

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Proposed Rulemaking

AGENDA REQUESTED: November 19, 2014

DATE OF REQUEST: October 31, 2014

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Kris Hogan, (512) 239-6812

CAPTION: Docket No. 2014-0953-RUL. Consideration for publication of, and hearing on, proposed amendments to Sections 114.2, 114.7, 114.53, 114.60, 114.62, 114.64, 114.70, and 114.87 of 30 Texas Administrative Code Chapter 114, Control of Air Pollution from Motor Vehicles, Subchapter A, Definitions, and Subchapter C, Vehicle Inspection and Maintenance; Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program; and Early Action Compact Counties. Amendments to Sections 114.2, 114.53, and 114.87, if adopted, will be submitted to the United States Environmental Protection Agency as a revision to the state implementation plan.

The proposed rulemaking would establish a formal procedure to allow a county that participates in the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) to opt out of the program, which includes ending the LIRAP contract between the county and the executive director and removing the LIRAP fee from the state fees assessed during annual vehicle inspection and remitted by vehicle owners during vehicle registration. The proposed rule revisions would differentiate between eligible counties that participate in the LIRAP and those that do not. (Jamie Zech, Sierra Redding) (Rule Project No. 2014-027-114-AI)

Steve Hagle, P.E.

Deputy Director

Joyce Nelson *for* David Brymer

Division Director

Kristina M. Hogan

Agenda Coordinator

Copy to CCC Secretary? YES

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** October 31, 2014

Thru: Bridget C. Bohac, Chief Clerk
Richard A. Hyde, P.E., Executive Director

From: Steve Hagle, P.E., Deputy Director, Office of Air

Docket No.: 2014-0953-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 114, Control of Air Pollution from Motor Vehicles
LIRAP Rule Revision
Rule Project No. 2014-027-114-AI

Background and reason(s) for the rulemaking:

In March 2002, the Texas Commission on Environmental Quality (TCEQ) adopted rules to implement the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP), which was authorized in Texas Health and Safety Code (THSC), §382.209. The rules established a fee to be paid by vehicle owners in participating counties to fund the LIRAP. The LIRAP fee is paid by vehicle owners as a portion of the fees assessed under the Vehicle Inspection and Maintenance (I/M) Program. Only counties that participate in the I/M program are eligible to participate in the LIRAP. Those counties include: Brazoria, Fort Bend, Galveston, Harris, and Montgomery Counties in the Houston-Galveston-Brazoria (HGB) area; Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties in the Dallas-Fort Worth (DFW) area; Travis and Williamson Counties in the Austin-Round Rock (ARR) area; and El Paso County.

When the rules were first adopted, a procedure was established to allow counties to opt into the LIRAP, and all eligible counties but El Paso County opted in. No procedure was established to allow a participating county to opt out of the LIRAP and have the LIRAP-funding fee removed. On April 28, 2014, the TCEQ received Court Order No. 2014-221-04-21 from the Collin County Commissioners Court requesting withdrawal of the county from participation in the LIRAP, which requires amending the rules to include an opt-out procedure. The proposed rulemaking, if adopted, would establish a formal procedure to allow Collin County or any participating county to opt out of the LIRAP and have LIRAP fee collection be discounted and the contract between the county and the TCEQ Executive Director ended. Removing the LIRAP fee in opt-out counties would require coordination with the Texas Department of Public Safety (DPS) and the Texas Department of Motor Vehicles (DMV).

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

The proposed revisions would amend Chapter 114, Subchapter A to incorporate a non-substantive change to §114.2 and the following substantive changes to §114.7.

- Section 114.7 would be amended to add four new definitions and revise two existing definitions. The proposed amendment would clarify the fee element of the LIRAP,

Re: Docket No. 2014-0953-RUL

define the date upon which an opt-out county is no longer subject to the LIRAP fee, define the date upon which a county is completely withdrawn from participation in the LIRAP, and differentiate between eligible counties that participate in the LIRAP and those that do not. The proposed rulemaking would revise the numbering for §114.7 to incorporate the added definitions.

The proposed revisions would also amend Chapter 114, Subchapter C to incorporate the following changes.

- Division 1, §114.53 would be revised to address the difference in vehicle emissions I/M fees between a nonattainment county that participates in the LIRAP, a non-attainment county that is in the process of opting out of the LIRAP, and a non-participating, nonattainment county.
- Division 2, §114.60 would be revised to clarify that LIRAP requirements apply only to participating counties.
- Division 2, §114.62 would be revised to clarify that the LIRAP is funded by fees collected only in participating counties.
- Division 2, §114.64 would be revised to incorporate a process by which a participating county may opt out of the LIRAP that includes a written request by the affected county commissioners court requesting removal of the LIRAP fee and ending of the grant contracts between the county and the TCEQ executive director. The LIRAP opt-out effective date for a county would be either the LIRAP fee termination effective date – the date upon which the county is no longer subject to the LIRAP fee – or the last day of the legislative biennium in which the LIRAP fee termination effective date occurred. Removal of the LIRAP fee would take at least 90 days but maybe more to take effect, which is the earliest a participating county may be completely withdrawn from the program.
- Division 2, §114.70 would be revised to specify that the recordkeeping requirements and audit provisions would continue to apply to affected entities in a county that opted out of the LIRAP for three years after the LIRAP opt-out effective date.
- Division 3, §114.87 would be revised to address the difference in vehicle emissions I/M fees between an early action compact county that participates in the LIRAP, an early action compact county that is in the process of opting out of the LIRAP, and a non-participating early action compact county.

In addition to the proposed changes to allow counties to opt out of the LIRAP, the proposed rule revisions also include various non-substantive revisions to conform with *Texas Register* style and formatting requirements.

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

None.

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

None.

Re: Docket No. 2014-0953-RUL

Statutory authority:

This rulemaking 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. This rulemaking is also proposed under THSC, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; 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 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.

Effect on the:

A.) Regulated community:

The proposed rulemaking is not expected to have a direct impact on the regulated community. The LIRAP is a voluntary program in which eligible counties may choose to participate or from which they may choose to withdraw.

B.) Public:

While this proposed rulemaking would not directly impact the public, there are possible implications if a participating county opts out of the LIRAP. Vehicle owners in non-participating counties are not subject to the LIRAP fee, which is \$6.00 in the participating HGB and DFW counties and \$2.00 in participating ARR counties. However, non-participating counties and the vehicle owners registered in those counties are not eligible for the AirCheckTexas Drive a Clean Machine (DACM) and Local Initiative Project (LIP) grant programs. With no DACM grant funds available to qualifying vehicle owners for repair or replacement of vehicles that fail emissions inspections, it is possible that program-related business at participating recognized emissions repair facilities and auto dealers in a non-participating county would be affected.

C.) Agency programs:

This proposed rulemaking would not directly impact agency programs. If a county opted out of the LIRAP, then the TCEQ would be required to coordinate with the DMV and the DPS to remove the LIRAP fee in that county.

Stakeholder meetings:

No stakeholder meetings were held for the proposed rulemaking. TCEQ staff coordinated with the DMV and DPS on developing a method for adding and removing the LIRAP fee in eligible counties.

Potential controversial concerns and legislative interest:

The proposed rule revisions would include a waiting period for LIRAP fee removal during which the TCEQ and DMV would work to remove the LIRAP fee. The proposed rulemaking

Re: Docket No. 2014-0953-RUL

would not set a specific time period for removal of the LIRAP fee because it is dependent on when registration forms that do not include the LIRAP fee are available from the DMV. The DMV prints and distributes its vehicle registration notices more than 90 days prior to a vehicle's registration expiration, so renewal notices that excluded the LIRAP fee for an opt-out county would be printed for registrations due more than 90 days after a county submitted its request to opt out of the LIRAP. During the fee-removal time frame, vehicle owners would still pay the LIRAP fee because the county would still be considered a participating county.

When a county participates in the LIRAP, vehicle owners remit the LIRAP fee, which funds the program. The LIRAP fees for each participating county are deposited in the state's Clean Air Fund 151, and a portion of that fund is appropriated to the commission for allocation to participating counties as annual grants for DACM and LIP. Vehicle owners in Travis and Williamson Counties pay \$2.00 in annual LIRAP fees, and vehicle owners in DFW and HGB-area counties pay \$6.00 in annual LIRAP fees. Once a county is effectively opted out of the LIRAP, the LIRAP fee for that county would no longer be collected and deposited in the state treasury's Clean Air Fund.

