

The Texas Natural Resource Conservation Commission (commission) adopts new §§114.600 - 114.602, and 114.609 in new Division 1, On-Road Diesel Vehicle Purchase or Lease Incentive Program; and new §§114.610 - 114.612, 114.616, 114.618, and 114.619 in new Division 2, Light-Duty Motor Vehicle Purchase or Lease Incentive Program. These new sections and new divisions are in new Subchapter K, Mobile Source Incentive Programs, of Chapter 114 as part of the implementation of Senate Bill (SB) 5 (relating to the Texas Emission Reduction Plan), 77th Texas Legislature, 2001. Sections 114.601, 114.609, 114.611, and 114.618 are adopted *with changes* to the proposed text as published in the July 20, 2001 issue of the *Texas Register* (26 TexReg 5355). Sections 114.600, 114.602, 114.610, 114.612, 114.616, and 114.619 are adopted *without changes* to the proposal and will not be published.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The 77th Legislature adopted SB 5 establishing the Texas Emission Reduction Plan (TERP) which provides financial incentives for reducing emissions of on-road and non-road motor vehicles and equipment, grants for the development of new emission control technology, new building energy efficiency standards, and research and development programs. The program is funded through surcharges and fees established in the bill. Senate Bill 5 also required that the commission delete the operating restriction on construction equipment rules and the Tier 2/Tier 3 accelerated purchase rules on construction equipment from the Dallas/Fort Worth and Houston/Galveston (HGA) state implementation plans (SIP) and replace them with programs from SB 5. The SB 5 programs are estimated to achieve reductions in excess of the reductions expected from the rules that are being repealed. In accordance with SB 5, the SIP will be revised to replace these rules with TERP.

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

SECTION BY SECTION DISCUSSION

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

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

The new §114.601 establishes the state-wide applicability of §§114.600, 114.602, and 114.609. All incentives are subject to the availability of funding for this program. Because the funding for these incentives is from surcharges which will be collected throughout the lifetime of the program, and because there are statutory caps on the amount of funding for this program, funding for incentives for eligible vehicles may be delayed or unavailable. Incentives will be funded in the order of the submission of a completed certification. In addition, in response to public comment, the proposed §114.601 has been amended to include a new subsection (b) which prohibits eligibility if the purchase or lease of the new on-road diesel motor vehicle is required by any other federal, state, or local regulations or agreements.

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

The new §114.609 establishes the schedule of emission standards and incentive amounts from which the incremental cost reimbursement incentives will be based. In response to comment and to reflect the

requirements of the statute, new §114.609(b) establishes the ability of the commission, in consultation with the TERP Advisory Board (Advisory Board), to evaluate new technologies and to change, if necessary, the incentive emissions standards established under this section, to improve the ability of the program to achieve its goals.

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

The new §114.611 establishes the state-wide applicability of §§114.610, 114.612, 114.616, 114.618, and 114.619. All incentives are subject to the availability of funding for this program. Because the funding for these incentives is from surcharges which will be collected during the pendency of the program, and because there are statutory caps on the amount of funding for this program, funding for incentives for eligible vehicles may be delayed or unavailable. Incentives established by these rules will be funded in accordance with rules and procedures adopted by the state comptroller's office. In addition, in response to public comment, §114.611 has been amended to include a new subsection (b) which prohibits eligibility if the purchase or lease of the new light-duty motor vehicle is required by any other federal, state, or local regulations or agreements.

The new §114.612 establishes the eligibility requirements for the new light-duty purchase or lease incentive for the purchase or lease of a new light-duty motor vehicle that is certified by the EPA to meet

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

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

The new §114.618 establishes the requirements for a vehicle emissions brochure that vehicle manufacturers will be required to publish by September 1 of each year and distribute to customers regarding the vehicles eligible to receive an incentive, beginning September 1, 2002. The dimensions of

the brochure are also established by the new §114.618 for the sake of uniformity in printing styles and so that the brochure may be easily recognized by prospective purchasers and lessees. The new §114.618 will also require each manufacturer to submit a copy of the brochure to the executive director, or his designee, by September 1 of each year, beginning September 1, 2002. In addition, new §114.618 will require manufacturers that do not intend to sell new light-duty motor vehicles in the state that may be eligible for the incentive to publish a brochure that states a notice of that fact. Finally, new §114.618(a)(5) has been added to require that the brochure include, at a minimum, not only the commission's website, but also information that a complete list of all eligible motor vehicles that manufacturers intend to sell in this state is available at this website.

