The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §§114.610 - 114.612, 114.616, and the repeal of §114.619.

Sections 114.612 and 114.616 are adopted *with changes* to the proposed text as published in the November 22, 2013, issue of the *Texas Register* (38 TexReg 8387). Amended §114.610 and §114.611 and the repeal of §114.619 are adopted *without changes* to the proposed text and will, therefore, not be republished.

Background and Summary of the Factual Basis for the Proposed Rules

The rulemaking implements requirements of Senate Bill (SB) 1727, 83rd Legislature, 2013.

The 77th Legislature, 2001, enacted SB 5 establishing the Texas Emissions Reduction Plan (TERP), which provides financial incentives for reducing emissions of on-road and non-road motor vehicles and equipment, grants for the development of new emission control technology, new building energy efficiency standards, and research and development programs. One of the programs that SB 5 established was the Light-Duty Motor Vehicle Purchase or Lease Incentive (LDPLI) program. SB 5 required the commission to establish a statewide incentive for the purchase or lease of light-duty motor vehicles that met emission standards more stringent than those required by federal requirements; however, implementation and administration of the LDPLI program were the responsibility of the Texas Comptroller of Public Accounts (TCPA). Although the commission adopted rules as published in the September 13, 2001, issue of the *Texas Register* (26 TexReg 6938) that established a statewide incentive for the purchase or lease of light-duty motor vehicles, the legislature never appropriated funds to the TCPA for LDPLI grants.

The 83rd Legislature, 2013, enacted SB 1727 authorizing changes to the LDPLI program listed in Texas Health and Safety Code (THSC), Chapter 386. The legislation transfers the responsibility of administering the LDPLI program from the TPCA to the commission, modifies the requirements for the types of vehicles that qualify for the LDPLI, establishes a maximum number of incentives available for the program, and establishes an incentive amount of $2,500 per eligible vehicle.

The adoption incorporates the changes under SB 1727.

Section by Section Discussion

§114.610, Definitions

Section 114.610 is amended by deleting the definition for "Bin or emissions bin" because the definition is no longer needed. Under the definition "Lessee," the reference to "light-motor vehicle" is corrected to "light-duty motor vehicle." In addition, the definition for a "New light-duty motor vehicle" is modified by removing the citation "Title 43, Texas

Administrative Code, §17.2 (relating to Definitions)" and replacing it with "Texas Transportation Code, §501.002" because the original citation is no longer valid. The definitions in this section are renumbered as needed.

§114.611, Applicability

Section 114.611 is amended by deleting references to §114.618 because this section no longer exists and to §114.619 because that section is repealed by this rulemaking.

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

Section 114.612 is amended to modify the requirements for the types of vehicles that may qualify for the LDPLI. As specified by SB 1727, the amended language states that only new light-duty motor vehicles that are powered by compressed natural gas, liquefied petroleum gas, or electric drives that meet specific established criteria qualify for the $2,500 incentive. The amended language in §114.612(a) includes specific vehicle criteria and requires the commission to post a list of vehicles that meet these requirements on the commission's Web site. Additional language was added to the proposed text in §114.612(a) to state that the commission will post the list of eligible vehicles by August 1 of each year. This deadline is in accordance with THSC, §386.156(a). Also, several editorial changes and corrections were made to the proposed text in §114.612(a), (a)(1) and (2), and (b)(2).

The revisions require that when a buyer or lessee purchases or leases a vehicle that qualifies for the LDPLI, the amount of time that a vehicle purchased or leased under the LDPLI must be registered and operated within the state, and the process for applying for the LDPLI. The revisions include the information and documentation that will be required as part of the LDPLI incentive application. The revisions also include the requirement that a dealership must keep a copy of purchase or lease verification documentation for a minimum of two years as required under THSC, §386.160(c). In addition, the revisions explain how an incentive for a lease will be prorated based on a four-year lease term. A one-year lease will qualify for 25% of the full incentive amount, a two-year lease will qualify for 50% of the full incentive amount, a three-year lease will qualify for 75% of the full incentive amount, and a four-year lease will qualify for the full incentive amount. This section is renumbered as needed.

§114.616, Manufacturer's Report

The current rule requires vehicle manufacturers to submit a report annually to the commission on vehicles they intend to sell in Texas that meet the requirements for the LDPLI. The revisions to §114.616 update references from §114.619 to §114.612 for the type of vehicles that may qualify for the LDPLI and are required to be included in the manufacturer's annual report. The revisions also modify the vehicle information that is required to be included in the manufacturer's report to reflect the LDPLI vehicle requirements. Language was added to proposed text in §114.616(a) to clarify that the list of vehicles referred to in the initial phrase of the first sentence is the list to be published by the commission on its Web site, as distinguished from the lists to be provided by each manufacturer.

