

**SUBCHAPTER K: MOBILE SOURCE INCENTIVE PROGRAMS**  
**DIVISION 1: ON-ROAD DIESEL VEHICLE PURCHASE OR LEASE INCENTIVE PROGRAM**

**§§114.600 - 114.602, 114.609**  
**Effective September 13, 2001**

**§114.600. Definitions.**

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

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

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

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

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

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

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

Adopted August 22, 2001

Effective September 13, 2001

**§114.601. Applicability.**

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

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

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

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

Adopted August 22, 2001

Effective September 13, 2001

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

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

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

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

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

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

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

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

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

Adopted August 22, 2001

Effective September 13, 2001

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

(a) The incentives provided under §114.602 of this title (relating to On-Road Diesel Vehicle Purchase or Lease Incentive Requirements) for new on-road diesel vehicles manufactured on or after January 1, 2001 until September 30, 2002 shall be based on the following emission standards for oxides of nitrogen (NO<sub>x</sub>) and accompanying reimbursement amounts:

(1) 2.5 grams per brake horsepower-hour (g/bhp-hr) of NO<sub>x</sub> or less is eligible for up to \$15,000; and

(2) 1.5 g/bhp-hr of NO<sub>x</sub> or less is eligible for up to \$25,000.

(b) The incentives provided under §114.602 of this title for new on-road diesel vehicles manufactured on or after October 1, 2002 until September 30, 2006 shall be based on the following emission standards for NO<sub>x</sub> and accompanying reimbursement amounts:

(1) 1.2 g/bhp-hr of NO<sub>x</sub> or less is eligible for up to \$15,000; and

(2) 0.5 g/bhp-hr of NO<sub>x</sub> or less is eligible for up to \$25,000.

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

Adopted August 22, 2001

Effective September 13, 2001

**DIVISION 2: LIGHT-DUTY MOTOR VEHICLE PURCHASE OR LEASE  
INCENTIVE PROGRAM  
§§114.610 - 114.612, 114.616  
Effective May 22, 2014**

**§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.

Adopted April 30, 2014

Effective May 22, 2014

**§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.

Adopted April 30, 2014

Effective May 22, 2014

**§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.

Adopted April 30, 2014

Effective May 22, 2014

**§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.

Adopted April 30, 2014

Effective May 22, 2014

**DIVISION 3: DIESEL EMISSIONS REDUCTION INCENTIVE PROGRAM FOR  
ON-ROAD AND NON-ROAD VEHICLES  
§§114.620 - 114.624, 114.626, 114.629  
Effective May 1, 2014**

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

(1) Cost-effectiveness--The total dollar amount expended divided by the total number of tons of nitrogen oxides emissions reduction attributable to that expenditure. In calculating cost-effectiveness, one-time grants of money at the beginning of a project shall be annualized using a time value of public funds or discount rate determined for each project by the commission, taking into account the interest rate on bonds, interest earned by state funds, and other factors the commission considers appropriate.

(2) Guidelines--*Texas Emissions Reduction Plan: Guidelines for Emissions Reduction Incentive Grants Program* (RG-388) adopted by the commission under Texas Health and Safety Code, §386.053, as amended.

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

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

(6) Non-road engine--An internal combustion engine that is in or on a piece of equipment that is self-propelled or that propels itself and performs another function, excluding a vehicle that is used solely for competition, or a piece of

equipment that is intended to be propelled while performing its function, or a piece of equipment designed to be and capable of being carried or moved from one location to another.

(7) On-road diesel--An on-road diesel-powered motor vehicle that has a gross vehicle weight rating of 8,500 pounds or more,

(8) Qualifying fuel--Any liquid or gaseous fuel or additives registered or verified by the United States Environmental Protection Agency that is ultimately dispensed into a motor vehicle or on-road or non-road diesel that provides reductions of nitrogen oxides emissions beyond reductions required by state or federal law.

(9) Repower--To replace an old engine powering an on-road or non-road diesel with a new engine; a used engine; a remanufactured engine; or electric motors, drives, or fuel cells.

(10) Retrofit--To equip an engine and fuel system with new emissions-reducing parts or technology verified by the United States Environmental Protection Agency after manufacture of the original engine and fuel system.

