

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Proposed Rulemaking

AGENDA REQUESTED: November 6, 2013

DATE OF REQUEST: October 18, 2013

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Michael Parrish, (512) 239-2548

CAPTION: Docket No. 2013-1140-RUL. Consideration for publication of, and hearing on, amended Sections 114.610 – 114.612, 114.616, and repeal of Section 114.619 of 30 Texas Administrative Code Chapter 114, Subchapter K, Division 2.

The proposed rulemaking would implement provisions of Senate Bill 1727, 83rd Legislature, 2013, Regular Session, by modifying the types of vehicles that qualify for the Light-Duty Motor Vehicle Purchase or Lease Incentive, establishing the maximum number of vehicles that may qualify for the incentive, establishing an incentive amount of \$2,500 per eligible vehicle, and establishing the process for applying for the incentive. (Guy Hoffman, Betsy Peticolas) (Rule Project No. 2013-039-114-AI)

Steve Hagle, P.E.

Deputy Director

David Brymer

Division Director

Michael Parrish

Agenda Coordinator

Copy to CCC Secretary? NO YES X

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** October 18, 2013

Thru: Bridget C. Bohac, Chief Clerk
Zak Covar, Executive Director

From: Steve Hagle, P.E., Deputy Director, Office of Air

Docket No.: 2013-1140-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 114, Control of Air Pollution from Motor Vehicles
SB 1727: Light-Duty Motor Vehicle Purchase or Lease Incentive
Rule Project No. 2013-039-114-AI

Background and reason(s) for the rulemaking:

The 77th Legislature, 2001, Regular Session enacted Senate Bill (SB) 5 establishing the Texas Emissions Reduction Plan (TERP), which provides financial incentives for reducing emissions of on-road and non-road motor vehicles and equipment, grants for the development of new emission control technology, new building energy efficiency standards, and research and development programs. One of the programs that SB 5 established was the Light-Duty Vehicle Purchase or Lease Incentive (LDPLI) program. SB 5 required the commission to establish a statewide incentive for the purchase or lease of light-duty motor vehicles that met emission standards more stringent than those required by federal requirements; however, implementation and administration of the LDPLI program were the responsibility of the Texas Comptroller of Public Accounts (TCPA). Although the commission adopted rules as published in the September 13, 2001 issue of the *Texas Register* (26 TexReg 6938) that established a statewide incentive for the purchase or lease of light-duty motor vehicles, the legislature never appropriated funds to the TCPA for LDPLI grants.

The 83rd Texas Legislature, 2013, Regular Session, enacted SB 1727 authorizing changes to the LDPLI program listed in Chapter 386 of the Texas Health and Safety Code (THSC). The legislation transfers the responsibility of administering the LDPLI program from the TCPA to the commission, modifies the requirements for the types of vehicles that qualify for the LDPLI, establishes a maximum number of incentives available for the program, and establishes an incentive amount of \$2,500 per eligible vehicle.

Scope of the rulemaking:

The proposed rule revisions would implement provisions of SB 1727 by modifying the types of vehicles that qualify for the LDPLI, establishing the maximum number of vehicles that may qualify for the incentive, establishing a rebate amount of \$2,500 per eligible vehicle, establishing the process for applying for the incentive, and modifying the manufacturer's reporting requirements.

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A.) Summary of what the rulemaking will do:

The proposed rule revision would revise Chapter 114, Subchapter K, Division 2 by amending §§114.610 - 114.612, 114.616, and repealing §114.619. The proposed rulemaking would:

- amend §114.610 by deleting the definition for “Bin or emissions bin” because it is no longer needed, modify the reference “light-motor vehicle” to “light-duty motor vehicle” under the definition for “Lessee,” and modify the definition for a “New light-duty motor vehicle” to correct the citation;
- amend §114.611 by deleting references to §114.618 because the section no longer exists and to §114.619 because the commission is proposing to repeal this section;
- amend §114.612 by modifying the requirements for the types of vehicles that may qualify for the LDPLI, adding language specifying the vehicle criteria for the types of vehicles that may qualify for the LDPLI, listing the \$2,500 incentive amount, adding language requiring the commission to post the list of eligible vehicles on the commission’s internet website, adding language specifying when a buyer or lessee could purchase a vehicle that may qualify for the LDPLI, adding language specifying the length of time a vehicle purchased under the LDPLI must be registered and operated within the state, adding language specifying the process to apply for the LDPLI, adding language specifying the information and documentation required as part of the LDPLI application, adding language requiring the dealership to keep a copy of the purchase or lease verification documentation for a minimum of two years as required under THSC, §386.160(c), and adding language specifying how the commission will prorate the LDPLI based on a four-year lease;
- amend §114.616 by updating the reference from §114.619 to §114.612 for types of vehicles that may qualify for the LDPLI and by modifying the required vehicle information that is included in the manufacturer’s report to reflect the LDPLI vehicle requirements; and
- repeal §114.619 because this section is no longer valid.

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

The revisions are required to incorporate changes to Chapter 386 of the THSC due to SB 1727, enacted by the 83rd Legislature, 2013, Regular Session.

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

None

Statutory authority:

The amendments and repealed section are 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

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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 and repealed section are also 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 program.

The amendments and repealed section are proposed as part of the implementation of SB 1727 and the amendments to THSC, §§386.152 – 386.153, 386.155 – 386.156, 386.158, and 386.160 – 386.162.

Effect on the:

A.) Regulated community:

The proposed rulemaking is not anticipated to have any implications on the effected community. Automobile dealers may see a sales increase on vehicles that qualify for the incentive.

B.) Public:

People who purchase or lease an eligible vehicle under the LDPLI would benefit from receiving the incentive.

C.) Agency programs:

The proposed rulemaking does have a significant impact on the TERP program and Financial Administration Division. SB 1727 transfers the responsibility of administering the LDPLI program from the TCPA to the commission. The TERP program will be required to develop the process for administering the LDPLI program to include an application packet, approval process, and working with the Financial Administration Division on establishing a payment process for the approved incentives.

Stakeholder meetings:

Stakeholder meetings were not held.

Potential controversial concerns and legislative interest:

None are anticipated.

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

The proposed rulemaking regarding the LDPLI would not affect any current policies or require development of new policies.

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

The current rules related to LDPLI requirements would be inconsistent with the requirements in SB 1727. SB 1727 did not provide flexibility in implementing the revised LDPLI requirements.

Key points in the proposal rulemaking schedule:

Anticipated proposal date: November 6, 2013

Anticipated *Texas Register* publication date: November 22, 2013

Public hearing date (if any): December 12, 2013- Austin

Public comment period: November 8, 2013 through December 18, 2013

Anticipated adoption date: April 9, 2014

Agency contacts:

Guy Hoffman, Rule Project Manager, 239-1981, Air Quality Division

Betsy Peticolas, Staff Attorney, 239-1439

Michael Parrish, Texas Register Coordinator, 239-2548

Attachments

SB 1727, 83rd Texas Legislature, 2013, Regular Session

cc: Chief Clerk, 2 copies
Executive Director's Office
Anne Idsal
Tucker Royall
Office of General Counsel
Michael Parrish
Betsy Peticolas
Guy Hoffman

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§114.610 - 114.612, 114.616; and the repeal of §114.619.

