The Texas Natural Resource Conservation Commission (commission) proposes new §§114.600 - 114.602, and 114.609 in new Division 1, On-Road Diesel Vehicle Purchase or Lease Incentive Program; and new §§114.610 - 114.612, 114.616, 114.618, and 114.619 in new Division 2, Light-Duty Motor Vehicle Purchase or Lease Incentive Program. These new sections and new divisions are being proposed in new Subchapter K, Mobile Source Incentive Programs, of Chapter 114 as part of the implementation of Senate Bill (SB) 5 (relating to the Texas Emission Reduction Plan), Acts of the 77th Texas Legislature, 2001.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The 77th Legislature adopted SB 5 establishing the Texas Emission 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. The program is funded through surcharges and fees established in the bill. Senate Bill 5 also required that the commission delete the operating restriction on construction equipment rules and the Tier 2/Tier 3 accelerated purchase rules on construction equipment from the Dallas/Fort Worth and Houston/Galveston state implementation plans and replace them with programs from SB 5. The SB 5 programs are estimated to achieve reductions in excess of the reductions expected from the rules that are being repealed. In accordance with SB 5, the state implementation plan will be revised to replace these rules with TERP.

The proposed rules will establish a state-wide incentive program for the purchase or lease of new on-road diesel vehicles and light-duty motor vehicles that meet emission standards more stringent than those required by federal requirements. The incentive for eligible on-road diesel vehicles will be the reimbursement of incremental costs to purchase the cleaner vehicle and the incentive for eligible light-duty motor vehicles will be an award of a specified dollar amount. Both incentives will be based on the emission standard to which the vehicle is certified. The implementation and administration of the new on-road diesel vehicle purchase or lease incentive program will be performed by the commission. However, implementation and administration of the incentive awards associated with the light-duty motor vehicle purchase or lease incentive program will be the responsibility of the state comptroller's office.

SECTION BY SECTION DISCUSSION

The proposed new Subchapter K includes two new divisions which will establish the rules concerning motor vehicle purchasing and leasing incentives. The proposed new Division 1 includes the proposed new on-road diesel vehicle purchase or lease incentive program rules found in the proposed new §§114.600 - 114.602, and 114.609. The proposed new Division 2 includes the proposed new light-duty motor vehicle purchase or lease incentive program rules found in the proposed new §§114.610 - 114.612, 114.616, 114.618, and 114.619.

The proposed new §114.600 contains definitions applicable to the on-road diesel vehicle purchase or lease incentive program rules. These definitions include: incremental costs, lease, lessee, motor vehicle, new on-road diesel vehicle, and on-road diesel. The definitions of motor vehicle and on-road diesel are as specified under SB 5, §1. The other definitions listed were added for clarity.

The proposed new §114.601 establishes the state-wide applicability of §§114.600, 114.602, and 114.609. All incentives are subject to the availability of funding for this program. Because the funding for these incentives is from surcharges which will be collected throughout the lifetime of the program, and because there are statutory caps on the amount of funding for this program, funding for incentives for eligible vehicles may be delayed or unavailable. Incentives will be funded in the order of the submission of a completed certification.

The proposed new §114.602 establishes the eligibility requirements for the on-road diesel vehicle purchase or lease incentive to reimburse the incremental costs of purchasing or leasing an on-road diesel vehicle that is certified by the United States Environmental Protection Agency (EPA) to meet an emission standard more stringent than that of a conventional on-road diesel vehicle. The proposed new §114.602 also specifies that only one incentive will be provided for each eligible new on-road diesel vehicle purchased or leased in the state and that the incentive shall be provided to the lessee and not to the purchaser if the on-road diesel vehicle is purchased for the purpose of leasing the on-road diesel vehicle to another person. In addition, the proposed new §114.602 specifies that the incentive for the lease of an eligible new on-road diesel vehicle must be prorated based on an eight-year lease term. This provision will likely prevent the excessive use of short term leases in acquiring incentive funding.