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

The proposed rulemaking is not expected to directly affect any current policies or require the development of new policies.

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

The LIRAP is a voluntary program, and participating counties may opt out at their discretion. The proposed rulemaking would establish a formal procedure to allow any participating LIRAP county to opt out of the program, which includes no longer paying the LIRAP fee. This proposed rulemaking offers counties opting out of the LIRAP a choice between becoming a non-participating county upon the LIRAP fee termination effective date or continuing to participate in the grant program using allocated funds until the end of the biennium in which the LIRAP fee was terminated. If this rulemaking does not go forward, then affected counties would be required to pay the LIRAP fee even if they no longer wanted to participate in the program. The only alternative to this proposed rulemaking would be to conduct a separate rulemaking for every county that decided to withdraw from the LIRAP.

Key points in the proposal rulemaking schedule:

Anticipated proposal date: November 19, 2014

Anticipated *Texas Register* publication date: December 5, 2014

Anticipated public hearing date (if any): January 6, 2015

Anticipated public comment period: December 5, 2014 through January 9, 2015

Anticipated adoption date: April 29, 2015

Commissioners
Page 5
October 31, 2014

Re: Docket No. 2014-0953-RUL

Agency contacts:

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The Texas Commission on Environmental Quality (TCEQ, agency, commission) proposes amendments to §§114.2, 114.7, 114.53, 114.60, 114.62, 114.64, 114.70, and 114.87.

If adopted, §§114.2, 114.53, and 114.87 will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP).

Background and Summary of the Factual Basis for the Proposed Rules

The commission proposes revisions to incorporate a procedure for counties to opt out of the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) and to be released from program obligations, including remittance of the fee to fund the LIRAP. The commission also proposes to add language that differentiates between a LIRAP participating county and non-participating county.

The LIRAP was established to enhance the objectives of the Vehicle Inspection and Maintenance (I/M) Program. The 77th Texas Legislature, 2001, enacted House Bill (HB) 2134 to assist low income individuals with repairs, retrofits, or retirement of vehicles that fail emissions inspections. HB 2134 required the commission and the Texas Department of Public Safety (DPS), by rule, to provide the minimum guidelines by which eligible counties may implement the LIRAP. The commission, in coordination with DPS, adopted rules implementing HB 2134.

The LIRAP is a voluntary program, and only those counties that have implemented vehicle emissions I/M programs are eligible to participate in the LIRAP. I/M program counties include Brazoria, Fort Bend, Galveston, Harris, and Montgomery Counties in the Houston-Galveston-Brazoria (HGB) area; Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties in the Dallas-Fort Worth (DFW) area; Travis and Williamson Counties in the Austin-Round Rock (ARR) area; and El Paso County. To participate, an eligible county must submit a written request to the TCEQ from the county's commissioners court to implement the LIRAP. The TCEQ executive director and the participating county then enter into a grant contract for implementation of the LIRAP. Under the program, monetary or other compensatory 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 and for which emission-related repairs would not be economical. In addition, appropriated funds are granted to participating counties for use in approved local initiative projects (LIP).

The LIRAP is funded through a fee (LIRAP fee) that is charged to vehicle owners in participating counties. The LIRAP fee is \$6.00 in participating DFW and HGB-area counties, and it is charged to vehicle owners who receive on-board diagnostics (OBD) emissions inspection tests. The LIRAP fee is \$2.00 in participating ARR-area counties, and it is charged to vehicle owners for any emissions inspection test performed. The LIRAP fee is remitted at authorized inspection stations during annual vehicle safety and emissions inspections, but as of March 1, 2015 the LIRAP fee will be paid at the Texas Department of

Motor Vehicles (DMV) or county tax assessor-collector during vehicle registration. This change is a result of a 2014 revision to Chapter 114, Subchapters A, B, and C (Rule Project Number 2013-035-114-AI), transitioning the state to a single sticker system for vehicle inspection and registration and implementing HB 2305, 83rd Texas Legislature, 2013.

The 2002 rules adopted to implement the LIRAP established minimum and maximum assistance amounts for emission-related repairs and retrofits, minimum and maximum assistance amounts toward purchase of replacement vehicles, and criteria for determining eligibility. The 2002 rulemaking required that emission-related repairs covered by the program be carried out at recognized emissions repair facilities and allowed participating counties to administer the program themselves or contract with private entities or other participating counties to administer the program.

The 2002 rulemaking allowed the commissioners court of a participating county to appoint one or more local advisory panels consisting of individuals representing automobile dealerships, the automotive repair industry, safety inspection stations, local affected governments, and local nonprofit organizations to advise the commissioners court on the operation of the LIRAP. Additionally, the rulemaking required the commission to authorize the assignment of emissions reduction credits to private, commercial, or business entities that purchase qualified vehicles for accelerated retirement under the LIRAP. Retired vehicles had to be destroyed, recycled, dismantled with remaining parts sold, or placed in storage and subsequently retired, repaired, or used as replacement

vehicles. The rulemaking to implement the LIRAP was adopted on March 27, 2002, as published in the April 12, 2002, issue of the *Texas Register* (27 TexReg 3194).

The 79th Texas Legislature, 2005, enacted HB 1611, which revised elements of the LIRAP. HB 1611 allowed for the LIRAP to be administered by participating counties in accordance with Texas Government Code, Chapter 783 (relating to Uniform Grant and Contract Management). It also allowed LIRAP funds to cover programmatic costs such as call-center management, application oversight, invoice analysis, education, outreach, and advertising. In 2005, legislation revised vehicle registration eligibility requirements. The commission adopted rule revisions (Rule Project Number 2005-073-114-EN) implementing HB 1611 on April 12, 2006, as published in the April 28, 2006, issue of the *Texas Register* (31 TexReg 3575).

On April 28, 2014, the commission received Court Order No. 2014-221-04-21 from the Collin County Commissioners Court withdrawing the county from participation in the LIRAP. The court order was sent with a letter requesting that the commission release Collin County from program requirements, including collection of the LIRAP fee.

At the time the LIRAP was established, the rules did not specify a procedure to allow participating counties to opt out of the program or to be released from the LIRAP fee requirement. This proposed rulemaking would provide Collin County or any participating county with a procedure for opting out of the LIRAP, which includes being released from

collection of the LIRAP fee and ending of the contract between the county and the TCEQ executive director. The proposed rulemaking would amend Subchapter A to revise the definitions for the LIRAP to account for counties opting out of the program and to add four new definitions to further clarify program elements and differentiate between counties participating in the LIRAP and non-participating counties. This proposed rulemaking would also amend Subchapter C, Divisions 1, 2, and 3. Division 1 would be amended to revise the I/M fees in a participating nonattainment county that elects to opt out of the LIRAP. Division 2 would be amended to provide a mechanism for participating nonattainment counties to opt out of the LIRAP, and Division 3 would be amended to provide a mechanism for early action compact (EAC) counties to opt out of the LIRAP and accordingly, revise the I/M fee requirements in §114.87.

Section by Section Discussion

In addition to the proposed amendments associated with providing a mechanism for counties to opt out of the LIRAP, various stylistic, non-substantive changes are included to update rule language to current *Texas Register* style and format requirements. Such changes include appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. These changes are non-substantive and generally are not specifically discussed in this preamble.

§114.2, Inspection and Maintenance Definitions

The commission proposes to replace the acronym for the Low Income Vehicle Repair

Assistance, Retrofit, and Accelerated Vehicle Retirement Program with the full program title to be consistent with the title of the referenced subchapter and *Texas Register* requirements.

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

The commission proposes to correct the title of §114.7 by amending the term "retrofit" to be singular. In addition, the commission proposes to add four new definitions to §114.7 to clarify program requirements and differentiate between participating counties and non-participating counties. "LIRAP fee" is proposed to be added as paragraph (13) to define the fee that vehicle owners in participating LIRAP counties pay when their vehicles receive certain emissions tests, OBD tests in DFW and HGB-area counties, and any emissions test in El Paso, Travis, and Williamson Counties. El Paso is currently a non-participating county. Assessment of the LIRAP fee is authorized by Texas Health and Safety Code (THSC), §382.202.

"LIRAP fee termination date" is proposed to be added as paragraph (14) to define the effective date upon which a county opting out of the LIRAP would no longer pay the LIRAP fee. "LIRAP opt-out effective date" is proposed to be added as paragraph (15) to define the date upon which a county that was participating in the LIRAP becomes a non-participating county. Withdrawal from the program is effective on the date that both of the following requirements have been met: 1) the county is no longer subject to the LIRAP fee; and 2) the

grant contract between the county and the TCEQ executive director that established participation in the program is ended. The grant contract cannot be ended before the LIRAP fee termination effective date.

"Non-participating county" is proposed to be added as paragraph (18) to differentiate between counties that are eligible to participate in the LIRAP but choose not to and eligible counties that participate in the LIRAP. The definition for "Participating county" is proposed to be amended to clarify that a county that is in the process of opting out of the LIRAP would be considered a participating county until the LIRAP opt-out effective date. The definition for "Recognized emissions repair facility" would be amended to replace the reference to 37 Texas Administrative Code (TAC) §23.93 with 37 TAC §23.51 as it replaced the former as of March 13, 2013. The remaining definitions in §114.7 would be renumbered to accommodate the added definitions.

§114.53, Inspection and Maintenance Fees

The commission proposes to amend §114.53(d)(1), (2), and (3) to more fully describe the LIRAP fee as it relates to the vehicle I/M programs in El Paso County and the DFW and HGB-area counties. Subparagraphs would be added to §114.53(d)(1), (2), and (3) to explain remittance of I/M fees, including the LIRAP fee, in a county participating in the LIRAP, a participating county that is in the process of opting out of the LIRAP, and a county that is not participating in the LIRAP and not subject to the LIRAP fee. The commission proposes to reorganize §114.53(d)(1) to allow the proposed subparagraphs to be consistent among

the paragraphs of §114.53(d). The proposed description of the state fees vehicle owners would pay during vehicle registration in participating counties, subparagraph (A) for each paragraph in §114.53(d), would include the LIRAP fee. The proposed description of the state fees vehicle owners would pay during vehicle registration in participating counties that are in the process of opting out of the LIRAP, subparagraph (B) for each paragraph in §114.53(d), would include the LIRAP fee until the effective LIRAP fee termination date, after which state fees would not include the LIRAP fee. The proposed description of the state fees vehicle owners would pay during vehicle registration in non-participating counties, subparagraph (C) for each paragraph in §114.53(d), would not include the LIRAP fee.

§114.60, Applicability for LIRAP

The commission proposes to add §114.60(c)(7) specifying that LIRAP requirements are not applicable to vehicles registered in counties that do not participate in the program. This addition would clarify that vehicles in non-participating counties are not subject to LIRAP requirements.

§114.62, LIRAP Funding

The commission proposes to amend §114.62(a) to clarify that the LIRAP is funded through money collected only in participating counties, and the term, "participating" would replace "affected" in §114.62(c) for consistency in describing counties that participate in the program.

§114.64, LIRAP Requirements

The counties that are eligible to participate in the LIRAP are limited to those that are included in I/M program areas, but no county is required to participate in the LIRAP. The original rule to implement the program included a procedure to allow counties to opt into the LIRAP, but it did not include a procedure to allow counties to opt out. The proposed amendment to §114.64 would establish a procedure for opting out of the LIRAP.

The commission proposes to amend §114.64(a), concerning implementation of the LIRAP, to indicate that participation in the program is voluntary. The commission proposes to amend §114.64(b)(3) to clarify that vehicle repair and retrofit assistance through the AirCheckTexas Drive a Clean Machine (DACM) Program is only available for vehicles registered in participating LIRAP counties.

The commission proposes to add §114.64(g) to establish the procedure for opting out of the LIRAP. Proposed §114.64(g)(1) would require a county wishing to opt out of the program to submit a written request from the county commissioners court to the TCEQ executive director, which is consistent with the process for opting into the LIRAP. The written request would include one of two possible LIRAP opt-out effective dates, either the LIRAP fee termination effective date or the last day of the legislative biennium in which the LIRAP fee termination effective date occurred. The first option would completely withdraw the opt-out county from the program on the same date that the county was no longer subject to

the LIRAP fee. The second option would extend the opt-out county's program participation past the LIRAP fee termination effective date to allow the county time to spend any remaining funds that had been allocated by the commission. The commission requests comment on the two program opt-out options proposed.

Participation in the LIRAP makes grant funds available to counties for program-related projects and to qualified vehicle owners, and the LIRAP is funded through fees collected from county vehicle owners. Due to the program's reliance on public support, the commission is requesting public comment on the method and process by which counties wishing to opt into or out of the LIRAP would do so, including any associated public notice requirements.

Proposed §114.64(g)(2) describes the procedure the commission would follow to release a county from LIRAP requirements upon receiving a written request from the county to opt out. Release from LIRAP requirements includes removing the LIRAP fee from the state fees charged to vehicle owners during vehicle registration, which requires the commission to coordinate with the DMV and DPS and to contact the Legislative Budget Board of Texas (LBB). This proposal includes a period of time for the LIRAP fee to be removed in counties that have requested to opt out of the program. The extended time frame is proposed because it allows the DMV to cycle through vehicle registrations for which notices that include the LIRAP fee have already been issued. The DMV prints and distributes vehicle registration notices more than 90 days prior to registration expiration dates. For example,

if the TCEQ executive director received a written request to withdraw from the program on August 1st, then the effective LIRAP fee termination date would be on or after December 1st because December would be the first month for which registration notices that did not include the LIRAP fee would be printed. The DMV prints registration notices mid-month, so a written request to withdraw that was received by the TCEQ executive director in mid-August would likely not result in the LIRAP fee being effectively terminated for the submitting county until, at the earliest, January 1st. The commission requests comment concerning this element of proposed §114.64(g)(2).

The proposed effective LIRAP fee termination date would be the first day of the month for the month that the DMV issues registration notices that do not include the LIRAP fee in the opt-out county. Until the LIRAP fee termination effective date, a county in the process of opting out of the LIRAP is still considered a participating county because the LIRAP fee cannot be assessed in a non-participating county. Depending upon the LIRAP opt-out effective date included in a county's written request to opt out of the program, the county could be completely withdrawn from the LIRAP on the LIRAP fee termination effective date, ending the contract between the county and the TCEQ executive director simultaneous with removal of the LIRAP fee, or the county could continue to participate in LIRAP activities without being subject to the LIRAP fee until the end of the legislative biennium in which the fee termination date occurs. The first option could end the county's participation in the LIRAP before all grant funds allocated to the county have been spent. The second option would allow a county the opportunity to continue LIRAP activities and

spend previously allocated LIRAP grant funds until the end of the biennium in which the LIRAP fee termination date occurred for that county.

Proposed §114.64(g)(3) describes the LIRAP opt-out effective date, which is upon which a participating county is no longer subject to the LIRAP fee and the grant contract between the county and the TCEQ executive director is ended. On this date, the county becomes a non-participating county. Because the commission proposes to allow a county wishing to opt out of the LIRAP two options in determining when the program is ended for that county, there are two possible effective dates upon which a participating county would become a non-participating county, either simultaneous with the LIRAP fee termination effective date or the last day of the legislative biennium in which the LIRAP fee termination effective date occurred. Upon a county's LIRAP opt-out effective date, any remaining grant balances would be returned to the commission.

§114.70, Records, Audits, and Enforcement

The commission proposes to amend §114.70(c) and (d) to incorporate recordkeeping and inspection requirements for counties that opt out of the LIRAP. Proposed §114.70(c) would require program participants in counties opting out of the LIRAP to maintain program records concerning the opt-out county for three years after the effective LIRAP opt-out date for the county. Program participants include the county, its designated entity, participating recognized emissions repair facilities, and participating vehicle retirement facilities.

Proposed §114.70(d) would require that in the three-year period during which records

must be kept after a county's LIRAP opt-out effective date, the TCEQ executive director must be allowed to conduct audits and inspections of the records kept concerning the opted out county by program participants.

§114.87, Inspection and Maintenance Fees

The commission proposes to amend §114.87 to apply the changes proposed in §114.53 to counties with early action compact programs that participate in the vehicle emissions I/M program. Proposed §114.87(d)(1) - (3) would explain remittance of I/M fees, including the LIRAP fee, in a county participating in the LIRAP, a participating county that is in the process of opting out of the LIRAP, and a county that is not participating in the LIRAP and not subject to the LIRAP fee. The proposed description of the state fees vehicle owners would pay during vehicle registration in participating EAC counties, paragraph (1), would include the LIRAP fee. The proposed description of the state fees vehicle owners would pay during vehicle registration in participating EAC counties that are in the process of opting out of the LIRAP, paragraph (2), would include the LIRAP fee until the effective LIRAP fee termination date, after which state fees would not include the LIRAP fee. The proposed description of the state fees vehicle owners would pay during vehicle registration in non-participating EAC counties, paragraph (3), would not include the LIRAP fee.

Fiscal Note: Costs to State and Local Government

Jeff Horvath, Analyst in the Chief Financial Officer's Division, has determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated

for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules. The proposed rules provide a mechanism for a county to withdraw from the LIRAP, which is a voluntary program.

The proposed rulemaking would establish a procedure to allow a participating county to opt out of the LIRAP. In March 2002, the agency adopted rules to implement the LIRAP, which was authorized in THSC, §382.209. The rules established a fee under the vehicle emissions I/M program to be paid by vehicle owners in participating counties, to fund the LIRAP. Pursuant to the passage of HB 2305, 83rd Texas Legislature, under the new single sticker system for vehicle inspection and registration, the vehicle emissions I/M fees will now be collected when vehicle owners register their vehicles.

Only counties that participate in the vehicle emissions I/M program are eligible to participate in the LIRAP. Those counties include the nonattainment and planning counties of Brazoria, Fort Bend, Galveston, Harris, and Montgomery Counties in the HGB area; Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties in the DFW area; Travis and Williamson Counties in the ARR area, and El Paso County.

When the rules were first adopted, a procedure was established to allow counties to opt into the LIRAP as part of an effort to reduce vehicle emissions. All eligible counties but El Paso County opted in. However, no mechanism was established to allow a participating county to opt out of the LIRAP and have the LIRAP-funding fee removed from vehicle emissions inspection fees in that county.

The Auto Emissions Inspection OBD, or LIRAP, fee revenue funds the LIRAP for those counties that have opted into the program. Vehicle owners in Travis and Williamson Counties pay \$2.00 in annual LIRAP fees, and vehicle owners in DFW- and HGB-area counties pay \$6.00 in annual LIRAP fees. These fees are added to the base emissions inspection fee. The LIRAP fees from each participating county are deposited into the agency's Clean Air Account 151, and a portion of that account's balance is used to fund both the DACM and LIP grant programs in participating counties.

If a county opted out of the LIRAP program, the OBD fees that fund the program would no longer be collected from vehicle owners in that county. Because this fee is used to fund the DACM and LIP programs, opting out would mean the county would not receive additional LIRAP funding to support clean air efforts and to fund repairs and replacements for low income vehicle owners who fail the motor vehicle emissions inspection.

There is no direct fiscal impact to the agency or to other units of state or local government from the proposed rulemaking as the proposed rules only provide a mechanism for a county to withdraw from the LIRAP, which is a voluntary program. Of the 17 eligible counties, 16 are currently participating in the program. If a county chose to withdraw from the LIRAP, there may be fiscal impacts, but they would be a result of voluntarily opting out, not a result of the proposed rulemaking.

The amount of LIRAP funding available to counties depends upon how much the legislature decides to appropriate for that purpose. The 83rd Texas Legislature, 2013, appropriated \$7,664,640 annually to fund the LIRAP for Fiscal Years 2014 and 2015. The estimated amount of Fiscal Year 2014 LIRAP-related revenue was \$42,847,650. The portion of the LIRAP fee that is not legislatively appropriated to fund the program in participating counties remains in the Clean Air Account 151 as part of the available fund balance. Collin County submitted a resolution from the county commissioners court to opt out of the program. Actual fiscal impacts for a county that opts out would be unique to that county due to varying funding amounts and program-related spending.

LIRAP grants are split between funding for local projects through the LIP and funding through the DACM program, which provides financial assistance for vehicle owners to repair, retrofit, or replace vehicles that fail annual emissions inspections. Eligible LIP include expansion and enhancement of the AirCheckTexas Repair and Replacement Assistance Program, development and implementation of remote emissions-sensing systems, enhancement of transportation system improvements, and coordination with local law enforcement to reduce counterfeit inspection stickers.

Upon Collin County's LIRAP opt-out effective date, future funding for both DACM and LIP would stop for Collin County. Collin County DACM and LIP allocations for 2008 through 2015 are listed in Table 1: *DACM and LIP Allocations for Collin County*. No allocations have been made beyond Fiscal Year 2015.

Figure 1: 30 TAC Chapter 114 - Preamble

Table 1: DACM and LIP Allocations for Collin County

Fiscal Year	DACM Allocation	LIP Allocation
2008	\$2,320,809.00	\$263,040.00
2009	\$2,467,357.00	\$275,436.00
2010	\$2,662,915.00	\$279,726.00
2011	\$2,733,141.00	\$195,062.00
2012	\$348,677.00	\$39,022.00
2013	\$346,875.00	\$39,022.00
2014	\$342,517.00	\$38,398.00
2015	\$342,517.00	\$38,398.00

If a participating county elects to opt out of the LIRAP, then staff would be required to coordinate between the county, the DMV, and the DPS to release the county from its LIRAP fee obligation. For example, TCEQ staff would inform DPS and DMV of Collin County's intention to withdraw from the LIRAP upon adoption of this proposed rulemaking. The proposed rulemaking would allow the DMV time to cycle through its pre-printed vehicle registration forms that include the LIRAP fee. This would prevent the DMV from having to reissue vehicle registration notices, which are printed and distributed to vehicle owners more than 90 days in advance of when they are due. Vehicle owners in Collin County with the LIRAP fee included on their registration notices would pay the LIRAP fee, but those notices would cycle out as the DMV issued notices that did not include the fee. Any DACM or LIP funds that were not spent by Collin County before its

LIRAP opt-out effective date (either upon the effective LIRAP fee termination date or upon the last day of the legislative biennium in which the LIRAP fee termination becomes effective, as decided by the county) would be returned to the commission.

The proposed rules establish a procedure for opting out of the LIRAP, but the procedure would not impose a fiscal burden on a county wishing to withdraw from the program. The proposed rules require records to be kept for three years following a county's withdrawal from the LIRAP. This requirement would not have a fiscal impact beyond the records retention requirement imposed while the county was participating in the program.

There are participating counties that have used LIRAP grant funds for LIP-related salaries. If a county opted out of the LIRAP, those funds would no longer be available for that purpose upon the LIRAP opt-out effective date.

Public Benefits and Costs

Mr. Horvath has also determined that for each year of the first five years the proposed rules are in effect, there is no direct public benefit anticipated from the changes seen in the proposed rules. However, counties in nonattainment and planning areas that participate in the LIRAP program will have the ability to opt out of the program if they so choose.

The proposed rules are not expected to have fiscal implications for individuals or businesses as the proposed rules only provide a mechanism for a county to withdraw from

the LIRAP, which is a voluntary program.

The residents in a county that voluntarily opted out of the LIRAP program would be affected. The DACM program provides assistance to vehicle owners, and by doing so, may help generate business for participating emissions repair facilities, dealers, and vehicle salvage facilities. For example, upon Collin County's LIRAP opt-out effective date, eligible, low-income individuals in that county with vehicles that fail emissions inspection tests would not have access to repair or replacement grant funds to assist with bringing their vehicles into compliance or replacing old vehicles. However, there may be little impact on affected businesses as drivers with vehicles that fail emissions inspections would still be obligated to remediate the failure, and vouchers from vehicle owners in other participating counties can still be used in Collin County.

Vehicle owners in Collin County, or any county opting out, would no longer be assessed the annual LIRAP fee upon the effective LIRAP fee termination date. Table 2: *Estimated Annual Revenue from LIRAP Fee in Collin County* lists the estimated LIRAP fees by year collected from inspection stickers issued in Collin County. There are 21 participating recognized emissions repair facilities that perform repair work through the program in Collin County, and there are 27 participating dealerships that sell vehicles to eligible participants through the program in Collin County. Since the beginning of DACM in 2007, Collin County residents have repaired 1,308 vehicles and retired and replaced 2,710 vehicles at an overall cost of \$8,896,641.

Figure 2: 30 TAC Chapter 114 - Preamble

Table 2: Estimated Annual Revenue from LIRAP Fee in Collin County

Fiscal Year	Estimated Revenue
2007	\$1,818,948.00
2008	\$1,981,020.00
2009	\$2,186,430.00
2010	\$2,323,410.00
2011	\$2,455,248.00
2012	\$2,546,550.00
2013	\$2,466,336.00

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules as the proposed rules only provide a mechanism for a county to withdraw from the LIRAP, which is a voluntary program. If a small business owns or operates an emissions repair facility or a vehicle salvage operation that does business through the LIRAP program, or owns or operates a participating dealership that sells vehicles to eligible participants through the program, they could be negatively impacted if the county in which they operate decides to opt out of the LIRAP program. However, drivers in Collin County with vehicles that fail emissions inspections would still be obligated to remediate the reason for the failure of the vehicle to pass the emissions test and vouchers from vehicle owners in other participating counties can still be used in Collin County, so the impact to businesses in counties that may opt out of the LIRAP program

may be minimal.

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 Determination

The commission reviewed this proposed rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225 and determined that it does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" means "a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector

of the state." Additionally, this proposed rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The amendments to Chapter 114 are proposed in accordance with HB 2134, which authorized the LIRAP found in THSC, Chapter 382. HB 2134 was enacted to enhance the objective of the vehicle emissions I/M program. The LIRAP provides financial assistance to low-income individuals for repair, retrofit, or retirement of vehicles that fail an emissions inspection. The proposed rulemaking is not expected to 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.

The proposed rulemaking implements requirements of 42 United States Code (USC), §7410, which requires states to adopt a SIP that provides for the implementation, maintenance, and enforcement of the National Ambient Air Quality Standards (NAAQS) in

each air quality control region of the state. The LIRAP was designed to enhance the objectives of the I/M program, and the commission previously submitted the I/M rules to the EPA as a revision to the Texas SIP, which the EPA approved effective July 25, 2014. While 42 USC, §7410 generally does not require specific programs, methods, or reductions in order to meet the standard, the SIP must include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter (42 USC, Chapter 85). The provisions of the Federal Clean Air Act (FCAA) recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 USC, §7410. States are not free to ignore the requirements of 42 USC, §7410 and must develop programs to assure that their contributions to nonattainment areas are reduced so that these areas can be brought into attainment on schedule.

The requirement to provide a fiscal analysis of adopted regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th Texas Legislature, 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis

of extraordinary rules. These rules are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 concluding that "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted the adopted rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law.

As discussed earlier in this preamble, the FCAA does not always require specific programs, methods, or reductions in order to meet the NAAQS; thus, states must develop programs for each area contributing to nonattainment to help ensure that those areas will meet the attainment deadlines. Because of the ongoing need to address nonattainment issues and to meet the requirements of 42 USC, §7410, the commission routinely proposes and adopts SIP rules. The legislature is presumed to understand this federal scheme. If each rule adopted for inclusion in the SIP was considered to be a major environmental rule that exceeds federal law, then every SIP rule would require the full regulatory impact analysis contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the LBB in its fiscal notes. Since the legislature

is presumed to understand the fiscal impacts of the bills it passes and that presumption is based on information provided by state agencies and the LBB, the commission believes that the intent of SB 633 was only to require the full regulatory impact analysis for rules that are extraordinary in nature. While the SIP rules will have a broad impact, the impact is no greater than is necessary or appropriate to meet the requirements of the FCAA. For these reasons, rules adopted for inclusion in the SIP fall under the exception in Texas Government Code, §2001.0225(a) because they are required by federal law.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code but left this provision substantially un-amended. It is presumed that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." *Central Power & Light Co. v. Sharp*, 919 S.W.2d 485, 489 (Tex. App. Austin 1995), *writ denied with per curiam opinion respecting another issue*, 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.*, 798 S.W.2d 353, 357 (Tex. App. Austin 1990, *no writ*). *Cf. Humble Oil & Refining Co. v. Calvert*, 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.*, 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor*, 24 S.W.3d 581 (Tex. App. Austin 2000, *pet. denied*); and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.*, 563 S.W.2d 916 (Tex. 1978).

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

The specific intent of these proposed rules is to amend sections of the TAC, which would allow any participating county to opt out of the LIRAP, including the collection of the LIRAP fee collected at the time of vehicle registration, without a future rulemaking. By providing a mechanism for participating counties to opt out of the LIRAP, this proposed rulemaking creates a more comprehensive program in accordance with the TCEQ's statutory obligation to create and implement the LIRAP. Additionally, even if the proposed rulemaking was a major environmental rule, it does not exceed a standard set by federal law or exceed an express requirement of state law. No contract or delegation agreement covers the topic that is the subject of this proposed rulemaking. Therefore, this proposed rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b) because it does not meet the definition of a "major environmental rule," nor does it meet any of the four applicability criteria for a major environmental rule.

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

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007 is applicable. The specific intent of these proposed rules is to amend sections of the TAC, which would allow any participating county to opt out of the LIRAP, including the collection of program-related LIRAP fee, without a future rulemaking. The proposed rules would substantially advance this stated purpose by amending sections in Chapter 114, Subchapters A and C to include revisions of the definitions and fees and to provide a mechanism for participating counties to opt out of the LIRAP. By providing a mechanism for participating counties to opt out of the LIRAP, this proposed rulemaking creates a more comprehensive program in accord with the TCEQ's statutory obligation to create and implement the LIRAP.

Texas Government Code, §2007.003(b)(4) provides that Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking because it is an action reasonably taken to fulfill an obligation mandated by state law. THSC, Chapter 382 requires the commission to establish and authorize the commissioners court of a participating county to implement a LIRAP subject to agency oversight that may include reasonable, periodic commission audits. Consequently, the proposed rulemaking meets the exemption criteria in Texas

Government Code, §2007.003(b)(4).

Nevertheless, the commission further evaluated these proposed rules and performed an assessment of whether these proposed rules constitute a "taking" under Texas Government Code, Chapter 2007. Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulations do not affect a landowner's rights in private real property because this rulemaking would not burden (constitutionally), nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. These proposed rules create a voluntary program for counties in the state to participate in and opt out of the LIRAP.

In addition, because the subject proposed regulations do not provide more stringent requirements they do not burden, restrict, or limit an owner's right to property and reduce its value 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 the Texas Government Code, Chapter 2007. For these reasons, Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking.

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) relating to rules subject to the Texas Coastal Management Program (CMP), and will, therefore, require that goals and policies of the CMP be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee 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 January 6, 2015, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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

Submittal of Comments

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

<http://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 2014-027-114-AI. The comment period closes on January 9, 2015. 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*. For further information, please contact Jamie Zech, Air Quality Planning Section, (512) 239-3935.

SUBCHAPTER A: DEFINITIONS

§114.2, §114.7

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and THSC, §382.012, concerning the State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. Additionally, the amendments are proposed under THSC, §382.209, concerning the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP), that authorizes the commission and the Public Safety Commission to adopt rules implementing the LIRAP; and THSC, §382.210, concerning

Implementation Guidelines and Requirements for the LIRAP, that authorizes the commission to adopt rules creating guidelines to assist participating counties in implementing the LIRAP.

The proposed amendments implement THSC, §§382.002, 382.011, 382.012, 382.017, 382.209, and 382.210.

§114.2. Inspection and Maintenance Definitions.

Unless specifically defined in Texas Health and Safety Code, Chapter 382, also known as the Texas Clean Air Act (TCAA), or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms that are defined by the TCAA, the following words and terms, when used in Subchapter C of this chapter (relating to Vehicle Inspection and Maintenance; Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program [LIRAP]; and Early Action Compact Counties), have the following meanings, unless the context clearly indicates otherwise.

(1) Acceleration simulation mode (ASM-2) test--An emissions test using a dynamometer (a set of rollers on which a test vehicle's tires rest) that applies an increasing load or resistance to the drive train of a vehicle, thereby simulating actual tailpipe

emissions of a vehicle as it is moving and accelerating. The ASM-2 vehicle emissions test is comprised of two phases:

(A) the 50/15 mode--in which the vehicle is tested for 90 seconds upon reaching and maintaining a constant speed of 15 miles per hour (mph) on a dynamometer that simulates acceleration at a rate of 3.3 mph per second by using 50% of the vehicle available horsepower; and

(B) the 25/25 mode--in which the vehicle is tested for 90 seconds upon reaching and maintaining a constant speed of 25 mph on a dynamometer that simulates acceleration at a rate of 3.3 mph per second by using 25% of the vehicle available horsepower.

