

The Texas Commission on Environmental Quality (commission) adopts the amendments to §§114.1, 114.2, 114.50, 114.52, and 114.53; and corresponding revisions to the Texas Inspection and Maintenance State Implementation Plan (SIP). Sections 114.2 and 114.52 are adopted *without changes* to the proposed text as published in the June 11, 2004 issue of the *Texas Register* (29 TexReg 5728), and will not be republished. Sections 114.1, 114.50, and 114.53 are adopted *with changes* to the proposed text and will 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 (FCAA), as codified in 42 United States Code (USC), §§7401 *et seq.*, and therefore, is required to attain the one-hour ozone standard of 0.12 parts per million (125 parts per billion (ppb)) by November 15, 2007. The HGA area is defined as Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties, and has been working to develop a demonstration of attainment in accordance with 42 USC, §7410. The most relevant HGA SIP revisions to date are the December 2000 one-hour ozone standard attainment demonstration, the September 2001 follow-up revision, and the December 2002 nitrogen oxides (NO_x)/highly-reactive volatile organic compound (HRVOC) revision.

The emission reduction requirements included as part of the December 2000 SIP revision represent substantial, intensive efforts on the part of stakeholder coalitions in the HGA area, in partnership with the commission, to address ozone. These coalitions include local governmental entities, elected officials, environmental groups, industry, consultants, and the public, as well as EPA and the commission, and worked diligently to identify and quantify control strategy measures for the HGA attainment demonstration area.

Recent photochemical modeling indicates that a combination of point source HRVOC controls and NO_x reductions appear to be the most effective means of reducing ozone in the HGA area. As a result, the commission evaluated a number of the existing control strategies that were put in place in the December 2000 revision. The photochemical modeling shows that some of these strategies are no longer necessary to attain the one-hour ozone standard.

On December 6, 2000, the commission adopted both the HGA Attainment Demonstration SIP and the associated amendments to Chapter 114 to assist with demonstrating attainment and maintenance of the one-hour ozone standard in the HGA area. The amendments 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. In addition, 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 a prior I/M rulemaking that was effective October 30, 2003, the commission delayed the implementation of the I/M program in Chambers, Liberty, and Waller Counties from May 1, 2004 to May 1, 2005 in order to have sufficient time for needed additional assessment of the alternative plans.

Based on the most recent photochemical modeling for the HGA area that indicates the I/M program, scheduled to begin in these three counties on May 1, 2005, will have little effect on ozone concentration in the HGA area, and that attainment of the one-hour ozone standard can be reached without this control measure, the commission is adopting amendments to the I/M rules to remove the vehicle emissions testing requirements from Chambers, Liberty, and Waller Counties.

SECTION BY SECTION DISCUSSION

Revisions to Subchapters A and C incorporate editorial changes to ensure the language is consistent with the guiding principles and policies of the commission and the language is consistent in format, style, and tone per commission guidelines; to correct the name of the commission; and to correct citations to other laws, codes, and rules. Revisions to specific sections are discussed in the following paragraphs.

SUBCHAPTER A, DEFINITIONS

Section 114.1, Definitions

The adopted amendment to the opening paragraph would change the citation to Texas Health and Safety Code, Chapter 382; state that Chapter 382 is known as the Texas Clean Air Act; and delete “shall” in the last sentence.

The adopted amendment to the definition of “First safety inspection certificate” would add “Texas” to correctly reference the Texas Department of Public Safety. The amendment to the definition of “Gross vehicle weight rating (GVWR)” would delete the acronym GVWR because it is not used again in the definition. The amendment to the definitions of “Heavy-duty vehicle” and “Light-duty vehicle” would spell out the acronyms “GVWR,” “lbs.,” and “MERC”; delete “the” in front of Texas Transportation Code; and lowercase “mobile emission reduction credit.” The amendment to the definition of “Inherently low emission vehicle” would delete the acronym “CFR” because it is not used again in the definition. The amendment to the definition of “Loaded mode inspection and maintenance (I/M) test” would delete the acronym “I/M” because it is not used again in the definition; lowercase “acceleration simulation mode”; and spell out the acronym “EPA” because it is not used again in the definition. The amendment to the definition of “Low emission vehicle (LEV)” would spell out the acronym “EPA” because it is not used again in the definition, and correct the citations to 42 USC and 40 Code of Federal Regulations, Part 88. The amendment to the definition of “Mass transit authority” would add a comma and correct the title of Chapter 453 of the Texas Transportation Code to “Municipal Transit Departments.” The amendment to the definition of “Reformulated gasoline” would correct the citation to 42 USC. The amendment to the definition of “Revised Texas I/M State Implementation Plan (SIP)” would change the title to “Texas Inspection and Maintenance State Implementation Plan” to correspond with the correct title of the SIP document; delete the acronym “SIP”; spell out the acronym “EPA” because it is not used again in the definition; and change the name of the commission to “Texas Commission on Environmental Quality.” The amendment to the definition of “Tier I federal emission standards” would correct the citation to 42 USC and spell out the acronym “CFR.” The amendment to

the definitions of “Ultra low emission vehicle” and “Zero emission vehicle” would spell out the acronym “CFR.”

