

The Texas Commission on Environmental Quality (commission) adopts amendments to §§114.50, 114.52, and 114.53. Section 114.50 is adopted *with change* to the proposed text as published in the July 25, 2003 issue of the *Texas Register* (28 TexReg 5792). Sections 114.52 and 114.53 are adopted *without changes* to the proposed text and will not be republished. The amendments and revised SIP narrative will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the SIP.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The Houston-Galveston (HGA) ozone nonattainment area is classified as Severe-17 under the Federal Clean Air Act Amendments of 1990 (42 United States Code, §§7401 *et seq.*), and therefore is required to attain the one-hour ozone standard of 0.12 parts per million by November 15, 2007. The HGA area is defined as Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties.

The HGA ozone nonattainment area will ultimately need to reduce nitrogen oxides (NO<sub>x</sub>) more than 750 tons per day to reach attainment with the one-hour standard. In addition, a volatile organic compound (VOC) reduction of about 25% will have to be achieved. On December 6, 2000, the commission adopted both the HGA SIP Attainment Demonstration and the associated revisions to Chapter 114 to assist with demonstrating attainment and maintenance of the one-hour ozone standard in the HGA area.

The revision to Chapter 114 included an air control strategy for NO<sub>x</sub> reductions which requires emissions testing of motor vehicles that are registered and primarily operated in the HGA ozone nonattainment area. The testing utilizes acceleration simulation mode (ASM-2) and on-board diagnostic (OBD) technologies. The previous vehicle emissions testing program was modified by implementing ASM-2 testing in the HGA area. Unlike the two-speed idle (TSI) test, ASM-2 technology has the ability to detect NO<sub>x</sub> emissions. Because NO<sub>x</sub> is a precursor to ground-level ozone formation, reduced NO<sub>x</sub> and VOC emissions will result in ground-level ozone reduction.

The revision increased the emissions inspection fee and changed the testing technology in the HGA area to ASM-2 and OBD for Harris County beginning May 1, 2002; and initiated a testing program and fee in Brazoria, Fort Bend, Galveston, and Montgomery Counties beginning May 1, 2003; and Chambers, Liberty, and Waller Counties beginning May 1, 2004. The commission provided flexibility for Chambers, Liberty, and Waller Counties, individually or collectively, to submit a resolution approved by the commission and EPA for alternative air control strategies other than an inspection and maintenance (I/M) program to meet or exceed the NO<sub>x</sub> emission reductions that are anticipated from the I/M program. The counties individually submitted their resolutions in May 2002. In order to have sufficient time for needed additional assessment of the alternative plans, the commission is delaying the implementation of the I/M program in Chambers, Liberty, and Waller Counties from May 1, 2004 to May 1, 2005.

The commission requested public comment concerning alternative approaches to the ASM testing of 1995 and older vehicles in Liberty, Waller, and Chambers Counties in 2005. No comments providing

information for alternative approaches were received, and no changes were made to the rules on this issue.

#### SECTION BY SECTION DISCUSSION

Revisions to Subchapter C incorporate editorial changes to ensure the language is consistent with the guiding principles and policies of the commission, and is consistent in format and style per commission guidelines. Revisions to specific sections in Subchapter C are discussed in the following paragraphs.

Amendments to §114.50 establish revised program requirements for the state I/M program for vehicle emissions testing and inspection. The amendments to the program concern the applicability requirements of §114.50. Section 114.50(a)(4)(F) and (G) previously defined model year vehicles to be tested using OBD and ASM-2 in Chambers, Liberty, and Waller Counties beginning May 1, 2004. The adopted amendments delay by one year (until May 1, 2005) the start date of the I/M programs in Chambers, Liberty, and Waller Counties. A non-substantive administrative error in §114.50(a)(4)(E) is corrected in this adoption. The words “and newer” were placed incorrectly between the phrases “all pre-1996” and “model year vehicles” since the provision is meant to only apply to vehicles manufactured before 1996. The words “and newer” are deleted in the adopted rule.