(2) Consumer price index--The consumer price index for any calendar year is the average of the consumer price index for all-urban consumers published by the United States Department of Labor, as of the close of the 12-month period ending on August 31 of the calendar year.

(3) Controller area network (CAN)--A vehicle manufacturer's communications protocol that connects to the various electronic modules in a vehicle. CAN provides one protocol that collects information from the vehicle's electronic systems including the on-board diagnostics (OBD) emissions testing system. The United States

Environmental Protection Agency requires the CAN protocol to be installed in OBD-compliant vehicles beginning with some model year 2003 vehicles and phasing in to all OBD-compliant vehicles by the 2008 model year.

(4) Low-volume emissions inspection station--A vehicle emissions inspection station that meets all criteria for obtaining a low-volume waiver from the Texas Department of Public Safety.

(5) Motorist--A person or other entity responsible for the inspection, repair, and maintenance of a motor vehicle, which may include, but is not limited to, owners and lessees.

(6) On-board diagnostic (OBD) system--The computer system installed in a vehicle by the manufacturer that monitors the performance of the vehicle emissions control equipment, fuel metering system, and ignition system for the purpose of detecting malfunction or deterioration in performance that would be expected to cause the vehicle not to meet emissions standards. All references to OBD should be interpreted to mean the second generation of this equipment, sometimes referred to as OBD II.

(7) On-road test--Utilization of remote sensing technology to identify vehicles operating within the inspection and maintenance program areas that have a high probability of being high-emitters.

(8) Out-of-cycle test--Required emissions test not associated with vehicle safety inspection testing cycle.

(9) Primarily operated--Use of a motor vehicle greater than 60 calendar days per testing cycle in an affected county. Motorists shall comply with emissions requirements for such counties. It is presumed that a vehicle is primarily operated in the county in which it is registered.

(10) Program area--County or counties in which the Texas Department of Public Safety, in coordination with the commission, administers the vehicle emissions inspection and maintenance program contained in the Texas Inspection and Maintenance State Implementation Plan. These program areas include:

(A) the Dallas-Fort Worth program area, consisting of the following counties: Collin, Dallas, Denton, and Tarrant;

(B) the El Paso program area, consisting of El Paso County;

(C) the Houston-Galveston-Brazoria program area, consisting of Brazoria, Fort Bend, Galveston, Harris, and Montgomery Counties; and

(D) the extended Dallas-Fort Worth program area, consisting of Ellis, Johnson, Kaufman, Parker, and Rockwall Counties. These counties became part of the program area as of May 1, 2003.

(11) Retests--Successive vehicle emissions inspections following the failing of an initial test by a vehicle during a single testing cycle.

(12) Testing cycle--Before the single sticker transition date as defined in §114.1 of this title (relating [related] to Definitions), the annual cycle commencing with the first safety inspection certificate expiration date for which a motor vehicle is subject to a vehicle emissions inspection or beginning on the single sticker transition date, the annual cycle commencing with the first vehicle registration expiration date for which a motor vehicle is subject to a vehicle emissions inspection.

(13) Two-speed idle (TSI) inspection and maintenance test--A measurement of the tailpipe exhaust emissions of a vehicle while the vehicle idles, first at a lower speed and then again at a higher speed.

(14) Uncommon part--A part that takes more than 30 days for expected delivery and installation where a motorist can prove that a reasonable attempt made to locate necessary emission control parts by retail or wholesale part suppliers will exceed the remaining time prior to expiration of:

(A) the vehicle safety inspection certificate prior to the single sticker transition date as defined in §114.1 of this title (relating to Definitions);

(B) the vehicle registration beginning on the single sticker transition date as defined in §114.1 of this title; or

(C) the 30-day period following an out-of-cycle inspection.

§114.7. Low Income Vehicle Repair Assistance, Retrofit [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 Texas 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 Texas 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 [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) 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) 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) 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) Hybrid vehicle--A motor vehicle that draws propulsion energy from both gasoline or conventional diesel fuel and a rechargeable energy storage system.

(12) LIRAP--Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program [Low income vehicle repair assistance, retrofit, and accelerated vehicle retirement program].

(13) LIRAP fee--The portion of the vehicle emissions inspection fee that is required to be remitted to the state at the time of annual vehicle registration, as authorized by Texas Health and Safety Code, §382.202, in counties participating in the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program.

(14) LIRAP fee termination date--The first day of the month for the month that the Texas Department of Motor Vehicles issues registration notices without the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) fee, as defined in this section, in a participating county opting out of the LIRAP.

(15) LIRAP opt-out effective date--The date upon which a county that was participating in the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) becomes a non-participating county, which occurs when the grant contract between the county and the executive director, established in §114.64(a) of this title (relating to LIRAP Requirements), is ended, but no earlier than the LIRAP fee termination effective date.

(16) [(13)] 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.

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

(18) Non-participating county--An affected county that has either:

(A) not opted into the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) authorized by Texas Health and Safety Code, §382.209; or

(B) opted out of the LIRAP according to the procedures specified in §114.64(g) of this title (relating to LIRAP Requirements) and has been released from all program requirements, including assessment of the LIRAP fee as defined in this section and participation in LIRAP grant programs.

(19) [(15)] 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 (LIRAP) [low income vehicle repair assistance, retrofit, and accelerated vehicle retirement program] authorized by Texas Health and Safety Code, §382.209. An affected county that is in the process of opting out of the LIRAP is considered a participating county until the LIRAP opt-out effective date as defined in this section.

(20) [(16)] 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.

(21) [(17)] 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.

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

(23) [(19)] Recognized emissions repair facility--An automotive repair facility as provided in 37 Texas Administrative Code §23.51 (relating to Vehicle Emissions Inspection Requirements) [§23.93, relating to Vehicle Emissions Inspection Requirements].

(24) [(20)] 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.

(25) [(21)] 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 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 Texas Department of Public Safety motor vehicle safety inspection or safety and emissions inspection within the 15-month period before the application is submitted.

(26) [(22)] 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.

(27) [(23)] 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.

(28) [(24)] Total cost--The total amount of 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.

(29) [(25)] 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.

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

(31) [(27)] 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.

(32) [(28)] 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 1: VEHICLE INSPECTION AND MAINTENANCE

§114.53

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also proposed under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and THSC, §382.012, concerning the State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air.

Additionally, the amendment is proposed under THSC, §382.209, concerning the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP), that authorizes the commission and the Public Safety Commission to adopt rules implementing the LIRAP; and THSC, §382.210, concerning Implementation Guidelines and Requirements for the LIRAP, that authorizes the commission to adopt rules creating guidelines to assist participating counties in implementing the LIRAP.

The proposed amendment implements THSC, §§382.002, 382.011, 382.012, 382.017, 382.209, and 382.210.

§114.53. Inspection and Maintenance Fees.

(a) The following fees must be paid for an emissions inspection of a vehicle at an inspection station. This fee must include one free retest should the vehicle fail the emissions inspection provided that the motorist has the retest performed at the same station where the vehicle originally failed and submits, prior to the retest, a properly completed vehicle repair form showing that emissions-related repairs were performed and the retest is conducted within 15 days of the initial emissions test.

(1) In El Paso County beginning May 1, 2002 and ending on the day before the single sticker transition date as defined in §114.1 of this title (relating to Definitions), any emissions inspection station required to conduct an emissions test in accordance with

§114.50(a)(4)(A), (B), or (C) of this title (relating to Vehicle Emissions Inspection Requirements) must collect a fee of \$14 and remit \$2.50 to the Texas Department of Public Safety (DPS). If the El Paso County Commissioners Court adopts a resolution that is approved by the commission to participate in the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP), the emissions inspection station in El Paso County must collect a fee of \$16 and remit to the DPS \$4.50 beginning upon the date specified by the commission and ending on the day before the single sticker transition date. Beginning on the single sticker transition date, any emissions inspection station in El Paso County required to conduct an emissions test in accordance with §114.50(a)(4)(A), (B), or (C) of this title must collect a fee not to exceed \$11.50.

(2) In the Dallas-Fort Worth program area beginning May 1, 2002 and ending on the day before the single sticker transition date as defined in §114.1 of this title, any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(1)(A) or (B) of this title and in the extended Dallas-Fort Worth program area beginning May 1, 2003 and ending on the day before the single sticker transition date, any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(2)(A) or (B) of this title must collect a fee not to exceed \$27. Beginning May 1, 2002 and ending on the day before the single sticker transition date in the Dallas-Fort Worth and the extended Dallas-Fort Worth program areas, the emissions inspection station must remit to the DPS \$2.50 for each acceleration simulation mode (ASM-2) test and \$8.50 for each on-board diagnostics (OBD) test. Beginning on the single sticker

transition date in the Dallas-Fort Worth and the extended Dallas-Fort Worth program areas, any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(1)(A) or (B) and (2)(A) or (B) of this title must collect a fee not to exceed \$24.50 for each ASM-2 test and \$18.50 for each OBD test.

