

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
**AGENDA ITEM REQUEST**  
for Rulemaking Adoption

**AGENDA REQUESTED:** June 13, 2012

**DATE OF REQUEST:** May 25, 2012

**INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED:** Bruce McAnally, (512) 239-2141

**CAPTION: Docket No. 2011-1790-RUL.** Consideration of the adoption of amendments to 30 Texas Administrative Code Chapter 114, Control of Air Pollution from Motor Vehicles, Section 114.7, Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program Definitions; and Section 114.64, LIRAP Requirements.

The adopted rulemaking will implement provisions of House Bill 3272, 82nd Legislature, 2011, Regular Session, by amending Section 114.7 and Section 114.64, revising requirements and guidelines of the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program. The proposed rules were published in the January 27, 2012, issue of the *Texas Register* (37 TexReg 297). (Michael Regan, Betsy Peticolas) (Rule Project No. 2011-062-114-EN).

Susana M. Hildebrand, P.E.  
\_\_\_\_\_  
**Chief Engineer**

David Brymer  
\_\_\_\_\_  
**Division Director**

Bruce McAnally  
\_\_\_\_\_  
**Agenda Coordinator**

**Copy to CCC Secretary? NO YES X**

# **Texas Commission on Environmental Quality**

## **Interoffice Memorandum**

**To:** Commissioners

**Date:** May 25, 2012

**Thru:** Bridget C. Bohac, Chief Clerk  
Zak Covar, Executive Director

**From:** Susana M. Hildebrand, P.E., Chief Engineer  
Chief Engineer's Office

**Docket No.:** 2011-1790-RUL

**Subject:** Commission Approval for Rulemaking Adoption  
Chapter 114, Control of Air Pollution from Motor Vehicles  
HB 3272: LIRAP Revisions  
Rule Project No. 2011-062-114-EN

### **Background and reason(s) for the rulemaking:**

The 77th Texas Legislature, 2001, Regular Session, enacted House Bill (HB) 2134 that authorized the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP), which provides financial assistance to low-income individuals for repairs, retrofits, or retirement of vehicles that fail an emissions inspection. The commission adopted rules on March 27, 2002, that provided the minimum guidelines and requirements for implementation of the LIRAP by participating counties. On December 5, 2007, the commission adopted rules implementing Senate Bill (SB) 12, 80th Texas Legislature, 2007, Regular Session, that modified certain guidelines and procedures for administering the LIRAP. The commission provides funds to participating counties to administer the program. The LIRAP includes Brazoria, Fort Bend, Galveston, Harris, and Montgomery Counties in the Houston-Galveston-Brazoria area; Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties in the Dallas-Fort Worth area; and Travis and Williamson Counties in the Austin-Round Rock area.

The 82nd Texas Legislature, 2011, Regular Session, enacted HB 3272 authorizing changes to the LIRAP. The adopted rulemaking amends 30 Texas Administrative Code Chapter 114, Control of Air Pollution from Motor Vehicles, §114.7, Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program Definitions; and §114.64, LIRAP Requirements, changing the requirements and guidelines of the LIRAP. The legislation became effective September 1, 2011. This bill was authored by Representatives Lon Burnam and Warren Chisum.

### **Scope of the rulemaking:**

#### **A.) Summary of what the rulemaking will do:**

The adopted rule will amend Chapter 114, Subchapter A, §114.7 to include definitions for electric and natural gas vehicles and will revise the current definitions of hybrid motor vehicle and replacement vehicle. The adopted rule defines electric vehicle as a motor

Re: Docket No. 2011-1790-RUL

vehicle that draws propulsion energy only from a rechargeable energy storage system. A natural gas vehicle is defined as a motor vehicle that uses only compressed natural gas or liquefied natural gas as fuel. The adopted rulemaking will revise the current defined term hybrid motor vehicle to hybrid vehicle and the definition of replacement vehicle to incorporate changes adopted to §114.64(c).

The adopted rule revisions will amend Chapter 114, Subchapter C, Division 2, as follows:

- §114.64(b)(3) by revising the length of time that a vehicle must be registered in a LIRAP participating county. The revised requirement will require that a vehicle be currently registered in and has been registered in a program county for at least 12 of the 15 months preceding the application for assistance;
- §114.64(c)(4)(C) by adding the requirement that eligible replacement vehicles have an odometer reading of not more than 70,000 miles;
- §114.64(c)(4)(D) by revising the current cost limitation for a replacement vehicle with the adopted amendment that will increase the cost limitation from \$25,000 to \$35,000 and \$45,000 for hybrid, electric, or natural gas vehicles or a vehicle certified as Tier 2 Bin 3 or cleaner; and
- §114.64(d)(1)(B)(iii) by modifying the current replacement vehicle compensation amount of \$3,500 for a replacement hybrid vehicle of the current model year or the previous model year. The adopted amendment will provide replacement assistance of \$3,500 for a replacement hybrid, electric, natural gas, and federal Tier 2 Bin 3 or cleaner vehicle of the current model year or the previous three model years.

**B.) Scope required by federal regulations or state statutes:**

The adopted amendments are required to incorporate HB 3272 enacted by the 82<sup>nd</sup> Texas Legislature, 2011, Regular Session.

**C.) Additional staff recommendations that are not required by federal rule or state statute:**

None

**Statutory authority:**

This rulemaking is adopted under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC, §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. These amendments are also adopted under Texas Health and Safety Code

Re: Docket No. 2011-1790-RUL

(THSC), §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; and §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. Finally, this rulemaking is adopted under THSC, §382.003, amending definitions for the LIRAP authorized under §382.209.

The adopted amendments implement HB 3272, 82nd Texas Legislature, Regular Session, 2011.

**Effect on the:**

**A.) Regulated community:**

The adopted rulemaking is not anticipated to have significant implications on the affected community, which includes participating counties, local program administrators, vehicle owners, automobile dealers, dismantling salvage yards, and recycling facilities. The rulemaking will potentially allow more vehicles to be eligible for retirement by providing flexibility in requiring that a vehicle be registered for 12 of the 15 months preceding application as opposed to the current requirement of the 12 months preceding application. The adopted rulemaking will expand the vehicles available as replacement vehicles by allowing electric and natural gas vehicles to be eligible replacements and by increasing from \$25,000 the total cost limits to \$35,000 for a replacement vehicle and \$45,000 for a replacement hybrid, electric, natural gas, or Tier 2 Bin 3 or cleaner vehicles. These vehicles will be eligible for assistance at the \$3,500 level for the current model and three model years old. Program counties and their subcontractors will not be affected because the adopted rulemaking does not change the application process or administrative responsibilities.

**B.) Public:**

The public is expected to benefit under the adopted rules since more vehicle owners will be eligible for assistance due to the vehicle registration requirement being revised from the current 12 months to 12 of 15 months preceding application.

The adopted rulemaking will expand the types of vehicles available as eligible replacement vehicles in the LIRAP. The public will also benefit from the adopted rulemaking by the potential for reduced emissions in participating counties due to the increased options of cleaner running vehicles available to replace older, high-emitting vehicles.

While the adopted rules increase the types of vehicles eligible for LIRAP replacement and funding, other legislative actions have reduced the amount of available LIRAP funding.

Re: Docket No. 2011-1790-RUL

**C.) Agency programs:**

The adopted rulemaking regarding the LIRAP will have no significant impact on the agency. The LIRAP is managed by the agency but administered and implemented in the local areas by the county program administrators and their subcontractors. The local governments and their subcontractors will not experience an adverse impact by this action. The adopted rulemaking will not add or cause any significant changes to the administrative process or requirements.

**Stakeholder meetings:**

Stakeholder meetings were not held.

**Public comment:**

TCEQ staff offered a public hearing in Austin on February 21, 2012. No member of the public wished to present comments, so staff did not open the public hearing. The comment period opened on January 27, 2012, and closed on February 27, 2012. The commission did not receive any written comments.

**Significant changes from proposal:**

None

**Potential controversial concerns and legislative interest:**

None are anticipated.

**Does this rulemaking affect any current policies or require development of new policies?**

The adopted rulemaking regarding the LIRAP will not affect any current policies or require development of new policies.

**What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?**

The current rules related to LIRAP requirements would be inconsistent with the requirements in HB 3272. HB 3272 did not provide flexibility in implementing the revised LIRAP requirements.

Commissioners

Page 5

May 25, 2012

Re: Docket No. 2011-1790-RUL

**Key points in the adoption rulemaking schedule:**

**Texas Register proposal publication date:** January 27, 2012

**Anticipated Texas Register publication date:** June 29, 2012

**Anticipated effective date:** July 5, 2012

**Six-month Texas Register filing deadline:** July 27, 2012

**Agency contacts:**

Michael Regan, Rule Project Manager, 239-2988, Air Quality Division

Betsy Peticolas, Staff Attorney, 239-1439

Bruce McAnally, Texas Register Coordinator, 239-2141

**Attachments**

HB 3272, 82nd Texas Legislature, 2011, Regular Session

cc: Chief Clerk, 2 copies  
Executive Director's Office  
Susana M. Hildebrand, P.E.  
Anne Idsal  
Curtis Seaton  
Ashley Morgan  
Office of General Counsel  
Michael Regan  
Bruce McAnally

The Texas Commission on Environmental Quality (TCEQ or commission) adopts amendments to §114.7 and §114.64 *without changes* to the proposed text as published in the January 27, 2012, issue of the *Texas Register* (37 TexReg 297).

### **Background and Summary of the Factual Basis for the Adopted Rules**

The commission adopts the revisions to implement requirements of House Bill (HB) 3272, 82nd Legislature, 2011, authored by Representatives Lon Burnam and Warren Chisum.

