

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Rulemaking Adoption

AGENDA REQUESTED: April 9, 2014

DATE OF REQUEST: March 21, 2014

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

CAPTION: Docket No. 2013-1140-RUL. Consideration of the adoption of 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 adoption 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 Program, establishing the maximum number of vehicles that may qualify for the incentive, establishing an incentive amount of \$2,500 per eligible vehicle, establishing the process for applying for the incentive, and modifying manufacturer reporting requirements. The proposed rules were published in the November 22, 2013, issue of the *Texas Register* (38 TexReg 8387). (Steve Dayton, Terry Salem) (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:** March 21, 2014

Thru: Bridget C. Bohac, Chief Clerk
Richard A. Hyde, P.E., Executive Director

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

Docket No.: 2013-1140-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 114, Control of Air Pollution from Motor Vehicles
SB 1727: Light-Duty Motor Vehicle Purchase or Lease Incentive Program
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 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 did not appropriate 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 Texas Health and Safety Code (THSC), Chapter 386. 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 rule revisions 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 rule revision revises Chapter 114, Subchapter K, Division 2 by amending §§114.610 - 114.612, 114.616, and repealing §114.619. The rulemaking:

- amends §114.610 by deleting the definition for “Bin or emissions bin” because it is no longer needed, modifying the reference “light-motor vehicle” to “light-duty motor vehicle” under the definition for “Lessee,” and modifying the definition for a “New light-duty motor vehicle” to correct the citation for 43 TAC §17.2 to Texas Transportation Code, §501.002 because the original citation is no longer valid;
- amends §114.611 by deleting references to §114.618 because the section no longer exists and to §114.619 because the commission is repealing this section;
- amends §114.612 by modifying the requirements for the types of vehicles that may qualify for the LDPLI, adding language specifying the 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 Web site, 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 one-, two-, three-, or four-year lease;
- amends §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
- repeals §114.619 because this section is no longer needed due to changes made in §114.612.

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

The revisions are required to implement changes to THSC, Chapter 386, 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:

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

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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 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 rulemaking is not anticipated to have any implications on the affected 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 potentially receiving the incentive.

C.) Agency programs:

The 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 staff will need to develop the process for administering the LDPLI program to include an application packet, approval process, and coordinating with the Financial Administration Division on establishing a payment process for the approved incentives.

Stakeholder meetings:

Stakeholder meetings were not held.

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Public Comment:

The proposal was published in the November 22, 2013, issue of the *Texas Register* (38 TexReg 8387). A public hearing was held on December 12, 2013. The comment period closed December 18, 2013. The commission received comments from Beneficial Results, the United States Environmental Protection Agency Region 6 (EPA), NRG eVgo, part of NRG Energy, Inc. (eVgo), General Motors Corporation (GM), the Regional Transportation Council of the North Central Texas Council of Governments (NCTCOG), Nissan North America, Inc. (Nissan), Plug-In Texas (PIT), Public Citizen, the Lone Star Chapter of the Sierra Club (Sierra Club), VNG.co (VNG), and two individuals.

Beneficial Results and Public Citizen commented in support of the proposed rulemaking. EPA, eVgo, GM, NCTCOG, Nissan, PIT, Sierra Club, VNG, and one individual commented in support of the proposed rulemaking with recommended changes. One individual provided recommendations for implementation of the rules. Significant comments and recommendations are discussed further.

Sierra Club recommended that the eligible vehicle list to be placed on the commission's Web site in accordance with §114.612(a) be posted by August 1 of each year.

NCTCOG recommended that a requirement be added to §114.612(a) that to be eligible a vehicle must be certified to reduce nitrogen oxide emissions as compared to the purchase of a typical new vehicle.

One individual commented regarding the requirement in §114.612(b)(1) that an eligible vehicle must have been acquired after the date established by the commission in the application period. The individual recommended that the date for eligible purchases be set at September 1, 2013, as authorized under THSC, §386.153(a)(7). NCTCOG recommended that the incentives be available only to purchases or leases made on or after the date of release of the application solicitation.

NCTCOG recommended that §114.612(b)(3) be changed to require a purchaser or lessee to commit to register and operate the vehicle in Texas for at least two years, rather than one year as currently specified in the proposed rules. NCTCOG also recommended that a verification mechanism be established to monitor compliance with registration and use requirements, such as reviewing registration records, and that consequences for non-compliance be established and communicated.

eVgo commented that it believes the program was designed specifically for individual consumers and not fleet purchases. eVgo recommended that language be added to §114.612(b) to initially limit fleet purchases to five eligible vehicles, with the fleet purchase limitation to expire approximately three months prior to the expiration date of the program in August 2015. PIT recommended initially prohibiting incentives to dealers in the initial stages of the program and then limiting fleet operators to five or fewer rebates during the Fiscal Year (FY) 2015 portion of the program. GM also commented that, while

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not explicit in the legislation, GM believes that the intent of the program is to stimulate the purchase or lease of eligible vehicles for individual Texas consumers. GM urged the commission to carefully consider how best to ensure that retail customers are not inadvertently excluded from the program because of the volume of potential fleet purchasers.

eVgo, GM, NCTCOG, Nissan, and PIT commented regarding the requirement under §114.612(f) that the incentive for a lease be prorated over the four-year lease term. eVgo, GM, Nissan, and PIT recommended providing the full \$2,500 incentive based on a 36-month lease term, since that duration more closely aligns with the majority of lease offers currently in the market. NCTCOG recommended that the proration schedule allow for 100% of the full incentive amount for leases with three- and four-year durations and 50% for leases with two-year durations. NCTCOG also recommended that leases with a duration of less than two years not be allowed.

eVgo also commented that if a 36-month proration schedule for leases is not possible, then the commission has significant latitude under THSC, §386.051(b-1), to create an ancillary program that could match the incremental difference between a program based on a four-year proration and a 36-month proration term. eVgo recommended implementing such a program for the ease of marketing campaign communications and adoption of qualified vehicles.

VNG commented that the rule proposal fails to facilitate participation by Fleet Management Companies (FMC). VNG explained that FMCs manage fleet vehicles on behalf of other parties, typically owning and leasing vehicles to clients. VNG recommended that rebates be available to vehicle lessors instead of lessees as stipulated in §114.612(f). VNG recommended that under this approach FMCs should have the option of receiving the entire rebate directly upon purchase of the vehicle and that the FMC would then be responsible for accounting for the lower vehicle price in its lease terms.

PIT commented regarding the language in §114.612(g) that specifies that lease incentives will be prorated based on full-year lease terms. PIT explained that 39-month leases are also common in the marketplace. PIT suggested that lease incentives be prorated over the number of months of the lease rather than by years.

NCTCOG commented regarding the changes to §114.616(a)(2), recommending that the manufacturer's report of eligible vehicles continue to include the vehicle emissions Tier and Federal emissions Bin number in order to provide adequate information to be able to calculate emissions reductions achieved by the program.

EPA commented that §114.619 is not currently part of the state implementation plan (SIP) and that the repeal of §114.619 does not need to be submitted for SIP approval.

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VNG recommended adding language to allow for a six-month reservation system. VNG recommended that under this approach a portion of the program funds could be set aside for awards to FMCs that lease to commercial light-duty vehicle fleets. VNG also recommended that the rules allow for legally binding reservations.

eVgo, GM, Nissan, and PIT recommended that applications continue to be accepted in FY 2014 beyond the available FY 2014 funds and be awarded incentives using FY 2015 funds.

NCTCOG encouraged the commission to request full funding of the program as budgets are prepared for the next biennium.

