

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Rulemaking Adoption

AGENDA REQUESTED: April 4, 2018

DATE OF REQUEST: March 16, 2018

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED:
Kris Hogan, (512) 239-6812

CAPTION: Docket No. 2017-0866-RUL. Consideration of the adoption of the repeal of Sections 114.610 - 114.612 and 114.616; and new Sections 114.610 - 114.613 of 30 TAC Chapter 114, Control of Air Pollution from Motor Vehicles.

The adoption would implement Senate Bill (SB) 1731 from the 85th Texas Legislature, 2017, Regular Session, to implement a new Light-Duty Motor Vehicle Purchase or Lease Incentive Program (program) established under Texas Health and Safety Code, Chapter 386, Subchapter D. The proposed rulemaking would repeal the criteria and requirements pertaining to the previous program that ended in 2015, and would replace those sections with the criteria and requirements for the new program established under SB 1731.

The new program would provide an incentive of up to \$5,000 for the purchase or lease of an eligible new light-duty motor vehicle powered by compressed natural gas or liquefied petroleum gas. An incentive of up to \$2,500 would be available for the purchase or lease of an eligible new light-duty motor vehicle powered by an electric motor that draws electricity from a hydrogen fuel cell or from a battery. The adopted new sections would include the eligibility criteria for applicants and the new light-duty motor vehicles that may qualify for the incentive.

The adopted new sections would also include requirements and procedures for a manufacturer of an eligible new light-duty motor vehicle, an intermediate or final state manufacturer, or a manufacturer of compressed natural gas or liquefied petroleum gas systems to submit reports to the executive director. Manufacturers are required to submit information on the new light-duty motor vehicle models or compressed natural gas or liquefied petroleum gas systems and the vehicle models on which the systems are approved for installation that the manufacturer intends to sell in this state during the model year. Under the adopted rulemaking, the manufacturer reports would need to be submitted to the executive director, or the executive director's designee, upon request initially and then no later than July 1st of each year preceding the new vehicle model year. The proposed rules were published in the December 1, 2017, issue of the *Texas Register* (42 TexReg 6689). (Steve Dayton, Sierra Redding) (Rule Project No. 2017-030-114-AI)

Steve Hagle, P.E.

Deputy Director

David Brymer

Division Director

Kristina M. Hogan

Agenda Coordinator

Copy to CCC Secretary? NO YES X

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** March 16, 2018

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.: 2017-0866-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 114, Control of Air Pollution from Motor Vehicles
SB 1731: Light-Duty Motor Vehicle Purchase or Lease Incentive Program
Rule Project No. 2017-030-114-AI

Background and reason(s) for the rulemaking:

The Light-Duty Motor Vehicle Purchase or Lease Incentive Program (LDPLIP) was originally created by Senate Bill (SB) 5, 77th Texas Legislature, 2001, to establish a statewide incentive program for the purchase or lease of light-duty motor vehicles that met emission standards more stringent than those required by federal requirements. The Texas Comptroller of Public Accounts (TCPA) was assigned to administer the program, while the Texas Commission on Environmental Quality (commission or agency) was responsible for establishing the program criteria and rules. Although the commission adopted rules for the program, initial funding levels were insufficient for the TCPA to implement the program during the 2002-2003 fiscal biennium. In subsequent years, the legislature did not appropriate funds to the TCPA to implement the program.

In 2013, the 83rd Texas Legislature enacted SB 1727 to substantially change the LDPLIP, including transferring the responsibility for implementation to the commission and establishing new eligibility criteria to provide incentives for the purchase or lease of vehicles powered by compressed natural gas, liquefied petroleum gas, or electricity. The revised program was authorized through August 31, 2015, and funding was appropriated by the legislature for the 2014-2015 fiscal biennium. The commission adopted program rules and implemented the program through the statutory expiration date.

In 2017, the 85th Texas Legislature enacted SB 1731 re-establishing the LDPLIP under Texas Health and Safety Code (THSC), Chapter 386, Subchapter D, and including changes to the previous program criteria. A significant change included increasing the maximum incentive for a vehicle powered by compressed natural gas or liquefied petroleum gas from \$2,500 to \$5,000, while the maximum incentive for a vehicle powered by an electric drive remained at \$2,500. The bill also included language authorizing incentives for the purchase or lease of a new motor vehicle that has a dedicated or bi-fuel compressed natural gas or liquefied petroleum gas fuel system installed prior to first sale or within 500 miles of operation of the vehicle following first sale.

Scope of the rulemaking:

The adopted rulemaking would repeal and replace the rule language for the LDPLIP to incorporate the criteria established by SB 1731 under new THSC, Chapter 386, Subchapter D.

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A.) Summary of what the rulemaking will do:

The adopted rulemaking would repeal Chapter 114, Subchapter K, Division 2, §§114.610 - 114.612 and §114.616 and replace the repealed sections with new §§114.610 - 114.613.

Adopted §114.610 would establish definitions for key words and terms used in this division.

Adopted §114.611 would state that the provisions of Division 2 would apply statewide, subject to availability of funding. Criteria would also be adopted in this section to require that a purchase or lease of a new 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. These restrictions would not apply if, on the date the incentive is awarded, the vehicle change is not required. The restrictions would also not apply if the purchase or lease is required only by local law or regulation or by corporate or controlling board policy of a public or private entity.

Adopted §114.612 would establish eligibility requirements and other requirements for applying for and receiving an incentive. Under the adopted criteria, a purchaser or lessee of a new light-duty motor vehicle may be eligible for an incentive if the vehicle meets the eligibility requirements and is included on the list of eligible vehicles provided to the commission. By August 1st of each year Division 2 is in effect and appropriations are available to fund the program, the commission would publish a list of eligible vehicles on its website. This section would also include criteria for vehicle owners to receive an incentive, including criteria for vehicles powered by compressed natural gas or liquefied petroleum gas and electric vehicles powered by an electric motor that draws electricity from a hydrogen fuel cell or from a battery that has a capacity of not less than four kilowatt hours and is capable of being recharged from an external source of electricity.

Adopted §114.612 would also establish the eligible incentive amounts. A person who purchases or leases an eligible new light-duty motor vehicle powered by compressed natural gas or liquefied petroleum gas may be eligible to receive a \$5,000 incentive. A person who purchases or leases an eligible new light-duty motor vehicle powered by a hydrogen fuel cell or other electric drive may be eligible to receive a \$2,500 incentive. The incentive for the lease of an eligible new light-duty motor vehicle would be prorated on a three-year term. The incentive for a one-year lease would be 33.3% of the full incentive amount, a two-year lease may qualify for 66.6% of the full incentive amount, and a three-year lease may qualify for 100% of the full incentive amount.

Under adopted §114.612, an eligible vehicle must have been acquired after the date established by the commission in the application solicitation. Requirements for completion and submission of the application for an incentive would also be established in this section. Also, the criteria would require that only one incentive would be provided for each eligible vehicle purchased or leased in this state and that the incentive would go to the lessee and not the purchaser if the vehicle is purchased for the purpose of leasing the vehicle to another person.

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Adopted §114.613 would establish requirements and procedures for a manufacturer of eligible new light-duty motor vehicles, an intermediate or final state manufacturer, or a manufacturer of compressed natural gas or liquefied petroleum gas systems to submit a report to the executive director in order for the executive director to compile a list of eligible vehicles and systems. The report would need to include required information on the new light-duty motor vehicle models or natural gas or liquefied petroleum gas systems, and the new light-duty motor vehicle models on which the systems are approved for installation, that the manufacturer intends to sell in this state during the model year. The manufacturer would also be required to certify that the vehicle models or systems meet the eligibility standards under §114.612(a).

Under adopted §114.613, the manufacturer reports would need to be submitted to the executive director, or the executive director's designee, upon request initially and then no later than July 1st of each year preceding the new vehicle model year. A manufacturer would also be authorized to supplement the required list to include additional new light-duty motor vehicle models or compressed natural gas or liquefied petroleum gas systems the manufacturer intends to sell in this state during the model year.

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

New §§114.610 - 114.613 are required to implement the provisions of the LDPLIP in THSC, Chapter 386, Subchapter D, as established by SB 1731.

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

Under THSC, §386.151(1), a "Light-duty motor vehicle" is defined as a motor vehicle with a gross vehicle weight rating (GVWR) of less than 10,000 pounds. Under THSC, §386.153(d), the commission by rule may revise the standards for the maximum unloaded vehicle weight rating and GVWR of an eligible vehicle to ensure that all of the vehicle weight configurations available under one general vehicle model may be eligible for an incentive.

Staff recommends a definition of "Light-duty motor vehicle" in §114.610 to include vehicles with a GVWR of "10,000 pounds or less." This revision to the statutory standard is intended to ensure that certain general pickup truck and van models that may include a vehicle configuration rated right at 10,000 pounds would be eligible for an incentive.

Statutory authority:

The rulemaking would be 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 rulemaking would also be adopted 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

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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 rulemaking would be adopted as part of the implementation of THSC, Chapter 386, Subchapter D, as amended by SB 1731.

Effect on the:

A.) Regulated community:

This is a voluntary program. The adopted rulemaking is not anticipated to have any implications on the regulated community.

B.) Public:

Persons who purchase or lease an eligible new light-duty motor vehicle and who apply for an incentive would benefit from receiving the incentive. Automobile dealers and leasing companies that sell or lease new light-duty motor vehicles eligible for an incentive may benefit if the program encourages more persons to purchase or lease an eligible vehicle.

C.) Agency programs:

The adopted rulemaking would implement an incentive program that had ended in 2015 and is now being re-established. New program processes and materials would need to be developed, including application forms, manufacturer reporting forms, eligible vehicle lists, application review and approval processes, and payment processes.

Stakeholder meetings:

The commission did not hold any stakeholder meetings related to this rulemaking; however, a public hearing was held during the comment period.

Public comment:

The commission held a public hearing on December 11, 2017. The comment period closed on December 22, 2017. The commission received oral and written comments from 679 individuals and 53 organizations, including Allpro Consulting Group, Inc. (Allpro); Bourke & Associates (Bourke); BSA Amarillo Diagnostic Clinic (BSA); Buchanan Technologies (Buchanan); Circular Energy, Inc. (Circular); City of Austin, Public Works Department; CNG 4 America, Inc. (CNG4); Cooper General Contractors; DMMGT, LLC (DMMGT); dwg. (DWG); Dynamic Systems Inc. (Dynamic); Energy Market Exchange (EME); Epcon Industrial Systems, LP (Epcon); Fagin Partners (Fagin); Formation, LLC (FORM); Friedman Realty Group, LLC (Friedman); Greater Houston Natural Gas Vehicle Alliance (GHNGVA); Group CBS, Inc.; HeartPlace (Heart); Hewlett Packard Enterprise (Hewlett); Houston Electric Auto Association (HEAA); Jones & Spross, PLLC; Josh Bryant Engineering Services, LLC (Bryant); Kendra Scott, LLC (Kendra); Law Offices of Hunter Biederman & Burleson, P.L.L.C. (Biederman); Magnitude Software (Magnitude); Mid America Mortgage, Inc. (MAM); MUY! (MUY); Napa Flats Wood-Fired Kitchen (Napa); Nat G CNG Solutions (NatG); joint comment from North Central Texas Council of Governments and Regional Transportation Council, the Metropolitan Planning Organization for the Dallas-Fort Worth Area (NCTCOG and RTC); NORTHMAX (NORTH); OZEM Texas, L.L.C. (OZEM); Plug-In Texas (Plug-In); Revival Across America (Revival); Sierra Club, Lone Star Chapter (Sierra); Silva

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Law Group, PLLC (Silva); Stambush Staffing (Stambush); Stone & Horne, LLP (Stone); TAS Energy (TAS); Tesla; Texas Automobile Dealers Association (TADA); Texas Health Resources (THR); Texas Spine Consultants (TSC); The Cave Realty Team at Keller Williams (Cave Realty); The Friedkin Group on behalf of Gulf States Toyota, Inc. (GST); The Hunter Group; The Johnson Law Group (Johnson); VerifyComply.com (Verify); Warren Recruiting, Inc. (Warren); Westport; and Zimmerman Interests, Inc.

Significant comments are summarized below.

Nineteen commenters expressed general support for the proposed rules or for providing vehicle rebates in general. Twenty-one commenters expressed general support for the proposed rules or providing rebates in general and provided recommendations for changes. Six hundred and eighty-two commenters provided comments against parts of the proposed rulemaking and recommended changes. Ten commenters provided general comments not directly discussing the general or specific portions of the proposed rules.

The commission also received comments from eight individuals and two organizations that were submitted after the close of the comment period. These late comments are not listed and discussed in the Response to Comments section, but all of the late comments were generally similar to the other comments recommending that vehicles purchased outside of Texas be eligible for a rebate under the LDPLIP.

The majority of the comments dealt with the provision in §114.613(a) that requires manufacturers to submit a list of the eligible vehicles or compressed natural gas or liquefied petroleum gas systems the manufacturer intends to sell in this state and the underlying premise that "sell in this state" means that only vehicles sold by a licensed dealer in Texas are eligible for an incentive. Plug-In, GST, and TADA commented in support of the requirements. Twelve individuals, Bourke, Buchanan, and Magnitude commented in general support of the LDPLIP, but commented against the provision in §114.613 that only vehicles a manufacturer intends to "sell in this state" would be eligible for an incentive. An additional 637 individuals, Allpro, BSA, Biederman, Bryant, Cave Realty, Circular, DMMGT, DWG, Dynamic, EME, Epcon, Fagin, FORM, Friedman, HEAA, Heart, Hewlett, Johnson, Jones, Kendra, MAM, MUY, Napa, NORTH, OZEM, Revival, Silva, Stambush, Stone, TAS, Tesla, THR, TSC, Verify, and Warren also commented against only allowing vehicles sold by a dealer in Texas to be eligible for an incentive.

Comments were also received regarding the definition of "Light-duty motor vehicle" under §114.610(3), which includes vehicles with a GVWR of 10,000 pounds or less. NCTCOG, RTC, and Sierra commented in support of the GVWR limits, while CNG4, GHNGVA, NatG, and Westport recommended that the GVWR be raised to 14,000 pounds to allow for a greater number of vehicles to be eligible under the program.

GST and TADA recommended removal of the term "Retail Sale" from the definitions in §114.610 and removal of the references to the term in §114.612(a)(1)(D). They commented that the term could be eliminated because its only applicability was in relation to the references to "first title" and the definition of "Sell in this state" that were in prior drafts of the proposed rules, but were not included in the current version.

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NCTCOG and RTC commented regarding the provision in §114.612(a)(1)(D) regarding eligibility of vehicles in which a compressed natural gas or liquefied petroleum gas system was installed after the first retail sale, but within 500 miles of operation after the first retail sale. NCTCOG and RTC discussed their experience with administering grants in which the negative impacts of improper installation of aftermarket systems undermined the benefits of the project. NCTCOG and RTC recommended a requirement that any compressed natural gas or liquefied petroleum gas system that is installed after first retail sale be installed by a Qualified Vehicle Modifier (QVM).

NCTCOG and RTC also recommended that in the reports required to be submitted by manufacturers under §114.613(a), the manufacturers of compressed natural gas and liquefied petroleum gas systems include a list of QVMs authorized to install the systems on an eligible vehicle.

Two individuals, GHNGVA, and NatG requested that the rebates be provided retroactively for purchases that occurred prior to adoption of the rules.

GST, Plug-in, and TADA also recommended that the forms used for the applications be similar to the forms used in the previous program to allow dealers to verify the purchases. GST also commented in support of allowing for reservation of rebates for vehicles that need to be ordered.

Significant changes from proposal:

GST and TADA recommended removal of references to "retail sale," commenting that its only applicability was in relation to references to "first title" and the definition of "Sell in this state" that were in prior drafts of the proposed rules, but were not included in the published proposal.

Staff agrees that the use of the term "first retail sale" should be changed, but not for the reasons outlined by GST and TADA. Staff determined that the term "first sale," which was used in the previous version of the LDPLIP rules, would be more appropriate than using the term "first retail sale."

The reference to "first retail sale" in the definition of "New light-duty motor vehicle" under §114.610(5) is changed from the proposed text to refer to "first sale." Also, the definition of "Retail sale" under §114.610(6) is changed to refer to "First sale" and the definition is changed to read that the term has the meaning as defined under Texas Transportation Code, §501.002. Also, the term "first retail sale" referred to twice in §114.612(a)(1)(D) is changed to read "first sale."

Potential controversial concerns and legislative interest:

Staff is aware that some light-duty electric vehicles are sold directly by the manufacturer rather than a dealer in Texas. Stakeholders have differing views regarding the eligibility of these vehicles, as evidenced by the large number of comments received on this issue.

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

The adopted rulemaking would not affect current policies. New program policies and procedures would need to be developed to implement the new program.

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

Under THSC, §386.153(a), the commission is to adopt rules necessary to implement the LDPLIP. The repeal of the existing rules and adoption of the new rules are necessary because the existing rule criteria and requirements are not consistent with new THSC, Chapter 386, Subchapter D. The commission could not implement the LDPLIP using the existing rules. If this rulemaking does not go forward, funding allocated for the LDPLIP would either not be used or would need to be reallocated to another program established under the Texas Emissions Reduction Plan, as authorized under THSC, §386.252.

Key points in the adoption rulemaking schedule:

***Texas Register* proposal publication date:** December 1, 2017

Anticipated *Texas Register* adoption publication date: April 20, 2018

Anticipated effective date: April 26, 2018

Six-month *Texas Register* filing deadline: June 1, 2018

Agency contacts:

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Sierra Redding, Staff Attorney, Environmental Law Division, (512) 239-2496

Kris Hogan, Texas Register Rule/Agenda Coordinator, (512) 239-6812

Attachments:

SB 1731

cc: Chief Clerk, 2 copies
Executive Director's Office
Stephen Tatum
Jim Rizk
Office of General Counsel
Steve Dayton
Kris Hogan

AN ACT

relating to the repeal of laws governing certain state entities, including the functions of those entities, and to certain duties, responsibilities, and functions of the Texas Commission on Environmental Quality on the abolishment of certain of those entities.

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

SECTION 1. AGRICULTURE AND WILDLIFE RESEARCH AND MANAGEMENT ADVISORY COMMITTEE. (a) The Agriculture and Wildlife Research and Management Advisory Committee is abolished.

(b) Section 50.001, Agriculture Code, is amended to read as follows:

Sec. 50.001. PROGRAM. The Texas Agricultural Experiment Station~~[, in consultation with the Agriculture and Wildlife Research and Management Advisory Committee established under Section 88.216, Education Code,~~] shall develop and administer a program to finance agriculture and wildlife research that the Texas Agricultural Experiment Station determines to be of the highest scientific merit and to offer significant promise in providing new directions for long-term solutions to continued agriculture production, water availability, and wildlife habitat availability.

(c) Section 88.216, Education Code, is repealed.

SECTION 2. STATE OF TEXAS ANNIVERSARY REMEMBRANCE DAY MEDAL COMMITTEE. (a) The State of Texas Anniversary Remembrance Day

Medal Committee is abolished.

(b) Chapter 3103, Government Code, is repealed.

SECTION 3. TEXAS BIOENERGY POLICY COUNCIL AND TEXAS BIOENERGY RESEARCH COMMITTEE. (a) The Texas Bioenergy Policy Council and the Texas Bioenergy Research Committee are abolished.

(b) Chapter 50D, Agriculture Code, is repealed.

(c) To the extent of any conflict, this section prevails over another Act of the 85th Legislature, Regular Session, 2017, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 4. BORDER SECURITY COUNCIL. (a) The Border Security Council is abolished.

(b) Section 421.0025, Government Code, is repealed.

SECTION 5. COLLEGE OPPORTUNITY ACT COMMITTEE. (a) The College Opportunity Act committee is abolished.

(b) Chapter 1233, Government Code, is repealed.

SECTION 6. TEXAS DISTINGUISHED SERVICE AWARDS COMMITTEE. (a) The Texas Distinguished Service Awards Committee is abolished.

(b) Chapter 3102, Government Code, is repealed.

SECTION 7. ADVISORY BOARD OF ECONOMIC DEVELOPMENT STAKEHOLDERS. (a) The advisory board of economic development stakeholders is abolished.

(b) Section 481.169, Government Code, is repealed.

SECTION 8. TEXAS EMISSIONS REDUCTION PLAN ADVISORY BOARD. (a) The Texas Emissions Reduction Plan Advisory Board is abolished on the date that the programs described by Section 386.252(a),

1 Health and Safety Code, and the funding for those programs are
2 continued in effect.

3 (a-1) In effectuating the abolition of the Texas Emissions
4 Reduction Plan Advisory Board, the Texas Commission on
5 Environmental Quality shall complete any unfinished work of the
6 abolished advisory board, including conducting the annual review of
7 programs required under Section 386.057(a), Health and Safety Code.
8 In conducting that annual review, the commission shall consider the
9 feasibility and benefits of implementing a governmental
10 alternative fuel fleet grant program. If the commission determines
11 that implementing a governmental alternative fuel fleet grant
12 program is feasible and would contribute to emissions reductions,
13 the commission may adopt rules governing the program and the
14 eligibility of entities to receive grants from the fund created
15 under Section 386.251, Health and Safety Code.

16 (a-2) Notwithstanding any other provision of law, except as
17 provided by Subsection (b) of this section, the programs described
18 by Section 386.252(a), Health and Safety Code, and the funding for
19 those programs are continued until the last day of the state fiscal
20 biennium during which the United States Environmental Protection
21 Agency publishes in the Federal Register certification that, with
22 respect to each national ambient air quality standard for ozone
23 under 40 C.F.R. Section 81.344, the agency has, for each designated
24 area under that section, designated the area as attainment or
25 unclassifiable or approved a redesignation substitute making a
26 finding of attainment for the area.

27 (b) To the extent of a conflict between Subsection (a-2) of

1 this section and any change in law made by another provision of this
2 section, the change in law made by the other provision of this
3 section controls.

4 (b-1) Effective on the date that the Texas Emissions
5 Reduction Plan Advisory Board is abolished under Subsection (a) of
6 this section, Subchapter B, Chapter 382, Health and Safety Code, is
7 amended by adding Section 382.037 to read as follows:

8 Sec. 382.037. NOTICE IN TEXAS REGISTER REGARDING NATIONAL
9 AMBIENT AIR QUALITY STANDARDS FOR OZONE. (a) This section applies
10 only if:

11 (1) with respect to each active or revoked national
12 ambient air quality standard for ozone referenced in 40 C.F.R.
13 Section 81.344, the United States Environmental Protection Agency
14 has, for each designated area referenced in that section:

15 (A) designated the area as attainment or
16 unclassifiable/attainment; or

17 (B) approved a redesignation substitute making a
18 finding of attainment for the area; and

19 (2) for each designated area described by Subdivision
20 (1), with respect to an action of the United States Environmental
21 Protection Agency described by Subdivision (1)(A) or (B):

22 (A) the action has been fully and finally upheld
23 following judicial review or the limitations period to seek
24 judicial review of the action has expired; and

25 (B) the rules under which the action was approved
26 by the agency have been fully and finally upheld following judicial
27 review or the limitations period to seek judicial review of those

1 rules has expired.