(11) Small business--A business owned by a person who:

(A) owns and operates not more than two vehicles, one of which is:

(i) an on-road diesel with a pre-1994 engine model; or

(ii) a non-road diesel with an engine with uncontrolled emissions; and

(B) has owned the on-road or non-road diesel for more than one year.

(12) Stationary engine--A machine used in non-mobile applications that converts fuel into mechanical motion, including turbines and other internal combustion devices.

Adopted February 24, 2010

Effective March 18, 2010

**§114.621. Applicability.**

Any person that owns or leases, or intends to own or lease, one or more on-road or non-road diesels that operate, or will operate, within counties listed in

§114.629 of this title (relating to Applicable Counties and Implementation Schedule) may apply for a grant under the diesel emissions reduction incentive program. Subject to the criteria included in the commission's *Texas Emissions Reduction Plan: Guidelines for Emissions Reduction Incentive Grants Program* (RG-388), a person other than the owner or lessee may also apply for and receive a grant.

Adopted January 28, 2004

Effective February 17, 2004

**§114.622. Incentive Program Requirements.**

(a) Eligible projects include:

- (1) purchase or lease of on-road and non-road diesels;
- (2) emissions-reducing retrofit projects for on-road or non-road diesels;
- (3) emissions-reducing repower projects for on-road or non-road diesels;
- (4) purchase and use of emissions-reducing add-on equipment for on-road or non-road diesels;
- (5) development and demonstration of practical, low-emissions retrofit technologies, repower options, and advanced technologies for on-road or non-road diesels with lower nitrogen oxides (NO<sub>x</sub>) emissions;
- (6) use of qualifying fuel;
- (7) implementation of infrastructure projects;
- (8) replacement of on-road and non-road diesels with newer on-road and non-road diesels; and
- (9) other projects that have the potential to reduce anticipated NO<sub>x</sub> emissions from diesel engines.

(b) For a proposed project as listed in subsection (a) of this section, other than a project involving a marine vessel or engine, a project involving non-road equipment used for natural gas recovery purposes, a project involving replacement of a motor vehicle, or a project involving the purchase or lease of a motor vehicle, not less than 75% of vehicle miles traveled or hours of operation projected for the five years immediately following the award of a grant must be projected to take

place in a nonattainment area or affected county of this state. The commission may also allow vehicle travel on highways and roadways, or portions of a highway or roadway, designated by the commission and located outside a nonattainment area or affected county to count towards the percentage of use requirement.

(c) For a proposed motor vehicle replacement, purchase, or lease project, the period used to determine the emissions reductions and cost-effectiveness of each replacement, purchase, or lease activity included in the project must extend for five years or more, or 400,000 miles, whichever occurs earlier. Not less than 75% of the vehicle miles traveled projected for the period used to determine the emissions reductions must be projected to take place in a nonattainment area or affected county of this state. The commission may also allow vehicle travel on highways and roadways, or portions of a highway or roadway, designated by the commission and located outside of a nonattainment county or affected county to count towards the percentage of use requirement.

(d) For a proposed project that includes a replacement of equipment or a repower, the old equipment or engine must be recycled or scrapped provided, however, that the executive director may allow permanent removal from the State of Texas in specific grants where the applicant has provided sufficient assurances that the old locomotive will not be returned to the State of Texas.

(e) For a proposed project to replace a motor vehicle, the vehicle and engine must be decommissioned by crushing the vehicle and engine, by making a hole in the engine block and permanently destroying the frame of the vehicle, or by another method approved by the executive director that permanently removes the vehicle and engine from operation in this state. For a proposed project to repower a motor vehicle, the engine being replaced must be decommissioned in a manner consistent with the requirements for decommissioning an engine as part of a vehicle replacement project. The executive director shall allow an applicant for a motor vehicle replacement or repower project to propose an alternative method for complying with the requirements of this subsection.

(f) For a project to replace a motor vehicle, the vehicle being replaced may have been owned, leased, or otherwise commercially financed by the applicant. The applicant must have a legal right to replace and recycle or scrap the vehicle and engine before a grant is awarded for that project.

(g) The commission may set cost-effectiveness limits as needed to ensure the best use of available funds. The commission may also base project selection decisions on additional measures to evaluate the effectiveness of projects in reducing NO<sub>x</sub> emissions in relation to the funds to be awarded.

(h) The executive director shall waive eligibility requirements established under subsections (b) - (f) of this section on a finding of good cause, which may include a waiver of any ownership and use requirements established for replacement of a motor vehicle for short lapses in registration or operation attributable to economic conditions, seasonal work, or other circumstances. In determining good cause and deciding whether to grant a waiver, the executive director shall ensure that the emissions reductions that will be attributed to the project will still be valid and, where applicable, meet the conditions for assignment for credit to the state implementation plan.

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

(j) A proposed project as listed in subsection (a) of this section is not eligible if it is required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document. This subsection does not apply to:

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

(2) the purchase of an on-road diesel or equipment required only by local law or regulation or by corporate or controlling board policy of a public or private entity.

(k) A proposed retrofit, repower, replacement, or add-on equipment project must achieve a reduction in NO<sub>x</sub> emissions to the level established in the commission's *Texas Emissions Reduction Plan: Guidelines for Emissions Reduction Incentive Grants Program* (RG-388) for that type of project compared with the baseline emissions adopted by the commission for the relevant engine year and application.

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

(m) Criteria established in the guidelines, including revisions to the commission's *Texas Emissions Reduction Plan: Guidelines for Emissions Reduction Incentive Grants Program* (RG-388), apply to the Texas Emissions Reduction Plan program. Notwithstanding the provisions of this chapter, as authorized under Texas

Health and Safety Code, §386.053(d), revisions to the guidelines may include, among other changes, adding additional pollutants; adding stationary engines or engines used in stationary applications; adding vehicles and equipment that use fuels other than diesel; or adjusting eligible program categories; as appropriate, to ensure that incentives established under this program achieve the maximum possible emission reductions.

Adopted April 9, 2014

Effective May 1, 2014

**§114.623. Small Business Incentives.**

(a) This section establishes a process to provide fast and simple access to grants for small businesses, in accordance with Texas Health and Safety Code, §386.116, as amended.

(b) The grant process for a small business may include:

- (1) a simplified grant application and other forms;
- (2) pre-approval or pre-authorization of certain types of grant purchases and expenses;
- (3) a simplified expense reimbursement process, which may include procedures for the grant recipient to assign grant payments directly to the vendor; and
- (4) promotional activities and instructional materials targeted at small businesses to encourage them to participate in the program and to inform them of how to access the grants.

(c) The commission's *Texas Emissions Reduction Plan: Guidelines for Emissions Reduction Incentive Grants Program* (RG-388) shall include details to implement methods identified in subsection (b) of this section.

(d) Other methods for providing fast and simple access to grants for small businesses may be developed through guidelines.

Adopted January 28, 2004

Effective February 17, 2004

**§114.624. Rebate Grant Process.**

(a) This section establishes a process to provide fast and simple access to rebate grants, in accordance with Texas Health and Safety Code, §386.117.

(b) The rebate grant process shall:

- (1) designate certain types of projects eligible for rebates;
- (2) project standardized oxides of nitrogen emissions reductions for each designated project type;
- (3) assign a standardized rebate amount for each designated project type;
- (4) allow for processing rebates on an ongoing first-come, first-served basis; and
- (5) consolidate, simplify, and reduce the administrative work for applicants and the commission associated with grant application, contracting, reimbursement, and reporting processes for designated project types.

(c) The commission may:

- (1) award rebate grants as a pilot project for a specific region or may award the grants statewide;
- (2) limit or expand the designated project types as necessary to further the goals of the program; and
- (3) administer the rebate grants or may designate another entity to administer the grants.

Adopted September 20, 2006

Effective October 12, 2006

#### **§114.626. Monitoring, Recordkeeping, and Reporting Requirements.**

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

Adopted August 22, 2001

Effective September 13, 2001

#### **§114.629. Affected Counties and Implementation Schedule.**

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

Waller, Williamson, Wilson, Wise, and any other county located within an area of Texas designated as a nonattainment area for ground-level ozone under Federal Clean Air Act, §107(d), as amended.