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

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking action does not meet the definition of a "major environmental rule" as defined in that statute. A major environmental rule is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy or a sector of the economy; productivity; competition; jobs; the environment; or the public health and safety of the state or a sector of the state.

These rules are intended to protect the environment or reduce risks to human health from environmental exposure to ozone by providing financial incentives for the purchase of cleaner on-road diesel vehicles

and light-duty motor vehicles. As such, these rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Additionally, Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1.) exceed a standard set by federal law, unless the rule is specifically required by state law; 2.) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3.) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4.) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking action does not meet any of these four applicability requirements because the rulemaking is specifically required by state law in SB 5.

TAKINGS IMPACT ASSESSMENT

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

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

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

The commission solicited comments on the consistency of the proposed rules with the CMP during the public comment period, but received no comments.

HEARINGS AND COMMENTERS

The commission held public hearings on this proposal on August 13, 2001 in Houston; on August 14, 2001 in Austin and in Arlington. The comment period closed on August 14, 2001. The following commenters provided oral testimony and/or submitted written testimony: Hughes and Luce, LLP, on behalf of the Alliance of Automotive Manufacturers (AAM); Association of Automotive Service Providers (AASP); Business Coalition for Clean Air (BCAA); City of Houston (Houston); Public Citizen's Texas Office on behalf of the Texas Campaign for the Environment, SEED Coalition, Clean Water Action, Environmental Defense, and Sierra Club - Texas/Arkansas Field Office (Public Citizen); Sierra Club - Texas/Arkansas Field Office (Sierra-TX/AR); Sierra Club Houston Regional Group (Sierra-Houston); Texas Campaign for the Environment (TCE); Texas Clean Air Working Group (TCAWG); Texas State Inspection Association (TSIA); TranStar Energy Company (TranStar); EPA; and four individuals.

RESPONSE TO COMMENTS

AAM, BCCA, EPA, Sierra-Houston, Public Citizen, Sierra-TX/AR, TCAWG, TCE, and TranStar generally supported the proposal. The commission did not receive any comments in opposition to the proposal. AAM, BCCA, EPA, Sierra-Houston, Public Citizen, Sierra-TX/AR, TCAWG, TCE, and TranStar suggested changes to the rules.

BCCA, Houston, TCAWG commented that the reimbursements to the purchasers of new, on-road heavy-duty diesel vehicles are limited to the reductions authorized by the Texas Health and Safety Code (THSC), §386.113, in the proposed rules and this limitation should be evaluated by August 31, 2002 to

determine if it should be revised and/or if such purchaser's reimbursements should be based on a per ton basis as is the case under the Diesel Emission Reduction Incentive Program.

Subject to the provisions of SB 5 and in consultation with the Advisory Board, the commission intends to regularly review the incentive amounts and qualification criteria set out in THSC, §386.113 to determine whether changes are needed to improve the program.

AASP and TSIA commented that the increase in the fee for the out-of-state motor vehicle safety inspection form, "green sheet," from \$1.00 to \$225 may be unconstitutional, difficult to enforce, and prove to be very difficult to implement.

The comment is beyond the scope of this rulemaking. This rulemaking does not address the collection of fees under SB 5, only the eligibility for receiving incentives. The Department of Public Safety has jurisdiction over the collection of the \$225 fee.

TranStar commented that all heavy-duty motor vehicles with engine technologies operating on a "qualifying fuel" and meeting the NO_x grams per brake horsepower-hour standard, as defined by SB 5, should be eligible for the incentives established. TranStar further commented that they believe this was the intent of the Texas Legislature and that errors in editing during the chaotic legislative process should not stand in the way of good public policy, or the intent of the legislature. BCCA recommended that the commission authorize reimbursements for the purchase or lease of any low-emitting vehicles, equipment, and alternative fuels (as defined by SB 5) as long as the overall emission reduction and cost-

effectiveness requirements of the program are met. TCAWG recommended that the commission take into account the clear intent of the legislation, which is to include all “qualifying fuels” as defined by SB 5 in eligibility for this program, not just diesel, as the language of the bill incorrectly suggests.