(3) In the Houston-Galveston-Brazoria program area beginning May 1, 2002 and ending on the day before the single sticker transition date as defined in §114.1 of this title, any emissions inspection station in Harris County required to conduct an emissions test in accordance with §114.50(a)(3)(A) or (B) of this title and beginning May 1, 2003 and ending on the day before the single sticker transition date, any emissions inspection station in Brazoria, Fort Bend, Galveston, and Montgomery Counties required to conduct an emissions test in accordance with §114.50(a)(3)(D) or (E) of this title must collect a fee not to exceed \$27. Beginning May 1, 2002 and ending on the day before the single sticker transition date in Brazoria, Fort Bend, Galveston, Harris, and Montgomery Counties, the emissions inspection station must remit to the DPS \$2.50 for each ASM-2 test and \$8.50 for each OBD test. Beginning on the single sticker transition date in Brazoria, Fort Bend, Galveston, Harris, and Montgomery Counties, any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(3)(A), (B), (D), or (E) of this title must collect a fee not to exceed \$24.50 for each ASM-2 test and \$18.50 for each OBD test.

(b) The per-vehicle fee and the amount the inspection station remits to the DPS for a challenge test at an inspection station designated by the DPS, must be the same as the

amounts set forth in subsection (a) of this section. The challenge fee must not be charged if the vehicle is retested within 15 days of the initial test.

(c) Inspection stations performing out-of-cycle vehicle emissions inspections for the state's remote sensing element must charge a motorist for an out-of-cycle emissions inspection in the amount specified in subsection (a) of this section resulting from written notification that subject vehicle failed on-road testing. If the vehicle passes the vehicle emissions inspection, the vehicle owner may request reimbursement from the DPS.

(d) Beginning on the single sticker transition date as defined in §114.1 of this title, vehicle owners shall remit as part of the annual vehicle registration fee collected by the Texas Department of Motor Vehicles (DMV) or county tax assessor-collector the amount of the vehicle emissions inspection fee that is required to be remitted to the state, [as specified by the following requirements:]

(1) In El Paso County, the following requirements apply. [vehicle owners shall remit \$2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax assessor-collector at the time of the annual vehicle registration as part of the vehicle emissions inspection fee. If the El Paso County Commissioners Court adopts a resolution that is approved by the commission to participate in the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program, vehicle owners shall remit \$4.50 for motor vehicles subject to vehicles emissions inspections to the DMV

or county tax assessor-collector at the time of the annual vehicle registration as part of the vehicle emissions inspection fee beginning upon the date specified by the commission.]

(A) If participating in the LIRAP, vehicle owners shall remit \$4.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee. Of the \$4.50 remitted, \$2.00 constitutes the LIRAP fee as defined in §114.7 of this title (relating to Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program Definitions).

(B) If participating in the LIRAP and in the process of opting out, vehicle owners shall remit \$4.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee until the LIRAP fee termination effective date as defined in §114.7 of this title. Of the \$4.50 remitted, \$2.00 constitutes the LIRAP fee as defined in §114.7 of this title. Upon the LIRAP fee termination effective date, vehicle owners shall remit \$2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee.

(C) If not participating in the LIRAP, vehicle owners shall remit \$2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-

assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee.

(2) In the Dallas-Fort Worth and the extended Dallas-Fort Worth program areas, the following requirements apply. [vehicle owners shall remit \$2.50 for motor vehicles subject to ASM-2 tests and \$8.50 for motor vehicles subject to OBD tests to the DMV or county tax assessor-collector at the time of the annual vehicle registration as part of the vehicle emissions inspection fee.]

(A) Vehicle owners in counties participating in the LIRAP shall remit \$2.50 for motor vehicles subject to ASM-2 tests and \$8.50 for motor vehicles subject to OBD tests to the DMV or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee. Of the \$8.50 remitted for OBD tests, \$6.00 constitutes the LIRAP fee as defined in §114.7 of this title.

(B) Vehicle owners in counties participating in the LIRAP that are in the process of opting out shall remit \$2.50 for motor vehicles subject to ASM-2 tests and \$8.50 for motor vehicles subject to OBD tests to the DMV or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee until the LIRAP fee termination effective date as defined in §114.7 of this title. Of the \$8.50 remitted for OBD tests, \$6.00 constitutes the LIRAP fee as defined in §114.7 of this title. Upon the LIRAP fee termination effective date, vehicle owners in participating counties

that are in the process of opting out of the LIRAP shall remit \$2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee.

(C) Vehicle owners in counties not participating in the LIRAP shall remit \$2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee.

(3) In the Houston-Galveston-Brazoria program area, the following requirements apply. [vehicle owners shall remit \$2.50 for motor vehicles subject to ASM-2 tests and \$8.50 for motor vehicles subject to OBD tests to the DMV or county tax assessor-collector at the time of the annual vehicle registration as part of the vehicle emissions inspection fee.]

(A) Vehicle owners in counties participating in the LIRAP shall remit \$2.50 for motor vehicles subject to ASM-2 tests and \$8.50 for motor vehicles subject to OBD tests to the DMV or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee. Of the \$8.50 remitted for OBD tests, \$6.00 constitutes the LIRAP fee as defined in §114.7 of this title.

(B) Vehicle owners in counties participating in the LIRAP that are in the process of opting out shall remit \$2.50 for motor vehicles subject to ASM-2 tests and \$8.50 for motor vehicles subject to OBD tests to the DMV or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee until the LIRAP fee termination effective date as defined in §114.7 of this title. Of the \$8.50 remitted for OBD tests, \$6.00 constitutes the LIRAP fee as defined in §114.7 of this title. Upon the LIRAP fee termination effective date, vehicle owners in participating counties that are in the process of opting out of the LIRAP shall remit \$2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee.

(C) Vehicle owners in counties not participating in the LIRAP shall remit \$2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee.

**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**

§§114.60, 114.62, 114.64, 114.70

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act (TCAA). The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and THSC, §382.012, concerning the State Air Control

Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. Additionally, the amendments are proposed under THSC, §382.209, concerning the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP), that authorizes the commission and the Public Safety Commission to adopt rules implementing the LIRAP; and THSC, §382.210, concerning Implementation Guidelines and Requirements for the LIRAP, that authorizes the commission to adopt rules creating guidelines to assist participating counties in implementing the LIRAP.

The proposed amendments implement THSC, §§382.002, 382.011, 382.012, 382.017, 382.209, and 382.210.

§114.60. Applicability for LIRAP.

(a) The provisions of §114.7 of this title (relating to Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program Definitions) and Division 2 of this subchapter (relating to Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program) provide the minimum requirements for county implementation of a Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) and apply to counties that implement a vehicle emissions inspection program and have elected to implement LIRAP provisions.

(b) To be eligible for assistance under this division, vehicles must be subject to §114.50(a) of this title (relating to Vehicle Emissions Inspection Requirements).

(c) LIRAP does not apply to a vehicle that is a:

(1) fleet vehicle;

(2) commercial vehicle;

(3) vehicle owned or leased by a governmental entity;

(4) vehicle registered as a classic motor vehicle as defined by Texas Transportation Code, §502.274;

(5) vehicle registered as an exhibition vehicle, including antique or military vehicles, as defined by Texas Transportation Code, §502.275; [or]

(6) vehicle not regularly used for transportation during the normal course of daily activities; or [.]

(7) vehicle subject to §114.50(a) of this title that is registered in a non-participating county.

(d) A participating county must ensure that owners of vehicles under subsection (c) of this section do not receive monetary or compensatory assistance under LIRAP.

§114.62. LIRAP Funding.

(a) The executive director shall provide funding for the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) with available funds from fees collected under §114.53 of this title (relating to Inspection and Maintenance Fees) or other designated and available funds from participating counties.

(b) The program shall be administered in accordance with Texas Government Code, Chapter 783. Programmatic costs may include call-center management, application oversight, invoice analysis, education, outreach, and advertising.

