides of nitrogen required by this subsection to improve the ability of the program to achieve its goals.

(f-1) The commission may establish minimum percentage reduction standards alternative to the standards established under Subsection (f) as an incentive for the conversion of heavy-duty diesel on-road vehicle engines or non-road engines to operate under a dual-fuel configuration that uses natural gas and diesel fuels through an alternative fuel conversion system certified by the United States Environmental Protection Agency or the California Air Resources Board. In determining the emissions rate of the converted vehicle and engine to compute the emissions reductions that can be attributed to the conversion system, the commission may take into account whether the emissions certification requirements for the conversion system prevent fully accounting for the emissions reductions. If the commission determines it to be necessary and appropriate, the commission may consider under this subsection certified engine test information that demonstrates reductions of emissions of nitrogen oxides and other pollutants and other information to verify the emissions reductions.

(g) If a baseline emissions standard does not exist for on-road or non-road diesels in a particular category, the commission, for purposes of this subchapter, shall establish an appropriate baseline emissions level for comparison purposes.

(h) The commission may approve payments to offset the incremental cost, over the expected lifetime of the motor vehicle or on-road or non-road diesel, of the use of qualifying fuel in a motor vehicle or on-road or non-road diesel if the proposed project as a whole, including the incremental fuel cost, meets the requirements of this subchapter. The commission shall develop an appropriate method for converting incremental fuel costs over the lifetime of the motor vehicle or on-road or non-road diesel into an initial cost for purposes of determining cost-effectiveness as required by Section 386.105.

(i) If the commission determines that a heavy-duty motor vehicle or engine under this chapter must be decommissioned, the commission shall require the decommissioning to be carried out by crushing the vehicle, by making a hole in the engine block and permanently destroying the frame of the vehicle, or by another method approved by the commission that permanently removes the vehicle from operation

in this state. The commission shall provide a means for an applicant to propose an alternative method for complying with the requirements of this subsection. The commission shall enforce the requirements of this subsection.

(j) The executive director shall waive any eligibility requirements established under this section on a finding of good cause, which may include a waiver for short lapses in registration or operation attributable to economic conditions, seasonal work, or other circumstances.

(k) The commission shall consider an application under this chapter for the replacement of a vehicle that has been owned, leased, or otherwise commercially financed by the applicant. If the commission determines that a heavy-duty motor vehicle or engine that is leased or otherwise commercially financed must be decommissioned, the commission shall ensure that the applicant has a legal right to decommission the vehicle or engine before awarding a grant to the applicant.

(l) The commission shall consider an application for a vehicle replacement or a fleet expansion for a project with an activity life of five years or more, or 400,000 miles, whichever is earlier.

(m) The commission shall provide a form that minimizes, to the maximum extent possible, the amount of paperwork required.

#### **§ 386.105. Calculation of Cost-Effectiveness**

(a) 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.

(b) The commission shall establish reasonable methodologies for evaluating project cost-effectiveness consistent with Subsection (a) and with accepted methods.

(c) The commission shall develop protocols for calculating oxides of nitrogen emissions reductions not otherwise required by state or federal law in nonattainment areas and affected counties of this state from representative project types over the life of the projects.

(d) The commission may include in cost-effectiveness determinations only reductions in oxides of nitrogen emissions that are achieved in nonattainment areas and affected counties of this state.

(e) The commission may allow for the apportionment of credits associated with a project between the plan and another program or entity if the part of the credit assigned to the program that is part of the plan still meets any applicable cost-effectiveness criteria.

#### **§ 386.106. Cost-Effectiveness Criteria; Determination of Grant Amount**

(a) Except as otherwise provided by statute, the commission may not award a grant that, net of taxes, provides an amount that exceeds the incremental cost of the proposed project.

(b) The commission shall adopt guidelines for capitalizing incremental lease costs so those costs may be offset by a grant under this subchapter.

(c) In determining the amount of a grant under this subchapter, the commission shall reduce the incremental cost of a proposed new purchase, lease, retrofit, repower, or add-on equipment project by the value of any existing financial incentive that directly reduces the cost of the proposed project, including tax credits or deductions, other grants, or any other public financial assistance.

#### **§ 386.107. Adjustment to Maximum Cost-Effectiveness Amount and Award Amount**

After study of available emissions reduction technologies and costs and after public notice and comment, the commission, in consultation with the advisory board, may change the values of the maximum grant award criteria established in Section 386.106 to account for inflation or to improve the ability of the program to achieve its goals.

### **§ 386.108. Infrastructure Projects**

(a) The commission shall provide funding under Section 386.252(a) for infrastructure projects.

(b) To implement the requirement of Subsection (a), the commission shall:

(1) solicit applications for a balanced mix of projects involving fueling and electrification infrastructure that is linked to motor vehicle and on-road and non-road diesel projects and consistent with program goals;

(2) coordinate infrastructure projects with motor vehicle and on-road and non-road diesel projects representing a broad range of fuels, technologies, and applications as appropriate and consistent with the goals of this chapter;

(3) adopt guidelines and criteria for infrastructure projects to be funded under the program; and

(4) oversee, monitor, and evaluate the use of grants awarded under this program and report on the effectiveness of this grant program in relation to the purposes and goals of this chapter.