The proposed new §114.609 establishes the schedule of emission standards and incentive amounts from which the incremental cost reimbursement incentives will be based.

The proposed new §114.610 contains definitions applicable to the light-duty motor vehicle purchase or lease incentive program rules. These definitions include: bin or emissions bin, lease, lessee, light-duty motor vehicle, and new light-duty motor vehicle. The definitions of bin or emissions bin, light-duty motor vehicle, and motor vehicle are as specified under SB 5, §1. The other definitions listed were added for clarity.

The proposed new §114.611 establishes the state-wide applicability of §§114.610, 114.612, 114.616, 114.618, and 114.619. All incentives are subject to the availability of funding for this program. Because the funding for these incentives is from surcharges which will be collected during the pendency of the program, and because there are statutory caps on the amount of funding for this program, funding for incentives for eligible vehicles may be delayed or unavailable. Incentives established by these proposed rules will be funded in accordance with rules and procedures adopted by the state comptroller's office.

The proposed new §114.612 establishes the eligibility requirements for the new light-duty purchase or lease incentive for the purchase or lease of a new light-duty motor vehicle that is certified by the EPA to meet the Tier 2 - Bin 4, Bin 3, Bin 2, or Bin 1 emission standards or to an emissions standard that is at least as stringent. The proposed new §114.612 also specifies that only one incentive will be provided for each eligible new light-duty motor vehicle purchased or leased in the state and that the incentive shall be provided to the lessee and not to the purchaser if the new light-duty motor vehicle is purchased for the purpose of leasing the light-duty motor vehicle to another person. In addition, the proposed new §114.612 specifies that the incentive for the lease of an eligible new light-duty motor vehicle must be prorated based on an four-year lease term. This provision will likely prevent the excessive use of short-term leases in acquiring incentive funding.

The proposed new §114.616 establishes the requirements for a list of eligible vehicles that vehicle manufacturers will be required to provide to the executive director, or his designee, at the beginning, but no later than July 1, of each year preceding the next new vehicle model year, beginning January 1, 2002. The information to be included on this list will provide the commission with sufficient data to verify the emission certification of vehicles listed. The proposed new §114.616 will also allow the manufacturer to supplement the list as necessary to include additional new light-duty motor vehicle models that the manufacturer intends to sell in this state during the model year. In addition, the proposed new §114.616 will require that all dealers and leasing agents of new light-duty motor vehicles statewide make copies of this list available to their prospective purchasers or lessees. This provision will help provide awareness of this incentive program to dealers state-wide and provide additional information to customers in making purchase selection decisions.

The proposed new §114.618 establishes the requirements for a vehicle emissions brochure that vehicle manufacturers will be required to publish by September 1 of each year and distribute to customers regarding the vehicles eligible to receive an incentive, beginning September 1, 2002. The dimensions of the brochure are also established by the proposed new §114.618 for the sake of uniformity in printing styles and so that the brochure may be easily recognized by prospective purchasers and lessees. The proposed new §114.618 will also require each manufacturer to submit a copy of the brochure to the executive director, or his designee, by September 1 of each year, beginning September 1, 2002. In addition, the proposed new §114.618 will require manufacturers that do not intend to sell new light-duty motor vehicles in the state that may be eligible for the incentive to publish a brochure that states a notice of that fact.

The proposed new §114.619 establishes the schedule of emission standards and corresponding incentive amounts from which the incentives will be based.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, determined that for the first five-year period the proposed amendments are in effect, there will be significant administrative costs to the commission to implement provisions in this rulemaking. There may be potential cost savings to units of state and local government that elect to participate in the voluntary incentive programs that will be implemented by the proposed amendments. Units of state and local government may receive incentives for purchases of cleaner on-road diesel vehicles in an amount not to exceed $25,000 per vehicle and incentives to purchase cleaner-running light-duty motor vehicles in an amount not to exceed $5,000 per vehicle. The incentives proposed in this rulemaking action would be available statewide.

