

The Texas Commission on Environmental Quality (TCEQ or commission) proposes amendments to §§114.7, 114.62, 114.64, 114.66, and 114.70.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The commission proposes these revisions in order to implement requirements of Senate Bill (SB) 12, authored by the Honorable Senator Averitt, passed during the 80th Legislature, 2007. During the 77th Legislature, 2001, the legislature adopted provisions, House Bill (HB) 2134, 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).

On March 27, 2002, the commission adopted requirements implementing HB 2134, 77th Legislature, 2001. 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, were 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. The 2001 law stated that participating counties could

expend no more than five percent of the funds received from the state for administrative costs. These rules provided 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, 2005, the legislature adopted HB 1611, revising three key elements of the program. The legislation allowed 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 allowed for programmatic costs such as call-center management, application oversight, invoice analysis, education, outreach, and advertising to be covered by LIRAP funds. The revision allowed for program administrators to utilize additional resources to attract and increase program participation. The legislation removed the requirement that capped five percent 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. The revision increased participation by making assistance available to those vehicle owners who have lived in the county for at least one year. The commission adopted rule revisions implementing HB 1611 on April 12, 2006.

During the 80th Legislature, 2007, the legislature adopted SB 12, revising elements of the I/M program and LIRAP requirements. Revisions include enhanced capabilities for the retirement of old vehicles and their replacement with new vehicles. Old vehicle requirements include: gasoline-powered and older than 10 years; owner financial eligibility requirements (up to 300 percent of federal poverty level);

operated and registered in the implementing county for 12 months preceding the application; and has passed the DPS safety or safety and emissions inspection within 15 months of application. The legislation also provided for replacement assistance for owners of vehicles passing the required I/M program acceleration simulation mode (ASM) emissions test but that would have failed the more stringent United States Environmental Protection Agency (EPA) Final ASM standards (also known as "final cut-points") emissions test. The revised maximum amounts for a new replacement vehicle are \$3,000 for a car, current model year and up to three model years old; \$3,000 for a truck, current model year and up to two model years old; \$3,500 for a hybrid vehicle of current or previous model year. The new vehicle must meet federal Tier 2, Bin 5 or cleaner emissions standards, have a gross vehicle weight rating of less than 10,000 pounds, and have a total purchase cost that does not exceed \$25,000.

SB 12 requires that dealers participating in the program and taking possession of the old vehicle submit proof that the vehicle has been retired. The vehicle retirement facility is required to destroy the emissions control equipment and engine and certify that those parts have been destroyed and not resold in the marketplace. Mercury switches must also be removed in accordance with any state and federal laws. The commission has included language to highlight concerns regarding fraud to ensure the vehicle retirement facilities have a clear understanding of the potential enforcement consequences. The legislation provided language that requires dealers and dismantlers participating in the program to be located in the state.

Additional revisions include limiting funding for administration and program costs of the local LIRAP to 10 percent of the money provided for the local program and requiring participating LIRAP counties to provide an electronic means for distributing funds for vehicle repairs or replacements. The county shall ensure that funds are transferred to a participating dealer not later than five business days after the sale of a replacement vehicle is completed. The legislation also requires that the commission establish procedures for a document confirming that the person is eligible to purchase a replacement vehicle, that the person applying for vehicle replacement have the document to participate in replacement, and that a dealer that relies on the document has no duty to confirm eligibility. New legislation amended current LIRAP definitions to include "Destroy," "Motor vehicle," "Hybrid motor vehicle," "Qualifying motor vehicle," "Emissions control equipment," "Dealer," "Automobile dealership," "Total cost," "Engine," and "Replacement vehicle." New definitions for "Truck" and "Car" are also proposed to determine the vehicle model types that are associated with "truck" and "car" categories.

The legislation also authorizes the appropriation of \$5 million per fiscal year from LIRAP funds, on a matching basis, to administer LIRAP Local Initiative Projects. The projects must be implemented in consultation with the commission and may include expanding and enhancing AirCheckTexas; developing and implementing programs to remotely determine vehicle emissions and notify the vehicle's operator; developing and implementing projects to implement the commission's smoking vehicle program; developing and implementing projects for coordinating with local law enforcement officials to reduce the use of counterfeit state inspection stickers; developing and implementing programs to enhance

transportation system improvements; or developing and implementing new air control strategies designed to assist local areas in complying with state and federal air quality rules and regulations.

Grammatical, style, and other non-substantive corrections are made throughout the rulemaking to be consistent with *Texas Register* requirements, to improve readability, and to conform to the drafting standards in the *Texas Legislative Drafting Manual*, August 2006. Such changes include appropriate and consistent use of acronyms, section references, and certain terminology such as “shall” and “must.” These changes are not discussed further.

SECTION BY SECTION DISCUSSION

Subchapter A, Definitions

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

The proposed amendments to §114.7, Low Income Vehicle Repair, Assistance, Retrofit, and Accelerated Vehicle Retirement Program Definitions, include adding and defining the following terms: automobile dealership, car, emissions control equipment, engine, hybrid motor vehicle, motor vehicle, qualifying motor vehicle, total cost, and truck. The commission proposes definitions for hybrid motor vehicle, motor vehicle, qualifying motor vehicle, and total cost as the terms are defined by SB 12. The legislation requires the commission to adopt rules defining emission control equipment and engine. The commission has elected to define automobile dealership, car, and truck. The proposed rule defines “Automobile dealership” following similar provisions in the Texas Transportation Code, §503.301. The definitions of “Car” and “Truck” have been added to clarify the new compensation amounts for a

replacement vehicle, which are: \$3,000 for a car, current model year or up to three model years old and \$3,000 for a truck, current model year or up to two model years old. The definition of “Destroy” has been amended to include the word “scrapped” and clarify the disposition of engine and emission control components. The commission has amended the definition of “Replacement vehicle” to meet the new vehicle qualifying requirements found in SB 12. The proposal will also renumber the LIRAP definitions section to make adjustments for the proposed new definitions.

Subchapter C, Vehicle Inspection & Maintenance; Low Income Vehicle Repair Assistance, Retrofit & Accelerated Vehicle Retirement Program; and Early Action Compact Counties

Division 2, Low Income Vehicle Repair Assistance Retrofit & Accelerated Vehicle Retirement Program
§114.62, Subchapter C, LIRAP Funding

The proposed amendment to §114.62 will add subsection (d) to include the LIRAP funding limit for administration and program costs of the LIRAP program to not more than 10 percent of the money provided as stated in SB 12.

§114.64, LIRAP Requirements

The proposed amendment to §114.64(b)(5) changes a vehicle owner’s net family income eligibility from 200 percent to 300 percent of the federal poverty level. This change will increase the income eligibility amount for LIRAP participants.

The proposed amendments to §114.64(c) would restructure all existing eligibility application requirements currently under paragraphs (1), (2), and (3) into one new paragraph (1). Old paragraphs (1), (2), and (3) have been renumbered subparagraphs (A), (B), and (C). New paragraphs (2), (3), and (4) have been added to §114.64(c). The proposed new §114.64(c)(2), would include pre-1996 model year vehicles undergoing an ASM emissions test as part of the I/M program to become eligible for LIRAP assistance if the vehicle passes the state's current test standards, but would have failed the more stringent standards known as EPA Final Cut-Points. The commission requests public comment specific to whether Final Cut-Points should be adopted for the ASM emissions test performed on gasoline-powered, model year 1995 and older vehicles. The new §114.64(c)(3) will enhance capabilities for the retirement of vehicles. It will allow a gasoline-powered motor vehicle to be eligible for replacement if the vehicle is at least 10 years old and the owner meets the financial eligibility requirements (up to 300 percent of the federal poverty level). The new §114.64(c)(4)(A)-(D) sets criteria for replacement vehicles. A new replacement vehicle must meet federal Tier 2, or Bin 5 or cleaner emission standards, have a gross vehicle weight rating of less than 10,000 pounds, have a total purchase cost that does not exceed \$25,000, and have passed a DPS motor vehicle safety inspection or safety and emissions inspection within a 15 month period before the application is submitted.

The proposed amendment to §114.64(d)(1)(B) would delete the previous requirements related to vehicle compensation and replace them with the new requirements set forth by SB 12. The revision will include adding clauses (i), (ii), and (iii). The new compensation amounts for a replacement vehicle are: \$3,000 for a car, current model year or up to three model years old; \$3,000 for a truck, current model

year or up to two model years old; and \$3,500 for a hybrid vehicle of current or previous model year.

The proposed revision to §114.64(d)(3) deletes the phrase *maximum and minimum* and replaces it with *compensation*. The revision is necessary to bring rule language into agreement with the new proposed revised compensation requirements in §114.64(d)(1)(B)(i), (ii), and (iii).

