The Texas Natural Resource Conservation Commission (commission) proposes new §114.620, Definitions; §114.621, Applicability; §114.622, Incentive Program Requirements; §114.626, Monitoring, Recordkeeping, and Reporting Requirements; and §114.629, Affected Counties and Implementation Schedule in new Division 3, Diesel Emissions Reduction Incentive Program for On-Road and Non-Road Vehicles. These new sections and new division are being proposed in new Subchapter K, Mobile Source Incentive Programs, of Chapter 114 as part of the implementation of Senate Bill (SB) 5 (relating to the Texas Emission Reduction Plan), Acts of the 77th Texas Legislature, 2001.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The 77th Legislature adopted SB 5 establishing the Texas Emission Reduction Plan (TERP) which provides financial incentives for reducing emissions of on-road and non-road motor vehicles and equipment, grants for the development of new emission control technology, new building energy efficiency standards, and research and development programs. The program is funded through surcharges and fees established in the bill. Senate Bill 5 also requires that the commission delete the operating restriction on construction equipment rules and the Tier 2/Tier 3 accelerated purchase rules on construction equipment from the Dallas/Fort Worth and Houston/Galveston state implementation plans (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SB 5 programs are estimated to achieve reductions in excess of the reductions expected from the rules that are being repealed.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 proposed rules would establish an incentive program for the repower, retrofit or add-on, use of a qualifying fuel, and the development and demonstration of new technologies in engines used in on-road and non-road diesel equipment that would reduce nitrogen oxides (NO_x) emissions not otherwise required by federal requirements. The proposed rules also establish incentives for the purchase or lease of new non-road equipment and for the implementation of infrastructure projects. The implementation and administration of the incentive programs will be performed by the commission and implemented through establishment of guidelines and criteria for eligible projects. The incentive programs established by these rules are available for use in the nonattainment areas of Texas and other affected areas of the state.

SECTION-BY-SECTION DISCUSSION

The proposed new Subchapter K includes a proposed new Division 3 which establishes a proposed new Diesel Emissions Reduction Incentive Program for On-Road and Non-Road Vehicles with rules found in the proposed new §§114.620 - 114.622, 114.626, and 114.629. Except where noted in the discussion that follows, the requirements in the proposed new rules are taken from requirements in SB 5. Also, criteria and requirements will be further refined through the guidelines and criteria that will be developed as part of the incentive program, as provided for in SB 5.

The proposed new §114.620 contains definitions applicable to the diesel emission reduction incentive program for on-road and non-road vehicles. These definitions include: cost-effectiveness, incremental cost, motor vehicle, non-road diesel, non-road engine, on-road diesel, qualifying fuel, repower, and retrofit.

The proposed new §114.621 establishes the applicability for persons applying for grants from the diesel emission reduction incentive program for on-road and non-road vehicles program. This provision will allow for potential future as well as current owners and operators to be eligible for grants from the program.

The proposed new §114.622 establishes the eligibility requirements for the incentive program. The proposed new §114.622 lists projects that are eligible for funding which include the following: purchase or lease of non-road diesels; emissions-reducing retrofit projects for on-road or non-road diesels; emissions-reducing repower projects for on-road or non-road diesels; purchase and use of emissions-reducing add-on equipment for on-road or non-road diesels; development and demonstration of practical, low-emissions retrofit technologies, repower options, and advanced technologies for on-road or non-road diesels with lower NO_x emissions; use of qualifying fuels; implementation of infrastructure projects; and other projects with the potential to reduce NO_x emissions from diesel engines. The proposed new §114.622 also requires that, if a project is funded under this incentive program, at least 75% vehicle miles traveled or hours of operation must take place in a nonattainment or affected county for five years following the grant. It is important that reductions be achieved for purposes of demonstrating attainment by 2007. The agency will develop guidance accordingly. Furthermore, the proposed new §114.622 also requires that: old equipment or engines that are replaced must be recycled, scrapped, or otherwise removed from all affected counties; grants can only be awarded to projects that have a cost-effectiveness not exceeding $13,000 per ton of NO_x emissions reduced; projects funded with this grant money cannot be used to generate emission credits; and projects are not eligible if required by a state or federal law, rule or regulation, memorandum of agreement, or other legally binding document. Additionally, a proposed retrofit, repower, or add-on equipment project must achieve a reduction of at least 30%. Finally, if a grant recipient fails to meet the terms of a project grant or the conditions of this division, the grant recipient may be required to return some or all of the funding. All of these requirements are found in SB 5 except the requirement that old equipment or engines must be recycled, scrapped, or removed from the affected counties. The commission has included this requirement so that these older equipment and engines are truly replaced with newer ones in order to ensure that all of the estimated emission reductions are actually achieved.