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

Adopted April 9, 2014

Effective May 1, 2014

**DIVISION 4: TEXAS CLEAN SCHOOL BUS PROGRAM**  
**§§114.640, 114.642, 114.644, 114.646, 114.648**  
**Effective April 17, 2014**

**§114.640. 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 that 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) Diesel exhaust--One or more of the air pollutants emitted from an engine by the combustion of diesel fuel, including particulate matter, nitrogen oxides, volatile organic compounds, air toxics, and carbon monoxide.

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

(3) Qualifying fuel--Includes any liquid or gaseous fuel or additive registered or verified by the United States Environmental Protection Agency, other than standard gasoline or diesel, that is ultimately dispensed into a school bus that provides reductions of emissions of particulate matter.

(4) Repower--To replace an old engine powering an on-road or non-road diesel with a new engine; a used engine; a remanufactured engine; or electric motors, drives, or fuel cells.

(5) Retrofit--To equip an engine and fuel system with new emissions-reducing parts or technology verified by the United States Environmental Protection Agency after manufacture of the original engine and fuel system.

Adopted March 26, 2014

Effective April 17, 2014

**§114.642. Applicability.**

(a) Any school district or charter school in this state that operates one or more diesel-fueled school buses or a transportation system provided by a countywide school district may apply for and receive a grant under the program.

(b) The commission may allow a regional planning commission, council of governments, or similar regional planning agency created under Local Government Code, Chapter 391, or a private nonprofit organization to apply for and receive a grant to improve the ability of the program to achieve its goals.

Adopted March 26, 2014

Effective April 17, 2014

**§114.644. Clean School Bus Program Requirements.**

(a) Eligible projects include:

- (1) diesel oxidation catalysts for school buses built before 1994;
- (2) diesel particulate filters for school buses built from 1994 to 1998;
- (3) the purchase and use of emission-reducing add-on equipment for school buses, including devices that reduce crankcase emissions;
- (4) the use of qualifying fuel; and
- (5) other technologies that the commission finds will bring about significant emissions reductions.

(b) The commission may limit funding under a particular funding round to certain areas of the state, types of applicants, and/or types of projects. The commission may place a priority on funding for projects conducted in areas that do not attain certain national ambient air quality standards.

(c) Prior to each funding period, the commission may establish priorities and other criteria for reductions in diesel exhaust emissions to be achieved by projects funded during that period, including designation of additional pollutants to be addressed. A proposed project must achieve a reduction in emissions of diesel exhaust compared with the baseline emissions according to the percentage reduction level and other priorities established by the commission. The commission may also establish maximum levels for the funding awarded in relation to the emission reductions projected to be achieved by a project, in order to maximize the use of available funds.

(d) A school bus proposed for retrofit must be used on a regular, daily route to and from a school and have at least five years of useful life remaining unless the applicant agrees to remove the retrofit device at the end of the life of the bus and reinstall the device on another bus.

(e) For a proposed project that includes a replacement of equipment or a repower, the old equipment or engine must be recycled, scrapped, or otherwise permanently removed from the State of Texas.

(f) An application for a grant under this program is only eligible if it is made on the form provided by the commission and contains the information required by the commission.

(g) A recipient of a grant under this division shall use the grant to pay incremental costs of the project for which the grant is made, which may include the reasonable and necessary expenses incurred for the labor needed to install emissions-reducing equipment. The recipient may not use the grant to pay the recipient's administrative expenses.

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

(i) A proposed project as listed in subsection (a) of this section is not eligible if it is required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document. This subsection does not apply to an otherwise qualified project, regardless of the fact that the state implementation plan assumes that the change in equipment, vehicles, or operations will occur, if on the date the grant is awarded the change is not required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document or the purchase of an on-road diesel or equipment required only by local law or regulation or by corporate or controlling board policy of a public or private entity.

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

Adopted March 26, 2014

Effective April 17, 2014

#### **§114.646. Monitoring, Recordkeeping, and Reporting Requirements.**

Grant recipients must meet the monitoring, recordkeeping, and reporting requirements of their grant. Reporting requirements must occur no less frequently than annually.

