

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §114.50, Vehicle Emissions Inspection Requirements; §114.51, Equipment Evaluation Procedures for Vehicle Exhaust Gas Analyzers; §114.52, Waivers and Extensions for Inspection Requirements; and §114.53, Inspection and Maintenance Fees. The commission proposes these amendments to Chapter 114 (Control of Air Pollution from Motor Vehicles), and to the state implementation plan (SIP) in order to control ground-level ozone in the Houston/Galveston (HGA) ozone nonattainment area. These amendments are one element of the control strategy for the proposed HGA Post-1999 Rate-of-Progress (ROP)/Attainment Demonstration SIP.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The HGA ozone nonattainment area is classified as Severe-17 under the Federal Clean Air Act (FCAA) Amendments of 1990 (42 United States Code (USC), §§7401 et seq.), and therefore is required to attain the one-hour ozone standard of 0.12 parts per million (ppm) by November 15, 2007. The HGA area, defined by Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties, has been working to develop a demonstration of attainment in accordance with 42 USC, §7410. On January 4, 1995, the state submitted the first of its Post-1996 SIP revisions for HGA.

The January 1995 SIP consisted of urban airshed model (UAM) modeling for 1988 and 1990 base-case episodes, adopted rules to achieve a 9% rate-of-progress (ROP) reduction in volatile organic compounds (VOC), and a commitment schedule for the remaining ROP and attainment demonstration elements. At the same time, but in a separate action, the State of Texas filed for the temporary nitrogen oxides (NO_x) waiver allowed by 42 USC, §7511a(f). The January 1995 SIP and the NO_x waiver were

based on early base-case episodes which marginally exhibited model performance in accordance with the United States Environmental Protection Agency (EPA) modeling performance standards, but which had a limited data set as inputs to the model. In 1993 and 1994, the commission was engaged in an intensive data-gathering exercise known as the COAST study. The state believed that the enhanced emissions inventory, expanded ambient air quality and meteorological monitoring, and other elements would provide a more robust data set for modeling and other analysis, which would lead to modeling results that the commission could use to better understand the nature of the ozone air quality problem in the HGA area.

Around the same time as the 1995 submittal, EPA policy regarding SIP elements and timelines went through changes. Two national programs in particular resulted in changing deadlines and requirements. The first of these programs was the Ozone Transport Assessment Group. This group grew out of a March 2, 1995 memo from Mary Nichols, former EPA Assistant Administrator for Air and Radiation, that allowed states to postpone completion of their attainment demonstrations until an assessment of the role of transported ozone and precursors had been completed for the eastern half of the nation, including the eastern portion of Texas. Texas participated in this study, and it has been concluded that Texas does not significantly contribute to ozone exceedances in the Northeastern United States. The other major national initiative that has impacted the SIP planning process is the revision to the national ambient air quality standard (NAAQS) for ozone. The EPA promulgated a final rule on July 18, 1997 changing the ozone standard to an eight-hour standard of 0.08 ppm. In November 1996, concurrent with the proposal of the standards, EPA proposed an interim implementation plan (IIP) that it believed would help areas like HGA transition from the old to the new standard. In an attempt to avoid a

significant delay in planning activities, Texas began to follow this guidance, and readjusted its modeling and SIP development timelines accordingly. When the new standard was published, EPA decided not to publish the IIP, and instead stated that, for areas currently exceeding the one-hour ozone standard, that standard would continue to apply until it is attained. The FCAA requires that HGA attain the standard by November 15, 2007.

The EPA issued revised draft guidance for areas such as HGA that do not attain the one-hour ozone standard. The commission adopted on May 6, 1998 and submitted to EPA on May 19, 1998, a revision to the HGA SIP which contained the following elements in response to EPA's guidance: UAM modeling based on emissions projected from a 1993 baseline out to the 2007 attainment date; an estimate of the level of VOC and NO_x reductions necessary to achieve the one-hour ozone standard by 2007; a list of control strategies that the state could implement to attain the one-hour ozone standard; a schedule for completing the other required elements of the attainment demonstration; a revision to the Post-1996 9% ROP SIP that remedied a deficiency that EPA believed made the previous version of that SIP unapprovable; and evidence that all measures and regulations required by Subpart 2 of Title I of the FCAA to control ozone and its precursors have been adopted and implemented, or are on an expeditious schedule to be adopted and implemented.

In November 1998, the SIP revision submitted to EPA in May 1998 became complete by operation of law. However, EPA stated that it could not approve the SIP until specific control strategies were modeled in the attainment demonstration. The EPA specified a submittal date of November 15, 1999

for this modeling. In a letter to EPA dated January 5, 1999, the state committed to model two strategies showing attainment.

As the HGA modeling protocol evolved, the state eventually selected and modeled seven basic modeling scenarios. As part of this process, a group of HGA stakeholders worked closely with commission staff to identify local control strategies for the modeling. Some of the scenarios for which the stakeholders requested evaluation included options such as California-type fuel and vehicle programs as well as an acceleration simulation mode (ASM-2) equivalent motor vehicle inspection and maintenance (I/M) program. Other scenarios incorporated the estimated reductions in emissions that were expected to be achieved throughout the modeling domain as a result of the implementation of several voluntary and mandatory statewide programs adopted or planned independently of the SIP. It should be made clear that the commission did not propose that any of these strategies be included in the ultimate control strategy submitted to EPA in 2000. The need for and effectiveness of any controls which may be implemented outside the HGA eight-county area will be evaluated on a county-by-county basis.