The proposed amendments are intended to implement certain provisions of SB 5. Specifically, the bill directed the commission to establish a state-wide incentive program for the purchase or lease of new on-road diesel vehicles and light-duty motor vehicles that meet emission standards more stringent than those required by federal regulations. The incentive for eligible on-road diesel vehicles will be the reimbursement of the cost difference between purchasing a vehicle that meets current emission standards and purchasing a vehicle that meets the more stringent emission standards as specified in this rulemaking. The incentive for eligible light-duty motor vehicles will be an award of a specified dollar amount, both incentives will be based on the emission standard to which the vehicle is certified.

All diesel-powered motor vehicles with a gross vehicle weight rating (GVWR) over 10,000 pounds that are required to be registered for use on public highways are eligible for the incentives if the vehicle is certified by the EPA to an emission standard at least as stringent as specified in this rulemaking. Types of diesel-powered vehicles that would qualify for incentives include large stepvans (such as those used by the United Parcel Service (UPS)), large pickup trucks, 18-wheel trucks, and buses.

A wide range of light-duty motor vehicles would also qualify for the incentives statewide. All light-duty motor vehicles with a GVWR less than 10,000 pounds that are required to be registered for use on public highways are eligible for incentives if the vehicle is certified by the EPA to an emission standard at least as stringent as the Tier 2 - Bin 4, Bin 3, Bin 2, or Bin 1 emission standards. A Bin is a set of emission standards applicable to exhaust pollutants that get stricter the lower the Bin number. Vehicles that meet Bin 4 standards are capable of emitting 0.04 grams/mile of nitrogen oxides (NO_x) or less; Bin 3 vehicles can emit 0.03 grams/mile of NO_x or less; Bin 2 vehicles can emit 0.02 grams/mile of NO_x; and Bin 1 vehicles can emit 0.00 grams/mile NO_x (zero emission vehicle). Examples of light-duty vehicles that would qualify for incentives include: most cars, pickups, sport utility vehicles (SUV), and passenger vans.

Incentives for the purchase or lease of on-road diesel vehicles manufactured on or after January 1, 2001 until September 30, 2002 shall be based on the following emission standards: vehicles emitting 2.5 grams per brake horsepower-hour (g/bhp-hr) of NO_x or less, are eligible for up to $15,000; and vehicles emitting 1.5 g/bhp-hr or less, would be eligible for up to $25,000. For those on-road diesel vehicles manufactured on or after October 1, 2002 until September 30, 2006, the standards and incentives are as follows: vehicles emitting 1.2 g/bhp-hr of NO_x or less would be eligible for up to $15,000; and vehicles emitting 0.5 g/bhp-hr or less, would be eligible for up to $25,000.

Incentives for the purchase or lease of light-duty motor vehicles for model years 2003 through 2007 will be based on the following emission standards and incentive amounts: Bin 4 is eligible for $1,250; Bin 3 is eligible for $2,225; Bin 2 is eligible for $3,750; and Bin 1 is eligible for $5,000.

Senate Bill 5 established the TERP, providing 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. The program is funded through newly created and increased fees and taxes established in the bill. Specifically, 10% of the registration fee for truck trailers and commercial vehicles statewide; 1% of the charge for each sale, lease, or rental of new or used construction equipment statewide; 2.5% of the total charge for every retail sale or lease of year 1996 and earlier on-road diesel motor vehicles with a gross registered weight over 14,000 lbs; $225 fee on motor vehicles registering for the first time in Texas, except military personnel; and $10 fee per commercial motor vehicle inspection. The Comptroller has estimated that approximately $133 million would be generated by these fees and taxes and deposited into the TERP in 2002 with the amount increasing to $165 million by 2006. The TERP fund would be used to fund the incentives and grants for the various programs established by the bill and to pay for the administration of the program. The collection of these fees is not part of this rulemaking.