The proposed amendment to §114.64(e) includes changing the header from *Reimbursement* to *Reimbursement for repairs and retrofit* in order to correctly reflect the modified content in the subsection. The amendment also includes language that requires the county to provide an electronic means for distributing vehicle repair and retrofit funds and that the funds be made available to reimburse the appropriate emission repair facility within five business days. This revision is proposed to establish consistency with the five day reimbursement requirement for automobile dealerships set forth in SB 12. The proposal will also renumber the paragraphs in the subsection to make adjustments for the proposed new language.

The proposed new §114.64(f), Reimbursements for replacements, requires that a participating county distribute vehicle replacement funds to a participating automobile dealership no later than five business days after the date the county receives proof of the sale and required administrative documents, including certification from the dismantler that the retired vehicle has been destroyed. The new §114.64(f)(1) requires a participating county provide an electronic means for distributing vehicle replacement funds within five business days as stated in §114.64(f). Automobile dealerships participating in the program must be located in the state and participation in LIRAP by an automobile

dealership is voluntary. The language also allows automobile dealerships participating in the program to accept funds provided under LIRAP as a down payment towards the purchase of a replacement vehicle.

The proposed new §114.64(f)(2) requires participating counties to develop a document to be used to confirm that a person is eligible to purchase a replacement vehicle. The proposed new §114.64(f)(2)(A) requires that the document must include, at a minimum, the full name of the applicant, the vehicle identification number of the retired vehicle, expiration date of the document, the program administrator's contact information, and the amount of money available to the purchaser. The proposed new §114.64(f)(2)(B) requires the purchaser to have the document before the person enters into negotiations with a dealer for a replacement vehicle and the proposed new §114.64(f)(2)(C) provides that a participating dealer who relies on the document has no duty to confirm eligibility of the person purchasing a replacement vehicle.

§114.66, Disposition of Retired Vehicle

The proposed amendment to §114.66 would revise subsections (a) and (b) and add new subsections (c), (d) and (e). The proposed §114.66(a) includes language requiring dismantlers participating in the program be located in the state. The proposed §114.66(b) provides vehicle disposition requirements. The proposed §114.66(c) includes language that requires dismantlers taking possession of the old vehicle to destroy the emissions control equipment and engine and certify that those parts have been destroyed and not resold into the marketplace. The revision will also include language requiring the dismantlers to remove any mercury switches in accordance with any state and federal law. The

proposed new §114.66(d) requires the dismantler to provide certification that the retired vehicle has been destroyed. The proposed new §114.66(e) requires the dismantler to provide the residual scrap metal of a retired vehicle to a recycling facility at no cost, except the cost of transportation of the residual scrap metal to the recycling facility.

§114.70, Records, Audits, and Enforcement

The proposed new §114.70(f) requires participating vehicle retirement facilities to certify that the equipment and engine have been destroyed and not resold into the marketplace. A violation of this requirement is subject to civil penalty under Subchapter D, Chapter 7, Water Code, for each violation.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeff Horvath, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rules are in effect, significant fiscal implications are anticipated for the agency and for counties in nonattainment areas or Early Action Compact (EAC) counties that participate in the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) as a result of administration or enforcement of the proposed rules. The proposed rules implement portions of SB 12, 80th Legislature, Regular Session and are intended to broaden program eligibility requirements and provide additional funding for LIRAP participants and counties that administer the program as well as provide additional funding for those counties who choose to implement the local air quality initiatives.

The LIRAP provides funds to participating counties to administer the program and provides financial assistance to low-income individuals with repairs, retrofits, or retirement of vehicles that fail an emissions test. The Federal Clean Air Act requires vehicle emissions testing in certain nonattainment areas. Other counties have committed to implement the testing programs as part of EACs.

The proposed amendments are intended to increase participation in LIRAP. Financial eligibility requirements for vehicle repair and replacement would be broadened to include owners whose net family income is at or less than 300 percent of the federal poverty level. The proposed amendments would also provide increased maximum amounts for a replacement vehicle and would amend current LIRAP definitions to include hybrid motor vehicle, motor vehicle, qualifying motor vehicle, truck, car, automobile dealership, total cost, emissions control equipment, and engine.

The proposed amendments will result in increased TCEQ responsibilities in implementing LIRAP. The agency will be required to revise certain I/M program procedures and LIRAP requirements and guidelines. The agency will have to administer 32 separate contracts with counties participating in LIRAP-16 contracts for the current vehicle repair and assistance program and 16 contracts for LIRAP Local Initiatives Projects.

The agency will be required to review and monitor county administrative costs, grant contracts, matching funds, and assistance to ensure compliance with program requirements as well as monitor

progress of the projects. Additionally, the TCEQ will be required to participate as a consultant in developing the proposed local initiative projects.