2 **(b) Not later than the 30th day after the date the**
3 **conditions described by Subsection (a) have been met, the**
4 **commission shall publish notice in the Texas Register that, with**
5 **respect to each active or revoked national ambient air quality**
6 **standard for ozone referenced in 40 C.F.R. Section 81.344, the**
7 **United States Environmental Protection Agency has, for each**
8 **designated area referenced in that section:**

9 **(1) designated the area as attainment or**
10 **unclassifiable/attainment; or**

11 **(2) approved a redesignation substitute making a**
12 **finding of attainment for the area.**

13 (b-2) Effective on the date that the Texas Emissions
14 Reduction Plan Advisory Board is abolished under Subsection (a) of
15 this section, Section 386.001(3), Health and Safety Code, is
16 amended to read as follows:

17 (3) "Commission" means the Texas [~~Natural Resource~~
18 ~~Conservation~~] Commission on Environmental Quality.

19 (c) Effective on the date that the Texas Emissions Reduction
20 Plan Advisory Board is abolished under Subsection (a) of this
21 section, Section 386.002, Health and Safety Code, is amended to
22 read as follows:

23 Sec. 386.002. EXPIRATION. This chapter expires on the last
24 day of the state fiscal biennium during which the commission
25 publishes in the Texas Register the notice required by Section
26 382.037 [~~August 31, 2019~~].

27 (c-1) Effective on the date that the Texas Emissions

1 Reduction Plan Advisory Board is abolished under Subsection (a) of
2 this section, Section 386.051(b), Health and Safety Code, is
3 amended to read as follows:

4 (b) Under the plan, the commission and the comptroller shall
5 provide grants or other funding for:

6 (1) the diesel emissions reduction incentive program
7 established under Subchapter C, including for infrastructure
8 projects established under that subchapter;

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

11 (3) the air quality research support program
12 established under Chapter 387;

13 (4) the clean school bus program established under
14 Chapter 390;

15 (5) the new technology implementation grant program
16 established under Chapter 391;

17 (6) the regional air monitoring program established
18 under Section 386.252(a);

19 (7) a health effects study as provided by Section
20 386.252(a);

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

23 (9) a contract with the Energy Systems Laboratory at
24 the Texas A&M Engineering Experiment Station for computation of
25 creditable statewide emissions reductions as provided by Section
26 386.252(a) [~~386.252(a)(14)~~];

27 (10) the clean fleet program established under Chapter

392;

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

(12) the natural gas vehicle grant program [~~and clean transportation triangle program~~] established under Chapter 394;

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

(14) other programs the commission may develop that support congestion mitigation to reduce mobile source ozone precursor emissions; [~~and~~]

(15) the seaport and rail yard areas emissions reduction [~~drayage truck incentive~~] program established under Subchapter D-1;

(16) conducting research and other activities associated with making any necessary demonstrations to the United States Environmental Protection Agency to account for the impact of foreign emissions or an exceptional event;

(17) studies of or pilot programs for incentives for port authorities located in nonattainment areas or affected counties as provided by Section 386.252(a); and

(18) the governmental alternative fuel fleet grant program established under Chapter 395.

(c-2) Effective on the date that the Texas Emissions Reduction Plan Advisory Board is abolished under Subsection (a) of this section, Sections 386.0515(a) and (c), Health and Safety Code,

are amended to read as follows:

(a) In this section:

(1) "Agricultural"~~[, "agricultural"]~~ product transportation" means the transportation of a raw agricultural product from the place of production using a heavy-duty truck to:

(A) ~~[(1)]~~ a nonattainment area;

(B) ~~[(2)]~~ an affected county;

(C) ~~[(3)]~~ a destination inside the clean transportation zone ~~[triangle]~~; or

(D) ~~[(4)]~~ a county adjacent to a county described by Paragraph (B) ~~[Subdivision (2)]~~ or that contains an area described by Paragraph (A) or (C) ~~[Subdivision (1) or (3)]~~.

(2) "Clean transportation zone" has the meaning assigned by Section 393.001.

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

(d) Effective on the date that the Texas Emissions Reduction Plan Advisory Board is abolished under Subsection (a) of this section, Sections 386.057(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The commission~~[, in consultation with the advisory~~

~~board,~~] annually shall review programs established under the plan, including each project funded under the plan, the amount granted for the project, the emissions reductions attributable to the project, and the cost-effectiveness of the project.

(b) Not later than December 1, 2002, and not later than December 1 of each subsequent second year, the commission~~[, in consultation with the advisory board,~~] shall publish and submit to the legislature a biennial plan report. The report must include:

(1) the information included in the annual reviews conducted under Subsection (a);

(2) specific information for individual projects as required by Subsection (c);

(3) information contained in reports received under Sections 386.205, 388.003(e), 388.006, and 391.104; and

(4) a summary of the commission's activities under Section 386.052.

(d-1) Effective on the date that the Texas Emissions Reduction Plan Advisory Board is abolished under Subsection (a) of this section, Section 386.103, Health and Safety Code, is amended by adding Subsection (c) to read as follows:

(c) To reduce the administrative burden for the commission and applicants, the commission may streamline the application process by:

(1) reducing data entry and the copying and recopying of applications; and

(2) developing, maintaining, and periodically updating a system to accept applications electronically through the

1 commission's Internet website.

2 (d-2) Effective on the date that the Texas Emissions
3 Reduction Plan Advisory Board is abolished under Subsection (a) of
4 this section, Sections 386.104(f) and (j), Health and Safety Code,
5 are amended to read as follows:

6 (f) A proposed retrofit, repower, replacement, or add-on
7 equipment project must document, in a manner acceptable to the
8 commission, a reduction in emissions of oxides of nitrogen of at
9 least 30 percent compared with the baseline emissions adopted by
10 the commission for the relevant engine year and application. After
11 study of available emissions reduction technologies and~~[7]~~ after
12 public notice and comment, ~~[and after consultation with the~~
13 ~~advisory board,~~] the commission may revise the minimum percentage
14 reduction in emissions of oxides of nitrogen required by this
15 subsection to improve the ability of the program to achieve its
16 goals.

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

22 (e) Effective on the date that the Texas Emissions Reduction
23 Plan Advisory Board is abolished under Subsection (a) of this
24 section, Sections 386.107, 386.114, and 386.115, Health and Safety
25 Code, are amended to read as follows:

26 Sec. 386.107. ADJUSTMENT TO MAXIMUM COST-EFFECTIVENESS
27 AMOUNT AND AWARD AMOUNT. After study of available emissions

1 reduction technologies and costs and after public notice and
2 comment, the commission[~~, in consultation with the advisory board,~~]
3 may change the values of the maximum grant award criteria
4 established in Section 386.106 to account for inflation or to
5 improve the ability of the program to achieve its goals.

6 Sec. 386.114. MODIFICATION OF INCENTIVE EMISSIONS
7 STANDARDS. After evaluating new technologies and after public
8 notice and comment, the commission[~~, in consultation with the~~
9 ~~advisory board,~~] may change the incentive emissions standards
10 established by Section 386.113 to improve the ability of the
11 program to achieve its goals.

12 Sec. 386.115. MODIFICATION OF VEHICLE ELIGIBILITY. After
13 evaluating the availability of vehicles meeting the emissions
14 standards and after public notice and comment, the commission[~~, in~~
15 ~~consultation with the advisory board,~~] may expand the program to
16 include other on-road vehicles, regardless of fuel type used, that
17 meet the emissions standards, have a gross vehicle weight rating of
18 greater than 8,500 pounds, and are purchased or leased in lieu of a
19 new on-road diesel.

20 (e-1) Effective on the date that the Texas Emissions
21 Reduction Plan Advisory Board is abolished under Subsection (a) of
22 this section, Sections 386.116(a), (b), and (c), Health and Safety
23 Code, are amended to read as follows:

24 (a) In this section, "small business" means a business owned
25 by a person who:

26 (1) owns and operates not more than five [~~two~~]
27 vehicles, one of which is:

1 (A) an on-road diesel [~~with a pre-1994 engine~~
2 ~~model~~]; or

3 (B) a non-road diesel [~~with an engine with~~
4 ~~uncontrolled emissions~~]; and

5 (2) has owned the vehicle described by Subdivision
6 (1)(A) or (B) for more than two years [~~one year~~].

7 (b) The commission [~~by rule~~] shall develop a method of
8 providing fast and simple access to grants under this subchapter
9 for a small business. The method must:

10 (1) create a separate small business grant program; or

11 (2) require the commission to give special
12 consideration to small businesses when implementing another
13 program established under this subchapter.

14 (c) The commission shall publicize and promote the
15 availability of grants under this subchapter for small businesses
16 [~~section~~] to encourage the use of vehicles that produce fewer
17 emissions.

18 (e-2) Effective on the date that the Texas Emissions
19 Reduction Plan Advisory Board is abolished under Subsection (a) of
20 this section, Chapter 386, Health and Safety Code, is amended by
21 adding Subchapter D to read as follows:

22 SUBCHAPTER D. MOTOR VEHICLE PURCHASE OR LEASE INCENTIVE PROGRAM

23 Sec. 386.151. DEFINITIONS. In this subchapter:

24 (1) "Light-duty motor vehicle" means a motor vehicle
25 with a gross vehicle weight rating of less than 10,000 pounds.

26 (2) "Motor vehicle" means a self-propelled device
27 designed for transporting persons or property on a public highway

1 that is required to be registered under Chapter 502, Transportation
2 Code.

3 Sec. 386.152. APPLICABILITY. The provisions of this
4 subchapter relating to a lessee do not apply to a person who rents
5 or leases a light-duty motor vehicle for a term of 30 days or less.

6 Sec. 386.153. COMMISSION DUTIES REGARDING LIGHT-DUTY MOTOR
7 VEHICLE PURCHASE OR LEASE INCENTIVE PROGRAM. (a) The commission
8 shall develop a purchase or lease incentive program for new
9 light-duty motor vehicles and shall adopt rules necessary to
10 implement the program.

11 (b) The program shall authorize statewide incentives for
12 the purchase or lease of new light-duty motor vehicles powered by
13 compressed natural gas, liquefied petroleum gas, or hydrogen fuel
14 cell or other electric drives for a purchaser or lessee who agrees
15 to register and operate the vehicle in this state for a minimum
16 period of time to be established by the commission.

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

21 (d) The commission by rule may revise the standards for the
22 maximum unloaded vehicle weight rating and gross vehicle weight
23 rating of an eligible vehicle to ensure that all of the vehicle
24 weight configurations available under one general vehicle model may
25 be eligible for an incentive.

26 Sec. 386.154. LIGHT-DUTY MOTOR VEHICLE PURCHASE OR LEASE
27 INCENTIVE REQUIREMENTS. (a) A new light-duty motor vehicle

powered by compressed natural gas or liquefied petroleum gas is eligible for a \$5,000 incentive if the vehicle:

(1) has four wheels;

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

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

(4) has a dedicated or bi-fuel compressed natural gas or liquefied petroleum gas fuel system:

(A) installed prior to first sale or within 500 miles of operation of the vehicle following first sale; and

(B) with a range of at least 125 miles as estimated, published, and updated by the United States Environmental Protection Agency;

(5) has, as applicable, a:

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

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

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

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

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

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

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

11 (b) If the commission determines that an updated version of
12 a code or standard described by Subsection (a)(5) is more stringent
13 than the version of the code or standard described by Subsection
14 (a)(5), the commission by rule may provide that a vehicle for which
15 a person applies for an incentive under Subsection (a) is eligible
16 for the incentive only if the vehicle complies with the updated
17 version of the code or standard.

18 (c) The incentive under Subsection (a) is limited to 1,000
19 vehicles for each state fiscal biennium.

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

22 (1) has four wheels;

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

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

27 (4) has a maximum speed capability of at least 55 miles

1 per hour;

2 (5) is propelled to a significant extent by an
3 electric motor that draws electricity from a hydrogen fuel cell or
4 from a battery that:

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

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

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

13 (e) The incentive under Subsection (d) is limited to 2,000
14 vehicles for each state fiscal biennium.

15 Sec. 386.155. MANUFACTURER'S REPORT. (a) At the beginning
16 of but not later than July 1 of each year preceding the vehicle
17 model year, a manufacturer of motor vehicles, an intermediate or
18 final state vehicle manufacturer, or a manufacturer of compressed
19 natural gas or liquefied petroleum gas systems shall provide to the
20 commission a list of the new vehicle or natural gas or liquefied
21 petroleum gas systems models that the manufacturer intends to sell
22 in this state during that model year that meet the incentive
23 requirements established under Section 386.154. The manufacturer
24 or installer may supplement the list provided to the commission
25 under this section as necessary to include additional new vehicle
26 models the manufacturer intends to sell in this state during the
27 model year.

1 (b) The commission may supplement the information provided
2 under Subsection (a) with additional information on available
3 vehicle models, including information provided by manufacturers or
4 installers of systems to convert new motor vehicles to operate on
5 natural gas or liquefied petroleum gas before sale as a new vehicle
6 or within 500 miles of operation of the vehicle following first
7 sale.

8 Sec. 386.156. LIST OF ELIGIBLE MOTOR VEHICLES. (a) On
9 August 1 of each year the commission shall publish a list of new
10 motor vehicle models eligible for inclusion in an incentive under
11 this subchapter. The commission shall publish supplements to that
12 list as necessary to include additional new vehicle models.

13 (b) The commission shall publish the list of eligible motor
14 vehicle models on the commission's Internet website.

15 Sec. 386.157. LIGHT-DUTY MOTOR VEHICLE PURCHASE OR LEASE
16 INCENTIVE. (a) A person who purchases or leases a new light-duty
17 motor vehicle described by Section 386.154 and listed under Section
18 386.156(a) is eligible to apply for an incentive under this
19 subchapter.

20 (b) A lease incentive for a new light-duty motor vehicle
21 shall be prorated based on a three-year lease term.

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

27 Sec. 386.158. COMMISSION TO ACCOUNT FOR MOTOR VEHICLE

1 PURCHASE OR LEASE INCENTIVES. (a) The commission by rule shall
2 develop a method to administer and account for the motor vehicle
3 purchase or lease incentives authorized by this subchapter and to
4 pay incentive money to the purchaser or lessee of a new motor
5 vehicle, on application of the purchaser or lessee as provided by
6 this subchapter.

7 (b) The commission shall develop and publish forms and
8 instructions for the purchaser or lessee of a new motor vehicle to
9 use in applying to the commission for an incentive payment under
10 this subchapter. The commission shall make the forms available to
11 new motor vehicle dealers and leasing agents. Dealers and leasing
12 agents shall make the forms available to their prospective
13 purchasers or lessees.

14 (c) The commission may require the submission of forms and
15 documentation as needed to verify eligibility for an incentive
16 under this subchapter.

17 Sec. 386.159. PURCHASE OR LEASE INCENTIVES INFORMATION.

18 (a) The commission shall establish a toll-free telephone number
19 available to motor vehicle dealers and leasing agents for the
20 dealers and agents to call to verify that incentives are available.
21 The commission may provide for issuing verification numbers over
22 the telephone line.

23 (b) Reliance by a dealer or leasing agent on information
24 provided by the commission is a complete defense to an action
25 involving or based on eligibility of a vehicle for an incentive or
26 availability of vehicles eligible for an incentive.

27 Sec. 386.160. RESERVATION OF INCENTIVES. The commission

1 may provide for dealers and leasing agents to reserve for a limited
2 time period incentives for vehicles that are not readily available
3 and must be ordered, if the dealer or leasing agent has a purchase
4 or lease order signed by an identified customer.

5 (f) Effective on the date that the Texas Emissions Reduction
6 Plan Advisory Board is abolished under Subsection (a) of this
7 section, the heading to Subchapter D-1, Chapter 386, Health and
8 Safety Code, is amended to read as follows:

9 SUBCHAPTER D-1. SEAPORT AND RAIL YARD AREAS EMISSIONS REDUCTION

10 [~~DRAVAGE TRUCK INCENTIVE~~] PROGRAM

11 (f-1) Effective on the date that the Texas Emissions
12 Reduction Plan Advisory Board is abolished under Subsection (a) of
13 this section, the heading to Section 386.181, Health and Safety
14 Code, is amended to read as follows:

15 Sec. 386.181. DEFINITIONS [~~DEFINITION~~]; RULES.

16 (f-2) Effective on the date that the Texas Emissions
17 Reduction Plan Advisory Board is abolished under Subsection (a) of
18 this section, Section 386.181(a), Health and Safety Code, is
19 amended to read as follows:

20 (a) In this subchapter:

21 (1) "Cargo handling equipment" means any heavy-duty
22 non-road, self-propelled vehicle or land-based equipment used at a
23 seaport or rail yard to lift or move cargo, such as containerized,
24 bulk, or break-bulk goods.

25 (2) "Drayage[~~, -"drayage~~] truck" means a heavy-duty
26 on-road or non-road vehicle that is used for drayage activities and
27 that operates in or transgresses through [~~truck that transports a~~]

1 ~~load to or from~~] a seaport or rail yard for the purpose of loading,
2 unloading, or transporting cargo, including transporting empty
3 containers and chassis.

4 (3) "Repower" means to replace an old engine powering
5 a vehicle with a new engine, a used engine, a remanufactured engine,
6 or electric motors, drives, or fuel cells.

7 (g) Effective on the date that the Texas Emissions Reduction
8 Plan Advisory Board is abolished under Subsection (a) of this
9 section, Section 386.182, Health and Safety Code, is amended to
10 read as follows:

11 Sec. 386.182. COMMISSION DUTIES. (a) The commission
12 shall:

13 (1) develop a purchase incentive program to encourage
14 owners to:

15 (A) replace older drayage trucks and cargo
16 handling equipment [~~with pre-2007 model year engines~~] with newer
17 drayage trucks and cargo handling equipment; or

18 (B) repower drayage trucks and cargo handling
19 equipment; and

20 (2) [~~shall~~] adopt guidelines necessary to implement
21 the program described by Subdivision (1).

22 (b) The commission by rule and guideline shall establish
23 criteria for the engines and the models of drayage trucks and cargo
24 handling equipment that are eligible for inclusion in an incentive
25 program under this subchapter. [~~The guidelines must provide that a~~
26 ~~drayage truck owner is not eligible for an incentive payment under~~
27 ~~this subchapter unless the truck being replaced contains a pre-2007~~

~~model year engine and the replacement truck's engine is from model year 2010 or later as determined by the commission and that the truck operates at a seaport or rail yard.]~~

(g-1) Effective on the date that the Texas Emissions Reduction Plan Advisory Board is abolished under Subsection (a) of this section, the heading to Section 386.183, Health and Safety Code, is amended to read as follows:

Sec. 386.183. DRAYAGE TRUCK AND CARGO HANDLING EQUIPMENT PURCHASE INCENTIVE.

(g-2) Effective on the date that the Texas Emissions Reduction Plan Advisory Board is abolished under Subsection (a) of this section, Section 386.183, Health and Safety Code, is amended by amending Subsections (a), (b), (c), (d), and (e) and adding Subsection (a-1) to read as follows:

(a) To be eligible for an incentive under this subchapter, a person must:

(1) purchase a replacement drayage truck, piece of cargo handling equipment, or engine that under Subsection (a-1)(1)(A) or (2)(A), as applicable, and the guidelines adopted by the commission under Section 386.182 is eligible for inclusion in the program for an incentive under this subchapter; and

(2) agree to:

(A) register the drayage truck in this state, if the replacement or repowered vehicle is an on-road drayage truck;

(B) operate the replacement or repowered drayage truck or cargo handling equipment in and within a maximum distance established by the commission of a seaport or rail yard in a

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

4 (C) permanently remove the [~~a pre-2007~~] drayage
5 truck, cargo handling equipment, or engine replaced under the
6 program [~~containing a pre-2007 engine owned by the person~~] from
7 operation in a nonattainment area of this state by destroying the
8 engine in accordance with guidelines established by the commission
9 and, if the incentive is for a replacement drayage truck or cargo
10 handling equipment, scrapping the truck or equipment after the
11 purchase of the replacement [~~new~~] truck or equipment in accordance
12 with guidelines established by the commission.

13 (a-1) To be eligible for purchase under this program:

14 (1) a drayage truck or cargo handling equipment must:

15 (A) be powered by an electric motor or contain an
16 engine certified to the current federal emissions standards
17 applicable to that type of engine, as determined by the commission;
18 and

19 (B) emit oxides of nitrogen at a rate that is at
20 least 25 percent less than the rate at which the truck or equipment
21 being replaced under the program emits such pollutants; and

22 (2) an engine repowering a drayage truck or cargo
23 handling equipment must:

24 (A) be an electric motor or an engine certified
25 to the current federal emissions standards applicable to that type
26 of engine, as determined by the commission; and

27 (B) emit oxides of nitrogen at a rate that is at

1 least 25 percent less than the rate at which the former engine in
2 the truck or equipment being repowered under the program emits such
3 pollutants.

4 (b) To receive money under an incentive program provided by
5 this subchapter, the purchaser of a drayage truck, piece of cargo
6 handling equipment, or engine eligible for inclusion in the program
7 must apply for the incentive in the manner provided by law, rule, or
8 guideline of the commission.

9 (c) Not more than one incentive may be provided for each
10 drayage truck or piece of cargo handling equipment purchased or
11 repowered.

12 (d) An incentive provided under this subchapter may be used
13 to fund not more than 80 percent of, as applicable, the purchase
14 price of:

- 15 (1) the drayage truck or cargo handling equipment; or
16 (2) the engine and any other eligible costs associated
17 with repowering the drayage truck or cargo handling equipment, as
18 determined by the commission.

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

- 21 (1) has operated in a seaport or rail yard and owned or
22 leased the drayage truck or cargo handling equipment to be replaced
23 or repowered for at least two years prior to receiving the grant;
24 and

- 25 (2) as applicable:
26 (A) after purchase of the replacement drayage
27 truck or cargo handling equipment, permanently destroys the engine

1 and scraps the ~~[drayage]~~ truck or equipment replaced under the
2 program ~~[that contained the pre-2007 engine owned or leased by the~~
3 ~~person,~~] in accordance with guidelines established by the
4 commission; or

5 (B) after repowering the drayage truck or cargo
6 handling equipment, permanently destroys the engine that was
7 contained in the truck or equipment in accordance with guidelines
8 established by the commission~~[, after the purchase of the new~~
9 ~~truck].~~

10 (h) Effective on the date that the Texas Emissions Reduction
11 Plan Advisory Board is abolished under Subsection (a) of this
12 section, Section 386.252, Health and Safety Code, is amended to
13 read as follows:

14 Sec. 386.252. USE OF FUND. (a) Money in the fund may be
15 used only to implement and administer programs established under
16 the plan. Subject to the reallocation of funds by the commission
17 under Subsection (h), money ~~[Money]~~ appropriated to the commission
18 to be used for the programs under Section 386.051(b) shall
19 initially be allocated as follows:

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

22 (2) ~~[not more than]~~ three percent may be used for the
23 new technology implementation grant program under Chapter 391, from
24 which at least \$1 million will be set aside for electricity storage
25 projects related to renewable energy;

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

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

(5) 10 ~~[not less than 16]~~ percent may ~~[shall]~~ be used for the Texas natural gas vehicle grant program under Chapter 394;

(6) not more than \$6 million ~~[five percent]~~ may be used ~~[to provide grants for natural gas fueling stations under the clean transportation triangle program under Section 394.010,~~

~~[(7) not more than five percent may be used]~~ for the Texas alternative fueling facilities program under Chapter 393, of which a specified amount may be used for fueling stations to provide natural gas fuel, except that money may not be allocated for the Texas alternative fueling facilities program for the state fiscal year ending August 31, 2019;

(7) ~~[(8)]~~ not more than \$750,000 ~~[a specified amount]~~ may be used each year to support research related to air quality as provided by Chapter 387;

(8) ~~[(9)]~~ not more than \$200,000 may be used for a health effects study~~+~~

~~[(10) \$500,000 is to be deposited in the state treasury to the credit of the clean air account created under~~

1 ~~Section 382.0622 to supplement funding for air quality planning~~
2 ~~activities in affected counties];~~

3 (9) ~~[(11)]~~ at least \$6 ~~[\$4]~~ million but not more than
4 \$8 ~~[and up to four percent to a maximum of \$7]~~ million~~[, whichever~~
5 ~~is greater,~~ is allocated to the commission for administrative
6 costs, including all direct and indirect costs for administering
7 the plan, costs for conducting outreach and education activities,
8 and costs attributable to the review or approval of applications
9 for marketable emissions reduction credits;

10 (10) six ~~[(12) at least two]~~ percent may ~~[and up to~~
11 ~~five percent of the fund is to]~~ be used by the commission for the
12 seaport and rail yard areas emissions reduction ~~[drayage truck~~
13 ~~incentive]~~ program established under Subchapter D-1;

14 (11) ~~[(13) not more than]~~ five percent may be used for
15 the light-duty motor vehicle purchase or lease incentive program
16 established under Subchapter D;

17 (12) ~~[(14)]~~ not more than \$216,000 is allocated to the
18 commission to contract with the Energy Systems Laboratory at the
19 Texas A&M Engineering Experiment Station annually for the
20 development and annual computation of creditable statewide
21 emissions reductions obtained through wind and other renewable
22 energy resources for the state implementation plan;

23 (13) not more than \$500,000 may be used for studies of
24 or pilot programs for incentives for port authorities located in
25 nonattainment areas or affected counties to encourage cargo
26 movement that reduces emissions of nitrogen oxides and particulate
27 matter ~~[(15) 1.5 percent of the money in the fund is allocated for~~

~~administrative costs incurred by the laboratory]; and~~

(14) ~~[(16)]~~ the balance is to be used by the commission for the diesel emissions reduction incentive program under Subchapter C as determined by the commission.

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

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

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

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

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

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

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

4 ~~[(f)]~~ Money in the fund may be used by the commission for
5 programs under Sections [386.051](#)(b)(13), (b)(14), and (b-1) as may
6 be appropriated for those programs.

7 (c) ~~[(g)]~~ If the legislature does not specify amounts or
8 percentages from the total appropriation to the commission to be
9 allocated under Subsection (a) or (b) ~~[(f)]~~, the commission shall
10 determine the amounts of the total appropriation to be allocated
11 under each of those subsections, such that the total appropriation
12 is expended while maximizing emissions reductions.

13 (d) To supplement funding for air quality planning
14 activities in affected counties, \$500,000 from the fund is to be
15 deposited annually in the state treasury to the credit of the clean
16 air account created under Section [382.0622](#).

17 (e) Money in the fund may be allocated for administrative
18 costs incurred by the Energy Systems Laboratory at the Texas A&M
19 Engineering Experiment Station as may be appropriated by the
20 legislature.

21 (f) To the extent that money is appropriated from the fund
22 for that purpose, not more than \$2.5 million may be used by the
23 commission to conduct research and other activities associated with
24 making any necessary demonstrations to the United States
25 Environmental Protection Agency to account for the impact of
26 foreign emissions or an exceptional event.

27 (g) To the extent that money is appropriated from the fund

1 for that purpose, the commission may use that money to award grants
2 under the governmental alternative fuel fleet grant program
3 established under Chapter 395, except that the commission may not
4 use for that purpose more than three percent of the balance of the
5 fund as of September 1 of each state fiscal year of the biennium for
6 the governmental alternative fuel fleet grant program in that
7 fiscal year.

8 (h) Subject to the limitations outlined in this section and
9 any additional limitations placed on the use of the appropriated
10 funds, money allocated under this section to a particular program
11 may be used for another program under the plan as determined by the
12 commission, based on demand for grants for eligible projects under
13 particular programs after the commission solicits projects to which
14 to award grants according to the initial allocation provisions of
15 this section.

16 (h-1) Effective on the date that the Texas Emissions
17 Reduction Plan Advisory Board is abolished under Subsection (a) of
18 this section, Section 390.001, Health and Safety Code, is amended
19 by amending Subdivision (1) and adding Subdivision (1-a) to read as
20 follows:

21 (1) "Commission" means the Texas Commission on
22 Environmental Quality.

23 (1-a) "Diesel exhaust" means one or more of the air
24 pollutants emitted from an engine by the combustion of diesel fuel,
25 including particulate matter, nitrogen oxides, volatile organic
26 compounds, air toxics, and carbon monoxide.

27 (h-2) Effective on the date that the Texas Emissions

Reduction Plan Advisory Board is abolished under Subsection (a) of this section, Section 390.002(b), Health and Safety Code, is amended to read as follows:

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

(1) diesel oxidation catalysts for school buses built before 1994;

(2) diesel particulate filters for school buses built from 1994 to 1998;

(3) the purchase and use of emission-reducing add-on equipment for school buses, including devices that reduce crankcase emissions;

(4) the use of qualifying fuel; ~~and~~

(5) other technologies that the commission finds will bring about significant emissions reductions; and

(6) replacement of a pre-2007 model year school bus.

(i) Effective on the date that the Texas Emissions Reduction Plan Advisory Board is abolished under Subsection (a) of this section, Section 390.004, Health and Safety Code, is amended by adding Subsections (c) and (d) to read as follows:

(c) A school bus proposed for replacement must:

(1) be of model year 2006 or earlier;

(2) have been owned and operated by the applicant for at least the two years before submission of the grant application;

(3) be in good operational condition; and

(4) be currently used on a regular, daily route to and from a school.

1 (d) A school bus proposed for purchase to replace a pre-2007
2 model year school bus must be of the current model year or the year
3 before the current model year at the time of submission of the grant
4 application.

5 (i-1) Effective on the date that the Texas Emissions
6 Reduction Plan Advisory Board is abolished under Subsection (a) of
7 this section, Section 390.005, Health and Safety Code, is amended
8 to read as follows:

9 Sec. 390.005. RESTRICTION ON USE OF GRANT. (a) A
10 recipient of a grant under this chapter shall use the grant to pay
11 the incremental costs of the project for which the grant is made,
12 which may include the reasonable and necessary expenses incurred
13 for the labor needed to install emissions-reducing equipment. The
14 recipient may not use the grant to pay the recipient's
15 administrative expenses.

16 (b) A school bus acquired to replace an existing school bus
17 must be purchased and the grant recipient must agree to own and
18 operate the school bus on a regular, daily route to and from a
19 school for at least five years after a start date established by the
20 commission, based on the date the commission accepts documentation
21 of the permanent destruction or permanent removal of the school bus
22 being replaced.

23 (c) A school bus replaced under this program must be
24 rendered permanently inoperable by crushing the bus, by making a
25 hole in the engine block and permanently destroying the frame of the
26 bus, or by another method approved by the commission, or be
27 permanently removed from operation in this state. The commission

1 shall establish criteria for ensuring the permanent destruction or
2 permanent removal of the engine or bus. The commission shall
3 enforce the destruction and removal requirements.

4 (d) In this section, "permanent removal" means the
5 permanent export of a school bus or the engine of a school bus to a
6 destination outside of the United States, Canada, or the United
7 Mexican States.

8 (i-2) Effective on the date that the Texas Emissions
9 Reduction Plan Advisory Board is abolished under Subsection (a) of
10 this section, Section 390.006, Health and Safety Code, is amended
11 to read as follows:

12 Sec. 390.006. EXPIRATION. This chapter expires on the last
13 day of the state fiscal biennium during which the commission
14 publishes in the Texas Register the notice required by Section
15 382.037 [August 31, 2019].

16 (j) Effective on the date that the Texas Emissions Reduction
17 Plan Advisory Board is abolished under Subsection (a) of this
18 section, Section 391.002(b), Health and Safety Code, is amended to
19 read as follows:

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

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

24 (2) new technology projects that reduce emissions of
25 regulated pollutants from stationary ~~[point]~~ sources;

26 (3) new technology projects that reduce emissions from
27 upstream and midstream oil and gas production, completions,

1 gathering, storage, processing, and transmission activities
2 through:

3 (A) the replacement, repower, or retrofit of
4 stationary compressor engines;

5 (B) the installation of systems to reduce or
6 eliminate the loss of gas, flaring of gas, or burning of gas using
7 other combustion control devices; or

8 (C) the installation of systems that reduce
9 flaring emissions and other site emissions by capturing waste heat
10 to generate electricity solely for on-site service; and

11 (4) [~~(3)~~] electricity storage projects related to
12 renewable energy, including projects to store electricity produced
13 from wind and solar generation that provide efficient means of
14 making the stored energy available during periods of peak energy
15 use.

16 (j-1) Effective on the date that the Texas Emissions
17 Reduction Plan Advisory Board is abolished under Subsection (a) of
18 this section, Section 391.102(f), Health and Safety Code, is
19 amended to read as follows:

20 (f) In reviewing a grant application under this chapter
21 [~~coordinating interagency application review procedures~~], the
22 commission may [shall]:

23 (1) solicit review and comments from:

24 (A) the comptroller to assess:

25 (i) the financial stability of the
26 applicant;

27 (ii) the economic benefits and job creation

1 potential associated with the project; and

2 (iii) any other information related to the
3 duties of that office;

4 (B) the Public Utility Commission of Texas to
5 assess:

6 (i) the reliability of the proposed
7 technology;

8 (ii) the feasibility and
9 cost-effectiveness of electric transmission associated with the
10 project; and

11 (iii) any other information related to the
12 duties of that agency; and

13 (C) the Railroad Commission of Texas to assess:

14 (i) the availability and cost of the fuel
15 involved with the project; and

16 (ii) any other information related to the
17 duties of that agency; and

18 (2) consider the comments received under Subdivision
19 (1) in the commission's grant award decision process~~[-and~~

20 ~~[(3) as part of the report required by Section~~
21 ~~391.104, justify awards made to projects that have been negatively~~
22 ~~reviewed by agencies under Subdivision (1)].~~

23 (j-2) Effective on the date that the Texas Emissions
24 Reduction Plan Advisory Board is abolished under Subsection (a) of
25 this section, Section 391.104, Health and Safety Code, is amended
26 to read as follows:

27 Sec. 391.104. REPORTING REQUIREMENTS. The commission

~~[annually]~~ shall include in the biennial plan report required by
Section 386.057(b) information ~~[prepare a report]~~ that summarizes
the applications received and grants awarded in the preceding
biennium ~~[year]~~. Preparation of the information for the report may
~~[must]~~ include the participation of any ~~[the]~~ state agency
~~[agencies]~~ involved in the review of applications under Section
391.102, if the commission determines participation of the agency
is needed.

(k) Effective on the date that the Texas Emissions Reduction
Plan Advisory Board is abolished under Subsection (a) of this
section, Section 391.205(a), Health and Safety Code, is amended to
read as follows:

(a) Except as provided by Subsection (c), in awarding grants
under this chapter the commission shall give preference to projects
that:

(1) involve the transport, use, recovery for use, or
prevention of the loss of natural resources originating or produced
in this state;

(2) contain an energy efficiency component; ~~[or]~~

(3) include the use of solar, wind, or other renewable
energy sources; or

(4) recover waste heat from the combustion of natural
resources and use the heat to generate electricity.

(k-1) Effective on the date that the Texas Emissions
Reduction Plan Advisory Board is abolished under Subsection (a) of
this section, Section 391.304, Health and Safety Code, is amended
to read as follows:

1 Sec. 391.304. EXPIRATION. This chapter expires on the last
2 day of the state fiscal biennium during which the commission
3 publishes in the Texas Register the notice required by Section
4 382.037 [~~August 31, 2019~~].

5 (k-2) Effective on the date that the Texas Emissions
6 Reduction Plan Advisory Board is abolished under Subsection (a) of
7 this section, Section 392.001(1), Health and Safety Code, is
8 amended to read as follows:

9 (1) "Alternative fuel" means a fuel other than
10 gasoline or diesel fuel, including electricity, compressed natural
11 gas, liquefied [~~liquified~~] natural gas, hydrogen, propane, or a
12 mixture of fuels containing at least 85 percent methanol by volume.

13 (1) Effective on the date that the Texas Emissions Reduction
14 Plan Advisory Board is abolished under Subsection (a) of this
15 section, Sections 392.002(b) and (c), Health and Safety Code, are
16 amended to read as follows:

17 (b) An entity that places 10 [~~20~~] or more qualifying
18 vehicles in service for use entirely in this state during a calendar
19 year is eligible to participate in the program.

20 (c) Notwithstanding Subsection (b), an entity that submits
21 a grant application for 10 [~~20~~] or more qualifying vehicles is
22 eligible to participate in the program even if the commission
23 denies approval for one or more of the vehicles during the
24 application process.

25 (l-1) Effective on the date that the Texas Emissions
26 Reduction Plan Advisory Board is abolished under Subsection (a) of
27 this section, Section 392.003(a), Health and Safety Code, is

1 amended to read as follows:

2 (a) A vehicle is a qualifying vehicle that may be considered
3 for a grant under the program if during the eligibility period
4 established by the commission ~~[calendar year]~~ the entity purchases
5 a new on-road vehicle that:

6 (1) is certified to the appropriate current federal
7 emissions standards as determined by the commission;

8 (2) replaces a diesel-powered on-road vehicle of the
9 same weight classification and use; and

10 (3) is a hybrid vehicle or fueled by an alternative
11 fuel.

12 (1-2) Effective on the date that the Texas Emissions
13 Reduction Plan Advisory Board is abolished under Subsection (a) of
14 this section, Section 392.004(d), Health and Safety Code, is
15 amended to read as follows:

16 (d) The commission shall minimize, to the maximum extent
17 possible, the amount of paperwork required for an application. ~~[An~~
18 ~~applicant may be required to submit a photograph or other~~
19 ~~documentation of a vehicle identification number, registration~~
20 ~~information, inspection information, tire condition, or engine~~
21 ~~block identification only if the photograph or documentation is~~
22 ~~requested by the commission after the commission has decided to~~
23 ~~award a grant to the applicant under this chapter.]~~

24 (m) Effective on the date that the Texas Emissions Reduction
25 Plan Advisory Board is abolished under Subsection (a) of this
26 section, Section 392.005, Health and Safety Code, is amended by
27 amending Subsections (c) and (i) and adding Subsection (c-1) to

read as follows:

(c) As a condition of receiving a grant, the qualifying vehicle must be continuously owned, registered, and operated in the state by the grant recipient until the earlier of the fifth anniversary of the activity start date established by the commission ~~[the date of reimbursement of the grant-funded expenses]~~ or ~~[until]~~ the date the vehicle has been in operation for 400,000 miles after the activity start date established by the commission ~~[of reimbursement]~~. Not less than 75 percent of the annual use of the qualifying vehicle, either mileage or fuel use as determined by the commission, must occur in the state.

(c-1) For purposes of Subsection (c), the commission shall establish the activity start date based on the date the commission accepts verification of the disposition of the vehicle being replaced.

(i) The executive director may ~~[shall]~~ waive the requirements of Subsection (b)(2)(A) on a finding of good cause, which may include a waiver for short lapses in registration or operation attributable to economic conditions, seasonal work, or other circumstances.

(m-1) Effective on the date that the Texas Emissions Reduction Plan Advisory Board is abolished under Subsection (a) of this section, Section **392.008**, Health and Safety Code, is amended to read as follows:

Sec. 392.008. EXPIRATION. This chapter expires on the last day of the state fiscal biennium during which the commission publishes in the Texas Register the notice required by Section

1 382.037 [~~August 31, 2017~~].

2 (m-2) Effective on the date that the Texas Emissions
3 Reduction Plan Advisory Board is abolished under Subsection (a) of
4 this section, Section 393.001, Health and Safety Code, is amended
5 by amending Subdivision (1) and adding Subdivision (1-a) to read as
6 follows:

7 (1) "Alternative fuel" means a fuel other than
8 gasoline or diesel fuel, other than biodiesel fuel, including
9 electricity, compressed natural gas, liquefied [~~liquified~~] natural
10 gas, hydrogen, propane, or a mixture of fuels containing at least 85
11 percent methanol by volume.

12 (1-a) "Clean transportation zone" means:

13 (A) counties containing or intersected by a
14 portion of an interstate highway connecting the cities of Houston,
15 San Antonio, Dallas, and Fort Worth;

16 (B) counties located within the area bounded by
17 the interstate highways described by Paragraph (A);

18 (C) counties containing or intersected by a
19 portion of:

20 (i) an interstate highway connecting San
21 Antonio to Corpus Christi or Laredo;

22 (ii) the most direct route using highways
23 in the state highway system connecting Corpus Christi and Laredo;
24 or

25 (iii) a highway corridor connecting Corpus
26 Christi and Houston;

27 (D) counties located within the area bounded by

1 the highways described by Paragraph (C);

2 (E) counties in this state all or part of which
3 are included in a nonattainment area designated under Section
4 107(d) of the federal Clean Air Act (42 U.S.C. Section 7407); and

5 (F) counties designated as affected counties
6 under Section 386.001.

7 (n) Effective on the date that the Texas Emissions Reduction
8 Plan Advisory Board is abolished under Subsection (a) of this
9 section, Section 393.002, Health and Safety Code, is amended to
10 read as follows:

11 Sec. 393.002. PROGRAM. (a) The commission shall establish
12 and administer the Texas alternative fueling facilities program to
13 provide fueling facilities for alternative fuel in the clean
14 transportation zone [~~nonattainment areas~~]. Under the program, the
15 commission shall provide a grant for each eligible facility to
16 offset the cost of those facilities.

17 (b) An entity that constructs or[~~7~~] reconstructs[~~7~~ ~~or~~
18 ~~acquires~~] an alternative fueling facility is eligible to
19 participate in the program.

20 (c) To ensure that alternative fuel vehicles have access to
21 fuel and to build the foundation for a self-sustaining market for
22 alternative fuels in Texas, the commission shall provide for
23 strategically placed fueling facilities in the clean
24 transportation zone to enable an alternative fuel vehicle to travel
25 in those areas relying solely on the alternative fuel.

26 (d) The commission shall maintain a listing to be made
27 available to the public online of all vehicle fueling facilities

1 that have received grant funding, including location and hours of
2 operation.

3 (n-1) Effective on the date that the Texas Emissions
4 Reduction Plan Advisory Board is abolished under Subsection (a) of
5 this section, Section 393.003, Health and Safety Code, is amended
6 by amending Subsections (a) and (b) and adding Subsections (d) and
7 (e) to read as follows:

8 (a) An entity operating in this state that constructs or~~[7]~~
9 ~~reconstructs[, or acquires]~~ a facility to ~~[store, compress, or]~~
10 dispense alternative fuels may apply for and receive a grant under
11 the program.

12 (b) The commission may ~~[adopt guidelines to]~~ allow a
13 regional planning commission, council of governments, or similar
14 regional planning agency created under Chapter 391, Local
15 Government Code, or a private nonprofit organization to apply for
16 and receive a grant to improve the ability of the program to achieve
17 its goals.

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

1 (e) The commission shall disburse grants under the program
2 through a competitive application selection process to offset a
3 portion of the eligible costs.

4 (n-2) Effective on the date that the Texas Emissions
5 Reduction Plan Advisory Board is abolished under Subsection (a) of
6 this section, Section 393.004, Health and Safety Code, is amended
7 to read as follows:

8 Sec. 393.004. ELIGIBILITY OF FACILITIES FOR GRANTS.

9 (a) In addition to the requirements of this chapter, the
10 commission shall establish additional eligibility and
11 prioritization criteria as needed to implement the program [~~The~~
12 ~~commission by rule shall establish criteria for prioritizing~~
13 ~~facilities eligible to receive grants under this chapter. The~~
14 ~~commission shall review and revise the criteria as appropriate~~].

15 (b) The prioritization criteria established under
16 Subsection (a) must provide that, for each grant round, the
17 commission may not award a grant to an entity that does not [~~To be~~
18 ~~eligible for a grant under the program, the entity receiving the~~
19 ~~grant must~~] agree to make the alternative fueling facility
20 accessible and available to the public [~~persons not associated with~~
21 ~~the entity~~] at times designated by the grant contract until each
22 eligible entity that does agree to those terms has been awarded a
23 grant [~~agreement~~].

24 (c) The commission may not award more than one grant for
25 each facility.

26 (d) The commission may give preference to or otherwise limit
27 grant selections to:

1 (1) fueling facilities providing specific types of
2 alternative fuels;

3 (2) fueling facilities in a specified area or
4 location; and

5 (3) fueling facilities meeting other specified
6 prioritization criteria established by the commission.

7 (e) For fueling facilities to provide natural gas, the
8 commission shall give preference to:

9 (1) facilities providing both liquefied natural gas
10 and compressed natural gas at a single location;

11 (2) facilities located not more than one mile from an
12 interstate highway system;

13 (3) facilities located in the area in and between the
14 Houston, San Antonio, and Dallas-Fort Worth areas; and

15 (4) facilities located in the area in and between the
16 Corpus Christi, Laredo, and San Antonio areas ~~[A recipient of a~~
17 ~~grant under this chapter is not eligible to receive a second grant~~
18 ~~under this chapter for the same facility].~~

19 (o) Effective on the date that the Texas Emissions Reduction
20 Plan Advisory Board is abolished under Subsection (a) of this
21 section, Section 393.005, Health and Safety Code, is amended to
22 read as follows:

23 Sec. 393.005. RESTRICTION ON USE OF GRANT. (a) A
24 recipient of a grant under this chapter shall use the grant only to
25 pay the costs of the facility for which the grant is made. The
26 recipient may not use the grant to pay the recipient's:

27 (1) administrative expenses;

1 (2) expenses for the purchase of land or an interest in
2 land; or

3 (3) expenses for equipment or facility improvements
4 that are not directly related to the delivery, storage,
5 compression, or dispensing of the alternative fuel at the facility.

6 (b) Each grant must be awarded using a contract that
7 requires the recipient to meet operational, maintenance, and
8 reporting requirements as specified by the commission.

9 (o-1) Effective on the date that the Texas Emissions
10 Reduction Plan Advisory Board is abolished under Subsection (a) of
11 this section, Section 393.006, Health and Safety Code, is amended
12 to read as follows:

13 Sec. 393.006. AMOUNT OF GRANT. (a) Grants awarded under
14 this chapter for a facility to provide alternative fuels other than
15 natural gas may not exceed [~~For each eligible facility for which a~~
16 ~~recipient is awarded a grant under the program, the commission~~
17 ~~shall award the grant in an amount equal to]~~ the lesser of:

18 (1) 50 percent of the sum of the actual eligible costs
19 incurred by the grant recipient within deadlines established by the
20 commission [~~to construct, reconstruct, or acquire the facility~~]; or

21 (2) \$600,000.

22 (b) Grants awarded under this chapter for a facility to
23 provide natural gas may not exceed:

24 (1) \$400,000 for a compressed natural gas facility;

25 (2) \$400,000 for a liquefied natural gas facility; or

26 (3) \$600,000 for a facility providing both liquefied
27 and compressed natural gas.

(o-2) Effective on the date that the Texas Emissions Reduction Plan Advisory Board is abolished under Subsection (a) of this section, Section 393.007, Health and Safety Code, is amended to read as follows:

Sec. 393.007. EXPIRATION. This chapter expires on the last day of the state fiscal biennium during which the commission publishes in the Texas Register the notice required by Section 382.037 ~~[August 31, 2018]~~.