One individual recommended that the commission expand the number of eligible vehicles and increase the incentive amount.

Significant changes from proposal:

In response to comments by Sierra Club, an addition was made to the proposed text under §114.612(a) to state that the list of eligible vehicles to be included on the commission's Web site will be posted by August 1 of each year. Several editorial changes and corrections were also made to the proposed text in §§114.612(a), (a)(1) and (2), (b)(2), and §114.616(a).

Potential controversial concerns and legislative interest:

One issue may be what date will be set for when a vehicle may have been purchased or leased in order to be eligible for an incentive. Some commenters recommended that incentives be available for purchases or leases that occurred prior to the opening of the rebate period. As provided for in the proposed rules, staff recommends that this date be set in the solicitation materials and not specifically established in the rules.

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

The rulemaking does not affect any current policies or require development of new policies.

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:

Texas Register proposal publication date: November 22, 2013

Anticipated *Texas Register* adoption publication date: April 25, 2014

Anticipated effective date: May 1, 2014

Six-month *Texas Register* filing deadline: May 22, 2014

Commissioners

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Agency contacts:

Steve Dayton, Rule Project Manager, 239-6824, Air Quality Division

Terry Salem, Staff Attorney, 239-0469

Michael Parrish, Texas Register Coordinator, 239-2548

Attachments

cc: Chief Clerk, 2 copies
Executive Director's Office
Marshall Coover
Tucker Royall
John Bentley
Office of General Counsel
Michael Parrish
Terry Salem
Steve Dayton

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

Sections 114.612 and 114.616 are adopted *with changes* to the proposed text as published in the November 22, 2013, issue of the *Texas Register* (38 TexReg 8387).

Amended §114.610 and §114.611 and the repeal of §114.619 are adopted *without changes* to the proposed text and will, therefore, not be republished.

Background and Summary of the Factual Basis for the Proposed Rules

The rulemaking implements requirements of Senate Bill (SB) 1727, 83rd Legislature, 2013.

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 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.

The adoption incorporates the changes under SB 1727.

Section by Section Discussion

§114.610, Definitions

Section 114.610 is amended by deleting the definition for "Bin or emissions bin" because the definition is no longer needed. Under the definition "Lessee," the reference to "light-motor vehicle" is corrected to "light-duty motor vehicle." In addition, the definition for a "New light-duty motor vehicle" is modified 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 are renumbered as needed.

§114.611, Applicability

Section 114.611 is amended by deleting references to §114.618 because this section no longer exists and to §114.619 because that section is repealed by this rulemaking.

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

Section 114.612 is amended to modify the requirements for the types of vehicles that may qualify for the LDPLI. As specified by SB 1727, the amended language states that only new light-duty motor vehicles that are powered by compressed natural gas, liquefied petroleum gas, or electric drives that meet specific established criteria qualify for the \$2,500 incentive. The amended language in §114.612(a) includes specific vehicle criteria and requires the commission to post a list of vehicles that meet these requirements on the commission's Web site. Additional language was added to the proposed text in §114.612(a) to state that the commission will post the list of eligible vehicles by August 1 of each year. This deadline is in accordance with THSC, §386.156(a). Also, several editorial changes and corrections were made to the proposed text in §114.612(a), (a)(1) and (2), and (b)(2).

The revisions require that 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 revisions include the information and documentation that will be required as part of the LDPLI incentive application. The revisions also include 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 revisions explain how an incentive for a lease will be prorated based on a four-year lease term. A one-year lease will qualify for 25% of the full incentive amount, a two-year lease will qualify for 50% of the full incentive amount, a three-year lease will qualify for 75% of the full incentive amount, and a four-year lease will qualify for the full incentive amount. This section is 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 revisions to §114.616 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 revisions also modify the vehicle information that is required to be included in the manufacturer's report to reflect the LDPLI vehicle requirements. Language was added to proposed text in §114.616(a) to clarify that the

list of vehicles referred to in the initial phrase of the first sentence is the list to be published by the commission on its Web site, as distinguished from the lists to be provided by each manufacturer.

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

Section 114.619 is repealed. This section no longer applies because the LDPLI schedule and accompanying incentive amounts have been replaced with specific vehicle requirements and a set incentive amount that is outlined in §114.612.

Final Regulatory Impact Determination

The commission reviewed the rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the 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 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 amendments are made in accordance with SB 1727, 83rd Legislature, 2013, which amended THSC, Chapter 386. The rules add or revise guidelines for a voluntary grant. Because the rules place no involuntary requirements on the regulated community, the rules will 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.

The commission invited public comment on the draft regulatory impact analysis determination. No comments were received on the draft regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated this rulemaking and performed an analysis of whether the proposed rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The commission's 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 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 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 rules do not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the rulemaking and found the adoption 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.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding consistency with the CMP.

Public Comment

The commission held a public hearing on December 12, 2013. The comment period closed December 18, 2013. The commission received comments from Beneficial Results; NRG eVgo, part of NRG Energy, Inc. (eVgo); the United States Environmental Protection Agency Region 6 (EPA); General Motors Corporation (GM); the Regional Transportation Council of the North Central Texas Council of Governments (NCTCOG); Nissan North America, Inc. (Nissan); Plug-In Texas (PIT); Public Citizen; the Lone Star Chapter of the Sierra Club (Sierra Club); VNG.co (VNG); and two individuals.

Beneficial Results and Public Citizen commented in support of the proposed rulemaking. eVgo, EPA, GM, NCTCOG, Nissan, PIT, Sierra Club, VNG, and one individual commented in support of the proposed rulemaking with recommended changes. One individual provided recommendations for implementation of the rules.

Response to Comments

EPA expressed appreciation for the efforts of the commission to continually improve the control of air pollution from motor vehicles and to provide for greater flexibility in funding projects. EPA commented that it continues to applaud the commission's efforts to continually improve the state implementation plan (SIP) and offered support during the rule revision process.

GM expressed appreciation for the undertaking before the commission to implement the legislation as part of the TERP.

Nissan commented in support of the rulemaking with recommended changes. Nissan explained that it continues to make long-term investments in a wide range of alternative fuel technologies that would complement this program and that it has been a leader in zero-emission technologies since 2010 with its mass market all-electric Nissan LEAF. Nissan commented that public policies like these are critical in supporting new breakthroughs and ongoing deployment and that this program will play an important

role in expanding the state's leadership in promoting alternative fuel technologies.

Nissan expressed appreciation for efforts to implement the program in a timely manner and that by creating a live program more quickly, it will help avoid creating a large class of potential buyers who might defer vehicle purchases.

eVgo commented in support of the rulemaking with modifications that will promote consumer adoption of eligible light-duty vehicles. eVgo expressed concern that public knowledge and promotion of an incentive program has chilled purchases of qualified light-duty vehicles as consumers wait for incentive funds to become available. eVgo commented that an expedited implementation schedule would reduce the motivation for consumers to wait for an incentive and would accelerate the environmental benefits from adoption of eligible vehicles. eVgo expressed support for a prompt rule adoption and program implementation schedule.

PIT commented that it appreciates the undertaking before the commission to implement the legislation and other various new and expanded TERP programs. Sierra Club commented that it is generally supportive of the rulemaking with small changes. Beneficial Results and Public Citizen commented in support of the program.

VNG commented that it applauds the State of Texas for offering an incentive for light-duty natural gas vehicles. VNG explained that while much of the focus of the TERP has

been on converting heavy-duty fleets to natural gas, there is a growing opportunity to develop a market for natural gas in light-duty vehicles, which account for 75% of on-road fuel use nationwide. VNG stated that offering effective incentives for light-duty natural gas vehicles could help catalyze this market and make Texas a leader in making natural gas a fuel for all drivers, not just the bus and truck fleet operators.