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

Section 114.619 is repealed. This section no longer applies because the LDPLI schedule and accompanying incentive amounts have been replaced with specific vehicle requirements and a set incentive amount that is outlined in §114.612.

Final Regulatory Impact Determination

The commission reviewed the rulemaking in light of the regulatory impact 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" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Additionally, the rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The amendments are made in accordance with SB 1727, 83rd Legislature, 2013, which amended THSC, Chapter 386. The rules add or revise guidelines for a voluntary grant. Because the rules place no involuntary requirements on the regulated community, the rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or sector of the state. In addition, none of these amendments place additional financial burdens on the regulated community.

The commission's interpretation of the regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance." The legislature specifically identified Texas Government Code, §2001.0225, as falling under this standard. The commission has substantially complied with the requirements of Texas Government Code, §2001.0225.

The commission invited public comment on the draft regulatory impact analysis determination. No comments were received on the draft regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated this rulemaking and performed an analysis of whether the proposed rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The commission's assessment indicates Texas Government Code, Chapter 2007, does not apply.

Under Texas Government Code, §2007.002(5), taking means: (A) a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Article I, Texas Constitution; or (B) a governmental action that: (i) affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and (ii) is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

Promulgation and enforcement of the rulemaking would be neither a statutory nor a constitutional taking of private real property. The primary purpose of the rulemaking is to amend Chapter 114 in accordance with the amendments to THSC, Chapter 386 as a result of SB 1727, 83rd Legislature, 2013. The rules make revisions to a voluntary program and only affect motor vehicles that are not considered to be private real property. The rulemaking does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property, nor does it reduce the value of any private real property by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, these rules do not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the rulemaking and found the adoption is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to rules subject to the Texas Coastal Management Program (CMP), and will, therefore, require that goals and policies of the CMP be considered during the rulemaking process. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking for Chapter 114 does not impact any CMP goals or policies because it revises a voluntary incentive grant program and does not govern air pollution emissions.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding consistency with the CMP.

Public Comment

The commission held a public hearing on December 12, 2013. The comment period closed December 18, 2013. The commission received comments from Beneficial Results; NRG eVgo, part of NRG Energy, Inc. (eVgo); the United States Environmental Protection Agency Region 6 (EPA); General Motors Corporation (GM); the Regional Transportation Council of the North Central Texas Council of Governments (NCTCOG); Nissan North America, Inc. (Nissan); Plug-In Texas (PIT); Public Citizen; the Lone Star Chapter of the Sierra Club (Sierra Club); VNG.co (VNG); and two individuals.

Beneficial Results and Public Citizen commented in support of the proposed rulemaking. eVgo, EPA, GM, NCTCOG, Nissan, PIT, Sierra Club, VNG, and one individual commented in support of the proposed rulemaking with recommended changes. One individual provided recommendations for implementation of the rules.

Response to Comments

EPA expressed appreciation for the efforts of the commission to continually improve the control of air pollution from motor vehicles and to provide for greater flexibility in funding projects. EPA commented that it continues to applaud the commission's efforts to continually improve the state implementation plan (SIP) and offered support during the rule revision process.

GM expressed appreciation for the undertaking before the commission to implement the legislation as part of the TERP.

Nissan commented in support of the rulemaking with recommended changes. Nissan explained that it continues to make long-term investments in a wide range of alternative fuel technologies that would complement this program and that it has been a leader in zero-emission technologies since 2010 with its mass market all-electric Nissan LEAF. Nissan commented that public policies like these are critical in supporting new breakthroughs and ongoing deployment and that this program will play an important role in expanding the state's leadership in promoting alternative fuel technologies. Nissan expressed appreciation for efforts to implement the program in a timely manner and that by creating a live program more quickly, it will help avoid creating a large class of potential buyers who might defer vehicle purchases.

eVgo commented in support of the rulemaking with modifications that will promote consumer adoption of eligible light-duty vehicles. eVgo expressed concern that public knowledge and promotion of an incentive program has chilled purchases of qualified light-duty vehicles as consumers wait for incentive funds to become available. eVgo commented that an expedited implementation schedule would reduce the motivation for consumers to wait for an incentive and would accelerate the environmental benefits from adoption of eligible vehicles. eVgo expressed support for a prompt rule adoption and program implementation schedule.

