

The Texas Natural Resource Conservation Commission (TNRCC or commission) adopts amendments to §114.2, Inspection and Maintenance (I/M) Definitions; §114.50, Vehicle Emissions Inspection Requirements; §114.51, Equipment Evaluation Procedures for Vehicle Exhaust Gas Analyzers; and §114.53, Inspection and Maintenance Fees; the repeal of §114.52, Waivers and Extensions for Inspection Requirements; and new §114.52, Early Participation Incentive Program. Sections 114.50 - 114.53 are adopted *with changes* to the proposed text as published in the August 24, 2001 issue of the *Texas Register* (26 TexReg 6247). The repealed §114.52 and amended §114.2 are adopted *without changes* and will not be republished. All sections will be submitted as a revision to the state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

In a prior rulemaking, the commission established an air pollution control strategy involving emissions testing of vehicles to reduce oxides of nitrogen (NO_x) and other emissions necessary for the counties included in the Dallas/Fort Worth (DFW), Houston/Galveston (HGA), and El Paso (ELP) nonattainment areas to be able to demonstrate attainment with the ozone national ambient air quality standard (NAAQS). The rulemaking adopted by the commission on December 6, 2000 and published in the January 12, 2001 issue of the *Texas Register* (26 TexReg 362) modified the vehicle emissions testing program by implementing acceleration simulation mode (ASM-2) testing and on-board diagnostics (OBD) testing for vehicles that are registered and primarily operated in the DFW and HGA nonattainment areas beginning May 1, 2002 in certain counties. 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 volatile organic compound (VOC) emissions will result in ground-level ozone

reductions. El Paso will continue to implement TSI through December 31, 2002. Beginning January 1, 2003, ELP will implement TSI for model year vehicles 1995 and older and implement OBD for 1996 and newer model year vehicles. The inclusion of OBD in the I/M program satisfied a federal mandate requirement that all 1996 and newer model year vehicles would require an OBD check.

The primary reason for the adopted rulemaking is to implement portions of House Bill 2134 (HB 2134), 77th Legislature, 2001, related to waivers and test-on-resale, and the United States Environmental Protection Agency's (EPA's) Amendments to Vehicle Inspection Maintenance Program Requirements Incorporating the On-Board Diagnostic Check, Final Rule. These adopted amendments are also necessary to provide the commission and the Texas Department of Public Safety (DPS) with expanded authority and flexibility related to implementation of the revised I/M program adopted by the commission on December 6, 2000.

The adopted rulemaking requires all vehicle emissions test stations in the DFW, extended DFW (EDFW), and HGA program areas, with the exception of low volume emissions inspection stations, to offer both ASM-2 testing and OBD testing beginning May 1, 2002; defines the term "low volume emissions inspection station"; requires all vehicle emissions inspection stations in the ELP program area to offer both TSI testing and OBD beginning January 1, 2003; adjusts the administrative portion of the test fees remitted to the state; increases the emissions test fee in the DFW, EDFW, and HGA program areas; increases fees for the ELP area should the county opt into the low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program; requires a test-on-resale component; incorporates the TSI and ASM-2 specifications into one equipment specification document with an amended date;

provides for new equipment requirements and specifications regarding OBD equipment; creates a new section to establish an early participation incentive program; and repeals §114.52.

SECTION BY SECTION DISCUSSION

Amended §114.2, Inspection and Maintenance (I/M) Definitions, is adopted without changes to the proposed text. The amendment adds a new definition for “low volume emissions inspection station” in paragraph (3). A “low volume emissions inspection station” is defined as an inspection station that opts to perform OBD testing only and does not exceed 1,200 OBD tests per calendar year. This term is defined because of the adopted amendment to §114.50, which includes an exception for facilities meeting this definition. The subsequent paragraphs are renumbered accordingly. Also, the definition for “on-board diagnostic system” is clarified by stating that all references to OBD should be interpreted to mean the second generation of this equipment, sometimes referred to as OBD II.

Amended §114.50, Vehicle Emissions Inspections Requirements, is adopted with changes to the proposed text. The amendment revises program requirements for the state I/M program for vehicle testing and inspection. Proposed §114.50(a)(2)(C), (3)(C), and (4)(C) added the requirement that all vehicle emissions inspection stations in the DFW, EDFW, and HGA program areas must offer both the ASM-2 test and the OBD test to the public. One exception to this requirement was provided for low volume emissions inspection stations, as defined in adopted §114.2(3). Based on a comment received, “to the public” was deleted in the adopted rules to allow fleets, which would not have inspection stations open to the general public, the same opportunity to participate by testing with ASM and OBD equipment or as a low volume emissions inspection stations performing only OBD tests. If the owner of an emissions

inspection station wishes to have his or her station classified as a low volume emissions inspection station, the owner must petition the DPS. The commission anticipates that DPS will develop the rules for petitioning for this classification in its upcoming rulemaking. The proposed §114.50(a)(5)(C) also required that all vehicle emissions inspection stations in the ELP program area offer both TSI and OBD tests to the public. The phrase “to the public” was deleted for the ELP area in the adopted rules to allow for fleet testing which would not be conducted at inspection stations open to the general public. There will be no low volume emissions inspection stations in ELP.

The delay in implementation of OBD for ELP is in response to a request from the Honorable Norma Chavez, State House of Representatives, that the commission investigate with EPA the possibility of being waived from the OBD requirements, pending final evaluation of ELP attainment status by EPA. The commission revised the rules to delay implementation of the OBD testing requirement until January 1, 2003, to allow the commission time to explore options and to take into consideration any changes in ELP's attainment status. Adopted §114.50(a)(1) requires that ELP continue TSI testing through December 31, 2002. Adopted §114.50(a)(5)(A) and (B) states that beginning January 1, 2003, all 1996 and newer model year vehicles equipped with OBD systems shall be tested using EPA-approved OBD test procedures and all 1995 and older model year vehicles shall be tested using a TSI test. A prior rulemaking established a test fee of \$14 beginning May 1, 2002, which will remain in effect.

The commission requested comments in regard to allowing new car dealers an exception from the requirement to offer both ASM-2 and OBD testing so that they may offer only OBD vehicle emissions testing for 1996 and newer model year vehicles in affected areas for the purpose of continuing their

customer service and warranty agreements. This exception would not have been limited by the number of tests per year performed by the dealers. The commission did not include this exception for new car dealers in the final rules. Testing data shows that new car dealers provide a significant number of safety and emissions tests for model year vehicles 1995 and older as well as testing model year 1996 and newer vehicles. New car dealers may still offer OBD only if they petition DPS to have their dealership's service business classified as a low volume inspection station and thus limit themselves to no more than 1,200 OBD tests per calendar year. This will in no way limit a new car dealer's ability to provide the initial two-year safety inspection sticker as no emissions test is conducted at that time. The commission received comments on this issue and addressed them in the RESPONSE TO COMMENTS.

Due to the addition of a new subparagraph (C) in §114.50(a)(4), subparagraphs (D) - (G) were renumbered to (E) - (H). In adopted §114.50(a)(4)(H), the reference to subparagraphs (E) - (F) is corrected to reference subparagraphs (F) - (G) as a result of the renumbering. Also, throughout §114.50, the statement "If OBD data cannot be collected from the vehicle, an EPA-approved tail-pipe emissions test will be used" is deleted because it is rare that OBD data cannot be collected from the vehicle. In those instances, the station will still check the OBD malfunction indicator light (MIL), one of the primary pass/fail criteria for OBD inspections. The commission believes that removing this provision will not have a significant impact on the effectiveness of the program, and it will avoid situations where cars might have to be sent to a different station to complete their emissions test.

The adopted amendments to §114.50(b) delete the reference to the minimum expenditure waiver in paragraph (5) because this waiver was eliminated by HB 2134. The revision to paragraph (6) adds the

phrase “or in any county adjacent to a program area” to extend the current remote sensing program to include cars commuting into the area from neighboring counties. This revision is authorized by HB 2134. The new paragraph (7) adds a test-on-resale component to the I/M program as required by HB 2134. Vehicles resold (any change of ownership except first sale) from a county without an I/M program into any I/M program county will not be eligible for title receipt or registration unless proof is presented that the vehicle has passed an approved vehicle emissions test within the past 90 days. Based on comments received, the commission added language to new paragraph (7) to more clearly reflect the language in the statute. This test-on-resale requirement applies to all gasoline-powered motor vehicles 2-24 years old and subject to an annual emissions inspection, beginning with the first safety inspection, and the ownership of which has changed and which has been the subject of a retail sale as defined by Texas Motor Vehicle Commission Code, §1.03 (Article 4413 (36), Texas Civil Statutes). Section 1.03 defines retail sale as a sale of a motor vehicle except a sale in which the purchaser acquires a vehicle for the purpose of resale, or a vehicle the dealer owns, operates, or permits to be operated on a public street or highway, in which the dealer may apply for, receive, and attach metal dealer license plates to the vehicle that the dealer sells and for which the dealer has been issued a general distinguishing number. In addition, 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 (TxDOT) are excluded from the test-on-resale requirement.

Additionally, model year 1996 and newer vehicles with less than 50,000 miles will be exempt from the test-on-resale requirement. Current paragraph (7) is renumbered as paragraph (8).

The adopted amendments to §114.50(c) delete the reference to §114.52, which is repealed by this adoption, and replaces it with a reference to 37 TAC §23.93, which contains the DPS requirements relating to waivers and extensions. The DPS is responsible for issuance and enforcement of waivers and extensions. All criteria and procedures for waivers and extensions are specified in DPS rules.

Amended §114.51, Equipment Evaluation Procedures for Vehicle Exhaust Gas Analyzers, is adopted with changes to the proposed text. The amendments update the requirements for vehicle emissions testing 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 November 1, 2000 for the exhaust analyzer technical specifications known as “Specifications for Preconditioned Two Speed Idle (TSI) Vehicle Exhaust Gas Analyzer Systems for use in the Texas Vehicle Emissions Testing Program,” and “Specifications for ASM-2 Vehicle Exhaust Gas Analyzer System for use in the Texas Vehicle Emissions Testing Program.” The revised rules incorporate the current TSI specifications into the current ASM-2 specifications and make some minor revisions to the requirements. The new specification is titled “Specifications for Vehicle Exhaust Gas Analyzer Systems for use in the Texas Vehicle Emissions Testing Program,” and was proposed with a date of June 15, 2001. The specifications are adopted with an amended date of October 15, 2001, because minor changes were made to clarify the existing specifications.

Additionally, the revised section includes a new specification titled “Specifications for On-Board Diagnostics II for use in the Texas Vehicle Emissions Testing Program,” and was proposed with a date of

June 15, 2001, to provide the specifications for all OBD test equipment used in the I/M program. The specifications are adopted with an amended date of October 15, 2001, because minor changes were made to clarify the existing specifications. Also, the adopted revision to §114.51(b)(5) renames the Texas Data Link System (TDLS) to the Texas Information Management System (TIMS) to reflect the current name of the contract to manage the exchange of vehicle test data.

The current §114.52, Waivers and Extensions for Inspection Requirements, is repealed with this adoption because these requirements are duplicative of those contained in DPS rules, 37 TAC §23.93, relating to Vehicle Emissions Inspection Requirements. Currently, the DPS is responsible for the issuance and enforcement of waivers and extensions; therefore, these requirements do not need to be included in the commission's rules. House Bill 2134 created a new low mileage waiver requirement. Program requirements will be waived for a failed vehicle on which at least \$100 has been spent to bring the vehicle into compliance and which has been driven less than 5,000 miles since the last safety inspection and will be driven less than 5,000 miles before the next safety inspection, as determined by DPS. House Bill 2134 also eliminated the minimum expenditure waiver which allowed for a waiver from I/M requirements if an individual spent at least \$450 to repair the vehicle and it still did not meet emissions standards. The commission anticipates that DPS will adopt and implement the waiver requirements revised by HB 2134 in its upcoming rulemaking.

New §114.52, Early Participation Incentive Program, is adopted with changes to the proposed text.

House Bill 2134 provides the commission with authority to provide incentives, including financial incentives for participation in the testing network, to ensure availability of an adequate number of testing

stations. The section explains the program eligibility requirements, program acceptance criteria, enrollment and documentation requirements, and the incentive payment plan. The commission adopted §114.52(a) with changes to clarify the purpose of the early participation incentive program. The commission requested comments on the adequacy of the incentive amount and payment terms proposed. Based on comments received on the incentive program, the commission revised the adopted §114.52(g) to clarify program requirements. Additionally, the commission requested comments on the concept of extending the protection over a longer period of time, e.g. five years at lesser monthly payments than proposed. Based on comments received, the commission extended the payment term so that eligible stations are eligible to receive \$675 per month to cover the remainder of five years rather than three years. Also in response to comment, the enrollment period in §114.52(b)(1) was amended to allow stations entering into a contract with an equipment vendor for certified equipment prior to October 25, 2001, to be eligible for the incentive program. Additionally, the commission extended the enrollment period from December 31, 2001 to January 15, 2002, in §114.52(b)(1) and (d).

The commission deleted §114.52(g)(2) and combined the remaining paragraph into §114.52(g) for clarity. Based on the changes made to the eligible term of payment, the commission amended the eligibility requirements for incentive payments to apply to those emissions inspection stations that have conducted 12,000 or less emissions tests at program termination.

Also in response to comment, the commission deleted the term “installation” from the requirement that a contract for the purchase and installation of ASM-2 equipment by the program start date be submitted to the commission in §114.52(d)(3). The commission recognizes that installation of certain components of

the testing equipment may have to be done by an entity other than the manufacturer or supplier. It is at the discretion of the station owner to have some components installed by any entity they choose. The requirement that the emissions testing equipment be operational by program start-up date (May 1, 2002) was not changed. The commission recognizes that station owners may want to lease equipment in lieu of purchase and, therefore, amended the incentive rule to provide for a lease option. The incentive program will be available to the owners or operators of the first 1,000 eligible emissions inspection stations in Dallas, Tarrant, Denton, Collin, and Harris Counties or adjacent counties. The incentive will provide emissions inspection station owners or operators with a financial assurance if ASM-2 testing is terminated within five years of the program start date on May 1, 2002. The number of years will be calculated as the number of 12-month periods since the program start date, not calendar years. If ASM-2 testing is terminated during the first five years following the program start date the adopted rules provide that emissions inspection station owners or operators accepted into the early participation incentive program and who maintain their eligibility are eligible to receive a payment of \$675 per month to cover the remainder of the five-year period. Participating inspection stations which have conducted more than 12,000 emissions tests at program termination will not be eligible for payments. The total payment amount possible represents approximately 100% of the average initial capital investment of ASM-2/OBD equipment (\$40,000) spread over 60 months. The adopted rules also give the executive director authority to accept additional stations into the program at his discretion if necessary to ensure adequate distribution of stations throughout the program areas.

For affected program areas that begin ASM-2 testing in May 2003 (Brazoria, Fort Bend, Galveston, Montgomery, Ellis, Johnson, Kaufman, Parker, and Rockwall Counties), the same incentive will be

offered beginning with the program start date for those counties. The incentive will be available to the owners or operators of the first 200 eligible inspection stations.

For affected program areas that begin ASM-2 testing in May 2004 (Chambers, Liberty, and Waller Counties), the same incentive will be offered beginning with the program start date for those counties. The incentive will be available to the owners or operators of the first 30 eligible inspection stations.

Amended §114.53, Inspection and Maintenance Fees, is adopted with changes to the proposed text. In the preamble to the proposed rules, the commission requested comments on the adequacy of the test fee and stated that it might consider changes to the test fee for ASM and OBD testing upon adoption of the rules.

The commission received numerous comments in regard to the emissions test fee. The commission has extensively reviewed and analyzed all of these comments to develop the revised test fee adopted. The adopted fee provides for an emissions test fee not to exceed \$27 per test in the HGA, DFW, and EDFW areas, an increase of a maximum of \$4.50 over the \$22.50 emissions test fee in the current rule language. An explanation of how the commission derived the \$4.50 per test increase follows.