A change was made to §114.1(9)(C) to specify that the definition of “Light-duty truck 2” includes those trucks that are 8,500 pounds.

Section 114.2, Inspection and Maintenance Definitions

The adopted amendment to the opening paragraph would change the citation to the Texas Health and Safety Code, Chapter 382; state that Chapter 382 is known as the Texas Clean Air Act; correct the title of Subchapter C by adding “and Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program”; and delete the word “shall” in the last sentence.

The adopted amendment to the definition of “Acceleration simulation mode (ASM-2 test)” would remove the word “test” from the acronym. The amendment to the definition of “Consumer Price Index” would lowercase the term in all places because it is not a proper noun. The definition of “Program areas” specifies the 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 Texas Inspection and Maintenance State Implementation Plan. The amendment to the definition of “Program area” would delete Chambers, Liberty, and Waller Counties from the HGA program area.

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

Section 114.50, Vehicle Emissions Inspection Requirements

The adopted amendment to §114.50 would revise program requirements for the state I/M program for vehicle emissions testing and inspection. The amendment to the program concerns the applicability requirements of §114.50.

The amendment to subsection (a)(2)(A) would spell out the acronym for “EPA.”

Subsection (a)(4)(F) and (G) currently define model year vehicles to be tested using on-board diagnostics (OBD) and acceleration simulation mode (ASM-2) in Chambers, Liberty, and Waller Counties beginning May 1, 2005. Subsection (a)(4)(H) allows Chambers, Liberty, and Waller Counties, and their respective largest municipality to submit by May 1, 2002, individually or collectively, resolutions to implement an alternative control strategy. The amendment to subsection (a)(4)(F) - (H) would repeal the vehicle emissions testing program scheduled to begin in Chambers, Liberty, and Waller Counties on May 1, 2005, by deleting §114.50(a)(4)(F) - (H).

The amendment to subsection (b)(2) would correct the citation to 42 USC, §§7401 *et seq.*

The amendment to subsection (b)(7) would correct the citation to Texas Occupations Code, §2301.002.

Changes were made to more accurately describe the Texas I/M SIP by removing the word “revised” in §114.50(a), (b)(2) and (6)(B), and (d)(1) and (2). Another minor change was made to §114.50(a)(3)(B) to remove the words “and older” because these words are redundant and not needed to clarify subparagraph (B).

Section 114.52, Early Participation Incentive Program

Section 114.52 established the early participation incentive program (EPIP). 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, 2005. The adopted amendment would repeal the implementation of the state’s EPIP program in Chambers, Liberty, and Waller Counties, and thus, eliminate the incentive for stations in these counties, by deleting §114.52(f). The amendment would also reletter subsection (g) to subsection (f) and change the corresponding reference in §114.52(b) from subsection (g) to subsection (f).

The editorial amendment to subsection (b)(4) would delete the acronym “DPS” because it is not used again in the section; add the word “the” before the word “program” in subsection (b)(5) and (6); and change the word “which” to “that” in relettered subsection (f).

Section 114.53, Inspection and Maintenance Fees

Section 114.53 currently establishes a fee schedule for the different counties. This fee must be paid to the inspection station at the time of the vehicle emissions inspection. Subsection (a)(4) explains that

among other counties in the HGA program area, beginning May 1, 2005, 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 amendment to subsection (a)(4) would remove the fee requirement in Chambers, Liberty, and Waller Counties by deleting the clause “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) and (F) of this title.”

The editorial amendment to §114.53 would lowercase the words “Vehicle Repair Form” in subsection (a); delete the acronym “TSI”; and add the word “Texas” to the term “Department of Public Safety” in subsection (a)(1). The editorial amendment in subsection (a)(2) would delete the phrase “(relating to Vehicle Emissions Inspection Requirements)” because it is unnecessary; delete the hyphen from the term “low-income”; and delete the acronym “LIRAP” because it is not used again in the section. The editorial amendment in subsection (a)(3) would delete the acronyms “DFW,” “EDFW,” “ASM-2,” and “OBD”; add the words “of this title” after the reference to §114.50(a)(2)(A) or (B); and spell out the acronym “DFW.” Finally, the editorial amendment in subsection (a)(4) would add the word “and” after the first “of this title, and spell out the acronyms “ASM-2” and “OBD.”

A change was made to §114.53(a)(2) to correct a reference to §114.50(a)(5)(B). A similar change was made to §114.53(a)(4) to correct a reference to §114.50(a)(4)(D) and (E).