Background and Summary of the Factual Basis for the Proposed Rules

The commission proposes these revisions to implement requirements of Senate Bill (SB) 1727, 83rd Legislature, 2013, authored by Senator Robert Deuell.

The 77th Legislature, 2001, enacted SB 5 establishing the Texas Emissions Reduction Plan (TERP), which provides financial incentives for reducing emissions of on-road and non-road motor vehicles and equipment, grants for the development of new emission control technology, new building energy efficiency standards, and research and development programs. One of the programs that SB 5 established was the Light-Duty Motor Vehicle Purchase or Lease Incentive (LDPLI) program. SB 5 required the commission to establish a statewide incentive for the purchase or lease of light-duty motor vehicles that met emission standards more stringent than those required by federal requirements; however, implementation and administration of the LDPLI program were the responsibility of the Texas Comptroller of Public Accounts (TCPA). Although the commission adopted rules as published in the September 13, 2001, issue of the *Texas Register* (26 TexReg 6938) that established a statewide incentive for the purchase or lease of light-duty motor vehicles, the legislature never appropriated funds to the TCPA for LDPLI grants.

The 83rd Legislature, 2013, enacted SB 1727 authorizing changes to the LDPLI program listed in Texas Health and Safety Code (THSC), Chapter 386. The legislation transfers the responsibility of administering the LDPLI program from the TPCA to the commission, modifies the requirements for the types of vehicles that qualify for the LDPLI, establishes a maximum number of incentives available for the program, and establishes an incentive amount of \$2,500 per eligible vehicle.

Section by Section Discussion

§114.610, Definitions

The commission proposes to amend §114.610 by deleting the definition for "Bin or emissions bin" because the definition is no longer needed. Under the definition "Lessee," the commission proposes to correct the reference "light-motor vehicle" to "light-duty motor vehicle." In addition, the commission proposes to modify the definition for a "New light-duty motor vehicle" by removing the citation "Title 43, Texas Administrative Code, §17.2 (relating to Definitions)" and replacing it with "Texas Transportation Code, §501.002" because the original citation is no longer valid. The definitions in this section would be renumbered as needed.

§114.611, Applicability

The commission proposes to amend §114.611 by deleting references to §114.618 because

this section no longer exists and to §114.619 because the commission is proposing to repeal this section.

§114.612, Light-Duty Motor Vehicle Purchase or Lease Incentive Requirements

The commission proposes to amend §114.612 by modifying the requirements for the types of vehicles that may qualify for the LDPLI. As specified by SB 1727, the proposed language states that only new light-duty motor vehicles that are powered by compressed natural gas (CNG), liquefied petroleum gas (LPG), or electric drives that meet specific established criteria qualify for the \$2,500 incentive. The proposed language includes specific vehicle criteria and requires the commission to post a list of vehicles that meet these requirements on the commission's Web site.

The proposed revisions would establish when a buyer or lessee purchases or leases a vehicle that qualifies for the LDPLI, the amount of time that a vehicle purchased or leased under the LDPLI must be registered and operated within the state, and the process for applying for the LDPLI. The proposed language includes the information and documentation that would be required as part of the LDPLI incentive application. The proposed language also includes the requirement that a dealership must keep a copy of purchase or lease verification documentation for a minimum of two years as required under THSC, §386.160(c). In addition, the proposed language includes how the

commission would prorate an incentive if a lease is less than four years. This section would be renumbered as needed.

§114.616, Manufacturer's Report

The current rule requires vehicle manufacturers to submit a report annually to the commission on vehicles they intend to sell in Texas that meet the requirements for the LDPLI. The proposed revisions to §114.616 would update references from §114.619 to §114.612 for the type of vehicles that may qualify for the LDPLI and are required to be included in the manufacturer's annual report. The proposed language would also modify the required vehicle information that is included in the manufacturer's report to reflect the LDPLI vehicle requirements.

§114.619, Light-Duty Motor Vehicle Purchase or Lease Incentive Schedule

The commission proposes to repeal §114.619 because the LDPLI schedule and accompanying incentive amounts have been replaced with specific vehicle requirements and a set incentive amount that is outlined in proposed §114.612.

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Strategic Planning and Assessment Section, has determined that for the first five-year period the proposed rules are in effect, fiscal implications are anticipated for the commission but not for other units of state or local

government as a result of administration or enforcement of the proposed rules. The proposed rules implement a voluntary incentive program for the purchase or lease of light-duty vehicles powered by CNG, LPG, or electric drives.

The proposed rules would implement sections of SB 1727, which authorized changes to the LDPLI program listed in THSC, Chapter 386. The legislation transferred the responsibility of administering the LDPLI program from the TCPA to the commission and modified the requirements for the types of vehicles that qualify for the LDPLI. The bill also established a maximum number of incentives available for the program and established an incentive amount of \$2,500 per eligible vehicle. The LDPLI program expires on August 31, 2015 unless future legislation extends the expiration date.

Specifically the proposed rulemaking would: 1) delete the definition for "Bin or emissions bin" because it is no longer needed, modify the reference "light-motor vehicle" to "light-duty motor vehicle" under the definition for "Lessee"; and modify the definition for a "New light-duty motor vehicle" to correct the cite; 2) delete references to §114.618 because the section no longer exists and to §114.619 because the commission is proposing to repeal this section; 3) modify the requirements for the types of vehicles that may qualify for the LDPLI; 4) add language to specify the vehicle criteria for the types of vehicles that may qualify for the LDPLI; 5) list the \$2,500 incentive amount; 6) add language requiring the commission to post the list of eligible vehicles on the

commission's Web site; 7) add language specifying when a buyer or lessee could purchase a vehicle that may qualify for the LDPLI; 8) add language specifying the length of time a vehicle purchased under the LDPLI must be registered and operated within the state; 9) add language specifying the process to apply for the LDPLI, including the information and documentation required as part of the LDPLI application; 10) add language requiring the dealership to keep a copy of the purchase or lease verification documentation for a minimum of two years; 11) add language specifying how the commission will prorate the LDPLI based on a four-year lease; and 12) repeal §114.619 because this section is no longer valid.

The commission will need to establish a process for administering the program, develop the necessary forms for applicants to apply for the incentive, and establish the process to disperse the funds to the awardees (grantees). The commission will use available funding appropriated out of the TERP Account 5071 to administer the program. THSC, §386.152(a)(13), limits the LDPLI to no more than 5% of the total allocations for the TERP program. Based upon the total amount of TERP program funding appropriated to the agency by the 83rd Legislature, 2013, approximately \$3.8 million of TERP program funding is available for grants for the LDPLI in each fiscal year of the 2014 - 2015 biennium. At \$2,500 per vehicle in grant funding, the commission would be able to provide grant funds for approximately 1,550 vehicles each fiscal year.

State agencies and units of local government would be eligible to apply for the \$2,500 vehicle incentive. However, it is unknown if any agencies or local governments would purchase or lease eligible vehicles, and if they did, how many and what kind of vehicles would be involved. Therefore, any cost benefits cannot be estimated. Under the LDPLI program, grant funding is limited to 2,000 vehicles per state fiscal biennium for vehicles powered by CNG or LPG and 2,000 vehicles per state fiscal biennium for vehicles powered by electric drives. This cap is not expected to affect eligible vehicle purchases or leases by state or local governments as the funding limits the program to 1,550 vehicles each fiscal year.