Section 114.52 establishes the early participation incentive program. This program encourages owners and operators of emissions inspection stations in Chambers, Liberty, and Waller Counties to participate in the early purchase of ASM-2 equipment to ensure an adequate number of emissions inspection stations are available by the program start date of May 1, 2004. The adopted amendments

delay the start date of the I/M program in Chambers, Liberty, and Waller Counties for one year from May 1, 2004 to May 1, 2005. Also, this adoption delays the enrollment start date for the early participation incentive program in these counties by one year (from October 15, 2003 through December 31, 2003, to October 15, 2004 through December 31, 2004).

Section 114.53 establishes a fee schedule for the different counties which must be paid for the vehicle emissions inspection at an inspection station. Subsection (a)(4) explains that in the HGA program area (beginning May 1, 2002, in Harris County; beginning May 1, 2003, in Brazoria, Fort Bend, Galveston, and Montgomery Counties; and beginning May 1, 2004, in Chambers, Liberty, and Waller Counties) any emissions inspection station conducting an ASM-2 or OBD emissions test shall collect a test fee not to exceed \$27. The adopted amendments delay the start date of the I/M program in Chambers, Liberty, and Waller Counties for one year, from May 1, 2004 to May 1, 2005.

In addition to the rule changes, the revisions to the SIP narrative clarify the new program elements such as applicability changes; performance standards; emissions testing network type; emissions testing; affected vehicle populations; test procedures, standards, and test equipment; on-road vehicle emissions testing; and the implementation schedule.

#### FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in that

statute. A “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. While the I/M program taken as a whole is intended to protect the environment and reduce risks to human health from environmental exposure, the amendments are intended to give the commission sufficient time for needed additional assessment of the counties’ alternative plans. Therefore, these amendments to Chapter 114 are not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Additionally, delaying the start of the I/M program for Chamber, Liberty, and Waller Counties will not 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 amendments do not fit the definition of a “major environmental rule.”

Section 2001.0225 also only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) 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 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking is not subject to the regulatory analysis provisions of §2001.0225 because it does not meet any of the four applicability requirements. Specifically, the I/M program is being implemented to comply with and is specifically required by federal law, and the program does not exceed an express requirement of state

law. The amendments do not exceed a requirement of a delegation agreement and are not adopted solely under the general powers of the agency.

#### TAKINGS IMPACT ASSESSMENT

The commission completed a takings impact assessment for the adopted rules. Adoption of the amended sections will not cause a burden on private real property. The amended sections will not affect private property in a manner which restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Therefore, the amendments do not constitute a taking under Texas Government Code, Chapter 2007.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that the 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, concerning Consistency with the Texas Coastal Management Program. As required by 30 TAC §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the amendments are consistent with the applicable CMP goal expressed in 31 TAC §501.12(1) of protecting and preserving the quality and values of coastal natural resource areas, and the policy in 31 TAC §501.14(q), which requires that the commission protect air quality in coastal

areas. The amendments delay by one year the start date for emissions testing during annual state inspections of motor vehicles registered in Chambers, Liberty, and Waller Counties. No new contaminants are authorized by these amendments, although the start date for the inspection and maintenance program is delayed for three counties in the HGA ozone nonattainment area.

#### PUBLIC COMMENT

A public hearing on this proposal was held in Dayton, Texas, on August 18, 2003, but no oral comments were received. The public comment period ended at 5:00 p.m. on August 25, 2003. Written comments were submitted by the Houston Sierra Club; the EPA; the Honorable Jimmy Sylvia, County Judge, representing the citizens of Chambers County (Judge Sylvia); and an individual. EPA and Judge Sylvia indicated that they supported the rule changes in general. Houston Sierra Club opposed the adoption of the rules. Judge Sylvia and the Chambers County Commissioners Court opposed being included in the HGA Consolidated Metropolitan Statistical Area. The individual did not indicate whether he was for or against the adoption of the rule that was proposed, but indicated opposition to the rule in general as it applies to rural counties.

#### RESPONSE TO COMMENTS

One individual from Chambers County opposed the proposed emissions testing program in the predominately rural counties of Chambers, Liberty and Waller. The individual stated that, considering the location and population/industry in these areas, Chambers County (mainly an agricultural county) is not the cause for the air quality degradation in the area. Also, the individual recommended looking at

alternatives to testing other than having the population pay a high price or financial burden for emission testing.