The 77th Legislature, 2001, enacted HB 2134, to assist low-income individuals with repairs, retrofits, or retirement of vehicles that fail emissions inspections. The commission adopted rules providing the minimum guidelines for counties to implement a low income vehicle repair assistance, retrofit, and accelerated vehicle retirement program (LIRAP) implementing HB 2134, on March 27, 2002, as published in the April 12, 2002, issue of the *Texas Register* (27 TexReg 3194). Only those counties that have implemented a vehicle inspection and maintenance (I/M) program are eligible for participation in the LIRAP. Under the LIRAP, monetary assistance is provided for emission-related repairs directly related to bringing the vehicle into compliance or for replacement assistance for a vehicle that has failed the required emissions test. Vehicle eligibility criteria, such as the vehicle having been registered for the past two years in the participating county, were developed and adopted by the commission. Emission-related

repairs covered by the LIRAP are required to be performed at a Texas Department of Public Safety (DPS)-recognized emissions repair facility. Participating counties may administer the LIRAP or contract with any appropriate entity or another county to administer the program. The 2001 law and rule stated that participating counties could expend no more than 5% of the funds received from the state for administrative costs. These rules provided for a minimum of \$30 and a maximum amount of \$600 for emission-related repairs, retrofit equipment, and installation; and a minimum of \$600 and a maximum amount of \$1,000 toward the purchase price of a replacement vehicle.

The 79th Legislature, 2005, enacted HB 1611, revising three key elements of the LIRAP. The legislation allowed for the LIRAP to be administered by the counties in accordance with Texas Government Code, Chapter 783, Uniform Grant and Contract Management, and allowed for programmatic costs such as call-center management, application oversight, invoice analysis, education, outreach, and advertising to be covered by LIRAP funds. The revision allowed for program administrators to utilize additional resources to attract and increase program participation. The legislation removed the requirement that capped administrative costs at 5% of the funds provided to a county to fund the LIRAP. Finally, the legislation changed the vehicle registration eligibility requirement from two years to 12 months. The revision increased participation by making assistance available to those vehicle owners who had lived in the county for at least one year. The commission adopted rule revisions implementing HB 1611 (79th Legislature), on April

12, 2006, as published in the April 28, 2006, issue of the *Texas Register* (31 TexReg 3575).

The 80th Legislature, 2007, enacted Senate Bill (SB) 12, revising the LIRAP requirements. The commission initiated rulemaking at the conclusion of the legislative session to implement the legislative requirements. The legislation provided enhanced eligibility and assistance guidelines, retirement and replacement guidelines, and revised LIRAP administration fund limits. The legislation limited allowable administrative cost for counties implementing LIRAP to 10% of the funds allocated by the commission and increased the LIRAP vehicle owner's income eligibility from 200% to 300% of the federal poverty level.

The legislation increased the assistance for the retirement and replacement of a vehicle from \$1,000 to \$3,000 for a car, current model year or up to three model years old; \$3,000 for a truck, current model year or up to two model years old; and \$3,500 for hybrid vehicle of current or previous model year. The legislation required that replacement vehicles must meet federal Tier 2, Bin 5 or cleaner emissions standards, have a gross vehicle weight rating of less than 10,000 pounds, and have a total purchase cost that did not exceed \$25,000.

The legislation amended LIRAP definitions to include the terms: destroy; motor vehicle;

hybrid motor vehicle; qualifying motor vehicle; emissions control equipment; dealer; automobile dealership; total cost; engine; and replacement vehicle. The rulemaking further added definitions for truck and car to clarify the vehicle model types that are associated with truck and car categories.

The legislation revised and enhanced capabilities for the retirement of older vehicles. Retired vehicle requirements included that: the vehicles be gasoline-powered and older than ten years; operated and registered in the implementing county for 12 months preceding the application; and had passed the DPS safety or safety and emissions inspection within 15 months of application. Owners of the vehicles to be retired were required to have an annual income of not more than 300% of the federal poverty level.

The legislation required that participating counties provide an electronic means for distributing vehicle repair and replacement funds and that the funds be transferred to a participating dealer no later than five business days after the date the county received proof of the sale and required administrative documents. The commission was required to develop a document to confirm that a person was eligible to purchase a replacement vehicle and the amount of money available to the purchaser through the program. The purchaser was required to have the document before the person entered into negotiations with a dealer for a replacement vehicle. The legislation required the commission to develop procedures for certifying that emissions control equipment and

engines of the retired vehicles were scrapped.

The legislation required that dismantlers participating in the program must be located in Texas. Dismantlers were required to scrap the vehicle's emissions control equipment, power train, and engine, and certify that those parts were scrapped and not resold into the marketplace. Dismantlers were also required to remove any mercury switches in accordance with state and federal law. The legislation required automobile dealerships participating in the program to be located in Texas and accept funds provided under the LIRAP as a down payment towards the purchase of a replacement vehicle. The commission worked in partnership with the steel industry and automobile dismantlers to ensure that vehicles were scrapped and that proof of scrapping is provided to the commission. The commission adopted requirements implementing SB 12, on December 5, 2007, as published in the December 21, 2007, issue of the *Texas Register* (32 TexReg 9711).

The 82nd Legislature, 2011, enacted HB 3272 authorizing changes to the LIRAP. The legislation modified certain guidelines and procedures for administering the LIRAP that required revisions to existing rules and added new or amended current program definitions to include replacement vehicle, hybrid vehicle, electric vehicle, and natural gas vehicle.

The legislation required the commission to revise the amount of replacement assistance provided to \$3,500 for a replacement vehicle of the current model year or the previous three model years if the vehicle is a hybrid vehicle, electric vehicle, natural gas vehicle, or is in a class or category of vehicles that has been certified to meet federal Tier 2, Bin 3 or cleaner Bin certification under 40 Code of Federal Regulations §86.1811-04, as published in the February 10, 2000, issue of the *Federal Register* (65 FR 6698).

The legislation amended criteria for replacement vehicles to require that replacement vehicles have an odometer reading of not more than 70,000 miles and a sales price of \$35,000 or less, for a car, current model year or up to three model years old; a sales price of \$35,000 or less, for a truck, current model year or up to two model years old; or a sales price of \$45,000 or less for a hybrid vehicle, electric vehicle, natural gas vehicle or a vehicle certified to meet or exceed federal Tier 2, Bin 3 or cleaner certification of the current model year or up to three model years old. The legislation amended the eligibility of a vehicle to be retired requiring that the vehicle be registered in a program county for at least 12 of the 15 months preceding the application.

## **Section by Section Discussion**

### Subchapter A, Definitions

#### *§114.7, Low Income Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program Definitions*

The adopted amendment to §114.7, includes adding and defining electric vehicle and natural gas vehicle and modifying the definition of a hybrid motor vehicle. An electric vehicle is defined as a motor vehicle that draws propulsion energy only from a rechargeable energy storage system. A natural gas vehicle is defined as a motor vehicle that uses only compressed natural gas or liquefied natural gas as fuel. Adopted §114.7 also revises the term hybrid motor vehicle to hybrid vehicle and the definition of replacement vehicle to incorporate changes to §114.64(c)(4). Other definitions in §114.7 are renumbered to make adjustments for the new definitions added to the section.

Subchapter C, Division 2, Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program

*§114.64, LIRAP Requirements*

The adopted amendment to §114.64(b)(3), relating to repair and retrofit assistance, revises the length of time that a vehicle must be registered in a LIRAP program county. Section 114.64(b)(3) still requires that a vehicle be currently registered in the program county. However, the time preceding the application for assistance that a vehicle must be registered in the program county is changed from at least 12 months to at least 12 of the 15 months.

The adopted amendment to §114.64(c)(4)(C), relating to accelerated vehicle retirement, adds the requirement that eligible replacement vehicles have an odometer reading of no

more than 70,000 miles. The adopted amendment to §114.64(c)(4)(D) changes the requirement that a replacement vehicle's total cost must not exceed \$25,000 to a replacement vehicle be a vehicle of which the total cost does not exceed \$35,000 or \$45,000 for hybrid, electric, or natural gas vehicles, or vehicles certified as Tier 2 Bin 3 or cleaner.

The commission also adopts the amendment to §114.64(d)(1)(B)(iii), relating to compensation, to modify the replacement vehicle compensation amount of \$3,500 for a replacement hybrid vehicle of the current model year or the previous model year.

Amended §114.64(d)(1)(B)(iii) allows replacement vehicle compensation of \$3,500 for hybrid, electric, natural gas, and federal Tier 2 Bin 3 or cleaner vehicles of the current model year or the previous three model years.

### **Final Regulatory Impact Determination**

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the adopted rulemaking does not meet the definition of a major environmental rule. Texas Government Code, §2001.0225 states that a major environmental rule is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, 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. Furthermore, while the adopted rulemaking does not constitute a major environmental rule, even if it did, a regulatory impact analysis is not be required because the adopted rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule. Texas Government Code, §2001.0225 applies only to a major environmental rule which: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds 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) adopts a rule solely under the general powers of the agency instead of under a specific state law. Specifically, the adopted rulemaking does not meet any of the four applicability criteria listed in Texas Government Code, §2001.0225 because: 1) the adopted rulemaking is not designed to exceed any relevant standard set by federal law; 2) parts of the adopted rulemaking are directly required by state law; 3) no contract or delegation agreement covers the topic that is the subject of this adopted rulemaking; and 4) the adopted rulemaking is authorized by specific sections of Texas Health and Safety Code (THSC), Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code (TWC), which are cited in the Statutory Authority section of this preamble.

The amendments are adopted in accordance with HB 3272, 82nd Legislature, 2011,

which amended THSC, Chapter 382. The adopted rules will add or revise guidelines for a voluntary grant. Because the adopted rules place no involuntary requirements on the regulated community, the adopted rules would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. In addition, none of these adopted amendments place additional financial burdens on the regulated community.

