The Texas Natural Resource Conservation Commission (commission) proposes new §114.7, Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program Definitions; §114.60, Applicability for LIRAP; §114.62, LIRAP Funding; §114.64, LIRAP Requirements; §114.66, Disposition of Retired Vehicle; §114.68, Emission Reduction Credits; §114.70, Records, Audits, and Enforcement; and §114.72, Local Advisory Panels.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED 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 proposed rules would apply to counties that implement a vehicle emissions I/M program and have elected to implement LIRAP provisions.

House Bill 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 must expend no less than 95% of the funds received from the state for vehicle repair, retrofit, or vehicle retirement assistance. Participation by counties is not mandatory.

House Bill 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, automotive repair industry, safety inspection stations, local affected governments and local nonprofit organizations to advise the commissioners court on the operation of the LIRAP.

House Bill 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 these proposed rules once they are adopted and become effective.

SECTION BY SECTION DISCUSSION

Subchapter A, Definitions

The proposed 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 proposed section: affected county, commercial vehicle, destroyed, dismantled, fleet vehicle, LIRAP, participating county, recognized emissions repair facility, recycled, replacement vehicle, retrofit, retrofit equipment, vehicle, and vehicle owner. 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 of retrofit equipment as the criteria for certification 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 Vehicles 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; but 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. 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.

Subchapter C, Vehicle Inspection and Maintenance

The proposed 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 proposed to be divided into two divisions. The existing sections of the subchapter would be placed into Division 1, Vehicle Inspection and Maintenance, and the proposed new sections would be placed into Division 2, Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program.

The proposed 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 proposed new section applies to counties that implement a vehicle I/M program and have elected to implement LIRAP provisions as authorized by HB 2134. The proposed 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, the proposed

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 Transportation Code, §502.274; and exhibition vehicles, including antique and military vehicles, as defined by Transportation Code, §502.275; and vehicles that are not regularly used for transportation during the normal course of daily activities. The proposed new §114.60(d) requires participating counties to ensure that owners of vehicles excluded from LIRAP under the proposed new subsection (c) do not receive monetary or compensatory assistance through LIRAP. The commission is developing guidance to assist participating counties in ensuring that only owners of the eligible vehicles receive assistance.

The proposed new §114.62, LIRAP Funding, specifies the funding requirements for the LIRAP. The proposed 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 accordance with the requirements of HB 2134, the proposed new §114.62(b) specifies that participating counties must expend no less than 95% of the funds received from the commission for vehicle repair, retrofit, or vehicle retirement assistance. Also in accordance with the requirements of HB 2134, the proposed 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 proposed new §114.64, LIRAP Requirements, specifies the requirements for establishing and implementing a LIRAP. The proposed 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. The proposed new subsection (a) specifies that the grant contract will provide conditions, requirements, and projected funding allowances for the implementation of LIRAP. The proposed new subsection (a) also allows a participating county to implement the LIRAP through a contract with an entity approved by the executive director. The proposed 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 proposed 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 is developing a guidance document that will include sample application forms, sample contracts, and other related information for counties to use to implement the LIRAP.

The proposed new §116.64(b) specifies the requirements for repair and retrofit assistance. The proposed 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 proposed subsection (b) requires that vehicles under the LIRAP be repaired or retrofitted at recognized emissions repair facilities. Additionally, the proposed 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 subsection requires 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. 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 is proposed to ensure 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. House Bill 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 was 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 $35,300 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 solicits comments on the adequacy of the income eligibility requirements.

The proposed new §114.64(c) specifies the requirement for accelerated vehicle retirement. The proposed 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. For the reasons previously discussed regarding repair and retrofit assistance, the applicant must 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. 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 proposed new §114.64(d) specifies the requirements related to compensation. The proposed 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, the proposed 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. The proposed new subsection (d) establishes 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. The proposed new §114.64(d)(2) also requires that vehicle owners be responsible for the first $50 of emission-related repairs or retrofit costs. Preventive work is normally performed as scheduled maintenance by the vehicle owner. In some cases, minor maintenance work such as an oil change, oil filter change, air filter change, or a positive crankcase ventilation valve replacement may be all that is needed for the vehicle to be brought into compliance. This maintenance work is not normally considered "vehicle repair," but may be included as part of a larger repair job. Average cost of this type of maintenance is $50. The commission proposes a $50 "copay" to cover such routine maintenance work. The commission solicits comments on the vehicle owner's responsibility to pay the first $50 of emission-related repairs or retrofit costs and the adequacy of the amount.

The proposed 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, the proposed 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, the proposed 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 solicits comments on the minimum and maximum compensation amounts for repair, retrofit, and vehicle retirement assistance.

The proposed new §114.64(e) establishes the requirements for reimbursement. The proposed 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 proposed new subsection requires that repaired or retrofitted vehicles pass a DPS safety and emissions inspection before the recognized emissions repair facility is reimbursed.

The proposed 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 proposed new §114.68, Emission Reduction Credits, establishes emission reduction credits in accordance with the requirements of HB 2134. The proposed section explains that counties may allow private, commercial, and business entities to provide monetary assistance toward the LIRAP. The proposed new §114.68(a) specifies the emission reduction credits available under a LIRAP. The proposed new subsection (a) states that, to the extent allowed under state and federal law, private, commercial, and business entities may purchase an eligible vehicle under the proposed 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. 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, Division 1 and 4 (relating to Emission Credit Banking and Trading and Discrete Emission Credit Banking and Trading).

The proposed new §114.68(b) specifies the emission reduction credits available for vehicles not covered under LIRAP. The proposed 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 1 of this title.

The proposed 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. The proposed 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 the proposed new 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. The proposed 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 is preparing guidance that will include software for counties to use in meeting this requirement. In addition, the proposed 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.

The proposed 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. The proposed §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 proposed new §114.72, Local Advisory Panels, establishes the criteria for the appointment of local advisory panels in accordance with HB 2134. The proposed 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. The proposed 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. The proposed new §114.72(c) states that local advisory panels may consist of individuals representing automobile dealerships, automotive repair industry, safety inspection stations, local affected governments, and local nonprofit organizations.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, has determined for the first five-year period the proposed new sections are in effect, there will be fiscal implications, which are not anticipated to be significant, to the commission to implement provisions in this rulemaking. There will be no fiscal implications to other units of state government to implement the provisions of these rules.

There will be significant fiscal implications to certain eligible counties that choose to voluntarily implement a LIRAP, because these counties would be able to receive funds through grant contracts from the commission to implement the LIRAP. There should be no fiscal implications to counties not eligible or which choose not to participate in this program.

The proposed new sections are intended to implement certain provisions of HB 2134. The bill directed the commission to establish a voluntary LIRAP funded by a portion of the fees collected from the statewide vehicle emissions tests. Funding has to be distributed to participating counties in proportion to the amount of vehicle emissions test fees collected in those counties.

The following counties are or will be eligible to participate in the LIRAP: Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Ellis, Liberty, Tarrant, Fort Bend, Galveston, Harris, Johnson, Kaufman, Montgomery, Parker, and Waller Counties.

The LIRAP is intended to provide monetary or other compensatory assistance to vehicle owners for repairs directly related to bringing a vehicle into compliance with vehicle emission standards or for replacement assistance for a vehicle that has failed the required emissions test when emission-related repairs would not be economical. Eligible vehicle owners would be eligible to receive up to $600 per vehicle to pay towards emission-related repairs, or up to $1,000 per vehicle for purchasing a replacement vehicle if they choose to have their failed vehicle retired. To qualify for assistance, vehicle owners must be able to demonstrate that: the vehicle has failed a vehicle emissions test within 30 days of the application submittal, the vehicle is capable of being operated or driven, the vehicle is currently registered in and has been registered in an affected county for the two years immediately preceding the application

for assistance, the vehicle has passed the safety portion of the DPS's motor vehicle safety and emissions inspection test, the vehicle owner's net family income is at or below 200% of the federal poverty level, and any other requirements of the participating county or executive director are met.

The LIRAP would not apply to fleet vehicles, commercial vehicles, vehicles owned by units of government, classic motor vehicles, exhibition vehicles, and vehicles not regularly used for transportation during the normal course of daily activities.

County governments that are required or have opted to implement the state's vehicle emissions I/M program may elect to implement and manage a LIRAP. These counties will have the option of managing the program themselves or contracting with another county or entity to run the program. Participating counties would be limited to using no more than 5% of the funds received from the commission for administrative costs of running the LIRAP.

