

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
**AGENDA ITEM REQUEST**  
for Proposed State Implementation Plan Revision

**AGENDA REQUESTED:** April 27, 2018

**DATE OF REQUEST:** April 6, 2018

**INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED:** Joyce Spencer-Nelson, (512) 239-5017

**CAPTION: Docket No. 2018-0111-SIP.** Consideration for publication of, and hearing on, a proposed revision of the State Implementation Plan (SIP) concerning 30 Texas Administrative Code (TAC) Chapter 114, Subchapter B, Motor Vehicle Anti-tampering Requirements and Section 114.86, Low Income Repair Assistance Program (LIRAP) for Participating Early Action Compact Counties.

The proposed SIP revision would remove Chapter 114, Subchapter B, and Section 114.86 from the SIP. Neither set of rules is a Federal Clean Air Act SIP requirement, and neither was adopted into the SIP with associated emissions reductions. Along with the SIP revision, the requested action would withdraw from consideration four adopted amendments to the anti-tampering rules that are still pending action by the United States Environmental Protection Agency. (Alison Stokes, Sierra Redding) (Non-Rule Project No. 2018-006-SIP-NR)

Steve Hagle, P.E.

David Brymer

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**Deputy Director**

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**Division Director**

Joyce Nelson

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**Agenda Coordinator**

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

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** April 6, 2018

**Thru:** Bridget C. Bohac, Chief Clerk  
Stephanie Bergeron Perdue, *Interim Executive Director*

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

**Docket No.:** 2018-0111-SIP

**Subject:** Commission Approval for Proposed Removal from the State Implementation Plan (SIP) of 30 Texas Administrative Code (TAC) Chapter 114, Subchapter B, Motor Vehicle Anti-tampering Requirements and §114.86, Low Income Repair Assistance Program (LIRAP) for Participating Early Action Compact Counties

SIP Revision to Remove Anti-tampering and EAC LIRAP  
Non-Rule Project No. 2018-006-SIP-NR

**Background and reason(s) for the SIP revision:**

The proposed SIP revision would remove two sets of Chapter 114 rules from the SIP: Subchapter B, Motor Vehicle Anti-tampering Requirements; and §114.86, LIRAP for Participating Early Action Compact (EAC) Counties. Neither set of rules is a Federal Clean Air Act (FCAA) SIP requirement, and neither was adopted into the SIP with associated emission reductions.

Subchapter B would be removed from the SIP on the grounds that federal anti-tampering regulations make the state rules an unnecessary and redundant SIP element. The state adopted rules in 1972 to prohibit removing or tampering with systems or devices used to control emissions from motor vehicles or motor vehicle engines. Those rules and five subsequent amendments were submitted to the United States Environmental Protection Agency (EPA) and approved into the SIP, with the last approved revision adopted by the commission on July 26, 1985. Due to several rule revisions that were either disapproved by the EPA, not submitted as SIP revisions, or are still pending EPA action, the SIP-approved version of the state anti-tampering rules are significantly different from the current Subchapter B rules. Section 114.86 would be removed from the SIP because it only applies to affected EAC counties currently in attainment, which have no FCAA SIP obligations. Section 114.86 is also the only section of the LIRAP rules that is included in the SIP, and it does not apply to the state's affected counties that are in nonattainment or maintenance areas that have FCAA SIP obligations.

Along with a SIP revision, the proposed action would withdraw from consideration four adopted amendments to the anti-tampering rules that are still pending action by the EPA. The four amendments, adopted by the commission on July 13, 1994, August 31, 1994, April 30, 2003, and February 12, 2014, were submitted to the EPA as SIP revisions. The EPA has not yet taken action to approve or disapprove them, and no action would be required if the anti-tampering rules were withdrawn from the SIP entirely.

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**Scope of the SIP revision:**

**A.) Summary of what the SIP revision will do:**

The proposed SIP revision would remove anti-tampering rules and LIRAP rules for EAC counties from the SIP. The rules would only be withdrawn from consideration as a revision to the SIP and would not be removed from the TAC. Removal from the SIP requires an anti-backsliding demonstration under FCAA, §110(l) to show that withdrawing the rules from the SIP would not interfere with attainment or maintenance of the ozone National Ambient Air Quality Standard (NAAQS). Based on FCAA, §110(l), the EPA cannot approve a SIP revision if it would interfere with attainment of the NAAQS, reasonable further progress toward attainment, or any other applicable requirement of the FCAA.

Adoption of state anti-tampering rules is not an FCAA requirement and current federal anti-tampering rules are more stringent than the existing state rules. The anti-tampering rules in the Texas SIP were adopted in 1985 and approved by the EPA in 1989, but several revisions to the 1985 version of the rules have been adopted in subsequent years. These revisions are not part of the approved SIP. There are no emission reduction obligations in the SIP associated with the state's anti-tampering rules. A SIP revision to remove the state's anti-tampering rules from the SIP entirely would not cause a violation of SIP requirements or risk sanctions for failure to meet FCAA requirements.

Like the anti-tampering rules, the EAC LIRAP rules were included in the SIP without associated emission reduction obligations. The EAC LIRAP is a voluntary program, which was indicated in the SIP revision to implement the Austin Area EAC, and participating counties may choose to withdraw from the program at their discretion. The EAC SIP revision into which the EAC LIRAP rules were adopted expired after December 31, 2012, and the attainment counties subject to the EAC LIRAP rules, Travis and Williamson Counties, have no applicable FCAA requirements.

The proposed SIP revision, if approved, would be submitted along with a request to withdraw four outstanding anti-tampering rule revisions from EPA consideration. Those revisions were submitted to the EPA for SIP approval between 1994 and 2014, and EPA action on those revisions would no longer be required if the anti-tampering rules were removed from the SIP entirely.

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

An anti-backsliding demonstration is required under FCAA, §110(l) because the SIP revision would remove the state's anti-tampering rules and EAC LIRAP rules from the SIP.

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

None

**Statutory authority:**

Texas Water Code (TWC), §5.102, General Powers; TWC, §5.103, Rules, and TWC, §5.105, General Policy, which provide the commission with the general powers to carry out its

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duties and authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.013, General Jurisdiction of Commission, which states the commission's authority over various statutory programs. Texas Health and Safety Code (THSC), §382.017, Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of THSC, Chapter 382 (the Texas Clean Air Act), and to adopt rules that differentiate among particular conditions, particular sources, and particular areas of the state; THSC, §382.002, Policy and Purpose, 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; THSC, §382.011, General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, 382.019, Methods Used to Control and Reduce Emissions from Land Vehicles, which provides the commission the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles, THSC, Chapter 382, Subchapter G, Vehicle Emissions, which provides 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 Federal Clean Air Act, 42 United States Code, §§7401 *et seq.*; and THSC, Subchapter H, Vehicle Emissions Programs in Certain Counties, which authorizes the commission to adopt an inspection and maintenance program for participating EAC counties.

**Effect on the:**

**A.) Regulated community:**

This proposed SIP revision to remove Subchapter B and §114.86 from the SIP would not require a rulemaking and would have no impact on the regulated community.

**B.) Public:**

Removing Subchapter B and §114.86 from the SIP would not negatively impact air quality, directly or indirectly; therefore, this action is not expected to impact the public.

**C.) Agency programs:**

This proposed SIP revision would have no effect on agency programs. The state's current anti-tampering rules and EAC LIRAP rules would continue to be in effect, and future revisions to those rules would not be submitted to the EPA as SIP revisions.

**Stakeholder meetings:**

The commission did not hold any stakeholder meetings related to this proposed SIP revision; however, a public hearing will be held during the comment period.

**Potential controversial concerns and legislative interest:**

This is not expected to be a controversial SIP revision. Removal of the anti-tampering rules and the EAC LIRAP rules from the SIP would not impose the threat of sanctions for failure to meet SIP requirements. Moreover, the state's anti-tampering rules and EAC LIRAP rules would not be repealed and would continue to apply.

Commissioners

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**Will this SIP revision affect any current policies or require development of new policies?**

The proposed SIP revision would not affect any current policies or require development of new policies.

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

Instead of removing the anti-tampering rules from the SIP, the commission could decide to leave the SIP-approved rules in place. The rules were last approved by the EPA effective March 13, 1989 (54 FR 6286) based on amendments adopted on July 26, 1985. The 1985 version is significantly different from the rules currently comprising Subchapter B. While this alternative would not risk federal sanctions for failure to meet SIP requirements, it is confusing to maintain SIP rules that are outdated or no longer reflect the rules being implemented by the state.

Instead of removing the EAC LIRAP rules from the SIP, the commission could simply leave the rules in place with no negative impacts. The rules in the SIP are specific to certain EAC attainment areas, and they refer to LIRAP rules that are not in the SIP, those pertaining to affected nonattainment and maintenance counties. Removing the EAC LIRAP rules from the SIP would provide consistency between attainment counties and nonattainment counties participating in the program. It would also end the requirement to submit LIRAP rule revisions that affect §114.86 to the EPA for SIP approval.

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

**Anticipated proposal date:** April 27, 2018

**Anticipated public hearing date:** May 31, 2018

**Anticipated public comment period:** May 1, 2018 through June 4, 2018

**Anticipated adoption date:** October 2018

**Agency contacts:**

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cc: Chief Clerk, 2 copies  
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Joyce Spencer-Nelson

REVISIONS TO THE STATE OF TEXAS AIR QUALITY  
IMPLEMENTATION PLAN MOBILE SOURCE STRATEGIES



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
P.O. BOX 13087  
AUSTIN, TEXAS 78711-3087

**STATE IMPLEMENTATION PLAN REVISION FOR REMOVAL  
OF 30 TEXAS ADMINISTRATIVE CODE (TAC) CHAPTER 114,  
SUBCHAPTER B MOTOR VEHICLE ANTI-TAMPERING  
REQUIREMENTS AND 30 TAC §114.86 LOW INCOME REPAIR  
ASSISTANCE PROGRAM FOR PARTICIPATING EARLY  
ACTION COMPACT COUNTIES**

PROJECT NUMBER 2018-006-SIP-NR

Proposal  
April 27, 2018

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## EXECUTIVE SUMMARY

The proposed state implementation plan (SIP) revision would remove two sets of 30 Texas Administrative Code (TAC) Chapter 114 rules from the SIP: Subchapter B, Motor Vehicle Anti-tampering Requirements; and §114.86, Low Income Repair Assistance Program (LIRAP) for Participating Early Action Compact (EAC) Counties. Neither set of rules is a Federal Clean Air Act (FCAA) SIP requirement, and neither was adopted into the SIP with associated emission reductions.

Subchapter B would be removed from the SIP on the grounds that federal anti-tampering regulations make the state rules an unnecessary and redundant SIP element. Adoption of state anti-tampering rules is not an FCAA requirement. The anti-tampering rules in the Texas SIP were adopted in 1985 and approved by the United States Environmental Protection Agency (EPA) in 1989, but several revisions to the 1985 version of the rules have been adopted in subsequent years. These revisions were either disapproved by the EPA, not submitted as SIP revisions or are still pending EPA action. These revisions are not part of the approved SIP. There are no emission reduction obligations in the SIP associated with the state's anti-tampering rules. A SIP revision to remove the state's anti-tampering rules from the SIP entirely would not cause a violation of SIP requirements or risk sanctions for failure to meet FCAA requirements.

Section 114.86, LIRAP for Participating EAC Counties, would be removed from the SIP because it only applies to affected EAC counties currently in attainment, which have no FCAA SIP obligations. The EAC LIRAP is a voluntary program, which was indicated in the SIP revision to implement the Austin Area EAC, and participating counties may choose to withdraw from the program at their discretion. The EAC SIP revision into which the EAC LIRAP rules were adopted expired after December 31, 2012 and the attainment counties subject to the EAC LIRAP rules, Travis and Williamson Counties, have no applicable FCAA requirements.

The anti-tampering rules and the LIRAP rules for EAC counties would only be removed from the SIP and would not be removed from the TAC. Removal from the SIP requires an anti-backsliding demonstration under FCAA, §110(l) to show that withdrawing the rules from the SIP would not interfere with attainment or maintenance of the ozone National Ambient Air Quality Standard (NAAQS). Based on FCAA, §110(l), the EPA cannot approve a SIP revision if it would interfere with attainment of the NAAQS, reasonable further progress toward attainment, or any other applicable requirement of the FCAA. The anti-tampering rules and the EAC LIRAP rules were included in the SIP without associated emission reduction obligations. Additionally, neither set of the rules is required by the FCAA.

Along with a SIP revision, the proposed action would withdraw from consideration four adopted amendments to the anti-tampering rules that are still pending action by the EPA. The four amendments, adopted by the commission on July 13, 1994, August 31, 1994, April 30, 2003, and February 12, 2014, were submitted to the EPA as SIP revisions. The EPA has not yet taken action to approve or disapprove them, and no action would be required if the anti-tampering rules were withdrawn from the SIP entirely.



## SECTION V-A: LEGAL AUTHORITY

### General

The Texas Commission on Environmental Quality (TCEQ) has the legal authority to implement, maintain, and enforce the National Ambient Air Quality Standards (NAAQS) and to control the quality of the state's air, including maintaining adequate visibility.

The first air pollution control act, known as the Clean Air Act of Texas, was passed by the Texas Legislature in 1965. In 1967, the Clean Air Act of Texas was superseded by a more comprehensive statute, the Texas Clean Air Act (TCAA), found in Article 4477-5, Vernon's Texas Civil Statutes. The legislature amended the TCAA in 1969, 1971, 1973, 1979, 1985, 1987, 1989, 1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009, 2011, 2013, 2015, and 2017. In 1989, the TCAA was codified as Chapter 382 of the Texas Health and Safety Code.

Originally, the TCAA stated that the Texas Air Control Board (TACB) is the state air pollution control agency and is the principal authority in the state on matters relating to the quality of air resources. In 1991, the legislature abolished the TACB effective September 1, 1993, and its powers, duties, responsibilities, and functions were transferred to the Texas Natural Resource Conservation Commission (TNRCC). With the creation of the TNRCC, the authority over air quality is found in both the Texas Water Code and the TCAA. Specifically, the authority of the TNRCC is found in Chapters 5 and 7. Chapter 5, Subchapters A - F, H - J, and L, include the general provisions, organization, and general powers and duties of the TNRCC, and the responsibilities and authority of the executive director. Chapter 5 also authorizes the TNRCC to implement action when emergency conditions arise and to conduct hearings. Chapter 7 gives the TNRCC enforcement authority. In 2001, the 77th Texas Legislature continued the existence of the TNRCC until September 1, 2013, and changed the name of the TNRCC to the TCEQ. In 2009, the 81st Texas Legislature, during a special session, amended section 5.014 of the Texas Water Code, changing the expiration date of the TCEQ to September 1, 2011, unless continued in existence by the Texas Sunset Act. In 2011, the 82nd Texas Legislature continued the existence of the TCEQ until 2023.