The commission appreciates the support expressed for the program. No changes to the proposed text were made in response to these comments.

Sierra Club commented that since manufacturers are required to submit a list of eligible vehicles to the commission by July 1 of each year, the commission should make that list available on its Web site, as specified under §114.612(a), by a specific date. Sierra Club suggested that the commission make the list available by August 1 of each year.

In accordance with THSC, §386.156(a), the commission is already required to publish the list of eligible vehicles on August 1 of each year. However, the commission agrees that it would help to include the August 1 deadline in the rules for clarity. A change to §114.612(a) was made from proposal to add the phrase "by August 1 of each year" to the sentence referring to the commission publishing the list of eligible vehicles on its Web site. That

sentence now reads "The commission will publish on its Web site by August 1 of each year a list of the eligible vehicles..."

NCTCOG recommended that nitrogen oxides (NO_x) emissions reductions be maintained as the primary focus of TERP funding. NCTCOG recommended that a requirement be added to §114.612(a) that in order to claim an incentive, the vehicle must be certified to reduce NO_x emissions as compared to the purchase of a typical new vehicle. NCTCOG commented that based on a survey of emission standards for model year 2012 vehicles, the significant majority of new vehicles are certified to the EPA Bin 5 emission standard. NCTCOG recommended that vehicles under the program should be certified to the EPA Bin 4 emission standard or a lower standard.

The commission does not agree with the recommendation to limit eligible vehicles to those vehicles certified to EPA Bin 4 or lower emission standards. The legislature removed the criteria related to EPA emission bins and established new criteria under THSC, §386.153, regarding the eligibility of vehicles for purchase or lease under the program. The rule changes implement this new criteria. No changes to the proposed text were made in response to this comment.

NCTCOG recommended clarification of the language in §114.612(a)(1)(B), which states that an eligible vehicle powered by natural gas or liquefied petroleum gas must have been originally manufactured to comply with or has been certified by an original manufacturer 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 a vehicle powered by compressed natural gas or liquefied petroleum gas. NCTCOG expressed concern that this language potentially allows vehicles on which an aftermarket compressed natural gas or liquefied natural gas conversion has been performed to be included as eligible under the program. NCTCOG commented that the dealer and manufacturer requirements in the rulemaking suggest that the intent of the rulemaking is to provide incentives for original equipment manufacturer vehicles only. NCTCOG recommended that vehicles on which aftermarket conversions have been performed be disallowed as qualifying vehicles and that clarifying language be added to specify that vehicle conversions are not eligible to receive the incentive.

The commission does not agree with the concerns and recommendations made by NCTCOG. Under §114.612(a)(1), to be eligible a vehicle must be a new light-duty motor vehicle. Under the definition included in §114.610(5), a new light-duty motor vehicle must be a light-duty motor vehicle that has never been subject to first sale as defined under Texas Transportation Code,

§501.002. Under this definition, a vehicle may not have been previously registered or titled. The language in §114.612(a)(1)(B) accounts for the fact that the manufacture of a new light-duty motor vehicle powered by an engine fueled by compressed natural gas or liquefied petroleum gas may include the addition of the alternative fuel engine to a manufactured chassis or the conversion of a new vehicle originally manufactured with a conventionally fueled engine before the vehicle is delivered to the customer and the title and registration issued. The addition of the alternative fuel engine or conversion to an alternative fuel engine may be completed by the manufacturer of the vehicle chassis or by another entity after the original manufacture of the vehicle. In either case, the alternative fuel vehicle must be delivered as a new vehicle to the customer, meeting all required safety regulations, emission standards, and other state regulations applicable to new vehicles powered by compressed natural gas or liquefied petroleum gas. The rule language ensures that aftermarket conversion of a vehicle after the first sale to a customer would not be allowed. No changes to the proposed text were made as a result of this comment.

One individual commented regarding §114.612(b)(1), which requires that to be eligible for an incentive a vehicle must have been acquired after the date established by the commission in the application solicitation. The individual recommended that the

commission make the rebates for an electric vehicle retroactive to the beginning of the fiscal year (FY). The individual stated that they specifically waited until after September 1, 2013, to purchase an electric vehicle because of the provision in THSC, §386.153(a)(7), that states that to be eligible for an incentive a vehicle must have been acquired on or after the beginning of this FY, September 1, 2013, or a later date established by the commission. The individual stated that the potential for a rebate influenced them to proceed with the purchase and they commented if the commission does not make the rebates retroactive then they will be excluded from getting a rebate even though they purchased the vehicle after the date established in the statute.

NCTCOG also commented on §114.612(b)(1) and recommended that the incentive be made available only to purchases or leases made on or after the date the commission releases the application solicitation. NCTCOG commented that the purpose of the program should be to achieve emissions reductions by increasing the rate of sale or lease of qualifying vehicles and that allowing the incentive to be applied retroactively would not further this goal.

Per §114.612(b)(1), the purchase or lease date will be included in the rebate solicitation documents. This language allows the commission to adjust the purchase or lease date requirements as needed, depending upon the demand for the program. As required under THSC, §386.153(a)(7), this

date may not be before September 1, 2013, but may be a later date. The commission will consider these comments when establishing a date in the solicitation documents. No changes to the proposed text were made as a result of these comments.

NCTCOG recommended a change to §114.612(b)(3) to require that a purchaser or lessee be required to commit to register and operate the vehicle in Texas for at least two years instead of the proposed one-year obligation. NCTCOG commented that a two-year obligation would increase the emissions reduction benefits gained through the program. NCTCOG also recommended that a verification mechanism be established to monitor compliance with the registration and use requirements, such as working with the Texas Department of Motor Vehicles to review registration records. NCTCOG also recommended that consequences for failure to comply be established and communicated. NCTCOG explained that a process for verification and enforcement of non-compliance would make the program consistent with other programs within the TERP and would help ensure that the emissions reductions are creditable to the SIP by being verifiable.

The commission does not agree with NCTCOG's recommendation to extend the obligation period from one year to two years. The one-year requirement is intended to ensure that the purchaser will register the

vehicle in Texas without imposing too many restrictions. Registration application documents will need to be submitted with the rebate application to ensure that the initial registration requirements are complied with. The commission also will have the option of checking registration records to confirm that vehicles have been registered in Texas for at least one year. The commission has determined that a longer commitment period would be a disincentive to participation and the administrative costs of implementing a more complex monitoring and enforcement process outweigh any benefits that might be gained from that process. Also, because this is a statewide program that is not linked to a specific nonattainment area and quantifying emissions reductions for the program would be very difficult with uncertain results, these rules are not being submitted to the EPA for approval as a revision to the SIP. Therefore, the enforceability criteria for SIP approval does not apply. No changes to the proposed text were made in response to this comment.

eVgo commented that it believes the program was designed specifically for individual consumers and not fleet purchases. eVgo recommended adding language to the eligibility criteria in §114.612(b) to initially limit fleet purchases to five eligible vehicles with the fleet purchase limitation to expire approximately three months prior to the expiration date of the program in August 2015 in order to allow fleets to utilize any

remaining funds. eVgo commented that including this requirement would permit consumers to substantially benefit first, while allowing fleets the possibility to benefit from both this program and the Texas Clean Fleet Program under Chapter 114, Subchapter K, Division 2.