Public Benefits and Costs

Mr. Horvath has also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be enhanced air quality through the provision of incentives to purchase or lease vehicles that are powered by CNG, LPG, or electric drives and have lower emissions.

The proposed rules are not anticipated to have a fiscal impact on individuals or businesses. The LDPLI is a voluntary incentive program and therefore the proposed rules do not provide any new regulatory requirements. Eligible businesses and individuals may apply for the \$2,500 vehicle incentive and receive financial benefit from

the additional funds if they were approved for the LDPLI for the purchase or lease of an eligible vehicle.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses for the first five-year period the proposed rules are in effect. The LDPLI is a voluntary incentive program and the proposed rules do not provide any new regulatory requirements.

Eligible small businesses may apply for the \$2,500 vehicle incentive and receive financial benefit from the additional funds if they were approved for the LDPLI.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rulemaking does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Additionally, the proposed rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The amended Chapter 114 rules are proposed in accordance with SB 1727, 83rd Legislature, 2013, which amended THSC, Chapter 386. The proposed rules add or revise

guidelines for a voluntary grant. Because the proposed rules place no involuntary requirements on the regulated community, the proposed rules would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or sector of the state. In addition, none of these amendments place additional financial burdens on the regulated community.

The commission's interpretation of the regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance." The legislature specifically identified Texas Government Code, §2001.0225, as falling under this standard. The commission has substantially complied with the requirements of Texas Government Code, §2001.0225.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an analysis of whether the proposed rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The commission's preliminary assessment indicates Texas Government Code, Chapter 2007, does not apply.

Under Texas Government Code, §2007.002(5), taking means: (A) a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Article I, Texas Constitution; or (B) a governmental action that: (i) affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and (ii) is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

Promulgation and enforcement of the proposed rulemaking would be neither a statutory

nor a constitutional taking of private real property. The primary purpose of the rulemaking is to amend Chapter 114 in accordance with the amendments to THSC, Chapter 386 as a result of SB 1727, 83rd Legislature, 2013. The rules make revisions to a voluntary program and only affect motor vehicles that are not considered to be private real property. The proposed rulemaking does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property, nor does it reduce the value of any private real property by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, these proposed rules would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to rules subject to the Texas Coastal Management Program (CMP), and will, therefore, require that goals and policies of the CMP be considered during the rulemaking process. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking for Chapter 114 does not impact any CMP goals or policies because it revises a voluntary incentive grant program and does not govern air pollution emissions.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal on December 12, 2013 at 10:00 a.m., in Building E, Room 201-S, at the commission's central office located at 12100 Park 35 Circle, Austin, Texas. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802. Requests should be made as far in advance as possible.

Submittal of Comments

Comments may be submitted to Michael Parrish, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-

3087, or faxed to (512) 239-4808. Electronic comments may be submitted at:

<http://www5.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to

comments being submitted via the eComments system. All comments should reference

Rule Project Number 2013-039-114-AI. The comment period closes December 18, 2013.

Copies of the proposed rulemaking can be obtained from the commission's Web site at

http://www.tceq.texas.gov/nav/rules/propose_adopt.html. For further information,

please contact Guy Hoffman, Implementation Grants Section, at (512) 239-1981.

SUBCHAPTER K: MOBILE SOURCE INCENTIVE PROGRAMS

DIVISION 2: LIGHT-DUTY MOTOR VEHICLE PURCHASE OR LEASE

INCENTIVE PROGRAM

§§114.610 - 114.612, 114.616

Statutory Authority

The amendments are 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 are also proposed under Texas Health and Safety Code (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 Texas Emissions Reduction Plan program.

The amendments are proposed as part of the implementation of Senate Bill 1727, 83rd, Legislature, 2013, and the amendments to THSC, §§386.152, 386.153, 386.155, 386.156, 386.158, and 386.160 - 386.162.

§114.610. Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) [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, §§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) Bin or emissions bin--A set of emissions standards applicable to exhaust pollutants measured on the Federal Test Procedure according to Title 40 Code of Federal Regulations, §86.1811-04.]

(1) [(2)] Lease--The use and control of a new light-duty motor vehicle in accordance with a rental contract for a term of twelve consecutive months or more.

(2) [(3)] Lessee--A person who enters into a lease for a new light-duty motor [light-motor] vehicle.

(3) [(4)] Light-duty motor vehicle--A motor vehicle with a gross vehicle weight rating of less than 10,000 pounds.

(4) [(5)] 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) [(6)] New light-duty motor vehicle--A light-duty motor vehicle that has never been the subject of a first sale as defined under Texas Transportation Code, §501.002 [Title 43, Texas Administrative Code, §17.2 (relating to Definitions)], either within this state or elsewhere.

§114.611. Applicability.

(a) The provisions of §§114.610, 114.612, and 114.616[, 114.618, and 114.619] of this title (relating to Definitions; Light-Duty Motor Vehicle Purchase or Lease Incentive Requirements; and Manufacturer's Report[; Vehicle Emissions Information Brochure;

and Light-Duty Motor Vehicle Purchase or Lease Incentive Schedule]) apply statewide subject to the availability of funding.

(b) A purchase or lease of a light-duty motor vehicle 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 purchase or lease, regardless of the fact that the state implementation plan assumes that the change in vehicles will occur, if on the date the incentive 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 or lease of a light-duty motor vehicle required only by local law or regulation or by corporate or controlling board policy of a public or private entity.

§114.612. Light-Duty Motor Vehicle Purchase or Lease Incentive Requirements.

(a) The purchaser [purchase] or lessee [lease] of a new light-duty motor vehicle powered by compressed natural gas, liquefied petroleum gas, or electric drive

[certified by the United States Environmental Protection Agency (EPA) [EPA] to an emissions standard at least as stringent as those specified in §114.619 of this title (relating to Light-Duty Motor Vehicle Purchase or Lease Incentive Schedule)] may [shall] be eligible for the incentive specified in subsection (b) of this section [§114.619 of this title] if the vehicle meets the requirements specified in paragraphs (1) or (2) of the subsection and is listed on the list of eligible vehicles provided to the commission as specified under §114.616 of this title (relating to Manufacturer's Report) [and the purchaser or lessee agrees to register the vehicle in this state and meets the requirements of this section]. The commission will publish on its Web site a list of the eligible vehicles as provided to the commission as specified under §114.616 of this title.

