

The Texas Commission on Environmental Quality (commission) proposes amendments to §§114.50, 114.52, and 114.53 and corresponding revisions to the state implementation plan (SIP). The amendments and revised SIP narrative will be submitted to the United States Environmental Protection Agency (EPA) as proposed revisions to the SIP.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED 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_x) 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_x 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_x emissions. Because NO_x is a precursor to ground-level ozone formation, reduced NO_x and VOC emissions will result in ground-level ozone reduction.

The 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; 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_x 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 proposing to delay the implementation of the I/M program in Chambers, Liberty, and Waller Counties from May 1, 2004 to May 1, 2005.

The commission is requesting public comment concerning alternative approaches to the ASM testing of 1995 and older vehicles in Liberty, Waller, and Chambers Counties in 2005, which could be incorporated upon adoption of this rule revision.

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.

Proposed amendments to §114.50 establish revised program requirements for the state I/M program for vehicle emissions testing and inspection. The proposed amendments to the program concern the applicability requirements of §114.50. Section 114.50(a)(4)(F) and (G) currently defines model year vehicles to be tested using OBD and ASM-2 in Chambers, Liberty, and Waller Counties beginning May 1, 2004. The proposed amendments would delay by one year (until May 1, 2005) the start date of the I/M programs in Chambers, Liberty, and Waller Counties.

Section 114.52 establishes the early participation incentive program. This program encouraged 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 proposed amendments would 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 proposal would delay 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 currently 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 proposed amendments would 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 proposed rule changes, the proposed revisions to the SIP narrative would 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.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, has determined that, for the first five-year period the proposed amendments are in effect, there will be no significant fiscal implications for units of state and local governments due to implementation of the proposed amendments.

The proposed amendments are intended to delay the implementation of an I/M program in Chambers, Liberty, and Waller Counties. These counties submitted alternative air control strategies, other than

I/M, to the commission in May 2002. The commission requires additional time to review the alternative programs; therefore, this rulemaking would change the I/M program implementation date in these counties from May 1, 2004 to May 1, 2005.

The proposed rule changes would delay receipt of additional revenues, from I/M vehicle emissions tests, to the commission and the Texas Department of Public Safety (DPS); however, this delay is not anticipated to result in significant fiscal implications for either agency. The commission estimates it would receive approximately \$43,000 in additional revenue from I/M tests in the affected counties from May 1, 2004 to April 1, 2005. The DPS would receive approximately \$170,000 in additional revenues during the same time frame. However, for both agencies the revenues from these counties, individually or collectively, were contingent on the implementation of an I/M program in 2004 or 2005.

Delaying implementation of the I/M program in Chambers, Liberty, and Waller Counties would also delay costs, until at least May 1, 2005, for units of government in these areas that want to conduct their own vehicle emissions tests, or those units of government that have their vehicles tested by a private company. Units of government that want to test their own vehicles will have to purchase new ASM-2 or OBD test analyzers, depending on the age of their vehicle fleets, to comply with existing commission regulations. ASM-2 test analyzers cost approximately \$40,000 each which includes OBD testing, while OBD only test analyzers cost approximately \$8,000 each. Units of government that have an outside company test their vehicles would not have to start paying the \$27 per test until May 1, 2005.

PUBLIC BENEFITS AND COSTS

Mr. Davis has also determined that, for each year of the first five years the proposed amendments are in effect, the public benefit anticipated from the proposed amendments may be the eventual implementation of more cost-effective air pollution control strategies which could result from the additional time for the commission to review, and possibly improve upon, the alternative air control strategies submitted by Chambers, Liberty, and Waller Counties.

In order to review the alternative compliance programs submitted by Chambers, Liberty, and Waller Counties, the commission proposes to delay the implementation date of an I/M program in these counties from May 1, 2004 to May 1, 2005. The proposed changes would not result in increased costs for individuals and private businesses. Costs associated with an I/M program would be deferred until May 1, 2005. Those costs would result from the need for private vehicle emissions inspection stations to purchase upgraded emission testing equipment and from I/M test fees to vehicle owners. The costs for the emission testing equipment and test fee would be the same as discussed in the FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT portion of this preamble.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There will not be adverse fiscal implications for small and micro-businesses due to implementation of the proposed amendments, which are intended to delay the implementation date of an I/M program in Chambers, Liberty, and Waller Counties from May 1, 2004 to May 1, 2005. The proposed implementation date change would not result in increased costs for small and micro-businesses. Costs

associated with an I/M program would be deferred until May 1, 2005. The costs for the emission testing equipment and the emission test fee would be the same as discussed in the FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT portion of this preamble.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the proposed 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 proposed amendments are intended to give the commission sufficient time for needed additional assessment of the counties’ alternative plans. Therefore, these proposed 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, or jobs. The proposed 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 proposed amendments do not exceed a requirement of a delegation agreement and are not proposed for adoption solely under the general powers of the agency. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission completed a takings impact assessment for the proposed 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 proposed amendments do not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that the proposed 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 has determined that the proposed 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. If adopted, the amendments will 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 will be authorized by these proposed amendments, although the start date for the inspection and maintenance program will be delayed for three counties in the HGA ozone nonattainment area. Interested persons may submit comments on the consistency of the proposed amendments with the CMP during the public comment period.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Dayton on August 18, 2003, at 6:00 p.m. in the Dayton High School cafeteria, located at 3200 North Cleveland (Highway 321 North). Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, a staff member will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

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

SUBMITTAL OF COMMENTS

Written comments may be submitted to Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 2003-034-114-AI. Comments must be received by 5:00 p.m., August 25, 2003. For further information or questions concerning this proposal, please contact Joseph Thomas, Office of Environmental Policy, Analysis, and Assessment, (512) 239-4580.

**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 proposed 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 proposed 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; §382.037, which provides the commission the authority by rule to establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of the Federal Clean Air Act; 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.

The proposed amendments implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.019, 382.037, and 382.201 - 382.216.

§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) - (3) (No change.)

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

(A) - (E) (No change.)

(F) Beginning May 1, 2005 [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, 2005 [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) (No change.)

(5) (No change.)

(b) - (d) (No change.)

§114.52. Early Participation Incentive Program.

(a) - (e) (No change.)

(f) Program areas beginning May 2005 [2004]. For program areas that begin ASM-2 testing in May 2005 [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, 2004 [2003] through December 31, 2004 [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) (No change.)

§114.53. Inspection and Maintenance Fees.

(a) The following fees must be paid for an emissions inspection of a vehicle at an inspection station. This fee shall include one free retest should the vehicle fail the emissions inspection, provided that the motorist has the retest performed at the same station where the vehicle originally failed and submits, prior to the retest, a properly completed Vehicle Repair Form showing that emissions-related repairs were performed and the retest is conducted within 15 days of the initial emissions test.

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

(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 [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) 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) - (c) (No change.)