PIT recommended initially limiting incentives to fleets in the initial stages of the program and then limiting rebates to fleet operators to five or fewer rebates during the FY 2015 portion of the program. PIT commented that such a ban on fleet rebates in FY 2014 would permit the commission to review applications and determine an appropriate, limited approach for fleet incentives in FY 2015 should individual consumer demand be less than anticipated.

GM commented that it and others advocated for the LDPLI program with individual consumers in mind and that, while not explicit in the legislation, GM believes that the intent of the program is to stimulate the purchase or lease of eligible vehicles for individual Texas consumers, although the program is likely to attract fleet customers as well. GM commented that although it does not have a specific recommendation concerning how best to bifurcate the two classes of customers, it urged the commission to carefully consider how best to ensure that retail customers are not inadvertently excluded from the program because of the volume of potential of fleet purchasers.

The commission shares the commenters' desire that the program be accessible to individuals but has no information to indicate that there will be such a large demand for the funds by owners of large fleets so as to preclude a substantial number of individuals from participating in the program. In addition, an overriding concern by the commission is that restrictions not be put in place that would cause the program to be under-utilized or to make implementation of the program overly burdensome. This is especially the case because the program expires August 31, 2015. The commission will monitor the program as it is implemented. If it appears that large fleet owners are receiving a large percentage of the funds, the commission could consider ways to ensure greater participation by smaller fleets and individual users, such as allocating a portion of the funds specifically for those types of applicants. No changes to the proposed text were made as a result of these comments.

eVgo, GM, NCTCOG, Nissan, and PIT commented regarding the requirement under §114.612(f) that the incentive for a lease be prorated on a four-year lease term. Both Nissan and NRG expressed support for providing the maximum incentive possible for the purchase or lease of qualified vehicles. PIT commented that leased electric vehicles have proven popular in the marketplace with consumers. Nissan explained that the most popular Nissan LEAF lease term is generally three years. NCTCOG commented

that based on industry feedback, it understands that four-year leases for new vehicles are rare.

eVgo, GM, Nissan, and PIT recommended providing a full \$2,500 incentive based on a 36-month lease term since that duration more closely aligns with the majority of lease offers currently in the market. GM commented that a 36-month term will yield the greatest interest by potential buyers in the marketplace, thus maximizing the impact and benefits of the program.

NCTCOG recommended that the proration schedule allow for 100% of the full incentive amount for leases with three- and four-year durations and 50% for leases with two-year durations. NCTCOG also recommended that leases with a duration of less than two years not be allowed in order to maximum emissions reductions and maintain consistency with NCTCOG recommendation of a minimum two-year registration and operational commitment in Texas.

The commission does not agree with the recommendations to prorate the lease incentives on a three-year lease term. The requirement to prorate the incentive for leases using a four-year lease term is in accordance with THSC, §386.158(b). The commission does not have an option under the statutory provisions to use a 36-month lease term to prorate the incentive.

The commission also does not agree with NCTCOG's recommendations for requiring a minimum two-year lease term and for providing the maximum rebate amount for both a three-year and a four-year lease. The commission has determined that these recommendations would not be consistent with the statutory requirement to prorate lease incentives over a four-year lease term. No changes to the proposed text were made in response to these comments.

eVgo further recommended that if proration based on a 36-month lease term is not possible, the commission has significant latitude under THSC, §386.051(b-1), to create an ancillary program that could match the incremental difference between a program based on a four-year proration and a 36-month proration. eVgo recommended implementing such a program for the ease of marketing campaign communications and adoption of qualified vehicles.

This recommendation is outside of the scope of this rulemaking. Also, the legislature did not allocate funds for programs under this additional statutory provision and use of funds for programs under this provision would reduce the funding available to the other TERP incentive programs. No changes to the proposed text were made in response to this comment.

VNG commented that the current rule proposal was much less effective in developing the light-duty natural gas vehicle market than it could be because it fails to facilitate participation by Fleet Management Companies (FMCs). VNG explained that FMCs manage vehicle fleets on behalf of other parties, typically owning and leasing vehicles to clients and arranging for full life-cycle support of the vehicles, including maintenance, repair, refueling, and resale. VNG states that these companies are responsible for more than 50% of the light-duty vehicle fleet market, including the majority of fleets operated by large, high-profile, multi-state, and multi-national corporations. VNG further explained that these major commercial fleets are important early adopters of natural gas vehicles because their combination of high mileage with regular routes allows for appealing vehicle payback times and the large size of the fleets facilitates both purchase and production economies of scale. VNG commented that these fleets are also key targets for refueling infrastructure developers like VNG, which can rely on these fleets as the "anchor tenants" needed to justify investments in new fueling stations. VNG stated that for all of these reasons, large light-duty fleets and the FMCs those fleets rely upon are potentially powerful partners in the initial development of the broader light-duty natural gas vehicle market. VNG recommended that rebates be available to vehicle lessors instead of the lessees as stipulated in §114.612(f). VNG recommended that FMCs should have the option of receiving the entire rebate directly upon purchase of the vehicle since they will be paying the full cost of the vehicle up front before leasing the

vehicle to the fleet user. The FMC would then be responsible for accounting for the lower vehicle price in its lease terms.

The commission does not agree with this recommendation. The program is intended to provide an incentive to the ultimate user of the vehicle to encourage them to choose a natural gas, propane, or electric vehicle over a conventional vehicle. Importantly, the commission has no control over what a leasing company charges to a lessee, regardless of the incentives the leasing company may have received for the original purchase of the vehicle. The commission would have no way to ensure that an incentive is provided to the lessee to encourage them to choose the natural gas, propane, or electric vehicle. In addition, if the rebate agreement is with the lessor and not the lessee, the commission would have no enforceable commitment by the lessee to register and operate the vehicle in Texas for not less than one year as provided for under §114.612(3). This commitment is needed to ensure that the environmental benefits of the use of the vehicle occur in the state. No changes to the proposed text were made in response to this comment.

PIT commented regarding the language in §114.612(g) that specifies that lease incentives will only be prorated based on full-year lease terms. PIT explained that 39-

month leases are also common in the marketplace. PIT suggested that lease incentives be prorated over months rather than years, if possible. PIT commented that this clarification will help ease consumer decision-making and assist in marketing of the program resulting in broader consumer adoption. eVgo commented that there are also significant numbers of 29- and 30-month leases in the market and recommended deleting the requirement for an incentive to be based on a full-year lease.

The commission does not agree with the recommendation to prorate lease incentives based on the number of months of the lease rather than on full-year lease terms. This program is intended to provide for a simple process to receive a rebate. The commission determined that using a monthly term would be make the determination of the eligible incentive amounts more complicated than is warranted for this program. No changes to the proposed text were made in response to these comments.

NCTCOG commented regarding the changes to §114.616(a)(2) recommending that the manufacturer's report continue to include the vehicle emissions Tier and Federal emissions Bin number in order to provide adequate information to be able to calculate emissions reductions achieved by the program.

The commission agrees that the emissions information for the vehicles will be important if emissions reductions are calculated for the program. The Certificate of Conformity issued by the EPA and the emissions information available from the EPA will provide the information needed to determine the emissions. Even if the information were provided on the manufacturer reports, the commission would still need to look up the Certificate of Conformity information to verify any information provided by the manufacturer. Therefore, the commission does not agree that the information on emissions Tier and Bin numbers should continue to be required on the manufacturer reports. No changes to the proposed text were made as a result of this comment.

EPA commented that §114.619 is not currently part of the SIP and that the repeal of §114.619 does not need to be submitted for SIP approval.