The proposed rulemaking requires that the TCEQ make available LIRAP replacement assistance for vehicles model year 1995 and older that pass an emissions test at the current test cut-points, but would have failed if the test were performed at federal final cut-points. The TCEQ is also required to determine by January 1, 2008, if these final cut-points should be adopted as a test standard. Contracts for installing final cut point software in emissions analyzers (Environmental Systems Product (ESP), Snap On Diagnostics and Worldwide Environmental Products (WorldWide)) to implement the new final cut-point initiative will need to be processed.

The agency was appropriated \$45 million in LIRAP and \$5 million for LIRAP Local Initiative Projects funding each year for Fiscal Year 2008 and for Fiscal Year 2009 (an increase from \$4.4 million in Fiscal Year 2006 and for Fiscal Year 2007). It is assumed this level of funding will remain constant for the remainder of the five year period, but any future LIRAP funding depends upon legislative appropriations. Of the amounts appropriated each fiscal year, \$210,000 was appropriated per fiscal year for administering the LIRAP and LIRAP Local Initiative Projects programs. In addition, the agency was appropriated \$2,062,582 in FY08 and \$2,082,459 in FY09 for administering the vehicle I/M emissions testing program. In order to implement the new program requirements, the agency is expected to use a portion of the vehicle I/M emission testing program appropriation in addition to the LIRAP administration appropriation (both from Clean Air Account 151). For the first year the program is in

place, agency costs are anticipated to be: \$250,000 to publicize the program with automobile manufacturers and dealers; \$100,000 to reprint LIRAP brochures/applications; \$300,000 for final cut-point software for emissions analyzers (three Vendors at \$100,000 per vendor); and \$192,239 for monitoring and program implementation/administration.

For the remainder of the five year period covered by the fiscal note, the agency is anticipated to expend \$250,000 yearly to cover the TCEQ portion of LIRAP publicity with automobile manufacturers and dealers; \$10,000 yearly for the printing of additional LIRAP brochures/applications; and \$192,239 yearly for monitoring and administration of LIRAP and local initiative projects. The agency may need to contract out for some of the monitoring and/or administration functions as no new FTEs were provided by the legislature. The proposed rulemaking would also require the TCEQ to include requirements for a procedure for the development of a document confirming that the person seeking to retire and replace a vehicle is eligible for vehicle replacement and the amount of money available to the purchaser and that the purchaser has the document before entering into negotiations with the dealer for a replacement vehicle.

Sixteen counties that have implemented the I/M program are participating in the LIRAP. In the Houston-Galveston-Brazoria area: Brazoria, Fort Bend, Galveston, Harris, and Montgomery Counties will be affected. In the Dallas-Fort Worth area: Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties will be affected. In the Austin area: Travis and Williamson Counties will be affected. The proposed rules cap allowable county administrative costs for LIRAP at 10 percent of the

money provided. Any costs for county governments or their contracted program administrators participating in LIRAP over the next five years are anticipated to be funded with the allowable administrative funding. Some of the costs for these entities will be the result of SB 12 and the proposed rulemaking, which requires participating LIRAP counties or contracted entities to provide an electronic means for distributing funds for vehicle repairs or replacements. Additionally, the county or contracted entity must ensure that funds are transferred to a participating repair facility or participating dealer within five business days after the sale of a replacement vehicle is completed.

Counties that participate in LIRAP are eligible to participate in LIRAP Local Initiative Projects. LIRAP Local Initiative Projects was appropriated \$5 million per fiscal year. Counties that choose to participate in LIRAP Local Initiative Projects will be required to match their LIRAP Local Initiative Projects funding dollar for dollar. Although in-kind matching is allowed, counties cannot use any activity funded by LIRAP funds to satisfy the LIRAP Local Initiative Projects matching requirement. Local Initiative Projects are to be developed in consultation with the TCEQ and may include: expanding and enhancing AirCheckTexas; developing and implementing programs to remotely determine vehicle emissions and notify the vehicle's operator; developing and implementing projects to implement the commission's smoking vehicle program; developing and implementing projects for coordinating with local law enforcement officials to reduce the use of counterfeit state inspection stickers; developing and implementing programs to enhance transportation system improvements; and/or developing and implementing new air control strategies designed to assist local areas in complying with state and federal air quality rules and regulations.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years the proposed new rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will ensure that the intended effectiveness of the program is met. It is anticipated that 25,572 vehicles will be retired or repaired each fiscal year through the LIRAP. Additionally, local projects initiated and implemented through LIRAP Local Initiative Projects will have a positive impact on air quality and provide constituents with opportunities to participate in a community's efforts to address local air pollution contributions.

Fiscal implications are anticipated for businesses and individuals located in counties that participate in the LIRAP. The proposed rulemaking does not impose new costs to any industry, business, or individual.

The proposed rulemaking expands LIRAP assistance eligibility requirements, making more vehicle owners eligible for repairs and retirement/replacements and establishes increased levels of assistance for retirement and replacement compensation. These two activities will provide financial opportunities for certain vehicle repair facilities and automobile dealerships. It is estimated that approximately \$41 million per fiscal year will be available for vehicle repair and retirement/replacement assistance over what has been available in previous years (approximately \$4 million per fiscal year).

Automobile dealerships and dismantlers in participating LIRAP counties will be affected by this rulemaking in that they are expected to realize an increase in their business activities. However, some small used car dealers that concentrate on sales of older vehicles may not be able to participate in the

LIRAP retirement and replacement program. In addition, because the proposed rulemaking will require the automobile dealership to work with dismantlers to ensure that a vehicle is retired and its emissions components and engine are destroyed, some car dealers may incur costs associated with the transportation of retired vehicles, especially if they process a low number of vehicle retirements.

Automobile dealerships wanting to participate in the LIRAP retirement and replacement program will be required by the proposed rulemaking to sell replacement vehicles that meet qualifying vehicle requirements. Replacement vehicles must be new or no more than three model years old, meet a federal Tier 2, Bin 5 or cleaner emission standard, weigh less than 10,000 pounds, and cost less than \$25,000. Automobile dealerships must also be willing to accept the approved eligibility certificate to be developed by the county program administrator with guidance from the TCEQ, as proof of eligibility and as a warrant for a designated monetary value.

The proposed rule will require that dealers take possession of the old vehicle and submit proof to the program administrator that the vehicle was retired. The dismantler is required to destroy the engine and the emissions equipment and certify that those parts have been destroyed and not resold in the marketplace, and remove any mercury switches in accordance with any applicable state and federal law.

The proposed rule language will require dealers and dismantlers participating in the program to be located in the state, but no dealer is required to participate in the program. The rulemaking also provides language that the dealer is not held responsible for the disposition of the vehicle if they have proof of a transfer to a dismantler.

Vehicle owners whose income for their family unit is at or less than 300 percent of the federal poverty rate will be eligible to participate in LIRAP as long as the replacement vehicle is a qualified motor vehicle.

The increase in income eligibility to 300 percent of the federal poverty level has the potential to impact over 1.9 million households in the program areas. A vehicle is eligible for retirement if the vehicle is at least ten years old, the vehicle owner meets the financial eligibility requirements (up to 300 percent of federal poverty level); the vehicle is operated and registered in the implementing county for 12 months preceding the application and has passed a DPS motor vehicle safety inspection or safety and emissions inspection with 15 months of application. The proposed rules would also provide assistance for replacement of a pre-1996 vehicle that passes the required EPA Start-Up ASM standards emissions test but that would have failed the EPA Final ASM standards emissions test or some other criterion determined by the commission.

These vehicle owners may be eligible for assistance of up to: \$3,000 for a replacement car of the current model year or the previous 3 model years; \$3,000 for a replacement truck of the current model year or the previous 2 model years; or \$3,500 for a hybrid vehicle of current or previous model year. The replacement vehicle must meet a federal Tier 2, Bin 5 or cleaner emission standard, weigh less than 10,000 pounds (gross vehicle weight), and cost less than \$25,000.

Vehicle owners who meet eligibility requirements, including having net income at or less than 300 percent of the federal poverty rate, will be eligible for repair assistance of up to \$600 if their vehicle fails

an emissions test. Vehicle owners whose vehicles fail an emissions test, whose vehicles are at least 10 years old and have passed an emissions test or whose vehicles are model year 1995 and older and passed the current emissions test, but would have failed the test if federal final cut-points were in place, may also be eligible for retirement/replacement assistance.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are expected for small or micro-businesses as a result of the proposed rules. Participation in the program is voluntary. A small business is defined as having fewer than 100 employees or less than \$1 million in annual gross receipts. A micro-business is defined as having no more than 21 employees.

It is estimated that there are 325 Recognized Emission Repair Facilities in the state and it is not known how many automobile dealerships are small or micro-businesses, but the number is believed to be limited. Vehicle repair facilities and used automobile dealerships may see an increase in business activity if they choose to participate in LIRAP. Vehicle repair facilities must be Texas Department of Public Safety Recognized Repair Facilities--this is not a new requirement, but a LIRAP requirement for facilities wanting to participate in the program. Used automobile dealerships wanting to participate in the program will have to have vehicles meeting the program requirements available. Some small used automobile dealerships that concentrate on older vehicles may not be able to participate in LIRAP. Because the proposed rulemaking will require the auto dealer to work with dismantlers to ensure that a vehicle is retired and its emissions components and engine are destroyed, some dealers may incur costs

associated with the transportation of retired vehicles, especially if they process a low number of vehicle retirements.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission 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.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined 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 SB 12 by providing revisions for elements of LIRAP. The proposed rulemaking addresses issues related to vehicle air emissions and increasing LIRAP participation. The proposed rulemaking implements changes to eligibility criteria to increase participation and implements legislation aimed at providing incentives for vehicle owners to retire older vehicles and replace with newer cleaner running vehicles. 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. Therefore, the proposed rulemaking does not meet the definition of a "major environmental rule."

In addition, a regulatory impact analysis is not required because the proposed rules do not meet any of the four applicability criteria for requiring a regulatory analysis of a "major environmental rule" as defined in the Texas Government Code. Section 2001.0225 applies only to a major environmental rule the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) 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 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not exceed a standard set by federal law, and the adopted technical requirements are consistent with applicable federal standards. In addition, this rulemaking does not exceed an express requirement of state law and is not adopted solely under the general powers of the agency, but is specifically authorized by the provisions cited in the STATUTORY AUTHORITY section of this preamble. Finally, this proposed rulemaking does not exceed a requirement of a delegation agreement or contract to implement a state and federal program.

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

TAKINGS IMPACT ASSESSMENT

The commission evaluated this proposed rulemaking action and performed an analysis of whether the adopted rules are subject to Texas Government Code, Chapter 2007. The primary purpose of the rulemaking is to amend Chapter 114 in accordance with SB 12. These amendments revise requirements for a voluntary program and only affect motor vehicles that are not considered to be private real property. Therefore, promulgation and enforcement of these proposed rules are neither a statutory nor a constitutional taking because they do not affect private real property. Therefore, these rules do not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.*, and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and found the proposed rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to the proposed rule is to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas. The CMP policy applicable to the proposed rule 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)).

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed rules are consistent with these CMP goals and policies, because these rules do not create or have a direct or significant adverse effect on any coastal natural resource areas, and because the proposed rulemaking does not authorize any new air contaminants and is intended to provide enhanced I/M program and LIRAP strategies. Therefore, this rulemaking is consistent with the applicable policy and goal.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

ANNOUNCEMENT OF HEARING

Public hearings on this proposal will be held in Austin on September 11, 2007, at 9:30 a.m. at the Texas Commission on Environmental Quality complex located at 12100 Park 35 Circle in Building F, Room 2210; in Houston on September 11, 2007, at 1:30 p.m. at the Houston-Galveston Area Council located at 3555 Timmons Lane, Suite 120, Room A; and in Arlington on September 11, 2007, at 1:30 p.m. at the North Central Texas Council of Governments at 616 Six Flags Drive, Centerpoint II, in the Metroplex Conference Room. The hearings will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will

be no open discussion during the hearing; however, agency staff will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Lesley Williamson, Office of Legal Services, at (512) 239-2461. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lesley Williamson, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808.

Electronic comments may be submitted at <http://www5.tceq.state.tx.us/rules/ecomments/>. File size restrictions may apply to comments submitted through the eComments system. All comments should reference Rule Project Number 2007-026-114-EN. The comment period closes September 12, 2007.

Copies of the proposed rule can be obtained from the commission's Web site at

http://www.tceq.state.tx.us/nav/rules/propose_adopt.html. For further information, please contact Bob Wierzowiecki, Air Quality Division, (512) 239-1769.

SUBCHAPTER A: DEFINITIONS

§114.7

STATUTORY AUTHORITY

The amendment is proposed 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 amendment is also proposed under Texas Health and Safety Code (THSC), §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also proposed 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, 382.301- 382.302, 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 Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP). Finally, the amendment is proposed as part of the implementation of SB 12, 80th Legislature, 2007.

The proposed amendment implements TWC, §§5.102, 5.103, and 5.105; and THSC, §§382.002, 382.011, 382.012, 382.019, 382.201 - 382.218, 382.301- 382.302, and provisions of SB 12, 80th Legislature, 2007.

§114.7. Low Income Vehicle Repair Assistance, Retrofits, and Accelerated Vehicle Retirement

Program Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) [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) **Automobile dealership**--A business that regularly and actively buys, sells, or exchanges vehicles at an established and permanent location as defined under Transportation Code, §503.301. The term includes a franchised motor vehicle dealer and an independent motor vehicle dealer.

(3) **Car**--A motor vehicle, other than a golf cart, truck or bus, designed or used primarily for the transportation of persons. A passenger van or sports utility vehicle may be considered a car under this section.

(4) [(2)] **Commercial vehicle**--A vehicle that is owned or leased in the regular course of business of a commercial or business entity.

(5) [(3)] **Destroyed**--Crushed, shredded, scrapped, or otherwise dismantled to render a vehicle, vehicle's engine, or emission control components permanently and irreversibly incapable of functioning as originally intended.

(6) [(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.

(7) **Emissions control equipment**--Relating to a motor vehicle that is subject to §114.50(a) of this title (relating to Vehicle Emissions Inspection Requirements). If the vehicle is so equipped, these include: exhaust gas recirculation system, power control module, catalytic converter, oxygen sensors, evaporative purge canister, positive crankcase ventilation valve, and gas cap.

(8) **Engine**--The fuel-based power source of a motor vehicle that is subject to §114.50(a) of this title (relating to Vehicle Emissions Inspection Requirements).

(9) [(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.

(10) **Hybrid motor vehicle**--A motor vehicle that draws propulsion energy from both gasoline or conventional diesel fuel and a rechargeable energy storage system.

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

(12) **Motor vehicle**--A fully self-propelled vehicle having four wheels that has as its primary purpose the transport of a person, persons, or property on a public highway.

(13) [(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.

(14) **Qualifying motor vehicle**--A motor vehicle that meets the requirements of replacement vehicle in this section.

(15) [(8)] **Recognized emissions repair facility**--An automotive repair facility as provided [defined] in 37 Texas Administrative Code [TAC,] §23.93, relating to Vehicle Emissions Inspection Requirements.

(16) [(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.

(17) [(10)] **Replacement vehicle**--A vehicle that is in a class or category of vehicles that has been certified to meet federal Tier 2, Bin 5 or cleaner Bin certification under 40 Code of Federal Regulations §86.1811-04, as published in the February 10, 2000, Federal Register; has a gross vehicle weight rating of less than 10,000 pounds; the total cost does not exceed \$25,000 and has passed a Department of Public Safety motor vehicle safety inspection or safety and emissions inspection within

the 15-month period before the application is submitted [has a valid Texas Department of Public Safety or safety and emissions inspection].

(18) [(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.

(19) [(12)] Retrofit equipment--Emissions-reducing equipment designed to reduce air emissions and improve air quality that is approved by the United States Environmental Protection Agency [EPA] and is installed after the manufacture of the original engine, exhaust, or fuel system.

(20) Total cost--Means the total amount money paid or to be paid for the purchase of a motor vehicle as set forth as the sales price in the form entitled "Application for Texas Certificate of Title" promulgated by the Texas Department of Transportation. In a transaction that does not involve the use of that form, the term means an amount of money that is equivalent, or substantially equivalent, to the amount that would appear as the sales price on the application for Texas Certificate of Title if that form were used.

(21) Truck--A motor vehicle having a gross vehicle weight rating of less than 10,000 pounds and designed primarily for the transport of persons and cargo.

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

(23) [(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.

(24) [(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; 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, 114.66, 114.70

STATUTORY AUTHORITY

The amendments are proposed under 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 proposed under THSC, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendments are also proposed 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, 382.301 – 382.302, 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 Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP). Finally, the amendments are proposed as part of the implementation of SB 12, 80th Legislature, 2007.

The adopted amendments implement TWC, §§5.102, 5.103, and 5.105; and THSC, §§382.002, 382.011, 382.012, 382.019, 382.201 - 382.218, 382.301 – 382.302, and provisions of SB 12, 80th Legislature, 2007.

§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.

(d) In a county with a vehicle emissions inspection and maintenance program under §382.202 or §382.302, Health and Safety Code, not more than 10 percent of the money provided for LIRAP may be used for administration of the program.

§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 shall [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 must [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 300 percent [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 must [shall] provide monetary or other compensatory assistance to eligible vehicle owners to be used toward the purchase of a replacement vehicle.

(1) 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:

(A) ~~[(1)]~~ the vehicle meets the requirements under subsection (b)(1) - (3) and (5) of this section;

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

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

(2) Pre-1996 model year vehicles that pass the required United States Environmental Protection Agency (EPA) Start-Up Acceleration Simulation Mode (ASM) standards emissions test, but would have failed the EPA Final ASM standards emissions test, or some other criteria determined by the commission, may be eligible for accelerated vehicle retirement and replacement compensation under this section.

(3) Notwithstanding the vehicle requirement provided under subsection (b)(1) of this section, a vehicle that is gasoline powered and is at least 10 years old as determined from the current

calendar year (i.e., 2007 minus 10 years equals 1997) and meets the requirements under subsection (b)(2), (3), and (5) of this section, may be eligible for accelerated vehicle retirement and compensation.

(4) Replacement vehicles must:

(A) be in a class or category of vehicles that has been certified to meet federal Tier 2, Bin 5 or cleaner Bin certification under 40 Code of Federal Regulations §86.1811-04, as published in the February 10, 2000, *Federal Register*;

(B) have a gross vehicle weight rating of less than 10,000 pounds;

(C) be a vehicle the total cost of which does not exceed \$25,000; and

(D) have passed a DPS motor vehicle safety inspection or safety and emissions inspection within the 15-month period before the application is submitted.

(d) Compensation. The participating county shall [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 must 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) based on vehicle type and model year of [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. The maximum amount toward a replacement vehicle, shall not exceed:

(i) \$3,000 for a replacement car of the current model year or previous three model years, except as provided by clause (iii) of this subparagraph;

(ii) \$3,000 for a replacement truck of the current model year or the previous two model years, except as provided by clause (iii) of this subparagraph;

(iii) \$3,500 for a replacement hybrid vehicle of the current model year or the previous model year.

(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 compensation [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 for repairs and retrofits. A participating county shall [must] reimburse the appropriate recognized emissions repair facility [or vehicle retirement facility] for approved repairs and [,]retrofits[, or vehicle retirements] within five business [30 calendar] days of receiving an invoice that meets the requirements of the county or designated entity.

(1) A participating county shall provide an electronic means for distributing vehicle repair funds once all program criteria have been met.

(2) 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.

(f) Reimbursements for replacements. A participating county shall ensure that funds are transferred to a participating automobile dealership no later than five business days after the county receives proof of the sale and any administrative documents that meet the requirements of the county or designated entity, including certification that the retired vehicle has been destroyed as required by §114.66 of this title (relating to Disposition of Retired Vehicle).

(1) A participating county shall provide an electronic means for distributing replacement funds to a participating automobile dealership once all program criteria have been met. The

replacement funds may be used as a down payment toward the purchase of a replacement vehicle.

Participating automobile dealers shall be located in the State of Texas. Participation in LIRAP by an automobile dealer is voluntary.

(2) Participating counties shall develop a document for confirming a person's eligibility for purchasing a replacement vehicle and for tracking such purchase.

(A) The document shall include at a minimum, the full name of applicant, the vehicle identification number of the retired vehicle, expiration date of the document, the program administrator's contact information, and the amount of money available to the participating vehicle owner.

(B) The document shall be presented to a participating dealer by the person seeking to purchase a replacement vehicle before entering into negotiations for a replacement vehicle.

(C) A participating dealer who relies on the document issued by the participating county has no duty to confirm the eligibility of the person purchasing a replacement vehicle in the manner provided by this section.

§114.66. Disposition of Retired Vehicle.

(a) 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. Any dismantling of vehicles or salvaging of steel under this section must be performed at a facility located in the state of Texas.

(b) 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.

(c) Notwithstanding subsection (b) of this section, the dismantler of a vehicle shall destroy the emissions control equipment and engine, certify those parts have been destroyed and not resold into

the market place. The dismantler shall remove any mercury switches in accordance with any state and federal laws.

(d) The dismantler shall provide certification that the vehicle has been destroyed to the automobile dealer from whom the dismantler has taken receipt of a vehicle for retirement.

(e) The dismantler shall provide the residual scrap metal of a retired vehicle under this section to a recycling facility at no cost, except the cost of transportation of the residual scrap metal to the recycling facility.

§114.70. Records, Audits, and Enforcement.

(a) A participating county shall [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 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 shall [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.

(f) A person who causes, suffers, allows, or permits a violation of §114.66(c) and (d) of this title is subject to a civil penalty under Subchapter D, Chapter 7, Water Code, for each violation. A separate violation occurs with each fraudulent certification or prohibited resale.