The commission agrees with these comments and the guidance document is currently drafted to allow a vehicle using any fuel to qualify for an on-road heavy-duty vehicle purchase incentive. The commission does not feel it is appropriate to modify the rules at this time to reflect this understanding. However, the commission is planning to consult with the Advisory Board at the earliest possible point in time to get their opinion on this issue. If the Advisory Board agrees with this interpretation, the commission will modify the rules to reflect this decision.

BCCA supported the development of a federal program to provide financial incentives toward retirement and recycling of pre-1988 commercial diesel trucks as these vehicle emit nearly three times the NO_x of today’s modern electronically-controlled diesel engines and are substantially less fuel efficient. BCCA further commented that a federal truck incentive program would augment the provisions in SB 5 to accelerate the reduction of emission and fuel consumption of these vehicles.

The commission appreciates the comment; however, the commission cannot take any action as part of this rulemaking regarding implementation of a federal incentive program.

TranStar recommended that the commission include the Inherently Low Emission Vehicle (ILEV) emission standard designation in the light-duty motor vehicle rules for an incentive amount in the \$3,500 - \$4,000 range because to include dedicated clean vehicles that produce no evaporation emissions (such as

ILEV certified vehicles) in the incentive program would add significantly to the benefits of the legislation and would further encourage the fueling infrastructure development that is critical to the success of this program.

The ILEV standard is not considered eligible for an incentive as part of the SB 5 program. ILEV vehicles are cleaner for evaporative volatile organic compounds; however, they do not meet a NO_x standard that is at least as stringent as the bin standards identified in the rules.

One individual requested more information be provided about the proposed incentive programs.

The commission is developing guidance documents that will provide more detailed information about the incentive programs. The commission will have these guidance documents and other additional information available on its internet website at www.tnrcc.state.tx.us/oprd/sips/terp.html.

One individual commented in opposition to reducing highway speed limits in the Houston area as a tactic to improve air quality since the area does not even have a good system to identify and keep the vehicles with inordinately high emission levels off the road.

This comment does not specifically address issues associated with this rulemaking. The commission made no changes in the rule language in response to this comment.

Sierra-Houston requested that the commission consider the removal of leasing from these rules, because leasing suggests that emission reductions may not be permanent.

SB 5 specifically includes leased vehicles in the program. The commission does not have the authority to modify the legislation to exclude leases.

Sierra-Houston commented that the commission needs oversight and auditing of each rebate to ensure that the public is not paying for reductions that never occur. Public Citizen commented that the commission should bulletproof the program against criticism by assuring that there are audits built in. The fear of audit will assure the people that the state means business and that there is retribution.

The commission will take every available action to insure the integrity of the program while ensuring the program remains simple, effective, and emissions efficient.

Sierra-TX/AR commented that the commission must have a dedicated alternative fuel vehicles (AFV) so that consumers can't purchase an AFV, receive the credit, and then fill the automobile with gasoline which will do nothing to improve air quality or reduce carbon dioxide emissions. Sierra-TX/AR further commented that is also necessary to require that a hybrid get a mile per gallon (mpg) standard significantly above the 27.5 mpg standard for cars.

The commission agrees with the commenter and will require that dual-fueled vehicles be operated only on a fuel which allows the vehicle to meet the eligibility criteria. This

requirement will be included within the incentive agreement itself. Fuel efficiency is not addressed as part of SB 5. In addition, fuel efficiency is not an indicator of emissions performance. As part of SB 5, THSC, §386.157, fuel efficiency was specifically omitted as part of the brochure requirements.

Public Citizen commented that the commission should establish procedures for gathering information, on both the grant from the comptroller and registration data on qualified vehicles through TxDOT, so that information can be compiled, because it is critical both for the EPA credibility of the program and for sales data to be used for program evaluation.

The commission will be establishing internal methodologies to track the emission reductions generated as part of this program and will make every effort to have these counted towards the EPA required SIP. The commission will work with all other agencies involved in the implementation of SB 5 to ensure an effective and creditable program.

Public Citizen and Sierra-TX/AR commented that the commission should re-evaluate the light-duty program each year, and establish a regular calendar to review and adjust the incentive program, in consultation with the Advisory Board, to assure that the greatest number of low-emission vehicles are given the biggest incentives, and announce it early. Public Citizen also stated that diesel hybrid engine vehicles should not be eligible for these incentives due to the potential for them to emit high levels of

particulate matter (PM) emissions. In addition, Public Citizen commented that the commission should use the incentive program to address global warming emissions.