The commission sought to ensure that a station doing the average number of tests (150 per month) could net the same amount as it would for conducting a TSI test in today's dollars. As suggested by commenters, the increased costs for materials, such as span gases, filters, gas probes, and costs for property taxes, electricity, and insurance were included in the analysis. The commission also agreed with

commenters that an additional \$0.75 per test was needed to cover the increase in the state administration fee from \$1.75 to \$2.50 adopted in this rulemaking. This analysis resulted in an increase of \$1.81 per test.

Additionally, the commission considered comments regarding the costs of conducting free re-tests to the station owners. Approximately 14% of vehicles are expected to fail their initial ASM-2 test. To cover the variable costs of running the free emissions re-test, the commission added a \$0.94 per test increase. This increase was calculated by taking the variable costs of conducting a re-test multiplied by the expected failure rate.

Finally, the commission added \$1.75 per test to cover the variations in labor costs indicated in many of the comments received by the commission.

The commission believes that setting a maximum fee will provide flexibility for emissions inspection stations to offer incentives or discounts to encourage vehicle owners to have their vehicles tested during non-peak periods. The commission believes that the amended fee structure will enable a larger number of inspection stations to participate in the I/M program, thus providing more inspection options for motorists.

The adopted section establishes the state administrative fees to be remitted to DPS out of each inspection fee. Section 114.53(a)(2) specifies a \$2.50 state administrative fee from the test fee of \$14 for TSI and/or OBD testing in El Paso County. The section also provides that if a resolution is passed by the El Paso County Commissioners to participate in the Low Income Repair Assistance Program (LIRAP) to be

established in a future rulemaking, the test fee in El Paso County will be \$17 and the administrative fee will be \$5.50 (\$2.50 state administrative fee plus \$3.00 to fund the LIRAP) from each TSI and OBD test fee. Section 114.53(a)(3) and (4) specifies a \$2.50 state administrative fee for an ASM-2 test and an \$8.50 fee (\$2.50 state administration fee and \$6.00 to fund LIRAP) for an OBD test to be remitted from the test fee not to exceed \$27 in the DFW, EDFW, and HGA nonattainment areas. These administrative fees are to be remitted to DPS by the inspection station owners at the time inspection station owners purchase inspection stickers.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the 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 adopted amendments to Chapter 114 are intended to protect the environment or reduce risks to human health from environmental exposure to ozone.

However, the emissions inspection stations in and around nonattainment areas would not normally be considered a sector of the economy. In addition, the commission set the portion of the fees to be retained by the inspection station to ensure that additional costs of equipment can be recovered. Additionally, the commission adopted an early participation incentive program to provide additional assurance that the cost of ASM-2 equipment can be recovered through the fees. Therefore, the adopted 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 adopted amendments are intended to revise the vehicle emissions testing program as part of the control strategy to reduce NO_x emissions necessary for the ozone nonattainment areas of the state to be able to demonstrate attainment with the ozone NAAQS.

As defined in 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 emissions testing program revised by this adoption was developed in order to meet the ozone NAAQS set by the EPA under 42 United States Code (USC), §7409, and, therefore, meets a federal requirement. The revisions are meant to ensure a successful program. This rulemaking does not exceed an express requirement of state law. This rulemaking is intended to implement provisions of HB 2134, 77th Legislature, 2001. The rulemaking does not 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, 382.039, and 382.201 - 382.216.

The commission invited public comment on the regulatory impact determination. No comments on the determination were received.

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 ozone nonattainment areas of the state 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 adoption 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 Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking 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 the rulemaking for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). The CMP policy applicable to this rulemaking is the policy (31 TAC §501.14(q)) that commission rules comply with federal regulations in 40 Code of Federal Regulations (CFR) to protect and enhance air quality in the coastal area (31 TAC §501.14(q)). This rulemaking does not authorize any new air contaminants and is intended to revise the vehicle emissions testing program as part of the control strategy to reduce NO_x emissions necessary for the ozone nonattainment areas of the state to be able to demonstrate attainment with the ozone NAAQS. Therefore, this rulemaking is consistent with the applicable policy and goal.

The commission invited public comment on the consistency of the rulemaking with applicable CMP goals and policies. No comments on the CMP were received.

HEARING AND COMMENTERS

Public hearings on the proposal were held at the following times and locations: September 13, 2001, at 2:00 p.m., Houston City Council Chambers, 2nd Floor, 901 Bagby, Houston; September 13, 2001, at 7:00 p.m., Doubletree Hotel, 400 Dallas Street, Houston; September 17, 2001, at 2:00 p.m. and 7:00 p.m., La Quinta Inn Arlington Conference Center, 825 N. Watson Road, Arlington; and September 17, 2001, at 7:00 p.m., City of El Paso Council Chambers, 2nd Floor, 2 Civic Center Plaza, El Paso.

The following provided oral and/or written comments on the proposal: Association of Automotive Service Providers of Texas (AASP); Concerned Citizens for Automotive Safety; Environmental Defense; EPA; Galveston-Houston Association for Smog Prevention (GHASP); Houston Sierra Club (HSC); North Central Texas Council of Governments (NCTCOG); Roseland Oaks Civic Association; Snap-On Diagnostics (Snap-On); State Representative Norma Chavez; Texas Automobile Dealers Association (TADA); TxDOT; Texas State Inspection Association (TSIA); and 43 individuals. Additionally, TSIA submitted supplemental information relating to the town hall meetings held by the DPS and the commission on July 31, 2001 and August 2, 2001. Comments received from the town hall meetings are as follows: 85 commented about the inadequate test fee; 31 commented in favor of charging a retest fee; 17 commented against the new car dealer exemption for OBD testing; 15 opposed the cap on OBD exempt stations; and five commented that the early participation incentive program will not provide enough

money. Comments received during the town hall meetings were also raised during the public comment period and are addressed in the RESPONSE TO COMMENTS section.

EPA, GHASP, NCTCOG, Snap-On, TADA, TxDOT, and three individuals generally supported the proposal.

Roseland Oaks Civic Association, TSIA, and 14 individuals generally opposed the proposal.

AASP, EPA, GHASP, HSC, NCTCOG, Snap-On; State Representative Norma Chavez, TADA, TxDOT, TSIA, and 14 individuals suggested changes to the proposal as stated in the RESPONSE TO COMMENTS.

RESPONSE TO COMMENTS

General I/M Comments

TSIA expressed concern that failure of the I/M program could put at risk the SIP, \$1,400,000,000 in federal highway funding, and could substantially force stationary sources to make up more reductions.

The commission recognizes that the success of the I/M program is an important component of the SIP for both the DFW and HGA areas and is committed to implementing a successful program. The commission did not revise the rules in response to this comment.

One individual commented that the proposed I/M program helps turn our society from capitalism to socialism.

In establishing the new I/M program, the commission has worked to provide an open market for privately owned businesses, such as inspection stations, recognized repair shops, and equipment manufacturers, to participate in the emissions testing program. Also, the vehicle emission testing program does not require mandatory participation. The commission did not revise the rules in response to this comment.

TSIA commented that TNRCC's ignoring of industry's concerns will lead to another Tejas type failure like in 1993.

Unlike the centralized program under Tejas, the new program maintains a decentralized program. The commission has made every effort to consider the concerns of the emissions testing industry. However, when adopting new policies, it is also the responsibility of the commission to balance industry concerns against the needs and concerns of the vehicle-owning public. All ideas and concerns were thoroughly researched. Issues that offered a viable option have been incorporated into the development of the new I/M program. The commission did not revise the rules in response to this comment.

One individual commented that the emissions testing program has been changed every two years.

The I/M program is subject to change based on amendments to federal and/or state laws which authorize the current program. The commission must incorporate changes to the emissions testing program to remain compliant with these laws. Apart from the ASM-2/OBD equipment change to be implemented in certain counties beginning May 2002, the last program change that required new equipment occurred in July 1996 in Dallas and Tarrant Counties, and in January 1997 in Harris and El Paso Counties. The commission did not revise the rules in response to this comment.

One individual recommended that cars should be checked and repaired for proper mechanical and electrical conditions, not to satisfy some big equipment company. The commenter was concerned that the State of Texas and TNRCC is taking money from the big equipment companies simply to introduce a law that will help benefit themselves and their pocketbook.

The commission agrees that cars should be properly maintained. This is the purpose of the emissions testing program. The commission does not profit from the sale of equipment. The I/M program is required by federal law and has been authorized to be implemented through Texas state law. The program is subject to change based on amendments to federal and/or state laws and to changing needs of the SIP. The current changes to the program are necessary to be able to achieve reductions in NO_x emissions required to achieve attainment of the federal ozone standards. The equipment required to identify high NO_x emissions (ASM/OBD) is approved by the EPA and, in the Texas program, sold on the open market. The commission did not revise the rules in response to this comment.

One individual questioned why the state is implementing a program that DPS inspection officers themselves say there is no proof that the program even helps lower the emissions levels.

An emissions testing program is required by federal law and has been authorized to be implemented through Texas state law. In the DFW area, 51% of the total NO_x emissions come from on-road sources or motor vehicles. In the HGA area, motor vehicles contribute 24%. MOBILE modeling shows that I/M programs achieve significant emission reductions. Having their vehicles checked, maintained, and repaired is one way that the public can contribute to reducing emissions in these areas. The commission has made no changes to the rules in response to this comment.

One individual questioned why there is a total disregard for the input from inspection stations and the survival of the stations as loyal testing centers for years. This individual also commented that the owners of these stations are harassed if they publicly disagree with the state's plans. In addition, the individual commented that this smells like corruption at the highest level.

The commission has no knowledge of any station being harassed if they publicly disagree with the state's plans and would strongly disapprove of such actions if they were to happen. The commission has made every effort to consider the concerns of the emissions testing industry. All ideas and concerns were thoroughly researched. Issues that offered a viable option have been incorporated into the development of the new I/M program. When adopting new policies, it is also the responsibility of the commission to balance industry concerns against the needs

and concerns of the vehicle owning public. The commission did not revise the rules in response to this comment. Also, see the response to the question immediately following.

One individual recommended that a representative from TSIA be involved in the TNRCC decision making process regarding the I/M program. Another individual asked that the TNRCC work with her to come up with better ideas and solutions. TSIA also commented that their association has not been included in the development of the proposed changes.

The inspection industry as well as the public have had many opportunities to participate in the decision making process regarding changes to the I/M program, both formally and informally. Town hall meetings were held in Arlington on July 31, 2001; in Houston on August 2, 2001; and in El Paso on August 30, 2001. The commission and the DPS jointly held a series of industry workgroup meetings to discuss changes to the I/M program. In addition, stakeholder meetings were held with industry personnel, inspections station owners, and the general public to discuss changes to the I/M program. Many of TSIA's concerns, such as offering an incentive program for those stations participating should the program change, were addressed. Recent legislation passed during the 77th Legislature (HB 2134), established an advisory committee consisting of six members to advise and make recommendations to DPS on rules relating to the operation of the emissions testing program. The commission is responsible for appointing three of the advisory committee's members, including the chair of the advisory committee. DPS is also responsible for appointing three members of the advisory committee,

including one member to represent inspection station owners and operators. The commission has made no changes to the rules in response to this comment.

One individual commented that he will stop doing inspections beginning May 1, 2002, because of past, unpleasant experiences with the DPS.

DPS is responsible for ensuring that inspection stations are compliant with the rules and regulations of the safety and emissions program (or federal and/or state laws which authorize the current program). The commission appreciates the past participation of this station as a safety and emissions testing center and will forward your concerns to the DPS. The commission did not revise the rules in response to this comment.

AASP and one individual recommended that an advisory committee be formed. AASP recommended that an advisory committee meet with DPS and TNRCC at least once a month during program roll-out, and at least once a quarter thereafter to assess needed program changes and problems.

AASP and the individual's concerns are addressed by HB 2134, which requires that an advisory committee be established. Its mandates are to advise and make recommendations to DPS on the department's rules relating to the operation of the emissions testing program and perform any other advisory functions requested by DPS. The commission is responsible for appointing three of the advisory committee's members, including the chair of the advisory committee.

DPS is also responsible for appointing three members of the advisory committee, including one

member to represent inspection station owners and operators. The advisory committee members are to be appointed by January 1, 2002. The commission did not revise the rules in response to these comments.

TSIA commented that the inspection and repair industries should be involved in program planning, implementation, and periodic review of the I/M network. In addition, TSIA stated that the commission should make sure the program is flexible enough to meet future inspection and maintenance needs of the state and allow industry to help the state monitor program performance and to suggest and improvements.

The commission is responsible for designing and planning the emissions testing program. DPS is responsible for implementing the emissions testing program as designed by the commission. Over the past five years, the commission and DPS have received and incorporated numerous suggestions made by the inspection and repair industries. The commission continues to work with DPS to implement industry suggestions and recommendations to improve the flexibility and efficiency of the I/M program. The advisory committee will be another medium through which suggestions and recommendations can be made by the inspection and repair industry. The commission will, as far as possible, endeavor to ensure that the emissions testing program meets future inspection and maintenance needs. The commission did not revise the rules in response to this comment.

Emissions Testing Fee

TSIA commented that the problem with the \$35 fee is not that the fee is too low, but that the state takes too much out of the total fee. TSIA compared Texas' average of \$6.50 per test to California's \$4.75, Pennsylvania's \$2.00, New Jersey's \$0.00, New York's \$4.00, Virginia's \$0.00, and Georgia's \$7.40.

The commission is authorized to set the emissions test fee and the part of that fee used to administer the I/M program. State law provides that the administration of the program will be funded through the inspection fee. The administrative fee of \$2.50 from every emissions test is necessary to fund program administration and oversight including remote sensing, overt and covert audits, registration denial, and inspector certification. Based on concerns related to the cost of the administrative fee, the commission revised the fee structure to help cover this cost.

Unlike Texas, some states fund their I/M programs from vehicle registration fees or general revenue, while others use a contractor, which collects a per-vehicle fee to operate their I/M programs at a cost of about \$4.00 to \$6.00 per vehicle. Pennsylvania's I/M program is contracted out for \$3.70 per vehicle with state oversight funded from general revenue. New Jersey's I/M program is also funded from general revenue, with motorists paying a safety and emissions inspection fee of \$24 upon license plate renewal. Virginia's biennial I/M program is funded with a \$2.00 annual fee paid through license plate renewal and a market-based inspection fee capped at \$20. Georgia's I/M contractor collects \$6.95, remitting \$0.95 to the state's Department of Natural Resources and \$1.00 for the registration offices, from a market-based annual inspection fee capped at \$25.

TSIA commented that in a previous rulemaking (Rule Log No. 1999-055C-114-AI) the commission increased the proposed inspection fee from \$18 to \$22.50. TSIA further commented that the rulemaking also indicated that “of the fee, \$20.50 per test will be retained by the inspection station.”

The commission agrees that at the time of the rulemaking referenced (Rule Log No. 1999-055C-114-AI), the fee was set at \$22.50 with \$2.00 to be remitted to DPS which would leave \$20.50 to be retained by the inspection station. The commission has the authority to set the fee. Since that time, the commission is revising the vehicle emissions testing program and the test fee as necessary. Considering this and other comments on the fee, the commission increased the emissions inspection fee in this rulemaking to a maximum of \$27.

Two individuals and the Roseland Oaks Civic Association opposed the emissions test fee as being too high.

While the commission understands the concerns of vehicle owners regarding an increased emission inspection fee, the commission believes that the amended fee structure will enable a larger number of inspection stations to participate in the I/M program, thus providing more inspection options for motorists. The commission did not revise the rules in response to this comment.

One individual expressed opposition to the \$14 test fee being proposed for El Paso and wants the test fee raised \$5 to cover the cost of the equipment. Also, Representative Chavez, TSIA, and one individual

commented that the test fee increase in El Paso is not sufficient. Representative Chavez is concerned that it would be difficult to recapture an investment made by participating inspection stations because of the \$0.25 increase. TSIA stated that emissions test fees in El Paso have not been increased since 1997 and the cost of rent, utilities, emission equipment parts and labor or service agreement continues to rise year by year, and recommended a minimum emissions test fee cap of \$19 for the El Paso area. One individual recommended that the test fee in El Paso be increased by \$5.00.

