

The Texas Commission on Environmental Quality (commission) proposes amendments to §§114.1, 114.2, 114.50, 114.52, and 114.53; and corresponding revisions to the Texas Inspection and Maintenance State Implementation Plan (SIP).

The amendments and revised SIP narrative will be submitted to the United States Environmental Protection Agency (EPA) as proposed revisions to the SIP.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The Houston/Galveston (HGA) ozone nonattainment area is classified as Severe-17 under the Federal Clean Air Act Amendments of 1990 (as codified in 42 United States Code (USC), §§7401 *et seq.*), and therefore, is required to attain the one-hour ozone standard of 0.12 parts per million (125 parts per billion) by November 15, 2007. The HGA area is defined as Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties, and has been working to develop a demonstration of attainment in accordance with 42 USC, §7410. The most relevant HGA SIP revisions to date are the December 2000 one-hour ozone standard attainment demonstration, the September 2001 follow-up revision, and the December 2002 nitrogen oxides (NO_x)/highly-reactive volatile organic compound (HRVOC) revision.

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

commission, and worked diligently to identify and quantify control strategy measures for the HGA attainment demonstration area.

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

On December 6, 2000, the commission adopted both the HGA Attainment Demonstration SIP and the associated amendments to Chapter 114 to assist with demonstrating attainment and maintenance of the one-hour ozone standard in the HGA area. The amendments to Chapter 114 included an air control strategy for NO_x reductions which requires emissions testing of motor vehicles that are registered and primarily operated in the HGA ozone nonattainment area. In addition, the commission provided flexibility for Chambers, Liberty, and Waller Counties, individually or collectively, to submit a resolution approved by the commission and EPA for alternative air control strategies other than an inspection and maintenance (I/M) program to meet or exceed the NO_x emission reductions that are anticipated from the I/M program. The counties individually submitted their resolutions in May 2002.

In a prior I/M rulemaking that was effective October 30, 2003, the commission delayed the implementation of the I/M program in Chambers, Liberty, and Waller Counties from May 1, 2004 to May 1, 2005 in order to have sufficient time for needed additional assessment of the alternative plans.

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

SECTION BY SECTION DISCUSSION

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

SUBCHAPTER A, DEFINITIONS

Section 114.1, Definitions

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

The proposed amendment to the definition of “First safety inspection certificate” would add “Texas” to correctly reference the Texas Department of Public Safety. The proposed amendment to the definition of “Gross vehicle weight rating (GVWR)” would delete the acronym GVWR because it is not used

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

Section 114.2, Inspection and Maintenance Definitions

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

The proposed amendment to the definition of “Acceleration simulation mode (ASM-2 test)” would remove the word “test” from the acronym. The proposed amendment to the definition of “Consumer Price Index” would lowercase the term in all places because it is not a proper noun. The definition of “Program areas” specifies the county or counties in which the Texas Department of Public Safety, in coordination with the commission, administers the vehicle emissions inspection and maintenance program contained in the Texas Inspection and Maintenance State Implementation Plan. The proposed amendment to the definition of “Program area” would delete Chambers, Liberty, and Waller Counties from the HGA program area.

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

Section 114.50, Vehicle Emissions Inspection Requirements

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

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

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

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

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

Section 114.52, Early Participation Incentive Program

Section 114.52 established the Early Participation Incentive Program (EPIP). This program encouraged owners and operators of emissions inspection stations in Chambers, Liberty, and Waller Counties, to participate in the early purchase of ASM-2 equipment to ensure an adequate number of emissions inspection stations are available by the program start date of May 1, 2005. The proposed amendment would repeal the implementation of the state’s EPIP program in Chambers, Liberty, and Waller Counties, and thus, eliminate the incentive for stations in these counties, by deleting §114.52(f). The

proposed amendment would also reletter subsection (g) to (f) and change the corresponding reference in §114.52(b) from subsection (g) to subsection (f).

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

Section 114.53, Inspection and Maintenance Fees

Section 114.53 currently establishes a fee schedule for the different counties. This fee must be paid to the inspection station at the time of the vehicle emissions inspection. Subsection (a)(4) explains that among other counties in the HGA program area, beginning May 1, 2005, in Chambers, Liberty, and Waller Counties any emissions inspection station conducting an ASM-2 or OBD emissions test shall collect a test fee not to exceed \$27. The proposed amendment to subsection (a)(4) would remove the fee requirement in Chambers, Liberty, and Waller Counties by deleting the clause “and beginning May 1, 2005, any emissions inspection station in chambers, Liberty, and Waller Counties required to conduct an emissions test in accordance with §114.50(a)(4)(E) and (F) of this title.”

The proposed editorial amendment to §114.53 would lowercase the words “Vehicle Repair Form” in subsection (a); delete the acronym “TSI”; and add the word “Texas” to the term “Department of Public Safety” in subsection (a)(1). The proposed editorial amendment in subsection (a)(2) would delete the phrase “(relating to Vehicle Emissions Inspection Requirements)” because it is unnecessary; delete the hyphen from the term “low-income”; and delete the acronym “LIRAP” because it is not used again in

the section. The proposed editorial amendment in subsection (a)(3) would delete the acronyms “DFW,” “EDFW,” “ASM-2,” and “OBD”; add the words “of this title” after the reference to §114.50(a)(2)(A) or (B); and spell out the acronym “DFW.” Finally, the proposed editorial amendment in subsection (a)(4) would add the word “and” after the first “of this title, and spell out the acronyms “ASM-2” and “OBD.”

SIP narrative changes

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

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Analyst, Strategic Planning and Grants Management Section, determined that for the first five-year period the proposed amendments are in effect, no significant fiscal implications are expected for the commission or other units of state and local government as a result of administration or enforcement of the proposed amendments. The commission determined that the amount of pollution coming from vehicles in Chambers, Liberty, and Waller Counties is not sufficient to warrant the implementation of an I/M vehicle emissions testing program in these counties.

This rulemaking action would remove the requirement for Chambers, Liberty, and Waller Counties to implement an I/M vehicle emissions testing program that was due to begin on May 1, 2005. Currently, vehicles in these counties are only required to pass an annual safety inspection. The I/M requirement would have added an emissions inspection for all gasoline-powered motor vehicles that are two to 24 years old.

The removal of the I/M program requirements in these three counties will likely result in cost savings for units of state and local government that operate vehicles that would have received an emissions inspection. Additionally, units of government in the affected counties that currently conduct their own safety inspections would have had to purchase vehicle emissions test analyzers in order to continue testing vehicles. For those units of government that rely on outside businesses to test their vehicles, the annual savings would be \$27 per vehicle. The cost for vehicle emissions testing analyzers range from \$8,000 for OBD-only analyzers, to \$40,000 for ASM-2 test analyzers. There are a total of approximately 84,700 vehicles in the affected counties that would have been subject to the vehicle emissions test, a small percentage of which are owned and operated by units of state or local government. There are 64 identified testing stations in the three counties, all of which would have had to purchase vehicle emissions test analyzers in order to continue performing vehicle inspections. The commission estimates that very few of these stations, if any, are owned and operated by units of state or local government.

Although the proposed amendments would decrease revenues collected, the commission does not anticipate that the loss of revenue will be significant. The commission would have received \$.50 for

each vehicle emissions test conducted in the three affected counties. Assuming 84,700 tests per year, the revenues to the commission would have been approximately \$14,000 in Fiscal Year 2005 (May - August 2005), and approximately \$42,000 for Fiscal Year 2006 and each year thereafter.

PUBLIC BENEFITS AND COSTS

Mr. Davis determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit from the enforcement of and compliance with the proposed amendments would be the deletion of the requirement for vehicles operating in the affected counties to undergo vehicle emissions tests. The commission determined that an I/M program in these counties would have had little effect on the overall ozone concentration in the HGA ozone nonattainment area. Vehicles in these counties will still have to undergo an annual safety check, which incorporates visual checks to ensure that vehicle emissions controls are not removed or tampered with.