The commission agrees with this recommendation. The original rules for this program were not submitted to EPA for SIP approval because the commission determined that it would be difficult to satisfy all of the EPA criteria for accepting the program as an Economic Incentive Program, including ensuring that emissions reductions are surplus, quantifiable, enforceable, and permanent. The commission does not intend to submit

this rulemaking to EPA for approval as a SIP revision at this time, although a decision could be made in the future to submit the program for SIP approval. No changes were made to the proposed text as a result of this comment.

VNG commented that the rules currently being considered are designed with individuals purchasing or leasing single vehicles from retail car dealerships in mind and do not consider the longer-term, larger-volume planning horizons of large fleets and the FMCs. VNG explained that these entities plan their fleet cycle very closely over several months with considerations including duty cycle, vehicle usage, technology needs, capital and financing requirements, order timing, used vehicle sale timing, and other factors. VNG further explained that the purchase of vehicles requiring natural gas upfits may extend this timeline further, with recent anecdotal information indicating delays of up to four to six months between ordering and receiving vehicles. VNG expressed concern that a "first-come-first-served" rebate that provides no guarantee of availability over the FMC fleet cycle effectively makes this funding impossible to plan for and thus very difficult or impossible to utilize. VNG expressed an opinion that the individual market will be much smaller than demand from fleets in the near term and that the dispersed, uncertain demand represented by individuals is simply not sufficient to drive private investment in light-duty natural gas vehicle refueling infrastructure, which is a prerequisite to making natural gas vehicles appealing to a wider market. VNG

recommended adding language to allow for a six-month reservation system, rather than just the informal system provided for under THSC, §386.161(c). Under the approach recommended by VNG, a portion of the program funds could be set aside for awards to FMCs that lease to commercial light-duty vehicle fleets. This funding would be available on a longer-term reservation system that would allow an FMC to reserve funds for a certain number of rebates, subject to a maximum number of rebate reservations per FMC at one time, and based on the FMC's expected customer demand for light-duty natural gas vehicles. The FMC would then have up to six months to identify specific customers, purchase vehicles, and sign lease agreements, after which any unused rebates would be returned to the pool for use by other applicants. VNG also recommended that the rules allow for legally binding reservations, rather than the informal, short-term assurances provided through the toll-free telephone number to be provided by the commission under THSC, §386.161(c). Reservations would be legally binding and the reserved funds would be held aside and made available to the FMC for the full six-month period.

The commission does not agree with the recommendations for an extended six-month rebate reservation system for FMCs and adding rule language to make the reservations legally binding. The statutory provisions under THSC, §386.160(c), direct the commission to establish a toll-free number for dealers and leasing agents to call to verify that incentives are available.

These provisions do not go further to direct or authorize the commission to establish a long-term reservation system, particularly reservations that are legally binding on the commission. The commission has determined that it would not be feasible to use a long-term, legally binding reservation system. The proposed approach would tie up limited funds with no guarantee that the reserved funds would be used. No changes to the proposed text were made in response to this comment.

eVgo, GM, Nissan, and PIT commented regarding the appropriated funding of approximately \$3.8 million per FY over the 2014 - 2015 state fiscal biennium, for a total of approximately \$7.6 million. eVgo commented that if more applications are received in FY 2014 than available funds for the first FY, the commission should put those additional applications at the front of the line for receiving rebates from the FY 2015 funds as soon as that program funding becomes available. GM and PIT recommended that there be no delineation between FY 2014 and FY 2015 in terms of the flow of funds to consumers should adequate funds be available. NRG commented that this approach would result in a clear and constant market signal promoting adoption of qualified vehicles and that providing constant access to program funds across FYs avoids a scenario in which a temporary funding gap could stop the program, resulting in a disincentive for consumers to purchase or lease qualified vehicles or otherwise confusing the consumer decision-making process. Nissan commented that by

maximizing incentives for sales in the first FY of the program, it will help grow the market immediately and void the problem of buyers deferring purchases. GM and PIT suggested that providing consistent access to consumers to funding until it is exhausted over the program period will increase adoption of qualified vehicles and contribute to accomplishing the objectives of the TERP.

These comments are outside of the scope of this rulemaking. The commission agrees that the proposed approach might help avoid a temporary gap in the purchase or lease of eligible vehicles. Because the program will not begin until after the adoption of these rules, it is also possible that the FY 2014 funding will be sufficient to cover all rebate applications received before the end of the FY. The commission will consider these comments in making a decision on whether to continue accepting applications in FY 2014 for which funding may not be available until the beginning of FY 2015, if a decision becomes necessary. No changes to the proposed text were made in response to these comments.

NCTCOG commented in support of TERP and full funding through appropriation of all revenue collected under the program. NCTCOG encouraged the commission to request full funding of the program as budgets are prepared for the next biennium.

This comment is outside of the scope of this rulemaking. Decisions on appropriation levels are made by the Texas Legislature. Also, how the commission structures the biennial appropriation request is guided by direction from the Legislative Budget Board (LBB). The commission will continue to work with members of the legislature and the LBB in regards to the appropriation funding levels for the TERP programs. No changes to the proposed text were made in response to this comment.

One individual expressed support for the program with a recommendation that the commission expand the number of eligible vehicles and increase the incentive amount. The individual commented that making the transition to alternative fuels is crucial as the state tries to meet the EPA's national air quality standards.

The vehicle eligibility standards and incentive amounts are established by the legislature under THSC, §386.153. The commission does not have authority to expand the types of eligible vehicles or increase the incentive amount. No changes to the proposed text were made in response to this comment.

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 adopted 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 adopted 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 adopted 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 paragraph (1) or (2) of this 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 by August 1 of each year a list of the eligible vehicles as provided to the commission as specified under §114.616 of this title. Eligible vehicles include:~~

~~(1) a 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 United States Environmental Protection Agency 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) a 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, providing all required information [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 to be published by the commission on its Web site, 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 **to be published by the commission on its Web site** ~~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 adopted 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 adopted 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 adopted 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.]

Section 964.069 authorizes the commissioner to adopt reasonable rules as necessary to implement the purposes and provisions of this chapter.

Section 964.071(a) provides that an authorized foreign or alien captive insurance company licensed under laws of any jurisdiction may become a domestic captive insurance company in this state on a determination by the commissioner that the captive insurance company has complied with the requirements of Insurance Code Chapter 964. Section 964.071(c) provides that the commissioner may postpone or waive the imposition of any fees or taxes under this code for a period not to exceed two years for any foreign or alien captive insurance company redomesticating to this state.

Section 36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of the state.

CROSS REFERENCE TO STATUTE. The proposal affects the following statutes: Insurance Code §§401.002, 401.006, 401.051, 803.005, 803.008, 964.002, 964.051, 964.052, 964.053, 964.054, 964.055, 964.056, 964.057, 964.057, 964.058, 964.059, 964.060, 964.062, 964.063, 964.065, 964.066, 964.067, 964.069, 964.071, 36.001 and Government Code §§411.083, 411.087, and 411.106.

§6.701. Disciplinary Action.

Disciplinary action may be taken against a captive insurance company, captive insurance manager, or other person if, after notice and opportunity for hearing, it is determined that the captive insurance company, captive insurance manager, or other person has violated the Insurance Code, or other law subject to department enforcement, or regulation by the department, including:

(1) a captive insurance company that violates §6.501 of this title (relating to Workers' Compensation); and

(2) an insurance carrier, as defined by Labor Code §401.011, if it allows an employer, other than a certified self-insured employer, to dictate the methods by which and the terms on which a claim is handled and settled in violation of statute.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 8, 2013.

TRD-201305161

Sara Waitt

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: December 22, 2013

For further information, please call: (512) 463-6327



TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES

SUBCHAPTER K. MOBILE SOURCE INCENTIVE PROGRAMS

DIVISION 2. LIGHT-DUTY MOTOR VEHICLE PURCHASE OR LEASE INCENTIVE PROGRAM

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 7, 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 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.

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.

30 TAC §§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 paragraph (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). 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: [~~and the purchaser or lessee agrees to register the vehicle in this state and meets the requirements of this section.~~]

(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 \$2,500 [an] 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) [(e)] 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.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 7, 2013.

TRD-201305137
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: December 22, 2013
For further information, please call: (512) 239-2548



30 TAC §114.619

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

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 agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Robert Martinez
Director, Environmental Law Division
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For further information, please call: (512) 239-2548



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

30 TAC §114.622, §114.629

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §114.622 and §114.629.

If adopted, the amendments will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan.

Background and Summary of the Factual Basis for the Proposed Rules

The purpose of this rulemaking is to amend existing rules implementing the Diesel Emissions Reduction Incentive (DERI) Program established under Texas Health and Safety Code (THSC), Chapter 386, Subchapter C. The DERI Program provides financial incentives for reducing emissions of on-road heavy-duty motor vehicles and non-road equipment.

Senate Bill (SB) 1727, 83rd Legislature, 2013, amended THSC, Chapter 386, Subchapter C, to revise existing criteria for receiving an incentive grant under this subchapter. The revision to THSC, §386.106, removed the maximum cost-effectiveness limit of \$15,000 per ton of nitrogen oxides (NO_x) reduced in the nonattainment area or affected county for which the project is proposed.

The proposed rulemaking would incorporate the change to THSC, §386.106, under SB 1727.

In addition, on May 21, 2012, the EPA published a revision to 40 Code of Federal Regulations Part 81, effective July 20, 2012 amending the designation of nonattainment areas for the 2008 Ozone National Ambient Air Quality Standard. Under the revised EPA rule, Wise County was added to the designation of the Dallas-Fort Worth 2008 Eight-Hour Ozone Nonattainment Area.

The proposed rulemaking would add Wise County to the list of applicable counties for the DERI Program.

Section by Section Discussion

§114.622, *Incentive Program Requirements*

The commission proposes to amend §114.622 to incorporate a change to the program eligibility criteria under THSC, §386.106(a).

Proposed subsection (g) would be consistent with amended THSC, §386.106(a), by removing the maximum cost-effectiveness limit of \$15,000 per ton of NO_x emissions reduced. Under the proposed change to this subsection, the commission would be authorized to set cost-effectiveness limits as needed to ensure the best use of available funds.

§114.629, *Affected Counties and Implementation Schedule*

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

1 Section 386.252(a) [~~386.252(a)(8)~~]; [~~and~~]

2 (9) a contract with the Energy Systems Laboratory at
3 the Texas Engineering Experiment Station for computation of
4 creditable statewide emissions reductions as provided by Section
5 386.252(a)(14);

6 (10) the clean fleet program established under Chapter
7 392;

8 (11) the alternative fueling facilities program
9 established under Chapter 393;

10 (12) the natural gas vehicle grant program and clean
11 transportation triangle program established under Chapter 394;

12 (13) other programs the commission may develop that
13 lead to reduced emissions of nitrogen oxides, particulate matter,
14 or volatile organic compounds in a nonattainment area or affected
15 county;

16 (14) other programs the commission may develop that
17 support congestion mitigation to reduce mobile source ozone
18 precursor emissions; and

19 (15) the drayage truck incentive program established
20 under Subchapter D-1 [~~386.252(a)(9)~~].

21 (b-1) Under the plan, the commission may establish and
22 administer other programs, including other grants or funding
23 programs, as determined by the commission to be necessary or
24 effective in fulfilling its duties and achieving the objectives
25 described under Section 386.052. The commission may apply the
26 criteria and requirements applicable to the programs under
27 Subsection (b) to programs established under this subsection, or

1 the commission may establish separate criteria and requirements as
2 necessary to achieve the commission's objectives. The additional
3 programs shall be consistent with and comply with all applicable
4 laws, regulations, and guidelines pertaining to the use of state
5 funds, the awarding and administration of grants and contracts, and
6 achieving reductions in ozone precursors or particulate matter.
7 Under this subsection, the commission may place a priority on
8 programs that address the following goals:

9 (1) reduction of emissions of oxides of nitrogen or
10 particulate matter from heavy-duty on-road vehicles and non-road
11 equipment, including drayage vehicles, locomotives, and marine
12 vessels, at seaport facilities or servicing seaport facilities in
13 nonattainment areas; and

14 (2) reduction of emissions from the operation of
15 drilling, production, completions, and related heavy-duty on-road
16 vehicles or non-road equipment in oil and gas production fields
17 where the commission determines that the programs can help prevent
18 that area or an adjacent area from being in violation of national
19 ambient air quality standards.

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

22 Sec. 386.0515. AGRICULTURAL PRODUCT TRANSPORTATION
23 PROJECTS. (a) In this section, "agricultural product
24 transportation" means the transportation of a raw agricultural
25 product from the place of production using a heavy-duty truck to:

26 (1) a nonattainment area;

27 (2) an affected county;

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

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

6 (b) Notwithstanding other eligibility requirements, the
7 commission shall by rule or policy provide specific eligibility
8 requirements under the Texas Clean Fleet Program established under
9 Chapter 392 and under the Texas natural gas vehicle grant program
10 established under Chapter 394, as added by Chapter 892 (Senate Bill
11 No. 385), Acts of the 82nd Legislature, Regular Session, 2011, for
12 projects relating to agricultural product transportation.

13 (c) The determining factor for eligibility for
14 participation in a program established under Chapter 392 or Chapter
15 394, as added by Chapter 892 (Senate Bill No. 385), Acts of the 82nd
16 Legislature, Regular Session, 2011, for a project relating to
17 agricultural product transportation is the overall accumulative
18 net reduction in emissions of oxides of nitrogen in a nonattainment
19 area, an affected county, or the clean transportation triangle.

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

22 (b) The governor shall appoint to the advisory board:

23 (1) a representative of the trucking industry;

24 (2) a representative of the air conditioning
25 manufacturing industry;

26 (3) a representative of the electric utility industry;

27 (4) a representative of regional transportation; and

1 (5) a representative of the nonprofit organization
2 described by Section 387.002 [~~386.252(a)(2)~~].

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

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

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

24 Sec. 386.106. COST-EFFECTIVENESS CRITERIA; DETERMINATION
25 OF GRANT AMOUNT. (a) Except as otherwise provided by statute, the
26 ~~[as provided by Section 386.107 and except for infrastructure~~
27 ~~projects and infrastructure purchases that are part of a broader~~

1 ~~retrofit, repower, replacement, or add-on equipment project, the~~
2 ~~commission may not award a grant for a proposed project the~~
3 ~~cost-effectiveness of which, calculated in accordance with Section~~
4 ~~386.105 and criteria developed under that section, exceeds \$15,000~~
5 ~~per ton of oxides of nitrogen emissions reduced in the~~
6 ~~nonattainment area or affected county for which the project is~~
7 ~~proposed. This subsection does not restrict commission authority~~
8 ~~under other law to require emissions reductions with a~~
9 ~~cost-effectiveness that exceeds \$15,000 per ton.~~

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

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

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

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

25 Sec. 386.152. [~~COMPTROLLER AND~~] COMMISSION DUTIES
26 REGARDING LIGHT-DUTY MOTOR VEHICLE PURCHASE OR LEASE INCENTIVE
27 PROGRAM. (a) The [~~comptroller and the~~] commission shall develop a

1 purchase or lease incentive program for new light-duty motor
2 vehicles and shall adopt rules necessary to implement the program.

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

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

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

- 22 (1) has four wheels;
23 (2) was originally manufactured to comply with and has
24 been certified by an original equipment manufacturer or
25 intermediate or final state vehicle manufacturer as complying with,
26 or has been altered to comply with, federal motor vehicle safety
27 standards, state emissions regulations, and any additional state

1 regulations applicable to vehicles powered by compressed natural
2 gas or liquefied petroleum gas;

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

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

7 (5) has a dedicated or bi-fuel compressed natural gas
8 or liquefied petroleum gas fuel system with a range of at least 125
9 miles as estimated, published, and updated by the United States
10 Environmental Protection Agency;

11 (6) has, as applicable, a:

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

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

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

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

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

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

25 (7) was acquired on or after September 1, 2013, or a
26 later date established by the commission, by the person applying
27 for the incentive under this subsection and for use or lease by that

1 person and not for resale.

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

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

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

13 (1) has four wheels;

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

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

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

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

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

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

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

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

5 (d) The incentive under Subsection (c) is limited to 2,000
6 vehicles for the state fiscal biennium beginning September 1, 2013.
7 ~~[A new light-duty motor vehicle is eligible for an incentive~~
8 ~~according to the following schedule:~~

9	[Incentive emissions standard and incentive amount
10	[Model year 2003-2007
11	[Bin 4 — \$1,250
12	[Bin 3 — \$2,225
13	[Bin 2 — \$3,750
14	[Bin 1 — \$5,000]

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

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

26 (b) The commission ~~[comptroller]~~ shall publish ~~[distribute]~~
27 the list of eligible motor vehicles on the commission's Internet

1 website [~~to all new motor vehicle dealers and leasing agents in this~~
2 ~~state~~].

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

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

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

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

16 Sec. 386.160. COMMISSION [~~COMPTROLLER~~] TO ACCOUNT FOR MOTOR
17 VEHICLE PURCHASE OR LEASE INCENTIVES. (a) The commission
18 [~~comptroller~~] by rule shall develop a method to administer and
19 account for the motor vehicle purchase or lease incentives
20 authorized by this subchapter and to pay incentive money to the
21 purchaser or lessee of a new motor vehicle, on application of the
22 purchaser or lessee as provided by this subchapter.

23 (b) The commission [~~comptroller~~] shall develop and publish
24 forms and instructions for the purchaser or lessee of a new motor
25 vehicle to use in applying to the commission [~~comptroller~~] for an
26 incentive payment under this subchapter. The commission
27 [~~comptroller~~] shall make the forms available to new motor vehicle

1 dealers and leasing agents. Dealers and leasing agents shall make
2 the forms available to their prospective purchasers or lessees.

3 (c) In addition to other forms developed and published under
4 this section, the commission [~~comptroller~~] shall develop and
5 publish a verification form by which, with information provided by
6 the dealer or leasing agent, the commission [~~comptroller~~] can
7 verify the sale of a vehicle covered by this subchapter. The
8 verification form shall include at least the name of the purchaser,
9 the vehicle identification number of the vehicle involved, the date
10 of the purchase, and the name of the new motor dealer or leasing
11 agent involved in the transaction. At the time of sale or lease of a
12 vehicle eligible for an incentive under this subchapter, the dealer
13 or leasing agent shall complete the verification form supplied to
14 the dealer by the commission [~~comptroller~~]. The purchaser or
15 lessee shall include the completed verification form as part of the
16 purchaser's application for an incentive. The dealer shall
17 maintain a copy of the completed verification form for at least two
18 years from the date of the transaction.

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

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

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

25 (b) If the balance available for motor vehicle purchase or
26 lease incentives falls below 15 percent of the total allocated for
27 the incentives during that fiscal year, the commission

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

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

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

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

20 Sec. 386.162. EXPIRATION. This subchapter expires August
21 31, 2015.

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

24 SUBCHAPTER D-1. DRAYAGE TRUCK INCENTIVE PROGRAM

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

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

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

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

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

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

24 (2) agree to:

25 (A) register the truck in this state;

26 (B) operate the truck in and within a maximum
27 distance established by the commission of a seaport or rail yard in

1 a nonattainment area of this state for not less than 50 percent of
2 the vehicle's annual mileage or hours of operation, as determined
3 by the commission; and

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

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

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

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

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

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

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

27 (f) The commission may modify this program to improve its

1 effectiveness or further the goals of Subchapter B.

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

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

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

8 Sec. 386.205. EVALUATION OF UTILITY COMMISSION AND
9 COMPTROLLER [~~STATE~~] ENERGY EFFICIENCY PROGRAMS. In cooperation
10 with the laboratory, the utility commission shall provide an annual
11 report to the commission that, by county, quantifies the reductions
12 of energy demand, peak loads, and associated emissions of air
13 contaminants achieved from [~~the~~] programs implemented by the state
14 energy conservation office [~~under this subchapter~~] and from
15 programs [~~those~~] implemented under Section 39.905, Utilities Code.

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

19 (a) Money in the fund may be used only to implement and
20 administer programs established under the plan. Money appropriated
21 to the commission to be used for the programs under Section
22 386.051(b) [~~and the total appropriation~~] shall be allocated as
23 follows:

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

26 (2) not more than three percent [~~not more than 10~~
27 ~~percent may be used for on-road diesel purchase or lease~~

1 ~~incentives,~~

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

6 (3) ~~[(4)]~~ five percent shall be used for the clean
7 fleet program under Chapter 392;

8 (4) ~~[(5)]~~ not more than ~~[\$7 million shall be allocated~~
9 ~~in 2012 and 2013 and not more than]~~ \$3 million may ~~[shall]~~ be used by
10 the commission ~~[allocated in 2014 and in subsequent years]~~ to fund a
11 regional air monitoring program in commission Regions 3 and 4 to be
12 implemented under the commission's oversight, including direction
13 regarding the type, number, location, and operation of, and data
14 validation practices for, monitors funded by the program through a
15 regional nonprofit entity located in North Texas having
16 representation from counties, municipalities, higher education
17 institutions, and private sector interests across the area;

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

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

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

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

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

3 (10) [(8) up to] \$500,000 is to be deposited in the
4 state treasury to the credit of the clean air account created under
5 Section 382.0622 to supplement funding for air quality planning
6 activities in affected counties;

7 (11) at least \$4 million and up to four percent to a
8 maximum of \$7 million, whichever is greater, is allocated to the
9 commission for administrative costs;

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

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

16 (14) [(9)] not more than \$216,000 is allocated to the
17 commission to contract with the Energy Systems Laboratory at the
18 Texas Engineering Experiment Station annually for the development
19 and annual computation of creditable statewide emissions
20 reductions obtained through wind and other renewable energy
21 resources for the state implementation plan;

22 (15) [(10) not more than \$3,400,000 is allocated to
23 the commission for administrative costs incurred by the commission;

24 [(11)] 1.5 percent of the money in the fund is
25 allocated for administrative costs incurred by the laboratory; and

26 (16) [(12)] the balance is to be used by [is allocated
27 to] the commission for the diesel emissions reduction incentive

1 program under Subchapter C as determined by the commission.