Eligible vehicles include:

(1) new light-duty vehicle motor vehicle powered by compressed natural gas or liquefied petroleum gas that:

(A) has four wheels;

(B) was originally manufactured to comply with and has been certified by an original equipment manufacturer or intermediate or final state vehicle manufacturer as complying with, or has been altered to comply with, federal motor vehicle safety standards, state emissions regulations, and any additional state

regulations applicable to vehicles powered by compressed natural gas or liquefied petroleum gas:

(C) was manufactured for use primarily on public streets, roads,

and highways:

(D) is rated at not more than 9,600 pounds unloaded vehicle

weight:

(E) has a dedicated or bi-fuel compressed natural gas or liquefied petroleum gas fuel system with a range of at least 125 miles as estimated, published, and updated by the EPA; and

(F) has, as applicable, a:

(i) compressed natural gas fuel system that complies with the 2013 (or newer) National Fire Protection Association (NFPA) 52 Vehicular Gaseous Fuel Systems Code and American National Standard for Basic Requirements for Compressed Natural Gas Vehicle Fuel Containers, commonly cited as "ANSI/CSA NGV2"; or

(ii) liquefied petroleum gas fuel system that complies with the 2011 (or newer) NFPA 58 Liquefied Petroleum Gas Code and Section VII of the 2013 (or newer) American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code; or

(2) new light-duty motor vehicle powered by electric drive that:

(A) has four wheels;

(B) was manufactured for use primarily on public streets, roads, and highways;

(C) powertrain has not been modified from the original manufacturer's specifications;

(D) is rated at not more than 8,500 pounds unloaded vehicle weight;

(E) has a maximum speed capability of at least 55 miles per hour;
and

(F) is propelled to a significant extent by an electric motor that draws electricity from a battery that:

(i) has a capacity of not less than four kilowatt hours; and

(ii) is capable of being recharged from an external source of electricity.

(b) A person who purchases or leases a new light-duty motor vehicle eligible for an incentive under subsection (a) of this section may [shall] be eligible to receive a [an] \$2,500 incentive [specified in §114.619 of this title] if the purchaser or lessee meets the following criteria: [registers the new light-duty motor vehicle in this state and signs a certification that the person will operate the light-duty motor vehicle in this state for not less than 75% of the light-duty motor vehicle's annual mileage while owned or leased by the purchaser or lessee and while the purchaser or lessee resides within the state. The certification must contain, at a minimum:]

(1) acquired the eligible vehicle after the date established by the commission in the application solicitation [the name, address, telephone number, and proof of identification of the person receiving the incentive];

(2) completes the application for the Light-Duty Vehicle Purchase or Lease Incentive [the purchase date, manufacturer, model, model year, vehicle license number (if assigned), vehicle identification number, gross vehicle weight rating (if applicable), current odometer reading, and emissions test group number to verify the certified emissions standard of the new light-duty motor vehicle for which the incentive has been claimed under this section]; and

(3) signs a certification that the purchaser or lessee will register and operate the light-duty motor vehicle in this state for not less than one year [a copy of the vehicle's registration application and purchase invoice, or lease agreement if applicable, to be attached to the certification].

(c) Incentives must be applied for using the forms developed and provided by the commission and must include the verification of purchase or lease by the dealer as prescribed under Texas Health and Safety Code, §386.160(c).

(d) A dealership selling or leasing a vehicle under the Light-Duty Motor Vehicle Purchase or Lease Incentive program is required to keep a copy of the purchase or lease verification documentation for a minimum of two years as required under Texas Health and Safety Code, §386.160(c).

(e) [(c)] Only one incentive will be provided for each eligible new light-duty motor vehicle purchased or leased in the state.

(f) [(d)] The incentive shall be provided to the lessee and not to the purchaser if the eligible new light-duty motor vehicle is purchased for the purpose of leasing the light-duty motor vehicle to another person.

(g) [(e)] An incentive for the lease of an eligible new light-duty motor vehicle shall be prorated based on a four-year lease term. A person who leases an eligible new light-duty motor vehicle may qualify for 25% of the full incentive with a one-year lease, 50% of the full incentive with a two-year lease, 75% of the full incentive with a three-year lease, and 100% of the full incentive with a four-year lease. The incentive will only be prorated based on a full-year lease.

§114.616. Manufacturer's Report.

(a) In order for a manufacturer to ensure that its vehicles are included in the list of eligible vehicles, a [A] manufacturer of light-duty motor vehicles sold in the state shall provide to the executive director, or his designee, a list of the new light-duty motor vehicle models that the manufacturer intends to sell in this state during that model year that are certified [by the EPA] to meet the [incentive emissions] standards listed

under §114.612(a) [§114.619] of this title (relating to Light-Duty Motor Vehicle Purchase or Lease Incentive Requirements [Schedule]). The list must contain for each light-duty motor vehicle listed, at a minimum:

(1) the manufacturer name, model, and model year; and

(2) the unloaded vehicle weight [test group, evaporative/refueling family], engine displacement, qualifying [exhaust emission test] fuel type, gross vehicle weight rating [applicable emission standards], and certificate number as listed on the Certificate of Conformity issued by the United States Environmental Protection Agency [EPA].

(b) The [Beginning January 1, 2002, the] list required by subsection (a) of this section must [shall] be submitted to the executive director, or his designee, at the beginning, but no later than July 1, of each year preceding the new vehicle model year.

(c) A manufacturer of new light-duty motor vehicles may supplement the list required by subsection (a) of this section to include additional new light-duty motor vehicle models the manufacturer intends to sell in this state during the model year.

(d) All new light-duty motor vehicle dealers and leasing agents statewide shall make copies of the list required under this section available to prospective purchasers or lessees of new light-duty motor vehicles.

SUBCHAPTER K: MOBILE SOURCE INCENTIVE PROGRAMS

DIVISION 2: LIGHT-DUTY MOTOR VEHICLE PURCHASE OR LEASE

INCENTIVE PROGRAM

§114.619

Statutory Authority

The repeal is 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 repeal is also proposed under Texas Health and Safety Code (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 Texas Emissions Reduction Plan.

The repeal is proposed as part of the implementation of Senate Bill 1727, 83rd, Legislature, 2013, and implements THSC, §386.153.

[§114.619. Light-Duty Motor Vehicle Purchase or Lease Incentive Schedule.]

[The incentives provided under §114.612 of this title (relating to Light-Duty Motor Vehicle Purchase or Lease Incentive Requirements) for model years 2003 through 2007 light-duty motor vehicles shall be based on the following emission standards and accompanying incentive amounts:]

[(1) Bin 4 is eligible for \$1,250;]

[(2) Bin 3 is eligible for \$2,225;]

[(3) Bin 2 is eligible for \$3,750; and]

[(4) Bin 1 is eligible for \$5,000.]

AN ACT

relating to the use of the Texas emissions reduction plan fund.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 386.051, Health and Safety Code, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

(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, including for infrastructure projects established under that subchapter;

(2) the motor vehicle purchase or lease incentive program established under Subchapter D;

(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) [~~386.252(a)(5)~~];

(7) a health effects study as provided by Section 386.252(a) [~~386.252(a)(7)~~];

(8) air quality planning activities as provided by Section 386.252(a) [~~386.252(a)(8)~~]; [and]

(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 [~~386.252(a)(9)~~].

(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.

SECTION 2. Subchapter B, Chapter 386, Health and Safety Code, is amended by adding Section 386.0515 to read as follows:

Sec. 386.0515. AGRICULTURAL PRODUCT TRANSPORTATION PROJECTS.

(a) In this section, "agricultural product transportation" means the transportation of a raw agricultural product from the place of production using a heavy-duty truck to:

(1) a nonattainment area;

(2) an affected county;

(3) a destination inside the clean transportation triangle; or

(4) a county adjacent to a county described by Subdivision (2) or that contains an area described by Subdivision (1) or (3).

(b) Notwithstanding other eligibility requirements, the commission shall by rule or policy provide specific eligibility requirements under the Texas Clean Fleet Program established under

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Chapter 392 and under the Texas natural gas vehicle grant program established under Chapter 394, as added by Chapter 892 (Senate Bill No. 385), Acts of the 82nd Legislature, Regular Session, 2011, for projects relating to agricultural product transportation.