PIT commented that it appreciates the undertaking before the commission to implement the legislation and other various new and expanded TERP programs. Sierra Club commented that it is generally supportive of the rulemaking with small changes. Beneficial Results and Public Citizen commented in support of the program.

VNG commented that it applauds the State of Texas for offering an incentive for light-duty natural gas vehicles. VNG explained that while much of the focus of the TERP has been on converting heavy-duty fleets to natural gas, there is a growing opportunity to develop a market for natural gas in light-duty vehicles, which account for 75% of on-road fuel use nationwide. VNG stated that offering effective incentives for light-duty natural gas vehicles could help catalyze this market and make Texas a leader in making natural gas a fuel for all drivers, not just the bus and truck fleet operators.

The commission appreciates the support expressed for the program. No changes to the proposed text were made in response to these comments.

Sierra Club commented that since manufacturers are required to submit a list of eligible vehicles to the commission by July 1 of each year, the commission should make that list available on its Web site, as specified under §114.612(a), by a specific date. Sierra Club suggested that the commission make the list available by August 1 of each year.

In accordance with THSC, §386.156(a), the commission is already required to publish the list of eligible vehicles on August 1 of each year. However, the commission agrees that it would help to include the August 1 deadline in the rules for clarity. A change to §114.612(a) was made from proposal to add the phrase "by August 1 of each year" to the sentence referring to the commission publishing the list of eligible vehicles on its Web site. That

sentence now reads "The commission will publish on its Web site by August 1 of each year a list of the eligible vehicles..."

NCTCOG recommended that nitrogen oxides (NO_X) emissions reductions be maintained as the primary focus of TERP funding. NCTCOG recommended that a requirement be added to §114.612(a) that in order to claim an incentive, the vehicle must be certified to reduce NO_X emissions as compared to the purchase of a typical new vehicle. NCTCOG commented that based on a survey of emission standards for model year 2012 vehicles, the significant majority of new vehicles are certified to the EPA Bin 5 emission standard. NCTCOG recommended that vehicles under the program should be certified to the EPA Bin 4 emission standard or a lower standard.

The commission does not agree with the recommendation to limit eligible vehicles to those vehicles certified to EPA Bin 4 or lower emission standards. The legislature removed the criteria related to EPA emission bins and established new criteria under THSC, §386.153, regarding the eligibility of vehicles for purchase or lease under the program. The rule changes implement this new criteria. No changes to the proposed text were made in response to this comment.

NCTCOG recommended clarification of the language in §114.612(a)(1)(B), which states that an eligible vehicle powered by natural gas or liquefied petroleum gas must have been originally manufactured to comply with or has been certified by an original manufacturer or final state vehicle manufacturer as complying with, or has been altered to comply with, federal motor vehicle safety standards, state emissions regulations, and any additional state regulations applicable to a vehicle powered by compressed natural gas or liquefied petroleum gas. NCTCOG expressed concern that this language potentially allows vehicles on which an aftermarket compressed natural gas or liquefied natural gas conversion has been performed to be included as eligible under the program. NCTCOG commented that the dealer and manufacturer requirements in the rulemaking suggest that the intent of the rulemaking is to provide incentives for original equipment manufacturer vehicles only. NCTCOG recommended that vehicles on which aftermarket conversions have been performed be disallowed as qualifying vehicles and that clarifying language be added to specify that vehicle conversions are not eligible to receive the incentive.

The commission does not agree with the concerns and recommendations made by NCTCOG. Under §114.612(a)(1), to be eligible a vehicle must be a new light-duty motor vehicle. Under the definition included in §114.610(5), a new light-duty motor vehicle must be a light-duty motor vehicle that has never been subject to first sale as defined under Texas Transportation Code,

§501.002. Under this definition, a vehicle may not have been previously registered or titled. The language in §114.612(a)(1)(B) accounts for the fact that the manufacture of a new light-duty motor vehicle powered by an engine fueled by compressed natural gas or liquefied petroleum gas may include the addition of the alternative fuel engine to a manufactured chassis or the conversion of a new vehicle originally manufactured with a conventionally fueled engine before the vehicle is delivered to the customer and the title and registration issued. The addition of the alternative fuel engine or conversion to an alternative fuel engine may be completed by the manufacturer of the vehicle chassis or by another entity after the original manufacture of the vehicle. In either case, the alternative fuel vehicle must be delivered as a new vehicle to the customer, meeting all required safety regulations, emission standards, and other state regulations applicable to new vehicles powered by compressed natural gas or liquefied petroleum gas. The rule language ensures that aftermarket conversion of a vehicle after the first sale to a customer would not be allowed. No changes to the proposed text were made as a result of this comment.

One individual commented regarding §114.612(b)(1), which requires that to be eligible for an incentive a vehicle must have been acquired after the date established by the commission in the application solicitation. The individual recommended that the commission make the rebates for an electric vehicle retroactive to the beginning of the fiscal year (FY). The individual stated that they specifically waited until after September 1, 2013, to purchase an electric vehicle because of the provision in THSC, §386.153(a)(7), that states that to be eligible for an incentive a vehicle must have been acquired on or after the beginning of this FY, September 1, 2013, or a later date established by the commission. The individual stated that the potential for a rebate influenced them to proceed with the purchase and they commented if the commission does not make the rebates retroactive then they will be excluded from getting a rebate even though they purchased the vehicle after the date established in the statute.

NCTCOG also commented on §114.612(b)(1) and recommended that the incentive be made available only to purchases or leases made on or after the date the commission releases the application solicitation. NCTCOG commented that the purpose of the program should be to achieve emissions reductions by increasing the rate of sale or lease of qualifying vehicles and that allowing the incentive to be applied retroactively would not further this goal.

Per §114.612(b)(1), the purchase or lease date will be included in the rebate solicitation documents. This language allows the commission to adjust the purchase or lease date requirements as needed, depending upon the demand for the program. As required under THSC, §386.153(a)(7), this date

may not be before September 1, 2013, but may be a later date. The commission will consider these comments when establishing a date in the solicitation documents. No changes to the proposed text were made as a result of these comments.

NCTCOG recommended a change to §114.612(b)(3) to require that a purchaser or lessee be required to commit to register and operate the vehicle in Texas for at least two years instead of the proposed one-year obligation. NCTCOG commented that a two-year obligation would increase the emissions reduction benefits gained through the program. NCTCOG also recommended that a verification mechanism be established to monitor compliance with the registration and use requirements, such as working with the Texas Department of Motor Vehicles to review registration records. NCTCOG also recommended that consequences for failure to comply be established and communicated. NCTCOG explained that a process for verification and enforcement of non-compliance would make the program consistent with other programs within the TERP and would help ensure that the emissions reductions are creditable to the SIP by being verifiable.

The commission does not agree with NCTCOG's recommendation to extend the obligation period from one year to two years. The one-year requirement is intended to ensure that the purchaser will register the vehicle in Texas

without imposing too many restrictions. Registration application documents will need to be submitted with the rebate application to ensure that the initial registration requirements are complied with. The commission also will have the option of checking registration records to confirm that vehicles have been registered in Texas for at least one year. The commission has determined that a longer commitment period would be a disincentive to participation and the administrative costs of implementing a more complex monitoring and enforcement process outweigh any benefits that might be gained from that process. Also, because this is a statewide program that is not linked to a specific nonattainment area and quantifying emissions reductions for the program would be very difficult with uncertain results, these rules are not being submitted to the EPA for approval as a revision to the SIP. Therefore, the enforceability criteria for SIP approval does not apply. No changes to the proposed text were made in response to this comment.

eVgo commented that it believes the program was designed specifically for individual consumers and not fleet purchases. eVgo recommended adding language to the eligibility criteria in §114.612(b) to initially limit fleet purchases to five eligible vehicles with the fleet purchase limitation to expire approximately three months prior to the expiration date of the program in August 2015 in order to allow fleets to utilize any remaining funds. eVgo commented that including this requirement would permit consumers to substantially benefit first, while allowing fleets the possibility to benefit from both this program and the Texas Clean Fleet Program under Chapter 114, Subchapter K, Division 2.

PIT recommended initially limiting incentives to fleets in the initial stages of the program and then limiting rebates to fleet operators to five or fewer rebates during the FY 2015 portion of the program. PIT commented that such a ban on fleet rebates in FY 2014 would permit the commission to review applications and determine an appropriate, limited approach for fleet incentives in FY 2015 should individual consumer demand be less than anticipated.

GM commented that it and others advocated for the LDPLI program with individual consumers in mind and that, while not explicit in the legislation, GM believes that the intent of the program is to stimulate the purchase or lease of eligible vehicles for individual Texas consumers, although the program is likely to attract fleet customers as well. GM commented that although it does not have a specific recommendation concerning how best to bifurcate the two classes of customers, it urged the commission to carefully consider how best to ensure that retail customers are not inadvertently excluded from the program because of the volume of potential of fleet purchasers.