SIP narrative changes

In addition to the adopted amendments, the adopted revisions to the SIP narrative would change the title to “Texas Inspection and Maintenance State Implementation Plan,” and clarify the revised program elements such as commonly used terms; applicability changes; emissions testing network type; emissions testing; affected vehicle populations; test procedures, standards, and test equipment; waivers and time extensions; motorist enforcement; on-road vehicle emissions testing; and the implementation schedule.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action does not meet the definition of a “major environmental rule” as defined in that statute. A “major environmental rule” is 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, 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 rescind the requirements for emissions testing during annual state inspections of motor vehicles registered in Chambers, Liberty, and Waller Counties. The most recent photochemical modeling for the HGA area indicates that the I/M program scheduled to begin in these three counties on May 1, 2005 will have little effect on ozone concentration in the HGA area, and that attainment of the one-hour ozone standard can be demonstrated

without this control measure. Therefore, these amendments to Chapter 114 are not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Additionally, rescinding the I/M program for Chambers, Liberty, and Waller Counties will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs.

Texas Government Code, §2001.0225 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 does not meet any of the four applicability requirements.

The amendments implement requirements of 42 USC. Under 42 USC, §7410, states are required to adopt a SIP which provides for “implementation, maintenance, and enforcement” of the primary national ambient air quality standard in each air quality control region of the state. While 42 USC, §7410, does not require specific programs, methods, or reductions in order to meet the standard, SIPs must include “enforceable emission limitations and other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter,” (meaning Chapter 85, Air Pollution Prevention and Control).

It is true that 42 USC does require some specific measures for SIP purposes, such as the I/M program, but those programs are the exception, not the rule, in the SIP structure of 42 USC. The provisions of 42 USC recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the ozone standard. This flexibility allows states, affected industry, and the public to collaborate on the best methods for attaining the ozone standard for the specific regions in the state. Even though 42 USC allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 USC, §7410. Thus, while specific measures are not generally required, the emission reductions are required. States are not free to ignore the requirements of 42 USC, §7410, and must develop programs to assure that the nonattainment areas of the state will be brought into attainment on schedule.

In addition, 42 USC, §7502(a)(2), requires attainment as expeditiously as practicable, and 42 USC, §7511a(d), requires states to submit ozone attainment demonstration SIPs for severe ozone nonattainment areas such as HGA area. 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 adopted amendments to rescind the requirements for emissions testing during annual state inspections of motor vehicles registered in Chambers, Liberty, and Waller Counties will not adversely impact the I/M program for the HGA area. Therefore, the amendments are necessary components of and consistent with the ozone attainment demonstration SIP for HGA area, required by 42 USC, §7410.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code but left this provision

substantially unamended. The commission presumes that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." *Central Power & Light Co. v. Sharp*, 919 S.W.2d 485, 489 (Tex. App.–Austin 1995), *writ denied with per curiam opinion respecting another issue*, 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.*, 798 S.W.2d 353, 357 (Tex. App.–Austin 1990), *no writ*. *Cf. Humble Oil & Refining Co. v. Calvert*, 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.*, 9 S.W.3d 884 (Tex. App.–Austin 2000); *Southwestern Life Ins. Co. v. Montemayor*, 24 S.W.3d 581 (Tex. App.–Austin 2000), *pet. denied*; and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.*, 563 S.W.2d 916 (Tex. 1978).

As discussed earlier in this preamble, this rulemaking implements requirements of 42 USC. There is no contract or delegation agreement that covers the topic that is the subject of this rulemaking action. Therefore, the amendments do not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, nor are adopted solely under the general powers of the agency. In addition, the amendments are adopted under Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.019, 382.037, and 382.201 - 382.216.

TAKINGS IMPACT ASSESSMENT

The commission completed a takings impact assessment for the rulemaking action under Texas Government Code, §2007.043. The primary purpose of this rulemaking action is to repeal the vehicle emissions testing program scheduled to begin in Chambers, Liberty, and Waller Counties on May 1, 2003. This rulemaking also repeals the state's EPIP program in Chambers, Liberty, and Waller

Counties, and thus eliminates the incentive for stations in these counties. The adopted amendments are not a government action that affects private real 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 adopted amendments do not constitute a takings 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. If adopted, the amendments will rescind the requirements for emissions testing during annual state inspections of motor vehicles registered in Chambers, Liberty, and Waller Counties. 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 to rescind the requirements for emissions testing during

annual state inspections of motor vehicles registered in Chambers, Liberty, and Waller Counties will not adversely impact the I/M program for the HGA area. No new contaminants will be authorized by these amendments.

PUBLIC COMMENT

Public hearings for this rulemaking were held August 2, 2004 in Houston; August 3, 2004 in Beaumont; and August 5, 2004 in Austin. The following persons submitted written or oral comment: Environmental Defense (ED); Galveston-Houston Association for Smog Prevention (GHASP); Sierra Club, Houston Regional Group (Sierra-Houston); EPA; and six individuals.

RESPONSE TO COMMENTS

Two individuals generally supported the proposal. Four individuals, ED, and GHASP generally opposed the proposal.

Necessary for attainment

Sierra-Houston opposed the changes to the Texas I/M SIP and the I/M rules that would remove Liberty, Montgomery, and Chambers Counties from the I/M program, because this will result in no I/M program being implemented in these counties to ensure the tailpipe emissions from covered vehicles meet federal motor vehicle emissions standards. Sierra-Houston stated that although these counties currently have a relatively small motor vehicle population, each one of these counties is experiencing growth and sprawl development that is emanating from the Houston area. These spillover counties will continue to grow in human and motor vehicle populations that will be significant by the June 15, 2010,

eight-hour ozone attainment date. Sierra-Houston stated that each of these counties has major existing or planned interstate and state roads that will assist in the rapid increase in human and motor vehicle population. The spillover of growth from the Houston area, along with the national trends, indicates that longer vehicle trips will emanate from these counties that will further increase the likelihood of additional emissions from heavily used vehicles. Sierra-Houston stated that the I/M program is needed for these three counties as a measure to reduce the air pollution impacts of vehicle miles traveled (VMT) growth and vehicle population growth, and that the commission must plan ahead and not wait until the area reaches nonattainment status again before placing reasonable controls on vehicles. Sierra-Houston stated that keeping these three counties in the I/M program will also reduce volatile organic compound (VOC) and NO_x precursors that will reduce the background level of these precursors or ozone that is transported to other portions of the eight-county HGA ozone nonattainment area, other ozone nonattainment areas, or ozone attainment areas. Sierra-Houston stated that removing these three counties from the I/M program would weaken region-wide efforts to reduce ozone levels.

GHASP disagreed with the commission statement in the proposal preamble that photochemical modeling shows that this strategy is no longer necessary. GHASP stated that even if one considered the air pollution problem in these three counties less serious than in the other five counties, these counties do have air pollution problems and the I/M program will have a beneficial effect for public health in those areas. GHASP also stated that it is likely that an attainment demonstration for the eight-hour ozone standard will require even greater NO_x control measures than the one-hour attainment demonstration, therefore, the proposed repeal is inconsistent with the further progress that will be required under the FCAA.

The commission disagrees that the motor vehicle I/M program in Chambers, Liberty, and Waller Counties is necessary at this time. On June 23, 2004 the commission proposed a one-hour ozone midcourse review attainment demonstration for the HGA area. The proposal did not include Chambers, Liberty, and Waller Counties in the area's I/M program and the attainment demonstration is superior to the one-hour attainment demonstration approved by EPA on November 14, 2001. The existing attainment demonstration is solely a NO_x based strategy and includes a 56 tons per day (tpd) shortfall. The recently proposed SIP addresses emissions of both NO_x and HRVOCs and removes the shortfall. Furthermore, the federally approved SIP demonstrates attainment by modeling three of four days below 135 ppb and using a weight-of-evidence analysis. The current proposal models six of ten days below 125 ppb and uses a weight-of-evidence analysis. Additional enhancements to the modeling since the SIP was proposed in June replicate peak ozone at or below 125 ppb on eight of ten days. The number of registered vehicles subject to I/M testing in these counties and the VMT in these counties is relatively small compared to the other counties in the which the I/M program is currently being implemented. Although VMT estimates continue to increase, emissions from individual vehicles continue to decrease due to federal vehicle standards. The commission estimates that the benefits from federal vehicle standards will continue to be seen beyond 2007. The total 2007 VMT estimate for Chambers, Liberty, and Waller Counties is 7,405,659 miles. The combined emissions for these three counties are 12.68 tpd of NO_x, 5.17 tpd of VOC, and 81.73 tpd of carbon monoxide (CO). As a portion of the entire eight-county HGA area, the combined contribution of these three counties represents only 5.1% of the VMT, 6.3% of the NO_x, 5.7% of the VOC, and 6.4% of the CO. According to the Texas Transportation Institute, the 2010 on-road mobile source inventory

estimates for these three counties are 7,926,468 VMT, 9.60 tpd NO_x, 4.32 tpd VOC, and 73.12 tpd CO. The net change in on-road mobile source emissions from 2007 to 2010 in these three counties is a VMT increase of 7.0%, and NO_x, VOC, and CO decreases of 24.3%, 16.5%, and 10.5% respectively. However, only the gasoline-powered vehicles (with the exception of motorcycles) are subject to the I/M program. If the net change in on-road mobile source emissions is calculated for only those vehicles subject to the I/M program, the net change in emissions in these three counties is a VMT increase of 7.0%, and NO_x, VOC, and CO decreases of 22.9%, 16.8%, and 10.4% respectively. As referenced in the Houston/Galveston/Brazoria Attainment Demonstration SIP proposal, the total I/M benefit from the three counties in 2007 is 0.87 tpd NO_x, 0.68 tpd VOC, and 13.72 tpd CO, and the total I/M benefit from the three counties in 2010 is 0.93 tpd NO_x, 0.68 tpd VOC, and 14.54 tpd CO.

Because a SIP revision that demonstrates attainment of the federal, health-based one-hour ozone standard has been proposed, it is the commission's position that the SIP adequately protects public health and air quality. The commission will consider emission reduction strategies to address the eight-hour ozone standard as a part of the eight-hour ozone SIP.

One individual stated that dropping the emissions inspections for vehicles in Chambers, Liberty, and Waller Counties is short-sighted when commuting vehicles put five times more miles on Houston roads.

Given to the relatively small population, the low percentage of commuters, and growth rate of these counties the commission has reevaluated the need for implementing the rules in these three

counties. The reevaluation included new photochemical modeling runs that apply the I/M program in the five remaining counties only. The results of these runs indicated a minor impact by removing Chambers, Liberty, and Waller Counties in this rulemaking, but also showed that the area could demonstrate attainment of the one-hour ozone standard without those I/M emissions reductions. In addition, the current on-road testing component of the Texas I/M program uses remote sensing to identify high-emitting vehicles. The remote sensing program is designed to detect potentially high-emitting vehicles registered in or commuting into any of the affected nonattainment counties. Owners of vehicles identified as high emitters receive written notice instructing them to submit their vehicles at a state-certified emissions testing station to determine compliance with emissions regulations. The commission made no changes to the rules in response to this comment.

Rural areas and vehicle type trends

Sierra-Houston stated that because these counties are currently more rural in nature and are following national trends that indicate growing sport utility and light-duty truck populations, Sierra-Houston is not surprised to see that the present motor vehicle population is made up of vehicles that have standards that allow for greater emissions than passenger vehicles.

Beginning with model year 2001, all vehicles with a gross vehicle weight rating of 6,000 pounds or less were manufactured to meet or surpass the national low emission vehicle program standards. This weight classification included many SUVs and light duty trucks. Approximately 82% of model year 2002 SUVs and light duty trucks met or were cleaner than the standard. In addition,

under the new "Tier 2" emission standards taking effect beginning with the 2004 model year, SUVs must meet the same emission standards for VOC, CO, and NO_x as cars and light trucks. Remote sensing will also continue to be used to identify high-emitting vehicles commuting into the program area. Owners of vehicles identified as high-emitters receive written notice of the violation instructing them to submit their vehicles to an emissions test at a state-certified emissions testing station for verification of exhaust emissions and to make necessary repairs to bring the vehicle into program compliance. Failure to comply with written notification of an emissions violation is a Class C misdemeanor punishable by a fine of not more than \$350. The commission made no changes to the rules in response to this comment.

Two individuals generally supported the elimination of the three counties from I/M restrictions, because the three rural counties have good air quality. In addition, one individual stated that it is not fair to blame Chambers County just because it is adjacent to Harris County.

The commission acknowledges these comments in support of this rulemaking.

One individual asked that if auto emissions at large emit the lion's share of the air pollution load in Houston, why would the commission delete entirely the emissions testing portion. The individual also stated that even though the testing and enforcement places a burden on the poor, poor children in poor areas also suffer the effects of the noxious air.

Chambers, Liberty, and Waller Counties were designated nonattainment for the one-hour ozone standard by EPA following the 1990 FCAA amendments and the counties continue to be included in the HGA ozone nonattainment area. Emissions from point, mobile, and area sources in Chambers, Liberty, and Waller Counties can contribute to ozone formation in the HGA area. The following table summarizes the 1999 NO_x emissions inventory data (in tpd) for these three counties:

Figure: 30 TAC Chapter 114 preamble - 1

	Point	Area	Non-road	On-road	Biogenics	Total
Chambers	28.28	10.46	3.31	10.20	0.36	52.61
Liberty	2.60	0.86	6.44	8.54	1.18	19.62
Waller	6.43	0.66	4.98	6.28	0.79	19.14

In its effort to ensure that the SIP strategies impose no more burden than necessary to protect health and welfare, the commission has decided to remove the counties of Chambers, Liberty, and Waller from the existing motor vehicle I/M rules because the counties only make up 3.0% (82,809 vehicles) of the subject vehicle fleet in the eight-county HGA ozone nonattainment area. The most recent photochemical modeling for the HGA area indicates that attainment of the one-hour ozone standard can be demonstrated without this control measure. The commission made no changes to the rules in response to these comments.

One individual expressed a belief that owners of older cars and trucks get a pass when it comes to cleaning up the air, and stated that one older car with no controls can emit more than 50 newer cars with pollution controls. Another individual stated that vehicle inspections should be required in *all counties*, for *all vehicles*, with no exceptions.

Extending the scope of the I/M program to all counties and for all vehicles or to older cars and trucks is beyond the scope of this proposed rulemaking action. The commission made no changes to the rules in response to these comments.

Toxic air pollutants

Sierra-Houston further stated that as an ancillary benefit, the I/M program will reduce levels of toxic air pollutants (like benzene, toluene, and xylene) and protect the environment and the public health, safety, and welfare.

The commission agrees that there are ancillary benefits associated with the I/M program, but given the low VMT and few number of registered vehicles subject to I/M testing, these benefits would be minimal. Moreover, the I/M program is a control strategy in the SIP to demonstrate attainment of the ozone standard. For these purposes, ozone precursor emissions of NO_x and VOC are relevant. Controlling the levels of toxic air pollutants through the I/M program is beyond the scope of this proposed rulemaking action. The commission made no change to the rules in response to this comment.

Substitute for emission reductions

ED expressed opposition to the repeal of the I/M program in the three counties without an enforceable replacement that achieves equal or greater air quality benefits. GHASP expressed a belief that neither the commission nor the EPA has approved an alternative air pollution control strategy to replace the I/M program in the three counties.

The three counties submitted alternative emission reduction plans to achieve equivalent emission reductions of 3.06 tpd of NO_x based on MOBILE5 emission estimates and the commission agreed to assist the counties to better develop the plans. In order to have additional time to more effectively coordinate with the local entities, the commission delayed the implementation date of the program from May 1, 2004 to May 1, 2005. Delaying the implementation date resulted in a fewer number of vehicles 1995 and older being subject to ASM testing due to fleet turnover. The ASM testing equipment costs \$40,000 and 64 stations in the three counties would potentially need to purchase the equipment. Moreover, the commission began to use EPA's new mobile modeling tool, known as MOBILE6, that showed emission reductions associated with the I/M program in Chambers, Liberty, and Waller Counties were 0.87 tpd of NO_x, significantly less than original estimates of 3.07 tpd. Considering the cost of the testing equipment and the decrease of the potential emission reductions, the cost effectiveness of the program has significantly decreased. As a result, the commission intended to reevaluate the program as part of the midcourse review and therefore, did not approve the alternative reduction plans. The commission made no changes to the rules in response to these comments.

The EPA stated that the commission deemed the several strategies as “not necessary” to meet the ozone standard and is withdrawing the I/M strategy as a result. EPA stated that the standard for reasonably available control measures (RACM) is whether a strategy would advance the attainment date, not whether a strategy is “necessary to attain.” EPA requested that the commission provide a RACM analysis that includes a detailed, substantive consideration of whether the I/M measure is “reasonable” and would advance attainment.

The commission recognizes that a RACM analysis is a SIP requirement. The commission will document SIP requirements in the accompanying one-hour attainment demonstration, which is scheduled for the commission’s consideration on December 1, 2004.

The VMT for the three counties is 7,405,659 miles, which makes up 5.1% of the total VMT for the eight-county nonattainment area. The 82,809 registered vehicles in the three counties that are subject to the I/M testing make up only 3.0% of the total registered vehicles subject to I/M testing in the eight-county area. Additionally, the emission reduction estimates associated with the program in the three counties is 0.87 tpd of NO_x. The proposed one-hour attainment demonstration for the eight-county HGA area includes 525 tpd of NO_x in 2007. Furthermore, preliminary estimates based on the number of registered vehicles subject to I/M testing, the emissions test fee, repair costs, and emission reduction estimates indicate the program would cost approximately \$19, 556.3 per tpd of NO_x reduced. On June 23, 2004 the commission proposed a one-hour ozone midcourse review attainment demonstration for the HGA area. The proposal did not include Chambers, Liberty, and Waller Counties in the area’s I/M program and the

attainment demonstration is superior to the one-hour attainment demonstration approved by EPA on November 14, 2001. The existing attainment demonstration is solely a NO_x based strategy and includes a 56 tpd shortfall. The recently proposed SIP addresses emissions of both NO_x and HRVOCs and removes the shortfall. Furthermore, the federally approved SIP demonstrates attainment by modeling three of four days below 135 ppb and using a weight-of-evidence analysis. The current proposal models six of ten days below 125 ppb and uses a weight-of-evidence analysis. Additional enhancements to the modeling since the SIP was proposed in June replicate peak ozone at or below 125 ppb on eight of ten days. The inclusion of these three counties in the I/M program does not significantly impact modeled peak ozone concentrations.

Given the low VMT, few registered vehicles subject to I/M testing, minimal emission reductions, low cost effectiveness, and the development of a more robust attainment demonstration, the commission maintains that the inclusion of the three counties in the I/M program is not a reasonable measure. These factors indicate that this measure does not advance the one-hour ozone attainment date of the HGA area, and therefore, is not a RACM. The commission made no changes to the rules in response to these comments.

Required by the FCAA and regulations governing the I/M program

GHASP stated that the statutes and regulations governing the I/M program (FCAA, §182(a)(2)(B) and (c)(3), and 40 CFR §51.351 and §51.352) do not make this program optional, even for marginal nonattainment areas, and that the proposed repeal is unlawful under the FCAA.

The commission does not agree that the I/M program is mandatory in these three counties. The FCAA, §182(c)(3)(A), and 40 CFR §51.350 require the HGA ozone nonattainment area to have an I/M program that covers all 1980 Bureau of Census-defined urbanized areas with populations of 200,000 or more. None of the three counties contain urbanized areas, and all three counties have populations less than 200,000. According to the 2000 census, the populations of Chambers, Liberty, and Waller Counties were 26,031; 70,154; and 32,663 respectively. Federal law therefore does not require these three counties to have an I/M program. The commission made no changes to the rules in response to this comment.

SUBCHAPTER A: DEFINITIONS

§114.1, §114.2

STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code, §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which provide the commission with the general powers to carry out its duties and 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 Texas Health and Safety Code, Chapter 382 (also known as 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'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, which authorizes the commission to adopt rules to control and reduce emissions from engines used to propel land vehicles; and Texas Health and Safety Code, Subchapter G, §§382.201 - 382.216, which authorizes the commission 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 42 USC, §§7401 *et seq.*

§114.1. Definitions.

Unless specifically defined in Texas Health and Safety Code, Chapter 382, also known as the Texas Clean Air Act (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 this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) **Dual-fuel vehicle** - Any motor vehicle or motor vehicle engine engineered and designed to be operated on two different fuels, but not a mixture of the two.

(2) **Emergency vehicle** - A vehicle defined as an authorized emergency vehicle according to Texas Transportation Code, §541.201(1).

(3) **Emissions** - The emissions of oxides of nitrogen, volatile organic compounds, carbon monoxide, particulate, or any combination of these substances.

(4) **First safety inspection certificate** - Initial Texas Department of Public Safety (DPS) certificates issued through DPS certified inspection stations for every new vehicle found to be in compliance with the rules and regulations governing safety inspections.

(5) **Gross vehicle weight rating** - The value specified by the manufacturer as the maximum design loaded weight of a vehicle. This is the weight as expressed on the vehicle's registration, and includes the weight the vehicle can carry or draw.

(6) **Heavy-duty vehicle** - Any passenger vehicle or truck capable of transporting people, equipment, or cargo, that has a gross vehicle weight rating (GVWR) greater than 8,500 pounds, and is required to be registered under Texas Transportation Code, §502.002. For purposes of the mobile emission reduction credit trading program the heavy-duty class is divided into the following subclasses:

(A) **Light heavy-duty vehicle** - Any passenger vehicle or truck capable of transporting people, equipment, or cargo that has a GVWR greater than 8,500 pounds, but less than or equal to 10,000 pounds.

(B) **Medium heavy-duty vehicle** - Any passenger vehicle or truck capable of transporting people, equipment, or cargo that has a GVWR greater than 10,000 pounds, but less than or equal to 19,500 pounds.

(C) **Heavy heavy-duty vehicle** - Any passenger vehicle or truck capable of transporting people, equipment, or cargo that has a GVWR greater than 19,500 pounds.

(7) **Inherently low emission vehicle** - A vehicle as defined by 40 Code of Federal Regulations, Part 88.

(8) **Law enforcement vehicle** - Any vehicle controlled by a local government and primarily operated by a civilian or military police officer or sheriff, or by state highway patrols, or other similar law enforcement agencies, and which is used for the purpose of law enforcement activities including, but not limited to, chase, apprehension, surveillance, or patrol of people engaged in or potentially engaged in unlawful activities.

(9) **Light-duty vehicle** - Any passenger vehicle or truck capable of transporting people, equipment, or cargo, that has a gross vehicle weight rating (GVWR) less than or equal to 8,500 pounds, and registered or required to be registered under Texas Transportation Code, §502.002. For purposes of the mobile emission reduction credit trading program the light-duty class is divided into the following subclasses:

(A) **Light-duty vehicle** - Any passenger vehicle capable of seating 12 or fewer passengers that has a GVWR less than or equal to 6,000 pounds.

(B) **Light-duty truck 1** - Any passenger truck capable of transporting people, equipment, or cargo, that has a GVWR less than or equal to 6,000 pounds.

(C) **Light-duty truck 2** - Any passenger truck capable of transporting people, equipment, or cargo, that has a GVWR greater than 6,000 pounds, but less than or equal to 8,500 pounds.

(10) **Loaded mode inspection and maintenance test** - A measurement of the tailpipe exhaust emissions of a vehicle while the drive wheel rotates on a dynamometer, which simulates the full weight of the vehicle driving down a level roadway. Loaded test equipment specifications shall meet United States Environmental Protection Agency requirements for acceleration simulation mode equipment.

(11) **Low emission vehicle (LEV)** - A vehicle in a class or category of vehicles that has been certified by the United States Environmental Protection Agency for any model year to meet:

(A) the LEV standards applicable under 42 United States Code, Part C, Subchapter II, §§7581 *et seq.*; or

(B) emission limits at least as stringent as the applicable LEV standards for the Federal Clean Fuel Fleet program under 40 Code of Federal Regulations §§88.104-94, 88.105-94, and 88.311-93, as published in the *Federal Register* on September 30, 1994 (59 FR 50042).

(12) **Mass transit authority** - A transportation or transit authority or department established under Chapter 141, 63rd Legislature, 1973, as defined in Texas Transportation Code,

Chapters 451- 453 (relating to Metropolitan Rapid Transit Authorities, Regional Transportation Authorities, and Municipal Transit Departments), that operates a mass transit system under any of those laws.

(13) **Mobile emission reduction credit (MERC)** - A credit representing the amount of emission reductions from a mobile source program. These emission reductions are voluntary and must be in addition to compliance with requirements of state and federal regulations. MERCs are any enforceable, permanent, and quantifiable emission reduction (exhaust and/or evaporative) generated by a mobile source, which has been banked in accordance with the rules of the commission. MERCs can be banked, purchased, traded, and sold to meet clean air mandates for specified air programs, which can be applied to the emission reduction obligations of another air quality source or to air quality attainment goals.

(14) **Reformulated gasoline** - Gasoline that has been certified as a reformulated gasoline under the federal certification regulations adopted in accordance with 42 United States Code, §7545(k).

(15) **Texas Inspection and Maintenance State Implementation Plan** - The portion of the Texas state implementation plan that includes the procedures and requirements of the vehicle emissions inspection and maintenance program as adopted by the commission May 29, 1996, in accordance with 40 Code of Federal Regulations Part 51, Subpart S, issued November 5, 1992; the United States Environmental Protection Agency flexibility amendments dated September 18, 1995; and

the National Highway Systems Designation Act of 1995. A copy of the Texas Inspection and Maintenance State Implementation Plan is available at the Texas Commission on Environmental Quality, 12100 Park 35 Circle, Austin, Texas, 78753; mailing address: P.O. Box 13087, MC 166, Austin, Texas 78711-3087.

(16) **Tier I federal emission standards** - The standards are defined in 42 United States Code, §7521, and in 40 Code of Federal Regulations, Part 86. The phase-in of these standards began in model year 1994.

(17) **Ultra low emission vehicle** - A vehicle as defined by 40 Code of Federal Regulations, Part 88.

(18) **Zero emission vehicle** - A vehicle as defined by 40 Code of Federal Regulations, Part 88.

§114.2. Inspection and Maintenance Definitions.

Unless specifically defined in Texas Health and Safety Code, Chapter 382, also known as the Texas Clean Air Act (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 and Low Income Vehicle Repair

Assistance, Retrofit, and Accelerated Vehicle Retirement Program), 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 Texas Inspection and Maintenance State Implementation Plan. These program areas include:

(A) the Dallas/Fort Worth program area, consisting of the following counties:

Dallas, Denton, Collin, and Tarrant;

(B) the El Paso program area, consisting of El Paso County;

(C) the Houston/Galveston program area, consisting of Brazoria, Fort Bend, Galveston, Harris, and Montgomery Counties; and

(D) the extended Dallas/Fort Worth program area, consisting 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
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, §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which provide the commission with the general powers to carry out its duties and 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 Texas Health and Safety Code, Chapter 382 (also known as 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'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, which authorizes the commission to adopt rules to control and reduce emissions from engines used to propel land vehicles; and Texas Health and Safety Code, Subchapter G, §§382.201 - 382.216, which authorizes the commission 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 42 USC, §§7401 *et seq.*

§114.50. Vehicle Emissions Inspection Requirements.

(a) Applicability. The requirements of this section and those contained in the Texas Inspection and Maintenance (I/M) State Implementation Plan (SIP) shall be applied to all gasoline- powered motor vehicles two - 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 United States Environmental Protection Agency (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 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.

(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 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, §§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 his or her 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 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 Occupations Code, §2301.002, 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 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 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 (f) 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 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 the 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 the 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) 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 that 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 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 Texas 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), or (B) of this title 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,” 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 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) of this title, and in the extended Dallas/Fort Worth 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 test and \$8.50 for each on-board diagnostics 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; and 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)(D) or (E) 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 test and \$8.50 for each on-board diagnostics 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.