(c) The determining factor for eligibility for participation in a program established under Chapter 392 or Chapter 394, as added by Chapter 892 (Senate Bill No. 385), Acts of the 82nd Legislature, Regular Session, 2011, for a project relating to agricultural product transportation is the overall accumulative net reduction in emissions of oxides of nitrogen in a nonattainment area, an affected county, or the clean transportation triangle.

SECTION 3. Subsection (b), Section 386.058, Health and Safety Code, is amended to read as follows:

- (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 [~~386.252(a)(2)~~].

SECTION 4. Section 386.104, Health and Safety Code, is amended by adding Subsection (f-1) to read as follows:

(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

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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.

SECTION 5. Section 386.106, Health and Safety Code, is amended to read as follows:

Sec. 386.106. COST-EFFECTIVENESS CRITERIA; DETERMINATION OF GRANT AMOUNT. (a) Except as otherwise provided by statute, the [~~as provided by Section 386.107 and except for infrastructure projects and infrastructure purchases that are part of a broader retrofit, repower, replacement, or add on equipment project, the commission may not award a grant for a proposed project the cost-effectiveness of which, calculated in accordance with Section 386.105 and criteria developed under that section, exceeds \$15,000 per ton of oxides of nitrogen emissions reduced in the nonattainment area or affected county for which the project is proposed. This subsection does not restrict commission authority under other law to require emissions reductions with a cost-~~

~~effectiveness that exceeds \$15,000 per ton.~~

~~[(b) The]~~ commission may not award a grant that, net of taxes, provides an amount that exceeds the incremental cost of the proposed project.

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

(c) ~~[(d)]~~ 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.

SECTION 6. Sections 386.152 and 386.153, Health and Safety Code, are amended to read as follows:

Sec. 386.152. ~~[COMPTROLLER AND]~~ COMMISSION DUTIES REGARDING LIGHT-DUTY MOTOR VEHICLE PURCHASE OR LEASE INCENTIVE PROGRAM.

(a) The ~~[comptroller and the]~~ commission shall develop a purchase or lease incentive program for new light-duty motor vehicles and shall adopt rules necessary to implement the program.

(b) The program shall authorize statewide incentives for the purchase or lease~~[-, according to the schedule provided by Section 386.153,]~~ of new light-duty motor vehicles powered by compressed natural gas, liquefied petroleum gas, or electric drives ~~[that are certified by the United States Environmental Protection Agency to meet an emissions standard that is at least as stringent as those provided by Section 386.153]~~ for a purchaser or lessee who agrees to register ~~[the vehicle in this state]~~ and ~~[to]~~ operate the vehicle in this state for a minimum period of time to be established by the commission ~~[not less than 75 percent of the vehicle's annual mileage].~~

(c) Only one incentive will be provided for each new light-duty motor vehicle. The incentive shall be provided to the lessee and not to the purchaser if the motor vehicle is purchased for the purpose of leasing the vehicle to another person.

Sec. 386.153. LIGHT-DUTY MOTOR VEHICLE PURCHASE OR LEASE INCENTIVE REQUIREMENTS [SCHEDULE]. (a) A new light-duty motor vehicle powered by compressed natural gas or liquefied petroleum gas is eligible for a \$2,500 incentive if the vehicle:

(1) has four wheels;

(2) was originally manufactured to comply with and has been certified by an original equipment manufacturer or intermediate or final state vehicle manufacturer as complying with, or has been altered to comply with, federal motor vehicle safety standards, state emissions regulations, and any additional state regulations applicable to vehicles powered by compressed natural gas or liquefied petroleum gas;

(3) was manufactured for use primarily on public streets, roads, and highways;

(4) is rated at not more than 9,600 pounds unloaded vehicle weight;

(5) has a dedicated or bi-fuel compressed natural gas or liquefied petroleum gas fuel system with a range of at least 125

miles as estimated, published, and updated by the United States Environmental Protection Agency;

(6) has, as applicable, a:

(A) compressed natural gas fuel system that complies with the:

(i) 2013 NFPA 52 Vehicular Gaseous Fuel Systems Code; and

(ii) American National Standard for Basic Requirements for Compressed Natural Gas Vehicle (NGV) Fuel Containers, commonly cited as "ANSI/CSA NGV2"; or

(B) liquefied petroleum gas fuel system that complies with:

(i) the 2011 NFPA 58 Liquefied Petroleum Gas Code; and

(ii) Section VII of the 2013 ASME Boiler and Pressure Vessel Code; and

(7) was acquired on or after September 1, 2013, or a later date established by the commission, by the person applying

for the incentive under this subsection and for use or lease by that person and not for resale.

(b) If the commission determines that an updated version of a code or standard described by Subdivision (a)(6) is more stringent than the version of the code or standard described by Subdivision (a)(6), the commission by rule may provide that a vehicle for which a person applies for an incentive under Subsection (a) is eligible for the incentive only if the vehicle complies with the updated version of the code or standard.

(b-1) The incentive under Subsection (a) is limited to 2,000 vehicles for the state fiscal biennium beginning September 1, 2013.

(c) A new light-duty motor vehicle powered by electric drive is eligible for a \$2,500 incentive if the vehicle:

(1) has four wheels;

(2) was manufactured for use primarily on public streets, roads, and highways;

(3) has not been modified from the original manufacturer's specifications;

(4) is rated at not more than 8,500 pounds unloaded vehicle weight;

(5) has a maximum speed capability of at least 55 miles per hour;

(6) is propelled to a significant extent by an electric motor that draws electricity from a battery that:

(A) has a capacity of not less than four kilowatt hours; and

(B) is capable of being recharged from an external source of electricity; and

(7) was acquired on or after September 1, 2013, or a later date as established by the commission, by the person applying for the incentive under this subsection and for use or lease by that person and not for resale.

(d) The incentive under Subsection (c) is limited to 2,000 vehicles for the state fiscal biennium beginning September 1, 2013.

~~[A new light duty motor vehicle is eligible for an incentive according to the following schedule:~~

~~[Incentive emissions standard and incentive amount~~

~~[Model year 2003-2007~~

~~[Bin 4 — \$1,250~~

~~[Bin 3 — \$2,225~~

~~[Bin 2 — \$3,750~~

~~[Bin 1 — \$5,000]~~

SECTION 7. Section 386.156, Health and Safety Code, is amended to read as follows:

Sec. 386.156. LIST OF ELIGIBLE MOTOR VEHICLES. (a) On August 1 each year the commission shall publish ~~[and provide to the comptroller]~~ a list of ~~[the]~~ new model motor vehicles eligible for inclusion in an incentive under this subchapter as listed for the commission under Section 386.155. The commission shall publish ~~[and provide to the comptroller]~~ supplements to that list as necessary to include additional new vehicle models ~~[listed in a supplement to the original list provided by a manufacturer under Section 386.155]~~.

(b) The commission ~~[comptroller]~~ shall publish ~~[distribute]~~

the list of eligible motor vehicles on the commission's Internet website [~~to all new motor vehicle dealers and leasing agents in this state~~].