The TCAA specifically authorizes the TCEQ to establish the level of quality to be maintained in the state's air and to control the quality of the state's air by preparing and developing a general, comprehensive plan. The TCAA, Subchapters A - D, also authorize the TCEQ to collect information to enable the commission to develop an inventory of emissions; to conduct research and investigations; to enter property and examine records; to prescribe monitoring requirements; to institute enforcement proceedings; to enter into contracts and execute instruments; to formulate rules; to issue orders taking into consideration factors bearing upon health, welfare, social and economic factors, and practicability and reasonableness; to conduct hearings; to establish air quality control regions; to encourage cooperation with citizens' groups and other agencies and political subdivisions of the state as well as with industries and the federal government; and to establish and operate a system of permits for construction or modification of facilities.

Local government authority is found in Subchapter E of the TCAA. Local governments have the same power as the TCEQ to enter property and make inspections. They also

may make recommendations to the commission concerning any action of the TCEQ that affects their territorial jurisdiction, may bring enforcement actions, and may execute cooperative agreements with the TCEQ or other local governments. In addition, a city or town may enact and enforce ordinances for the control and abatement of air pollution not inconsistent with the provisions of the TCAA and the rules or orders of the commission.

Subchapters G and H of the TCAA authorize the TCEQ to establish vehicle inspection and maintenance programs in certain areas of the state, consistent with the requirements of the Federal Clean Air Act; coordinate with federal, state, and local transportation planning agencies to develop and implement transportation programs and measures necessary to attain and maintain the NAAQS; establish gasoline volatility and low emission diesel standards; and fund and authorize participating counties to implement vehicle repair assistance, retrofit, and accelerated vehicle retirement programs.

#### Applicable Law

The following statutes and rules provide necessary authority to adopt and implement the state implementation plan (SIP). The rules listed below have previously been submitted as part of the SIP.

#### Statutes

All sections of each subchapter are included, unless otherwise noted.

TEXAS HEALTH & SAFETY CODE, Chapter 382	September 1, 2017
TEXAS WATER CODE	September 1, 2017

#### Chapter 5: Texas Natural Resource Conservation Commission

Subchapter A: General Provisions

Subchapter B: Organization of the Texas Natural Resource Conservation Commission

Subchapter C: Texas Natural Resource Conservation Commission

Subchapter D: General Powers and Duties of the Commission

Subchapter E: Administrative Provisions for Commission

Subchapter F: Executive Director (except §§5.225, 5.226, 5.227, 5.2275, 5.231, 5.232, and 5.236)

Subchapter H: Delegation of Hearings

Subchapter I: Judicial Review

Subchapter J: Consolidated Permit Processing

Subchapter L: Emergency and Temporary Orders (§§5.514, 5.5145, and 5.515 only)

Subchapter M: Environmental Permitting Procedures (§5.558 only)

#### Chapter 7: Enforcement

Subchapter A: General Provisions (§§7.001, 7.002, 7.0025, 7.004, and 7.005 only)

Subchapter B: Corrective Action and Injunctive Relief (§7.032 only)

Subchapter C: Administrative Penalties

Subchapter D: Civil Penalties (except §7.109)

Subchapter E: Criminal Offenses and Penalties: §§7.177, 7.179-7.183

## Rules

All of the following rules are found in 30 Texas Administrative Code, as of the following latest effective dates:

Chapter 7: Memoranda of Understanding, §§7.110 and 7.119	December 13, 1996 and May 2, 2002
Chapter 19: Electronic Reporting	March 15, 2007
Chapter 35: Subchapters A-C, K: Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions	July 20, 2006
Chapter 39: Public Notice, §§39.402(a)(1) - (6), (8), and (10) - (12), 39.405(f)(3) and (g), (h)(1)(A) - (4), (6), (8) - (11), (i) and (j), 39.407, 39.409, 39.411(a), (e)(1) - (4)(A)(i) and (iii), (4)(B), (5)(A) and (B), and (6) - (10), (11)(A)(i) and (iii) and (iv), (11)(B) - (F), (13) and (15), and (f)(1) - (8), (g) and (h), 39.418(a), (b)(2)(A), (b)(3), and (c), 39.419(e), 39.420 (c)(1)(A) - (D)(i)(I) and (II), (D)(ii), (c)(2), (d) - (e), and (h), and 39.601 - 39.605	December 29, 2016
Chapter 55: Requests for Reconsideration and Contested Case Hearings; Public Comment, §§55.150, 55.152(a)(1), (2), (5), and (6) and (b), 55.154(a), (b), (c)(1) - (3), and (5), and (d) - (g), and 55.156(a), (b), (c)(1), (e), and (g)	December 31, 2015
Chapter 101: General Air Quality Rules	October 12, 2017
Chapter 106: Permits by Rule, Subchapter A	April 17, 2014
Chapter 111: Control of Air Pollution from Visible Emissions and Particulate Matter	August 3, 2017
Chapter 112: Control of Air Pollution from Sulfur Compounds	July 16, 1997
Chapter 113: Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants	May 14, 2009
Chapter 114: Control of Air Pollution from Motor Vehicles	December 29, 2016
Chapter 115: Control of Air Pollution from Volatile Organic Compounds	June 25, 2015
Chapter 116: Permits for New Construction or Modification	November 24, 2016
Chapter 117: Control of Air Pollution from Nitrogen Compounds	June 25, 2015
Chapter 118: Control of Air Pollution Episodes	March 5, 2000
Chapter 122: §122.122: Potential to Emit	February 23, 2017

Chapter 122: §122.215: Minor Permit Revisions	June 3, 2001
Chapter 122: §122.216: Applications for Minor Permit Revisions	June 3, 2001
Chapter 122: §122.217: Procedures for Minor Permit Revisions	December 11, 2002
Chapter 122: §122.218: Minor Permit Revision Procedures for Permit Revisions Involving the Use of Economic Incentives, Marketable Permits, and Emissions Trading	June 3, 2001

## SECTION VI: CONTROL STRATEGY

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- B. Ozone (No Change)
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- E. Lead (No change)
- F. Oxides of Nitrogen (No change)
- G. Sulfur Dioxide (No change)
- H. Conformity with the National Ambient Air Quality Standards (No change)
- I. Site Specific (No change)
- J. Mobile Sources Strategies (Revised)
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  - Chapter 2: Motor Vehicle Anti-tampering Requirements
  - Chapter 3: Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program in Early Action Compact Counties
- K. Clean Air Interstate Rule (No change)
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## LIST OF ACRONYMS

ARR	Austin-Round Rock
CFR	Code of Federal Regulations
DFW	Dallas-Fort Worth
EAC	Early Action Compact
EPA	United States Environmental Protection Agency
FCAA	Federal Clean Air Act
HGB	Houston-Galveston-Brazoria
I/M	Inspection and Maintenance
LIRAP	Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program
MOVES	Motor Vehicle Emission Simulator
NAAQS	National Ambient Air Quality Standard
NO <sub>x</sub>	nitrogen oxides
OBD	On Board Diagnostic
SIP	State Implementation Plan
TAC	Texas Administrative Code
TACB	Texas Air Control Board
TCAA	Texas Clean Air Act
TCEQ	Texas Commission on Environmental Quality (commission)
TNRCC	Texas Natural Resource Conservation Commission
VOC	volatile organic compounds



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## CHAPTER 1: GENERAL

### 1.1 BACKGROUND

Information on the Texas state implementation plan (SIP) and a list of SIP revisions and other air quality plans adopted by the commission can be found on the [Texas State Implementation Plan](http://www.tceq.texas.gov/airquality/sip) webpage (<http://www.tceq.texas.gov/airquality/sip>) on the [Texas Commission on Environmental Quality's \(TCEQ\)](http://www.tceq.texas.gov/) website (<http://www.tceq.texas.gov/>).

### 1.2 INTRODUCTION

The proposed SIP revision would remove two sets of 30 Texas Administrative Code (TAC) Chapter 114 rules from the SIP: Subchapter B, Motor Vehicle Anti-tampering Requirements; and §114.86, LIRAP for Participating EAC Counties. Neither set of rules is a FCAA SIP requirement, and neither was adopted into the SIP with associated emission reductions. Subchapter B would be removed from the SIP on the grounds that federal anti-tampering regulations make the state rules an unnecessary and redundant SIP element. In addition, the SIP-approved version of the state anti-tampering rules are significantly different from the current Subchapter B rules due to several rule revisions that were either disapproved by the United States Environmental Protection Agency (EPA), not submitted as SIP revisions, or still pending EPA action. Section 114.86 LIRAP for Participating EAC Counties, would be removed from the SIP because it only applies to the affected EAC counties currently in attainment, which have no FCAA SIP obligations. Section 114.86 is also the only section of the LIRAP rules that is included in the SIP, and it does not apply to the state's affected counties that are in nonattainment or maintenance areas, which have FCAA SIP obligations.

Additionally, the proposed action would withdraw from consideration four adopted amendments to the anti-tampering rules that are still pending action by the EPA. The four amendments, adopted by the commission on July 13, 1994, August 31, 1994, April 30, 2003, and February 12, 2014, were submitted to the EPA as SIP revisions. The EPA has not yet taken action to approve or disapprove them, and no action would be required if the anti-tampering rules were withdrawn from the SIP entirely.

#### 1.2.1 Chapter 114, Subchapter B, Motor Vehicle Anti-tampering Requirements

The state adopted rules in 1972 to prohibit removing or tampering with systems or devices used to control emissions from motor vehicles or motor vehicle engines. Those rules and five subsequent amendments were submitted to the EPA and approved into the SIP, with the last approved revision adopted by the commission on July 26, 1985. Revisions adopted and submitted to the EPA in 1988, 1989, and 1993 were disapproved in a final rule published in the *Federal Register* (FR) on February 10, 1998 (63 FR 6651).

Since the 1993 disapproved revision, the commission has adopted six amendments to the state's anti-tampering rules. One of those revisions, at the suggestion of the EPA, was not submitted as a SIP revision, but the other five were. Only one of the five revisions that were submitted was acted upon by the EPA. That submittal was a repeal and recodification of Chapter 114 that also removed an obsolete section from the state's anti-tampering rules. EPA's approval, published on July 1, 1998 (63 FR 35839), was restricted to renumbering Chapter 114 and removing the obsolete section from

the re-codified chapter. It expressly did not approve any substantive changes previously submitted.

With the exception of the EPA's 1998 restricted approval, the last EPA-approved SIP revision to the anti-tampering rules was adopted in 1985. The 1985 version of the state's anti-tampering rules differs significantly from the current anti-tampering rules in Subchapter B. The current rules are not consistent with the SIP-approved rules, and state anti-tampering rules are not a SIP requirement.

### **1.2.2 Section 114.86 LIRAP for Participating EAC Counties**

In March 2002, the state adopted rules to implement the LIRAP, which was authorized in Texas Health and Safety Code (THSC), §382.209. The 2002 rules applied to counties in which the Vehicle Inspection and Maintenance (I/M) Program, an FCAA requirement for certain ozone nonattainment and maintenance counties, was administered. Only those counties were eligible to participate in the LIRAP, a voluntary program. The rules established a fee to be paid by vehicle owners in participating counties to fund the program. The 2002 rules were not included in the SIP as a control strategy and were not submitted to the EPA as a SIP revision.

In 2004, the state adopted rules to implement certain requirements and programs applicable to counties participating in the EPA's EAC Program, which was designed to incentivize early action to reduce ozone in counties that may otherwise have been designated nonattainment for the 1997 eight-hour ozone standard. The commission adopted EAC SIP revisions for several areas, including the Austin area (Bastrop, Caldwell, Hays, Travis, and Williamson Counties). The Austin area EAC, which expired after December 31, 2012, included I/M and LIRAP as control measures. To implement the LIRAP for EAC counties, the commission adopted and submitted new §114.86 to the EPA as a SIP revision. The LIRAP rules for affected nonattainment and maintenance counties are contained in §§114.60, 114.62, 114.64, 114.66, 114.68, 114.70, 114.72, and §114.86 pertains to affected EAC attainment counties. The only LIRAP rules in the SIP are contained in §114.86, and they apply only to Travis and Williamson Counties, the only EAC counties that have voluntarily implemented I/M and are, therefore, eligible to participate in LIRAP. The LIRAP is not an FCAA requirement and is not intended to be a SIP control strategy. Additionally, the state does not take an emissions reduction credit for the LIRAP.

### **1.3 HEALTH EFFECTS**

Removing Subchapter B and §114.86 from the SIP would not negatively impact air quality, directly or indirectly; therefore, this action is not expected to have any health effect on the public.

### **1.4 PUBLIC HEARING AND COMMENT INFORMATION**

The commission will hold a public hearing on this proposed SIP revision at the following time and location:

**Table 1-1: Public Hearing Information**

<b>City</b>	<b>Date</b>	<b>Time</b>	<b>Location</b>
Austin, TX	May 31, 2018	2:00 p.m.	Texas Commission on Environmental Quality, 12100 Park 35 Circle, Building E, Room 201S

The public comment period will open on May 1, 2018, and close on June 4, 2018. Written comments will be accepted via mail, fax, or through the [eComments](http://www1.tceq.texas.gov/rules/ecomments/index.cfm) (<http://www1.tceq.texas.gov/rules/ecomments/index.cfm>) system. All comments should reference the “SIP Revision to Remove Anti-tampering and EAC LIRAP” and should reference Project Number 2018-006-SIP-NR. Comments may be submitted to Alison Stokes, MC 206, State Implementation Plan Team, Air Quality Division, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-6188. If you choose to submit electronic comments, they must be submitted through the eComments system. File size restrictions may apply to comments being submitted via the eComments system. Comments must be received by June 4, 2018.

### **1.5 SOCIAL AND ECONOMIC CONSIDERATIONS**

The removal of the anti-tampering rules and EAC LIRAP rules from the SIP is not expected to have negative social or economic implications. The rules are not relied on in the SIP for emissions reduction and are not required by the FCAA. The rules would only be removed from the SIP and would remain in the TAC. This action would not require a rulemaking and would have no impact on the regulated community.

### **1.6 FISCAL AND MANPOWER RESOURCES**

The proposed SIP revision would have no impact on agency fiscal or manpower resources. The state’s current anti-tampering rules and EAC LIRAP rules would continue to be in effect, and future revisions to those rules would not be submitted to the EPA as SIP revisions.

## CHAPTER 2: MOTOR VEHICLE ANTI-TAMPERING REQUIREMENTS

Tampering is removing or making inoperable any system or device used to control emissions from a motor vehicle engine. Tampering is prohibited through federal and state regulations and in the Federal Clean Air Act (FCAA). In 1972, the Texas Air Control Board, a predecessor to the Texas Commission on Environmental Quality (TCEQ), incorporated into the State Implementation Plan (SIP) rules to prohibit tampering. The rules were part of the state's mobile source emission control strategy in the SIP. Although federal law provides for enforcement by the United States Environmental Protection Agency (EPA), Texas established anti-tampering rules as a state-level enforcement tool to deter tampering and the sale of tampered vehicles. While the initial iteration of the state rules was aligned with federal regulations, rule amendments in later years diverged from federal requirements, and current state anti-tampering rules differ significantly from the version of the rules last approved into the Texas SIP.

### 2.1 FEDERAL ANTI-TAMPERING REQUIREMENTS

Section 203(a) of the FCAA ([42 United States Code \(USC\) §7522\(a\)\(3\)](#))<sup>1</sup> enumerates the prohibitions applied to emission control devices or design elements installed on or in a motor vehicle or motor vehicle engine. Except for repair and replacement or for circumstances related to converting a motor vehicle to use a clean alternative fuel, federal statute prohibits any person from disabling or removing any emission control device or design element that is installed on or in a motor vehicle or motor vehicle engine before its sale and delivery to a buyer. Federal statute also prohibits any person from knowingly altering, disabling, or removing any emission control device or design element after sale and delivery to a buyer. Certain exemptions to these prohibitions exist and are granted at the discretion of the administrator of the EPA. Exemption categories include new motor vehicles or engines:

- intended solely for research, training, or for reasons of national security;
- imported and brought into conformity with federal emissions standards before a final import admission determination is made; or
- intended solely for export to a country in which the vehicle or engine would be compliant with that country's emission standards.

### 2.2 STATE ANTI-TAMPERING REQUIREMENTS

Texas' vehicle anti-tampering rules are codified in Title 30 Texas Administrative Code (TAC) Chapter 114, Subchapter B, §§114.20 and 114.21. Section 114.20 prohibits altering, disabling, or removing any system or device on a motor vehicle or motor vehicle engine that controls motor vehicle emissions. It also prohibits the sale or lease of vehicles on which emission control devices have been altered, disabled, or removed, and it establishes criteria to ensure that removing or disabling a motor vehicle emission control device is only undertaken with the purpose of installing specific, equally effective replacement devices. Section 114.21 establishes allowable exemptions from the state's anti-tampering requirements, including exemptions for vehicles intended solely for research and development, legally sanctioned competitions,

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<sup>1</sup> <https://www.gpo.gov/fdsys/pkg/USCODE-2013-title42/html/USCODE-2013-title42-chap85-subchapII-partA-sec7522.htm>

vocational training activities, for vehicles belonging to certain members of the United States Department of Defense, and for certain vehicles registered as farm vehicles. Conditions are also established by which exemptions may be allowed for local, state, and federal agencies and commercial auction facilities that sell abandoned, confiscated, or seized vehicles. The anti-tampering rules in the 30 TAC Chapter 114, Subchapter B are provided in Appendix A *Texas Anti-tampering Rules in Title 30 Texas Administration Code Chapter 114, Subchapter B Motor Vehicle Anti-tampering Requirements*.

### 2.3 STATE ANTI-TAMPERING RULES IN THE SIP

Anti-tampering rules were adopted under Regulation IV *Control of Air Pollution from Motor Vehicles* as part of the initial Texas SIP on January 26, 1972. The SIP was submitted to the EPA on January 28, 1972, as noted in 40 Code of Federal Regulations (CFR) §52.2299(b). The rules were amended 14 times from 1973 through 2014, and in that time, they were re-numbered twice and were moved from Title 31 to Title 30 of the TAC along with all TCEQ (formerly the Texas Air Control Board and the Texas Natural Resource Conservation Commission) rules. Table 2-1 *Anti-tampering Rule Revisions in Texas* lists the anti-tampering rule amendments and traces the numbering shifts along with EPA actions.

Regulation IV was revised twice in 1973, and both revisions were submitted to and approved by the EPA as part of the SIP. A subsequent amendment in 1981 was adopted during a period when the *Texas Register*, first published in January 1976, transitioned from a ten-digit numbering system to the TAC numbering system. The new numbering system was based on TAC chapters and sections, which allowed for consistency between the TAC and the *Texas Register*. The 1981 anti-tampering rule revision was the only one to list the anti-tampering rules under §§114.1 and 114.2. A 1983 rulemaking revised §114.1 and repealed §114.2 and readopted it as §114.5, so from 1983 until 1997, revisions to the state's anti-tampering rules were adopted under §114.1 *Maintenance and Operation of Air Pollution Control Systems or Devices Used to Control Emissions from Motor Vehicles* and §114.5 *Exemptions and Exclusions*. In 1997, the state repealed and renumbered 30 TAC Chapter 114 in its entirety, and §§114.1 and 114.5 became §§114.20 and 114.21. Since the 1997 renumbering, the state's anti-tampering rules have been revised three times. The last revision was adopted in 2014.

Of the 14 adopted rule revisions to the anti-tampering rules, 13 were submitted to the EPA as SIP revisions. Of those, six were approved, three were disapproved, and four have not yet been acted upon by the EPA. Apart from its approval of the 1997 rule revision to repeal and recodify Chapter 114<sup>2</sup>, the EPA last approved the state's anti-tampering rules as amended in the 1985 rule revision. The current state rules, which include amendments from nine rule revisions that were adopted after the 1985 revision, are significantly different from the SIP-approved, 1985 version of the rules. The adopted and SIP-approved 1985 rule revision is provided in Appendix B *Most Recent Anti-tampering Rule Revision Approved in the State Implementation Plan for Texas, Adopted July 26, 1985*.

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<sup>2</sup> The EPA's approval included removing original §114.1(e) concerning leaded gasoline dispensing labeling requirements from re-codified §114.20.

**Table 2-1: Anti-tampering Rule Revisions in Texas**

Adoption Date	Rule(s) Revised	Texas Register Reference	EPA Action
February 13, 1973	Regulation IV <i>Control of Air Pollution from Motor Vehicles</i>	(See Note 1)	Approved in 40 Code of Federal Regulations (CFR) §52.2299(c)(7)
October 30, 1973	Regulation IV	(See Note 1)	Approved in 40 CFR §52.2299(c)(8)
March 20, 1981	31 Texas Administrative Code (TAC) §114.2 <i>Exclusions and Exemptions</i> (See Note 2)	6 <i>TexReg</i> 1242	Approved in 40 CFR §52.2299(c)(31)
September 9, 1983	31 TAC §§114.1 and 114.5 (See Note 3)	8 <i>TexReg</i> 3889	Approved in 40 CFR §52.2299(c)(61)
July 26, 1985	31 TAC §§114.1 and 114.5	10 <i>TexReg</i> 3370	Approved in 40 CFR §52.2299(c)(66) (54 FR 6286)
October 14, 1988	31 TAC §§114.1 and 114.5	13 <i>TexReg</i> 6346	Disapproved in 40 CFR §52.2311 (63 FR 6651)
September 15, 1989	31 TAC §114.5	15 <i>TexReg</i> 257	Disapproved in 40 CFR §52.2311 (63 FR 6651)
January 15, 1993	31 TAC §§114.1 and 114.5	18 <i>TexReg</i> 886	Disapproved in 40 CFR §52.2311 (63 FR 6651)
July 13, 1994	30 TAC §114.1 (See Note 4)	19 <i>TexReg</i> 5842	No action by EPA
August 31, 1994	30 TAC §114.5	19 <i>TexReg</i> 8117	No action by EPA
November 7, 1997	30 TAC §§114.20 and 114.21 (See Note 5)	22 <i>TexReg</i> 11388	Approved in 40 CFR §52.2299(c)(111) (63 FR 35839)
April 5, 2000	30 TAC §114.21	25 <i>TexReg</i> 3533	Not submitted to EPA as a SIP revision
April 30, 2003	30 TAC §114.21	28 <i>TexReg</i> 3972	No action by EPA (See Note 6)
February 12, 2014	30 TAC §114.21	39 <i>TexReg</i> 1400	No action by EPA

Note 1: The *Texas Register* was first published in January 1976.

Note 2: Only §114.2 was amended with this revision and not §114.1 *Maintenance and Operation of Air Pollution Control Systems or Devices Used to Control Emissions from Motor Vehicles*.

Note 3: Section §114.2 *Exclusions and Exemptions* was repealed and replaced with §114.5 *Exclusions and Exemptions*.

Note 4: Title 30 of the TAC was created on September 1, 1993 (18 *TexReg* 5840), and all TCEQ (formerly Texas Air Control Board and Texas Natural Resource Conservation Commission) rules were moved from Title 31 to Title 30 of the TAC.

Note 5: Section §§114.1 and 114.5 were repealed and replaced with §§114.20 and 114.21.

Note 6: Adopted amendments to §114.21 were part of a SIP revision that amended other sections of Chapter 114. The EPA approved parts of the submittal and expressly stated that it was not acting on the amendments to §114.21 (70 FR 38776).



### 2.3.1 Disapproved Anti-tampering SIP Revision Submittals

After the 1985 anti-tampering rule revision was approved by the EPA, three adopted anti-tampering rule revisions (October 14, 1988, September 15, 1989, and January 15, 1993) were disapproved. In a disapproval notice published on February 10, 1998 (63 FR 6651), the EPA specified that the state's anti-tampering rules were no longer consistent with FCAA §203(a)(3). The EPA's disapproval notice specifically noted three inconsistencies with the FCAA in §114.20 (§114.1 at the time) and two with §114.21 (§114.5 at the time). Those inconsistencies, listed below, formed the basis for the EPA's disapproval.

- Section 114.20(b)(3) referenced a section of the TAC, §114.11, that no longer existed.

Section §114.11 did exist at the time the state adopted revisions to §114.20, but it was repealed in a 1996 rule revision, prior to the EPA's disapproval notice. The current §114.20(b)(3) does not reference another section of Chapter 114.

- Section 114.20(b)(4) allowed replacement or installation of any system or device that was not already covered under another section of the rule (catalytic converters, engines, and alternative-fuel conversions) if it can be demonstrated to be at least as effective in reducing emissions as the original equipment. The EPA noted that the state provided no explanation of how or by what criteria that kind of demonstration would be made.

The current §114.20(b)(4) is unchanged.

- Section 114.20(e) allowed for dispensing leaded gasoline, which was banned on January 1, 1996.

Section 114.20(e) did exist at the time the state adopted revisions to §114.20, but it was repealed in a 1997 rule revision, prior to the EPA's disapproval notice. The EPA later approved removal of §114.20(e) as part of its 1998 approval of the recodification of Chapter 114 (63 FR 35839).

- Section 114.21(a)(1) allowed an exclusion from the state's anti-tampering requirements for registered farm vehicles, which the EPA stated was contrary to the FCAA and its 1974 guidance in Memorandum No. 1A<sup>3</sup>.

The provision in §114.21(a)(1) was removed in a 2000 rulemaking that was not submitted to the EPA; however, the 2000 amendment grandfathered vehicles that were granted an exemption before July 1, 2000.

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<sup>3</sup> [Memorandum No. 1A](https://www.epa.gov/sites/production/files/documents/tamper-memo1a.pdf) (https://www.epa.gov/sites/production/files/documents/tamper-memo1a.pdf) is a June 25, 1974 memo from the Office of Enforcement and General Counsel of the EPA that provides an interim tampering enforcement policy. Though it was an interim policy, it is still in place.

- Section 114.21(c) provided an exemption by petition to the state for danger to person or property, which the EPA stated was contrary to the FCAA and its 1974 guidance in Memorandum No. 1A.

The provision in §114.21(c) was removed in a 2000 rulemaking that was not submitted to the EPA; however, the 2000 amendment grandfathered vehicles that were granted an exemption before July 1, 2000.

As part of the final action to disapprove the 1988, 1989, and 1993 revisions, the EPA stated that the disapproval would not trigger sanctions for failure to meet FCAA requirements because state anti-tampering rules are not required by the FCAA.

On January 28, 2000, the state published a proposed revision to its anti-tampering rules to address the issues cited by the EPA in its 1998 disapproval. The EPA submitted public comments on the proposal indicating that the proposed revisions did not fully address its concerns regarding exemptions. The EPA suggested that in lieu of changing the rules to make them approvable, the state choose not to submit the adopted rulemaking as a SIP revision. The state adopted the rule revision on April 5, 2000 without changing the proposed text, and it was not submitted to the EPA as a SIP revision.

### **2.3.2 Outstanding Anti-tampering SIP Revision Submittals**

The state adopted and submitted two anti-tampering revisions to the EPA in 1994 (July 13, 1994 and August 31, 1994). While comments were received from the EPA at proposal for both revisions, the state has found no record that either submittal has been acted upon. The EPA did act on the November 7, 1997 submittal to recodify Chapter 114, but its approval was limited to renumbering and did not reflect approval of underlying requirements. Since 1997, the state has revised the anti-tampering rules three times. The revision adopted on April 5, 2000, as previously mentioned, was not submitted as a SIP revision, but an April 30, 2003 revision was submitted to the EPA along with two unrelated sections of Chapter 114. At proposal, the EPA had no comment on the changes to §114.21 but did comment on proposed amendments to the other sections of Chapter 114. In an approval action published on July 6, 2005 (70 FR 38776), the EPA expressly stated that it was not acting on the revisions to §114.21 at that time, and it has not acted on them subsequently.

The last revision to the anti-tampering rules, specifically to §114.21, was adopted on February 12, 2014 as part of a revision to amend the state's Vehicle Inspection and Maintenance Program. Approval of the revision was published on October 7, 2016 (81 FR 69682), but at the TCEQ's request, the EPA did not act on the revisions to §114.21. In total, there are four outstanding anti-tampering revisions that were submitted to the EPA as SIP revisions but not acted upon, those adopted July 13, 1994, August 31, 1994, April 30, 2003, and February 12, 2014.

### **2.4 REQUEST TO REMOVE ANTI-TAMPERING RULES FROM THE SIP**

This proposed SIP revision would remove 30 TAC Chapter 114, Subchapter B from the SIP. Although the current state anti-tampering rules are not SIP-approved, the original 1972 rules, along with the amendments through 1985, were approved by the EPA as part of the SIP. Those are the rules that would be removed with approval of this proposed SIP revision. The TCEQ, in consultation with EPA Region 6 staff, proposes

removal of the state anti-tampering rules from the SIP because the current state rules are no longer consistent with the SIP-approved rules from 1985 and would require significant revision to be considered approvable in the current SIP. Additionally, state anti-tampering rules are not required by the FCAA and current federal anti-tampering rules are more stringent than the existing state rules.

Removing a measure from the SIP requires a demonstration of non-interference under FCAA §110(l) to show that withdrawing the measure from the SIP would not interfere with attainment or maintenance of the National Ambient Air Quality Standards (NAAQS). Based on FCAA §110(l), the EPA cannot approve a SIP revision if it would interfere with attainment of the NAAQS, reasonable further progress toward attainment, or any other applicable requirement of the FCAA. The FCAA states:

“Each revision to an implementation plan submitted by a State under this Act shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this Act.”

#### **2.4.1 Demonstration of Non-interference**

There are four factors that help justify that removing the state’s anti-tampering rules from the SIP would not interfere with reasonable further progress, attainment, or any other applicable FCAA requirement. First, state anti-tampering rules are not required under the FCAA, and removing them from the SIP would not constitute a failure to meet FCAA §179(a) requirements. Second, the rules in the SIP are not relied upon to demonstrate reasonable further progress, attainment, or maintenance as there are no emissions reductions credited to the rules in the SIP. Third, any emissions reductions that may occur due to the rules would not be hindered by removing the measure from the SIP because the state rules and federal requirements would remain in place. Finally, the federal requirements in place are more stringent than the current state rules.

##### **2.4.1.1 No FCAA Requirement for State Rules**

State-level anti-tampering rules are not required by the FCAA, which is confirmed by the EPA in its February 10, 1998 disapproval of three of the state’s revisions (63 FR 6652). The EPA states:

“Texas’ statewide tampering prohibitions are part of the state SIP but are not required under section 179(a) of the Act . . . Federal law in section 203(a) of the Act, which prohibits tampering, will continue to be in effect. Since State tampering rules are not required by the Act, this final disapproval action does not impose sanctions for failure to meet Act requirements.”

In addition to its confirmation that the 1988, 1989, and 1993 disapprovals would not result in sanctions for failure to meet FCAA requirements, the EPA provided a comment to that effect concerning a proposed revision that was adopted in 2000. The EPA’s comment suggested that if the state chose not to make changes to the proposal to make the rules approvable, then the state should consider not submitting the

adopted revision as a SIP revision. In response, the state did not submit the 2000 revision to the EPA as a SIP revision.

#### 2.4.1.2 Not Relied upon in the SIP

When state anti-tampering rules were first included in the SIP in 1972, there were no emission reduction obligations associated with the measure, and no emissions reductions have been quantified or modeled in subsequent revisions to the SIP. It would be unreasonable to attempt to quantify potential emissions reductions from the measure since the rules act as a deterrent for potential behavior. The anti-tampering rules establish prohibitions and associated fines concerning removal or alteration of vehicle emission control devices and define the circumstances under which compliance with the prohibitions is exempted. While the measure, as a deterrent, does help realize emissions reductions, those reductions are not quantified in the Texas SIP, and they are not used to help demonstrate reasonable further progress, attainment, or maintenance. It would be impossible to accurately quantify emissions reductions from the anti-tampering measure, and the state has not attempted to do so.

The Motor Vehicle Emission Simulator (MOVES) model that was first released by the EPA in 2010 does not have the ability to model anti-tampering as part of an inspection and maintenance (I/M) program. The MOBILE6.2 model, which is the predecessor of MOVES, did have the capability to model anti-tampering, but only for 1995-and-older vehicles. According to Section 2.8.9.3 of the MOBILE6.2 User's Guide, "the mere presence of an I/M program is expected to act as a deterrent to tampering . . . All 1996 and newer model year vehicles are assumed to have negligible tampering effects. As a result, there is no tampering reduction benefit associated with the 1996 and newer vehicles." Section 5.2 of the MOBILE6.2 User's Guide elaborates further by stating that "with the introduction of the phase 2 of the onboard diagnostic (OBD) electronics in 1996, the explicit modeling of the effects of tampering on vehicle emissions will phase out because OBD vehicles are assumed to have negligible tampering rates." Year 1995-and-older vehicles are currently a very small portion of the fleet, and their total number will continue to decline with fleet turn-over.

#### 2.4.1.3 No Loss of Air Quality Benefits

This proposed SIP revision, if approved, would only remove state anti-tampering rules from the SIP and not from the TAC. Both state and federal anti-tampering requirements would remain in place, and any potential emissions reductions would continue to occur. Though not quantified, no potential air quality benefits would be lost by removing the state measure from the SIP.

#### 2.4.1.4 Federal Anti-tampering Rules in Place

Tampering is prohibited at the federal level, with requirements codified in FCAA §203(a), federal anti-tampering requirements are more stringent than the state's current anti-tampering rules. Since federal requirements will remain in place with or without state anti-tampering rules, removing state requirements from the SIP would not interfere with reasonable further progress, attainment, or any other applicable FCAA requirement.

## **2.5 REQUEST TO WITHDRAW OUTSTANDING ANTI-TAMPERING REVISIONS FROM CONSIDERATION**

Along with this proposed request to remove the state anti-tampering measure from the SIP, the state proposes to submit a request to the EPA that the four anti-tampering rule revisions that have not been acted upon by the EPA be withdrawn from consideration as revisions to the SIP. The revisions, provided in Appendix C *Anti-tampering State Implementation Plan Revisions for Withdrawal from Consideration by the United States Environmental Protection Agency*, were adopted on July 13, 1994, August 31, 1994, April 30, 2003, and February 12, 2014.

It is unlikely that the EPA would find the four outstanding anti-tampering revisions approvable, and none of the adopted revisions fully addresses the concerns the EPA expressed in its 1997 disapproval notice. However, EPA action on the four revisions would be unnecessary if this proposed SIP revision is approved and 30 TAC Chapter 114, Subchapter B is removed from the SIP entirely.

## **CHAPTER 3: LOW INCOME VEHICLE REPAIR ASSISTANCE, RETROFIT, AND ACCELERATED VEHICLE RETIREMENT PROGRAM IN EARLY ACTION COMPACT COUNTIES**

### **3.1 LIRAP BACKGROUND**

House Bill (HB) 2134, 77th Legislature, 2001 required the Texas Commission on Environmental Quality (TCEQ) to adopt rules to implement the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP). The LIRAP was established to enhance the objectives of the state's Vehicle Inspection and Maintenance (I/M) Program by assisting low-income individuals with repairs, retrofits, or retirement of vehicles that fail emissions inspections. HB 2134 required the TCEQ and the Texas Department of Public Safety, by rule, to provide the minimum guidelines by which eligible counties may implement the program.

The LIRAP is a voluntary program, and only those counties that have implemented vehicle 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. The LIRAP is funded through a fee that is charged to vehicle owners in participating counties. 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 program. Participation is voluntary, and participating counties may choose to opt out at their discretion.

In March 2002, the state adopted rules (30 Texas Administrative Code (TAC) §§114.7, 114.60, 114.62, 114.64, 114.66, 114.68, 114.70, and 114.72) to implement the LIRAP. Those rules were not included in the State Implementation Plan (SIP) as a modeled control strategy and were not submitted to the United States Environmental Protection Agency (EPA) as a component of the SIP. The 2002 rules did not apply to ARR-area counties because the area was not a nonattainment area and did not have an I/M program.

### **3.2 LIRAP IN THE SIP**

In 2004, the state adopted rules to implement certain requirements and programs applicable to counties participating in the EPA's Early Action Compact (EAC) Program, which was designed to incentivize early action to reduce ozone in counties that may otherwise have been designated nonattainment for the 1997 eight-hour ozone standard. The commission adopted EAC SIP revisions for several areas, including the ARR area (Bastrop, Caldwell, Hays, Travis and Williamson Counties). The ARR-area EAC included a voluntary I/M program for Travis and Williamson Counties as a control strategy to voluntarily reduce ozone precursor emissions (nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOC)) from vehicles in the area. The ARR EAC I/M program is distinct from the SIP-approved I/M program in 30 TAC Chapter 114, Subchapter C, Division 2, which is a Federal Clean Air Act (FCAA) requirement for applicable nonattainment areas. The ARR EAC I/M program is not an FCAA requirement.

The ARR EAC included voluntary participation in the LIRAP to enhance the voluntary I/M program. New 30 TAC Chapter 114, Subchapter C, Division 3 was adopted to establish rules for the ARR EAC I/M and LIRAP programs, and the new TAC division was submitted to the EPA as a SIP revision. Section 114.86 of Division 3 comprises the EAC LIRAP rules. Aside from establishing a funding mechanism for LIRAP in participating ARR EAC attainment counties, the EAC LIRAP rules reference the LIRAP rules in 30 TAC Chapter 114, Subchapter C, Division 2, which are not in the SIP. The EAC LIRAP rules in the SIP currently apply only to Travis and Williamson Counties, the only EAC counties that have voluntarily implemented an I/M program, making them eligible to participate in the EAC LIRAP. The ARR EAC was adopted on November 17, 2004 under the 1997 eight-hour ozone standard, and it expired after December 31, 2012. Travis and Williamson Counties were designated attainment/unclassifiable under the revoked one-hour and 1997 eight-hour ozone standards and are designated attainment/unclassifiable under the 2008 and 2015 eight-hour ozone standards.

LIRAP rules are codified in two divisions of 30 TAC Chapter 114, Subchapter C. Division 2 contains the LIRAP rules adopted to enhance the FCAA-required I/M program for the HGB and DFW areas and El Paso County. The LIRAP rules in Division 2 are not part of the SIP. Division 3 contains the EAC LIRAP rules adopted to enhance the voluntary EAC I/M program for the ARR attainment area, and the EAC LIRAP rules are part of the SIP. Table 3-1: *LIRAP Rule Revisions in Texas* shows the history of the LIRAP rules in Texas. Division 2 LIRAP rules have been revised five times since they were originally adopted in 2002. Neither the initial rules nor any of the five amendments was submitted to the EPA as a SIP revision. Division 3 LIRAP rules were adopted with the ARR EAC in 2004, and they were submitted to the EPA as a SIP revision. The 2004 EAC LIRAP rules have never been amended.

**Table 3-1: LIRAP Rule Revisions in Texas**

Adoption Date	Rule(s) Revised	Texas Register Reference	EPA Action
March 27, 2002	New 30 TAC §§114.7, 114.60, 114.62, 114.64, 114.66, 114.68, 114.70, and 114.72	27 <i>TexReg</i> 3194	Not submitted to EPA as a SIP revision
November 17, 2004	New §114.86 (See Note 1)	29 <i>TexReg</i> 11348	Approved (70 FR 45542) (See Note 2)
December 5, 2007	30 TAC §§114.7, 114.62, 114.64, 114.66, and 114.70	32 <i>TexReg</i> 9711	Not submitted to EPA as a SIP revision
November 18, 2010	30 TAC §114.64	35 <i>TexReg</i> 10985	Not submitted to EPA as a SIP revision
June 13, 2012	30 TAC §§114.7 and 114.64	37 <i>TexReg</i> 4941	Not submitted to EPA as a SIP revision
April 29, 2015	30 TAC §§114.7, 114.60, 114.62, 114.64, and 114.70	40 <i>TexReg</i> 2670	Not submitted to EPA as a SIP revision
February 15, 2017	30 TAC §§114.7 and 114.64	42 <i>TexReg</i> 1029	Not submitted to EPA as a SIP revision

Note 1: The rule and corresponding SIP revision only applied to Travis and Williamson Counties under an EAC that expired after December 31, 2012.

Note 2: The LIRAP for participating EAC counties was adopted to enhance a voluntary vehicle inspection and maintenance control measure included in the EAC SIP revision.

### **3.3 REQUEST TO REMOVE LIRAP EAC RULES FROM THE SIP**

This proposed SIP revision would remove the EAC LIRAP rules in 30 TAC Chapter 114, Subchapter C, Division 3, §114.86 from the SIP to be consistent with the LIRAP rules in 30 TAC Chapter 114, Subchapter C, Division 2, which are not in the SIP. Removing a measure from the SIP requires a demonstration of non-interference under FCAA §110(l) to show that withdrawing the measure from the SIP would not interfere with attainment or maintenance of the National Ambient Air Quality Standards (NAAQS). Based on FCAA §110(l), the EPA cannot approve a SIP revision if it would interfere with attainment of the NAAQS, reasonable further progress toward attainment, or any other applicable requirement of the FCAA.

#### **3.3.1 Demonstration of Non-interference**

Removing the EAC LIRAP measure from the SIP does not constitute backsliding under FCAA §110(l). The measure is not an FCAA requirement and was not relied upon in the SIP to demonstrate reasonable further progress, attainment, or maintenance. Additionally, any air quality benefits from the measure would not be hindered by removing it from the SIP. The measure in the SIP only applies for Travis and Williamson Counties under the expired ARR EAC. Both counties were designated attainment/unclassifiable under the revoked one-hour and 1997 eight-hour ozone standards and are designated attainment/unclassifiable under the 2008 and 2015 eight-hour ozone standards.

##### 3.3.1.1 No FCAA Requirement for EAC LIRAP Measure

Texas' LIRAP rules were adopted into the TAC to implement state legislation and not to meet FCAA requirements. The LIRAP rules in 30 TAC Chapter 114, Subchapter C, Division 2 are not, and have never been, part of the Texas SIP. The EAC LIRAP rules in 30 TAC Chapter 114, Subchapter C, Division 3 are part of the SIP because the 2004 attainment area ARR EAC was submitted to the EPA as a SIP revision. Keeping the EAC LIRAP measure in the SIP when the program rules for eligible nonattainment counties are not in the SIP is inconsistent and confusing, especially when neither the nonattainment LIRAP nor the EAC LIRAP is required by the FCAA.

The EAC LIRAP was adopted as a voluntary enhancement to the ARR EAC I/M program in the 2004 ARR EAC, which expired after December 31, 2012. Both the EAC I/M and LIRAP rules were approved by the EPA effective September 7, 2005, and the EPA's approval notice (70 FR 45542) stated that approval was not based on "requirements set forth in EPA's final I/M rule at 40 CFR Part 51, Subpart S, but rather as a strengthening of the SIP." The state infers a confirmation from that statement that removing the EAC LIRAP from the SIP would not violate an FCAA requirement.

##### 3.3.1.2 Not Relied upon in the SIP

The EAC LIRAP rules in 30 TAC §114.86 were adopted into the SIP as a voluntary measure for eligible ARR EAC counties, i.e., Travis and Williamson Counties. As such, participation in the program is not required and is at the discretion of each eligible county. Either, neither, or both Travis and Williamson Counties may participate in the LIRAP for EAC counties, and emissions reductions from the program could be zero if neither county participated. Due to this uncertainty, the EAC LIRAP measure was adopted into the SIP as a voluntary measure and with no associated, quantified emissions reductions. That uncertainty is also part of the reason the LIRAP rules in 30



TAC Chapter 114, Subchapter C, Division 2 were not included as a control strategy in the Texas SIP. Any air quality benefits that do occur from the ARR area's EAC LIRAP are captured within the ARR attainment area's emissions inventory and are not discernable or quantifiably creditable to the program itself.

#### 3.3.1.3 No Loss of Air Quality Benefits

Although potential emissions reductions from the EAC LIRAP measure are not quantified or modeled in the SIP, any potential air quality benefits from the measure would occur without the measure being included in the SIP because the EAC LIRAP rules in 30 TAC §114.86 would remain in place. This proposed action would only remove the EAC LIRAP measure from the SIP and not from the TAC. No air quality benefits would be lost by removing the EAC LIRAP measure from the SIP.

*Appendices Available Upon Request*

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