The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §§114.2, 114.7, 114.53, 114.60, 114.62, 114.64, 114.70, and 114.87.

Section 114.64 is adopted *with change* to the proposed text as published in the December 5, 2014, issue of the *Texas Register* (39 TexReg 9468). Sections 114.2, 114.7, 114.53, 114.60, 114.62, 114.70, and 114.87 are adopted *without changes* to the proposed text and, therefore, will not be republished.

Sections 114.2, 114.53, and 114.87 will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP).

Background and Summary of the Factual Basis for the Adopted Rules

The commission adopts revisions to incorporate a procedure for counties to opt out of the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) and to be released from program obligations, including remittance of the fee to fund the LIRAP. The commission also adopts language that differentiates between a LIRAP participating county and a non-participating county.

The LIRAP was established to enhance the objectives of the Vehicle Inspection and Maintenance (I/M) Program. The 77th Texas Legislature, 2001, enacted House Bill (HB) 2134 to assist low income individuals with repairs, retrofits, or retirement of vehicles

that fail emissions inspections. HB 2134 required the commission and the Texas Department of Public Safety (DPS), by rule, to provide the minimum guidelines by which eligible counties may implement the LIRAP. The commission, in coordination with DPS, adopted rules implementing HB 2134.

The LIRAP is a voluntary program, and only those counties that have implemented vehicle emissions I/M programs are eligible to participate in the LIRAP. I/M program counties include Brazoria, Fort Bend, Galveston, Harris, and Montgomery Counties in the Houston-Galveston-Brazoria (HGB) area; Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties in the Dallas-Fort Worth (DFW) area; Travis and Williamson Counties in the Austin-Round Rock (ARR) area; and El Paso County. To participate, an eligible county must submit a written request to the TCEQ from the county's commissioners court to implement the LIRAP. The TCEQ executive director and the participating county then enter into a grant contract for implementation of the program. The LIRAP is separated into two grant programs - Drive a Clean Machine (DACM) and local initiative projects (LIP). DACM funds provide monetary assistance to qualifying vehicle owners in participating counties for emission-related vehicle repair, retrofit, and replacement. LIP funds are granted to participating counties for use in approved projects focused on improving air quality in the program area.

The LIRAP is funded through a fee (LIRAP fee) that is charged to vehicle owners in participating counties. The LIRAP fee is $6.00 in participating DFW and HGB-area counties, and it is charged to vehicle owners who receive on-board diagnostics (OBD) emissions inspection tests. The LIRAP fee is $2.00 in participating ARR-area counties, and it is charged to vehicle owners for any emissions inspection test performed. The LIRAP fee was remitted at authorized inspection stations during annual vehicle safety and emissions inspections until March 1, 2015. As of that date, the LIRAP fee is paid to the Texas Department of Motor Vehicles (DMV) or county tax assessor-collector during vehicle registration. This change is a result of a 2014 revision to Chapter 114, Subchapters A, B, and C (Rule Project Number 2013-035-114-AI), transitioning the state to a single sticker system for vehicle inspection and registration and implementing HB 2305, 83rd Texas Legislature, 2013.

On April 28, 2014, the commission received Court Order No. 2014-221-04-21 from the Collin County Commissioners Court withdrawing the county from participation in the LIRAP. The court order was sent with a letter requesting that the commission release Collin County from program requirements, including collection of the LIRAP fee. At the time the LIRAP was established, the rules did not specify a procedure to allow participating counties to opt out of the program or to be released from the LIRAP fee requirement. This rulemaking provides Collin County or any participating county with a procedure for opting out of the LIRAP, which includes being released from collection of

the LIRAP fee and ending of the contract between the county and the TCEQ executive director. This rulemaking amends Subchapter A to revise the definitions for the LIRAP to account for counties opting out of the program and adds four new definitions to further clarify program elements and differentiate between counties participating in the LIRAP and non-participating counties. This rulemaking also amends Subchapter C, Divisions 1, 2, and 3. Division 1 is amended to specify the I/M fees that apply in a participating nonattainment county, a county that is in the process of opting out of the LIRAP, and a non-participating nonattainment county. Division 2 is amended to provide a mechanism for participating nonattainment counties to opt out of the LIRAP, and Division 3 is amended to provide a mechanism for early action compact (EAC) counties to opt out of the LIRAP and accordingly, revise the I/M fee requirements in §114.87.

Section by Section Discussion

In addition to the adopted amendments associated with providing a mechanism for counties to opt out of the LIRAP, various stylistic, non-substantive changes are included to update rule language to current *Texas Register* style and format requirements. Such changes include appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. These changes are non-substantive and generally are not specifically discussed in this preamble.

§114.2, Inspection and Maintenance Definitions

The acronym for the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program is replaced with the full program title to be consistent with the title of the referenced subchapter and *Texas Register* requirements.

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

The title of §114.7 is corrected by amending the term "retrofit" to be singular. In addition, four definitions are added to §114.7 to clarify program requirements and differentiate between participating counties and non-participating counties. "LIRAP fee" is added as paragraph (13) to define the fee that vehicle owners in participating LIRAP counties pay when their vehicles receive certain emissions tests, OBD tests in DFW and HGB-area counties, and any emissions test in El Paso, Travis, and Williamson Counties. El Paso is currently a non-participating county. Assessment of the LIRAP fee is authorized by Texas Health and Safety Code (THSC), §382.202.

"LIRAP fee termination date" is added as paragraph (14) to define the effective date upon which a county opting out of the LIRAP would no longer pay the LIRAP fee. "LIRAP opt-out effective date" is added as paragraph (15) to define the date upon which a county that was participating in the LIRAP becomes a non-participating county. Withdrawal from the program is effective on the date that both of the following

requirements have been met: 1) the county is no longer subject to the LIRAP fee; and 2) the grant contract between the county and the TCEQ executive director that established participation in the program is ended. The grant contract cannot be ended before the LIRAP fee termination effective date.

"Non-participating county" is added as paragraph (18) to differentiate between counties that are eligible to participate in the LIRAP but choose not to and eligible counties that participate in the LIRAP. The definition for "Participating county" is amended to clarify that a county that is in the process of opting out of the LIRAP will be considered a participating county until the LIRAP opt-out effective date. The definition for "Recognized emissions repair facility" is amended to replace the reference to 37 Texas Administrative Code (TAC) §23.93 with 37 TAC §23.51 as it replaced the former as of March 13, 2013. The remaining definitions in §114.7 are renumbered to accommodate the added definitions.