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

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

9 (c) The commission may allocate unexpended money designated
10 for the Texas alternative fueling facilities program under Chapter
11 393 to other programs described under Subsection (a) after the
12 commission allocates money to recipients under the alternative
13 fueling facilities program.

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

17 (1) the commission, in consultation with the governor
18 and the advisory board, determines that the use of the money in the
19 fund for that program will cause the state to be in noncompliance
20 with the state implementation plan to the extent that federal
21 action is likely; and

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

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

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

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

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

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

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

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

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

25 (f) Money in the fund may be used by the commission for
26 programs under Sections 386.051(b)(13), (b)(14), and (b-1) as may
27 be appropriated for those programs [~~Notwithstanding Subsection~~

1 ~~(a), the commission may reallocate money in the fund if:~~

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

7 ~~[(2) the commission finds that the reallocation of~~
8 ~~some or all of the funding for the program established under Chapter~~
9 ~~394 would resolve the noncompliance].~~

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

13 (g) If the legislature does not specify amounts or
14 percentages from the total appropriation to the commission to be
15 allocated under Subsection (a) or (f), the commission shall
16 determine the amounts of the total appropriation to be allocated
17 under each of those subsections, such that the total appropriation
18 is expended while maximizing emissions reductions ~~[Under~~
19 ~~Subsection (f), the commission may not reallocate more than the~~
20 ~~minimum amount of money necessary to resolve the noncompliance].~~

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

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

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

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

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

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

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

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

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

25 [~~(1)~~] 80 percent, as determined by the commission, of
26 the total [~~incremental~~] cost for replacement of a heavy-duty or
27 light-duty diesel engine[+]

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

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

6 ~~[(2) 70 percent of the incremental cost for~~
7 ~~replacement of a heavy-duty diesel engine certified to meet the~~
8 ~~federal emission standards applicable to engines manufactured in~~
9 ~~1990 through 1997;~~

10 ~~[(3) 60 percent of the incremental cost for~~
11 ~~replacement of a heavy-duty diesel engine certified to meet the~~
12 ~~federal emission standards applicable to engines manufactured in~~
13 ~~1998 through 2003;~~

14 ~~[(4) 50 percent of the incremental cost for~~
15 ~~replacement of a heavy-duty diesel engine certified to meet the~~
16 ~~federal emission standards applicable to engines manufactured in~~
17 ~~2004 and later;~~

18 ~~[(5) 80 percent of the incremental cost for~~
19 ~~replacement of a light-duty diesel vehicle;~~

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

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

24 ~~[(6) 70 percent of the incremental cost for~~
25 ~~replacement of a light-duty diesel vehicle certified to meet~~
26 ~~federal Tier 1 emission standards phased in between 1994 and 1997;~~
27 ~~and~~

1 ~~[(7) 60 percent of the incremental cost for~~
2 ~~replacement of a light-duty diesel vehicle certified to meet~~
3 ~~federal Tier 2 emission standards phased in between 2004 and 2009].~~

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

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

8 (1) assigns a standardized grant in an amount up to
9 ~~[between 60 and]~~ 90 percent of the incremental cost of a natural gas
10 vehicle purchase, lease, other commercial finance, or repowering;

11 (2) is based on:

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

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

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

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

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

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

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

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

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

15 (4) a listing, to be maintained by the commission and
16 made available to the public online, of all natural gas vehicle
17 fueling stations that have received grant funding, including
18 location and hours of operation.

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

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

23 (1) \$400,000 ~~[\$100,000]~~ for a compressed natural gas
24 station;

25 (2) \$400,000 ~~[\$250,000]~~ for a liquefied natural gas
26 station; or

27 (3) \$600,000 ~~[\$400,000]~~ for a station providing both

1 liquefied and compressed natural gas.

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

6 (1) stations providing both liquefied natural gas and
7 compressed natural gas at a single location; [~~and~~]

8 (2) stations located not more than one mile from an
9 interstate highway system; and

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

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

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

25 Sec. 393.006. AMOUNT OF GRANT. For each eligible facility
26 for which a recipient is awarded a grant under the program, the
27 commission shall award the grant in an amount equal to the lesser

1 of:

2 (1) 50 percent of the sum of the actual eligible costs
3 incurred by the grant recipient within deadlines established by the
4 commission to construct, reconstruct, or acquire the facility; or

5 (2) \$600,000 [~~\$500,000~~].

6 SECTION 25. The following provisions are repealed:

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

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

11 (3) Section 386.154, Health and Safety Code;

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

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

16 (6) Section 386.204, Health and Safety Code;

17 (7) Subsection (a), Section 386.252, Health and Safety
18 Code, as amended by Chapters 589 (Senate Bill No. 20) and 892
19 (Senate Bill No. 385), Acts of the 82nd Legislature, Regular
20 Session, 2011;

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

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

27 SECTION 26. This Act takes effect immediately if it

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

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

Approved:

Date

Governor

Texas Commission on Environmental Quality



ORDER ADOPTING AMENDED AND REPEALED RULES

Docket No. 2013-1140-RUL
Project No. 2013-039-114-RUL

On April 9, 2014, the Texas Commission on Environmental Quality (Commission) adopted amended §§ 114.610 - 114.612, 114.616, and repealed § 114.619 of 30 Texas Administrative Code Chapter 114, Subchapter K, Division 2. The adoption 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 Program, establishing the maximum number of vehicles that may qualify for the incentive, establishing an incentive amount of \$2,500 per eligible vehicle, establishing the process for applying for the incentive, and modifying manufacturers reporting requirements.

Under Tex. Health & Safety Code Ann., §§ 382.011, 382.012, and 382.023 (Vernon 2010), the Commission has the authority to control the quality of the state's air and to issue orders consistent with the policies and purposes of the Texas Clean Air Act, Chapter 382 of the Tex. Health & Safety Code. The proposed rules were published for comment in the November 22, 2013, issue of the *Texas Register* (38 TexReg 8387).

Pursuant to Tex. Health & Safety Code Ann. § 382.017 (Vernon 2010) and Government Code, Chapter 2001 (Vernon 2008 and after proper notice, the Commission conducted a public hearing to consider the amended and repealed rules. Proper notice included prominent advertisement in the areas affected at least 30 days prior to the date of the hearing. A public hearing was held in Austin, Texas on December 12, 2013.

The Commission circulated hearing notices of its intended action to the public, including interested persons and all applicable local air pollution control agencies. The public was invited to submit data, views, and recommendations on the proposed amended and repealed rules, either orally or in writing, at the hearing or during the comment period. Prior to the scheduled hearing, copies of the proposed amended and repealed rules were available for public inspection at the Commission's central office and on the Commission's Web site.

Data, views, and recommendations of interested persons regarding the proposed amended and repealed rules were submitted to the Commission during the comment

period, and were considered by the Commission as reflected in the analysis of testimony incorporated by reference to this Order. The Commission finds that the analysis of testimony includes the names of all interested groups or associations offering comment on the proposed amended and repealed rules and their position concerning the same.

IT IS THEREFORE ORDERED BY THE COMMISSION that the amended and repealed rules are hereby adopted. The Commission further authorizes staff to make any non-substantive revisions to the rules necessary to comply with *Texas Register* requirements. The adopted rules and the preamble to the adopted rules are incorporated by reference in this Order as if set forth at length verbatim in this Order.

This Order constitutes the Order of the Commission required by the Administrative Procedure Act, Government Code, § 2001.033.

If any portion of this Order is for any reason held to be invalid by a court of competent jurisdiction, the invalidity of any portion shall not affect the validity of the remaining portions.

Date Issued:

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Bryan W. Shaw, Ph.D., P.E., Chairman