A prior rulemaking established a test fee of \$14 beginning May 1, 2002, which will remain in effect to cover the increase in the administrative fee from that date. The commission is revising the rules to delay implementation of OBD testing in El Paso County until January 1, 2003 from May 1, 2002, pending commission review of options and consideration of any changes in El Paso's attainment status. Based on this, the commission could consider revisions to the fee structure in the future.

Five individuals and TSIA commented that the current fee is inadequate to cover the additional costs of ASM/OBD and OBD-only testing, especially the \$40,000 equipment, reduced vehicle throughput, and increased free re-tests, and thus their businesses would lose money under either program. Seventeen individuals and AASP opposed the \$35 safety and emissions fee and recommended that the fee be raised an additional \$7.00 to \$15 to recoup the higher cost of performing ASM-2 emissions test and so that can stay in business. One individual recommended an \$80 fee. Another individual also noted that the state has given itself a raise through an increase in the fees they collect but that they ignore the needs of the inspection stations. Two individuals noted that even their high volume stations would have difficulty under

the adopted fee structure. An individual was concerned that since his low-volume station deals mostly with fleet vehicles, he was uncertain how he would recover costs for the new equipment. The commenter also stated that the station services mostly fleet vehicles and that he has to hire an inspector that is proficient in TxDOT inspections. This commenter expected his insurance costs to increase from \$30,000 to \$90,000 per year. One individual was uncomfortable that no one had analyzed this proposal from a business perspective and that the state is going to throw the inspection process into complete chaos. Additionally, two individuals submitted detailed spreadsheets on business costs associated with emissions testing.

The commission has extensively reviewed and analyzed all of these comments. Based on this, the commission is revising the test fee. The adopted fee provides for an emissions test fee not to exceed \$27 per test in the HGA, DFW, and EDFW areas, an increase of a maximum of \$4.50 over the \$22.50 emissions test fee in the current rule language. An explanation of how the commission derived the \$4.50 per test increase follows.

The commission sought to ensure that a station doing the average number of tests (150 per month) could net the same amount as it would for conducting a TSI test in today's dollars. As suggested by commenters, the increased costs for materials, such as span gases, filters, gas probes, and costs for property taxes, electricity, and insurance were included in the analysis.

The commission also agrees with commenters that an additional \$0.75 per test needed to cover the increase in the state administration fee from \$1.75 to \$2.50 adopted in this rulemaking.

This analysis resulted in an increase of a \$1.81 per test.

Additionally, the commission considered comments regarding the costs of conducting free re-tests to the station owners. Approximately 14% of vehicles are expected to fail their initial ASM-2 test. To cover the variable costs of running the free emissions re-test, the commission added a \$0.94 per test increase. This increase was calculated by taking the variable costs of conducting a re-test multiplied by the expected failure rate.

Finally, the commission added a \$1.75 per test to cover the variations in labor costs indicated in many of the comments received by the commission.

The commission believes that setting a maximum fee will provide flexibility for emissions inspection stations to offer incentives or discounts to encourage vehicle owners to have their vehicles tested during non-peak periods. The commission believes that the amended fee structure will enable a larger number of inspection stations to participate in the I/M program, thus providing more inspection options for motorists.

TSIA commented on the TNRCC's involvement with HB 2134 during the 77th Legislature, 2001.

Specifically, TSIA commented that they believed that discussions between Representative Chisum and the commission's chairman led to Representative Chisum introducing an amendment to eliminate a \$10 fee increase in an earlier version of HB 2134.

The amendment to revise the fee language was adopted by the legislature. The legislature routinely and specifically requests that the commissioners, executive director, and TNRCC

staff provide expertise and serve as resource witnesses, and did so on HB 2134 during the 77th Legislature, 2001.

AASP and four individuals commented that there should be no free re-tests. They are concerned that they will lose money retesting vehicles for free as required on re-inspections. They further commented that the cost for a re-test inspection should be the same as an initial inspection. One individual recommended a \$25 fee for re-tests. Another individual commented that since the analyzers already give second chance testing for failing vehicles, the re-test that is performed within 15 days should be a chargeable test.

The commission does not agree that an additional fee should be paid by the consumer for a re-test for a vehicle that has failed the initial test. However, to address the concerns that stations may lose money on re-tests, the commission is adopting an increased emissions test fee not to exceed \$27, of which \$0.94 of the increase is intended to cover the variable costs of running the free emissions re-test for the 14% of vehicles estimated to fail the initial test. This 14% failure rate is an estimate based on data from other states conducting ASM-2 testing.

TSIA requested that TNRCC review then reduce the administration cost of the proposed I/M program. The administration cost is incorporated in the cost of the inspection stickers the stations must prepay to the DPS. The current cost is \$7.25 each, rising to \$8.00 under the proposed rule changes. TSIA commented that the problem with the \$35 fee is not that the fee is too low, but that the state takes too

much out of the total. TSIA further commented that TNRCC is proposing to take an average of \$11 per test from the total fee.

The commission assumes that the \$11 referenced by TSIA is derived from totaling the administrative fees from both the emissions and safety tests. The administrative fee of \$2.50 from every emissions test is necessary to fund program administration and oversight including remote sensing, overt and covert audits, registration denial, and inspector certification. The emissions test administrative fee, amended from \$1.75 to \$2.50, will provide both the commission and DPS with resources to implement and manage two new complex emission testing programs (ASM-2 and OBD), which cover five counties in 2002; an additional nine counties in 2003; and another three counties in 2004. An additional \$6.00 will be taken from each OBD test fee to fund the LIRAP program. The administrative fee for the safety only portion of all inspections is currently \$5.50. A portion of this fee provides DPS with the resources to implement and manage the statewide safety inspection program. Based on concerns related to the cost of the administrative fee, the commission increased the emissions test fee not to exceed \$27 in part to help cover this cost.

LIRAP

One individual wanted to know how the \$6.00 charge for the motorist assistance program will be collected or disbursed.

The fee will be collected by DPS through the sale of safety and emissions certificates (stickers) in affected program areas. DPS will transfer the appropriate amount to the Texas Comptroller of Public Accounts. Upon transfer by the Comptroller's office to the commission, the fees will be redistributed through contracts with participating county governments. The commission did not revise the rules in response to this comment.

EPA supported the change in the fee structure in §114.53 to fund the LIRAP. Because the minimum expenditure waiver is being repealed, EPA assumed that cars will be fixed completely rather than just to a dollar amount resulting in cleaner vehicles.

The commission appreciates EPA's support of the fee structure to fund LIRAP. Specifics on vehicles repair requirements related to the LIRAP program will be addressed in a future rulemaking. The commission did not revise the rule in response to this comment.

TSIA commented that the LIRAP collections will be close to \$18 million per year, enough to buy each of these people that failed the test a brand new Lexus. TSIA further commented that because only about 1,000 cars per year are waived for people that cannot afford to fix emissions failures, too much money will be collected with LIRAP.

House Bill 2134 directed the commission to implement LIRAP. Although, the failure rate under the current TSI program has been approximately 5%, the commission estimates that the ASM-2/OBD testing program will have a failure rate of approximately 14%, or approximately

588,000 vehicles in 2004. It is expected that a majority of the vehicles that are expected to fail will be older vehicles, typically driven by low-income families. For these reasons, the commission believes the funds from the LIRAP will be necessary to assist low-income families in getting the proper repairs for their vehicles as well as retiring vehicles that cannot be repaired. Additionally, the number of waivers under the current program does not directly relate to the number of vehicles that will be eligible for LIRAP funds. The commission did not revise the rules in response to this comment.

TSIA expressed concern that funding for LIRAP will be taken directly from the \$20.50 to be retained by emissions testing stations and that an estimated \$17 million will be taken from state inspection owners and operators to fund LIRAP.

The commission adopted the emissions test fee regardless of whether the emissions test is ASM or OBD. The \$6.00 LIRAP fee is only taken from OBD tests. Because the OBD test costs less to run than the ASM test, the commission believes that inspection stations can make sufficient return on the investment in OBD testing even after the LIRAP fee is taken out. With the requirement to implement LIRAP, staff recommended the funding for this program come from the excess OBD fee. The commission did not revise the rules in response to this comment.

The HSC commented that LIRAP should be provided for all counties with an I/M program. In addition, the LIRAP guidance and regulations should be in this SIP so the public can review and comment on its adequacy.

House Bill 2134 allows any county that has a vehicle emissions program to choose to implement LIRAP. Rules related to LIRAP and any corresponding SIP revision will be proposed in a future rulemaking, and the public will have the opportunity to comment on the rules at that time. The commission did not revise the rules in response to this comment.

Vehicle Coverage

TSIA commented that in recent years they had to defeat five different bills proposed in the Texas legislature that would have reduced drastically the number of vehicles subject to testing. These bills, had they passed into law, would have exempted hundreds of thousands of newer cars that are currently being tested. TSIA wants to know how can the inspection industry afford to make decisions to buy new equipment when the legislature may remove 20 - 60% of the marketplace.

The emissions testing program is required by federal law and has been authorized to be implemented through Texas state law. The program is subject to change based on amendments that could occur to federal and/or state laws which authorize the current program. Such changes are beyond the authority of the commission. However, to provide a level of assurance regarding the life of the ASM-2 program, the commission has adopted an incentive program which will allow the first 1,000 eligible stations that enroll in the program to recoup most of the cost of their initial investment should ASM-2 be terminated if the station meets rule requirements. The commission did not revise the rules in response to this comment.

The HSC opposed the limitation of the test-on-resale element so it did not apply to 1996 and newer model year vehicles with less than 50,000 miles. The HSC recommended that all vehicles be required to undergo emissions testing prior to being sold.

The commission is authorized to implement the I/M program in accordance with Texas state law. Transportation Code, §548.3011(b), states that test-on-resale requirements do not apply to a vehicle that is a 1996 or newer model that has less than 50,000 miles. The commission has made no changes to the rules in response to this comment.

GHASP supported the requirement for test-on-resale for vehicles sold into an I/M county.

The commission appreciates GHASP's support. The commission did not revise the rules in response to this comment.

TxDOT recommended that §114.50(b)(7) be clarified to include the exemptions shown in §114.50(a). As currently written, the only exemption shown is for 1996 and newer model year vehicles.

Section 114.50(b)(7) has been amended to clarify the applicability of vehicles included in the program, and now reads "A subject vehicle registered in a county without an I/M program which meets the applicability criteria of subsection (a) of this section and the ownership of which has changed through a retail sale as defined by Texas Motor Vehicle Commission Code, §1.03, is not eligible for title receipt or registration in a county with an I/M program unless

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

TADA commented that the proposed language in §114.50(b)(7) describing test-on-resale requirements is inconsistent with HB 2134. TADA recommended harmonizing the proposed rule language with the statute.

The commission agrees with the comment and amended the rule to be consistent with HB 2134.

Waivers

EPA requested that DPS submit the entire set of waiver rules in 37 TAC §23.93 to replace 30 TAC §114.52 in the SIP. EPA stated that the rules must be submitted as a SIP revision.

The commission repeals the current §114.52, Waivers and Extensions for Inspection Requirements, with this adoption because this rule is duplicative of DPS waiver rules in 37 TAC §23.93. The commission expects DPS to revise this rule in an upcoming rulemaking to implement requirements of HB 2134. Once adopted, the commission will submit the DPS rules as a SIP revision. The commission did not revise the rules in response to this comment.

EPA and the HSC opposed the low mileage waiver. EPA does not believe the low mileage waiver will be an adequate substitute for the minimum expenditure waiver. EPA also stated that low mileage waivers tend to encourage fraud and abuse of the I/M program. The HSC also stated that the TNRCC did not provide any estimates for the waiver rate expected in Texas for the low mileage waivers. The HSC asked about the penalties associated with noncompliance of the waiver rate. Lastly, the HSC believes that increasing the waiver rates beyond the level originally projected could significantly reduce the credit generated by the I/M program which may cause reevaluation of the credit available for the SIP.

The low mileage vehicle waiver and the removal of the minimum expenditure waiver are required by HB 2134. The overall waiver rate for the testing program in the year 2000 has not exceeded 0.13%, which is well below the 3% waiver rate used in EPA's MOBILE model. Vehicles that do not comply with the program and do not receive a waiver are subject to a Class C misdemeanor punishable by a fine not to exceed \$500. The owner will be subject to an additional citation every time the vehicle is driven. With the establishment of LIRAP, the commission does not believe that the overall waiver rate will exceed 3%; therefore, it is unlikely that credits generated by the I/M program will be reduced. The commission did not revise the rules in response to this comment.

The HSC commented that the state “must,” not “may,” contact the parts distributor to verify the length of time necessary for a component to be received when a motorist applies for a Parts Availability Time Extension.

The state will contact the parts distributor to verify the length of time necessary for a repair component to be received by a motorist applying for a Parts Availability Time Extension.

However, because in 2000 DPS reported no requests for Parts Availability Time Extensions, the commission sees no reason to change "may" to "must." The commission did not revise the rules as a result of this comment.

The HSC opposes the Low Income Time Extension. They feel that the state must assist a low income person in getting a loan for a vehicle that does not exceed pollution standards and not continue the cycle of needless air pollution.

As directed by state statute, DPS waiver stations are authorized to issue a Low Income Time Extension to a vehicle owner whose vehicle fails the initial emissions inspection if the vehicle owner meets the income eligibility requirements. In 2000, DPS issued 40 Low Income Time Extensions out of nearly 4 million vehicles tested. This waiver may be issued for only one year, and may not be reissued the following year.

Also, HB 2134 requires the commission to implement LIRAP, which assists low-income individuals with financial assistance towards the costs of repairs or the replacement of a vehicle. Rules related to LIRAP will be proposed in a future rulemaking. The commission did not revise the rules as a result of this comment.

The HSC opposed allowing a 3% waiver rate. They stated that for the HGA area, a 3% waiver rate allows 61,221 vehicles out of a vehicle population of 2 million to pollute above air pollution standards. They also believe the waiver rate, if there is any, should be 100 vehicles or 0.01%.

Waivers are a way to ensure that motorists making every “good faith” effort to comply with I/M program requirements do not incur excessive repair costs that may cause undue burden or hardship. Waivers are not extended beyond one test cycle. Vehicle owners must meet all requirements and reapply, if applicable, the following year to receive a new waiver for that test cycle. The commission is committed to limiting all waivers to no more than 3% of failing vehicles in each program area, however, the waiver rate in the current program has not exceeded 0.4%. The commission will continue to monitor waiver rates in all program areas.

In addition, HB 2134 requires the commission to establish LIRAP, which assists low-income individuals with costs of repairs or replacement of a vehicle. Rules related to LIRAP will be proposed in a future rulemaking. The commission did not revise the rules in response to this comment.

One individual commented that the proposed program does not consider the elderly or individuals on fixed incomes.

The vehicle emissions testing program includes two waivers to assist the elderly or individuals on fixed incomes: 1.) Low Income Time Extension; and 2.) Low Mileage Vehicle Waiver. DPS

may issue a Low Income Time Extension to a vehicle owner whose vehicle fails the initial emissions inspection if the vehicle owner meets the income eligibility requirements. The Low-Mileage Vehicle Waiver is also available for vehicles that have failed an emissions test. The following requirements apply: 1.) at least \$100 has been spent to bring the vehicle into compliance; and 2.) DPS can verify that the vehicle has been driven less than 5,000 miles since the last safety inspection and reasonably determine that the vehicle will be driven less than 5,000 miles before the next safety inspection is required.

Additionally, HB 2134 requires the commission to establish LIRAP, which is designed to assist low-income individuals with the costs of emissions related repairs or replacement of a vehicle. Rules related to LIRAP will be proposed in a future rulemaking. The commission did not revise the rules in response to this comment.