§114.53, Inspection and Maintenance Fees

Section 114.53(d)(1), (2), and (3) is amended to more fully describe the LIRAP fee as it relates to the vehicle I/M programs in El Paso County and the DFW and HGB-area counties. Subparagraphs are added to §114.53(d)(1), (2), and (3) to explain remittance of I/M fees, including the LIRAP fee, in a county participating in the LIRAP, a participating county that is in the process of opting out of the LIRAP, and a county that

is not participating in the LIRAP and not subject to the LIRAP fee. Section 114.53(d)(1) is reorganized to allow the adopted subparagraphs to be consistent among the paragraphs of §114.53(d). The state fees vehicle owners pay during vehicle registration in participating counties, subparagraph (A) for each paragraph in §114.53(d), includes the LIRAP fee. The state fees vehicle owners pay during vehicle registration in participating counties that are in the process of opting out of the LIRAP, subparagraph (B) for each paragraph in §114.53(d), includes the LIRAP fee until the effective LIRAP fee termination date, after which state fees will not include the LIRAP fee. The state fees vehicle owners pay during vehicle registration in non-participating counties, subparagraph (C) for each paragraph in §114.53(d), does not include the LIRAP fee.

§114.60, Applicability for LIRAP

Section 114.60(c)(7) is added to specify that LIRAP requirements are not applicable to vehicles registered in counties that do not participate in the program. This addition clarifies that vehicles in non-participating counties are not subject to LIRAP requirements.

§114.62, LIRAP Funding

Section 114.62(a) is amended to clarify that the LIRAP is funded through money collected only in participating counties, and the term "participating" replaces "affected" in §114.62(c) for consistency in describing counties that participate in the program.

§114.64, LIRAP Requirements

The counties that are eligible to participate in the LIRAP are limited to those that are included in I/M program areas, but no county is required to participate in the LIRAP. The original rule to implement the program included a procedure to allow counties to opt into the LIRAP, but it did not include a procedure to allow counties to opt out. The adopted amendments to §114.64 establish a procedure for opting out of the LIRAP.

The commission amends §114.64(a), concerning implementation of the LIRAP, to indicate that participation in the program is voluntary. The commission amends §114.64(b)(3) to clarify that vehicle repair and retrofit assistance through the DACM Program is only available for vehicles registered in participating LIRAP counties.

The commission adds §114.64(g) to establish the procedure for opting out of the LIRAP. Section 114.64(g)(1) requires a county wishing to opt out of the program to submit a written request from the county commissioners court to the TCEQ executive director, which is consistent with the process for opting into the LIRAP. The written request should include one of two possible LIRAP opt-out effective dates, either the LIRAP fee termination effective date or the last day of the legislative biennium in which the LIRAP fee termination effective date occurs. The first option completely withdraws the opt-out county from the program on the same date that the county is no longer subject to the LIRAP fee. The second option extends the opt-out county's program participation past

the LIRAP fee termination effective date to allow the county time to spend any remaining funds that have been allocated by the commission.

Participation in the LIRAP makes grant funds available to counties for program-related projects and to qualified vehicle owners, and the LIRAP is funded through appropriations made by the legislature from Clean Air Account 151, into which LIRAP fees collected from county vehicle owners are deposited. Due to the program's reliance on public support, the commission requested public comment on the method and process by which counties wishing to opt into or out of the LIRAP would do so, including any associated public notice requirements.

Adopted §114.64(g)(2) describes the procedure the commission will follow to release a county from LIRAP requirements upon receiving a written request from the county to opt out. Release from LIRAP requirements includes removing the LIRAP fee from the state fees charged to vehicle owners during vehicle registration, which requires the commission to coordinate with the DMV and DPS and to contact the Legislative Budget Board of Texas (LBB). The process to remove the LIRAP fee will be initiated upon receipt by the TCEQ executive director of a request from a county to opt out of the program. The DMV vehicle registration notices list charges for state inspection fees, which include the LIRAP fee in counties participating in the program. These fees are paid by vehicle owners when they register their vehicles. The DMV prints and

distributes vehicle registration notices at least 90 days prior to registration expiration dates, so registration notices that include the LIRAP fee will be in circulation in an opt-out county for at least 90 days after the TCEQ initiates the fee removal process. The LIRAP fee will be effectively removed for an opt-out county once it is no longer included in the state fee charges that appear on vehicle registration notices in the affected county. For example, if the TCEQ executive director received a written request to withdraw from the program on August 1st, then the effective LIRAP fee termination date would be on or after December 1st because December would be the first month for which registration notices that did not include the LIRAP fee would be printed. The DMV prints registration notices mid-month, so a written request to withdraw that was received by the TCEQ executive director in mid-August would likely not result in the LIRAP fee being effectively terminated for the submitting county until, at the earliest, January 1st.

The effective LIRAP fee termination date for a county opting out of the LIRAP is the first day of the month for the month that the DMV issues registration notices that do not include the LIRAP fee. Until the LIRAP fee termination effective date, a county in the process of opting out of the LIRAP is still considered a participating county because the LIRAP fee cannot be assessed in a non-participating county. Depending upon the LIRAP opt-out effective date included in a county's written request to opt out of the program, the county could be completely withdrawn from the LIRAP on the LIRAP fee termination effective date, ending the contract between the county and the TCEQ

executive director simultaneous with removal of the LIRAP fee. The county may instead choose to continue to participate in LIRAP activities without being subject to the LIRAP fee until the end of the legislative biennium in which the fee termination date occurs. Choosing the first option could end the county's participation in the LIRAP before all grant funds allocated to the county have been spent. The second option would allow a county the opportunity to continue LIRAP activities and spend previously allocated LIRAP grant funds until the end of the biennium in which the LIRAP fee termination date occurred for that county.

Adopted §114.64(g)(3) describes the LIRAP opt-out effective date, which is the date upon which a participating county is no longer subject to the LIRAP fee and the grant contract between the county and the TCEQ executive director is ended. On this date, the county becomes a non-participating county. The commission will allow a county wishing to opt out of the LIRAP a choice of two options in determining when the program is ended for that county, so there are two possible effective dates upon which a participating county becomes a non-participating county. The first occurs simultaneous with the LIRAP fee termination effective date, and the second occurs on the last day of the legislative biennium in which the LIRAP fee termination effective date occurs. The commission revises proposed §114.64(g)(3) in response to a comment received, which is discussed in the Response to Comments section of this preamble. Revised §114.64(g)(3) indicates that not more than 90 days after a county's LIRAP opt-out effective date, the

unspent balance of allocated LIRAP funds for the opt-out county will be returned to the commission unless the county has entered into an official inter-county elective agreement with other participating counties in the same region to share allocated LIRAP funds. If an inter-county elective agreement exists, then the portion of LIRAP allocations that is shared and unspent as of the LIRAP opt-out effective date will be redistributed among the remaining participating counties that are part of that agreement. The redistribution of a county's allocated and unspent LIRAP funds will occur not more than 90 days after the county's LIRAP opt-out effective date.