SECTION 8. Subsections (a) and (c), Section 386.158, Health and Safety Code, are amended to read as follows:

(a) A person who purchases or leases a new light-duty motor vehicle described by Section 386.153 and [~~that has been~~] listed under Section 386.156(a) [~~386.155~~] is eligible to apply for an incentive under this subchapter.

(c) To receive money under an incentive program provided by this subchapter, the purchaser or lessee of a new light-duty motor vehicle who is eligible to apply for an incentive under this subchapter shall apply for the incentive in the manner provided by law or by rule of the commission [~~comptroller~~].

SECTION 9. Section 386.160, Health and Safety Code, is amended to read as follows:

Sec. 386.160. COMMISSION [~~COMPTROLLER~~] TO ACCOUNT FOR MOTOR VEHICLE PURCHASE OR LEASE INCENTIVES. (a) The commission

[~~comptroller~~] by rule shall develop a method to administer and account for the motor vehicle purchase or lease incentives authorized by this subchapter and to pay incentive money to the purchaser or lessee of a new motor vehicle, on application of the purchaser or lessee as provided by this subchapter.

(b) The commission [~~comptroller~~] shall develop and publish forms and instructions for the purchaser or lessee of a new motor vehicle to use in applying to the commission [~~comptroller~~] for an incentive payment under this subchapter. The commission [~~comptroller~~] shall make the forms available to new motor vehicle dealers and leasing agents. Dealers and leasing agents shall make the forms available to their prospective purchasers or lessees.

(c) In addition to other forms developed and published under this section, the commission [~~comptroller~~] shall develop and publish a verification form by which, with information provided by the dealer or leasing agent, the commission [~~comptroller~~] can verify the sale of a vehicle covered by this subchapter. The verification form shall include at least the name of the purchaser,

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the vehicle identification number of the vehicle involved, the date of the purchase, and the name of the new motor dealer or leasing agent involved in the transaction. At the time of sale or lease of a vehicle eligible for an incentive under this subchapter, the dealer or leasing agent shall complete the verification form supplied to the dealer by the commission [~~controller~~]. The purchaser or lessee shall include the completed verification form as part of the purchaser's application for an incentive. The dealer shall maintain a copy of the completed verification form for at least two years from the date of the transaction.

SECTION 10. The heading to Section 386.161, Health and Safety Code, is amended to read as follows:

Sec. 386.161. [~~REPORT TO COMMISSION~~] SUSPENSION OF PURCHASE OR LEASE INCENTIVES.

SECTION 11. Subsections (b), (c), and (d), Section 386.161, Health and Safety Code, are amended to read as follows:

(b) If the balance available for motor vehicle purchase or lease incentives falls below 15 percent of the total allocated for

the incentives during that fiscal year, the commission [~~comptroller~~] by order shall suspend the incentives until the date the comptroller can certify that the balance available in the fund for incentives is an amount adequate to resume the incentives or the beginning of the next fiscal year, whichever is earlier. If the commission [~~comptroller~~] suspends the incentives, the commission [~~comptroller~~] shall immediately notify [~~the commission and~~] all new motor vehicle dealers and leasing agents that the incentives have been suspended.

(c) The commission [~~comptroller~~] shall establish a toll-free telephone number available to motor vehicle dealers and leasing agents for the dealers and agents to call to verify that incentives are available. The commission [~~comptroller~~] may provide for issuing verification numbers over the telephone line.

(d) Reliance by a dealer or leasing agent on information provided by the [~~comptroller or~~] commission is a complete defense to an action involving or based on eligibility of a vehicle for an incentive or availability of vehicles eligible for an incentive.

SECTION 12. Subchapter D, Chapter 386, Health and Safety Code, is amended by adding Section 386.162 to read as follows:

Sec. 386.162. EXPIRATION. This subchapter expires August 31, 2015.

SECTION 13. Chapter 386, Health and Safety Code, is amended by adding Subchapter D-1 to read as follows:

SUBCHAPTER D-1. DRAYAGE TRUCK INCENTIVE PROGRAM

Sec. 386.181. DEFINITION; RULES. (a) In this subchapter, "drayage truck" means a truck that transports a load to or from a seaport or rail yard.

(b) The commission may include more specific definitions in the rules or guidelines developed to implement the program established by this subchapter in order to reduce emissions in and around seaports in a nonattainment area.

Sec. 386.182. COMMISSION DUTIES. (a) The commission shall develop a purchase incentive program to encourage owners to replace drayage trucks with pre-2007 model year engines with newer drayage trucks and shall adopt guidelines necessary to implement the

program.

(b) The commission by rule shall establish criteria for the models of drayage trucks that are eligible for inclusion in an incentive program under this subchapter. The guidelines must provide that a drayage truck owner is not eligible for an incentive payment under this subchapter unless the truck being replaced contains a pre-2007 model year engine and the replacement truck's engine is from model year 2010 or later as determined by the commission and that the truck operates at a seaport or rail yard.

Sec. 386.183. DRAYAGE TRUCK PURCHASE INCENTIVE. (a) To be eligible for an incentive under this subchapter, a person must:

(1) purchase a replacement drayage truck that under the guidelines adopted by the commission under Section 386.182 is eligible for inclusion in the program for an incentive under this subchapter; and

(2) agree to:

(A) register the truck in this state;

(B) operate the truck in and within a maximum

distance established by the commission of a seaport or rail yard in a nonattainment area of this state for not less than 50 percent of the vehicle's annual mileage or hours of operation, as determined by the commission; and

(C) permanently remove a pre-2007 drayage truck containing a pre-2007 engine owned by the person from operation in a nonattainment area of this state by destroying the engine and scrapping the truck after the purchase of the new truck in accordance with guidelines established by the commission.

(b) To receive money under an incentive program provided by this subchapter, the purchaser of a drayage truck eligible for inclusion in the program must apply for the incentive in the manner provided by law, rule, or guideline of the commission.

(c) Not more than one incentive may be provided for each drayage truck purchased.

(d) An incentive provided under this subchapter may be used to fund not more than 80 percent of the purchase price of the drayage truck.

(e) The commission shall establish procedures to verify that a person who receives an incentive:

(1) has operated in a seaport or rail yard and owned or leased the drayage truck to be replaced for at least two years prior to receiving the grant; and

(2) permanently destroys the engine and scraps the drayage truck that contained the pre-2007 engine owned or leased by the person, in accordance with guidelines established by the commission, after the purchase of the new truck.

(f) The commission may modify this program to improve its effectiveness or further the goals of Subchapter B.

SECTION 14. The heading to Subchapter E, Chapter 386, Health and Safety Code, is amended to read as follows:

SUBCHAPTER E. EVALUATION OF UTILITY COMMISSION AND COMPTROLLER ENERGY EFFICIENCY PROGRAMS [~~GRANT PROGRAM~~]

SECTION 15. Section 386.205, Health and Safety Code, is amended to read as follows:

Sec. 386.205. EVALUATION OF UTILITY COMMISSION AND

COMPTROLLER [~~STATE~~] ENERGY EFFICIENCY PROGRAMS. In cooperation with the laboratory, the utility commission shall provide an annual report to the commission that, by county, quantifies the reductions of energy demand, peak loads, and associated emissions of air contaminants achieved from [~~the~~] programs implemented by the state energy conservation office [~~under this subchapter~~] and from programs [~~those~~] implemented under Section 39.905, Utilities Code.

SECTION 16. Subsection (a), Section 386.252, Health and Safety Code, as amended by Chapter 28 (S.B. 527), Acts of the 82nd Legislature, Regular Session, 2011, is amended to read as follows:

(a) Money in the fund may be used only to implement and administer programs established under the plan. Money appropriated to the commission to be used for the programs under Section 386.051(b) [~~and the total appropriation~~] shall be allocated as follows:

(1) not more than four percent may be used for the clean school bus program under Chapter 390;

(2) not more than three percent [~~not more than 10~~]

~~percent may be used for on road diesel purchase or lease incentives;~~

~~[(3) a specified amount]~~ may be used for the new technology implementation grant program under Chapter 391, from which at least \$1 million will ~~[a defined amount may]~~ be set aside for electricity storage projects related to renewable energy;

(3) ~~[(4)]~~ five percent shall be used for the clean fleet program under Chapter 392;

(4) ~~[(5)]~~ not more than ~~[\$7 million shall be allocated in 2012 and 2013 and not more than]~~ \$3 million may ~~[shall]~~ be used by the commission ~~[allocated in 2014 and in subsequent years]~~ to fund a regional air monitoring program in commission Regions 3 and 4 to be implemented under the commission's oversight, including direction regarding the type, number, location, and operation of, and data validation practices for, monitors funded by the program through a regional nonprofit entity located in North Texas having representation from counties, municipalities, higher education institutions, and private sector interests across the area;

(5) not less than 16 percent shall be used for the Texas natural gas vehicle grant program under Chapter 394;

(6) not more than five percent may be used to provide grants for natural gas fueling stations under the clean transportation triangle program under Section 394.010;

(7) not more than five percent may be used for the Texas alternative fueling facilities program under Chapter 393;

(8) a specified amount may be used [~~is to be allocated~~] each year to support research related to air quality as provided by Chapter 387;

(9) not more than [~~(7) up to~~] \$200,000 may be used [~~is allocated~~] for a health effects study;

(10) [(8) up to] \$500,000 is to be deposited in the state treasury to the credit of the clean air account created under Section 382.0622 to supplement funding for air quality planning activities in affected counties;

(11) at least \$4 million and up to four percent to a maximum of \$7 million, whichever is greater, is allocated to the

commission for administrative costs;

(12) at least two percent and up to five percent of the fund is to be used by the commission for the drayage truck incentive program established under Subchapter D-1;

(13) not more than five percent may be used for the light-duty motor vehicle purchase or lease incentive program established under Subchapter D;

(14) [(+9)] not more than \$216,000 is allocated to the commission to contract with the Energy Systems Laboratory at the Texas Engineering Experiment Station annually for the development and annual computation of creditable statewide emissions reductions obtained through wind and other renewable energy resources for the state implementation plan;

(15) [(+10)] ~~not more than \$3,400,000 is allocated to the commission for administrative costs incurred by the commission;~~

[(+11)] 1.5 percent of the money in the fund is allocated for administrative costs incurred by the laboratory; and

(16) [(+12)] the balance is to be used by [is allocated

~~to~~] the commission for the diesel emissions reduction incentive program under Subchapter C as determined by the commission.

SECTION 17. Section 386.252, Health and Safety Code, is amended by amending Subsections (b), (c), (d), and (e) and adding Subsection (e-1) to read as follows:

(b) The commission may allocate unexpended money designated for the clean fleet program under Chapter 392 to other programs described under Subsection (a) after the commission allocates money to recipients under the clean fleet program.

(c) The commission may allocate unexpended money designated for the Texas alternative fueling facilities program under Chapter 393 to other programs described under Subsection (a) after the commission allocates money to recipients under the alternative fueling facilities program.

(d) The commission may reallocate money designated for the Texas natural gas vehicle grant program under Chapter 394 to other programs described under Subsection (a) if:

(1) the commission, in consultation with the governor

and the advisory board, determines that the use of the money in the fund for that program will cause the state to be in noncompliance with the state implementation plan to the extent that federal action is likely; and

(2) the commission finds that the reallocation of some or all of the funding for the program would resolve the noncompliance.

(e) Under Subsection (d), the commission may not reallocate more than the minimum amount of money necessary to resolve the noncompliance.

(e-1) Money [money] allocated under Subsection (a) to a particular program may be used for another program under the plan as determined by the commission.

~~[(c) Money in the fund may be allocated to the clean school bus program only if:~~

~~[(1) the money is available for that purpose after money is allocated for the other purposes of the fund as required by the state implementation plan; or~~

~~[(2) the amount of money deposited to the credit of the fund in a state fiscal year exceeds the amount the comptroller's biennial revenue estimate shows as the comptroller's estimated amount to be deposited to the credit of the fund in that year.]~~

~~[(d) The commission may allocate unexpended money designated for the clean fleet program to other programs described under Subsection (a) after the commission allocates money to recipients under the clean fleet program.]~~

~~[(e) The commission may allocate unexpended money designated for the Texas alternative fueling facilities program to other programs described under Subsection (a) after the commission allocates money to recipients under the alternative fueling facilities program.]~~

SECTION 18. Subsection (f), Section 386.252, Health and Safety Code, as added by Chapter 892 (S.B. 385), Acts of the 82nd Legislature, Regular Session, 2011, is amended to read as follows:

(f) Money in the fund may be used by the commission for programs under Sections 386.051(b)(13), (b)(14), and (b-1) as may

be appropriated for those programs [~~Notwithstanding Subsection (a),~~
~~the commission may reallocate money in the fund if:~~

~~[(1) the commission, in consultation with the governor and the advisory board, determines that the use of the money in the fund for the program established under Chapter 394 will cause the state to be in noncompliance with the state implementation plan to the extent that federal action is likely; and~~

~~[(2) the commission finds that the reallocation of some or all of the funding for the program established under Chapter 394 would resolve the noncompliance].~~

SECTION 19. Section 386.252, Health and Safety Code, is amended by amending Subsection (g) and adding Subsection (h) to read as follows:

(g) If the legislature does not specify amounts or percentages from the total appropriation to the commission to be allocated under Subsection (a) or (f), the commission shall determine the amounts of the total appropriation to be allocated under each of those subsections, such that the total appropriation

is expended while maximizing emissions reductions [~~Under Subsection (f), the commission may not reallocate more than the minimum amount of money necessary to resolve the noncompliance~~].

(h) Subject to the limitations outlined in this section and any additional limitations placed on the use of the appropriated funds, money allocated under this section to a particular program may be used for another program under the plan as determined by the commission.

SECTION 20. Section 391.002, Health and Safety Code, is amended to read as follows:

Sec. 391.002. GRANT PROGRAM. (a) The commission shall establish and administer a new technology implementation grant program to assist the implementation of new technologies to reduce emissions from facilities and other stationary sources in this state. The commission may establish a minimum capital expenditure threshold for projects under Subsection (b)(2). Under the program, the commission shall provide grants or other financial incentives for eligible projects to offset the incremental cost of emissions

reductions.

