

# Texas Commission on Environmental Quality

## Interoffice Memorandum

To: Commissioners Date: August 19, 2016

Thru: Bridget C. Bohac, Chief Clerk  
Richard A. Hyde, P.E., Executive Director

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

Docket No.: 2016-0564-RUL

Subject: Commission Approval for Proposed Rulemaking  
Chapter 114, Control of Air Pollution from Motor Vehicles  
Low-Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle  
Retirement Program (LIRAP) Revisions  
Rule Project No. 2016-031-114-AI

### **Background and reason(s) for the rulemaking:**

The 77th Texas Legislature, 2001, Regular Session, enacted House Bill (HB) 2134 to create the LIRAP which provides financial assistance to low income individuals for repairs, retrofits, or retirement of vehicles that fail emissions inspections. The 80th Texas Legislature, 2007, Regular Session, enacted HB 12 to make LIRAP assistance available for retirement of vehicles that are 10 years old or older. Beginning in March 2002, the TCEQ adopted rules in 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 (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 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 Tier 3 emission standards are equivalent to or cleaner than the current Tier 2, Bin 5 emission standards. However, the Tier 3 rules are found in a different section in the CFR than the Tier 2 rules. Therefore, the TCEQ rules need to be updated to reflect the most current federal Motor Vehicle Emission and Fuel Standards.

The Tier 3 emission standards will be phased in and replace the existing Tier 2 emission standards beginning with Model Year 2017 vehicles. This phase-in schedule requires 60% compliance of all covered vehicle classes by Model Year 2019, 80% compliance by Model Year 2021, and complete transition to the Tier 3 emission standards by Model Year 2022. Some automobile manufacturers have already certified certain Model Year 2016 vehicles to the new Tier 3 emissions standards earlier than required, which has proven problematic for the LIRAP. Because current rule language exclusively refers to Tier 2 emission standards, any vehicles certified to the Tier 3 emission standards are not eligible for purchase with LIRAP replacement assistance even though the engines are certified equivalent to or cleaner than the Tier 2, Bin 5 emission standards. This proposed rulemaking would amend the LIRAP rules in §114.7 and §114.64 to incorporate the Tier 3 emission standards into the program requirements as allowed under THSC, §382.210(c).

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If the Tier 3 emission standards are not incorporated into the LIRAP rule, then the number of vehicles eligible for purchase with LIRAP replacement assistance will be largely reduced beginning with Model Year 2017 and nearly depleted when the Tier 3 emission standards are fully implemented by Model Year 2022.

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 emissions-related repairs needed to pass the required annual emissions inspection. The required annual emissions inspection is the emissions inspection test that must be performed and passed within 90 days of the vehicle's registration expiration date as a prerequisite for vehicle registration renewal. Repair assistance is intended to bring failing vehicles into compliance with emissions requirements.

Current rule language in §114.64(e) requires a repaired vehicle to pass a safety and emissions inspection retest before the recognized emissions repair facility is reimbursed by the local program administrator. This language also limits local program administrator discretion for payment to cases where the recognized emissions repair facility made repairs, and the vehicle still did not pass a subsequent emissions inspection retest. However, local program administrators interpreted this discretion as allowing multiple repair assistance vouchers of up to \$600 per voucher for the same vehicle within one year as long as the applicant presented a failing inspection. The TCEQ issued guidance to the program administrators on August 3, 2015 stating that no more than \$600 in LIRAP funds may be used for emissions-related repairs per vehicle per year. Under this guidance, the local program administrators may only decide whether to reimburse the cost of the diagnosed emissions-related repairs up to \$600, not whether to issue an additional \$600 repair voucher to the applicant for subsequent repairs. This guidance was then issued to the participating recognized emissions repair facilities by the program administrators. The proposed amendment to §114.64 would reflect this guidance and clarify the annual limit on repair assistance.

Another clarifying change that is being proposed relates to the definition of "engine." The LIRAP rules allow participating dismantlers to salvage some parts for resale from the retired vehicles they receive through the LIRAP, but dismantlers are explicitly prohibited from selling the emissions control equipment and engines from retired vehicles. While 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 which components of a vehicle retired through the LIRAP may not be sold by a dismantler after the vehicle's retirement.

**Scope of the rulemaking:**

**A.) Summary of what the rulemaking will do:**

The proposed rulemaking would amend Chapter 114 as follows:

- Subchapter A: Definitions, §114.7 would be amended to revise the definitions as needed for clarity and for consistency with the proposed revisions to Subchapter C; and

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- 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 in assistance may be granted annually per vehicle per applicant for emissions-related repairs to pass the required annual emissions inspection as needed to clarify the annual limit on repair assistance.

**B.) Scope required by federal regulations or state statutes:**

None.

**C.) Additional staff recommendations that are not required by federal rule or state statute:**

None.

**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.

**Effect on the:**

**A.) Regulated community:**

- The proposed rulemaking to amend the definition of "engine" would have no impact on dismantlers 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 enter the market and the availability of Tier 2 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 amount of repair assistance allowed per vehicle per year, but it could also result in repair assistance being provided to a greater number of vehicles.

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**B.) Public:**

- The proposed rulemaking to amend the definition of “engine” 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 under 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 Model Year 2017.

**C.) Agency programs:**

This proposed rulemaking would not impact agency programs.

**Stakeholder meetings:**

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.

**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 on August 3, 2015, 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 required 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 the 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.

**Will this rulemaking affect any current policies or require development of new policies?**

The proposed rulemaking would not affect any current policies or require the development of new policies.

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**What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?**

The long-term viability of the LIRAP's vehicle replacement program would be at risk if the current rulemaking does not go forward. Because the LIRAP only accepts vehicles certified to the Tier 2 emission standards, the pool of eligible vehicles available for purchase with program funding will be gradually depleted as Tier 2 emission standards are phased out of use in new vehicles by Model Year 2022. The decreased number of eligible vehicles could discourage dealerships and the public from participating in the LIRAP.

**Key points in the proposal rulemaking schedule:**

**Anticipated proposal date:** September 7, 2016

**Anticipated *Texas Register* publication date:** September 23, 2016

**Anticipated public hearing date (if any):** October 20, 2016

**Anticipated public comment period:** September 23, 2016 - October 24, 2016

**Anticipated adoption date:** February 2017

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**Attachments:**

None

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