Owners and operators that register, purchase, or lease truck trailers, commercial vehicles, on-road diesel vehicles, construction equipment, and out-of-state vehicles would pay the fees to fund the TERP fund. The Comptroller has estimated that over 417,000 truck trailers and commercial vehicles, 440,000 out-of-state motor vehicles, and an unknown number of on-road diesel vehicles and construction equipment would be affected by the newly created and increased taxes and fees established by SB 5. Although units of state and local government may be affected by the increased charges on vehicles and equipment, the proposed amendments are intended to reduce the cost of acquiring cleaner-running vehicles.

The commission estimates that significant administrative costs will be required to implement the proposed amendments. The commission was appropriated an additional $1,125,401 in Fiscal Year (FY) 2002 and $966,402 in FY 2003 to administer the provisions of SB 5. The commission was also appropriated an additional $103,616,840 in FY 2002 and $109,439,810 in FY 2003 out of the TERP fund to be used as grants and incentives for the diesel emissions reduction program. In addition to the additional appropriations, the commission was authorized an additional five full-time equivalent personnel positions (FTE) to develop and manage the program.

PUBLIC BENEFIT AND COSTS

Mr. Davis also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendments would be potentially reducing the amount of harmful emissions being emitted from motor vehicles and thereby improving the overall air quality of the state.

The proposed amendments are intended to implement certain provisions of SB 5, which directed the commission to establish a state-wide incentive program for the purchase or lease of new on-road diesel vehicles and light-duty motor vehicles that meet emission standards more stringent than those required by federal regulations. The incentive for eligible on-road diesel vehicles will be the reimbursement of the cost difference between purchasing a vehicle that meets current emission standards and purchasing a vehicle that meets the more stringent emission standards as specified in this rulemaking. The incentive for eligible light-duty motor vehicles will be an award of a specified dollar amount, both incentives will be based on the emission standard to which the vehicle is certified.

All diesel-powered motor vehicles with a GVWR over 10,000 pounds that are required to be registered for use on public highways are eligible for the incentives if the vehicle is certified by the EPA to an emission standard at least as stringent as specified in this rulemaking. Types of diesel-powered vehicles that would qualify for incentives include large stepvans (such as those used by UPS), large pickup trucks, 18-wheel trucks, and buses.

A wide range of light-duty motor vehicles would also qualify for the incentives statewide. All light-duty motor vehicles with a GVWR less than 10,000 pounds that are required to be registered for use on public highways are eligible for incentives if the vehicle is certified by the EPA to an emission standard at least as stringent as the Tier 2 - Bin 4, Bin 3, Bin 2, or Bin 1 emission standards. Example of light-duty vehicles that would qualify for incentives include: most cars, pickups, SUVs, and passenger vans.

Incentives for the purchase or lease of on-road diesel vehicles manufactured on or after January 1, 2001 until September 30, 2002 shall be based on the following emission standards: vehicles emitting 2.5 g/bhp-hr of NO_x or less, are eligible for up to $15,000; and vehicles emitting 1.5 g/bhp-hr or less, would be eligible for up to $25,000. For those on-road diesel vehicles manufactured on or after October 1, 2002 until September 30, 2006, the standards and incentives are as follows: vehicles emitting 1.2 g/bhp-hr of NO_x or less would be eligible for up to $15,000; and vehicles emitting 0.5 g/bhp-hr or less, would be eligible for up to $25,000.

Incentives for the purchase or lease of light-duty motor vehicles for model years 2003 through 2007 will be based on the following emission standards and incentive amounts: Bin 4 (0.04 grams/mile of NO_x) is eligible for $1,250; Bin 3 (0.03 grams/mile of NO_x) is eligible for $2,225; Bin 2 (0.02 grams/mile of NO_x) is eligible for $3,750; and Bin 1 (0.00 grams/mile of NO_x) is eligible for $5,000.