Public Information

GHASP commented that the I/M program lacks adequate means to provide outreach to the public and assist low income persons with compliance.

HB 2134 requires the commission to establish LIRAP, which assists low-income individuals with costs of repairs or replacement of a vehicle to comply with the I/M program. The commission will propose rules establishing LIRAP in a future rulemaking. DPS recently contracted with a media company to provide public outreach regarding the new I/M program.

The outreach program will provide information on testing requirements, vehicle maintenance, and LIRAP. The commission did not revise the rules in response to this comment.

Remote Sensing

The HSC recommended that the state commit to the remote sensing of 20% of the total vehicle population each year instead of 20,000 vehicles or 0.98% as listed on page 21-1 of the SIP revisions. In addition, GHASP recommended that at least 400,000 vehicles be tested using remote sensing each year, because testing only 20,000 vehicles makes it quite unlikely that anyone fraudulently registered outside the program area will be identified by this insignificant level of testing.

Remote sensing is used to satisfy two requirements for on-road testing in the Texas I/M program. First, as specified in 40 CFR §51.351(b), on-road testing is to be used to supplement periodic inspections required in a vehicle I/M program, providing continuous monitoring of the effectiveness of the program. The DPS plans to use remote sensing to evaluate the on-road emissions performance of at least 20,000 of the vehicles subject to emissions testing in the DFW nonattainment area, and Harris and ELP Counties, thereby satisfying the first requirement for on-road testing. Second, on-road testing is used to identify high-emitting vehicles commuting into a nonattainment area and as an additional enforcement mechanism to identify high-emitting vehicles that have not complied with the program. Once a high-emitting vehicle is identified, the owner of the vehicle is instructed, by written notice from the DPS, to bring the vehicle into a state-certified emissions testing station for a verification emissions test. If the vehicle fails the emissions test, the owner is required to make necessary repairs to

bring the vehicle into program compliance with emissions standards. Failure to comply with the notice is a Class C misdemeanor. Since program inception in October 1998, over 5 million vehicles have been scanned by remote sensing equipment. The commission did not revise the rules in response to these comments.

Early Participation Incentive Program

Snap-On recommended that station owners purchasing ASM-2 emissions testing equipment before October 25, 2001 be included in the early participation incentive program the state is proposing.

The commission agrees with the commenter and will delete the start date of October 25, 2001 in the adopted rules. The commission revised the rules in response to this comment.

Snap-On recommended that as long as an inspection station has ordered ASM-2 testing equipment by December 31, 2001, and has such certified equipment installed and operating within 30 days after program start date, the station should be eligible for the incentive program.

The main objective of the incentive program is to have as many stations operational by the testing start-up date of May 1, 2002. The sign-up deadline date and the financial guarantee provide the incentive for having stations online by the start-up date. Providing an extra 30 days after start-up would essentially negate the objectives of the incentive program. The commission did not revise the rules in response to this comment.

Snap-On recommended eliminating the proposed requirement that the station owner must include installation in the copy of the signed contract with an equipment vendor. Snap-On felt that some shop owners may elect to have someone other than the equipment manufacturer install his/her dynamometer.

The commission has revised the rules in response to this comment and will delete "installation" from §114.52(d)(3). The commission recognizes that installation of certain components of the testing equipment may have to be done by an entity other than the manufacturer or supplier. It is at the discretion of the station owner to have some components installed by any entity they choose. The requirement that the emissions testing equipment be operational by program start-up date (May 1, 2002) has not changed.

One individual was concerned about the price of equipment and the return on investment. He understood that the proposed incentive program will cover around 75% of the equipment cost in the event that the program is terminated early, but wanted to know how the remaining 25% of the equipment cost will be covered. TSIA commented that the commission should guarantee that the new I/M program will last, at a minimum, for five years and recommended that the state should fully compensate station owners or cover the full remainder on a lease payment should the program fold or be substantially altered by the legislature. In addition, one individual commented that if the state is sincere about helping inspection station owners as far as the first two years if the program fails, then the state should guarantee the program for three years and pay for the total cost of the equipment. Additionally, two individuals commented there should be a guarantee against early termination of the program to reduce risks to businesses.

The I/M program is subject to change based on amendments that could occur to federal and/or state laws which authorize the current program. Such changes are beyond the authority of the commission. However, to address concerns about possible early termination of the program, the commission proposed an early participation incentive program. Under this program, station owners may be eligible to receive payments of \$675 per month from the point of termination, which will cover the payments on the basic cost of the initial capital investment.

In response to comments on the adequacy of the terms of the early participation incentive program and since most purchases/leases are in a term of five years, the commission extended the term of coverage from three to five years. The ASM-2 equipment certified by the state also includes OBD testing equipment used for testing 1996 and newer vehicles. Should ASM-2 testing be terminated, OBD testing, which is a federal requirement, would continue and stations could continue to bring in revenue from this equipment. Beginning in 2002, OBD compliant vehicles will account for approximately 43% of the vehicle fleet in the HGA and DFW program areas. In 2007, OBD compliant vehicles will account for approximately 77% of the vehicle fleet. The commission has revised the rules in response to these comments.

GHASP and EPA supported the concept of an early participation incentive program. GHASP considered the level of the assurance to be too low to make a significant difference considering the overall risks and reward offered to station owners. GHASP stated that, according to the TNRCC fiscal note, the proposed program offers a maximum liability to the state of \$26.5 million. GHASP recommended the TNRCC establish a program with a liability of at least \$60 million and that its terms should be developed in

consultation with inspection station owners. EPA stated that, according to the Fiscal Note Section in the proposal, the payment would be paid from anticipated additional revenues resulting from implementation of the proposed amendments. EPA stated that if the program is halted or terminated, there would be no additional revenue from I/M to fund this program. NCTCOG is also concerned that if ASM-2 testing is terminated within three years of the program start date station owners may not be fully reimbursed from the termination date for their investment.

HB 2134 provides the commission with authority to provide incentives, including financial incentives for participation in the testing network, to ensure availability of an adequate number of testing stations. Based on comments received, the commission revised the rules to extend the payment term so that eligible stations are eligible to receive \$675 per month to cover the remainder of five years rather than three years. With this change, the total payment amount possible represents approximately 100% of the average initial capital investment of ASM-2/OBD equipment (\$40,000) spread over 60 months.

The commission believes that there will be continuing revenues should ASM-2 testing be terminated. Should ASM-2 testing be terminated, OBD testing which is a federal requirement will continue and stations will continue to generate revenue from this equipment. Beginning in 2002, OBD compliant vehicles will account for approximately 43% of the vehicle fleet in the HGA and DFW areas. In 2007, OBD compliant vehicles will account for approximately 77% of the vehicle fleet in HGA and DFW areas.

GHASP recommended that the TNRCC consider whether the state should provide any financial assistance to businesses that have recently invested in the current emissions testing equipment that will be obsolete in May 2002.

Financial assistance to businesses that have recently invested in the current emissions test equipment is not currently available. It is anticipated that participating equipment vendors may offer the possibility of upgrading current TSI equipment to ASM/OBD, may offer a trade-in program for their customers based upon when they purchased the TSI equipment, and may offer an OBD-only option. The commission did not revise the rules in response to this comment.

NCTCOG supported the early participation incentive program, but it appears the program focuses on the private owners and operators. Also, NCTCOG recommended that this program also apply to single units of state and local governments conducting their own tests.

The commission agrees that the early participation incentive program focuses on private owners and operators. However, in response to comments received, the commission revised the rules to allow government fleets the same flexibility as public stations to become ASM-2 and OBD testing stations, OBD-only testing stations committed to conducting up to 1,200 OBD inspections per year, or contracting out the emissions testing service for their fleet. Each government fleet must make a decision based upon their fleet inventory to determine the

approach to take. The commission has made no changes to the rules in response to this comment.

NCTCOG and one individual opposed placing a cap on the number of eligible stations who wish to participate in the early participation incentive program. Both recommended that the program be offered to all that are interested. TSIA also commented on limiting participation to the first 1,000 stations.

The purpose of the early participation incentive program is to ensure that an adequate number of emissions inspection stations are open to the public on the program start date. At the discretion of the executive director, additional stations may be accepted into the program to ensure adequate distribution of stations throughout the program area. The commission did not revise the rules in response to this comment.

Two individuals commented that the agency is blackmailing stations to sign-up early. The two individuals also commented that stations have to decide early if they want to participate in the program.

The commission believes that the station owners retain the ability to determine whether to participate in the program. The incentive program simply provides that the first 1,000 eligible stations that sign-up by January 15, 2002, through the early participation incentive program, would be given a financial assurance should the ASM-2 program be terminated for any reason during the first five years of the program. The early participation incentive program is aimed at ensuring that an adequate number of ASM-2/OBD emissions inspection stations are open to

the public on the program start date. The commission did not revise the rules in response to this comment.

TSIA commented that the state considered a contractor to manage the testing program which would have resulted in a multi-year contract, backed by the full faith of the Texas government, that would have guaranteed the contractor a minimum number of vehicles to be tested for a set period of time. Also, one individual commented that if the state selects a sole testing contractor to perform I/M tests in the nonattainment areas, the state will lose a huge amount of tax payers' money. TSIA asked why the state thinks small business should risk their livelihood without similar guarantee.

The commission considered the option of a sole-source contractor to manage the testing program, but rejected the idea in favor of an open-market program to allow for competition.

The commission did not revise the rules in response to this comment.

Program Equipment

TSIA opposed the proposed network design and fee structure. TSIA commented that although equipment providers have made hundreds of daily sales calls, station owners tell TSIA that they are not going to buy equipment until the I/M program is restructured and station owners' concerns are addressed. TSIA further commented that since there have not been any significant sales or purchase of equipment, the testing program is in jeopardy.

The commission is committed to addressing the concerns of the station owners and believes that the changes it has adopted to the emissions inspection fee and the terms of the early participation incentive program will encourage inspection station owners to participate in the program. The equipment providers have indicated to the commission that some inspection stations are already making commitments to purchase equipment and that they expect the majority of the purchases to occur after the rules are adopted. The commission did not revise the rules in response to this comment.

TSIA commented that due to the Tejas program failure and the lack of credibility of the state and TNRCC, lenders that finance or lease I/M equipment to inspections station owners are concerned about the longevity and stability of the proposed program. I/M is considered high risk, and therefore lenders will be charging higher interests rates, if they agree to finance or lease the equipment at all.

The commission does not have authority over the interest rates charged by lenders. To offset some of these concerns, the commission is offering financial assurances in the form of the early participation incentive program. See previous responses to comments on the early participation incentive program. The commission did not revise the rules in response to this comment.

Three individuals commented on the large purchase price of the new equipment.

The purchase price for the ASM-2 test equipment is determined by the equipment manufacturers operating in an open market. Comparisons with the cost of ASM equipment in other states indicate that the list prices currently quoted in Texas are comparable with costs in other states. The commission did not revise the rules in response to this comment.

One individual participated in the MCI Worldcom OBD pilot project and wants to be furnished with the OBD testing equipment at no cost to him.

The equipment for the OBD pilot project that is currently being conducted in El Paso was donated by MCI Worldcom Communications, Inc. as an incentive for stations to voluntarily participate in the pilot project since no additional fees were authorized to conduct the additional OBD test along with the current TSI test. As outlined in the agreement to participate in the pilot project between the stations and MCI Worldcom, once the pilot project is complete, the OBD components will be removed from the PC and the hard drive re-formatted and loaded with a Windows operating system. The PC will then be donated to the participating station. The commission did not revise the rules in response to this comment.

One individual is concerned that some station owners may not qualify for a loan to purchase new equipment at the current prices. One individual suggested that the state should fund equipment cost instead of a buy-back or incentive program.

Purchasing new testing equipment is a business decision and is the responsibility of the owner to determine if the investment is worth the cost. The credit history of each inspection station will determine their ability to qualify for a loan. Further, the commission believes that the adopted early participation incentive program is meant to provide financial assurance to station owners for the purchase of equipment. The commission did not revise the rules in response to this comment.

One individual is concerned that a full-service station will have to have a separate phone line for each type of emissions test.

Since the ASM-2 emissions analyzer will perform all required emissions tests, station owners will only have to have one phone line per testing analyzer. If the station has multiple lanes, then the commission agrees that the station will need to have a separate phone line for each emissions analyzer, as is currently the case. The commission did not revise the rules in response to this comment.

TSIA stated that it is economically out of the question for station owners to purchase new equipment. They further stated that some station owners still have payments remaining to pay-off upgrades required by the last program change.

Apart from the ASM-2/OBD equipment change to be implemented in certain counties beginning May 2002, the last program change that required new equipment occurred in July

1996 in Dallas and Tarrant Counties, and in January 1997 in Harris and El Paso Counties. The commission recognizes that some owners will decide not to participate in the new program due to equipment costs, while others will see a potential business benefit. Equipment vendors may provide lease agreements and other options of financing. The commission did not revise the rules in response to this comment.

One individual is concerned that state officials are giving stations a testing scenario where two different pieces of equipment are required and one of the units will be obsolete or barely used five years from now and that there may be no possible payback for that unit.

A station that participates as a full-service inspection station will purchase or lease one piece of equipment to perform both ASM-2 and OBD inspections or have their current TSI equipment upgraded to perform both tests. Using historical fleet growth rates, the commission anticipates that by the year 2007, there will be 1.25 million model year 1995 and older subject vehicles in the ASM-2 program areas (DFW and HGA). These vehicles will require ASM-2 testing until they are retired from the fleet or exempted due to age (greater than 24 years). The commission did not revise the rules in response to this comment.

One individual thought that the cost estimates done by the state were grossly underestimated. He would like to know the real cost of equipment, installation, training, interest, and insurance to cover the known hazards of operating this equipment. Also, he asked about the cost for uninstalling the equipment after three years of diminishing returns.

The commission reviewed its analysis of the costs of ASM testing and adjusted the fee to take into consideration elements where the cost may have been underestimated. However, given that costs of equipment, installation, training, interest, and insurance will be different for each inspection station, based on the type of equipment and level of service selected, each participating station must decide whether participation is in the best interest of its business. After extensive analysis and review, the commission determined that most stations will be able to offset most of the increased costs of ASM-2 with the revised inspection fee not to exceed \$27.

For station owners unwilling or unable to install an ASM-2 dynamometer in the floor of the inspection bay, above-ground analyzer models are offered by participating manufacturers which are simple to “uninstall.”

One individual is concerned that the expense of modifications necessary to install and position ASM-2 equipment so that the equipment does not disturb neighboring businesses has not been addressed.

The commission expects the noise levels for conducting the ASM-2 test to be about the same as the noise generated by the current TSI test. The decibel (db) level is below 90 dbs, which is below the permissible noise exposure recommended by Occupation Safety and Health Agency (OSHA) for an 8-hour period. Staff researched other states that use dynamometers in ASM-2 emissions testing and did not find that excessive noise complaints were reported. The commission did not revise the rules in response to this comment.

TSIA recommended the state require equipment manufacturers to properly service emissions analyzers through equipment contracts.

The analyzer specifications require equipment manufacturers to offer service contracts to analyzer owners. The commission's rules require the analyzer to be returned to service within two business days of the request for service by the analyzer owner. The commission has directed staff to closely monitor service complaints registered by inspection station owners. The commission did not revise the rules in response to this comment.

One individual commented that in 1990 when BAR90/84 was introduced, DPS did not provide information on certain model vehicles that could not be inspected using this equipment and that resulted in damaging the vehicles transmissions at costs of \$4,500 to the inspection station. The commentor's concern is that with ASM-2 testing, the same results might happen and the inspection station will be left to foot the cost of the damaged vehicles.

Emissions testing using dynamometers has been conducted in many states without serious incidents being reported. However, staff has received information regarding potential damage to a small number of model vehicles if tested on the dynamometer. The ASM-2 test sequence in Texas will accommodate these vehicles by providing an alternative test, such as the TSI test. A training program will be implemented by DPS for all inspectors operating dynamometer type emissions test equipment. The commission made no changes to the rules in response to this comment.

TSIA commented that ASM-2, as proposed, is an obsolete technology and is prone to unacceptable levels of false failures.

The ASM-2 test achieves modeled hydrocarbons (HC) and NO_x reductions comparable to those achieved by an IM-240 test but at less than one-third the cost and is approved by EPA for use in many I/M programs. Moreover, the ASM-2 test is considered effective in identifying high-emitting vehicles, and can be implemented through the current decentralized testing network. While the ASM-2 test equipment may be used less each year for conducting ASM-2 inspections, the equipment will continue to be used to conduct OBD inspections, and will prove effective in diagnostic and repair of vehicles failing the OBD inspection. The commission did not revise the rules in response to this comment.

TSIA commented that the proposed ASM-2 equipment will prove to be less reliable than the current BAR90-based idle system resulting in more inspection equipment downtime and increase public confusion and inconvenience.

States with emissions programs that utilize ASM-2 testing have not found the ASM-2 equipment to be less reliable than the BAR90 idle system. States have indicated that dynamometers are proving to be more robust than previously anticipated, and the improved sample systems are reducing equipment downtime. Therefore, the commission believes the ASM-2 program is unlikely to increase public confusion and inconvenience. The commission did not revise the rules in response to this comment.

TSIA commented that there will be a real safety issue regarding the use of the dynamometer that is associated with the proposed ASM-2 testing equipment.

According to the California Department of Consumer Affairs Report to the California Legislature, July 9, 1999, the BAR97 (ASM-2) dynamometer poses no serious safety issues when properly used and is no more dangerous than other shop equipment such as hoists and wheel balancers. Most incidents can be prevented with proper training and experience. The commission did not revise the rules in response to this comment.

One individual was concerned that the vehicle's drive cycle may not be completed by some drivers, such as the elderly, and this would cause the vehicle to fail the OBD only test.

EPA rules allow an exemption related to this specific drive cycle issue and this has been included in the Texas equipment specifications. Model year vehicles 1996-2000 will not fail if two or less readiness codes are "not ready," and for model years 2001 and newer, one readiness code of "not ready" is allowed. This should eliminate concerns that the vehicle's drive cycle was not completed by low mileage driving patterns. The commission did not revise the rules in response to this comment.

TSIA commented that there will be an annual update cost for OBD equipment as the new models are produced. The update is estimated to cost between \$2,000 to \$3,000 above the annual maintenance costs.

New vehicle model years will be updated through the TIMS contract. The inspection sequence for conducting OBD inspections does not require an annual update. Repair update costs associated with vehicle diagnostics are incurred by the repair industry. The commission did not revise the rules in response to this comment.

One individual commented that no OBD-only equipment is yet available and will be rushed to market untested. In addition, the commenter is concerned that \$8,000 is a lot to spend for unproven equipment.

OBD equipment is already available and being used to test vehicles in I/M programs in other states. Any manufacturer or distributor of vehicle testing equipment may apply to the executive director of the commission for approval of a OBD analyzer system for use in the I/M program. Each manufacturer shall submit a formal certificate to the commission stating that any OBD 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 the specifications for OBD. The commission did not revise the rules in response to this comment.

Repair Program

One individual recommended lifting the stipulation that if a vehicle fails an emissions test, the vehicle owner must have the vehicle repaired at a "Recognized Emissions Repair Facility" before the owner can qualify for any and all extensions and/or waivers.

House Bill 2134 eliminated the minimum expenditure waiver that required eligible expenses for emissions related repairs to be done by a DPS “Recognized Emissions Repair Facilities.”

With this waiver being repealed by this rulemaking, the commission does not require emission related repairs to be completed by a “Recognized Emissions Repair Facility.” The motorist has the option of completing the repairs themselves, or using a repair facility of their choice.

The commission did not revise the rules in response to this comment. However, "Recognized Emissions Repair Facilities" may have a role to play in LIRAP, which will be the subject of a future rulemaking.

The HSC commented that repair technicians “must,” not “should” (as listed on page 19-1 of the SIP revisions), provide an emissions repair vehicle diagnostic to motorists before engaging in emissions related repairs.

Mandating repair technicians to perform vehicle diagnostics before engaging in emissions related repairs is beyond the authority of the commission and the scope of this rulemaking. However, as stated in the SIP, the commission believes that an emissions repair vehicle diagnostic should be provided before repairs. The commission has made no changes to the rules or SIP in response to this comment.

The HSC commented that the commission must require that DPS shall set up a repair technician training program with training resources. In addition, they stated that this training program and resources must be spelled out in this SIP.

DPS establishes the criteria for technicians to become a “Recognized Repair Technician.”

The “Repair Effectiveness” program can be found in Section 19 of the SIP. Technicians must obtain certification in the following four areas offered by National Institute for Automotive Service of Excellence (ASE): Engine Repair (Test A1), Electrical Systems (Test A6), Engine Performance (Test A8), and Advanced Engine Performance Specialist (Test L1). The commission and DPS have taken steps to ensure adequate technician training resources are available. Recently, the commission contracted with Brookhaven College in Dallas, to develop a curriculum to provide repair technicians the opportunity to advance their emissions related skill level by offering training on advanced diagnostic repairs through training providers located throughout near-nonattainment and nonattainment areas. The objective of the Texas-specific training was to thoroughly cover theories, test procedures, and testing methods an automobile technician needs to comprehend and apply for the diagnosis of emissions and driveability-related problems in an enhanced testing environment, with specific emphasis placed on NO_x and OBD failures and their repairs. The Advanced Repair Technician Training Program will greatly reinforce the repair technician’s ability to diagnose and repair enhanced emissions failures. The commission did not revise the rules in response to this comment.

One individual is concerned that repair technicians have not been properly trained on OBD vehicles and will pass along misinformation regarding failures to vehicle owners.

The commission and DPS recognize that properly trained technicians that can diagnose and repair OBD and emissions related problems are important to the success of the I/M program.

The commission will support DPS in their training and certification of testing technicians, as well as their working with recognized repair facilities. Earlier this year, the commission, through a grant sponsored by EPA, developed and provided repair training for diagnosing and repairing NO_x related problems in vehicles that fail ASM-2 and OBD tests. The training program material will be made available to repair technicians. Training providers will offer the same training at area community colleges and technical schools in the affected areas. The commission did not revise the rules in response to this comment.

One individual expressed concern that repair facilities will not purchase ASM-2 equipment because they do not perform enough inspections to justify the cost of the equipment. Most of these facilities will continue as recognized repair facilities and will repair vehicles that fail ASM-2 tests. However, without ASM-2 equipment at the repair shop, the vehicle owner will have to go back and forth between the repair shop and inspection facility in cases where the vehicle does not pass the re-test.

Vehicle owners will have the option of taking their vehicle to a test and repair facility or a repair-only facility of their choosing. The commission did not revise the rules in response to this comment.

Program Network

One individual expressed concern that there will not be enough emission testing facilities in the program to test all of the vehicles and this will result in long wait times and inconvenience to the motorist.

The commission adopted an early participation incentive program to encourage a sufficient number of stations offering emissions testing. Both DPS and the commission will be continually monitoring that the network of stations is equally distributed and convenient to the public. The commission has also raised the testing fee, not to exceed \$27, allowing for station owners to generate the revenue necessary to pay off the equipment. The commission did not revise the rules in response to this comment.

TSIA recommended a free market system that allows every inspection station to be full-service (ASM-2/OBD) to avoid the confusion to the public that will cause frustration and consumer backlash. In addition, TSIA stated that the TNRCC should scrap plans for a dual or split system.

All vehicle emissions test stations in DFW and HGA affected program areas are required to offer both the ASM-2 and OBD test, with the exception of low volume vehicle emission inspection stations. This exception is intended to allow those small stations that cannot afford ASM-2 equipment to continue participating in the emissions inspection program without jeopardizing the vehicle volume for those stations investing in ASM-2 equipment. If an emission test station wishes to become a low volume emission testing station, the station must petition DPS. The commission did not revise the rules in response to this comment.

The HSC and GHASP opposed the 1,200 tests allowed to be conducted by definition of low volume inspection stations. HSC requested that the definition of a low-volume emissions inspection station be

changed to allow for no more than 365 emissions tests per year. GHASP recommended no more than 350 tests per year be allowed by these stations.

The commission has determined that 1,200 tests conducted by OBD-only testing stations in one year will allow the smaller stations the option to continue to participate in the testing program. Limiting these stations to 350 tests per year (or one per day) would be too restrictive and severely burden those small stations that wish to continue participating in the emissions testing program on a small scale and cannot afford ASM-2 equipment. By 2007, OBD compliant vehicles will account for 77% of the fleet and these small stations will have an increasingly important role in the I/M program. The commission will undertake reviewing the number of tests allowed by OBD-only testing stations in the future. The commission did not revise the rules in response to this comment.

One individual inquired if a fleet company can qualify as a low-volume station. In addition, the individual would like to know if the station is an OBD-only station, can they offer TSI tests for their heavy-duty vehicles.

The commission amended the rules to clarify that a fleet or government inspection station, which inspects its own vehicles, may choose to become a low volume emissions testing station performing OBD-only tests for 1996 and newer vehicles. A fleet or government station choosing to be an OBD-only station may also petition DPS requesting to be allowed to conduct TSI tests on their heavy-duty vehicles (vehicles with gross vehicular weight ratings greater

than 8,500 pounds). Each petition will be reviewed on a case-by-case basis. The commission did not revise the rules in response to this comment.

One individual wanted to know if his small fleet truck repair center that is a public inspection station, but only works for fleet companies, qualifies under the new rules as a low-volume station.

Public inspection stations that only work for fleet companies can petition DPS to be classified as a low volume emissions inspection station conducting only OBD tests. The commission did not revise the rules in response to this comment.

One individual commented that if the station is limited to 100 OBD tests per month, the station would be closed three weeks out of the month, and as the station owner, he would not be able to afford the cut in revenue.

Emission testing stations offering both ASM-2 and OBD will have no limits on the number of tests performed each month. Only stations that choose to be classified as a low volume emissions inspection station will be limited to 1,200 OBD-only tests per year or approximately 100 per month for 1996 and newer vehicles. The commission did not revise the rules in response to this comment.

The HSC commented that DPS must propose rules regarding low volume emissions inspection stations.

The HSC also commented that the SIP revisions will not be completed without these rules being proposed so that the public can review and comment on them.

The commission anticipates that DPS will develop rules to coincide with the commission's amendments to the state's I/M rules after this adoption, and the public will have the opportunity to comment on the rules at that time. Any corresponding SIP revision, if necessary, will be proposed in a future rulemaking. The commission did not revise the rules in response to this comment.

The HSC opposes allowing new car dealers an exception from offering both ASM-2 and OBD tests for 1996 and newer model year vehicles. The HSC also commented that the dealers must offer both tests to give the citizens the widest range of options for convenience.

The commission did not revise the rules to allow new auto dealers to perform an unlimited amount of OBD tests. The commission believes that new auto dealers should have the option of becoming a low volume inspection station limited to 1,200 OBD tests per year if most of their tests will be for vehicles 1996 and newer. The commission did not revise the rules in response to these comments.

TADA supported the proposed rules that allow dealers to participate in the emissions testing program using only OBD equipment and testing only 1996 and newer model year vehicles. One individual wanted

to know why the commission is limiting OBD testing for some facilities and not for new car dealerships since this would be an inconvenience to the public. AASP expressed opposition to giving new car dealers unlimited use of OBD testing. AASP recommended if the TNRCC is going to allow new car dealers to have unlimited use of OBD testing, then everyone should have unlimited use of OBD testing. One individual commented that the new car dealer exemption is unfair since repair stations that perform inspections also repair 96 and newer vehicles. GHASP also recommended that the TNRCC adopt a waiver-based approach for any exception offered to new car dealers. They stated that an annual waiver of the requirement to offer ASM-2 tests should be granted to dealers that describe by make and model year which cars they wish to test, and exclude all vehicles that have not been offered for sale at their dealership under manufacturers' service and warranty agreements.

The commission asked for comment in the preamble to the proposed amendments regarding the possibility of allowing new car dealers to offer OBD-only testing on an unlimited basis. The commission did not include this exception for new car dealers in the final rules. Testing data shows that new car dealers provide a significant number of safety and emissions tests for model year vehicles 1995 and older as well as testing model year 1996 and newer vehicles. New car dealers may still offer OBD only if they petition DPS to have their dealership's service business classified as a low volume inspection station and thus limit themselves to no more than 1,200 OBD test per calendar year. This will not limit new car dealer's ability to provide the initial two-year safety inspection sticker. The commission did not revise the rules in response to this comment.

TSIA commented that the success of the current TSI program is due to plenty of convenient locations, knowledgeable inspectors, and stations operated by independent neighborhood businesses.

The commission agrees with the comment and is committed to working with station owners to help ensure continued convenience and to maintaining the decentralized emissions testing network currently in place. The commission did not revise the rules in response to this comment.

One individual commented that OBD and TSI is the right combination to regulate automobile smog.

One of the commission's main goals is to reduce ground level ozone, which is primarily created through the interaction of HC and NO_x in bright sunlight. OBD testing will achieve significant NO_x reductions, in addition to reductions of HC, but can only be conducted on 1996 and newer model year vehicles. A TSI test is not able to identify NO_x emissions. A loaded mode test, such as ASM-2, is needed to achieve NO_x reductions for 1995 and older vehicles. The commission has adopted the ASM-2 test because it is estimated to achieve HC and NO_x emission reductions comparable to those achieved by an IM-240 type test, but at less than one-third of the cost. The commission did not revise the rules in response to this comment.

TSIA recommended that OBD be backed with an actual emissions test until OBD has been proven reliable.

The commission believes that OBD testing effectively identifies emissions problems and vehicles in need of repair. Title 40 CFR, Parts 51 and 85, Section IV, Subsection H, states “the use of the OBD-I/M check exclusively for [model year] 1996 and newer vehicles is an acceptable means of evaluating this segment of the vehicle fleet and that use of back-up tailpipe testing has limited applicability.” Oregon and Wisconsin I/M programs have both had success with OBD testing without a back-up test. The commission did not revise the rules in response to this comment.

The HSC commented that EPA and others have conducted numerous audits of centralized and decentralized I/M testing facilities and have found that there is less fraud in centralized I/M testing facilities than in decentralized testing facilities. They further stated that in order to stop “cheating,” TNRCC should implement a centralized testing network.

The commission has no intention of implementing a centralized program and will continue to implement the emissions testing program through the decentralized network of individual inspection stations. The current decentralized network, approved by EPA, improved convenience over the earlier centralized network by providing more than 2,300 testing facilities in the original four I/M counties. The commission did not revise the rules in response to this comment.

Representative Norma Chavez, the HSC, GHASP, EPA, and TSIA opposed deleting the requirement that if OBD data cannot be collected from a vehicle, an EPA-approved tailpipe emissions test will be used.

The commenter stated that since it is rare that OBD data cannot be collected from a vehicle, it would not be too much of a burden to require a tailpipe test if OBD data is not available and that using a back-up test will ensure that the vehicle's emissions are not exceeding the vehicle's standards. TSIA commented that the National Research Council (NRC) study raises issues that call into question the TNRCC's plan to allow OBD-only testing on 1996 and newer vehicles. Using OBD without a conventional test back-up could mean that industry in a year or two might be forced to buy additional equipment should the expected emissions reductions from OBD not prove up in the real world. EPA questioned the rationale in deleting the sentence "If OBD data cannot be collected from the vehicle, an EPA-approved tailpipe emissions test will be used" from various parts of the rule.

EPA's final rule for OBD implementation found in 40 CFR, Parts 51 and 85, Section IV

Subsection H, states that "the use of the OBD-I/M check exclusively for [model year] 1996 and newer vehicles is an acceptable means of evaluating this segment of the vehicle fleet and that use of back-up tailpipe testing has limited applicability." EPA's final rule also says that states may use discretion on back-up tests for vehicles that cannot be tested using OBD.

Based on statistics from other I/M programs, the commission estimates that less than 1.0% of the testable OBD fleet will be unable to process data to the OBD analyzer. In the Texas program, any such vehicle will be tested by identifying whether the "check engine light" is on or functional, and will fail the OBD test if the light is on. The commission did not revise the rules in response to this comment.

The HSC opposed government entities being allowed to apply for authorization to conduct OBD-only testing. The HSC stated that these entities should conduct both the OBD and ASM-2 tests to determine the complete air pollution emissions of the vehicles they operate. The HSC further stated that governmental entities should set the example by doing all they can to reduce pollution.

Governmental entities will have the option of conducting ASM-2 and OBD or OBD-only testing if they opt to become a low volume emissions inspection station. Vehicle fleets owned and managed by governmental entities in many cases will be made up of model year 1996 and newer vehicles. These vehicles are required by EPA and this rulemaking to have OBD tests. If the governmental entity has opted to be a low volume inspection station limited to 1,200 OBD-only tests per year and has fleet vehicles that are model year 1995 and older, these vehicles will be required to have an ASM-2 test that may be conducted at a privately owned inspection station. Requiring government entities to also have ASM-2 equipment unnecessarily could produce a burden to the taxpayers since the use of the equipment could be limited to a small number of older vehicles that may make up their fleets. The commission did not revise the rules in response to this comment.

One individual stated the new program is not a realistic concept environmentally or economically. The individual asked why the station owners are risking \$40,000 in equipment costs to catch only 3.0% of the cars out of compliance. He also stated that the same result could be achieved by reducing the current emissions standards by 25% and continuing to measure NO_x at state levels as is done now.

One of the commission's main goals is to reduce ground level ozone, which is primarily created through the interaction of HC and NO_x in bright sunlight. Reducing the current emissions standards will not reduce any of the NO_x emitted from the vehicles. The current TSI test is not able to identify NO_x emissions. OBD testing will achieve significant reductions, in addition to reductions of HC, but can only be conducted on 1996 and newer model year vehicles. A loaded mode test, such as ASM-2, is needed to achieve NO_x reductions for 1995 and older vehicles. The commission adopted the ASM-2 and OBD testing program because it is estimated to achieve HC and NO_x emission reductions comparable to those achieved by an IM-240 type test, but at less than one-third of the cost. The commission did not revise the rules in response to this comment.

GHASP expressed concern that the I/M program has failed to provide a reasonable basis for participation by privately owned vehicle inspection stations, and is likely to result in fewer emissions reductions than projected due to the testing technology and standards being considered.

The commission adopted the early participation incentive program for inspection stations to encourage an adequate number of ASM-2/OBD emissions inspection stations to be online by May 1, 2002. With this and the amended fee, the commission believes there will be sufficient inspection stations offering ASM and OBD testing to achieve emission reductions necessary to meet the requirements of the SIP. The commission did not revise the rules in response to this comment.

State Compliance

The HSC recommended that the annual quality assurance reports, quality control reports, and enforcement reports should be submitted to EPA on a quarterly basis. In addition, they recommended that biennial reports listed in the SIP should be submitted yearly.

Title 40 CFR Part 51 outlines that quality assurance, quality control, and enforcement reports are due to EPA on an annual basis, and program evaluation be conducted on a biennial basis. The commission provides continuous access to all I/M reports for EPA through TIMS. With this access, EPA has the ability to run these reports at their convenience. Because the biennial program evaluation requires costly data collection and analysis, it would not be cost effective or practical for the commission to produce this evaluation of the program on an annual basis. The commission did not revise the rules in response to this comment.

The HSC recommended that the recall notice report (page 21-1 of the SIP revisions) be submitted quarterly instead of annually so the EPA can determine if any problems exist and can address these problems immediately.

Title 40 CRF Part 51 outlines that a recall notice report is due to EPA on an annual basis. Currently, the report cannot be completed because EPA has not yet fully developed the necessary database of manufacturer vehicle recalls and supplied this data to states for incorporation into the respective I/M programs. The commission did not revise the rules in response to this comment.

One individual commented there needs to be more fleet-only stations for new car dealerships that have to perform inspections on new cars to minimize consumer frustration.

Mandating fleet-only stations is outside the scope of this rulemaking. The commission did not revise the rules in response to this comment.

One individual compared the proposed emissions test to the emissions test that is conducted in Denver. The Denver test fee is \$24, requires only the vehicle identification number and vehicle mileage for data input, and only takes five minutes to complete. The proposed test takes considerable longer to complete and the stations receive less money per test.

The vehicle emission test in the Denver program does not include a safety component, and therefore, does not have to collect safety-related data at the entry point. The actual emissions test times for the Denver program and the ASM-2 test are substantially equal. The Denver program uses the IM240 test which has a maximum test time of 240 seconds. The ASM-2 test has a maximum test time of 270 seconds. A vehicle can “fast pass” in the Denver program in approximately 30 seconds, while a vehicle in the proposed ASM-2 test can “fast pass” in 60 seconds. The majority of vehicles in each program will receive a test time of approximately 80 seconds.

The Colorado Department of Public Health and Environment indicates that the centralized test facilities in Denver keep \$24 of the \$24.25 fee charged for the biennial emissions test. The

administration of the Colorado vehicle emissions testing program is funded through a portion of the annual vehicle registration fee. The Colorado Department of Public Health and Environment indicates that the centralized test facilities spent approximately \$125,000 per inspection lane; whereas, the estimated cost per lane for the ASM-2 test is approximately \$40,000. The commission did not revise the rules in response to this comment.

One individual stated that OBD II is not the answer, and that if it is, it should be statewide. The individual further commented that the TSI test works, even with flaws.

One of the commission's main goals is to reduce ground level ozone, which is primarily created through the interaction of HC and NO_x in bright sunlight. OBD effectively identifies high emitters and vehicles in need of repair. The OBD test is able to identify which emissions control systems is malfunctioning and the system displays the stored problem codes to make diagnosis and repair verification easier and much more effective. OBD testing will achieve significant NO_x reductions, in addition to reductions of HC, but this can only be conducted on 1996 and newer model year vehicles. OBD testing, which is part of an I/M program, is required in designated nonattainment areas by EPA.

A TSI test is not able to identify NO_x emissions. A loaded mode test, such as ASM-2 or IM240, is needed to achieve NO_x reductions for 1995 and older vehicles. The commission has adopted the ASM-2 because it is estimated to achieve HC and NO_x emission reductions

comparable to those achieved by an IM240 type test, but at less than one-third of the cost.

The commission did not revise the rule in response to this comment.

Representative Norma Chavez of El Paso commented that the state could better serve the public and participating stations by providing an option for participating stations to choose to provide both the TSI and OBD or just the TSI. The representative recommended Chapter 114 be amended to include an exception for El Paso stations to provide TSI-only inspections. This would provide those stations with older fleet vehicles an opportunity to phase into the OBD requirements.

The commission revised the rules to delay implementation of the OBD testing requirement until January 1, 2003, to allow the commission time to explore any viable options and to take into consideration any changes in ELP's attainment status. The revised rules require that El Paso continue TSI testing through December 31, 2002. Beginning January 1, 2003, all 1996 and newer model year vehicles equipped with OBD systems shall be tested using EPA-approved OBD test procedures and all 1995 and older model year vehicles shall be tested using a TSI. The adopted rules require all inspection stations to offer both TSI and OBD tests beginning January 1, 2003. Based on further consideration of options or a change in ELP's attainment status, this requirement could be revised in the future.

TSIA commented that the proposed I/M program is not designed to be easily adjusted, nor is it responsive to numerous questions raised in the recently released NRC study evaluating I/M programs. The commenter stated that the NRC report listed California reporting reductions of barely one-half of those

expected with their ASM-2 program. The commenter stated that it appears that other state designed ASM-2 programs will also fall short of the expectations of their designers.

The 2000 evaluation of the California I/M program includes lengthy discussion of the causes of the state's emissions reductions shortfall. Reasons include differences between the I/M program described in the SIP and what was actually implemented in the state. The NRC report ("Evaluating Vehicle Emissions Inspection and Maintenance Program," July 2001) recommended that: 1.) "I/M programs should focus primarily on identification, diagnosis, and repair of the highest-emitting vehicles along with verification of those repairs" (page 4); 2.) "I/M programs should clearly state which pollutants they are seeking to reduce" (page 7) because different repairs and technician training are needed for different pollutants; 3.) "remote sensing should have an increased role in assessing motor vehicle emissions and I/M program effectiveness" (page 8); 4.) "I/M programs can be improved by identifying ways to make them more cost effective and by easing the testing burden for vehicle owners" (page 11); and 5.) "tailpipe testing should use a dynamometer based technology."

The commission believes the new Texas program meets these recommendations by 1.) implementing ASM-2 testing to identify high emitters of carbon monoxide, HC, and NO_x and to verify repair of those vehicles. ASM-2 is a cost effective testing method which has been proven to identify high emitters and minimizes costs for both motorists and station owners while achieving necessary emissions reductions; 2.) creating a low income repair assistance program as required by HB 2134 which will allow the Texas program to concentrate more on

repairs; and 3.) including an ongoing remote sensing component to identify high emitting vehicles that are evading the emissions testing program or are not subject to emissions testing in their area. The commission did not revise the rules in response to this comment.

Vehicle Identification Database (VID)

One individual commented that the communications system that is in place needs to be eliminated. The contractor does not have any idea how much each station owes them. In addition, there are a number of places that are willing to perform the VID functions for a considerable amount less than what MCI is charging.

The real time collection of emissions test data is required under federal law, 40 CFR Part 51. In the six years of the TDLS contract, only three billing complaints were brought to the attention of the commission. In each instance, the contractor worked with the station owner and all the billing discrepancies were resolved. In reference to the second comment regarding MCI, this comment is outside the scope of this rulemaking. However, to clarify for the commenter, the commission released a Request For Offer for the Design, Construction, and Operation of the Texas Information Management System (TIMS) for the Inspection and Maintenance Program, and MCI Worldcom was awarded the contract. In order to guarantee the best value for the state, beginning with the new ASM-2/OBD program, the per transaction fee will be reduced to \$0.39 from the \$0.44 under the current TDLS contract, an 11% decrease. The commission did not revise the rules in response to these comments.

Two individuals recommended that if EPA, TNRCC, or DPS needs the data, they should share in the cost. The commenters are unsatisfied with the costs incurred by the inspection stations for communications fees.

The I/M program is intended to be fully self-funded through the collection of emissions test fees. This communication fee covers the cost of real-time electronic transfer of emissions data that is required by EPA. In establishing the emissions testing fee, cost analyses took into consideration the communications fee. Additionally, beginning with the new ASM-2/OBD program, the per transaction fee will be reduced to \$0.39 from the \$0.44 under the current TDLS contract, an 11% decrease. The commission did not revise the rules in response to this comment.

TSIA commented that the TNRCC favored the incumbent and limited the new I/M program performance by rushing the rebid process with a poorly designed Request For Offer (RFO) for the TIMS. In addition, TSIA commented that many of the potential bidders felt the short timetable made the playing field too unlevel and that industry interests were almost totally ignored during the development of the VID RFO. TSIA also commented on the information that it thought a more modern VID could/should provide. TSIA expressed concerns over TNRCC signing another contract for a 386 DOS-based VID in a Windows and DSL world.

These comments are outside the scope of this rulemaking. However, to clarify for the commenter, the commission released a Request For Offer for the Design, Construction, and

Operation of the Texas Information Management System (TIMS) for the Inspection and Maintenance Program, and MCI Worldcom was awarded the contract within the scope of bidding, awarding, and contracting requirements outlined by the state's Texas Building and Procurement Commission (formerly the General Services Commission) and by the commission. TIMS will help reduce the cost of I/M program administration, in addition to assisting in the estimating of emissions reductions, program evaluation and effectiveness, and with I/M repair effectiveness reporting. TIMS is designed using the latest SUN servers along with a robust ORACLE 8 RDBMS with Power Builder front-end tools for easy access and manipulation of the system. TIMS is designed to communicate with all emissions analyzer systems including, DOS and Windows-based systems. The commission did not revise the rules in response to this comment.

Motorist Compliance

The HSC commented that the TNRCC has never reported the results of the current I/M program. Specifically, the HSC asked for information on the number of vehicles that failed the emissions test, the number of people that escape the emissions tests, the amount of cheating going on, and the results of audits of the program.

Title 40 CFR Part 51 outlines all reporting requirements that are due to EPA on an annual and biennial basis. In addition, the agency provides continuous access to all annual I/M reports for EPA through the TIMS contract. With this access, EPA has the ability to run any report at their convenience.

A program evaluation is required to be conducted and submitted every two years. The program was last evaluated in May 31, 2000, and reports are available to the public. Specific to the HSC's information request, the applicable reports were submitted to the HSC. The commission did not revise the rules in response to this comment. Overt and covert audits are conducted by DPS and information on this can be obtained from DPS.

The HSC commented that a compliance rate of 96% is insufficient. The commenter further stated that a compliance rate of 96% allows 81,628 vehicles to avoid the I/M test from the total vehicle population of 2 million in the HGA area. The commenter also stated that a more acceptable compliance rate is 99.96%, equating to 1,000 vehicles for the HGA area.

A compliance rate target of 96% is standard within I/M testing programs including a default compliance rate of 96% in EPA's MOBILE model on which current SIP commitments are based. Current I/M program data and a DPS survey on the safety inspection sticker compliance rate for Dallas, El Paso, Harris, and Tarrant Counties suggests a compliance rate of approximately 96%. The commission did not revise the rules in response to this comment.

Referring to page 21-1 of the SIP revisions, the HSC commented that the notification letter "must," not "may," require the owner to have the vehicle inspected. In addition, when there is failure to comply with the requirements of the notification letter a citation "must," not "may," be issued against the owner of a vehicle.

The commission agrees with the comment and the SIP has been amended to include "must."

Enforcement

The HSC commented that the SIP revisions propose an inadequate enforcement element for the I/M program that will be required in DFW, HGA, and ELP areas.

The increase in the administrative fee from \$1.75 to \$2.50 is intended to provide additional resources for DPS to enforce the I/M rules and requirements and to provide for remote sensing activities throughout the affected areas. The commission did not revise the rules in response to this comment.

The HSC recommended using remote sensing to conduct covert audits on 20% of the emissions inspection stations. The commenter also stated that covertly auditing 20% of the vehicle population will increase the probability of catching cheating motorists and I/M station owners/operators.

Currently, remote sensing is used to identify high-emitting vehicles commuting into an I/M area and as an additional enforcement mechanism to identify high-emitting vehicles that have not complied with the program. Once a high-emitting vehicle is identified, the owner of the vehicle is instructed by written notice from the DPS to bring the vehicle into a state-certified emissions testing station for a verification emissions test and to make necessary repairs to bring the vehicle into program compliance. Failure to comply with the notice is a Class C misdemeanor. Local law enforcement officials are responsible for ensuring that vehicles

operating on public roads have a valid registration sticker and safety certificate. The commission will continue to evaluate technological advances in remote sensing to ensure the best possible testing methodologies and equipment are considered in future program development. As remote sensing technology improves, it may be considered for expanded use in the I/M program. The state is committed to using remote sensing to identify 20,000 vehicles or .01% of the vehicle population as required by the Federal Clean Air Act (FCAA).

The DPS is responsible for ensuring that inspection stations are compliant with the rules and regulations of the safety and emissions program. The DPS conducts covert audits on all safety inspection stations in the program and may use remote sensing as a tool for conducting covert audits. The commission did not revise the rules in response to this comment.

One individual expressed concern about the ineffective enforcement against fraudulent issuance of inspection stickers.

Vehicles failing to have a valid safety and emissions certificate could receive penalties such as a Class C misdemeanor punishable by a fine not to exceed \$500. The owner will be subject to an additional citation every time the vehicle is driven. Local law enforcement officials are responsible for ensuring that vehicles operating on public roads have a valid registration sticker and safety certificate. Emissions inspection stations can lose their certification and even face criminal charges if they are found to knowingly issue safety/emissions certificates for

vehicles that have not passed a safety or emissions inspection. The commission did not revise the rules in response to this comment.

NCTCOG encouraged implementation of registration denial requirements as adopted in HB 2134.

The commission agrees with this comment, and the adopted §114.50(b)(7) requires test-on-resale as authorized by HB 2134. However, registration denial is the responsibility of the county tax assessor-collector and TxDOT. Therefore, no changes in the rules are necessary in response to this comment.

One individual expressed concern that misinformation about dynamometers' stress on vehicles will have vehicle owners avoiding the test and going outside of the designated counties and demanding counterfeit inspection stickers.

The level of stress experienced by the vehicle during the ASM-2 test will be the same or lower than the level of stress the vehicle experiences during normal driving conditions. Emissions testing using dynamometers has been conducted in many states without serious incidents being reported. Vehicles registered in an I/M program county receiving a safety-only inspection outside the county of residence would require the filing of a false affidavit by the vehicle operator, a Class A misdemeanor, punishable by a fine not to exceed \$4,000; confinement in jail for a term not to exceed one year; or both. The commission did not revise the rules in response to this comment.

Geographic Coverage

The HSC commented that they are not in favor of allowing Brazoria, Fort Bend, Galveston, and Montgomery Counties to delay program implementation until May 1, 2003. In addition, they are not in favor of allowing Chambers, Liberty, and Waller Counties to delay I/M program implementation until May 1, 2004. The commenter also stated that all counties must begin stringent I/M testing beginning May 1, 2002.

The phase-in of I/M testing in Brazoria, Fort Bend, Galveston and Montgomery Counties in 2003 and Chambers, Liberty and Waller Counties in 2004 allows inspection stations in these counties to assess and plan for participation in the testing program. The phase-in also allows the DPS and the commission to provide public information on testing requirements and procedures for vehicle owners in counties that have not before had I/M programs. During this time, remote sensing of vehicles driving into affected counties will expand. The commission did not revise the rules in response to this comment.

One individual recommends allowing inspection station operators to test vehicles from affected and non-affected areas.

This comment is beyond the authority of the commission and the scope of this rulemaking. DPS has statutory responsibility for allowing inspection stations in I/M program areas to test vehicles from affected and non-affected counties. This comment will be forwarded to DPS for consideration. The commission did not revise the rules in response to this comment.

The HSC expressed concern regarding the language that allows Chambers, Liberty, and Waller Counties to abdicate implementing an I/M program for some other, undefined, emissions control strategies. The commenter stated that if such a program is allowed, the TNRCC must require not just a commitment, but a detailed program of what emissions will be reduced and how.

An enforceable control plan that will provide modeled reductions of HC and NO_x equivalent to the reductions that have been modeled for these counties through the implementation of the I/M program will have to be submitted to the commission and EPA for approval prior to the state accepting an alternative air control plan. If approved, the alternative plan will become part of the SIP. The commission did not revise the rules in response to this comment.

The HSC commented that the TNRCC has illegally allowed the Beaumont/Port Arthur (BPA) area to avoid I/M vehicle inspections.

The September 16, 1995, EPA I/M Flexibility Amendments allow areas such as BPA, with an urbanized population of less than 200,000 based on the 1990 Census, to submit a plan to reduce air pollution without implementing the vehicle emissions testing program. Because the BPA area meets this criterion, the I/M requirement was removed from the BPA SIP. The commission did not revise the rules in response to this comment.

One individual commented that if the program really wanted to lower emissions in DFW, then the TSI test should be implemented in larger cities down the I-35 corridor between San Antonio and DFW.

The commission has the authority to implement an I/M program in areas designated by the EPA as nonattainment of the national standards for ground level ozone and CO. The larger cities down the I-35 corridor between San Antonio and DFW are not designated as nonattainment areas. However, a county may opt into an I/M program voluntarily if it is not classified as a nonattainment area. The commission did not revise the rules in response to this comment.

One individual commented that he is the only inspection station within 25 miles, and that if this program is implemented as is, then there will be no inspections stations in parts of Denton County.

The commission and DPS are jointly working to ensure an acceptable ratio of subject fleet vehicles to emissions testing stations. The commission did not revise the rules in response to the comment.

Fiscal Note

EPA recommended clarification of the fiscal note language on page 17 relating to the emissions test fees in El Paso if it opts into the LIRAP.

The commission is not required to include the fiscal note sections in the adoption preamble under Texas Government Code, Chapter 2001. But for clarification on EPA's comment, the owner or operator of an affected vehicle will have to pay a \$14 emissions test fee (potentially \$17 if El Paso County participates in LIRAP) in El Paso.

EPA disagreed with the statement on page 19 of the fiscal note that the final two provisions (ASM-2 and OBD specifications) will not have fiscal impact on individuals and businesses in Texas because these are requirements to be met by emission analyzer manufacturers, none of which are located in Texas. EPA states that any increased costs to the manufacturers will be passed along to their customers, the station owners, who will pass them along to the vehicle owners or operators through the increase in testing fees.

Texas Government Code, §2001.024, requires the notice of a proposed rule to include the public benefits expected and the probable economic costs to persons required to comply with the rule. The proposed rules contained an analysis of information available to the commission regarding the costs and benefits of the proposed rules as required. This analysis took into consideration proposed costs of equipment presented by manufacturers as a result of the specifications being developed. The commission met the requirements of Texas Government Code, Chapter 2001, and is not required to republish the fiscal note sections in the adoption preamble. The commission did not revise the rules in response to this comment.

EPA recommended clarification of the fiscal note language on page 20 relating to the purchase of OBD test equipment. It states, “individuals and businesses that currently conduct emissions testing would either have to purchase new or upgrade existing equipment, or apply for authorization to conduct OBD test only.” EPA felt that this should be clarified because it seems that stations wishing to perform OBD tests need only apply for authorization and not purchase or upgrade equipment.

The commission agrees with the EPA that individuals and businesses that currently conduct emissions testing or are interested in conducting ASM-2 and OBD testing will either have to purchase new or upgrade existing equipment. Stations interested in conducting OBD-only testing will have to petition DPS to be classified as a low volume emissions inspection station and will have to purchase stand-alone OBD testing equipment. The commission did not revise the rules in response to this comment.

NCTCOG commented that in the table (fiscal note) of affected counties that Parker and Rockwall Counties are missing.

The commission agrees with NCTCOG that Parker and Rockwall Counties were erroneously omitted in one of the tables found in the FISCAL NOTE SECTION of the proposal; however, these counties were included in the proposed rules. The commission did not revise the rules in response to this comment.

Other Issues

Four individuals disagreed with collecting fees for out-of-state registration (green sheet, VI30A).

Comments related to VI30A registration or "green sheet" as it is commonly known are beyond the scope of this rulemaking. The commission did not revise the rules in response to the comment.

The HSC commented that only the DFW ozone nonattainment area is mentioned in the title to the SIP revisions, but the changes apply to both this nonattainment area and the HGA and ELP nonattainment areas. The commenter would appreciate an explanation about this inconsistency since the rule changes are for the DFW, HGA, and ELP ozone nonattainment areas.

The commission agrees with HSC and the SIP document title has been edited to reflect that revisions apply to all the areas mentioned.

One individual wanted to know why he has to enter pass/fail for every safety component. The commenter stated that if he is collecting data for the TNRCC, then the TNRCC should reimburse him for the time it takes to enter the data.

The entry of pass/fail information on individual items of the safety component of the annual inspection of vehicles is a requirement of DPS. The automation of the inspection process, both safety and emissions, provides the DPS with the ability to collect and analyze information. The safety component information is used to promote traffic safety, a goal in DPS' Strategic Plan. It also enables the DPS to provide this information to the public, DPS senior management, other state agencies, and legislators requesting information on the safety inspection program. The vehicle inspection fee is the mechanism that allows inspection stations to recoup the cost of conducting the inspections, which includes entering the data. The commission did not revise the rules in response to this comment.

One individual commented that he is amazed at the public hearing process in that very little feedback is given from the TNRCC representatives regarding the issues that are brought up during these hearings.

Public hearings on proposed commission rules are structured strictly for the receipt of oral or written comments. Open discussion during the hearing is not allowed; however, if anyone has questions or comments regarding the proposals there are opportunities for open discussion before the hearing is opened and after the hearing is closed. Also, feedback is given in the form of written responses to the comments which become a part of the adoption order. The commission did not revise the rules in response to this comment.

One individual commented that the University of Houston should not be involved in the commission's decisionmaking process.

The University of Houston was previously contracted by the TNRCC to perform an independent analysis of the emissions testing fee structure. This information, as well as all comments received during public comment, are used by the commission in making decisions on rulemaking.

One individual commented that he will take cash only for the VI30A.

Comments related to VI30A registration or "green sheet" as it is commonly known are beyond the scope of this rulemaking. The commission has made no changes to the rules in response to this comment.

NCTCOG expressed concern about language in HB 2134 of the 77th Legislature, 2001 that removes the ability of peace officers to issue citations when they have probable cause to believe that an offense of excessive vehicle emissions has been committed.

Language in HB 2134 related issues within DPS' jurisdiction is beyond the scope of this rulemaking. The commission has made no changes to the rules in response to this comment.

One individual asked about a station's right to refuse an inspection.

This comment is beyond the scope of this rulemaking; however, DPS's Rules and Regulations Manual For Operation Of Official Vehicle Inspection Stations mandates that each official vehicle inspection station must have a minimum of one certified inspector on duty to perform inspections promptly during the approved working hours of the inspection station. The station must be open for inspections eight consecutive hours, excluding the lunch hour, each approved business day with a minimum of 40 hours per week. Additional hours of inspection are permitted. An inspector may refuse to inspect a vehicle if unsafe conditions exists, such as weather, or the vehicle is deemed to be operating in an unsafe condition that may cause damage

to the testing equipment. The commission did not revise the rules in response to this comment.

One individual asked if you have a line for ASM-2 repairs and one ASM-2 inspection, is the station required to perform the inspection prior to performing the repairs.

Inspection stations are not required to perform inspections prior to performing repairs in the current program. The commission did not revise the rules in response to this comment.

One individual commented that when the program changed from the handwritten log book to the automated log book, the entries decreased from 30 per page to seven per page, producing an increase of paper use.

This comment is beyond the scope of this rulemaking. However, DPS is currently evaluating methods that may eliminate the need to print the automated log book and thus reduce paper consumption. The commission did not revise the rules in response to this comment.

One individual commented that the TNRCC is proposing weird rules, based on weird data and weird scenarios.

The FCAA Amendments of 1990 require emission testing in communities where ozone levels exceed federal health standards. High ozone levels can cause serious health effects.

Businesses, industries, and private citizens have been called upon to make pollution reductions. The vehicle emissions testing program is one of these efforts and is approved by the EPA. The commission did not revise the rules in response to this comment.

TSIA and two individuals commented because of the unique situation in El Paso with Juarez, Mexico, a program for only the approximately 430,000 vehicles in the El Paso fleet will not provide for significant air quality improvement to occur in the area.

The commission only has authority to establish air quality improvement programs within the State of Texas. The commission will continue to participate in bilateral workgroups and discussions that bring together officials and ideas from Juarez, Mexico, Dona Ana, New Mexico, and El Paso and will continue to support the work of local organizations involved in developing programs and ideas. The commission has made no changes to the rules in response to this comment.

Representative Chavez requested the TNRCC submit a waiver to EPA exempting El Paso, per §179B of the Clean Air Act, from the OBD testing requirements.

The commission revised the rules to delay implementation of the OBD testing requirement until January 1, 2003, to allow the commission time to explore options and to take into consideration any changes in ELP's attainment status. The revised rule requires that El Paso continue TSI testing through December 31, 2002. Beginning January 1, 2003, all 1996 and

newer model year vehicles equipped with OBD systems shall be tested using EPA-approved OBD test procedures and all 1995 and older model year vehicles shall be tested using a TSI.

TSIA asked why the TNRCC authorized funding of the exhaust gas recirculation (EGR) study with \$600,000 of the public's money, but limited the design of the study so it would fall far short. TSIA questioned if policy makers were already committed to certain I/M program choices and to the timelines that the decisions had already been made for. TSIA also commented that they would like to know why the TNRCC ignored the promising results from the EGR study, including the potential for using EGR testing equipment. TSIA estimated that EGR test equipment would have only cost between \$3,500 to \$5,000 compared to the \$30,000 to \$40,000 for the proposed ASM-2 equipment.

The commission investigated the feasibility of incorporating an EGR system functional check into the I/M program. The "I/M Testing Technologies" study followed adequate procedures within strict budgetary guidelines to determine that an EGR test was unacceptable for an inspection lane environment at this time. The report states that "additional development and testing of the EGR test system will be required before a final determination can be made regarding potential NO_x emissions reductions." The study determined that the prototype equipment studied had major shortcomings, requiring "significant modification," including that the "potential for fraud will be high," "performing the EGR test occasionally caused breakage of" engine components, the test requires a skill level "beyond the usual duties of a program inspector," and "the EGR test can be applied to only 85% of the I/M fleet." The commission is aware of no manufacturer currently developing equipment capable of testing the EGR system in

an inspection lane environment. The commission did not revise the rules in response to these comments.

TSIA commented that if a true benchmark had been included in the EGR study, the shortcomings of the proposed ASM2 program would probably have come to more light.

The purpose of the EGR study was to investigate the effectiveness of the EGR functional test compared to the ASM test, not to evaluate the effectiveness of the ASM test. ASM has been approved by EPA for use in I/M programs, whereas no EGR functional test has yet been approved by EPA.

TSIA commented that the NRC study might be read as recommending that newer model year vehicles not be tested at all. This would be an easy mistake to make because the failure rates of newer vehicles are quite low. To come to this conclusion would be an over simplification of a complex matter; but nonetheless, the industry must express concern.

This comment is beyond the scope of this rulemaking. The commission did not revise the rules in response to this comment.

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under Texas Health and

Safety Code, TCAA, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also adopted under TCAA, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.019, concerning Methods Used to Control and Reduce Emissions from Land Vehicles, which authorizes the commission to adopt rules to control and reduce emissions from engines used to propel land vehicles; §382.039, concerning Attainment Program, which authorizes the commission to develop and implement transportation programs and other measures necessary to demonstrate attainment and protect the public from exposure to hazardous air contaminants from motor vehicles; and TCAA, Subchapter G, concerning Vehicle Emissions (§§382.201 - 382.216 as added by HB 2134, Section 1, 77th Legislature, 2001).

SUBCHAPTER A: DEFINITIONS

§114.2

§114.2. Inspection and Maintenance (I/M) Definitions.

Unless specifically defined in the TCAA or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, the following words and terms, when used in Subchapter C of this chapter (relating to Vehicle Inspection and Maintenance), shall have the following meanings, unless the context clearly indicates otherwise.

(1) Acceleration simulation mode (ASM-2 test) - An emissions test using a dynamometer (a set of rollers on which a test vehicle's tires rest) which applies an increasing load or resistance to the drive train of a vehicle, thereby simulating actual tailpipe emissions of a vehicle as it is moving and accelerating. The ASM-2 vehicle emissions test is comprised of two phases:

(A) the 50/15 mode - in which the vehicle is tested on the dynamometer simulating the use of 50% of the vehicle available horsepower to accelerate at a rate of 3.3 miles per hour (mph) per second at a constant speed of 15 mph; and

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

(2) Consumer Price Index - The Consumer Price Index for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the Department of Labor, as of the close of the 12-month period ending on August 31 of the calendar year.

(3) Low volume emissions inspection station - A vehicle emissions inspection station that performs on-board diagnostics (OBD) testing only and does not exceed 1,200 OBD tests per calendar year.

(4) Motorist - A person or other entity responsible for the inspection, repair, and maintenance of a motor vehicle, which may include, but is not limited to, owners and lessees.

(5) On-board diagnostic (OBD) system - The computer system installed in a vehicle by the manufacturer which monitors the performance of the vehicle emissions control equipment, fuel metering system, and ignition system for the purpose of detecting malfunction or deterioration in performance that would be expected to cause the vehicle not to meet emissions standards. All references to OBD should be interpreted to mean the second generation of this equipment, sometimes referred to as OBD II.

(6) On-road test - Utilization of remote sensing technology to identify vehicles operating within the inspection and maintenance program areas that have a high probability of being high-emitters.

(7) Out-of-cycle test - Required emissions test not associated with vehicle safety inspection testing cycle.

(8) Primarily operated - Use of a motor vehicle greater than 60 calendar days per testing cycle in an affected county. Motorists shall comply with emissions requirements for such counties. It is presumed that a vehicle is primarily operated in the county in which it is registered.

(9) Program area - County or counties in which the Texas Department of Public Safety, in coordination with the commission, administers the vehicle emissions inspection and maintenance program contained in the revised Texas Inspection and Maintenance (I/M) State Implementation Plan. These program areas include:

(A) the Dallas/Fort Worth (DFW) program area which consists of the following counties: Dallas, Denton, Collin, and Tarrant;

(B) the El Paso program area which consists of El Paso County;

(C) the Houston/Galveston program area which consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties; and

(D) the extended DFW (EDFW) program area which consists of Ellis, Johnson, Kaufman, Parker, and Rockwall Counties. These counties will become part of the program area as of May 1, 2003.

(10) Retests - Successive vehicle emissions inspections following the failing of an initial test by a vehicle during a single testing cycle.

(11) Testing cycle - Annual cycle commencing with the first safety inspection certificate expiration date for which a motor vehicle is subject to a vehicle emissions inspection.

(12) Two-speed idle inspection and maintenance test - A measurement of the tailpipe exhaust emissions of a vehicle while the vehicle idles, first at a lower speed and then again at a higher speed.

(13) Uncommon part - A part that takes more than 30 days for expected delivery and installation, where a motorist can prove that a reasonable attempt made to locate necessary emission control parts by retail or wholesale part suppliers will exceed the remaining time prior to expiration of the vehicle safety inspection certificate or the 30-day period following an out-of-cycle inspection.

SUBCHAPTER C: VEHICLE INSPECTION AND MAINTENANCE

§114.52

STATUTORY AUTHORITY

The repeal is adopted under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under Texas Health and Safety Code, TCAA, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The repeal is also adopted under TCAA, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.019, concerning Methods Used to Control and Reduce Emissions from Land Vehicles, which authorizes the commission to adopt rules to control and reduce emissions from engines used to propel land vehicles; §382.039, concerning Attainment Program, which authorizes the commission to develop and implement transportation programs and other measures necessary to demonstrate attainment and protect the public from exposure to hazardous air contaminants from motor vehicles; and TCAA, Subchapter G, concerning Vehicle Emissions (§§382.201 - 382.216 as added by House Bill 2134, Section 1, 77th Legislature, 2001).

§114.52. Waivers and Extensions for Inspection Requirements.

SUBCHAPTER C: VEHICLE INSPECTION AND MAINTENANCE

§§114.50 - 114.53

STATUTORY AUTHORITY

The amendments and new section are adopted under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under Texas Health and Safety Code, TCAA, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendments and new section are also adopted under TCAA, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.019, concerning Methods Used to Control and Reduce Emissions from Land Vehicles, which authorizes the commission to adopt rules to control and reduce emissions from engines used to propel land vehicles; §382.039, concerning Attainment Program, which authorizes the commission to develop and implement transportation programs and other measures necessary to demonstrate attainment and protect the public from exposure to hazardous air contaminants from motor vehicles; and TCAA, Subchapter G, concerning Vehicle Emissions (§§382.201 - 382.216 as added by House Bill 2134, Section 1, 77th Legislation Session).

§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) All vehicles registered and primarily operated in Dallas, Tarrant, and Harris Counties shall be tested using a two-speed idle (TSI) test through April 30, 2002. All vehicles registered and primarily operated in El Paso County shall be tested using a TSI test through December 31, 2002.

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

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

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

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

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

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

(B) Beginning May 1, 2003, all pre-1996 and older model year vehicles registered and primarily operated in Ellis, Johnson, Kaufman, Parker, and Rockwall 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.

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

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

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

(B) Beginning May 1, 2002, all pre-1996 model year vehicles registered and primarily operated in Harris County 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.

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

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

(E) 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.

(F) 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.

(G) 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.

(H) If Chambers, Liberty, and Waller Counties and their respective largest municipality submit by May 1, 2002, individually or collectively, a resolution that is approved by the commission and EPA as an alternative air control plan, then subparagraphs (F) - (G) of this paragraph are not required. The resolution should provide a control plan that will provide modeled reductions of volatile organic compounds and nitrogen oxides equivalent to the reductions that have been modeled for these

counties through the implementation of the I/M program. In determining approvability of a plan, the commission will consider federal I/M program requirements.

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

(A) Beginning January 1, 2003, all 1996 and newer model year vehicles equipped with OBD systems shall be tested using EPA-approved OBD test procedures.

(B) Beginning January 1, 2003, all pre-1996 vehicles shall be tested using a TSI test.

(C) Beginning January 1, 2003, all vehicle emissions inspection stations in the El Paso program area shall offer both the TSI test and OBD test.

(b) Control requirements.

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

(A) all applicable air pollution emissions control related requirements included in the annual vehicle safety inspection requirements administered by DPS, as evidenced by a current valid inspection certificate affixed to the vehicle windshield; and

(B) the vehicle emissions inspection and maintenance requirements contained in this subchapter.

(2) All federal government agencies shall require a motor vehicle operated by any federal government agency employee on any property or facility under the jurisdiction of the agency and located in a program area to comply with all vehicle emissions I/M requirements contained in the revised Texas I/M SIP. Commanding officers or directors of federal facilities shall certify annually to the executive director, or appointed designee, that all subject vehicles have been tested and are in compliance with the Federal Clean Air Act (42 United States Code, et seq.). This requirement shall not apply to visiting agency, employee, or military personnel vehicles as long as such visits do not exceed 60 calendar days per year.

(3) Any motorist in the DFW, EDFW, HGA, or El Paso program areas 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) A motorist whose vehicle has failed an emissions test may request a challenge retest through DPS. If the retest is conducted within 15 days of the initial inspection, the retest is free.

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

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

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

(B) satisfy all inspection, extension, or waiver requirements of the vehicle emissions I/M program contained in the revised Texas I/M SIP.

(7) A subject vehicle registered in a county without an I/M program which meets the applicability criteria of subsection (a) of this section and the ownership of which has changed through a retail sale as defined by Texas Motor Vehicle Commission Code, §1.03, is not eligible for title receipt or

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

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

(c) Waivers and extensions. A motorist may apply to the DPS for a waiver or an extension as specified in 37 TAC §23.93 (relating to Vehicle Emissions Inspection Requirements), which defer the need for full compliance with vehicle emissions standards for a specified period of time after failing a vehicle emissions inspection.

(d) Prohibitions.

(1) No person may issue or allow the issuance of a VIR, as authorized by DPS, unless all applicable air pollution emissions control related requirements of the annual vehicle safety inspection and the vehicle emissions I/M requirements and procedures contained in the revised Texas I/M SIP are completely and properly performed in accordance with the rules and regulations adopted by DPS and the

commission. Prior to taking any enforcement action regarding this provision, the commission shall consult with DPS.

(2) No person may allow or participate in the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen safety inspection certificates, VIRs, VRFs, vehicle emissions repair documentation, or other documents which may be used to circumvent the vehicle emissions I/M requirements and procedures contained in the revised Texas I/M SIP.

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

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

§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 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 Vehicle Exhaust Gas Analyzer Systems for Use in the Texas Vehicle Emissions Testing Program," dated October 15, 2001 or in "Specifications for On-Board Diagnostics II for use in the Texas Vehicle Emissions Testing Program," dated October 15, 2001. 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) All equipment shall be tested by an independent test laboratory. The cost of the certification shall be absorbed by the manufacturer. The conformance demonstration shall include, but is not limited to:

(1) certification that equipment design and construction conform with the specifications referenced in subsection (a) of this section;

(2) documentation of successful results from appropriate performance testing;

(3) evidence of necessary changes to internal computer programming, display format, and data recording sequence;

(4) a commitment to fulfill all maintenance, repair, training, and other service requirements described in the specifications referenced in subsection (a) of this section. A copy of the minimum warranty agreement to be offered to the purchaser of an approved vehicle exhaust gas analyzer shall be included in the demonstration of conformance; and

(5) documentation of communication ability using protocol provided by the commission or the commission Texas Information Management System (TIMS) contractor.

(c) If a review of the demonstration of conformance and all related support material indicates compliance with the criteria listed in subsections (a) and (b) of this section, the executive director or his appointee may issue a notice of approval to the analyzer manufacturer which endorses the use of the specified analyzer or analyzer system in the Texas I/M program.

(d) The applicant shall comply with all special provisions and conditions specified by the executive director or his appointee in the notice of approval.

(e) Any manufacturer or distributor which receives a notice of approval from the executive director or his appointee for a vehicle emissions test equipment for use in the Texas I/M program may be subject to appropriate enforcement action and penalties prescribed in the TCAA or the rules and regulations promulgated thereunder if:

(1) any information included in the conformance demonstration as required in subsection (b) of this section is misrepresented resulting in the purchase or operation of equipment in the Texas I/M program which does not meet the specifications referenced in subsection (a) of this section; or

(2) the applicant fails to comply with any requirement or commitment specified in the notice of approval issued by the executive director or implied by the representations submitted by the applicant in the conformance demonstration required by subsection (b) of this section; or

(3) the manufacturer or distributor fails to provide on-site service response by a qualified repair technician within two business days of a request from an inspection station, excluding Sundays, national holidays (New Year's Day, Martin Luther King Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, and Christmas Day), and other days when a purchaser's business might be closed;

(4) the manufacturer or distributor fails to fulfill, on a continuing basis, the requirements described in this section or in the specifications referenced in subsection (a) of this section; or

(5) the manufacturer fails to provide analyzer software updates within six months of request and fails to install analyzer updates within 90 days of commission written notice of acceptance.

§114.52. Early Participation Incentive Program.

(a) Purpose. The early participation incentive program is to ensure that an adequate number of emissions inspection stations that provide acceleration simulation mode (ASM-2) testing are open to the public on the program start date.

(b) Eligibility. In order to be eligible to receive the incentive described in subsection (g) of this section, an emissions inspection station owner or operator must meet the following requirements.

(1) The emissions inspection station owner or operator must enroll and submit the information described in subsection (d) of this section by January 15, 2002.

(2) The emissions inspection station must be located in Dallas, Tarrant, Denton, Collin, or Harris County or in an adjacent county.

(3) The emissions inspection station must be open to the general public.

(4) The emissions inspection station must be a Texas Department of Public Safety (DPS) certified official vehicle inspection station from the program start date and must continue ASM-2 emissions testing for five years following the program start date or until ASM-2 testing is terminated by the state.

(5) The ASM-2 testing equipment at the emissions inspection station must be operational by program start date in order to be covered by this incentive program.

(6) The ASM-2 equipment must be certified for use in the Texas Inspection/Maintenance Program by program start date in accordance with §114.51 of this title (relating to Equipment Evaluation Procedures for Vehicle Exhaust Gas Analyzers).

(c) Program acceptance. The executive director will accept the first 1,000 eligible emissions inspection stations into the program. At the discretion of the executive director, additional stations may be accepted into the program to ensure adequate distribution of stations throughout the program area.

(d) Enrollment and documentation requirements. Emissions inspection station owners or operators who opt to participate in the incentive program described in this section must apply using a form designated by the executive director. The application must be received in complete form by the executive director by January 15, 2002. This form will require at a minimum the following information and documentation:

(1) the emissions inspection station's name, location, mailing address, and other identifying information;

(2) the vendor and model of each ASM-2 piece of equipment to be used in participation in this program; and

(3) a copy of the signed contract with an equipment vendor for the purchase or lease of each piece of ASM-2 equipment by the program start date.

(e) Program areas beginning May 2003. For program areas that begin ASM-2 testing in May 2003 (Brazoria, Fort Bend, Galveston, Montgomery, Ellis, Johnson, Kaufman, Parker, and Rockwall Counties), the same incentive is offered subject to the requirements listed in this section. The enrollment period for these counties is October 15, 2002 through December 31, 2002. The executive director will accept the first 200 eligible emissions inspection stations into the program. At the discretion of the executive director, additional stations may be accepted into the program to ensure adequate distribution of stations throughout the program area.

(f) Program areas beginning May 2004. For program areas that begin ASM-2 testing in May 2004 (Chambers, Liberty, and Waller Counties), the same incentive is offered subject to the requirements listed in this section. The enrollment period for these counties is October 15, 2003 through December 31, 2003. The executive director will accept the first 30 eligible emissions inspection stations into the program. At the discretion of the executive director, additional stations may be accepted into the program to ensure adequate distribution of stations throughout the program area.

(g) Incentive payment plan. Emissions inspection station owners or operators who are accepted into the program and who maintain their eligibility are eligible to receive a payment of \$675 per month to cover the remainder of the five-year period following the program start date if the ASM-2 testing requirement is terminated by state rule or statute during the first five years following the program start date. Participating emissions inspection stations which have conducted more than 12,000 emissions tests at program termination are not eligible for payment.

§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) Through April 30, 2002, any emissions inspection station required to conduct a two-speed idle (TSI) test in accordance with §114.50(a)(1) of this title (relating to Vehicle Emissions Inspection Requirements) shall collect a fee of \$13 and shall remit \$1.75 to the Department of Public Safety (DPS).

(2) In El Paso County beginning May 1, 2002, any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(1) or (5)(A), (B), or (C) of this title (relating to Vehicle Emissions Inspection Requirements) shall collect a fee of \$14 and shall remit \$2.50 to the DPS. If the El Paso County Commissioners Court adopts a resolution that is approved by the commission to participate in the "Low-Income Repair Assistance Program (LIRAP)," the emissions inspection station shall collect a fee of \$17 and shall remit to DPS \$5.50 beginning upon the date specified by the commission upon approval of the resolution.

(3) In the Dallas/Fort Worth (DFW) program area beginning May 1, 2002, any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(2)(A) or (B), and in the extended DFW (EDFW) program area beginning May 1, 2003, any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(3)(A) or (B) of this title shall collect a fee not to exceed \$27. The emissions inspection station shall remit to the DPS \$2.50 for each acceleration simulation mode (ASM-2) test and \$8.50 for each on-board diagnostics (OBD) test.

(4) In the Houston/Galveston program area beginning May 1, 2002, any emissions inspection station in Harris County required to conduct an emissions test in accordance with §114.50(a)(4)(A) or (B); beginning May 1, 2003, any emissions inspection station in Brazoria, Fort Bend, Galveston, and Montgomery Counties required to conduct an emissions test in accordance with §114.50(a)(4)(C) or (D); and beginning May 1, 2004, any emissions inspection station in Chambers, Liberty, and Waller Counties required to conduct an emissions test in accordance with §114.50(a)(4)(E) or (F) shall collect a fee not to exceed \$27. The emissions inspection station shall remit to the DPS \$2.50 for each ASM-2 test and \$8.50 for each OBD test.

(b) The per-vehicle fee and the amount the inspection station remits to the DPS for a challenge test, at an inspection station designated by the DPS, shall be the same as the amounts set forth in subsection (a) of this section. The challenge fee shall not be charged if the vehicle is retested within 15 days of the initial test.

(c) Inspection stations performing out-of-cycle vehicle emissions inspections for the state's remote sensing element shall charge a motorist for an out-of-cycle emissions inspection in the amount specified in subsection (a) of this section, resulting from written notification that subject vehicle failed on-road testing. If the vehicle passes the vehicle emissions inspection, the vehicle owner may request reimbursement from DPS.