### **§ 386.109. Eligible Infrastructure Projects**

(a) The commission may consider for funding under Section 386.108:

(1) the purchase and installation at a site of equipment that is designed primarily to dispense qualifying fuel, other than standard gasoline or diesel, or the purchase of on-site mobile fueling equipment;

(2) infrastructure projects, including auxiliary power units, designed to dispense electricity to:

(A) motor vehicles;

(B) on-road and non-road diesels; and

(C) marine vessels;

(3) a project that involves a technology that allows a vehicle to replace with electric power, while the vehicle is parked, the power normally supplied by the vehicle's internal combustion engine; and

(4) a project to reduce air pollution and engine idling by relieving congestion through rail relocation or improvement at a rail intersection that is located in a nonattainment or near nonattainment area.

(b) The commission may provide funding to other state agencies to implement projects under Subsection (a)(3), including funding for the lease, purchase, or installation of idle reduction technologies and facilities at rest areas and other public facilities on major highway transportation routes located in areas eligible for funding or for marine vessels operating on water routes eligible for funding. Funding under this subsection may include reasonable operational costs determined by the commission to be needed for the initial start-up and proper operation of the idle reduction technologies. The state agency leasing, owning, or operating the idle reduction facility constructed with funds provided under this subsection may, but is not required to, charge reasonable fees for the provision of idle reduction services provided that those fees are used to directly offset the cost of providing the services.

(c) In evaluating a request for funding of an eligible infrastructure project, the commission shall encourage the use of a technology that allows a vehicle to replace with electric power, while the vehicle is parked, the power normally supplied by the vehicle's internal combustion engine at the state's ports and border crossings in affected areas.

### **§ 386.110. Application Package for Infrastructure Projects**

(a) The commission shall develop a simple, standardized application package for infrastructure project grants under this subchapter. The package must include:

(1) an application form;

(2) a brief description of:

- (A) the program;
  - (B) the projects that are eligible for available funding;
  - (C) the selection criteria and evaluation process; and
  - (D) the required documentation;
- (3) the name of a person or office to contact for more information;
- (4) an example of the contract that an applicant will be required to execute before receiving a grant; and
- (5) any other information the commission considers useful to inform the applicant and expedite the application process.
- (b) The application form shall require as much information as the commission determines is necessary to properly evaluate each project but shall otherwise minimize the information required.
- (c) The commission may not require an applicant, as part of the application process, to calculate tons of emissions reduced or cost-effectiveness.

#### **§ 386.111. Application Review Procedures**

- (a) The commission shall review an application for a grant for a project authorized under this subchapter, including an application for a grant for an infrastructure project, immediately on receipt of the application. If the commission determines that an application is incomplete, the commission shall notify the applicant with an explanation of what is missing from the application. The commission shall evaluate the completed application according to the appropriate project criteria. Subject to available funding, the commission shall make a final determination on an application as soon as possible.
- (b) The commission shall make every effort to expedite the application review process and to award grants to qualified projects in a timely manner. To the extent possible, the commission shall coordinate project review and approval with any timing constraints related to project purchases or installations to be made by an applicant.
- (c) The commission may deny an application for a project that does not meet the applicable project criteria or that the commission determines is not made in good faith, is not credible, or is not in compliance with this chapter and the goals of this chapter.
- (d) Subject to availability of funds, the commission shall award a grant under this subchapter in conjunction with the execution of a contract that obligates the commission to make the grant and the recipient to perform the actions described in the recipient's grant application. The contract must incorporate provisions for recapturing grant money in proportion to any loss of emissions reductions or underachievement in dispensing qualifying fuel compared with the volume of emissions reductions or amount of fuel dispensed that was projected in awarding the grant. Grant money recaptured under the contract provision shall be deposited in the fund and reallocated for other projects under this subchapter.
- (e) An applicant may seek reimbursement for qualifying equipment installed after the effective date of this program.

#### **§ 386.112. On-Road Diesel Purchase or Lease Incentive**

(a) The commission shall develop a purchase or lease incentive program for new on-road diesels and shall adopt rules necessary to implement the program and to reimburse a purchaser or lessee of a new on-road diesel that is eligible for reimbursement of incremental costs under this subchapter.

(b) The program shall authorize statewide incentives for the reimbursement of incremental costs for the purchase or lease, according to the schedule provided by Section 386.113, of new on-road diesels that are certified by the United States Environmental Protection Agency or the California Air Resources Board to an emissions standard provided by Section 386.113 if the purchaser or lessee of the on-road diesel agrees to register the vehicle in this state and to operate the on-road diesel in this state for not less than 75 percent of the on-road diesel's annual mileage.

(c) Only one incentive will be provided for each new on-road diesel. The incentive shall be provided to the purchaser if the on-road diesel is not purchased for the purpose of leasing the on-road diesel to another person, or to the lessee and not to the purchaser if the on-road diesel is purchased for the purpose of leasing the on-road diesel to another person. A lease incentive for a new on-road diesel shall be prorated based on an eight-year lease term.

**§ 386.113. On-Road Diesel Purchase or Lease Incentive Schedule**

A new on-road diesel is eligible for reimbursement of incremental costs according to the following schedule:

Incentive emissions standard (oxides of nitrogen)		Reimbursement amount
Date of manufacture (2001)	Date of manufacture (10/1/02-9/30/06)	
2.5 g/bhp-hr NOx	1.2 g/bhp-hr NOx	up to \$15,000
1.5 g/bhp-hr NOx	0.5 g/bhp-hr NOx	up to \$25,000
0.0 g/bhp-hr NOx	0.0 g/bhp-hr NOx	up to \$25,000