

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Commissioners **Date:** October 29, 2010
Thru: LaDonna Castañuela, Chief Clerk
Mark R. Vickery, P.G., Executive Director
From: Susana M. Hildebrand, P.E., Chief Engineer
Docket No.: 2009-1610-RUL
Subject: Commission Approval for Rulemaking Adoption
Chapter 114, Control of Air Pollution from Motor Vehicles
Inspection and Maintenance (I/M) Rule Revisions
Rule Project No. 2009-027-114-EN

Background and reason(s) for the rulemaking:

Background Information

On December 6, 2000, the commission adopted an enhanced I/M program for the counties included in the Dallas-Fort Worth (DFW) and Houston-Galveston-Brazoria (HGB) ozone nonattainment areas to assist with demonstrating attainment with the one-hour ozone National Ambient Air Quality Standard. Part of this package was the vehicle emissions testing analyzer specifications (TAS) and inspection requirements for acceleration simulation mode (ASM) and on-board diagnostic (OBD) inspections. On October 24, 2001, the commission adopted rules that defined the term low-volume emissions inspection station and required all vehicle emissions inspection stations in the DFW and HGB areas to offer both ASM and OBD inspections to the public with the exception of low-volume emissions inspection stations. The adopted rules also revised the TAS and established the Early Participation Incentive Program (EPIP).

Low-Volume Emissions Inspection Stations

The low-volume emissions inspection station designation was established in 2001 because of the cost differential of ASM vehicle emissions inspection analyzers and the cost of OBD-only vehicle inspection analyzers. To ensure that an adequate number of vehicle emissions inspection stations were available to provide both ASM and OBD inspections at the start of the revised I/M program in the DFW and HGB areas, stations that voluntarily opted to be designated as a low-volume emissions inspection station by the Texas Department of Public Safety (DPS) were restricted to a maximum of 1,200 OBD inspections per calendar year.

Section 1 of House Bill (HB) 715, 81st Texas Legislature, 2009, Regular Session, establishes a minimum vehicle emissions inspection limit for low-volume emissions inspection stations that will become effective on December 31, 2010. Currently, these low-volume emissions inspection stations may perform up to 1,200 OBD vehicle emissions inspections per year. Section 1 of HB 715 prevents the DPS from restricting low-volume emissions inspection stations to fewer than 150 OBD inspections per month. The adopted rule revision to 30 Texas Administrative Code (TAC) §114.2 is needed in order to comply with the requirements of HB 715.

EPIP

The EPIP was established as an additional method to ensure that an adequate number of vehicle emissions inspection stations were available to provide both ASM and OBD inspections at the start of the revised I/M program in the DFW and HGB areas. The EPIP encouraged early purchases of ASM analyzers by providing vehicle emissions inspection stations with financial assurance offered by the state if the I/M program was terminated early. Vehicle emissions inspection station owners that were accepted into the EPIP and

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maintained their eligibility could have received a payment of up to \$675 per month to cover the cost of the ASM analyzers if the I/M program was terminated within five years of the program start date. Because the EPIP has expired, §114.52 is no longer applicable and should be repealed.

LIRAP

The commission adopted rules on March 27, 2002, to implement the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP), which was designed to assist low income individuals with repairs, retrofits, or retirement of vehicles that failed emissions inspections. Under the LIRAP, monetary assistance is provided for emissions-related repairs that were directly related to bringing the vehicle into compliance or for replacement of a vehicle that has failed the emissions inspection. The commission adopted rules on December 5, 2007, that modified the LIRAP by requiring funds be transferred to a participating dealer not later than five business days after the sale of a replacement vehicle is completed. The LIRAP operates in Travis and Williamson Counties in the Austin area, in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties in the DFW area, and in Brazoria, Fort Bend, Galveston, Harris, and Montgomery Counties in the HGB area.