The commission will review the program on an as needed basis, and will recommend changes to the Advisory Board when warranted. The statute does not specifically address PM or global warming emissions; however, it does allow the commission to consider reductions of other types of emission in conjunction with the reduction of NO_x. If PM or global warming emissions become a significant threat to air quality in the future, the commission will consult with the Advisory Board as needed to make changes to the program. Currently, the statute does not address fuel type as part of the light-duty program.

Public Citizen commented that entities affected by the Texas Clean Fleet (TCF) program should not be eligible to receive incentives under the purchase or lease incentive program, because these entities are required to purchase cleaner vehicles to comply with the TCF program.

The commission agrees with this comment and has added language to the rules to clarify that purchases or leases otherwise required by state or federal law, rule or regulation, memorandum of agreement, or other legally binding document are ineligible for funding under this program.

Sierra-TX/AR commented that there should be a dedicated person to administer the program. Public Citizen commented that the commission should add to its rules a dedicated ombudsman for the clean car program.

The commission was allocated a portion of the administration budget and will have adequate staff assigned to implement this program. However, the commission disagrees that an ombudsman is necessary in order to administer this program. Therefore, the commission has made no changes to the rule language in response to this comment.

Sierra-TX/AR commented that education is paramount to any incentive program and that public educational materials should be developed and should include, but not be limited to, radio and television announcements, posters, and brochures. Sierra-TX/AR further commented that there should be a person who is able to go to the business community and host town hall meeting, etc. to promote the program and explain how it works. Similarly, BCCA also urged the commission to conduct an open, stakeholder-based rule and guidance development process for this program.

The commission will make every effort to promote this program as it has the potential to be one of the most effective programs for improving air quality around the state. The commission will do all that it can, within its budget, for getting the word out regarding the TERP program. The commission has also made every effort to conduct an open rule and guidance development process for this program and will continue to do so. Currently, the guidance documents are available on the commission website and the commission encourages all those concerned to submit comments.

EPA commented that the proposed §114.609 needs further clarification in regard to reimbursement amounts being “up to” \$15,000 and \$25,000, respectively. EPA further asked whether this is a prorated amount for vehicles that are better than the levels required in federal regulations, but greater than the levels in this rule.

The commission interprets this part of the legislation to be a straight forward, simple rebate program. With that in mind, the commission will rebate up to \$15,000 or \$25,000 for the incremental cost of a cleaner vehicle. In other words, the actual amount of the rebate will be based upon the incremental cost related to the particular vehicle with a cap of \$15,000 or \$25,000. The commission does not believe it is appropriate to prorate rebates based on emissions level beyond what is already identified in statute.

AAM submitted sample paragraphs to be used in the manufacturer’s brochure.

The commission has not specified the exact wording to be used by manufacturers in their individual brochures. The layout of the brochure is at the discretion of the manufacturer. However, the brochures must conform to the requirements of §114.618 in regard to the contextual information.

EPA commented that §114.616 should be revised to require manufacturers to “inform” the commission of which new vehicles meet the incentive emission standard instead of producing a report. EPA further suggested that the commission not require manufacturers to put together a list, but rather require that for a

manufacturer's engine model to be eligible for the incentive. Finally, EPA stated that the manufacturer must list the engine model in the report detailed in §114.616.

The commission disagrees with these comments. The requirements in §114.616 implement the mandates provided in SB 5, §1, which require manufacturers to provide a list of eligible vehicles that the manufacturer intends to sell in the state each year to the commission. The commission made no changes in the rule language in response to these comments.

EPA commented that they do not understand how the EPA "Green Vehicle Guide" would be used for the proper crediting of emission reductions in the HGA SIP. EPA further commented that while EPA makes every effort to assure that this data is complete and accurate, EPA cannot guarantee this accuracy.

The statute clearly indicates that the purpose of using data from the EPA "Green Vehicle Guide" is not for calculating emission reductions, but to enable consumers to make informed purchase decisions based on the relative amount of emissions produced by motor vehicles within each vehicle class. The commission understands that the EPA is not able to guarantee the accuracy of the data; however, the statute specifically requires manufacturers to publish a brochure that includes emission and air pollution ratings for each eligible motor vehicle based on data from this guide.

EPA commented that requiring manufacturers to produce reports could possibly be pre-empted under the Federal Clean Air Act, §209(a), especially since the brochures must be "approved" by the state. EPA

also commented that the requirements in §114.618 that manufacturers provide new car buyers with an emission brochure describing which of their models are eligible for incentive, or explain that none of their vehicles are eligible, seems to go beyond the “voluntary” spirit of the program.