**The proposal to eliminate emissions testing in its entirety in Chambers, Liberty, and Waller Counties is beyond the scope of this rulemaking. Alternative approaches to testing 1995 and older vehicles using ASM are being considered, but the commission has made no final determination. The commission made no changes to the rules in response to this comment.**

Judge Sylvia indicated that the Chambers County Commissioners Court opposes inclusion of Chambers County in the HGA Consolidated Metropolitan Statistical Area.

**The concept of eliminating Chambers County from the HGA Consolidated Metropolitan Statistical Area is beyond the scope of this rulemaking. The commission made no changes to the rules in response to this comment.**

Houston Sierra Club opposed the delay in implementing the I/M program in Chambers, Liberty, and Waller Counties, stating that the commission has delayed submittal of the attainment SIP since 1994, and that all control strategies must be identified immediately and implemented as soon as possible.

**The commission believes that delaying the start date of the I/M program in Chambers, Liberty, and Waller Counties from May 1, 2004 to May 1, 2005 will not interfere with attainment of the one-hour ozone standard by 2007. In addition, the delay provides more time to review alternative**

**control strategies submitted by the counties and their respective largest cities which may achieve equivalent emissions reductions and be proven cost effective and appropriate for implementation by the individual counties. The commission made no changes to the rules in response to this comment.**

EPA agreed to the proposed rule change delaying the I/M program for one year in Chambers, Liberty, and Waller Counties as long as it can be demonstrated with the delay that the HGA nonattainment area can still meet its attainment obligations in 2007. Judge Sylvia also indicated support on behalf of the citizens of Chambers County for postponement of the I/M testing.

**The commission appreciates Judge Sylvia's and EPA's support in delaying the implementation of the I/M program in Chambers, Liberty, and Waller Counties. The commission intends to meet its attainment obligations that were originally adopted as part of the December 2000 HGA ozone nonattainment area SIP. The commission made no changes to the rules in response to this comment.**

EPA stated that the commission requested comments concerning alternative approaches to ASM testing of 1995 and older vehicles in Chambers, Liberty, and Waller Counties and the hearing notice stated that alternative approaches "could be incorporated upon adoption of this rule revision." EPA stated that any alternative approach to testing of 1995 and older vehicles would require a rule change and proper public participation. Also, EPA stated that it would like to have the opportunity to comment on any alternative approach that might be considered.

**The commission concurs that certain alternative approaches to testing 1995 and older vehicles could have required a rule change and the opportunity for public comments. However, since the commission made no changes to the proposed rules, none is necessary.**

**SUBCHAPTER C: VEHICLE INSPECTION AND MAINTENANCE AND LOW INCOME  
VEHICLE REPAIR ASSISTANCE, RETROFIT, AND ACCELERATED VEHICLE  
RETIREMENT PROGRAM**

**DIVISION 1: VEHICLE INSPECTION AND MAINTENANCE**

**§§114.50, 114.52, 114.53**

STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendments are also adopted under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state 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 air; §382.019, which provides the commission the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles; and Subchapter G, §§382.201 - 382.216, which provide the commission the authority by rule to establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of the Federal Clean Air Act.

**§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, as defined in §114.2 of this title (relating to Inspection and Maintenance (I/M) Definitions), 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.

(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 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, 2005, 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, 2005, 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) and (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) All vehicles shall be tested using a TSI test, except as provided by subparagraph (B) of this paragraph.

(B) In the event that the commission publishes notification in the *Texas Register* of a determination that contingency measures are necessary in order to maintain attainment of the national ambient air quality standards in the El Paso area, the following contingency measures will become effective 12 months after the notice is published.

(i) All 1996 and newer model year vehicles equipped with OBD systems shall be tested using EPA-approved OBD test procedures.

(ii) All pre-1996 model year vehicles shall be tested using a TSI test.

(iii) All vehicle emissions inspection stations in the El Paso program area shall offer both the TSI test and the 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 I/M 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 FCAA (42 United States Code, §§7401 *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, Article 4413(36), §1.03, (moved to Texas Occupations Code, §2301.002, effective June 1, 2003) is not eligible for title receipt or registration in 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 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.

**§114.52. 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 2005. For program areas that begin ASM-2 testing in May 2005 (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, 2004 through December 31, 2004. 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) of this title; 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) of this title; and beginning May 1, 2005, 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) of this title 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.