The removal of the I/M program requirements in these three counties will likely result in cost savings for individuals and businesses that operate vehicles that would have received an emissions inspection. Additionally, businesses in the affected counties that currently conduct safety inspections would have had to purchase vehicle emissions test analyzers in order to continue testing vehicles. Individuals and businesses that would have had to have their vehicles undergo an emissions test would have had to pay an additional \$27 per vehicle per year. The cost for vehicle emissions testing analyzers range from \$8,000 for OBD only analyzers to \$40,000 for ASM-2 test analyzers.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

The commission anticipates no adverse fiscal implications as a result of implementation of the proposed amendments for small or micro-businesses. There are 64 identified testing stations in the three counties, all of which would have had to purchase vehicle emissions test analyzers in order to continue performing vehicle inspections. The majority of these businesses are probably small and micro-businesses. The removal of the I/M program requirements for vehicles operating in Chambers, Liberty, and Waller Counties would result in cost savings for small and micro-businesses as discussed in the PUBLIC BENEFITS AND COSTS section of this preamble. These businesses would be able to continue performing annual safety inspections without having to purchase vehicle test analyzers that would have been required to conduct vehicle emissions tests.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action does not meet the definition of a “major environmental rule” as defined in that statute. A “major environmental rule” is a rule the specific intent of which is to protect the environment or reduce risks to human health from

environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

While the I/M program taken as a whole is intended to protect the environment and reduce risks to human health from environmental exposure, the proposed amendments are intended to rescind the requirements for emissions testing during annual state inspections of motor vehicles registered in Chambers, Liberty, and Waller Counties. The most recent photochemical modeling for the HGA area indicates that the I/M program scheduled to begin in these three counties on May 1, 2005 will have little effect on ozone concentration in the HGA area, and that attainment of the one-hour ozone standard can be modeled without this control measure. Therefore, these proposed amendments to Chapter 114 are not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Additionally, rescinding the I/M program for Chambers, Liberty, and Waller Counties will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs.

Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of the four applicability requirements.

The amendments implement requirements of 42 USC. Under 42 USC, §7410, states are required to adopt a SIP which provides for “implementation, maintenance, and enforcement” of the primary national ambient air quality standard in each air quality control region of the state. While §7410, does not require specific programs, methods, or reductions in order to meet the standard, SIPs must include “enforceable emission limitations and other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter,” (meaning Chapter 85, Air Pollution Prevention and Control). It is true that 42 USC does require some specific measures for SIP purposes, such as the I/M program, but those programs are the exception, not the rule, in the SIP structure of 42 USC. The provisions of 42 USC recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the ozone standard. This flexibility allows states, affected industry, and the public to collaborate on the best methods for attaining the ozone standard for the specific regions in the state. Even though 42 USC allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of §7410. Thus, while specific measures are not generally required, the emission reductions are required. States are not free to ignore the requirements of §7410, and must develop programs to assure that the nonattainment areas of the state will be brought into attainment on schedule.

The requirement to provide a fiscal analysis of proposed regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th Legislature, 1997. The intent of SB 633 was to require agencies to conduct an regulatory impact analysis of extraordinary rules. These are identified in

the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded “based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill would not have significant fiscal implications for the agency due to its limited application.” The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted proposed rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law. As discussed earlier in this preamble, 42 USC does not require specific programs, methods, or reductions in order to meet the ozone standard; thus, states must develop programs for each nonattainment area to ensure that area will meet the attainment deadlines. Because of the ongoing need to address nonattainment issues, the commission routinely proposes and adopts SIP rules. The legislature is presumed to understand this federal scheme. If each rule proposed for inclusion in the SIP was considered to be a major environmental rule that exceeds federal law, then every SIP rule would require the full regulatory impact analysis contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board in its fiscal notes. Because the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the Legislative Budget Board, the commission believes that the intent of SB 633 was only to require the full regulatory impact analysis for rules that are extraordinary in nature. While the SIP rules will have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of 42 USC. For these reasons, rules adopted

for inclusion in the SIP fall under the exception in Texas Government Code, §2001.0225(a), because they are specifically required by federal law.

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

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code but left this provision substantially unamended. The commission presumes that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." *Central Power & Light Co. v. Sharp*, 919 S.W.2d 485, 489 (Tex. App.–Austin 1995), *writ denied with per curiam opinion respecting another issue*, 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.*, 798 S.W.2d 353, 357 (Tex. App.–Austin 1990, no writ). *Cf. Humble Oil & Refining Co. v. Calvert*, 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.*, 9 S.W.3d 884 (Tex. App.–Austin 2000); *Southwestern Life*

Ins. Co. v. Montemayor, 24 S.W.3d 581 (Tex. App.–Austin 2000, *pet. denied*); and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.*, 563 S.W.2d 916 (Tex. 1978).

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

TAKINGS IMPACT ASSESSMENT

The commission completed a takings impact assessment for the proposed rulemaking action under Texas Government Code, §2007.043. Texas Government Code, §2007.003(b)(4), provides that Chapter 2007 does not apply to this proposed rulemaking action, because it is reasonably taken to fulfill an obligation mandated by federal law. States are primarily responsible for ensuring attainment and maintenance of the national ambient air quality standards once the EPA has established them. Under 42 USC, §7410, and related provisions, states must submit for EPA approval, SIPs that provide for the attainment and maintenance of the ozone standard through control programs directed to sources of ozone. Therefore, one purpose of this rulemaking action is to meet the ozone standard established under federal law. Therefore, the proposed amendments are necessary components of and consistent with the ozone attainment demonstration SIP for the HGA area, required by 42 USC, §7410.

In addition, Texas Government Code, §2007.003(b)(13), states that Chapter 2007 does not apply to an action that: 1) is taken in response to a real and substantial threat to public health and safety; 2) is designed to significantly advance the health and safety purpose; and 3) does not impose a greater burden than is necessary to achieve the health and safety purpose. Although the proposed amendments 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 significantly advance the health and safety purpose. This action is taken in response to the HGA area exceeding the federal ozone standard, and that exceedance adversely affects public health, primarily through irritation of the lungs. While the I/M program taken as a whole is intended to protect the environment and reduce risks to human health from environmental exposure, the proposed amendments to rescind the requirements for emissions testing during annual state inspections of motor vehicles registered in Chambers, Liberty, and Waller Counties will not adversely impact the I/M program for the HGA area. The action significantly advances the health and safety purpose by reducing ozone levels in the HGA nonattainment area. Consequently, these proposed rules meet the exemption in §2007.003(b)(13). This rulemaking action therefore meets the requirements of Texas Government Code, §2007.003(b)(4) and (13). Additionally, the proposed amendments would be neither a statutory nor a constitutional taking because they do not impact private real property. Specifically, the proposed amendments do not affect private property in a manner which restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. For all these reasons, the proposed amendments do 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, concerning Consistency with the Texas Coastal Management Program. As required by 30 TAC §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the proposed amendments are consistent with the applicable CMP goal expressed in 31 TAC §501.12(1) of protecting and preserving the quality and values of coastal natural resource areas, and the policy in 31 TAC §501.14(q), which requires that the commission protect air quality in coastal areas. If adopted, the amendments will rescind the requirements for emissions testing during annual state inspections of motor vehicles registered in Chambers, Liberty, and Waller Counties. While the I/M program taken as a whole is intended to protect the environment and reduce risks to human health from environmental exposure, the proposed amendments to rescind the requirements for emissions testing during annual state inspections of motor vehicles registered in Chambers, Liberty, and Waller Counties will not adversely impact the I/M program for the HGA area. No new contaminants will be authorized by these proposed amendments. Interested persons may submit comments on the consistency of the proposed amendments with the CMP during the public comment period.

ANNOUNCEMENT OF HEARINGS

Public hearings for this proposed rulemaking have been scheduled for: August 2, 2004, 1:30 p.m. and 5:30 p.m., City of Houston, City Council Chambers, 2nd Floor, 901 Bagby, Houston; August 3, 2004, 10:30 a.m., John Gray Institute, 855 Florida Avenue, Beaumont; and August 5, 2004, 9:30 a.m., Texas Commission on Environmental Quality, 12100 North I-35, Building F, Room 2210, Austin. The hearings will be structured for the receipt of oral or written comments by interested persons.

Registration will begin 30 minutes prior to the hearings. Individuals may present oral statements when called upon in order of registration. A time limit may be established at the hearings to assure that enough time is allowed for every interested person to speak. There will be no open discussion during the hearings; however, commission staff members will be available to discuss the proposal 30 minutes before the hearings and will answer questions before and after the hearings.

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

SUBMITTAL OF COMMENTS

Written comments may be submitted to Patricia Durón, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087; faxed to (512) 239-4808; or emailed to siprules@tceq.state.tx.us. All comments should reference Rule Project Number 2004-035-114-AI. Comments must be received by 5:00 p.m. on

August 9, 2004. For further information, please contact Ray Schubert, Technical Analysis Division, at (512) 239-6615 or Alan Henderson, Policy and Regulations Division, at (512) 239-1510.

SUBCHAPTER A: DEFINITIONS

§114.1, §114.2

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code, §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which provide the commission with the general powers to carry out its duties and authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of Texas Health and Safety Code, Chapter 382 (also known as the Texas Clean Air Act). The amendments are also proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.019, which authorizes the commission to adopt rules to control and reduce emissions from engines used to propel land vehicles; and Texas Health and Safety Code, Subchapter G, §§382.201 - 382.216, which authorizes the commission by rule to establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of 42 USC, §§7401 *et seq.*

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

§114.1. Definitions.

Unless specifically defined in Texas Health and Safety Code, Chapter 382, also known as the Texas Clean Air Act (TCAA) [TCAA] or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, the following words and terms, when used in this chapter, [shall] have the following meanings, unless the context clearly indicates otherwise.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) the LEV standards applicable under 42 United States Code, [the Federal Clean Air Act as amended] Part C, Subchapter II, §§7581 et seq. [(U.S.C. 42 Section 7581 et seq.); or

(B) emission limits at least as stringent as the applicable LEV standards for the Federal Clean Fuel Fleet program under 40 Code of Federal Regulations §§88.104-94, 88.105-94, and

88.311-93, [40 CFR, Parts 88.104-94, 88.105-94, and 88.311-93] as published in the *Federal Register* on September 30, 1994 (59 FR 50042).

(12) **Mass transit authority** - A transportation or transit authority or department established under Chapter 141, 63rd Legislature, 1973₂ as defined in [the] Texas Transportation Code, Chapters 451- 453 (relating to Metropolitan Rapid Transit Authorities, Regional Transportation Authorities, and Municipal Transit Departments [Transportation Authorities]), that operates a mass transit system under any of those laws.

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

(14) **Reformulated gasoline** - Gasoline that has been certified as a reformulated gasoline under the federal certification regulations adopted in accordance with 42 United States Code, §7545(k) [the Federal Clean Air Act, §211(k)(42 United States Code, §7545(k))].

(15) **[Revised] Texas Inspection and Maintenance [I/M] State Implementation Plan**

[(SIP)] - The portion of the Texas state implementation plan that [SIP which] includes the procedures and requirements of the vehicle emissions inspection and maintenance program as adopted by the commission May 29, 1996, in accordance with [the] 40 Code of Federal Regulations [CFR] Part 51, Subpart S, issued November 5, 1992; the United States Environmental Protection Agency [EPA] flexibility amendments dated September 18, 1995; and the National Highway Systems Designation Act of 1995. A copy of the [revised] Texas Inspection and Maintenance State Implementation Plan [I/M SIP] is available at the Texas Commission on Environmental Quality [Texas Natural Resource Conservation Commission], 12100 Park 35 Circle, Austin, Texas, 78753; mailing address: P.O. Box 13087, MC 166, Austin, Texas 78711-3087.

(16) **Tier I federal emission standards** - The standards are defined in 42 United States Code, §7521 [the FCAA as amended in §202, USC Title 42 §7521], and in 40 Code of Federal Regulations [CFR], Part 86. The phase-in of these standards began in model year 1994.

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

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

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

Unless specifically defined in Texas Health and Safety Code, Chapter 382, also known as the Texas Clean Air Act (TCAA), [TCAA] or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, the following words and terms, when used in Subchapter C of this chapter (relating to Vehicle Inspection and Maintenance and Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program), [shall] have the following meanings, unless the context clearly indicates otherwise.

(1) **Acceleration simulation mode (ASM-2 [test] test)** - An emissions test using a dynamometer (a set of rollers on which a test vehicle's tires rest) which applies an increasing load or resistance to the drive train of a vehicle, thereby simulating actual tailpipe emissions of a vehicle as it is moving and accelerating. The ASM-2 vehicle emissions test is comprised of two phases:

(A) the 50/15 mode - in which the vehicle is tested on the dynamometer simulating the use of 50% of the vehicle available horsepower to accelerate at a rate of 3.3 miles per hour (mph) per second at a constant speed of 15 mph; and

(B) the 25/25 mode - in which the vehicle is tested on the dynamometer simulating the use of 25% of the vehicle available horsepower to accelerate at a rate 3.3 mph per second at a constant speed of 25 mph.

(2) **Consumer price index [Price Index]** - The consumer price index [Consumer Price Index] for any calendar year is the average of the consumer price index [Consumer Price Index] for all-urban consumers published by the Department of Labor, as of the close of the 12-month period ending on August 31 of the calendar year.

(3) **Low volume emissions inspection station** - A vehicle emissions inspection station that performs on-board diagnostics (OBD) testing only and does not exceed 1,200 OBD tests per calendar year.

(4) **Motorist** - A person or other entity responsible for the inspection, repair, and maintenance of a motor vehicle, which may include, but is not limited to, owners and lessees.

(5) **On-board diagnostic (OBD) system** - The computer system installed in a vehicle by the manufacturer which monitors the performance of the vehicle emissions control equipment, fuel metering system, and ignition system for the purpose of detecting malfunction or deterioration in performance that would be expected to cause the vehicle not to meet emissions standards. All references to OBD should be interpreted to mean the second generation of this equipment, sometimes referred to as OBD II.

(6) **On-road test** - Utilization of remote sensing technology to identify vehicles operating within the inspection and maintenance program areas that have a high probability of being high-emitters.

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

(8) **Primarily operated** - Use of a motor vehicle greater than 60 calendar days per testing cycle in an affected county. Motorists shall comply with emissions requirements for such counties. It is presumed that a vehicle is primarily operated in the county in which it is registered.

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

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

(B) the El Paso program area, consisting of [which consists of] El Paso County;

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

(D) the extended Dallas/Fort Worth [DFW (EDFW)] program area, consisting of [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) **Retests** - Successive vehicle emissions inspections following the failing of an initial test by a vehicle during a single testing cycle.

(11) **Testing cycle** - Annual cycle commencing with the first safety inspection certificate expiration date for which a motor vehicle is subject to a vehicle emissions inspection.

(12) **Two-speed idle inspection and maintenance test** - A measurement of the tailpipe exhaust emissions of a vehicle while the vehicle idles, first at a lower speed and then again at a higher speed.

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

**SUBCHAPTER C: VEHICLE INSPECTION AND MAINTENANCE
AND LOW INCOME VEHICLE REPAIR ASSISTANCE, RETROFIT,
AND ACCELERATED VEHICLE RETIREMENT PROGRAM
DIVISION 1: VEHICLE INSPECTION AND MAINTENANCE**

§§114.50, 114.52, 114.53

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code, §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which provide the commission with the general powers to carry out its duties and authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of Texas Health and Safety Code, Chapter 382 (also known as the Texas Clean Air Act). The amendments are also proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.019, which authorizes the commission to adopt rules to control and reduce emissions from engines used to propel land vehicles; and Texas Health and Safety Code, Subchapter G, §§382.201 - 382.216, which authorizes the commission by rule to establish, implement, and administer a program requiring emissions-related

inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of 42 USC, §§7401 *et seq.*

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

§114.50. Vehicle Emissions Inspection Requirements.

(a) Applicability. The requirements of this section and those contained in the revised Texas Inspection and Maintenance (I/M) State Implementation Plan (SIP) shall be applied to all gasoline-powered motor vehicles two [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 United States Environmental Protection Agency (EPA)-approved [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 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, 2005, all 1996 and newer model year vehicles equipped with OBD systems and registered and primarily operated in Chambers, Liberty, and Waller Counties shall be tested using EPA-approved OBD test procedures.]