The proposed new §114.626 establishes that grant recipients must meet the reporting requirements of the grant and that reports will not be required more than once in a 12-month period. General reporting requirements may be detailed in guidance that is being developed for this incentive program in addition to project-specific reporting requirements which may be included in the grant terms.

The proposed new §114.629 lists the affected counties in which this program applies. The proposed new §114.629 also establishes that equipment purchased before September 1, 2001 are not eligible for funding. This list of counties includes the nonattainment area counties of Texas as well as other counties which could potentially become nonattainment counties in the near future.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, determined that for the first five-year period the proposed amendments are in effect, there will be significant administrative costs to the commission to implement provisions in this rulemaking. There may be potential cost savings to units of state and local government that elect to participate in the voluntary incentive programs that will be implemented by the proposed amendments.

The proposed amendments are intended to implement certain provisions of SB 5. Specifically, the bill directed the commission to implement a diesel emissions reduction incentive program to award grants to help fund eligible emissions reduction projects. Eligible projects include: the replacement of existing on-road and non-road diesel engines with cleaner-running engines (known as repower); the retrofitting or adding-on new or different equipment to an existing on-road and non-road diesel engine to reduce emissions; the use of a qualifying fuel; and the development and demonstration of new technologies in engines used in on-road and non-road diesel equipment that would reduce NO_x emissions not otherwise required by federal requirements; the purchase or lease of new non-road equipment; the implementation of infrastructure projects; and other projects with the potential to reduce NO_x emissions from diesel engines.

Incentives for proposed projects would be available in the following counties: Bastrop, Bexar, Brazoria, Caldwell, Chambers, Collin, Comal, Dallas, Denton, El Paso, Ellis, Fort Bend, Galveston, Gregg, Guadalupe, Harris, Hardin, Harrison, Hays, Jefferson, Johnson, Kaufman, Liberty, Montgomery, Nueces, Orange, Parker, Rockwall, Rusk, San Patricio, Smith, Tarrant, Travis, Upshur, Victoria, Waller, Williamson, and Wilson.

To be eligible for a grant, the cost-effectiveness for the proposed project must not exceed $13,000 per ton of NO_x removed. For a proposed project, at least 75% of operations must occur within the affected counties for the first five years following approval of the grant. For projects that include replacement of equipment or engines, the old equipment or engines must be recycled, scrapped, or otherwise removed from all affected counties.

The commission has not identified a limit to the types of vehicles, equipment, or projects that would be eligible for incentives under the proposed amendments. Additionally, no limits have been set on the amount of funding to be granted for each request. The following listing of sample projects and resulting grants was derived from data provided by California's Carl Moyer program. This listing is for information purposes only. The commission does not have an estimate of the total number and amount per grant that will be awarded annually by the diesel emissions reduction incentive program.
Figure: 30 TAC Chapter 114 - Preamble

Figure: 30 TAC Chapter 114 - Preamble

Category	Project	Equipment	Baseline Cost	Reduced Emission Cost	Grant per Unit	Number of Units	Total Awarded Grants
On-road	Re-power	Waste Collection Truck	$6,000	$101,573	$49,000	1	$49,000
On-road	Re-power	Front Loader	$6,000	$92,363	$49,000	1	$49,000
On-road	Re-power	Roll-off refuse truck	$6,000	$106,581	$75,221	2	$150,442
On-road	Re-power	Tour Bus	$3,000	$58,000	$55,000	1	$55,000
On-road	Re-power	Transit Bus	$6,000	$106,581	$100,581	3	$301,743
On-road	Retrofit	Roll-off refuse truck	$6,500	$56,350	$11,182	1	$11,182
On-road	New	Campus Shuttle Bus	$212,000	$240,000	$28,000	3	$84,000
On-road	New	Delivery Truck	$34,000	$41,500	$7,500	12	$90,000
On-road	New	Electric Shuttle Bus	$135,000	$210,000	$46,600	10	$466,000
On-road	New	Resort Bus	$135,000	$191,000	$50,100	10	$501,000
On-road	New	Transit Bus	$241,843	$276,843	$35,000	14	$490,000
Marine Vessel	Re-power	Fishing Vessel	$12,000	$118,388	$106,388	1	$106,388
Marine Vessel	Re-power	Auxillary	$6,900	$16,900	$10,000	1	$10,000
Marine Vessel	Re-power	Marine Vessel	$4,000	$30,000	$15,000	1	$15,000

