

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §114.2, Inspection and Maintenance (I/M) Definitions; §114.50, Vehicle Emissions Inspection Requirements; §114.51, Equipment Evaluation Procedures for Vehicle Exhaust Gas Analyzers; and §114.53, Inspection and Maintenance Fees; the repeal of §114.52, Waivers and Extensions for Inspection Requirements; and new §114.52, Early Participation Incentive Program. The commission proposes these revisions to Chapter 114, Control of Air Pollution from Motor Vehicles, and to the state implementation plan (SIP) in order to control ground-level ozone in the Dallas/Fort Worth (DFW), Houston/Galveston (HGA), and El Paso (ELP) ozone nonattainment areas.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

In a prior rulemaking, the commission established an air pollution control strategy involving emissions testing of vehicles to reduce oxides of nitrogen (NO_x) and other emissions necessary for the counties included in the DFW, HGA, and ELP nonattainment areas to be able to demonstrate attainment with the ozone national ambient air quality standard (NAAQS). The rulemaking adopted by the commission on December 6, 2000 and published in the January 12, 2001 issue of the *Texas Register* (26 TexReg 362) modified the vehicle emissions testing program by implementing acceleration simulation mode (ASM-2) testing and on-board diagnostics (OBD) testing for vehicles that are registered and primarily operated in the DFW and HGA nonattainment areas beginning May 1, 2002 in certain counties. Unlike the current two-speed idle (TSI) test, ASM-2 technology has the ability to detect NO_x emissions. Because NO_x is a precursor to ground-level ozone formation, reduced NO_x, and volatile organic compound (VOC) emissions will result in ground-level ozone reductions. El Paso will continue to implement TSI for vehicle model years vehicles 1995 and older and implement OBD for 1996 and newer vehicles. The

inclusion of OBD in the I/M program satisfied a federal mandate requirement that all 1996 and newer model year vehicles would require an OBD check.

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

The proposed rulemaking requires all vehicle emissions test stations in the DFW, extended DFW (EDFW), and HGA program areas, with the exception of low volume emissions inspection stations, to offer both ASM-2 testing and OBD testing to the public; defines the term "low volume emissions inspection station"; requires all vehicle emissions inspection stations in the El Paso program area to offer both TSI testing and OBD testing to the public; adjusts the administrative portion of the test fees remitted to the state; increases fees for the El Paso area should the county opt into the low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program; requires a test-on-resale component; incorporates the TSI and ASM-2 specifications into one equipment specification document with an amended date; provides for new equipment requirements and specifications regarding OBD equipment; creates a new section to establish an early participation incentive program; and repeals §114.52.

SECTION BY SECTION DISCUSSION

The proposed amendments to §114.2, Inspection and Maintenance (I/M) Definitions, add a new definition for “low volume emissions inspection station” in paragraph (3). A “low volume emissions inspection station” is proposed to be defined as an inspection station that opts to perform OBD testing only and does not exceed 1,200 OBD tests per calendar year. This term required definition because of the proposed amendments to §114.50, which include an exception for facilities meeting this definition. The subsequent paragraphs are renumbered accordingly. Also, the definition for “on-board diagnostic system” was clarified by stating that all references to OBD should be interpreted to mean the second generation of this equipment, sometimes referred to as OBD II.

The proposed amendments to §114.50, Vehicle Emissions Inspections Requirements, revise program requirements for the state I/M program for vehicle testing and inspection. Proposed amendments to §114.50(a) add a requirement that all vehicle emissions test stations in the DFW, EDFW, and HGA program areas must offer both the ASM-2 test and the OBD test to the public. One exception to this requirement would be provided to low volume emissions inspection stations, as defined in proposed §114.2(3). If the owner of an emissions inspection station wishes to have his or her station classified as a low volume emissions inspection station, the owner must petition the DPS. The commission anticipates that DPS will develop the rules for petitioning for this classification in its upcoming rulemaking. The proposed revisions also include a requirement that all vehicle emissions inspection stations in the El Paso program area must offer both a TSI test and OBD test to the public. There would be no low volume emissions inspection stations in El Paso exempted from the requirement to offer both TSI and OBD tests.

The commission requests comments in regards to allowing new car dealers an exception from the requirement to offer both ASM-2 and OBD testing so that they may offer only OBD vehicle emissions testing for 1996 and newer model year vehicles in affected areas for the purpose of continuing their customer service and warranty agreements. This exception would not be limited by the number of tests per year performed by the dealers. The commission may include such an exception in the adopted version of these revisions.

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

The proposed amendments to §114.50(b) revise paragraph (5) to delete the reference to the minimum expenditure waiver because this waiver was eliminated by HB 2134. The proposed revision to paragraph (6) adds the phrase, “or in any county adjacent to a program area” to extend the current remote sensing program to include cars commuting into the area from neighboring counties. This

proposed revision is authorized by HB 2134. The proposed new paragraph (7) adds a test-on-resale component to the I/M program as required by HB 2134. Vehicles resold (any change of ownership except first sale) from a county without an I/M program into any I/M program county would not be eligible for title receipt or registration unless proof was presented that the vehicle had passed an approved vehicle emissions test within the past 90 days. Model year 1996 and newer vehicles with less than 50,000 miles would be exempt from the test-on-resale requirement. Current paragraph (7) is proposed to be renumbered as paragraph (8).

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

The proposed amendments to §114.51, Equipment Evaluation Procedures for Vehicle Exhaust Gas Analyzers, update the requirements for vehicle emissions testing equipment. This section currently specifies application, certification, maintenance, and service requirements for manufacturers or distributors of vehicle emissions testing equipment seeking approval of an exhaust gas analyzer or analyzer system for use in the Texas I/M program. Section 114.51(a) currently specifies a date of November 1, 2000 for the exhaust analyzer technical specifications known as “Specifications for Preconditioned Two Speed Idle (TSI) Vehicle Exhaust Gas Analyzer Systems for use in the Texas Vehicle Emissions Testing Program,” and “Specifications for Acceleration Simulation Mode (ASM-2) Vehicle Exhaust Gas Analyzer System for use in the Texas Vehicle Emissions Testing Program.” The

revised rule incorporates the current TSI specifications into the current ASM-2 specifications and to make some minor revisions to the requirements. The new specification would be titled "Specifications for Vehicle Exhaust Gas Analyzer Systems for use in the Texas Vehicle Emissions Testing Program," dated June 15, 2001.

Additionally, the revised section would include a new specification titled "Specifications for On-Board Diagnostics II for use in the Texas Vehicle Emissions Testing Program," dated June 15, 2001, to provide the specifications for all OBD test equipment used in the program. Also, the proposed revision to §114.51(b)(5) renames the Texas Data Link to the Texas Information Management System to reflect the current name of the contract to manage the exchange of vehicle test data.

The commission has worked with stakeholders to ensure that the proposed specifications are as close as possible to their final form. Based upon the short time frame for the certification of equipment to these standards, the commission felt that it was imperative that the manufacturers be able to begin work on the testing equipment immediately. Due to the input of the stakeholders, the commission does not anticipate receiving comments that will result in major changes to the equipment analyzer specifications. If the commission decides that minor changes are warranted to clarify conflicts or errors in the existing specifications, then notification to potential analyzer equipment providers will be made as expeditiously as possible.

The current §114.52, Waivers and Extensions for Inspection Requirements, is proposed to be repealed because these requirements are duplicative of those contained in DPS rules, 37 TAC §23.93, relating to

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

The proposed new §114.52, Early Participation Incentive Program, is meant to encourage owners and operators of emissions inspection stations to participate early in the purchase of ASM-2 equipment to ensure an adequate number of emissions inspection stations are available by the program start date. The proposed new section explains the program eligibility requirements, program acceptance criteria, enrollment and documentation requirements, and the incentive payment plan. The incentive program would be available to the owners or operators of the first 1,000 eligible emissions inspection stations in Dallas, Tarrant, Denton, Collin, and Harris Counties or adjacent counties. The proposed incentive would provide emissions inspection station owners or operators with a financial assurance if ASM-2 testing were to be terminated within three years of the program start date on May 1, 2002. The number of years will be calculated as the number of 12-month periods since the program start date, not calendar years. If ASM-2 testing were to be terminated during the first two years of the program, the proposed

rule provides that emissions inspection station owners or operators accepted into the early participation incentive program would receive a payment of \$675 per month for the remainder of the three-year period. The payment amount is approximately 75% of the average initial capital investment of ASM-2/OBD equipment (\$40,000) less \$8,000 for the OBD portion of the equipment which can continue to be used for emission testing of 1996 and newer vehicles, spread over 36 months. If ASM-2 testing were to be terminated during the third year of the program, the proposed rules provide that all inspection station owners or operators accepted into the early participation incentive program whose stations have conducted less than 5,000 emissions tests at program termination would receive a payment of \$675 per month for the remainder of the third year. The proposed rules also give the executive director authority to accept additional stations into the program at his discretion if necessary to ensure adequate distribution of stations throughout the program areas.

The commission requests comments on the adequacy of the incentive amount and payment terms. Specifically, the commission requests comments on the concept of extending the protection over a longer period of time, e.g five years at lesser monthly payments than proposed.

For affected program areas that begin ASM-2 testing in May 2003 (Brazoria, Fort Bend, Galveston, Montgomery, Ellis, Johnson, Kaufman, Parker, and Rockwall Counties), the same incentive would be offered beginning with the program start date for those counties. The incentive will be available to the owners or operators of the first 200 eligible inspection stations.

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

The proposed amendments to §114.53, Inspection and Maintenance Fees, establish the state administrative fees to be remitted to DPS out of each inspection fee. Proposed §114.53(a)(2) specifies a \$2.50 state administrative fee from the test fee of \$14 for TSI and OBD testing in El Paso County.

The section is also revised to provide that if a resolution is passed by the El Paso County Commissioners to participate in the Low Income Repair Assistance Program (LIRAP) to be established in a separate rulemaking, the test fee in El Paso County would be \$17 and the administrative fee would be \$5.50 (\$2.50 state administrative fee plus \$3.00 to fund the LIRAP) from each TSI and OBD test fee. Proposed §114.53(a)(3) and (4) specify a \$2.50 state administrative fee for an ASM-2 test and an \$8.50 fee (\$2.50 state administration fee and \$6.00 to fund LIRAP) for an OBD test to be remitted from the test fee of \$22.50 in the DFW, EDFW, and HGA nonattainment areas. These administrative fees will be remitted to DPS by the inspection station owners at the time inspection station owners purchase inspection stickers.

The commission requests comments on the adequacy of the test fee. The commission is aware of concerns that the test fee does not take into account the cost of an increased number of retests due to the higher failure rate expected. Based upon comments received regarding the overall adequacy of the fee,

the commission may consider changes to the test fee for ASM and OBD testing upon adoption of these rules.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, determined that for the first five-year period the proposed rules are in effect, it is anticipated that the commission will receive additional revenues of approximately \$3.9 million in Fiscal Year (FY) 2002, \$15.3 million in FY 2003, and up to approximately \$22 million by FY 2005 as a result of administration and enforcement of the proposed amendments. The increased revenues will be used to provide assistance to counties participating in the LIRAP created by HB 2134 and to develop, administer, evaluate, and maintain the states's I/M vehicle emissions testing program. There may be fiscal implications, which are not anticipated to be significant, for units of state and local government located within the DFW, HGA, and ELP nonattainment areas which may have to upgrade or purchase new emission testing equipment, which could cost as much as \$40,000, to comply with the proposed amendments.

There are provisions within this rulemaking that would also provide financial assurances to emissions inspection stations if the ASM-2 testing program were terminated within the first three years of the program. The fiscal liability to the state could be approximately \$26.5 million over a three-year period if the ASM-2 testing program were terminated on June 1, 2002, and could be approximately \$20.3 million over a three-year period if the ASM-2 testing program were terminated on June 1, 2003.

Additionally, there will be fiscal implications, which are not anticipated to be significant for any single unit of state and local government that conducts its own vehicle emissions tests within the DFW, HGA, and ELP areas. The total cost for emissions inspection stickers bought by all units of government within affected counties would increase by approximately \$125,000 annually. The commission anticipates no fiscal implications for units of state and local government located outside of the DFW, HGA, and ELP nonattainment areas.

The proposed amendments are intended to revise the state's I/M vehicle emissions testing program and implement certain provisions of HB 2134. The Texas I/M program applies to all gasoline-powered motor vehicles 2 - 24 years old that are subject to an annual emissions inspection. The current I/M program requires that affected model year 1996 and newer motor vehicles operating in the DFW, HGA, and El Paso nonattainment areas will be required to pass an OBD test and all affected vehicles in the DFW and HGA areas older than model year 1996 will be required to pass an ASM-2 test beginning May 1, 2002. In El Paso, affected motor vehicles older than model year 1996 are required to pass a TSI emissions test. House Bill 2134 also requires the commission to develop the LIRAP, which is intended to provide funding to participating counties to assist motorists in repairing, retrofitting, or scrapping vehicles that have failed an emissions test. This rulemaking only implements updates to the I/M program and funding mechanisms to help fund the LIRAP. Implementation of the LIRAP guidance and regulations will occur in a future rulemaking.

The proposed amendments will not result in an increased vehicle emissions test fee unless El Paso County decides to participate in the LIRAP. If this occurs, the emissions test fee in El Paso will be

increased from \$14 to \$17 to help fund the LIRAP. In previous rulemakings, the commission raised the vehicle emission test fee in the DFW and HGA areas from \$14 to \$22.50 and raised the fee in El Paso from \$13 to \$14 effective May 1, 2002. For the purposes of this fiscal note, it is assumed that El Paso will participate in the LIRAP.

The proposed amendments are intended to increase the administrative portion of the emissions test fee that will be remitted to the state, effective May 1, 2002. The commission will receive an additional \$0.06 for every ASM-2 test and an additional \$6.06 (of which \$6.00 is pass-through money that will fund the LIRAP) for every OBD test performed in the DFW and HGA nonattainment areas. The commission will also receive an additional \$3.06 (of which \$3.00 is pass-through money that will fund the LIRAP) for every TSI and OBD test performed in the ELP nonattainment area. Since privately-owned inspection stations would not be required to transfer increased administrative portions of the emissions test fee to the commission until May 1, 2002, there would be no loss in revenues to these inspection stations because under current requirements inspection stations also begin collecting an increased emissions test fee beginning on May 1, 2002.

The commission estimates that approximately 1,300,000 vehicles in the DFW and HGA areas and 138,000 vehicles in El Paso will receive a vehicle emissions tests in FY 2002. During FY 2003, approximately 4,300,000 vehicles in the DFW and HGA areas and 425,000 vehicles in El Paso will receive vehicle emissions tests. Based on the number of vehicles that are projected to receive emissions tests, and the increased administrative portion of each testing fee to be remitted to the commission, an

additional \$3.9 million in FY 2002 and \$15.3 million in FY 2003 is expected to be received by the commission.

Units of state and local government that test their own vehicles would be required to pay more for emission stickers due to the proposed amendments. Units of state and local government that purchase emissions inspection stickers from the DPS are required to pay the administrative portion of the emissions test fee, which is currently \$1.75 per sticker. The proposed amendments will raise the administrative fee to \$2.50 per sticker for all ASM-2 and TSI test stickers purchased in the DFW, HGA, and ELP program areas. The administrative fee for OBD stickers will be increased to \$8.50 per sticker for those purchased in the DFW and HGA areas, and \$5.50 per sticker for those purchased in the ELP area. The commission estimates that approximately 21,335 government owned vehicles will receive an annual ASM-2 or OBD test in the DFW and HGA nonattainment areas. The total costs due to increased administrative fees for units of state and local governments in these areas is estimated to be approximately \$119,000 annually. The commission estimates that approximately 2,100 government owned vehicles will receive an annual TSI or OBD test in El Paso. The total costs due to increased sticker prices for units of state and local governments in El Paso is estimated to be approximately \$5,700 annually.

The proposed amendments would also require all vehicle emissions inspection stations in affected program areas, with the exception of low volume emissions inspection stations, to offer both ASM-2 and OBD testing; implement an incentive program for early participation in the vehicle emissions testing program; require a test-on-resale component (HB 2134 requirement); and delete the previous

minimum expenditure waiver (HB 2134 requirement). Additionally, the proposed amendments will incorporate the TSI and ASM-2 specifications into one equipment specification document with an amended date, and require new equipment requirements and specifications for OBD equipment and effective dates. The commission estimates these final two provisions will not have fiscal impact on units of state and local government because these are requirements that have to be met by emission analyzer manufacturers.

The requirement that all vehicle emissions inspection stations provide both ASM-2 and OBD tests in the DFW and HGA nonattainment areas would begin May 1, 2002. All existing or new vehicle emissions inspection stations in El Paso County would also be required to provide both TSI and OBD tests beginning May 1, 2002. The remaining counties affected and applicable timelines are listed in the following table.

Figure 1: 30 TAC Chapter 114 - Preamble

Start Date	Counties Affected	Test Types
May 1, 2002	Collin, Dallas, Denton, Harris, and Tarrant.	ASM-2 and OBD
May 1, 2002	El Paso	TSI and OBD
May 1, 2003	Brazoria, Ellis, Fort Bend, Galveston, Johnson,	ASM-2 and OBD
May 1, 2004	Chambers, Liberty, and Waller	ASM-2 and OBD

The only exception to these requirements would be for low volume emissions inspection stations in the DFW and HGA nonattainment areas, which can opt to perform OBD tests only, if the station performs 1,200 or fewer OBD tests per year.

Units of state and local government that currently conduct their own emission testing will either have to purchase new or upgrade existing equipment, contract with a vendor to perform the testing, have their vehicles tested at local stations, or apply for authorization to conduct OBD tests only. The number of state and local government testing stations is unknown. The cost to upgrade existing analyzers in El Paso County to a system that can perform both TSI and OBD tests will be approximately \$4,000, while the cost to purchase a new system to conduct these tests will cost approximately \$20,000. The cost to upgrade existing analyzers in the DFW and HGA areas to perform ASM-2 and OBD tests will be approximately \$25,000, while the cost to purchase new analyzers in these areas will cost approximately \$40,000. If a unit of state and local government in the DFW and HGA nonattainment areas qualifies as a low volume emissions inspection station, it could receive authority from the DPS to conduct OBD only tests. The cost of OBD testing equipment is approximately \$8,000.

The proposed amendments would implement an early participation incentive program designed to encourage early purchases of ASM-2 equipment. The incentive to emissions inspection station owners or operators would be a financial assurance offered by the state if the program were terminated early. However, it is not anticipated that any units of state or local government would be eligible for the proposed incentive plan because their testing facilities would not be open to the general public which is one of the program eligibility requirements. The incentive would be available to the first 1,000 eligible DPS certified stations operating in affected counties that enter into a three-year contract for the purchase and installation of ASM-2 equipment by December 31, 2001. The proposal provides that if ASM-2 testing were terminated during the first two years, all qualified stations would receive a payment of \$675 per month for the remainder of the three years. If ASM-2 testing were terminated

during the third year of the contract, those qualified stations that have conducted less than 5,000 emissions inspections since the program start date would receive a payment of \$675 per month for the remainder of the third year. The \$675 a month payment would be paid from anticipated additional revenues resulting from implementation of the proposed amendments.

For affected program areas that begin ASM-2 testing in May 2003 (Brazoria, Fort Bend, Galveston, Montgomery, Ellis, Johnson, Kaufman, Parker, and Rockwall Counties), the same incentive would be offered beginning with the program start date for those counties. The incentive would be available to the first 200 eligible inspection station owners or operators.

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

If ASM-2 testing in the DFW and HGA nonattainment areas were terminated on June 1, 2002 (one month after the program started), the commission would be required to pay 1,000 stations (assuming this many were qualified for the incentives) \$675 per month for 35 months. The total cost to the commission would be approximately \$26.5 million between June 1, 2002 and May 31, 2005. This analysis assumes the entire ASM-2 testing program were cancelled, so stations due to begin ASM-2 testing on May 1, 2003 and May 1, 2004 would not be affected by the cancellation.

If ASM-2 testing in the DFW and HGA nonattainment areas were terminated on June 1, 2003, the commission would be required to pay 1,000 stations \$675 per month for 23 months and 200 stations (assuming this many were qualified for incentives beginning May 1, 2003) \$675 per month for 35 months. The total cost to the commission would be approximately \$20.3 million between June 1, 2003 and May 31, 2006. This analysis assumes the entire ASM-2 testing program were cancelled, so stations due to begin ASM-2 testing on May 1, 2004 would not be affected by the cancellation.

If ASM-2 testing in the DFW and HGA nonattainment areas were terminated on June 1, 2004 (within the third program year for those counties that begin ASM-2 testing on May 1, 2002, and just one month after the program start date for those counties that begin ASM-2 testing on May 1, 2004), the commission would be required to pay up to 1,000 stations (or however many eligible stations had conducted fewer than 5,000 emissions tests since the program start date) \$675 per month for 11 months, 200 stations \$675 per month for 23 months, and 30 stations \$675 per month for 35 months. The total cost to the commission would be approximately \$11.3 million between June 1, 2004 and May 31, 2007. This analysis assumes the maximum number of inspection stations were eligible for incentives.

The proposed amendments are also intended to implement certain provisions of HB 2134, which require the commission to incorporate a test-on-resale component into the existing I/M program, and remove the current minimum expenditure waiver in favor of a low mileage waiver. Test-on-resale will require county tax assessor collectors to bar the registration of vehicles to be resold from outside program areas into affected counties without having passed an emissions test. In order to pass an emissions test, an

owner or operator of an affected vehicle would have to pay \$14 (potentially \$17 if El Paso County participates in LIRAP) in El Paso and \$22.50 in all other program areas for an emissions test. Model year 1996 and newer vehicles that have fewer than 50,000 miles would be excluded from the test-on-resale provision. The commission anticipates that the test-on-resale component of the I/M program will not have significant fiscal implications to units of state and local government within affected counties because most vehicles purchased by units of government are purchased as new vehicles within I/M program areas.

The I/M program currently allows owners and operators of vehicles that fail an emissions test to apply for a minimum expenditure waiver in order to be excluded from testing for a year. The minimum expenditure was \$450; however, HB 2134 eliminated this waiver in favor of a low mileage waiver that would allow owners and operators of failing vehicles to be waived from emission standards requirements if at least \$100 was spent to repair the vehicle and if the vehicle was driven less than 5,000 miles since the last inspection and will be driven less than 5,000 miles during the current inspection year. If a vehicle does not qualify for the new waiver, the owner or operator would have to fix the vehicle or participate in LIRAP. The commission does not anticipate significant impacts to units of state and local government due to the deletion of the minimum expenditure waiver, because only approximately 250 waivers were requested annually.

PUBLIC BENEFITS AND COSTS

Mr. Davis also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendments will be

improved air quality by the potential reduction of on-road mobile source emissions and potential reduction in NO_x emissions. These rules should also contribute toward demonstration of attainment with the ozone NAAQS in the areas affected by this proposed rulemaking.

The proposed amendments are intended to revise the state's I/M vehicle emissions testing program and implement certain provisions of HB 2134. The proposed amendments require all vehicle emissions inspection stations in affected program areas, with the exception of low volume emissions inspection stations, to offer both ASM-2 and OBD testing; adjust the administrative portion of vehicle emissions test fees remitted to the state; increase the test fee for TSI and OBD tests in El Paso if El Paso opts into the LIRAP; require a test-on-resale component (HB 2134 requirement); and delete the previous minimum expenditure waiver (HB 2134 requirement). Additionally, the proposed amendments would incorporate the TSI and ASM-2 specifications into one equipment specification document with an amended date, and require new equipment requirements and specifications for OBD equipment and effective dates. The commission estimates these final two provisions will not have fiscal impact on individuals and businesses in Texas because these are requirements that have to be met by emission analyzer manufacturers, none of which are located in Texas.

The requirement that all vehicle emissions inspection stations provide both ASM-2 and OBD tests in the DFW and HGA nonattainment areas would begin May 1, 2002. All existing or new vehicle emission testing stations in El Paso County would also be required to provide both TSI and OBD tests beginning May 1, 2002. The remaining counties affected and applicable timelines are listed in the following table.

Figure 2: 30 TAC Chapter 114 - Preamble

Start Date	Counties Affected	Test Types
May 1, 2002	Collin, Dallas, Denton, Harris, and Tarrant.	ASM-2 and OBD
May 1, 2002	El Paso	TSI and OBD
May 1, 2003	Brazoria, Ellis, Fort Bend, Galveston, Johnson, Kaufman, Montgomery, Parker, and Rockwall	ASM-2 and OBD
May 1, 2004	Chambers, Liberty, and Waller	ASM-2 and OBD

The only exception to these requirements would be for low volume emissions inspection stations in the DFW and HGA nonattainment areas, which can opt to perform OBD tests only if the station performs 1,200 or fewer OBD tests per year.

Individuals and businesses that currently conduct emissions testing would either have to purchase new or upgrade existing equipment, or apply for authorization to conduct OBD tests only. It is anticipated that the economic decision to upgrade or purchase the required equipment will include the economics of labor costs, potential alternative use of labor's time, the equipment capital costs, and volume of anticipated inspections, current equipment, and other anticipated costs associated with emissions testing. It is anticipated that some inspection stations that must upgrade their equipment or purchase new equipment in order to comply with the proposed emissions testing requirements in the proposed amendments will find it uneconomical to do so for various reasons and will be unable to continue to perform emissions inspections. It is anticipated that this business decision will be made by each inspection station owner or operator.

There are approximately 2,100 privately-owned inspection stations in the DFW and HGA areas and 200 in El Paso. By May 1, 2002, 75% or 1,575 of the current inspection stations in the DFW and HGA nonattainment areas will have to purchase new ASM-2 equipment in order to conduct ASM-2 and OBD vehicle emissions tests. Each new analyzer will cost approximately \$40,000. The remaining 525 inspection stations will be able to upgrade current analyzers at a cost of approximately \$25,000. In Collin and Denton Counties, current inspection stations will have to purchase new ASM-2 equipment to conduct ASM-2 and OBD tests. Follow-on counties that begin testing on May 1, 2003 and May 1, 2004 will also have to purchase new ASM-2 equipment to conduct ASM-2 and OBD tests. There are currently approximately 1,210 stations in the DFW and HGA areas that could qualify as low volume emissions inspection stations. If these stations are granted authority to conduct OBD only tests, they would only have to purchase OBD testing equipment, which costs approximately \$8,000.

In El Paso County, 80% or 160 of the current inspection stations will have to purchase new TSI analyzers to incorporate OBD. Each new analyzer will cost approximately \$20,000. The remaining 40 inspection stations will be able to upgrade current analyzers at a cost of approximately \$4,000.

The proposed amendments are also intended to increase the administrative portion of the emissions test fee that would be remitted to the commission, effective May 1, 2002. However, since privately-owned inspection stations would not be required to transfer increased administrative portions of the emissions test fee to the commission until May 1, 2002, there would be no loss in revenues to these inspection stations because under current requirements inspection stations also begin collecting an increased emissions test fee beginning on May 1, 2002.

The proposed amendments will not result in a vehicle emission test fee increase unless El Paso County decides to participate in the LIRAP. For the purposes of this fiscal note, it has been assumed that El Paso will participate in the LIRAP; therefore, the vehicle emission test fee applied to all affected vehicles in El Paso for this analysis is \$17. The commission estimates there will be approximately 138,000 vehicles in FY 2002 and approximately 425,000 vehicles in FY 2003 subject to the I/M vehicle emission testing program in El Paso County. The \$3.00 fee increase will require individuals and businesses to pay an additional \$414,000 in FY 2002 and approximately \$1.28 million in FY 2003.

The proposed amendments would implement an early participation incentive program designed to encourage early purchases of ASM-2 equipment. The incentive to emissions inspection station owners or operators would be a financial assurance offered by the state if the program were terminated early. The incentive would be available to the first 1,000 eligible DPS certified stations operating in affected counties that enter into a three-year contract for the purchase and installation of ASM-2 equipment by December 31, 2001. The proposal provides that if ASM-2 testing were terminated during the first two years, all qualified stations would receive a payment of \$675 per month for the remainder of the three years. If ASM-2 testing were terminated during the third year of the contract, those qualified stations that have conducted less than 5,000 emissions inspections since the program start date would receive a payment of \$675 per month for the remainder of the third year.

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

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

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

The proposed amendments are also intended to implement certain provisions of HB 2134, which require the commission to incorporate a test-on-resale component into the existing I/M program and remove the current minimum expenditure waiver in favor of a low mileage waiver. Test-on-resale will require county tax assessor collectors to bar the registration of vehicles to be resold from outside program areas into affected counties without having passed an emissions test. In order to pass an emissions test, an owner or operator of an affected vehicle would have to pay \$14 (potentially \$17) in El Paso and \$22.50 in all other program areas for an emissions test. Model year 1996 and newer vehicles that have fewer than 50,000 miles would be excluded from the test-on-resale provision.

The I/M program currently allows owners and operators of vehicles that fail an emissions test to apply for a minimum expenditure waiver in order to be excluded from testing for a year. The minimum expenditure was \$450; however, HB 2134 eliminated this waiver in favor of a low mileage waiver that would allow owners and operators of failing vehicles to be waived from emission standards requirements if at least \$100 was spent to repair the vehicle and if the vehicle was driven less than

5,000 miles since the last inspection and will be driven less than 5,000 miles during the current inspection year. If a vehicle does not qualify for the new waiver, the owner or operator would have to fix the vehicle or participate in LIRAP. The commission does not anticipate significant impacts on individuals and businesses due to the deletion of the minimum expenditure waiver, because only approximately 250 waivers were requested annually.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There will be adverse fiscal implications, which may be significant to small and micro-businesses as a result of implementing the proposed amendments, which revise the state's I/M vehicle emissions testing program and implement certain provisions of HB 2134. The primary fiscal implications would be the requirement to upgrade or purchase new vehicle emission testing equipment in order to continue participating in the state's I/M program, which could cost as much as \$40,000 per vehicle emission analyzer.

The proposed amendments do not increase emission test fees, unless El Paso County decides to participate in the LIRAP. If this were to occur, the annual emissions inspection fee in El Paso would be increased from \$14 to \$17. If the fee is increased, the cost to small and micro-businesses will vary with the number of vehicles owned and affected by the testing requirements.

The proposed amendments are intended to increase the administrative portion of the emissions test fee that would be remitted to the commission, effective May 1, 2002. However, since privately-owned inspection stations would not be required to transfer increased administrative portions of the emissions

test fee to the commission until May 1, 2002, there would be no loss in revenues to these inspection stations because under current requirements inspection stations also begin collecting an increased emissions test fee beginning on May 1, 2002.

The commission anticipates that many of the 2,300 inspection stations in the DFW, HGA, and ELP areas are small or micro-businesses that will be required to upgrade their current testing equipment or purchase new analyzers to continue participating in the state's I/M program. It is anticipated that the economic decision to upgrade or purchase the required equipment will include the economics of labor costs, potential alternative use of labor's time, the equipment capital costs, and volume of anticipated inspections, current equipment, and other anticipated costs associated with emission testing. It is anticipated that some small or micro-business inspection stations that must upgrade their equipment or purchase new equipment in order to comply with the proposed emission testing requirements in the proposed amendments will find it uneconomical to do so for various reasons and will be unable to continue performing emissions inspections. It is anticipated that this business decision will be made by each inspection station.

New analyzer equipment required to conduct ASM-2 (with integrated OBD) vehicle emission testing in the DFW and HGA areas will cost approximately \$40,000. The cost to upgrade currently owned analyzers to conduct these tests costs approximately \$25,000. New analyzer equipment required to conduct TSI (with integrated OBD) vehicle emission testing in El Paso County will cost approximately \$20,000. The cost to upgrade currently owned analyzers to conduct these tests will cost approximately \$4,000.

The proposed amendments would add an exception for testing stations in the DFW and HGA nonattainment areas that qualify as low volume emissions inspection stations. These stations could be authorized by the DPS to conduct only OBD tests if the stations conduct 1,200 or less OBD tests annually. The OBD test equipment costs approximately \$8,000.

The proposed amendments would implement an early participation incentive program designed to encourage early purchases of ASM-2 equipment. The incentive to emissions inspection station owners or operators would be a financial assurance offered by the state if the program were terminated early. The incentive would be available to the first 1,000 eligible DPS certified stations operating in affected counties that enter into a three-year contract for the purchase and installation of ASM-2 equipment by December 31, 2001. The proposal provides that if ASM-2 testing were terminated during the first two years, all qualified stations would receive a payment of \$675 per month for the remainder of the three years. If ASM-2 testing were terminated during the third year of the contract, those qualified stations that have conducted less than 5,000 emissions inspections since the program start date would receive a payment of \$675 per month for the remainder of the third year.

For affected program areas that begin ASM-2 testing in May 2003 (Brazoria, Fort Bend, Galveston, Montgomery, Ellis, Johnson, Kaufman, Parker, and Rockwall Counties), the same incentive would be offered beginning with the program start date for those counties. The incentive would be available to the first 200 eligible inspection station owners or operators.

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

The following is an analysis of the potential costs per employee for small or micro-businesses affected by the proposed amendments. Small and micro-businesses are defined as businesses having fewer than 100 or 20 employees, respectively. A small business that decides to purchase a new ASM-2 analyzer would incur costs up to approximately \$40,000 per analyzer or \$400 per employee. A micro-business that decides to purchase a new ASM-2 analyzer would incur costs up to approximately \$40,000 per analyzer or \$2,000 per employee. The overall costs to small or micro-businesses to implement the provisions of this bill will vary depending on how many analyzers are purchased or upgraded, and how many vehicles owned and operated by a small or micro-business are affected by the potential \$3.00 emission testing fee increase in El Paso.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking action is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in that statute. “Major environmental rule” means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the

environment, or the public health and safety of the state or a sector of the state. The proposed amendments to Chapter 114 are intended to protect the environment or reduce risks to human health from environmental exposure to ozone. However, the emissions inspection stations in and around nonattainment areas would not normally be considered a sector of the economy. In addition, the commission set the portion of the fees to be retained by the inspection station to ensure that additional costs of equipment can be recovered. Additionally, the commission has proposed an early participation incentive program to provide additional assurance that the cost of ASM-2 equipment can be recovered through the fees. Therefore, the proposed rules do not affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments are intended to revise the vehicle emissions testing program as part of the control strategy to reduce NO_x emissions necessary for the ozone nonattainment areas of the state to be able to demonstrate attainment with the ozone NAAQS.

As defined in Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability requirements of a “major environmental rule.”

Specifically, the emissions testing program revised by this proposal was developed in order to meet the ozone NAAQS set by the EPA under 42 United States Code (USC), §7409, and therefore meets a

federal requirement. The revisions are meant to ensure a successful program. This rulemaking does not exceed an express requirement of state law. This rulemaking is intended to implement provisions of HB 2134, 77th Legislature, 2001. The rulemaking does not exceed a requirement of a delegation agreement. The rulemaking was not developed solely under the general powers of the agency, but was specifically developed to meet the NAAQS established under federal law and authorized under Texas Clean Air Act (TCAA), §§382.011, 382.012, 382.017, 382.019, 382.039, and 382.201 - 382.216.

The commission invites public comment on the draft regulatory impact assessment.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for these rules in accordance with Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rulemaking is to implement a revised I/M program in the ozone nonattainment areas of the state as part of the strategy to reduce emissions of ozone precursors necessary for the area to be able to demonstrate attainment with the ozone NAAQS.

Promulgation and enforcement of the rules will not burden private, real property because this rulemaking action does not require the installation of permanent equipment. Although the rule revisions do not directly prevent a nuisance or prevent an immediate threat to life or property, they do prevent a real and substantial threat to public health and safety and partially fulfill a federal mandate under 42 USC §7410. Specifically, the emissions limitations and control requirements within this proposal were developed in order to meet the ozone NAAQS set by the EPA under 42 USC §7409. States are

primarily responsible for ensuring attainment and maintenance of the NAAQS once the EPA has established them. Under 42 USC §7410 and related provisions, states must submit, for approval by the EPA, SIPs that provide for the attainment and maintenance of NAAQS through control programs directed to sources of the pollutants involved. Therefore, the purpose of the rulemaking action is to implement a revised I/M program which is necessary for the ozone nonattainment areas to meet the air quality standards established under federal law as NAAQS. Consequently, the exemption which applies to these rules is that of an action reasonably taken to fulfill an obligation mandated by federal law. Therefore, this rulemaking action will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that the proposed rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et seq.), and the commission rules in 30 TAC Chapter 281, Subchapter B, Consistency with the CMP. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed the proposed rulemaking for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). The CMP policy applicable to this rulemaking is

the policy (31 TAC §501.14(q)) that commission rules comply with federal regulations in 40 Code of Federal Regulations to protect and enhance air quality in the coastal area (31 TAC §501.14(q)). This rulemaking does not authorize any new air contaminants and is intended to revise the vehicle emissions testing program as part of the control strategy to reduce NO_x emissions necessary for the ozone nonattainment areas of the state to be able to demonstrate attainment with the ozone NAAQS. Therefore, this rulemaking is consistent with the applicable policy and goal.

The commission seeks public comment on the consistency of the proposed rulemaking with applicable CMP goals and policies.

ANNOUNCEMENT OF HEARING

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

The hearings are structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearings; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearings, and answer questions before and after the hearings.

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

SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087; or by fax at (512) 239-4808. All comments must be received by 5:00 p.m. on September 17, 2001, although written comments submitted at the September 17, 2001 hearings will be accepted. All comments should reference Rule Log No. 2001-035-114-AI. For further information, please contact Jill Burditt, Policy and Regulations Division, at (512) 239-0560.

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under Texas Health and Safety Code, TCAA, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also proposed under TCAA, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.019, concerning Methods Used to Control and Reduce Emissions from Land Vehicles, which authorizes the commission to adopt rules to control and reduce emissions from engines used to propel

land vehicles; §382.039, concerning Attainment Program, which authorizes the commission to develop and implement transportation programs and other measures necessary to demonstrate attainment and protect the public from exposure to hazardous air contaminants from motor vehicles; and TCAA, Subchapter G, concerning Vehicle Emissions (§§382.201 - 382.216 as added by HB 2134, Section 1, 77th Legislature, 2001).

The proposed amendment implements TCAA, §§382.002, 382.011, 382.012, 382.019, 382.039, and Subchapter G.

SUBCHAPTER A: DEFINITIONS

§114.2

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

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

(1) - (2) (No change.)

(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) [(3)] 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) [(4)] 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) [(5)] 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) [(6)] Out-of-cycle test - Required emissions test not associated with vehicle safety inspection testing cycle.

(8) [(7)] 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) [(8)] Program area - County or counties in which the Texas Department of Public Safety, in coordination with the commission, administers the vehicle emissions inspection and maintenance program contained in the revised Texas Inspection and Maintenance (I/M) State Implementation Plan. These program areas include:

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

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

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

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

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

(11) [(10)] 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) [(11)] 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) [(12)] Uncommon part - A part that takes more than 30 days for expected delivery and installation, where a motorist can prove that a reasonable attempt made to locate necessary emission control parts by retail or wholesale part suppliers will exceed the remaining time prior to expiration of the vehicle safety inspection certificate or the 30-day period following an out-of-cycle inspection.

SUBCHAPTER C: VEHICLE INSPECTION AND MAINTENANCE

§114.52

STATUTORY AUTHORITY

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

The proposed repeal implements TCAA, §§382.002, 382.011, 382.012, 382.019, 382.039, and Subchapter G.

§114.52. Waivers and Extensions for Inspection Requirements.

SUBCHAPTER C: VEHICLE INSPECTION AND MAINTENANCE

§§114.50 - 114.53

STATUTORY AUTHORITY

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

The proposed amendments and new section implement TCAA, §§382.002, 382.011, 382.012, 382.019, 382.039, and Subchapter G.

§114.50. Vehicle Emissions Inspection Requirements.

(a) Applicability. The requirements of this section and those contained in the revised Texas Inspection and Maintenance (I/M) State Implementation Plan (SIP) shall be applied to all gasoline-powered motor vehicles 2-24 years old and subject to an annual emissions inspection, beginning with the first safety inspection. Currently, military tactical vehicles, motorcycles, diesel-powered vehicles, dual-fueled vehicles which cannot operate using gasoline, and antique vehicles registered with the Texas Department of Transportation are excluded from the program. Safety inspection facilities and inspectors certified by the Texas Department of Public Safety (DPS) shall inspect all subject vehicles, in the following program areas in accordance with the following schedule.

(1) (No change.)

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

(A) Beginning May 1, 2002, all 1996 and newer model year vehicles registered and primarily operated in Collin, Dallas, Denton, and Tarrant Counties equipped with on-board diagnostic (OBD) systems shall be tested using EPA-approved OBD test procedures. [If OBD data cannot be collected from the vehicle, an EPA-approved tail-pipe emissions test will be used.]

(B) (No change.)

(C) All vehicle emissions inspection stations in affected program areas shall offer both the ASM-2 test and the OBD test to the public, 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. [If OBD data cannot be collected from the vehicle, an EPA approved tail-pipe emissions test will be used.]

(B) (No change.)

(C) All vehicle emissions inspection stations in affected program areas shall offer both the ASM-2 test and the OBD test to the public, 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. [If OBD data cannot be collected from the vehicle, an EPA approved tail-pipe emissions test will be used.]

(B) (No change.)

(C) All vehicle emissions inspection stations in affected program areas shall offer both the ASM-2 test and the OBD test to the public, 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) [(C)] 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. [If OBD data cannot be collected from the vehicle, an EPA approved tail-pipe emissions test will be used.]

(E) [(D)] Beginning May 1, 2003, all pre-1996 and newer model year vehicles registered and primarily operated in Brazoria, Fort Bend, Galveston, and Montgomery Counties shall be tested using the ASM-2 test procedures, or a vehicle emissions test that meets SIP emissions reduction requirements and is approved by the EPA.

(F) [(E)] Beginning May 1, 2004, all 1996 and newer model year vehicles equipped with OBD systems and registered and primarily operated in Chambers, Liberty, and Waller Counties shall be tested using EPA-approved OBD test procedures. [If OBD data cannot be collected from the vehicle, an EPA-approved tail-pipe emissions test will be used.]

(G) [(F)] Beginning May 1, 2004, all pre-1996 model year vehicles registered and primarily operated in Chambers, Liberty, and Waller Counties shall be tested using an ASM-2 test, or a vehicle emissions test that meets SIP emissions reduction requirements and is approved by the EPA.

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

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

(A) Beginning May 1, 2002, all 1996 and newer model year vehicles equipped with OBD systems shall be tested using EPA-approved OBD test procedures. [If OBD data cannot be collected from the vehicle, an EPA-approved tail-pipe emissions test will be used.]

(B) (No change.)

(C) All vehicle emissions inspection stations in the El Paso program area shall offer both the TSI test and OBD test to the public.

(b) Control requirements.

(1) - (4) (No change.)

(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[, a minimum expenditure waiver, or a parts availability time extension]. 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) - (B) (No change.)

(7) All vehicles registered in a county without an I/M program, then resold (change of ownership) into a program area are not eligible for title receipt or registration 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 requirement of this paragraph.

(8) [(7)] 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 [§114.52 of this title] (relating to Vehicle Emissions [Waivers and Extensions for] 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) (No change.)

§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 Texas Natural Resource Conservation Commission (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 [Preconditioned Two Speed Idle] Vehicle Exhaust Gas Analyzer Systems for Use in the Texas Vehicle Emissions Testing Program," dated June 15, 2001 [November 1, 2000] or in "Specifications for On-Board Diagnostics II [Acceleration Simulation Mode (ASM-2) Vehicle Exhaust Gas Analyzer Systems] for use in the Texas Vehicle Emissions Testing Program," dated June 15, 2001 [November 1, 2000]. 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) - (4) (No change.)

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

(c) - (e) (No change.)

§114.52. Early Participation Incentive Program.

(a) Purpose. The early participation incentive program is to ensure that an adequate number of emissions inspection stations are open to the public on the program start date.

(b) Eligibility. In order to be eligible to receive the incentive described in subsection (d) 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 between October 25, 2001 and December 31, 2001 by submitting the information described in subsection (e) of this section.

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

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

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

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

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

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

(d) Enrollment and documentation requirements. Emissions inspection station owners or operators who opt to participate in the incentive program described in this section must apply using a form designated by the executive director. The application must be received in complete form by the executive director by December 31, 2001. 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 and installation of each piece of ASM-2 equipment by the program start date.

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

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

(g) Incentive payment plan. Eligible emissions inspection station owners or operators who are accepted into the program and who maintain their eligibility will receive:

(1) if the ASM-2 testing requirement is terminated by state rule or statute during the first two years following the program start date, a payment of \$675 per month for the remainder of the three-year period following the program start date; or

(2) if the ASM-2 testing requirement is terminated by state rule or statute during the third year following the program start date and the participating emissions inspection station has conducted fewer than 5,000 emissions tests at program termination, a payment of \$675 per month for the remainder of the third year following the program start date.

§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) (No change.)

(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)(5)(A), (B), or (C) [§114.50(a)(5)(A) or (B)] of this title (relating to Vehicle Emissions Inspection Requirements) shall collect a fee of \$14 and shall remit \$2.50 to the DPS. If the El Paso County Commissioners Court adopts a resolution that is approved by the commission to participate in the “Low-Income Repair Assistance Program (LIRAP),” the emissions inspection station shall collect a fee of \$17 and shall remit to DPS \$5.50 beginning upon the date specified by the commission upon approval of the resolution.

(3) In the Dallas/Fort Worth (DFW) program area beginning May 1, 2002, any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(2)(A) or (B), and in the extended DFW (EDFW) program area beginning May 1, 2003, any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(3)(A) or (B) of this title shall collect a fee of \$22.50 and shall remit to the DPS \$2.50 for each acceleration simulation mode (ASM-2) test and \$8.50 for each on-board diagnostics (OBD) test.

(4) In the Houston/Galveston program area beginning May 1, 2002, any emissions inspection station in Harris County required to conduct an emissions test in accordance with §114.50(a)(4)(A) or (B); beginning May 1, 2003, any emissions inspection station in Brazoria, Fort Bend, Galveston, and Montgomery Counties required to conduct an emissions test in accordance with §114.50(a)(4)(C) or (D); and beginning May 1, 2004, any emissions inspection station in Chambers, Liberty, and Waller Counties required to conduct an emissions test in accordance with §114.50(a)(4)(E) or (F) shall collect a fee of \$22.50 and shall remit to the DPS \$2.50 for each ASM-2 test and \$8.50 for each OBD test.

(b) - (c) (No change.)

