

The Texas Commission on Environmental Quality (TCEQ or commission) adopts the amendments to §§114.7, 114.62, 114.64, 114.66, and 114.70 *with changes* to the proposed text as published in the August 24, 2007, issue of the *Texas Register* (32 TexReg 5315).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The commission adopts these revisions in order to implement requirements of Senate Bill (SB) 12, authored by the Honorable Senator Averitt, passed during the 80th Legislature, 2007. During the 77th Legislature, 2001, the legislature adopted provisions under House Bill (HB) 2134 to assist low income individuals with repairs, retrofits, or retirement of vehicles that fail emissions inspections. As required by HB 2134, the commission adopted rules providing the minimum guidelines for counties to implement a low income vehicle repair assistance, retrofit, and accelerated vehicle retirement program (LIRAP).

On March 27, 2002, the commission adopted requirements implementing HB 2134, 77th Legislature, 2001. Only those counties that have implemented a vehicle inspection and maintenance (I/M) program are eligible for participation in the LIRAP. Under the program, monetary assistance is provided for emission-related repairs directly related to bringing the vehicle into compliance or for replacement assistance for the owner of a vehicle that has failed the required emissions test. Vehicle eligibility criteria, such as the vehicle having been registered for the past two years in the participating county, were developed and adopted by the commission. Emission-related repairs covered by the program are required to be performed at a Texas Department of Public Safety (DPS)-recognized emissions repair facility. Participating counties may administer the program themselves or contract with a private entity or another county to administer the program. The 2001 law stated that participating counties could expend no more than five percent of the funds received from the state for administrative costs. These rules provided for a

minimum of \$30 and a maximum amount of \$600 for emission-related repairs, retrofit equipment, and installation; and a minimum of \$600 and a maximum amount of \$1,000 toward the purchase price of a replacement vehicle.

During the 79th Legislature, 2005, the legislature adopted HB 1611, revising three key elements of the program. The legislation allowed for the LIRAP to be administered by the counties in accordance with Texas Government Code, Chapter 783 (relating to Uniform Grant and Contract Management) and allowed for programmatic costs such as call-center management, application oversight, invoice analysis, education, outreach, and advertising to be covered by LIRAP funds. The revision allowed for participating counties to utilize additional resources to attract and increase program participation. The legislation removed the requirement that capped administrative costs at five percent of the funds provided to a county. Finally, the legislation changed the vehicle registration eligibility requirement from two years to 12 months. The revision increased participation by making assistance available to those vehicle owners who have lived in the county for at least one year. The commission adopted rule revisions implementing HB 1611 on April 12, 2006.

During the 80th Legislature, 2007, the legislature adopted SB 12, revising elements of the I/M program and LIRAP requirements. Revisions include enhanced capabilities for the retirement of old vehicles and their replacement with new vehicles. Old vehicle requirements include: gasoline-powered and older than ten years; owner financial eligibility requirements (up to 300 percent of federal poverty level); operated and registered in the implementing county for 12 months preceding the application; and passing the DPS safety or safety and emissions inspection within 15 months of application. The legislation also provided for replacement assistance for owners of vehicles passing the required I/M program acceleration

simulation mode (ASM) emissions test but that would have failed the more stringent United States Environmental Protection Agency (EPA) Final ASM standards (also known as “final cut-points”) emissions test. The revised maximum amounts for a new replacement vehicle are \$3,000 for a car, current model year and up to three model years old; \$3,000 for a truck, current model year and up to two model years old; \$3,500 for a hybrid vehicle of current or previous model year. The new vehicle must meet federal Tier 2, Bin 5 or cleaner emissions standards, have a gross vehicle weight rating of less than 10,000 pounds, and have a total purchase cost that does not exceed \$25,000.

SB 12 requires that dealers participating in the program and taking possession of the old vehicle submit proof that the vehicle has been retired. The vehicle retirement facility is required to destroy the emissions control equipment and engine and certify that those parts have been destroyed and not resold in the marketplace. Mercury switches must also be removed in accordance with any state and federal laws. The commission has included language to highlight concerns regarding fraud to ensure the vehicle retirement facilities have a clear understanding of the potential enforcement consequences. The legislation provided language that requires dealers and dismantlers participating in the program to be located in the state.

Additional revisions include limiting funding for administration and program costs of the local LIRAP to 10 percent of the money provided for the local program and requiring participating LIRAP counties to provide an electronic means for distributing funds for vehicle repairs or replacements. The county shall ensure that funds are transferred to a participating dealer not later than five business days after the sale of a replacement vehicle is completed. The legislation also requires that the commission establish procedures for a document confirming that the person is eligible to purchase a replacement vehicle, that the person applying for vehicle replacement has the document to participate in replacement, and that a dealer that

relies on the document has no duty to confirm eligibility. New legislation amended current LIRAP definitions to include “Destroy,” “Motor vehicle,” “Hybrid motor vehicle,” “Qualifying motor vehicle,” “Emissions control equipment,” “Dealer,” “Automobile dealership,” “Total cost,” “Engine,” and “Replacement vehicle.” New definitions for “Truck” and “Car” are also adopted to determine the vehicle model types that are associated with “truck” and “car” categories. To clarify when a transaction has occurred that finalizes the sale of a vehicle, and in response to comment, a definition for “Proof of sale” has been included in this adoption. To clarify the five business day reimbursement to automobile dealers requirement, a definition of “Proof of transfer” has been included in this adoption.

The legislation also authorizes the appropriation of \$5 million per fiscal year from LIRAP funds, on a matching basis, to administer LIRAP Local Initiative Projects. The projects must be implemented in consultation with the commission and may include expanding and enhancing AirCheckTexas; developing and implementing programs to remotely determine vehicle emissions and notify the vehicle’s operator; developing and implementing projects to implement the commission’s smoking vehicle program; developing and implementing projects for coordinating with local law enforcement officials to reduce the use of counterfeit state inspection stickers; developing and implementing programs to enhance transportation system improvements; or developing and implementing new air control strategies designed to assist local areas in complying with state and federal air quality rules and regulations.

Grammatical, stylistic, and other non-substantive corrections are made throughout the rulemaking to be consistent with *Texas Register* requirements, to improve readability, and to conform to the drafting standards in the *Texas Legislative Drafting Manual*, August 2006. Such changes include appropriate and

consistent use of acronyms, section references, and certain terminology such as “shall” and “must.” These changes are not discussed further.

SECTION BY SECTION DISCUSSION

Subchapter A, Definitions

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

The adopted amendments to §114.7, Low Income Vehicle Repair, Assistance, Retrofit, and Accelerated Vehicle Retirement Program Definitions, include adding and defining the following terms: automobile dealership, car, emissions control equipment, engine, hybrid motor vehicle, motor vehicle, qualifying motor vehicle, total cost, and truck. The commission adopts definitions for hybrid motor vehicle, motor vehicle, qualifying motor vehicle, and total cost as the terms are defined by SB 12. The legislation requires the commission to adopt rules defining emissions control equipment and engine. The commission has elected to define automobile dealership, car, and truck. The adopted rule defines “automobile dealership” following similar provisions in the Texas Transportation Code, §503.301. The definitions of “car,” “truck” and “hybrid motor vehicle” have been added to clarify the new compensation amounts for a replacement vehicle, which are: \$3,000 for a car, current model year or up to three model years old; \$3,000 for a truck, current model year or up to two model years old; and \$3500 for a hybrid motor vehicle of the current model year or the previous model year. The definition of “destroy” has been amended to include the word “scrapped” and clarify the disposition of engine and emission control components. The commission has amended the definition of “replacement vehicle” to meet the new vehicle qualifying requirements found in SB 12. In response to comments, the commission has also adopted definitions for “proof of sale” and “proof of transfer” to clarify the process for replacement reimbursement to automobile

dealers. The adoption also renumbers the LIRAP definitions section to make adjustments for the adopted new definitions.

Subchapter C, Vehicle Inspection and Maintenance; Low Income Vehicle Repair Assistance, Retrofit & Accelerated Vehicle Retirement Program; and Early Action Compact Counties

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

§114.62, LIRAP Funding

The adopted amendment to §114.62 will add subsection (d) to include the LIRAP funding limit for administration and program costs of the LIRAP to not more than 10 percent of the money provided as stated in SB 12.

§114.64, LIRAP Requirements

The adopted amendment to §114.64(b)(5) changes a vehicle owner's net family income eligibility from 200 percent to 300 percent of the federal poverty level. This change increases the income eligibility amount for LIRAP participants.

The adopted amendments to §114.64(c) would restructure all existing eligibility application requirements currently under paragraphs (1), (2), and (3) into one new paragraph (1). Old paragraphs (1), (2), and (3) have been relettered as subparagraphs (A), (B), and (C). New paragraphs (2), (3), and (4) have been added to §114.64(c). Adopted §114.64(c)(2) would include pre-1996 model year vehicles undergoing an ASM emissions test as part of the I/M program to become eligible for LIRAP assistance if the vehicle passes the state's current test standards, but would have failed the more stringent standards known as EPA Final

Cut-Points. The commission requested public comment specific to whether Final Cut-Points should be adopted for the ASM emissions test performed on gasoline-powered, model year 1995 and older vehicles. The executive director has assessed the impact of implementing final cut-points and recognized that due to the current failure rate of 9% escalating to over 30% for this older group of vehicles, the ownership of older model vehicles by low income individuals, and the continuing diminishing fleet of older vehicles, the implementation of final cut-points is not warranted. In addition, all vehicle owners that would be subject to final cut-points are already eligible to participate in the program if they meet income eligibility requirements because the affected vehicles are more than 10 years old. Adopted §114.64(c)(3) will enhance capabilities for the retirement of vehicles. A gasoline-powered motor vehicle is eligible now for replacement if the vehicle is at least 10 years old and the owner meets the financial eligibility requirements (up to 300 percent of the federal poverty level). Adopted §114.64(c)(4)(A)-(D) sets criteria for replacement vehicles. A new replacement vehicle must meet federal Tier 2, or Bin 5 or cleaner emission standards, have a gross vehicle weight rating of less than 10,000 pounds, have a total purchase cost that does not exceed \$25,000, and have passed a Department of Public Safety (DPS) motor vehicle safety inspection or safety and emissions inspection within a 15-month period before the application is submitted.

The adopted amendment to §114.64(d)(1)(B) would delete the previous requirements related to vehicle compensation and replace them with the new requirements set forth by SB 12. Subsequent to close of the public comment period the commission determined that to address fraud concerns, only one retirement compensation can be used toward one replacement vehicle annually per applicant. The revision will include adding clauses (i), (ii), and (iii). The new compensation amounts for a replacement vehicle are: \$3,000 for a car, current model year or up to three model years old; \$3,000 for a truck, current model year

or up to two model years old; and \$3,500 for a hybrid vehicle of current or previous model year. The adopted revision to §114.64(d)(3) deletes the phrase *maximum and minimum* and replaces it with *compensation*. The revision is necessary to bring rule language into agreement with the new adopted revised compensation requirements in §114.64(d)(1)(B)(i), (ii), and (iii).

The adopted amendment to §114.64(e) includes changing the title from *Reimbursement* to *Reimbursement for Repairs and Retrofit* to correctly reflect the modified content in the subsection. In response to comment, the commission has determined that the county may continue to reimburse the appropriate emission repair facilities within 30 calendar days for emission related repairs and retrofits.

Adopted §114.64(f), Reimbursements for replacements, requires that a participating county distribute vehicle replacement funds to a participating automobile dealership no later than five business days after the date the county receives proof of the sale and the required administrative documents as defined in the agreements between the automobile dealerships and program administrators. A list of the administrative documents must be included in the agreements entered into between the counties or program areas and the automobile dealers. Adopted §114.64(f)(1) requires a participating county provide an electronic means for distributing vehicle replacement funds within five business days as stated in §114.64(f). Automobile dealerships participating in the program must be located in the state and participation in LIRAP by an automobile dealership is voluntary. The language also allows automobile dealerships participating in the program to accept funds provided under LIRAP as a down payment towards the purchase of a replacement vehicle.

Adopted §114.64(f)(2) requires participating counties to develop a document to be used to confirm that a person is eligible to purchase a replacement vehicle. Adopted §114.64(f)(2)(A) requires that the document must include, at a minimum, the full name of the applicant, the vehicle identification number of the retired vehicle, expiration date of the document, the participating county's contact information, and the amount of money available to the purchaser. Adopted §114.64(f)(2)(B) requires the purchaser to have the document before the person enters into negotiations with a dealer for a replacement vehicle and adopted §114.64(f)(2)(C) provides that a participating dealer who relies on the document has no duty to confirm eligibility of the person purchasing a replacement vehicle.

§114.66, Disposition of Retired Vehicle

The adopted amendment to §114.66 revises subsections (a) and (b) and adds subsections (c) - (e). The adopted §114.66(a) includes language requiring dismantlers participating in the program be located in the state. The adopted §114.66(b) provides vehicle disposition requirements. The adopted §114.66(c) includes language that requires dismantlers taking possession of the old vehicle to destroy the emissions control equipment and engine and certify that those parts have been destroyed and not resold into the marketplace. The adoption includes language requiring the dismantlers to remove any mercury switches and to comply with any state and federal laws applicable to the management of those mercury switches. The commission encourages all dismantlers to participate in the National Vehicle Mercury Switch Recovery Program in the removal of mercury switches from non-program vehicles. In response to comments, the commission has determined that the automobile dealer should submit to the participating county or designated entity proof of destruction from the dismantler. Adopted §114.66(d) requires the dismantler to provide certification to the automobile dealer that the retired vehicle has been destroyed. Adopted §114.66(e) requires the dismantler to provide the residual scrap metal of a retired vehicle to a

recycling facility at no cost, except for the cost of transportation of the residual scrap metal to the recycling facility.

§114.70, Records, Audits, and Enforcement

Adopted §114.70(f) requires participating vehicle retirement facilities to certify that the equipment and engine have been destroyed and not resold into the marketplace. A violation of this requirement is subject to civil penalty under Texas Water Code, Subchapter D, Chapter 7 for each violation. Subsequent to the close of the public comment period, the commission determined that to more accurately determine the success of the program, replacement vehicle data should be reported along with retirement vehicle information. This new requirement is located in §114.70(b)(8).

Administrative and grammatical changes are made throughout the rules to bring existing rule language into agreement with Texas Register requirements, agency format guidelines, and guidance provided in the *Texas Legislative Council Drafting Manual*, August 2006.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the 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. The adoption implements SB 12 by providing revisions for

elements of LIRAP. The adoption addresses issues related to vehicle air emissions and increasing LIRAP participation. The adoption implements changes to eligibility criteria to increase participation and implements legislation aimed at providing incentives for vehicle owners to retire older vehicles and replace with newer cleaner running vehicles. The rules are intended to protect the environment or reduce risks to human health from environmental exposure to ozone by assisting low income motorists in repairing, retrofitting, or retiring vehicles that have failed an emissions test under the state's vehicle emissions I/M program. As such, these rules do not 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 sector of the state. Therefore, the adoption does not meet the definition of a "major environmental rule."

In addition, a regulatory impact analysis is not required because the adopted rules do not meet any of the four applicability criteria for requiring a regulatory analysis of a "major environmental rule" as defined in the Texas Government Code. 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. This rulemaking does not exceed a standard set by federal law, and the adopted technical requirements are consistent with applicable federal standards. In addition, this rulemaking does not exceed an express requirement of state law and is not adopted solely under the general powers of the agency, but is specifically authorized by the provisions cited in the STATUTORY AUTHORITY section

of this preamble. Finally, this adoption does not exceed a requirement of a delegation agreement or contract to implement a state and federal program.

The commission solicited comments on the Regulatory Impact Analysis Determination during the comment period and received comments during the public comment period.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this adoption action and performed an analysis of whether the adopted rules are subject to Texas Government Code, Chapter 2007. The primary purpose of the rulemaking is to amend Chapter 114 in accordance with SB 12. These amendments revise requirements for a voluntary program and only affect motor vehicles that are not considered to be private real property. Therefore, promulgation and enforcement of these adopted rules are neither a statutory nor a constitutional taking because they do not affect private real property. Therefore, these rules do not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adoption and found that the rulemaking is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.*, and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and found the adoption is consistent with the applicable CMP goals and policies. The CMP goal applicable to the adopted rule is to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource

areas. The CMP policy applicable to the adopted rule is the policy that commission rules comply with federal regulations in 40 Code of Federal Regulations to protect and enhance air quality in the coastal area (31 TAC §501.14(q)).

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the adopted rules are consistent with these CMP goals and policies, because these rules do not create or have a direct or significant adverse effect on any coastal natural resource areas, and because the adoption does not authorize any new air contaminants and is intended to provide enhanced I/M program and LIRAP strategies. Therefore, this rulemaking is consistent with the applicable policy and goal.

PUBLIC COMMENT

The commission held public hearings on September 11, 2007, in Arlington, Austin, and Houston. The comment period closed on September 12, 2007. The commission received oral comments at the public hearings from the Lone Star Chapter of the Sierra Club (Sierra Club) and the North Central Texas Council of Governments (NCTCOG). The commission received written comments from the City of Dallas, Commercial Metals Company (CMC), Fort Worth Chamber of Commerce (Fort Worth Chamber), Greater Dallas Chamber (Dallas Chamber), NCTCOG, Nucor, Inc. (Nucor), Texas Automobile Dealers Association (TADA), Travis County Transportation and Natural Resources Department (Travis County), Sierra Club, and the United States Environmental Protection Agency (EPA).

RESPONSE TO COMMENTS

Fort Worth Chamber supported the proposed revisions and commented that adjustments to the LIRAP would allow more North Texans to participate and benefit from the program.

The commission appreciates the Fort Worth Chamber's support in this action and made no changes to the rules as a result of this comment.

The EPA supported the proposed revisions to the rules because they strengthen and clarify the LIRAP and scrappage program. The EPA further commented that although these rules are not a part of the approved state implementation plan (SIP), these programs will contribute to the enhancement of air quality in the nonattainment areas where they are implemented.

The commission appreciates the EPA's support of this rulemaking. The LIRAP provides repair assistance to ensure vehicles in the nonattainment areas operate at their designed emissions standards. The commission made no changes to the rules as a result of this comment.

TADA commented that access to a list of eligible vehicles that can be sold to a person using a replacement voucher would make the program more efficient.

The commission is committed to providing information to automobile dealers that makes it convenient for them to determine whether a vehicle is eligible for sale while redeeming a replacement voucher. A list of vehicles that meet the requirements of the federal Tier 2, Bin 5 standards and have a Gross Vehicle Weight Rating of less than 10,000 pounds will be maintained

on the commission's vehicle replacement program website. The commission made no changes to the rules as a result of this comment.

The City of Dallas supports the proposed changes to the vehicle owner eligibility criteria that will allow for more participation in the program as well as provide a greater incentive for the retirement of high emitting vehicles.

The commission appreciates the City of Dallas' support for this rulemaking. Changing the vehicle owner's income eligibility requirement from 200% of the federal poverty rate to 300% of the federal poverty rate will allow approximately 1.9 million families eligible for participation in the program. To ensure funding is available to a maximum number of participants, the commission has revised §114.64(d)(1)(B) to limit replacement compensation annually per applicant.

The City of Dallas and the Dallas Chamber commented that providing more flexible options for purchasing vehicles to be considered for low income families would reduce the challenges that some of these families may face in having to purchase a new or three-year-old vehicle. Although supportive of the increase in retirement incentive and the inclusion of hybrid vehicles as a type of replacement, they are concerned that the eligible vehicle replacement requirements may prevent a large number of qualified families from participating.

The provisions establishing replacement vehicle eligibility and maximum payment incentives are set by statute under Texas Health and Safety Code, §382.210(a)(2) as amended by SB 12. Although newer vehicles may have a higher purchase price, vehicle owners purchasing them should realize

cost savings in maintenance and repairs and see improved fuel economy. These savings may off-set the costs of the purchase. The commission made no changes to the rules as a result of this comment.

The Sierra Club commented that additional language was needed in the rule to clarify that counties may offer a graduated incentive for replacement vehicle vouchers.

The commission has reviewed this comment and maintains that counties are allowed to offer a graduated incentive for replacement vehicle vouchers by language defined in §114.64(d)(1)(B) in the last sentence of the paragraph that states: “The maximum amount toward a replacement vehicle, shall not exceed: . . .” The commission made no changes to the rules as a result of this comment.

The Sierra Club expressed concern that a purchaser might possibly be prohibited from participating in the replacement program if he/she did not obtain a replacement voucher prior to entering into negotiations with a dealer for a replacement vehicle.

The commission has reviewed this comment and has determined that the language in §114.64(f)(2)(B) does not prohibit an automobile dealer from informing a participant about the vehicle replacement program financial assistance and then continuing sale negotiations after a determination is made whether the purchaser is or is not eligible for replacement program financial assistance. The rule requirement is necessary to ensure that all eligibility requirements have been fulfilled and that all parties are aware of the type and method of transaction that will take place. The commission made no changes to the rules as a result of this comment.

CMC commented that language in §114.66(c) stating that “The dismantler shall remove any mercury switches in accordance with any state and federal laws” may be understood by dismantlers as being a discretionary requirement of the program should there be no current federal or state laws requiring removal. CMC commented that mercury switches should be removed in accordance with rules or laws that apply to their removal such as Universal Waste rule or rules relating to prohibition of unauthorized discharges. CMC further commented that the commission should identify in the preamble the National Vehicle Mercury Switch Recovery Program as the national program under which mercury switch removal is currently administered.

As a result of this comment, the commission has changed the rule to require the dismantler to remove any mercury switches and comply with state and federal laws applicable to the management of those mercury switches.

City of Dallas, NCTCOG, and the Sierra Club commented that the vehicle inspection and maintenance program should implement EPA final acceleration simulation mode (ASM) emission standards also known as “final cut-points” to ensure that vehicles are passing a more stringent test that more accurately measure a vehicle’s emissions. The Sierra Club further commented that a reasonable time for adjustment to the new requirement should be provided to testing centers and vehicle owners; however, the commission should move to implement final cut-point standards as soon as technically feasible.

The commission acknowledges the comments were made in response to its request during the proposal period specific to whether transition to final cut-points should be considered for the ASM emissions test performed on gasoline-powered, model year 1995 and older vehicles. The executive

director has assessed the impact of implementing final cut-points and recognized that due to the projected increase in the 9% failure rate currently to over 30%, the likelihood that these older model vehicles are owned by low income individuals, and the continuing diminishing fleet of older vehicles, the implementation of final cut-points is not warranted. In addition, all vehicles that are subject to final cut-points are already eligible to participate in the program because they are older than 10 model years.

NCTCOG requested that the commission formally define §114.62(d), relating to LIRAP Funding.

The commission has reviewed the language in this paragraph and has determined the language clearly describes that not more than 10% of money from each TCEQ distribution provided for LIRAP may be used for administration of the program. The commission made no changes to the rules as a result of this comment.

NCTCOG commented that local county government officials have expressed concerns over the requirement that funds for Local Initiative Projects are only available if matching funds are provided by the county. The local government officials have stated that since funding for these projects is made through funds that were originally collected from their counties, requiring these fund be matched is essentially “double-taxation.”

The provisions related to the Local Initiative Projects including requiring matching funds is established in statute and is not part of this rulemaking project. The comment is beyond the scope of this rulemaking. The commission made no changes to the rules as a result of this comment.

NCTCOG commented that replacement vehicle program structure in the rule places purchasing restrictions on eligible replacement vehicles that may limit the number of low income families that are able to take advantage of the replacement component of the program.

The provisions establishing replacement vehicle eligibility and maximum payment incentives are set by statute under Texas Health and Safety Code, §382.210(a)(2) by SB 12. However, participating counties have the flexibility to enhance financial assistance if desired on the local level to low income individuals through the use of other funds, such as the Local Initiatives Projects. The commission made no changes to the rules as a result of this comment.

Nucor commented that they support revisions to LIRAP and requested the commission to create a process requiring shredders to be part of the destruction process prior to reaching a recycling facility.

Vehicles retired through this program will be forfeited at the dealership where the replacement is purchased, then sent to the dismantler, who takes the first step that renders the vehicle in a condition that prevents it from returning to operation on Texas highways. The dismantler will destroy the engine and emission control parts, salvage remaining useable parts, destroy the vehicle and make the residual scrap metal available to recyclers. Nucor's request that a retirement process that includes shredders be established by rule is beyond the scope of the agency's statutory authority. The commission made no changes to the rules as a result of this comment.

Nucor requested that language be modified to require that 90% of vehicles retired under the LIRAP are provided to a recycling facility in a county in the state of Texas where average family income is no greater than the amount prescribed in Texas Health and Safety Code, §382.210(a)(3)(A), for a family of two.

The commission has determined that Nucor’s request is beyond the scope of the agency’s statutory authority and this rulemaking. The commission made no changes to the rules as a result of this comment.

TADA commented that clarification of the term “proof of sale” was needed because it is a component of the dealer reimbursement mechanism and the term “sale” is a component of a process and not a term that carries legal implications. TADA recommended that a definition of “proof of sale” would make that component of the process more certain.

The commission agrees with the comment and has added a definition of “proof of sale” to provide additional clarification that will make this important part of the replacement process more certain. The definition in §114.7(14) is: “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.

TADA commented that providing clarification in the rules of what specific type(s) of administrative documents are acceptable to meet the requirements of §114.64(f) and determine if those documents will meet county or designated entity requirements is necessary to avoid confusion and establish a clear

process for reimbursement. Without this determination, TADA commented that counties would be able to add additional requirements. Clarifying this requirement would streamline the process.

The commission recognizes that participating counties may need administrative documents such as vehicle title and registration documents submitted to confirm that reimbursement for a voucher should be approved. Because there are many variations of these types of documents that may provide the necessary information and the local participating counties may choose to accept, modifications of the proposed language to list specific documents would hinder the efficiency of the program. However as a result of this comment, the commission has made a change to the rule. Section 114.64(f) has been revised to include language that agreements between the county or designated entity and a dealership will include all administrative documents.

TADA commented on the delays for reimbursement to the participating dealerships that may be created by the requirement that participating dealers certify that a retired vehicle has been destroyed as part of the reimbursement process. TADA comments that this requirement is not included or inferred in the legislation.

The commission recognizes that requiring certification that the entire vehicle has been destroyed before the automobile dealership can submit the voucher for reimbursement and begin the five business day clock may create a disincentive for participation. Thus, the commission has revised the requirements to require proof of transfer to a dismantler. A definition of “proof of transfer” was added in §114.7 to further provide clarity.

Travis County commented that §114.65(e) requiring counties to reimburse emissions facilities within five business days of receiving an invoice that meets requirements should be revised because it conflicts with statutory requirements under the Local Government Code.

The commission agrees with the comment and has revised rule language to allow counties to continue making reimbursement payments for emissions related repairs to participating Recognized Emissions Repair Facilities in accordance with the current rule language. Counties will still be required to make reimbursement payments to participating automobile dealers for replacement vehicles as required by the legislation and this rulemaking.

SUBCHAPTER A: DEFINITIONS

§114.7

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which provide the commission with the general powers to carry out its duties and authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and §5.013, which states the commission's authority over various statutory programs. The amendment is also adopted under Texas Health and Safety Code (THSC), §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also adopted under THSC, §382.002, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to control the quality

of the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.013, which authorizes the commission to designate air quality control regions in order to implement air quality standards; §382.019, which provides the commission the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles; and §§382.201 - 382.218, 382.301- 382.302, which provide the commission the authority by rule to establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of the Federal Clean Air Act (42 United States Code, §§7401 *et seq.*), to coordinate with federal, state, and local transportation planning agencies to develop and implement transportation programs and other measures necessary to demonstrate and maintain attainment of the National Ambient Air Quality Standards, and to fund the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP). Finally, the amendment is adopted as part of the implementation of SB 12, 80th Legislature, 2007.

The adopted amendment implements TWC, §§5.102, 5.103, and 5.105; and THSC, §§382.002, 382.011, 382.012, 382.019, 382.201 - 382.218, 382.301- 382.302, and provisions of SB 12, 80th Legislature, 2007.

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

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used in this chapter have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, §§3.2, 101.1, and 114.1 of this title

(relating to Definitions), the following words and terms, when used in Subchapter C, Division 2, of this chapter (relating to Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program) have the following meanings, unless the context clearly indicates otherwise.

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

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

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

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

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

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

(7) **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.

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

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

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

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

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

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

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

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

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

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

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

(19) **Replacement vehicle**--A vehicle that is in a class or category of vehicles that has been certified to meet federal Tier 2, Bin 5 or cleaner Bin certification under 40 Code of Federal Regulations §86.1811-04, as published in the February 10, 2000, *Federal Register*; has a gross vehicle weight rating of less than 10,000 pounds; the total cost does not exceed \$25,000 and has passed a Department of Public Safety motor vehicle safety inspection or safety and emissions inspection within the 15-month period before the application is submitted.

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

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

(22) **Total cost**--The total amount money paid or to be paid for the purchase of a motor vehicle as set forth as the sales price in the form entitled "Application for Texas Certificate of Title" promulgated by the Texas Department of Transportation. In a transaction that does not involve the use of

that form, the term means an amount of money that is equivalent, or substantially equivalent, to the amount that would appear as the sales price on the application for Texas Certificate of Title if that form were used.

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

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

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

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

**SUBCHAPTER C: VEHICLE INSPECTION AND MAINTENANCE; LOW INCOME VEHICLE
REPAIR ASSISTANCE, RETROFIT, AND ACCELERATED VEHICLE RETIREMENT**

PROGRAM; AND EARLY ACTION COMPACT COUNTIES

**DIVISION 2: LOW INCOME VEHICLE REPAIR ASSISTANCE, RETROFIT, AND
ACCELERATED VEHICLE RETIREMENT PROGRAM**

§§114.62, 114.64, 114.66, 114.70

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which provide the commission with the general powers to carry out its duties and authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and §5.013, which states the commission's authority over various statutory programs. The amendments are also adopted under THSC, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendments are also adopted under THSC, §382.002, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.013, which authorizes the commission to designate air quality control regions in order to implement air quality standards; §382.019, which provides the commission the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles; and §§382.201 - 382.218, 382.301 – 382.302, which provide the commission the authority by rule to establish, implement, and

administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of the federal Clean Air Act (42 United States Code, §§7401 *et seq.*), to coordinate with federal, state, and local transportation planning agencies to develop and implement transportation programs and other measures necessary to demonstrate and maintain attainment of the National Ambient Air Quality Standards, and to fund the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP). Finally, the amendments are adopted as part of the implementation of SB 12, 80th Legislature, 2007.

The adopted amendments implement TWC, §§5.102, 5.103, and 5.105; and THSC, §§382.002, 382.011, 382.012, 382.019, 382.201 - 382.218, 382.301 – 382.302, and provisions of SB 12, 80th Legislature, 2007.

§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.

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

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

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

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

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

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

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

(3) the vehicle is currently registered in and has been registered in the program county for the 12 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 percent 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., 2007 minus 10 years equals 1997) 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 FedReg 6698);

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

(C) be a vehicle the total cost of which does not exceed \$25,000; and

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

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

(1) Compensations must be:

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

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

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

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

(iii) \$3,500 for a replacement hybrid vehicle of the current model year or the previous model year.

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

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

(A) model year of the vehicle;

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

(C) fair market value of the vehicle;

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

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

(F) vehicle owner's income.

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

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

§114.66. Disposition of Retired Vehicle.

(a) Vehicles retired under a Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) may not be resold or reused in their entirety in this or another state. Any dismantling of vehicles or salvaging of steel under this section must be performed at a facility located in the state of Texas.

(b) The vehicle must be:

(1) destroyed;

(2) recycled;

(3) dismantled and its parts sold as used parts or used in the LIRAP;

(4) placed in a storage facility and subsequently destroyed, recycled, or dismantled within 12 months of the vehicle retirement date and its parts sold or used in the LIRAP; or

(5) repaired, brought into compliance, and used as a replacement vehicle under this division. Not more than 10% of all vehicles eligible for retirement may be used as replacement vehicles.

(c) Notwithstanding subsection (b) of this section, the dismantler of a vehicle shall destroy the emissions control equipment and engine, certify those parts have been destroyed and not resold into the market place. The dismantler shall remove any mercury switches and shall comply with state and federal laws applicable to the management of those mercury switches.

(d) The dismantler shall provide certification that the vehicle has been destroyed to the automobile dealer from whom the dismantler has taken receipt of a vehicle for retirement. The automobile dealer shall submit to the participating county or its designated entity the proof of destruction from the dismantler.

(e) The dismantler shall provide the residual scrap metal of a retired vehicle under this section to a recycling facility at no cost, except for the cost of transportation of the residual scrap metal to the recycling facility.

§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) 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. 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.

(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, Subchapter D, Chapter 7, for each violation. A separate violation occurs with each fraudulent certification or prohibited resale.