The commission shares the commenters' desire that the program be accessible to individuals but has no information to indicate that there will be such a large demand for the funds by owners of large fleets so as to preclude a substantial number of individuals from participating in the program. In addition, an overriding concern by the commission is that restrictions not be put in place that would cause the program to be under-utilized or to make implementation of the program overly burdensome. This is especially the case because the program expires August 31, 2015. The commission will monitor the program as it is implemented. If it appears that large fleet owners are receiving a large percentage of the funds, the commission could consider ways to ensure greater participation by smaller fleets and individual users, such as allocating a portion of the funds specifically for those types of applicants. No changes to the proposed text were made as a result of these comments.

eVgo, GM, NCTCOG, Nissan, and PIT commented regarding the requirement under §114.612(f) that the incentive for a lease be prorated on a four-year lease term. Both Nissan and NRG expressed support for providing the maximum incentive possible for the purchase or lease of qualified vehicles. PIT commented that leased electric vehicles have proven popular in the marketplace with consumers. Nissan explained that the most popular Nissan LEAF lease term is generally three years. NCTCOG commented that based on industry feedback, it understands that four-year leases for new vehicles are rare.

eVgo, GM, Nissan, and PIT recommended providing a full $2,500 incentive based on a 36-month lease term since that duration more closely aligns with the majority of lease offers currently in the market. GM commented that a 36-month term will yield the greatest interest by potential buyers in the marketplace, thus maximizing the impact and benefits of the program.

NCTCOG recommended that the proration schedule allow for 100% of the full incentive amount for leases with three- and four-year durations and 50% for leases with two-year durations. NCTCOG also recommended that leases with a duration of less than two years not be allowed in order to maximum emissions reductions and maintain consistency with NCTCOG recommendation of a minimum two-year registration and operational commitment in Texas.

The commission does not agree with the recommendations to prorate the lease incentives on a three-year lease term. The requirement to prorate the incentive for leases using a four-year lease term is in accordance with THSC, §386.158(b). The commission does not have an option under the statutory provisions to use a 36-month lease term to prorate the incentive.

The commission also does not agree with NCTCOG's recommendations for requiring a minimum two-year lease term and for providing the maximum rebate amount for both a three-year and a four-year lease. The commission has determined that these recommendations would not be consistent with the statutory requirement to prorate lease incentives over a four-year lease term. No changes to the proposed text were made in response to these comments.

eVgo further recommended that if proration based on a 36-month lease term is not possible, the commission has significant latitude under THSC, §386.051(b-1), to create an ancillary program that could match the incremental difference between a program based on a four-year proration and a 36-month proration. eVgo recommended implementing such a program for the ease of marketing campaign communications and adoption of qualified vehicles.

This recommendation is outside of the scope of this rulemaking. Also, the legislature did not allocate funds for programs under this additional statutory provision and use of funds for programs under this provision would reduce the funding available to the other TERP incentive programs. No changes to the proposed text were made in response to this comment.

VNG commented that the current rule proposal was much less effective in developing the light-duty natural gas vehicle market than it could be because it fails to facilitate participation by Fleet Management Companies (FMCs). VNG explained that FMCs manage vehicle fleets on behalf of other parties, typically owning and leasing vehicles to clients and arranging for full life-cycle support of the vehicles, including maintenance, repair, refueling, and resale. VNG states that these companies are responsible for more than 50% of the light-duty vehicle fleet market, including the majority of fleets operated by large, high-profile, multi-state, and multi-national corporations. VNG further explained that these major commercial fleets are important early adopters of natural gas vehicles because their combination of high mileage with regular routes allows for appealing vehicle payback times and the large size of the fleets facilitates both purchase and production economies of scale. VNG commented that these fleets are also key targets for refueling infrastructure developers like VNG, which can rely on these fleets as the "anchor tenants" needed to justify investments in new fueling stations. VNG stated that for all of these reasons, large light-duty fleets and the FMCs those fleets rely upon are potentially powerful partners in the initial development of the broader light-duty natural gas vehicle market. VNG recommended that rebates be available to vehicle lessors instead of the lessees as stipulated in §114.612(f). VNG recommended that FMCs should have the option of receiving the entire rebate directly upon purchase of the vehicle since they will be paying the full cost of the vehicle up front before leasing the vehicle to the fleet user. The FMC would then be responsible for accounting for the lower vehicle price in its lease terms.

The commission does not agree with this recommendation. The program is intended to provide an incentive to the ultimate user of the vehicle to encourage them to choose a natural gas, propane, or electric vehicle over a conventional vehicle. Importantly, the commission has no control over what a leasing company charges to a lessee, regardless of the incentives the leasing company may have received for the original purchase of the vehicle. The commission would have no way to ensure that an incentive is provided to the lessee to encourage them to choose the natural gas, propane, or electric vehicle. In addition, if the rebate agreement is with the lessor and not the lessee, the commission would have no enforceable commitment by the lessee to register and operate the vehicle in Texas for not less than one year as provided for under §114.612(3). This commitment is needed to ensure that the environmental benefits of the use of the vehicle occur in the state. No changes to the proposed text were made in response to this comment.

PIT commented regarding the language in §114.612(g) that specifies that lease incentives will only be prorated based on full-year lease terms. PIT explained that 39-

month leases are also common in the marketplace. PIT suggested that lease incentives be prorated over months rather than years, if possible. PIT commented that this clarification will help ease consumer decision-making and assist in marketing of the program resulting in broader consumer adoption. eVgo commented that there are also significant numbers of 29- and 30-month leases in the market and recommended deleting the requirement for an incentive to be based on a full-year lease.

The commission does not agree with the recommendation to prorate lease incentives based on the number of months of the lease rather than on full-year lease terms. This program is intended to provide for a simple process to receive a rebate. The commission determined that using a monthly term would be make the determination of the eligible incentive amounts more complicated than is warranted for this program. No changes to the proposed text were made in response to these comments.

NCTCOG commented regarding the changes to §114.616(a)(2) recommending that the manufacturer's report continue to include the vehicle emissions Tier and Federal emissions Bin number in order to provide adequate information to be able to calculate emissions reductions achieved by the program.

The commission agrees that the emissions information for the vehicles will be important if emissions reductions are calculated for the program. The Certificate of Conformity issued by the EPA and the emissions information available from the EPA will provide the information needed to determine the emissions. Even if the information were provided on the manufacturer reports, the commission would still need to look up the Certificate of Conformity information to verify any information provided by the manufacturer. Therefore, the commission does not agree that the information on emissions Tier and Bin numbers should continue to be required on the manufacturer reports. No changes to the proposed text were made as a result of this comment.

EPA commented that §114.619 is not currently part of the SIP and that the repeal of §114.619 does not need to be submitted for SIP approval.

The commission agrees with this recommendation. The original rules for this program were not submitted to EPA for SIP approval because the commission determined that it would be difficult to satisfy all of the EPA criteria for accepting the program as an Economic Incentive Program, including ensuring that emissions reductions are surplus, quantifiable, enforceable, and permanent. The commission does not intend to submit

this rulemaking to EPA for approval as a SIP revision at this time, although a decision could be made in the future to submit the program for SIP approval. No changes were made to the proposed text as a result of this comment.

VNG commented that the rules currently being considered are designed with individuals purchasing or leasing single vehicles from retail car dealerships in mind and do not consider the longer-term, larger-volume planning horizons of large fleets and the FMCs. VNG explained that these entities plan their fleet cycle very closely over several months with considerations including duty cycle, vehicle usage, technology needs, capital and financing requirements, order timing, used vehicle sale timing, and other factors. VNG further explained that the purchase of vehicles requiring natural gas upfits may extend this timeline further, with recent anecdotal information indicating delays of up to four to six months between ordering and receiving vehicles. VNG expressed concern that a "first-come-first-served" rebate that provides no guarantee of availability over the FMC fleet cycle effectively makes this funding impossible to plan for and thus very difficult or impossible to utilize. VNG expressed an opinion that the individual market will be much smaller than demand from fleets in the near term and that the dispersed, uncertain demand represented by individuals is simply not sufficient to drive private investment in light-duty natural gas vehicle refueling infrastructure, which is a prerequisite to making natural gas vehicles appealing to a wider market. VNG recommended adding language to allow for a six-month reservation system, rather than just the informal system provided for under THSC, §386.161(c). Under the approach recommended by VNG, a portion of the program funds could be set aside for awards to FMCs that lease to commercial light-duty vehicle fleets. This funding would be available on a longer-term reservation system that would allow an FMC to reserve funds for a certain number of rebates, subject to a maximum number of rebate reservations per FMC at one time, and based on the FMC's expected customer demand for light-duty natural gas vehicles. The FMC would then have up to six months to identify specific customers, purchase vehicles, and sign lease agreements, after which any unused rebates would be returned to the pool for use by other applicants. VNG also recommended that the rules allow for legally binding reservations, rather than the informal, short-term assurances provided through the toll-free telephone number to be provided by the commission under THSC, §386.161(c). Reservations would be legally binding and the reserved funds would be held aside and made available to the FMC for the full six-month period.

The commission does not agree with the recommendations for an extended six-month rebate reservation system for FMCs and adding rule language to make the reservations legally binding. The statutory provisions under THSC, §386.160(c), direct the commission to establish a toll-free number for dealers and leasing agents to call to verify that incentives are available. These provisions do not go further to direct or authorize the commission to

establish a long-term reservation system, particularly reservations that are legally binding on the commission. The commission has determined that it would not be feasible to use a long-term, legally binding reservation system. The proposed approach would tie up limited funds with no guarantee that the reserved funds would be used. No changes to the proposed text were made in response to this comment.

eVgo, GM, Nissan, and PIT commented regarding the appropriated funding of approximately $3.8 million per FY over the 2014 - 2015 state fiscal biennium, for a total of approximately $7.6 million. eVgo commented that if more applications are received in FY 2014 than available funds for the first FY, the commission should put those additional applications at the front of the line for receiving rebates from the FY 2015 funds as soon as that program funding becomes available. GM and PIT recommended that there be no delineation between FY 2014 and FY 2015 in terms of the flow of funds to consumers should adequate funds be available. NRG commented that this approach would result in a clear and constant market signal promoting adoption of qualified vehicles and that providing constant access to program funds across FYs avoids a scenario in which a temporary funding gap could stop the program, resulting in a disincentive for consumers to purchase or lease qualified vehicles or otherwise confusing the consumer decision-making process. Nissan commented that by maximizing incentives for sales in the first FY of the program, it will help grow the market immediately and void the problem of buyers deferring purchases. GM and PIT suggested that providing consistent access to consumers to funding until it is exhausted over the program period will increase adoption of qualified vehicles and contribute to accomplishing the objectives of the TERP.

These comments are outside of the scope of this rulemaking. The commission agrees that the proposed approach might help avoid a temporary gap in the purchase or lease of eligible vehicles. Because the program will not begin until after the adoption of these rules, it is also possible that the FY 2014 funding will be sufficient to cover all rebate applications received before the end of the FY. The commission will consider these comments in making a decision on whether to continue accepting applications in FY 2014 for which funding may not be available until the beginning of FY 2015, if a decision becomes necessary. No changes to the proposed text were made in response to these comments.

NCTCOG commented in support of TERP and full funding through appropriation of all revenue collected under the program. NCTCOG encouraged the commission to request full funding of the program as budgets are prepared for the next biennium.

This comment is outside of the scope of this rulemaking. Decisions on appropriation levels are made by the Texas Legislature. Also, how the commission structures the biennial appropriation request is guided by direction from the Legislative Budget Board (LBB). The commission will continue to work with members of the legislature and the LBB in regards to the appropriation funding levels for the TERP programs. No changes to the proposed text were made in response to this comment.

One individual expressed support for the program with a recommendation that the commission expand the number of eligible vehicles and increase the incentive amount. The individual commented that making the transition to alternative fuels is crucial as the state tries to meet the EPA's national air quality standards.

The vehicle eligibility standards and incentive amounts are established by the legislature under THSC, §386.153. The commission does not have authority to expand the types of eligible vehicles or increase the incentive amount. No changes to the proposed text were made in response to this comment.

SUBCHAPTER K: MOBILE SOURCE INCENTIVE PROGRAMS

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

§§114.610 - 114.612, 114.616

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendments are also adopted under Texas Health and Safety Code (THSC), Texas Clean Air Act, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the THSC; THSC, §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; THSC, §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and THSC, Chapter 386, which establishes the Texas Emissions Reduction Plan program.

The amendments are adopted as part of the implementation of Senate Bill 1727, 83rd, Legislature, 2013, and the amendments to THSC, §§386.152, 386.153, 386.155, 386.156, 386.158, and 386.160 - 386.162.

§114.610. Definitions.

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

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

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

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

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

(5) New light-duty motor vehicle--A light-duty motor vehicle that has never been the subject of a first sale as defined under Texas Transportation Code, §501.002, either within this state or elsewhere.

§114.611. Applicability.

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

(b) A purchase or lease of a light-duty motor vehicle is not eligible if it is required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document. This subsection does not apply to:

(1) an otherwise qualified purchase or lease, regardless of the fact that the state implementation plan assumes that the change in vehicles will occur, if on the date

the incentive is awarded the change is not required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document; or

(2) the purchase or lease of a light-duty motor vehicle required only by local law or regulation or by corporate or controlling board policy of a public or private entity.

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

(a) The purchaser or lessee of a new light-duty motor vehicle powered by compressed natural gas, liquefied petroleum gas, or electric drive may be eligible for the incentive specified in subsection (b) of this section if the vehicle meets the requirements specified in paragraph (1) or (2) of this subsection and is listed on the list of eligible vehicles provided to the commission as specified under §114.616 of this title (relating to Manufacturer's Report). The commission will publish on its Web site by August 1 of each year a list of the eligible vehicles as provided to the commission as specified under §114.616 of this title. Eligible vehicles include:

(1) a new light-duty motor vehicle powered by compressed natural gas or liquefied petroleum gas that:

(A) has four wheels;

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

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

(D) is rated at not more than 9,600 pounds unloaded vehicle weight;

(E) has a dedicated or bi-fuel compressed natural gas or liquefied petroleum gas fuel system with a range of at least 125 miles as estimated, published, and updated by the United States Environmental Protection Agency ; and

(F) has, as applicable, a:

(i) compressed natural gas fuel system that complies with the 2013 (or newer) National Fire Protection Association (NFPA) 52 Vehicular Gaseous Fuel Systems Code and American National Standard for Basic Requirements for Compressed Natural Gas Vehicle Fuel Containers, commonly cited as "ANSI/CSA NGV2"; or

(ii) liquefied petroleum gas fuel system that complies with the 2011 (or newer) NFPA 58 Liquefied Petroleum Gas Code and Section VII of the 2013 (or newer) American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code; or

(2) a new light-duty motor vehicle powered by electric drive that:

(A) has four wheels;

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

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

(D) is rated at not more than 8,500 pounds unloaded vehicle weight;

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

(F) is propelled to a significant extent by an electric motor that draws electricity from a battery that:

(i) has a capacity of not less than four kilowatt hours; and

(ii) is capable of being recharged from an external source of electricity.

(b) A person who purchases or leases a new light-duty motor vehicle eligible for an incentive under subsection (a) of this section may be eligible to receive a $2,500 incentive if the purchaser or lessee meets the following criteria:

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

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

(3) signs a certification that the purchaser or lessee will register and operate the light-duty motor vehicle in this state for not less than one year.

(c) Incentives must be applied for using the forms developed and provided by the commission and must include the verification of purchase or lease by the dealer as prescribed under Texas Health and Safety Code, §386.160(c).

(d) A dealership selling or leasing a vehicle under the Light-Duty Motor Vehicle Purchase or Lease Incentive program is required to keep a copy of the purchase or lease verification documentation for a minimum of two years as required under Texas Health and Safety Code, §386.160(c).

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

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

(g) An incentive for the lease of an eligible new light-duty motor vehicle shall be prorated based on a four-year lease term. A person who leases an eligible new light-duty motor vehicle may qualify for 25% of the full incentive with a one-year lease, 50% of the full incentive with a two-year lease, 75% of the full incentive with a three-year lease, and 100% of the full incentive with a four-year lease. The incentive will only be prorated based on a full-year lease.

§114.616. Manufacturer's Report.

(a) In order for a manufacturer to ensure that its vehicles are included in the list of eligible vehicles to be published by the commission on its Web site, a manufacturer of light-duty motor vehicles sold in the state shall provide to the executive director, or his designee, a list of the new light-duty motor vehicle models that the manufacturer intends to sell in this state during that model year that are certified to meet the standards listed under §114.612(a) of this title (relating to Light-Duty Motor Vehicle Purchase or Lease Incentive Requirements). The list must contain for each light-duty motor vehicle listed, at a minimum:

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

(2) the unloaded vehicle weight, engine displacement, qualifying fuel type, gross vehicle weight rating, and certificate number as listed on the Certificate of Conformity issued by the United States Environmental Protection Agency.

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

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

(d) All new light-duty motor vehicle dealers and leasing agents statewide shall make copies of the list to be published by the commission on its Web site available to prospective purchasers or lessees of new light-duty motor vehicles.

SUBCHAPTER K: MOBILE SOURCE INCENTIVE PROGRAMS

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

§114.619

Statutory Authority

The repeal is adopted under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The repeal is also adopted under Texas Health and Safety Code (THSC), Texas Clean Air Act, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the THSC; THSC, §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; THSC, §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and THSC, Chapter 386, which establishes the Texas Emissions Reduction Plan.

The repeal is adopted as part of the implementation of Senate Bill 1727, 83rd, Legislature, 2013, and implements THSC, §386.153.

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