The SIP revision was adopted by the commission on October 27, 1999, submitted to EPA by November 15, 1999, and contained the following elements: photochemical modeling of potential specific control strategies for attainment of the one-hour ozone standard in the HGA area by the attainment date of November 15, 2007; an analysis of seven specific modeling scenarios reflecting various combinations of federal, state, and local controls in HGA (additional scenarios H1 and H2 build upon Scenario VI); identification of the level of reductions of VOC and NO_x necessary to attain the one-hour ozone standard by 2007; a 2007 mobile source budget for transportation conformity; identification of specific

source categories which, if controlled, could result in sufficient VOC and/or NO_x reductions to attain the standard; a schedule committing to submit by April 2000 an enforceable commitment to conduct a mid-course review; and a schedule committing to submit modeling and adopted rules in support of the attainment demonstration by December 2000.

The April 19, 2000 SIP revision for HGA contained the following enforceable commitments by the state: to quantify the shortfall of NO_x reductions needed for attainment; to list and quantify potential control measures to meet the shortfall of NO_x reductions needed for attainment; to adopt the majority of the necessary rules for the HGA attainment demonstration by December 31, 2000, and to adopt the rest of the shortfall rules as expeditiously as practical, but no later than July 31, 2001; to submit a Post-99 ROP plan by December 31, 2000; to perform a mid-course review by May 1, 2004; and to perform modeling of mobile source emissions using the EPA mobile source emissions model (MOBILE6), to revise the on-road mobile source budget as needed, and to submit the revised budget within 24 months of the model's release. In addition, if a conformity analysis is to be performed between 12 months and 24 months after the MOBILE6 release, the state will revise the motor vehicle emissions budget (MVEB) so that the conformity analysis and the SIP MVEB are calculated on the same basis.

In order for the state to have an approvable attainment demonstration, EPA has indicated that the state must adopt those strategies modeled in the November submittal and then adopt sufficient controls to close the remaining gap in NO_x emissions. The modeling included in this proposal indicates a gap of an additional 77.98 tons per day (tpd) of NO_x reductions is necessary for an approvable attainment demonstration.

The emission reduction requirements included as part of this SIP revision represent substantial, intensive efforts on the part of stakeholder coalitions in the HGA area. These coalitions, involving local governmental entities, elected officials, environmental groups, industry, consultants, and the public, as well as the commission and EPA, have worked diligently to identify and quantify potential control strategy measures for the HGA attainment demonstration. Local officials from the HGA area have formally submitted a resolution to the commission, requesting the inclusion of many specific emission reduction strategies.

The current SIP revision contains rules, enforceable commitments, and photochemical modeling analyses in support of the HGA ozone attainment demonstration. In addition, this SIP contains post-1999 ROP plans for the milestone years 2002 and 2005, and for the attainment year 2007. The SIP also contains enforceable commitments to implement further measures, if needed, in support of the HGA attainment demonstration, as well as a commitment to perform and submit a mid-course review.

The HGA ozone nonattainment area will need to ultimately reduce NO_x more than 750 tpd to reach attainment with the one-hour standard. In addition, a VOC reduction of about 25% will have to be achieved. Adoption of the I/M program will contribute to attainment and maintenance of the one-hour ozone standard in the HGA area. An I/M program should also contribute to a successful demonstration of transportation conformity in the HGA area.

The commission is proposing an air control strategy for NO_x reductions which requires emissions testing of motor vehicles that are registered and primarily operated in the HGA ozone nonattainment

area. The testing would utilize ASM-2 and on-board diagnostic (OBD) technologies. This proposed I/M program was modeled to cover the eight-county region comprising the HGA nonattainment area. The proposed I/M program will reduce NO_x emissions from on-road vehicles in the HGA ozone nonattainment area by 42.03 tpd.

The proposed revisions will modify the vehicle emissions testing program by implementing ASM-2 testing in the HGA ozone nonattainment area. Unlike the current two-speed idle (TSI) test, ASM-2 technology has the ability to detect NO_x emissions. Because NO_x is a precursor to ground-level ozone formation, reduced NO_x and VOC emissions will result in ground-level ozone reduction.

The proposed amendments addressed in this rule change are: changing the testing technology in the HGA area to ASM-2 and OBD for Harris County beginning May 1, 2002; Brazoria, Fort Bend, Galveston, and Montgomery Counties beginning May 1, 2003; and Chambers, Liberty, and Waller Counties beginning May 1, 2004, and an increase to the emissions inspection fee. The commission is proposing a phase-in approach to make for a smoother implementation of the proposed I/M program while still providing significant air quality improvements. In addition, the proposed rules incorporate changes to the exhaust analyzer technical specifications which will apply in every I/M program area.

The commission will take comments on the option of Chambers, Liberty, and Waller Counties individually or collectively developing alternative air control strategies other than an I/M program to meet or exceed the NO_x emission reductions that are anticipated from the proposed I/M program. The estimated I/M NO_x emission reductions for Chambers County is .98 tpd, Liberty County .94 tpd, and

Waller County is .77 tpd, for a combined estimated NO_x emissions reduction of 2.69 tpd. The commission will consider proposed alternatives during the comment period and make a final determination. However, the remote sensing component implemented in Harris County will likely continue to cover vehicles registered in these counties even if an alternative control strategy is accepted by the commission.