The commission's interpretation of the regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of substantial compliance as required in Texas Government Code, §2001.035. The legislature specifically identified Texas Government Code, §2001.0225 as falling under this standard. The commission has substantially complied with the requirements of Texas Government Code, §2001.0225.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No written comments on the draft regulatory impact analysis determination were submitted.

### **Takings Impact Assessment**

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

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

Promulgation and enforcement of the adopted rulemaking will be neither a statutory

nor a constitutional taking of private real property. The primary purpose of the rulemaking is to amend Chapter 114 in accordance with the amendments to THSC, Chapter 382 as a result of HB 3272, 82nd Legislature. The adopted rulemaking provides for revisions to a voluntary program and only affect motor vehicles and equipment that are not considered to be private real property. The adopted rulemaking does not affect a landowner's rights in private real property because this rulemaking will not burden, restrict, or limit the owner's right to property, nor will 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 adopted rules will not constitute a taking under Texas Government Code, Chapter 2007.

### **Consistency with the Coastal Management Program**

The commission reviewed the adopted rulemaking and found the adoption is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4), concerning rules subject to the Texas Coastal Management Program (CMP), and therefore, required that goals and policies of the CMP be considered during the rulemaking process. The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the rulemaking is editorial and procedural in nature and will have no substantive effect on commission actions subject to the CMP and therefore, is consistent with CMP goals and policies.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period and received no comments.

**Public Comment**

The commission offered a public hearing on February 21, 2012, in Austin. No member of the public wished to present comments, so staff did not open the public hearing. The comment period closed on February 27, 2012. The commission received no comments.

## **SUBCHAPTER A: DEFINITIONS**

### **§114.7**

#### **Statutory Authority**

The amendment is adopted under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; §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 amendment is also adopted under Texas Health and Safety Code (THSC), Texas Clean Air Act (TCAA), §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; and 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. Finally, this rulemaking is adopted under THSC, §382.003, amending definitions for the low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program authorized under THSC, §382.209.

The adopted amendment implements House Bill 3272, 82nd Legislature, 2011.

**§114.7. Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program Definitions.**

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used in this chapter 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 Subchapter C, Division 2, of this chapter (relating to Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program) have the following meanings, unless the context clearly indicates otherwise.

(1) Affected county--A county with a motor vehicle emissions inspection and maintenance program established under Transportation Code, §548.301.

(2) Automobile dealership--A business that regularly and actively buys, sells, or exchanges vehicles at an established and permanent location as defined under Transportation Code, §503.301. The term includes a franchised motor vehicle dealer and an independent motor vehicle dealer.

(3) Car--A motor vehicle, other than a golf cart, truck or bus, designed or used primarily for the transportation of persons. A passenger van or sports utility vehicle may be considered a car under this section.

(4) Commercial vehicle--A vehicle that is owned or leased in the regular course of business of a commercial or business entity.

(5) Destroyed--Crushed, shredded, scrapped, or otherwise dismantled to render a vehicle, vehicle's engine, or emission control components permanently and irreversibly incapable of functioning as originally intended.

(6) Dismantled--Extraction of parts, components, and accessories for use in the low income vehicle repair assistance, retrofit, and accelerated vehicle retirement program or sold as used parts.

(7) Electric vehicle--A motor vehicle that draws propulsion energy only from a rechargeable energy storage system.

(8) [(7)] Emissions control equipment--Relating to a motor vehicle that is subject to §114.50(a) of this title (relating to Vehicle Emissions Inspection Requirements). If the vehicle is so equipped, these include: exhaust gas recirculation

system, power control module, catalytic converter, oxygen sensors, evaporative purge canister, positive crankcase ventilation valve, and gas cap.

(9) [(8)] Engine--The fuel-based power source of a motor vehicle that is subject to §114.50(a) of this title (relating to Vehicle Emissions Inspection Requirements).

(10) [(9)] Fleet vehicle--A motor vehicle operated as one of a group that consists of more than ten motor vehicles and that is owned and operated by a public or commercial entity or by a private entity other than a single household.

(11) [(10)] Hybrid [motor] vehicle--A motor vehicle that draws propulsion energy from both gasoline or conventional diesel fuel and a rechargeable energy storage system.

(12) [(11)] LIRAP--Low income vehicle repair assistance, retrofit, and accelerated vehicle retirement program.

(13) [(12)] Motor vehicle--A fully self-propelled vehicle having four wheels that has as its primary purpose the transport of a person, persons, or property on a public highway.

(14) Natural gas vehicle--A motor vehicle that uses only compressed natural gas or liquefied natural gas as fuel.

(15) [(13)] Participating county--An affected county in which the commissioners court by resolution has chosen to implement a low income vehicle repair assistance, retrofit, and accelerated vehicle retirement program authorized by Texas Health and Safety Code, §382.209.

(16) [(14)] Proof of sale--A notice of sale or transfer filed with the Texas Department of Transportation as required under Texas Transportation Code, §503.005, or if unavailable, an affidavit from the selling dealer or documents approved by the commission.

(17) [(15)] Proof of transfer--A TCEQ form that identifies the vehicle to be destroyed and tracks the transfer of the vehicle to the recycler from the participating county, automobile dealer, and dismantler.

(18) [(16)] Qualifying motor vehicle--A motor vehicle that meets the requirements for replacement in §114.64 of this title (relating to LIRAP Requirements).

(19) [(17)] Recognized emissions repair facility--An automotive repair facility as provided in 37 Texas Administrative Code §23.93, relating to Vehicle Emissions Inspection Requirements.

(20) [(18)] Recycled--Conversion of metal or other material into raw material products that have prepared grades; an existing or potential economic value; and using these raw material products in the production of new products.

(21) [(19)] Replacement vehicle--A vehicle that is in a class or category of vehicles that has been certified to meet federal Tier 2, Bin 5 or cleaner Bin certification under 40 Code of Federal Regulations §86.1811-04, as published in the February 10, 2000, *Federal Register*; has a gross vehicle weight rating of less than 10,000 pounds; have an odometer reading of not more than 70,000 miles; the total cost does not exceed \$35,000 [\$25,000] and up to \$45,000 for hybrid, electric, or natural gas vehicles, or vehicles certified as Tier 2 Bin 3 or cleaner Bin certification under 40 Code of Federal Regulations §86.1811-04, as published in the February 10, 2000, issue of the *Federal Register* (65 FR 6698); has passed a Department of Public Safety motor vehicle safety inspection or safety and emissions inspection within the 15-month period before the application is submitted.

(22) [(20)] Retrofit--To equip, or the equipping of, an engine or an exhaust or fuel system with new, emissions-reducing parts or equipment designed to reduce air emissions and improve air quality, after the manufacture of the original engine or exhaust or fuel system, so long as the parts or equipment allow the vehicle to meet or exceed state and federal air emissions reduction standards.

(23) [(21)] Retrofit equipment--Emissions-reducing equipment designed to reduce air emissions and improve air quality that is approved by the United States Environmental Protection Agency and is installed after the manufacture of the original engine, exhaust, or fuel system.

(24) [(22)] Total cost--The total amount money paid or to be paid for the purchase of a motor vehicle as set forth as the sales price in the form entitled "Application for Texas Certificate of Title" promulgated by the Texas Department of Transportation. In a transaction that does not involve the use of that form, the term means an amount of money that is equivalent, or substantially equivalent, to the amount that would appear as the sales price on the application for Texas Certificate of Title if that form were used.

(25) [(23)] Truck--A motor vehicle having a gross vehicle weight rating of less than 10,000 pounds and designed primarily for the transport of persons and cargo.

(26) [(24)] Vehicle--A motor vehicle subject to §114.50(a) of this title (relating to Vehicle Emissions Inspection Requirements).

(27) [(25)] Vehicle owner--For the purposes of repair assistance or retrofit, the person who holds the Certificate of Title for the vehicle and/or the operator who is granted possession and is authorized to make repairs under a lease or purchase agreement; and for the purposes of accelerated retirement, the person who holds the Certificate of Title for the vehicle.

(28) [(26)] Vehicle retirement facility--A facility that, at a minimum, is licensed, certified, or otherwise authorized by the Texas Department of Transportation to destroy, recycle, or dismantle vehicles.

**SUBCHAPTER C: VEHICLE INSPECTION AND MAINTENANCE;  
LOW INCOME VEHICLE REPAIR ASSISTANCE, RETROFIT,  
AND ACCELERATED VEHICLE RETIREMENT PROGRAM;  
AND EARLY ACTION COMPACT COUNTIES  
DIVISION 2: LOW INCOME VEHICLE REPAIR ASSISTANCE,  
RETROFIT, AND ACCELERATED VEHICLE RETIREMENT PROGRAM**

**§114.64**

**Statutory Authority**

The amendment is adopted under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; §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 amendment is also adopted under Texas Health and Safety Code (THSC), Texas Clean Air Act (TCAA), §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; and 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. Finally, this rulemaking is adopted under THSC, §382.210, requiring the commission to establish by rule guidelines to assist a participating county in implementing a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program.

The adopted amendment implements House Bill 3272, 82nd Legislature, 2011.

**§114.64. LIRAP Requirements.**

(a) Implementation. Upon receiving a written request to implement a Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) by a county commissioners court, the executive director shall authorize the implementation of a LIRAP in the requesting county. The executive director and county shall enter into a grant contract for the implementation of the LIRAP.

(1) The grant contract must provide conditions, requirements, and projected funding allowances for the implementation of the LIRAP.

(2) A participating county may contract with an entity approved by the executive director for services necessary to implement the LIRAP. A participating county or its designated entity shall demonstrate to the executive director that, at a minimum, the county or its designated entity has provided for appropriate measures for determining applicant eligibility and repair effectiveness and ensuring against fraud.

(3) The participating county shall remain the contracted entity even if the county contracts with another county or another entity approved by the executive director to administer the LIRAP.

(b) Repair and retrofit assistance. A LIRAP must provide for monetary or other compensatory assistance to eligible vehicle owners for repairs directly related to bringing certain vehicles that have failed a required emissions test into compliance with emissions requirements or for installing retrofit equipment on vehicles that have failed a required emissions test, if practically and economically feasible, in lieu of or in combination with repairs performed to bring a vehicle into compliance with emissions requirements. Vehicles under the LIRAP must be repaired or retrofitted at a recognized emissions repair facility. To determine eligibility, the participating county or its designated entity shall make applications available for LIRAP participants. The application, at a minimum, must require the vehicle owner to demonstrate that:

(1) the vehicle has failed a vehicle emissions test within 30 days of application submittal;

(2) the vehicle can be driven under its own power to the emissions inspection station or vehicle retirement facility;

(3) the vehicle is currently registered in and has been registered in the program county for at least [the] 12 of the 15 months immediately preceding the application for assistance;

(4) the vehicle has passed the safety portion of the Texas Department of Public Safety (DPS) motor vehicle safety and emissions inspection as recorded in the Vehicle Inspection Report (VIR), or provide assurance that actions will be taken to bring the vehicle into compliance with safety requirements;

(5) the vehicle owner's net family income is at or below 300% of the federal poverty level; and

(6) any other requirements of the participating county or the executive director are met.

(c) Accelerated vehicle retirement. A LIRAP must provide monetary or other compensatory assistance to eligible vehicle owners to be used toward the purchase of a replacement vehicle.

(1) To determine eligibility, the participating county or its designated entity shall make applications available for LIRAP participants. The application, at a minimum, must require the vehicle owner to demonstrate that:

(A) the vehicle meets the requirements under subsection (b)(1) - (3) and (5) of this section;

(B) the vehicle has passed a DPS motor vehicle safety or safety and emissions inspection within 15 months prior to application submittal; and

(C) any other requirements of the participating county or the executive director are met.

(2) Eligible vehicle owners of pre-1996 model year vehicles that pass the required United States Environmental Protection Agency (EPA) Start-Up Acceleration Simulation Mode (ASM) standards emissions test, but would have failed the EPA Final ASM standards emissions test, or some other criteria determined by the commission, may be eligible for accelerated vehicle retirement and replacement compensation under this section.

(3) Notwithstanding the vehicle requirement provided under subsection (b)(1) of this section, an eligible vehicle owner of a vehicle that is gasoline powered and is at least 10 years old as determined from the current calendar year (i.e., 2010 minus 10 years equals 2000) and meets the requirements under subsection (b)(2), (3), and (5) of this section, may be eligible for accelerated vehicle retirement and compensation.

(4) Replacement vehicles must:

(A) be in a class or category of vehicles that has been certified to meet federal Tier 2, Bin 5 or cleaner Bin certification under 40 Code of Federal Regulations §86.1811-04, as published in the February 10, 2000, *Federal Register* (65 FR 6698);

(B) have a gross vehicle weight rating of less than 10,000 pounds;

(C) have an odometer reading of not more than 70,000 miles;

(D) [(C)] be a vehicle, the total cost of which does not exceed \$35,000 [\$25,000;] and up to \$45,000 for hybrid, electric, or natural gas vehicles, or vehicles certified as Tier 2 Bin 3 or cleaner Bin certification under 40 Code of Federal Regulations §86.1811-04, as published in the February 10, 2000, issue of the *Federal Register* (65 FR 6698); and

(E) [(D)] have passed a DPS motor vehicle safety inspection or safety and emissions inspection within the 15-month period before the application is submitted.

(d) Compensation. The participating county shall determine eligibility and approve or deny the application promptly. If the requirements of subsection (b) or (c) of

this section are met and based on available funding, the county shall authorize monetary or other compensations to the eligible vehicle owner.

(1) Compensations must be:

(A) no more than \$600 and no less than \$30 per vehicle to be used for emission-related repairs or retrofits performed at recognized emissions repair facilities, including diagnostics tests performed on the vehicle; or

(B) based on vehicle type and model year of a replacement vehicle for the accelerated retirement of a vehicle meeting the requirements under this subsection. Only one retirement compensation can be used toward one replacement vehicle annually per applicant. The maximum amount toward a replacement vehicle must not exceed:

(i) \$3,000 for a replacement car of the current model year or previous three model years, except as provided by clause (iii) of this subparagraph;

(ii) \$3,000 for a replacement truck of the current model year or the previous two model years, except as provided by clause (iii) of this subparagraph;

(iii) \$3,500 for a replacement hybrid, electric, natural gas, and federal Tier 2 Bin 3 or cleaner Bin certification under 40 Code of Federal Regulations §86.1811-04, as published in the February 10, 2000, issue of the *Federal Register* (65 FR 6698) vehicle of the current model year or the three previous model years.

(2) Vehicle owners shall be responsible for paying the first \$30 of emission-related repairs or retrofit costs that may include diagnostics tests performed on the vehicle.

(3) For accelerated vehicle retirement, provided that the compensation levels in paragraph (1)(B) of this subsection are met and minimum eligibility requirements under subsection (c) of this section are met, a participating county may set a specific level of compensation or implement a level of compensation schedule that allows flexibility. The following criteria may be used for determining the amount of financial assistance:

(A) model year of the vehicle;

(B) miles registered on the vehicle's odometer;

(C) fair market value of the vehicle;

(D) estimated cost of emission-related repairs necessary to bring the vehicle into compliance with emission standards;

(E) amount of money the vehicle owner has already spent to bring the vehicle into compliance, excluding the cost of the vehicle emissions inspection; and

(F) vehicle owner's income.

(e) Reimbursement for repairs and retrofits. A participating county shall reimburse the appropriate recognized emissions repair facility for approved repairs and retrofits within 30 calendar days of receiving an invoice that meets the requirements of the county or designated entity. Repaired or retrofitted vehicles must pass a DPS safety and emissions inspection before the recognized emissions repair facility is reimbursed. In the event that the vehicle does not pass the emissions retest after diagnosed repairs are performed, the participating county has the discretion, on a case-by-case basis, to make payment for diagnosed emissions repair work performed.

(f) Reimbursements for replacements. A participating county shall ensure that funds are transferred to a participating automobile dealership no later than 10 business

days after the county receives proof of the sale, proof of transfer to a dismantler, and any administrative documents that meet the requirements of the county or designated entity. A list of all administrative documents must be included in the agreements that are entered into by the county or designated entity and the participating automobile dealerships.

(1) A participating county shall provide an electronic means for distributing replacement funds to a participating automobile dealership once all program criteria have been met. The replacement funds may be used as a down payment toward the purchase of a replacement vehicle. Participating automobile dealers shall be located in the State of Texas. Participation in the LIRAP by an automobile dealer is voluntary.

(2) Participating counties shall develop a document for confirming a person's eligibility for purchasing a replacement vehicle and for tracking such purchase.

(A) The document must include at a minimum, the full name of applicant, the vehicle identification number of the retired vehicle, expiration date of the document, the program administrator's contact information, and the amount of money available to the participating vehicle owner.

(B) The document must be presented to a participating dealer by the person seeking to purchase a replacement vehicle before entering into negotiations for a replacement vehicle.

(C) A participating dealer who relies on the document issued by the participating county has no duty to confirm the eligibility of the person purchasing a replacement vehicle in the manner provided by this section.

# Texas Commission on Environmental Quality



## **ORDER ADOPTING AMENDED RULES**

### **Docket No. 2011-1790-RUL**

On June 13, 2012, the Texas Commission on Environmental Quality (Commission) adopted amended rules in 30 TAC Chapter 114, concerning Control of Air Pollution from Motor Vehicles. The proposed rules were published for comment in the January 27, 2012, issue of the *Texas Register* (37 TexReg 297).

IT IS THEREFORE ORDERED BY THE COMMISSION that the amended rules are hereby adopted. The Commission further authorizes staff to make any non-substantive revisions to the rules necessary to comply with Texas Register requirements. The adopted rules and the preamble to the adopted rules are incorporated by reference in this Order as if set forth at length verbatim in this Order.

This Order constitutes the Order of the Commission required by the Administrative Procedure Act, Government Code, §2001.033.

If any portion of this Order is for any reason held to be invalid by a court of competent jurisdiction, the invalidity of any portion shall not affect the validity of the remaining portions.

Issued date:

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

---

Bryan W. Shaw, Ph.D., Chairman



## TITLE 30. ENVIRONMENTAL QUALITY

### PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

#### CHAPTER 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES

The Texas Commission on Environmental Quality (TCEQ or commission) proposes amendments to §114.7 and §114.64.

Background and Summary of the Factual Basis for the Proposed Rules

The commission proposes these revisions to implement requirements of House Bill (HB) 3272, 82nd Legislature, 2011, authored by Representatives Lon Burnam and Warren Chisum.

The 77th Legislature, 2001, enacted HB 2134, to assist low-income individuals with repairs, retrofits, or retirement of vehicles that fail emissions inspections. The commission adopted rules providing the minimum guidelines for counties to implement a low income vehicle repair assistance, retrofit, and accelerated vehicle retirement program (LIRAP) implementing HB 2134, on March 27, 2002, as published in the April 12, 2002, issue of the *Texas Register* (27 TexReg 3194). Only those counties that have implemented a vehicle inspection and maintenance (I/M) program are eligible for participation in the LIRAP. Under the LIRAP, monetary assistance is provided for emission-related repairs directly related to bringing the vehicle into compliance or for replacement assistance for a vehicle that has failed the required emissions test. Vehicle eligibility criteria, such as the vehicle having been registered for the past two years in the participating county, were developed and adopted by the commission. Emission-related repairs covered by the LIRAP are required to be performed at a Texas Department of Public Safety (DPS)-recognized emissions repair facility. Participating counties may administer the LIRAP or contract with any appropriate entity or another county to administer the program. The 2001 law and rule stated that participating counties could expend no more than 5% of the funds received from the state for administrative costs. These rules provided for a minimum of \$30 and a maximum amount of \$600 for emission-related repairs, retrofit equipment, and installation; and a minimum of \$600 and a maximum amount of \$1,000 toward the purchase price of a replacement vehicle.

The 79th Legislature, 2005, enacted HB 1611, revising three key elements of the LIRAP. The legislation allowed for the LIRAP to be administered by the counties in accordance with Texas Government Code, Chapter 783, Uniform Grant and Contract Management, and allowed for programmatic costs such as call-center management, application oversight, invoice analysis, education, outreach, and advertising to be covered by LIRAP funds. The revision allowed for program administrators to utilize additional resources to attract and increase program participation. The legislation removed the requirement that capped administrative costs at 5% of the funds provided to a county to fund the LIRAP. Finally, the legislation changed the vehicle registration

eligibility requirement from two years to 12 months. The revision increased participation by making assistance available to those vehicle owners who had lived in the county for at least one year. The commission adopted rule revisions implementing HB 1611 (79th Legislature), on April 12, 2006, as published in the April 28, 2006, issue of the *Texas Register* (31 TexReg 3575).

The 80th Legislature, 2007, enacted Senate Bill (SB) 12, revising the LIRAP requirements. The commission initiated rulemaking at the conclusion of the legislative session to implement the legislative requirements. The legislation provided enhanced eligibility and assistance guidelines, retirement and replacement guidelines, and revised LIRAP administration fund limits. The legislation limited allowable administrative cost for counties implementing LIRAP to 10% of the funds allocated by the commission and increased the LIRAP vehicle owner's income eligibility from 200% to 300% of the federal poverty level.

The legislation increased the assistance for the retirement and replacement of a vehicle from \$1,000 to \$3,000 for a car, current model year or up to three model years old; \$3,000 for a truck, current model year or up to two model years old; and \$3,500 for a hybrid vehicle of current or previous model year. The legislation required that replacement vehicles must meet federal Tier 2, Bin 5 or cleaner emissions standards, have a gross vehicle weight rating of less than 10,000 pounds, and have a total purchase cost that did not exceed \$25,000.

The legislation amended LIRAP definitions to include -the terms-destroy, motor vehicle, hybrid motor vehicle, qualifying motor vehicle, emissions control equipment, dealer, automobile dealership, total cost, engine, and replacement vehicle. The rulemaking further added definitions for truck and car to clarify the vehicle model types that are associated with truck and car categories.

The legislation revised and enhanced capabilities for the retirement of older vehicles. Retired vehicle requirements included that the vehicles be gasoline-powered and older than 10 years; operated and registered in the implementing county for 12 months preceding the application; and had passed the DPS safety or safety and emissions inspection within 15 months of application. Owners of the vehicles to be retired were required to have an annual income of not more than 300% of the federal poverty level.

The legislation required that participating counties provide an electronic means for distributing vehicle repair and replacement funds and that the funds be transferred to a participating dealer no later than five business days after the date the county received proof of the sale and required administrative documents. The commission was required to develop a document to confirm that a person was eligible to purchase a replacement vehicle and the amount of money available to the purchaser through the program. The purchaser was required to have the document before the person entered into negotiations with a dealer for a replacement vehicle. The legislation required the commission to develop procedures for certifying that emissions control equipment and engines of the retired vehicles were scrapped.

The legislation required that dismantlers participating in the program must be located in the State of Texas. Dismantlers were required to scrap the vehicle's emissions control equipment, power train, and engine and certify that those parts were scrapped and not resold into the marketplace. Dismantlers were also required to remove any mercury switches in accordance with state and federal law.

The legislation required automobile dealerships participating in the program to be located in the State of Texas and accept funds provided under the LIRAP as a down payment towards the purchase of a replacement vehicle.

The commission worked in partnership with the steel industry and automobile dismantlers to ensure that vehicles were scrapped and that proof of scrapping is provided to the commission. The commission adopted requirements implementing SB 12, on December 5, 2007, as published in the December 21, 2007, issue of the *Texas Register* (32 TexReg 9711).

The 82nd Legislature, enacted HB 3272, authorizing changes to the LIRAP. The legislation modifies certain guidelines and procedures for administering the LIRAP that will require revisions to existing rules and add new or amend current program definitions to include replacement vehicle, hybrid vehicle, electric vehicle, and natural gas vehicle.

The legislation requires the commission to revise the amount of replacement assistance provided to \$3,500 for a replacement vehicle of the current model year or the previous three model years if the vehicle is a hybrid vehicle, electric vehicle, natural gas vehicle, or is in a class or category of vehicles that has been certified to meet federal Tier 2, Bin 3 or cleaner Bin certification under 40 Code of Federal Regulations §86.1811-04, as published in the February 10, 2000, *Federal Register* (65 FR 6698).

The legislation amends criteria for replacement vehicles to require that replacement vehicles have an odometer reading of not more than 70,000 miles and a sales price of \$35,000 or less, for a car, current model year or up to three model years old; a sales price of \$35,000 or less, for a truck, current model year or up to two model years old; or a sales price of \$45,000 or less for a hybrid vehicle, electric vehicle, natural gas vehicle or a vehicle certified to meet or exceed federal Tier 2, Bin 3 or cleaner certification of the current model year or up to three model years old.

The legislation amends the eligibility of a vehicle to be retired requiring that the vehicle be registered in a program county for at least 12 of the 15 months preceding the application.

## Section by Section Discussion

### Subchapter A, Definitions

#### *§114.7, Low Income Repair Assistance, Retrofits, and Accelerated Vehicle Retirement Program Definitions*

The proposed amendment to §114.7, includes adding and defining electric vehicle and natural gas vehicle, and modifying the current definition of a hybrid motor vehicle. The proposal defines electric vehicle as a motor vehicle that draws propulsion energy only from a rechargeable energy storage system, and natural gas vehicle as a motor vehicle that uses only compressed natural gas or liquefied natural gas as fuel. The proposal revises the current defined term hybrid motor vehicle to hybrid vehicle and the definition of replacement vehicle to incorporate changes to §114.64(c)(4). The proposal would also renumber the LIRAP definitions section to make adjustments for the newly proposed added definitions.

#### Subchapter C, Division 2, Low Income Repair Assistance, Retrofits, and Accelerated Vehicle Retirement Program

##### *§114.64, LIRAP Requirements*

The proposed amendment to §114.64(b)(3), relating to repair and retrofit assistance, would revise the length of time that a vehicle must be registered in a LIRAP program county. The current

requirement states the vehicle is currently registered in and has been registered in the program county for the 12 months immediately preceding the application for assistance. The proposed revision would require that the vehicle be currently registered in and has been registered in the program county for at least 12 of the 15 months preceding the application for assistance.

The proposed amendment to §114.64(c)(4)(C), relating to accelerated vehicle retirement, would add the requirement that eligible replacement vehicles have an odometer reading of no more than 70,000 miles.

The proposed amendment to §114.64(c)(4)(D), relating to accelerated vehicle retirement, would revise the current replacement vehicle requirement that a replacement vehicle's total cost must not exceed \$25,000. The proposed amendment would require that a replacement vehicle be a vehicle where the total cost does not exceed \$35,000 and up to \$45,000 for hybrid, electric, or natural gas vehicles, or vehicles certified as Tier 2 Bin 3 or cleaner.

The proposed amendment to §114.64(d)(1)(B)(iii), relating to compensation, would modify the current replacement vehicle compensation amount of \$3,500 for a replacement hybrid vehicle of the current model year or the previous model year. The proposed amendment would make available replacement assistance of \$3,500 that is currently available for hybrid vehicles to replacement hybrid, electric, natural gas, and federal Tier 2 Bin 3 or cleaner vehicles of the current model year or the previous three model years.

#### Fiscal Note: Costs to State and Local Government

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency or other units of state or local government as a result of administration or enforcement of the proposed rules. The proposed rules make revisions mandated by legislation to the LIRAP, and the agency will use currently available resources to implement the required revisions.

The proposed rulemaking adds the definitions of an electric vehicle and natural gas vehicle, and amends the definition of a hybrid vehicle for purposes relating to the LIRAP. The proposed rules would also change the length of time that a vehicle must be registered in a LIRAP participating county to be eligible for the program from 12 months to at least 12 of the 15 months preceding the application for participation in the program. The proposed rules would expand replacement assistance that was only available for hybrid vehicles to include hybrid, electric, natural gas, and federal Tier 2 Bin 3 or cleaner vehicles for the current model year or the previous three model years. The proposed rules would require replacement vehicles purchased through the LIRAP to have an odometer reading of not more than 70,000 miles and raise the total cost allowed of replacement vehicles to not more than \$35,000 versus \$25,000 under current law for replacement vehicles, and up to \$45,000 for hybrid, electric, natural gas and Tier 2 Bin 3 or cleaner vehicles. The proposed rules do not change the amount of replacement assistance for a vehicle, but do allow for assistance up to \$3,500 for hybrid, electric, natural gas, and Tier 2 Bin 3 or cleaner vehicles of the current model year or previous three model years.

The proposed rules are not expected to have a significant fiscal impact on the 16 counties (Brazoria, Collin, Dallas, Denton, Ellis, Fort Bend, Galveston, Harris, Johnson, Kaufman, Montgomery, Parker, Rockwall, Tarrant, Travis, and Williamson) that participate in the LIRAP. While the proposed rules increase the types

of vehicles eligible for LIRAP replacement and funding, other legislative actions have reduced the amount of available LIRAP funding. Counties and their contractors are expected to assist as many of their constituents as possible under these constraints, and the proposed rules are not expected to increase or decrease administrative costs significantly since the current review and approval processes for LIRAP applications and voucher issuance are not changed.

#### Public Benefits and Costs

Ms. Chamness also determined that for each of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules would be the potential for reduced emissions in participating counties due to the increased options available to replace older, high-emitting vehicles. The proposed rules expand the universe of eligible vehicle owners and replacement vehicles in the LIRAP. Individuals are expected to benefit under the proposed rules since more owners could become eligible for assistance and since more types of vehicles can be considered as a replacement vehicle. Whether or not an individual is able to receive LIRAP funds to replace an older, high-emitting vehicle will depend on whether a participating county or its contractor is able to grant funding to constituents that apply for funding.

The proposed rules are not expected to have a significant fiscal impact on large or small businesses in participating LIRAP counties. The proposed rules would not change current review and approval processes for LIRAP applications and voucher issuance. Reporting and other administrative requirements would not change under the proposed rules. While the proposed rules increase the number of vehicles eligible for funding, decreases in LIRAP funds may affect vehicle repair and replacement activity in participating counties. The agency cannot estimate the fiscal impact on vehicle dealers, vehicle dismantlers, or steel mill and metal recyclers regarding limited LIRAP funding. Any fiscal impact regarding these activities will depend on how participating counties choose to address constituent demands with decreased LIRAP allocations.

#### Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. Most vehicle dismantlers, in counties participating in the LIRAP are considered to be small businesses. The proposed rules do not change any administrative or reporting requirements for small businesses. Any increase or decrease in business activity regarding LIRAP funding will be due to other LIRAP constraints.

#### Small Business Regulatory Flexibility Analysis

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

#### Local Employment Impact Statement

The commission has 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.

#### Draft Regulatory Impact Analysis

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the proposed rulemaking does not meet the definition of a major environmental rule. Texas Government Code, §2001.0225 states that a major environmental rule is, a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, 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. Furthermore, while the proposed rulemaking does not constitute a major environmental rule, even if it did, a regulatory impact analysis would not be required because the proposed rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule. Texas Government Code, §2001.0225 applies only to a major environmental rule which: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds 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) adopts a rule solely under the general powers of the agency instead of under a specific state law. Specifically, the proposed rulemaking does not meet any of the four applicability criteria listed in Texas Government Code, §2001.0225 because: 1) the proposed rulemaking is not designed to exceed any relevant standard set by federal law; 2) parts of the proposed rulemaking are directly required by state law; 3) no contract or delegation agreement covers the topic that is the subject of this proposed rulemaking; and 4) the proposed rulemaking is authorized by specific sections of Texas Health and Safety Code (THSC), Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code (TWC), which are cited in the statutory authority section of this preamble.

The amendments are proposed in accordance with HB 3272, 82nd Legislature, 2011, which amended THSC, Chapter 382. 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 the public health and safety of the state or a sector of the state. In addition, none of these amendments place additional financial burdens on the regulated community.

The commission's interpretation of the regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of substantial compliance as required in Texas Government Code, §2001.035. The legislature specifically identified Texas Government Code, §2001.0225 as falling under this standard. The commission has substantially complied with the requirements of Texas Government Code, §2001.0225.

The commission invites public comment regarding the draft regulatory impact analysis determination during the public comment period. 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 amend Chapter 114 in accordance with the amendments to THSC, Chapter 382 as a result of HB 3272, 82nd Legislature. The rules make revisions to a voluntary program and only affect motor vehicles and equipment 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)(4), concerning 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 rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the rulemaking is editorial and procedural in nature and will have no substantive effect on commission actions subject to the CMP and therefore, is consistent with CMP goals and policies. 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 February 21, 2012, at 10:00 a.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. Requests should be made as far in advance as possible.

### Submittal of Comments

Written comments may be submitted to Bruce McAnally, 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://www5.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 2011-062-114-EN. The comment period closes February 27, 2012. Copies of the proposed rulemaking can be obtained from the commission's Web site at [http://www.tceq.texas.gov/nav/rules/propose\\_adopt.html](http://www.tceq.texas.gov/nav/rules/propose_adopt.html). For further information, please contact Michael Regan, Air Quality Planning at (512) 239-2988.

## SUBCHAPTER A. DEFINITIONS

### 30 TAC §114.7

#### Statutory Authority

The amendment 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; §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 amendment 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 Texas Clean Air Act; and §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. Finally, this rulemaking is proposed under THSC, §382.003, amending definitions for the low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program authorized under THSC, §382.209.

The proposed amendment implements House Bill 3272, 82nd Legislature, 2011.

#### *§114.7. Low Income Vehicle Repair Assistance, Retrofits, and Accelerated Vehicle Retirement Program Definitions.*

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used in this chapter 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 Subchapter C, Division 2, of this chapter (relating to Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program) have the following meanings, unless the context clearly indicates otherwise.

(1) Affected county--A county with a motor vehicle emissions inspection and maintenance program established under Transportation Code, §548.301.

(2) Automobile dealership--A business that regularly and actively buys, sells, or exchanges vehicles at an established and per-

manent location as defined under Transportation Code, §503.301. The term includes a franchised motor vehicle dealer and an independent motor vehicle dealer.

(3) Car--A motor vehicle, other than a golf cart, truck or bus, designed or used primarily for the transportation of persons. A passenger van or sports utility vehicle may be considered a car under this section.

(4) Commercial vehicle--A vehicle that is owned or leased in the regular course of business of a commercial or business entity.

(5) Destroyed--Crushed, shredded, scrapped, or otherwise dismantled to render a vehicle, vehicle's engine, or emission control components permanently and irreversibly incapable of functioning as originally intended.

(6) Dismantled--Extraction of parts, components, and accessories for use in the low income vehicle repair assistance, retrofit, and accelerated vehicle retirement program or sold as used parts.

(7) Electric vehicle--A motor vehicle that draws propulsion energy only from a rechargeable energy storage system.

(8) [(7)] Emissions control equipment--Relating to a motor vehicle that is subject to §114.50(a) of this title (relating to Vehicle Emissions Inspection Requirements). If the vehicle is so equipped, these include: exhaust gas recirculation system, power control module, catalytic converter, oxygen sensors, evaporative purge canister, positive crankcase ventilation valve, and gas cap.

(9) [(8)] Engine--The fuel-based power source of a motor vehicle that is subject to §114.50(a) of this title (relating to Vehicle Emissions Inspection Requirements).

(10) [(9)] Fleet vehicle--A motor vehicle operated as one of a group that consists of more than ten motor vehicles and that is owned and operated by a public or commercial entity or by a private entity other than a single household.

(11) [(10)] Hybrid [~~motor~~] vehicle--A motor vehicle that draws propulsion energy from both gasoline or conventional diesel fuel and a rechargeable energy storage system.

(12) [(11)] LIRAP--Low income vehicle repair assistance, retrofit, and accelerated vehicle retirement program.

(13) [(12)] Motor vehicle--A fully self-propelled vehicle having four wheels that has as its primary purpose the transport of a person, persons, or property on a public highway.

(14) Natural gas vehicle--A motor vehicle that uses only compressed natural gas or liquefied natural gas as fuel.

(15) [(13)] Participating county--An affected county in which the commissioners court by resolution has chosen to implement a low income vehicle repair assistance, retrofit, and accelerated vehicle retirement program authorized by Texas Health and Safety Code, §382.209.

(16) [(14)] Proof of sale--A notice of sale or transfer filed with the Texas Department of Transportation as required under Texas Transportation Code, §503.005, or if unavailable, an affidavit from the selling dealer or documents approved by the commission.

(17) [(15)] Proof of transfer--A TCEQ form that identifies the vehicle to be destroyed and tracks the transfer of the vehicle to the recycler from the participating county, automobile dealer, and dismantler.

(18) [(16)] Qualifying motor vehicle--A motor vehicle that meets the requirements for replacement in §114.64 of this title (relating to LIRAP Requirements).

(19) [(17)] Recognized emissions repair facility--An automotive repair facility as provided in 37 Texas Administrative Code §23.93, relating to Vehicle Emissions Inspection Requirements.

(20) [(18)] Recycled--Conversion of metal or other material into raw material products that have prepared grades; an existing or potential economic value; and using these raw material products in the production of new products.

(21) [(19)] Replacement vehicle--A vehicle that is in a class or category of vehicles that has been certified to meet federal Tier 2, Bin 5 or cleaner Bin certification under 40 Code of Federal Regulations §86.1811-04, as published in the February 10, 2000, *Federal Register*; has a gross vehicle weight rating of less than 10,000 pounds; have an odometer reading of not more than 70,000 miles; the total cost does not exceed \$35,000 [25,000] and up to \$45,000 for hybrid, electric, or natural gas vehicles, or vehicles certified as Tier 2 Bin 3 or cleaner Bin certification under 40 Code of Federal Regulations §86.1811-04, as published in the February 10, 2000, issue of the *Federal Register* (65 FR 6698); has passed a Department of Public Safety motor vehicle safety inspection or safety and emissions inspection within the 15-month period before the application is submitted.

(22) [(20)] Retrofit--To equip, or the equipping of, an engine or an exhaust or fuel system with new, emissions-reducing parts or equipment designed to reduce air emissions and improve air quality, after the manufacture of the original engine or exhaust or fuel system, so long as the parts or equipment allow the vehicle to meet or exceed state and federal air emissions reduction standards.

(23) [(21)] Retrofit equipment--Emissions-reducing equipment designed to reduce air emissions and improve air quality that is approved by the United States Environmental Protection Agency and is installed after the manufacture of the original engine, exhaust, or fuel system.

(24) [(22)] Total cost--The total amount money paid or to be paid for the purchase of a motor vehicle as set forth as the sales price in the form entitled "Application for Texas Certificate of Title" promulgated by the Texas Department of Transportation. In a transaction that does not involve the use of that form, the term means an amount of money that is equivalent, or substantially equivalent, to the amount that would appear as the sales price on the application for Texas Certificate of Title if that form were used.