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

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

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

PUBLIC BENEFIT AND COSTS

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

The proposed amendments are intended to implement certain provisions of SB 5. Specifically, the bill directed the commission to implement a diesel emissions reduction incentive program to award grants to help fund eligible emission reduction projects. Eligible projects include: the replacement of existing on-road and non-road diesel engines with cleaner-running engines (known as repower); the retrofitting or adding-on new or different equipment to an existing on-road and non-road diesel engine to reduce emissions; the use of a qualifying fuel; the development and demonstration of new technologies in engines used in on-road and non-road diesel equipment that would reduce NO_x emissions not otherwise required by federal requirements; the purchase or lease of new non-road equipment; the implementation of infrastructure projects; and other projects with the potential to reduce NO_x emissions from diesel engines.

Incentives for proposed projects would be available in the following counties: Bastrop, Bexar, Brazoria, Caldwell, Chambers, Collin, Comal, Dallas, Denton, El Paso, Ellis, Fort Bend, Galveston, Gregg, Guadalupe, Harris, Hardin, Harrison, Hays, Jefferson, Johnson, Kaufman, Liberty, Montgomery, Nueces, Orange, Parker, Rockwall, Rusk, San Patricio, Smith, Tarrant, Travis, Upshur, Victoria, Waller, Williamson, and Wilson.

To be eligible for a grant, the cost-effectiveness for the proposed project must not exceed $13,000 per ton of NO_x removed. For a proposed project, at least 75% of operations must occur within the affected counties for the first five years following approval of the grant. For projects that include replacement of equipment or engines, the old equipment or engines must be recycled, scrapped, or otherwise removed from all affected counties.

The commission has not identified a limit to the types of vehicles, equipment, or projects that would be eligible for incentives under the proposed amendments. Additionally, no limits have been set on the amount of funding to be granted for each request. Examples of projects funded by California's Carl Moyer program include the repower of waste collection trucks, front loaders, tour and transit buses; the retrofitting of refuse trucks; the purchase of new shuttle buses, delivery trucks, and resort and transit buses; and the repower of marine vessels, fishing boats, and auxillary vessels. The grants awarded ranged from $11,000 to $100,000 per engine for the repower of on-road vehicles; $7,500 to $50,000 towards the purchase of a new on-road vehicles; and $4,000 to $12,000 per engine for the repower of marine vessels. These examples are for information purposes only. The commission does not have an estimate of the total number and amount per grant that will be awarded annually by the diesel emissions reduction incentive program.

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

The amount of incentives that can be provided annually is limited to what the commission is appropriated from the TERP fund. The commission was appropriated $103,616,840 for FY 2002, and $109,439,810 for FY 2003 to be used as grants and incentives for the diesel emissions reduction incentive program. This funding will be used to provide incentives for the funding of eligible emissions reduction projects described in this rulemaking, and to fund incentives and grants being proposed in concurrent rulemaking. The commission does not have an estimate as to the number and type of vehicles and equipment that will be purchased by individuals and businesses through the proposed incentive programs.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There will be no adverse fiscal implications for small and micro-businesses as a result of implementation of the proposed amendments. Senate Bill 5 directed the commission to implement a diesel emission reduction incentive program to award grants to help fund eligible emission reduction projects. Eligible projects include: the replacement of existing on-road and non-road diesel engines with cleaner-running engines; the retrofitting or adding-on new or different equipment to an existing on-road and non-road diesel engine to reduce emissions; the use of a qualifying fuel; the development and demonstration of new technologies in engines used in on-road and non-road diesel equipment that would reduce NO_x emissions not otherwise required by federal requirements; the purchase or lease of new non-road equipment; the implementation of infrastructure projects; and other projects with the potential to reduce NO_x emissions from diesel engines.