(p) Effective on the date that the Texas Emissions Reduction Plan Advisory Board is abolished under Subsection (a) of this section, Section 394.001, Health and Safety Code, is amended by amending Subdivisions (1), (4), (5), and (8) and adding Subdivisions (1-a) and (7-a) to read as follows:

(1) "Certified" includes:

(A) new vehicle or new engine certification by the United States Environmental Protection Agency; or

(B) certification or approval by the United States Environmental Protection Agency of a system to convert a vehicle or engine to operate on an alternative fuel and a demonstration by the emissions data used to certify or approve the vehicle or engine, if the commission determines the testing used to obtain the emissions data is consistent with the testing required for approval of an alternative fuel conversion system for new and relatively new vehicles or engines under 40 C.F.R. Part 85
~~["Advisory board" means the Texas Emissions Reduction Plan Advisory Board]~~.

(1-a) "Clean transportation zone" has the meaning

1 assigned by Section 393.001.

2 (4) "Heavy-duty motor vehicle" means a motor vehicle
3 that ~~[with]:~~

4 (A) has a gross vehicle weight rating of more
5 than 8,500 pounds; and

6 (B) is certified to or has an engine certified to
7 the United States Environmental Protection Agency's emissions
8 standards for heavy-duty vehicles or engines.

9 (5) "Incremental cost" has the meaning assigned by
10 Section 386.001 ~~[means the difference between the manufacturer's~~
11 ~~suggested retail price of a baseline vehicle, the documented dealer~~
12 ~~price of a baseline vehicle, cost to lease or otherwise~~
13 ~~commercially finance a baseline vehicle, cost to repower with a~~
14 ~~baseline engine, or other appropriate baseline cost established by~~
15 ~~the commission, and the actual cost of the natural gas vehicle~~
16 ~~purchase, lease, or other commercial financing, or repower].~~

17 (7-a) "Natural gas engine" means an engine that
18 operates:

19 (A) solely on natural gas, including compressed
20 natural gas, liquefied natural gas, or liquefied petroleum gas; or

21 (B) on a combination of diesel fuel and natural
22 gas, including compressed natural gas, liquefied natural gas, or
23 liquefied petroleum gas, and is capable of achieving at least 60
24 percent displacement of diesel fuel with natural gas.

25 (8) "Natural gas vehicle" means a motor vehicle that
26 is powered by a natural gas engine ~~[receives not less than 75~~
27 ~~percent of its power from compressed or liquefied natural gas].~~

(p-1) Effective on the date that the Texas Emissions Reduction Plan Advisory Board is abolished under Subsection (a) of this section, Section 394.003(a), Health and Safety Code, is amended to read as follows:

(a) A vehicle is a qualifying vehicle that may be considered for a grant under the program if during the eligibility period established by the commission ~~[calendar year]~~ the entity:

(1) purchased, leased, or otherwise commercially financed the vehicle as a new on-road heavy-duty or medium-duty motor vehicle that:

(A) is a natural gas vehicle;

(B) is certified to the appropriate current federal emissions standards as determined by the commission; and

(C) replaces an on-road heavy-duty or medium-duty motor vehicle of the same weight classification and use; ~~and~~

~~[(D) is powered by an engine certified to:~~

~~[(i) emit not more than 0.2 grams of nitrogen oxides per brake horsepower hour, or~~

~~[(ii) meet or exceed the United States Environmental Protection Agency's Bin 5 standard for light-duty engines when powering the vehicle,] or~~

(2) repowered the on-road motor vehicle to a natural gas vehicle powered by a natural gas engine that ~~[~~

~~[(A)]~~ is certified to the appropriate current federal emissions standards as determined by the commission ~~[, and~~

~~[(B) is:~~

1 ~~[(i) a heavy-duty engine that is certified~~
2 ~~to emit not more than 0.2 grams of nitrogen oxides per brake~~
3 ~~horsepower hour, or~~

4 ~~[(ii) certified to meet or exceed the~~
5 ~~United States Environmental Protection Agency's Bin 5 standard for~~
6 ~~light-duty engines when powering the vehicle].~~

7 (p-2) Effective on the date that the Texas Emissions
8 Reduction Plan Advisory Board is abolished under Subsection (a) of
9 this section, Section 394.005, Health and Safety Code, is amended
10 by amending Subsections (a), (b), (c), (f), (g), and (i) and adding
11 Subsection (c-1) to read as follows:

12 (a) The commission ~~[by rule]~~ shall establish criteria for
13 prioritizing qualifying vehicles eligible to receive grants under
14 this chapter. The commission shall review and revise the criteria
15 as appropriate ~~[after consultation with the advisory board]~~.

16 (b) To be eligible for a grant under the program:

17 (1) the use of the qualifying vehicle must be
18 projected to result in a reduction in emissions of nitrogen oxides
19 of at least 25 percent as compared to the motor vehicle or engine
20 being replaced, based on:

21 (A) the baseline emission level set by the
22 commission under Subsection (g); and

23 (B) the certified emission rate of the new
24 vehicle; and

25 (2) the qualifying vehicle must:

26 (A) replace a heavy-duty or medium-duty motor
27 vehicle that:

1 (i) is an on-road vehicle that has been
2 owned, leased, or otherwise commercially financed and registered
3 and operated by the applicant in Texas for at least the two years
4 immediately preceding the submission of a grant application;

5 (ii) satisfies any minimum average annual
6 mileage or fuel usage requirements established by the commission;

7 (iii) satisfies any minimum percentage of
8 annual usage requirements established by the commission; and

9 (iv) is in operating condition and has at
10 least two years of remaining useful life, as determined in
11 accordance with criteria established by the commission; ~~or~~

12 (B) replace a heavy-duty or medium-duty motor
13 vehicle that:

14 (i) is owned by the applicant;

15 (ii) is an on-road vehicle that has been:

16 (a) owned, leased, or otherwise
17 commercially financed and operated in Texas as a fleet vehicle for
18 at least the two years immediately preceding the submission of a
19 grant application; and

20 (b) registered in a county located in
21 the clean transportation zone for at least the two years
22 immediately preceding the submission of a grant application; and

23 (iii) otherwise satisfies the mileage,
24 usage, and useful life requirements established under Paragraph (A)
25 as determined by documentation associated with the vehicle; or

26 (C) be a heavy-duty or medium-duty motor vehicle
27 repowered with a natural gas engine that:

(i) is installed in an on-road vehicle that has been owned, leased, or otherwise commercially financed and registered and operated by the applicant in Texas for at least the two years immediately preceding the submission of a grant application;

(ii) satisfies any minimum average annual mileage or fuel usage requirements established by the commission;

(iii) satisfies any minimum percentage of annual usage requirements established by the commission; and

(iv) is installed in an on-road vehicle that, at the time of the vehicle's repowering, was in operating condition and had at least two years of remaining useful life, as determined in accordance with criteria established by the commission.

(c) As a condition of receiving a grant, the qualifying vehicle must be continuously owned, leased, or otherwise commercially financed and registered and operated in the state by the grant recipient until the earlier of the fourth anniversary of the activity start date established by the commission ~~[the date of reimbursement of the grant-funded expenses]~~ or ~~[until]~~ the date the vehicle has been in operation for 400,000 miles after the activity start date established by the commission ~~[of reimbursement]~~. Not less than 75 percent of the annual use of the qualifying vehicle, either mileage or fuel use as determined by the commission, must occur in the clean transportation zone ~~[+]~~

~~[(1) the counties any part of which are included in the area described by Section 394.010(a), or~~

1 ~~[(2) counties designated as nonattainment areas~~
2 ~~within the meaning of Section 107(d) of the federal Clean Air Act~~
3 ~~(42 U.S.C. Section 7407)]~~.

4 (c-1) For purposes of Subsection (c), the commission shall
5 establish the activity start date based on the date the commission
6 accepts verification of the disposition of the vehicle or engine.

7 (f) A heavy-duty or medium-duty motor vehicle replaced
8 under this program must be rendered permanently inoperable by
9 crushing the vehicle, by making a hole in the engine block and
10 permanently destroying the frame of the vehicle, or by another
11 method approved by the commission, or be [that] permanently removed
12 ~~[removes the vehicle]~~ from operation in this state. The commission
13 shall establish criteria for ensuring the permanent destruction or
14 permanent removal of the engine or vehicle. The commission shall
15 enforce the destruction and removal requirements. For purposes of
16 this subsection, "permanent removal" means the permanent export of
17 the vehicle or engine to a destination outside of the United States,
18 Canada, or the United Mexican States.

19 (g) The commission shall establish baseline emission levels
20 for emissions of nitrogen oxides for on-road heavy-duty or
21 medium-duty motor vehicles being replaced or repowered by using the
22 emission certification for the engine or vehicle being replaced.
23 The commission may consider deterioration of the emission
24 performance of the engine of the vehicle being replaced in
25 establishing the baseline emission level. The commission may
26 consider and establish baseline emission rates for additional
27 pollutants of concern~~[, as determined by the commission after~~

~~consultation with the advisory board].~~

(i) The executive director may ~~[shall]~~ waive the requirements of Subsection (b)(2)(A)(i) or (B)(ii) on a finding of good cause, which may include short lapses in registration or operation due to economic conditions, seasonal work, or other circumstances.

(q) Effective on the date that the Texas Emissions Reduction Plan Advisory Board is abolished under Subsection (a) of this section, Section 394.006, Health and Safety Code, is amended to read as follows:

Sec. 394.006. RESTRICTION ON USE OF GRANT. A recipient of a grant under this chapter shall use the grant to pay the incremental costs of the replacement or vehicle repower for which the grant is made, which may include a portion of the initial cost of the natural gas vehicle or natural gas engine, including the cost of the natural gas fuel system and installation ~~[and the reasonable and necessary expenses incurred for the labor needed to install emissions-reducing equipment]~~. The recipient may not use the grant to pay the recipient's administrative expenses.

(q-1) Effective on the date that the Texas Emissions Reduction Plan Advisory Board is abolished under Subsection (a) of this section, Section 394.007(c), Health and Safety Code, is amended to read as follows:

(c) A person may not receive a grant under this chapter that, when combined with any other grant, tax credit, or other governmental incentive, exceeds the incremental cost of the vehicle or vehicle repower for which the grant is awarded. A person shall

1 return to the commission the amount of a grant awarded under this
2 chapter that, when combined with any other grant, tax credit, or
3 other governmental incentive, exceeds the incremental cost of the
4 vehicle or vehicle repower for which the grant is awarded.

5 (q-2) Effective on the date that the Texas Emissions
6 Reduction Plan Advisory Board is abolished under Subsection (a) of
7 this section, Sections [394.008](#)(a) and (b), Health and Safety Code,
8 are amended to read as follows:

9 (a) The commission shall establish ~~[adopt]~~ procedures for:

10 (1) awarding grants under this chapter to reimburse
11 eligible costs; [in the form of rebates, and]

12 (2) streamlining the grant application, contracting,
13 reimbursement, and reporting process for qualifying natural gas
14 vehicle purchases or repowers; and

15 (3) preapproving the award of grants to applicants who
16 propose to purchase and replace motor vehicles described by Section
17 [394.005](#)(b)(2)(B).

18 (b) Procedures established ~~[adopted]~~ under this section
19 must:

20 (1) provide for the commission to compile and
21 regularly update a listing of potentially eligible [preapproved]
22 natural gas vehicles and natural gas engines that are certified to
23 the appropriate current federal emissions standards as determined
24 by the commission ~~[+]~~

25 ~~[(A) powered by natural gas engines certified to~~
26 ~~emit not more than 0.2 grams of nitrogen oxides per brake horsepower~~
27 ~~hour, or~~

1 ~~[(B) certified to the United States~~
2 ~~Environmental Protection Agency's light-duty Bin 5 standard or~~
3 ~~better];~~

4 (2) ~~[if a federal standard for the calculation of~~
5 ~~emissions reductions exists,~~] provide a method to calculate the
6 reduction in emissions of nitrogen oxides, volatile organic
7 compounds, carbon monoxide, particulate matter, and sulfur
8 compounds for each replacement or repowering;

9 (3) assign a standardized grant ~~[rebate]~~ amount for
10 each qualifying vehicle or engine repower under Section 394.007;

11 (4) allow for processing applications ~~[rebates]~~ on an
12 ongoing first-come, first-served basis;

13 (5) ~~[provide for contracts between the commission and~~
14 ~~participating dealers under Section 394.009,~~

15 ~~[(6) allow grant recipients to assign their grant~~
16 ~~funds to participating dealers to offset the purchase or lease~~
17 ~~price,~~

18 ~~[(7)]~~ require grant applicants to identify natural gas
19 fueling stations that are available to fuel the qualifying vehicle
20 in the area of its use;

21 (6) ~~[(8)]~~ provide for payment not later than the 30th
22 day after the date the request for reimbursement for an approved
23 grant is received;

24 (7) ~~[(9)]~~ provide for application submission and
25 application status checks using procedures established by the
26 commission, which may include application submission and status
27 checks to be made over the Internet; and

1 (8) [~~(10)~~] consolidate, simplify, and reduce the
2 administrative work for applicants and the commission associated
3 with grant application, contracting, reimbursement, and reporting
4 requirements.

5 (r) Effective on the date that the Texas Emissions Reduction
6 Plan Advisory Board is abolished under Subsection (a) of this
7 section, Section 394.012, Health and Safety Code, is amended to
8 read as follows:

9 Sec. 394.012. EXPIRATION. This chapter expires on the last
10 day of the state fiscal biennium during which the commission
11 publishes in the Texas Register the notice required by Section
12 382.037 [August 31, 2017].

13 (r-1) Effective on the date that the Texas Emissions
14 Reduction Plan Advisory Board is abolished under Subsection (a) of
15 this section, Subtitle C, Title 5, Health and Safety Code, is
16 amended by adding Chapter 395 to read as follows:

17 CHAPTER 395. GOVERNMENTAL ALTERNATIVE FUEL FLEET GRANT PROGRAM

18 Sec. 395.001. DEFINITIONS. In this chapter:

19 (1) "Alternative fuel" means compressed natural gas,
20 liquefied natural gas, liquefied petroleum gas, hydrogen fuel
21 cells, or electricity, including electricity to power fully
22 electric motor vehicles and plug-in hybrid motor vehicles.

23 (2) "Commission" means the Texas Commission on
24 Environmental Quality.

25 (3) "Incremental cost" has the meaning assigned by
26 Section 386.001.

27 (4) "Motor vehicle" means a self-propelled device

designed for transporting persons or property on a public highway that is required to be registered under Chapter 502, Transportation Code.

(5) "Plug-in hybrid motor vehicle" has the meaning assigned by Section 2158.001, Government Code.

(6) "Political subdivision" means a county, municipality, school district, junior college district, river authority, water district or other special district, or other political subdivision created under the constitution or a statute of this state.

(7) "Program" means the governmental alternative fuel fleet grant program established under this chapter.

(8) "State agency" has the meaning assigned by Section 2151.002, Government Code, and includes the commission.

Sec. 395.002. PROGRAM. (a) The commission shall establish and administer a governmental alternative fuel fleet grant program to assist an eligible applicant described by Section 395.003 in purchasing or leasing new motor vehicles that operate primarily on an alternative fuel.

(b) The program may provide a grant to an applicant described by Section 395.003 to:

(1) purchase or lease a new motor vehicle described by Section 395.004; or

(2) purchase, lease, or install refueling infrastructure or equipment or procure refueling services as described by Section 395.005 to store and dispense alternative fuel needed for a motor vehicle described by Subdivision (1) of this

1 subsection.

2 Sec. 395.003. ELIGIBLE APPLICANTS. (a) A state agency or
3 political subdivision is eligible to apply for a grant under the
4 program if the entity operates a fleet of more than 15 motor
5 vehicles, excluding motor vehicles that are owned and operated by a
6 private company or other third party under a contract with the
7 entity.

8 (b) A mass transit or school transportation provider or
9 other public entity established to provide public or school
10 transportation services is eligible for a grant under the program.

11 Sec. 395.004. MOTOR VEHICLE REQUIREMENTS. (a) A grant
12 recipient may purchase or lease with money from a grant under the
13 program a new motor vehicle that is originally manufactured to
14 operate using one or more alternative fuels or is converted to
15 operate using one or more alternative fuels before the first retail
16 sale of the vehicle, and that:

17 (1) has a dedicated system, dual-fuel system, or
18 bi-fuel system; and

19 (2) if the motor vehicle is a fully electric motor
20 vehicle or plug-in hybrid motor vehicle, has a United States
21 Environmental Protection Agency rating of at least 75 miles per
22 gallon equivalent or a 75-mile combined city and highway range.

23 (b) A grant recipient may not use money from a grant under
24 the program to replace a motor vehicle, transit bus, or school bus
25 that operates on an alternative fuel unless the replacement vehicle
26 produces fewer emissions and has greater fuel efficiency than the
27 vehicle being replaced.

1 Sec. 395.005. REFUELING INFRASTRUCTURE, EQUIPMENT, AND
2 SERVICES. A grant recipient may purchase, lease, or install
3 refueling infrastructure or equipment or procure refueling
4 services with money from a grant under the program if:

5 (1) the purchase, lease, installation, or procurement
6 is made in conjunction with the purchase or lease of a motor vehicle
7 as described by Section 395.004 or the conversion of a motor vehicle
8 to operate primarily on an alternative fuel;

9 (2) the grant recipient demonstrates that a refueling
10 station that meets the needs of the recipient is not available
11 within five miles of the location at which the recipient's vehicles
12 are stored or primarily used; and

13 (3) for the purchase or installation of refueling
14 infrastructure or equipment, the infrastructure or equipment will
15 be owned and operated by the grant recipient, and for the lease of
16 refueling infrastructure or equipment or the procurement of
17 refueling services, a third-party service provider engaged by the
18 grant recipient will provide the infrastructure, equipment, or
19 services.

20 Sec. 395.006. ELIGIBLE COSTS. (a) A motor vehicle lease
21 agreement paid for with money from a grant under the program must
22 have a term of at least three years.

23 (b) Refueling infrastructure or equipment purchased or
24 installed with money from a grant under the program must be used
25 specifically to store or dispense alternative fuel, as determined
26 by the commission.

27 (c) A lease of or service agreement for refueling

1 infrastructure, equipment, or services paid for with money from a
2 grant under the program must have a term of at least three years.

3 Sec. 395.007. GRANT AMOUNTS. (a) The commission may
4 establish standardized grant amounts based on the incremental costs
5 associated with the purchase or lease of different categories of
6 motor vehicles, including the type of fuel used, vehicle class, and
7 other categories the commission considers appropriate.

8 (b) In determining the incremental costs and setting the
9 standardized grant amounts, the commission may consider the
10 difference in cost between a new motor vehicle operated using
11 conventional gasoline or diesel fuel and a new motor vehicle
12 operated using alternative fuel.

13 (c) The amount of a grant for the purchase or lease of a
14 motor vehicle may not exceed the amount of the incremental cost of
15 the purchase or lease.

16 (d) The commission may establish grant amounts to reimburse
17 the full cost of the purchase, lease, installation, or procurement
18 of refueling infrastructure, equipment, or services or may
19 establish criteria for reimbursing a percentage of the cost.

20 (e) A grant under the program may be combined with funding
21 from other sources, including other grant programs, except that a
22 grant may not be combined with other funding or grants from the
23 Texas emissions reduction plan. When combined with other funding
24 sources, a grant may not exceed the total cost to the grant
25 recipient.

26 (f) In providing a grant for the lease of a motor vehicle
27 under this chapter, the commission shall establish criteria:

1 (1) to offset incremental costs through an up-front
2 payment to lower the cost basis of the lease; or

3 (2) if determined appropriate by the commission, to
4 provide for reimbursement of lease payments over no more than the
5 period of availability of the contracted funds under applicable
6 state law and regulation, which may be less than the required
7 three-year lease term.

8 (g) In providing a grant for the lease of refueling
9 infrastructure, equipment, or services, the commission shall
10 establish criteria:

11 (1) to offset incremental costs through an up-front
12 payment to lower the cost basis of the lease; or

13 (2) if determined appropriate by the commission, to
14 provide for reimbursement of lease payments over no more than the
15 period of availability of the contracted funds under applicable
16 state law and regulation, which may be less than the required
17 three-year lease term.

18 (h) Notwithstanding Subsection (d), the commission is not
19 obligated to fund the full cost of the purchase, lease,
20 installation, or procurement of refueling infrastructure,
21 equipment, or services if those costs cannot be incurred and
22 reimbursed over the period of availability of the funds under
23 applicable state law and regulation.

24 Sec. 395.008. AVAILABILITY OF EMISSIONS REDUCTION CREDITS.

25 (a) A project that is funded from a grant under the program and
26 that would generate marketable emissions reduction credits under a
27 state or federal emissions reduction credit averaging, banking, or

1 trading program is not eligible for funding under the program
2 unless:

3 (1) the project includes the transfer of the credits,
4 or the reductions that would otherwise be marketable credits, to
5 the commission and, if applicable, the state implementation plan;
6 and

7 (2) the credits or reductions, as applicable, are
8 permanently retired.

9 (b) An emissions reduction generated by a purchase or lease
10 under this chapter may be used to demonstrate conformity with the
11 state implementation plan.

12 Sec. 395.009. USE OF GRANT MONEY. A grant recipient when
13 using money from a grant under the program shall prioritize:

14 (1) the purchase or lease of new motor vehicles,
15 including new motor vehicles that are converted to operate on an
16 alternative fuel, when replacing vehicles or adding vehicles to the
17 fleet;

18 (2) the purchase of new motor vehicles, including new
19 motor vehicles that are converted to operate on an alternative
20 fuel, to replace vehicles that have the highest total mileage and do
21 not use an alternative fuel; and

22 (3) to the extent feasible, obtaining, whether by
23 purchase, purchase and conversion, or lease, motor vehicles that
24 use compressed natural gas, liquefied natural gas, or liquefied
25 petroleum gas.

26 Sec. 395.010. GRANT PROCEDURES AND CRITERIA. (a) The
27 commission shall establish specific criteria and procedures in

1 order to implement and administer the program, including the
2 creation and provision of application forms and guidance on the
3 application process.

4 (b) The commission shall award a grant through a contract
5 between the commission and the grant recipient.

6 (c) The commission shall provide an online application
7 process for the submission of all required application documents.

8 (d) The commission may limit funding for a particular period
9 according to priorities established by the commission, including
10 limiting the availability of grants to specific entities, for
11 certain types of vehicles and infrastructure, or to certain
12 geographic areas to ensure equitable distribution of grant funds
13 across the state.

14 (e) In awarding grants under the program, the commission
15 shall prioritize projects in the following order:

16 (1) projects that are proposed by a state agency;
17 (2) projects that are in or near a nonattainment area;
18 (3) projects that are in an affected county, as that
19 term is defined by Section 386.001; and

20 (4) projects that will produce the greatest emissions
21 reductions.

22 (f) In addition to the requirements under Subsection (e), in
23 awarding grants under the program, the commission shall consider:

24 (1) the total amount of the emissions reduction that
25 would be achieved from the project;

26 (2) the type and number of vehicles purchased or
27 leased;

1 (3) the location of the fleet and the refueling
2 infrastructure or equipment;

3 (4) the number of vehicles served and the rate at which
4 vehicles are served by the refueling infrastructure or equipment;

5 (5) the amount of any matching funds committed by the
6 applicant; and

7 (6) the schedule for project completion.

8 (g) The commission may not award more than 10 percent of the
9 total amount awarded under the program in any fiscal year for
10 purchasing, leasing, installing, or procuring refueling
11 infrastructure, equipment, or services.

12 Sec. 395.011. FUNDING. The legislature may appropriate
13 money to the commission from the Texas emissions reduction plan
14 fund established under Section 386.251 to administer the program.