The commission disagrees that requiring manufacturers to produce reports is pre-empted under the Federal Clean Air Act, §209(a). The reporting requirement is not a condition precedent to an initial retail sale, titling (if any), or registration. In addition, the statute clearly requires each manufacturer to publish and make available to its dealers a brochure that includes, at a minimum, the vehicles that would be eligible for incentives under this program. This rulemaking is designed to implement the statute. The commission has also determined that all manufacturers that intend to sell vehicles in the state participate in this program, regardless of whether they intend to sell eligible vehicles. This action should provide consumers with sufficient information to make informed purchases.

EPA commented that it appears that vehicles not meeting the incentive thresholds are somehow being taxed an additional amount because of their emission levels and that the EPA would not encourage any language that suggests that certain vehicles are being taxed more because of their status. EPA believes that there may be language in the preamble that may suggest this is happening.

The commission did not intend to suggest in the proposal preamble that certain vehicles are being taxed more because of their status. The PUBLIC BENEFITS AND COSTS section of

the preamble to the proposed rules, which may include confusing statements on this issue, is not included in the preamble to the adopted rules.

EPA also commented that it appears to them that the tax incentive level is based partially on the difference in the manufacturer's suggested retail price between a model certified to Bin 4 or cleaner and the same model certified to a higher level. This may mean that manufacturers may choose to distribute the costs of its cleaner vehicles so there is no price difference between the two models.

The commission does not have authority to regulate manufacturers in their business decisions related to pricing. However, the light-duty motor vehicle program will provide a rebate at the level specified in statute regardless of the difference in price between a conventional vehicle and a cleaner vehicle. The commission encourages the commenter to provide comments to the Texas Comptroller of Public Accounts who will be implementing the major portion of this part of SB 5.

EPA commented that it cannot predict the availability of the cleaner vehicles produced by manufacturers during the 2002 - 2003 time frame because the federal Tier 2 program begins later.

The commission understands that the EPA cannot predict the availability of the cleaner vehicles, but the commission hopes that the state incentive program will encourage manufacturers to produce vehicles which meet the cleaner incentive emissions standards.

EPA commented that it does not know the proper accounting of the emission reductions resulting from the incentive program, but that EPA will work with the commission to develop SIP credit protocols.

The commission appreciates the EPA comment, and will work with the EPA to develop SIP credit protocols.

EPA commented that the regulations ought to take into consideration the fact that there may be different emission levels for vehicles within a model, and provided the example that some Honda Accords may be certified to Bin 4 or cleaner, while other Accords may be Bin 5 or dirtier depending on their configuration.

The rules do take into consideration that there may be different emission levels for vehicles within a model. The statute and the rules specifically include the requirement that it is the light-duty vehicle, and not the model that must be certified by the EPA to meet an emissions standard that is at least as stringent as the incentive emission standards provided in the rules. Thus, in the example provided by the EPA, state-wide incentives for the purchase or lease of light-duty motor vehicles would apply only for those Honda Accords that are certified to Bin 4 or cleaner.

TxDOT commented that, although the commission will require manufacturers to report on the types of equipment available for rebates and grants, it may take them a while to provide this information to the commission, reducing the TxDOT ability to take advantage of the program.

The commission will use every means possible to get information out regarding vehicles and equipment which are eligible for grants. The commission notes that only manufacturers of light-duty vehicles are required to report eligible vehicles to the commission. If a manufacturer is late in reporting, the commission will seek to get the information through other means, such as inquiring of the EPA which engine families are eligible for rebates.

TxDOT commented that the reference to truck-trailers should be corrected to truck-tractors.

The commission agrees with TxDOT. The reference to truck-trailers was a typographical error and all references to truck-trailers have been removed.

Public Citizen disagrees with the commission interpretation of what is required to be a part of the manufacturer's brochure. Public Citizen expressed a belief that the manufacturer should be required to list in the brochure all eligible vehicles, regardless of who the manufacturer is. Public Citizen suggested that as an alternative, the commission develop a generic brochure to be distributed to all dealers. In addition, the commission should create its own clean car web site and assure that it is linked to the EPA and comptroller.