Senate Bill 5 established the TERP, which is funded through newly created and increased fees and taxes established in the bill. Owners and operators of truck trailers, commercial vehicles, on-road diesel vehicles, construction equipment, and out-of-state vehicles would pay the fees to fund the TERP. The

Comptroller has estimated that over 417,000 truck trailers and commercial vehicles, 440,000 out-of-state motor vehicles, and an unknown number of on-road diesel vehicles and construction equipment would be affected by the newly created and increased taxes and fees established by SB 5. Although individuals and businesses will be affected by the increased charges on vehicles and equipment, the proposed amendments are intended to reduce the cost of acquiring cleaner-running vehicles.

The amount of incentives that can be provided annually is limited to what the commission is appropriated from the TERP fund. The commission was appropriated $103,616,840 for FY 2002, and $109,439,810 for FY 2003 to be used as grants and incentives for the diesel emissions reduction program. This funding will be used to provide incentives for the purchase or lease of new on-road diesel vehicles and light-duty motor vehicles that exceed current emission standards as described in this rulemaking, and to fund incentives and grants being proposed in concurrent rulemaking. The commission does not have an estimate as to the number and type of vehicles that will be purchased by individuals and businesses through the proposed incentive programs.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There will be no adverse fiscal implications for small and micro-businesses as a result of implementation of the proposed amendments. Senate Bill 5 directed the commission to establish a state-wide incentive program for the purchase or lease of new on-road diesel vehicles and light-duty motor vehicles that meet emission standards more stringent than those required by federal regulations. The incentive for eligible on-road diesel vehicles will be the reimbursement of the cost difference between purchasing a vehicle that meets current emission standards and purchasing a vehicle that meets the more stringent emission standards as specified in this rulemaking. The incentive for eligible light-duty motor vehicles will be an award of a specified dollar amount, both incentives will be based on the emission standard to which the vehicle is certified.

Small and micro-businesses that purchase qualifying vehicles could potentially receive up to as much as $25,000 per vehicle when purchasing on-road diesel vehicles, and up to $5,000 per vehicle when purchasing qualifying light-duty motor vehicles.

All diesel-powered motor vehicles with a GVWR over 10,000 pounds that are required to be registered for use on public highways are eligible for the incentives if the vehicle is certified by the EPA to an emission standard at least as stringent as specified in this rulemaking. Types of diesel-powered vehicles that would qualify for incentives include large stepvans (such as those used by UPS), large pickup trucks, 18-wheel trucks, and buses.

A wide range of light-duty motor vehicles would also qualify for the incentives. All light-duty motor vehicles with a GVWR less than 10,000 pounds that are required to be registered for use on public highways are eligible for incentives if the vehicle is certified by the EPA to an emission standard at least as stringent as the Tier 2 - Bin 4, Bin 3, Bin 2, or Bin 1 emission standards. A Bin is a set of emission standards applicable to exhaust pollutants. Example of light-duty vehicles that would qualify for incentives include: most cars, pickups, SUVs, and passenger vans.

Senate Bill 5 established the TERP which is funded through newly created and increased fees and taxes established in the bill. Owners and operators of truck trailers, commercial vehicles, on-road diesel vehicles, construction equipment, and out-of-state vehicles would pay the fees to fund the TERP fund. The Comptroller has estimated that over 417,000 truck trailers and commercial vehicles, 440,000 out-of-state motor vehicles, and an unknown number of on-road diesel vehicles and construction equipment would be affected by the newly created and increased taxes and fees established by SB 5. Although there will be small and micro-businesses affected by the increased charges, the proposed amendments are intended to reduce the cost of acquiring cleaner-running vehicles.