It is expected that EPA will soon publish a notice of proposed rulemaking (NPRM) which will postpone the requirement to conduct OBD testing beginning January 1, 2001, in I/M program areas for one year or more. In addition, it is anticipated that EPA will propose dropping the tailpipe test for vehicles receiving an OBD test (model year 1996 and newer) with no credit loss. The commission may adjust OBD test requirements upon adoption of these rules, based on information contained in the NPRM.

The commission solicits comment on additional flexibilities relating to rule content and implementation which have not been addressed in this or other concurrent rulemakings. These flexibilities may be available for both mobile and stationary sources. Additional flexibilities may also be achieved through innovative and/or emerging technology which may become available in the future. Additional sources of funds for incentive programs may become available to substitute for some of the measures considered here.

SECTION BY SECTION DISCUSSION

Proposed amendments to §114.50 establish revised program requirements for the state I/M program for vehicle testing and inspection. The proposed amendments to the program concern the applicability and

control requirements. The result of these amendments would be to incorporate the entire HGA nonattainment area into the full I/M program in a phased manner.

Section 114.50(a)(4) is proposed to be amended by deleting “Harris County of” the HGA program area. Subsection (a)(4)(A) and (B) is amended by adding vehicles which are “registered and primarily operated in Harris County.” Subsection (a) is proposed to be amended by adding new paragraphs (4)(C) - (H) providing clarification of program areas, model years to be tested, types of equipment to be utilized, and implementation dates. New paragraph (4)(C) defines model year vehicles to be tested using OBD in conjunction with ASM-2 in Harris County beginning May 1, 2002. Paragraph (4)(D) defines model year vehicles to be tested in Harris County using ASM-2, or a vehicle emissions test that meets SIP emissions reduction requirements and is approved by EPA beginning May 1, 2002, and clarifies that testing stations must offer both an OBD and an ASM-2 test. Paragraph (4)(E) defines model year vehicles to be tested using OBD in conjunction with ASM-2 in Brazoria, Fort Bend, Galveston, and Montgomery Counties beginning May 1, 2003. Paragraph (4)(F) defines model year vehicles to be tested in Brazoria, Fort Bend, Galveston, and Montgomery Counties using ASM-2, or a vehicle emissions test that meets SIP emissions reduction requirements and is approved by EPA beginning May 1, 2003. Paragraph (4)(G) defines model year vehicles to be tested using OBD in conjunction with ASM-2 in Chambers, Liberty, and Waller Counties beginning May 1, 2004. Paragraph (4)(H) defines model year vehicles to be tested in Chamber, Liberty, and Waller Counties using ASM-2, or a vehicle emissions test that meets SIP emissions reductions requirements and is approved by EPA beginning May 1, 2004. Paragraph (4)(H) also clarifies that testing stations must offer both an OBD and an ASM-2 test.

Section 114.50(b)(3) is amended by adding “HGA” after EDFW to the program areas and deleting “or Harris County” concerning vehicle recall notification.

Section 114.51 is proposed to be amended to update the equipment evaluation procedures for vehicle emissions test equipment. This section currently specifies application, certification, maintenance, and service requirements for manufacturers or distributors of vehicle emissions testing equipment seeking approval of an exhaust gas analyzer or analyzer system for use in the Texas I/M program. Section 114.51(a) currently specifies a date of March 15, 2000, for the exhaust analyzer technical specifications known as “Specifications for Preconditioned Two Speed Idle Vehicle Exhaust Gas Analyzer Systems for use in the Texas Vehicle Emissions Testing Program.” In order to incorporate new and updated specifications into the program, the proposed rule amendments specify a date of November 1, 2000, for both the TSI exhaust analyzer technical specifications, and the “Specifications for Acceleration Simulation Mode Vehicle Exhaust Gas Analyzer System for use in the Texas Vehicle Emissions Testing Program.”

Proposed amendments to §114.52 establish the schedule for when motorists in specific counties become eligible for waivers and extensions. The schedule is consistent with the dates for the implementation of the emissions testing program in each county.

Proposed amendments to §114.53 establish fee schedules for the different counties which must be paid for the vehicle emissions inspection at an inspection station. Subsection (a)(3) and (4) is proposed to be amended by revising test methodology to ASM-2 and OBD and by adding counties to the I/M program

beginning May 1, 2002, and May 1, 2003, respectively. New subsection (a)(5) is being proposed to provide for the collection of fees by those inspection stations conducting ASM-2 and OBD testing beginning May 1, 2004.

In addition to the proposed amendments, the proposed revisions to the SIP narrative clarify the new program elements such as applicability changes; new performance standards; emissions testing network type; emissions testing; affected vehicle populations; enforcement actions related to vehicles and service providers; on-road vehicle emissions testing; and the implementation schedule.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, determined that for the first five-year period the proposed rules are in effect, the fiscal implication for affected units of state and local government, as a result vehicle emission tests, is estimated to be an additional annual cost of approximately \$75,000 in the eight-county area consisting of Harris, Brazoria, Fort Bend, Galveston, Montgomery, Chambers, Liberty, and Waller Counties.

