

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** March 10, 2016

Thru: Richard A. Hyde, P.E., Executive Director

Thru:  Steve Hagle, P.E., Deputy Director, Office of Air

From: David Brymer, Division Director, Air Quality
Division

Subject: Rulemaking Draft Concept and Initiation Memo
30 Texas Administrative Code (TAC) Chapter 114, Control of Air Pollution
from Motor Vehicles

Suggested short title: Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) Revisions

Introduction and reason(s) for the rulemaking:

The 77th Legislature, 2001, Regular Session, enacted House Bill (HB) 2134 that authorized the LIRAP, which provides financial assistance to low-income individuals for repairs, retrofits, or retirement of vehicles that fail an emissions inspection, or for retirement of vehicles that are 10 years old or older. Beginning in March 2002, the Texas Commission on Environmental Quality (TCEQ) adopted rules in 30 TAC Chapter 114 as necessary to implement the LIRAP as codified under Texas Health and Safety Code (THSC), §§382.209–382.216, 382.218, and 382.219.

The LIRAP requirements specified in §114.64 and in THSC, §382.210 currently require replacement vehicles to be certified to meet federal Tier 2, Bin 5 or a cleaner Bin certification under Title 40 Code of Federal Regulations (40 CFR) §86.1811-04 in order to qualify for vehicle replacement assistance through the LIRAP. This tiered system refers to federal vehicle emission standards established by the United States Environmental Protection Agency (EPA). The EPA recently promulgated new rules to establish the Tier 3 Motor Vehicle Emission and Fuel Standards on April 28, 2014 under 40 CFR §86.1811-17.

The new Tier 3 emission standards are being phased in to replace the existing Tier 2 emission standards beginning with Model Year 2017 vehicles. The Tier 3 emission standards are equivalent to or cleaner than the current Tier 2 Bin 5 emission standards. Automobile manufacturers have already certified some Model Year 2016 vehicles to the new Tier 3 emission standards earlier than required, which has proved problematic for the LIRAP. These vehicles are not eligible to be purchased with LIRAP replacement assistance even though they are certified equivalent to or cleaner than the Tier 2 Bin 5 emission standard. This proposed rulemaking would amend the LIRAP rules in §114.7 and §114.64 to incorporate the new Tier 3 emission standards into the program requirements as allowed under THSC, §382.210(c). Unless this proposed rulemaking is adopted, the number of vehicles eligible for purchase with LIRAP replacement assistance will be significantly reduced beginning with Model Year 2017 and completely eliminated when the Tier 3 emission standards are fully implemented in Model Year 2025.

This proposed rulemaking would also amend the LIRAP rules in §114.64 to limit applicants to receive no more than \$600 in assistance annually per vehicle to make the emissions-related repairs needed to pass the required annual emissions inspection. This change provides programmatic consistency, since §114.64 already limits vehicle retirement compensation to one replacement vehicle annually per applicant. Repair assistance is intended to bring failing vehicles into compliance with required emissions tests. Because emissions inspections are required only on an annual basis, as a prerequisite for vehicle registration, the need for LIRAP assistance toward achieving a passing inspection should similarly only occur once per year. Initially, local program administrators used their discretion to issue repair vouchers of up to \$600 as long as the applicant presented a failing inspection. This resulted in instances of multiple \$600 repair vouchers issued on the same vehicle within one year. However, existing rule language in §114.64(e) requires a repaired vehicle to pass a safety and emissions inspection before the payment of the repair voucher. This language also limits local program administrator discretion for payment to cases where the recognized emissions repair facility made repairs and the vehicle still could not pass a subsequent emissions inspection. Here, the local program administrators may only decide whether to reimburse the cost of repairs up to \$600, not whether to issue an additional \$600 voucher to the applicant. The TCEQ issued guidance on this issue to the program administrators in August 2015 stating that no more than \$600 in LIRAP funds may be used for repairs per vehicle per year. The proposed amendment to §114.64 would reflect this guidance and clarify the annual limit on repair assistance.

The LIRAP rules allow participating dismantlers to salvage some parts for resale from the retired vehicles they receive through the LIRAP, but they are explicitly prohibited from selling emissions control equipment and engines from these retired vehicles. However, although the rule specifically defines the components of emissions control equipment, the definition of “engine” does not have the same amount of detail. This proposed rulemaking would amend the LIRAP rules in §114.7 to revise the definition of “engine” as needed to clarify what engine components the participating dismantlers may sell and what they must destroy.

Scope of the proposed rule:

The proposed rulemaking would amend Chapter 114 as follows:

- Subchapter A: Definitions, §114.7 would be amended to revise definitions as needed for clarity and for consistency with the proposed revisions to Subchapter C; and
- Subchapter C: Vehicle Inspection and Maintenance, §114.64 would be amended to incorporate the Tier 3 emission standards established under 40 CFR §86.1811-17 as an eligibility component for replacement vehicles and as a determinant for the replacement compensation amount. In addition, §114.64(d) would be amended to specify that no more than \$600 may be used for emissions-related repairs per

vehicle per year for clarity and consistency with the vehicle replacement provisions specified under this section.

Potential controversial concerns and legislative interest:

There are two potential controversial concerns. The first controversial concern is in regard to limiting applicants to \$600 in repair assistance per vehicle annually. In some cases, local program administrators previously used their discretion to issue multiple repair vouchers of up to \$600 per voucher as long as the vehicle continued to fail inspections. While guidance was issued to correct this practice, repair facilities could argue that the change results in a loss of revenue. There is also potential for the public to argue a need for more assistance to repair vehicles beyond the emissions inspection required for vehicle registration.

The second potential controversy arises from the Tier 3 emissions standards. If the TCEQ does not act to incorporate the new emission standards into the rule, then an increasing number of vehicles will be ineligible for LIRAP financial assistance as models phase into Tier 3 emission standards. A Model Year 2017 vehicle certified to the Tier 3 emission standards would be unavailable for purchase with LIRAP funds even though it is equivalent to or cleaner than its Model Year 2016 predecessor certified to the Tier 2, Bin 5 or cleaner Tier 2 Bin standard. An inability to sell current model year vehicles could serve as a disincentive for dealerships to participate in the program. Similarly, an inability to purchase a desired vehicle model may dissuade applicants from utilizing their LIRAP vehicle replacement assistance vouchers. These disincentives could cumulatively prevent the TCEQ from meeting program goals as intended in statute, as well as not utilizing all funds appropriated for LIRAP.

Potential alternatives:

None

Effect on the:

A) Regulated community:

- The proposed rulemaking to amend §114.7(9) would have no impact on dismantlers participating in the program.
- The proposed rulemaking to amend §114.7(25) and §114.64, incorporating the Tier 3 emission standards, would impact dealerships participating in the program by ensuring the availability of LIRAP eligible vehicles. It would allow dealerships to continue to sell LIRAP-eligible vehicles as more Tier 3 certified vehicles become available and the availability of Tier 2, Bin 5 certified vehicles declines.
- The proposed rulemaking to amend §114.64(d)(1)(A) to clarify that a \$600 maximum per vehicle per year is allowed for vehicle emissions repairs could impact the recognized emissions repair facilities by limiting the number of repair vouchers

allowed per vehicle per year, but it could also result in repair assistance being provided to a greater number of vehicles.

B) Public:

- The proposed rulemaking to amend §114.7(9) would have no impact on the public.
- The proposed rulemaking to amend §114.7(25) and §114.64, incorporating the Tier 3 emission standards, would impact the public by increasing the number of cars eligible for purchase through the LIRAP. Individuals wishing to use a LIRAP vehicle replacement assistance voucher would have greater options for choosing newer and cleaner vehicles. In contrast, if the rule is not updated, then the pool of eligible vehicles would diminish with each subsequent model year as manufacturers comply with the Tier 3 emission standards being phased in with the 2017 model year.
- The proposed rulemaking to amend §114.64(d)(1)(A) would impact the public by restricting vehicle repair assistance to a maximum of \$600 per vehicle per year. Previously, an individual could submit an application for and receive an emissions repair assistance voucher of up to \$600 after failing an emissions inspection multiple times within a given 12-month period.

C) Agency programs:

None

Proposed schedule and constraints:

Anticipated Proposal Date: August 24, 2016

Anticipated Public Comment Period: September/October 2016

Anticipated Adoption Date: February, 2017

Planned stakeholder involvement:

Discussions with various stakeholders during program monitoring visits have prompted each of the proposed rule changes. No further stakeholder involvement is anticipated for the proposed rulemaking.

Statutory authority:

This rulemaking is proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC, and other laws of this state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. These amendments are also proposed under Texas Health and Safety Code (THSC), §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; and §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air. Finally, this rulemaking is proposed under THSC, §382.209, which establishes and authorizes the LIRAP; §382.210, which provides the

implementation guidelines for the LIRAP; and §382.213, which outlines the requirements for disposition of retired vehicles.

Direction and Guidance:

Rule or Non-Rule Project number: 2016-031-114-AI

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