The amount of incentives that can be provided annually is limited to what the commission is appropriated from the TERP fund. The commission was appropriated $103,616,840 for FY 2002 and $109,439,810 for FY 2003 to be used as grants and incentives for the diesel emissions reduction program. This funding will be used to provide incentives for the purchase or lease of new on-road diesel vehicles and light-duty motor vehicles that exceed current emission standards as described in this rulemaking, and to fund incentives and grants being proposed in concurrent rulemaking. The commission does not have an estimate as to the number and type of vehicles that will be purchased by small or micro-businesses through the proposed incentive programs.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory 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 is 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 or 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. The proposed rules are intended to protect the environment or reduce risks to human health from environmental exposure to ozone by providing financial incentives for the purchase of cleaner on-road diesel vehicles and light-duty motor vehicles. As such, the rules will not 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, Texas Government Code, §2001.0225 only applies 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. This proposed rulemaking action does not meet any of these four applicability requirements because the rulemaking is specifically required by state law in SB 5.

TAKINGS IMPACT ASSESSMENT

The commission assessed the takings impact for these proposed rules in accordance with Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rulemaking action is to provide financial incentives for the purchase of cleaner on-road diesel vehicles and light-duty motor vehicles. The rules will not burden private real property because they implement a voluntary program and do not involve changes to private real property. These proposed rules only affect motor vehicles which are not considered to be private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that the rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et seq.), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the CMP. As required by 30 TAC §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(1)). The specific purpose of this rulemaking action is to provide financial incentives for the purchase of cleaner on-road diesel vehicles and light-duty motor vehicles. No new sources of air contaminants will be authorized and NO_x air emissions will be reduced as a result of these rules. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations in 40 Code of Federal Regulations (CFR), to protect and enhance air quality in the coastal area (31 TAC §501.14(q)). This rulemaking action complies with 40 CFR 51. Therefore, in compliance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

Interested persons may submit comments on the consistency of the proposed rules with the CMP during the public comment period.

ANNOUNCEMENT OF HEARINGS

The commission will hold public hearings on this proposal on August 13, 2001 at 2:00 p.m., Houston City Hall Council Chambers, 2nd Floor, 901 Bagby, Houston; on August 14, 2001 at 9:00 a.m., Texas Natural Resource Conservation Commission, Building E, Room 201S, 12100 Park 35 Circle, Austin; and on August 14, 2001 at 2:00 p.m., North Central Texas Council of Governments, Transportation Board Room, 3rd Floor, 616 Six Flags Drive, Arlington. The hearings are structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to each hearing. Individuals may present oral statements when called upon in order of registration. A four-minute time limit may be established at the hearing to assure that enough time is allowed for every interested person to speak. Open discussion will not occur during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing, and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs, who are planning to attend the hearing, should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Ms. Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087; faxed to (512) 239-4808; or emailed to *terp@tnrcc.state.tx.us*. All comments should reference Rule Log Number 2001-025c-114-AI. Comments must be received by 5:00 p.m., August 14, 2001. The latest version of these proposed rules in Chapter114 is available on the commission's web site at *http://www.tnrcc.state.tx.us/oprd/sips/terp.html*. For further information, please contact Morris Brown at (512) 239-1438 or Alan Henderson at (512) 239-1510.

STATUTORY AUTHORITY

These new sections are proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under TWC; §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of TWC and other laws of this state; and §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. These new sections are also proposed under Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of TCAA; §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; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and Chapter 386, which establishes the TERP. Finally, these proposed new sections are required as part of the implementation of SB 5, Acts of the 77th Legislature, 2001.

The proposed new sections implement TCAA, Chapter 386, and SB 5.

SUBCHAPTER K: MOBILE SOURCE INCENTIVE PROGRAMS

DIVISION 1: ON-ROAD DIESEL VEHICLE PURCHASE OR LEASE INCENTIVE PROGRAM

§§114.600 - 114.602, 114.609

§114.600. Definitions.