The commission was appropriated approximately $3.2 million in Fiscal Year 2002 and approximately $13.6 million in Fiscal Year 2003 to implement this program. These appropriations were based on revenue estimates derived from emission test fees and anticipated funding assistance requests. Actual funding assistance available to the public will be dependent on the amount of revenue the commission receives from vehicle emissions inspection fees. The commission received additional appropriation for three full-time employees and $186,365 in Fiscal Year 2002 and $162,365 in Fiscal Year 2003 to develop the program and to provide guidance to counties participating in the program. Assuming the entire amount of the appropriations is granted to participating counties, the total funding for administrative costs

for all participating counties would be limited to $159,881 in Fiscal Year 2002 and $679,681 in Fiscal Year 2003.

The commission estimates that 6,600 vehicles would be eligible for repair assistance in Fiscal Year 2002 and 17,000 in Fiscal Year 2003. Another 2,200 vehicles would be eligible for accelerated retirement in Fiscal Year 2002 and 5,700 in Fiscal Year 2003. Depending on the number of vehicle owners that apply for assistance, the funding needed to cover all eligible vehicles may potentially surpass the additional funding allocated to the commission to support the LIRAP. Therefore, it will be up to the participating counties to prioritize and determine which vehicle owner receives the monetary assistance.

PUBLIC BENEFITS AND COSTS

Mr. Davis also determined for each year of the first five years the proposed new sections are in effect, the public benefit anticipated from enforcement of and compliance with the proposed new sections will be monetary incentives for vehicle owners to repair or replace polluting vehicles, which could result in decreased emissions in affected counties.

The proposed new sections are intended to implement certain provisions of HB 2134, which directed the commission to establish a voluntary LIRAP funded by a portion of the fees collected from the statewide vehicle emissions tests. Funding is required by the bill to be distributed to participating counties in proportion to the amount of vehicle emission test fees collected in those counties.

The following counties are or will be eligible to participate in the LIRAP: Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Ellis, Liberty, Tarrant, Fort Bend, Galveston, Harris, Johnson, Kaufman, Montgomery, Parker, and Waller Counties.

The LIRAP is intended to provide monetary or other compensatory assistance to vehicle owners for repairs directly related to bringing a vehicle into compliance with vehicle emission standards or for replacement assistance for a vehicle that has failed the required emissions test when emission-related repairs would not be economical. Eligible vehicle owners would be eligible to receive up to $600 per vehicle to pay towards emission-related repairs, or up to $1,000 per vehicle for purchasing a replacement vehicle if they choose to have their failed vehicle retired. To qualify for assistance, vehicle owners must be able to demonstrate that: the vehicle has failed a vehicle emissions test within 30 days of the application submittal, the vehicle is capable of being operated or driven, the vehicle is currently registered in and has been registered in an affected county for the two years immediately preceding the application for assistance, the vehicle has passed the safety portion of the DPS's motor vehicle safety and emissions inspection test, the vehicle owner's net family income is at or below 200% of the federal poverty level, and any other requirements of the participating county or executive director are met.

The LIRAP does not apply to fleet vehicles, commercial vehicles, classic motor vehicles, exhibition vehicles, and vehicles not regularly used for transportation during the normal course of daily activities. As a result, this assistance is only available to individual vehicle owners. Businesses within affected counties would not be eligible to apply for repair or replacement assistance for company vehicles that have failed a vehicle emissions inspection test.

The commission was appropriated approximately an additional $3.2 million in Fiscal Year 2002 and approximately $13.6 million in Fiscal Year 2003 to be passed on to participating counties to be used to provide monetary assistance for emission repairs and accelerated vehicle retirement. These appropriations were based on revenue estimates derived from emission test fees and anticipated funding assistance requests. Actual funding assistance available to the public will be dependent on the amount of revenue the commission receives from vehicle emission inspection fees. The commission estimates that 6,600 vehicles would be eligible for repair assistance in Fiscal Year 2002 and 17,000 in Fiscal Year 2003. Another 2,200 vehicles would be eligible for accelerated retirement in Fiscal Year 2002 and 5,700 in Fiscal Year 2003. Depending on the number of vehicle owners that apply for assistance, the funding needed to cover all eligible vehicles may potentially surpass the additional funding allocated to the commission to support the LIRAP. Therefore, it will be up to the participating counties to prioritize and determine which vehicle owner receives the monetary assistance.

Vehicle owners that apply for assistance have to ensure their vehicles are repaired at DPS-recognized emissions repair facilities, some of which will be small or micro-businesses. Additionally, licensed auto dismantling or other retirement operators, some of which will be small or micro-businesses, will participate in the retirement of vehicles. The proposed new sections will require participating recognized emission repair facilities and participating vehicle retirement facilities to retain LIRAP repair records for a minimum period of three years. Although this is a new requirement, the commission does not anticipate there will be significant fiscal impacts to small or micro-businesses to comply.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There will be adverse fiscal implications, which are not anticipated to be significant, to small or micro-businesses as a result of implementing the proposed new sections. The proposed new sections are

intended to establish a voluntary LIRAP funded by a portion of the fees collected from the statewide vehicle emissions inspection tests. The LIRAP does not apply to fleet vehicles, commercial vehicles, classic motor vehicles, exhibition vehicles, and vehicles not regularly used for transportation during the normal course of daily activities. This assistance is only available to individual vehicle owners. Businesses within the affected counties would not be eligible to apply for repair or replacement assistance for company vehicles that have failed a vehicle emissions inspection test.

Vehicle owners that apply for assistance have to ensure their vehicles are repaired at DPS-recognized emissions repair facilities, some of which will be small or micro-businesses. Additionally, licensed auto dismantling or other retirement operators, some of which will be small or micro-businesses, will participate in the retirement of vehicles. The proposed new sections will require participating recognized emission repair facilities and participating vehicle retirement facilities to retain LIRAP repair records for a minimum period of three years. Although this is a new requirement, the commission does not anticipate there will be significant fiscal impacts to small or micro-businesses to comply.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the proposed 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 proposed 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 proposed 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 invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this rulemaking action and did an analysis of whether the proposed rules are subject to Texas Government Code, §2007.043. The following is a summary of that analysis. This rulemaking is proposed 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, LIRAP provides monetary assistance to certain vehicle owners towards repair assistance, retrofit, and accelerated vehicle retirement that have failed an emissions test. The proposed 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, 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 is that this is: 1) an action reasonably taken to fulfill federal ozone NAAQS requirements; 2) 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 will not constitute a takings under Texas Government Code, Chapter 2007.

The commission invites public comment on the draft takings impact assessment.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has determined that the proposed 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 has reviewed the proposed 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 seeks public comment on the consistency of the proposed rulemaking with applicable CMP goals and policies.

ANNOUNCEMENT OF HEARING

Public hearings on the proposal will be held at the following times and locations: January 22, 2002, 10:00 a.m. and 7:00 p.m., City of Houston City Council Chambers, 2nd Floor, 901 Bagby, Houston; January 23, 2002, 10:00 a.m. and 6:30 p.m., City of Irving Central Library Auditorium, 801 West Irving Boulevard, Irving; and January 24, 2002, 2:00 p.m. and 7:00 p.m., City of El Paso City Council Chambers, 2nd Floor, 2 Civic Center Plaza, El Paso.

The hearings are structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur

during the hearings; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearings, and answer questions before and after the hearings.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087; or by fax at (512) 239-4808. All comments must be received by 5:00 p.m. on January 24, 2002. All comments should reference Rule Log No. 2001-035a-114-AI. For further information, please contact Jill Burditt, Policy and Regulations Division, at (512) 239-0560.

STATUTORY AUTHORITY

The new section is proposed 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 under 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 proposed under TCAA, Subchapter G, concerning Vehicle Emissions (§§382.201 - 382.216 as added by HB 2134, §1, 77th Legislature, 2001). Specifically, the proposed rule is authorized under TCAA, §§382.202, 382.209 - 382.213.

The proposed rule implements TWC, §5.103 and TCAA, §§382.017, and 382.201 - 382.216.

SUBCHAPTER A: DEFINITIONS

§114.7

§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.

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 proposed under TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under 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 proposed under TCAA, Subchapter G, concerning Vehicle Emissions (§§382.201 - 382.216 as added by HB 2134, §1, 77th Legislature, 2001). Specifically, the proposed rules are authorized under TCAA, §§382.202, 382.209 - 382.213.

The proposed new sections implement TWC, §5.103; and TCAA, §382.017 and §§382.201 - 382.216.

§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 less than 95% of the money provided by the commission to a participating county must be used for vehicle repair, retrofit, or vehicle retirement assistance in accordance with the grant contract between the executive director and the county.

(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 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;

(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 $50 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 $50 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 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. Repaired or retrofitted vehicles must pass a DPS safety and emissions inspection before the recognized emissions repair facility is reimbursed.

§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 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 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 entity; 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.