Adopted March 26, 2014

Effective April 17, 2014

**§114.648. Expiration.**

This division expires August 31, 2019, unless the program is extended or reauthorized by the Texas Legislature.

Adopted March 26, 2014

Effective April 17, 2014

**DIVISION 5: TEXAS CLEAN FLEET PROGRAM**  
**§§114.650 - 114.658**  
**Effective May 1, 2014**

**§114.650. 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 that 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 will have the following meanings, unless the context clearly indicates otherwise.

(1) Agricultural product transportation--The transportation of a raw agricultural product from the place of production using a heavy-duty on-road vehicle to:

(A) a nonattainment area;

(B) an affected county as defined under Texas Health and Safety Code (THSC), §386.001;

(C) a destination inside the clean transportation triangle established under THSC, §394.010; or

(D) a county adjacent to a county described by subparagraph (B) of this paragraph or that contains an area described by subparagraph (A) or (C) of this paragraph.

(2) Alternative fuel--A fuel, other than gasoline or diesel fuel. When used in this division, this definition is limited to the following: electricity, compressed natural gas, liquefied natural gas, hydrogen, propane, or a mixture of fuels containing at least 85% methanol by volume.

(3) Eligible entity--Any person or entity with a fleet of 75 or more vehicles that:

(A) are registered in Texas; and

(B) include at least 20 vehicles that are eligible for replacement.

(4) Golf cart--A motor vehicle designed by the manufacturer primarily for transporting persons on a golf course.

(5) Heavy-duty vehicle--A motor vehicle with a gross vehicle weight rating greater than 8,500 pounds and containing an engine certified to the United States Environmental Protection Agency's heavy-duty engine standards.

(6) Hybrid vehicle--A motor vehicle with at least two different energy converters and two different energy storage systems on board the vehicle for the purpose of propelling the vehicle.

(7) Light-duty motor vehicle--A motor vehicle with a gross vehicle weight rating of less than 10,000 pounds and certified to the United States Environmental Protection Agency's light-duty vehicle emission standards.

(8) 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.

(9) Neighborhood electric vehicle--A motor vehicle that:

(A) is originally manufactured to meet, and does meet, the equipment requirements and safety standards established for "low-speed vehicles" in Federal Motor Vehicle Safety Standard No. 500 (49 Code of Federal Regulations §571.500);

(B) is a slow-moving vehicle, as defined by Texas Transportation Code, §547.001 that is able to attain a speed of more than 20 miles per hour but not more than 25 miles per hour in one mile on a paved, level surface;

(C) is a four-wheeled motor vehicle;

(D) is powered by electricity or alternative power sources;

(E) has a gross vehicle weight rating of less than 3,000 pounds;  
and

(F) is not a golf cart.

(10) Program--The Texas Clean Fleet Program established under this division.

**§114.651. Applicability.**

(a) Any eligible entity that will replace 20 or more on-road diesel vehicles within a twelve-month period with qualifying vehicles may apply for a grant under the Texas Clean Fleet Program to offset the cost of replacing those vehicles with alternative fuel or hybrid vehicles.

(b) Notwithstanding subsection (a) of this section, an entity that submits a grant application for 20 or more qualifying vehicles is eligible to participate in the program even if the commission denies approval for one or more of the vehicles during the application process.

(c) The commission may allow a regional planning commission, council of governments, or similar regional planning agency created under Local Government Code, Chapter 391, or a private nonprofit organization to apply for and receive a grant to improve the ability of the program to achieve its goals.

Adopted March 28, 2012

Effective April 19, 2012

**§114.652. Qualifying Vehicles.**

(a) A qualifying vehicle is one that:

- (1) is certified to current federal emissions standards;
- (2) replaces a diesel-powered on-road vehicle of the same weight classification and use; and
- (3) is a hybrid vehicle or fueled by an alternative fuel.

(b) As a condition of receiving a grant the qualifying vehicle must be continuously owned, registered, and operated in Texas by the grant recipient until the earlier of the fifth anniversary of the date of reimbursement of the grant-funded expenses or until the date the vehicle has been in operation for 400,000 miles after the date of reimbursement.

(c) A vehicle is not a qualifying vehicle if it:

- (1) is a neighborhood electric vehicle;
- (2) has been used as a qualifying vehicle to qualify for a grant under this division for a previous reporting period or by another entity; or
- (3) has qualified for a similar grant or tax credit in another jurisdiction.

Adopted March 28, 2012

Effective April 19, 2012

**§114.653. Grant Eligibility.**

(a) To be eligible for a grant under the program a project must result in nitrogen oxide emission reductions of at least 25%, based on:

- (1) the baseline emission level set by the executive director; and
- (2) the certified emission rate of the new vehicle or engine.

(b) The vehicle being replaced must:

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

(2) satisfy any minimum average annual mileage or fuel usage requirements established by the executive director;

(3) satisfy any minimum percentage of annual usage requirements established by the executive director; and

(4) be in operating condition with at least two years of remaining useful life, as determined in accordance with criteria established by the executive director.

(c) At the discretion of the executive director, projects that result in a 25% reduction in other pollutants may be considered eligible for funding under this program.

(d) The executive director may establish additional criteria for purposes of prioritizing projects for selection. Such criteria may include, but are not limited to:

(1) nonattainment status of the primary location in which the eligible vehicles are used; or

(2) cost per ton benefits of the overall emissions being reduced.

(e) The executive director shall waive the requirements of subsection (b)(1) of this section on a finding of good cause, which may include a waiver for short lapses in registration or operation attributable to economic conditions, seasonal work, or other circumstances. In determining good cause and deciding whether to

grant a waiver, the executive director shall ensure that the emissions reductions that will be attributed to the project will still be valid and, where applicable, meet the conditions for assignment for credit to the state implementation plan.

(f) In establishing more specific requirements or additional criteria, as authorized under this section, for projects related to agricultural product transportation, the executive director shall use as a determining factor for eligibility for participation in the program established under this division the overall accumulative net reduction in nitrogen oxide emissions in a nonattainment area, an affected county, or the clean transportation triangle.

Adopted April 9, 2014

Effective May 1, 2014

**§114.654. Usage and Disposition.**

(a) Not less than 75% of the annual use of the qualifying vehicle, either mileage or fuel use as determined by the executive director, must occur in Texas.

(b) A vehicle or engine replaced under this program must be rendered permanently inoperable by crushing the vehicle, by making a hole in the engine block and permanently destroying the frame of the vehicle, or by another method approved by the executive director that permanently removes the vehicle from operation in this state. The executive director shall provide a means for an applicant to propose an alternative method for complying with the requirements of this subsection.

Adopted March 28, 2012

Effective April 19, 2012

**§114.655. Grant Restrictions.**

A recipient of a grant under this division shall use the grant to pay the costs of the project for which the grant is made, which may include the initial cost of the alternative fuel or hybrid vehicle. The recipient shall not use the grant to pay the recipient's administrative expenses.

Adopted February 24, 2010

Effective March 18, 2010

**§114.656. Eligible Grant Amounts.**

(a) The eligible grant amount for each heavy-duty on-road vehicle being replaced is up to 80%, as determined by the executive director, of the total cost for replacement.

(b) The eligible grant amount for each light-duty on-road vehicle being replaced is up to 80%, as determined by the executive director, of the total cost for replacement.

(c) The executive director may establish more specific standards for determining grant amounts within the maximum percentage of total costs established under this section consistent with the priorities for project selection, including consideration of the federal emission standards for different model years of heavy-duty engines and light-duty vehicles, decisions on pollutants of concern, and other factors that will help implement the project priorities.

(d) To be eligible for replacement, vehicles and engines imported into the United States from another country must have met all applicable emissions certification requirements for importation.

Adopted April 9, 2014

Effective May 1, 2014

**§114.657. Reporting Requirements.**

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

Adopted February 24, 2010

Effective March 18, 2010

**§114.658. Implementation Schedule.**

This division expires on August 31, 2017.

Adopted February 24, 2010

Effective March 18, 2010

**DIVISION 6: ALTERNATIVE FUELING FACILITIES PROGRAM**  
**§§114.660 - 114.662**  
**Effective April 19, 2012**

**§114.660. Purpose.**

(a) These rules establish the criteria that the executive director may use for prioritizing facilities eligible to receive grants under the Alternative Fueling Facilities Program, established under Texas Health and Safety Code, Chapter 393.

(b) The requirements of Texas Health and Safety Code, Chapter 393, apply to grants awarded under this program.

Adopted March 28, 2012

Effective April 19, 2012

**§114.661. Criteria for Prioritizing Facilities Eligible to Receive a Grant.**

(a) Prior to each grant application period, the executive director will establish specific priorities for funding projects under that application period. Criteria that may be considered in establishing the funding priorities include, but are not limited to:

(1) the need for reductions in nitrogen oxides (NO<sub>x</sub>) or other pollutants of concern in the area where the facility will be located in order to meet or maintain federal air quality standards;

(2) the type of alternative fuel and the vehicles or equipment that will use the fuel;

(3) the potential for the project to increase the use of the alternative fuel in nonattainment areas and Texas in general;

(4) the potential for the project to increase the use of alternative fuels and alternative fuel technologies produced, manufactured, or otherwise based in Texas;

(5) the need for the facility, based on the current and expected number of vehicles and equipment that would be served by the facility or the fuel made available as a result of the facility, and the availability of other sources of the alternative fuel in the area;

(6) the expected use of the facility for fueling vehicles funded under local, state, or federal incentive programs, including the programs implemented under the Texas Emissions Reduction Plan;

(7) the location of the proposed facility in relation to major highways and transportation routes and the ease of access to the facility for use by the public;

(8) the location of the proposed facility in relation to an area where increased vehicle traffic would not be expected to contribute to traffic congestion, reduce or negatively impact access to the area, or negatively impact the region's air quality or sensitive receptors;

(9) the percentage of costs of the facility to be paid by the applicant and other sources of funding;

(10) the commitment by the applicant to operating the facility over a period of time;

(11) consideration of technical and economic factors associated with a project; and

(12) the experience of the applicant in developing and operating the type of project proposed.

(b) The executive director may establish additional criteria for the award of a grant, including establishing certain operational, maintenance, and reporting requirements.

(c) The executive director may limit the grants under a grant application period according to the priorities established for that grant application period.

Adopted March 28, 2012

Effective April 19, 2012

**§114.662. Implementation Schedule.**

This division expires on August 31, 2018.

Adopted March 28, 2012

Effective April 19, 2012

**DIVISION 7: TEXAS NATURAL GAS VEHICLE GRANT PROGRAM**  
**§§114.670 - 114.672**  
**Effective April 19, 2012**

**§114.670. Purpose.**

(a) These rules establish the criteria that the executive director may use for prioritizing qualifying vehicles eligible to receive grants under the Texas Natural Gas Vehicle Grant Program, established under Texas Health and Safety Code, Chapter 394.

(b) The requirements of Texas Health and Safety Code, Chapter 394, apply to grants awarded under this program.

Adopted March 28, 2012

Effective April 19, 2012

**§114.671. Criteria for Prioritizing Vehicles Eligible to Receive a Grant.**

(a) Prior to each grant application period, the executive director will establish priorities for funding projects under that application period. Criteria that may be considered in establishing the funding priorities include, but are not limited to:

(1) the potential for different types of projects to achieve reductions in nitrogen oxides (NO<sub>x</sub>) and/or other pollutants of concern over the required period of use of the grant-funded vehicles, including consideration of the vehicle types, weight categories, and types of use with the greatest potential to achieve emissions reductions;

(2) the cost-effectiveness of potential projects, as determined by the cost per ton of expected reductions in NO<sub>x</sub> and/or other pollutants of concern;

(3) the potential for different types of projects to help increase the use of natural gas for transportation in Texas;

(4) the areas of use of the grant-funded vehicles, including consideration of the availability of fuel and fueling infrastructure, the need for vehicle fleets to support fueling infrastructure, and the need for emissions reductions in those areas in order to meet federal air quality standards;

(5) support for conversion of large regional vehicle fleets moving goods and materials along interstate highways connecting the cities of Houston, San Antonio, Dallas, and Fort Worth from gasoline or diesel fuel to natural gas;

(6) support for projects to reduce exposure of vulnerable populations to pollutants of concern, including conversion of school bus fleets and other fleets transporting children or the elderly from gasoline or diesel fuel to natural gas;

(7) support for conversion of public transportation fleets, such as school buses, transit buses, airport shuttle buses, and similar vehicle fleets from gasoline or diesel fuel to natural gas;

(8) support for conversion of public utility and service fleets, such as refuse vehicles, maintenance and utility vehicles, and similar fleets from gasoline or diesel fuel to natural gas;

(9) support for the use of natural gas and natural gas vehicles, engines, and associated technologies produced, manufactured, or otherwise based in Texas; and

(10) support for implementation of new and innovative natural gas vehicle and engine technologies.

(b) The executive director may limit the grants under a grant application period according to the priorities established for that grant application period.

(c) Not less than 60% of the total amount of grants awarded in a fiscal biennium must be awarded to motor vehicles with a gross vehicle weight rating of at least 33,001 pounds. However, this restriction does not apply if the commission does not receive enough grant applications to satisfy the percentage of funding requirement.

Adopted March 28, 2012

Effective April 19, 2012

**§114.672. Implementation Schedule.**

This division expires on August 31, 2017.

Adopted March 28, 2012

Effective April 19, 2012

**DIVISION 8: DRAYAGE TRUCK INCENTIVE PROGRAM**  
**§§114.680 - 114.682**  
**Effective August 25, 2016**

**§114.680. 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 that 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 will have the following meanings, unless the context clearly indicates otherwise.

(1) Cargo handling equipment--Any heavy-duty non-road, self-propelled vehicle or equipment used at a seaport or rail yard to lift or move cargo, such as containerized, bulk, or break-bulk goods. Equipment includes, but is not limited to, rubber-tired gantry cranes, yard trucks, top handlers, side handlers, reach stackers, forklifts, loaders, and aerial lifts.

(2) Drayage activities--The transport of cargo, such as containerized, bulk, or break-bulk goods.

(3) Drayage truck--A heavy-duty on-road or non-road vehicle used for drayage activities and that operates on or transgresses through a seaport or rail yard for the purpose of loading, unloading, or transporting cargo, including transporting empty containers and chassis.

(4) Non-road yard truck--A non-road mobile utility vehicle used to transport cargo containers with or without chassis; also known as a utility tractor rig, yard tractor, or terminal tractor.

(5) Rail yard--A rail facility where cargo is routinely transferred from drayage truck to train or vice-versa, including structures that are devoted to receiving, handling, holding, consolidating, and loading or delivery of rail-borne cargo.

(6) Seaport--Publically or privately owned property associated with the primary movement of cargo or materials from ocean-going vessels or barges to shore or vice-versa, including structures and property devoted to receiving, handling, holding, consolidating, and loading or delivery of waterborne shipments. A seaport also includes publically or privately owned property within a ship channel security district established under Texas Water Code, Chapter 68.

Adopted August 3, 2016

Effective August 25, 2016

**§114.681. Applicability.**

The provisions of §114.680 and §114.682 of this title (relating to Definitions and Eligible Vehicle Models) apply to the Drayage Truck Incentive Program established and implemented under Texas Health and Safety Code, Chapter 386, Subchapter D-1.

Adopted April 9, 2014

Effective May 1, 2014

**§114.682. Eligible Vehicle Models.**

(a) Models of drayage trucks eligible for purchase to replace an existing drayage truck under the program include:

- (1) a heavy-duty on-road vehicle with a gross vehicle weight rating (GVWR) over 26,000 pounds;
- (2) a non-road yard truck; and
- (3) other cargo handling equipment.

(b) Models of existing drayage trucks eligible for replacement under the program include:

- (1) a heavy-duty on-road vehicle with a GVWR over 26,000 pounds;
- (2) a non-road yard truck; and
- (3) other cargo handling equipment.

(c) To be eligible for purchase under the program a drayage truck must have an engine of model year 2010 or later as specified by the agency in the grant solicitation materials and the drayage truck being replaced must have an engine of model year 2006 or earlier.

(d) The executive director may place additional limits on vehicle models and engine model years eligible for purchase and replacement under the program for a particular grant round in order to improve the effectiveness and further the goals of the program.

Adopted August 3, 2016

Effective August 25, 2016