§114.70, Records, Audits, and Enforcement

The commission amends §114.70(c) and (d) to incorporate recordkeeping and inspection requirements for counties that opt out of the LIRAP. Adopted §114.70(c) requires program participants in counties opting out of the LIRAP to maintain program records concerning the opt-out county for three years after the effective LIRAP opt-out date for the county. Program participants include the county, its designated entity, participating recognized emissions repair facilities, and participating vehicle retirement facilities. Adopted §114.70(d) requires that in the three-year period during which records must be kept after a county's LIRAP opt-out effective date, the TCEQ executive director must be allowed to conduct audits and inspections of the records kept concerning the opted out county by program participants.

§114.87, Inspection and Maintenance Fees

The commission amends §114.87 to apply the changes adopted in §114.53 to counties with early action compact programs that participate in the vehicle emissions I/M program. Adopted §114.87(d)(1) - (3) explains remittance of I/M fees, including the LIRAP fee, in a county participating in the LIRAP, a participating county that is in the process of opting out of the LIRAP, and a county that is not participating in the LIRAP and not subject to the LIRAP fee. The description of the state fees vehicle owners pay during vehicle registration in participating EAC counties, paragraph (1), includes the LIRAP fee. The description of the state fees vehicle owners pay during vehicle registration in participating EAC counties that are in the process of opting out of the LIRAP, paragraph (2), includes the LIRAP fee until the effective LIRAP fee termination date, after which state fees do not include the LIRAP fee. The description of the state fees vehicle owners pay during vehicle registration in non-participating EAC counties, paragraph (3), does not include the LIRAP fee.

Final Regulatory Impact Determination

The commission reviewed this rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225 and determined that it does not meet the definition of a "major environmental rule" as defined in that 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." Additionally, this rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Texas Government Code, §2001.0225(a). Texas Government Code, §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.

The amendments to Chapter 114 are adopted in accordance with HB 2134, which authorized the LIRAP found in THSC, Chapter 382. HB 2134 was enacted to enhance the objective of the vehicle emissions I/M program. The LIRAP provides financial assistance to low-income individuals for repair, retrofit, or retirement of vehicles that fail an emissions inspection. The rulemaking is not expected to 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 rulemaking implements requirements of 42 United States Code (USC), §7410, which requires states to adopt a SIP that provides for the implementation, maintenance, and enforcement of the National Ambient Air Quality Standards (NAAQS) in each air quality control region of the state. The LIRAP was designed to enhance the objectives of the I/M program, and the commission previously submitted the I/M rules to the EPA as a revision to the Texas SIP, which the EPA approved effective July 25, 2014. While 42 USC, §7410 generally does not require specific programs, methods, or reductions in order to meet the standard, the SIP must include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter (42 USC, Chapter 85). The provisions of the Federal Clean Air Act (FCAA) recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 USC, §7410. States are not free to ignore the requirements of 42 USC, §7410 and must develop programs to assure that their contributions to nonattainment areas are reduced so that these areas can be brought into attainment on schedule.

The requirement to provide a fiscal analysis of adopted regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th Texas Legislature, 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These rules are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 concluding that "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted the adopted rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law.

As discussed earlier in this preamble, the FCAA does not always require specific programs, methods, or reductions in order to meet the NAAQS; thus, states must develop programs for each area contributing to nonattainment to help ensure that those areas will meet the attainment deadlines. Because of the ongoing need to address nonattainment issues and to meet the requirements of 42 USC, §7410, the commission

routinely proposes and adopts SIP rules. The legislature is presumed to understand this federal scheme. If each rule adopted for inclusion in the SIP was considered to be a major environmental rule that exceeds federal law, then every SIP rule would require the full regulatory impact analysis contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the LBB in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes and that presumption is based on information provided by state agencies and the LBB, the commission believes that the intent of SB 633 was only to require the full regulatory impact analysis for rules that are extraordinary in nature. While the SIP rules will have a broad impact, the impact is no greater than is necessary or appropriate to meet the requirements of the FCAA. For these reasons, rules adopted for inclusion in the SIP fall under the exception in Texas Government Code, §2001.0225(a) because they are required by federal law.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code but left this provision substantially un-amended. It is presumed that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." *Central Power & Light Co. v. Sharp*, 919 S.W.2d 485, 489 (Tex. App. Austin 1995), *writ denied with per curiam opinion respecting another issue*,

960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.*, 798 S.W.2d 353, 357 (Tex. App. Austin 1990, *no writ*); *Cf. Humble Oil & Refining Co. v. Calvert*, 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.*, 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor*, 24 S.W.3d 581 (Tex. App. Austin 2000, *pet. denied*); and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.*, 563 S.W.2d 916 (Tex. 1978).

The commission's interpretation of the regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance." The legislature specifically identified Texas Government Code, §2001.0225, as falling under this standard. The commission has substantially complied with the requirements of Texas Government Code, §2001.0225.

The specific intent of these adopted rules is to amend sections of the TAC, which would allow any participating county to opt out of the LIRAP, including the collection of the LIRAP fee collected at the time of vehicle registration, without a future rulemaking. By providing a mechanism for participating counties to opt out of the LIRAP, this rulemaking creates a more comprehensive program in accordance with the TCEQ's

statutory obligation to create and implement the LIRAP. Additionally, even if the adopted rulemaking was a major environmental rule, it does not exceed a standard set by federal law or exceed an express requirement of state law. No contract or delegation agreement covers the topic that is the subject of this rulemaking. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b) because it does not meet the definition of a "major environmental rule," nor does it meet any of the four applicability criteria for a major environmental rule.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period, and none were received.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007 is applicable. The specific intent of these rules is to amend sections of the TAC, which will allow any participating county to opt out of the LIRAP, including the collection of program-related LIRAP fee, without a future rulemaking. The rules will substantially advance this stated purpose by amending sections in Chapter 114, Subchapters A and C to include revisions of the definitions and fees and to provide a mechanism for participating counties to opt out of the LIRAP. By providing a mechanism for participating counties to opt out of the LIRAP, this

rulemaking creates a more comprehensive program in accord with the TCEQ's statutory obligation to create and implement the LIRAP.

Texas Government Code, §2007.003(b)(4) provides that Texas Government Code, Chapter 2007 does not apply to this rulemaking because it is an action reasonably taken to fulfill an obligation mandated by state law. THSC, Chapter 382 requires the commission to establish and authorize the commissioners court of a participating county to implement a LIRAP subject to agency oversight that may include reasonable, periodic commission audits. Consequently, this rulemaking meets the exemption criteria in Texas Government Code, §2007.003(b)(4).

Nevertheless, the commission further evaluated these adopted rules and performed an assessment of whether these rules constitute a "taking" under Texas Government Code, Chapter 2007. Promulgation and enforcement of these rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject regulations do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally), nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. These adopted rules create a voluntary program for counties in the state to participate in and opt out of the LIRAP.

In addition, because the subject regulations do not provide more stringent requirements they do not burden, restrict, or limit an owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, these adopted rules do not constitute a taking under the Texas Government Code, Chapter 2007. For these reasons, Texas Government Code, Chapter 2007 does not apply to this rulemaking.

Consistency with the Coastal Management Program

The commission reviewed this rulemaking and found that it is identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4) relating to rules subject to the Texas Coastal Management Program (CMP), and will, therefore, require that goals and policies of the CMP be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking is editorial and procedural in nature and will have no substantive effect on commission actions subject to the CMP and therefore, is consistent with CMP goals and policies.

The commission invited public comment regarding the consistency with the CMP during the public comment period, and none were received.

Public Comment

The comment period was from December 5, 2014 through January 9, 2015. The commission offered a public hearing on January 6, 2015, but it was not opened because no one signed up to provide oral testimony. The commission received written comments from the North Central Texas Council of Governments (NCTCOG) and the Transportation and Natural Resources Department of Travis County (Travis County). In general, both commenters supported this rulemaking; however, NCTCOG recommended changes related to the distribution of funds and recordkeeping and auditing requirements.

Response to Comments

Comment

Travis County supported the proposed rulemaking and added that it will benefit participating counties to have a formal procedure for opting out of the LIRAP that includes removing the LIRAP fee.

Response

The commission appreciates Travis County's support of this rulemaking and agrees that having a formal procedure to opt out of the LIRAP will benefit the counties that participate in the program.

Comment

NCTCOG agreed that counties opting out of the LIRAP should have options and commented that those provided in this rulemaking provide flexibility when it comes to spending allocated funds.

Response

The commission appreciates NCTCOG's comment and agrees that a county opting out of the program should have options with regard to the use of allocated LIRAP funds. The commission's staff will work closely with each opt-out county to help the county spend allocated LIRAP funds by the chosen LIRAP opt-out effective date.

Comment

NCTCOG commented that due to an agreement among the participating DFW counties to share LIRAP funds, which is facilitated by NCTCOG, it would be complicated to require an opt-out county to return unspent allocations to the TCEQ upon a county's LIRAP opt-out effective date. NCTCOG recommended that the TCEQ amend its proposal to allow the redistribution of an opt-out county's unspent allocations to other participating counties within the region.

Response

The commission has amended proposed §114.64(g)(3) to specify that unspent allocations will be returned to the commission not more than 90 days after a county's LIRAP opt-out effective date unless there is an official inter-county elective agreement that the opt-out county shares allocated LIRAP funds with other participating counties in the same region. If there is an inter-county elective agreement, then not more than 90 days after a county's LIRAP opt-out effective date, the portion of LIRAP allocations that is shared and unspent as of the LIRAP opt-out effective date will be redistributed among the remaining participating counties that are part of the agreement.

Comment

NCTCOG recommended that the TCEQ develop a process to allow opt-out counties to spend all collected funds, appropriated and otherwise. NCTCOG commented that LIRAP fees are currently being collected in participating counties at a higher rate than what is appropriated by the legislature and that there is a large surplus of unappropriated funds. NCTCOG added that opt-out counties should be able to exhaust all collected funds, even after the LIRAP opt-out effective date.

Response

The commission has not made the suggested change to the rule. The LIRAP

is a voluntary program, and a participating county may choose to opt out at its discretion. The opt-out process established in this rulemaking offers an opt-out county the choice of extending participation in the program beyond the date upon which the LIRAP fee is no longer collected, the LIRAP fee termination date. This allows the county to spend LIRAP grant funds that have been appropriated by the legislature and allocated by the commission. The commission only has the authority to allocate funds appropriated by the legislature to participating counties or an area specified by the legislature. Any future appropriations are unknown and are dependent upon the legislature, which appropriates funding for the LIRAP to the commission during each biennial session from Clean Air Account 151. Clean Air Account 151 is used to safeguard the air resources of the state, and LIRAP fees from vehicle owners in each participating county are deposited into the account as part of a county's participation in the program. LIRAP appropriations from Clean Air Account 151 are not identified by revenue source and county, and as such, it would not be possible to identify future LIRAP appropriations as corresponding to a county that has opted out of the program without additional statutory or appropriations direction.

Comment

NCTCOG recommended that the TCEQ alert all counties of any modifications to the

LIRAP resulting from legislative action.

Response

The LIRAP has been modified by legislative action four times since the 77th Texas Legislature enacted HB 2134 in 2001. The commission has and will continue to notify counties of changes to the LIRAP that result from legislative action.

Comment

NCTCOG supported the amendment to §114.70(c) and (d) that will maintain program-related recordkeeping and auditing requirements related to an opt-out county after that county's opt-out effective date. NCTCOG recommended that the TCEQ add automobile dealerships to the list of entities that must comply with these requirements.

Response

The commission appreciates NCTCOG's support of the amendment to §114.70(c) and (d). However, the commission has not made the suggested change. The commission did not propose to revise §114.70 to require automobile dealerships to comply with program-related recordkeeping and auditing requirements. Adding automobile dealerships would impose new requirements that were not made available for public review and comment.

Furthermore, the commission does not consider it necessary at this time to make automobile dealerships subject to LIRAP-related recordkeeping and auditing requirements. One of the LIRAP's main objectives is to repair or remove older, polluting vehicles from roadways in counties where vehicle emissions inspections are conducted. Participating automobile dealerships facilitate the purchase of replacement vehicles by eligible applicants in exchange for those applicants' retired vehicles. Under the program, replacement vehicles are partially paid for with vouchers representing DACM grant funds. Dealerships transfer retired vehicles to participating dismantlers and return the vouchers and retired vehicle information to the program administrator for reimbursement. Participating dismantlers and program administrators are subject to §114.70 requirements. Dismantlers provide proof that retired vehicles have been destroyed, and program administrators maintain records for the entire DACM process.

Comment

NCTCOG agreed that the opt-out time frame was reasonable based on the various processes that must be undertaken by the TCEQ, DMV, and DPS.

Response

The commission appreciates NCTCOG's assessment that the LIRAP fee termination process, including the time frame, is reasonable.

Comment

NCTCOG was disappointed that the TCEQ did not hold a public hearing in the DFW region since the rulemaking was initiated by Collin County's request to opt out of LIRAP.

Response

While the commission appreciates that Collin County made the original request for opt-out that prompted this rulemaking, the commission must also balance both resource availability and the necessity for holding public hearings in various areas of the state. For rules that apply statewide, the commission has regularly held public hearings in Austin or in Austin and other parts of the state.

SUBCHAPTER A: DEFINITIONS

§114.2, §114.7

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendments are also adopted under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and THSC, §382.012, concerning the State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. Additionally, the amendments are adopted under THSC, §382.209, concerning the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP), that authorizes the commission and

the Public Safety Commission to adopt rules implementing the LIRAP; and THSC, §382.210, concerning Implementation Guidelines and Requirements for the LIRAP, that authorizes the commission to adopt rules creating guidelines to assist participating counties in implementing the LIRAP.

The adopted amendments implement THSC, §§382.002, 382.011, 382.012, 382.017, 382.209, and 382.210.

§114.2. Inspection and Maintenance Definitions.

Unless specifically defined in Texas Health and Safety Code, Chapter 382, also known as the Texas Clean Air Act (TCAA), or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms that are defined by the TCAA, the following words and terms, when used in Subchapter C of this chapter (relating to Vehicle Inspection and Maintenance; Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program; and Early Action Compact Counties), have the following meanings, unless the context clearly indicates otherwise.

(1) Acceleration simulation mode (ASM-2) test--An emissions test using a dynamometer (a set of rollers on which a test vehicle's tires rest) that applies an

increasing load or resistance to the drive train of a vehicle, thereby simulating actual tailpipe emissions of a vehicle as it is moving and accelerating. The ASM-2 vehicle emissions test is comprised of two phases:

(A) the 50/15 mode--in which the vehicle is tested for 90 seconds upon reaching and maintaining a constant speed of 15 miles per hour (mph) on a dynamometer that simulates acceleration at a rate of 3.3 mph per second by using 50% of the vehicle available horsepower; and

(B) the 25/25 mode--in which the vehicle is tested for 90 seconds upon reaching and maintaining a constant speed of 25 mph on a dynamometer that simulates acceleration at a rate of 3.3 mph per second by using 25% of the vehicle available horsepower.

(2) Consumer price index--The consumer price index for any calendar year is the average of the consumer price index for all-urban consumers published by the United States Department of Labor, as of the close of the 12-month period ending on August 31 of the calendar year.

(3) Controller area network (CAN)--A vehicle manufacturer's communications protocol that connects to the various electronic modules in a vehicle.

CAN provides one protocol that collects information from the vehicle's electronic systems including the on-board diagnostics (OBD) emissions testing system. The United States Environmental Protection Agency requires the CAN protocol to be installed in OBD-compliant vehicles beginning with some model year 2003 vehicles and phasing in to all OBD-compliant vehicles by the 2008 model year.

(4) Low-volume emissions inspection station--A vehicle emissions inspection station that meets all criteria for obtaining a low-volume waiver from the Texas Department of Public Safety.

(5) Motorist--A person or other entity responsible for the inspection, repair, and maintenance of a motor vehicle, which may include, but is not limited to, owners and lessees.

(6) On-board diagnostic (OBD) system--The computer system installed in a vehicle by the manufacturer that monitors the performance of the vehicle emissions control equipment, fuel metering system, and ignition system for the purpose of detecting malfunction or deterioration in performance that would be expected to cause the vehicle not to meet emissions standards. All references to OBD should be interpreted to mean the second generation of this equipment, sometimes referred to as OBD II.

(7) On-road test--Utilization of remote sensing technology to identify vehicles operating within the inspection and maintenance program areas that have a high probability of being high-emitters.

(8) Out-of-cycle test--Required emissions test not associated with vehicle safety inspection testing cycle.

(9) Primarily operated--Use of a motor vehicle greater than 60 calendar days per testing cycle in an affected county. Motorists shall comply with emissions requirements for such counties. It is presumed that a vehicle is primarily operated in the county in which it is registered.

(10) Program area--County or counties in which the Texas Department of Public Safety, in coordination with the commission, administers the vehicle emissions inspection and maintenance program contained in the Texas Inspection and Maintenance State Implementation Plan. These program areas include:

(A) the Dallas-Fort Worth program area, consisting of the following counties: Collin, Dallas, Denton, and Tarrant;

(B) the El Paso program area, consisting of El Paso County;

(C) the Houston-Galveston-Brazoria program area, consisting of Brazoria, Fort Bend, Galveston, Harris, and Montgomery Counties; and

(D) the extended Dallas-Fort Worth program area, consisting of Ellis, Johnson, Kaufman, Parker, and Rockwall Counties. These counties became part of the program area as of May 1, 2003.

(11) Retests--Successive vehicle emissions inspections following the failing of an initial test by a vehicle during a single testing cycle.

(12) Testing cycle--Before the single sticker transition date as defined in §114.1 of this title (relating to Definitions), the annual cycle commencing with the first safety inspection certificate expiration date for which a motor vehicle is subject to a vehicle emissions inspection or beginning on the single sticker transition date, the annual cycle commencing with the first vehicle registration expiration date for which a motor vehicle is subject to a vehicle emissions inspection.

(13) Two-speed idle (TSI) inspection and maintenance test--A measurement of the tailpipe exhaust emissions of a vehicle while the vehicle idles, first at a lower speed and then again at a higher speed.

(14) Uncommon part--A part that takes more than 30 days for expected delivery and installation where a motorist can prove that a reasonable attempt made to locate necessary emission control parts by retail or wholesale part suppliers will exceed the remaining time prior to expiration of:

(A) the vehicle safety inspection certificate prior to the single sticker transition date as defined in §114.1 of this title (relating to Definitions);

(B) the vehicle registration beginning on the single sticker transition date as defined in §114.1 of this title; or

(C) the 30-day period following an out-of-cycle inspection.

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

Unless specifically defined in the Texas Clean Air Act (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 Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program) 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 Texas 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 Texas 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) Commercial vehicle--A vehicle that is owned or leased in the regular course of business of a commercial or business entity.

(5) 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) 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) Electric vehicle--A motor vehicle that draws propulsion energy only from a rechargeable energy storage system.

(8) 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.

(9) 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).

(10) 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.

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

(12) LIRAP--Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program.

(13) LIRAP fee--The portion of the vehicle emissions inspection fee that is required to be remitted to the state at the time of annual vehicle registration, as authorized by Texas Health and Safety Code, §382.202, in counties participating in the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program.

(14) LIRAP fee termination date--The first day of the month for the month that the Texas Department of Motor Vehicles issues registration notices without the Low

Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) fee, as defined in this section, in a participating county opting out of the LIRAP.

(15) LIRAP opt-out effective date--The date upon which a county that was participating in the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) becomes a non-participating county, which occurs when the grant contract between the county and the executive director, established in §114.64(a) of this title (relating to LIRAP Requirements), is ended, but no earlier than the LIRAP fee termination effective date.

(16) 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.

(17) Natural gas vehicle--A motor vehicle that uses only compressed natural gas or liquefied natural gas as fuel.

(18) Non-participating county--An affected county that has either:

(A) not opted into the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) authorized by Texas Health and Safety Code, §382.209; or

(B) opted out of the LIRAP according to the procedures specified in §114.64(g) of this title (relating to LIRAP Requirements) and has been released from all program requirements, including assessment of the LIRAP fee as defined in this section and participation in LIRAP grant programs.

(19) 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 (LIRAP) authorized by Texas Health and Safety Code, §382.209. An affected county that is in the process of opting out of the LIRAP is considered a participating county until the LIRAP opt-out effective date as defined in this section.

(20) Proof of sale--A notice of sale or transfer filed with the Texas Department of Transportation as required under Texas Transportation Code, §503.005, or if unavailable, an affidavit from the selling dealer or documents approved by the commission.

(21) Proof of transfer--A TCEQ form that identifies the vehicle to be destroyed and tracks the transfer of the vehicle to the recycler from the participating county, automobile dealer, and dismantler.

(22) Qualifying motor vehicle--A motor vehicle that meets the requirements for replacement in §114.64 of this title (relating to LIRAP Requirements).

(23) Recognized emissions repair facility--An automotive repair facility as provided in 37 Texas Administrative Code §23.51 (relating to Vehicle Emissions Inspection Requirements).

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

(25) 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; have an odometer reading of not more than 70,000 miles; the total cost does not exceed $35,000 and up to $45,000 for hybrid, electric, or natural gas vehicles, or vehicles

certified as Tier 2 Bin 3 or cleaner Bin certification under 40 Code of Federal Regulations §86.1811-04, as published in the February 10, 2000, issue of the *Federal Register* (65 FR 6698); has passed a Texas Department of Public Safety motor vehicle safety inspection or safety and emissions inspection within the 15-month period before the application is submitted.

(26) 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.

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

(28) Total cost--The total amount of 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.

(29) 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.

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

(31) 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.

(32) 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 1: VEHICLE INSPECTION AND MAINTENANCE

§114.53

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also adopted under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and THSC, §382.012, concerning the State Air Control Plan,

that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. Additionally, the amendment is adopted under THSC, §382.209, concerning the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP), that authorizes the commission and the Public Safety Commission to adopt rules implementing the LIRAP; and THSC, §382.210, concerning Implementation Guidelines and Requirements for the LIRAP, that authorizes the commission to adopt rules creating guidelines to assist participating counties in implementing the LIRAP.

The adopted amendment implements THSC, §§382.002, 382.011, 382.012, 382.017, 382.209, and 382.210.

§114.53. Inspection and Maintenance Fees.

(a) The following fees must be paid for an emissions inspection of a vehicle at an inspection station. This fee must include one free retest should the vehicle fail the emissions inspection provided that the motorist has the retest performed at the same station where the vehicle originally failed and submits, prior to the retest, a properly completed vehicle repair form showing that emissions-related repairs were performed and the retest is conducted within 15 days of the initial emissions test.

(1) In El Paso County beginning May 1, 2002 and ending on the day before the single sticker transition date as defined in §114.1 of this title (relating to Definitions), any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(4)(A), (B), or (C) of this title (relating to Vehicle Emissions Inspection Requirements) must collect a fee of $14 and remit $2.50 to the Texas Department of Public Safety (DPS). If the El Paso County Commissioners Court adopts a resolution that is approved by the commission to participate in the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP), the emissions inspection station in El Paso County must collect a fee of $16 and remit to the DPS $4.50 beginning upon the date specified by the commission and ending on the day before the single sticker transition date. Beginning on the single sticker transition date, any emissions inspection station in El Paso County required to conduct an emissions test in accordance with §114.50(a)(4)(A), (B), or (C) of this title must collect a fee not to exceed $11.50.

(2) In the Dallas-Fort Worth program area beginning May 1, 2002 and ending on the day before the single sticker transition date as defined in §114.1 of this title, any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(1)(A) or (B) of this title and in the extended Dallas-Fort Worth program area beginning May 1, 2003 and ending on the day before the single sticker transition date, any emissions inspection station required to conduct an

emissions test in accordance with §114.50(a)(2)(A) or (B) of this title must collect a fee not to exceed $27. Beginning May 1, 2002 and ending on the day before the single sticker transition date in the Dallas-Fort Worth and the extended Dallas-Fort Worth program areas, the emissions inspection station must remit to the DPS $2.50 for each acceleration simulation mode (ASM-2) test and $8.50 for each on-board diagnostics (OBD) test. Beginning on the single sticker transition date in the Dallas-Fort Worth and the extended Dallas-Fort Worth program areas, any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(1)(A) or (B) and (2)(A) or (B) of this title must collect a fee not to exceed $24.50 for each ASM-2 test and $18.50 for each OBD test.

(3) In the Houston-Galveston-Brazoria program area beginning May 1, 2002 and ending on the day before the single sticker transition date as defined in §114.1 of this title, any emissions inspection station in Harris County required to conduct an emissions test in accordance with §114.50(a)(3)(A) or (B) of this title and beginning May 1, 2003 and ending on the day before the single sticker transition date, any emissions inspection station in Brazoria, Fort Bend, Galveston, and Montgomery Counties required to conduct an emissions test in accordance with §114.50(a)(3)(D) or (E) of this title must collect a fee not to exceed $27. Beginning May 1, 2002 and ending on the day before the single sticker transition date in Brazoria, Fort Bend, Galveston, Harris, and Montgomery Counties, the emissions inspection station must remit to the DPS $2.50 for

each ASM-2 test and $8.50 for each OBD test. Beginning on the single sticker transition date in Brazoria, Fort Bend, Galveston, Harris, and Montgomery Counties, any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(3)(A), (B), (D), or (E) of this title must collect a fee not to exceed $24.50 for each ASM-2 test and $18.50 for each OBD test.

(b) The per-vehicle fee and the amount the inspection station remits to the DPS for a challenge test at an inspection station designated by the DPS, must be the same as the amounts set forth in subsection (a) of this section. The challenge fee must not be charged if the vehicle is retested within 15 days of the initial test.

(c) Inspection stations performing out-of-cycle vehicle emissions inspections for the state's remote sensing element must charge a motorist for an out-of-cycle emissions inspection in the amount specified in subsection (a) of this section resulting from written notification that subject vehicle failed on-road testing. If the vehicle passes the vehicle emissions inspection, the vehicle owner may request reimbursement from the DPS.

(d) Beginning on the single sticker transition date as defined in §114.1 of this title, vehicle owners shall remit as part of the annual vehicle registration fee collected by the

Texas Department of Motor Vehicles (DMV) or county tax assessor-collector the amount of the vehicle emissions inspection fee that is required to be remitted to the state.

(1) In El Paso County, the following requirements apply.

(A) If participating in the LIRAP, vehicle owners shall remit $4.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee. Of the $4.50 remitted, $2.00 constitutes the LIRAP fee as defined in §114.7 of this title (relating to Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program Definitions).

(B) If participating in the LIRAP and in the process of opting out, vehicle owners shall remit $4.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee until the LIRAP fee termination effective date as defined in §114.7 of this title. Of the $4.50 remitted, $2.00 constitutes the LIRAP fee as defined in §114.7 of this title. Upon the LIRAP fee termination effective date, vehicle owners shall remit $2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee.

(C) If not participating in the LIRAP, vehicle owners shall remit $2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee.

(2) In the Dallas-Fort Worth and the extended Dallas-Fort Worth program areas, the following requirements apply.

(A) Vehicle owners in counties participating in the LIRAP shall remit $2.50 for motor vehicles subject to ASM-2 tests and $8.50 for motor vehicles subject to OBD tests to the DMV or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee. Of the $8.50 remitted for OBD tests, $6.00 constitutes the LIRAP fee as defined in §114.7 of this title.

(B) Vehicle owners in counties participating in the LIRAP that are in the process of opting out shall remit $2.50 for motor vehicles subject to ASM-2 tests and $8.50 for motor vehicles subject to OBD tests to the DMV or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee until the LIRAP fee termination effective date as defined in §114.7 of this title. Of the $8.50 remitted for OBD tests, $6.00 constitutes the LIRAP fee as defined in

§114.7 of this title. Upon the LIRAP fee termination effective date, vehicle owners in participating counties that are in the process of opting out of the LIRAP shall remit $2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee.

(C) Vehicle owners in counties not participating in the LIRAP shall remit $2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee.

(3) In the Houston-Galveston-Brazoria program area, the following requirements apply.

(A) Vehicle owners in counties participating in the LIRAP shall remit $2.50 for motor vehicles subject to ASM-2 tests and $8.50 for motor vehicles subject to OBD tests to the DMV or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee. Of the $8.50 remitted for OBD tests, $6.00 constitutes the LIRAP fee as defined in §114.7 of this title.

(B) Vehicle owners in counties participating in the LIRAP that are in the process of opting out shall remit $2.50 for motor vehicles subject to ASM-2 tests and $8.50 for motor vehicles subject to OBD tests to the DMV or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee until the LIRAP fee termination effective date as defined in §114.7 of this title. Of the $8.50 remitted for OBD tests, $6.00 constitutes the LIRAP fee as defined in §114.7 of this title. Upon the LIRAP fee termination effective date, vehicle owners in participating counties that are in the process of opting out of the LIRAP shall remit $2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee.

(C) Vehicle owners in counties not participating in the LIRAP shall remit $2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee.

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

§§114.60, 114.62, 114.64, 114.70

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act (TCAA). The amendments are also adopted under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, that authorizes the

commission to control the quality of the state's air; and THSC, §382.012, concerning the State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. Additionally, the amendments are adopted under THSC, §382.209, concerning the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP), that authorizes the commission and the Public Safety Commission to adopt rules implementing the LIRAP; and THSC, §382.210, concerning Implementation Guidelines and Requirements for the LIRAP, that authorizes the commission to adopt rules creating guidelines to assist participating counties in implementing the LIRAP.

The adopted amendments implement THSC, §§382.002, 382.011, 382.012, 382.017, 382.209, and 382.210.

§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 Texas Transportation Code, §502.274;

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

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

(7) vehicle subject to §114.50(a) of this title that is registered in a non-participating county.

(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 from participating counties.

(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, funds appropriated for the program in reasonable proportion to the amount in fees collected in the participating county or area from emissions testing fees designated by the commission.

(d) In a county with a vehicle emissions inspection and maintenance program under Texas Health and Safety Code, §382.202 or §382.302, 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. Participation in the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) is voluntary. An affected county may choose to participate in the program at its discretion. Upon receiving a written request to participate in the 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 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 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 participating program county for at least 12 of the 15 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% 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 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) the vehicle meets the requirements under subsection (b)(1) - (3) and (5) of this section;

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

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

(2) Eligible vehicle owners of 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, an eligible vehicle owner of a vehicle that is gasoline powered and is at least 10 years old as determined from the current calendar year (i.e., 2010 minus 10 years equals 2000) 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, issue of the *Federal Register* (65 FR 6698);

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

(C) have an odometer reading of not more than 70,000 miles;

(D) be a vehicle, the total cost of which does not exceed $35,000 and up to $45,000 for hybrid, electric, or natural gas vehicles, or vehicles certified as Tier 2 Bin 3 or cleaner Bin certification under 40 Code of Federal Regulations §86.1811-04, as published in the February 10, 2000, issue of the *Federal Register* (65 FR 6698); and

(E) 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 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 a replacement vehicle for the accelerated retirement of a vehicle meeting the requirements under this subsection. Only one retirement compensation can be used toward one replacement vehicle annually per applicant. The maximum amount toward a replacement vehicle must 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, electric, natural gas, and federal Tier 2 Bin 3 or cleaner Bin certification under 40 Code of Federal Regulations §86.1811-04, as published in the February 10, 2000, issue of the *Federal Register* (65 FR 6698) vehicle of the current model year or the three previous model years.

(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 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 reimburse the appropriate recognized emissions repair facility for approved repairs and retrofits 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.

(f) Reimbursements for replacements. A participating county shall ensure that funds are transferred to a participating automobile dealership no later than 10 business days after the county receives proof of the sale, proof of transfer to a dismantler, and any administrative documents that meet the requirements of the county or designated entity. A list of all administrative documents must be included in the agreements that are entered into by the county or designated entity and the participating automobile dealerships.

(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 the 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 must 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 must 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.

(g) Opting out of the LIRAP. Participation in the LIRAP is voluntary. A

participating county may opt out of the program. Procedures to release a participating county from the LIRAP shall be initiated upon the receipt of a written request to the executive director by the county commissioners court in a participating county.

(1) A written request to opt out of the LIRAP shall request release from the LIRAP fee as defined in §114.7 of this title (relating to Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program Definitions) and the grant contract established in subsection (a) of this section. The written request shall include one of the following possible LIRAP opt-out effective dates as defined in §114.7 of this title:

(A) the LIRAP fee termination effective date as defined in §114.7 of this title; or

(B) the last day of the legislative biennium in which the LIRAP fee termination effective date as defined in §114.7 of this title occurred.

(2) Upon receipt of a written request to be released from participation in the LIRAP, the executive director shall notify, in writing, with a copy sent to the requesting county, the Texas Department of Motor Vehicles (DMV), DPS, and the

Legislative Budget Board of Texas that the LIRAP fee should no longer be collected for vehicles undergoing inspection and registration in the affected county.

(3) A county opting out of the LIRAP remains a participating county until the LIRAP opt-out effective date as defined in §114.7 of this title, on which date the county is no longer subject to the LIRAP fee, and the grant contract established in subsection (a) of this section is ended. Not more than 90 days after a county's LIRAP opt-out effective date, the unspent balance of allocated LIRAP funds for that county will be returned to the commission unless the county opting out has entered into an official inter-county elective agreement with other participating counties in the same region to share allocated LIRAP funds. If the county opting out has entered into an official inter-county elective agreement with other participating counties in the same region to share allocated LIRAP funds, then the portion of LIRAP allocations that is shared and unspent as of the LIRAP opt-out effective date will be redistributed among the remaining participating counties that are part of that agreement. This redistribution of funds will occur not more than 90 days after a county's LIRAP opt-out effective date.

§114.70. Records, Audits, and Enforcement.

(a) A participating county shall 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;

(8) information for each replacement vehicle including:

(A) VIN;

(B) make of vehicle;

(C) model year;

(D) odometer reading;

(E) name and business address of seller; and

(9) 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. Upon the LIRAP opt out effective date as defined in §114.7 of this title (relating to Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program Definitions), the non-participating county, its designated entity, a participating recognized emissions repair facility, and a participating vehicle retirement facility must maintain program records for the non-participating county for a period of three years. 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 allow the

executive director to conduct audits and inspections. For a period of three years after the LIRAP opt-out effective date as defined in §114.7 of this title, a non-participating county, its designated entity, a participating recognized emissions repair facility, and a participating vehicle retirement facility shall allow the executive director to conduct audits and inspections of records from the non-participating county.

(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 (relating to Disposition of Retired Vehicle) is subject to a civil penalty under Texas Water Code, Chapter 7, Subchapter D, for each violation. A separate violation occurs with each fraudulent certification or prohibited resale.

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

DIVISION 3: EARLY ACTION COMPACT COUNTIES

§114.87

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also adopted under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and THSC, §382.012, concerning the State Air Control Plan,

that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. Additionally, the amendment is adopted under THSC, §382.209, concerning the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP), that authorizes the commission and the Public Safety Commission to adopt rules implementing the LIRAP; and THSC, §382.210, concerning Implementation Guidelines and Requirements for the LIRAP, that authorizes the commission to adopt rules creating guidelines to assist participating counties in implementing the LIRAP.

The adopted amendment implements THSC, §§382.002, 382.011, 382.012, 382.017, 382.209, and 382.210.

§114.87. Inspection and Maintenance Fees.

(a) The following fees must be paid for an emissions inspection of a vehicle at an inspection station in an affected early action compact program county. This fee must include one free retest if the vehicle fails the emissions inspection, provided that the motorist has the retest performed at the same station where the vehicle originally failed; the motorist submits, prior to the retest, a properly completed vehicle repair form showing that emissions-related repairs were performed; and the retest is conducted within 15 days of the initial emissions test. In Travis and Williamson Counties beginning

September 1, 2005 and ending on the day before the single sticker transition date as defined in §114.1 of this title (relating to Definitions), any emissions inspection station required to conduct an emissions test in accordance with §114.80 of this title (relating to Applicability) must collect a fee not to exceed $16 and remit $4.50 to the Texas Department of Public Safety (DPS) for each on-board diagnostic and two-speed idle test. In Travis and Williamson Counties beginning on the single sticker transition date, any emissions inspection station required to conduct an emissions test in accordance with §114.80 of this title must collect a fee not to exceed $11.50 for each on-board diagnostic and two-speed idle test.

(b) The per-vehicle fee and the amount the inspection station remits to the DPS for a challenge test at an inspection station designated by the DPS must be the same as the amounts specified in subsection (a) of this section. The challenge fee must not be charged if the vehicle is retested within 15 days of the initial test.

(c) Inspection stations performing out-of-cycle vehicle emissions inspections resulting from written notification that the subject vehicle failed on-road testing (remote sensing) must charge a motorist for an out-of-cycle emissions inspection in the amount specified in subsection (a) of this section. If the vehicle passes the vehicle emissions inspection, the vehicle owner may request reimbursement from the DPS.

(d) Beginning on the single sticker transition date as defined in §114.1 of this title in Travis and Williamson Counties, the following requirements apply.

(1) Vehicle owners in counties participating in Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) shall remit $4.50 for motor vehicles subject to vehicle emissions inspections to the Texas Department of Motor Vehicles (DMV) or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee. Of the $4.50 remitted, $2.00 constitutes the LIRAP fee as defined in §114.7 of this title (relating to Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program Definitions).

(2) Vehicle owners in counties participating in the LIRAP and in the process of opting out shall remit $4.50 for motor vehicles subject to emissions inspection to the DMV or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee until the LIRAP fee termination effective date as defined in §114.7 of this title. Of the $4.50 remitted, $2.00 constitutes the LIRAP fee as defined in §114.7 of this title. Upon the LIRAP fee termination effective date, vehicle owners in participating counties that are in the process of opting out of the LIRAP shall remit $2.50 for motor vehicles subject to

vehicle emissions inspections to the DMV or county tax-assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee.

(3) Vehicle owners in counties not participating in the LIRAP shall remit $2.50 for motor vehicles subject to vehicle emissions inspection to the DMV or county tax-assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee.