

The Texas Commission on Environmental Quality (commission) adopts an amendment to §114.50, Vehicle Inspection and Maintenance, and corresponding revisions to the Texas Inspection and Maintenance State Implementation Plan (Texas I/M SIP). The amendment is being adopted in Subchapter C, Vehicle Inspection and Maintenance and Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program; Division 1, Vehicle Inspection and Maintenance. The amendment and associated Texas I/M SIP will be submitted to the United States Environmental Protection Agency (EPA). The amendment and SIP revision are being adopted to revise the El Paso I/M program to make on-board diagnostic (OBD) testing a contingency measure of the El Paso ozone SIP in support of the maintenance of national ambient air quality standards (NAAQS). Section 114.50 is adopted *with change* to the proposed text as published in the September 27, 2002 issue of the *Texas Register* (27 TexReg 9101).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

The federal I/M regulations for ozone nonattainment areas ranked as serious, require that OBD testing be implemented beginning January 1, 2002. Those regulations also provide an option for an extension, up to 12 months, if a state can show good cause. In a prior I/M rulemaking effective November 20, 2001, the commission submitted a request for a one-year extension for 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 rule 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 any viable options and to take into consideration any changes in El Paso's attainment status.

The current rule requires El Paso to continue two-speed idle (TSI) testing through December 31, 2002. The current rule also requires, beginning January 1, 2003, that all 1996 and newer model year vehicles equipped with OBD systems be tested using EPA-approved OBD test procedures and all pre-1996 model year vehicles be tested using TSI test procedures. In addition, the current rule requires all inspection stations to offer both TSI and OBD tests beginning January 1, 2003.

Based on ambient air monitoring data that shows that El Paso has experienced six years with no violations of the ozone standard, the commission is adopting amendments to the I/M rule to exclude the El Paso program area from OBD testing requirements. The six-year period with no ozone violations has been achieved through the implementation of a volatile organic compound (VOC) control strategy which includes the TSI vehicle emissions testing program for all 2 - 24 year old gasoline-powered vehicles. Because El Paso, through monitoring, has demonstrated attainment prior to the EPA January 2002 deadline to commence OBD testing as part of the I/M program, and because OBD testing has not already been implemented, the commission concludes that the OBD testing program is not necessary for the El Paso area to maintain attainment of the ozone standard. Therefore, the commission is removing the current requirement in the I/M rule for OBD testing to begin in the El Paso program area on January 1, 2003. The OBD requirement is being converted to a contingency measure in the maintenance plan being developed for the area. This plan will be submitted along with the request for redesignation to attainment for ozone.

El Paso is also designated nonattainment for carbon monoxide (CO), but ambient air monitoring data shows that El Paso has experienced six years with no violations of the CO standard. The six-year

period with no CO violations has been achieved through the implementation of a CO control strategy which includes the TSI vehicle emissions testing program for all 2 - 24 year old gasoline-powered vehicles. Because El Paso, through monitoring, has demonstrated attainment prior to the EPA January 2002 deadline to commence OBD testing as part of the I/M program, and because OBD testing has not already been implemented, the commission also concludes that the OBD testing program is not necessary for the El Paso area to maintain attainment of the CO standard.

In the event that the commission determines that implementation of the OBD program is necessary to maintain attainment of a NAAQS, for example if the El Paso area violates the ozone standard, either before the submittal of the redesignation request and the maintenance plan for El Paso or after redesignation takes place, the commission will publish notification in the *Texas Register* of its determination that the contingency measure will be implemented. The OBD testing will be required to begin 12 months after the notice is published in the *Texas Register*.

The amendments adopted in this rulemaking include the continuation of TSI testing in the El Paso program area; the removal of the requirements for OBD testing; the addition of a contingency measure that the El Paso program area will implement should the commission publish notice in the *Texas Register*; and the deletion of the requirement that all emissions inspection stations offer both TSI and OBD tests until the contingency measure is triggered. In addition, the rule amendment includes a few editorial corrections to conform to *Texas Register* formatting and style requirements.

SECTION DISCUSSION

Section 114.50(a) is amended by adding a reference to the location of the I/M program area definition.

Section 114.50(a)(1) is amended by deleting the requirement that El Paso continue TSI testing through December 31, 2002 because TSI testing is being continued past the date in the El Paso program area.

Section 114.50(a)(5) is amended by deleting subparagraphs (A), (B), and (C), which pertain to the initiation of OBD testing in the El Paso program area on January 1, 2003, and adding new subparagraphs (A) and (B). New subparagraph (A) will require all vehicles in the El Paso program area to be tested using the TSI test. New subparagraph (B) will be the OBD contingency measure for the El Paso program area that would become effective 12 months after the commission publishes notice in the *Texas Register* of its determination that this contingency measure is necessary in order to maintain attainment of the ozone NAAQS. The contingency measure, if triggered, would require that: all 1996 and newer model year vehicles equipped with OBD systems be tested using EPA-approved OBD test procedures; all pre-1996 model year vehicles be tested using TSI test procedures; and all vehicle emissions inspection stations in the El Paso program area offer both TSI and OBD testing.

The commission adopts an editorial change to §114.50(b)(1)(B) to replace the term “inspection and maintenance” with the acronym “I/M” because the acronym has been used previously in the section.

The commission adopts an editorial change to §114.50(b)(2) to replace Federal Clean Air Act (FCAA) with the acronym “FCAA” because it is defined in 30 TAC Chapter 3, and to clarify that the FCAA is codified in 42 United States Code (USC), §§7401 *et seq.*, by adding §§7401 to the citation. In addition, the commission adopts an editorial change to §114.50(b)(7) to add the correct citation to the reference to the “Texas Motor Vehicle Commission Code.” The correct citation should be “Texas

Motor Vehicle Commission Code, Article 4413(36), §1.03.” However, the 77th Legislature, 2001, repealed this code and moved the article into the Texas Occupations Code, §2301.002. These changes will be effective June 1, 2003. Finally, the commission adopts an editorial change to §114.50(d)(4) to delete the parentheses around the phrase “(as designated by DPS)” because the phrase is already set off by commas.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action 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 underlying I/M program is intended to protect the environment or reduce risks to human health from environmental exposure to ozone and CO. This revision to the program is intended to limit the impact of the program on the inspection stations and the public to the extent possible, but itself is not intended to protect the environment nor reduce risks to human health from environmental exposure. The adopted amendment is intended to change the OBD testing portion of the vehicle emission testing program in El Paso County to a contingency measure as part of the control strategy to maintain the ozone and CO NAAQS in El Paso. While the OBD portion of the I/M program is generally mandatory for nonattainment counties, it may be a contingency measure for counties which have achieved attainment of the NAAQS. This change

would delay or eliminate the need for inspection stations to invest in OBD testing equipment and therefore should provide a positive financial benefit to the regulated community. Additionally, the environment should not be negatively impacted because the contingency measure will be in place to ensure that the El Paso area maintains attainment of the NAAQS. Therefore, the adopted rule does 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. As defined in Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability requirements. Specifically, the emission testing program underlying this rulemaking action was developed in order to meet the NAAQS for ozone and CO set by the EPA under 42 USC, §7409, and therefore meets a federal requirement. States are primarily responsible for ensuring attainment and maintenance of NAAQS once EPA has established those standards. Under 42 USC, §7410 and related provisions, states must submit, for EPA approval, SIPs that provide for the attainment and maintenance of NAAQS through control programs directed to sources of the pollutants involved. This rulemaking action is not an express requirement of state law, but was developed specifically in order to maintain the air quality standards established under federal law as NAAQS. This rulemaking action is intended to help the El Paso nonattainment area maintain compliance with the NAAQS by assuring a contingency measure without requiring more financial investment than

necessary. The amendment does not exceed a standard set by federal law, exceed an express requirement of state law unless specifically required by federal law, nor exceed a requirement of a delegation agreement. The amendment was not developed solely under the general powers of the agency, but was specifically developed under Texas Health and Safety Code (THSC), §§382.011, 382.012, 382.017, 382.019, 382.037, 382.039, and Subchapter G, §§382.201 - 382.216 to maintain the air quality standards established under federal law as NAAQS. The commission invited public comment on the draft regulatory impact analysis determination and received comments from EPA, which are addressed in the RESPONSE TO COMMENTS portion of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for this rule in accordance with Texas Government Code, §2007.043. The specific purpose of the rulemaking is to implement a revised I/M program in the El Paso nonattainment area as part of the strategy to maintain attainment of the NAAQS. Promulgation and enforcement of this rule will not burden private, real property because this rulemaking action does not require the installation of permanent equipment. This rule amendment should temporarily or permanently reduce the amount of emission testing equipment required at a testing station. Although the rule amendment does not directly prevent a nuisance or prevent an immediate threat to life or property, the underlying emission testing program does prevent a real and substantial threat to public health and safety and partially fulfill a federal mandate under 42 USC, §7410. Specifically, the emission limitations and control requirements underlying this rulemaking action were developed in order to maintain the 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 this rulemaking action is to implement a revised I/M program which is necessary for the El Paso nonattainment area to maintain the air quality standards established under federal law as NAAQS by assuring a contingency measure without requiring more financial investment than necessary. Consequently, the exemption which applies to this rule is that of an action reasonably taken to fulfill an obligation mandated by federal law. Therefore, this revision will not constitute a takings under Texas Government Code, Chapter 2007. EPA provided comments regarding this section which are addressed in the RESPONSE TO COMMENTS portion of this preamble.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

This adopted 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's rules in 30 TAC Chapter 281, Subchapter B (Consistency with the Texas Coastal Management Program). 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 this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal in 31 TAC §501.12(l) to protect, preserve, and enhance the diversity, quality, quantity, functions, and

values of coastal natural resource areas. The CMP policy applicable to this rulemaking action is the policy in 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. This rulemaking adoption 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 making the OBD testing requirements a contingency measure. Further, no new air contaminants will be authorized by the rule revisions. Therefore, in compliance with 31 TAC §505.22(e), this rulemaking is consistent with CMP goals and policies.

The commission solicited public comment on the consistency of the proposed rulemaking with applicable CMP goals and policies, but received no comments specifically regarding the CMP.

PUBLIC COMMENT

The commission held public hearings on this proposal on October 16, 2002, at 2:00 p.m. and 7:00 p.m., at the commission's regional office in El Paso. The following persons submitted written or oral comment: Environmental Defense; EPA; the Honorable Norma Chavez, State Representative from El Paso, District 76 (Representative Chavez); and three individuals representing AV Auto, RC's Automotive, and S&M Muffler.

RESPONSE TO COMMENTS

The EPA, Representative Chavez, and three individuals generally supported the proposal.

Environmental Defense expressed strong opposition to the proposal in their written comments, and

endorsed their written comments in their oral statement. The EPA and Environmental Defense expressed concerns and/or suggested changes to the proposal.

Representative Chavez and three individuals representing inspection stations gave oral testimony supporting the proposed rule change.

The commission appreciates the support for the vehicle emissions testing program.

Environmental Defense expressed opposition to the proposed amendments exempting El Paso from OBD testing, and stated that EPA has found that OBD testing produces more emissions reductions than the TSI test, and that the benefits of OBD are equivalent to the more stringent enhanced I/M (IM-240) test. Environmental Defense also stated that while typical I/M programs, including the TSI testing in El Paso, only measure a vehicle's performance during the test, OBD measures emissions performance under all driving conditions. This allows OBD to catch many malfunctioning vehicles missed by the TSI test. Environmental Defense commented that the OBD check is quicker than the traditional tailpipe tests, more accurately pinpoints the failure thus potentially lowering repair costs by targeting the repair, alerts motorists to problems before additional damage to other emissions components occurs, and is more protective of the environment.

The commission agrees there are many added benefits of OBD testing. However, the current control strategies in El Paso, which include TSI testing have been sufficient for the area to monitor attainment of the ozone and CO standards. The commission recognizes that

implementing OBD at this time would place an unnecessary burden on inspection station owners who would be required to purchase new equipment costing approximately \$8,000, and on vehicle owners who might pay higher inspection fees in the future to offset the purchase of new equipment by those inspection station owners. Should El Paso violate either the ozone or CO standard in the future, then El Paso County could be required to implement OBD testing as required by the commission's rules and EPA. Therefore, the commission did not revise the rule in response to this comment.

Environmental Defense expressed concern that numerous one-hour exceedances in El Paso over the past three years argue against the state's confidence that an ozone standard violation is unlikely.

Environmental Defense stated that while El Paso has not had more than three exceedances of the one-hour standard over the past three years, it is on the verge of violating the standard. Currently, the Chamizal monitor (C41/C126) has two exceedances this year and one exceedance in 2001. Any additional exceedance at the Chamizal monitor this year or next year will amount to a violation of the one-hour standard, forestalling any chance of redesignation. The University of Texas at El Paso (UTEP) monitor (C12/C125/C151) has had one exceedance in each of the past three years. Any additional exceedance this year at the UTEP monitor will amount to a violation of the one-hour standard. Environmental Defense further commented that additional reductions from OBD checks in El Paso will provide a margin of safety that the region currently lacks to ensure the achievement and maintenance of the one-hour standard.

The commission agrees with the commenter in that a fourth exceedance at any monitor during a three-year period will be a violation of the one-hour standard and forestall a chance at redesignation. However, the monitoring data also shows that the current emission reduction strategies implemented in El Paso County are working to bring the area into attainment of the one-hour ozone standard and the CO standard. TSI testing will continue to be a requirement in any maintenance plan developed for El Paso County. If a violation occurs, El Paso County could be required to implement OBD testing for 1996 and newer model year vehicles as required by the commission's rules and EPA. Because the area is in the process of applying for redesignation to attainment status, the commission recognizes that implementing OBD at this time would place an unnecessary burden on inspection station owners who would be required to purchase new equipment costing approximately \$8,000, and on vehicle owners who might pay higher inspection fees in the future to offset the purchase of new equipment by those inspection station owners. The commission did not revise the rule in response to this comment.

Environmental Defense stated that the integration of OBD checks into the El Paso I/M program is not a matter of discretion, but a mandatory requirement of the FCAA and its implementing regulations. According to the FCAA, §182(c)(3) {42 USC, §7511a(c)(3)}, serious nonattainment areas are required to implement enhanced I/M programs. According to 42 USC, §§7511a(c)(3)(C), one of the program parameters for an enhanced I/M program is “. . . inspection of emission control diagnostic systems and the maintenance or repair of malfunctions or system deterioration identification by or affecting such diagnostic systems.” Environmental Defense further stated that the proposed rule, to defer OBD implementation past the January 1, 2003 deadline, is contrary to EPA's regulations and thus unlawful.

The commission disagrees that the OBD deferment is unlawful. El Paso has experienced six years with no monitored violations of the ozone standard. The six-year period has been achieved through the implementation of a VOC control strategy which includes the TSI vehicle emissions testing program for all 2 - 24 year old gasoline-powered vehicles. Because El Paso, through monitoring, has demonstrated attainment prior to the January 2002 deadline to commence OBD testing as part of the I/M program, and because OBD testing has not already been implemented, the commission determined that the OBD testing program is not necessary for the El Paso area to maintain attainment of the ozone standard. This determination is in accordance with the EPA OBD-I/M SIP Policy Guidance document, dated August 21, 2001. Therefore, the commission is removing the current requirement in the I/M rule for OBD testing to begin in the El Paso program area. Because TSI testing has been the I/M control strategy for the area, the commission will continue with this test methodology. The OBD requirement is being converted to a contingency measure in the maintenance plan under development for the area. The commission did not revise the rule in response to this comment.

Environmental Defense stated the commission should not have made this proposal without the input of the Paso del Norte Air Quality Task Force and the Joint Advisory Committee for Air Quality Improvement. These institutions were established with the express purpose of integrating local expertise and priorities into the state and federal government's decision making. Environmental Defense urged the commission to solicit these institutions' views and recommendations about the proposed rule before reaching a final decision.

The commission disagrees with this comment. The commission proposed this rule through the formal process that allows all interested parties, including the Paso del Norte Air Quality Task Force and the Joint Advisory Committee for Air Quality Improvement, to provide comment on all elements of the proposed rule. The formal comment period provides an opportunity for institution views and recommendations about the proposed rule to be presented and addressed by the commission before final adoption is considered. In addition to the required public hearings, stakeholder meetings were held with industry personnel, inspections station owners, and the general public to discuss changes to the I/M program. The commission notes that the Environmental Defense comments were also signed by a member of the Joint Advisory Committee. The commission did not revise the rule in response to this comment.

EPA stated that the OBD program outlined in the proposal is acceptable, but that it can only be approved by EPA when OBD is included by the state as a contingency measure in an approved redesignation request and maintenance plan. EPA further stated that timing and sequencing of events are critical to the approval of the El Paso OBD rule as proposed, and that for EPA to approve this rule revision, the redesignation request and maintenance plan must be approved at the same time or in advance of the OBD action.

The commission appreciates the EPA's support of this approach based upon discussions of the intent of EPA's guidance document which states, "If OBD-I/M testing has not been implemented and the area reaches attainment prior to the deadline for OBD-I/M testing start-up, the area may convert OBD-I/M testing to a contingency measure in its maintenance plan through a SIP

revision.” El Paso has not had a violation of the one-hour ozone standard since 1996. This clearly places the area in attainment of the one-hour ozone standard prior to the deadline of January 1, 2002 to implement OBD. While the area has not been redesignated by EPA to attainment, the monitoring data demonstrates that the area has achieved attainment and the agency expects to request redesignation and to submit the required maintenance plan. The commission understands that while EPA is supportive of not implementing the OBD requirements in the El Paso area based upon monitored data, the EPA will only be able to take federal action on the proposal in conjunction with a maintenance plan. Therefore, this revision fulfills the requirement as a contingency measure because it states that in the event that the commission determines that implementation of the OBD program is necessary to maintain attainment of the NAAQS, either before the submittal of the redesignation request and the maintenance plan for El Paso or after redesignation takes place, the commission will publish notification in the *Texas Register* of its determination that the contingency measure will be implemented. The OBD testing will be required to begin 12 months after the notice is published in the *Texas Register*. Therefore, the commission believes that the current SIP revision may be approved by EPA prior to approval of the El Paso redesignation request and maintenance plan.

EPA clarified that only the OBD portion of the El Paso I/M program could become a contingency measure of the SIP.

The commission agrees and is removing only the current OBD testing requirement from the I/M rule covering the El Paso program area, not the TSI requirement. The OBD testing requirement

will be converted to a contingency measure in the maintenance plan being developed for El Paso.

In the event that the commission determines that implementation of the OBD program is necessary to maintain attainment of the NAAQS, for example if the El Paso area violates the ozone standard, either before the submittal of the redesignation request and the maintenance plan for El Paso or after redesignation takes place, the commission will publish notification in the *Texas Register* of its determination that the contingency measure will be implemented. The OBD testing will be required to begin 12 months after the notice is published in the *Texas Register*. The commission did not revise the rule in response to this comment.

EPA recommended that the commission remove or revise certain language throughout the preamble, such as in the TAKINGS IMPACT ASSESSMENT section of the proposal which stated that this rule “. . . does prevent a real and substantial threat to public health and safety and partially fulfill a federal mandate under 42 USC, §7410.” EPA stated that while implementation of the existing vehicle I/M program will continue to benefit air quality and public health, this rule revision to move the OBD program to a contingency measure neither improves public health nor prevents a threat to public health and safety as stated in the proposal. EPA also recommended that the commission remove or revise the language in the REGULATORY IMPACT ANALYSIS DETERMINATION section of the proposal which stated that this rule is a requirement of the FCAA, because this rule revision is not a requirement of the FCAA. Finally, EPA recommended changing the language in the REGULATORY IMPACT ANALYSIS DETERMINATION section which stated that the purpose of the proposed rule amendment is to “. . . protect the environment or reduce risks to human health from environmental exposure to

ozone . . .,” because moving the OBD program to a contingency measure does not protect the environment or reduce risks to human health.

The commission understands the comment and will clarify the language in sections of the FINAL REGULATORY IMPACT ANALYSIS DETERMINATION and TAKINGS IMPACT ASSESSMENT sections of this preamble. The commission’s position is that the underlying program itself is required by federal law and will protect public health. As is often the case, the specific revisions to the program are not specifically required by state or federal law, but are necessary to ensure the successful operation of the underlying program. The commission believes that the revisions contained in this rulemaking will provide the needed environmental benefit without imposing additional financial burden on the inspection stations or the community. The commission is sensitive to the public and industry resistance to vehicle I/M programs in general and seeks to limit the impact of these programs whenever possible. This position helps to ensure that the program itself is accepted and achieves the critical reductions upon which the SIP relies.

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

DIVISION 1: VEHICLE INSPECTION AND MAINTENANCE

§114.50

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state air; §382.019, which provides the commission the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles; §382.037, which provides the commission the authority by rule to establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of the FCAA; §382.039, which provides the commission the authority 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 NAAQS and to protect the public from exposure to hazardous air contaminants from motor vehicles; and 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 the FCAA.

§114.50. Vehicle Emissions Inspection Requirements.

(a) Applicability. The requirements of this section and those contained in the revised Texas Inspection and Maintenance (I/M) State Implementation Plan (SIP) shall be applied to all gasoline-powered motor vehicles 2 - 24 years old and subject to an annual emissions inspection, beginning with the first safety inspection. Currently, military tactical vehicles, motorcycles, diesel-powered vehicles, dual-fueled vehicles which cannot operate using gasoline, and antique vehicles registered with the Texas Department of Transportation are excluded from the program. Safety inspection facilities and inspectors certified by the Texas Department of Public Safety (DPS) shall inspect all subject vehicles, in the following program areas, as defined in §114.2 of this title (relating to Inspection and Maintenance (I/M) Definitions), in accordance with the following schedule.

(1) All vehicles registered and primarily operated in Dallas, Tarrant, and Harris Counties shall be tested using a two-speed idle (TSI) test through April 30, 2002.

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

(A) Beginning May 1, 2002, all 1996 and newer model year vehicles registered and primarily operated in Collin, Dallas, Denton, and Tarrant Counties equipped with on-board diagnostic (OBD) systems shall be tested using EPA-approved OBD test procedures.

(B) Beginning May 1, 2002, all pre-1996 model year vehicles registered and primarily operated in Collin, Dallas, Denton, and Tarrant Counties shall be tested using an acceleration simulation mode (ASM-2) test, or a vehicle emissions test that meets SIP emissions reduction requirements and is approved by the EPA.

(C) All vehicle emissions inspection stations in affected program areas shall offer both the ASM-2 test and the OBD test, except low volume emissions inspection stations. If an owner or operator wishes to have his or her station classified as a low volume emissions inspection station, the station owner or operator must petition the DPS in accordance with the rules and procedures established by DPS.

(3) This paragraph applies to all vehicles registered and primarily operated in the extended DFW (EDFW) program area.

(A) Beginning May 1, 2003, all 1996 and newer model year vehicles registered and primarily operated in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties equipped with OBD systems shall be tested using EPA-approved OBD test procedures.

(B) Beginning May 1, 2003, all pre-1996 and older model year vehicles registered and primarily operated in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties shall be tested using an ASM-2 test, or a vehicle emissions test that meets SIP emissions reduction requirements and is approved by the EPA.

(C) All vehicle emissions inspection stations in affected program areas shall offer both the ASM-2 test and the OBD test, except low volume emissions inspection stations. If an owner or operator wishes to have his or her station classified as a low volume emissions inspection station, the station owner or operator must petition the DPS in accordance with the rules and procedures established by DPS.

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

(A) Beginning May 1, 2002, all 1996 and newer model year vehicles registered and primarily operated in Harris County equipped with OBD systems shall be tested using EPA-approved OBD test procedures.

(B) Beginning May 1, 2002, all pre-1996 model year vehicles registered and primarily operated in Harris County shall be tested using an ASM-2 test, or a vehicle emissions test that meets SIP emissions reduction requirements and is approved by the EPA.

(C) All vehicle emissions inspection stations in affected program areas shall offer both the ASM-2 test and the OBD test, except low volume emissions inspection stations. If an owner or operator wishes to have his or her station classified as a low volume emissions inspection station, the station owner or operator must petition the DPS in accordance with the rules and procedures established by DPS.

(D) Beginning May 1, 2003, all 1996 and newer model year vehicles equipped with OBD systems and registered and primarily operated in Brazoria, Fort Bend, Galveston, and Montgomery Counties shall be tested using EPA-approved OBD test procedures.

(E) Beginning May 1, 2003, all pre-1996 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) 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.

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

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

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

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

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

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

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

(b) Control requirements.

(1) No person or entity may operate, or allow the operation of, a motor vehicle registered in the DFW, EDFW, HGA, and El Paso program areas which does not comply with:

(A) all applicable air pollution emissions control related requirements included in the annual vehicle safety inspection requirements administered by DPS, as evidenced by a current valid inspection certificate affixed to the vehicle windshield; and

(B) the vehicle emissions I/M requirements contained in this subchapter.

(2) All federal government agencies shall require a motor vehicle operated by any federal government agency employee on any property or facility under the jurisdiction of the agency and located in a program area to comply with all vehicle emissions I/M requirements contained in the

revised Texas I/M SIP. Commanding officers or directors of federal facilities shall certify annually to the executive director, or appointed designee, that all subject vehicles have been tested and are in compliance with the FCAA (42 United States Code, §§7401 *et seq*). This requirement shall not apply to visiting agency, employee, or military personnel vehicles as long as such visits do not exceed 60 calendar days per year.

(3) Any motorist in the DFW, EDFW, HGA, or El Paso program areas who has received a notice from an emissions inspection station that there are recall items unresolved on their motor vehicle, should furnish proof of compliance with the recall notice prior to the next vehicle emissions inspection. The motorist may present a written statement from the dealership or leasing agency indicating that emissions repairs have been completed as proof of compliance.

(4) A motorist whose vehicle has failed an emissions test may request a challenge retest through DPS. If the retest is conducted within 15 days of the initial inspection, the retest is free.

(5) A motorist whose vehicle has failed an emissions test and has not requested a challenge retest or has failed a challenge retest must have emissions-related repairs performed and must submit a properly completed vehicle repair form (VRF) in order to receive a retest. In order to receive a waiver or time extension, the motorist must submit a VRF or applicable documentation as deemed necessary by DPS.

(6) A motorist whose vehicle is registered in the DFW, EDFW, HGA, or El Paso program areas, or in any county adjacent to a program area and has failed an on-road test administered by the DPS shall:

(A) submit the vehicle for an out-of-cycle vehicle emissions inspection within 30 days of written notice by the DPS; and

(B) satisfy all inspection, extension, or waiver requirements of the vehicle emissions I/M program contained in the revised Texas I/M SIP.

(7) A subject vehicle registered in a county without an I/M program which meets the applicability criteria of subsection (a) of this section and the ownership of which has changed through a retail sale as defined by Texas Motor Vehicle Commission Code, Article 4413(36), §1.03, (moved to Texas Occupations Code, §2301.002, effective June 1, 2003) is not eligible for title receipt or registration in a county with an I/M program unless proof is presented that the vehicle has passed an approved vehicle emissions inspection within 90 days before the title transfer. The evidence of proof required may be in the form of the vehicle inspection report (VIR) or another proof of the program compliance as authorized by DPS. All 1996 and newer model year vehicles with less than 50,000 miles are exempt from the test-on-resale requirements of this paragraph.

(8) State, governmental, and quasi-governmental agencies which fall outside the normal registration or inspection process shall comply with all vehicle emissions I/M requirements contained in the Texas I/M SIP for vehicles primarily operated in I/M program areas.

(c) Waivers and extensions. A motorist may apply to the DPS for a waiver or an extension as specified in 37 TAC §23.93 (relating to Vehicle Emissions Inspection Requirements), which defer the need for full compliance with vehicle emissions standards for a specified period of time after failing a vehicle emissions inspection.

(d) Prohibitions.

(1) No person may issue or allow the issuance of a VIR, as authorized by DPS, unless all applicable air pollution emissions control related requirements of the annual vehicle safety inspection and the vehicle emissions I/M requirements and procedures contained in the revised Texas I/M SIP are completely and properly performed in accordance with the rules and regulations adopted by DPS and the commission. Prior to taking any enforcement action regarding this provision, the commission shall consult with DPS.

(2) No person may allow or participate in the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen safety inspection certificates, VIRs, VRFs, vehicle emissions repair documentation, or other documents which may be used to circumvent the vehicle emissions I/M requirements and procedures contained in the revised Texas I/M SIP.

(3) No organization, business, person, or other entity may represent itself as an emissions inspector certified by the DPS, unless such certification has been issued under the certification requirements and procedures contained in Texas Transportation Code, §§548.401 - 548.404.

(4) No person may act as or offer to perform services as a Recognized Emissions Repair Technician of Texas, as designated by DPS, without first obtaining and maintaining DPS recognition.