15 Sec. 395.012. ADMINISTRATIVE COSTS. In each fiscal year,
16 the commission may use up to 1.5 percent of the total amount of
17 money allocated to the program in that fiscal year, but not more
18 than \$1 million, for the administrative costs of the program.

19 Sec. 395.013. RULES. The commission may adopt rules as
20 necessary to implement this chapter.

21 Sec. 395.014. REPORT REQUIRED. On or before November 1 of
22 each even-numbered year, the commission shall submit to the
23 governor, lieutenant governor, and members of the legislature a
24 report that includes the following information regarding awards
25 made under the program during the preceding state fiscal biennium:

26 (1) the number of grants awarded under the program;

27 (2) the recipient of each grant awarded;

1 (3) the number of vehicles replaced;

2 (4) the number, type, and location of any refueling
3 infrastructure, equipment, or services funded under the program;

4 (5) the total emissions reductions achieved under the
5 program; and

6 (6) any other information the commission considers
7 relevant.

8 Sec. 395.015. EXPIRATION. This chapter expires on the last
9 day of the state fiscal biennium during which the commission
10 publishes in the Texas Register the notice required by Section
11 382.037.

12 (r-2) Effective on the date that the Texas Emissions
13 Reduction Plan Advisory Board is abolished under Subsection (a) of
14 this section, the following provisions of the Health and Safety
15 Code are repealed:

16 (1) Section 386.001(1);

17 (2) Section 386.058;

18 (3) Section 394.001(1);

19 (4) Section 394.009;

20 (5) Section 394.010; and

21 (6) Section 394.011.

22 (s) This subsection takes effect on the date that the Texas
23 Emissions Reduction Plan Advisory Board is abolished under
24 Subsection (a) of this section. As soon as practicable after the
25 effective date of this subsection, the Texas Commission on
26 Environmental Quality shall implement the online application
27 process required by Section 395.010(c), Health and Safety Code, as

1 added by this section. Prior to the implementation of the online
2 application process, the commission may accept applications for a
3 grant under Chapter 395, Health and Safety Code, as added by this
4 section, in any manner provided by the commission.

5 (s-1) This subsection takes effect on the date that the
6 Texas Emissions Reduction Plan Advisory Board is abolished under
7 Subsection (a) of this section. The changes in law made by this
8 section apply only to a Texas emissions reduction plan grant
9 awarded on or after the effective date of this section. A grant
10 awarded before the effective date of this section is governed by the
11 law in effect on the date the award was made, and the former law is
12 continued in effect for that purpose.

13 (t) This section takes effect August 30, 2017.

14 SECTION 9. FIRE ANT RESEARCH AND MANAGEMENT ACCOUNT
15 ADVISORY COMMITTEE. (a) The Fire Ant Research and Management
16 Account Advisory Committee is abolished.

17 (b) The following provisions are repealed:

18 (1) Section [77.022](#), Agriculture Code; and

19 (2) Section [88.215](#), Education Code.

20 SECTION 10. PALLIATIVE CARE INTERDISCIPLINARY ADVISORY
21 COUNCIL. Section [118.003](#), Health and Safety Code, is repealed.

22 SECTION 11. AGRICULTURE POLICY BOARD. (a) The Agriculture
23 Policy Board is abolished.

24 (b) Section [2.004](#), Agriculture Code, is repealed.

25 SECTION 12. ADVISORY OVERSIGHT COMMUNITY OUTREACH
26 COMMITTEE. (a) The Advisory Oversight Community Outreach
27 Committee is abolished.

(b) Section 411.0197, Government Code, is repealed.

SECTION 13. RAIN HARVESTING AND WATER RECYCLING TASK FORCE.

(a) The task force under Section 2113.301(h), Government Code, as repealed by this section, is abolished.

(b) Section 2113.301(h), Government Code, is repealed.

SECTION 14. STATE COGENERATION COUNCIL. (a) The State Cogeneration Council is abolished. All rules adopted by the State Cogeneration Council are abolished.

(b) Section 2302.024, Government Code, is amended to read as follows:

Sec. 2302.024. AUTHORITY TO SELL POWER. A ~~[(a) After the council has approved the application to construct or operate a cogeneration facility, a]~~ cogenerating state agency may contract in the same manner as a qualifying facility for the sale to an electric utility of firm or nonfirm power produced by the state agency cogeneration facility that exceeds the agency's power requirements.

~~[(b) A cogenerating state agency may consult with the council about the price or other terms of a contract entered under this section.]~~

(c) The following provisions of the Government Code are repealed:

(1) Section 2302.001(3);

(2) Sections 2302.002, 2302.003, 2302.004, 2302.005, 2302.006, and 2302.007;

(3) Section 2302.021(a); and

(4) Section 2302.022.

1 SECTION 15. PREMARITAL EDUCATION HANDBOOK ADVISORY
2 COMMITTEE. (a) The advisory committee under Section 2.014(d),
3 Family Code, as repealed by this section, is abolished.

4 (b) Section 2.014(d), Family Code, is repealed.

5 SECTION 16. INDEPENDENT REVIEW ORGANIZATION ADVISORY
6 GROUP. (a) The advisory group under Section 4202.011, Insurance
7 Code, as repealed by this section, is abolished.

8 (b) Section 4202.011, Insurance Code, is repealed.

9 SECTION 17. VEHICLE PROTECTION PRODUCT WARRANTOR ADVISORY
10 BOARD. (a) The Vehicle Protection Product Warrantor Advisory
11 Board is abolished.

12 (b) Subchapter C, Chapter 2306, Occupations Code, is
13 repealed.

14 SECTION 18. Except as otherwise provided by this Act, this
15 Act takes effect September 1, 2017.

<hr style="border: none; border-top: 1px solid black; margin-bottom: 5px;"/> <div>President of the Senate</div>	<hr style="border: none; border-top: 1px solid black; margin-bottom: 5px;"/> <div>Speaker of the House</div>
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I hereby certify that S.B. No. 1731 passed the Senate on April 27, 2017, by the following vote: Yeas 31, Nays 0; May 26, 2017, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 27, 2017, House granted request of the Senate; May 28, 2017, Senate adopted Conference Committee Report by the following vote: Yeas 28, Nays 3.

Secretary of the Senate

I hereby certify that S.B. No. 1731 passed the House, with amendments, on May 24, 2017, by the following vote: Yeas 145, Nays 0, one present not voting; May 27, 2017, House granted request of the Senate for appointment of Conference Committee; May 28, 2017, House adopted Conference Committee Report by the following vote: Yeas 146, Nays 0, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor

68

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the repeal of §§114.610 - 114.612 and §114.616; and new §§114.610 - 114.613.

The commission adopts new §114.610 and §114.612 *with changes* to the proposed text as published in the December 1, 2017, issue of the *Texas Register* (42 TexReg 6689) and will be republished. The repeal of §§114.610 - 114.612 and §114.616; and new §114.611 and §114.613 are adopted *without changes* to the proposal and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The commission adopts this rulemaking to implement requirements of Texas Health and Safety Code (THSC), Chapter 386, Subchapter D, as established under Senate Bill (SB) 1731, 85th Texas Legislature, 2017.

The Light-Duty Motor Vehicle Purchase or Lease Incentive Program (LDPLIP or program) was originally created by SB 5, 77th Texas Legislature, 2001, to establish a statewide incentive program for the purchase or lease of light-duty motor vehicles that met emission standards more stringent than those required by federal requirements. The Texas Comptroller of Public Accounts (TCPA) was assigned to administer the program, while the commission was responsible for establishing the program criteria and rules. Although the commission adopted rules for the program, initial funding levels were insufficient for the TCPA to implement the program during the 2002 - 2003 fiscal

biennium. In subsequent years, the legislature did not appropriate funds to the TCPA to implement the program.

In 2013, the 83rd Texas Legislature enacted SB 1727 to substantially change the LDPLIP, including transferring the responsibility for implementation to the commission and establishing new eligibility criteria to provide incentives for the purchase or lease of vehicles powered by compressed natural gas, liquefied petroleum gas, or electricity. The revised program was authorized through August 31, 2015, and funding was appropriated by the legislature for the 2014 - 2015 fiscal biennium. The commission adopted program rules and implemented the program through the statutory expiration date.

SB 1731 re-established the LDPLIP under THSC, Chapter 386, Subchapter D, and included changes to the previous program criteria. A significant change included increasing the maximum incentive for a vehicle powered by compressed natural gas or liquefied petroleum gas from \$2,500 to \$5,000, while the maximum incentive for a vehicle powered by an electric drive remained at \$2,500. SB 1731 also included language authorizing incentives for the purchase or lease of a new motor vehicle that has a dedicated or bi-fuel compressed natural gas or liquefied petroleum gas fuel system installed prior to the first sale or within 500 miles of operation of the vehicle following the first sale.

Section by Section Discussion

Subchapter K: Mobile Source Incentive Programs

Division 2: Light-Duty Motor Vehicle Purchase or Lease Incentive Program

The commission repeals §§114.610 - 114.612 and §114.616 and replaces the rule language with new language to incorporate the new program criteria established by SB 1731 under THSC, Chapter 386, Subchapter D.

§114.610, Definitions

The commission adopts new §114.610 to establish definitions for terms used in this division.

In adopted §114.610(2), "Lease" is defined as the use and control of a new light-duty motor vehicle in accordance with a rental contract for a term of 12 consecutive months or more. In adopted §114.610(3), "Lessee" is defined as a person who enters into a lease for a new light-duty motor vehicle.

In adopted §114.610(4), "Light-duty motor vehicle" is defined as a motor vehicle with a gross vehicle weight rating (GVWR) of 10,000 pounds or less. In adopted §114.610(5), a "Motor vehicle" is defined as 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.

In adopted §114.610(6), the definition of "New light-duty motor vehicle" is changed from the proposed text. The proposed text defined the term as meaning a light-duty motor vehicle that has never been the subject of a first retail sale. Under the adopted text, the term is defined as meaning a light-duty motor vehicle that has never been subject of a first sale.

The term and definition of "Retail Sale" are changed from the proposed text. In the proposed text, §114.610(6) defined "Retail Sale" as having the meaning defined under Texas Occupations Code, §2301.002. Adopted §114.610(1) includes a definition for the term "First sale," with the meaning as defined under Texas Transportation Code, §501.002. In the Texas Transportation Code, §501.002(8), "First sale" means: A) the bargain, sale, transfer, or delivery of a motor vehicle that has not been previously registered or titled, with intent to pass an interest in the motor vehicle, other than a lien, regardless of where the bargain, sale, transfer, or delivery occurred; and B) the registration or titling of that vehicle.

§114.611, Applicability

The commission adopts new §114.611(a) to establish that the provisions of this division apply statewide, subject to the availability of funding.

Criteria is adopted in §114.611(b) that a purchase or lease of a new 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. Under the adopted criteria, these limitations would not apply if, on the date the incentive is awarded, the vehicle change is not required under the listed requirements. Also, the restrictions would not apply if the purchase or lease is 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

The commission adopts new §114.612 to establish eligibility requirements and other requirements for applying for and receiving an incentive under this division. Under the adopted criteria in §114.612(a), a purchaser or lessee of a new light-duty motor vehicle powered by compressed natural gas, liquefied petroleum gas, or hydrogen fuel cell or other electric drive may be eligible for an incentive if the vehicle meets the requirements outlined in this subsection and is included on the list of eligible vehicles as compiled by the commission under the adopted provisions of §114.613. Also under the adopted subsection (a), by August 1 of each year Division 2 is in effect and appropriations are available to fund this program, the commission would publish a list of eligible vehicles on its website.

Section 114.612(a) also includes eligibility criteria for vehicles to receive an incentive.

Adopted §114.612(a)(1) includes changes to the proposed text. In adopted

§114.612(a)(1)(D), two uses of the term "first retail sale" are changed to use the term

"first sale." Under adopted §114.612(a)(1), a new light-duty motor vehicle powered by

compressed natural gas or liquefied petroleum gas would need to have four wheels, and be originally manufactured to comply with and have been certified by an original equipment manufacturer or intermediate or final state vehicle manufacturer as complying with, or have 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. The vehicle would need to have been manufactured for use primarily on public streets, roads, and highways, and would need to have a dedicated or bi-fuel compressed natural gas or liquefied petroleum gas fuel system installed prior to first sale or installed in Texas within 500 miles of operation of the vehicle following first sale, and with a range of at least 125 miles as estimated, published, and updated by the United States Environmental Protection Agency.

Under the adopted criteria in §114.612(a)(1), a compressed natural gas fuel system would need to comply with the 2013 (or newer) National Fire Protection (NFPA) 52 Vehicular Gaseous Fuel Systems Code and American National Standard for Basic Requirements for Compressed Natural Gas Vehicle Fuel Containers. A liquefied petroleum gas system would need to comply with the 2011 (or newer) NFPA 58 Liquefied Petroleum Gas Code and Section VII of the 2013 (or newer) American Society of Mechanical Engineers Boiler and Pressure Vessel Code.

Section 114.612(a)(2) includes eligibility criteria for a light-duty motor vehicle powered by an electric drive. Under the adopted criteria, a new light-duty motor vehicle powered by an electric drive would need to have four wheels and have been manufactured for use primarily on public streets, roads, and highways. The vehicle's powertrain could not have been modified from the original manufacturer's specifications. The vehicle would need to have a maximum speed capability of at least 55 miles per hour and be propelled to a significant extent by an electric motor that draws electricity from a hydrogen fuel cell or from a battery that has a capacity of not less than four kilowatts and is capable of being recharged from an external source of electricity.

Section 114.612(b) and (c) include incentive amounts. Under the adopted criteria, a person who purchases or leases an eligible new light-duty motor vehicle powered by compressed natural gas or liquefied petroleum gas may be eligible to receive a \$5,000 incentive. A person who purchases or leases an eligible new light-duty motor vehicle powered by a hydrogen fuel cell or other electric drive may be eligible to receive a \$2,500 incentive.

Under the adopted criteria in §114.612(d), an eligible vehicle must have been acquired after the date established by the commission in the application solicitation. The purchaser or lessee must complete the application for the incentive, providing all required information, and sign 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.

Adopted §114.612(e) requires that incentives be applied for using forms developed and provided by the commission and must include the verification of purchase or lease as may be required by the commission.

Adopted §114.612(f) requires that only one incentive would be provided for each eligible new light-duty motor vehicle purchased or leased in this state. Under adopted §114.612(g), the incentive would be provided to the lessee and not the purchaser if the vehicle is purchased for the purpose of leasing the vehicle to another person.

Adopted §114.612(h) requires that a lease of an eligible new light-duty motor vehicle be prorated based on a three-year term. A one-year lease may qualify for 33.3% of the full incentive amount, a two-year lease may qualify for 66.6% of the full incentive amount, and a three-year lease may qualify for 100% of the full incentive amount. Under the adopted criteria, an incentive would only be prorated based on a full-year lease.

§114.613, Manufacturer's Report

The commission adopts new §114.613 to establish requirements and procedures for manufacturers to submit a report on eligible vehicles and compressed natural gas and liquefied petroleum gas systems that the manufacturer intends to sell in this state.

Under adopted §114.613(a), a manufacturer of new light-duty motor vehicles, an

intermediate or final state vehicle manufacturer, or a manufacturer of compressed natural gas or liquefied petroleum gas systems would be required to provide to the executive director a list of the new light-duty motor vehicle models or compressed natural gas or liquefied petroleum gas systems, and the new light-duty motor vehicle models on which the systems are approved for installation, that the manufacturer intends to sell in this state during the model year and that are certified to meet the eligibility standards under §114.612(a).

Adopted §114.613(a) outlines the required contents of the lists to be provided to the executive director by manufacturers. Under the adopted subsection, the list would need to contain the vehicle manufacturer name, vehicle model, and vehicle model year; the intermediate or final state vehicle manufacturer name, if applicable; and the compressed natural gas or liquefied petroleum gas system manufacturer name, system model, and system model year, if applicable. Information about the vehicle would also need to be provided, including the engine displacement, qualifying fuel type, GVWR, and the engine or vehicle family name as listed on the Certificate of Conformity issued by the United States Environmental Protection Agency. If applicable, the compressed natural gas or liquefied petroleum gas system engine or vehicle family name would also need to be provided. The manufacturer would need to certify that the vehicle and compressed natural gas or liquefied petroleum gas system complies with the standards of this division. The commission may also request other information to be provided by the manufacturer.

Under §114.613(b), the list to be submitted by manufacturers must be submitted to the executive director, or the executive director's designee, upon request initially and then no later than July 1 of each year preceding the new vehicle model year.

Adopted §114.613(c) allows a manufacturer to supplement the required list to include additional new light-duty motor vehicle models or compressed natural gas or liquefied petroleum gas systems the manufacturer intends to sell in this state during the model year.

Final Regulatory Impact Analysis Determination

The commission reviewed the adopted rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the adopted 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 adopted 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 rules are adopted in accordance with SB 1731, 85th Texas Legislature, 2017, which amended THSC, Chapter 386 to add a new Subchapter D. The adopted rules add or revise guidelines for a voluntary grant. Because the adopted rules place no involuntary requirements on the regulated community, the adopted 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 rules 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 regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the draft regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an analysis of whether the adopted 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 adopted rulemaking would be neither a statutory nor a constitutional taking of private real property. The primary purpose of the rulemaking is to repeal and replace rule language in Chapter 114, Subchapter K, Division 2, in accordance with new THSC, Chapter 386, Subchapter D, as a result of SB 1731, 85th Texas Legislature, 2017. The rules establish a voluntary program and only affect motor vehicles that are not considered to be private real property. The adopted 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 adopted rules would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted 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 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 the consistency of the proposed rules with the CMP.

Public Comment

The commission held a public hearing on December 11, 2017. The comment period closed on December 22, 2017. The commission received oral and written comments from 679 individuals and 53 organizations, including Allpro Consulting Group, Inc. (Allpro); Bourke & Associates (Bourke); BSA Amarillo Diagnostic Clinic (BSA); Buchanan Technologies (Buchanan); Circular Energy, Inc. (Circular); City of Austin, Public Works Department (COA); CNG 4 America, Inc. (CNG4); Cooper General Contractors (Cooper); DMMGT, LLC (DMMGT); dwg. (DWG); Dynamic Systems Inc. (Dynamic); Energy Market Exchange (EME); Epcon Industrial Systems, LP (Epcon); Fagin Partners (Fagin); Formation, LLC (FORM); Friedman Realty Group, LLC (Friedman); Greater Houston Natural Gas Vehicle Alliance (GHNGVA); Group CBS, Inc. (GCBS); HeartPlace (Heart);

Hewlett Packard Enterprise (Hewlett); Houston Electric Auto Association (HEAA); Jones & Spross, PLLC (Jones); Josh Bryant Engineering Services, LLC (Bryant); Kendra Scott, LLC (Kendra); Law Offices of Hunter Biederman & Burleson, P.L.L.C. (Biederman); Magnitude Software (Magnitude); Mid America Mortgage, Inc. (MAM); MUY! (MUY); Napa Flats Wood-Fired Kitchen (Napa); Nat G CNG Solutions (NatG); joint comment from North Central Texas Council of Governments and Regional Transportation Council, the Metropolitan Planning Organization for the Dallas-Fort Worth Area (NCTCOG and RTC); NORTHMAX (NORTH); OZEM Texas, L.L.C. (OZEM); Plug-In Texas (Plug-In); Revival Across America (Revival); Sierra Club, Lone Star Chapter (Sierra); Silva Law Group, PLLC (Silva); Stambush Staffing (Stambush); Stone & Horne, LLP (Stone); TAS Energy (TAS); Tesla; Texas Automobile Dealers Association (TADA); Texas Health Resources (THR); Texas Spine Consultants (TSC); The Cave Realty Team at Keller Williams (Cave Realty); The Friedkin Group on behalf of Gulf States Toyota, Inc. (GST); The Hunter Group (THG); The Johnson Law Group (Johnson); VerifyComply.com (Verify); Warren Recruiting, Inc. (Warren); Westport; and Zimmerman Interests, Inc. (Zimmerman).

Nineteen commenters expressed general support for the proposed rules or for providing vehicle rebates in general. Twenty-one commenters expressed general support for the proposed rules or providing rebates in general and provided recommendations for changes. Six hundred and eighty-two commenters provided comments against parts of the proposed rulemaking and recommended changes. Ten

commenters provided general comments not directly discussing the general or specific portions of the proposed rules.

The commission also received comments from nine individuals and two organizations that were submitted after the close of the comment period. These late comments are not listed and discussed in the Response to Comments section, but all of the late comments were generally similar to the other comments recommending that vehicles purchased outside of Texas be eligible for a rebate under the LDPLIP.

Response to Comments

Comment

Seven individuals, COA, Sierra, and Zimmerman commented in support of the rulemaking and the LDPLIP incentives. In addition, seven individuals, GCBS, and THG expressed support for incentives for electric vehicle purchases in general.

Twelve individuals, Bourke, Buchanan, Circular, GST, Magnitude, NCTCOG, Plug-In, RTC, and TADA expressed support for the LDPLIP and the goals of the program, while also either recommending changes or commenting against a part of the rulemaking.

Response

The commission appreciates the support expressed for the rulemaking and the LDPLIP. No changes to the proposed text were made as a result of the general statements of support.

Comment

NCTCOG and RTC expressed support for the proposal in §114.610(3) to use the statutory definition of "Light-duty motor vehicle" from THSC, §386.151(a), which includes all vehicles with a GVWR of 10,000 pounds or less. NCTCOG and RTC also expressed support for not incorporating specific weight references in §114.612 that had been in the previous LDPLIP rules that varied based on fuel type. NCTCOG and RTC stated that this definition and simplification will expand eligibility and allow for greater participation while streamlining the program.

Sierra commented in support of the provision to require that vehicles eligible for the incentives be rated at 10,000 pounds or less, which generally matches the statutory definition. Sierra stated that while there may be some vehicles heavier than 10,000 pounds that could in theory enjoy the incentives, it believes the intent of the legislation and program was to spur new investment in cleaner light-duty vehicles and that there are other programs in the Texas Emissions Reduction Plan (TERP) to incent heavier vehicles.

Response

The commission agrees with these comments. THSC, §386.151(3), defines "Light-duty motor vehicle" as a vehicle with a GVWR of less than 10,000 pounds. THSC, §386.153(d), also authorizes the commission to revise by rule the standards for the maximum unloaded vehicle weight rating and GVWR of an eligible vehicle to ensure that all vehicle weight configurations available under one general vehicle model may be eligible for an incentive. As authorized under THSC, §386.153(d), the proposed rules modify the definition of "Light-duty motor vehicle" to increase the maximum GVWR from "less than 10,000 pounds" to include vehicles with a GVWR of "10,000 pounds or less." This small increase in the GVWR limit is proposed because certain vehicle models that generally have configurations that are less than 10,000 pounds GVWR may also include a few configurations with a GVWR of 10,000 pounds. No changes were made to the proposed text in response to these comments

Comment

CNG4, GHNGVA, NatG, and Westport recommended changes to the proposed definition of "Light-duty motor vehicle" under §114.610(3). The proposed definition specifies that a light-duty motor vehicle is a motor vehicle with a GVWR of 10,000 pounds or less. CNG4, GHNGVA, and NatG recommended that the commission use the Federal Highway Administration vehicle classification of "light-duty truck," which includes vehicles up to 14,000 pounds GVWR. Westport also recommended that the definition of "Light-duty motor vehicle" be changed to allow for vehicles up to 14,000 pounds GVWR.