Unless specifically defined in the 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) Incremental costs - The cost difference between the manufacturer's suggested retail price (MSRP) to purchase or lease a new on-road diesel vehicle certified by the EPA to meet the federal emission standards required at the date of its manufacture and the MSRP to purchase or lease a comparable new on-road diesel vehicle certified by the EPA to meet an emission standard at least as stringent as those specified in §114.609 of this title (relating to On-Road Diesel Vehicle Purchase or Lease Incentive Schedule).

(2) Lease - The use and control of a new on-road diesel vehicle in accordance with a rental contract for a term of twelve consecutive months or more.

(3) Lessee - A person who enters into a lease for a new on-road diesel vehicle.

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

(5) New on-road diesel vehicle - An on-road diesel that has never been the subject of a first sale as defined under Title 43, Texas Administrative Code, §17.2 (relating to Definitions), either within this state or elsewhere.

(6) On-road diesel - An on-road diesel-powered motor vehicle that has a gross vehicle weight rating of 10,000 pounds or more.

§114.601. Applicability.

The provisions of §§114.600, 114.602, 114.604, and 114.609 of this title (relating to Definitions; On-Road Diesel Vehicle Purchase or Lease Incentive Requirements; On-Road Diesel Purchase or Lease Incentive Reporting Requirements; and On-Road Diesel Vehicle Purchase or Lease Incentive Schedule) apply statewide subject to the availability of funding.

§114.602. On-Road Diesel Vehicle Purchase or Lease Incentive Requirements.

(a) The purchase or lease of a new on-road diesel vehicle certified by the EPA to an emissions standard at least as stringent as those specified under §114.609 of this title (relating to On-Road Diesel Vehicle Purchase or Lease Incentive Schedule) shall be eligible for an incentive for the reimbursement of incremental costs not to exceed that specified under §114.609 of this title if the purchaser or lessee of the on-road diesel vehicle agrees to register the vehicle in this state and meets the requirements of this section.

(b) Only one incentive will be provided for each eligible new on-road diesel vehicle purchased or leased in the state.

(c) The incentive shall be provided to the lessee and not to the purchaser if the on-road diesel vehicle is purchased for the purpose of leasing the on-road diesel vehicle to another person.

(d) An incentive for the lease of an eligible new on-road diesel vehicle shall be prorated based on an eight-year lease term.

(e) A person eligible to receive an incentive under this section shall sign a certification that the person will operate the on-road diesel vehicle in this state for not less than 75% of the vehicle's annual mileage while owned or leased by the purchaser or lessee and while the purchaser or lessee resides within the state before the reimbursement of incremental costs can occur. The certification must contain, at a minimum:

(1) the name, address, telephone number, and proof of identification of the person receiving the incentive;

(2) the purchase date, manufacturer, model, model year, vehicle license number, vehicle identification number, gross vehicle weight rating, current odometer reading, and certified emissions standard of the new on-road diesel vehicle for which the incentive has been claimed under subsection (a) of this section; and

(3) a copy of the vehicle's registration and purchase invoice, or lease agreement if applicable, to be attached to the certification.

§114.609. On-Road Diesel Vehicle Purchase or Lease Incentive Schedule.

(a) The incentives provided under §114.602 of this title (relating to On-Road Diesel Vehicle Purchase or Lease Incentive Requirements) for new on-road diesel vehicles manufactured on or after January 1, 2001 until September 30, 2002 shall be based on the following emission standards for oxides of nitrogen (NO_x) and accompanying reimbursement amounts:

(1) 2.5 grams per brake horsepower-hour (g/bhp-hr) of NO_x or less is eligible for up to $15,000; and

(2) 1.5 g/bhp-hr of NO_x or less is eligible for up to $25,000.

(b) The incentives provided under §114.602 of this title for new on-road diesel vehicles manufactured on or after October 1, 2002 until September 30, 2006 shall be based on the following emission standards for NO_x and accompanying reimbursement amounts:

(1) 1.2 g/bhp-hr of NO_x or less is eligible for up to $15,000; and

(2) 0.5 g/bhp-hr of NO_x or less is eligible for up to $25,000.

SUBCHAPTER K: MOBILE SOURCE INCENTIVE PROGRAMS

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

§§114.610 - 114.612, 114.616, 114.618, 114.619

These new sections are proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under TWC; §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of TWC and other laws of this state; and §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. These new sections are also proposed under Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of TCAA; §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; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and Chapter 386, which establishes the Texas Emission Reduction Plan. Finally, these proposed new sections are required as part of the implementation of SB 5, Acts of the 77th Legislature, 2001.

The proposed sections rules implement TCAA, Chapter 386, and SB 5.

§114.610. Definitions.

Unless specifically defined in the 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.

(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.

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

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

(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.

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

§114.611. Applicability.

The provisions of §§114.610, 114.612, 114.616, 114.618, and 114.619 of this title (relating to Definitions; Light-Duty Motor Vehicle Purchase or Lease Incentive Requirements; 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.

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

(a) The purchase or lease of a new light-duty motor vehicle certified by the 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) shall be eligible for the incentive specified in §114.619 of this title if listed 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.

(b) A person who purchases or leases a new light-duty motor vehicle eligible for an incentive under subsection (a) of this section shall be eligible to receive an incentive specified in §114.619 of this title if the purchaser or lessee 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) the name, address, telephone number, and proof of identification of the person receiving the incentive;

(2) 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) a copy of the vehicle's registration and purchase invoice, or lease agreement if applicable, to be attached to the certification.

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

(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.

(e) An incentive for the lease of an eligible new light-duty motor vehicle shall be prorated based on a four-year lease term.

§114.616. Manufacturer's Report.

(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 §114.619 of this title (relating to Light-Duty Motor Vehicle Purchase or Lease Incentive 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 test group, evaporative/refueling family, engine displacement, exhaust emission test fuel type, applicable emission standards, and certificate number as listed on the Certificate of Conformity issued by the EPA.

(b) Beginning January 1, 2002, the list required by subsection (a) of this section 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.

§114.618. Vehicle Emissions Information Brochure.

(a) Beginning September 1, 2002, a manufacturer of new light-duty motor vehicles sold in the state covered under §114.616 of this title (relating to Manufacturer's Report) shall publish and make available to its dealers for distribution to the dealers' customers by September 1 of each year, a brochure that includes at a minimum:

(1) a list of eligible new light-duty motor vehicles as required under §114.616 of this title;

(2) the emissions and air pollution ratings, not including fuel efficiency, for each eligible new light-duty motor vehicle listed under paragraph (1) of this subsection based on data from the EPA Green Vehicle Guide (http://www.epa.gov/greenvehicles/index.htm) and the light-duty motor vehicle Bin certification number;

(3) an indication of where the Bin certification information is located on each new light-duty motor vehicle listed under paragraph (1) of this subsection and a clear explanation of how to interpret that information; and

(4) information on how the consumer may obtain further information from the EPA Green Vehicle Guide.

(b) The brochure required under subsection (a) or (d) of this section shall be placed in a location within the dealer's showroom or sales area so that it is clearly visible and available for distribution to the dealer's customers.

(c) The brochure required under subsection (a) or (d) of this section shall have a page size no smaller than 8.5 inches by 11 inches and the information required under subsection (a)(1) - (4) of this section shall be printed in no less than 12-point type in a color contrasting with the intended background.

(d) Beginning September 1, 2002, a manufacturer of new light-duty motor vehicles sold in this state not covered under §114.616 of this title must publish a brochure that indicates that no eligible new light-duty motor vehicles will be available for purchase or lease within the state from the manufacturer for the upcoming new model year.

(e) Beginning September 1, 2002, a manufacturer of new light-duty motor vehicles sold in the state shall submit a copy of the brochure required under subsection (a) or (d) of this section to the executive director, or his designee, by September 1 of each year.

§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.