The commission disagrees with the comment about requiring manufacturers to publish brochures containing information about competitors' vehicles. THSC, §386.157, requires that a motor vehicle manufacturer shall publish and make available to the dealers a brochure that includes the list of eligible motor vehicles prepared under THSC, §386.156. Section 386.156

requires the commission to publish and provide to the comptroller a list of the new motor vehicles as listed under THSC, §386.155, which requires the manufacturer to provide to the commission a list of the new motor vehicles that the manufacturer intends to sell in this state. Therefore, the commission interprets the statute to only require manufacturers to publish a brochure that includes the list of eligible motor vehicles that the manufacturer intends to sell in this state. However, the commission will require that each brochure include the commission web address for this program so potential purchasers will have access to additional information. Also, §114.618, relating to brochure requirements, has been amended to require that the brochure include, at a minimum, not only the commission's website, but also information specifying that a complete list of all eligible motor vehicles that manufacturers intend to sell in this state is available at this website.

Public Citizen commented that if the commission allowed a manufacturer to publish a brochure covering only its vehicles, the commission should require a manufacturer to list on its brochure all vehicles it manufactures, including all its associated companies.

The commission disagrees with the comment. Section 386.155 provides that a manufacturer of a motor vehicle shall provide to the commission a list of the new motor vehicle models the manufacturer will provide for a sale in the state. The term "manufacturer" is not defined in the statute, however, at a minimum, the manufacturer must make available to the dealerships a brochure regarding their product lines offered by that dealer. The commission's interpretation

of the brochure requirements is that it is left to the manufacturers to decide what car lines should be included in brochures at their dealerships.

Public Citizen commented that the commission needs to develop in its rules the type of brochure that TxDOT will distribute with the annual vehicle registration.

The commission disagrees with this comment. The commission does not have the statutory authority to develop rules governing TxDOT's development of their annual vehicle registration program. However, the commission will provide input if requested by TxDOT.

Public Citizen commented that the commission should develop a brochure for the heavy-duty incentive program.

The commission was not required as part of the SB 5 statute to develop a brochure for the heavy-duty incentive program. However, the commission will make every effort to get the word out about the program through website postings and public workshops.

Public Citizen commented that §114.611(a) and (b) contain no enforcement mechanism to ensure that vehicles be used 75% of the time in Texas, and urged that the commission and TxDOT enter into an interagency agreement to allow tracking of these vehicles through a four-year period, and further that the commission should request a refund of the incentive money if the vehicle is removed from the targeted

areas. Along these same lines the commenter requested additional oversight through TxDOT inspections of dealerships.

The commission will require as part of getting an incentive that the participant sign a document as part of receiving a grant that requires them to operate a minimum of 75% in an affected area. In addition, the document will include a provision allowing the state to demand money back if this requirement is not met. The commission will consult with the comptroller and TxDOT on their ability to implement and enforce these measures through inspection of dealerships.

Public Citizen commented that regarding §114.611(c), purchasers should only be able to buy one vehicle per year. An individual opposed this position and recommended that if a limit had to be established, it should be as high as 50 to encourage small business owners who operate from a central fleet location to take advantage of all incentives available to them. This individual commented that a balance needs to be struck between limiting it to one person and allowing one fleet to take advantage of the whole program.

The commission disagrees with the comment that purchasing limits should be set. The statute does not limit, in any way, the number of vehicles eligible for purchase by any one single individual and the commission does not think it is appropriate to do so.

Public Citizen commented that regarding §114.611(c), the commission should clarify in the rules and materials that an eligible entity may also qualify for additional benefits, such as federal tax incentives or

local assistance programs, and receipt of benefits under this program does not limit eligibility of these programs. In addition, the commission and comptroller should keep their web pages updated regarding these programs.

The commission appreciates the comment, however, it is the responsibility of other agencies, such as the Internal Revenue Service, to make the public aware of their incentives. However, the commission is not opposed to creating links on its website to other agencies which may also offer incentives. The commission does not have the authority to determine eligibility for other agency programs. The commission will make every effort to keep its website updated with the most recent information. Regarding the on-road diesel rebate program, additional benefits such as federal tax incentives or local assistance programs would not automatically disqualify a vehicle from eligibility, however such incentives could reduce the amount of funding for which the vehicle is eligible.

An individual expressed the hope that the commission is able to develop a successful program, especially given the challenges, such as the need to reduce emissions through new purchases of vehicles under the incentive program, given that many low-income earners keep their cars longer with increased pollution levels from those cars.