Response

The commission does not agree with the recommendation to increase the GVWR to 14,000 pounds in the definition of "Light-duty motor vehicle." THSC, §386.153(d), authorizes the commission to revise by rule the standards for the maximum unloaded vehicle weight rating and GVWR of an eligible vehicle to ensure that all vehicle weight configurations available under one general vehicle model may be eligible for an incentive. An increase of the GVWR limit to 14,000 pounds would extend the program to new vehicle models over 10,000 pounds GVWR. The authorization in THSC, §386.153(d), does not provide for the commission raising the GVWR limits to include additional vehicle models. No changes were made to the proposed text as a result of these recommendations.

Comment

GST and TADA recommended that the proposed definition of "Retail Sale" under §114.610(6), be removed and that the term be removed from the definition of "New light-duty motor vehicle" under §114.610(5). GST and TADA also recommended that references to the term under §114.612(a)(1)(D), be removed. Both GST and TADA commented that the term "retail sale" could be eliminated since its only applicability was in relation to the references to "first title" and the definition of "Sell in this state" that were in prior drafts of the proposed rules, but were not included in the published proposal.

Response

The commission agrees that the use of the term "first retail sale" should be changed, but not for the reasons outlined by GST and TADA. Instead of removing the term, the commission has determined that the term "first sale," which was used in the previous version of the LDPLIP rules, would be more appropriate than using the term "first retail sale."

The term "Retail sale" is defined under Texas Occupations Code, §2301.002(30), to mean any sale of a motor vehicle other than: A) a sale in which the purchaser acquired a vehicle for resale; or B) a sale of a vehicle that is operated in accordance with Texas Transportation Code, §503.061. Texas Transportation Code, §503.061 pertains to vehicles operated by a dealer under a dealer's license plate.

The term "First sale" is defined in Texas Transportation Code, §501.002(8), to mean: A) the bargain, sale, transfer, or delivery of a motor vehicle that has not been previously registered or titled, with intent to pass an interest in the motor vehicle, other than a lien, regardless of where the bargain, sale, transfer, or delivery occurred; and B) the registration or titling of that vehicle.

The commission originally proposed using the term "first retail sale" in the rules as a more explanatory term than using the term "first sale," which was used in the

previous LDPLIP rules. However, because the term "First sale" is defined in the Texas Transportation Code and refers to the status of the motor vehicle, including the registration and titling of the vehicle, the commission has determined that this term would be more appropriate to use in the LDPLIP rules.

The reference to "first retail sale" in the definition of "New light-duty motor vehicle" under §114.610(5) is changed from the proposed text to refer to "first sale." Also, the definition of "Retail sale" under §114.610 is changed to refer to "First sale" and the definition is changed to read that the term has the meaning as defined under Texas Transportation Code, §501.002. Also, the term "first retail sale" referred to twice in §114.612(a)(1)(D) is changed to read "first sale."

Comment

NCTCOG and RTC expressed support for not incorporating specific weight references in §114.612 that had been in the previous LDPLIP rules and that varied based on fuel type. NCTCOG and RTC stated that this definition and simplification will expand eligibility and allow for greater participation while streamlining the program.

Response

The previous LDPLIP rules included reference to requirements that an electric vehicle be rated at not more than 8,500 pounds unloaded vehicle weight, while a compressed natural gas (CNG) or liquefied petroleum gas (LPG) vehicle be rated not

to exceed 9,600 pounds unloaded vehicle weight. These references to unloaded vehicle weight were not included in the LDPLIP statutory provisions enacted under SB 1731 and, therefore, are not included in the proposed rulemaking. The commission agrees that by not including weight references in the statute that would limit the weight of an electric vehicle to below the 10,000 pounds GVWR referred to in the definition of "Light-duty motor vehicle," the legislature simplified the criteria and allowed for the possibility of additional electric vehicle models to be eligible under the program. No changes to the proposed text were made as a result of these comments.

Comment

Sierra commented that it supports the requirement in §114.612(a) for the commission to publish the list of eligible vehicles on the commission's website. Sierra commented that it believes that by making manufacturers report to the TCEQ which vehicles they are producing that will be eligible and then publishing that on its website, the program will be able to be promoted by both TCEQ and by dealers who carry these vehicles, either for purchase or lease.

Response

The commission agrees that dealers who carry the eligible vehicles will be able to use the published list to promote the program to potential buyers or lessees. No changes to the proposed text were made as a result of these comments.

Comment

NCTCOG and RTC commented on the provision in §114.612(a)(1)(D) regarding the eligibility of vehicles in which a CNG or LPG system was installed after the first retail sale, but within 500 miles of operation after the first retail sale. NCTCOG and RTC commented that based on NCTCOG's experience administering grant funds for alternative fuel vehicle projects, they are aware of circumstances in which the negative impacts of improper installation of aftermarket systems undermined the benefits that would have otherwise have been gained from conversion of vehicles to alternative fuels, even when the installed system met all applicable federal and state requirements. NCTCOG and RTC recommended additional language in §114.612(a)(1) that requires any CNG or LPG system that is installed after first retail sale to have been installed by a Qualified Vehicle Modifier (QVM).

Response

The commission does not agree with the recommendation by NCTCOG and RTC. The term "qualified vehicle modifier" is a unique term used by Ford Motor Company to identify conversion companies it has approved to install CNG or LPG conversion systems on new Ford vehicles and where the Ford vehicle warranty would not be affected. Other vehicle manufacturers, such as General Motors, have identified conversion system installers that it will use as part of a flow-through process for providing a converted vehicle to the purchaser as part of the new

vehicle purchase. However, not all vehicle manufacturers have approved certain conversion companies for conversion of their vehicles after the vehicle is purchased. Also, while Ford has identified a substantial number of QVMs, some of which are located in Texas, it is not clear how many of the other vehicle manufacturers have approved certain conversion system installers for conversion of that manufacturer's vehicle to operate on CNG or LPG, and if those installers are located in Texas. The statutory language does not require that conversion system installers have received approval or authorization from the vehicle manufacturer, and not all vehicle manufacturers have established that type of system.

Alternatively, it is the commission's understanding that conversion system installers will have approval or authorization from the conversion system manufacturer to perform the installations and that the conversion system manufacturer warranty provisions would apply.

The commission will consider including information on the eligible vehicle list and in the application materials to explain that the conversion of an engine or vehicle to operate on an alternative fuel may impact the original engine or vehicle warranty, and that the purchaser or lessee should obtain a full understanding of the warranty coverage of the vehicle, engine, and conversion system, and the entity responsible for that coverage.

No changes to the proposed text were made in response to these comments.

Comment

Two individuals commented that the rebates were skewed towards natural gas and not electric vehicles.

Response

The commission acknowledges that the eligible rebate amount for a vehicle powered by CNG or LPG is set higher than the rebate amount for a vehicle powered by a hydrogen fuel cell or other electric drive. Under §114.612(b) the rebate for the purchase or lease of a light-duty motor vehicle powered by CNG or LPG is up to \$5,000. Under §114.612(c), the rebate for a vehicle powered by a hydrogen fuel cell or other electric drive is up to \$2,500. The rebate amounts included in the proposed rules implement the criteria established in THSC, §386.154(a) and (d). Although the legislature set a higher rebate amount for CNG and LPG vehicles, THSC, §386.154(c), also limits the incentives for these vehicles to 1,000 vehicles for each state fiscal biennium, while the number of incentives that may be issued for hydrogen fuel cell and other electric drive vehicles is set at 2,000 vehicles for each state fiscal biennium under THSC, §386.154(e). No changes to the proposed text were made as a result of this comment.

Comment

NCTCOG and RTC expressed support for the proposed criteria of §114.612(d)(1) that limits incentive eligibility to purchases made after the date established by the TCEQ in the application solicitation. They commented that structuring eligibility in this manner helps ensure that these valuable incentive dollars have the intended impact of motivating alternative fuel vehicle purchases that may not have happened without the availability of these funds.

GHNGVA commented that it would like for the commission to make the dates retroactive or at least correspond with the manufacturer's order dates. GHNGVA stated that this would help with the whole process, and it would also include vehicles that are available and not lead to a lag of vehicles that are not available based on the manufacturer's order dates.

NatG asked the commission to please consider making the eligibility date for the grants retroactive to September 1, 2017. NatG explained that any light-duty vehicle that has been converted and titled by a Texas dealership after September 1, 2017 can easily be identified, and that grants awarded to fleets purchasing vehicles from September 1, 2017, up to the application opening date, will be incentivized to purchase more in the future. NatG also asked the commission to keep in mind that the order book for the vehicle manufacturers may close early this year, making the window for customers to order very narrow without having to wait for 2019 production and certification.

One individual commented that Texas should not only implement the rebate for Tesla but give existing Tesla owners the rebate retroactively.

One individual commented that vehicle deposits were made prior to the legislation and that credits/incentives should still be honored.

Response

These comments are outside the scope of the rulemaking and pertain to the commission's implementation of the program. The commission agrees that there are a number of factors the commission will need to take into account in determining the limits on when a vehicle may have been purchased in order to qualify for an incentive. Those limits will then be included in the rebate solicitation and application documents.

Comment

NCTCOG and RTC commented in support of the requirement in §114.612(d)(3) that an applicant for the rebate certify that the vehicle will be registered and operated in Texas for at least one year. NCTCOG and RTC also recommended that the TCEQ verify compliance with the registration requirement by confirming whether the vehicle is still registered one year from the incentive date through coordination with the Texas Department of Motor Vehicles (TxDMV).

Response

The commission agrees that some type of monitoring is warranted to verify compliance with the registration requirements. For the previous LDPLIP, the commission checked the TxDMV records on a sample of approximately 200 rebate recipients. Those vehicles were still registered in Texas after one year. If there had been vehicles that were not registered, the commission would have expanded the sampling. The commission intends to perform similar checks on vehicles for which a rebate is provided under this new program. No changes to the proposed text were made in response to these comments.

Comment

TADA commented that the removal by the commission of the "first title" and "sell in this state" language from an earlier version of the proposal was proper and confirmed the policy that TERP dollars should not be incentivizing purchases made outside of the state of Texas. TADA commented that the policy is consistent with proposed §114.612(f) providing for only one incentive for each eligible new light-duty motor vehicle purchased or leased in the state. TADA commented that the policy is also consistent with the manufacturer's report under §114.613(a) regarding the vehicles the manufacturer intends to sell in this state through its franchised dealers, which is the legal conduit for these transactions to occur in the state. TADA commented that the commission should not allow artificial constructs and new definitions to allow for out-

of-state purchases to qualify for these Texas incentives. TADA encouraged the commission to stay committed to this policy, as it believes that it follows the intent of the legislation that Texas funds be used for vehicles purchased in the state of Texas.

Plug-In commented that Plug-In automotive section members are appreciative of the commission's recognition of the legislative intent that Texas taxpayer-generated and Texas vehicle-generated TERP grants are intended for LDPLIP eligible vehicles purchased or leased in Texas via Texas licensed franchise automobile dealers and intended to be used in Texas. Plug-In commented that the removal by the commission of the "first title" and "sell in this state" language from an earlier version of the proposal was important to confirm the Texas specific sale status.

GST commented that it believes that the published proposed rules more accurately reflect the legislative intent found in SB 1731. GST commented that, in renewing the LDPLIP, it understands that the legislature intended only for new motor vehicle purchases and leases conducted through licensed Texas dealerships to qualify for the applicable incentives. GST commented that SB 1731 amends THSC, Chapter 386, including multiple references in §§386.158 - 386.160 to "dealers and leasing agents," which must be licensed in the state of Texas by the TxDMV. GST commented that Texas law is clear that a manufacturer is generally prohibited from acting in the capacity of a dealer, including, for example, by engaging in the sale of new motor vehicles in Texas. GST commented that Texas Occupations Code, Chapter 2301,

governs the distribution and sale of motor vehicles in Texas, and that a dealer must hold a general distinguishing number issued by the TxDMV. GST commented that there is no indication that the legislature intended for there to be a different definition of the word "dealer" or for the word "dealer" to take on any different meaning as part of SB 1731. GST further commented that the commission's removal of language referring to "first title" and "sell in this state" would tend to bring the proposed rules more in line with the original intent of the LDPLIP as created by SB 5 during the 77th Texas Legislature in 2001 and the changes made to the program under SB 1727 during the 83rd Texas Legislature in 2013. GST commented that it is unaware of anything in the legislative history of SB 1731 that would indicate an intent by the legislature to materially alter eligibility under this program beyond new motor vehicles sold through Texas licensed franchised new motor vehicle dealers.

Response

The commission agrees that there is nothing in the legislative record to indicate that the legislature intended for the term "sell in this state" under THSC, §386.155, to mean anything other than the plain language meaning of the term.

THSC, §386.155(a), requires that a manufacturer of motor vehicles, an intermediate or final state vehicle manufacturer, or a manufacturer of CNG or LPG systems provide to the commission by July 1 of each year preceding the vehicle model year a list of the new vehicle models or CNG or LPG systems models that the

manufacturer intends to sell in this state during that model year that meet the incentive requirements under THSC, §386.154. The LDPLIP rules implement these provisions.

Although there are vehicle manufacturers located outside of Texas that use a direct sales process and that may solicit purchases from buyers in Texas, the sales transaction occurs outside of Texas. Similarly, a person that resides in Texas may purchase a vehicle from a dealer located in another state and bring that vehicle back into the state. In that case, the sales transaction also occurs in the other state. Therefore, because these transactions occur outside of Texas, neither of these purchases would be eligible for a rebate under the LDPLIP.

Also, the use of the term "sell in this state" and the commission's interpretation of the term are consistent with the language and interpretation used in the commission's implementation of the previous LDPLIP.

No changes were made to the proposed text as a result of these comments.

Comment

Twelve individuals, Bourke, Buchanan, and Magnitude commented in general support of the LDPLIP, but commented against the provision in §114.613 that only vehicles a manufacturer intends to "sell in this state" would be eligible for an incentive. An

additional 637 individuals, Allpro, BSA, Biederman, Bryant, Cave Realty, Circular, DMMGT, DWG, Dynamic, EME, Epcon, Fagin, FORM, Friedman, HEAA, Heart, Hewlett, Johnson, Jones, Kendra, MAM, MUY, Napa, NORTH, OZEM, Revival, Silva, Stambush, Stone, TAS, Tesla, THR, TSC, Verify, and Warren also commented against only allowing vehicles sold by a dealer in Texas to be eligible for an incentive. More specific comments from these entities are explained further in this Response to Comments section.

Five hundred and thirty-nine individuals, Allpro, BSA, Biederman, Bourke, Bryant, Buchanan, Cave Realty, Circular, DMMGT, DWG, EME, Fagin, HEAA, Hewlett, Johnson, Jones, Kendra, MAM, Magnitude, MUY, NORTH, OZEM, Revival, Stambush, Stone, TAS, Tesla, THR, TSC, and Verify commented that they own, plan to own, or otherwise support the eligibility for a rebate of vehicles manufactured by Tesla. These commenters discussed a range of reasons why they support Tesla. Commenters discussed that Tesla uses a direct sales model where the vehicle is purchased directly from the manufacturer instead of going through a franchised dealer in Texas. Many of the commenters discussed that Tesla is an American company. Commenters also explained their support for Tesla because Tesla vehicles have a greater range between charges than other electric vehicles and that Tesla now has a model that will cost \$35,000, making it much more affordable. Tesla stated that it thinks that a rebate, like the one offered, could make the Tesla vehicles even more attainable for a larger

segment of the population. Some commenters that have owned a Tesla in the past expressed their opinion that Teslas were very reliable vehicles.

Tesla also stated that in 2001, when TERP was initially created, Tesla did not exist, nor did Tesla's sales model. Tesla stated their opinion that legislators at the time couldn't comprehend purchasing vehicles in any other way than through a local car dealer, but that the world has changed a lot since 2001. Tesla explained that Amazon deliveries, International Organization for Standardization (ISO) capabilities, and driver-assisted vehicles were all figments of the public's imagination and not something that could ever have been envisioned as being incorporated into everyday lives.

Tesla stated that the success of the TERP would only be increased by allowing Tesla customers to participate. Tesla commented that luxury sedans and sport utility vehicles account for some of the largest polluters of light-duty vehicle emissions on the road today, and that those product lines are what Tesla buyers generally are competing against. Tesla stated that every time a customer buys a Tesla Model S or a Model X, a heavy polluter is replaced with a zero-emission vehicle, truly making an impact in emissions reductions.

Two hundred twenty-four individuals, Allpro, Biederman, Bourke, Cave Realty, Epcon, Fagin, Heart, Jones, Magnitude, NORTH, Stone, Tesla, THR, and Warren commented that Tesla owners pay the same sales tax on the vehicle in Texas as other vehicle

owners and recommended that all vehicle owners that pay sales tax on the purchase of an electric vehicle should be eligible for a rebate, regardless of whether the vehicle was purchased in Texas.

One hundred seventy-five individuals, Dynamic, HEAA, Kendra, MUY, Revival, and Stambush also recommended that vehicles from all manufacturers should be eligible for a rebate. Several of the commenters stated that the commission should not be picking winners and losers from among vehicle manufacturers or that the commission should not discriminate between manufacturers.

Thirty-one individuals, Heart, Hewlett, Jones, MAM, and OZEM expressed concern with the influence of dealers, dealer associations, or lobbyists on policies that exclude Tesla or other out-of-state manufacturers from participating in the rebates.

Two individuals and Stone expressed their opinion that the exclusion of Tesla or other vehicles not purchased in Texas violates the Fourteenth Amendment Equal Protection Clause of the United States Constitution. One of these individuals stated that they have standing to challenge this law based on a determination that the law is potentially unconstitutional. This individual stated that they think filing a lawsuit would be a tremendous waste of time and resources for the individual and the state of Texas, but that there are many more Tesla drivers coming on board daily in Texas. This individual commented that the individual and other Tesla owners would have to consider a

lawsuit to challenge the application of this program, which clearly is being done in a way to discriminate against one vehicle manufacturer in spite of the fact that their vehicles meet all of the stated purposes behind the rebate program.

One individual stated that prohibiting vehicles purchased out-of-state from receiving a rebate is likely a violation of the Commerce Clause, which prohibits discrimination against interstate commerce. They stated that this would be a violation of the United States Constitution, Article I, §8, Clause 3 because of the disparate impact it has on out-of-state commerce. Additionally, they commented that the United States Supreme Court has held that violations of the 'dormant Commerce Clause' may be brought pursuant to 42 United States Code §1983 and cited *Dennis v. Higgins*, 498 U.S. 439. Therefore, the commenter stated that a constitutional challenge to the program's administration, if found unconstitutional, could result in substantial legal fees being incurred by TCEQ.

Two individuals commented that otherwise qualifying purchases not occurring in the state must still be registered in the state of Texas and pay equivalent sales or use tax as the taxes paid on purchases that occur in the state. These commenters also stated that all such purchases equally contribute to air quality benefits for the state of Texas, which is the purpose of the rebate program. The commenters stated that a literal reading of THSC, §386.155(a), is contrary to the purpose of the incentive and the apparent intent of the legislature in creating this clean air incentive. The commenters

further stated that even the definition of "Retail sale" of motor vehicles from the Texas Occupations Code is not geographically limited to "in this state," and that if the legislature had intended to disqualify Tesla sales, a geographically limited version of "Retail sale" could have been adopted, or else the language qualifying actual purchases could have specified sales in the state or sales from Texas automobile dealers. The commenters stated that this is not the case and, therefore, we must look more closely at THSC, §386.155, and determine if the proposed rule is faithful to, at least, a literal reading of the statute. The commenters stated that the proposed regulation adopts the language "sell in this state" in two places, one of which, §114.613(c), is clearly not justified by a literal reading of the statute. The commenters stated that to see why, review THSC, §386.155(b), which states that the commission may supplement the information provided under subsection (a) with additional information on available vehicle models, including information provided by manufacturers or installers of systems to convert new motor vehicles to operate on CNG or LPG. The two individuals stated that this subsection clearly provides the commission with authority to add other qualifying vehicles such as those made by Tesla. The commenters stated that the qualifier following the comma, "including information...." is not restrictive -- that is, "includes" but is "not limited to" CNG and LPG conversions, and that nowhere is the additional information on vehicle sales qualified geographically. The commenters stated that the proposed regulation, §114.613(c), errs in using the phrase "in this state" to apply to supplementary information on qualifying vehicle models submitted by manufacturers. The commenters recommended that §114.613(c) be corrected to

exclude the phrase "in this state," and that the commission should adopt language allowing inclusion of other qualifying motor vehicles in the rebate program.

One of the individuals commented in support of the previous draft version of the proposed rules, before the current proposed rulemaking was published for public comment. That commenter stated that they supported the proposed definitions for the terms "First title" and "Sell in this state." The previous draft version of the rules would have included a definition of the term. "First title" to mean the initial title issued after the first retail sale of the new vehicle, with no previous title having been issued after manufacture of the vehicle. The term "Sell in this state," as it applies to new vehicles, would have been defined as where the manufacturer intends for the vehicle to be available to a purchaser in Texas. Based on the apparent intent of these comments, this individual is included in the enumeration of the number of individuals and organizations commenting against the provision that only vehicles sold in Texas are eligible for an incentive.

Response

The commission appreciates the comments provided by the large number of individuals and organizations that support the further use of electric vehicles in Texas. The commission agrees that increased use of vehicles with cleaner, less polluting engines is an important goal of the LDPLIP and the TERP in general.

However, the commission has determined that there is nothing in the legislative record to indicate that the legislature intended for the term "Sell in this state" under THSC, §386.155, to mean anything other than the plain language meaning of the term.

THSC, §386.155(a), requires that a manufacturer of motor vehicles, an intermediate or final state vehicle manufacturer, or a manufacturer of CNG or LPG systems provide to the commission by July 1 of each year preceding the vehicle model year a list of the new vehicle or CNG or LPG systems models that the manufacturer intends to sell in this state during that model year that meet the incentive requirements under THSC, §386.154. The LDPLIP rules implement this statutory provision.

Although, there are manufacturers located outside of Texas, such as Tesla, that use a direct sales approach and that may solicit purchasers from Texas, the sales transaction occurs outside of Texas. Similarly, a person that resides in Texas may purchase a vehicle from a dealer located in another state and bring that vehicle back into the state. In that case, the sales transaction also occurs in the other state. Therefore, neither of these vehicles are eligible for a rebate under the LDPLIP. Additionally, the statutory provisions say nothing about vehicles purchased outside of Texas being eligible as long as the owner pays Texas sales tax.

The use of the term "sell in this state" and the commission's interpretation of the term are consistent with the language and interpretation used in the commission's implementation of the previous LDPLIP. If the legislature intended for there to be a different meaning ascribed to the term "sell in this state," the legislature had the opportunity to clarify its intent when re-establishing the LDPLIP provisions in SB 1731.

In response to the comments that the exclusion of Tesla or other vehicles not purchased in Texas violates the Fourteenth Amendment Equal Protection Clause, the proposed rules implement the statutory language as found in SB 1731. These rules do not infringe on any individual's right to purchase vehicles out of state, and they do not deny equal protection of the laws to any individual.

In response to the comments that the exclusion of Tesla or other vehicles not purchased in Texas violates the Commerce Clause of the United States Constitution, the rules do not infringe on the rights of individuals to engage in interstate commerce. The case cited by the commenter, *Dennis v. Higgins*, 498 U.S. 439 (1991) involved the constitutionality of certain "retaliatory" taxes and fees imposed by the state of Nebraska on motor carriers with vehicles registered out of state but operated in Nebraska. That set of facts is wholly different from the incentive program under the LDPLIP. The LDPLIP, as directed by the language in SB 1731, provides an incentive for qualifying vehicles purchased in the state of Texas; it

does not impose a tax on or prohibit the purchase of vehicles out of state. The incentive is also not a tax rebate as referred to by the commenter. It merely provides an incentive to purchase qualifying vehicles in the state of Texas.

Also, the commission does not agree with the comments by two individuals that THSC, §386.155(b), authorizing the commission to supplement the information provided by manufacturers under THSC, §386.155(a), authorizes the commission to include vehicles not sold in Texas. This provision allows the commission the opportunity to correct errors, include missing information about certain vehicle models, and add additional information about the vehicle models meeting the requirements of THSC, §386.155(a), including the requirement that the vehicle will be sold in Texas.

No changes were made to the proposed text as a result of these comments.

Comment

Of the individuals commenting against the requirement that only vehicles sold in Texas would be included on the list of eligible vehicles, one individual also referred to language in the Executive Summary Memorandum to the Commissioners dated October 13, 2017, regarding the proposed rulemaking. The commenter noted language in the memorandum that said that staff expects interest in the provisions regarding the sale of a vehicle in Texas and that stakeholders have differing views regarding the eligibility

of these vehicles. The commenter asked who are the stakeholders that have differing views regarding the eligibility of these vehicles. The commenter also asked about Attorney General opinions related to consumer protection of purchasing ANY products directly from manufacturers, and not just vehicles.

Response

The commission recommends that the commenter refer to the previous comments and response to comments, which note comments both in support of the proposed regulations and those against the regulations pertaining to the requirement that only vehicles sold in Texas are eligible for an incentive.

Regarding the questions about any Attorney General opinions related to consumer protection for purchasing products directly from manufacturers, it is recommended that the commenter contact the Office of the Attorney General of Texas at (512) 463-2100 for information on requesting Attorney General opinions. No changes to the proposed text were made as a result of these comments.

Comment

One individual commented that the rule requirements for vehicle manufacturer submissions under §114.613(a) appear to be limited to natural gas vehicles. The commenter recommended that this difference be clarified, with an explicit statement of the requirements for electric vehicle manufacturers.

NCTCOG and RTC also recommended changes to increase clarity of the manufacturer reporting requirements under §114.613(a). In addition, NCTCOG and RTC recommended that the report provided by manufacturers of CNG and LPG systems include a list of QVMs who are authorized to install the eligible system on an eligible vehicle. NCTCOG and RTC recommended that this list of QVMs either be endorsed by the relevant vehicle manufacturers prior to submittal by the system manufacturers or be confirmed with the vehicle manufacturers by the TCEQ independently. NCTCOG and RTC recommended that the qualifying vehicle list posted by the TCEQ on its website as part of the program should include the QVM information. NCTCOG and RTC provided proposed language for §114.613(a) as follows: "A manufacturer of new light-duty motor vehicles or an intermediate or final state vehicle manufacturer shall provide to the executive director, or the executive director's designee, a list of the new light-duty motor vehicle models that the manufacturer intends to sell in this state during the model year and that are certified to meet the eligibility requirements under 114.612(a). A manufacturer of CNG or LPG systems shall provide to the executive director, or the executive director's designee, a list of the CNG or LPG systems that it intends to sell in this state during the model year, along with a list of the new light-duty vehicle models in which the systems are approved for installation and qualified vehicle modifiers who are authorized to perform proper installation."

Response

The commission has determined that the rule language sufficiently explains the requirements in order to provide for implementation by the commission. The reporting instructions and forms the commission intends to make available to manufacturers will be very clear regarding how to report on either the vehicle models a manufacturer intends to sell in Texas, or the eligible CNG and LPG systems a manufacturer intends to make available in Texas for installation on a new light-duty motor vehicle sold in Texas. In addition, the list of eligible vehicle models and CNG and LPG conversion systems the commission is required to make available on its website will clearly delineate between vehicles, engines, and conversion systems eligible for a rebate. The rebate application forms and instructions will also provide for submission of information on the vehicle model and, if the vehicle was converted to operate on CNG or LPG, the conversion system information.

Also, the commission does not agree with NCTCOG's recommendation that the rule language require a list of QVMs that are authorized to perform proper installation. The term "qualified vehicle modifier" is a unique term used by Ford Motor Company to identify conversion companies it has approved to install CNG or LPG conversion systems on new Ford vehicles. Other vehicle companies, such as General Motors, have identified conversion system installers that it will use as part of a flow-through process for providing a converted vehicle to the purchaser as part of the new vehicle purchase. However, not all vehicle manufacturers have

approved certain conversion companies for conversion of their vehicles after the vehicle is purchased. Also, while Ford has identified a substantial number of QVMs, some of which are located in Texas, it is not clear how many of the other vehicle manufacturers have approved certain conversion system installers for conversion of that manufacturer's vehicle to operate on CNG or LPG, and if those installers are located in Texas. The statutory language does not require that the reports from manufacturers include this information, and the commission does not agree with making it a requirement.

No changes were made to the proposed text in response to these comments.

Comment

Bryant commented that in the last rebate program, a dealer was unaware of the program and not interested in learning about it. Bryant commented that they were disappointed and did not buy a plug-in electric vehicle. Bryant recommended that the future program not require any assistance from the dealer, and that a copy of the registration and proof of Texas sales tax paid should be sufficient.

Response

This comment is outside the scope of the proposed rulemaking. The commission understands the commenter's frustration regarding a dealership that was not fully aware of the incentives under the previous LDPLIP. Under the previous LDPLIP

statutory provisions, THSC, §386.160(c), required that the dealer or leasing agent complete and provide a form to the purchaser to verify the purchase or lease of the vehicle. That provision was not included in the new LDPLIP statutory provisions established under SB 1731. As a result, the proposed rules do not require that a specific form be completed by the dealer or leasing agent to verify the purchase. However, the commission intends to require that sufficient documentation be provided by the applicant to verify that the purchase or lease was completed and that the vehicle is eligible for an incentive. In some cases, this may require the dealer or leasing agent to include certain detailed information in the purchase or lease documents. In some cases, the applicant may be asked to obtain additional information from the dealer or leasing agent. The commission intends to make this process as simple as possible, while still ensuring the integrity of the program. The documentation and verification requirements will be explained in the solicitation and application materials. Also, an eligible vehicle may be purchased from any dealer in Texas. If a dealer is not willing to provide documentation that may be required to apply for a rebate, a purchaser has the option of going to a different dealer. No changes were made to the proposed text in response to this comment.

Comment

TADA commented that its members anticipate that they will be providing documentation verifying a purchase or lease of an eligible new light-duty motor vehicle in the state. TADA suggested that the forms and documentation requirements for

dealers be specified and be substantially similar to the requirements for dealers under the prior program.

Plug-In commented that to provide greater clarity for the state's auto dealers and vehicle purchasers preparing incentive forms and paperwork, Plug-In would support the inclusion of language and documents substantially similar to the previous program's reimbursement forms which were successfully utilized in Fiscal Years 2014 and 2015.

GST commented that the inclusion and utilization of forms and materials with terms and conditions substantially similar to those used in the implementation of the previous LDPLIP is necessary to successfully implement and administer the LDPLIP in accordance with the legislative intent of SB 1731. GST commented that new motor vehicle customers benefitted from dealers being able to verify incentives prior to purchase and to reserve incentives for vehicles not readily available but that had to be ordered. GST commented that the legislature once again expressly provided for dealers to perform those functions and services on behalf of their customers, and GST urged the commission to adopt substantially similar forms again to help facilitate the new vehicle purchase process for dealers and their customers. GST commented that it supports the proposed rules as published in the *Texas Register* based on the belief that the agency will again provide forms and materials substantially similar to those previously used to successfully administer this environmentally beneficial program.

Response

These comments are outside the scope of the proposed rulemaking. Under the previous LDPLIP statutory provisions, THSC, §386.160(c), required that the dealer or leasing agent complete and provide a form to the purchaser to verify the purchase or lease of the vehicle. That particular provision was not included in the new LDPLIP statutory provisions established under SB 1731. As a result, the proposed rules do not require that a specific form be completed by the dealer or leasing agent to verify the purchase. However, the commission intends to require that sufficient documentation be provided by the applicant to verify that the purchase or lease was completed and that the vehicle is eligible for an incentive. In some cases, this may require the dealer or leasing agent to include certain detailed information in the purchase or lease documents. In some cases, the applicant may be asked to obtain additional information from the dealer or leasing agent. The commission intends to make this process as simple as possible, while still ensuring the integrity of the program. The documentation and verification requirements will be explained in the solicitation and application materials. In addition, the commission intends to again use a reservation system to allow dealers to reserve incentives for vehicles that need to be ordered. No changes were made to the proposed text in response to these comments.

Comment

One individual stated they were disappointed because this bill {rule} does not help the hobbyist or enthusiast that provisions and builds his own electric vehicle in Texas and clearly would have been using and spending money earned and bought and sold and paid for the products here in the great state of Texas.

Response

This comment is outside the scope of the proposed rulemaking. The statutory provisions do not authorize funding for an individual to build an electric vehicle. No changes were made to the proposed text in response to this comment.

Comment

Cooper commented that it did not agree with eliminating the purchase and lease incentives for light-duty motor vehicles. Cooper stated that we need to be progressive with our laws to reduce carbon emissions and that there should be more incentives to encourage more electric vehicles from more manufacturers.

One individual commented that they opposed any reduction to incentives to lease or purchase electric motor vehicles. This individual commented that we need to continue to encourage the transition to electric to reduce our reliance on gasoline, lower the cost to operate vehicles, and support a sustainable future. The individual further stated that encouraging more people to switch to electric is a step toward these goals

and will ultimately lower the cost to produce such vehicles, thereby making them available to a broader population.

Response

These comments are outside the scope of the proposed rulemaking. The proposed rulemaking is not eliminating or reducing the incentives; it is establishing new incentives under the LDPLIP. No changes were made to the proposed text in response to these comments.

Comment

Three individuals submitted comments that directly focus on tax credits. One individual asked that the state not take away or reduce the \$7,500 tax credit for those who purchase these types of vehicles. Another individual supported a tax credit, and one individual stated their support for a tax break for electric car owners

Response

These comments are outside the scope of the proposed rulemaking. The LDPLIP involves rebates for the purchase or lease of qualifying vehicles. The program does not provide a tax credit. Also, the \$7,500 tax credit referred to by one individual is a federal tax credit and is not associated with this program. No changes were made to the proposed text in response to these comments.

Comment

One individual recommended that instead of giving the rebate to the dealers and having them pass it on to the owners, a direct claim mechanism would work better and be more transparent.

One individual commented that it is important to maintain incentives not only to the companies that provide sustainable energy products but also the consumers who purchase them. This individual commented that there is an added cost in purchasing an electric vehicle, and for those on the edge, an extra rebate incentive might just be what will help them lessen the energy footprint here in Texas. The individual commented that they appreciate the commission's consideration in insuring that the commission maintain not only company rebates but also owner rebates as the rules are finalized for this program.

Response

This comment is outside the scope of the proposed rulemaking. The rebates provided under the LDPLIP go directly to the purchaser or lessee of the vehicle and not to the dealer or company providing the vehicle. No changes were made to the proposed text in response to this comment.

Comment

One individual commented that the commission should not discriminate against the individual because they live in Texas, and the commission should leave the rebate alone.

Response

This comment is outside the scope of the proposed rulemaking. The LDPLIP is intended to provide rebates for persons purchasing or leasing an eligible vehicle in Texas and that commit to registering the vehicle in Texas for at least one year. Also, the proposed rules establish the new LDPLIP rebate program, and the commission is not changing an existing rebate program. No changes to the proposed text were made in response to this comment.

Comment

One individual commented that Texas needs to be competitive with other states.

Response

The commission agrees with this comment. No changes were made to the proposed text 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 repeal of the sections 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 of the sections 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 of the sections is adopted as part of the implementation of THSC, Chapter 386, Subchapter D, established by SB 1731, 85th Texas Legislature, 2017.

[§114.610. Definitions.]

[Unless specifically defined in the Texas Clean Air Act (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) 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) Lessee--A person who enters into a lease for a new light-duty motor vehicle.]

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

[(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 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, either within this state or elsewhere.]

[§114.611. Applicability.]

[(a) The provisions of §§114.610, 114.612, and 114.616 of this title (relating to Definitions; Light-Duty Motor Vehicle Purchase or Lease Incentive Requirements; and Manufacturer's Report) 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 or lessee of a new light-duty motor vehicle powered by compressed natural gas, liquefied petroleum gas, or electric drive may be eligible for the incentive specified in subsection (b) of this section if the vehicle meets the requirements specified in paragraphs (1) or (2) of this 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 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 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; 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 be eligible to receive a \$2,500 incentive if the purchaser or lessee meets the following criteria:]

[(1) acquired the eligible vehicle after the date established by the commission in the application solicitation;]

[(2) completes the application for the Light-Duty Vehicle Purchase or Lease Incentive, providing all required information; 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.]

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

[(f) 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) 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 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 to meet the standards listed under §114.612(a) of this title (relating to Light-Duty Motor Vehicle Purchase or Lease Incentive Requirements). 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, engine displacement, qualifying fuel type, gross vehicle weight rating, and certificate number as listed on the Certificate of Conformity issued by the United States Environmental Protection Agency.]

[(b) The list required by subsection (a) of this section must 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 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**

§§114.610 - 114.613

Statutory Authority

The new sections 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 new sections 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.

The new sections are adopted as part of the implementation of THSC, Chapter 386, Subchapter D, established by SB 1731, 85th Texas Legislature, 2017.

§114.610. Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used in this division 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 and §§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) First sale--Has the meaning as defined under Texas Transportation Code, §501.002.

(2) ~~(1)~~ Lease--The use and control of a new light-duty motor vehicle in accordance with a rental contract for a term of 12 consecutive months or more.

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

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

(5) ~~(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.

(6) ~~(5)~~ New light-duty motor vehicle--A light-duty motor vehicle that has never been the subject of a first ~~retail~~ sale.

~~(6) Retail Sale--Has the meaning as defined under Texas Occupations Code, §2301.002.~~

§114.611. Applicability.

(a) The provisions of this division apply statewide subject to the availability of funding.

(b) A purchase or lease of a new 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 new 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 or lessee of a new light-duty motor vehicle powered by compressed natural gas, liquefied petroleum gas, or hydrogen fuel cell or other electric drive may be eligible for the incentive specified in subsection (b) or (c) of this section if the vehicle meets the requirements specified in paragraph (1) or (2) of this subsection and is listed on the list of eligible vehicles provided to the commission as specified under §114.613 of this title (relating to Manufacturer's Report). By August 1 of each year this division is in effect and appropriations are available to fund this program the commission will publish on its website a list of the eligible vehicles provided to the commission as specified under §114.613 of this title. Eligible vehicles include:

(1) a new light-duty 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) has a dedicated or bi-fuel compressed natural gas or liquefied petroleum gas fuel system installed prior to first ~~retail~~ sale or installed in Texas within 500 miles of operation of the vehicle following first ~~retail~~ sale, and with a range of at least 125 miles as estimated, published, and updated by the United States Environmental Protection Agency; and

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

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

(E) is propelled to a significant extent by an electric motor that draws electricity from a hydrogen fuel cell or 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 powered by compressed natural gas or liquefied petroleum gas eligible for an incentive under subsection (a) of this section may be eligible to receive a \$5,000 incentive.

(c) A person who purchases or leases a new light-duty motor vehicle powered by a hydrogen fuel cell or other electric drive eligible for an incentive under subsection (a) of this section may be eligible to receive a \$2,500 incentive.

(d) To be eligible for the incentives under subsection (b) or (c) of this section, the purchaser or lessee must meet the following criteria:

(1) acquired the eligible vehicle after the date established by the commission in the application solicitation;

(2) completes the application for the Light-Duty Vehicle Purchase or Lease Incentive, providing all required information; 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.

(e) Incentives must be applied for using the forms developed and provided by the commission and must include the verification of purchase or lease as may be required by the commission.

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

(g) 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.

(h) An incentive for the lease of an eligible new light-duty motor vehicle shall be prorated based on a three-year lease term. A person who leases an eligible new light-duty motor vehicle may qualify for 33.3% of the full incentive with a one-year lease, 66.6% of the full incentive with a two-year lease, and 100% of the full incentive with a three-year lease. The incentive will only be prorated based on a full-year lease.

§114.613. 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 website, a manufacturer of new light-duty motor vehicles, an intermediate or final state vehicle manufacturer, or a manufacturer of compressed natural gas or liquefied petroleum gas systems shall provide to the executive director, or the executive director's designee, a list of the new light-duty motor vehicle models or compressed natural gas or liquefied petroleum gas systems, and the new light-duty motor vehicle models on which the systems are approved for installation, that the manufacturer intends to sell in this state during that model year that are certified to meet the standards listed under §114.612(a) of this title (relating to Light-Duty Motor Vehicle Purchase or Lease Incentive Requirements). The list must contain for each light-duty motor vehicle or natural gas or liquefied petroleum gas system listed:

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

(2) the intermediate or final state vehicle manufacturer name, if applicable;

(3) the compressed natural gas or liquefied petroleum gas system manufacturer name, system model, and system model year, if applicable;

(4) the engine displacement, qualifying fuel type, gross vehicle weight rating, and engine or vehicle family name as listed on the Certificate of Conformity issued by the United States Environmental Protection Agency;

(5) the compressed natural gas or liquefied petroleum gas conversion system engine or vehicle family name, if applicable;

(6) certification by the manufacturer that the vehicle and, if applicable, the compressed natural gas or liquefied petroleum gas system comply with the standards of this division; and

(7) other information as may be requested by the commission.

(b) The list required by subsection (a) of this section must be submitted to the executive director, or the executive director's designee, upon request initially and then no later than July 1 of each year preceding the new vehicle model year.

(c) A manufacturer of new light-duty motor vehicles, an intermediate or final state vehicle manufacturer, or a manufacturer of compressed natural gas or liquefied

petroleum gas systems may supplement the list required by subsection (a) of this section to include additional new light-duty motor vehicle models or compressed natural gas or liquefied petroleum gas systems the manufacturer intends to sell in this state during the model year.

Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; and THSC, §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing, which prescribes the public participation requirements for certain applications filed with the commission. In addition, the amendment is also proposed under Texas Government Code, §2001.004, concerning Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions, which requires state agencies to adopt procedural rules; and the Federal Clean Air Act, 42 United States Code, §§7401, et seq., which requires states to submit state implementation plan revisions that specify the manner in which the national ambient air quality standards will be achieved and maintained within each air quality control region of the state.

The proposed amendment implements THSC, §382.056 and Senate Bill 1045.

§55.152. Public Comment Period.

(a) Public comments must be filed with the chief clerk within the time period specified in the notice. The public comment period shall end 30 days after the last publication of the Notice of Application and Preliminary Decision, except that the time period shall end:

(1) 30 days after the last publication of Notice of Receipt of Application and Intent to Obtain Permit under §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit), or 30 days after Notice of Application and Preliminary Decision if a second notice is required under §39.419 of this title (relating to Notice of Application and Preliminary Decision), for an air quality permit application not otherwise specified in this section;

(2) 30 days after the last publication of the consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision under §39.603 of this title (relating to Newspaper Notice) for a registration for a concrete batch plant under the Air Quality Standard Permit for Concrete Batch Plants adopted by the commission under Chapter 116, Subchapter F of this title (relating to Standard Permits), unless the plant is to be temporarily located in or contiguous to the right-of-way of a public works project;

(3) 30 days after the last publication of the consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision under §39.603 of this title for an application for a new permit or permit amendment under Chapter 116, Subchapters B and G of this title (relating to New Source Review Permits and Flexible Permits);

(4) [(3)] 15 days after the last publication of Notice of Receipt of Application and Intent to Obtain Permit under §39.418 of this title, or 30 days after Notice of Application and Preliminary Decision if a second notice is required under §39.419 of this title, for a permit renewal under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);

(5) [(4)] 45 days after the last publication of the notice of Application and Preliminary Decision for an application for a hazardous waste facility permit, or to amend, extend, or renew or to obtain a Class 3 Modification of such a permit, or 30 days after the publication

of Notice of Application and Preliminary Decision for Class 3 modifications of non-hazardous industrial solid waste permits;

(6) [(5)] 30 days after the mailing of the notice of draft production area authorization under Chapter 331 of this title (relating to Underground Injection Control);

(7) [(6)] the time specified in commission rules for other specific types of applications; or

(8) [(7)] as extended by the executive director for good cause.

(b) The public comment period shall automatically be extended to the close of any public meeting.

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 16, 2017.

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Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: December 31, 2017

For further information, please call: (512) 239-6812



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 the repeal of §§114.610 - 114.612 and §114.616; and new §§114.610 - 114.613.

Background and Summary of the Factual Basis for the Proposed Rules

The commission proposes this rulemaking to implement requirements of Texas Health and Safety Code (THSC), Chapter 386, Subchapter D, as established under Senate Bill 1731 (SB 1731 or bill), 85th Texas Legislature, 2017.

The Light-Duty Motor Vehicle Purchase or Lease Incentive Program (LDPLIP or program) was originally created by SB 5, 77th Texas Legislature, 2001, to establish a statewide incentive program for the purchase or lease of light-duty motor vehicles that met emission standards more stringent than those required by federal requirements. The Texas Comptroller of Public Accounts (TCPA) was assigned to administer the program, while the commission was responsible for establishing the program criteria and rules. Although the commission adopted rules for the program, initial funding levels were insufficient for the TCPA to implement the program during the 2002 - 2003 fiscal biennium. In subsequent years, the legislature did not appropriate funds to the TCPA to implement the program.

In 2013, the 83rd Texas Legislature enacted SB 1727 to substantially change the LDPLIP, including transferring the responsibility

for implementation to the commission and establishing new eligibility criteria to provide incentives for the purchase or lease of vehicles powered by compressed natural gas, liquefied petroleum gas, or electricity. The revised program was authorized through August 31, 2015, and funding was appropriated by the legislature for the 2014 - 2015 fiscal biennium. The commission adopted program rules and implemented the program through the statutory expiration date.

SB 1731 re-established the LDPLIP under THSC, Chapter 386, Subchapter D, and included changes to the previous program criteria. A significant change included increasing the maximum incentive for a vehicle powered by compressed natural gas or liquefied petroleum gas from \$2,500 to \$5,000, while the maximum incentive for a vehicle powered by an electric drive remained at \$2,500. The bill also included language authorizing incentives for the purchase or lease of a new motor vehicle that has a dedicated or bi-fuel compressed natural gas or liquefied petroleum gas fuel system installed prior to the first sale or within 500 miles of operation of the vehicle following the first sale.

Section by Section Discussion

Subchapter K: Mobile Source Incentive Programs

Division 2: Light-Duty Motor Vehicle Purchase or Lease Incentive Program

The proposed rulemaking would repeal §§114.610 - 114.612 and §114.616 and replace the rule language to incorporate the new program criteria established by SB 1731 under THSC, Chapter 386, Subchapter D.

§114.610, Definitions

The commission proposes new §114.610 to establish definitions for terms used in this division.

In proposed §114.610(1), a "Lease" would be defined as the use and control of a new light-duty motor vehicle in accordance with a rental contract for a term of 12 consecutive months or more. In proposed §114.610(2), a "Lessee" would be defined as a person who enters into a lease for a new light-duty motor vehicle.

In proposed §114.610(3), a "Light-duty motor vehicle" would be defined as a motor vehicle with a gross vehicle weight rating of 10,000 pounds or less. In proposed §114.610(4), a "Motor vehicle" would be defined as 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.

In proposed §114.610(5), a "New light-duty motor vehicle" would be defined as a light-duty motor vehicle that has never been the subject of a first retail sale. In proposed §114.610(6) "Retail sale" would have the meaning defined under Texas Occupations Code, §2301.002. The definition of "retail sale" in the Texas Occupations Code means any sale of a motor vehicle other than: a) a sale in which the purchaser acquires a vehicle for resale; or b) a sale of a vehicle that is operated in accordance with Texas Transportation Code, §503.061. This section of the Transportation Code pertains to vehicles operated by a dealer with a dealer's license plate.

§114.611, Applicability

The commission proposes new §114.611(a) to establish that the provisions of this division would apply statewide, subject to the availability of funding.

Criteria is proposed in §114.611(b) that a purchase or lease of a new 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. Under the proposed criteria, these limitations would not apply if, on the date the incentive is awarded, the vehicle change is not required under the listed requirements. Also, the restrictions would not apply if the purchase or lease is 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

The commission proposes new §114.612 to establish eligibility requirements and other requirements for applying for and receiving an incentive under this division. Under the proposed criteria in §114.612(a), a purchaser or lessee of a new light-duty motor vehicle powered by compressed natural gas, liquefied petroleum gas, or hydrogen fuel cell or other electric drive may be eligible for an incentive if the vehicle meets the requirements outlined in this subsection and is included on the list of eligible vehicles as compiled by the commission under the proposed provisions of §114.613. Also under the proposed subsection (a), by August 1 of each year §114.612 is in effect and appropriations are available to fund this program, the commission would publish a list of eligible vehicles on its website.

Section 114.612(a) also includes proposed eligibility criteria for vehicles to receive an incentive. Under proposed §114.612(a)(1), a new light-duty motor vehicle powered by compressed natural gas or liquefied petroleum gas would need to have four wheels, and be originally manufactured to comply with and have been certified by an original equipment manufacturer or intermediate or final state vehicle manufacturer as complying with, or have 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. The vehicle would need to have been manufactured for use primarily on public streets, roads, and highways, and would need to have a dedicated or bi-fuel compressed natural gas or liquefied petroleum gas fuel system installed prior to first retail sale or installed in Texas within 500 miles of operation of the vehicle following first retail sale, and with a range of at least 125 miles as estimated, published, and updated by the United States Environmental Protection Agency.

Under the proposed criteria in §114.612(a)(1), a compressed natural gas fuel system would need to comply with the 2013 (or newer) National Fire Protection (NFPA) 52 Vehicular Gaseous Fuel Systems Code and American National Standard for Basic Requirements for Compressed Natural Gas Vehicle Fuel Containers. A liquefied petroleum gas system would need to comply with the 2011 (or newer) NFPA 58 Liquefied Petroleum Gas Code and Section VII of the 2013 (or newer) American Society of Mechanical Engineers Boiler and Pressure Vessel Code.

Section 114.612(a)(2) includes proposed eligibility criteria for a light-duty motor vehicle powered by an electric drive. Under the proposed criteria, a new light-duty motor vehicle powered by an electric drive would need to have four wheels and have been manufactured for use primarily on public streets, roads, and highways. The vehicle's powertrain could not have been modified from the original manufacturer's specifications. The vehicle would need to have a maximum speed capability of at least 55 miles per hour and be propelled to a significant extent by an electric motor that draws electricity from a hydrogen fuel cell or

from a battery that has a capacity of not less than four kilowatts and is capable of being recharged from an external source of electricity.

Section 114.612(b) and (c) include proposed incentive amounts. Under the proposed criteria, a person who purchases or leases an eligible new light-duty motor vehicle powered by compressed natural gas or liquefied petroleum gas may be eligible to receive a \$5,000 incentive. A person who purchases or leases an eligible new light-duty motor vehicle powered by a hydrogen fuel cell or other electric drive may be eligible to receive a \$2,500 incentive.

Under the proposed criteria in §114.612(d), an eligible vehicle must have been acquired after the date established by the commission in the application solicitation. The purchaser or lessee must complete the application for the incentive, providing all required information, and sign 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. Proposed §114.612(e) would require that incentives be applied for using forms developed and provided by the commission and must include the verification of purchase or lease as may be required by the commission.

Proposed §114.612(f) would require that only one incentive would be provided for each eligible new light-duty motor vehicle purchased or leased in this state. Under proposed §114.612(g), the incentive would be provided to the lessee and not the purchaser if the vehicle is purchased for the purpose of leasing the vehicle to another person.

Proposed §114.612(h) would require that a lease of an eligible new light-duty motor vehicle be prorated based on a three-year term. A one-year lease may qualify for 33.3% of the full incentive amount, a two-year lease may qualify for 66.6% of the full incentive amount, and a three-year lease may qualify for 100% of the full incentive amount. Under the proposed criteria, an incentive would only be prorated based on a full-year lease.

§114.613, Manufacturer's Report

The commission proposes new §114.613 to establish requirements and procedures for manufacturers to submit a report on eligible vehicles and compressed natural gas and liquefied petroleum gas systems that the manufacturer intends to sell in this state. Under proposed §114.613(a), a manufacturer of new light-duty motor vehicles, an intermediate or final state vehicle manufacturer, or a manufacturer of compressed natural gas or liquefied petroleum gas systems would be required to provide to the executive director a list of the new light-duty motor vehicle models or compressed natural gas or liquefied petroleum gas systems, and the new light-duty motor vehicle models on which the systems are approved for installation, that the manufacturer intends to sell in this state during the model year and that are certified to meet the eligibility standards under §114.612(a).

Proposed §114.613(a) would outline the required contents of the lists to be provided to the executive director by manufacturers. Under the proposed subsection, the list would need to contain the vehicle manufacturer name, vehicle model, and vehicle model year; the intermediate or final state vehicle manufacturer name, if applicable; and the compressed natural gas or liquefied petroleum gas system manufacturer name, system model, and system model year, if applicable. Information about the vehicle would also need to be provided, including the engine displacement, qualifying fuel type, gross vehicle weight rating, and the engine or vehicle family name as listed on the Certificate of Conformity issued by the United States Environmental Protection Agency. If applicable, the compressed natural gas or

liquefied petroleum gas system engine or vehicle family name would also need to be provided. The manufacturer would need to certify that the vehicle and compressed natural gas or liquefied petroleum gas system complies with the standards of this division. The commission may also request other information to be provided by the manufacturer.

Under §114.613(b), the list to be submitted by manufacturers must be submitted to the executive director, or the executive director's designee, upon request initially and then no later than July 1 of each year preceding the new vehicle model year.

Proposed §114.613(c) would allow a manufacturer to supplement the required list to include additional new light-duty motor vehicle models or compressed natural gas or liquefied petroleum gas systems the manufacturer intends to sell in this state during the model year.

Fiscal Note: Costs to State and Local Government¹

Jeffrey Horvath, analyst in the Chief Financial Officer Division, determined that for the first five-year period the proposed rulemaking is in effect, no significant fiscal implications are expected for the agency and no fiscal implications are expected for other state agencies or units of local government.

In 2017, the 85th Texas Legislature enacted SB 1731 that re-established the LDPLIP under THSC, Chapter 386, Subchapter D. A previous program had expired August 31, 2015. SB 1731 re-established the LDPLIP with additional changes from the previous program.

The proposed rulemaking would repeal rules for the previously authorized program and establish rules for the new program. Under the proposed rulemaking, a person who purchases or leases a new light-duty motor vehicle in Texas would be eligible for an incentive if the vehicle meets the eligibility requirements and is included on a list of eligible vehicles to be published on the agency's website. A "Light-duty motor vehicle" would be defined as a motor vehicle with a gross vehicle weight rating of 10,000 pounds or less.

The proposed rulemaking would include criteria for vehicles to receive an incentive, including criteria for vehicles powered by compressed natural gas or liquefied petroleum gas and electric vehicles powered by an electric motor that draws electricity from a hydrogen fuel cell or from a battery that has a capacity of not less than four kilowatts and is capable of being recharged from an external source of electricity.

Under the proposed criteria, a person who purchases or leases an eligible new light-duty motor vehicle powered by compressed natural gas or liquefied petroleum gas may be eligible to receive a \$5,000 incentive. A person who purchases or leases an eligible new light-duty motor vehicle powered by a hydrogen fuel cell or other electric drive may be eligible to receive a \$2,500 incentive. The incentive for the lease of an eligible new light-duty motor vehicle would be prorated on a three-year term. The incentive for a one-year lease would be 33.3% of the full incentive amount, a two-year lease may qualify for 66.6% of the full incentive amount, and a three-year lease may qualify for 100% of the full incentive amount.

The rulemaking would establish requirements and procedures for a manufacturer of eligible light-duty motor vehicles, an intermediate or final state manufacturer, or a manufacturer of compressed natural gas or liquefied petroleum gas systems to submit a report to the executive director in order for the executive director to compile a list of eligible vehicles and systems. The report

would need to include required information on the new light-duty motor vehicle models or natural gas or liquefied petroleum gas systems, that the manufacturer intends to sell in Texas during the model year. The manufacturer would also be required to certify that the vehicle models or systems meet the eligibility standards.

The manufacturer reports would need to be submitted to the executive director, or the executive director's designee, upon request initially and then no later than July 1 of each year preceding the new vehicle model year. A manufacturer would also be authorized to supplement the required list to include additional new light-duty motor vehicle models or compressed natural gas or liquefied petroleum gas systems the manufacturer intends to sell in this state during the model year.

The TCEQ would be required to administer the new program, including processing and approving applications, executing the incentive contracts, and processing payment of the incentives.

The agency proposes to hire two temporary employees for six months each fiscal biennium at a cost of \$60,000 to assist in implementing and administering the new LDPLIP. The temporary employees would be hired the first fiscal year (FY) of the biennium, but in some cases, the six-month employment term could extend into the second FY. In those cases, a portion of the \$60,000 cost for the two temporary staff could be incurred in the second FY.

The legislature did not authorize new full-time employees for implementing the new LDPLIP. However, the overall allocation for administrative costs to administer the Texas Emissions Reduction Plan (TERP) programs was increased to up to \$8 million per FY in FY 2018 and FY 2019. The costs for the temporary employees will be covered by the additional administrative funding.

All types of governmental entities that purchase or lease an eligible light-duty motor vehicle in Texas would be eligible to apply for this voluntary incentive program. Because applying for an incentive would be voluntary, it is not known how many governmental entities would apply in the future.

Public Benefits and Costs to Businesses and Individuals

Mr. Horvath 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 a potential increase in the use of alternative fuels and electricity with a beneficial impact on the state's air quality for types of pollutants where the use of alternative fuels or electricity would result in fewer emissions.

No fiscal implications are anticipated for businesses or individuals as a result of the implementation or administration of the proposed rules. The proposed rules relate to voluntary incentive programs. Only those entities that apply for and receive an incentive would be required to register the light-duty motor vehicle in Texas for at least one year. Because participation in the program would be voluntary, it is not known how many entities would apply.

Individuals that apply for and receive a grant will have a cost savings of up to \$2,500 for the purchase or lease of an eligible electric-drive vehicle and up to \$5,000 for the purchase or lease of an eligible vehicle powered by compressed natural gas or liquefied petroleum gas.

Local Employment Impact Statement

The commission 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.

Rural Community Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rules do not adversely affect a rural community in a material way for the first five years that the proposed rules are in effect. These statewide rules will not affect rural communities in any way different from non-rural communities. These rules involve voluntary incentives for persons or entities that purchase or lease an eligible new light-duty motor vehicle. The proposed rulemaking would not affect rural communities.

Small and Micro-Business Impact Statement

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect. The proposed rules involve voluntary incentive programs. No direct impact on small or micro-businesses will occur as a result of the proposed rulemaking, except to the extent a small or micro-business purchases or leases an eligible light-duty motor vehicle.

Small Business Regulatory Flexibility Analysis

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

Government Growth Impact Statement Assessment

The commission prepared a Government Growth Impact Statement Assessment for this proposed rulemaking. The rulemaking will create a new incentive program. No employee positions are created or eliminated as a direct result of this rulemaking. The agency proposes to hire two temporary employees on a six-month basis each fiscal biennium to assist with implementing and administering the program. The proposed rulemaking would not directly require an increase or decrease in future legislative appropriations of the agency. Continued funding for the LDPLIP will be a legislative decision. The decision of the legislature to continue the funding would not be impacted by this rulemaking. The proposed rulemaking would not impact fees paid to the agency. The proposed rulemaking would create a new regulation to establish the criteria and procedures for the new incentive program. The proposed rulemaking repeals existing regulation for the previous incentive program that expired August 31, 2015, and replaces those rules with rules to implement the new program. Because the proposed rulemaking would implement a new incentive program, the proposed rulemaking would increase the number of individuals subject to the rule's applicability.

The rulemaking involves voluntary incentive programs for the purchase or lease of light-duty motor vehicles in Texas if the vehicle meets the eligibility requirements and is included on a list of eligible vehicles to be published on the agency's website. Any impact to the growth of government is a result of the passage of SB 1731 and not of this rulemaking. The rulemaking only proposes changes required to be implemented as a result of the passage of SB 1731.

During the first five years that the rules would be in effect, it is anticipated that this rulemaking will not positively or adversely

impact the state's economy. The proposed rules involve voluntary incentive programs. The proposed rules could result in cost savings of up to \$2,500 for the purchase or lease of an eligible electric-drive vehicle and up to \$5,000 for the purchase or lease of an eligible vehicle powered by compressed natural gas or liquefied petroleum gas.

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 rules are proposed in accordance with SB 1731, 85th Texas Legislature, 2017, which amended THSC, Chapter 386 to add a new Subchapter D. 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 rules 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 repeal and replace rule language in Chapter 114, Subchapter K, Division 2, in accordance with new THSC, Chapter 386, Subchapter D, as a result of SB 1731, 85th Texas Legislature, 2017. The rules establish 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 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 in Austin on December 11, 2017, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. 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 con-

tact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Ms. Kris Hogan, 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://www1.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 2017-030-114-AI. The comment period closes on December 22, 2017. Copies of the proposed rule-making can be obtained from the commission's website at http://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Steve Dayton, Implementation Grants Section, at (512) 239-6824.

30 TAC §§114.610 - 114.612, 114.616

Statutory Authority

The repeal of the sections 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 of the sections 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 of the sections is proposed as part of the implementation of THSC, Chapter 386, Subchapter D, established by SB 1731, 85th Texas Legislature, 2017.

§114.610. Definitions.

§114.611. Applicability.

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

§114.616. Manufacturer's Report.

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 16, 2017.

TRD-201704650

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: December 31, 2017

For further information, please call: (512) 239-6812

30 TAC §§114.610 - 114.613

Statutory Authority

The 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 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 new sections 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.

The new sections are proposed as part of the implementation of THSC, Chapter 386, Subchapter D, established by SB 1731, 85th Texas Legislature, 2017.

§114.610. Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used in this division 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 and §§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) Lease--The use and control of a new light-duty motor vehicle in accordance with a rental contract for a term of 12 consecutive months or more.

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

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

(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 light-duty motor vehicle--A light-duty motor vehicle that has never been the subject of a first retail sale.

(6) Retail Sale--Has the meaning as defined under Texas Occupations Code, §2301.002,

§114.611. Applicability.

(a) The provisions of this division apply statewide subject to the availability of funding.

(b) A purchase or lease of a new 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 new 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 or lessee of a new light-duty motor vehicle powered by compressed natural gas, liquefied petroleum gas, or hydrogen fuel cell or other electric drive may be eligible for the incentive specified in subsection (b) or (c) of this section if the vehicle meets the requirements specified in paragraph (1) or (2) of this subsection and is listed on the list of eligible vehicles provided to the commission as specified under §114.613 of this title (relating to Manufacturer's Report). By August 1 of each year this division is in effect and appropriations are available to fund this program the commission will publish on its website a list of the eligible vehicles provided to the commission as specified under §114.613 of this title. Eligible vehicles include:

(1) a new light-duty 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) has a dedicated or bi-fuel compressed natural gas or liquefied petroleum gas fuel system installed prior to first retail sale or installed in Texas within 500 miles of operation of the vehicle following first retail sale, and with a range of at least 125 miles as estimated, published, and updated by the United States Environmental Protection Agency; and

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

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

(E) is propelled to a significant extent by an electric motor that draws electricity from a hydrogen fuel cell or 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 powered by compressed natural gas or liquefied petroleum gas eligible for an incentive under subsection (a) of this section may be eligible to receive a \$5,000 incentive.

(c) A person who purchases or leases a new light-duty motor vehicle powered by a hydrogen fuel cell or other electric drive eligible for an incentive under subsection (a) of this section may be eligible to receive a \$2,500 incentive.

(d) To be eligible for the incentives under subsection (b) or (c) of this section, the purchaser or lessee must meet the following criteria:

(1) acquired the eligible vehicle after the date established by the commission in the application solicitation;

(2) completes the application for the Light-Duty Vehicle Purchase or Lease Incentive, providing all required information; 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.

(e) Incentives must be applied for using the forms developed and provided by the commission and must include the verification of purchase or lease as may be required by the commission.

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

(g) 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.

(h) An incentive for the lease of an eligible new light-duty motor vehicle shall be prorated based on a three-year lease term. A person who leases an eligible new light-duty motor vehicle may qualify for 33.3% of the full incentive with a one-year lease, 66.6% of the full incentive with a two-year lease, and 100% of the full incentive with a three-year lease. The incentive will only be prorated based on a full-year lease.

§114.613. 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 website, a manufacturer of new light-duty motor vehicles, an intermediate or final state vehicle manufacturer, or a manufacturer of compressed natural gas or liquefied petroleum gas systems shall provide to the executive director, or the executive director's designee, a list of the new light-duty motor vehicle models or compressed natural gas or liquefied petroleum gas systems, and the new light-duty motor vehicle models on which the systems are approved for installation, that the manufacturer intends to sell in this state during that model year that are certified to meet the standards listed under §114.612(a) of this title (relating to Light-Duty Motor Vehicle Purchase or Lease Incentive Requirements). The list must contain for each light-duty motor vehicle or natural gas or liquefied petroleum gas system listed:

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

(2) the intermediate or final state vehicle manufacturer name, if applicable;

(3) the compressed natural gas or liquefied petroleum gas system manufacturer name, system model, and system model year, if applicable;

(4) the engine displacement, qualifying fuel type, gross vehicle weight rating, and engine or vehicle family name as listed on the Certificate of Conformity issued by the United States Environmental Protection Agency;

(5) the compressed natural gas or liquefied petroleum gas conversion system engine or vehicle family name, if applicable;

(6) certification by the manufacturer that the vehicle and, if applicable, the compressed natural gas or liquefied petroleum gas system comply with the standards of this division; and

(7) other information as may be requested by the commission.

(b) The list required by subsection (a) of this section must be submitted to the executive director, or the executive director's designee, upon request initially and then no later than July 1 of each year preceding the new vehicle model year.

(c) A manufacturer of new light-duty motor vehicles, an intermediate or final state vehicle manufacturer, or a manufacturer of compressed natural gas or liquefied petroleum gas systems may supplement the list required by subsection (a) of this section to include additional new light-duty motor vehicle models or compressed natural gas or liquefied petroleum gas systems the manufacturer intends to sell in this state during the model year.

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 16, 2017.

TRD-201704652

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: December 31, 2017

For further information, please call: (512) 239-6812



SUBCHAPTER K. MOBILE SOURCE INCENTIVE PROGRAMS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§114.620, 114.622, 114.623, 114.644, 114.650 - 114.653, and 114.680 - 114.682; and the repeal of §§114.648, 114.658, 114.660 - 114.662, and 114.670 - 114.672.

If adopted, the amendments to §§114.620, 114.622, 114.623, 114.650 - 114.653, and 114.680 - 114.682 will be submitted to the United States Environmental Protection Agency (EPA) as a revision 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 Program (DE-

RIP) established under Texas Health and Safety Code (THSC), Chapter 386, Subchapter C; the Texas Clean School Bus Program (TCSBP) established under THSC, Chapter 390; the Texas Clean Fleet Program (TCFP) established under THSC, Chapter 392; and the Seaport and Rail Yard Emissions Reduction Program, established under THSC, Chapter 386, Subchapter D-1. The purpose of this rulemaking is also to repeal existing rules that established prioritization criteria for the Alternative Fueling Facilities Program (AFFP) established under THSC, Chapter 393; and the Texas Natural Gas Vehicle Grant Program (TNGVGP) established under THSC, Chapter 394.

The incentive programs implemented by these rules are part of the Texas Emissions Reduction Plan (TERP) established under THSC, Chapter 386, and administered by the commission. The enabling legislation creating the TERP was enacted under Senate Bill (SB) 5, 77th Texas Legislature, 2001. The TERP was created to provide financial incentives for reducing emissions of on-road heavy-duty motor vehicles and non-road equipment, with the DERIP as the primary incentive program. In subsequent years, additional programs were added to the TERP to provide incentives to install retrofit devices on school buses to reduce exposure of school children to diesel exhaust, programs to provide incentives to replace diesel vehicles with alternative fuel vehicles, programs to provide incentives for the construction of fueling facilities to provide alternative fuel, and a program to replace drayage trucks at seaports and rail yards with newer, cleaner models. The chapters in the THSC authorizing these programs and the TERP in general were scheduled to expire August 31, 2019.

SB 1731, 85th Texas Legislature, 2017, extended the expiration dates of these programs and revised some of the program criteria and processes. Instead of establishing a specific new expiration date, SB 1731 extended the programs until the last day of the state fiscal biennium during which the commission publishes in the *Texas Register* notification that the EPA has published in the *Federal Register* that areas in the state are designated attainment or unclassifiable/attainment for National Ambient Air Quality Standards (NAAQS) for ozone, or the EPA has approved a redesignation substitute making a finding of attainment for the area, and judicial reviews of the EPA actions and rules have been completed and upheld the findings or the limitations period to seek judicial review has expired. The proposed rulemaking would amend the TCSBP and TCFP rules to remove the rule expiration dates.

SB 1731 amended the DERIP criteria under THSC, Chapter 386, Subchapter C, to revise the definition of a small business to include a small business that owns and operates not more than five vehicles and to remove model-year restrictions on vehicles and equipment that may be owned by the small business. In addition, the requirement that the executive director shall waive certain eligibility requirements on a finding of good cause was changed to state that the executive director may waive the requirements. Also, SB 1731 added clarifying language to the small business incentive requirements to specify that the commission may implement the small business incentives either through a separate small business grant program or through special consideration to small businesses when implementing another program under THSC, Chapter 386, Subchapter C. The proposed rulemaking would make corresponding changes to the DERIP rules.

SB 1731 amended the criteria for the TCSBP under THSC, Chapter 390, to add replacement of an existing school bus with a new school bus as an eligible project category. The

Texas Commission on Environmental Quality



ORDER REPEALING AND ADOPTING NEW RULES

Docket No. 2017-0866-RUL

Rule Project No. 2017-030-114-AI

On April 4, 2018, the Texas Commission on Environmental Quality (Commission) adopted the repeal of §§ 114.610 - 114.612 and § 114.616 and new §§ 114.610 - 114.613 in 30 TAC Chapter 114, Control of Air Pollution from Motor Vehicles. The proposal was published for comment in the December 1, 2017, issue of the *Texas Register* (42 TexReg 6689).

IT IS THEREFORE ORDERED BY THE COMMISSION that the repeal and new 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 repealed and adopted rules and the preamble to the repealed and 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, Tex. Gov't Code Ann., Chapter 2001 (West 2016).

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.

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

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

Date Signed