The proposed amendments to Chapter 114 revise the vehicle emission testing program as part of the control strategy to reduce NO_x emissions necessary for the counties included in the HGA nonattainment area to be able to demonstrate attainment with the ozone NAAQS. The proposed amendments are one element of the proposed HGA Post-1999 ROP/Attainment Demonstration SIP. A SIP is a plan developed for any region where existing (measured and modeled) ambient levels of pollutant exceeds

the levels specified in a national standard. The plan sets forth a control strategy that provides emission reductions necessary for attainment and maintenance of the national standard.

The proposed amendments revise the I/M program using ASM-2 vehicle emission testing equipment in the HGA ozone nonattainment area. Currently, only Harris County requires an Enhanced I/M program. Galveston, Brazoria, Fort Bend, Montgomery, Chambers, Liberty, and Waller Counties do not currently have an I/M program, but will be required to have an Enhanced I/M program similar to Harris County because they are in the HGA ozone nonattainment area. Harris County will use ASM-2 emissions testing technology beginning May 1, 2002; Brazoria, Fort Bend, Galveston, and Montgomery Counties will begin May 1, 2003; and Chambers, Liberty, and Waller Counties will begin May 1, 2004.

In accordance with EPA requirements, the proposed amendments will require an OBD check of all 1996 and newer model year vehicles subject to the I/M requirements starting January 1, 2001. It is anticipated that owners of over 2.8 million vehicles in the HGA ozone nonattainment area could be affected by vehicle emission inspections and other fee increases and the inspection requirements in the proposed amendments. In addition, owners of vehicle safety and emission inspection stations that choose to continue to perform emission testing will be required to upgrade existing equipment or purchase new equipment in order to comply with the proposed new emission test requirements incorporating ASM-2 and OBD technology. There are currently 1,058 emission inspection stations in Harris County. There are an additional 454 safety inspection stations in Galveston, Brazoria, Fort Bend, Montgomery, Chambers, Liberty, and Waller Counties where the Enhanced I/M program will

now be mandatory that will have to purchase new analyzers. The cost to upgrade existing analyzers is \$25,000 and the cost to purchase a new analyzer is \$40,000.

A prior rulemaking increased the emission test fee in Harris County from \$13 to \$14, effective January 1, 2001. The proposed amendments increase the emission inspection fee in Harris County from \$14 to \$22.50 per inspection effective May 1, 2002. Motorists, state and local government agencies, and businesses owning registered vehicles in Harris County that are primarily operated in the HGA ozone nonattainment area will be required to pay an additional \$8.50 for each emission inspection utilizing ASM-2 or OBD testing. Annual emission testing is not currently required in Galveston, Brazoria, Fort Bend, Montgomery, Chambers, Liberty, and Waller Counties. In the proposed amendments, motorists, state and local government agencies, and businesses in Galveston, Brazoria, Fort Bend, Montgomery, Chambers, Liberty, and Waller Counties owning registered vehicles that are primarily operated in the HGA ozone nonattainment area will be required to pay \$22.50 for an emission inspection utilizing ASM-2 or OBD technology.

Units of state and local government that own or operate vehicles subject to I/M requirements in the HGA ozone nonattainment area will be required to have emission testing and will be required to pay the fees established in the proposed amendments. The fiscal impact on units of state and local government associated with emission inspection costs are similar to the impacts on business in general. Units of state and local government that own or operate vehicles subject to I/M requirements in the HGA ozone nonattainment area will be able to apply for a minimum expenditure waiver. The minimum expenditure to receive a waiver in counties under the proposed I/M program will be \$450. This is no change in

Harris County and a new \$450 cost in Galveston, Brazoria, Fort Bend, Montgomery, Chambers, Liberty, and Waller Counties. Based on the inspection fee increase in Harris County and the inspection fee in the other counties, the commission estimates that 6,300 state and local government vehicles in HGA ozone nonattainment area will be affected with a total increased annual cost of approximately \$75,000.

PUBLIC BENEFIT AND COSTS

Mr. Davis also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendments will be the potential reduction of on-road mobile source emissions, potential reduction in NO_x emissions, potentially improved air quality, and contribution toward demonstration of attainment with the ozone NAAQS.

There are economic implications anticipated to individuals and businesses as a result of implementing the proposed amendments. Additional costs to affected persons and businesses associated with the proposed amendments include increased and additional costs associated with emission test fees, and additional costs for inspection stations that opt to perform emission testing associated with equipment upgrades or purchases. It is estimated that approximately 2.8 million vehicles in the HGA ozone nonattainment area could potentially be affected by the proposed amendments.

Individual motorists, state and local government agencies, and businesses with vehicles subject to I/M requirements that are registered and primarily operated in the HGA ozone nonattainment area will pay

more to have their vehicle's emissions tested incorporating OBD testing on their 1996 and newer vehicles. Individual motorists, state and local government agencies, and businesses with pre-1996 vehicles subject to I/M requirements that are registered and primarily operated in the HGA ozone nonattainment area will pay more to have their vehicle's emissions tested incorporating ASM-2 testing.

In the proposed amendments, the annual emission inspection fee is increased from \$14 to \$22.50 in Harris County. Motorists, state and local government agencies, and businesses owning registered vehicles in Harris County that are primarily operated in the HGA ozone nonattainment area will pay \$8.50 more for each emission inspection utilizing ASM-2 or OBD testing. Currently, emission inspections are not required in Galveston, Brazoria, Fort Bend, Montgomery, Chambers, Liberty, and Waller Counties. In the proposed amendments, motorists, state and local government agencies, and business owning registered vehicles in Galveston, Brazoria, Fort Bend, Montgomery, Chambers, Liberty, and Waller Counties that are primarily operated in the HGA ozone nonattainment area will pay \$22.50 for an annual emission inspection utilizing ASM-2 or OBD.

The cost to any person or business to comply with an enhanced I/M program will vary depending upon the number of vehicles owned, the model year, and the condition of the vehicle.

Businesses or individuals that own or operate vehicles subject to I/M requirements in the HGA ozone nonattainment area will be able to apply for a minimum expenditure waiver. The minimum expenditure to receive a waiver in counties under the proposed I/M program will be \$450. This is no change in

Harris County and a new \$450 cost in Galveston, Brazoria, Fort Bend, Montgomery, Chambers, Liberty, and Waller Counties.

Normally, the annual vehicle safety inspection and emission testing, where required, is accomplished at the same facility. The decision by each inspection facility to accomplish the proposed emission testing is voluntary and could have economic implications. Safety inspection stations in the HGA ozone nonattainment area that opt to perform emission testing for the I/M program would be required to upgrade existing equipment or may have to purchase new equipment in order to comply with the proposed new state emissions test requirements incorporating OBD and ASM-2 testing. Current emission inspection stations in Harris County that opt to continue to perform emission testing would be required to upgrade existing equipment or may have to purchase new equipment to comply with the proposed new state emissions test requirements incorporating ASM-2 and OBD testing technology. It is anticipated that the economic decision to upgrade or purchase the required equipment will include the economics of labor costs, potential alternative use of labor's time, the equipment capital costs, and volume of anticipated inspections, current equipment, and other anticipated costs associated with emission testing. It is anticipated that some inspection stations that must upgrade their equipment or purchase new equipment in order to comply with the proposed emission testing requirements in the proposed amendments will find it uneconomic to do so for various reasons and will be unable to accomplish emission inspections. It is anticipated that this business decision will be made by each inspection station.

According to Texas Department of Public Safety (DPS) records, there are currently 1,058 inspection stations in Harris County. If these inspection stations choose to perform emission testing, the commission staff estimated that 10% (approximately 106) of the current inspection stations in Harris County would have to purchase new ASM-2 equipment in order to conduct ASM-2 or OBD vehicle emission testing. Each new analyzer costs approximately \$40,000. If this equipment cost is capitalized, the monthly cost for the new equipment is estimated to be approximately \$900 per month for five years. The commission staff also estimated that the remaining 90% (approximately 952) of the inspection stations in Harris County could upgrade currently owned analyzers at a cost of approximately \$25,000. If this equipment cost is capitalized, the monthly costs for the new equipment is estimated to be approximately \$600 per month for five years.

According to DPS records, there are 454 safety inspection stations in Galveston, Brazoria, Fort Bend, Montgomery, Chambers, Liberty, and Waller Counties where the I/M program is proposed. All inspection stations in Galveston, Brazoria, Fort Bend, Montgomery, Chambers, Liberty, and Waller Counties will have to purchase new analyzers to comply with the Enhanced I/M program. Each new analyzer costs approximately \$40,000. If this equipment cost is capitalized, the monthly costs for the new equipment is estimated to be approximately \$900 per month for five years.

SMALL AND MICRO-BUSINESS ASSESSMENT

There are anticipated fiscal implications to small businesses and micro-businesses as a result of implementing the proposed amendments. The fiscal implications include increased minimum expenditure costs for waivers and increased costs for emission testing of business-owned vehicles.

In general, the costs indicated in the public benefit portion of this fiscal note for individuals, state and local government agencies, and businesses will apply to small and micro-businesses. The minimum expenditure to receive a waiver in counties under the proposed I/M program will be \$450. This is no change in Harris County and a new \$450 cost in Galveston, Brazoria, Fort Bend, Montgomery, Chambers, Liberty, and Waller Counties for the minimum expenditure waiver.

The annual emission inspection fee will be \$22.50 for counties under the proposed I/M program in the HGA ozone nonattainment area. This is an increase of \$8.50 Harris County and a new \$22.50 fee for the emission test Galveston, Brazoria, Fort Bend, Montgomery, Chambers, Liberty, and Waller Counties.

The cost to small and micro-businesses will vary with the number of vehicles owned, model year, and condition of the vehicle(s).

In addition, it is anticipated that many of the inspection stations are small or micro-businesses that will be required to upgrade their current testing equipment or purchase new analyzers. New analyzer equipment required to conduct ASM-2 (with integrated OBD) vehicle emission testing costs approximately \$40,000. The cost to upgrade currently owned analyzers to conduct ASM (with integrated OBD) testing costs approximately \$25,000. It is anticipated that the economic decision to upgrade or purchase the required equipment will include the economics of labor costs, potential alternative use of labor's time, the equipment capital costs, and volume of anticipated inspections, current equipment, and other anticipated costs associated with emission testing. It is anticipated that

some small or micro-business inspection stations that must upgrade their equipment or purchase new equipment in order to comply with the proposed emission testing requirements in the proposed amendments will find it uneconomic to do so for various reasons and will be unable to continue emission inspections. It is anticipated that this business decision will be made by each inspection station.

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 rulemaking action is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in that statute. “Major environmental rule” means 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. The proposed amendments to Chapter 114 are intended to protect the environment or reduce risks to human health from environmental exposure to ozone. However, the inspection stations in and around nonattainment areas would not normally be considered a sector of the economy. In addition, the commission structured the fees in this program to ensure that most additional equipment costs can be recovered. Therefore, the proposed rules do not 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. The proposed amendments are intended to establish a vehicle emissions testing program as part of the control strategy to reduce NO_x emissions necessary for the counties included in the HGA

nonattainment area to be able to demonstrate attainment with the ozone NAAQS. The proposed amendments are one element of the proposed HGA Attainment Demonstration SIP. As defined in the Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed 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; adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability requirements of a “major environmental rule.” Specifically, the emission testing program within this proposal was developed in order to meet the ozone NAAQS set by the EPA under 42 USC, §7409, and therefore meets a federal requirement. Provisions of 42 USC, §7410, require states to adopt a SIP which provides for “implementation, maintenance, and enforcement” of the primary NAAQS in each air quality control region of the state. While §7410 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 Chapter 85, Air Pollution Prevention and Control). It is true that 42 USC does require some specific measures for SIP purposes, like the inspection and maintenance program, but those programs are the exception, not the rule, in the SIP structure of 42 USC. The provisions of 42 USC 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 42 USC allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of §7410. Thus, while specific measures are not generally required, the emission reductions are required. States are not free to ignore the requirements of §7410 and must develop programs to assure that the nonattainment areas of the state will be brought into attainment on schedule.

The requirement to provide a fiscal analysis of proposed regulations in the Texas Government Code was amended by Senate Bill 633 (SB 633) during the 75th Legislative Session, 1999. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis (RIA) 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 proposed rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law. As previously discussed, 42 USC does not require specific programs, methods, or reductions in order to meet the NAAQS; thus, states must develop programs for each nonattainment area to ensure that area will meet the attainment deadlines. Because of the ongoing need to address nonattainment issues, the

commission routinely proposes and adopts SIP 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 SIP rule would require the full RIA 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 RIA for rules that are extraordinary in nature. While the SIP rules will 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 proposed 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 performed photochemical grid modeling which predicts that NO_x emission reductions, such as those required by these rules, will result in reductions in ozone formation in the HGA ozone nonattainment area. This rulemaking does not exceed an express requirement of state law. This rulemaking is intended to obtain NO_x emission reductions which will result in reductions in ozone formation in the HGA ozone nonattainment area and help bring HGA into compliance with the air quality standards established under federal law as NAAQS for ozone. The rulemaking does not exceed a standard set by federal law, exceed an express requirement of state law (unless specifically required by federal law), or exceed a requirement of a delegation agreement. The rulemaking was not developed solely under the general powers of the agency, but was specifically developed to meet the NAAQS established under federal law and authorized under Texas Clean Air Act (TCAA), §§382.011, 382.012, 382.017, 382.019, 382.037 through 382.038, and 382.039.

The commission invites public comment on the draft regulatory impact assessment.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for these rules in accordance with Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rulemaking is to implement a revised I/M program in the HGA ozone nonattainment area as part of the strategy to reduce emissions of ozone precursors necessary for the area to be able to demonstrate attainment with the ozone NAAQS.

Promulgation and enforcement of the rules will not burden private, real property because this rulemaking action does not require the installation of permanent equipment. Although the rule revisions do not directly prevent a nuisance or prevent an immediate threat to life or property, they do prevent a real and substantial threat to public health and safety and partially fulfill a federal mandate under 42 USC, §7410. Specifically, the emissions limitations and control requirements within this proposal were developed in order to meet the ozone NAAQS set by the EPA under 42 USC, §7409. States are primarily responsible for ensuring attainment and maintenance of the NAAQS once the EPA has established them. Under 42 USC, §7410 and related provisions, states must submit, for approval by the EPA, SIPs that provide for the attainment and maintenance of NAAQS through control programs directed to sources of the pollutants involved. Therefore, the purpose of the rulemaking action is to implement a revised I/M program which is necessary for the ozone nonattainment areas to meet the air quality standards established under federal law as NAAQS. Consequently, the exemption which applies to these rules is that of an action reasonably taken to fulfill an obligation mandated by federal law.

Therefore, this rulemaking action will not constitute a takings under the Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et seq.), and the commission rules in 30 TAC Chapter 281, Subchapter B, Consistency with the CMP. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this rulemaking action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action is consistent with the applicable CMP goals and policies. The CMP policy applicable to this rulemaking action is the policy (31 TAC §501.14(q)) that commission rules comply with federal regulations in 40 Code of Federal Regulations to protect and enhance air quality in the coastal area (31 TAC §501.14(q)). This rulemaking action will have a beneficial effect on SIP emissions reduction obligations relating to reasonable further progress and attainment demonstrations by making additional emissions reductions over those made by the existing I/M program. Further, no new air contaminants will be authorized by the rule revisions. Therefore, in compliance with 31 TAC §505.22(e), this rulemaking is consistent with CMP goals and policies.

Interested persons may submit comments on the consistency of the proposed rules with the CMP during the public comment period.

ANNOUNCEMENT OF HEARINGS

The commission will hold public hearings on this proposal at the following times and locations:

September 18, 2000, 10:00 a.m., Lone Star Convention Center, 9055 Airport Road (FM 1484), Conroe; September 18, 2000, 7:00 p.m., Lake Jackson Civic Center, 333 Highway 332 East, Lake Jackson; September 19, 2000, 10:00 a.m. and 7:00 p.m., George Brown Convention Center, 1001 Avenida de Las Americas, Houston; September 20, 2000, 9:00 a.m., VFW Hall, 6202 George Bush Drive, Katy; September 20, 2000, 6:00 p.m., East Harris County Community Center, 7340 Spencer, Pasadena; September 21, 2000, 10:00 a.m., Southeast Texas Regional Airport Media Room, 6000 Airline Drive, Beaumont; September 21, 2000, 2:00 p.m., Amarillo City Commission Chambers, City Hall, 509 East 7th Avenue, Amarillo; September 21, 2000, 6:00 p.m., Charles T. Doyle Convention Center, 21st Street at Phoenix Lane, Texas City; September 22, 2000, 10:00 a.m., Dayton High School, 2nd Floor Lecture Room, 3200 North Cleveland Street, Dayton; September 22, 2000, 11:00 a.m., El Paso City Council Chambers, 2 Civic Center Plaza, 2nd Floor, El Paso; September 22, 2000, 2:00 p.m., North Central Texas Council of Governments, 2nd Floor Board Room, 616 Six Flags Drive, Suite 200, Arlington; and September 25, 2000, 10:00 a.m., Texas Natural Resource Conservation Commission, 12100 North I-35, Building E, Room 201S, Austin. The hearings are structured for the receipt of oral or written comments by interested persons. Registration will begin one hour prior to each hearing. Individuals may present oral statements when called upon in order of registration. A four-minute time limit will be established at each hearing to assure that enough time is allowed for

every interested person to speak. Open discussion will not occur during each hearing; however, agency staff members will be available to discuss the proposal one hour before each hearing, and will answer questions before and after each hearing.

Persons with disabilities who have special communication or other accommodation needs, who are planning to attend the hearings, should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Ms. Heather Evans, Office of Environmental Policy, Analysis, and Assessment, MC 206, P.O. Box 13087, Austin, Texas 78711-3087, faxed to (512) 239-4808, or emailed to siprules@tnrcc.state.tx.us. All comments should reference Rule Log Number 2000-011A-114-AI. Comments must be received by 5:00 p.m., September 25, 2000. For further information, please contact Mr. Bob Wierzowiecki, Technical Analysis Division, (512) 239-1769 or Mr. Alan Henderson, Policy and Regulations Division, (512) 239-1510.

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code, §5.103, which provides the commission the authority to propose rules necessary to carry out its powers and duties under the TWC. The amendments are also proposed under the Texas Health and Safety Code, TCAA, §382.011, which provides the commission the authority to control the quality of the state's air; §382.012, which provides the commission the authority to prepare and develop a general, comprehensive plan for the control of

the state's air; §382.017, which provides the commission the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.019, which provides the commission the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles; §382.037 through §382.038, which provide 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 the FCAA; and §382.039, which provides the commission the authority to coordinate with federal, state, and local transportation planning agencies to develop and implement transportation programs and other measures necessary to demonstrate and maintain attainment of NAAQS and to protect the public from exposure to hazardous air contaminants from motor vehicles.

The amendments implement TCAA, §382.002, relating to Policy and Purpose; §382.011, relating to General Powers and Duties; §382.012, relating to State Air Control Plan; §382.019, relating to Methods Used to Control and Reduce Emissions from Land Vehicles; §382.037 through §382.038, relating to Vehicle Emissions Inspection and Maintenance Program; and §382.039, relating to Attainment Program.

SUBCHAPTER C: VEHICLE INSPECTION AND MAINTENANCE

§§114.50-114.53

§114.50. Vehicle Emissions Inspection Requirements.

(a) Applicability. The requirements of this section and those contained in the revised Texas Inspection and Maintenance (I/M) State Implementation Plan (SIP) 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. Currently, military tactical vehicles, motorcycles, diesel-powered vehicles, dual-fueled vehicles which cannot operate using gasoline, and antique vehicles registered with the Texas Department of Transportation are excluded from the program. Safety inspection facilities and inspectors certified by the Texas Department of Public Safety (DPS) shall inspect all subject vehicles, in the following program areas in accordance with the following schedule.

(1) - (3) (No change.)

(4) This paragraph applies to all vehicles registered and primarily operated in [Harris County of] the Houston/Galveston (HGA) program area.

(A) Beginning January 1, 2001, all 1996 and newer model year vehicles registered and primarily operated in Harris County equipped with OBD systems shall be tested using EPA-approved OBD test procedures in conjunction with a TSI test.

(B) Beginning January 1, 2001, all pre-1996 and older vehicles registered and primarily operated in Harris County shall be tested using a TSI test. All vehicle emissions test stations must offer both TSI and OBD tests to the public.

(C) Beginning May 1, 2002, all 1996 and newer model year vehicles equipped with OBD systems and registered and primarily operated in Harris County shall be tested using EPA-approved OBD test procedures in conjunction with an ASM-2 test, or a vehicle emissions test that meets SIP emissions reduction requirements and is approved by the EPA.

(D) Beginning May 1, 2002, all pre-1996 model year vehicles registered and primarily operated in Harris County shall be tested using the ASM-2 test, or a vehicle emissions test that meets SIP emissions reduction requirements and is approved by the EPA. All vehicle emissions test stations must offer both an OBD test and ASM-2 test, or a vehicle emissions test that meets SIP emissions reduction requirements and is approved by EPA, to the public.

(E) 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 shall be tested using EPA-approved OBD test procedures in conjunction with an ASM-2 test, or a vehicle emissions test that meets SIP emissions reduction requirements and is approved by the EPA.

(F) Beginning May 1, 2003, all pre-1996 and newer model year vehicles registered and primarily operated in Brazoria, Fort Bend, Galveston, and Montgomery Counties shall be tested using the ASM-2 test procedures, or a vehicle emissions test that meets SIP emissions reduction requirements and is approved by the EPA. All vehicle emissions test stations must offer both an OBD test and an ASM-2 test or a vehicle emissions test that meets SIP emissions reduction requirements and is approved by the EPA, to the public.

(G) Beginning May 1, 2004, all 1996 and newer model year vehicles equipped with OBD systems and registered and primarily operated in Chambers, Liberty, and Waller Counties shall be tested using EPA-approved OBD test procedures in conjunction with an ASM-2 test, or a vehicle emissions test that meets SIP emissions reduction requirements and is approved by the EPA.

(H) Beginning May 1, 2004, all pre-1996 model year vehicles registered and primarily operated in Chambers, Liberty, and Waller Counties shall be tested using an ASM-2 test, or a vehicle emissions test that meets SIP emissions reduction requirements and is approved by the EPA. All vehicle emissions test stations must offer both an OBD test and ASM-2 test, or a vehicle emissions test that meets SIP emissions reduction requirements and is approved by EPA, to the public.

(5) (No change.)

(b) Control requirements.

(1) - (2) (No change.)

(3) Any motorist in the DFW, EDFW, HGA, or El Paso program areas [or Harris County] who has received a notice from an emissions inspection station that there are recall items unresolved on their motor vehicle, should furnish proof of compliance with the recall notice prior to the next vehicle emissions inspection. 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) - (7) (No change.)

(c) - (d) (No change.)

§114.51. Equipment Evaluation Procedures for Vehicle Exhaust Gas Analyzers.

(a) Any manufacturer or distributor of vehicle testing equipment may apply to the executive director of the Texas Natural Resource Conservation Commission (commission) or his appointee, for approval of an exhaust gas analyzer or analyzer system for use in the Texas Inspection and Maintenance (I/M) program administered by the Texas Department of Public Safety. Each manufacturer shall submit a formal certificate to the commission stating that any analyzer model sold or leased by the manufacturer or its authorized representative and any model currently in use in the I/M program will satisfy all design and performance criteria set forth in "Specifications for Preconditioned Two Speed Idle Vehicle Exhaust Gas Analyzer Systems for Use in the Texas Vehicle Emissions Testing Program,"

dated November 1 [March 15], 2000, or in “Specifications for Acceleration Simulation Mode (ASM-2) Vehicle Exhaust Gas Analyzer Systems for use in the Texas Vehicle Emissions Testing Program,” dated November 1 [March 15], 2000. Copies of these documents are available at the commission’s Central Office, located at 12100 Park 35 Circle, Austin, Texas 78753. The manufacturer shall also provide sufficient documentation to demonstrate conformance with these criteria including a complete description of all hardware components, the results of appropriate performance testing, and a point-by-point response to each specific requirement.

(b) - (e) (No change.)

§114.52. Waivers and Extensions for Inspection Requirements.

(a) Applicability. The waivers and extensions apply to any motorist who can satisfy the conditions of a specific waiver or extension. Applications must be made to the Department of Public Safety (DPS). For the minimum expenditure waiver, individual vehicle waiver, and parts availability time extension, the motorist may apply only once during each testing cycle. For the low income time extension, the motorist may apply every other test cycle. Application for waivers and extensions may be made in the following inspection and maintenance program counties:

(1) Motorists in Dallas, El Paso, Harris, and Tarrant Counties are eligible for waivers and extensions.

(2) Beginning May 1, 2002, motorists in Collin and Denton Counties will be eligible for waivers and extensions.

(3) Beginning May 1, 2003, motorists in Brazoria, Ellis, Fort Bend, Galveston, Johnson, Kaufman, Montgomery, Parker, and Rockwall Counties will be eligible for waivers and extensions.

(4) Beginning May 1, 2004, motorists in Chambers, Liberty, and Waller Counties will be eligible for waivers and extensions.

(b) - (e) (No change.)

§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 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) - (2) (No change.)

(3) Beginning May 1, 2002, any emissions inspection station required to conduct an acceleration simulation mode (ASM-2) test and test in accordance with §114.50(a)(2)(C) and (D) and (4)(C) and (D) of this title shall collect a fee of \$22.50 and shall remit \$2.00 to the DPS.

(4) Beginning May 1, 2003, any emissions inspection station required to conduct an ASM-2 [acceleration simulation mode] test and OBD test in accordance with §114.50(a)(3) and (4)(E) and (F) of this title shall collect a fee of \$22.50 and shall remit \$2.00 to the DPS.

(5) Beginning May 1, 2004, any emissions inspection station required to conduct an ASM-2 test and OBD test in accordance with §114.50(a)(4)(G) and (H) of this title shall collect a fee of \$22.50 and shall remit \$2.00 to the DPS.

(b) - (c) (No change.)