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

(1) advanced clean energy projects, as defined by Section 382.003;

(2) new technology projects that reduce emissions of regulated pollutants from point sources [~~and involve capital expenditures that exceed \$500 million~~]; and

(3) electricity storage projects related to renewable energy, including projects to store electricity produced from wind and solar generation that provide efficient means of making the stored energy available during periods of peak energy use.

SECTION 21. Subsection (a), Section 392.007, Health and Safety Code, is amended to read as follows:

(a) The amount the commission shall award for each vehicle being replaced is up to[+]

[~~(+)~~] 80 percent, as determined by the commission, of the total [~~incremental~~] cost for replacement of a heavy-duty or

light-duty diesel engine[+]

~~[(A) manufactured prior to implementation of federal or California emission standards; and~~

~~[(B) not certified to meet a specific emission level by either the United States Environmental Protection Agency or the California Air Resources Board;~~

~~[(2) 70 percent of the incremental cost for replacement of a heavy-duty diesel engine certified to meet the federal emission standards applicable to engines manufactured in 1990 through 1997;~~

~~[(3) 60 percent of the incremental cost for replacement of a heavy-duty diesel engine certified to meet the federal emission standards applicable to engines manufactured in 1998 through 2003;~~

~~[(4) 50 percent of the incremental cost for replacement of a heavy-duty diesel engine certified to meet the federal emission standards applicable to engines manufactured in 2004 and later;~~

~~[(5) 80 percent of the incremental cost for replacement of a light duty diesel vehicle:~~

~~[(A) manufactured prior to the implementation of certification requirements; and~~

~~[(B) not certified to meet either mandatory or voluntary emission certification standards;~~

~~[(6) 70 percent of the incremental cost for replacement of a light duty diesel vehicle certified to meet federal Tier 1 emission standards phased in between 1994 and 1997; and~~

~~[(7) 60 percent of the incremental cost for replacement of a light duty diesel vehicle certified to meet federal Tier 2 emission standards phased in between 2004 and 2009].~~

SECTION 22. Subsection (a), Section 394.007, Health and Safety Code, as amended by Chapter 892 (S.B. 385), Acts of the 82nd Legislature, Regular Session, 2011, is amended to read as follows:

(a) The commission shall develop a grant schedule that:

(1) assigns a standardized grant in an amount up to ~~[between 60 and]~~ 90 percent of the incremental cost of a natural

gas vehicle purchase, lease, other commercial finance, or repowering;

(2) is based on:

(A) the certified emission level of nitrogen oxides, or other pollutants as determined by the commission, of the engine powering the natural gas vehicle; and

(B) the usage of the natural gas vehicle; and

(3) may take into account the overall emissions reduction achieved by the natural gas vehicle.

SECTION 23. Section 394.010, Health and Safety Code, as amended by Chapter 892 (S.B. 385), Acts of the 82nd Legislature, Regular Session, 2011, is amended by amending Subsections (a), (b), (c), and (d) and adding Subsection (f-1) to read as follows:

(a) To ensure that natural gas vehicles purchased, leased, or otherwise commercially financed or repowered under the program have access to fuel, and to build the foundation for a self-sustaining market for natural gas vehicles in Texas, the commission shall award grants to support the development of a network of natural gas

vehicle fueling stations along the interstate highways connecting Houston, San Antonio, Dallas, and Fort Worth, and in nonattainment areas and affected counties of the state. In awarding the grants, the commission shall provide for:

(1) strategically placed natural gas vehicle fueling stations in and between the Houston, San Antonio, and Dallas-Fort Worth areas, and in nonattainment areas and affected counties of the state, to enable a natural gas vehicle to travel in those areas [~~along that triangular area~~] relying solely on natural gas fuel;

(2) grants to be dispersed through a competitive bidding process to offset a portion of the cost of installation of the natural gas dispensing equipment;

(3) contracts that require the recipient stations to meet operational, maintenance, and reporting requirements as specified by the commission; and

(4) a listing, to be maintained by the commission and made available to the public online, of all natural gas vehicle fueling stations that have received grant funding, including

location and hours of operation.

- (b) The commission may not award more than[+]
[~~(1) three station grants to any entity; or~~
[~~(2)~~] one grant for each station.

(c) Grants awarded under this section may not exceed:

- (1) \$400,000 [~~\$100,000~~] for a compressed natural gas station;
- (2) \$400,000 [~~\$250,000~~] for a liquefied natural gas station; or
- (3) \$600,000 [~~\$400,000~~] for a station providing both liquefied and compressed natural gas.

(d) Stations funded by grants under this section must be publicly accessible [~~and located not more than three miles from an interstate highway system~~]. The commission shall give preference to:

- (1) stations providing both liquefied natural gas and compressed natural gas at a single location; [~~and~~]
- (2) stations located not more than one mile from an

interstate highway system; and

(3) stations located in the triangular area between the Houston, San Antonio, and Dallas-Fort Worth areas.

(f-1) An application for a grant under this section must include a certification that the applicant complies with laws, rules, guidelines, and requirements applicable to taxation of fuel provided by the applicant at each fueling facility owned or operated by the applicant. The commission may terminate a grant awarded under this section without further obligation to the grant recipient if the commission determines that the recipient did not comply with a law, rule, guideline, or requirement described by this subsection. This subsection does not create a cause of action to contest an application or award of a grant.

SECTION 24. Section 393.006, Health and Safety Code, as amended by Chapter 892 (S.B. 385), Acts of the 82nd Legislature, Regular Session, 2011, is amended to read as follows:

Sec. 393.006. AMOUNT OF GRANT. For each eligible facility for which a recipient is awarded a grant under the program, the

commission shall award the grant in an amount equal to the lesser of:

(1) 50 percent of the sum of the actual eligible costs incurred by the grant recipient within deadlines established by the commission to construct, reconstruct, or acquire the facility; or

(2) \$600,000 [~~\$500,000~~].

SECTION 25. The following provisions are repealed:

(1) Subsection (c), Section 386.051, Health and Safety Code;

(2) Subdivision (1), Section 386.151, Health and Safety Code;

(3) Section 386.154, Health and Safety Code;

(4) Subsection (a), Section 386.161, Health and Safety Code;

(5) Sections 386.201, 386.202, and 386.203, Health and Safety Code;

(6) Section 386.204, Health and Safety Code;

(7) Subsection (a), Section 386.252, Health and Safety Code;

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Code, as amended by Chapters 589 (Senate Bill No. 20) and 892 (Senate Bill No. 385), Acts of the 82nd Legislature, Regular Session, 2011;

(8) Subsection (f), Section 386.252, Health and Safety Code, as added by Chapter 589 (Senate Bill No. 20), Acts of the 82nd Legislature, Regular Session, 2011; and

(9) Chapters 393 and 394, Health and Safety Code, as amended by Chapter 589 (Senate Bill No. 20), Acts of the 82nd Legislature, Regular Session, 2011.

SECTION 26. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.

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President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1727 passed the Senate on May 2, 2013, by the following vote: Yeas 29, Nays 1, one present not voting; and that the Senate concurred in House amendments on May 25, 2013, by the following vote: Yeas 28, Nays 2, one present not voting.

Secretary of the Senate

I hereby certify that S.B. No. 1727 passed the House, with amendments, on May 21, 2013, by the following vote: Yeas 107, Nays 39, two present not voting.

Chief Clerk of the House

S.B. No. 1727

Approved:

Date

Governor