[(G) Beginning May 1, 2005, 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 Federal Clean Air Act [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 his or her [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.

§114.52. Early Participation Incentive Program.

(a) Purpose. The early participation incentive program is to ensure that an adequate number of emissions inspection stations that provide acceleration simulation mode (ASM-2) testing are open to the public on the program start date.

(b) Eligibility. In order to be eligible to receive the incentive described in subsection (f) [(g)] of this section, an emissions inspection station owner or operator must meet the following requirements.

(1) The emissions inspection station owner or operator must enroll and submit the information described in subsection (d) of this section by January 15, 2002.

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

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

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

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

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

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

(d) Enrollment and documentation requirements. Emissions inspection station owners or operators who opt to participate in the incentive program described in this section must apply using a form designated by the executive director. The application must be received in complete form by the executive director by January 15, 2002. This form will require at a minimum the following information and documentation:

(1) the emissions inspection station's name, location, mailing address, and other identifying information;

(2) the vendor and model of each ASM-2 piece of equipment to be used in participation in this program; and

(3) a copy of the signed contract with an equipment vendor for the purchase or lease of each piece of ASM-2 equipment by the program start date.

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

[f) Program areas beginning May 2005. For program areas that begin ASM-2 testing in May 2005 (Chambers, Liberty, and Waller Counties), the same incentive is offered subject to the requirements listed in this section. The enrollment period for these counties is October 15, 2004 through December 31, 2004. 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.]

(f) [(g)] Incentive payment plan. Emissions inspection station owners or operators who are accepted into the program and who maintain their eligibility are eligible to receive a payment of \$675 per month to cover the remainder of the five-year period following the program start date if the ASM-2 testing requirement is terminated by state rule or statute during the first five years following the program start date. Participating emissions inspection stations that [which] have conducted more than 12,000 emissions tests at program termination are not eligible for payment.

§114.53. Inspection and Maintenance Fees.

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

(1) Through April 30, 2002, any emissions inspection station required to conduct a two-speed idle [(TSI)] test in accordance with §114.50(a)(1) of this title (relating to Vehicle Emissions Inspection Requirements) shall collect a fee of \$13 and shall remit \$1.75 to the Texas Department of Public Safety (DPS).

(2) In El Paso County beginning May 1, 2002, any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(1) or (5)(A), (B), or (C) of this title [(relating to Vehicle Emissions Inspection Requirements)] shall collect a fee of \$14 and shall remit \$2.50 to the DPS. If the El Paso County Commissioners Court adopts a resolution that is approved by the commission to participate in the “Low Income [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) of this title, and in the extended Dallas/Fort Worth [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 not to exceed \$27. The emissions inspection station shall remit to the DPS \$2.50 for each acceleration simulation mode [(ASM-2)] test and \$8.50 for each on-board diagnostics [(OBD)] test.

(4) In the Houston/Galveston program area beginning May 1, 2002, any emissions inspection station in Harris County required to conduct an emissions test in accordance with §114.50(a)(4)(A) or (B) of this title; and beginning May 1, 2003, any emissions inspection station in Brazoria, Fort Bend, Galveston, and Montgomery Counties required to conduct an emissions test in accordance with §114.50(a)(4)(C) or (D) of this title; [and beginning May 1, 2005, any emissions inspection station in Chambers, Liberty, and Waller Counties required to conduct an emissions test in accordance with §114.50(a)(4)(E) or (F) of this title] shall collect a fee not to exceed \$27. The emissions inspection station shall remit to the DPS \$2.50 for each acceleration simulation mode [ASM-2] test and \$8.50 for each on-board diagnostics [OBD] test.

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

(c) Inspection stations performing out-of-cycle vehicle emissions inspections for the state's remote sensing element shall charge a motorist for an out-of-cycle emissions inspection in the amount specified in subsection (a) of this section, resulting from written notification that subject vehicle failed

on-road testing. If the vehicle passes the vehicle emissions inspection, the vehicle owner may request reimbursement from DPS.