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.

Re: Docket No. 2013-1140-RUL

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

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.

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

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.

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

Re: Docket No. 2013-1140-RUL

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