(c) A participating county shall receive, to the extent practicable, funds appropriated for the program [funding] in reasonable proportion to the amount in fees collected in the participating [affected] county or area from emissions testing fees designated by the commission.

(d) In a county with a vehicle emissions inspection and maintenance program under Texas Health and Safety Code, §382.202 or §382.302, not more than 10 percent of the money provided for LIRAP may be used for administration of the program.

§114.64. LIRAP Requirements.

(a) Implementation. Participation in the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) is voluntary. An affected county may choose to participate in the program at its discretion. Upon receiving a written request to participate in the LIRAP [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 participating program county for at least 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) be a vehicle, the total cost of which 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 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) 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.

(g) Opting out of the LIRAP. Participation in the LIRAP is voluntary. A participating county may opt out of the program. Procedures to release a participating county from the LIRAP shall be initiated upon the receipt of a written request to the executive director by the county commissioners court in a participating county.

(1) A written request to opt out of the LIRAP shall request release from the LIRAP fee as defined in §114.7 of this title (relating to Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program Definitions) and the grant contract established in subsection (a) of this section. The written request shall include one of the following possible LIRAP opt-out effective dates as defined in §114.7 of this title:

(A) the LIRAP fee termination effective date as defined in §114.7 of this title; or

(B) the last day of the legislative biennium in which the LIRAP fee termination effective date as defined in §114.7 of this title occurred.

(2) Upon receipt of a written request to be released from participation in the LIRAP, the executive director shall notify, in writing, with a copy sent to the requesting county, the Texas Department of Motor Vehicles (DMV), DPS, and the Legislative Budget

Board of Texas that the LIRAP fee should no longer be collected for vehicles undergoing inspection and registration in the affected county.

(3) A county opting out of the LIRAP remains a participating county until the LIRAP opt-out effective date as defined in §114.7 of this title, on which date the county is no longer subject to the LIRAP fee, and the grant contract established in subsection (a) of this section is ended. On the LIRAP opt-out effective date, any unspent balance of allocated funds shall be returned to the commission.

§114.70. Records, Audits, and Enforcement.

(a) A participating county shall submit quarterly audit reports to ensure that the funds provided to implement the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) have been used in accordance with requirements of this division. The quarterly reports (September - November, December - February, March - May, June - August) must be transmitted to the executive director in paper copies or in an electronic database format to be determined by mutual agreement between the state and the participating county no later than 30 days after the end of the quarter.

(b) At a minimum, the quarterly reports must include the following:

(1) name of the county department or entity implementing the program and their mailing address;

(2) name of the official representative of the county department or entity;

(3) amount of funds received during the reporting period;

(4) amount distributed for repair assistance, retrofitting, accelerated retirement, and administrative costs;

(5) information regarding the recognized emissions repair facilities and vehicle retirement facilities participating in the LIRAP, including the number of approved assistance transactions, the amount of each transaction, and the total amounts paid to each facility;

(6) pending amount of funds that must be paid out;

(7) information for each vehicle participating in program, including:

(A) vehicle identification number (VIN);

(B) vehicle license plate number;

(C) name and business address of the Texas Department of Public Safety recognized emissions repair facility or vehicle retirement facility; and

(D) date of vehicle repair, retrofit, or retirement; [and]

(8) information for each replacement vehicle including:

(A) VIN [vehicle identification number (VIN)];

(B) make of vehicle;

(C) model year;

(D) odometer reading;

(E) name and business address of seller; and

(9) any other information requested by the executive director.

(c) Records on LIRAP must be maintained for a minimum period of three years by a participating county, its designated entity, a participating recognized emissions repair

facility, and a participating vehicle retirement facility. Upon the LIRAP opt out effective date as defined in §114.7 of this title (relating to Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program Definitions), the non-participating county, its designated entity, a participating recognized emissions repair facility, and a participating vehicle retirement facility must maintain program records for the non-participating county for a period of three years. Such records must be available upon request by the executive director for auditing purposes.

(d) A participating county, its designated entity, a participating recognized emissions repair facility, and a participating vehicle retirement facility shall allow the executive director to conduct audits and inspections. For a period of three years after the LIRAP opt-out effective date as defined in §114.7 of this title, a non-participating county, its designated entity, a participating recognized emissions repair facility, and a participating vehicle retirement facility shall allow the executive director to conduct audits and inspections of records from the non-participating county.

(e) A person who, with intent to defraud, sells a vehicle in an accelerated vehicle retirement program under LIRAP commits an offense that is classified as a third degree felony.

(f) A person who causes, suffers, allows, or permits a violation of §114.66(c) and (d) of this title (relating to Disposition of Retired Vehicle) is subject to a civil penalty under

Texas Water Code, Chapter 7, Subchapter D, [Chapter 7,] for each violation. A separate violation occurs with each fraudulent certification or prohibited resale.

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

DIVISION 3: EARLY ACTION COMPACT COUNTIES

§114.87

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC) §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also proposed under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and THSC, §382.012, concerning the State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air.

Additionally, the amendment is proposed under THSC, §382.209, concerning the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP), that authorizes the commission and the Public Safety Commission to adopt rules implementing the LIRAP; and THSC, §382.210, concerning Implementation Guidelines and Requirements for the LIRAP, that authorizes the commission to adopt rules creating guidelines to assist participating counties in implementing the LIRAP.

The proposed amendment implements THSC, §§382.002, 382.011, 382.012, 382.017, 382.209, and 382.210.

§114.87. Inspection and Maintenance Fees.

(a) The following fees must be paid for an emissions inspection of a vehicle at an inspection station in an affected early action compact program county. This fee must include one free retest if the vehicle fails the emissions inspection, provided that the motorist has the retest performed at the same station where the vehicle originally failed; the motorist submits, prior to the retest, a properly completed vehicle repair form showing that emissions-related repairs were performed; and the retest is conducted within 15 days of the initial emissions test. In Travis and Williamson Counties beginning September 1, 2005 and ending on the day before the single sticker transition date as defined in §114.1 of this title (relating to Definitions), any emissions inspection station required to conduct an emissions test in accordance with §114.80 of this title (relating to Applicability) must

collect a fee not to exceed \$16 and remit \$4.50 to the Texas Department of Public Safety (DPS) for each on-board diagnostic and two-speed idle test. In Travis and Williamson Counties beginning on the single sticker transition date, any emissions inspection station required to conduct an emissions test in accordance with §114.80 of this title must collect a fee not to exceed \$11.50 for each on-board diagnostic and two-speed idle test.

(b) The per-vehicle fee and the amount the inspection station remits to the DPS for a challenge test at an inspection station designated by the DPS must be the same as the amounts specified in subsection (a) of this section. The challenge fee must not be charged if the vehicle is retested within 15 days of the initial test.

(c) Inspection stations performing out-of-cycle vehicle emissions inspections resulting from written notification that the subject vehicle failed on-road testing (remote sensing) must charge a motorist for an out-of-cycle emissions inspection in the amount specified in subsection (a) of this section. If the vehicle passes the vehicle emissions inspection, the vehicle owner may request reimbursement from the DPS.

(d) Beginning [Effective] on the single sticker transition date as defined in §114.1 of this title in Travis and Williamson Counties, the following requirements apply. [vehicle owners shall remit \$4.50 for motor vehicles subject to vehicle emissions inspections to the Texas Department of Motor Vehicles or county tax assessor-collector at the time of the annual vehicle registration as part of the vehicle emissions inspection fee.]

(1) Vehicle owners in counties participating in Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) shall remit \$4.50 for motor vehicles subject to vehicle emissions inspections to the Texas Department of Motor Vehicles (DMV) or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee. Of the \$4.50 remitted, \$2.00 constitutes the LIRAP fee as defined in §114.7 of this title (relating to Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program Definitions).

(2) Vehicle owners in counties participating in the LIRAP and in the process of opting out shall remit \$4.50 for motor vehicles subject to emissions inspection to the DMV or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee until the LIRAP fee termination effective date as defined in §114.7 of this title. Of the \$4.50 remitted, \$2.00 constitutes the LIRAP fee as defined in §114.7 of this title. Upon the LIRAP fee termination effective date, vehicle owners in participating counties that are in the process of opting out of the LIRAP shall remit \$2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee.

(3) Vehicle owners in counties not participating in the LIRAP shall remit \$2.50 for motor vehicles subject to vehicle emissions inspection to the DMV or county tax-

assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee.