

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** December 16, 2011

Thru: Bridget C. Bohac, Chief Clerk
Mark R. Vickery, P.G., Executive Director

From: Susana M. Hildebrand, P.E., Chief Engineer

Docket No.: 2011-1790-RUL

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

Background and reason(s) for the rulemaking:

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

The 82nd Legislature, 2011, Regular Session, enacted HB 3272, authorizing changes to the LIRAP. The proposed rulemaking would amend 30 Texas Administrative Code Chapter 114, Control of Air Pollution from Motor Vehicles, §114.7, Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program Definitions; and §114.64, LIRAP Requirements, making changes to the requirements and guidelines of the LIRAP. The legislation became effective September 1, 2011.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

The proposed rule revisions would amend Chapter 114, Subchapter A, as follows:

- Amend §114.7 to include definitions for electric and natural gas vehicles and modify the current definitions of hybrid motor vehicle and replacement vehicle. The

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

The proposed rule revisions would amend Chapter 114, Subchapter C, Division 2, as follows:

- Amend §114.64(b)(3), by revising the length of time that a vehicle must be registered in a LIRAP participating county. The revised requirement would require that a vehicle be currently registered in and has been registered in a program county for at least 12 of the 15 months preceding the application for assistance.
- Amend §114.64(c)(4)(C), by adding the requirement that eligible replacement vehicles have an odometer reading of no more than 70,000 miles.
- Amend §114.64(c)(4)(D), by revising the current cost limitation for a replacement vehicle with the proposed amendment that would increase the cost limitation from \$25,000 to \$35,000 and \$45,000 for hybrid, electric, or natural gas vehicles or a vehicle certified as Tier 2 Bin 3 or cleaner.
- Amend §114.64(d)(1)(B)(iii), by modifying the current replacement vehicle compensation amount of \$3,500 for a replacement hybrid vehicle of the current model year or the previous model year. The proposed amendment would provide replacement assistance of \$3,500 for a replacement hybrid, electric, natural gas, and federal Tier 2 Bin 3 or cleaner vehicle of the current model year or the previous three model years.

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

The amendments are required to incorporate HB 3272, enacted by the 82nd Legislature, 2011, Regular Session.

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

None

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. These amendments are also proposed 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; and §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air. Finally, this rulemaking is proposed under THSC, §382.003, amending definitions for the low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program authorized under §382.209.

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

Effect on the:

A.) Regulated community:

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

B.) Public:

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

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

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

C.) Agency programs:

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

Stakeholder meetings:

Stakeholder meetings were not held.

Potential controversial concerns and legislative interest:

None are anticipated.

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

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

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

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

Key points in the proposal rulemaking schedule:

Anticipated proposal date: January 11, 2012

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

Public hearing date (if any): February 21, 2012

Public comment period: January 27, 2012 through February 27, 2012

Anticipated adoption date: June 13, 2012

Agency contacts:

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Attachments

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Re: Docket No. 2011-1790-RUL

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

**cc: Chief Clerk, 2 copies
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