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

Background and Summary of the Factual Basis for the Proposed Rules

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

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

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

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

Section by Section Discussion

Subchapter K: Mobile Source Incentive Programs

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

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

§114.610, Definitions

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

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

In proposed §114.610(3), a "Light-duty motor vehicle" would be defined as a motor vehicle with a gross vehicle weight rating of 10,000 pounds or less. In proposed §114.610(4), a "Motor vehicle" would be defined as a self-propelled device designed for transporting persons or property on a public highway that is required to be registered under Texas Transportation Code, Chapter 502.

In proposed §114.610(5), a "New light-duty motor vehicle" would be defined as a light-duty motor vehicle that has never been the subject of a first retail sale. In proposed §114.610(6) "Retail sale" would have the meaning defined under Texas Occupations

Code, §2301.002. The definition of "retail sale" in the Texas Occupations Code means any sale of a motor vehicle other than: a) a sale in which the purchaser acquires a vehicle for resale; or b) a sale of a vehicle that is operated in accordance with Texas Transportation Code, §503.061. This section of the Transportation Code pertains to vehicles operated by a dealer with a dealer's license plate.

§114.611, Applicability

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

Criteria is proposed in §114.611(b) that a purchase or lease of a new light-duty motor vehicle is not eligible if it is required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document. Under the proposed criteria, these limitations would not apply if, on the date the incentive is awarded, the vehicle change is not required under the listed requirements. Also, the restrictions would not apply if the purchase or lease is required only by local law or regulation or by corporate or controlling board policy of a public or private entity.

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

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

Section 114.612(a) also includes proposed eligibility criteria for vehicles to receive an incentive. Under proposed §114.612(a)(1), a new light-duty motor vehicle powered by compressed natural gas or liquefied petroleum gas would need to have four wheels, and be originally manufactured to comply with and have been certified by an original equipment manufacturer or intermediate or final state vehicle manufacturer as complying with, or have been altered to comply with, federal motor vehicle safety standards, state emissions regulations, and any additional state regulations applicable to vehicles powered by compressed natural gas or liquefied petroleum gas. The vehicle would need to have been manufactured for use primarily on public streets, roads, and highways, and would need to have a dedicated or bi-fuel compressed natural gas or liquefied petroleum gas fuel system installed prior to first retail sale or installed in Texas within 500 miles of operation of the vehicle following first retail sale, and with a range of at least 125 miles as estimated, published, and updated by the United States Environmental Protection Agency.

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

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

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

Under the proposed criteria in §114.612(d), an eligible vehicle must have been acquired after the date established by the commission in the application solicitation. The purchaser or lessee must complete the application for the incentive, providing all required information, and sign a certification that the purchaser or lessee will register and operate the light-duty motor vehicle in this state for not less than one year. Proposed §114.612(e) would require that incentives be applied for using forms developed and provided by the commission and must include the verification of purchase or lease as may be required by the commission.

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

Proposed §114.612(h) would require that a lease of an eligible new light-duty motor vehicle be prorated based on a three-year term. A one-year lease may qualify for 33.3%

of the full incentive amount, a two-year lease may qualify for 66.6% of the full incentive amount, and a three-year lease may qualify for 100% of the full incentive amount. Under the proposed criteria, an incentive would only be prorated based on a full-year lease.

§114.613, Manufacturer's Report

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

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

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

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

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, analyst in the Chief Financial Officer Division, determined that for the first five-year period the proposed rulemaking is in effect, no significant fiscal implications are expected for the agency and no fiscal implications are expected for other state agencies or units of local government.

In 2017, the 85th Texas Legislature enacted SB 1731 that re-established the LDPLIP under THSC, Chapter 386, Subchapter D. A previous program had expired August 31, 2015. SB 1731 re-established the LDPLIP with additional changes from the previous program.

The proposed rulemaking would repeal rules for the previously authorized program and establish rules for the new program. Under the proposed rulemaking, a person who purchases or leases a new light-duty motor vehicle in Texas would be eligible for an incentive if the vehicle meets the eligibility requirements and is included on a list of eligible vehicles to be published on the agency's website. A "Light-duty motor vehicle" would be defined as a motor vehicle with a gross vehicle weight rating of 10,000 pounds or less.

The proposed rulemaking would include criteria for vehicles to receive an incentive, including criteria for vehicles powered by compressed natural gas or liquefied petroleum gas and electric vehicles powered by an electric motor that draws electricity from a hydrogen fuel cell or from a battery that has a capacity of not less than four kilowatts and is capable of being recharged from an external source of electricity.

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

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

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

The TCEQ would be required to administer the new program, including processing and approving applications, executing the incentive contracts, and processing payment of the incentives.

The agency proposes to hire two temporary employees for six months each fiscal biennium at a cost of $60,000 to assist in implementing and administering the new LDPLIP. The temporary employees would be hired the first fiscal year (FY) of the biennium, but in some cases, the six-month employment term could extend into the second FY. In those cases, a portion of the $60,000 cost for the two temporary staff could be incurred in the second FY.

The legislature did not authorize new full-time employees for implementing the new LDPLIP. However, the overall allocation for administrative costs to administer the Texas Emissions Reduction Plan (TERP) programs was increased to up to $8 million per

FY in FY 2018 and FY 2019. The costs for the temporary employees will be covered by the additional administrative funding.

All types of governmental entities that purchase or lease an eligible light-duty motor vehicle in Texas would be eligible to apply for this voluntary incentive program. Because applying for an incentive would be voluntary, it is not known how many governmental entities would apply in the future.

Public Benefits and Costs to Businesses and Individuals

Mr. Horvath also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be a potential increase in the use of alternative fuels and electricity with a beneficial impact on the state's air quality for types of pollutants where the use of alternative fuels or electricity would result in fewer emissions.

No fiscal implications are anticipated for businesses or individuals as a result of the implementation or administration of the proposed rules. The proposed rules relate to voluntary incentive programs. Only those entities that apply for and receive an incentive would be required to register the light-duty motor vehicle in Texas for at least one year. Because participation in the program would be voluntary, it is not known how many entities would apply.

Individuals that apply for and receive a grant will have a cost savings of up to $2,500 for the purchase or lease of an eligible electric-drive vehicle and up to $5,000 for the purchase or lease of an eligible vehicle powered by compressed natural gas or liquefied petroleum gas.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Rural Community Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rules do not adversely affect a rural community in a material way for the first five years that the proposed rules are in effect. These statewide rules will not affect rural communities in any way different from non-rural communities. These rules involve voluntary incentives for persons or entities that purchase or lease an eligible new light-duty motor vehicle. The proposed rulemaking would not affect rural communities.

Small and Micro-Business Impact Statement

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect. The proposed rules involve voluntary incentive programs. No direct impact on small or micro-businesses will occur as a result of the proposed rulemaking, except to the extent a small or micro-business purchases or leases an eligible light-duty motor vehicle.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules do not adversely affect small or micro-businesses for the first five-year period the proposed rules are in effect.

Government Growth Impact Statement Assessment

The commission prepared a Government Growth Impact Statement Assessment for this proposed rulemaking. The rulemaking will create a new incentive program. No employee positions are created or eliminated as a direct result of this rulemaking. The agency proposes to hire two temporary employees on a six-month basis each fiscal biennium to assist with implementing and administering the program. The proposed rulemaking would not directly require an increase or decrease in future legislative appropriations of the agency. Continued funding for the LDPLIP will be a legislative decision. The decision of the legislature to continue the funding would not be impacted by this rulemaking. The proposed rulemaking would not impact fees paid to the agency. The proposed rulemaking would create a new regulation to establish the criteria and procedures for the new incentive program. The proposed rulemaking repeals existing regulation for the previous incentive program that expired August 31, 2015, and replaces those rules with rules to implement the new program. Because the proposed rulemaking would implement a new incentive program, the proposed rulemaking would increase the number of individuals subject to the rule's applicability.

The rulemaking involves voluntary incentive programs for the purchase or lease of light-duty motor vehicles in Texas if the vehicle meets the eligibility requirements and is included on a list of eligible vehicles to be published on the agency's website. Any impact to the growth of government is a result of the passage of SB 1731 and not of this rulemaking. The rulemaking only proposes changes required to be implemented as a result of the passage of SB 1731.

During the first five years that the rules would be in effect, it is anticipated that this rulemaking will not positively or adversely impact the state's economy. The proposed rules involve voluntary incentive programs. The proposed rules could result in cost savings of up to $2,500 for the purchase or lease of an eligible electric-drive vehicle and up to $5,000 for the purchase or lease of an eligible vehicle powered by compressed natural gas or liquefied petroleum gas.

Draft Regulatory Impact Analysis Determination

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

The rules are proposed in accordance with SB 1731, 85th Texas Legislature, 2017, which amended THSC, Chapter 386 to add a new Subchapter D. The proposed rules add or revise guidelines for a voluntary grant. Because the proposed rules place no involuntary requirements on the regulated community, the proposed rules would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or sector of the state. In addition, none of these rules place additional financial burdens on the regulated community.

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

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

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

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

Promulgation and enforcement of the proposed rulemaking would be neither a statutory nor a constitutional taking of private real property. The primary purpose of the rulemaking is to repeal and replace rule language in Chapter 114, Subchapter K, Division 2, in accordance with new THSC, Chapter 386, Subchapter D, as a result of SB 1731, 85th Texas Legislature, 2017. The rules establish a voluntary program and only affect motor vehicles that are not considered to be private real property. The proposed rulemaking does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property, nor does it reduce the value of any private real property by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, these proposed rules would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

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

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on December 11, 2017, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at:

http://www1.tceq.texas.gov/rules/ecomments/. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2017-030-114-AI. The comment period closes on December 22, 2017. Copies of the proposed rulemaking can be obtained from the commission's website at *http://www.tceq.texas.gov/rules/propose_adopt.html*. For further information, please contact Steve Dayton, Implementation Grants Section, at (512) 239-6824.

SUBCHAPTER K: MOBILE SOURCE INCENTIVE PROGRAMS

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

[§§114.610 - 114.612, 114.616]

Statutory Authority

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

The repeal of the sections is proposed as part of the implementation of THSC, Chapter 386, Subchapter D, established by SB 1731, 85th Texas Legislature, 2017.

[§114.610. Definitions.]

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

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

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

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

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

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

[§114.611. Applicability.]

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

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

[(1) an otherwise qualified purchase or lease, regardless of the fact that the state implementation plan assumes that the change in vehicles will occur, if on the date the incentive is awarded the change is not required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document; or]

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

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

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

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

[(A) has four wheels;]

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

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

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

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

[(F) has, as applicable, a:]

[(i) compressed natural gas fuel system that complies with the 2013 (or newer) National Fire Protection Association (NFPA) 52 Vehicular Gaseous Fuel Systems Code and American National Standard for Basic Requirements for Compressed Natural Gas Vehicle Fuel Containers, commonly cited as "ANSI/CSA NGV2"; or] [(ii) liquefied petroleum gas fuel system that complies with the 2011 (or newer) NFPA 58 Liquefied Petroleum Gas Code and Section VII of the 2013 (or newer) American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code; or]

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

[(A) has four wheels;]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[§114.616. Manufacturer's Report.]

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

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

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

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

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

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

SUBCHAPTER K: MOBILE SOURCE INCENTIVE PROGRAMS

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

§§114.610 - 114.613

Statutory Authority

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

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

§114.610. Definitions.

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

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

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

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

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

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

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

§114.611. Applicability.

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

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

(1) an otherwise qualified purchase or lease, regardless of the fact that the state implementation plan assumes that the change in vehicles will occur, if on the date the incentive is awarded the change is not required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document; or

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

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

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

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

(A) has four wheels;

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

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

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

(E) has, as applicable, a:

(i) compressed natural gas fuel system that complies with the 2013 (or newer) National Fire Protection Association (NFPA) 52 Vehicular Gaseous Fuel Systems Code and American National Standard for Basic Requirements for

Compressed Natural Gas Vehicle Fuel Containers, commonly cited as "ANSI/CSA NGV2"; or

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

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

(A) has four wheels;

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

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

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

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

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

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

(b) A person who purchases or leases a new light-duty motor vehicle powered by compressed natural gas or liquefied petroleum gas eligible for an incentive under subsection (a) of this section may be eligible to receive a $5,000 incentive.

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

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

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

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

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

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

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

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

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

§114.613. Manufacturer's Report.

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

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

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

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

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

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

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

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

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

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