

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** September 5, 2013

Thru: Bridget C. Bohac, Chief Clerk
Zak Covar, Executive Director

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

Docket No.: 2013-1109-RUL

Subject: Commission Approval for Proposed Rulemaking
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 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. 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) 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 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.

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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 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 registration sticker 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 windshield 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 windshield 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 windshield 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, as well as the DMV and DPS, to adopt rules necessary to implement these changes prior to March 1, 2014 and implement the changes by March 1, 2015. The proposed 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 proposed 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 proposed rule revisions would revise applicable sections of Chapter 114 relating to the I/M program and implement the requirements of HB 2305.

In addition to the proposed rule revisions to Chapter 114, various non-substantive changes are included that would 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.

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A.) Summary of what the rulemaking will do:

The proposed rule revisions would 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 proposed revisions would replace the requirements for vehicles to display a safety and emissions inspection windshield sticker with new requirements for vehicles to display a vehicle registration insignia sticker. The term “safety inspection certificate” would 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 would be revised and the amount that a vehicle emissions inspection station owner pays to the DPS would be repealed. The amount of the vehicle emissions inspection fee paid to the state, which would now be collected from registered vehicle owners by the DMV or county tax assessor-collector, would be included in proposed new subsections, §114.53(d) and §114.87(d). The amount of the vehicle emissions inspection fee paid to the state and collected by the DMV or county tax assessor-collector would be the same amount currently collected by the DPS. Refer to the *Effect on the Regulated Community* section for a breakdown of the fee in each of the I/M program areas. Additionally, the proposed revisions would maintain the current I/M program requirements until the new requirements of HB 2305 are implemented on March 1, 2015.

- Proposed changes to §114.1 would revise the definition of “first safety inspection certificate” and add definitions for “first vehicle registration,” “vehicle registration,” and “vehicle registration insignia sticker” to conform to the requirements of HB 2305. 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.
- Proposed changes to §114.2 would revise the definition of “testing cycle” to indicate that the current testing cycle definition would continue to apply until March 1, 2015, and that on or after 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. The proposed changes would also revise the term “uncommon part” to use the vehicle safety inspection certificate prior to March 1, 2015 and use the vehicle registration on or after March 1, 2015.
- Proposed changes to §114.21 would 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. Effective March 1, 2015, the DMV vehicle registration insignia sticker would 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.

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- Proposed changes to §114.50 would 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 windshield effective March 1, 2015 in lieu of a current valid inspection certificate required prior to March 1, 2015. The proposed revisions to §114.50 would also update language regarding the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen vehicle registration insignia sticker, 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 starting March 1, 2015. **The proposed changes to §114.50 would also replace the reference to 37 TAC §23.93 with a reference to 37 TAC Chapter 23, Vehicle Inspection.**
- Proposed changes to §114.53 would revise the maximum fee that may be collected by emissions inspections 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 would remit to the DPS to reflect the change in fee collections required by HB 2305.
- Proposed changes to §114.82 would require owners of vehicles operating in Travis and Williamson Counties to demonstrate compliance by displaying a current valid registration certificate affixed to the vehicle windshield effective March 1, 2015 in lieu of a current valid inspection certificate required prior to March 1, 2015.
- **Proposed changes to §114.83 would replace the reference to 37 TAC §23.93 with a reference to 37 TAC Chapter 23.**
- Proposed changes to §114.84 would update language regarding the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen 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 revisions would also replace the reference to 37 TAC §23.93 with a reference to 37 TAC Chapter 23.**
- Proposed changes to §114.87 would 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 would 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 proposed rule revisions are needed to ensure that the rules regarding the I/M program would comply with the requirements of HB 2305.

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

The proposed rule revisions would not include any additional substantive changes beyond the modifications needed to comply with the requirements of HB 2305.

Statutory authority:

The rule revisions 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 EAC counties. The rule revisions are proposed 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 2350.

Effect on the:

A.) Regulated community:

Effective March 1, 2015, the vehicle emissions inspection station owners would experience a reduction in the maximum vehicle emissions inspection fee that they collect at the time of inspection. The fee would be reduced by the amount of the state's portion of the inspection fee that would 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 inspection certificates from the DPS. The maximum vehicle emissions inspection fee would be lowered from:

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- \$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 would need to adjust to the revised timing for passing the vehicle emissions inspection. Motorists would be required to pass an emissions inspection no sooner than 90 days prior to the corresponding vehicle registration expiration date. Motorists whose vehicle safety and emissions windshield 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 from March 1, 2014 to March 1, 2016.

B.) Public:

Effective March 1, 2015, the registered vehicle owners subject to I/M program 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. The total amount collected from registered vehicle owners for the vehicle emissions inspection and vehicle registration would not increase or decrease. The change would only affect who collects the various fees and when those fees are collected. As previously stated, motorists would need to adjust to the revised timing for passing the vehicle emissions inspection.

C.) Agency programs:

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

The TCEQ's staff would 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. After March 1, 2015, the TCEQ would cease mailing these notices resulting in a cost savings to the agency. 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.

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HB 2305 requires the DPS to report the compliance status of vehicles receiving emissions inspections to the DMV. The TCEQ would provide vehicle inspection data received from the vehicle emissions inspection stations to the DPS to help fulfill this requirement. The TCEQ staff would 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 approximately \$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.

Stakeholder meetings:

No stakeholder meetings were held because of the limited time to implement HB 2305. However, public comment will be taken and public hearings will be held. Program staff will coordinate with the agency's media communications as well as the DPS and the DMV.

Potential controversial concerns and legislative interest:

The vehicle emissions inspection stations may be interested in the proposed lowering of the maximum vehicle emissions inspection fee. Effective March 1, 2015, the maximum vehicle emissions inspection fee would be lowered by:

- \$2.50 for vehicles subject to an acceleration simulation mode emissions inspection and \$8.50 for vehicles subject to an on-board diagnostics 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.

The section of the rule containing the vehicle emissions inspection fee would be opened, and the TCEQ staff anticipates receiving comments that may include requests to lower the fee by the public or requests to increase the portion of the fee retained by the emissions inspection stations.

Motorists whose vehicle safety and emissions windshield 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's portion, for two inspections in less than 12 months during the transition period from March 1, 2014 to March 1, 2016. The TCEQ staff would work with the DMV and the DPS to attempt to remedy this situation.

For vehicles registered in I/M program areas but exempt from the annual vehicle registration renewal fees and requirements such as those owned by local and state governments, HB 2305 does not specify a method for collecting the state's portion of the inspection fee or verifying compliance with I/M program requirements using the vehicle's windshield sticker. The DMV is considering amending its rules to require owners of these

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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 does not anticipate any change to its funding related to this issue. The TCEQ staff cannot predict where the DMV would deposit the funds. The TCEQ staff would work with the DMV and the DPS to develop and implement methods for remedying this situation.

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

The proposed rule revisions would modify criteria within the current I/M program but would 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 proposed rule revision does not go forward, the rules would conflict with the requirements of HB 2305. There are no viable alternatives to this 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 registration sticker.

Key points in the proposal rulemaking schedule:

Anticipated proposal date: September 24, 2013

Anticipated *Texas Register* publication date: October 11, 2013

Anticipated public hearing dates:

- October 29, 2013 in Houston
- October 30, 2013 in Austin
- October 31, 2013 in Fort Worth
- November 1, 2013 in El Paso

Anticipated public comment period: September 27, 2013 through November 4, 2013

Anticipated adoption date: February 12, 2014

Agency contacts:

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Attachments
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cc: Chief Clerk, 2 copies
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