Section 12 of HB 1796, 81st Texas Legislature, 2009, Regular Session, which became effective on September 1, 2009, increased the maximum time for counties to reimburse dealerships participating in the LIRAP from five to 10 business days. The rules regarding the LIRAP in 30 TAC §114.64 currently require counties to reimburse dealerships participating in the LIRAP in five business days. The adopted rule revision to 30 TAC §114.64 is needed in order to comply with the requirements of HB 1796. While the LIRAP, also known as the Drive a Clean Machine program, provides monetary assistance associated with the I/M program, the LIRAP is not included in the I/M state implementation plan (SIP) revision.

TAS

On October 26, 2005, the commission adopted revisions to 30 TAC §114.51, which required manufacturers of vehicle emissions inspection analyzers used in the I/M program to meet the requirements contained in the Texas Commission on Environmental Quality's (TCEQ) documents referenced in the rule, the vehicle emissions testing analyzer specifications. These documents, also referred to as the TAS, are dated May 1, 2005, in the rule.

Since October 2005, the TAS have been modified four times to improve oversight and enhance effectiveness of the I/M program. The minor non-programmatic modifications did not affect the vehicle emissions inspection procedures or the design and performance criteria for the vehicle emissions inspection analyzer. However, the minor non-programmatic modifications did include updates to accommodate new technology vehicles, enhancements to the method of collecting inspection data that is used to identify occurrences of possible improper or fraudulent inspections, and updates to internal reference tables used to determine the applicable vehicle emissions inspection criteria. No modification will be considered a minor non-programmatic modification if it results in additional costs to vehicle inspection station owners. Each time the TAS were modified, staff incorporated the necessary software enhancements into a draft version of the TAS, and these enhancements were implemented on all analyzers by the analyzer manufacturers participating in the I/M program. The modified TAS have not been incorporated into the rule. The adopted rule revision will result in a more streamlined process for implementing minor non-programmatic modifications to the TAS.

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Scope of the rulemaking:

The adopted rule revisions will revise 30 TAC Chapter 114, Subchapter A, §114.2; Subchapter C, §114.51, and §114.64 to implement changes required by HB 715 and HB 1796 (81st Texas Legislature, 2009, Regular Session). The adopted rulemaking will also repeal 30 TAC Chapter 114, Subchapter C, §114.52. Additional details regarding the changes are included in the *Summary of what the rulemaking will do* portion of this executive summary.

In addition to the adopted rule revisions to 30 TAC Chapter 114, various non-substantive changes are included that will update rule language to the current *Texas Register* style and format 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:

Low-Volume Emissions Inspection Stations

The adopted rule revision to 30 TAC §114.2 will modify the current definition of a low-volume emissions inspection station. The modified definition will state that “a low-volume emissions inspection station is a vehicle emissions inspection station that meets all criteria for obtaining a low-volume waiver from the Texas Department of Public Safety.” This adopted rule revision will ensure that the definition for a low-volume emissions inspection station does not conflict with the low-volume waiver criteria for inspection stations listed in the DPS rules (37 TAC §23.95) and meet the requirements of HB 715.

EPIP

The adopted repeal of 30 TAC §114.52 will remove all requirements related to the EPIP and delete the EPIP requirements that were incorporated into the I/M SIP in the preamble of previous rulemakings adopted on October 24, 2001, October 8, 2003, and September 14, 2004.

LIRAP

The LIRAP requirement in 30 TAC §114.64 requires counties to reimburse dealerships participating in the LIRAP in five business days. The adopted rule revision will modify the language to increase the maximum time period from five to 10 business days as required by HB 1796 and will include a minor non-substantive grammatical change made since the rulemaking was proposed.

TAS

The adopted rule revision to 30 TAC §114.51 will remove the dates associated with the TAS and will add language requiring analyzer manufacturers to meet the requirements contained in the “most recent version of the TAS” resulting in a more streamlined process for implementing minor non-programmatic modifications to the TAS. The adopted rule revision will also add language indicating that the TAS are available at the TCEQ’s central office or at

<http://www.tceq.state.tx.us/assets/public/implementation/air/ms/IM/txvehanlspecs.pdf>. In addition, the adopted rule revision will remove the TCEQ’s “Specifications for On-Board Diagnostics II Analyzer for Use in the Texas Vehicle Emissions Testing Program” and its corresponding references as these TAS are no longer needed because the specifications for OBD-only vehicle inspection analyzers are also contained in the TCEQ’s “Specifications for Vehicle Exhaust Gas Analyzer Systems for Use in the Texas Vehicle Emissions Testing Program.”

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B) Scope required by federal regulations or state statutes:

Low-Volume Emissions Inspection Stations

The adopted rule revision will modify the vehicle emissions inspection limit for a low-volume emissions inspection station from a maximum of 1,200 OBD inspections per year to a maximum established by the DPS of at least 150 OBD inspections per month as required by HB 715.

LIRAP

The adopted rule revision will increase the maximum time that counties have to reimburse dealerships participating in the LIRAP from five to 10 business days as required by HB 1796.

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

EPIP

The adopted rule repeal related to the EPIP is not required by federal rule or state statute; however, it has expired, and §114.52 is no longer applicable.

TAS

The adopted rule revision to change the way the commission approves minor non-programmatic modifications to the TAS and remove the TCEQ's "Specifications for On-Board Diagnostics II Analyzer for Use in the Texas Vehicle Emissions Testing Program" is not required by federal rule or state statute but will streamline the operation of the I/M program.

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 provides the commission with the general powers to carry out its duties and authorizes 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; and 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 Texas Transportation Code, §548.3075, which was amended by Section 1 of HB 715 from the 81st Texas Legislature, 2009, Regular Session, and THSC, §382.210, which was amended by Section 12 of HB 1796 from the 81st Texas Legislature, 2009, Regular Session.

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Effect on the:

A) Regulated community:

Low-Volume Emissions Inspection Stations

The adopted rule revision regarding low-volume emissions inspection stations may affect all vehicle emissions inspection stations in the DFW and HGB areas regardless of the volume. As the low-volume limit for stations that offer OBD-only inspections is increased, the I/M program may experience a decrease in the number of vehicle emissions inspection stations that offer both ASM and OBD inspections due to potential loss in revenue and the operational cost associated with maintaining the ASM equipment. In addition, the adopted rule revision may fiscally impact vehicle emissions inspection stations. Low-volume emissions inspection stations may experience an increase in revenue due to the increase in the amount of inspections they are allowed to perform each month. Non low-volume emissions inspection stations, also known as full-service vehicle emissions inspection stations, may experience a corresponding decrease in revenue. Predicting the magnitude of the increase or decrease experienced by each type of station is not possible as the increase or decrease will be determined by the marketplace.

EPIP

The adopted rule repeal related to the EPIP will not have an effect or a fiscal impact on the regulated community.

LIRAP

The adopted rule revision related to the LIRAP will not have an effect or a fiscal impact on the regulated community. The adopted rule revision will increase the maximum time that counties have to reimburse dealerships participating in the LIRAP from five to 10 business days after the county receives proof that the sale of a replacement vehicle is completed.

Counties cannot disburse funds to any entity, including dealerships, before such expenditures have been reviewed and approved by the county's auditor, commissioner's court, and treasurer as required by Texas law. The review and approval process extends past the five business days requirement in most cases. Williamson County requested an Attorney General's opinion on November 8, 2007, on whether disbursements under the LIRAP could be made before the review and approval was completed. The Attorney General's opinion (GA-0624, May 7, 2008) determined that the LIRAP requirements did not alter the county auditor's, commissioner's court, or treasurer's duties with respect to dealer payments.

TAS

The adopted rule revision related to the TAS will not have an effect or a fiscal impact on the regulated community as minor non-programmatic modifications to the TAS will not result in additional costs to vehicle inspection station owners.

B) Public:

The adopted rule revisions will not have a fiscal impact on the public.

Low-Volume Emissions Inspection Stations

The adopted rule revision regarding low-volume emissions inspection stations may cause motorists of model-year 1995 and older vehicles (those that will need an ASM inspection) to experience difficulty locating a convenient full-service vehicle emissions inspection station as the I/M program in the DFW and HGB areas may see a decrease in the number of full-service inspection stations offering ASM inspections.

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EPIP

The adopted rule repeal regarding the EPIP will not have an effect on the public.

LIRAP

The adopted rule revision regarding the LIRAP will not have an effect on the public.

TAS

The adopted rule revision regarding the TAS will not have an effect on the public.

C) Agency programs:

Low-Volume Emissions Inspection Stations

The adopted rule revision regarding the definition of the low-volume emissions inspection station will have no significant impact on the agency.

EPIP

The adopted rule repeal regarding the EPIP will have no significant impact on the agency because the EPIP has expired.

LIRAP

The adopted rule revision regarding the LIRAP will have no significant impact on the agency. The LIRAP is managed by the agency but administered and implemented in the local areas by the county program administrators. The agency does not conduct any reimbursement activities to dealerships and will not be affected by this action. In addition, local governments and their contracted local administrators will not experience an adverse impact by this action. The adopted rule revision will provide additional processing and review time that will improve the efficiency of payments to dealerships.

TAS

The adopted rule revision regarding the TAS will impact the agency. By defining the TAS as “the most recent version,” the adopted rule revision will streamline the process for implementing minor non-programmatic modifications to the TAS in a timely manner.

Public comment:

TCEQ staff offered public hearings in Fort Worth on July 20, 2010; in Austin on July 21, 2010; and in Houston on July 22, 2010. No member of the public wished to present comments, so staff did not open the public hearings. The comment period opened on June 18, 2010, and closed on July 26, 2010.

The commission received one written comment from the United States Environmental Protection Agency (EPA). The EPA expressed support for the proposed revisions to the rule and the I/M SIP and expressed continued support for the I/M program and the LIRAP.

Significant changes from proposal:

None

Stakeholder meetings:

Stakeholder meetings were not held.

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Potential controversial concerns and legislative interest remaining after proposal and public comment:

None

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

Low-Volume Emissions Inspection Stations

The adopted rule revision 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.

EPIP

The adopted rule repeal regarding the EPIP will not affect any current policies or require development of new policies.

LIRAP

The adopted rule revision regarding the LIRAP will not affect any current policies or require development of new policies.

TAS

Under the current policies, implementing minor non-programmatic modifications to the TAS may take up to 30 months. The process includes approximately 12 to 18 months to revise the rule and an additional nine to 12 months for software development. The adopted rule revision will result in a more streamlined process for minor non-programmatic modifications to the TAS and allow staff to implement minor non-programmatic modifications in a timely manner. However, modifications to the I/M program design, performance criteria for the vehicle emissions inspection analyzer, and the vehicle emissions inspection procedure will not be implemented unless commission approval is received through the rule and SIP revision process.

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

Low-Volume Emissions Inspection Stations

The current rule, which defines a low-volume emissions inspection station, will conflict with the requirements of HB 715. There are no viable alternatives to this revision to the rule since HB 715 directs the DPS to set the inspection limit for low-volume emissions inspection stations. If the rule revision does not go forward, the TCEQ rules will be in conflict with HB 715.

EPIP

Since the EPIP has expired, there are no consequences if the adopted rule repeal regarding the EPIP is not approved to go forward. An alternative is not to amend this section. If this section is not amended, the rules will continue to reference out-of-date requirements, possibly leading to confusion from external stakeholders.

LIRAP

The current rules related to LIRAP requirements will continue to conflict with Section 12 of HB 1796. The LIRAP requirements of HB 1796 did not authorize any alternatives.

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TAS

Minor non-programmatic modifications to the TAS will continue to require approval through the rulemaking process. An alternative is not to proceed with the adopted rule revision. However, minor non-programmatic modifications to the TAS may require up to 30 months to implement.

Key points in the adoption rulemaking schedule:

Proposal date:	June 16, 2010
Texas Register proposal publication date:	July 2, 2010
Anticipated Texas Register publication date:	December 10, 2010
Anticipated effective date:	December 16, 2010
Six-month Texas Register filing deadline:	January 2, 2011

Agency contacts:

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Attachments:

HB 715
HB 1796

cc: Chief Clerk, 2 copies
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