

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Rulemaking Adoption

AGENDA REQUESTED: February 12, 2014

DATE OF REQUEST: January 24, 2014

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Michael Parrish, (512) 239-2548

CAPTION: Docket No. 2013-1109-RUL. Consideration of the adoption of amendments to Sections 114.1, 114.2, 114.21, 114.50, 114.53, 114.82 - 114.84, and 114.87 of 30 TAC Chapter 114, Control of Air Pollution from Motor Vehicles, and corresponding revisions to the state implementation plan.

The adoption will implement House Bill 2305 from the 83rd Texas Legislature, 2013, Regular Session, relating to replacing the dual windshield sticker system for vehicle inspection and registration with a single registration insignia sticker and modifying the method used to collect the state portion of the vehicle safety and emissions inspection fee in addition to minor non-programmatic updates to rule language to correct outdated references and for general clarity. The proposed rules were published in the October 11, 2013 issue of the *Texas Register* (38 TexReg 7067) (Edgar Gilmore, Terry Salem) (Rule Project No. 2013-035-114-AI)

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Copy to CCC Secretary? NO YES X

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** January 24, 2014

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.: 2013-1109-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 114, Control of Air Pollution from Motor Vehicles
Inspection and Maintenance (I/M) Rule Revision
Rule Project No. 2013-035-114-AI

Background and reason(s) for the rulemaking:

On May 29, 1996, the Texas Commission on Environmental Quality (commission or TCEQ) adopted rules in 30 Texas Administrative Code (TAC) Chapter 114 to implement a vehicle emissions inspection and maintenance (I/M) program in the Dallas-Fort Worth (DFW), Houston-Galveston-Brazoria (HGB), and El Paso one-hour ozone nonattainment areas. The I/M program is an air pollution control strategy involving emissions inspections of vehicles to reduce nitrogen oxides and volatile organic compounds to assist with demonstrating attainment with the National Ambient Air Quality Standard (NAAQS) for ozone. The Federal Clean Air Act and 40 Code of Federal Regulations, Parts 51 and 85, require an I/M program in nonattainment areas classified as marginal or higher for the ozone NAAQS.

The I/M rules currently apply to all nine counties (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties) in the DFW 1997 eight-hour ozone nonattainment area, selected counties (Brazoria, Fort Bend, Galveston, Harris, and Montgomery Counties) in the HGB 1997 eight-hour ozone nonattainment area, and El Paso County. The I/M program remains in place in El Paso County as part of the area's maintenance plan for the 1997 eight-hour ozone standard. On November 17, 2004, the commission adopted rules in Chapter 114 implementing an I/M program in Travis and Williamson Counties in the Austin-Round Rock area as a part of the Austin Area Early Action Compact state implementation plan (SIP).

The I/M rules require the TCEQ to implement the I/M program in conjunction with the Texas Department of Public Safety (DPS) and require vehicles registered in these areas to pass an emissions inspection at the time of their annual safety inspection. The rules also authorize the collection of the state's portion of the vehicle emissions inspection fee by the DPS at the time that vehicle emissions inspection station owners purchased safety and emissions inspection certificates (stickers). Currently, motorists are required to demonstrate compliance with the I/M program by displaying on the vehicle's windshield:

- a current valid safety and emissions inspection sticker; and
- a current valid registration insignia sticker.

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The I/M rules also require denying renewal of the registration until the vehicle has complied with the I/M program. The TCEQ is currently responsible for:

- identifying non-compliant vehicles;
- notifying motorists of the non-compliance;
- providing information on non-compliant vehicles to the Texas Department of Motor Vehicles (DMV), previously a part of the Texas Department of Transportation; and
- assisting motorists to resolve the non-compliance.

House Bill (HB) 2305, 83rd Texas Legislature, 2013, Regular Session, replaces the current Texas dual inspection and registration sticker system with a single vehicle registration insignia sticker system (single sticker system) and modifies the method used to collect the state's portion of the vehicle safety and emissions inspection fee. HB 2305 requires:

- eliminating the use of the safety and emissions inspection sticker;
- verifying compliance with I/M program requirements using the vehicle inspection report or vehicle registration insignia sticker instead of the current safety and emissions inspection sticker;
- passing of the vehicle safety and emissions inspection no more than 90 days prior to the expiration of the vehicle's registration instead of on the expiration of the vehicle's safety and emissions inspection sticker;
- replacing the TCEQ with the DPS as the entity providing information on compliant vehicles to the DMV; and
- collecting the state's portion of the safety and emissions inspection fee at the time of registration or registration renewal by the DMV or county tax assessor-collector.

HB 2305, which became effective on September 1, 2013, requires the TCEQ, the DMV, and the DPS to adopt rules necessary to implement these changes prior to March 1, 2014 and implement the changes by March 1, 2015. The adopted revisions to 30 TAC Chapter 114, Subchapter A, §114.1 and §114.2, Subchapter B, §114.21, and Subchapter C, §§114.50, 114.53, 114.82 - 114.84, and 114.87 are needed to comply with the requirements of HB 2305.

The adopted revisions to 30 TAC Chapter 114, Subchapter C, §§114.50, 114.83, and 114.84 are necessary to correct references to 37 TAC §23.93, which was repealed by the DPS on March 13, 2013.

Scope of the rulemaking:

The adopted rule revisions will revise applicable sections of Chapter 114 relating to the I/M program and implement the requirements of HB 2305.

In addition to the adopted rule revisions to Chapter 114, various non-substantive changes are included that will update rule language to the current *Texas Register* style and format

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requirements. Such changes include appropriate and consistent use of acronyms, section references, rule structure, and certain terminology.

A.) Summary of what the rulemaking will do:

The adopted rule revisions will revise Chapter 114, Subchapter A, §114.1 and §114.2, Subchapter B, §114.21, and Subchapter C, §§114.50, 114.53, 114.82 - 114.84, and 114.87 relating to the I/M program. The adopted revisions will replace the requirements for vehicles to display a safety and emissions inspection sticker with new requirements for vehicles to display a vehicle registration insignia sticker. The term “safety inspection certificate” will be replaced with “vehicle registration” or “vehicle registration insignia sticker” where applicable. The requirement regarding the amount of the vehicle emissions inspection fee that vehicle emissions inspection stations are authorized to collect will be revised and the amount that a vehicle emissions inspection station owner pays to the DPS will be repealed. The amount of the vehicle emissions inspection fee paid to the state, which will now be collected from registered vehicle owners by the DMV or county tax assessor-collector, will be included in adopted new subsection (d) in §114.53 and §114.87. The amount of the vehicle emissions inspection fee paid to the state and collected by the DMV or county tax assessor-collector will be the same amount currently collected by the DPS. The *Effect on the Regulated Community* and *Effect on the Public* section includes a breakdown of the fee in each of the I/M program areas. Additionally, the adopted revisions will maintain the current I/M program requirements until the new requirements of HB 2305 are concurrently implemented by the DPS and the DMV on a date that is no sooner than March 1, 2015.

- Adopted changes to §114.1 will revise the definition of “first safety inspection certificate” and add definitions for “first vehicle registration,” “single sticker transition date,” “vehicle registration,” and “vehicle registration insignia sticker” to conform to the requirements of HB 2305. Beginning when the new requirements of HB 2305 are concurrently implemented by the DPS and the DMV on a date that is no sooner than March 1, 2015, the vehicle registration insignia sticker will be used as proof of compliance with I/M program requirements, the DMV’s rules and regulations governing vehicle registration, and the DPS’s rules and regulations governing safety inspections.
- Adopted changes to §114.2 will revise the definition of “testing cycle” to indicate that the existing testing cycle definition will continue to apply through the day before the single sticker transition date and that beginning on the single sticker transition date, the testing cycle definition becomes the annual cycle commencing with the first vehicle registration expiration date for which a motor vehicle is subject to a vehicle emissions inspection. The adopted changes will also revise the term “uncommon part” to use the vehicle safety inspection certificate prior to the single sticker transition date and use the vehicle registration beginning on the single sticker transition date.

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- Adopted changes to §114.21 will update the requirement that vehicles exempt from vehicle anti-tampering requirements must remove and destroy the DPS motor vehicle safety inspection certificates before the vehicle is offered for sale or displayed for public examination. Beginning on the single sticker transition date, the DMV vehicle registration insignia sticker will be required to be removed and destroyed from a vehicle exempt from vehicle anti-tampering requirements before offering it for sale or displaying it for public examination.
- Adopted changes to §114.50 will require owners of vehicles operating in the DFW, HGB, and El Paso I/M program areas to demonstrate compliance by displaying a current valid registration insignia sticker affixed to the vehicle's windshield beginning on the single sticker transition date in lieu of a current valid safety and emissions inspection sticker required prior to the single sticker transition date. The adopted revisions to §114.50 will also update language regarding the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen safety and emissions inspection stickers, vehicle inspection reports, or other documents that may be used to circumvent the vehicle emissions requirements in the DFW, HGB, and El Paso I/M program areas to reflect the changes to the I/M program beginning on the single sticker transition date. The adopted changes to §114.50 will also replace the reference to 37 TAC §23.93 with a reference to 37 TAC Chapter 23, Subchapter E.
- Adopted changes to §114.53 will revise the maximum fee that may be collected by emissions inspection stations located in the DFW, HGB, and El Paso I/M program areas and the state's portion of the inspection fee that the emissions inspection stations will remit to the DPS to reflect the change in fee collections required by HB 2305.
- Adopted changes to §114.82 will require owners of vehicles operating in Travis and Williamson Counties to demonstrate compliance by displaying a current valid registration insignia sticker affixed to the vehicle's windshield beginning on the single sticker transition date in lieu of a current valid safety and emissions inspection sticker required prior to the single sticker transition date.
- Adopted changes to §114.83 will replace the reference to 37 TAC §23.93 with a reference to 37 TAC Chapter 23, Subchapter E.
- Adopted changes to §114.84 will update language regarding the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen safety and emissions inspection stickers, vehicle inspection reports, or other documents that may be used to circumvent the vehicle emissions I/M requirements in Travis and Williamson Counties. The adopted revisions will also replace the reference to 37 TAC §23.93 with a reference to 37 TAC Chapter 23, Subchapter E.

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- Adopted changes to §114.87 will revise the maximum fee that may be collected by emissions inspections stations located in Travis and Williamson Counties and the state's portion of the inspection fee that the emissions inspection stations will remit to the DPS to reflect the change in fee collections required by HB 2305.

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

The adopted rule revisions are needed to ensure that the rules regarding the I/M program will comply with the requirements of HB 2305.

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

The adopted rule revisions will not include any additional substantive changes beyond the modifications needed to comply with the requirements of HB 2305. The adopted rule revisions will include changes to correct outdated references to 37 TAC §23.93, which was repealed by the DPS on March 13, 2013.

The adopted rule revision also includes a new term, "single sticker transition date," to define the date when the dual sticker system will be replaced with the single sticker system. The single sticker transition date will be contingent upon when the DPS and the DMV concurrently implement the single sticker system required by Texas Transportation Code, §502.047 but no earlier than March 1, 2015. This change is necessary to allow for flexibility in the implementation date because coordination between the DMV, the DPS, and the TCEQ is needed to ensure a smooth transition to the single sticker system. The adopted rules also include revisions that replace the specific transition dates included in the proposed rules with references to the single sticker transition date.

Statutory authority:

The rule revisions are adopted under Texas Water Code (TWC), §5.102, General Powers, TWC, §5.103, Rules, and TWC, §5.105, General Policy, which provide the commission with the general powers to carry out its duties and authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.013, General Jurisdiction of Commission, which states the commission's authority over various statutory programs. The revisions are also adopted under Texas Health and Safety Code (THSC), §382.017, Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of THSC, Chapter 382 (the Texas Clean Air Act), and to adopt rules that differentiate among particular conditions, particular sources, and particular areas of the state. The revisions are also adopted under THSC, §382.002, Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.019, Methods Used to Control and Reduce Emissions From Land Vehicles, which provides the commission the authority to adopt rules to control and reduce

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emissions from engines used to propel land vehicles; THSC, Chapter 382, Subchapter G, Vehicle Emissions, which provides the commission the authority by rule to establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of Federal Clean Air Act, 42 United States Code, §§7401 *et seq.*; and THSC, Chapter 382, Subchapter H, Vehicle Emissions Programs in Certain Counties, which authorizes the commission to adopt an I/M program for participating EAC counties. The rule revisions are adopted pursuant to amendments to Texas Transportation Code, §548.104 and §548.302, which were amended by HB 2305, and THSC, §382.0622(a), which was also amended by HB 2305.

Effect on the:

A.) Regulated community:

Beginning on the single sticker transition date, the vehicle emissions inspection station owners will experience a reduction in the maximum vehicle emissions inspection fee that they collect at the time of inspection. The fee will be reduced by the amount of the state's portion of the inspection fee that will now be collected by the DMV or county tax assessor-collector at the time of registration due to the station owner no longer having to purchase safety and emissions inspection stickers from the DPS. The maximum vehicle emissions inspection fee will be lowered from:

- \$27 to \$24.50 for vehicles subject to an acceleration simulation mode emissions inspection and from \$27 to \$18.50 for vehicles subject to an on-board diagnostics inspection in the DFW and HGB areas;
- \$16 to \$11.50 for vehicles subject to an emissions inspection in Travis and Williamson Counties; and
- either \$14 to \$11.50 for vehicles subject to an emissions inspection in El Paso County or \$16 to \$11.50 if El Paso County chooses to participate in the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program.

Motorists will need to adjust to the revised timing for passing the vehicle emissions inspection. Motorists will be required to pass an emissions inspection no earlier than 90 days prior to the corresponding vehicle registration expiration date. Motorists whose vehicle safety and emissions inspection sticker expiration date is more than 90 days prior to the corresponding vehicle registration expiration date may experience paying the inspection fees, including the state portion, for two inspections in less than 12 months during the transition period covering the year before and the year after the single sticker transition date (e.g., March 1, 2014 to March 1, 2016 is the transition period if the single sticker transition date is March 1, 2015).

B.) Public:

Beginning on the single sticker transition date, the maximum vehicle emissions inspection fee will be lowered by the amount of the state's portion of the inspection fee that will now

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be collected by the DMV or county tax assessor-collector at the time of registration, which is:

- \$2.50 for vehicles subject to an acceleration simulation mode (ASM) emissions inspection and \$8.50 for vehicles subject to an on-board diagnostics (OBD) inspection in the DFW and HGB I/M program areas;
- \$4.50 for vehicles subject to an emissions inspection in Travis and Williamson Counties; and
- either \$2.50 for vehicles subject to an emissions inspection in the El Paso I/M program area or \$4.50 if the El Paso I/M program area chooses to participate in the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program.

Beginning on the single sticker transition date, registered vehicle owners subject to I/M program requirements will experience a reduction in the fee charged by the inspection station and an increase in the fee charged to renew the vehicle's registration. The total amount collected from registered vehicle owners for the vehicle emissions inspection and vehicle registration will not increase or decrease. The change will only affect who collects the various fees and when those fees are collected. As previously stated, motorists will need to adjust to the revised timing for passing the vehicle emissions inspection.

C.) Agency programs:

The adopted rule revisions will require operational changes to the vehicle emissions inspection analyzer software and to the TCEQ's Air Quality Division work procedures since the TCEQ will no longer be responsible for registration denial activities. Throughout the transition of this component of the I/M program, the TCEQ staff will coordinate with the DPS and the DMV.

The TCEQ's staff will implement operational changes to end registration denial activities including providing information to the DMV regarding non-compliant vehicles and mailing notices to registered vehicle owners regarding the non-compliant status of their vehicles prior to registration renewal. Currently, the TCEQ spends approximately \$22,750 annually to mail registration denial notices to registered vehicle owners. Beginning on the single sticker transition date, the TCEQ will cease mailing these notices resulting in a cost savings to the agency. The TCEQ staff will continue providing information regarding compliant vehicles to the DPS but may need to develop a new method for transmitting this information or revise the current method.

HB 2305 requires the DPS to report the compliance status of vehicles receiving emissions inspections to the DMV. The TCEQ will provide vehicle inspection data received from the vehicle emissions inspection stations to the DPS to help fulfill this requirement. The TCEQ staff will facilitate the modifications to the software that operates the vehicle emissions inspection analyzers to allow proper implementation of the requirements in HB 2305. The 83rd Texas Legislature, 2013, Regular Session provided \$800,000 in funding through a contingency rider in Article IX of the General Appropriations Act for the purpose of updating the vehicle emissions inspection analyzers to comply with HB 2305.

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Stakeholder meetings:

No stakeholder meetings were held because of the limited time to implement HB 2305. However, public comments were received and public hearings were offered. Program staff will coordinate with the agency's media communications, as well as the DPS and the DMV, in an effort to inform the public of these changes.

Public comment:

Public hearings were offered in Houston on October 29, 2013; in Austin on October 30, 2013; in Fort Worth on October 31, 2013; and in El Paso on November 1, 2013. No member of the public wished to present comments, so staff did not formally open the public hearings. The comment period opened September 27, 2013 and closed November 4, 2013. The commission received written comments from the City of Houston's Department of Health and Human Services, Envirotec Systems Holdings Corporation, the United States Environmental Protection Agency (EPA), and the North Central Texas Council of Governments.

The EPA and the NCTCOG expressed support for the proposed revisions to the rules and the I/M SIP. The NCTCOG and Envirotec suggested changes to the proposed revisions to the rules and the I/M SIP. Significant public comments are summarized as follows.

- The EPA commented that the revisions will implement the preferred registration denial enforcement strategy and may improve the enforcement and compliance components of the I/M program. *The commission appreciates the EPA's support of the revisions.*
- The EPA requested an explanation regarding how vehicle owners will be made aware of the requirement to perform an emissions inspection no earlier than 90 days before the expiration of the vehicle registration. *The TCEQ staff plans to work with the DMV and the DPS to develop a public outreach campaign to alert vehicle owners of the revised requirement to have the vehicle inspected within 90 days of the expiration of the current vehicle registration.*
- The EPA requested an explanation of the process that will be used to transition vehicle owners from the current Texas dual inspection and registration sticker system to a single sticker system. *No special provisions or exemptions are included in this rulemaking. The TCEQ staff plans to work with the DMV and the DPS to develop the process for implementing the transition from sticker-based enforcement to registration denial enforcement of the I/M program requirements. The TCEQ staff anticipates that the details of the process will be provided as part of a public outreach campaign after the development of the transition process is completed. The current dual sticker system will remain in place and effective until the provisions of HB 2305 are implemented by the DPS and the DMV to ensure stability of the I/M program.*

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- The NCTCOG recommended that a robust educational program be established to help the public understand the changes to the requirements and to the fees charged for ASM and OBD tests at the time of inspection. The NCTCOG suggested that the education program will help to avoid potential disproportionate imprints under Executive Order 12898 (Environmental Justice) since ASM vehicles are older and often owned by lower-income individuals. *Executive Order 12898 only applies to actions by federal agencies and does not apply to the TCEQ's rulemaking; however, the TCEQ staff plans to work with the DMV and the DPS to develop the plan for implementing the changes to the I/M program requirements. The TCEQ staff anticipates that the details of the plan will be provided as part of a public outreach campaign informing motorists of the changes to the fees charged by the inspection station at the time of the vehicle inspection and by the DMV or county tax assessor-collector at the time of vehicle registration.*
- The NCTCOG expressed support for the use of remote sensing technology to identify high-emitting vehicles, provided a report supporting its belief that this technology is not being used often enough to be effective, and suggested that increased use would increase the effectiveness. *The commission appreciates the NCTCOG's support on enforcement of the I/M program; however, expanding the role of the remote sensing component of the current I/M program is beyond the scope of this rulemaking.*
- The NCTCOG suggested that §114.21(e) and (f), which requires the removal and destruction of the safety and emissions inspection sticker and the vehicle registration insignia sticker from vehicles currently exempt from anti-tampering requirements before being offered for sale or public examination, be modified to extend this requirement to all retail vehicle sales and to all vehicles sold at auction. *The commission appreciates the NCTCOG's support of this revision to §114.21(e) and (f); however, expanding the use of this requirement to all retail vehicle or auction sales is beyond the scope of this rulemaking.*
- The NCTCOG requested more transparency be brought to the state's Vehicle Inspection Advisory Committee and suggested that meeting notices be posted on the TCEQ, DPS, and DMV websites, and that an e-mail distribution list be developed to inform interested parties of upcoming meetings. The NCTCOG also recommended that Committee meetings be hosted in each of the four I/M regions once per year to help increase attendance. *The purpose and task of the State's Vehicle Inspection Advisory Committee are the responsibility of the DPS. The TCEQ is responsible for appointing one member to the committee and will inform the committee of the NCTCOG's suggestions.*
- Envirotest expressed support for the I/M SIP revision, continued use of remote sensing technology, and enforcement of the Texas I/M program requirements.

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Envirotest suggested increasing the use of the remote sensing technology to help prevent backsliding. *The commission appreciates Envirotest's support. As discussed under the Demonstrating Noninterference under Federal Clean Air Act, §110(l) portion of the Background and Summary section of this rulemaking, no backsliding is anticipated as a result of these changes. Expanding the role of the remote sensing component of the I/M program is beyond the scope of this rulemaking.*

Significant changes from proposal:

The specific transition dates included in the proposal were replaced with references to the single sticker transition date, which will be contingent upon when the DPS and the DMV concurrently implement the single sticker system required by Texas Transportation Code §502.047, but no earlier than March 1, 2015. Additionally, minor non-programmatic updates to rule language were made to correct outdated references and for general clarity.

Potential controversial concerns and legislative interest:

At this time, the TCEQ cannot provide the explanations requested by the EPA regarding the details for the transition to the single sticker system, whether special provisions or exemptions may be provided, or how public outreach will be performed. The exact details of the information requested by the EPA will be dependent on actions taken by the DMV and the DPS, neither of which have finalized plans for the implementation of HB 2305.

Although the exact details requested by the EPA are not included in this rulemaking, these details can be provided to the EPA when finalized. The EPA could delay action on the Chapter 114 rulemaking and associated I/M SIP revision until the requested information is provided.

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

The adopted rule revisions will modify criteria within the current I/M program but will not affect the current agency policies regarding implementation, enforcement, and oversight of the I/M program as required by the current rules.

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

If this rule revision does not go forward, the existing rules will conflict with the requirements of HB 2305. There are no viable alternatives to a rule revision since HB 2305 directs the DMV or county tax assessor-collector to collect the state's portion of the vehicle emissions inspection fee at the time of registration and requires the dual inspection and registration sticker system to be replaced with a single sticker system.

Key points in the adoption rulemaking schedule:

Proposal date:

September 24, 2013

Texas Register proposal publication date:

October 11, 2013

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Anticipated *Texas Register* adoption publication date: February 28, 2014
Anticipated effective date: March 6, 2014
Six-month *Texas Register* filing deadline: March 11, 2014

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Attachments

HB2305

cc: Chief Clerk, 2 copies
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The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §§114.1, 114.2, 114.21, 114.50, 114.53, 114.82 - 114.84, and 114.87.

Sections §§114.1, 114.2, 114.21, 114.50, 114.53, 114.82 - 114.84, and 114.87 are adopted *with changes* to the proposed text as published in the October 11, 2013, issue of the *Texas Register* (38 TexReg 7067).

The adopted amendments to §§114.1, 114.2, 114.21, 114.50, 114.53, 114.82 - 114.84, 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

On May 29, 1996, the commission adopted rules implementing an air pollution control strategy involving emissions inspection of vehicles to reduce nitrogen oxides and volatile organic compounds necessary for the counties included in the Dallas-Fort Worth (DFW), Houston-Galveston-Brazoria (HGB), and El Paso ozone nonattainment areas in order to assist in the ability to demonstrate attainment with the one-hour ozone National Ambient Air Quality Standard (NAAQS). The vehicle emissions inspection program, also known as the vehicle emissions inspection and maintenance (I/M) program, began on July 1, 1996 in the DFW, HGB, and El Paso one-hour ozone

nonattainment areas. The I/M rules currently apply to all nine counties (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties) in the DFW 1997 eight-hour ozone nonattainment area, selected counties (Brazoria, Fort Bend, Galveston, Harris, and Montgomery Counties) in the HGB 1997 eight-hour ozone nonattainment area, and El Paso County. The I/M program remains in place in El Paso County as part of the area's maintenance plan for the 1997 eight-hour ozone standard. On November 17, 2004, the commission adopted rules in Chapter 114 implementing an I/M program in Travis and Williamson Counties in the Austin-Round Rock area.

The I/M rules require the TCEQ to implement the I/M program in conjunction with the Texas Department of Public Safety (DPS). The I/M rules also authorize the collection of the state's portion of the vehicle emissions inspection fee by the DPS at the time that vehicle emissions inspection station owners purchased safety and emissions inspection certificates (stickers). Currently, motorists are required to demonstrate compliance with the I/M program by displaying a current valid safety and emissions inspection sticker and a current valid vehicle registration insignia sticker affixed to the vehicle's windshield. The I/M rules also require denying renewal of the registration until the vehicle complies with the I/M program. The TCEQ is currently responsible for: 1) identifying non-compliant vehicles; 2) notifying motorists of the non-compliance; 3) providing information on non-compliant vehicles to the Texas Department of Motor Vehicles (DMV), previously a part of the Texas Department of Transportation; and 4)

assisting motorists to resolve the non-compliance.

Additionally, on December 6, 2000 the commission adopted rules that enhanced the I/M program. The enhanced I/M program includes requirements for vehicle emissions inspections stations to conduct acceleration simulation mode (ASM) emissions tests on model year 1995 and older vehicles and on-board diagnostics (OBD) inspections on model year 1996 and newer vehicles. The ASM emissions test and the OBD inspection have more stringent emissions inspection criteria and were added as replacements for the two-speed idle emissions test used in the I/M program prior to the adopted rules.

This adopted rulemaking will implement applicable sections of House Bill (HB) 2305, 83rd Legislature, 2013, relating to replacing the current Texas dual inspection and registration sticker system with a single vehicle registration insignia sticker and will modify the method used to collect the state's portion of the vehicle emissions inspection fee. HB 2305 mandates that the TCEQ adopt rules necessary to implement the changes prior to March 1, 2014 and that the changes be implemented on March 1, 2015. The adopted rulemaking will put in place applicable requirements necessary for the DPS and the DMV to implement the remaining sections of HB 2305 that affect their respective agencies.

Demonstrating Noninterference under Federal Clean Air Act, §110(l)

The commission provides the following information to demonstrate why the adopted change to the I/M program rules in Chapter 114 will not negatively impact the status of the state's progress towards attainment with the 1997 eight-hour ozone NAAQS, El Paso County's maintenance plan for the 1997 eight-hour ozone standard, and the *Austin Area Early Action Compact* for Travis and Williamson Counties; will not interfere with control measures; and will not prevent reasonable further progress toward attainment of the ozone NAAQS.

The amendments to Chapter 114 modify administrative aspects of the existing I/M program in order to implement HB 2305, which replaces the current dual inspection and registration sticker system with a single vehicle registration insignia sticker and modifies the method used to collect the state's portion of the vehicle emissions inspection fee. The compliance rate under the single sticker system will be at least as effective as the dual sticker system since the single sticker system will represent compliance with inspection requirements, registration requirements, and the I/M program requirements. Registrations for non-compliant vehicles will be denied under the single sticker system in the same manner as under the dual sticker system.

Resources allocated to enforcement of the dual sticker system will continue to be used to ensure compliance with the single sticker system. The network of vehicle emissions inspection stations used to conduct vehicle emissions inspections under the dual sticker system will continue to conduct vehicle emissions inspections under the single sticker

system. These vehicle emissions inspection stations were also required to remit the state's portion of the inspection fees to the DPS under the dual sticker system. However, under the single sticker system, the vehicle owner will remit the state's portion of the inspection fee to the DMV or county tax assessor-collector at the time of registration.

The effectiveness of the I/M program is expected to remain the same under the single sticker system as under the dual sticker system because the size of the vehicle population that is subject to the I/M program requirements, the vehicle emissions inspection frequency, and the stringency of the vehicle emissions inspection criteria are not changing. Upon full implementation, the single sticker system is expected to have a compliance rate at least as high as the historically implemented dual sticker system.

For vehicles exempt from annual vehicle registration renewal requirements and registered in the I/M program areas such as those owned by local and state governments, HB 2305 does not specify methods for collecting the state's portion of the inspection fee or exempt these vehicles from the I/M program requirements. Exempt vehicles will still be subject to the I/M program requirements at a time determined by the DPS and the DMV. Verifying compliance with the I/M program requirements using the vehicle registration insignia sticker affixed to the vehicle's windshield may be problematic as exempt vehicles are not currently provided vehicle registration insignia stickers. Owners of exempt vehicles will still be able to provide proof of compliance

using the Vehicle Inspection Report that is provided by the inspection stations. The TCEQ staff plans to work with the DMV and the DPS to develop a remedy for this situation and ensure exempt vehicles maintain compliance with the I/M program requirements. In order to ensure the stability of the I/M program, the current I/M program requirement will remain in place and effective until the provisions of HB 2305 are implemented by the DPS and the DMV.

Section by Section Discussion

The following amendments will ensure that the I/M program rules are consistent with the requirements in HB 2305, which mandates that effective March 1, 2015: 1) the safety and emissions inspection stickers will no longer be used; 2) the vehicle registration insignia stickers will replace the safety and emissions inspection stickers; and 3) the state's portion of the vehicle emissions inspection fee will be collected by the DMV or county tax assessor-collector at the time of registration. While not specifically commented on, the commission has added clarifying language to certain rule provisions associated with the implementation of HB 2305 to more clearly indicate when existing requirements will cease and when new requirements will be initiated. The proposed reference to 37 TAC Chapter 23 was amended for adoption to specifically identify Subchapter E in order to more clearly indicate where the rules adopted by the DPS that contain the requirements for the I/M program can be found. The definition for ASM test was amended for adoption to improve readability, more clearly describe the test

conditions and requirements, and reduce the possibility that readers will conclude that the vehicle is tested while simultaneously accelerating and being held at a constant speed. The amended definition does not change the test conditions or requirements.

The commission is also adopting a new term, "single sticker transition date," to define the date when the dual sticker system will be replaced with the single sticker system. The single sticker transition date will be contingent upon when the DPS and the DMV concurrently implement the single sticker system required by Texas Transportation Code, §502.047, but no earlier than March 1, 2015. This change is necessary to allow for flexibility in the implementation date because coordination between the DMV, the DPS, and the TCEQ is needed to ensure a smooth transition to the single sticker system. The adopted rules replace the specific transition dates included in the proposed rules with references to the single sticker transition date.

In addition to the amendments associated with the implementation of HB 2305, 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.

§114.1, Definitions

The amendment to §114.1 revises the definition for "first safety inspection certificate" and adds definitions for four new terms. First safety inspection certificate is defined as the initial DPS certificate issued through the DPS-certified inspection stations for every new vehicle found to be in compliance with the rules and regulations governing safety inspections. The amendment adds language to the definition indicating that safety inspection certificates will no longer be used beginning on the single sticker transition date. The amendment also adds definitions for "single sticker transition date," "first vehicle registration," "vehicle registration," and "vehicle registration insignia sticker." Single sticker transition date is defined as the transition date of the single sticker system that is the later of March 1, 2015 or the date that the DMV and the DPS concurrently implement the single sticker system required by Texas Transportation Code, §502.047. First vehicle registration is defined as the initial vehicle registration insignia sticker issued through the DMV for every new vehicle found to be in compliance with the rules and regulations governing vehicle registration prior to the single sticker transition date and vehicle registration and safety inspections beginning on the single sticker transition date. Vehicle registration is defined as the vehicle characteristics, corresponding owner information, and registration expiration date contained in the DMV's registration system. Vehicle registration insignia sticker is defined as the sticker issued through the DMV to be affixed to the windshield of a vehicle compliant with DMV regulations. The vehicle registration insignia sticker definition also indicates that beginning on the single

sticker transition date, the vehicle registration insignia sticker will be used as proof of compliance with the I/M program requirements, the DMV's rules and regulations governing vehicle registration, and the DPS's rules and regulations governing safety inspections. The amendment ensures that the terms and definitions for "first safety inspection certificate," "first vehicle registration," "single sticker transition date," "vehicle registration," and "vehicle registration insignia sticker" are consistent with the requirements of HB 2305. The amendment also renumbers the definitions in this section as necessary for the addition of new definitions. The definition for "single sticker transition date" was added for adoption to clarify when the dual sticker system will be replaced by the single sticker system. As discussed elsewhere in the Section by Section discussion of this preamble, the adopted amendment to this section contains modifications that replace the references to specific transition dates included in the proposed amendment to this section with references to the single sticker transition date.

§114.2, Inspection and Maintenance Definitions

The amendment modifies the definitions of "testing cycle" and "uncommon part." Testing cycle is defined as the annual cycle commencing with the first safety inspection certificate expiration date for which a motor vehicle is subject to a vehicle emissions inspection. The amendment adds language indicating that prior to the single sticker transition date, the testing cycle is the annual cycle commencing with the first safety inspection certificate expiration date for which a motor vehicle is subject to a vehicle

emissions inspection, but effective on the single sticker transition date, the annual cycle will commence with the first vehicle registration expiration date for which a motor vehicle is subject to a vehicle emissions inspection.

Uncommon part was previously defined as 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 the vehicle safety inspection certificate or the 30-day period following an out-of-cycle inspection. The amendment adds language allowing the motorist to prove that the location of the part will exceed the remaining time prior to the expiration of the vehicle safety inspection certificate prior to the single sticker transition date; the vehicle registration beginning on the single sticker transition date; or the 30-day period following an out-of-cycle inspection. The language clarifying that the existing definition of testing cycle will be maintained through the day before the single sticker transition date was not included in the proposed amendment to §114.2.

The definition for acceleration simulation mode test was amended for adoption to more clearly indicate, but not change, the test conditions and requirements for the two modes of the acceleration simulation mode test. The amended definition indicates that 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 in the 50/15 mode and that 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 in the 25/25 mode. As discussed elsewhere in the Section by Section discussion of this preamble, the adopted amendment to this section contains modifications that replace the references to specific transition dates included in the proposed amendment to this section with references to the single sticker transition date.

§114.21, Exemptions

The amendment to §114.21(e) and (f) adds language indicating that the existing requirement to remove and destroy the DPS motor vehicle safety inspection certificates before the vehicle is offered for sale or displayed for public examination will remain in effect prior to the single sticker transition date. The amendment also adds language indicating that beginning on the single sticker transition date, the DMV vehicle registration insignia sticker must be removed and destroyed from a vehicle exempt from vehicle anti-tampering requirements before offering it for sale or displaying it for public examination. The language clarifying that the existing requirements will be maintained prior to the single sticker transition date was not included in the proposed amendment to §114.21(e) and (f). As discussed elsewhere in the Section by Section discussion of this

preamble, the adopted amendment to this section contains modifications that replace the references to specific transition dates included in the proposed amendment to this section with references to the single sticker transition date.

§114.50, Vehicle Emissions Inspection Requirements

The amendment to §114.50(b)(1) modifies the method used to demonstrate compliance with the I/M program requirements to retain the existing requirements prior to the single sticker transition date and prescribes new requirements beginning on the single sticker transition date. The language in §114.50(b)(1) requires vehicles operating in the DFW, HGB, and El Paso I/M program areas to demonstrate compliance by displaying a current valid inspection certificate affixed to the vehicle windshield. The amendment requires demonstration of compliance beginning on the single sticker transition date by displaying a current valid DMV vehicle registration insignia sticker since inspection certificates will no longer be used beginning on the single sticker transition date. The language clarifying that the existing requirements will be maintained prior to the single sticker transition date was not included in the proposed amendment to §114.50(b)(1).

The amendment to §114.50(d)(2) adds language retaining the existing requirements prior to the single sticker transition date and prescribes new requirements beginning on the single sticker transition date. The existing requirements prevent the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen vehicle safety

inspection certificates, vehicle inspection reports, or other documents that may be used to circumvent the vehicle emissions I/M requirements in the DFW, HGB, and El Paso I/M program areas. Beginning on the single sticker transition date, the new requirements prevent the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen vehicle registration insignia stickers, vehicle inspection reports, or other documents that may be used to circumvent the vehicle emissions I/M requirements in the DFW, HGB, and El Paso I/M program areas. The language clarifying that the existing requirements will be maintained prior to the single sticker transition date was not included in the proposed amendment to §114.50(d)(2).

The amendment to §114.50(b)(6)(B) and (c) replaces the reference to 37 TAC §23.93 with 37 TAC Chapter 23, Subchapter E, because 37 TAC §23.93 was repealed by the DPS on March 13, 2013. The reference to Subchapter E was not included in the proposed amendment to §114.50(b)(6)(B) and (c). As discussed elsewhere in the Section by Section discussion of this preamble, the reference to Subchapter E was added to provide specific citation where the rules adopted by the DPS that contain the requirements for the I/M program can be found. As discussed elsewhere in the Section by Section discussion of this preamble, the adopted amendment to this section contains modifications that replace the references to specific transition dates included in the proposed amendment to this section with references to the single sticker transition date.

§114.53, Inspection and Maintenance Fees

The amendment to §114.53(a)(1) - (3) exempts emissions inspection stations from being required to remit the state's portion of the vehicle emissions inspection fee to the DPS beginning on the single sticker transition date. The amendment also lowers the maximum inspection fee collected by the emissions inspection stations in the DFW, HGB, and El Paso I/M program areas. Beginning on the single sticker transition date, the maximum inspection fee will be lowered by the amount of the state's portion of the vehicle emissions inspection fee that will now be collected by the DMV or county tax assessor-collector at the time of registration.

Beginning on the single sticker transition date, the maximum inspection fee collected by emissions inspection stations inspection in the DFW and HGB I/M program areas will be lowered from \$27 to \$24.50 for vehicles subject to an ASM emissions test and from \$27 to \$18.50 for vehicles subject to an OBD inspection. For the El Paso I/M program area, the maximum inspection fee collected by emissions inspections stations will change based on whether the El Paso I/M program area chooses to participate in the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP). The maximum inspection fee for vehicles subject to an emissions inspection in El Paso County will be lowered to \$11.50 from either \$14 if El Paso County is not participating in the LIRAP or \$16 if El Paso County is participating in the LIRAP.

The language in §114.53(a)(1) - (3) sets the maximum inspection fee that may be collected by the emissions inspection stations located in the DFW, HGB, and El Paso I/M program areas and the state's portion of the vehicle emissions inspection fee that the emissions inspection stations remit to the DPS. The amendment to §114.53 also adds language in proposed subsection (d) that specifies that owners of vehicles subject to vehicle emissions inspections in the DFW, HGB, and El Paso I/M program areas will remit the state's portion of the vehicle emissions inspection fee to the DMV or county tax assessor-collector at the time of registration. The state's portion of the vehicle emissions fee is \$2.50 for vehicles subject to an ASM emissions test and \$8.50 for vehicles subject to an OBD inspection in the DFW and HGB I/M program areas. If the El Paso I/M program area does not participate in the LIRAP, the state's portion of the vehicle emissions fee is \$2.50 for vehicles subject to an emissions inspection in the El Paso I/M program area. If the El Paso I/M program area chooses to participate in the LIRAP, the state's portion of the vehicle emissions fee changes to \$4.50 for vehicles subject to an emissions inspection in the El Paso I/M program area. The language clarifying that the existing fee requirements will be maintained prior to the single sticker transition date was not included in the proposed amendment to §114.53(a)(1) - (3). As discussed elsewhere in the Section by Section discussion of this preamble, the adopted amendment to this section contains modifications that replace the references to specific transition dates included in the proposed amendment to this section with references to the single sticker transition date.

§114.82, Control Requirements

The amendment to §114.82(a) modifies the method used to demonstrate compliance with the I/M program requirements to retain the existing requirements prior to the single sticker transition date and prescribes new requirements beginning on the single sticker transition date. The language in §114.82(a) indicates that vehicles registered in Travis and Williamson Counties, also known as the early action compact counties, are required to demonstrate compliance by displaying a current valid inspection certificate affixed to the vehicle windshield. The amendment requires demonstration of compliance beginning on the single sticker transition date by displaying a current valid DMV vehicle registration insignia sticker since inspection certificates will no longer be used beginning on the single sticker transition date. The language clarifying that the existing requirements will be maintained prior to the single sticker transition date was not included in the proposed amendment to §114.82(a). As discussed elsewhere in the Section by Section discussion of this preamble, the adopted amendment to this section contains modifications that replace the references to specific transition dates included in the proposed amendment to this section with references to the single sticker transition date.

§114.83, Waivers and Extensions

The amendment to §114.83 replaces the reference to 37 TAC §23.93 with a reference to

37 TAC Chapter 23, Subchapter E, because 37 TAC §23.93 was repealed by the DPS on March 13, 2013. The reference to 37 TAC Chapter 23, Subchapter E was not included in the proposed amendment to §114.83. As discussed elsewhere in the Section by Section discussion of this preamble, the reference to 37 TAC Chapter 23, Subchapter E was added to provide specific citation where the rules adopted by the DPS that contain the requirements for the I/M program can be found.

§114.84, Prohibitions

The amendment to §114.84(b) adds language retaining the existing requirements prior to the single sticker transition date and prescribes new requirements beginning on the single sticker transition date. The revised requirements prevent the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen vehicle safety inspection certificates, vehicle inspection reports, or other documents that may be used to circumvent the vehicle emissions I/M requirements in Travis and Williamson Counties prior to the single sticker transition date.

The new requirements prevent the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen vehicle registration insignia stickers, vehicle inspection reports, or other documents that may be used to circumvent the vehicle emissions I/M requirements in Travis and Williamson Counties beginning on the single sticker transition date. The language clarifying that the existing requirements will be

maintained prior to the single sticker transition date was not included the proposed amendment to §114.84(b).

The amendment to §114.84(d) also replaces the reference to 37 TAC §23.93 with 37 TAC Chapter 23, Subchapter E, because 37 TAC §23.93 was repealed by the DPS on March 13, 2013. The reference to 37 TAC Chapter 23, Subchapter E was not included in the proposed amendment to §114.84(d). As discussed elsewhere in the Section by Section discussion of this preamble, the reference to 37 TAC Chapter 23, Subchapter E was added to provide specific citation where the rules adopted by the DPS that contain the requirements for the I/M program can be found. As discussed elsewhere in the Section by Section discussion of this preamble, the adopted amendment to this section contains modifications that replace the references to specific transition dates included in the proposed amendment to this section with references to the single sticker transition date.

§114.87, Inspection and Maintenance Fees

Beginning on the single sticker transition date, the amendment to §114.87(a): 1) exempts emissions inspection stations from being required to remit the state's portion of the vehicle emissions inspection fee to the DPS; and 2) lowers the maximum inspection fee collected by the emissions inspection stations by the amount of the state's portion of the vehicle emissions inspection fee that will now be collected by the DMV or county tax assessor-collector at the time of registration.

Beginning on the single sticker transition date, the maximum inspection fee collected by emissions inspection stations will be lowered from \$16 to \$11.50 for vehicles subject to emissions inspections in Travis and Williamson Counties. The language in §114.87(a) sets the maximum inspection fee that emissions inspections stations located in Travis and Williamson Counties may collect and the state's portion of the vehicle emissions inspection fee that the emissions inspection stations remit to the DPS. The amendment to §114.87 also adds language in proposed subsection (d) that specifies that owners of vehicles subject to vehicle emissions inspections in Travis and Williamson Counties will remit the state's portion of the vehicle emissions inspection fee, \$4.50, to the DMV or county tax assessor-collector at the time of registration. The language clarifying when the requirements in proposed subsection (d) go into effect was not included in the proposed amendment to §114.87(d). As discussed elsewhere in the Section by Section discussion of this preamble, the adopted amendment to this section contains modifications that replace the references to specific transition dates included in the proposed amendment to this section with references to the single sticker transition date.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the adopted rules do not meet the definition of a "major environmental rule." Texas Government

Code, §2001.0225 states that a "major environmental rule" is, "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." Furthermore, while the adopted rulemaking does not constitute a major environmental rule, even if it did, a regulatory impact analysis is not be required because the adopted rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule. Texas Government Code, §2001.0225 applies only to a major environmental rule which, "(1) exceeds a standard set by federal law, unless the rule is specifically required by state law; (2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; (3) exceeds 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) adopts a rule solely under the general powers of the agency instead of under a specific state law."

The adopted rulemaking implements requirements of the Federal Clean Air Act (FCAA). Under 42 United States Code (USC), §7410, each state is required to adopt and implement a SIP containing adequate provisions to implement, attain, maintain, and enforce the NAAQS within the state. While 42 USC, §7410 generally does not require specific programs, methods, or reductions in order to meet the standard, state SIPs

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," (meaning 42 USC, Chapter 85, Air Pollution Prevention and Control, otherwise known as the FCAA). The provisions of the 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 and control measures to assure that their SIPs provide for implementation, attainment, maintenance, and enforcement of the NAAQS within the state. Furthermore, while states generally are afforded some flexibility in adopting and implementing a SIP, vehicle I/M programs are required elements of the SIP pursuant to 42 USC, §7511(a) based on the classification of an area.

The specific intent of the adopted rulemaking is to implement applicable sections of HB 2305, relating to replacing the current Texas dual inspection and registration sticker system with a single vehicle registration insignia sticker and modifying the method used

to collect the state's portion of the vehicle emissions inspection fee. The adopted rulemaking does not constitute a major environmental rule under Texas Government Code, §2001.0225(g)(3) because: 1) the specific intent of the adopted rulemaking is not to protect the environment or reduce risks to human health from environmental exposure, but rather to modify administrative aspects of an existing program by implementing HB 2305, which replaces the current dual inspection and registration sticker system with a single vehicle registration insignia sticker and modifies the method used to collect the state's portion of the vehicle emissions inspection fee; and 2) the adopted rulemaking does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs, nor will the adopted rules adversely affect in a material way the environment, or the public health and safety of the state or a sector of the state because the amendments are merely administrative changes to the existing program. Because the adopted rulemaking is not a major environmental rule, it is not subject to a regulatory impact analysis under Texas Government Code, §2001.0225.

While the adopted rulemaking does not constitute a major environmental law, even if it did, it is not be subject to a regulatory impact analysis under Texas Government Code, §2001.0225. The requirement to provide a fiscal analysis of regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th Legislature, 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact

analysis of extraordinary rules. These 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 will seldom apply, the commission provided a cost estimate for SB 633 that concluded: "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 will 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 rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law.

The FCAA does not always require specific programs, methods, or reductions in order to meet the NAAQS; thus, states must develop programs for each nonattainment area 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 revisions to the SIP and 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 revision to the SIP and rules 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 Legislative Budget Board (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 and rules have a broad impact, that 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 unamended. 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" (Texas Government Code, §2001.035). 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.

Even if the adopted rulemaking constituted a major environmental rule under Texas Government Code, §2001.0225(g)(3), a regulatory impact analysis is not required because this exemption is part of the commission's SIP for making progress toward the attainment and maintenance of the NAAQS. Therefore, the adopted rules do not exceed a standard set by federal law or exceed an express requirement of state law since they are part of an overall regulatory scheme designed to meet, not exceed, the relevant standard set by federal law - the NAAQS. In addition, the adoption and maintenance of the I/M program is directly required by federal law pursuant to 42 USC, §7511(a). The commission is charged with protecting air quality within the state and to design and

submit a plan to achieve attainment and maintenance of the federally mandated NAAQS. The Third District Court of Appeals upheld this interpretation in *Brazoria County v. Texas Comm'n on Env'tl. Quality*, 128 S.W. 3d 728 (Tex. App. - Austin 2004, *no writ*). In addition, this rulemaking is directly required by HB 2305.

Furthermore, no contract or delegation agreement covers the topic that is the subject of this rulemaking. Finally, this rulemaking was not developed solely under the general powers of the agency but is authorized by specific sections of Texas Health and Safety Code (THSC), Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code (TWC), which are cited in the Statutory Authority section of this preamble, including THSC, §§382.011, 382.012, and 382.017.

This rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), for the following reasons. The adopted rulemaking is not a major environmental law because: 1) the specific intent of the adopted rules is not to protect the environment or reduce risks to human health from environmental exposure but rather to modify administrative aspects of an existing program by implementing HB 2305, which replaces the current dual inspection and registration sticker system with a single vehicle registration insignia sticker, and modifies the method used to collect the state's portion of the vehicle emissions inspection fee; and 2) the adopted rulemaking does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs, nor will it adversely affect in a

material way the environment, or the public health and safety of the state or a sector of the state because the amendments are merely administrative changes to the existing program. Furthermore, even if the adopted rulemaking was a major environmental rule, it does not meet any of the four applicability criteria listed in Texas Government Code, §2001.0225 because: 1) the adopted rulemaking is part of the SIP, and as such is designed to meet, not exceed the relevant standard set by federal law; 2) this rulemaking is directly required by state law; 3) no contract or delegation agreement covers the topic that is the subject of this rulemaking; and 4) the adopted rulemaking is authorized by specific sections of THSC, Chapter 382 (also known as the Texas Clean Air Act), and the TWC, which are cited in the Statutory Authority section of this preamble.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period, and no comments were received.

Takings Impact Assessment

The commission evaluated the adopted rules and performed an analysis of whether the adopted rules constitute a taking under Texas Government Code, Chapter 2007. The commission's assessment indicates Texas Government Code, Chapter 2007 does not apply.

Under Texas Government Code, §2007.002(5), taking means: "(A) a governmental

action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Article I, Texas Constitution; or (B) a governmental action that: (i) affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and (ii) is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect."

The specific purpose of the adopted rules is to implement applicable sections of HB 2305, relating to administrative changes to the I/M safety inspection process. HB 2305 requires replacement of the current Texas dual inspection and registration sticker system with a single vehicle registration insignia sticker and modifies the method used to collect the state's portion of the vehicle emissions inspection fee. Therefore, the adopted rules do not have any impact on private real property.

Promulgation and enforcement of the adopted rules is neither a statutory nor a

constitutional taking of private real property. These rules are not burdensome, restrictive, or limiting of rights to private real property because the adopted rules do not affect a landowner's rights in private real property. These rules do not burden, restrict, or limit the owner's right to property, nor does it reduce the value of any private real property by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, these rules do not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found the adoption is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), relating to rules subject to the Coastal Management Program (CMP), and will, therefore, require that goals and policies of the CMP be considered during the rulemaking process. 31 TAC §505.11(b)(2) applies only to air pollutant emissions, on-site sewage disposal systems, and underground storage tanks and 31 TAC §505.11(b)(4) applies to all other actions.

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 procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore,

consistent with CMP goals and policies.

The commission invited public comment regarding the consistency with the CMP during the public comment period and no comments were received.

Public Comment

Public hearings were offered in Houston on October 29, 2013; in Austin on October 30, 2013; in Fort Worth on October 31, 2013; and in El Paso on November 1, 2013. The hearings were not officially opened because no one registered to provide oral comments. The comment period opened on September 27, 2013 and closed on November 4, 2013. The commission received written comments from the City of Houston's Department of Health and Human Services, Envirotest Systems Holdings Corporation (Envirotest), the EPA, and the North Central Texas Council of Governments (NCTCOG). Two commenters expressed support for the revisions to the rules and the I/M SIP. Two commenters suggested changes to the revisions to the rules and the I/M SIP.

Responses to Comments

The EPA expressed support for the revisions to §§114.1, 114.2, 114.21, 114.50, 114.53, 114.82 - 114.84, and 114.87 and commented that the revisions will implement the preferred registration denial enforcement strategy and may improve the enforcement and compliance components of the I/M program.

The commission appreciates the EPA's support of this rulemaking and this I/M SIP revision. No changes were made in response to this comment.

The EPA requested an explanation regarding how vehicle owners will be made aware of the requirement to perform an emissions inspection no earlier than 90 days before the expiration of the vehicle registration.

The TCEQ staff plans to work with the DMV and the DPS to develop the details of a public outreach campaign to alert vehicle owners of the revised requirement to have the vehicle inspected within 90 days prior to the expiration of the vehicle registration. No changes were made in response to this comment.

The EPA requested an explanation of how the transition from sticker-based enforcement to registration denial enforcement starting March 1, 2015 will take place, especially when inspection due dates and vehicle registration dates do not coincide. The EPA commented that under such a scenario some vehicles would have to be inspected more than once in a 12-month period and asked what special provisions or exemptions might be afforded to those vehicle owners.

No special provisions or exemptions are included in this rulemaking. The TCEQ staff plans to work with the DMV and the DPS to develop the process for implementing the transition from sticker-based enforcement to registration denial enforcement of the I/M program requirements. The TCEQ staff anticipates that the details of the process will be provided as part of a public outreach campaign after the development of the transition process is completed. The current dual sticker system will remain in place and effective until the provisions of HB 2305 are implemented by the DPS and the DMV to ensure stability of the I/M program. No changes were made in response to this comment.

The NCTCOG conveyed its support for HB 2305. The NCTCOG recommended that the TCEQ establish a robust educational program to help the public understand the changes taking place, especially as the changes relate to the fees charged at the inspection station for ASM and OBD tests since the LIRAP fee will no longer be collected at the time of inspection. The NCTCOG commented that a proper education program in place will help to avoid potential disproportionate imprints under Executive Order 12898 (Environmental Justice) since ASM vehicles are older and often owned by lower-income individuals.

Executive Order 12898 only applies to actions by federal agencies and does not apply to the TCEQ's rulemaking; however, the TCEQ staff plans to work with the DMV and the DPS to develop the plan for implementing the changes to the I/M program requirements contained in this rulemaking. The TCEQ staff anticipates that the details of the plan will be provided as part of a public outreach campaign that will inform motorists of the changes to the fees charged by the inspection station at the time of the vehicle inspection and by the DMV or county tax assessor-collector at the time of vehicle registration. No changes were made in response to this comment.

The NCTCOG expressed support for the use of remote sensing technology to identify high-emitting vehicles and conveyed its belief that this technology is not being used often enough to be effective. The NCTCOG included a June 2011 report entitled, "Enhanced Remote Sensing Performance Based Pilot Programs," based upon a study conducted by the NCTCOG and Envirotest. The NCTCOG commented that based upon the referenced study, more stringent cut-points and a greater sampling of vehicles are key to making remote sensing successful. The NCTCOG suggested that the increased use of remote sensing would assist the DPS in enforcing the requirement to conduct emissions tests on vehicles that are registered outside of an I/M county but travel within an I/M area more than 60 days per year.

The commission appreciates the NCTCOG's support on enforcement of the I/M program; however, expanding the role of the remote sensing component of the current I/M program is beyond the scope of this rulemaking. No changes were made in response to this comment.

The NCTCOG expressed support for the revisions to §114.21(e) and (f) that requires removal and destruction of the vehicle inspection certificate and vehicle registration insignia sticker from vehicles currently exempt from anti-tampering requirements before the vehicles are offered for sale or public examination. The NCTCOG suggested that this requirement be extended to all retail vehicle sales and to all vehicles sold at auction.

The commission appreciates the NCTCOG's support of this revision to §114.21(e) and (f); however, expanding the use of this requirement to all retail vehicle or auction sales is beyond the scope of this rulemaking. No changes were made in response to this comment.

The NCTCOG requested more transparency be brought to the state's Vehicle Inspection Advisory Committee and suggested that meeting notices be posted on the TCEQ, DPS,

and DMV websites, and that an e-mail distribution list be developed to inform interested parties of upcoming meetings. The NCTCOG also recommended that committee meetings be hosted in each of the four I/M regions once per year to help increase attendance.

The commission appreciates the NCTCOG's suggestions regarding the State's Vehicle Inspection Advisory Committee. The purpose and task of the advisory committee are the responsibility of the DPS. The TCEQ is responsible for appointing one member to the committee and will inform the committee of the NCTCOG's suggestions. No changes were made in response to this comment.

Envirotest commented that it applauds the TCEQ's SIP programs and supports the I/M SIP revision. Envirotest urged the TCEQ to continue vigorous enforcement of the I/M requirements and identified I/M programs as essential to attainment of health standards in nonattainment areas. Envirotest urged continued use of remote sensing technology and rigorous enforcement of the Texas I/M program requirements in support of the Texas SIP and to help prevent backsliding. Envirotest also suggested increasing the use of the remote sensing technology in order to restore the on-road program to measuring 10% - 20% of I/M area registered vehicles.

The commission appreciates Envirotest's support. As discussed in the *Demonstrating Noninterference under Federal Clean Air Act, §110(l)* portion of the Background and Summary section of this preamble, no backsliding is anticipated as a result of these changes. Expanding the role of the remote sensing component of the I/M program is beyond the scope of this rulemaking. No changes were made in response to this comment.

The City of Houston's Department of Health and Human Services offered to assist the TCEQ with the public hearings as needed.

The commission appreciates City of Houston's Department of Health and Human Services offer for assistance with the public hearing process for this rulemaking and this I/M SIP revision. No changes were made in response to this comment.

SUBCHAPTER A: DEFINITIONS

§114.1, §114.2

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102, General Powers, TWC, §5.103, Rules, and TWC, §5.105, General Policy, which provide the commission with the general powers to carry out its duties and authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.013, General Jurisdiction of Commission, which states the commission's authority over various statutory programs. The revisions are also adopted under Texas Health and Safety Code (THSC), §382.017, Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of THSC, Chapter 382 (the Texas Clean Air Act), and to adopt rules that differentiate among particular conditions, particular sources, and particular areas of the state. The revisions are also adopted under THSC, §382.002, Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.019, Methods Used to

Control and Reduce Emissions From Land Vehicles, which provides the commission the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles; THSC, Chapter 382, Subchapter G, Vehicle Emissions, which provides the commission the authority by rule to establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of Federal Clean Air Act, 42 United States Code, §§7401 *et seq.*; and THSC, Chapter 382, Subchapter H, Vehicle Emissions Programs in Certain Counties, which authorizes the commission to adopt an inspection and maintenance program for participating early action compact counties. The rule revisions are adopted pursuant to amendments to Texas Transportation Code, §548.104 and §548.302, which were amended by House Bill (HB) 2305, 83rd Legislature, 2013, and THSC, §382.0622(a), which was also amended by HB 2305.

The amendments implement THSC, §382.019 and §382.0622(a), Chapter 382, Subchapter G, in addition to Texas Transportation Code, §548.104 and §548.302.

§114.1. 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 which are defined by the TCAA, the following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Dual-fuel vehicle--Any motor vehicle or motor vehicle engine engineered and designed to be operated on two different fuels, but not a mixture of the two.

(2) Emergency vehicle--A vehicle defined as an authorized emergency vehicle according to Texas Transportation Code, §541.201(1).

(3) Emissions--The emissions of oxides of nitrogen, volatile organic compounds, carbon monoxide, particulate, or any combination of these substances.

(4) First safety inspection certificate--Initial Texas Department of Public Safety (DPS) certificates issued through DPS-certified [DPS certified] inspection stations for every new vehicle found to be in compliance with the rules and regulations governing safety inspections. **Beginning on the single sticker transition date as defined in this section,** Effective March 1, 2015, the safety inspection certificates will no longer be used.

(5) First vehicle registration--Initial vehicle registration insignia sticker issued through the Texas Department of Motor Vehicles for every new vehicle found to be in compliance with the rules and regulations governing vehicle registration prior to the single sticker transition date as defined in this section March 1, 2015 and vehicle registration and safety inspections beginning on the single sticker transition date. effective March 1, 2015.

(6) [(5)] Gross vehicle weight rating--The value specified by the manufacturer as the maximum design loaded weight of a vehicle. This is the weight as expressed on the vehicle's registration, and includes the weight the vehicle can carry or draw.

(7) [(6)] Heavy-duty vehicle--Any passenger vehicle or truck capable of transporting people, equipment, or cargo, that has a gross vehicle weight rating (GVWR) greater than 8,500 pounds, and is required to be registered under Texas Transportation Code, §502.002. For purposes of the mobile emission reduction credit trading program the heavy-duty class is divided into the following subclasses:

(A) Light heavy-duty vehicle--Any passenger vehicle or truck capable of transporting people, equipment, or cargo that has a GVWR greater than 8,500 pounds, but less than or equal to 10,000 pounds.

(B) Medium heavy-duty vehicle--Any passenger vehicle or truck capable of transporting people, equipment, or cargo that has a GVWR greater than 10,000 pounds, but less than or equal to 19,500 pounds.

(C) Heavy heavy-duty vehicle--Any passenger vehicle or truck capable of transporting people, equipment, or cargo that has a GVWR greater than 19,500 pounds.

(8) [(7)] Inherently low emission vehicle--A vehicle as defined by 40 Code of Federal Regulations[,] Part 88.

(9) [(8)] Law enforcement vehicle--Any vehicle controlled by a local government and primarily operated by a civilian or military police officer or sheriff, or by state highway patrols, or other similar law enforcement agencies, and [which is] used for the purpose of law enforcement activities including, but not limited to, chase, apprehension, surveillance, or patrol of people engaged in or potentially engaged in unlawful activities.

(10) [(9)] Light-duty vehicle--Any passenger vehicle or truck capable of transporting people, equipment, or cargo[,] that has a gross vehicle weight rating

(GVWR) less than or equal to 8,500 pounds[,] and registered or required to be registered under Texas Transportation Code, §502.002. For purposes of the mobile emission reduction credit trading program the light-duty class is divided into the following subclasses:

(A) Light-duty vehicle--Any passenger vehicle capable of seating 12 or fewer passengers that has a GVWR less than or equal to 6,000 pounds.

(B) Light-duty truck 1--Any passenger truck capable of transporting people, equipment, or cargo[,] that has a GVWR less than or equal to 6,000 pounds.

(C) Light-duty truck 2--Any passenger truck capable of transporting people, equipment, or cargo[,] that has a GVWR greater than 6,000 pounds[,] but less than or equal to 8,500 pounds.

(11) [(10)] Loaded mode inspection and maintenance test--A measurement of the tailpipe exhaust emissions of a vehicle while the drive wheel rotates on a dynamometer, which simulates the full weight of the vehicle driving down a level roadway. Loaded test equipment specifications must [shall] meet United States Environmental Protection Agency requirements for acceleration simulation mode equipment.

(12) [(11)] Low emission vehicle (LEV)--A vehicle in a class or category of vehicles that has been certified by the United States Environmental Protection Agency for any model year to meet:

(A) the LEV standards applicable under 42 United States Code, Part C, Subchapter II, §§7581 *et seq.*; or

(B) emission limits at least as stringent as the applicable LEV standards for the Federal Clean Fuel Fleet program under 40 Code of Federal Regulations §§88.104-94, 88.105-94, and 88.311-93, as published in the *Federal Register* on September 30, 1994 (59 FR 50042).

(13) [(12)] Mass transit authority--A transportation or transit authority or department established under Chapter 141, 63rd Legislature (1973), as defined in Texas Transportation Code, Chapters 451 - 453 (relating to Metropolitan Rapid Transit Authorities, Regional Transportation Authorities, and Municipal Transit Departments) [,] that operates a mass transit system under any of those laws.

(14) [(13)] Reformulated gasoline--Gasoline that has been certified as a reformulated gasoline under the federal certification regulations adopted in accordance with 42 United States Code, §7545(k).

(15) Single sticker transition date--The transition date of the single sticker system is the later of March 1, 2015 or the date that the Texas Department of Motor Vehicles and the Texas Department of Public Safety concurrently implement the single sticker system required by Texas Transportation Code, §502.047.

(16) ~~(15)~~ [(14)] Texas Inspection and Maintenance State Implementation Plan--The portion of the Texas state implementation plan that includes the procedures and requirements of the vehicle emissions inspection and maintenance program as adopted by the commission May 29, 1996[,] in accordance with 40 Code of Federal Regulations Part 51, Subpart S, issued November 5, 1992; the United States Environmental Protection Agency flexibility amendments dated September 18, 1995; and the National Highway Systems Designation Act of 1995. A copy of the Texas Inspection and Maintenance State Implementation Plan is available at the Texas Commission on Environmental Quality, 12100 Park 35 Circle, Austin, Texas, 78753; mailing address: P.O. Box 13087, MC 166, Austin, Texas 78711-3087.

(17) ~~(16)~~ [(15)] Tier I federal emission standards--The standards are defined in 42 United States Code, §7521, and in 40 Code of Federal Regulations[,] Part 86. The phase-in of these standards began in model year 1994.

(18) ~~(17)~~ [(16)] Ultra low emission vehicle--A vehicle as defined by 40 Code of Federal Regulations[,] Part 88.

(19) ~~(18)~~ Vehicle registration--Vehicle characteristics, corresponding owner information, and registration expiration date contained in the Texas Department of Motor Vehicles registration system.

(20) ~~(19)~~ Vehicle registration insignia sticker--The sticker issued through the Texas Department of Motor Vehicles (DMV) or county tax assessor-collector to be affixed on the windshield of a vehicle compliant with the DMV regulations. Beginning on the single sticker transition date as defined in this section Effective March 1, 2015, the vehicle registration insignia sticker will be used as proof of compliance with inspection and maintenance program requirements, the DMV's rules and regulations governing vehicle registration, and the Texas Department of Public Safety's rules and regulations governing safety inspections.

(21) ~~(20)~~ [(17)] Zero emission vehicle--A vehicle as defined by 40 Code of Federal Regulations[,] Part 88.

§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; LIRAP; 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; ~~in which the vehicle is tested on the dynamometer simulating the use of 50% of the vehicle available horsepower to accelerate at a rate of 3.3 miles per hour (mph) per second at a constant speed of 15 mph; 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. in which the vehicle is tested on the dynamometer simulating the use of 25% of the vehicle available horsepower to accelerate at a rate 3.3 mph per second at a constant speed of 25 mph.~~

(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 (related to Definitions), the annual~~ 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, effective March 1, 2015, 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: [the vehicle safety inspection certificate or the 30-day period following an out-of-cycle inspection.]

(A) the vehicle safety inspection certificate prior to the single sticker transition date as defined in §114.1 of this title (relating to Definitions) ~~March 1, 2015;~~

(B) the vehicle registration beginning on the single sticker transition date as defined in §114.1 of this title ~~effective March 1, 2015;~~ or

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

SUBCHAPTER B: MOTOR VEHICLE ANTI-TAMPERING REQUIREMENTS

§114.21

Statutory Authority

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

comprehensive plan for the control of the state's air; THSC, §382.019, Methods Used to Control and Reduce Emissions From Land Vehicles, which provides the commission the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles; THSC, Chapter 382, Subchapter G, Vehicle Emissions, which provides the commission the authority by rule to establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of Federal Clean Air Act, 42 United States Code, §§7401 *et seq.*; and THSC, Chapter 382, Subchapter H, Vehicle Emissions Programs in Certain Counties, which authorizes the commission to adopt an inspection and maintenance program for participating early action compact counties. The rule revisions are adopted pursuant to amendments to Texas Transportation Code, §548.104 and §548.302, which were amended by House Bill (HB) 2305, 83rd Legislature, 2013, and THSC, §382.0622(a), which was also amended by HB 2305.

The amendment implements THSC, §382.019 and §382.0622(a), Chapter 382, Subchapter G, in addition to Texas Transportation Code, §548.104 and §548.302.

§114.21. Exemptions.

(a) The following exemptions [shall] apply to specified motor vehicles or motor vehicle engines.

(1) Motor vehicles or motor vehicle engines which are intended solely or primarily for legally sanctioned motor competitions, for research and development uses, or for instruction in a bona fide vocational training program where the use of a system or device would be detrimental to the purpose for which the vehicle or engine is intended to be used are exempt from the provisions of §114.20(a), (b), and (d) of this title (relating to Maintenance and Operation of Air Pollution Control Systems or Devices Used to Control Emissions from Motor Vehicles).

(2) Motor vehicles or motor vehicle engines intended solely or primarily for research and development uses, or for instruction in a bona fide vocational training program where the introduction of leaded gasoline or the circumvention of an emission control system or device is necessary for the intended purposes of the program are exempt from the provisions of §114.20(e) of this title.

(b) Vehicles belonging to members of the United States [U.S.] Department of Defense (DoD) participating in the DoD Privately Owned Vehicle Import Control Program or other persons being transferred to a foreign country are exempt from the provisions of §114.20(a), (b), and (d) of this title if the following conditions are met.

(1) Only the catalytic converter, oxygen sensor, and/or the fuel filler inlet restrictor are removed from the vehicle.

(2) The vehicle is delivered to the appropriate port for overseas shipment within 30 days after the emission control device(s) is removed.

(3) If the vehicle is returned to the United States, all systems or devices used to control emissions from the vehicle are restored to good operable condition within 30 days of pick-up of the vehicle from the appropriate port of importation.

(4) Documentation must [shall] be kept with the vehicle at all times while the vehicle is operated in Texas that [which] provides sufficient information to demonstrate compliance with all appropriate qualifications and conditions of this exemption, including the following:

(A) the unique vehicle identification number (VIN) of the subject vehicle;

(B) the agency, company, or organization that [which] employs the owner of the subject vehicle;

(C) the country to which the owner of the subject vehicle is being transferred;

(D) the dates when applicable alterations were performed on the subject vehicle;

(E) the date when the subject vehicle is scheduled to be delivered to the appropriate port for shipment out of the United States; and

(F) the date when the subject vehicle is picked up from the port of importation upon returning to the United States.

(c) Motor vehicles are exempt from the provisions of §114.20(a), (b), and (d) of this title if the following conditions apply:

(1) the motor vehicles are registered as farm vehicles with the Vehicle Titles and Registration Division of the Texas Department of Motor Vehicles [Transportation], are intended solely or primarily for use on a farm or ranch, and their air pollution control devices or systems were removed or made inoperable prior to June 1, 2000; or

(2) the motor vehicles were granted an exemption from the provisions of §114.20(a) and (b) of this title by the commission or its predecessor agency prior to June 1, 2000.

(A) A copy of the exemption must [shall] be kept with the vehicle at all times and [shall be] available for inspection by representatives of the commission, the Texas Department of Public Safety (DPS), or any other law enforcement agency upon request. The approved exclusion must [shall] also be presented to the certified vehicle inspector before each annual vehicle safety inspection of the vehicle as administered by the DPS.

(B) The exemption must [shall] be void and all pollution control systems and devices replaced on the vehicle and/or engine covered by the exclusion when the vehicle changes ownership or is no longer used for the purpose identified in the exclusion application. The executive director shall be informed in writing prior to the change of ownership or usage.

(d) The following vehicle transactions involving a "dealer" as defined in Texas Transportation Code, §503.001, are exempt from the requirements of §114.20(c) of this title:

(1) sales or transfers from one dealer to another; and

(2) sales, transfers, or trade-ins from an individual to a dealer.

(e) Federal, state, and local agencies or their agents that [which] sell abandoned, confiscated, or seized vehicles and any commercial vehicle auction facilities are exempt from the provisions of §114.20(c) of this title if the following conditions are met.

(1) **Before the single sticker transition date as defined in §114.1 of this title (relating to Definitions), the** The DPS motor vehicle safety inspection certificates must be removed from the vehicle and destroyed before the vehicle may be offered for sale or displayed for public examination. **Beginning on the single sticker transition date, ~~or,~~** effective March 1, 2015, the Texas Department of Motor Vehicles (DMV) vehicle registration insignia sticker must be removed from the vehicle and destroyed before the vehicle may be offered for sale or displayed for public examination.

(2) All potential buyers of the vehicle must be informed that deficiencies may be present in the vehicle pollution control systems on the vehicle. The buyer must also be informed of the liabilities to the buyer under §114.20 of this title and §114.50 of this title (relating to Vehicle Emissions Inspection Requirements) of operating the vehicle prior to the adequate restoration of all pollution control systems or devices on

the vehicle as originally equipped. The seller of the vehicle shall provide to the buyer a written acknowledgment of the receipt of this information which must be signed by the buyer prior to completion of the sales transaction. The seller shall retain a copy of this signed acknowledgment for two years and shall make it available, upon request.

(f) **Before the single sticker transition date as defined in §114.1 of this title,** ~~the~~ The owner of a motor vehicle that [which] has been totally disabled by accident, age, or malfunction and [which] will no longer be operated is exempt from the provisions of §114.20(c) of this title if the DPS motor vehicle safety inspection certificate is removed and destroyed before the vehicle is offered for sale or displayed for public examination. **Beginning on the single sticker transition date,** ~~Effective March 1, 2015,~~ the owner of a motor vehicle that has been totally disabled by accident, age, or malfunction and will no longer be operated is exempt from the provisions of §114.20(c) of this title if the DMV vehicle registration insignia sticker is removed and destroyed before the vehicle is offered for sale or displayed for public examination.

**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

§114.50, §114.53

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102, General Powers, TWC, §5.103, Rules, and TWC, §5.105, General Policy, which provide the commission with the general powers to carry out its duties and authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.013, General Jurisdiction of Commission, which states the commission's authority over various statutory programs. The revisions are also adopted under Texas Health and Safety Code (THSC), §382.017, Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of THSC, Chapter 382 (the Texas Clean Air Act), and to adopt rules that differentiate among particular conditions, particular sources, and particular areas of the state. The revisions are also adopted under THSC, §382.002, Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and

physical property; THSC, §382.011, General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.019, Methods Used to Control and Reduce Emissions From Land Vehicles, which provides the commission the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles; THSC, Chapter 382, Subchapter G, Vehicle Emissions, which provides the commission the authority by rule to establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of Federal Clean Air Act, 42 United States Code, §§7401 *et seq.*; and THSC, Chapter 382, Subchapter H, Vehicle Emissions Programs in Certain Counties, which authorizes the commission to adopt an I/M program for participating Early Action Compact counties. The rule revisions are adopted pursuant to amendments to Texas Transportation Code, §548.104 and §548.302, which were amended by House Bill (HB) 2305, 83rd Legislature, 2013, and THSC, §382.0622(a), which was also amended by HB 2305.

The amendments implement THSC, §382.019 and §382.0622(a), Chapter 382, Subchapter G, in addition to Texas Transportation Code, §548.104 and §548.302.

§114.50. Vehicle Emissions Inspection Requirements.

(a) Applicability. The requirements of this section and those contained in the Texas Inspection and Maintenance (I/M) State Implementation Plan (SIP) must [shall] be applied to all gasoline-powered motor vehicles 2 - 24 years old and subject to an annual emissions inspection[,] beginning with the first safety inspection. Military tactical vehicles, motorcycles, diesel-powered vehicles, dual-fueled vehicles that cannot operate using gasoline, and antique vehicles registered with the Texas Department of Motor Vehicles [Transportation] are excluded from the program. Safety inspection facilities and inspectors certified by the Texas Department of Public Safety (DPS) must [shall] inspect all subject vehicles[,] in the following program areas[,] as defined in §114.2 of this title (relating to Inspection and Maintenance Definitions), in accordance with the following schedule.

(1) This paragraph applies to all vehicles registered and primarily operated in the Dallas-Fort Worth (DFW) program area.

(A) Beginning May 1, 2002, all 1996 and newer model year vehicles registered and primarily operated in Collin, Dallas, Denton, and Tarrant Counties equipped with on-board diagnostic (OBD) systems must [shall] be tested using United States Environmental Protection Agency (EPA)-approved OBD test procedures.

(B) Beginning May 1, 2002, all pre-1996 model year vehicles registered and primarily operated in Collin, Dallas, Denton, and Tarrant Counties must [shall] be tested using an acceleration simulation mode (ASM-2) test[,] or a vehicle emissions test approved by the EPA.

(C) All vehicle emissions inspection stations in affected program areas must [shall] offer both the ASM-2 test and the OBD test[,] except low volume emissions inspection stations. If an owner or operator wishes to have his or her station classified as a low volume emissions inspection station, the station owner or operator shall [must] petition the DPS in accordance with the rules and procedures established by the DPS.

(2) This paragraph applies to all vehicles registered and primarily operated in the extended DFW (EDFW) program area.

(A) Beginning May 1, 2003, all 1996 and newer model year vehicles registered and primarily operated in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties equipped with OBD systems must [shall] be tested using EPA-approved OBD test procedures.

(B) Beginning May 1, 2003, all pre-1996 model year vehicles registered and primarily operated in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties must [shall] be tested using an ASM-2 test[,] or a vehicle emissions test approved by the EPA.

(C) All vehicle emissions inspection stations in affected program areas must [shall] offer both the ASM-2 test and the OBD test[,] except low volume emissions inspection stations. If an owner or operator wishes to have his or her station classified as a low volume emissions inspection station, the station owner or operator shall [must] petition the DPS in accordance with the rules and procedures established by the DPS.

(3) This paragraph applies to all vehicles registered and primarily operated in the Houston-Galveston-Brazoria (HGB) program area.

(A) Beginning May 1, 2002, all 1996 and newer model year vehicles registered and primarily operated in Harris County equipped with OBD systems must [shall] be tested using EPA-approved OBD test procedures.

(B) Beginning May 1, 2002, all pre-1996 model year vehicles registered and primarily operated in Harris County must [shall] be tested using an ASM-2 test[,] or a vehicle emissions test approved by the EPA.

(C) All vehicle emissions inspection stations in affected program areas must [shall] offer both the ASM-2 test and the OBD test[,] except low volume emissions inspection stations. If an owner or operator wishes to have his or her station classified as a low volume emissions inspection station, the station owner or operator shall [must] petition the DPS in accordance with the rules and procedures established by the DPS.

(D) Beginning May 1, 2003, all 1996 and newer model year vehicles equipped with OBD systems and registered and primarily operated in Brazoria, Fort Bend, Galveston, and Montgomery Counties must [shall] be tested using EPA-approved OBD test procedures.

(E) Beginning May 1, 2003, all pre-1996 model year vehicles registered and primarily operated in Brazoria, Fort Bend, Galveston, and Montgomery Counties must [shall] be tested using the ASM-2 test procedures[,] or a vehicle emissions test approved by the EPA.

(4) This paragraph applies to all vehicles registered and primarily operated in the El Paso program area.

(A) All vehicles must [shall] be tested using a two-speed idle (TSI) test through December 31, 2006.

(B) Beginning January 1, 2007, all 1996 and newer model year vehicles equipped with OBD systems must [shall] be tested using EPA-approved OBD test procedures.

(C) Beginning January 1, 2007, all pre-1996 model year vehicles must [shall] be tested using a TSI test.

(D) Beginning January 1, 2007, all vehicle emissions inspection stations in the El Paso program area must [shall] offer both the TSI test and OBD test.

(b) Control requirements.

(1) No person or entity may operate, or allow the operation of, a motor vehicle registered in the DFW, EDFW, HGB, and El Paso program areas that does not comply with:

(A) ~~prior to March 1, 2015~~, all applicable air pollution emissions control-related [control related] requirements included in the annual vehicle safety inspection requirements administered by the DPS; as evidenced **prior to the single sticker transition date as defined in §114.1 of this title (relating to Definitions)** by a current valid inspection certificate affixed to the vehicle windshield, a current valid vehicle inspection report (VIR), or other form of proof authorized by the DPS; [and]

(B) **beginning on the single sticker transition date,** ~~effective March 1, 2015~~, all applicable air pollution emissions control-related requirements included in the annual vehicle safety inspection requirements administered by the DPS, as evidenced by a current valid vehicle registration insignia sticker affixed to the vehicle windshield, a current valid VIR, or other form of proof authorized by the DPS; and

(C) [(B)] the vehicle emissions I/M requirements contained in this subchapter.

(2) All federal government agencies must [shall] require a motor vehicle operated by any federal government agency employee on any property or facility under the jurisdiction of the federal government agency and located in a program area to comply with all vehicle emissions I/M requirements specified in Texas Health and

Safety Code, Subchapter G, §§382.201 - 382.216 (concerning Vehicle Emissions), and this chapter. Commanding officers or directors of federal facilities shall certify annually to the executive director, or appointed designee, that all subject vehicles have been tested and are in compliance with the Federal Clean Air Act (42 United States Code, §§7401 *et seq.*). This requirement will [shall] not apply to visiting federal government agency, employee, or military personnel vehicles as long as such visits do not exceed 60 calendar days per year.

(3) Any motorist in the DFW, EDFW, HGB, or El Paso program areas who has received a notice from an emissions inspection station that there are recall items unresolved on his or her motor vehicle[,] should furnish proof of compliance with the recall notice prior to the next vehicle emissions inspection, such as [. The motorist may present] a written statement from the dealership or leasing agency indicating that emissions repairs have been completed [as proof of compliance].

(4) A motorist whose vehicle has failed an emissions test may request a challenge retest through the DPS. If the retest is conducted within 15 days of the initial inspection, the retest is free.

(5) A motorist whose vehicle has failed an emissions test and has not requested a challenge retest or whose vehicle has failed a challenge retest shall [must]

have emissions-related repairs performed and [must] submit a properly completed vehicle repair form (VRF) in order to receive a retest. In order to receive a waiver or time extension, the motorist shall [must] submit a VRF or applicable documentation as deemed necessary by the DPS.

(6) A motorist whose vehicle is registered in the DFW, EDFW, HGB, or El Paso program areas[,] or in any county adjacent to a program area and whose vehicle has failed an on-road test administered by the DPS shall:

(A) submit the vehicle for an out-of-cycle vehicle emissions inspection within 30 days of written notice by the DPS; and

(B) satisfy all inspection, extension, or waiver requirements of the vehicle emissions I/M program specified in 37 TAC Chapter 23, Subchapter E (relating to Vehicle Emissions Inspection And Maintenance Program ~~Vehicle Inspection~~) [§23.93 (relating to Vehicle Emission Inspection Requirements)].

(7) A subject vehicle registered in a county without an I/M program that meets the applicability criteria of subsection (a) of this section and the ownership of which has changed through a retail sale as defined by Texas Occupations Code, §2301.002, is not eligible for title receipt or registration in a county with an I/M

program unless proof is presented that the vehicle has passed an approved vehicle emissions inspection within 90 days before the title transfer. The evidence of proof required may be in the form of the vehicle inspection report (VIR) or another proof of the program compliance as authorized by the DPS. All 1996 and newer model year vehicles with less than 50,000 miles are exempt from the test-on-resale requirements of this paragraph.

(8) State, governmental, and quasi-governmental agencies that fall outside the normal registration or inspection process must [shall] comply with all vehicle emissions I/M requirements for vehicles primarily operated in I/M program areas.

(c) Waivers and extensions. A motorist may apply to the DPS for a waiver or an extension as specified in 37 TAC Chapter 23, Subchapter E, [§23.93,] which defers [defer] the need for full compliance with vehicle emissions standards for a specified period of time after failing a vehicle emissions inspection.

(d) Prohibitions.

(1) No person may issue or allow the issuance of a VIR, as authorized by the DPS [DPS,] unless all applicable air pollution emissions control-related [control related] requirements of the annual vehicle safety inspection and the vehicle emissions

I/M requirements are completely and properly performed in accordance with the rules and regulations adopted by the DPS and the commission. Prior to taking any enforcement action regarding this provision, the commission must [shall] consult with the DPS.

(2) **Before the single sticker transition date as defined in §114.1 of this title,** **no** ~~no~~ person may allow or participate in the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen safety inspection certificates, VIRs, VRFs, vehicle emissions repair documentation, or other documents that may be used to circumvent applicable vehicle emissions I/M requirements and to commit an offense specified in Texas Transportation Code, §548.603 (concerning Fictitious or Counterfeit Inspection Certificate or Insurance Document). **Beginning on the single sticker transition date,** ~~Effective March 1, 2015,~~ no person may allow or participate in the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen vehicle registration insignia stickers, VIRs, VRFs, vehicle emissions repair documentation, or other documents that may be used to circumvent applicable vehicle emissions I/M requirements and to commit an offense specified in Texas Transportation Code, §548.603.

(3) No organization, business, person, or other entity may represent itself as an emissions inspector certified by the DPS[,] unless such certification has been

issued under the certification requirements and procedures contained in Texas
Transportation Code, §§548.401 - 548.404.

(4) No person may act as or offer to perform services as a Recognized Emissions Repair Technician of Texas, as designated by the DPS, without first obtaining and maintaining DPS recognition.

§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 [shall] 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) February 28, 2015, 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 [shall] collect a fee of \$14 and [shall]

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, the emissions inspection station **in El Paso County** must [shall] collect a fee of \$16 and [shall] 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, but prior to March 1, 2015. Beginning on the single sticker transition date, Effective March 1, 2015, 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. [upon approval of the resolution]

(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, February 28, 2015,** 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 February 28, 2015,** any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(2)(A) or (B) of this title must [shall] 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 The emissions inspection station must [shall] 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 ~~Effective March 1, 2015~~ 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 ~~February 28, 2015~~, 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 ~~February 28, 2015~~, 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 [; shall] 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 The emissions inspection station must [shall] 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 Effective March 1, 2015 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 [shall] be the same as the amounts set forth in subsection (a) of this section. The challenge fee must [shall] 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 [shall] 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 Effective March 1, 2015, 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, as specified by the following requirements:

(1) In El Paso County, 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 the annual vehicle registration as part of the vehicle emissions inspection fee. 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, vehicle owners shall remit \$4.50 for motor vehicles subject to vehicles emissions inspections to the DMV or county tax assessor-collector at the time of the annual vehicle registration as part of the vehicle emissions inspection fee beginning upon the date specified by the commission.

(2) In the Dallas-Fort Worth and the extended Dallas-Fort Worth program areas, vehicle owners 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 the annual vehicle registration as part of the vehicle emissions inspection fee.

(3) In the Houston-Galveston-Brazoria program area, vehicle owners 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 the 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 3: EARLY ACTION COMPACT COUNTIES

§§114.82 - 114.84, and 114.87

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102, General Powers, TWC, §5.103, Rules, and TWC, §5.105, General Policy, which provide the commission with the general powers to carry out its duties and authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.013, General Jurisdiction of Commission, which states the commission's authority over various statutory programs. The revisions are also adopted under Texas Health and Safety Code (THSC), §382.017, Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of THSC, Chapter 382 (the Texas Clean Air Act), and to adopt rules that differentiate among particular conditions, particular sources, and particular areas of the state. The revisions are also adopted under THSC, §382.002,

Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.019, Methods Used to Control and Reduce Emissions From Land Vehicles, which provides the commission the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles; THSC, Chapter 382, Subchapter G, Vehicle Emissions, which provides the commission the authority by rule to establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of Federal Clean Air Act, 42 United States Code, §§7401 *et seq.*; and THSC, Chapter 382, Subchapter H, Vehicle Emissions Programs in Certain Counties, which authorizes the commission to adopt an inspection and maintenance program for participating early action compact counties. The rule revisions are adopted pursuant to amendments to Texas Transportation Code, §548.104 and §548.302, which were amended by House Bill (HB) 2305, 83rd Legislature, 2013, and THSC, §382.0622(a), which was also amended by HB 2305.

The amendments implement THSC, §382.019 and §382.0622(a), Chapter 382, Subchapter G, in addition to Texas Transportation Code, §548.104 and §548.302.

§114.82. Control Requirements.

(a) No person or entity may operate, or allow the operation of, a motor vehicle registered in the affected early action compact (EAC) counties that does not comply with:

(1) ~~prior to March 1, 2015~~, all applicable air pollution emissions control-related requirements included in the annual vehicle safety inspection requirements administered by the Texas Department of Public Safety (DPS) [,] as evidenced **prior to the single sticker transition date as defined in §114.1 of this title (relating to Definitions)** by a current valid inspection certificate affixed to the vehicle windshield, a current valid vehicle inspection report (VIR), or other form of proof authorized by the DPS; [and]

(2) **Beginning on the single sticker transition date**, ~~effective March 1, 2015~~, all applicable air pollution emissions control-related requirements included in the annual vehicle safety inspection requirements administered by the DPS as evidenced by a current valid vehicle registration insignia sticker affixed to the vehicle windshield or a current valid VIR, or other form of proof authorized by the DPS; and

(3) [(2)] the vehicle emissions inspection and maintenance (I/M) requirements contained in this subchapter.

(b) All federal government agencies must [shall] require a motor vehicle operated by any federal government agency employee on any property or facility under the jurisdiction of the agency and located in an affected EAC county to comply with all vehicle emissions I/M requirements contained in the Austin Area Early Action Compact Ozone State Implementation Plan Revision. Commanding officers or directors of federal facilities shall certify annually to the executive director, or appointed designee, that all subject vehicles have been tested and are in compliance with the Federal Clean Air Act (42 United States Code, §§7401 *et seq.*). This requirement does not apply to visiting agency, employee, or military personnel vehicles as long as such visits do not exceed 60 calendar days per year.

(c) A motorist in an affected EAC county who has received a notice from an emissions inspection station that there are unresolved recall items on the motor vehicle[,] shall furnish proof of compliance with the recall notice prior to the next vehicle emissions inspection, such as [. The motorist may present] a written statement from the dealership or leasing agency indicating that emissions repairs have been completed ~~as~~ [proof of compliance].

(d) A motorist whose vehicle has failed an emissions test may request a challenge retest through DPS. If the retest is conducted within 15 days of the initial inspection, the cost of the retest is free.

(e) A motorist whose vehicle has failed an emissions test and has not requested a challenge retest or has failed a challenge retest shall have emissions-related repairs performed and [shall] submit a properly completed vehicle repair form in order to receive a retest. In order to receive a waiver or time extension, the motorist shall submit a vehicle repair form or applicable documentation as considered necessary by the DPS.

(f) A motorist whose vehicle is registered in an affected EAC county, or in any county adjacent to an affected EAC county, and has failed an on-road test administered by the DPS shall:

(1) submit the vehicle for an out-of-cycle vehicle emissions inspection within 30 days of written notice by the DPS; and

(2) satisfy all inspection, extension, or waiver requirements of the vehicle emissions I/M program contained in the Austin Area Early Action Compact Ozone State Implementation Plan Revision.

(g) A vehicle registered in a county without an I/M program that meets the applicability criteria of §114.80(c) of this title (relating to Applicability), and the ownership of which has changed through a retail sale as defined by Texas Motor Vehicle Commission Code, Article 4413(36), §1.03 (moved to Texas Occupations Code, §2301.002, effective June 1, 2003), is not eligible for title receipt or registration in an affected EAC program county with an I/M program unless proof is presented that the vehicle has passed an approved vehicle emissions inspection within 90 days before the title transfer. The evidence of proof required may be in the form of the vehicle inspection report or another proof of the program compliance as authorized by the DPS. All 1996 and newer model year vehicles with less than 50,000 miles are exempt from the test-on-resale requirements of this subsection.

(h) State, governmental, and quasi-governmental agencies that fall outside the normal registration or inspection process must [shall] comply with all vehicle emissions I/M requirements contained in the Austin Area Early Action Compact Ozone State Implementation Plan Revision for vehicles primarily operated in I/M program areas.

§114.83. Waivers and Extensions.

A motorist may apply to the Texas Department of Public Safety for a waiver or an extension as specified in 37 TAC Chapter 23, Subchapter E (relating to Vehicle

Emissions Inspection and Maintenance Program ~~Vehicle Inspection~~, [§23.93 (relating to Vehicle Emissions Inspection Requirements),] which defers the need for full compliance with vehicle emissions standards for a specified period of time after failing a vehicle emissions inspection.

§114.84. Prohibitions.

(a) No person may issue or allow the issuance of a vehicle inspection report, as authorized by the Texas Department of Public Safety (DPS), unless all applicable air pollution emissions control-related requirements of the annual vehicle safety inspection and the vehicle emissions inspection and maintenance (I/M) requirements and procedures contained in the Austin Area Early Action Compact Ozone State Implementation Plan Revision are completely and properly performed in accordance with the rules and regulations adopted by the DPS and the commission. Prior to taking any enforcement action regarding this provision, the executive director shall consult with the DPS.

(b) **Before the single sticker transition date as defined in §114.1 of this title (relating to Definitions), no** ~~No~~ person may allow or participate in the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen safety inspection certificates, vehicle inspection reports, vehicle repair forms, vehicle emissions repair

documentation, or other documents that may be used to circumvent the vehicle emissions I/M requirements and procedures contained in the Austin Area Early Action Compact Ozone State Implementation Plan Revision. **Beginning on the single sticker transition date,** Effective March 1, 2015, no person may allow or participate in the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen vehicle registration insignia stickers, vehicle inspection reports, vehicle repair forms, vehicle emissions repair documentation, or other documents that may be used to circumvent the vehicle emissions I/M requirements and procedures contained in the Austin Area Early Action Compact Ozone State Implementation Plan Revision.

(c) No organization, business, person, or other entity may represent itself as an emissions inspector certified by the DPS[,] unless the certification has been issued under the certification requirements and procedures contained in Texas Transportation Code, §§548.401 - 548.404.

(d) No person may act as or offer to perform services as a Recognized Emissions Repair Technician of Texas, as designated by the DPS, without first obtaining and maintaining DPS recognition. Requirements to become a DPS Recognized Emission Repair Technician are contained in 37 TAC Chapter 23, Subchapter E, (relating to Vehicle Emissions Inspection and Maintenance Program) ~~(relating to Vehicle Inspection)~~ [§23.93 (relating to Vehicle Emissions Inspection Requirements)].

§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), February 28, 2015, any emissions inspection station required to conduct an emissions test in accordance with §114.80 of this title (relating to Applicability) must [shall] collect a fee not to exceed \$16 and [shall] 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, effective March 1, 2015, 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 [shall] 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) Effective on the single sticker transition date as defined in §114.1 of this title in ~~H~~-Travis and Williamson Counties, vehicle owners shall remit \$4.50 for motor vehicles subject to vehicle emissions inspections to the Texas Department of Motor Vehicles or county tax assessor-collector at the time of the annual vehicle registration as part of the vehicle emissions inspection fee.

**ORDER ADOPTING AMENDED RULES AND
REVISIONS TO THE STATE IMPLEMENTATION PLAN**

**Docket Nos. 2013-1109-RUL and 2013-1108-SIP
Rule Project Nos. 2013-035-114-AI and 2013-041-SIP-NR**

On February 14, 2014, the Texas Commission on Environmental Quality (Commission), during a public meeting, considered adoption of amendments to 30 Texas Administrative Code (TAC) Chapter 114, Control of Air Pollution from Motor Vehicles, Subchapter A: *Definitions*, §114.1 and §114.2, Subchapter B: *Motor Vehicle Anti-Tampering Requirements*, §114.21, and 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* §§114.50, 114.53, and Division 3: *Early Action Compact Counties*, §114.82 - 114.84, and 114.87 and corresponding revisions to the State Implementation Plan (SIP).

The Commission adopts these amendments, in 30 TAC Chapter 114, Control of Air Pollution from Motor Vehicles, Subchapter A: *Definitions*, §114.1 and §114.2, Subchapter B: *Motor Vehicle Anti-Tampering Requirements*, §114.21, and 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* §§114.50, 114.53, and Division 3: *Early Action Compact Counties*, §114.82 - 114.84, and 114.87; and corresponding revisions to the SIP. The adopted amendments implement House Bill 2305 from the 83rd Texas Legislature, 2013, Regular Session, relating to replacing the dual windshield sticker system for vehicle inspection and registration with a single vehicle registration insignia sticker and modifying the method used to collect the state portion of the vehicle safety and emissions inspection fee, in addition to minor non-programmatic updates to rule language to correct outdated references and for general clarity. Under Tex. Health & Safety Code Ann. §§ 382.011, 382.012, and 382.023 (Vernon 2011), the Commission has the authority to control the quality of the state's air and to issue orders consistent with the policies and purposes of the Texas Clean Air Act, Chapter 382 of the Tex. Health & Safety Code. The proposed rules were published for comment in the October 11, 2013, issue of the *Texas Register* (38 TexReg 7067).

Pursuant to Tex. Health & Safety Code Ann. § 382.017 (Vernon 2001), Tex. Gov't Code Chapter 2001 (Vernon 2008), and 40 Code of Federal Regulations § 51.102, and after proper notice, the Commission conducted a public hearings to consider the amended rules and revisions to the SIP. Proper notice included prominent advertisement in the areas affected at

least 30 days prior to the dates of the hearings. Public hearings were offered in Houston, Texas, on October 29, 2013; in Austin, Texas, on October 30, 2013; in Fort Worth, Texas, on October 31, 2013; and in El Paso, Texas, on November 1, 2013. No member of the public wished to present comments, so staff did not formally open the public hearings.

The Commission circulated hearing notices of its intended action to the public, including interested persons, the Regional Administrator of the EPA, and all applicable local air pollution control agencies. The public was invited to submit data, views, and recommendations on the proposed amended rules and SIP revisions, either orally or in writing, at the hearings or during the comment period. Prior to the scheduled hearings, copies of the proposed amended rules and SIP revisions were available for public inspection at the Commission's central office and on the Commission's Web site.

Data, views, and recommendations of interested persons regarding the proposed amended rules and SIP revisions were submitted to the Commission during the comment period, and were considered by the Commission as reflected in the analysis of testimony incorporated by reference to this Order. The Commission finds that the analysis of testimony includes the names of all interested groups or associations offering comment on the proposed amended rules and the SIP revisions and their position concerning the same.

IT IS THEREFORE ORDERED BY THE COMMISSION that the amended rules and revisions to the SIP incorporated by reference to this Order are hereby adopted. The Commission further authorizes staff to make any non-substantive revisions to the rules necessary to comply with *Texas Register* requirements. The adopted rules and the preamble to the adopted rules and the revisions to the SIP are incorporated by reference in this Order as if set forth at length verbatim in this Order.

IT IS FURTHER ORDERED BY THE COMMISSION that on behalf of the Commission, the Chairman should transmit a copy of this Order, together with the adopted rules and revisions to the SIP, to the Regional Administrator of EPA as a proposed revision to the Texas SIP pursuant to the Federal Clean Air Act, codified at 42 U.S. Code Ann. §§ 7401 - 7671q, as amended.

This Order constitutes the Order of the Commission required by the Administrative Procedure Act, Tex. Gov't Code, § 2001.033 (Vernon 2008).

If any portion of this Order is for any reason held to be invalid by a court of competent jurisdiction, the invalidity of any portion shall not affect the validity of the remaining portions.

Issued date:

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Bryan W. Shaw, Ph.D., Chairman

DRAFT

- (12) DP for Doctor of Podiatric Medicine;
- (13) DS for Dentist;
- (14) IL for Independent Laboratory;
- (15) LP for Licensed Professional Counselor;
- (16) LS for Licensed Surgical Assistant;
- (17) MD for Doctor of Medicine;
- (18) MS for Licensed Master Social Worker;
- (19) MT for Massage Therapist;
- (20) NF for Nurse First Assistant;
- (21) OD for Doctor of Optometry;
- (22) OP for Orthotist/Prosthetist;
- (23) OT for Occupational Therapist;
- (24) PA for Physician Assistant;
- (25) PM for Pain Management Clinic;
- (26) PS for Psychologist;
- (27) PT for Physical Therapist;
- (28) RA for Radiology Facility; or
- (29) RN for Registered Nurse.

(j) When resubmitting a medical bill under subsection (f) of this section, a resubmission condition code may be reported. In reporting a resubmission condition code, the following definitions apply to the resubmission condition codes established by the Uniform National Billing Committee:

(1) W3 - Level 1 Appeal means a request for reconsideration under §133.250 of this title (relating to Reconsideration for Payment of Medical Bills) or an appeal of an adverse determination under Chapter 19, Subchapter U of this title (relating to Utilization Reviews for Health Care Provided Under Workers' Compensation Insurance Coverage);

(2) W4 - Level 2 Appeal means a request for reimbursement as a result of a decision issued by the division, an Independent Review Organization, or a Network complaint process; and

(3) W5 - Level 3 Appeal means a request for reimbursement as a result of a decision issued by an administrative law judge or judicial review.

(k) The inclusion of the appropriate resubmission condition code and the original reference number is sufficient to identify a resubmitted medical bill as a request for reconsideration under §133.250 of this title or an appeal of an adverse determination under Chapter 19, Subchapter U of this title provided the resubmitted medical bill complies with the other requirements contained in the appropriate section.

(l) This section is effective for medical bills filed on or after April 1, 2013 [~~August 1, 2011~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 30, 2013.

TRD-201304285

Dirk Johnson
 General Counsel
 Texas Department of Insurance, Division of Workers' Compensation
 Earliest possible date of adoption: November 10, 2013
 For further information, please call: (512) 804-4703



TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§114.1, 114.2, 114.21, 114.50, 114.53, 114.82 - 114.84, and 114.87.

If adopted, the commission would submit the amendments 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 Proposed Rules

On May 29, 1996, the commission adopted rules implementing an air pollution control strategy involving emissions inspection of vehicles to reduce nitrogen oxides and volatile organic compounds necessary for the counties included in the Dallas-Fort Worth (DFW), Houston-Galveston-Brazoria (HGB), and El Paso ozone nonattainment areas in order to assist in the ability to demonstrate attainment with the one-hour ozone National Ambient Air Quality Standard (NAAQS). The vehicle emissions inspection program, also known as the vehicle emission inspection and maintenance (I/M) program, began on July 1, 1996 in the DFW, HGB, and El Paso one-hour ozone nonattainment areas. The I/M rules currently apply to all nine counties (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties) in the DFW 1997 eight-hour ozone nonattainment area, selected counties (Brazoria, Fort Bend, Galveston, Harris, and Montgomery Counties) in the HGB 1997 eight-hour ozone nonattainment area, and El Paso County. El Paso County was designated nonattainment for the revoked one-hour ozone standard, and was subsequently designated attainment for the 1997 eight-hour ozone standard, effective June 15, 2004. The I/M program remains in place in El Paso County as part of the area's maintenance plan for the 1997 eight-hour ozone standard. On November 17, 2004, the commission adopted rules in Chapter 114 implementing an I/M program in Travis and Williamson Counties in the Austin-Round Rock area.

The I/M rules require the TCEQ to implement the I/M program in conjunction with the Texas Department of Public Safety (DPS). The I/M rules also authorize the collection of the state's portion of the vehicle emissions inspection fee by the DPS at the time that vehicle emissions inspection station owners purchased safety and emissions inspection windshield stickers. Currently, motorists are required to demonstrate compliance with the I/M program by displaying a current valid safety and emissions inspection windshield certificate or sticker and a current valid registration windshield sticker. The I/M rules also require denying renewal of the registration until the vehicle complied with the I/M program. The TCEQ is responsible for: 1) identifying non-compliant vehicles; 2) notifying motorists of the non-compliance; 3)

providing information on non-compliant vehicles to the Texas Department of Motor Vehicles (DMV), previously a part of the Texas Department of Transportation; and 4) assisting motorists to resolve the non-compliance.

Additionally, on December 6, 2000, the commission adopted rules that enhanced the I/M program. The enhanced I/M program includes requirements for vehicle emissions inspections stations to conduct acceleration simulation mode (ASM) emissions tests on model year 1995 and older vehicles and on-board diagnostics (OBD) inspections on model year 1996 and newer vehicles. The ASM emissions test and the OBD inspection have more stringent emissions inspection criteria and were added as replacements for the two-speed idle emissions test used in the I/M program prior to the adopted rules.

This proposed rulemaking would implement applicable sections of House Bill (HB) 2305, 83rd Legislature, 2013, relating to replacing the current Texas dual inspection and registration sticker system with a single registration sticker and would modify the method used to collect the state's portion of the vehicle emissions inspection fee. HB 2305 mandates that the TCEQ adopt rules necessary to implement the changes prior to March 1, 2014, and that the changes be implemented on March 1, 2015. The proposed rulemaking would put in place applicable requirements necessary for the DPS and the DMV to implement remaining sections of HB 2305 that affect their respective agencies.

Demonstrating Noninterference under Federal Clean Air Act, §110(l)

The commission provides the following information to demonstrate why the proposed change to the I/M program rules in Chapter 114 would not negatively impact the status of the state's progress towards attainment with the 1997 eight-hour ozone NAAQS, the El Paso County's maintenance plan for the 1997 eight-hour ozone standard, and the *Austin Eight-Hour Ozone Flex Plan* for Travis and Williamson Counties; will not interfere with control measures; and would not prevent reasonable further progress toward attainment of the ozone NAAQS.

The proposed amendments to Chapter 114 would modify administrative aspects of the existing I/M program in order to implement HB 2305, which replaces the current dual inspection and registration sticker system with a single registration sticker and modifies the method used to collect the state's portion of the vehicle emissions inspection fee. The compliance rate under the single sticker system would be at least as effective as the dual sticker system as the single sticker system would represent compliance with inspection requirements, registration requirements, and I/M program requirements. Registrations for non-compliant vehicles would be denied under the single sticker system as under the dual sticker system. Resources allocated to enforcement of the dual sticker system would be used to ensure compliance with the single sticker system. The network of vehicle emissions inspection stations used to conduct vehicle emissions inspections under the dual sticker system would continue to conduct vehicle emissions inspections under the single sticker system. These vehicle emissions inspection stations were also required to remit the state's portion of the inspection fees to the DPS under the dual sticker system. However, under the single sticker system, the vehicle owner would remit the state's portion of the inspection fee to the DMV or county tax assessor-collector at the time of registration.

The effectiveness of the I/M program is expected to remain the same under the single sticker system as under the dual sticker system because the size of the vehicle population that is subject to I/M program requirements, the vehicle emissions inspection frequency, and the stringency of the vehicle emissions inspection criteria are not changing. Similarly, the compliance rate for vehicles subject to I/M program requirements is expected to remain the same as the same resources used to ensure compliance under the dual sticker system will now be used to ensure compliance under the single registration sticker.

For vehicles exempt from annual vehicle registration renewal requirements and registered in I/M program areas such as those owned by local and state governments, HB 2305 does not specify methods for collecting the state's portion of the inspection fee or exempt these vehicles from I/M program requirements. Exempt vehicles would still be subject to I/M program requirements at a time determined by the DPS and DMV. Verifying compliance with I/M program requirements using the vehicle registration insignia sticker affixed to the vehicle's windshield may be problematic as exempt vehicles are not currently provided windshield stickers. Owners of exempt vehicles would still be able to provide proof of compliance using the Vehicle Inspection Report that is provided by the inspection stations. The DMV is considering amending its rules to require owners of exempt vehicles to remit the state's portion of the inspection fee to the DMV and display the vehicle registration insignia sticker on the vehicle's windshield but not remit registration fees from which they are currently exempt. The TCEQ staff would work with the DMV and the DPS to attempt to remedy this situation and ensure exempt vehicles maintain compliance with I/M program requirements.

Section by Section Discussion

The following proposed amendments would ensure that the I/M program rules are consistent with the requirements in HB 2305, which mandates that effective March 1, 2015: 1) the safety inspection certificates would no longer be used; 2) the vehicle registration insignia stickers would replace the safety inspection certificates; and 3) the state's portion of the vehicle emissions inspection fee would be collected by the DMV or county tax assessor-collector at the time of registration.

In addition to the proposed amendments associated with the implementation of HB 2305, 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. Comments received regarding existing rule language that are not related to incorporating the proposed amendments to Chapter 114 or to the specific proposed non-substantive changes discussed in this preamble would not be considered, and no changes would be made based on such comments.

§114.1, Definitions

The proposed amendment to §114.1 would revise the definition for "first safety inspection certificate" and add definitions for three new terms. First safety inspection certificate is currently defined as the initial DPS certificate issued through the DPS-certified inspection stations for every new vehicle found to be in compliance with the rules and regulations governing safety inspections. The proposed amendment would add language to the definition indicating that safety inspection certificates would no longer be

used effective March 1, 2015. The proposed amendment would also add definitions for "first vehicle registration," "vehicle registration," and "vehicle registration insignia sticker." First vehicle registration would be defined as the initial vehicle registration insignia sticker issued through the DMV for every new vehicle found to be in compliance with the rules and regulations governing safety inspections. Vehicle registration would be defined as the vehicle characteristics, corresponding owner information, and registration expiration date contained in the DMV's registration system. Vehicle registration insignia sticker would be defined as the sticker issued through the DMV to be affixed on the windshield of a vehicle compliant with DMV regulations. The vehicle registration insignia sticker definition would also indicate that effective March 1, 2015, the vehicle registration insignia sticker would be used as proof of compliance with I/M program requirements, the DMV's rules and regulations governing vehicle registration, and the DPS's rules and regulations governing safety inspections. The proposed amendment would ensure that the terms and definitions for "first safety inspection certificate," "first vehicle registration," "vehicle registration," and "vehicle registration insignia sticker" would be consistent with the requirements of HB 2305. The definitions in this section would be renumbered accordingly.

§114.2, Inspection and Maintenance Definitions

The proposed amendment would modify the definitions of "testing cycle" and "uncommon part." Testing cycle is currently defined as the annual cycle commencing with the first safety inspection certificate expiration date for which a motor vehicle is subject to a vehicle emissions inspection. The proposed amendment would add language indicating that the current testing cycle definition applies prior to March 1, 2015 and that effective March 1, 2015, the annual cycle would commence with the first vehicle registration expiration date for which a motor vehicle is subject to a vehicle emissions inspection. Uncommon part is currently defined as 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 the vehicle safety inspection certificate or the 30-day period following an out-of-cycle inspection. The proposed amendment would add language requiring the use of the vehicle safety inspection certificate prior to March 1, 2015 and the use of the vehicle registration on or after March 1, 2015.

§114.21, Exemptions

The proposed amendment to §114.21(e) and (f) would add language indicating that prior to March 1, 2015, the DPS motor vehicle safety inspection certificate must be removed and destroyed from a vehicle exempt from vehicle anti-tampering requirements before offering it for sale or displaying it for public examination. The proposed amendment would also add language indicating that effective March 1, 2015, the DMV vehicle registration insignia sticker must be removed and destroyed from a vehicle exempt from vehicle anti-tampering requirements before offering it for sale or displaying it for public examination. Currently, §114.21(e) and (f) indicates that vehicles exempt from vehicle anti-tampering requirements must remove and destroy the DPS motor vehicle safety inspection certificates before the vehicle is offered for sale or displayed for public examination.

§114.50, Vehicle Emissions Inspection Requirements

The proposed amendment to §114.50(b)(1) would modify the method used to demonstrate compliance with I/M program re-

quirements. Currently, §114.50(b)(1) requires vehicles operating in the DFW, HGB, and El Paso I/M program areas to demonstrate compliance by displaying a current valid inspection certificate affixed to the vehicle windshield. The proposed amendment would require demonstration of compliance effective March 1, 2015 by displaying a current valid DMV vehicle registration insignia sticker since inspection certificates would no longer be issued.

The proposed amendment to §114.50(d)(2) would add language preventing the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen vehicle registration insignia stickers, vehicle inspection reports, or other documents that may be used to circumvent the vehicle emissions I/M requirements in the DFW, HGB, and El Paso I/M program areas effective March 1, 2015. Currently, §114.50(d)(2) prevents the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen safety inspection certificates, vehicle inspection reports, or other documents that may be used to circumvent the vehicle emissions I/M requirements in the DFW, HGB, and El Paso I/M program areas.

The proposed amendment to §114.50(b)(6)(B) and (c) would replace the reference to 37 TAC §23.93 with 37 TAC Chapter 23, because 37 TAC §23.93 was repealed by the DPS on March 13, 2013.

§114.53, Inspection and Maintenance Fees

The proposed amendment to §114.53(a)(1) - (3) would exempt emissions inspection stations from being required to remit the state's portion of the vehicle emissions inspection fee to the DPS effective March 1, 2015. The proposed amendment also would lower the maximum inspection fee collected by the emissions inspection stations in the DFW, HGB, and El Paso I/M program areas. Effective March 1, 2015, the maximum inspection fee would be lowered by the amount of the state's portion of the vehicle emissions inspection fee that would now be collected by the DMV or county tax assessor-collector at the time of registration.

Effective March 1, 2015, the maximum inspection fee collected by emissions inspection stations inspection in the DFW and HGB I/M program areas would be lowered from \$27 to \$24.50 for vehicles subject to an ASM emissions test and from \$27 to \$18.50 for vehicles subject to an OBD inspection. For the El Paso I/M program area, the maximum inspection fee collected by emissions inspections stations would change based on whether the El Paso I/M program area chooses to participate in the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP). The maximum inspection fee for vehicles subject to an emissions inspection in El Paso County would be lowered to \$11.50 from either \$14 if El Paso County is not participating in the LIRAP or \$16 if El Paso County is participating in the LIRAP.

Currently, §114.53(a)(1) - (3) set the maximum inspection fee that may be collected by the emissions inspection stations located in the DFW, HGB, and El Paso I/M program areas and the state's portion of the vehicle emissions inspection fee that the emissions inspection stations remit to the DPS. The proposed amendment to §114.53 would also add subsection (d) that specifies that owners of vehicles subject to vehicle emissions inspections in the DFW, HGB, and El Paso I/M program areas would remit the state's portion of the vehicle emissions inspection fee to the DMV or county tax assessor-collector at the time of registration. The state's portion of the vehicle emissions fee is \$2.50 for vehicles subject to an ASM emissions test and \$8.50 for ve-

hicles subject to an OBD inspection in the DFW and HGB I/M program areas. If the El Paso I/M program area does not participate in the LIRAP, the state's portion of the vehicle emissions fee is \$2.50 for vehicles subject to an emissions inspection in the El Paso I/M program area. If the El Paso I/M program area chooses to participate in the LIRAP, the state's portion of the vehicle emissions fee changes to \$4.50 for vehicles subject to an emissions inspection in the El Paso I/M program area.

§114.82, *Control Requirements*

The proposed amendment to §114.82(a) would modify the method used to demonstrate compliance with I/M program requirements. Currently, §114.82(a) requires vehicles operating in Travis and Williamson Counties, also known as the early action compact counties, to demonstrate compliance by displaying a current valid inspection certificate affixed to the vehicle windshield. The proposed amendment would require demonstration of compliance by displaying a current valid DMV vehicle registration insignia sticker since inspection certificates would no longer be issued.

§114.83, *Waivers and Extensions*

The proposed amendment to §114.83 would replace the reference to 37 TAC §23.93 with a reference to 37 TAC Chapter 23, because 37 TAC §23.93 was repealed by the DPS on March 13, 2013.

§114.84, *Prohibitions*

The proposed amendment to §114.84(b) would add language preventing the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen vehicle registration insignia stickers, vehicle inspection reports, or other documents that may be used to circumvent the vehicle emissions I/M requirements in Travis and Williamson Counties effective March 1, 2015. Currently, §114.84(b) prevents the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen safety inspection certificates, vehicle inspection reports, or other documents that may be used to circumvent the vehicle emissions I/M requirements in Travis and Williamson Counties.

The proposed amendment to §114.84(d) would also replace the reference to 37 TAC §23.93 with 37 TAC Chapter 23, because 37 TAC §23.93 was repealed by the DPS on March 13, 2013.

§114.87, *Inspection and Maintenance Fees*

Effective March 1, 2015, the proposed amendment to §114.87(a) would: 1) exempt emissions inspection stations from being required to remit the state's portion of the vehicle emissions inspection fee to the DPS; and 2) lower the maximum inspection fee collected by the emissions inspection stations by the amount of the state's portion of the vehicle emissions inspection fee that would now be collected by the DMV or county tax assessor-collector at the time of registration.

Effective March 1, 2015, the maximum inspection fee collected by emissions inspection stations would be lowered from \$16 to \$11.50 for vehicles subject to emissions inspections in Travis and Williamson Counties. Currently, §114.87(a) sets the maximum inspection fee that emissions inspections stations located in Travis and Williamson Counties may collect and the state's portion of the vehicle emissions inspection fee that the emissions inspection stations would remit to the DPS. The proposed amendment to §114.87 would also add language in a proposed subsection (d) that specifies that owners of vehicles subject to vehicle emissions inspections in Travis and Williamson Counties

would remit the state's portion of the vehicle emissions inspection fee, \$4.50, to the DMV or county tax assessor-collector at the time of registration.

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Strategic Planning and Assessment Section, has determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency or other units of state or local government as a result of administration or enforcement of the proposed rules.

The proposed rules would implement sections of HB 2305 that establish a single combined vehicle safety inspection and vehicle registration windshield sticker to replace the current dual windshield sticker system for vehicle safety inspections and vehicle registrations. The bill also transfers responsibility for the denial of registrations from the commission to the DMV and modifies the method used to collect the state's portion of the vehicle emissions inspection fee.

Implementation of the bill and the new single registration sticker program is not expected to alter the amount of vehicle emissions inspection fee revenue received by the state. However, the bill would alter the manner by which the fee revenue would be collected and remitted to the state treasury. Currently, inspection stations remit inspection revenues to the DPS who then remits the revenue to the state treasury. The bill requires the state's portion of inspection fee revenue to be remitted to the treasury by the DMV or county tax assessor-collector at the time of the vehicle registration. This change would affect both the vehicle safety inspection fee and the emissions inspection fee collected in Travis and Williamson Counties, and the DFW, HGB, and El Paso I/M program areas, as the DPS currently collects and remits inspection fee revenue for both these activities. The DMV or county tax assessor-collector would now collect these inspection fees in addition to the applicable vehicle registration fees to cover the amount of the emissions and safety inspection fees that would no longer be collected by the DPS. The commission, therefore, proposes to lower the vehicle emissions inspection fees in the I/M program areas by the amount that is the state's portion of the fee that would be collected by the DMV or county tax assessor-collector. Under the proposed rules, effective March 1, 2015, the maximum vehicle emissions inspection fee would be lowered from: 1) \$27 to \$24.50 for vehicles subject to an ASM emissions test and from \$27 to \$18.50 for vehicles subject to an OBD inspection in the DFW and HGB I/M program areas; 2) \$16 to \$11.50 for vehicles subject to an emissions inspection in Travis and Williamson Counties; and 3) either \$14 to \$11.50 for vehicles subject to an emissions inspection in the El Paso I/M program area or \$16 to \$11.50 if the El Paso I/M program area chooses to participate in the LIRAP.

In the DFW and HGB I/M program areas, the proposed rules would essentially lower the vehicle emissions inspection fee to the amount retained by the inspection station for the ASM emissions inspection (\$24.50) and the OBD inspection (\$18.50). Currently, for the OBD inspection, of the \$27 assessed for each inspection, \$18.50 is retained by the station, \$6.00 goes to LIRAP, \$0.50 goes to TCEQ for administration costs, and \$2.00 goes to the DPS for administrative costs. Currently, for the ASM inspection, of the \$27 assessed, \$2.00 goes to the DPS and \$0.50 goes to TCEQ for administration.

In Travis and Williamson Counties, the proposed rules would lower the vehicle emissions inspection fee from \$16 to \$11.50.

At this time, \$11.50 is retained by the station, \$2.00 is allocated to LIRAP, and \$2.50 in I/M administrative fees for the TCEQ and DPS.

In the El Paso I/M program area, the proposed rules would lower the vehicle emissions inspection fee from \$14 to \$11.50. Currently, the El Paso I/M program area does not participate in LIRAP and \$2.00 of the fee is allocated to the DPS and \$0.50 to the TCEQ.

In order to retain collection of the state's portion of the emission inspection fee revenue, the proposed rules require that registered vehicle owners in the El Paso I/M program area remit \$2.50 for vehicles subject to vehicle emissions inspections to the DMV or county tax assessor-collector at the time of the annual vehicle registration as part of the vehicle emissions inspection fee. If the El Paso County Commissioners Court adopts a resolution that is approved by the commission to participate in the LIRAP, registered vehicle owners would remit \$4.50 for vehicles subject to vehicles emissions inspections to the DMV or county tax assessor-collector at the time of the annual vehicle registration as part of the vehicle emissions inspection fee beginning upon the date specified by the commission.

Under the proposed rules, in the DFW and HGB I/M program areas, registered vehicle owners would remit \$2.50 for vehicles subject to ASM emissions tests and \$8.50 for vehicles subject to OBD inspections to the DMV or county tax assessor-collector at the time of the annual vehicle registration as part of the vehicle emissions inspection fee.

Under the proposed rules, registered vehicle owners in Travis and Williamson Counties would remit \$4.50 for vehicles subject to vehicle emissions inspections to the DMV or county tax assessor-collector at the time of the annual vehicle registration as part of the vehicle emissions inspection fee.

In order to implement these changes to the I/M program, TCEQ would need to facilitate modifications to the software that operates the four platforms of vehicle emissions inspection analyzers. The estimated one-time cost to update the resident software would be approximately \$200,000 for each of the four vehicle emissions analyzer platforms, or \$800,000 in total. The 83rd Legislature, 2013, appropriated funding specifically for this purpose.

In addition to these proposed changes for the vehicle emissions inspection fee, HB 2305 requires that the state's portion of each vehicle safety inspection fee (\$5.50 for the annual inspection and \$14.75 for the initial two-year inspection) for each passenger car or light truck be collected and remitted by the DMV or county tax assessor-collector instead of the DPS. This portion of the state fee would also be collected at the time the vehicle registration fee is collected. Of the state's portion, \$2.00 of each annual inspection and \$4.00 of each two-year inspection is allocated to the TCEQ's Clean Air Account where funding is used to support the state's clean air programs. The remaining portion of the state's fee (\$3.50 for the annual inspection and \$10.75 for the initial two-year inspection) is deposited to the Texas Mobility Fund, which is used by the Texas Department of Transportation.

This fiscal note assumes that the DMV would have a system in place to collect the various fees associated with the I/M program when the vehicle registration fees are collected. It is further assumed that the DMV or county tax assessor-collector would collect the state's portion of the vehicle safety inspection program and that the collected funds would be allocated to the correct accounts. This funding is critical for supporting the state's clean air

programs, including LIRAP, and the state's I/M program. It must be noted, however, that for vehicles exempt from annual vehicle registration renewal requirements and registered in I/M program areas such as those owned by local and state governments, HB 2305 does not specify methods for collecting the state's portion of the inspection fee or exempt these vehicles from I/M program requirements. The possibility exists for a loss in fee revenue for the state and the agency should the DMV fail to adopt a new mechanism for collection of the state inspection fee on exempt vehicles. Exempt vehicles would still be subject to I/M program requirements at a time determined by the DPS and DMV. Verifying compliance with I/M program requirements using the vehicle registration insignia sticker affixed to the vehicle's windshield may be problematic as exempt vehicles are not currently provided with windshield stickers. Owners of exempt vehicles would still be able to provide proof of compliance using the Vehicle Inspection Report that is provided by the inspection stations. The DMV is considering amending its rules to require owners of exempt vehicles to remit the state's portion of the inspection fee to the DMV and display the vehicle registration insignia sticker on the vehicle's windshield but not remit registration fees from which they are currently exempt. If the DMV fails to adopt its rules, the agency and the state could experience a loss in revenue and not have a visible method for ensuring exempt vehicles maintain compliance with I/M program requirements.

HB 2305 now requires the DPS to report the compliance status of vehicles receiving emissions inspections to the DMV. At this time, TCEQ has responsibility for this registration denial component of the I/M program. A vehicle is denied renewal of the registration until the vehicle complies with the I/M program. The TCEQ's current responsibilities are to: 1) identify non-compliant vehicles; 2) notify motorists of the non-compliance; 3) provide information on non-compliant vehicles to the DMV; and 4) assist motorists to come into compliance.

Under the proposed rules, the TCEQ would implement operational changes to end registration denial activities performed by our agency including providing information to the DMV regarding non-compliant vehicles and mailing notices to motorists regarding the non-compliant status of their vehicles prior to registration renewal. This change would result in some cost savings for the TCEQ. Currently, the TCEQ spends approximately \$22,750 annually to mail registration denial notices to motorists. After March 1, 2015, the TCEQ would cease mailing these notices. The TCEQ staff would continue providing information regarding compliant vehicles to the DPS but may need to develop a new method for transmitting this information or revise the current method. Cost savings to the TCEQ are not considered significant.

To implement the requirements of HB 2305, the DPS would be required to: create and update program content; modify Information Technology software applications; and communicate and train agency staff. The DPS estimated that it would need to hire Information Technology contractors and collaborate with DMV and TCEQ to implement the requirements of HB 2305. It is assumed the DPS would use existing resources to implement these changes.

In order to implement the provisions of the bill, the DMV would need to: work with the DPS and TCEQ to adopt rules to implement the program; make programmatic changes to the DMV's automated systems, Web sites, and forms; and provide notice to county tax assessor-collectors, law enforcement, and other

agency partners. It is assumed the DMV would implement the provisions of the bill with available resources.

The possibility exists for a loss in fee revenue for the state and the agency should the DMV fail to adopt rules revising the annual registration renewal requirements for exempt vehicles and a new mechanism for collection of the state's portion of the inspection fee from owners of exempt vehicles. The TCEQ staff would work with the DMV and the DPS to attempt to remedy this situation and avoid the loss in revenue and ensure exempt vehicles maintain compliance with I/M program requirements.

Public Benefits and Costs

Mr. Horvath has also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules would be compliance with state law and a consolidated inspection and registration system. This single system is anticipated to help eliminate vehicle inspection certificate fraud while reducing state costs.

The proposed rules are not anticipated to have a long term fiscal impact on individuals. After the proposed rules go into effect on March 1, 2015, motorists would begin receiving reminders to get their annual safety and emissions inspection in the form of the vehicle registration renewal notices provided by the DMV, and need to adjust to the revised timing for passing the safety and emissions inspection. Motorists would need to pass a safety and emissions inspection no sooner than 90 days prior to the corresponding vehicle registration expiration date. Prior to March 1, 2015, motorists would need to pass a safety and emissions inspection upon the expiration of the safety inspection certificate.

Owners of vehicles subject to vehicle safety and emissions inspection requirements would experience a reduction in the fee charged by the inspection station and an increase in the fee charged to renew the vehicle's registration; however, the annual total cost for the vehicle inspection and registration renewal would remain the same amount as the state's portion of the inspection fee would now be collected at the time of registration instead of at the time of inspection.

No significant fiscal implications are anticipated for businesses that conduct vehicle safety inspections. Vehicle emission inspection stations would no longer have to purchase or ensure the safety and integrity of the vehicle emissions inspection windshield stickers, which could result in better cash flow and reduced administrative costs for some stations.

HB 2305 requires the DMV or county tax assessor-collector to collect the portion of the inspection fee that is required to be remitted to the state at the time of registration of the vehicle. The bill requires the DMV or county tax assessor-collectors to remit the collected fees to the Texas Comptroller of Public Accounts. This provision would result in a decrease in vehicle safety inspection fees and emission inspection fees that would be paid by registered vehicle owners and assessed by inspection stations. However, the proposed rules and HB 2305 do not reduce fees allocated to the inspection stations and therefore the amount of revenue collected by them is expected to be unaffected.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses for the first five-year period the proposed rules are in effect. The proposed rules would result in a decrease in vehicle safety inspection fees and vehicle emission inspection fees that would be paid by vehicle owners and assessed by in-

spection stations. However, the proposed rules and HB 2305 do not reduce fees allocated to the inspection stations and therefore the amount of revenue collected by them is expected to be unaffected.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the proposed rules do not meet the definition of a "major environmental rule." Texas Government Code, §2001.0225 states that a "major environmental rule" is, "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." Furthermore, while the proposed rulemaking does not constitute a major environmental rule, even if it did, a regulatory impact analysis would not be required because the proposed rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule. Texas Government Code, §2001.0225 applies only to a major environmental rule which, "(1) exceeds a standard set by federal law, unless the rule is specifically required by state law; (2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; (3) exceeds 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) adopts a rule solely under the general powers of the agency instead of under a specific state law."

The proposed rulemaking implements requirements of the Federal Clean Air Act (FCAA). Under 42 United States Code (USC), §7410, each state is required to adopt and implement a SIP containing adequate provisions to implement, attain, maintain, and enforce the NAAQS within the state. While 42 USC, §7410 generally does not require specific programs, methods, or reductions in order to meet the standard, state SIPs 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," (meaning 42 USC, Chapter 85, Air Pollution Prevention and Control, otherwise known as the FCAA). The provisions of the 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 and control measures to assure that their SIPs provide for implementation, attainment, maintenance, and enforcement of the NAAQS within the state. Furthermore, while states generally are afforded some flexibility in adopting and implementing a SIP, vehicle I/M programs are required elements of the SIP pursuant to 42 USC, §7511(a) based on the classification of an area.

The specific intent of the proposed rulemaking is to implement applicable sections of HB 2305, relating to replacing the current Texas dual inspection and registration sticker system with a single registration sticker and modifying the method used to collect the state's portion of the vehicle emissions inspection fee. The proposed rulemaking does not constitute a major environmental rule under Texas Government Code, §2001.0225(g)(3) because: 1) the specific intent of the proposed rulemaking is not to protect the environment or reduce risks to human health from environmental exposure, but rather to modify administrative aspects of an existing program by implementing HB 2305, which replaces the current dual inspection and registration sticker system with a single registration sticker and modifies the method used to collect the state's portion of the vehicle emissions inspection fee; and 2) as discussed in the Fiscal Note, Public Benefits And Costs, Small Business Regulatory Flexibility Analysis, and the Local Employment Impact Statement sections of this preamble, the proposed rulemaking would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs, nor would the proposed rules adversely affect in a material way the environment, or the public health and safety of the state or a sector of the state because the amendments are merely administrative changes to the existing program. Because the proposed rulemaking is not a major environmental rule, it is not subject to a regulatory impact analysis under Texas Government Code, §2001.0225.

While the proposed rulemaking does not constitute a major environmental law, even if it did, it would not be subject to a regulatory impact analysis under Texas Government Code, §2001.0225. The requirement to provide a fiscal analysis of regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th Legislature, 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These 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 that concluded: "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 rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law.

The FCAA does not always require specific programs, methods, or reductions in order to meet the NAAQS; thus, states must develop programs for each nonattainment area 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 revisions to the SIP and rules. The legislature is presumed to understand this federal scheme. If each rule proposed for inclusion in the SIP was considered to be a major environmental rule that exceeds federal law, then every revision to the SIP 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 Legislative Budget Board (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 has a broad impact, that 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 unamended. 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" (Texas Government Code, §2001.035). 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.

Regardless of whether the proposed rulemaking constitutes a major environmental rule under Texas Government Code, §2001.0225(g)(3), a regulatory impact analysis is not required because this exemption is part of the commission's SIP for making progress toward the attainment and maintenance of the NAAQS. Therefore, the proposed rules do not exceed a standard set by federal law or exceed an express requirement of state law since they are part of an overall regulatory scheme designed to meet, not exceed, the relevant standard set by federal law - the NAAQS. In addition, the adoption and maintenance of the I/M program is directly required by federal law pursuant to 42 USC, §7511(a). The commission is charged with protecting air quality within the state and to design and submit a plan to achieve attainment and maintenance of the

federally mandated NAAQS. The Third District Court of Appeals upheld this interpretation in *Brazoria County v. Texas Comm'n on Env'tl. Quality*, 128 S.W. 3d 728 (Tex. App. - Austin 2004, *no writ*). In addition, this rulemaking is directly required by HB 2305. Furthermore, no contract or delegation agreement covers the topic that is the subject of this rulemaking. Finally, this rulemaking was not developed solely under the general powers of the agency but is authorized by specific sections of Texas Health and Safety Code, Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code, which are cited in the Statutory Authority section of this preamble, including Texas Health and Safety Code, §§382.011, 382.012, and 382.017.

This rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), for the following reasons. The proposed rulemaking is not a major environmental law because: 1) the specific intent of the proposed rules is not to protect the environment or reduce risks to human health from environmental exposure but rather to modify administrative aspects of an existing program by implementing HB 2305, which replaces the current dual inspection and registration sticker system with a single registration sticker, and modifies the method used to collect the state's portion of the vehicle emissions inspection fee; and 2) the proposed rulemaking would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs, nor would it adversely affect in a material way the environment, or the public health and safety of the state or a sector of the state because the amendments are merely administrative changes to the existing program. Furthermore, even if the proposed rulemaking was a major environmental rule, it does not meet any of the four applicability criteria listed in Texas Government Code, §2001.0225 because: 1) the proposed rulemaking is part of the SIP, and as such is designed to meet, not exceed the relevant standard set by federal law; 2) this rulemaking is directly required by state law; 3) no contract or delegation agreement covers the topic that is the subject of this rulemaking; and 4) the proposed rulemaking is authorized by specific sections of Texas Health and Safety Code, Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code, which are cited in the Statutory Authority section of this preamble.

The commission invites public comment regarding the draft regulatory impact analysis determination during the public comment period. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed rules and performed an analysis of whether the proposed rules constitute a taking under Texas Government Code, Chapter 2007. The commission's preliminary assessment indicates Texas Government Code, Chapter 2007 does not apply.

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

property that would otherwise exist in the absence of the governmental action; and (ii) is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect."

The specific purpose of the proposed rulemaking is to implement applicable sections of HB 2305, relating to administrative changes to the I/M safety inspection process. HB 2305 requires replacement of the current Texas dual inspection and registration sticker system with a single registration sticker and modifies the method used to collect the state's portion of the vehicle emissions inspection fee. Therefore, the proposed rulemaking does not have any impact on private real property.

Promulgation and enforcement of the proposed rules would be neither a statutory nor a constitutional taking of private real property. These rules are not burdensome, restrictive, or limiting of rights to private real property because the proposed rules do not affect a landowner's rights in private real property. This rulemaking does not burden, restrict, or limit the owner's right to property, nor does it reduce the value of any private real property by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, these rules would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), relating to rules subject to the Coastal Management Program (CMP), and would, therefore, require that goals and policies of the CMP be considered during the rulemaking process. Section 505.11(b)(2) applies only to air pollutant emissions, on-site sewage disposal systems, and underground storage tanks. Section 505.11(b)(4) applies to all other actions.

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 procedural in nature and would have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

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

Announcement of Hearing

The commission will hold public hearings on this proposal in Houston on October 29, 2013, at 2:00 p.m. at the Houston-Galveston Area Council, Conference Room A, 3555 Timmons Lane; in Austin on October 30, 2013, at 10:00 a.m. at the TCEQ, Building E, Room 201S, 12100 Park 35 Circle; in Fort Worth on October 31, 2013, at 2:00 p.m. at the TCEQ, Region 4 Office, DFW Public Meeting Room, 2309 Gravel Road; and in El Paso on November 1, 2013, at 3:00 p.m. at El Paso Public Library, Maud Sullivan Gallery, 501 N. Oregon St. The hearings will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearings; however, commission staff members will be available to discuss the proposal 30 minutes prior to each hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearings should contact Sandy Wong, Office of Legal Services, at (512) 239-1802. Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Mr. Michael Parrish, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2013-035-114-AI. The comment period closes on November 4, 2013. Copies of the proposed rule-making can be obtained from the commission's Web site at http://www.tceq.texas.gov/nav/rules/propose_adapt.html. For further information, please contact Edgar Gilmore, Air Quality Planning Section, (512) 239-2069.

SUBCHAPTER A. DEFINITIONS

30 TAC §114.1, §114.2

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, General Powers, TWC, §5.103, Rules, and TWC, §5.105, General Policy, which provide the commission with the general powers to carry out its duties and authorize the commission to propose rules necessary to carry out its powers and duties under the TWC; and TWC, §5.013, General Jurisdiction of Commission, which states the commission's authority over various statutory programs. The revisions are also proposed under Texas Health and Safety Code (THSC), §382.017, Rules, which authorizes the commission to propose rules consistent with the policy and purposes of THSC, Chapter 382 (the Texas Clean Air Act), and to propose rules that differentiate among particular conditions, particular sources, and particular areas of the state. The revisions are also proposed under THSC, §382.002, Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.019, Methods Used to Control and Reduce Emissions From Land Vehicles, which provides the commission the authority to propose rules to control and reduce emissions from engines used to propel land vehicles; THSC, Chapter 382, Subchapter G, Vehicle Emissions, which provides the commission the authority by rule to establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of Federal Clean Air Act, 42 United States Code, §§7401 *et seq.*; and THSC, Chapter 382, Subchapter H, Vehicle Emissions Programs in Certain Counties, which authorizes the commission to propose an inspection and maintenance program for participating early action compact counties. The rule revisions are proposed pursuant to amendments to Texas Transportation Code, §548.104 and §548.302, which were amended by House Bill (HB) 2305, 83rd Legislature, 2013, and THSC, §382.0622(a), which was also amended by HB 2305.

These amendments implement Texas Transportation Code, §548.104 and §548.302.

§114.1. 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 which are defined by the TCAA, the following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Dual-fuel vehicle--Any motor vehicle or motor vehicle engine engineered and designed to be operated on two different fuels, but not a mixture of the two.

(2) Emergency vehicle--A vehicle defined as an authorized emergency vehicle according to Texas Transportation Code, §541.201(1).

(3) Emissions--The emissions of oxides of nitrogen, volatile organic compounds, carbon monoxide, particulate, or any combination of these substances.

(4) First safety inspection certificate--Initial Texas Department of Public Safety (DPS) certificates issued through DPS-certified [DPS certified] inspection stations for every new vehicle found to be in compliance with the rules and regulations governing safety inspections. Effective March 1, 2015, the safety inspection certificates will no longer be used.

(5) First vehicle registration--Initial vehicle registration insignia sticker issued through the Texas Department of Motor Vehicles for every new vehicle found to be in compliance with the rules and regulations governing vehicle registration prior to March 1, 2015 and vehicle registration and safety inspections effective March 1, 2015.

(6) [(5)] Gross vehicle weight rating--The value specified by the manufacturer as the maximum design loaded weight of a vehicle. This is the weight as expressed on the vehicle's registration, and includes the weight the vehicle can carry or draw.

(7) [(6)] Heavy-duty vehicle--Any passenger vehicle or truck capable of transporting people, equipment, or cargo, that has a gross vehicle weight rating (GVWR) greater than 8,500 pounds, and is required to be registered under Texas Transportation Code, §502.002. For purposes of the mobile emission reduction credit trading program the heavy-duty class is divided into the following subclasses:

(A) Light heavy-duty vehicle--Any passenger vehicle or truck capable of transporting people, equipment, or cargo that has a GVWR greater than 8,500 pounds, but less than or equal to 10,000 pounds.

(B) Medium heavy-duty vehicle--Any passenger vehicle or truck capable of transporting people, equipment, or cargo that has a GVWR greater than 10,000 pounds, but less than or equal to 19,500 pounds.

(C) Heavy heavy-duty vehicle--Any passenger vehicle or truck capable of transporting people, equipment, or cargo that has a GVWR greater than 19,500 pounds.

(8) [(7)] Inherently low emission vehicle--A vehicle as defined by 40 Code of Federal Regulations[,] Part 88.

(9) [(8)] Law enforcement vehicle--Any vehicle controlled by a local government and primarily operated by a civilian or military police officer or sheriff, or by state highway patrols, or other similar law enforcement agencies, and [which is] used for the purpose of law enforcement activities including, but not limited to, chase, apprehen-

sion, surveillance, or patrol of people engaged in or potentially engaged in unlawful activities.

(10) [(9)] Light-duty vehicle--Any passenger vehicle or truck capable of transporting people, equipment, or cargo[;] that has a gross vehicle weight rating (GVWR) less than or equal to 8,500 pounds[;] and registered or required to be registered under Texas Transportation Code, §502.002. For purposes of the mobile emission reduction credit trading program the light-duty class is divided into the following subclasses:

(A) Light-duty vehicle--Any passenger vehicle capable of seating 12 or fewer passengers that has a GVWR less than or equal to 6,000 pounds.

(B) Light-duty truck 1--Any passenger truck capable of transporting people, equipment, or cargo[;] that has a GVWR less than or equal to 6,000 pounds.

(C) Light-duty truck 2--Any passenger truck capable of transporting people, equipment, or cargo[;] that has a GVWR greater than 6,000 pounds[;] but less than or equal to 8,500 pounds.

(11) [(10)] Loaded mode inspection and maintenance test--A measurement of the tailpipe exhaust emissions of a vehicle while the drive wheel rotates on a dynamometer, which simulates the full weight of the vehicle driving down a level roadway. Loaded test equipment specifications must [shah] meet United States Environmental Protection Agency requirements for acceleration simulation mode equipment.

(12) [(11)] Low emission vehicle (LEV)--A vehicle in a class or category of vehicles that has been certified by the United States Environmental Protection Agency for any model year to meet:

(A) the LEV standards applicable under 42 United States Code, Part C, Subchapter II, §§7581 *et seq.*; or

(B) emission limits at least as stringent as the applicable LEV standards for the Federal Clean Fuel Fleet program under 40 Code of Federal Regulations §§88.104-94, 88.105-94, and 88.311-93, as published in the *Federal Register* on September 30, 1994 (59 FR 50042).

(13) [(12)] Mass transit authority--A transportation or transit authority or department established under Chapter 141, 63rd Legislature (1973), as defined in Texas Transportation Code, Chapters 451 - 453 (relating to Metropolitan Rapid Transit Authorities, Regional Transportation Authorities, and Municipal Transit Departments)[;] that operates a mass transit system under any of those laws.

(14) [(13)] Reformulated gasoline--Gasoline that has been certified as a reformulated gasoline under the federal certification regulations adopted in accordance with 42 United States Code, §7545(k).

(15) [(14)] Texas Inspection and Maintenance State Implementation Plan--The portion of the Texas state implementation plan that includes the procedures and requirements of the vehicle emissions inspection and maintenance program as adopted by the commission May 29, 1996[;] in accordance with 40 Code of Federal Regulations Part 51, Subpart S, issued November 5, 1992; the United States Environmental Protection Agency flexibility amendments dated September 18, 1995; and the National Highway Systems Designation Act of 1995. A copy of the Texas Inspection and Maintenance State Implementation Plan is available at the Texas Commission on Environmental Quality, 12100 Park 35 Circle, Austin, Texas, 78753; mailing address: P.O. Box 13087, MC 166, Austin, Texas 78711-3087.

(16) [(15)] Tier I federal emission standards--The standards are defined in 42 United States Code, §7521, and in 40 Code

of Federal Regulations[;] Part 86. The phase-in of these standards began in model year 1994.

(17) [(16)] Ultra low emission vehicle--A vehicle as defined by 40 Code of Federal Regulations[;] Part 88.

(18) Vehicle registration--Vehicle characteristics, corresponding owner information, and registration expiration date contained in the Texas Department of Motor Vehicles registration system.

(19) Vehicle registration insignia sticker--The sticker issued through the Texas Department of Motor Vehicles (DMV) or county tax assessor-collector to be affixed on the windshield of a vehicle compliant with the DMV regulations. Effective March 1, 2015, the vehicle registration insignia sticker will be used as proof of compliance with inspection and maintenance program requirements, the DMV's rules and regulations governing vehicle registration, and the Texas Department of Public Safety's rules and regulations governing safety inspections.

(20) [(17)] Zero emission vehicle--A vehicle as defined by 40 Code of Federal Regulations[;] Part 88.

§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; LIRAP; 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 on the dynamometer simulating the use of 50% of the vehicle available horsepower to accelerate at a rate of 3.3 miles per hour (mph) per second at a constant speed of 15 mph; and

(B) the 25/25 mode--in which the vehicle is tested on the dynamometer simulating the use of 25% of the vehicle available horsepower to accelerate at a rate 3.3 mph per second at a constant speed of 25 mph.

(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--Annual cycle commencing with the first safety inspection certificate expiration date for which a motor vehicle is subject to a vehicle emissions inspection or effective March 1, 2015, 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: [the vehicle safety inspection certificate or the 30-day period following an out-of-cycle inspection.]

(A) the vehicle safety inspection certificate prior to March 1, 2015;

(B) the vehicle registration effective March 1, 2015; or

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

tion.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Director, Environmental Law Division

Texas Commission on Environmental Quality

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For further information, please call: (512) 239-2548



SUBCHAPTER B. MOTOR VEHICLE ANTI-TAMPERING REQUIREMENTS

30 TAC §114.21

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.102, General Powers, TWC, §5.103, Rules, and TWC, §5.105, General Policy, which provide the commission with the general powers to carry out its duties and authorize the commission to propose rules necessary to carry out its powers and duties under the TWC; and TWC, §5.013, General Jurisdiction of Commission, which states the commission's authority over various statutory programs. The revisions are also proposed under Texas Health and Safety Code (THSC), §382.017, Rules, which authorizes the commission to propose rules consistent with the policy and purposes of THSC, Chapter 382 (the Texas Clean Air Act), and to propose rules that differentiate among particular conditions, particular sources, and particular areas of the state. The revisions are also proposed under THSC, §382.002, Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.019, Methods Used to Control and Reduce Emissions From Land Vehicles, which provides the commission the authority to propose rules to control and reduce emissions from engines used to propel land vehicles; THSC, Chapter 382, Subchapter G, Vehicle Emissions, which provides the commission the authority by rule to establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of Federal Clean Air Act, 42 United States Code, §§7401 *et seq.*; and THSC, Chapter 382, Subchapter H, Vehicle Emissions Programs in Certain Counties, which authorizes the commission to propose an inspection and maintenance program for participating early action compact counties. The rule revisions are proposed pursuant to amendments to Texas Transportation Code, §548.104 and §548.302, which were

amended by House Bill (HB) 2305, 83rd Legislature, 2013, and THSC, §382.0622(a), which was also amended by HB 2305.

This amendment implements Texas Transportation Code, §548.104 and §548.302.

§114.21. Exemptions.

(a) The following exemptions [shall] apply to specified motor vehicles or motor vehicle engines.

(1) Motor vehicles or motor vehicle engines which are intended solely or primarily for legally sanctioned motor competitions, for research and development uses, or for instruction in a bona fide vocational training program where the use of a system or device would be detrimental to the purpose for which the vehicle or engine is intended to be used are exempt from the provisions of §114.20(a), (b), and (d) of this title (relating to Maintenance and Operation of Air Pollution Control Systems or Devices Used to Control Emissions from Motor Vehicles).

(2) Motor vehicles or motor vehicle engines intended solely or primarily for research and development uses, or for instruction in a bona fide vocational training program where the introduction of leaded gasoline or the circumvention of an emission control system or device is necessary for the intended purposes of the program are exempt from the provisions of §114.20(e) of this title.

(b) Vehicles belonging to members of the United States [U.S.] Department of Defense (DoD) participating in the DoD Privately Owned Vehicle Import Control Program or other persons being transferred to a foreign country are exempt from the provisions of §114.20(a), (b), and (d) of this title if the following conditions are met.

(1) Only the catalytic converter, oxygen sensor, and/or the fuel filler inlet restrictor are removed from the vehicle.

(2) The vehicle is delivered to the appropriate port for overseas shipment within 30 days after the emission control device(s) is removed.

(3) If the vehicle is returned to the United States, all systems or devices used to control emissions from the vehicle are restored to good operable condition within 30 days of pick-up of the vehicle from the appropriate port of importation.

(4) Documentation must [shall] be kept with the vehicle at all times while the vehicle is operated in Texas that [which] provides sufficient information to demonstrate compliance with all appropriate qualifications and conditions of this exemption, including the following:

(A) the unique vehicle identification number (VIN) of the subject vehicle;

(B) the agency, company, or organization that [which] employs the owner of the subject vehicle;

(C) the country to which the owner of the subject vehicle is being transferred;

(D) the dates when applicable alterations were performed on the subject vehicle;

(E) the date when the subject vehicle is scheduled to be delivered to the appropriate port for shipment out of the United States; and

(F) the date when the subject vehicle is picked up from the port of importation upon returning to the United States.

(c) Motor vehicles are exempt from the provisions of §114.20(a), (b), and (d) of this title if the following conditions apply:

(1) the motor vehicles are registered as farm vehicles with the Vehicle Titles and Registration Division of the Texas Department of Motor Vehicles [Transportation], are intended solely or primarily for use on a farm or ranch, and their air pollution control devices or systems were removed or made inoperable prior to June 1, 2000; or

(2) the motor vehicles were granted an exemption from the provisions of §114.20(a) and (b) of this title by the commission or its predecessor agency prior to June 1, 2000.

(A) A copy of the exemption must [shall] be kept with the vehicle at all times and [shall be] available for inspection by representatives of the commission, the Texas Department of Public Safety (DPS), or any other law enforcement agency upon request. The approved exclusion must [shall] also be presented to the certified vehicle inspector before each annual vehicle safety inspection of the vehicle as administered by the DPS.

(B) The exemption must [shall] be void and all pollution control systems and devices replaced on the vehicle and/or engine covered by the exclusion when the vehicle changes ownership or is no longer used for the purpose identified in the exclusion application. The executive director shall be informed in writing prior to the change of ownership or usage.

(d) The following vehicle transactions involving a "dealer" as defined in Texas Transportation Code, §503.001, are exempt from the requirements of §114.20(c) of this title:

(1) sales or transfers from one dealer to another; and

(2) sales, transfers, or trade-ins from an individual to a dealer.

(e) Federal, state, and local agencies or their agents that [which] sell abandoned, confiscated, or seized vehicles and any commercial vehicle auction facilities are exempt from the provisions of §114.20(c) of this title if the following conditions are met.

(1) The DPS motor vehicle safety inspection certificates must be removed from the vehicle and destroyed before the vehicle may be offered for sale or displayed for public examination, or, effective March 1, 2015, the Texas Department of Motor Vehicles (DMV) vehicle registration insignia sticker must be removed from the vehicle and destroyed before the vehicle may be offered for sale or displayed for public examination.

(2) All potential buyers of the vehicle must be informed that deficiencies may be present in the vehicle pollution control systems on the vehicle. The buyer must also be informed of the liabilities to the buyer under §114.20 of this title and §114.50 of this title (relating to Vehicle Emissions Inspection Requirements) of operating the vehicle prior to the adequate restoration of all pollution control systems or devices on the vehicle as originally equipped. The seller of the vehicle shall provide to the buyer a written acknowledgment of the receipt of this information which must be signed by the buyer prior to completion of the sales transaction. The seller shall retain a copy of this signed acknowledgment for two years and shall make it available, upon request.

(f) The owner of a motor vehicle that [which] has been totally disabled by accident, age, or malfunction and [which] will no longer be operated is exempt from the provisions of §114.20(c) of this title if the DPS motor vehicle safety inspection certificate is removed and destroyed before the vehicle is offered for sale or displayed for public examination. Effective March 1, 2015, the owner of a motor vehicle that has been totally disabled by accident, age, or malfunction and will no longer be operated is exempt from the provisions of §114.20(c) of this title if the DMV vehicle registration insignia sticker is removed and

destroyed before the vehicle is offered for sale or displayed for public examination.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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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

30 TAC §114.50, §114.53

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, General Powers, TWC, §5.103, Rules, and TWC, §5.105, General Policy, which provide the commission with the general powers to carry out its duties and authorize the commission to propose rules necessary to carry out its powers and duties under the TWC; and TWC, §5.013, General Jurisdiction of Commission, which states the commission's authority over various statutory programs. The revisions are also proposed under Texas Health and Safety Code (THSC), §382.017, Rules, which authorizes the commission to propose rules consistent with the policy and purposes of THSC, Chapter 382 (the Texas Clean Air Act), and to propose rules that differentiate among particular conditions, particular sources, and particular areas of the state. The revisions are also proposed under THSC, §382.002, Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.019, Methods Used to Control and Reduce Emissions From Land Vehicles, which provides the commission the authority to propose rules to control and reduce emissions from engines used to propel land vehicles; THSC, Chapter 382, Subchapter G, Vehicle Emissions, which provides the commission the authority by rule to establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of Federal Clean Air Act, 42 United States Code,

§§7401 *et seq.*; and THSC, Chapter 382, Subchapter H, Vehicle Emissions Programs in Certain Counties, which authorizes the commission to propose an I/M program for participating Early Action Compact counties. The rule revisions are proposed pursuant to amendments to Texas Transportation Code, §548.104 and §548.302, which were amended by House Bill (HB) 2305, 83rd Legislature, 2013, and THSC, §382.0622(a), which was also amended by HB 2305.

These amendments implement Texas Transportation Code, §548.104 and §548.302.

§114.50. Vehicle Emissions Inspection Requirements.

(a) Applicability. The requirements of this section and those contained in the Texas Inspection and Maintenance (I/M) State Implementation Plan (SIP) must [shalt] be applied to all gasoline-powered motor vehicles 2 - 24 years old and subject to an annual emissions inspection[;] beginning with the first safety inspection. Military tactical vehicles, motorcycles, diesel-powered vehicles, dual-fueled vehicles that cannot operate using gasoline, and antique vehicles registered with the Texas Department of Motor Vehicles [~~Transportation~~] are excluded from the program. Safety inspection facilities and inspectors certified by the Texas Department of Public Safety (DPS) must [shalt] inspect all subject vehicles[;] in the following program areas[;] as defined in §114.2 of this title (relating to Inspection and Maintenance Definitions), in accordance with the following schedule.

(1) This paragraph applies to all vehicles registered and primarily operated in the Dallas-Fort Worth (DFW) program area.

(A) Beginning May 1, 2002, all 1996 and newer model year vehicles registered and primarily operated in Collin, Dallas, Denton, and Tarrant Counties equipped with on-board diagnostic (OBD) systems must [shalt] be tested using United States Environmental Protection Agency (EPA)-approved OBD test procedures.

(B) Beginning May 1, 2002, all pre-1996 model year vehicles registered and primarily operated in Collin, Dallas, Denton, and Tarrant Counties must [shalt] be tested using an acceleration simulation mode (ASM-2) test[;] or a vehicle emissions test approved by the EPA.

(C) All vehicle emissions inspection stations in affected program areas must [shalt] offer both the ASM-2 test and the OBD test[;] except low volume emissions inspection stations. If an owner or operator wishes to have his or her station classified as a low volume emissions inspection station, the station owner or operator shall [~~must~~] petition the DPS in accordance with the rules and procedures established by the DPS.

(2) This paragraph applies to all vehicles registered and primarily operated in the extended DFW (EDFW) program area.

(A) Beginning May 1, 2003, all 1996 and newer model year vehicles registered and primarily operated in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties equipped with OBD systems must [shalt] be tested using EPA-approved OBD test procedures.

(B) Beginning May 1, 2003, all pre-1996 model year vehicles registered and primarily operated in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties must [shalt] be tested using an ASM-2 test[;] or a vehicle emissions test approved by the EPA.

(C) All vehicle emissions inspection stations in affected program areas must [shalt] offer both the ASM-2 test and the OBD test[;] except low volume emissions inspection stations. If an owner or operator wishes to have his or her station classified as a low volume emissions inspection station, the station owner or operator shall [~~must~~]

petition the DPS in accordance with the rules and procedures established by the DPS.

(3) This paragraph applies to all vehicles registered and primarily operated in the Houston-Galveston-Brazoria (HGB) program area.

(A) Beginning May 1, 2002, all 1996 and newer model year vehicles registered and primarily operated in Harris County equipped with OBD systems must [shaH] be tested using EPA-approved OBD test procedures.

(B) Beginning May 1, 2002, all pre-1996 model year vehicles registered and primarily operated in Harris County must [shaH] be tested using an ASM-2 test[;] or a vehicle emissions test approved by the EPA.

(C) All vehicle emissions inspection stations in affected program areas must [shaH] offer both the ASM-2 test and the OBD test[;] except low volume emissions inspection stations. If an owner or operator wishes to have his or her station classified as a low volume emissions inspection station, the station owner or operator shall [~~must~~] petition the DPS in accordance with the rules and procedures established by the DPS.

(D) Beginning May 1, 2003, all 1996 and newer model year vehicles equipped with OBD systems and registered and primarily operated in Brazoria, Fort Bend, Galveston, and Montgomery Counties must [shaH] be tested using EPA-approved OBD test procedures.

(E) Beginning May 1, 2003, all pre-1996 model year vehicles registered and primarily operated in Brazoria, Fort Bend, Galveston, and Montgomery Counties must [shaH] be tested using the ASM-2 test procedures[;] or a vehicle emissions test approved by the EPA.

(4) This paragraph applies to all vehicles registered and primarily operated in the El Paso program area.

(A) All vehicles must [shaH] be tested using a two-speed idle (TSI) test through December 31, 2006.

(B) Beginning January 1, 2007, all 1996 and newer model year vehicles equipped with OBD systems must [shaH] be tested using EPA-approved OBD test procedures.

(C) Beginning January 1, 2007, all pre-1996 model year vehicles must [shaH] be tested using a TSI test.

(D) Beginning January 1, 2007, all vehicle emissions inspection stations in the El Paso program area must [shaH] offer both the TSI test and OBD test.

(b) Control requirements.

(1) No person or entity may operate, or allow the operation of, a motor vehicle registered in the DFW, EDFW, HGB, and El Paso program areas that does not comply with:

(A) prior to March 1, 2015, all applicable air pollution emissions control-related [~~control related~~] requirements included in the annual vehicle safety inspection requirements administered by the DPS, as evidenced by a current valid inspection certificate affixed to the vehicle windshield, a current valid vehicle inspection report (VIR), or other form of proof authorized by the DPS; [~~and~~]

(B) effective March 1, 2015, all applicable air pollution emissions control-related requirements included in the annual vehicle safety inspection requirements administered by the DPS, as evidenced by a current valid vehicle registration insignia sticker affixed to the vehicle windshield, a current valid VIR, or other form of proof authorized by the DPS; and

(C) [~~(B)~~] the vehicle emissions I/M requirements contained in this subchapter.

(2) All federal government agencies must [shaH] require a motor vehicle operated by any federal government agency employee on any property or facility under the jurisdiction of the federal government agency and located in a program area to comply with all vehicle emissions I/M requirements specified in Texas Health and Safety Code, Subchapter G, §§382.201 - 382.216 (concerning Vehicle Emissions), and this chapter. Commanding officers or directors of federal facilities shall certify annually to the executive director, or appointed designee, that all subject vehicles have been tested and are in compliance with the Federal Clean Air Act (42 United States Code, §§7401 *et seq.*). This requirement will [shaH] not apply to visiting federal government agency, employee, or military personnel vehicles as long as such visits do not exceed 60 calendar days per year.

(3) Any motorist in the DFW, EDFW, HGB, or El Paso program areas who has received a notice from an emissions inspection station that there are recall items unresolved on his or her motor vehicle[;] should furnish proof of compliance with the recall notice prior to the next vehicle emissions inspection, such as[- The motorist may present] a written statement from the dealership or leasing agency indicating that emissions repairs have been completed [~~as proof of compliance~~].

(4) A motorist whose vehicle has failed an emissions test may request a challenge retest through the DPS. If the retest is conducted within 15 days of the initial inspection, the retest is free.

(5) A motorist whose vehicle has failed an emissions test and has not requested a challenge retest or whose vehicle has failed a challenge retest shall [~~must~~] have emissions-related repairs performed and [~~must~~] submit a properly completed vehicle repair form (VRF) in order to receive a retest. In order to receive a waiver or time extension, the motorist shall [~~must~~] submit a VRF or applicable documentation as deemed necessary by the DPS.

(6) A motorist whose vehicle is registered in the DFW, EDFW, HGB, or El Paso program areas[;] or in any county adjacent to a program area and whose vehicle has failed an on-road test administered by the DPS shall:

(A) submit the vehicle for an out-of-cycle vehicle emissions inspection within 30 days of written notice by the DPS; and

(B) satisfy all inspection, extension, or waiver requirements of the vehicle emissions I/M program specified in 37 TAC Chapter 23 (relating to Vehicle Inspection) [~~§23.93 (relating to Vehicle Emission Inspection Requirements)~~].

(7) A subject vehicle registered in a county without an I/M program that meets the applicability criteria of subsection (a) of this section and the ownership of which has changed through a retail sale as defined by Texas Occupations Code, §2301.002, is not eligible for title receipt or registration in a county with an I/M program unless proof is presented that the vehicle has passed an approved vehicle emissions inspection within 90 days before the title transfer. The evidence of proof required may be in the form of the vehicle inspection report (VIR) or another proof of the program compliance as authorized by the DPS. All 1996 and newer model year vehicles with less than 50,000 miles are exempt from the test-on-resale requirements of this paragraph.

(8) State, governmental, and quasi-governmental agencies that fall outside the normal registration or inspection process must [shaH] comply with all vehicle emissions I/M requirements for vehicles primarily operated in I/M program areas.

(c) Waivers and extensions. A motorist may apply to the DPS for a waiver or an extension as specified in 37 TAC Chapter

23, [§23.93,] which defers [defer] the need for full compliance with vehicle emissions standards for a specified period of time after failing a vehicle emissions inspection.

(d) Prohibitions.

(1) No person may issue or allow the issuance of a VIR, as authorized by the DPS [DPS,] unless all applicable air pollution emissions control-related [control related] requirements of the annual vehicle safety inspection and the vehicle emissions I/M requirements are completely and properly performed in accordance with the rules and regulations adopted by the DPS and the commission. Prior to taking any enforcement action regarding this provision, the commission must [shall] consult with the DPS.

(2) No person may allow or participate in the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen safety inspection certificates, VIRs, VRFs, vehicle emissions repair documentation, or other documents that may be used to circumvent applicable vehicle emissions I/M requirements and to commit an offense specified in Texas Transportation Code, §548.603 (concerning Fictitious or Counterfeit Inspection Certificate or Insurance Document). Effective March 1, 2015, no person may allow or participate in the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen vehicle registration insignia stickers, VIRs, VRFs, vehicle emissions repair documentation, or other documents that may be used to circumvent applicable vehicle emissions I/M requirements and to commit an offense specified in Texas Transportation Code, §548.603.

(3) No organization, business, person, or other entity may represent itself as an emissions inspector certified by the DPS[;] unless such certification has been issued under the certification requirements and procedures contained in Texas Transportation Code, §§548.401 - 548.404.

(4) No person may act as or offer to perform services as a Recognized Emissions Repair Technician of Texas, as designated by the DPS, without first obtaining and maintaining DPS recognition.

§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 [shall] 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 February 28, 2015, 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 [shall] collect a fee of \$14 and [shall] 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, the emissions inspection station must [shall] collect a fee of \$16 and [shall] remit to the DPS \$4.50 beginning upon the date specified by the commission but prior to March 1, 2015. Effective March 1, 2015, any emissions inspection station 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. [upon approval of the resolution.]

(2) In the Dallas-Fort Worth program area beginning May 1, 2002 and ending February 28, 2015, 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 February 28, 2015, any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(2)(A) or (B) of this title must [shall] collect a fee not to exceed \$27. The emissions inspection station must [shall] remit to the DPS \$2.50 for each acceleration simulation mode (ASM-2) test and \$8.50 for each on-board diagnostics (OBD) test. Effective March 1, 2015 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 February 28, 2015, 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 February 28, 2015, 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[; shall] collect a fee not to exceed \$27. The emissions inspection station must [shall] remit to the DPS \$2.50 for each ASM-2 test and \$8.50 for each OBD test. Effective March 1, 2015 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 [shall] be the same as the amounts set forth in subsection (a) of this section. The challenge fee must [shall] 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 [shall] 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) Effective March 1, 2015, 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, 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 the annual vehicle registration as part of the vehicle emissions inspection fee. 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, 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 the annual vehicle registration as part of the vehicle emissions inspection fee beginning upon the date specified by the commission.

(2) In the Dallas-Fort Worth and the extended Dallas-Fort Worth program areas, vehicle owners 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

the annual vehicle registration as part of the vehicle emissions inspection fee.

(3) In the Houston-Galveston-Brazoria program area, vehicle owners 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 the annual vehicle registration as part of the vehicle emissions inspection fee.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Texas Commission on Environmental Quality

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DIVISION 3. EARLY ACTION COMPACT COUNTIES

30 TAC §§114.82 - 114.84, 114.87

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, General Powers, TWC, §5.103, Rules, and TWC, §5.105, General Policy, which provide the commission with the general powers to carry out its duties and authorize the commission to propose rules necessary to carry out its powers and duties under the TWC; and TWC, §5.013, General Jurisdiction of Commission, which states the commission's authority over various statutory programs. The revisions are also proposed under Texas Health and Safety Code (THSC), §382.017, Rules, which authorizes the commission to propose rules consistent with the policy and purposes of THSC, Chapter 382 (the Texas Clean Air Act), and to propose rules that differentiate among particular conditions, particular sources, and particular areas of the state. The revisions are also proposed under THSC, §382.002, Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.019, Methods Used to Control and Reduce Emissions From Land Vehicles, which provides the commission the authority to propose rules to control and reduce emissions from engines used to propel land vehicles; THSC, Chapter 382, Subchapter G, Vehicle Emissions, which provides the commission the authority by rule to establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of Federal Clean Air Act, 42 United States Code, §§7401 *et seq.*; and THSC, Chapter 382, Subchapter H, Vehicle Emissions Programs in Certain Counties, which authorizes the commission to propose an inspection and maintenance

program for participating early action compact counties. The rule revisions are proposed pursuant to amendments to Texas Transportation Code, §548.104 and §548.302, which were amended by House Bill (HB) 2305, 83rd Legislature, 2013, and THSC, §382.0622(a), which was also amended by HB 2305.

These amendments implement Texas Transportation Code, §548.104 and §548.302.

§114.82. Control Requirements.

(a) No person or entity may operate, or allow the operation of, a motor vehicle registered in the affected early action compact (EAC) counties that does not comply with:

(1) prior to March 1, 2015, all applicable air pollution emissions control-related requirements included in the annual vehicle safety inspection requirements administered by the Texas Department of Public Safety (DPS); as evidenced by a current valid inspection certificate affixed to the vehicle windshield, a current valid vehicle inspection report (VIR), or other form of proof authorized by the DPS; and

(2) effective March 1, 2015, all applicable air pollution emissions control-related requirements included in the annual vehicle safety inspection requirements administered by the DPS as evidenced by a current valid vehicle registration insignia sticker affixed to the vehicle windshield or a current valid VIR, or other form of proof authorized by the DPS; and

(3) ~~(2)~~ the vehicle emissions inspection and maintenance (I/M) requirements contained in this subchapter.

(b) All federal government agencies must ~~shall~~ require a motor vehicle operated by any federal government agency employee on any property or facility under the jurisdiction of the agency and located in an affected EAC county to comply with all vehicle emissions I/M requirements contained in the Austin Area Early Action Compact Ozone State Implementation Plan Revision. Commanding officers or directors of federal facilities shall certify annually to the executive director, or appointed designee, that all subject vehicles have been tested and are in compliance with the Federal Clean Air Act (42 United States Code, §§7401 *et seq.*). This requirement does not apply to visiting agency, employee, or military personnel vehicles as long as such visits do not exceed 60 calendar days per year.

(c) A motorist in an affected EAC county who has received a notice from an emissions inspection station that there are unresolved recall items on the motor vehicle~~;~~ shall furnish proof of compliance with the recall notice prior to the next vehicle emissions inspection, such as: ~~The motorist may present~~ a written statement from the dealership or leasing agency indicating that emissions repairs have been completed as ~~proof of compliance~~.

(d) A motorist whose vehicle has failed an emissions test may request a challenge retest through DPS. If the retest is conducted within 15 days of the initial inspection, the cost of the retest is free.

(e) A motorist whose vehicle has failed an emissions test and has not requested a challenge retest or has failed a challenge retest shall have emissions-related repairs performed and ~~shall~~ submit a properly completed vehicle repair form in order to receive a retest. In order to receive a waiver or time extension, the motorist shall submit a vehicle repair form or applicable documentation as considered necessary by the DPS.

(f) A motorist whose vehicle is registered in an affected EAC county, or in any county adjacent to an affected EAC county, and has failed an on-road test administered by the DPS shall:

(1) submit the vehicle for an out-of-cycle vehicle emissions inspection within 30 days of written notice by the DPS; and

(2) satisfy all inspection, extension, or waiver requirements of the vehicle emissions I/M program contained in the Austin Area Early Action Compact Ozone State Implementation Plan Revision.

(g) A vehicle registered in a county without an I/M program that meets the applicability criteria of §114.80(c) of this title (relating to Applicability), and the ownership of which has changed through a retail sale as defined by Texas Motor Vehicle Commission Code, Article 4413(36), §1.03 (moved to Texas Occupations Code, §2301.002, effective June 1, 2003), is not eligible for title receipt or registration in an affected EAC program county with an I/M program unless proof is presented that the vehicle has passed an approved vehicle emissions inspection within 90 days before the title transfer. The evidence of proof required may be in the form of the vehicle inspection report or another proof of the program compliance as authorized by the DPS. All 1996 and newer model year vehicles with less than 50,000 miles are exempt from the test-on-resale requirements of this subsection.

(h) State, governmental, and quasi-governmental agencies that fall outside the normal registration or inspection process must [shalt] comply with all vehicle emissions I/M requirements contained in the Austin Area Early Action Compact Ozone State Implementation Plan Revision for vehicles primarily operated in I/M program areas.

§114.83. Waivers and Extensions.

A motorist may apply to the Texas Department of Public Safety for a waiver or an extension as specified in 37 TAC Chapter 23 (relating to Vehicle Inspection), [§23.93 (relating to Vehicle Emissions Inspection Requirements),] which defers the need for full compliance with vehicle emissions standards for a specified period of time after failing a vehicle emissions inspection.

§114.84. Prohibitions.

(a) No person may issue or allow the issuance of a vehicle inspection report, as authorized by the Texas Department of Public Safety (DPS), unless all applicable air pollution emissions control-related requirements of the annual vehicle safety inspection and the vehicle emissions inspection and maintenance (I/M) requirements and procedures contained in the Austin Area Early Action Compact Ozone State Implementation Plan Revision are completely and properly performed in accordance with the rules and regulations adopted by the DPS and the commission. Prior to taking any enforcement action regarding this provision, the executive director shall consult with the DPS.

(b) No person may allow or participate in the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen safety inspection certificates, vehicle inspection reports, vehicle repair forms, vehicle emissions repair documentation, or other documents that may be used to circumvent the vehicle emissions I/M requirements and procedures contained in the Austin Area Early Action Compact Ozone State Implementation Plan Revision. Effective March 1, 2015, no person may allow or participate in the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen vehicle registration insignia stickers, vehicle inspection reports, vehicle repair forms, vehicle emissions repair documentation, or other documents that may be used to circumvent the vehicle emissions I/M requirements and procedures contained in the Austin Area Early Action Compact Ozone State Implementation Plan Revision.

(c) No organization, business, person, or other entity may represent itself as an emissions inspector certified by the DPS[₇] unless the certification has been issued under the certification requirements and procedures contained in Texas Transportation Code, §§548.401 - 548.404.

(d) No person may act as or offer to perform services as a Recognized Emissions Repair Technician of Texas, as designated by the

DPS, without first obtaining and maintaining DPS recognition. Requirements to become a DPS Recognized Emission Repair Technician are contained in 37 TAC Chapter 23 (relating to Vehicle Inspection) [§23.93 (relating to Vehicle Emissions Inspection Requirements)].

§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 February 28, 2015, any emissions inspection station required to conduct an emissions test in accordance with §114.80 of this title (relating to Applicability) must [shalt] collect a fee not to exceed \$16 and [shalt] 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 effective March 1, 2015, 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[₇] at an inspection station designated by the DPS[₇] 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 [shalt] 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) In Travis and Williamson Counties, vehicle owners shall remit \$4.50 for motor vehicles subject to vehicle emissions inspections to the Texas Department of Motor Vehicles or county tax assessor-collector at the time of the annual vehicle registration as part of the vehicle emissions inspection fee.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 27, 2013.

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Texas Commission on Environmental Quality

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For further information, please call: (512) 239-2548



CHAPTER 290. PUBLIC DRINKING WATER
SUBCHAPTER D. RULES AND
REGULATIONS FOR PUBLIC WATER
SYSTEMS

AN ACT

relating to motor vehicle inspections; creating an offense; changing the collection method for certain fees.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 548.104, Transportation Code, is amended to read as follows:

Sec. 548.104. EQUIPMENT-RELATED PREREQUISITES TO ISSUANCE OF PASSING VEHICLE INSPECTION REPORT [~~CERTIFICATE~~]. (a) The commission shall adopt uniform standards of safety applicable to each item required to be inspected by Section 548.051. The standards and the list of items to be inspected shall be posted in each inspection station.

(b) An inspection station or inspector may issue a passing vehicle [~~an~~] inspection report [~~certificate~~] only if the vehicle is inspected and found to be in proper and safe condition and to comply with this chapter and the rules adopted under this chapter.

(c) An inspection station or inspector may inspect only the equipment required to be inspected by Section 548.051 and may not:

(1) falsely and fraudulently represent to an applicant that equipment required to be inspected must be repaired, adjusted, or replaced before the vehicle will pass inspection; or

(2) require an applicant to have another part of the vehicle or other equipment inspected as a prerequisite for issuance of a passing vehicle [~~an~~] inspection report [~~certificate~~].

1 (d) An inspection station or inspector may not issue a
2 passing vehicle [~~an~~] inspection report [~~certificate~~] for a vehicle
3 equipped with:

4 (1) a carburetion device permitting the use of
5 liquefied gas alone or interchangeably with another fuel, unless a
6 valid liquefied gas tax decal issued by the comptroller is attached
7 to the lower right-hand corner of the front windshield of the
8 vehicle on the passenger side; [~~or~~]

9 (2) a sunscreening device prohibited by Section
10 547.613, except that the department by rule shall provide
11 procedures for issuance of a passing vehicle [~~an~~] inspection report
12 [~~certificate~~] for a vehicle exempt under Section 547.613(c); or

13 (3) a compressed natural gas container unless the
14 owner demonstrates in accordance with department rules proof:

15 (A) that:

16 (i) the container has met the inspection
17 requirements under 49 C.F.R. Section 571.304; and

18 (ii) the manufacturer's recommended service
19 life for the container, as stated on the container label required by
20 49 C.F.R. Section 571.304, has not expired; or

21 (B) that the vehicle is a fleet vehicle for which
22 the fleet operator employs a technician certified to inspect the
23 container.

24 (e) The department shall adopt rules relating to inspection
25 of and issuance of a vehicle [~~an~~] inspection report [~~certificate~~]
26 for a moped.

27 SECTION 2. Article 45.003, Code of Criminal Procedure, is

1 amended to read as follows:

2 Art. 45.003. DEFINITION FOR CERTAIN PROSECUTIONS. For
3 purposes of dismissing a charge under Section 502.407 [~~or 548.605~~],
4 Transportation Code, "day" does not include Saturday, Sunday, or a
5 legal holiday.

6 SECTION 3. Section 51.207(d), Education Code, is amended to
7 read as follows:

8 (d) This subsection applies only to a public institution of
9 higher education campus that is not covered by Subsection (b). The
10 institution may not issue a permit to a student of the institution
11 for driving or parking a motor vehicle on institutional property
12 unless the institution provides written notice to the student that
13 failure to register the vehicle in this state [~~or to display a
14 current and appropriate inspection certificate issued under
15 Chapter 548, Transportation Code,~~] may violate state law if the
16 owner of the vehicle resides in this state.

17 SECTION 4. Section 103.0213, Government Code, is amended to
18 read as follows:

19 Sec. 103.0213. ADDITIONAL FEES AND COSTS IN CRIMINAL OR
20 CIVIL CASES: TRANSPORTATION CODE. An accused or defendant, or a
21 party to a civil suit, as applicable, shall pay the following fees
22 and costs under the Transportation Code if ordered by the court or
23 otherwise required:

24 (1) administrative fee on dismissal of charge of
25 driving with an expired motor vehicle registration (Sec. 502.407,
26 Transportation Code) . . . not to exceed \$20;

27 (2) administrative fee on dismissal of charge of

1 driving with an expired driver's license (Sec. 521.026,
2 Transportation Code) . . . not to exceed \$20;

3 (3) [~~administrative fee on remediation of charge of~~
4 ~~driving with an expired inspection certificate (Sec. 548.605,~~
5 ~~Transportation Code) . . . not to exceed \$20;~~

6 [(4)] administrative fee for failure to appear for a
7 complaint or citation on certain offenses (Sec. 706.006,
8 Transportation Code) . . . \$30 for each violation; and

9 (4) [(5)] administrative fee for failure to pay or
10 satisfy certain judgments (Sec. 706.006, Transportation Code)
11 . . . \$30.

12 SECTION 5. Section 382.0622(a), Health and Safety Code, is
13 amended to read as follows:

14 (a) Clean Air Act fees consist of:

15 (1) fees collected by the commission under Sections
16 382.062, 382.0621, 382.202, and 382.302 and as otherwise provided
17 by law;

18 (2) \$2 of each fee [~~advance payment~~] collected for
19 inspections of [~~by the Department of Public Safety for inspection~~
20 ~~certificates for~~] vehicles other than mopeds under Section 548.501,
21 Transportation Code; and

22 (3) fees collected that are required under Section 185
23 of the federal Clean Air Act (42 U.S.C. Section 7511d).

24 SECTION 6. Sections 382.202(d) and (l), Health and Safety
25 Code, are amended to read as follows:

26 (d) On adoption of a resolution by the commission and after
27 proper notice, the Department of Public Safety of the State of Texas

1 shall implement a system that requires, as a condition of obtaining
2 a passing vehicle [~~safety~~] inspection report [~~certificate~~] issued
3 under Subchapter C, Chapter 548, Transportation Code, in a county
4 that is included in a vehicle emissions inspection and maintenance
5 program under Subchapter F of that chapter, that the vehicle,
6 unless the vehicle is not covered by the system, be annually or
7 biennially inspected under the vehicle emissions inspection and
8 maintenance program as required by the state's air quality state
9 implementation plan. The Department of Public Safety shall
10 implement such a system when it is required by any provision of
11 federal or state law, including any provision of the state's air
12 quality state implementation plan.

13 (1) Except as provided by this subsection, a person who
14 sells or transfers ownership of a motor vehicle for which a passing
15 vehicle [~~emissions~~] inspection report [~~certificate~~] has been
16 issued is not liable for the cost of emission control system repairs
17 that are required for the vehicle subsequently to receive a passing
18 report [~~an emissions inspection certificate~~]. This subsection does
19 not apply to repairs that are required because emission control
20 equipment or devices on the vehicle were removed or tampered with
21 before the sale or transfer of the vehicle.

22 SECTION 7. Section 382.205(d), Health and Safety Code, is
23 amended to read as follows:

24 (d) The Department of Public Safety of the State of Texas by
25 rule shall adopt:

26 (1) testing procedures in accordance with motor
27 vehicle emissions testing equipment specifications; and

1 (2) procedures for issuing a vehicle [~~or denying an~~
2 ~~emissions~~] inspection report following an emissions inspection and
3 submitting information to the inspection database described by
4 Section 548.251, Transportation Code, following an emissions
5 inspection [~~certificate~~].

6 SECTION 8. Sections 382.220(b) and (d), Health and Safety
7 Code, are amended to read as follows:

8 (b) A program under this section must be implemented in
9 consultation with the commission and may include a program to:

10 (1) expand and enhance the AirCheck Texas Repair and
11 Replacement Assistance Program;

12 (2) develop and implement programs or systems that
13 remotely determine vehicle emissions and notify the vehicle's
14 operator;

15 (3) develop and implement projects to implement the
16 commission's smoking vehicle program;

17 (4) develop and implement projects in consultation
18 with the director of the Department of Public Safety for
19 coordinating with local law enforcement officials to reduce the use
20 of counterfeit registration insignia and vehicle inspection
21 reports [~~state inspection stickers~~] by providing local law
22 enforcement officials with funds to identify vehicles with
23 counterfeit registration insignia and vehicle inspection reports
24 [~~state inspection stickers~~] and to carry out appropriate actions;

25 (5) develop and implement programs to enhance
26 transportation system improvements; or

27 (6) develop and implement new air control strategies

1 designed to assist local areas in complying with state and federal
2 air quality rules and regulations.

3 (d) Fees collected under Sections 382.202 and 382.302 may be
4 used, in an amount not to exceed \$5 million per fiscal year, for
5 projects described by Subsection (b). The fees shall be made
6 available only to counties participating in the low-income vehicle
7 repair assistance, retrofit, and accelerated vehicle retirement
8 programs created under Section 382.209 and only on a matching
9 basis, whereby the commission provides money to a county in the same
10 amount that the county dedicates to a project authorized by
11 Subsection (b). The commission may reduce the match requirement
12 for a county that proposes to develop and implement independent
13 test facility fraud detection programs, including the use of remote
14 sensing technology for coordinating with law enforcement officials
15 to detect, prevent, and prosecute the use of counterfeit
16 registration insignia and vehicle inspection reports [~~state~~
17 ~~inspection stickers~~].

18 SECTION 9. Sections 2308.253(d) and (e), Occupations Code,
19 are amended to read as follows:

20 (d) Except as provided by a contract described by Subsection
21 (e), a parking facility owner may not have a vehicle removed from
22 the parking facility merely because the vehicle does not display[+]

23 [~~(1)~~] an unexpired license plate or registration
24 insignia issued for the vehicle under Chapter 502, Transportation
25 Code, or the vehicle registration law of another state or country[+]
26 ~~or~~

27 [~~(2) a valid vehicle inspection certificate issued~~

1 ~~under Chapter 548, Transportation Code, or the vehicle inspection~~
2 ~~law of another state or country].~~

3 (e) A contract provision providing for the removal from a
4 parking facility of a vehicle that does not display an unexpired
5 license plate or registration insignia [~~or a valid inspection~~
6 ~~certificate~~] is valid only if the provision requires the owner or
7 operator of the vehicle to be given at least 10 days' written notice
8 that the vehicle will be towed from the facility at the vehicle
9 owner's or operator's expense if it is not removed from the parking
10 facility. The notice must be:

11 (1) delivered in person to the owner or operator of the
12 vehicle; or

13 (2) sent by certified mail, return receipt requested,
14 to that owner or operator.

15 SECTION 10. Section 501.030(a), Transportation Code, is
16 amended to read as follows:

17 (a) Before a motor vehicle that was last registered or
18 titled in another state or country may be titled in this state, [~~the~~
19 ~~applicant must furnish~~] the county assessor-collector shall verify
20 that the vehicle has passed the inspections required by Chapter
21 548, as indicated in the Department of Public Safety's inspection
22 database under Section 548.251 [~~with a verification form under~~
23 ~~Section 548.256~~].

24 SECTION 11. Section 502.0023, Transportation Code, is
25 amended by adding Subsection (j) to read as follows:

26 (j) A motor vehicle, semitrailer, or trailer registered
27 under this section is subject to the inspection requirements of

1 Chapter 548 as if the vehicle, semitrailer, or trailer were
2 registered without extended registration. The department and the
3 Department of Public Safety shall by rule establish a method to
4 enforce the inspection requirements of Chapter 548 for motor
5 vehicles, semitrailers, and trailers registered under this
6 section. The department may assess a fee to cover the department's
7 administrative costs of implementing this subsection.

8 SECTION 12. Section 502.047, Transportation Code, is
9 amended to read as follows:

10 Sec. 502.047. REGISTRATION-BASED ENFORCEMENT OF MOTOR
11 VEHICLE [EMISSIONS] INSPECTION [AND MAINTENANCE] REQUIREMENTS.

12 (a) The department and the Department of Public Safety shall
13 ensure compliance with the motor vehicle inspection requirements
14 under Chapter 548, including compliance with the motor vehicle
15 emissions inspection and maintenance program under Subchapter F of
16 that chapter, through a vehicle registration-based enforcement
17 system [~~inspection sticker-based enforcement system except as~~
18 ~~provided by this section or Section 548.3011. Subsections (b)-(c)~~
19 ~~apply only if the United States Environmental Protection Agency~~
20 ~~determines that the state has not demonstrated, as required by~~
21 ~~C.F.R. Section 51.361, that sticker-based enforcement of the~~
22 ~~program is more effective than registration-based enforcement and~~
23 ~~gives the Texas Commission on Environmental Quality or the governor~~
24 ~~written notification that the reregistration-based enforcement of~~
25 ~~the program, as described by those subsections, will be required.~~
26 ~~If Subsections (b)-(c) are made applicable as provided by this~~
27 ~~subsection, the department shall terminate reregistration-based~~

1 ~~enforcement of the program under those subsections on the date the~~
2 ~~United States Environmental Protection Agency gives the Texas~~
3 ~~Commission on Environmental Quality or a person the commission~~
4 ~~designates written notification that reregistration-based~~
5 ~~enforcement is not required for the state implementation plan].~~

6 (b) A motor vehicle may not be registered if the department
7 receives from the Texas Commission on Environmental Quality or the
8 Department of Public Safety notification that the registered owner
9 of the vehicle has not complied with [~~Subchapter F,~~] Chapter 548.

10 (c) A motor vehicle may not be registered if the vehicle was
11 denied registration under Subsection (b) unless verification is
12 received that the registered vehicle owner is in compliance with
13 [~~Subchapter F,~~] Chapter 548.

14 (d) The department and the Department of Public Safety shall
15 enter into an agreement regarding the timely submission by the
16 Department of Public Safety of inspection compliance information to
17 the department.

18 (d-1) The department, the Texas Commission on Environmental
19 Quality, and the Department of Public Safety shall enter an
20 agreement regarding the responsibilities for costs associated with
21 implementing this section.

22 (e) A county tax assessor-collector is not liable to any
23 person for refusing to register a motor vehicle because of the
24 person's failure to provide verification of the person's compliance
25 with [~~Subchapter F,~~] Chapter 548.

26 SECTION 13. Section 502.059(c), Transportation Code, is
27 amended to read as follows:

1 (c) Except as provided by Subsection (f), the registration
2 insignia for validation of a license plate shall be attached to the
3 inside of the vehicle's windshield, if the vehicle has a
4 windshield, in the lower left corner in a manner that will not
5 obstruct the vision of the driver [~~within six inches of the place~~
6 ~~where the motor vehicle inspection sticker is required to be~~
7 ~~placed~~]. If the vehicle does not have a windshield, the owner, when
8 applying for registration or renewal of registration, shall notify
9 the department, and the department shall issue a distinctive device
10 for attachment to the rear license plate of the vehicle.

11 SECTION 14. The heading to Section 521.3465, Transportation
12 Code, is amended to read as follows:

13 Sec. 521.3465. AUTOMATIC SUSPENSION ON CONVICTION OF
14 CERTAIN OFFENSES INVOLVING FICTITIOUS MOTOR VEHICLE LICENSE
15 PLATES, REGISTRATION INSIGNIA, OR VEHICLE [~~SAFETY~~]
16 REPORTS [~~CERTIFICATES~~].

17 SECTION 15. Section 521.3465(a), Transportation Code, is
18 amended to read as follows:

19 (a) A license is automatically suspended on final
20 conviction of the license holder of:

21 (1) an offense under Section 502.475(a)(4)
22 [~~502.409(a)(4)~~]; or

23 (2) an offense under Section 548.603(a)(1) that
24 involves a fictitious vehicle [~~safety~~] inspection report
25 [~~certificate~~].

26 SECTION 16. Section 521.3466(a), Transportation Code, is
27 amended to read as follows:

1 (a) A license is automatically revoked on final conviction
2 of the license holder of an offense under Section 37.10, Penal Code,
3 if the governmental record was a motor vehicle license plate or
4 registration insignia, within the meaning of Chapter 502, or a
5 vehicle [safety] inspection report [certificate], within the
6 meaning of Chapter 548.

7 SECTION 17. Section 548.001, Transportation Code, is
8 amended by adding Subdivision (10) to read as follows:

9 (10) "Vehicle inspection report" means a report issued
10 by an inspector or an inspection station for a vehicle that
11 indicates whether the vehicle has passed the safety and, if
12 applicable, emissions inspections required by this chapter.

13 SECTION 18. Section 548.004(c), Transportation Code, is
14 amended to read as follows:

15 (c) The facility may inspect only a vehicle owned by the
16 political subdivision or state agency. [~~An officer, employee, or~~
17 ~~inspector of the subdivision or agency may not place an inspection~~
18 ~~certificate received from the department under this section on a~~
19 ~~vehicle not owned by the subdivision or agency.~~]

20 SECTION 19. Section 548.053(a), Transportation Code, is
21 amended to read as follows:

22 (a) If an inspection discloses the necessity for
23 adjustment, correction, or repair, an inspection station or
24 inspector may not issue a passing vehicle inspection report [~~an~~
25 ~~inspection certificate~~] until the adjustment, correction, or
26 repair is made. The owner of the vehicle may have the adjustment,
27 correction, or repair made by a qualified person of the owner's

1 choice, subject to reinspection. The vehicle shall be reinspected
2 once free of charge within 15 days after the date of the original
3 inspection, not including the date the original inspection is made,
4 at the same inspection station after the adjustment, correction, or
5 repair is made.

6 SECTION 20. The heading to Subchapter C, Chapter 548,
7 Transportation Code, is amended to read as follows:

8 SUBCHAPTER C. PERIODS OF INSPECTION; PREREQUISITES TO ISSUANCE OF
9 PASSING VEHICLE INSPECTION REPORT [~~CERTIFICATE~~]

10 SECTION 21. Section 548.101, Transportation Code, is
11 amended to read as follows:

12 Sec. 548.101. GENERAL ONE-YEAR INSPECTION PERIOD. Except as
13 provided by Section 548.102, the department shall require an annual
14 inspection. The department shall set the periods of inspection and
15 may make rules with respect to those periods. The rules must provide
16 that:

17 (1) a vehicle owner may obtain an inspection not
18 earlier than 90 days before the date of expiration of the vehicle's
19 registration; and

20 (2) a used motor vehicle sold by a dealer, as defined
21 by Section 503.001, must be inspected in the 180 days preceding the
22 date the dealer sells the vehicle.

23 SECTION 22. Section 548.103, Transportation Code, is
24 amended to read as follows:

25 Sec. 548.103. EXTENDED INSPECTION PERIOD FOR CERTAIN
26 VEHICLES. The department may extend the time within which the
27 resident owner of a vehicle that is not in this state when an

1 inspection is required must obtain a vehicle [~~an~~] inspection report
2 [~~certificate~~] in this state.

3 SECTION 23. Section 548.105, Transportation Code, is
4 amended to read as follows:

5 Sec. 548.105. EVIDENCE OF FINANCIAL RESPONSIBILITY AS
6 PREREQUISITE TO ISSUANCE OF PASSING VEHICLE INSPECTION REPORT
7 [~~CERTIFICATE~~]. (a) An inspection station or inspector may not
8 issue a passing vehicle [~~an~~] inspection report [~~certificate~~] for a
9 vehicle unless the owner or operator furnishes evidence of
10 financial responsibility at the time of inspection. Evidence of
11 financial responsibility may be shown in the manner specified under
12 Section 601.053(a). A personal automobile insurance policy used as
13 evidence of financial responsibility must be written for a term of
14 30 days or more as required by Section 1952.054 [~~Article 5.06~~],
15 Insurance Code.

16 (b) An inspection station is not liable to a person,
17 including a third party, for issuing a passing vehicle [~~an~~]
18 inspection report [~~certificate~~] in reliance on evidence of
19 financial responsibility furnished to the station. An inspection
20 station that is the seller of a motor vehicle may rely on an oral
21 insurance binder.

22 SECTION 24. The heading to Subchapter E, Chapter 548,
23 Transportation Code, is amended to read as follows:

24 SUBCHAPTER E. ISSUANCE [~~, RECORDING, AND PROOF~~] OF VEHICLE
25 INSPECTION REPORTS; SUBMISSION OF INFORMATION TO DEPARTMENT
26 DATABASE [~~CERTIFICATES AND VERIFICATION FORMS~~]

27 SECTION 25. Section 548.251, Transportation Code, is

1 amended to read as follows:

2 Sec. 548.251. DEPARTMENT TO MAINTAIN DATABASE [~~PROVIDE~~
3 ~~INSPECTION CERTIFICATES AND VERIFICATION FORMS~~]. The department
4 shall maintain an electronic database to which inspection stations
5 may electronically submit the information required by Section
6 548.253 [~~provide serially numbered inspection certificates and~~
7 ~~verification forms to inspection stations. The department may~~
8 ~~issue a unique inspection certificate for:~~

9 ~~[(1) a commercial motor vehicle inspected under~~
10 ~~Section 548.201; or~~

11 ~~[(2) a vehicle inspected under Subchapter F].~~

12 SECTION 26. Section 548.252, Transportation Code, is
13 amended to read as follows:

14 Sec. 548.252. ISSUANCE [~~SAFEKEEPING AND CONTROL~~] OF VEHICLE
15 INSPECTION REPORTS [~~CERTIFICATES AND VERIFICATION FORMS~~].

16 (a) The department by rule shall require an inspection station to:

17 (1) issue a vehicle inspection report to the owner or
18 operator of each vehicle inspected by the station; and

19 (2) issue a passing vehicle inspection report to the
20 owner or operator of each vehicle inspected by the station that
21 passes the inspections required by this chapter.

22 (b) The department may adopt rules regarding the issuance of
23 vehicle inspection reports, including rules providing for [~~On being~~
24 ~~licensed, an inspector or owner of an inspection station shall:~~

25 ~~[(1) provide for]~~ the format and safekeeping of the
26 reports [~~inspection certificates and verification forms,~~

27 ~~[(2) safeguard the certificates and forms against~~

1 ~~theft, loss, or damage,~~

2 ~~[(3) control the sequence of issuance of the~~
3 ~~certificates and forms; and~~

4 ~~[(4) ensure that the certificates and forms are issued~~
5 ~~in accordance with department rules].~~

6 SECTION 27. Section 548.253, Transportation Code, is
7 amended to read as follows:

8 Sec. 548.253. INFORMATION TO BE SUBMITTED [~~RECORDED~~] ON
9 COMPLETION [~~ISSUANCE~~] OF INSPECTION [~~CERTIFICATE AND VERIFICATION~~
10 ~~FORM~~]. An inspection station or inspector, on completion of
11 [~~issuing~~] an inspection [~~certificate and verification form~~], shall
12 electronically submit to the department's inspection database:

13 (1) the vehicle identification number of the inspected
14 vehicle and an indication of whether the vehicle passed the
15 inspections required by this chapter [~~make a record and report as~~
16 ~~prescribed by the department of the inspection and certificate~~
17 ~~issued~~]; and

18 (2) any additional [~~include in the inspection~~
19 ~~certificate and verification form the~~] information required by rule
20 by the department for the type of vehicle inspected.

21 SECTION 28. Section 548.254, Transportation Code, is
22 amended to read as follows:

23 Sec. 548.254. VALIDITY OF VEHICLE INSPECTION REPORT
24 [~~CERTIFICATE~~]. A vehicle [~~An~~] inspection report [~~certificate~~] is
25 invalid after the end of the 12th month following the month in which
26 the report [~~certificate~~] is issued. [~~An unused inspection~~
27 ~~certificate representing a previous inspection period may not be~~

1 ~~issued after the beginning of the next period.]~~

2 SECTION 29. Section 548.256, Transportation Code, is
3 amended to read as follows:

4 Sec. 548.256. PROOF OF INSPECTION [~~VERIFICATION FORM~~]
5 REQUIRED TO REGISTER VEHICLE. [~~(a)~~] Before a vehicle [~~that is~~
6 ~~brought into this state by a person other than a manufacturer or~~
7 ~~importer~~] may be registered, the Texas Department of Motor Vehicles
8 or the county assessor-collector registering the vehicle shall
9 verify that the vehicle has passed the inspections required by this
10 chapter, as indicated in the department's inspection database. If
11 the database information is not available, the owner of the vehicle
12 may present a vehicle inspection report issued for the vehicle[~~7~~
13 ~~the owner must have the vehicle inspected and have the inspection~~
14 ~~station record the following information on a verification form~~
15 ~~prescribed and provided by the department.~~

16 [~~(1) the vehicle identification number,~~

17 [~~(2) the number appearing on the odometer of the~~
18 ~~vehicle at the time of the inspection, if the vehicle has an~~
19 ~~odometer, and~~

20 [~~(3) other information the department requires].~~

21 [~~(b) An inspection station may not issue the verification~~
22 ~~form unless the vehicle complies with the inspection requirements~~
23 ~~of this chapter.]~~

24 SECTION 30. Section 548.258(b), Transportation Code, is
25 amended to read as follows:

26 (b) The department may adopt rules to require an inspection
27 station to use the state electronic Internet portal to[+

1 ~~[(1) purchase inspection certificates, or~~
2 ~~[(2)]~~ send to the department a record, report, or
3 other information required by the department.

4 SECTION 31. Section 548.301(c), Transportation Code, is
5 amended to read as follows:

6 (c) A program established under this section must
7 ~~[Subsection (b) or (b-1) may]~~ include registration and
8 reregistration-based enforcement.

9 SECTION 32. Section 548.302, Transportation Code, is
10 amended to read as follows:

11 Sec. 548.302. COMMISSION TO ADOPT STANDARDS AND
12 REQUIREMENTS. The commission shall:

13 (1) adopt standards for emissions-related inspection
14 criteria consistent with requirements of the United States and the
15 conservation commission applicable to a county in which a program
16 is established under this subchapter; and

17 (2) develop and impose requirements necessary to
18 ensure that a passing vehicle ~~[an]~~ inspection report ~~[certificate]~~
19 is not issued to a vehicle subject to a program established under
20 this subchapter and that information stating that a vehicle has
21 passed an inspection is not submitted to the department's database
22 unless the vehicle has passed a motor vehicle emissions inspection
23 at a facility authorized and certified by the department.

24 SECTION 33. Section 548.304, Transportation Code, is
25 amended to read as follows:

26 Sec. 548.304. STATIONS LICENSED TO CONDUCT EMISSIONS
27 INSPECTIONS. ~~[(a)]~~ The department may authorize and certify

1 inspection stations as necessary to implement the
2 emissions-related inspection requirements of the motor vehicle
3 emissions inspection and maintenance program established under
4 this subchapter if the station meets the department's certification
5 requirements.

6 ~~[(b) The department shall provide inspection certificates
7 for distribution and issuance at inspection stations certified by
8 the department.]~~

9 SECTION 34. Section 548.401, Transportation Code, is
10 amended to read as follows:

11 Sec. 548.401. CERTIFICATION GENERALLY. A person may
12 perform an inspection, ~~[or]~~ issue a vehicle [an] inspection report,
13 or submit inspection information to the department's inspection
14 database ~~[certificate]~~ only if certified to do so by the department
15 under rules adopted by the department.

16 SECTION 35. Section 548.407(d), Transportation Code, is
17 amended to read as follows:

18 (d) The department may provide that a revocation or
19 suspension takes effect on receipt of notice under Subsection (b)
20 if the department finds that the action is necessary to prevent or
21 remedy a threat to public health, safety, or welfare. Violations
22 that present a threat to public health, safety, or welfare include:

23 (1) issuing a passing vehicle [an] inspection report
24 or submitting inspection information to the department's database
25 ~~[certificate]~~ with knowledge that the issuance or submission is in
26 violation of this chapter or rules adopted under this chapter;

27 (2) falsely or fraudulently representing to the owner

1 or operator of a vehicle that equipment inspected or required to be
2 inspected must be repaired, adjusted, or replaced for the vehicle
3 to pass an inspection;

4 (3) issuing a vehicle [~~an~~] inspection report or
5 submitting inspection information to the department's database
6 [~~certificate~~]:

7 (A) without authorization to issue the report or
8 submit the information [~~certificate~~]; or

9 (B) without inspecting the vehicle;

10 (4) issuing a passing vehicle [~~an~~] inspection report
11 or submitting inspection information to the department's database
12 [~~certificate~~] for a vehicle with knowledge that the vehicle has not
13 been repaired, adjusted, or corrected after an inspection has shown
14 a repair, adjustment, or correction to be necessary;

15 (5) knowingly issuing a passing vehicle [~~an~~]
16 inspection report or submitting inspection information to the
17 department's database [~~certificate~~]:

18 (A) for a vehicle without conducting an
19 inspection of each item required to be inspected; or

20 (B) for a vehicle that is missing an item
21 required to be inspected or that has an item required to be
22 inspected that is not in compliance with state law or department
23 rules;

24 (6) refusing to allow a vehicle's owner to have a
25 qualified person of the owner's choice make a required repair,
26 adjustment, or correction;

27 (7) charging for an inspection an amount greater than

1 the authorized fee;

2 (8) a violation of Subchapter F;

3 (9) a violation of Section 548.603; or

4 (10) a conviction of a felony or a Class A or B
5 misdemeanor that directly relates to or affects the duties or
6 responsibilities of a vehicle inspection station or inspector or a
7 conviction of a similar crime under the jurisdiction of another
8 state or the federal government.

9 SECTION 36. Section 548.501, Transportation Code, is
10 amended to read as follows:

11 Sec. 548.501. INSPECTION FEES GENERALLY. (a) Except as
12 provided by Sections 548.503 and 548.504, the fee for inspection of
13 a motor vehicle other than a moped is \$12.50. The fee for
14 inspection of a moped is \$5.75. [~~The fee for a verification form
15 issued as required by Section 548.256 is \$1.~~]

16 (b) Out of each fee for an inspection, \$5.50 shall be
17 remitted to the state under Section 548.509. [~~An inspection
18 station shall pay to the department \$5.50 of each fee for an
19 inspection. The department may require the station to make an
20 advance payment of \$5.50 for each inspection certificate provided
21 to the station. If advance payment is made:~~

22 [~~(1) no further payment may be required on issuance of
23 a certificate,~~

24 [~~(2) the inspection station may waive the fee due from
25 the owner of an inspected vehicle who is issued a certificate to
26 which the advance payment applies,~~

27 [~~(3) the department shall refund to the inspection~~

1 ~~station \$5.50 for each unissued certificate that the station~~
2 ~~returns to the department in accordance with department rules, and~~
3 ~~[(4) the conservation commission shall pay to the~~
4 ~~department \$2 for each unissued certificate that the station~~
5 ~~returns to the department.]~~

6 SECTION 37. Section 548.502, Transportation Code, is
7 amended to read as follows:

8 Sec. 548.502. INSPECTION BY POLITICAL SUBDIVISION OR STATE
9 AGENCY. A political subdivision or state agency for which the
10 department certifies an inspection station under Section 548.004:

11 (1) shall pay to the state ~~[department an advance~~
12 ~~payment of]~~ \$5.50 for each inspection under Section 548.509
13 ~~[certificate provided to it]~~; and

14 (2) may not be required to pay the remainder of the
15 ~~[compulsory]~~ inspection fee.

16 SECTION 38. Section 548.503, Transportation Code, is
17 amended to read as follows:

18 Sec. 548.503. INITIAL TWO-YEAR INSPECTION OF PASSENGER CAR
19 OR LIGHT TRUCK. (a) The fee for inspection of a passenger car or
20 light truck under Section 548.102 shall be set by the department by
21 rule on or before September 1 of each year. A fee set by the
22 department under this subsection must be based on the costs of
23 ~~[producing certificates,]~~ providing inspections~~[,]~~ and
24 administering the program, but may not be less than \$21.75.

25 (b) Out of each fee for an inspection under this section,
26 \$14.75 shall be remitted to the state under Section 548.509. ~~[The~~
27 ~~department shall require an inspection station to make an advance~~

1 ~~payment of \$14.75 for a certificate to be issued under this section.~~
2 ~~Additional payment may not be required of the station for the~~
3 ~~certificate. The inspection station may waive the fee due from the~~
4 ~~owner of the vehicle inspected. A refund for an unissued~~
5 ~~certificate shall be made in the same manner as provided for other~~
6 ~~certificate refunds.]~~

7 SECTION 39. Section 548.504(b), Transportation Code, is
8 amended to read as follows:

9 (b) Out of each fee for inspection of a commercial motor
10 vehicle, \$10 shall be remitted to the state under Section 548.509.
11 ~~[The inspection station shall pay to the department \$10 of each fee~~
12 ~~for inspection of a commercial motor vehicle. The department may~~
13 ~~require the station to make an advance payment of \$10 for a~~
14 ~~certificate to be issued under this section. If advance payment is~~
15 ~~made:~~

16 ~~[(1) no additional payment may be required of the~~
17 ~~station for the certificate, and~~

18 ~~[(2) a refund for an unissued certificate shall be~~
19 ~~made in the same manner as provided for other certificate refunds.]~~

20 SECTION 40. Section 548.505(a), Transportation Code, is
21 amended to read as follows:

22 (a) The department by rule may impose an inspection fee for
23 a vehicle inspected under Section 548.301(a) in addition to the fee
24 provided by Section 548.501, 548.502, 548.503, or 548.504. A fee
25 imposed under this subsection must be based on the costs of:

26 (1) ~~[producing certificates,~~

27 ~~[(2)]~~ providing inspections; and

1 (2) [~~(3)~~] administering the program.

2 SECTION 41. Section 548.508, Transportation Code, is
3 amended to read as follows:

4 Sec. 548.508. DISPOSITION OF FEES. Except as provided by
5 Sections 382.0622 and 382.202, Health and Safety Code, and Section
6 548.5055, each fee remitted to the comptroller [~~collected by the~~
7 ~~department~~] under this subchapter shall be deposited to the credit
8 of the Texas mobility fund.

9 SECTION 42. Subchapter H, Chapter 548, Transportation Code,
10 is amended by adding Section 548.509 to read as follows:

11 Sec. 548.509. COLLECTION OF FEE DURING REGISTRATION. The
12 Texas Department of Motor Vehicles or a county assessor-collector
13 that registers a motor vehicle that is subject to an inspection fee
14 under this chapter shall collect at the time of registration of the
15 motor vehicle the portion of the inspection fee that is required to
16 be remitted to the state. The Texas Department of Motor Vehicles or
17 the county assessor-collector shall remit the fee to the
18 comptroller.

19 SECTION 43. Section 548.601(a), Transportation Code, is
20 amended to read as follows:

21 (a) A person, including an inspector or an inspection
22 station, commits an offense if the person:

23 (1) submits information to the department's inspection
24 database or issues a vehicle inspection report [~~an inspection~~
25 ~~certificate~~] with knowledge that the submission or issuance is in
26 violation of this chapter or rules adopted under this chapter;

27 (2) falsely or fraudulently represents to the owner or

1 operator of a vehicle that equipment inspected or required to be
2 inspected must be repaired, adjusted, or replaced for the vehicle
3 to pass an inspection;

4 (3) misrepresents:

5 (A) material information in an application in
6 violation of Section 548.402 or 548.403; or

7 (B) information filed with the department under
8 this chapter or as required by department rule;

9 (4) submits information to the department's inspection
10 database or issues a vehicle inspection report [~~an inspection~~
11 ~~certificate~~]:

12 (A) without authorization to issue the report or
13 submit the information [~~certificate~~]; or

14 (B) without inspecting the vehicle;

15 (5) submits information to the department's inspection
16 database indicating that a vehicle has passed the applicable
17 inspections or issues a passing vehicle [~~an~~] inspection report
18 [~~certificate~~] for a vehicle with knowledge that the vehicle has not
19 been repaired, adjusted, or corrected after an inspection has shown
20 a repair, adjustment, or correction to be necessary;

21 (6) knowingly submits information to the department's
22 inspection database or issues a vehicle inspection report [~~an~~
23 ~~inspection certificate~~]:

24 (A) for a vehicle without conducting an
25 inspection of each item required to be inspected; or

26 (B) for a vehicle that is missing an item
27 required to be inspected or that has an item required to be

1 inspected that is not in compliance with state law or department
2 rules;

3 (7) refuses to allow a vehicle's owner to have a
4 qualified person of the owner's choice make a required repair,
5 adjustment, or correction;

6 (8) charges for an inspection an amount greater than
7 the authorized fee; or

8 (9) performs an act prohibited by or fails to perform
9 an act required by this chapter or a rule adopted under this
10 chapter.

11 SECTION 44. Sections 548.603(a), (b), and (c),
12 Transportation Code, are amended to read as follows:

13 (a) A person commits an offense if the person:

14 (1) presents to an official of this state or a
15 political subdivision of this state a vehicle inspection report
16 ~~[displays or causes or permits to be displayed an inspection~~
17 ~~certificate]~~ or insurance document knowing that the report
18 ~~[certificate]~~ or document is counterfeit, tampered with, altered,
19 fictitious, issued for another vehicle, issued for a vehicle
20 failing to meet all emissions inspection requirements, or issued in
21 violation of:

22 (A) this chapter, rules adopted under this
23 chapter, or other law of this state; or

24 (B) a law of another state, the United States,
25 the United Mexican States, a state of the United Mexican States,
26 Canada, or a province of Canada;

27 (2) ~~[transfers an inspection certificate from a~~

1 ~~windshield or location to another windshield or location,~~
2 ~~[(3)]~~ with intent to circumvent the emissions
3 inspection requirements seeks an inspection of a vehicle at a
4 station not certified to perform an emissions inspection if the
5 person knows that the vehicle is required to be inspected under
6 Section 548.301; or

7 (3) ~~[(4)]~~ knowingly does not comply with an emissions
8 inspection requirement for a vehicle~~;~~ ~~or~~

9 ~~[(5) displays on a vehicle an inspection certificate~~
10 ~~that was obtained knowing that the vehicle does not meet all~~
11 ~~emissions inspection requirements for the vehicle].~~

12 (b) A person commits an offense if the person:

13 (1) makes or possesses, with the intent to sell,
14 circulate, or pass, a counterfeit vehicle inspection report
15 ~~[certificate]~~ or insurance document; or

16 (2) possesses any part of a stamp, dye, plate,
17 negative, machine, or other device that is used or designated for
18 use in making a counterfeit vehicle inspection report ~~[certificate]~~
19 or insurance document.

20 (c) The owner of a vehicle commits an offense if the owner
21 knowingly allows the vehicle to be registered using a vehicle
22 inspection report ~~[or operated while the vehicle displays an~~
23 ~~inspection certificate]~~ in violation of Subsection (a).

24 SECTION 45. Section 548.603(f), Transportation Code, as
25 added by Chapter 851 (H.B. 1048), Acts of the 75th Legislature,
26 Regular Session, 1997, is amended to read as follows:

27 (f) Notwithstanding Subsection (c), an offense under

1 Subsection (a)(1) that involves a fictitious vehicle inspection
2 report [~~certificate~~] is a Class B misdemeanor.

3 SECTION 46. Section 548.6035(a), Transportation Code, is
4 amended to read as follows:

5 (a) A person commits an offense if, in connection with a
6 required emissions inspection of a motor vehicle, the person
7 knowingly:

8 (1) submits information to the department's inspection
9 database stating that a vehicle has passed the applicable
10 inspections or issues a passing vehicle inspection report [~~places~~
11 ~~or causes to be placed on a motor vehicle an inspection~~
12 ~~certificate~~], if:

13 (A) the vehicle does not meet the emissions
14 requirements established by the department; or

15 (B) the person has not inspected the vehicle;

16 (2) manipulates an emissions test result;

17 (3) uses or causes to be used emissions data from
18 another motor vehicle as a substitute for the motor vehicle being
19 inspected; or

20 (4) bypasses or circumvents a fuel cap test.

21 SECTION 47. Section 623.011(d), Transportation Code, is
22 amended to read as follows:

23 (d) When the department issues a permit under this section,
24 the department shall issue a sticker to be placed on the front
25 windshield of the vehicle [~~above the inspection certificate issued~~
26 ~~to the vehicle~~]. The department shall design the form of the
27 sticker to aid in the enforcement of weight limits for vehicles.

1 SECTION 48. Section 683.051, Transportation Code, is
2 amended to read as follows:

3 Sec. 683.051. APPLICATION FOR AUTHORIZATION TO DISPOSE OF
4 CERTAIN MOTOR VEHICLES. A person may apply to the department for
5 authority:

6 (1) to sell, give away, or dispose of a motor vehicle
7 to a motor vehicle demolisher if:

8 (A) the person owns the motor vehicle and the
9 certificate of title to the vehicle is lost, destroyed, or faulty;
10 or

11 (B) the vehicle is an abandoned motor vehicle and
12 is:

13 (i) in the possession of the person; or
14 (ii) located on property owned by the
15 person; or

16 (2) to dispose of a motor vehicle to a motor vehicle
17 demolisher for demolition, wrecking, or dismantling if:

18 (A) the abandoned motor vehicle:

19 (i) is in the possession of the person;
20 (ii) is more than eight years old;

21 (iii) either has no motor or is otherwise
22 totally inoperable or does not comply with all applicable air
23 pollution emissions control related requirements included in[+

24 ~~(aa) the vehicle inspection requirements under Chapter 548, as~~
25 ~~evidenced by a current inspection certificate affixed to the~~
26 ~~vehicle windshield, or (bb)] the vehicle emissions inspection and~~

27 maintenance requirements contained in the Public Safety

1 Commission's motor vehicle emissions inspection and maintenance
2 program under Subchapter F, Chapter 548, or the state's air quality
3 state implementation plan; and

4 (iv) was authorized to be towed by a law
5 enforcement agency; and

6 (B) the law enforcement agency approves the
7 application.

8 SECTION 49. Section 683.071, Transportation Code, as
9 amended by Chapters 720 (H.B. 787) and 753 (H.B. 1376), Acts of the
10 82nd Legislature, Regular Session, 2011, is reenacted and amended
11 to read as follows:

12 Sec. 683.071. DEFINITION AND APPLICABILITY. (a) In this
13 subchapter, "junked vehicle" means a vehicle that:

14 (1) is self-propelled; and

15 (2) is:

16 (A) wrecked, dismantled or partially dismantled,
17 or discarded; or

18 (B) inoperable and has remained inoperable for
19 more than:

20 (i) 72 consecutive hours, if the vehicle is
21 on public property; or

22 (ii) 30 consecutive days, if the vehicle is
23 on private property.

24 (b) For purposes of this subchapter, "junked vehicle"
25 includes a motor vehicle, aircraft, or watercraft. This subchapter
26 applies only to:

27 (1) a motor vehicle that displays an expired license

1 plate [~~or invalid motor vehicle inspection certificate~~] or does not
2 display a license plate [~~or motor vehicle inspection certificate~~];

3 (2) an aircraft that does not have lawfully printed on
4 the aircraft an unexpired federal aircraft identification number
5 registered under Federal Aviation Administration aircraft
6 registration regulations in 14 C.F.R. Part 47; or

7 (3) a watercraft that:

8 (A) does not have lawfully on board an unexpired
9 certificate of number; and

10 (B) is not a watercraft described by Section
11 31.055, Parks and Wildlife Code.

12 SECTION 50. The following statutes are repealed:

13 (1) Section 548.053(c), Transportation Code;

14 (2) Section 548.255, Transportation Code;

15 (3) Section 548.257, Transportation Code;

16 (4) Section 548.602, Transportation Code;

17 (5) Section 548.603(e)(2), Transportation Code;

18 (6) Section 548.603(f), Transportation Code, as added
19 by Chapter 1069 (S.B. 1856), Acts of the 75th Legislature, Regular
20 Session, 1997; and

21 (7) Section 548.605, Transportation Code.

22 SECTION 51. Article 45.003, Code of Criminal Procedure,
23 Section 103.0213, Government Code, and Sections 521.3465,
24 521.3466, 548.601, 548.603, and 548.6035, Transportation Code, as
25 amended by this Act, and the repeal by this Act of Sections 548.602
26 and 548.605, Transportation Code, apply only to an offense
27 committed on or after March 1, 2015. An offense committed before

1 March 1, 2015, is governed by the law in effect on the date the
2 offense was committed, and the former law is continued in effect for
3 that purpose. For purposes of this section, an offense was
4 committed before March 1, 2015, if any element of the offense
5 occurred before that date.

6 SECTION 52. To the extent of any conflict, this Act prevails
7 over another Act of the 83rd Legislature, Regular Session, 2013,
8 relating to nonsubstantive additions to and corrections in enacted
9 codes.

10 SECTION 53. (a) Except as provided by Subsection (c) of
11 this section, not later than March 1, 2014, the Texas Department of
12 Motor Vehicles, the Department of Public Safety of the State of
13 Texas, and the Texas Commission on Environmental Quality shall
14 adopt rules necessary to implement the changes in law made by this
15 Act.

16 (b) Not later than March 1, 2014, the Department of Public
17 Safety shall create the database described by Section 548.251,
18 Transportation Code, as amended by this Act, and require inspection
19 stations to submit to the database the information required by
20 Section 548.253, Transportation Code, as amended by this Act.

21 (c) Not later than January 1, 2014, the Department of Public
22 Safety shall adopt rules relating to the proof required by Section
23 548.104(d)(3), Transportation Code, as added by this Act.

24 (d) Except as otherwise provided by Subsections (e) and (f)
25 of this section, this Act takes effect March 1, 2015.

26 (e) Subsections (a), (b), and (c) of this section take
27 effect September 1, 2013.

1 (f) The change in law made by Section 548.104(d)(3),
2 Transportation Code, as added by this Act, takes effect September
3 1, 2014, and applies only to a vehicle inspected on or after that
4 date.

President of the Senate

Speaker of the House

I certify that H.B. No. 2305 was passed by the House on May 8, 2013, by the following vote: Yeas 144, Nays 3, 2 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 2305 on May 24, 2013, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 2305 on May 26, 2013, by the following vote: Yeas 126, Nays 20, 1 present, not voting.

Chief Clerk of the House

H.B. No. 2305

I certify that H.B. No. 2305 was passed by the Senate, with amendments, on May 21, 2013, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 2305 on May 26, 2013, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor