

The Texas Commission on Environmental Quality (commission or TCEQ) adopts amendments to §§114.2, 114.50, 114.51, and 114.53; and corresponding revisions to the Texas Inspection and Maintenance (I/M) State Implementation Plan (SIP). Sections 114.50 and 114.51 are adopted *with changes* to the proposed text as published in the July 1, 2005, issue of the *Texas Register* (30 TexReg 3817). Sections 114.2 and 114.53 are adopted *without changes* to the proposed text and will not be republished.

The commission adopts these revisions to Chapter 114, Control of Air Pollution from Motor Vehicles, and to the SIP in order to control ground-level ozone in the El Paso ozone nonattainment area. The amendments and associated El Paso Motor Vehicle Emissions I/M SIP will be submitted to the United States Environmental Protection Agency (EPA).

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

The federal I/M regulations for ozone nonattainment areas classified as “serious” require that on-board diagnostic (OBD) testing be implemented beginning January 1, 2002. Those regulations also provide an option for an extension of up to 12 months, if a state could show good cause. In a prior I/M rulemaking effective November 20, 2001, the commission submitted a request for a one-year extension to delay the implementation of OBD testing requirements in the El Paso ozone nonattainment area.

This action was taken based on the El Paso area having experienced five years with no monitored violations of the ozone standard. At the time, the commission revised the I/M rules to delay implementation of the OBD testing requirement in the El Paso program area until January 1, 2003, to allow the commission time to explore viable options and to take into consideration any changes in El

Paso's attainment status.

At the request of community leaders and elected officials in El Paso, the commission adopted rules (December 2002) revising the I/M rules and exempting El Paso from OBD testing since El Paso had experienced five years with no monitored violations of the ozone standard. This was achieved through the implementation of volatile organic compounds (VOC) control strategies including the two-speed idle (TSI) vehicle emissions testing program for all 2- to 24-year old gasoline-powered vehicles. Because El Paso reached attainment prior to the EPA's deadline for OBD-I/M startup (January 1, 2002) and OBD had not already been implemented, the commission removed the requirement in the rules for OBD implementation to begin in El Paso as of January 1, 2003. The OBD requirement was converted to a contingency measure. The contingency measure would be invoked by the commission with a notice in the *Texas Register* that OBD testing was required for the El Paso area to maintain attainment of the ozone national ambient air quality standard (NAAQS). The El Paso I/M program area would be required to initiate OBD testing 12 months after publication of the notice.

The previous rule required El Paso to continue TSI testing of all subject vehicles. The previous rule also required OBD testing contingent upon the commission publishing a *Texas Register* notice that OBD testing is required for the El Paso area to maintain attainment of the ozone NAAQS. The El Paso I/M program area was required to initiate OBD testing 12 months after publication of the notice.

Since the adoption of OBD as a contingency measure, the commission has become aware that many of the current TSI analyzers in place have become outdated and can no longer be effectively serviced.

These analyzers will be unlikely to continue to operate properly due to lack of internal replacement components, and may not meet the state's minimum specifications required to provide critical vehicle inspection information to the Texas Information Management System (TIMS). Manufacturers have raised concerns about the feasibility of servicing these old analyzers and about the expense and availability of parts. Additionally, station owners are faced with expensive repairs that are required much more frequently because of the age of the analyzers.

In El Paso County, 69 of the 219 stations with analyzers can be updated with the proper equipment and software to meet current specifications. These analyzers can be updated with OBD testing equipment for an affordable cost of \$1,200 to \$2,500 per analyzer. All new TSI-OBD analyzers now being sold meet current specifications and operate on the current software that meets TIMS requirements.

Additionally, the commission has recognized that the vehicle fleet age in El Paso County is increasingly becoming OBD compliant beginning with model year 1996 vehicles. Over half of the registered vehicles in El Paso County are model year 1996 and newer. The combination of the necessity of upgrading the testing network and a vehicle fleet becoming more OBD compliant has precipitated the changes to the I/M program for El Paso County.

The amendments adopted in this rulemaking require TSI and OBD testing in the El Paso I/M program area beginning January 1, 2007. The adopted amendments revise rules related to the implementation of the state's I/M program in El Paso. The adopted rules require all gasoline-powered 1996 and newer model year motor vehicles equipped with OBD systems registered and primarily operated in El Paso

County to be tested using EPA-approved OBD test procedures. All pre-1996 model year gasoline-powered motor vehicles registered and primarily operated in El Paso County must be tested using the EPA-approved TSI test. Emissions test stations in the El Paso program area are required to offer both TSI testing and OBD testing to the public beginning on the effective date of the rules. Additionally, the amendments reference updated vehicle emissions testing equipment specifications, which now include new EPA OBD communications components, known as controller area network (CAN).

This I/M program for El Paso is an important on-road mobile source control strategy that will support an El Paso eight-hour ozone maintenance plan and El Paso carbon monoxide redesignation maintenance plan.

#### SECTION BY SECTION DISCUSSION

Throughout this rulemaking package, minor administrative changes were made to be consistent with Texas Register requirements and other agency rules for clarity and better readability.

##### *Subchapter A, Definitions*

The amendment to §114.2, Inspection and Maintenance Definitions, adds a new definition “Controller area network (CAN)” and renumbers the remaining definitions accordingly. The new definition defines a term that is specific to the state I/M program. Also, the title of Chapter 114, Subchapter C, is updated in the introductory text of this section.

##### *Subchapter C, Vehicle Inspection and Maintenance; Low Income Vehicle Repair Assistance, Retrofit,*

*and Accelerated Vehicle Retirement Program; and Early Action Compact Counties*

*Division 1, Vehicle Inspection and Maintenance*

The amendment to §114.50, Vehicle Emissions Inspection Requirements, deletes the requirement that all vehicles registered and primarily operated in Dallas, Tarrant, and Harris Counties shall be tested using a TSI test through April 30, 2002, in §114.50(a)(1) because TSI testing is no longer required in Dallas, Tarrant, and Harris Counties. The previously existing paragraphs (2) - (5) are renumbered as paragraphs (1) - (4).

The commission revised §114.50 from proposal to delay implementation of the OBD testing requirement until January 1, 2007, to allow inspection station owners additional time to upgrade their existing TSI equipment or to purchase new OBD/TSI test equipment. The delay in implementation of OBD for El Paso is in response to a request from the Honorable Norma Chávez, State Representative, District 76, Texas House of Representatives (Representative Chávez), and inspection station owners. The implementation date of January 1, 2007, will prevent consumer confusion because all inspection stations will be required to offer both TSI and OBD testing beginning on that date. Adopted §114.50(a)(4)(A) requires that El Paso continue TSI testing through December 31, 2006. Adopted §114.50(a)(4)(B) and (C) states that beginning January 1, 2007, all 1996 and newer model year vehicles equipped with OBD systems shall be tested using EPA-approved OBD test procedures and all 1995 and older model year vehicles shall be tested using the TSI test. Adopted §114.50(a)(4)(D) specifies that all vehicle emissions inspection stations in the El Paso program area offer both TSI and OBD tests to the public beginning January 1, 2007.

References made to complying with requirements contained in the Texas I/M SIP are deleted to clarify program requirements in §114.50(a)(1)(B), (2)(B), (3)(B) and (E); (b)(2), (6)(B), and (8); and (d)(1) and (2). The commission revised §114.50(b)(2) from proposal by adding the phrase “and this chapter” to make it clear that the I/M program to which the federal government is subject includes the rules in Chapter 114, and by changing “relating to” to “concerning” for consistency with Texas Register requirements and other agency rules. Section 114.50(b)(6)(B) is further modified by adding “specified in 37 TAC §23.93 (relating to Vehicle Emissions Inspection Requirements).” Section 114.50(d)(2) is modified by adding “and to commit an offense specified in Texas Transportation Code, §548.603 (concerning Fictitious or Counterfeit Inspection Certificate or Insurance Document).”

The amendment to §114.51, Equipment Evaluation Procedures for Vehicle Exhaust Gas Analyzers, updates the requirements for vehicle emissions testing equipment. This section specifies application, certification, maintenance, and service requirements for manufacturers or distributors of vehicle emissions testing equipment seeking approval of an exhaust gas analyzer or analyzer system for use in the Texas I/M program. Section 114.51(a) previously specified a date of October 15, 2001, for the exhaust gas analyzer technical specifications known as "Specifications for Vehicle Exhaust Gas Analyzer Systems for Use in the Texas Vehicle Emissions Testing Program," and for “Specifications for On-Board Diagnostics II for Use in the Texas Vehicle Emissions Testing Program.” The adopted amendment updates the reference to both vehicle emissions testing equipment specifications with their new version date of May 1, 2005. The revised specifications include a new EPA communications component requirement, known as CAN. The commission revised §114.51(e) from proposal by removing an “a” to correct a grammatical error and by replacing the word “his” with “the executive

director's" to remove a gender reference.

Section 114.53, Inspection and Maintenance Fees, establishes a fee schedule for the different counties, which must be paid for the vehicle emissions inspection at an inspection station. Section 114.53(a)(1) is amended by deleting the TSI fee requirement associated with deleted §114.50(a)(1), because TSI is no longer the required test in Dallas, Tarrant, and Harris Counties. The previously existing paragraphs (2) - (4) in subsection (a) are renumbered as paragraphs (1) - (3). There are no changes to the current annual emissions test fee of \$14. Section 114.53(a)(1) provided that if a resolution is passed by the El Paso County Commissioners Court to participate in the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP), there will be an additional fee of \$3.00, making the test fee in El Paso County \$17. The administrative fee from each TSI test would be \$5.50 (\$2.50 state administrative fee plus \$3.00 to fund the LIRAP). Adopted revisions to §114.53(a)(1) specify that if a resolution is passed by the El Paso County Commissioners Court to participate in LIRAP, the test fee in El Paso County would be \$16 and the administrative fee would be \$4.50 (\$2.50 state administrative fee plus \$2.00 to fund the LIRAP) from each TSI or OBD test fee. These administrative fees will be remitted to the Texas Department of Public Safety (DPS) by the inspection station owners at the time inspection station owners purchase inspection stickers. Also, renumbered paragraphs (1) - (3) in subsection (a) are modified to reflect the renumbering of references, as discussed earlier in this preamble, and the acronyms ASM-2 and OBD are added to improve clarity.

In addition to the adopted rule amendments, the revisions to the SIP narrative clarify the new program elements, such as applicability changes; performance standards; emissions testing network type;

adequate tools and resources; emissions testing; affected vehicle populations; test procedures, standards, and test equipment; motorist compliance enforcement; and the implementation schedule.

#### FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rules are not subject to §2001.0225 because they do 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 intent of the adopted rules is to continue the program already in place while upgrading the test options that are offered. Therefore, these amendments to Chapter 114 are not specifically intended to protect the environment or to reduce risks to human health from environmental exposure. The rules will not have an adverse material impact on the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, because the continuation of the existing program will not impose new burdens on the public. If El Paso County chooses to participate in LIRAP, the emissions test fee will increase by \$2.00 per vehicle. The impact of an increase of this amount will not be material. In addition, the benefits of the LIRAP, including improved air quality, will accrue to the public in the affected area.

Operators of testing stations, as the regulated community, will choose whether to upgrade or replace their test equipment, but will expect to recoup the expense through the continuation of the I/M program. Operators may elect not to participate in the vehicle emissions inspection and I/M program.

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. The adopted rulemaking does not meet any of the four applicability requirements. There is no contract or delegation agreement that covers the topic that is the subject of this rulemaking action. The I/M program was created specifically in response to the requirements of the Federal Clean Air Act (FCAA) in 42 United States Code (USC) and the state law implementing the program. Under 42 USC, §7410, states are required to adopt a SIP that provides for "implementation, maintenance, and enforcement" of the primary NAAQS in each air quality control region of the state. The continuation of the I/M program with adjustments for improved technology, as a strategy to maintain the ozone NAAQS, is in accord with existing law.

#### TAKINGS IMPACT ASSESSMENT

The commission evaluated the adopted amendments and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. The commissions's assessment indicates that Chapter

2007 does not apply to the adopted rules because this is an action that is reasonably taken to fulfill an obligation mandated by federal law, which is exempt under Texas Government Code, §2007.003(b)(4). The primary purpose of this rulemaking action is to upgrade and continue the existing emissions testing program in place in El Paso County as a SIP strategy for the control of ground-level ozone in the El Paso ozone nonattainment area. The amendments require station operators to upgrade or replace emissions testing equipment in order to continue to participate in the I/M program, which was implemented under the FCAA and Texas Health and Safety Code (THSC), §§382.201 - 382.216. The requirement to upgrade emissions analyzers will assure the continued availability of emissions testing to the public and will support the availability of parts and service for the equipment. The adopted rules are not a government action that affects private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Therefore, the adopted rules do not constitute a takings under Texas Government Code, Chapter 2007.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the adopted rulemaking is an action identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, and therefore requires that applicable goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process. The commission determined that under 31 TAC §505.22, this rulemaking action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). No new sources of air contaminants will be authorized and ozone levels will be reduced as a result of the adopted rules. The

CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations in 40 Code of Federal Regulations (CFR) to protect and enhance air quality in the coastal area (31 TAC §501.32). This rulemaking will not have a detrimental effect on SIP emission reduction obligations relating to maintenance of the ozone NAAQS by continuing the existing TSI testing portion of the I/M program and implementing new OBD testing requirements. This rulemaking action complies with 40 CFR. Therefore, in compliance with 31 TAC §505.22(e), this rulemaking action is consistent with CMP goals and policies.

#### PUBLIC COMMENT

The commission held a public hearing on this proposal on July 19, 2005, at 6:30 p.m. at the City of El Paso Council Chambers, 2 Civic Center Plaza, 2nd Floor. At the June 15, 2005, commissioners' agenda for rule proposal, Representative Chávez requested that the commission extend the public comment period two weeks from the proposed July 19, 2005, closing date to August 2, 2005. The commission granted the two-week extension requested by Representative Chávez. Written and/or oral comments were received from Representative Chávez; EPA; and six inspection station owners: Nidal Brum representing All Tech Auto Center (All Tech), Jose Perez representing Arrow Discount Automotive (Arrow), Brett Conner representing Bob's Big Boys Toys (BBT), Juan Jimenez representing Jay's Automotive (Jay's), Robert Rodela representing Rodela's Service (Rodela's), and Dennis Martinez representing Zenitram Automotive Services (Zenitram).

#### RESPONSE TO COMMENTS

Representative Chávez provided oral and written testimony and supports the program, but with

changes. All commenters expressed support of an I/M program. Representative Chávez, Jay's, and Rodela's opposed the May 1, 2006, start date of TSI/OBD testing and requested more time before the implementation of OBD testing.

All Tech, Arrow, BBT, and Zenitram testified that they support the introduction of OBD technology. Representative Chávez commented that she supports the I/M program because it is responsible for helping El Paso to attain the NAAQS for ozone and to pursue redesignation to attainment status for carbon monoxide. EPA commented that it supports the changes to the I/M program rules because they are a logical outgrowth of a program that needs updating.

**The commission appreciates the support for the vehicle emissions testing program and concurs that OBD technology is needed to supplement TSI testing in El Paso. Since the inception of TSI testing in El Paso, the subject vehicle fleet has changed dramatically. In 2005, over 60% of all vehicles in El Paso County were OBD compliant. OBD technology provides for a more accurate assessment of the vehicle emissions related components. In addition, OBD systems also provide more information to help auto technicians diagnose and properly repair vehicles during their first visit to the repair shop, saving time and money for consumers.**

Representative Chávez, Jay's, and Rodela's opposed the timing of the proposal requiring TSI and OBD testing beginning May 1, 2006. They requested a phase-in approach to allow more time for the purchase of replacement equipment. Representative Chávez expressed concern that the May 1, 2006, effective date does not give inspection station owners enough time to purchase and replace the existing

equipment with the new updated equipment. Representative Chávez suggested phasing out the existing TSI-only program by December 31, 2006, and proposed rule language that would allow stations already equipped with OBD testing equipment to begin OBD testing for 1996 and newer model vehicles beginning on May 1, 2006. Further, Representative Chávez proposed that stations with TSI equipment be allowed to continue TSI testing through January 1, 2007, with no requirement to purchase OBD test equipment until that date. In addition, Jay's and Rodela's commented that they do not want to transition to OBD as long as their TSI equipment is still operational.

**The commission has made every effort to consider the concerns of the emissions testing industry. Purchasing new testing equipment is a business decision, and it is the responsibility of the station owner to determine if the investment is worth the cost. All suggestions and concerns were thoroughly researched. Viable options have been considered and incorporated into the development of the El Paso I/M program upgrade.**

**The commission agrees with the commenters that the implementation date of January 1, 2007, will allow time for inspection stations to plan and budget for the upgrade or purchase of OBD/TSI testing equipment. In order to give all station owners an equitable amount of time to budget for the upgrade or to purchase new equipment, the commission is now requiring all inspection stations to offer both OBD and TSI testing to the public beginning January 1, 2007. However, the commission maintains that in order to avoid confusion by consumers, all inspection stations must offer only TSI testing to the public until the implementation date of January 1, 2007. Stations equipped with OBD test equipment prior to the implementation date of OBD testing will not gain**

**an advantage, nor will they be disadvantaged, because only TSI testing may be conducted at all testing stations before January 1, 2007.**

**The commission has revised §114.50 in response to the comments and adopts a new implementation date of January 1, 2007. Beginning on January 1, 2007, all emissions testing stations will be required to offer both OBD and TSI testing to the public.**

Representative Chávez commented that there are no legal deadlines by which these rules must be proposed, adopted, or made effective, so the effective date should be based on input from stakeholders and the public and should only be determined after all public comment has been considered.

Additionally, Representative Chávez stated that the debate and policy regarding the I/M program should be driven by air quality concerns and public participation, not by equipment vendors or by TCEQ staff.

**The commission concurs that no legal deadlines exist for the proposal, adoption, or effective date of these amendments to the rules. Due to obsolescence, most of the equipment analyzers in use in El Paso no longer can be effectively serviced. These analyzers are unlikely to continue to operate properly due to lack of internal replacement components, and may not meet the state's minimum specifications required to provide critical vehicle inspection information to the TIMS.**

**Manufacturers of the existing vehicle emissions TSI analyzers participating in the El Paso I/M program notified the commission last year that, due to the age of many analyzers in El Paso, maintenance for those analyzers would end in January 2006.**

The EPA requires all vehicle I/M programs to upgrade and implement OBD testing to complement the collateral requirement imposed on vehicle manufacturers in recent years to install OBD components in motor vehicles. OBD testing is far more advanced, accurate, and efficient than TSI testing. The commission has chosen to continue the El Paso I/M program as a measure to ensure continued attainment of the NAAQS. Coupled with the continuation of the I/M program is the decision to keep pace with improved technology that makes the program more efficient and effective. As a result of EPA requirements and in response to improved technology, manufacturers of vehicle emissions testing equipment are producing only equipment capable of both TSI and OBD testing. These manufacturers have little economic incentive to continue to provide parts and service for TSI equipment that is for all practical purposes obsolete.

The commission has balanced the requirement to upgrade the I/M program to include OBD testing against the cost to station owners and to the public. The commission has also considered the demonstrated improvement in air quality in El Paso and the need to remain vigilant to protect that improvement from potential decline. The commission has also weighed the advantages to the public, and to the protection of air quality, of upgrading to better emissions testing technology. The commission does not agree that its consideration of all viewpoints has resulted in an unfair weight having been assigned to any one of those viewpoints. The commission has agreed to change the date in the rule from the proposed May 1, 2006, implementation date to the implementation date here adopted, January 1, 2007, as a result of its own reconsideration process and in response to this and other comments received.

Representative Chávez commented that the commission has not followed its rule (§114.50(a)(5)) adopted in 2002, that implementation of the contingency measure of OBD testing would only follow a determination by the commission that activation of contingency measures was necessary to maintain attainment of the NAAQS in El Paso. Representative Chávez disagreed with the justification offered in this rule proposal to implement OBD testing because the commission has determined that many of the TSI analyzers have become outdated and that parts for these analyzers will not be available.

**Under 42 USC, §7410, states are required to adopt a SIP that provides for "implementation, maintenance, and enforcement" of the primary NAAQS in each air quality control region of the state. The continuation of the I/M program with adjustments for improved technology, as a strategy to maintain the ozone NAAQS, is in accord with existing law. Further, the El Paso I/M program is an important on-road mobile source control strategy that the commission has chosen to continue as an active measure in order to support both an El Paso eight-hour ozone maintenance plan and El Paso carbon monoxide redesignation maintenance plan. Section 114.50(a)(5)(B) requires the implementation of contingency measures in the El Paso area following publication of notice in the *Texas Register* of the commission's determination that such measures are necessary to remain in attainment of the NAAQS. In adopting §114.50(a)(5)(B), the commission established one procedure for implementing contingency measures when needed. However, the rule did not limit the commission to following only the §114.50(a)(5)(B) procedure to implement contingency measures, nor did the rule limit the measures the commission may implement to address air quality problems.**

**The commission has proposed implementing OBD testing in the El Paso area for several reasons. Prominent among those reasons is that manufacturers and service representatives have notified the commission that a majority of the emissions testing analyzers have become outdated or can no longer be repaired because of lack of working components. The new analyzers being sold in the area and those analyzers that have been or are capable of being updated are OBD compatible, thus preparing the testing network for the new testing program.**

**The adoption of §114.50(a)(5) in 2002, which identified OBD as a contingency measure, was the last significant change in the El Paso I/M program rules. Since that time, the vehicle population in El Paso has changed considerably. Model year 1996 and newer vehicles, which are OBD compatible, now make up over 60% of the vehicle population. The commission has become aware that 54 of the 219 current TSI analyzers in place have become outdated and may no longer be effectively serviced past May 1, 2006. Another 96 analyzers may no longer be effectively serviced past December 31, 2006. The requirement to upgrade emissions analyzers will assure the continued availability of emissions testing to the public and will support the availability of parts and service for the equipment. Annual I/M testing not only identifies high-polluting vehicles, but it also encourages vehicle owners to maintain and repair their vehicles. When tested with the current TSI emissions test, it is possible for model year 1996 and newer vehicles to pass the inspection even with the "Check Engine" light on the dashboard illuminated (a computer indication that one of the vehicle's emissions control components is not working properly). The commission recognizes that this condition may be detrimental to the effectiveness of the El Paso I/M program.**

**The commission does not agree that its justifications for implementing OBD testing are in conflict with existing law. The commission did not revise the rule in response to this comment.**

Representative Chávez suggested and supports a new provision that requires inspection stations to purchase new OBD equipment before they can become permitted (licensed). Representative Chávez proposed that existing stations wanting to become licensed would first be required to purchase TSI/OBD equipment. Additionally, any station losing its license would be required to purchase new OBD equipment before a new license would be issued.

**The commission appreciates the suggestion. By establishing January 1, 2007, as the implementation date to begin OBD/TSI testing, all stations open to the public will be required to offer both OBD and TSI testing. This would include new stations, existing stations, or any station that may have been previously suspended. The commission does not impose specific requirements regarding the model or brand of equipment stations must possess in order to become licensed, nor are changes to licensing procedures being adopted. Although the adopted rules do not require stations to upgrade or replace equipment until January 1, 2007, stations will not be authorized to continue operating as emissions testing stations unless they provide both TSI and OBD testing beginning on January 1, 2007, regardless of the date they became licensed.**

EPA commented that it has in-house a previous I/M SIP submittal that moves OBD to a contingency measure. EPA requested that TCEQ ask for that submission to be withdrawn upon submission of the El Paso Redesignation and Maintenance Plan SIP revision.

**The commission agrees that the previous SIP submission included a rule change and SIP revision that moved OBD to a contingency measure (Rule Log No. 2002-068-114-AI, December 4, 2002).**

**SIP documents may be viewed on the TCEQ's SIP Web site at**

***<http://www.tceq.state.tx.us/nav/eq/sip.html>*. The adopted rules and associated SIP revision provide for the implementation of OBD as an active control measure in the I/M program in El Paso beginning on January 1, 2007. The rules and SIP submittal likewise remove OBD as a contingency measure. Efforts to maintain attainment of the NAAQS for ozone and carbon monoxide depend, in part, upon the continuation of the I/M program in El Paso. Both monitoring data and air modeling support redesignation to attainment status for the El Paso area. It is expected that future revisions of the ozone and carbon monoxide SIPs will incorporate continuation of OBD as an active control measure and will correspondingly request its removal as a contingency measure. The commission has made no changes to the adopted rules in response to this comment.**

## **SUBCHAPTER A: DEFINITIONS**

### **§114.2**

#### **STATUTORY AUTHORITY**

The amendment is adopted under Texas Water Code (TWC), §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 TWC; and §5.013, which states the commission's authority over various statutory programs. The amendment is also adopted under THSC, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of THSC, Chapter 382 (the Texas Clean Air Act (TCAA)), and to adopt rules that differentiate among particular conditions, particular sources, and particular areas of the state. The amendment is also adopted under THSC, §382.002, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to administer the TCAA and to control the quality of the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.013, which authorizes the commission to designate air quality control regions in order to implement air quality standards; §382.019, which provides the commission the authority to adopt rules that specify the method to be used to control and reduce emissions from engines used to propel land vehicles; §382.202, 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; and §382.205, which authorizes the commission to adopt standards and

specifications for motor vehicle emissions testing equipment.

The adopted amendment implements TWC, §§5.013, 5.102, 5.103, and 5.105; and THSC, §§382.002, 382.011, 382.012, 382.019, 382.202, and 382.205.

**§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 that are defined by the TCAA, the following words and terms, when used in Subchapter C of this chapter (relating to Vehicle Inspection and Maintenance; Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program; and Early Action Compact Counties), 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) that 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) **Controller area network (CAN)** - A vehicle manufacturer's communications protocol that connects to the various electronic modules in a vehicle. CAN provides one protocol that collects information from the vehicle's electronic systems including the on-board diagnostics (OBD) emissions testing system. The United States Environmental Protection Agency requires the CAN protocol to be installed in OBD-compliant vehicles beginning with some model year 2003 vehicles and phasing in to all OBD-compliant vehicles by the 2008 model year.

(4) **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.

(5) **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.

(6) **On-board diagnostic (OBD) system** - The computer system installed in a vehicle by the manufacturer that 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.

(7) **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.

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

(9) **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.

(10) **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-Brazoria 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 became part of the program area as of May 1, 2003.

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

(12) **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.

(13) **Two-speed idle (TSI) 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.

(14) **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; LOW INCOME  
VEHICLE REPAIR ASSISTANCE, RETROFIT, AND ACCELERATED VEHICLE  
RETIREMENT PROGRAM; AND EARLY ACTION COMPACT COUNTIES**

**DIVISION 1: VEHICLE INSPECTION AND MAINTENANCE**

**§§114.50, 114.51, 114.53**

**STATUTORY AUTHORITY**

The amendments are adopted under TWC, §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 TWC; and §5.013, which states the commission's authority over various statutory programs. The amendments are also adopted under THSC, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of THSC, Chapter 382 (the TCAA), and to adopt rules that differentiate among particular conditions, particular sources, and particular areas of the state. The amendments are also adopted under THSC, §382.002, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.013, which authorizes the commission to designate air quality control regions in order to implement air quality standards; §382.019, which provides the commission

the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles; and THSC, Subchapter G, §§382.201 - 382.216, 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 FCAA, §§7401 *et seq.*, to coordinate with federal, state, and local transportation planning agencies to develop and implement transportation programs and other measures necessary to demonstrate and maintain attainment of the NAAQS, and to fund the establishment of the LIRAP.

The adopted amendments implement TWC, §§5.013, 5.102, 5.103, and 5.105; and THSC, §§382.002, 382.011, 382.012, 382.019, and 382.201 - 382.216.

**§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 2 - 24 years old and subject to an annual emissions inspection, beginning with the first safety inspection. Military tactical vehicles, motorcycles, diesel-powered vehicles, dual-fueled vehicles that 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 Definitions), in accordance with the following schedule.

(1) 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 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.

(2) 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 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 Houston-Galveston-Brazoria (HGB) 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

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 approved by the EPA.

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

(A) All vehicles shall be tested using a two-speed idle (TSI) test through December 31, 2006.

(B) Beginning January 1, 2007, all 1996 and newer model year vehicles equipped with OBD systems shall be tested using EPA-approved OBD test procedures.

(C) Beginning January 1, 2007, all pre-1996 model year vehicles shall be tested using a TSI test.

(D) Beginning January 1, 2007, all vehicle emissions inspection stations in the El Paso program area shall offer both the TSI test and OBD test.

(b) Control requirements.

(1) No person or entity may operate, or allow the operation of, a motor vehicle registered in the DFW, EDFW, HGB, and El Paso program areas that 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 federal

government agency and located in a program area to comply with all vehicle emissions I/M requirements specified in Texas Health and Safety Code, Subchapter G, §§382.201 - 382.216 (concerning Vehicle Emissions), and this chapter. 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 federal government 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, HGB, 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 whose vehicle 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, HGB, or El Paso program areas, or in any county adjacent to a program area and whose vehicle 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 specified in 37 TAC §23.93 (relating to Vehicle Emission Inspection Requirements).

(7) A subject vehicle registered in a county without an I/M program that 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 that fall outside the normal registration or inspection process shall comply with all vehicle emissions I/M requirements 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, 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 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 that may be used to circumvent applicable vehicle emissions I/M requirements and to commit an offense specified in Texas Transportation Code, §548.603 (concerning Fictitious or Counterfeit Inspection Certificate or Insurance Document).

(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.

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

(a) Any manufacturer or distributor of vehicle testing equipment may apply to the executive director of the commission or his appointee, for approval of an exhaust gas analyzer or analyzer system for use in the Texas Inspection and Maintenance (I/M) program administered by the Texas Department of Public Safety. Each manufacturer shall submit a formal certificate to the commission stating that any analyzer model sold or leased by the manufacturer or its authorized representative and any model currently in use in the I/M program will satisfy all design and performance criteria set forth in "Specifications for Vehicle Exhaust Gas Analyzer Systems for Use in the Texas Vehicle Emissions Testing Program," dated May 1, 2005, or in "Specifications for On-Board Diagnostics II for Use in the Texas Vehicle Emissions Testing Program," dated May 1, 2005. Copies of these documents are available at the commission's Central Office, located at 12100 Park 35 Circle, Austin, Texas 78753. The manufacturer shall also provide sufficient documentation to demonstrate conformance with these criteria including a complete description of all hardware components, the results of appropriate performance testing, and a point-by-point response to each specific requirement.

(b) All equipment shall be tested by an independent test laboratory. The cost of the certification shall be absorbed by the manufacturer. The conformance demonstration shall include, but is not limited to:

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

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

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

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

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

(c) If a review of the demonstration of conformance and all related support material indicates compliance with the criteria listed in subsections (a) and (b) of this section, the executive director or his

appointee may issue a notice of approval to the analyzer manufacturer that endorses the use of the specified analyzer or analyzer system in the Texas I/M program.

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

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

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

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

(3) the manufacturer or distributor fails to provide on-site service response by a qualified repair technician within two business days of a request from an inspection station, excluding

Sundays, national holidays (New Year's Day, Martin Luther King Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, and Christmas Day), and other days when a purchaser's business might be closed;

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

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

**§114.53. 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) In El Paso County beginning May 1, 2002, any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(4)(A), (B), or (C) of this title

(relating to Vehicle Emissions Inspection Requirements) shall collect a fee of \$14 and shall remit \$2.50 to the Texas Department of Public Safety (DPS). If the El Paso County Commissioners Court adopts a resolution that is approved by the commission to participate in the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program, the emissions inspection station shall collect a fee of \$16 and shall remit to DPS \$4.50 beginning upon the date specified by the commission upon approval of the resolution.

(2) 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)(1)(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)(2)(A) or (B) of this title shall collect a fee not to exceed \$27. The emissions inspection station shall remit to the DPS \$2.50 for each acceleration simulation mode (ASM-2) test and \$8.50 for each on-board diagnostics (OBD) test.

(3) In the Houston-Galveston-Brazoria 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)(3)(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)(3)(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 ASM-2 test and \$8.50 for each OBD test.

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

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