

The Texas Commission on Environmental Quality (TCEQ or commission) adopts amendments to §114.62 and §114.64 *without changes* to the proposed text as published in the December 30, 2005, issue of the *Texas Register* (30 TexReg 8805) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The commission adopts these revisions in order to implement requirements of House Bill (HB) 1611, authored by Representative Warren Chisum, passed during the 79th Legislature, 2005. During the 77th Legislature, 2001, the legislature adopted HB 2134, which contained provisions designed to assist low income individuals with repairs, retrofits, or retirement of vehicles that fail emissions inspections. As required by HB 2134, the commission adopted rules providing the minimum guidelines for counties to implement a low income vehicle repair assistance, retrofit, and accelerated vehicle retirement program (LIRAP).

Only those counties that have implemented a vehicle inspection and maintenance (I/M) program are eligible for participation in the LIRAP. Under the program, monetary assistance is provided for emission-related repairs directly related to bringing the vehicle into compliance or for replacement assistance for a vehicle that has failed the required emissions test. Vehicle eligibility criteria, such as the vehicle having been registered for the past two years in the participating county, have been developed and adopted by the commission. Emission-related repairs covered by the program are required to be performed at a Texas Department of Public Safety (DPS)-recognized emissions repair facility. Participating counties may administer the program themselves or contract with a private entity or another county to administer the program. Participating counties may expend no more than 5.0% of

the funds received from the state for administrative costs. These rules provide for a minimum of \$30 and a maximum amount of \$600 for emission-related repairs, retrofit equipment, and installation; and a minimum of \$600 and a maximum amount of \$1,000 toward the purchase price of a replacement vehicle.

During the 79th Legislature, the legislature adopted HB 1611, revising three key elements of the program. The legislation allows for the LIRAP to be administered by the counties in accordance with Texas Government Code, Chapter 783 (relating to Uniform Grant and Contract Management), and allows for programmatic costs such as call-center management, application oversight, invoice analysis, education, outreach, and advertising to be covered by LIRAP funds. This revision allows for program administrators to utilize additional resources to attract and increase program participation. The legislation deleted the requirement that only 5.0% of the funds provided to a county to fund the LIRAP be used to cover administrative costs. Finally, the legislation changed the vehicle registration eligibility requirement from two years to 12 months. This revision will increase participation and make assistance available to those vehicle owners who have lived in the county for at least one year.

SECTION BY SECTION DISCUSSION

Administrative and grammatical changes were made throughout the sections to bring the existing rule language into agreement with Texas Register requirements, agency guidelines, and guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004.

The adopted amendment to §114.62, LIRAP Funding, establishes revised program requirements.

Section 114.62(b) deletes the requirement 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.

Subsection (b) also requires the LIRAP to be administered in accordance with Texas Government Code, Chapter 783, and allows for programmatic costs such as call-center management, application oversight, invoice analysis, education, outreach, and advertising to be covered by the LIRAP funds.

The adopted amendment to §114.64, LIRAP Requirements, updates the requirements for establishing and implementing a LIRAP. Subsection (b)(3) deletes the requirement that an eligible vehicle be currently registered in and have been registered in the program county for the two years immediately preceding the application for assistance. Subsection (b)(3) decreases the time required for a vehicle to be registered in a participating county to 12 months in order to meet eligibility for the LIRAP.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted amendments in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the amendments do not meet the definition of a “major environmental rule.” Under Texas Government Code, §2001.0225, “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 amendments are intended to attract and increase program participation, and allow more effective management by local program administrators. While the LIRAP as a whole is intended to protect the environment and reduce risks to human health from

environmental exposure, the adopted amendments to the program are administrative and do not possess that specific intent. Because the adopted amendments concern local administration of the LIRAP, the amendments are unlikely to adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs. As previously stated, the LIRAP is intended to protect human health and the environment, and regardless of the adopted amendments, the program will continue. It is therefore unlikely that these amendments will adversely affect in a material way the environment or the public health and safety of the state or a sector of the state. Because the adopted amendments will not 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 amendments do not fit the definition of “major environmental rule” in Texas Government Code, §2001.0225.

Under Texas Government Code, §2001.0225, only a major environmental rule requires a regulatory impact analysis. Because this rulemaking does not constitute a major environmental rule, a regulatory impact analysis is not required.

TAKINGS IMPACT ASSESSMENT

Under Texas Government Code, §2007.002(5), “taking” means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or §17 or §19, Article I, Texas Constitution; or a governmental action that affects an owner's private real property that is the subject of the

governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The commission completed a takings impact assessment for the adopted amendments. The adopted amendments will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The adopted amendments also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking action and found that the adopted rulemaking is an action identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, or will affect an action/authorization identified in §505.11, and therefore will require that applicable goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process. The commission determined that under 31 TAC §505.22, this rulemaking action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action 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)). No new sources of air contaminants will be authorized and ozone

levels will be reduced as a result of the adopted rules. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations in 40 Code of Federal Regulations to protect and enhance air quality in the coastal area (31 TAC §501.32).

This rulemaking does not authorize any new air contaminants and is intended to revise administrative and eligibility requirements of the existing LIRAP as a result of new legislation. Therefore, this rulemaking is consistent with the applicable policy and goal.

PUBLIC COMMENT

A public hearing on this proposal was held in Austin on January 24, 2006, at 10:00 a.m. in Building F, Room 2210 at the Texas Commission on Environmental Quality complex, located at 12100 Park 35 Circle, but no oral comments were received. Written comments were submitted by Sierra Club, Houston Regional Group (Sierra-Houston) and North Central Texas Council of Governments (NCTCOG).

RESPONSE TO COMMENTS

Sierra-Houston supported the amendments but was concerned that the removal of the 5.0% limit for administrative costs, could allow administrative costs to balloon. Sierra-Houston suggested the implementation of a 20% administrative cost if not by regulation/rule, then implemented administratively to ensure that taxpayer's dollars are not wasted and that as much of the money goes to actual low income vehicle repair assistance, retrofit, and accelerated retirement as possible.

The commission appreciates the support and concurs that administrative costs should be kept to a minimum. In new grant/contracts signed with each participating county, the commission has incorporated language expressing that the amount allowed for administrative costs must not exceed 20% of annual expenditures. The commission did not revise the rule in response to this comment.

NCTCOG supported the amendments but felt that the rule did not address several portions of HB 1611 and requested that the commission establish guidelines for all provisions in HB 1611. NCTCOG stated that the rule amendments failed to address inter-county sharing of funds as stated in HB 1611 allowing that a participating county may enter into an agreement with other participating counties within the same region and agree to have the money collected in any one county used in any other participating county in the same region.

The flexibility of inter-county sharing of funds was incorporated into the grant/contracts signed with each participating county. New grant/contracts with each participating county included language allowing a participating county to agree that its LIRAP funds be used in any other LIRAP participating county within the same region. The commission did not revise the rule in response to this comment.

NCTCOG requested that the commission consider increasing the qualifying income level and replacement compensation amount. NCTCOG suggested increasing the qualifying income level to 300% of the federal poverty rate and replacement compensation to \$2,000 based on a sliding scale.

Vehicle owners at 200% of the poverty rate would be eligible for \$600 in repair compensation or \$2,000 in replacement compensation. Vehicle owners at 300% would be eligible for \$300 in repair compensation or \$1,000 in replacement compensation.

The commission appreciates the comment. Consideration to increase the income eligibility criteria for low income vehicle owners and financial assistance for repair or replacement of eligible vehicles is beyond the scope of this rulemaking. The commission did not revise the rule in response to this comment.

NCTCOG stated the rule amendment failed to address the creation of a subaccount of the Clean Air Account for other air quality programs established in Section 382.202(q) of HB 1611 and how unexpended LIRAP money in this subaccount may be used for these programs. HB 1611 authorized that fees collected that are available to fund LIRAP, but that are not appropriated for LIRAP, be transferred into a subaccount of the Clean Air Account and be appropriated only for various air quality programs in consultation with the commission. These air quality programs may include: additional outreach and education programs to increase public awareness of air quality issues, an enhanced Aircheck Texas Repair and Replacement Assistance Program, enhanced remote sensing programs, regional smoking vehicle programs, projects to reduce counterfeit inspection stickers, and other air quality programs aimed at reducing emissions. NCTCOG requested that the TCEQ establish guidelines for all HB 1611 provisions.

The 79th legislature did not appropriate funds during the 2006 and 2007 biennium for the new subaccount of the Clean Air Account created in §382.202(q) of HB 1611. This new subaccount is to be funded from LIRAP fees collected but not appropriated to fund the LIRAP program. The legislation does not authorize the depositing or transferring of unexpended LIRAP funds appropriated for LIRAP into this subaccount. If the legislature appropriates funding for the subaccount for the purposes provided by §382.202(q), the commission will provide guidance. The commission did not revise the rule in response to this comment.

**SUBCHAPTER C: VEHICLE INSPECTION AND MAINTENANCE; LOW INCOME
VEHICLE REPAIR ASSISTANCE, RETROFIT, AND ACCELERATED VEHICLE
RETIREMENT PROGRAM; AND EARLY ACTION COMPACT COUNTIES**

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

§114.62, §114.64

STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which provide the commission with the general powers to carry out its duties and authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and §5.013, which states the commission's authority over various statutory programs. The amendments are also adopted under Texas Health and Safety Code (THSC), §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the THSC, Chapter 382 (also known as the Texas Clean Air Act), and to adopt rules that differentiate among particular conditions, particular sources, and particular areas of the state. The amendments are also adopted under THSC, §382.002, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.013, which authorizes the commission to designate air quality control

regions in order to implement air quality standards; §382.019, which provides the commission the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles; and §§382.201 - 382.218, which provide the commission the authority by rule to establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of the federal Clean Air Act (42 United States Code, §§7401 *et seq.*), to coordinate with federal, state, and local transportation planning agencies to develop and implement transportation programs and other measures necessary to demonstrate and maintain attainment of the National Ambient Air Quality Standards, and to fund the establishment of the LIRAP. Specifically, the amendments are adopted under THSC, §382.209, as amended by HB 1611.

The adopted amendments implement TWC, §§5.102, 5.103, and 5.105; and THSC, §§382.002, 382.011, 382.012, 382.019, and 382.201 - 382.218.

§114.62. LIRAP Funding.

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

(b) The program shall be administered in accordance with Texas Government Code, Chapter 783. Programmatic costs may include call-center management, application oversight, invoice analysis, education, outreach, and advertising.

(c) A participating county shall receive, to the extent practicable, funding in reasonable proportion to the amount in fees collected in the affected county or area from emissions testing fees designated by the commission.

§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 12 months immediately preceding the application for assistance;

(4) the vehicle has passed the safety portion of the Texas Department of Public Safety (DPS) motor vehicle safety and emissions inspection as recorded in the Vehicle Inspection Report (VIR), or provide assurance that actions will be taken to bring the vehicle into compliance with safety requirements;

(5) the vehicle owner's net family income is at or below 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 that 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.