The commission has not identified a limit to the types of vehicles, equipment, or projects that would be eligible for incentives under the proposed amendments. Additionally, no limits have been set on the amount of funding to be granted for each request. Examples of projects funded by California's Carl Moyer program include the repower of waste collection trucks, front loaders, tour and transit buses; the retrofitting of refuse trucks; the purchase of new shuttle buses, delivery trucks, and resort and transit buses; and the repower of marine vessels, fishing boats, and auxillary vessels. The grants awarded ranged from $11,000 to $100,000 per engine for the repower of on-road vehicles; $7,500 to $50,000 towards the purchase of a new on-road vehicles; and $4,000 to $12,000 per engine for the repower of marine vessels. These examples are for information purposes only. The commission does not have an estimate of the total number and amount per grant that will be awarded annually by the diesel emissions reduction incentive program.

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

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

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a "major environmental rule" as defined in that statute. A major environmental rule is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy or a sector of the economy; productivity; competition; jobs; the environment; or the public health and safety of the state or a sector of the state. The proposed rules are intended to protect the environment or reduce risks to human health from environmental exposure to ozone by providing financial incentives for reducing diesel emissions through the repower, retrofit, or add-on; use of a qualifying fuel; and the development and demonstration of new technologies in engines used in on-road and non-road diesel equipment that would reduce NO_x emissions not otherwise required by federal requirements. The proposed rules also establish incentives for the purchase or lease of new non-road equipment and for the implementation of infrastructure projects. As such, the rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Additionally, Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1.) exceed a standard set by federal law, unless the rule is specifically required by state law; 2.) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3.) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4.)

adopt a rule solely under the general powers of the agency instead of under a specific state law. This proposed rulemaking action does not meet any of these four applicability requirements because the rulemaking is specifically required by SB 5.

TAKINGS IMPACT ASSESSMENT

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

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

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

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

ANNOUNCEMENT OF HEARINGS

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

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

SUBMITTAL OF COMMENTS

Written comments may be submitted to Ms. Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087; faxed to (512) 239-4808; or emailed to *terp@tnrcc.state.tx.us*. All comments should reference Rule Log Number 2001-025b-114-AI. Comments must be received by 5:00 p.m., August 14, 2001. The latest version of these proposed rules in Chapter114 are available on the commission's web site at *http://www.tnrcc.state.tx.us/oprd/sips/terp.html*. For further information, please contact Ken Gathright at (512) 239-0599 or Alan Henderson at (512) 239-1510.

STATUTORY AUTHORITY

These new sections are proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under TWC; §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of TWC and other laws of this state; and §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. These new sections are also proposed under Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of TCAA; §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and Chapter 386, which establishes the TERP. Finally, these proposed new sections are part of the implementation of SB 5, Acts of the 77th Legislature, 2001.

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

SUBCHAPTER K: MOBILE SOURCE INCENTIVE PROGRAMS

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

§§114.620 - 114.622, 114.626, 114.629

§114.620. 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; 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) **Cost-effectiveness** - The total dollar amount expended divided by the total number of tons of nitrogen oxides emissions reduction attributable to that expenditure.

(2) **Incremental cost** - The cost of an applicant's project less a baseline cost that would otherwise be incurred by an applicant in the normal course of business and may include added lease or fuel costs as well as additional capital costs.

(3) **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.

(4) Non-road diesel - a vehicle or piece of equipment, excluding a motor vehicle or on-road diesel, that is powered by a non-road engine, including: non-road non-recreational equipment and vehicles; construction equipment; locomotives; marine vessels; and other high-emitting diesel engine categories.

(5) Non-road engine - an internal combustion engine that is in or on a piece of equipment that is self-propelled or that propels itself and performs another function, excluding a vehicle that is used solely for competition, or a piece of equipment this is intended to be propelled while performing its function, or a piece of equipment designed to be and capable of being carried or moved from one location to another.

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

(7) Qualifying fuel - any liquid or gaseous fuel or additives registered or verified by the EPA that is ultimately dispensed into a motor vehicle or on-road or non-road diesel that provides reductions of nitrogen oxides emissions beyond reductions required by state or federal law.

(8) Repower - to replace an old engine powering an on-road or non-road diesel with:

(A) a new engine that emits at least 30% less than the nitrogen oxides (NO_x) emissions standard required by federal regulation for the current model year for that engine;

(B) an engine manufactured later than 1987 that emits at least 30% less than the NO_x emissions standard emitted by a new engine certified to the baseline NO_x emissions standard for that engine;

(C) an engine manufactured before 1988 that emits not more than 50% of the NO_x emissions standard emitted by a new engine certified to the baseline NO_x emissions standard for that engine; or

(D) electric motors, drives, or fuel cells.

(9) Retrofit - to equip an engine and fuel system with new emissions-reducing parts or technology verified by the EPA after manufacture of the original engine and fuel system.

§114.621. Applicability.

Any person that owns or leases, or intends to own or lease, one or more on-road or non-road diesels that operate, or will operate, within an affected county as defined by §114.629 of this title (relating to Affected Counties and Implementation Schedule) may apply for a grant under the diesel emissions reduction incentive program.

§114.622. Incentive Program Requirements.

(a) Eligible projects include:

(1) purchase or lease of non-road diesels;

(2) emissions-reducing retrofit projects for on-road or non-road diesels;

(3) emissions-reducing repower projects for on-road or non-road diesels;

(4) purchase and use of emissions-reducing add-on equipment for on-road or non-road diesels;

(5) development and demonstration of practical, low-emissions retrofit technologies, repower options, and advanced technologies for on-road or non-road diesels with lower nitrogen oxides (NO_x) emissions;

(6) use of qualifying fuel;

(7) implementation of infrastructure projects; and

(8) other projects that have the potential to reduce anticipated NO_x emissions from diesel engines.

(b) For a proposed project as listed in subsection (a) of this section, other than a project involving a marine vessel or engine, not less than 75% of vehicle miles traveled or hours of operation projected for the five years immediately following the award of a grant must be projected to take place in a nonattainment area or affected county of this state.

(c) For a proposed project that includes a replacement of equipment or a repower, the old equipment or engine must be recycled, scrapped, or otherwise removed from all affected counties as defined by §114.629 of this title (relating to Affected Counties and Implementation Schedule).

(d) To be eligible for a grant, the cost-effectiveness of a proposed project as listed in subsection (a)(1) - (7) of this section must not exceed $13,000 per ton of NO_x emissions.

(e) Projects funded with a grant from this program may not be used for credit under any state or federal emissions reduction credit averaging, banking, or trading program except as provided under Texas Health and Safety Code, §386.056.

(f) A proposed project as listed in subsection (a) of this section 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 project, regardless of the fact that the state implementation plan assumes that the change in equipment, vehicles, or operations will occur, if on the date the grant 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 of an on-road diesel or equipment required only by local law or regulation or by corporate or controlling board policy of a public or private entity.

(g) A proposed retrofit, repower, or add-on equipment project must achieve a reduction in NO_x emissions of at least 30% compared with the baseline emissions adopted by the commission for the relevant engine year and application.

(h) If a grant recipient fails to meet the terms of a project grant or the conditions of this division, the executive director can require that the grant recipient return some or all of the grant funding to the extent that emission reductions are not achieved or cannot be demonstrated.

§114.626. Monitoring, Recordkeeping, and Reporting Requirements.

Grant recipients must meet the reporting requirements of their grant which must occur no less frequently than annually.

§114.629. Affected Counties and Implementation Schedule.

(a) Applicable counties in the incentive program include: Bastrop, Bexar, Brazoria, Caldwell, Chambers, Collin, Comal, Dallas, Denton, El Paso, Ellis, Fort Bend, Galveston, Gregg, Guadalupe, Harris, Hardin, Harrison, Hays, Jefferson, Johnson, Kaufman, Liberty, Montgomery, Nueces, Orange, Parker, Rockwall, Rusk, San Patricio, Smith, Tarrant, Travis, Upshur, Victoria, Waller, Williamson, and Wilson.

(b) Equipment purchased before September 1, 2001 is not eligible for a grant under this program.