(25) [(23)] Truck--A motor vehicle having a gross vehicle weight rating of less than 10,000 pounds and designed primarily for the transport of persons and cargo.

(26) [(24)] Vehicle--A motor vehicle subject to §114.50(a) of this title (relating to Vehicle Emissions Inspection Requirements).

(27) [(25)] Vehicle owner--For the purposes of repair assistance or retrofit, the person who holds the Certificate of Title for the vehicle and/or the operator who is granted possession and is authorized to make repairs under a lease or purchase agreement; and for the purposes of accelerated retirement, the person who holds the Certificate of Title for the vehicle.

(28) [(26)] Vehicle retirement facility--A facility that, at a minimum, is licensed, certified, or otherwise authorized by the Texas Department of Transportation to destroy, recycle, or dismantle vehicles.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 12, 2012.

TRD-201200131

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: February 26, 2012

For further information, please call: (512) 239-2141



**SUBCHAPTER C. VEHICLE INSPECTION  
AND MAINTENANCE; LOW INCOME  
VEHICLE REPAIR ASSISTANCE, RETROFIT,  
AND ACCELERATED VEHICLE RETIREMENT  
PROGRAM; AND EARLY ACTION COMPACT  
COUNTIES  
DIVISION 2. LOW INCOME VEHICLE REPAIR  
ASSISTANCE, RETROFIT, AND ACCELERATED  
VEHICLE RETIREMENT PROGRAM**

**30 TAC §114.64**

**Statutory Authority**

The amendment 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; §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 amendment 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 Texas Clean Air Act; and §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. Finally, this rulemaking is proposed under THSC, §382.210, requiring the commission to establish by rule guidelines to assist a participating county in implementing a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program.

The proposed amendment implements House Bill 3272, 82nd Legislature, 2011.

*§114.64. LIRAP Requirements.*

(a) Implementation. Upon receiving a written request to implement a Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) by a county commissioners court, the executive director shall authorize the implementation of a LIRAP in the requesting county. The executive director and county shall enter into a grant contract for the implementation of the LIRAP.

(1) The grant contract must provide conditions, requirements, and projected funding allowances for the implementation of the LIRAP.

(2) A participating county may contract with an entity approved by the executive director for services necessary to implement the LIRAP. A participating county or its designated entity shall demonstrate to the executive director that, at a minimum, the county or its designated entity has provided for appropriate measures for determining applicant eligibility and repair effectiveness and ensuring against fraud.

(3) The participating county shall remain the contracted entity even if the county contracts with another county or another entity approved by the executive director to administer the LIRAP.

(b) Repair and retrofit assistance. A LIRAP must provide for monetary or other compensatory assistance to eligible vehicle owners for repairs directly related to bringing certain vehicles that have failed a required emissions test into compliance with emissions requirements or for installing retrofit equipment on vehicles that have failed a required emissions test, if practically and economically feasible, in lieu of or in combination with repairs performed to bring a vehicle into compliance with emissions requirements. Vehicles under the LIRAP must be repaired or retrofitted at a recognized emissions repair facility. To determine eligibility, the participating county or its designated entity shall make applications available for LIRAP participants. The application, at a minimum, must require the vehicle owner to demonstrate that:

(1) the vehicle has failed a vehicle emissions test within 30 days of application submittal;

(2) the vehicle can be driven under its own power to the emissions inspection station or vehicle retirement facility;

(3) the vehicle is currently registered in and has been registered in the program county for at least [the] 12 of the 15 months immediately preceding the application for assistance;

(4) the vehicle has passed the safety portion of the Texas Department of Public Safety (DPS) motor vehicle safety and emissions inspection as recorded in the Vehicle Inspection Report (VIR), or provide assurance that actions will be taken to bring the vehicle into compliance with safety requirements;

(5) the vehicle owner's net family income is at or below 300% of the federal poverty level; and

(6) any other requirements of the participating county or the executive director are met.

(c) Accelerated vehicle retirement. A LIRAP must provide monetary or other compensatory assistance to eligible vehicle owners to be used toward the purchase of a replacement vehicle.

(1) To determine eligibility, the participating county or its designated entity shall make applications available for LIRAP participants. The application, at a minimum, must require the vehicle owner to demonstrate that:

(A) the vehicle meets the requirements under subsection (b)(1) - (3) and (5) of this section;

(B) the vehicle has passed a DPS motor vehicle safety or safety and emissions inspection within 15 months prior to application submittal; and

(C) any other requirements of the participating county or the executive director are met.

(2) Eligible vehicle owners of pre-1996 model year vehicles that pass the required United States Environmental Protection Agency (EPA) Start-Up Acceleration Simulation Mode (ASM) standards emissions test, but would have failed the EPA Final ASM standards emissions test, or some other criteria determined by the

commission, may be eligible for accelerated vehicle retirement and replacement compensation under this section.

(3) Notwithstanding the vehicle requirement provided under subsection (b)(1) of this section, an eligible vehicle owner of a vehicle that is gasoline powered and is at least 10 years old as determined from the current calendar year (i.e., 2010 minus 10 years equals 2000) and meets the requirements under subsection (b)(2), (3), and (5) of this section, may be eligible for accelerated vehicle retirement and compensation.

(4) Replacement vehicles must:

(A) be in a class or category of vehicles that has been certified to meet federal Tier 2, Bin 5 or cleaner Bin certification under 40 Code of Federal Regulations §86.1811-04, as published in the February 10, 2000, *Federal Register* (65 FR 6698);

(B) have a gross vehicle weight rating of less than 10,000 pounds;

(C) have an odometer reading of not more than 70,000 miles;

(D) ~~[(E)]~~ be a vehicle, the total cost of which does not exceed \$35,000 ~~[\$25,000]~~ and up to \$45,000 for hybrid, electric, or natural gas vehicles, or vehicles certified as Tier 2 Bin 3 or cleaner Bin certification under 40 Code of Federal Regulations §86.1811-04, as published in the February 10, 2000, issue of the *Federal Register* (65 FR 6698); and

(E) ~~[(D)]~~ have passed a DPS motor vehicle safety inspection or safety and emissions inspection within the 15-month period before the application is submitted.

(d) Compensation. The participating county shall determine eligibility and approve or deny the application promptly. If the requirements of subsection (b) or (c) of this section are met and based on available funding, the county shall authorize monetary or other compensations to the eligible vehicle owner.

(1) Compensations must be:

(A) no more than \$600 and no less than \$30 per vehicle to be used for emission-related repairs or retrofits performed at recognized emissions repair facilities, including diagnostics tests performed on the vehicle; or

(B) based on vehicle type and model year of a replacement vehicle for the accelerated retirement of a vehicle meeting the requirements under this subsection. Only one retirement compensation can be used toward one replacement vehicle annually per applicant. The maximum amount toward a replacement vehicle must not exceed:

(i) \$3,000 for a replacement car of the current model year or previous three model years, except as provided by clause (iii) of this subparagraph;

(ii) \$3,000 for a replacement truck of the current model year or the previous two model years, except as provided by clause (iii) of this subparagraph;

(iii) \$3,500 for a replacement hybrid, electric, natural gas, and federal Tier 2 Bin 3 or cleaner Bin certification under 40 Code of Federal Regulations §86.1811-04, as published in the February 10, 2000, issue of the *Federal Register* (65 FR 6698) vehicle of the current model year or the three previous model years [year].

(2) Vehicle owners shall be responsible for paying the first \$30 of emission-related repairs or retrofit costs that may include diagnostics tests performed on the vehicle.

(3) For accelerated vehicle retirement, provided that the compensation levels in paragraph (1)(B) of this subsection are met and minimum eligibility requirements under subsection (c) of this section are met, a participating county may set a specific level of compensation or implement a level of compensation schedule that allows flexibility. The following criteria may be used for determining the amount of financial assistance:

(A) model year of the vehicle;

(B) miles registered on the vehicle's odometer;

(C) fair market value of the vehicle;

(D) estimated cost of emission-related repairs necessary to bring the vehicle into compliance with emission standards;

(E) amount of money the vehicle owner has already spent to bring the vehicle into compliance, excluding the cost of the vehicle emissions inspection; and

(F) vehicle owner's income.

(e) Reimbursement for repairs and retrofits. A participating county shall reimburse the appropriate recognized emissions repair facility for approved repairs and retrofits within 30 calendar days of receiving an invoice that meets the requirements of the county or designated entity. Repaired or retrofitted vehicles must pass a DPS safety and emissions inspection before the recognized emissions repair facility is reimbursed. In the event that the vehicle does not pass the emissions retest after diagnosed repairs are performed, the participating county has the discretion, on a case-by-case basis, to make payment for diagnosed emissions repair work performed.

(f) Reimbursements for replacements. A participating county shall ensure that funds are transferred to a participating automobile dealership no later than 10 business days after the county receives proof of the sale, proof of transfer to a dismantler, and any administrative documents that meet the requirements of the county or designated entity. A list of all administrative documents must be included in the agreements that are entered into by the county or designated entity and the participating automobile dealerships.

(1) A participating county shall provide an electronic means for distributing replacement funds to a participating automobile dealership once all program criteria have been met. The replacement funds may be used as a down payment toward the purchase of a replacement vehicle. Participating automobile dealers shall be located in the State of Texas. Participation in the LIRAP by an automobile dealer is voluntary.

(2) Participating counties shall develop a document for confirming a person's eligibility for purchasing a replacement vehicle and for tracking such purchase.

(A) The document must include at a minimum, the full name of applicant, the vehicle identification number of the retired vehicle, expiration date of the document, the program administrator's contact information, and the amount of money available to the participating vehicle owner.