The commission appreciates this comment and is working towards developing a successful program.

STATUTORY AUTHORITY

These 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 TWC; §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of TWC and other laws of this state; and §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. These new sections are also adopted under THSC, Texas Clean Air Act (TCAA), §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of TCAA; §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and Chapter 386, which establishes the TERP. Finally, these adopted new sections are required as part of the implementation of SB 5, acts of the 77th Legislature, 2001.

SUBCHAPTER K: MOBILE SOURCE INCENTIVE PROGRAMS

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

§§114.600 - 114.602, 114.609

§114.600. Definitions.

Unless specifically defined in the TCAA or in the rules of the commission, the terms used in this subchapter have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, §§3.2, 101.1, and 114.1 of this title (relating to Definitions), the following words and terms, when used in this division shall have the following meanings, unless the context clearly indicates otherwise.

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

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

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

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

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

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

§114.601. Applicability.

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

(b) A purchase or lease of an on-road diesel 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 an on-road diesel motor vehicle required only by local law or regulation or by corporate or controlling board policy of a public or private entity.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) After evaluating new technologies and after public notice and comment, the commission, in consultation with the Texas Emission Reduction Plan Advisory Board, may change the incentive emissions standards established under this section to improve the ability of the program to achieve its goals.

SUBCHAPTER K: MOBILE SOURCE INCENTIVE PROGRAMS

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

§§114.610 - 114.612, 114.616, 114.618, 114.619

STATUTORY AUTHORITY

These 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 TWC; §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of TWC and other laws of this state; and §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. These new sections are also adopted under THSC, TCAA, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of TCAA; §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and Chapter 386, which establishes the TERP. Finally, these adopted new sections are required as part of the implementation of SB 5, acts of the 77th Legislature, 2001.

§114.610. Definitions.

Unless specifically defined in the TCAA or in the rules of the commission, the terms used in this subchapter have the meanings commonly ascribed to them in the field of air pollution control. In addition

to the terms which are defined by the TCAA, §§3.2, 101.1, and 114.1 of this title (relating to Definitions), the following words and terms, when used in this division shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Bin or emissions bin** - A set of emissions standards applicable to exhaust pollutants measured on the Federal Test Procedure according to Title 40 Code of Federal Regulations, §86.1811-04.

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

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

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

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

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

§114.611. Applicability.

(a) The provisions of §§114.610, 114.612, 114.616, 114.618, and 114.619 of this title (relating to Definitions; Light-Duty Motor Vehicle Purchase or Lease Incentive Requirements; Manufacturer's Report; Vehicle Emissions Information Brochure; and Light-Duty Motor Vehicle Purchase or Lease Incentive Schedule) apply statewide subject to the availability of funding.

(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 purchase or lease of a new light-duty motor vehicle certified by the EPA to an emissions standard at least as stringent as those specified in §114.619 of this title (relating to Light-Duty Motor Vehicle Purchase or Lease Incentive Schedule) shall be eligible for the incentive specified in §114.619 of this title if listed under §114.616 of this title (relating to Manufacturer's Report) and the purchaser or lessee agrees to register the vehicle in this state and meets the requirements of this section.

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

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

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

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

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

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

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

§114.616. Manufacturer's Report.

(a) A manufacturer of light-duty motor vehicles sold in the state shall provide to the executive director, or his designee, a list of the new light-duty motor vehicle models that the manufacturer intends to sell in this state during that model year that are certified by the EPA to meet the incentive emissions standards listed under §114.619 of this title (relating to Light-Duty Motor Vehicle Purchase or Lease Incentive Schedule). The list must contain for each light-duty motor vehicle listed, at a minimum:

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

(2) the test group, evaporative/refueling family, engine displacement, exhaust emission test fuel type, applicable emission standards, and certificate number as listed on the Certificate of Conformity issued by the EPA.

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

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

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

§114.618. Vehicle Emissions Information Brochure.

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

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

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

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

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

(5) the web address of the commission's Texas Emission Reduction Plan (TERP) program and specific information that the commission's website will include a complete list of all eligible light-duty motor vehicles that manufacturers intend to sell in this state.

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

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

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

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

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

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

- (1) Bin 4 is eligible for \$1,250;
- (2) Bin 3 is eligible for \$2,225;
- (3) Bin 2 is eligible for \$3,750; and
- (4) Bin 1 is eligible for \$5,000.