

The Texas Natural Resource Conservation Commission (commission) adopts new §§114.7, 114.60, 114.62, 114.64, 114.66, 114.68, 114.70, and 114.72. Sections 114.7, 114.62, 114.64, 114.68, and 114.70 are adopted *with changes* to the proposed text as published in the January 4, 2002 issue of the *Texas Register* (27 TexReg 39). Sections 114.60, 114.66, and 114.72 are adopted *without changes* and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

To enhance the vehicle emissions inspection and maintenance (I/M) program's objectives, the Texas Legislature adopted provisions to assist low income individuals with repairs, retrofits, or retirement of vehicles that fail emissions inspections. House Bill (HB) 2134, 77th Legislature, 2001, requires the commission and the Texas Department of Public Safety (DPS), by rule, to provide the minimum guidelines for counties to implement a low income vehicle repair assistance, retrofit, and accelerated vehicle retirement program (LIRAP). The adopted rules apply to counties that implement a vehicle emissions I/M program and have elected to implement LIRAP provisions.

HB 2134 requires the DPS and the commission by joint rule to establish and authorize the commissioners court of an affected county to implement a LIRAP subject to oversight by the executive director. Only those counties that have implemented a vehicle I/M program are eligible for participation in the LIRAP. Under the program, monetary or other compensatory assistance will be provided for emission-related repairs directly related to bringing the vehicle into compliance or for replacement assistance for a vehicle that has failed the required emissions test and for which emission-related repairs would not be economical. Vehicle eligibility criteria has been developed by the

commission, in association with the DPS. Emission-related repairs covered by the program will be required to be carried out at a recognized emissions repair facility. Participating counties may administer the program themselves or contract with a private entity or another county to administer the program. Participating counties may expend no more than 5.0% of the money provided by the commission to a participating county or its LIRAP designee for administration of the program. Participation by counties is not mandatory.

HB 2134 also requires the commission to adopt rules to assist participating counties in implementing the program. These rules include the minimum and maximum amount for emission-related repairs and retrofit equipment and installation, and the minimum and maximum amount toward the purchase price of a replacement vehicle and criteria for determining eligibility. In addition, HB 2134 allows the commissioners court of the participating county to appoint one or more local advisory panels consisting of individuals representing automobile dealerships, the automotive repair industry, safety inspection stations, local affected governments, and local nonprofit organizations to advise the commissioners court on the operation of the LIRAP.

HB 2134 requires the commission to authorize the assignment of emissions reduction credits to private, commercial, or business entities that purchase qualified vehicles for accelerated retirement under this program. Also, retired vehicles must be destroyed; recycled; dismantled, and the parts sold; or placed in storage and subsequently retired and repaired, brought into compliance, or used as replacement vehicles. No more than 10% of all vehicles eligible for retirement may be used as replacement vehicles.

The commission anticipates that the DPS will adopt by reference the adopted rules.

SECTION BY SECTION DISCUSSION

Subchapter A, Definitions

The adopted new §114.7, Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program Definitions, contains definitions applicable to the LIRAP. The following terms are defined in the section: affected county, commercial vehicle, destroyed, dismantled, fleet vehicle, LIRAP, participating county, recognized emissions repair facility, recycled, replacement vehicle, retrofit, retrofit equipment, vehicle, vehicle owner, and vehicle retirement facility. Definitions for the terms affected county, commercial vehicle, fleet vehicle, participating county, retrofit, and retrofit equipment are defined by HB 2134. The statute requires the commission to develop criteria for certifying retrofit equipment. The commission has elected to use the United States Environmental Protection Agency's (EPA's) certification or verification of retrofit equipment as the criteria for approval of retrofit equipment for LIRAP. The statute requires that vehicles eligible for participation in the LIRAP be repaired by a recognized emissions repair facility. Recognized emissions repair facility is defined in 37 TAC §23.93, relating to Vehicle Emissions Inspection Requirements. The statute also requires monetary or compensatory assistance for a replacement vehicle; therefore, replacement vehicle has been defined as a vehicle that has a valid DPS safety or safety and emissions inspection. The statute does not define the terms destroyed, dismantled, and recycled; and to avoid creating ambiguity, the proposed rules define these terms based on similar provisions in the Texas Transportation Code relating to automobile wrecking and salvage yards and non-repairable and salvage motor vehicles, and based on common understanding of these terms in this industry. The definition of "Vehicle" was added

to clarify that the only motor vehicles eligible for assistance under LIRAP are those subject under §114.50(a), Vehicle Emissions Inspection Requirements, which applies to all gasoline-powered motor vehicles two through 24 years old and does not include military tactical vehicles, motorcycles, diesel-powered vehicles, dual-fueled vehicles which cannot operate using gasoline, and antique vehicles registered with the Texas Department of Transportation (TxDOT). The definition of “Vehicle owner” was added to clarify that a person holding a Certificate of Title to the vehicle and/or an operator who is granted possession and is authorized to make repairs under a lease or purchase agreement between the title holder and the operator will be considered the vehicle owner for the purposes of repair and retrofit assistance. For the purposes of accelerated retirement, however, vehicle owner means the person who holds the Certificate of Title for the vehicle. In response to comments, the definition of “Vehicle retirement facility” was added to explain what the term means when used in the adopted rules. Vehicle retirement facility is defined as a facility that, at a minimum, is licensed, certified, or otherwise authorized by TxDOT to destroy, recycle, or dismantle vehicles.

Subchapter C, Vehicle Inspection and Maintenance

The adopted revisions to Subchapter C include changing the subchapter title from “Vehicle Inspection and Maintenance” to “Vehicle Inspection and Maintenance and Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program” in order to correctly reflect the modified content of the subchapter. The subchapter is divided into two divisions. The existing sections of the subchapter are placed into Division 1, Vehicle Inspection and Maintenance, and the adopted new sections are placed into Division 2, Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program.

The adopted new §114.60, Applicability for LIRAP, establishes the applicability of §114.7, Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program Definitions, and Subchapter C, Division 2, Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program. The new section applies to counties that implement a vehicle I/M program and have elected to implement LIRAP provisions as authorized by HB 2134. New §114.60(b) specifies that vehicles must be subject to §114.50(a), Vehicle Emissions Inspection Requirements, to be eligible for assistance under the LIRAP. In accordance with HB 2134, new §114.60(c) specifically excludes the following vehicles from being eligible to participate in the LIRAP: fleet vehicles; commercial vehicles; vehicles owned or leased by a governmental entity; vehicles registered as classic motor vehicles as defined by Texas Transportation Code, §502.274; and exhibition vehicles, including antique and military vehicles, as defined by Texas Transportation Code, §502.275; and vehicles that are not regularly used for transportation during the normal course of daily activities. New §114.60(d) requires participating counties to ensure that owners of vehicles excluded from LIRAP under new subsection (c) do not receive monetary or compensatory assistance through LIRAP. The commission developed guidance to assist participating counties in ensuring that only owners of the eligible vehicles receive assistance.

The adopted new §114.62, LIRAP Funding, specifies the funding requirements for the LIRAP. New §114.62(a) states that the LIRAP will be funded from emissions test fees collected by the DPS under §114.53, Inspection and Maintenance Fees. In response to comments, §114.62(b) was revised to clarify that no more than 5.0% of the money provided by the commission to a local county or its LIRAP designee may be used for administration of the program. Also in accordance with the

requirements of HB 2134, new §114.62(c) specifies that counties electing to participate in the LIRAP 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.

The adopted new §114.64, LIRAP Requirements, specifies the requirements for establishing and implementing a LIRAP. New §114.64(a) specifies that, upon receiving the request by a county commissioners court, the executive director shall authorize the implementation of LIRAP in a requesting county, and that the county and the executive director shall enter into a grant contract for the implementation of the LIRAP. New subsection (a) specifies that the grant contract will provide conditions, requirements, and projected funding allowances for the implementation of LIRAP. New subsection (a) also allows a participating county to implement the LIRAP through a contract with an entity approved by the executive director. The adopted rulemaking requires that the participating county or its entity take appropriate measures to determine applicant eligibility and repair effectiveness and to ensure against fraud. The rules specify that the county will remain the contracted entity even if the county contracts for the services necessary to implement the LIRAP. A grant contract between the participating county and the executive director of the commission must adhere to Uniform Grant Management Standards. Since fees collected by the state will be used to fund local LIRAPs, other contract procedures required by other agencies such as the Comptroller's Office may also be applicable. The commission developed a guidance document that includes sample application forms, sample contracts, and other related information for counties to use to implement the LIRAP.

The adopted new §116.64(b) specifies the requirements for repair and retrofit assistance. New

subsection (b), as required by statute, specifies that a LIRAP shall 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 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. The adopted subsection (b) requires that vehicles under the LIRAP be repaired or retrofitted at recognized emissions repair facilities. Additionally, new subsection (b) requires the participating county or its designated entity to make applications available for LIRAP participants and specifies what the applicant must demonstrate, at a minimum, to be eligible for repair or retrofit assistance. The vehicle must have failed a vehicle emissions test within 30 days of application submittal. The requirement to have failed a vehicle emissions test within 30 days of application submittal is established to allow the vehicle owner a reasonable amount of time to consider participating in the LIRAP. In addition, HB 2134 requires that the eligible vehicle be capable of being operated or driven and be currently registered in and have been registered in the program county for the two years immediately preceding the application for assistance. To ensure that an eligible vehicle is capable of being operated or driven, the proposed rules required that the vehicle owner be able to demonstrate that vehicle can be started by keyed ignition and idle without the use of the accelerator pedal for at least ten continuous seconds, be driven in forward and reverse for a minimum of 25 feet each way, and be driven under its own power to the emissions inspection station or designated disposal facility. In response to comments that this requirement is an administrative burden, the commission revised the proposed §114.64(b)(2) to require that the vehicle be driven under its own power to the emissions inspection station or vehicle retirement facility. HB 2134 directs that a vehicle is not eligible

to participate in LIRAP unless the vehicle is capable of being operated. The commission determined that the requirement of the vehicle's driveability has been met if the vehicle has been driven to the safety and emissions inspection facility where it failed the emissions test. Additionally, the vehicle must have passed the safety portion of the DPS motor vehicle safety and emissions inspection as recorded in the Texas Vehicle Inspection Report (VIR), or the vehicle owner must provide assurance that actions will be taken to bring the vehicle into compliance with safety requirements. This requirement ensures that the vehicle is roadworthy after emission-related repairs or retrofit work has been completed and the vehicle is in compliance with vehicle emissions requirements. Additionally, the vehicle owner must demonstrate that his or her net family income is at or below 200% of the federal poverty level. HB 2134 is specifically directed at assisting low income individuals and families. Commission staff researched other financial assistance programs and determined that the Texas Children's Health Insurance Program (CHIP) provides income eligibility requirements similar to the targeted population that the LIRAP is intended to cover. Thus, the income eligibility for the LIRAP is based on the CHIP eligibility requirement. For example, a family of four whose annual income is \$36,200 or less would be eligible to receive assistance under the proposed rules. The applicant must also demonstrate that any other requirements of the participating county or the executive director are met. The commission solicited comments on the adequacy of the income eligibility requirements, but received no comments on the issue.

The adopted new §114.64(c) specifies the requirement for accelerated vehicle retirement. New subsection (c) states that a LIRAP shall provide for monetary or other compensatory assistance to eligible vehicle owners to be used for the purchase of a replacement vehicle. New subsection (c) also

requires the participating county or its designated entity to make applications available for LIRAP participants and specifies what an applicant must demonstrate, at a minimum, to be eligible for accelerated vehicle retirement. The proposed rules required that the applicant demonstrate that the vehicle has failed a vehicle emissions test within 30 days of application submittal, can be started by keyed ignition and idle without the use of the accelerator pedal for at least ten continuous seconds, can be driven in forward and reverse for a minimum of 25 feet each way, can be driven under its own power to the emissions inspection station or designated disposal facility, and is currently registered in and has been registered in the program county for the two years immediately preceding the application for assistance. In response to comment that this requirement is an administrative burden, the commission revised the proposed §114.64(c)(1) to require that the vehicle be driven under its own power to the emissions inspection station or vehicle retirement facility. HB 2134 directs that a vehicle is not eligible to participate in LIRAP unless the vehicle is capable of being operated. The commission determined that the requirement of the vehicle's driveability has been met if the vehicle has been driven to the safety and emissions inspection facility where it failed the emissions test. The vehicle owner must also demonstrate that his or her net family income is at or below 200% of the federal poverty level for the same reasons as discussed previously. Additionally, the vehicle must have passed a DPS motor vehicle safety or safety and emissions inspection within 15 months prior to application submittal. This is to avoid unnecessary safety-related work being done prior to retiring the vehicle. Additionally, the applicant is required to demonstrate that other requirements of the county or executive director are met.

The adopted new §114.64(d) specifies the requirements related to compensation. New subsection (d) requires that participating counties determine eligibility and authorize monetary or other compensation

to the eligible vehicle owner based on available funding. The amount of monetary or other compensatory assistance for emission repairs to eligible vehicles by participating counties will be determined on a case-by-case basis. As required by HB 2134, new §114.64(d)(1)(A) establishes the maximum and minimum compensation amounts for repair and retrofit assistance, and specifies that such repairs and retrofits must be performed by a recognized emissions repair facility. Proposed subsection (d) established that compensation may be no more than \$600 and no less than \$50 per vehicle for emission-related repairs or retrofits performed at a recognized emissions repair facility, including diagnostics tests performed on the vehicle. The commission determined the maximum \$600 emission-related repair fee to be a reasonable and equitable amount based on commission staff research on the State of California's Consumer Assistance Program which provides financial assistance for related repairs and accelerated vehicle retirement. The average repair cost in the State of California's Consumer Assistance Program for Acceleration Simulation Mode (ASM-2) emission-related repairs is \$385 with some vehicles requiring higher amounts and some vehicles requiring lower amounts depending on the cause of emission failures. Proposed §114.64(d)(2) required that vehicle owners be responsible for the first \$50 of emission-related repairs or retrofit costs. In response to comments regarding the vehicle owner's contribution, the commission revised the amount for which the owner is responsible from \$50 to \$30. This will ease the burden on low income individuals while still providing for a commitment from the vehicle owner. The vehicle owner's contribution is not intended to be a "co-pay," but rather a vehicle owner's good faith effort at establishing a partnership with the LIRAP to operate a clean vehicle and, therefore, the commission does not believe that the fee should be waived under any circumstance. To reflect this change, §114.64(d)(1)(A) was revised to lower the minimum compensation from \$50 to \$30 per vehicle.

The adopted new §114.64(d)(1)(B) also establishes that compensation may be no more than \$1,000 and no less than \$600 per vehicle, including diagnostics tests to be used as required by HB 2134, toward the cost of a replacement vehicle for the accelerated retirement of a vehicle. The \$1,000 maximum compensation amount was determined by commission staff research on the State of California's Consumer Assistance Program discussed previously, where originally \$500 per vehicle was offered, but resulted in low participation. The State of California then raised the offer to \$1,000 per vehicle which dramatically increased participation in the program. The minimum of \$600 per vehicle for replacement was derived from the maximum allowed for repair assistance. A vehicle owner whose vehicle has failed an emissions test and for which repairs are deemed uneconomical is ensured of receiving no less than \$600 or the maximum amount of what would be paid for repairs.

Provided the retirement minimum and maximum amounts are met, new §114.64(d)(3) provides that counties may implement a level of compensation schedule that allows flexibility. In accordance with the requirements of HB 2134, new subsection (d) states that the following criteria may be used for determining the amount of financial assistance provided: model year of the vehicle; miles registered on the vehicle's odometer; fair market value of the vehicle; estimated cost of emission-related repairs necessary to bring the vehicle into compliance with emission standards; the amount of money the vehicle owner has already spent to bring the vehicle into compliance, excluding the cost of the vehicle emissions inspection; and the vehicle owner's income. The commission solicited comments on the minimum and maximum compensation amounts for repair, retrofit, and vehicle retirement assistance. The commission received three comments on the minimum and maximum compensation amounts for repair, retrofit, and vehicle retirement assistance. All comments are addressed in the RESPONSE TO

COMMENTS section of this preamble.

The adopted new §114.64(e) establishes the requirements for reimbursement. New subsection (e) requires that counties reimburse the appropriate recognized emissions repair facilities or vehicle retirement entity for approved repairs, retrofits, or vehicle retirements within 30 calendar days of receiving an invoice that meets the requirements of the county or designated entity. The 30-calendar-day requirement is based on Texas Government Code, Prompt Payment Act, Chapter 2251. To ensure that vehicles are repaired to meet vehicle emissions standards, the new subsection requires that repaired or retrofitted vehicles pass a DPS safety and emissions inspection before the recognized emissions repair facility is reimbursed. In response to comment that more flexibility is needed in the reimbursement section to allow participating counties the option to pay recognized repair facilities in situations where diagnosed repairs were made, but the vehicle did not pass its emission retest, the commission revised the rules. The adopted §114.64(e) states that 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.

The adopted new §114.66, Disposition of Retired Vehicle, explains that vehicles retired under an accelerated vehicle retirement program may not be resold or reused in their entirety in this or another state. As required by HB 2134, the vehicle must either be destroyed, recycled, or dismantled and its parts sold as used parts or used in the LIRAP; placed in a storage facility and subsequently destroyed, recycled, or dismantled within 12 months of vehicle retirement date and its parts sold or used in the LIRAP; or repaired, brought into compliance, and used as a replacement vehicle under this chapter. As

required by HB 2134, not more than 10% of all vehicles eligible for retirement may be used as replacement vehicles.

The adopted new §114.68, Emission Reduction Credits, establishes emission reduction credits in accordance with the requirements of HB 2134. The section explains that counties may allow private, commercial, and business entities to provide monetary assistance toward the LIRAP. New §114.68(a) specifies the emission reduction credits available under a LIRAP. Proposed subsection (a) stated that, to the extent allowed under state and federal law, private, commercial, and business entities may purchase an eligible vehicle under new §114.64(c), LIRAP Requirements, for accelerated retirement as approved by the participating county and may have 100% of the emission reductions certified as emission credits. In response to comments regarding the amount of emission reduction credits, the commission revised §114.68(a) and (b) to clarify that up to 100% of the emission reductions may be certified as emission credits. This percentage of emission reduction credits is established as an incentive for private, commercial, and business entities to provide funding in support of LIRAP. This emission reduction credit may be transferred or used by the holder in accordance with 30 TAC Chapter 101, Subchapter H, Divisions 1 and 4 (relating to Emission Credit Banking and Trading; and Discrete Emission Credit Banking and Trading).

The adopted new §114.68(b) specifies the emission reduction credits available for vehicles not covered under LIRAP. New subsection (b) states that, to the extent allowed under state and federal law, a fleet vehicle, a government-owned or leased vehicle, or a commercial vehicle may be retired and may have 100% of the emission reductions certified as emission credits.

The total amount of emission reduction credits that may be eligible for certification or registration is subject to requirements under Chapter 101, Subchapter H, Division 1 and Division 4. For instance, mobile emission reduction credits must be enforceable, permanent, quantifiable, real, and surplus; and mobile discrete emission reduction credits must be real, quantifiable, and surplus in accordance with the banking and trading rules and policies in Chapter 101, Subchapter H, Division.

The adopted new §114.70, Records, Audits, and Enforcement, establishes requirements for recordkeeping, reporting, and enforcement in accordance with HB 2134, which specifies that LIRAP will be subject to agency oversight that may include reasonable periodic commission audits. New §114.70(a) requires that a participating county submit quarterly audit reports to the commission to ensure that funds expended have been used in accordance with the requirements in this subchapter. The recordkeeping required in subsection (b) shall be transmitted to the state in paper copies or in an electronic database format, to be determined by mutual agreement between the state and the participating county. New §114.70(b) specifies the minimum information that the quarterly reports must include. The quarterly reports will provide the commission with the necessary information to ensure accountability on how the funds are spent and managed, and whether the vehicles are repaired, retrofitted, or retired according to requirements of state statutes and commission rules. The report must include the name of the county issuing the report; the name of the official representative certifying the report on behalf of the county; the amount of funds received during the reporting period; the amount of funds distributed for repair assistance, retrofitting, or voluntary retirement; information for each vehicle participating in the program, including vehicle identification number, license plate number, date of vehicle repair, retrofit, or retirement; and other pertinent information as required. The commission

developed guidance that includes software for counties to use in meeting this requirement. In addition, new §114.70(c) requires that records be maintained for a minimum of three years by the participating county, its designated entity, a participating recognized emissions repair facility, and a participating vehicle retirement facility. This three-year record retention requirement is consistent with the vehicle scrappage program under §114.216 (relating to Records, Auditing and Enforcement). Such records must be available upon request by the executive director for auditing purposes.

New §114.70(d) requires that a participating county, its designated entity, a participating recognized emissions repair facility, and a participating vehicle retirement facility allow the executive director to conduct audits and inspections. New §114.70(e) states that a person who, with intent to defraud, sells a vehicle in an accelerated vehicle retirement program under the LIRAP commits an offense that is a third degree felony. Under HB 2134, LIRAP is subject to commission oversight. Therefore, these recordkeeping, auditing, and reporting requirements are proposed to fulfill the statutory oversight responsibilities.

The adopted new §114.72, Local Advisory Panels, establishes the criteria for the appointment of local advisory panels in accordance with HB 2134. New §114.72(a) allows the commissioners court of a participating county to appoint one or more local advisory panels to assist in identifying vehicles with intrinsic value that make these vehicles existing or future collectibles. A vehicle identified under this proposed section could be sold to an individual if the vehicle is repaired and brought into compliance with I/M program requirements; removed from the state; removed from an affected county; or stored for future restoration and cannot be registered in an affected county except under Texas Transportation

Code, §502.274 or §502.275 as a classic or antique vehicle. New §114.72(b) states that the court may delegate all or part of the financial administrative matters to any of the local advisory panels that it appoints. New §114.72(c) states that local advisory panels may consist of individuals representing automobile dealerships, the automotive repair industry, safety inspection stations, local affected governments, and local nonprofit organizations.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.225, and determined that 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 adopted rulemaking implements HB 2134 by providing requirements for participating counties' implementation of the LIRAP and applies only to counties that implement a vehicle emissions I/M program. 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.

Even if this was a major environmental rule, Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; 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 adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability requirements of a “major environmental rule.” This rule is specifically required by state law. To enhance the vehicle emissions I/M program’s objectives to meet the ozone national ambient air quality standards (NAAQS) set by the EPA under 42 United States Code (USC), 7409, HB 2134 provided for monetary assistance to low income vehicle owners for repair assistance, retrofit, and accelerated vehicle retirement of vehicles that have failed emissions tests. This rulemaking does not exceed an express requirement of state law because this rulemaking specifically implements the provisions of HB 2134. The rulemaking does not exceed a requirement of a delegation agreement. Also, the rulemaking was not developed solely under the general powers of the agency, but was specifically authorized under Texas Clean Air Act (TCAA), §§382.202, 382.209 - 382.213.

The commission invited public comment on the regulatory impact analysis determination. No comments on the determination were received.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this rulemaking action and did an analysis of whether the rules are subject to

Texas Government Code, §2007.043. This rulemaking is adopted to assist low income motorists in repairing, retrofitting, or retiring vehicles that have failed an emissions test under the state's I/M program, in an effort towards reducing emissions from these vehicles and to help meet the ozone NAAQS set by the EPA under 42 USC, §7409.

Promulgation and enforcement of the rules will not burden private, real property because this rulemaking action is intended to provide compensation to eligible vehicle owners for repair assistance, retrofit, and accelerated vehicle retirement. Although the rule revisions do not directly prevent a nuisance or prevent an immediate threat to life or property, they do prevent a real and substantial threat to public health and safety and are part of the efforts towards meeting the ozone NAAQS. Specifically, the LIRAP provides monetary assistance to certain vehicle owners towards repair assistance, retrofit, and accelerated vehicle retirement that have failed an emissions test. The adopted rules are one part of the strategy to enhance the vehicle I/M program. The vehicle I/M program was developed in order to meet the ozone NAAQS set by the EPA under 42 USC, §7409. States are primarily responsible for ensuring attainment and maintenance of NAAQS once the EPA has established them. Under 42 USC, §7410 and related provisions, states must submit, for approval by the EPA, state implementation plans (SIPs) that provide for the attainment and maintenance of NAAQS through control programs directed to sources of the pollutants involved. The vehicle I/M program is one of the control strategies submitted to the EPA as part of the SIP. Based on this analysis, exemptions which apply to these rules are that this: 1) is an action reasonably taken to fulfill federal ozone NAAQS requirements; 2) is in response to a real and substantial threat to public health and safety; 3) is designed to significantly advance the health and safety purpose; and 4) does not impose a greater burden than is necessary to achieve the health and

safety purpose. Therefore, this rulemaking action does not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that the rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et seq.), and the commission rules in 30 TAC Chapter 281, Subchapter B, Consistency with the CMP. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed the rulemaking for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). The CMP policy applicable to this rulemaking is the policy (31 TAC §501.14(q)) 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)). This rulemaking does not authorize any new air contaminants and is intended to provide compensation to eligible vehicle owners for repair assistance, retrofit, and accelerated vehicle retirement as one part of the strategy to enhance the state's vehicle emissions I/M program. Therefore, this rulemaking is consistent with the applicable policy and goal.

The commission invited public comment on the consistency of the rulemaking with applicable CMP goals and policies. No comments on the CMP were received.

HEARING AND COMMENTERS

The following provided oral and/or written comments on the proposal: Conlon, Frantz, Phelan, & Pires law firm representing the Automotive Engine Rebuilders Association (AERA) and Automotive Parts Rebuilders Association (APRA); Air Emissions Reduction Credit Organization (AERCO), City of Houston; EPA; Harris County Auto Recyclers Association (HCARA); Harris County Judge Robert Eckels (Judge Eckels); Houston Sierra Club; North Central Texas Council of Governments (NCTCOG); Specialty Equipment Market Association (SEMA); and one individual.

AERA, APRA, AERCO, City of Houston, EPA, HCARA, Judge Eckels, Houston Sierra Club, NCTCOG, SEMA, and one individual generally supported the proposal.

AERA, APRA, AERCO, City of Houston, EPA, HCARA, Judge Eckels, Houston Sierra Club, NCTCOG, SEMA, and one individual suggested changes to the proposal as stated in the RESPONSE TO COMMENTS section.

RESPONSE TO COMMENTS

Houston Sierra Club and NCTCOG commented on limiting counties' administrative costs. NCTCOG commented that, under §114.62(b), the proposed rule implies that 95% of available money must be spent. Both commenters recommended the commission set a 5.0% limit on administrative costs so that

the money for this program goes to those who want to do their share and clean up the air but do not have the monetary resources to do so. Limiting administrative costs will maximize the number of vehicles that can be cleaned up. NCTCOG further commented that participating counties be informed of the 5.0% administrative cap, and of the timeline to use funds before they are returned to the state.

HB 2134 requires that not more than 5.0% of the money provided to a local LIRAP may be used for administration of the program. The rules have been changed to more clearly reflect the requirement in the statute. Contracts with participating counties will explain the 5.0% administrative limit and timelines for use of funds.

Houston Sierra Club commented that it does not support limiting assistance for repairs to \$600.

Houston Sierra Club recommended a \$1,000 maximum repair limit because it believes the cost of repairs justifies it.

Commission staff has researched the average cost for emissions-related repairs as a result of ASM testing failures in other states. The average repair cost is approximately \$385. The commission has established the upper limit of \$600 for repair assistance to accommodate those repairs which may be higher than the average. The range of assistance will be reviewed after LIRAP has been fully implemented for one year. The commission made no changes to the rules as a result of this comment.

Houston Sierra Club and NCTCOG commented on the need for additional flexibility on the minimum

and maximum compensation allowed for retiring a vehicle. Houston Sierra Club recommended the minimum replacement costs for a vehicle should be \$1,000. Both commenters recommended that the maximum assistance for replacement vehicles be set at \$3,000 to allow for better condition, lower mileage, and newer vehicles to be acquired.

The commission believes that \$1,000 as a maximum for vehicle replacement assistance will allow this benefit to be provided to as many eligible vehicle owners as possible during the first full year of LIRAP implementation. Program administrators will have the flexibility to provide assistance within the range of \$600 to \$1,000 depending on the vehicle's age, odometer reading, and condition. The commission will review the range of assistance for the accelerated vehicle retirement program after the program has been fully implemented for one year. The commission made no changes to the rules as a result of this comment.

NCTCOG recommended that the proposed §114.68 be revised to state that any monetary assistance provided by private, commercial, and business entities may be used to provide additional funds over the maximum established by the commission for vehicle repair or replacement.

This rulemaking provides for the minimum and maximum assistance, as required by statute, that can be provided from state LIRAP funds for eligible vehicles. Counties are not prohibited from providing additional resources to eligible vehicle owners from funds received from outside parties. The commission made no changes to the rules as a result of this comment.

Houston Sierra Club commented that the commission did not state how the LIRAP will be advertised to the public. Houston Sierra Club encouraged the commission to widely advertise the program via many different kinds of media to maximize getting the message out and encouraging participation.

LIRAP leaflets and application forms will be made available to all vehicle owners who fail the emissions tests at the inspection station. The commission will also encourage participating counties to work with social services to provide information and assistance on implementing the program. The commission did not revise the rule in response to this comment.

NCTCOG recommended the commission revise the rule summary to include Rockwall County as an eligible participant in LIRAP. NCTCOG stated that, as indicated in the Attainment Demonstration State Implementation Plan, Rockwall County will begin mandatory I/M program on May 1, 2003, and therefore can be defined as an affected county.

Rockwall County was inadvertently omitted from the list of counties that will begin testing in 2003 in the fiscal note. The statute and rules are consistent in making available the LIRAP program to all counties that have adopted and implemented a vehicle emissions I/M program. Rockwall County is scheduled to begin implementation of the vehicle emissions testing program on May 1, 2003. The commission made no changes to the rules as a result of this comment.

NCTCOG requested that the commission revise §114.64(a) to state explicitly that the executive director will allow a participating county or group of counties to implement the LIRAP through another political

subdivision via an inter-local contract.

The statute is clear and the rules are consistent in providing that only counties with vehicle emissions testing programs may elect to implement the LIRAP program. However, counties have the option of contracting with an approved entity. This option allows counties the flexibility to implement the LIRAP through another political subdivision. However, a county's participation in the LIRAP can only be triggered by a resolution from the affected county's commissioners court to the commission. The commission made no changes to the rules as a result of this comment.

NCTCOG, Judge Eckels, HCARA, and AERCO commented that the administrative requirements associated with the determination of program eligibility and the extensive reporting requirements place an unnecessary expense on participating counties. NCTCOG also stated that the commission should work with the North Central Region in preparing guidance documents. Judge Eckels further commented that the commission should make staff available to assist counties in determining eligible requirements and ensuring that the program requirements are met.

The commission understands the administrative burden placed on the participating counties and is working with participating counties to reduce the burden. The commission carefully considered the reporting requirements and believes that each one is necessary to demonstrate compliance for auditing purposes. The commission also developed a program guide in cooperation with stakeholders, including NCTCOG, to assist program administrators in determining vehicle and vehicle owner eligibility and to explain the program's reporting requirements. Staff has developed

reporting software to help counties meet the program's reporting requirements. The commission made no changes to the rules in response to this comment.

NCTCOG requested that additional considerations be made to ensure that the LIRAP applicant will be held liable for false statements or fraudulent actions.

The commission agrees with NCTCOG that applicants are liable for making false statements on the application and this will be emphasized on the application. The commission made no changes to the rules in response to this comment.

Judge Eckels commented that the proposed rule requirements, such as demonstrating that a vehicle can be driven in forward and reverse for a minimum of 25 feet each way and can be started by keyed ignition and idle without the use of the accelerator pedal for at least ten continuous seconds seem to be overly burdensome, difficult to enforce, and present technical and physical challenges upon the county.

The commission agrees with the commenter that this requirement is an administrative burden. HB 2134 directs that a vehicle is not eligible to participate in LIRAP unless the vehicle is capable of being operated. The commission has determined that, if the vehicle has been driven to the safety and emissions inspection facility where it failed the emissions test, the requirements of the vehicle's driveability have been met. Therefore, the proposed wording in §114.64(b)(2) was revised to require that the vehicle be driven under its own power to the emissions inspection station or vehicle retirement facility.

HCARA commented that it will be difficult for the counties to track title paperwork, particularly for vehicles which are retired and subsequently repaired and returned to service.

The commission acknowledges that tracking title paperwork may be difficult. However, HB 2134 specifies that 10% of retired vehicles may be used as replacement vehicles. The commission believes that local advisory panels may be used to provide guidance on tracking vehicles that are returned to service. The commission made no changes to the rules as a result of this comment.

NCTCOG and Houston Sierra Club commented that more clarification is needed on the issue of the \$50 “co-pay.” Houston Sierra Club did not favor the first \$50 fee paid by the vehicle owner toward emissions-related repairs or retrofit costs because it believes that many people cannot afford the \$50 at the income levels this program addresses. NCTCOG stated that the rules suggest the vehicle owner pay the first \$50 of the repair or retrofit costs, whereas the rule summary indicates that this fee is intended to pay for maintenance costs. NCTCOG recommended that if a participant is required to pay for the first \$50 of maintenance, then they should be able to fulfill or supplement this requirement by providing proof of purchase of repairs, parts, and/or services rendered within a specific time frame from the application date. NCTCOG believes that this would keep participants from being penalized for taking the initiative to come into compliance prior to seeking assistance through LIRAP. NCTCOG recommended that the \$50 “co-pay” be waived if diagnostics indicate that necessary repairs do not include maintenance type work. Houston Sierra Club recommended a \$30 fee which will ease the burden for the poorest while still requiring a commitment from vehicle owners for the program.

The vehicle owner's contribution is not intended to be a "co-pay," but rather a vehicle owner's good faith effort at establishing a partnership with the LIRAP to operate a clean vehicle and, therefore, the commission does not believe that the fee should be waived under any circumstance. The commission agrees that lowering the amount for which the owner is responsible will ease the burden on low income individuals while still providing for a commitment from the vehicle owner; therefore, the \$50 amount that was proposed has been revised to \$30.

NCTCOG concurred with the commission's proposed maximum \$600 repair reimbursement in §114.64(d)(1)(A), but would like to see additional safeguards. NCTCOG stated that subsequent guidance should include an exhaustive list of applicable repairs and cost ranges for associated materials and labor to help ensure against fraud.

Staff has developed and will provide to program administrators a program guide listing possible emissions-related repairs. Repair costs will vary depending upon location, repair technician experience and training, and the specific repair required. Only those repairs related to emissions-testing failures will be covered by the assistance program. Repairs covered by the LIRAP can only be done at DPS-recognized emissions repair facilities. These repair facilities have demonstrated to DPS a degree of competence in emissions-related diagnostics and repairs for vehicles that have failed vehicle emission tests. These facilities should provide estimates of the cost of repairs to the eligible vehicle owner before the repairs are done. Program administrators have the option, resources permitting, to review and verify the estimate and to determine if the cost and degree of repairs are warranted. Repair work done on an eligible vehicle by a recognized

emissions repair facility, in most cases, will only be paid for by the program administrator upon evidence of the vehicle having passed an emissions test. Passage of the emissions test should help provide assurance against fraud. The commission made no changes as a result of this comment.

NCTCOG commented that more flexibility is needed in the reimbursement rules. NCTCOG recommended that in the event that a recognized repair facility honestly performed all necessary repairs but the vehicle was still not able to pass the emissions test, the facility should be provided the opportunity to request reimbursement from the program administrator.

The commission agrees with the commenter and changed the rules to provide that in this event, the facility may request that the participating county pay for repair work performed.

Participating counties will have the option of reviewing these requests on a case-by-case basis and may allow the local advisory panel, which may include industry representatives, to review and decide on these cases.

NCTCOG further commented that in various parts of the proposed rules, language referring to the inclusion of diagnostic testing contains confusing phraseology. NCTCOG stated that it is unclear if the cost for diagnostic tests will be paid for through LIRAP funds, or if this cost will be the responsibility of the vehicle owner.

The commission recognizes that the cost of performing a diagnostic test is a critical component in

determining how to bring a vehicle into compliance. Therefore, as provided in §114.64(d)(1)(A) and (B), the cost of a diagnostic test is included in the allowable compensation. The commission made no changes to the rules as a result of this comment.

NCTCOG recommended revising the definition of a replacement vehicle. NCTCOG stated the proposed rules limit the use of money received to only the purchase of a replacement vehicle. It stated that, where appropriate, participants should have the option of participating in various regional commuting programs and/or using alternate modes of transportation.

The commission does not have the authority to broadly define a replacement vehicle as suggested by the commenter to include alternative modes of transportation. HB 2134 clearly states that funding may be used only toward repairs directly related to bringing a vehicle into compliance, a replacement vehicle, replacement assistance for a vehicle, or installing retrofit equipment on a vehicle to bring it into compliance. The commission made no changes as a result of this comment.

NCTCOG commented that additional language is needed in §114.66(a), Disposition of Retired Vehicles, to protect regional interest. NCTCOG suggested that §114.66(a)(4) indicate that parts obtained from a retired vehicle and reused in LIRAP meet guidelines established in §114.213(f) and exclude ineligible equipment defined under §114.213(f)(2), relating to emissions systems.

Section 114.213(f) provides guidelines for the retirement of vehicles for the purposes of generating SIP credit for the vehicle scrappage program and is not applicable to the LIRAP. Any emission

reduction credits generated under §114.68, Emission Reduction Credits, must meet the requirements of Chapter 101, Subchapter H, Division 1 or 4. The commission made no changes to the rules as a result of this comment.

SEMA, AERA, and APRA recommended that all efforts be made to determine whether a vehicle would benefit from repair and/or retrofit before the vehicle is allocated to the retirement program under §114.64. NCTCOG commented that in an attempt to administer funds efficiently, the region would like to have the authority to investigate the option of requiring a diagnostic test of vehicles applying for retirement. NCTCOG stated that in the event that a vehicle could easily and cost-effectively be repaired, it would seem prudent to encourage the owner to consider repair over retirement, and retirement should be considered only as a last resort. AERA and APRA further commented that if the owner of every vehicle which could be repaired or retrofitted would be required to do so instead of allowing the vehicle to be scrapped, fewer funds would be needed.

The commission agrees that repairs should be chosen over vehicle retirement in the event that a vehicle can be easily and cost-effectively repaired. Participating counties have the flexibility under §114.64(b)(6) or (c)(3) to require additional criteria for determining eligibility, which could include requiring a diagnostic test. The commission made no changes to the rules as a result of this comment.

SEMA commented that nowhere in §114.68 or the proposed rules does the commission make provisions for emission reduction credits available to private, commercial, and business entities that participate in

the repair and retrofit of these vehicles. SEMA also stated that nothing in the law prevents the commission from issuing such credits. AERA and APRA commented that because repaired or retrofitted vehicles eliminate future emissions, the commission should allow private entities to obtain emission reduction credits certified by the commission.

Emission reduction credits for the repair of vehicles that fail emissions tests are already included in the modeled reductions from the I/M program in the SIP. To enhance the vehicle emissions I/M program's objectives to meet the ozone NAAQS set by the EPA, the LIRAP provides monetary assistance to low income vehicle owners for repair assistance, retrofit, and accelerated vehicle retirement of vehicle that have failed an emissions test. The commission made no changes to the rules as a result of this comment.

SEMA, AERA, and APRA opposed the complete destruction of program vehicles and their components in §114.66 of the proposed rules and believe that dismantlers must be given equal opportunity and incentive to resell parts. AERA and APRA commented that the commission should indicate a preference to recycling of automobile parts by dismantling as opposed to scrappage or destruction. SEMA commented that limiting the reselling of vehicles and parts to one of several options available to dismantlers will lead to public disapproval of the program. SEMA stated that allowing the option for destruction of older vehicles and their components unfairly discriminates against those who have no option but to own such vehicles. SEMA stated that persons on low and/or fixed incomes who depend upon older vehicles for primary transportation may be forced into foregoing otherwise intended vehicle maintenance and repairs due to the unavailability or higher costs of parts which will result from this

program.

HB 2134 provides that a retired vehicle must be destroyed; recycled; dismantled and its parts sold; placed in a storage facility and subsequently destroyed, recycled, or dismantled; or repaired and used as a replacement vehicle. The commission believes that it is up to the discretion of the dismantler to determine which option to choose on a case-by-case basis. The commission made no changes to the rules in response to this comment.

SEMA recommended that vehicles qualify for the program only if they are regularly driven and actually contribute to the emissions inventory to ensure that the emissions reductions credited when retiring the vehicle are real and quantifiable. SEMA proposed that regularly driven vehicles, as accepted by the California Air Resources Board's model and others, be vehicles that are driven a minimum of 400 miles per month or 5,000 miles per year.

The commission believes the adopted requirements adequately address SEMA's concerns as to whether a vehicle is regularly driven. The commission believes that SEMA's suggestion of defining a regularly driven vehicle as one that is driven a minimum of 400 miles per month or 5,000 miles per year would be burdensome for counties to verify. The statute and rules are consistent in requiring the vehicle be currently registered and has been registered in the participating county for the previous two years. The rules further require that vehicles have passed a safety test for repair and retrofit assistance and a safety and emissions test in the prior 15 months for accelerated vehicle retirement assistance. These three requirements indicate that the

vehicle is currently being operated or that an intent to operate the vehicle was made within the past year. These requirements must be satisfied before a vehicle is eligible for repair, retrofit, or accelerated retirement assistance. The commission made no changes to rules as a result of this comment.

SEMA, AERA, and APRA recommended clarification on language defining retrofit equipment in Subchapter A, §114.7. SEMA and EPA stated that there is currently no EPA-approved criteria that applies to retrofit equipment available for gasoline vehicles eligible for the proposed repair, retrofit, and retirement program. SEMA requested that the agency provide further detail as to how retrofit equipment will be approved and certified by EPA for use in the Texas program. AERA and APRA commented that since EPA has not approved any retrofit equipment for automobile engines, the requirement that retrofit equipment must be approved by EPA should be deleted from the definition of “retrofit equipment.”

The commission agrees with the commenter that currently EPA has not approved any retrofit equipment for gasoline powered vehicles. HB 2134 requires that the commission and DPS establish standards and specifications for the approval of retrofit equipment that can be used in LIRAP. The commission determined that EPA-approved retrofit equipment for gasoline operated vehicles will be the only allowed equipment in LIRAP because these standards and specifications, as well as the retrofit equipment, would eventually have to be approved by EPA. Upon their approval of any such equipment, this equipment will be allowed to be used in the LIRAP. The commission made no changes to the rules as a result of this comment.

EPA recommended clarification on preamble language defining retrofit equipment in Subchapter A, §114.7, to read that the commission has elected to use EPA's certification or verification of retrofit equipment as the criteria for approval of retrofit equipment for LIRAP.

The commission agrees with EPA that clarification of the preamble is necessary, and this clarification was made. The definition in the adopted rules state that retrofit equipment shall be approved by EPA. The commission made no changes to the rules in response to this comment.

EPA commented that the rulemaking should be clear that up to 100% of the reductions may be certified as emission reduction credits only if and when the emission reduction credits are certified by the commission staff to meet the requirements of Chapter 101, Subchapter H, Division 1 or 4.

Additionally, EPA commented that emissions from new vehicles that replace subject vehicle must be subtracted from the emission reduction credits. EPA stated that the emission reductions certified by the commission staff must have been relied upon in the most recent attainment demonstration approved by EPA.

The commission concurs with the comment and has revised §114.68(a) and (b) to clearly state that up to 100% of the emission reductions may be certified as emission credits. EPA's other concerns are addressed in the rules which require that all emission reduction credits generated by this rulemaking meet the requirements of Chapter 101, Subchapter H, Division 1 or 4. The commission agrees that staff must rely on the most recent attainment demonstration approved by the EPA when determining emission reduction credits.

Judge Eckels commented that administrative start-up cost associated with LIRAP could be significant and that the 5.0% administrative cost that counties are allowed from state LIRAP funds may not be sufficient to cover the cost.

The 5.0% administrative costs allowed from the state funds provided for LIRAP is a statutory requirement found in HB 2134. The commission made no changes to the rules in response to this comment.

Judge Eckels commented that the \$600 minimum for replacement assistance is inconsistent with the flexibility proposed in §114.64(d)(3). Judge Eckels also proposed allowing counties flexibility for using criteria for financial assistance that is proposed for each vehicle and owner.

HB 2134 requires the commission to set as part of the program's guidelines a minimum and maximum amount of compensation for vehicle repair, retrofit, and replacement. Program administrators are provided with the flexibility of establishing their own compensation schedule as long as it falls within the minimum and maximum range found in the rules. The commission will review the range of assistance for the accelerated vehicle retirement program after the program has been fully implemented for one year. The commission made no changes to the rules as result of this comment.

Judge Eckels commented that under §114.68(a) governmental entities providing assistance for LIRAP should also receive 100% of the emission reduction credits to be used toward the SIP.

The commission based §114.68(a) on provisions in HB 2134 that allow private, commercial, and business entities to claim reduction credits if they purchase eligible vehicles in the LIRAP for retirement. Therefore, the commission did not include governmental entities in §114.68(a). The commission made no changes to the rules as a result of this comment.

One individual, HCARA, and AERCO recommended clarification on language defining “participating vehicle retirement facility” and what criteria these facilities are expected to meet. The commenters stated that these facilities should be required to have their state dismantling license, a local dismantling license, or a permit if required by the local political subdivision.

The commission agrees that clarification to define a vehicle retirement facility is necessary. The commission revised the rules to add a definition for a vehicle retirement facility as a facility that, at a minimum, is licensed, certified, or otherwise authorized by TxDOT to destroy, recycle, or dismantle vehicles. This definition allows participating counties the flexibility to include additional local requirements for vehicle retirement facilities.

City of Houston and HCARA commented that the rules should specifically require that a representative from the largest city in the participating county and a representative of the auto recycling community be members of the county's LIRAP advisory group.

The commission made no changes to the rules in response to this comment because the rules reflect HB 2134, which provides that a local advisory panel, if appointed, may consist of

representatives from automobile dealerships, automotive repair industry, safety inspection facilities, general public, antique and vintage car clubs, local nonprofit organizations, and locally affected governments. The commissioners court of a participating county may appoint representatives from large cities as a locally affected government. However, HB 2134 does not include representatives of the auto recycling community.

City of Houston commented that the rules should be changed to specifically state that counties may contract with cities within their respective jurisdictions to administer the LIRAP.

HB 2134 and the rules are consistent in allowing counties to contract with an entity approved by the commission's executive director for services necessary to implement the LIRAP. This entity could include a city government. The commission made no change to the rules as a result of this comment.

City of Houston commented that the commission should develop a proactive strategy to assure early and maximum participation in the program by affected counties.

The commission's staff is working with affected counties in the development of the program to promote participation in the LIRAP. The commission made no change to the rules as a result of this comment.

City of Houston commented that the rules should be clarified to minimize and avoid the potential dual

assistance possibility of vehicle owners first obtaining \$600 repair assistance and then immediately choosing to scrap the same vehicle and obtain \$600 to \$1,000 for a replacement vehicle. City of Houston also stated that this clarity would also maximize emission reduction opportunities.

The rules state that repaired or retrofitted vehicles must pass a DPS safety and emissions inspection before the recognized emissions repair facility is reimbursed. Once the vehicle passes the inspection and is provided a safety and emissions sticker, the vehicle will not be eligible for retirement. In instances where repairs to the vehicle are not sufficient to pass the emissions test and the only option remaining is to scrap the vehicle, the program administrator may make this decision on a case-by-case basis. The commission made no changes to the rules as a result of this comment.

City of Houston commented that the commission should assess and report back to the Texas Legislature and elected officials of nonattainment counties and cities on an ongoing basis the adequacy of funding for the program.

Through periodic audits, the commission will track the adequacy of funding for the LIRAP. This information will be made available to interested parties, including elected officials, as appropriate. The commission made no change to the rules as a result of this comment.

HCARA and AERCO commented that vehicles being targeted for retirement assistance through the LIRAP are historically being operated by persons other than the registered owner. The commenters

stated that this could make it difficult for the vehicle to be eligible for participation in LIRAP.

However, the commenters stated that they understand the need to limit eligibility to a person who is a registered owner and has a certificate of title.

The commission agrees that often the vehicle operator is not the registered owner of the vehicle.

However, for the purposes of vehicle retirement, it is necessary to require a certificate of title.

This requirement prevents fraud and reduces the administrative burden on the participating county. The commission made no change to the rules as a result of this comment.

SUBCHAPTER A: DEFINITIONS

§114.7

STATUTORY AUTHORITY

The new section is adopted under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and Texas Health and Safety Code, TCAA, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The new section is adopted under TCAA, Subchapter G, concerning Vehicle Emissions (§§382.201 - 382.216 as added by HB 2134, §1, 77th Legislature, 2001). Specifically, the adopted rule is authorized under TCAA, §§382.202, 382.209 - 382.213.

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

Unless specifically defined in the 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 LIRAP) shall 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) **Commercial vehicle** - A vehicle that is owned or leased in the regular course of business of a commercial or business entity.

(3) **Destroyed** - Crushed, shredded, or otherwise dismantled to render a vehicle permanently and irreversibly incapable of functioning as originally intended.

(4) **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.

(5) **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.

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

(7) **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.

(8) **Recognized emissions repair facility** - An automotive repair facility as defined in

37 TAC, §23.93, relating to Vehicle Emissions Inspection Requirements.

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

(10) **Replacement vehicle** - A vehicle that has a valid Texas Department of Public Safety or safety and emissions inspection.

(11) **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.

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

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

(14) **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.

(15) **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
AND LOW INCOME VEHICLE REPAIR ASSISTANCE, RETROFIT,
AND ACCELERATED VEHICLE RETIREMENT PROGRAM**

**DIVISION 2: LOW INCOME VEHICLE REPAIR ASSISTANCE,
RETROFIT, AND ACCELERATED VEHICLE RETIREMENT PROGRAM
§§114.60, 114.62, 114.64, 114.66, 114.68, 114.70, 114.72**

STATUTORY AUTHORITY

The new rules are adopted under TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and Texas Health and Safety Code, TCAA, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The rules are adopted under TCAA, Subchapter G, concerning Vehicle Emissions (§§382.201 - 382.216 as added by HB 2134, §1, 77th Legislature, 2001). Specifically, the adopted rules are authorized under TCAA, §§382.202, 382.209 - 382.213.

§114.60. Applicability for LIRAP.

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

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

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

(1) fleet vehicle;

(2) commercial vehicle;

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

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

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

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

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

§114.62. LIRAP Funding.

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

(b) Not more than 5.0% of the money provided by the commission to a participating county or its LIRAP designee may be used for administration of the program.

(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.

§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 must 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 shall 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 two years 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 200% 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 shall provide monetary or other compensatory assistance to eligible vehicle owners to be used toward the purchase of a replacement vehicle. 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 meets the requirements under subsection (b)(1) - (3), and (5) of this section;

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

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

(d) Compensation. The participating county must 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 shall 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) no more than \$1,000 and no less than \$600 per vehicle, including diagnostics tests, to be used toward a replacement vehicle for the accelerated retirement of a vehicle meeting the requirements under this subsection.

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

(3) For accelerated vehicle retirement, provided that the maximum and minimum 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. A participating county must reimburse the appropriate recognized emissions repair facility or vehicle retirement facility for approved repairs, retrofits, or vehicle retirements 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.

§114.66. Disposition of Retired Vehicle.

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. 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.

§114.68. Emission Reduction Credits.

(a) Emission Reduction Credits Available Under a Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP). A participating county may allow private, commercial, and business entities to provide monetary assistance towards the LIRAP. To the extent allowed under state and federal law, private, commercial, and business entities may purchase eligible vehicles under §114.64(c) of this title (relating to LIRAP Requirements) for accelerated retirement as approved by the participating county, and may have up to 100% of the emission reductions certified as emission credits. This emission reduction credit may be transferred or used by the holder in accordance with Chapter 101, Subchapter H, Division 1 or 4 of this title (relating to Emission Credit Banking and Trading; and Discrete Emission Credit Banking and Trading).

(b) Emission Reduction Credits Available for Vehicles Not Covered Under a LIRAP. To the extent allowed under state and federal law, a fleet vehicle, a government owned or leased vehicle, or a

commercial vehicle may be retired and may have up to 100% of the emission reductions certified as emission credits.

(c) Other Requirements. Emission reduction credits under subsection (a) or (b) of this section must meet the requirements of Chapter 101, Subchapter H, Division 1 or 4 of this title.

§114.70. Records, Audits, and Enforcement.

(a) A participating county must 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) any other information requested by the executive director.

(c) Records on the 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 must 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.

§114.72. Local Advisory Panels.

(a) The commissioners court of a participating county may appoint one or more local advisory panels to provide advice on Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) and to assist in identifying vehicles with intrinsic value that make these vehicles existing or future collectibles. A vehicle identified under this section may be sold to an individual if the vehicle is:

(1) repaired and brought into compliance;

(2) removed from the state;

(3) removed from an affected county; or

(4) stored for future restoration and cannot be registered in an affected county except under Transportation Code, §502.274 or §502.275.

(b) A commissioners court may delegate all or part of the financial and administrative matters to any of the local advisory panels that it appoints.

(c) A local advisory panel may consist of representatives from:

(1) automobile dealerships;

(2) automotive repair industry;

(3) safety inspection facilities;

(4) the general public;

- (5) antique and vintage car clubs;
- (6) local nonprofit organizations; and
- (7) locally affected governments.