(B) The document must be presented to a participating dealer by the person seeking to purchase a replacement vehicle before entering into negotiations for a replacement vehicle.

(C) A participating dealer who relies on the document issued by the participating county has no duty to confirm the eligibility of the person purchasing a replacement vehicle in the manner provided by this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 12, 2012.

TRD-201200132

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: February 26, 2012

For further information, please call: (512) 239-2141

## CHAPTER 342. REGULATION OF CERTAIN AGGREGATE PRODUCTION OPERATIONS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes new §§342.1, 342.25, and 342.26.

### Background and Summary of the Factual Basis for the Proposed Rules

House Bill (HB) 571 passed in the 82nd Legislature, 2011 and was codified in Texas Water Code (TWC), Chapter 28A. HB 571 was authored by Representative Dan Huberty and sponsored by Senator Tommy Williams.

The statute exempts certain aggregate production operations (APOs) from the requirements. The statute requires active APOs to register and pay a fee annually. The statute does not contain any additional technical requirements for APOs beyond those required in other applicable rules and regulations. The statute also contains requirements for the TCEQ. These include conducting an annual survey, beginning September 2012, to facilitate locating active APOs; conducting compliance investigations of each active APO once every three years; and, providing specified information on APOs as part of the annual enforcement report. Additionally, the statute gives the commission the authority to assess penalties in accordance with the TCEQ penalty policy and within the conditions outlined in the statute, and establish an annual registration fee in an amount sufficient to maintain a registry of active aggregate production operations but not to exceed \$1,000. For APOs submitting a Notice of Audit in conjunction with initial registration, as outlined in TWC, §28A, Section 2(b), compliance investigations of these APOs will not begin before September 2015.

### Section by Section Discussion

New §342.1, Definitions, is proposed to define terms pertinent to and defined in TWC, §28A.

New §342.25, Registration, is proposed to address requirements for the annual registration of all APOs. As stipulated in TWC, §28A, annual registration for each APO is required provided regulated activities continue. Upon cessation of regulated activities, the APO shall notify the TCEQ in writing. Registration will be facilitated by submission of required forms either electronically or via hard copy. All sites will be required to register annually. Initial registration may begin on July 1, 2012 but must be completed no later than September 1, 2012.

New §342.26, Registration Fees, is proposed to address required annual registration fees for all APOs. Each site is re-

quired to submit an annual registration fee. TWC, Chapter 28A requires the TCEQ to set fees in the amount necessary to cover the costs of administering the program, not to exceed \$1,000 per year. The proposed rule states that the maximum fee shall not exceed \$1,000.

The proposed rule does not specify the actual fees, but allows the TCEQ to establish fees that do not exceed the maximum fee of \$1,000. Specifying the maximum fee in the rule allows the TCEQ flexibility to adjust fees as needed to support the program. Structuring the rule pertaining to the fee in this manner also allows the TCEQ to examine fee structures, such as a tiered fee structure, that may prove more desirable to stakeholders.

Stakeholder meetings were held on September 13, 2011 and December 6, 2011 to support both the development of these proposed rules and other implementation activities, including fee development. It was during these meetings that stakeholders asked TCEQ to consider a tiered fee structure, primarily to lessen the fee burden for small business. To consider a tiered fee structure, additional information from APOs is necessary.

The TCEQ has developed outreach materials that include a questionnaire related to registration fees. This questionnaire collects information about type of operation, type of material extracted, and stakeholder preferences related to fee structure. TCEQ intends to use the information from this questionnaire to develop the fees and fee structure for Fiscal Year 2013 registrations. Future fee adjustments would be supported by information submitted with the registration and stakeholder communication. In accordance with TWC, Chapter 28A and the proposed rules, individual fees assessed will not exceed \$1,000 per year and total fee revenue will not exceed the costs of administering the program.

The public meeting for these proposed rules is scheduled for February 9, 2012. During that public meeting, program staff will also separately discuss and take comment on other implementation activities, including fee development. Program staff anticipates holding additional stakeholder meetings on implementation activities, including fees, as necessary to ensure that the regulated community is well informed of these new requirements and has an opportunity to provide input on program development.

### Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Strategic Planning and Assessment Section, has determined that for the first five-year period the proposed rules are in effect, there will be fiscal implications for the agency to implement a new registration and investigation program for facilities who extract or process aggregates used for construction material. No significant fiscal implications are anticipated for other units of state or local government as a result of administration or enforcement of the proposed rules. According to TWC, §28A.001(1)(B), state agencies, including the Texas Department of Transportation, as well as cities or other units of local government that provide aggregate products for use in public works projects are not defined as APOs and would not be required to register and pay the annual application fees.

The proposed rulemaking implements TWC, §28A and would require an active APO to register annually with the TCEQ, no later than September 1, 2012. The statute requires the TCEQ to establish an annual registration fee in an amount not to exceed \$1,000, and to survey the state each year to locate unregistered APOs. The statute requires each APO to be investigated every three years, but would allow entities that submit a Notice of Au-

H.B. No. 3272

AN ACT

relating to the low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 382.003, Health and Safety Code, is amended by adding Subdivisions (4-a) and (9-b) and amending Subdivision (7-b) to read as follows:

(4-a) "Electric vehicle" means a motor vehicle that draws propulsion energy only from a rechargeable energy storage system.

(7-b) "Hybrid [~~motor~~] vehicle" means a motor vehicle that draws propulsion energy from both gasoline or conventional diesel fuel and a rechargeable energy storage system.

(9-b) "Natural gas vehicle" means a motor vehicle that uses only compressed natural gas or liquefied natural gas as fuel.

SECTION 2. Section 382.209(e), Health and Safety Code, is amended to read as follows:

(e) A vehicle is not eligible to participate in a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program established under this section unless:

(1) the vehicle is capable of being operated;

(2) the registration of the vehicle:

(A) is current; and

(B) reflects that the vehicle has been registered in the county implementing the program for at least ~~the~~ 12 of the 15 months preceding the application for participation in the program;

(3) the commissioners court of the county administering the program determines that the vehicle meets the eligibility criteria adopted by the commission, the Texas Department of Motor

Vehicles, and the Public Safety Commission;

(4) if the vehicle is to be repaired, the repair is done by a repair facility recognized by the Department of Public Safety, which may be an independent or private entity licensed by the state; and

(5) if the vehicle is to be retired under this subsection and Section 382.213, the replacement vehicle is a qualifying motor vehicle.

SECTION 3. Sections 382.210(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The commission by rule shall adopt guidelines to assist a participating county in implementing a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program authorized under Section 382.209. The guidelines at a minimum shall recommend:

- (1) a minimum and maximum amount for repair assistance;
- (2) a minimum and maximum amount toward the purchase

H.B. No. 3272  
price of a replacement vehicle qualified for the accelerated retirement program, based on vehicle type and model year, with the maximum amount not to exceed:

(A) \$3,000 for a replacement car of the current model year or the previous three model years, except as provided by Paragraph (C);

(B) \$3,000 for a replacement truck of the current model year or the previous two model years, except as provided by Paragraph (C); and

(C) \$3,500 for a replacement [~~hybrid~~] vehicle of the current model year or the previous three model years that:

(i) is a hybrid vehicle, electric vehicle, or natural gas vehicle; or

(ii) has been certified to meet federal Tier 2, Bin 3 or a cleaner Bin certification under 40 C.F.R. Section 86.1811-04, as published in the February 10, 2000, Federal Register [year];

(3) criteria for determining eligibility, taking into account:

(A) the vehicle owner's income, which may not exceed 300 percent of the federal poverty level;

(B) the fair market value of the vehicle; and

(C) any other relevant considerations;

(4) safeguards for preventing fraud in the repair, purchase, or sale of a vehicle in the program; and

(5) procedures for determining the degree and amount of repair assistance a vehicle is allowed, based on:

(A) the amount of money the vehicle owner has spent on repairs;

(B) the vehicle owner's income; and

(C) any other relevant factors.

(b) A replacement vehicle described by Subsection (a)(2) must:

(1) except as provided by Subsection (c), be a vehicle

H.B. No. 3272

in a class or category of vehicles that has been certified to meet federal Tier 2, Bin 5 or a cleaner Bin certification under 40 C.F.R. Section 86.1811-04, as published in the February 10, 2000, Federal Register;

(2) have a gross vehicle weight rating of less than 10,000 pounds; ~~and~~

(3) have an odometer reading of not more than 70,000 miles; and

(4) be a vehicle the total cost of which does not exceed:

(A) for a vehicle described by Subsection (a)(2)(A) or (B), \$35,000; or

(B) for a vehicle described by Subsection (a)(2)(C), \$45,000 [~~\$25,000~~].

SECTION 4. Section 382.213, Health and Safety Code, is amended by adding Subsection (a-1) and amending Subsection (h) to read as follows:

H.B. No. 3272

(a-1) The commission shall establish a partnership with representatives of the steel industry, automobile dismantlers, and the scrap metal recycling industry to ensure that:

(1) vehicles retired under Section 382.209 are scrapped or recycled; and

(2) proof of scrapping or recycling is provided to the commission.

(h) The [~~For purposes of this section, the~~] commission shall adopt rules:

(1) defining "emissions control equipment" and "engine" for the purposes of this section; and

(2) providing a procedure for certifying that emissions control equipment and vehicle engines have been scrapped or recycled. [u]

SECTION 5. This Act takes effect September 1, 2011.

H.B. No. 3272

---

President of the Senate

---

Speaker of the House

I certify that H.B. No. 3272 was passed by the House on April 27, 2011, by the following vote: Yeas 132, Nays 15, 2 present, not voting.

---

Chief Clerk of the House

I certify that H.B. No. 3272 was passed by the Senate on May 19, 2011, by the following vote: Yeas 26, Nays 5.

---

Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

---

Governor