

The Texas Commission on Environmental Quality (commission) proposes amendments to §§114.2, 114.50, 114.51, and 114.53; and corresponding revisions to the Texas Inspection and Maintenance (I/M) State Implementation Plan (SIP).

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

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The federal I/M regulations for ozone nonattainment areas classified as “serious” require that on-board diagnostic (OBD) testing be implemented beginning January 1, 2002. Those regulations also provide an option for an extension of up to 12 months, if a state could show good cause. In a prior I/M rulemaking effective November 20, 2001, the commission submitted a request for a one-year extension to delay the implementation of OBD testing requirements in the El Paso ozone nonattainment area. This action was taken based on the El Paso area having experienced five years with no monitored violations of the ozone standard. At the time, the commission revised the I/M rules to delay implementation of the OBD testing requirement in the El Paso program area until January 1, 2003, to allow the commission time to explore viable options and to take into consideration any changes in El Paso’s attainment status.

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

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

Since the adoption of OBD as a contingency measure, the commission has become aware that many of the current TSI analyzers in place have become outdated and can no longer be effectively serviced. These analyzers will be unlikely to continue to operate properly due to lack of internal replacement components, and may not meet the state's minimum specifications required to provide critical vehicle

inspection information to the Texas Information Management System (TIMS). Manufacturers have raised concerns about the feasibility of servicing these old analyzers and about the expense and availability of parts. Additionally, station owners are faced with expensive repairs that are required much more frequently because of the age of the analyzers.

In El Paso County, 37 of the 219 stations with analyzers can be updated with the proper equipment and software to meet current specifications. These analyzers can be updated with OBD testing equipment for an affordable cost of \$1,200 to \$2,500 per analyzer. All new TSI-OBD analyzers now being sold meet current specifications and operate on the current software that meets TIMS requirements.

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

The amendments proposed in this rulemaking would require TSI and OBD testing in the El Paso I/M program area beginning May 1, 2006. The proposed amendments would revise rules related to the implementation of the state's I/M program in El Paso. The proposed rulemaking would require all gasoline-powered 1996 and newer model year motor vehicles equipped with OBD systems registered and primarily operated in El Paso County to be tested using EPA-approved OBD test procedures. All pre-1996 model year gasoline-powered motor vehicles registered and primarily operated in El Paso

County would be tested using the EPA-approved TSI test. Emissions test stations in the El Paso program area would be required to offer both TSI testing and OBD testing to the public. Additionally, the proposal will reference updated vehicle emissions testing equipment specifications, which now include new EPA OBD communications components, known as controller area network (CAN).

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

SECTION BY SECTION DISCUSSION

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

Subchapter A, Definitions

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

Subchapter C, Vehicle Inspection and Maintenance; Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program; and Early Action Compact Counties

Division 1, Vehicle Inspection and Maintenance

The proposed amendment to §114.50, Vehicle Emissions Inspection Requirements, establishes revised program requirements for the state I/M program for vehicle emissions testing and inspection. Section 114.50(a)(1) is proposed to be amended by deleting the requirement that all vehicles registered and primarily operated in Dallas, Tarrant, and Harris Counties shall be tested using a TSI test through April 30, 2002, because TSI testing is no longer required in Dallas, Tarrant, and Harris Counties. The currently existing paragraphs (2) - (5) are proposed to be renumbered as paragraphs (1) - (4).

Proposed changes to §114.50(a)(4) delete subparagraphs (A) and (B), which require all subject vehicles in El Paso to be tested using TSI, and which converted to OBD testing as a contingency measure. New subparagraphs (A) - (D) are proposed. Proposed new subparagraph (A) specifies the continuation of TSI testing through April 30, 2006. Proposed new subparagraph (B) defines model year vehicles to be tested using OBD in El Paso County beginning May 1, 2006. Proposed new subparagraph (C) defines model year vehicles to continue to be tested using TSI. Proposed new subparagraph (D) requires that all vehicle emissions inspection stations in the El Paso program area offer both TSI and OBD tests to the public beginning May 1, 2006.

References made to complying with requirements contained in the Texas I/M SIP are proposed to be deleted to clarify program requirements in §114.50(a)(1)(B), (2)(B), (3)(B) and (E); (b)(2), (6)(B), and (8); and (d)(1) and (2). Section 114.50(b)(6)(B) is further modified by adding “specified in 37 TAC §23.93 (relating to Vehicle Emissions Inspection Requirements).” Section 114.50(d)(2) is modified by adding “and to commit an offense specified in Texas Transportation Code, §548.603 (relating to Fictitious or Counterfeit Inspection Certificate or Insurance Document).”

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

Section 114.53, Inspection and Maintenance Fees, currently establishes a fee schedule for the different counties, which must be paid for the vehicle emissions inspection at an inspection station. Section 114.53(a)(1) is proposed to be amended by deleting the TSI fee requirement associated with the proposed deleted §114.50(a)(1), because TSI is no longer the required test in Dallas, Tarrant, and Harris Counties. The currently existing paragraphs (2) - (4) are proposed to be renumbered as paragraphs (1) - (3). There are no changes proposed to the current annual emissions test fee of \$14. Section 114.53(a)(1) provides that if a resolution is passed by the El Paso County Commissioners Court to participate in the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP), there will be an additional fee of \$3.00, making the test fee in El Paso County \$17 with the administrative fee being \$5.50 (\$2.50 state administrative fee plus \$3.00 to fund

the LIRAP) from each TSI test fee. Proposed revisions to subsection (a) specify that if a resolution is passed by the El Paso County Commissioners Court to participate in LIRAP, the test fee in El Paso County would be \$16 and the administrative fee would be \$4.50 (\$2.50 state administrative fee plus \$2.00 to fund the LIRAP) from each TSI or OBD test fee. These administrative fees will be remitted to the Texas Department of Public Safety (DPS) by the inspection station owners at the time inspection station owners purchase inspection stickers. Also, proposed renumbered paragraphs (1) - (3) are modified to reflect the renumbering of references, as discussed earlier in this preamble, and the acronyms ASM-2 and OBD are added to improve clarity.

In addition to the proposed rule amendments, the proposed revisions to the SIP narrative clarify the new program elements, such as applicability changes; performance standards; emissions testing network type; adequate tools and resources; emissions testing; affected vehicle populations; test procedures, standards, and test equipment; motorist compliance enforcement; and the implementation schedule.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Walter Perry, Analyst, Strategic Planning and Grants Management Section, has determined that for the first five-year period the proposed rules requiring OBD testing are in effect, fiscal implications are anticipated for units of state or local government in El Paso County that conduct their own vehicle inspections. If the El Paso County Commissioners Court decides to join the LIRAP, additional revenue would be generated for the agency and deposited into Fund 151. Fiscal implications would then be anticipated for other units of state or local governments in El Paso County that utilize vehicle fleets that would be subject to the LIRAP fee.

The proposed rulemaking would amend sections of Chapter 114 that deal with vehicle emissions, inspection, and maintenance. The revisions to Chapter 114 and to the SIP are proposed in order to control ground-level ozone in the El Paso ozone nonattainment area. The proposed rules clarify language and amend requirements for El Paso County with regard to emission testing for vehicles by requiring OBD testing beginning May 1, 2006, in addition to TSI testing that currently occurs. The proposed rulemaking would also lower the per vehicle fee that would be assessed in support of the LIRAP in El Paso County to encourage that county to participate in the program. If the El Paso County Commissioners Court decides to participate in the program, additional fee revenue for the agency is expected. If the County Commissioners Court decides not to participate, there would be no fiscal impact to the state. The amendments and associated El Paso Motor Vehicle Emissions I/M SIP will be submitted to the EPA. The proposed rules for OBD testing are not expected to result in fiscal implications for units of state and local government unless they decide to conduct their own vehicle inspections, which would require the purchase of additional or new equipment.

Cost Implications to State Agencies

The proposed rules for OBD testing may have fiscal implications for any state agency that conducts its own vehicle inspections. The proposed rulemaking would require any facility that conducts emissions testing to upgrade or replace its equipment to comply with the OBD testing requirement. The anticipated cost to upgrade the equipment is projected to be between \$1,200 and \$2,500 per analyzer. The cost to purchase new equipment is projected to be \$15,000 per analyzer. Currently, the DPS and the Texas Department of Transportation (TxDOT) are the only state entities that own emissions testing analyzers in El Paso County. DPS does not test its own vehicles, but uses its analyzer for

waiver/challenge requests by vehicle owners. DPS has indicated that the agency will likely replace its current analyzer at a cost of \$15,000. TxDOT uses its analyzer to test its vehicles and has indicated that the agency's analyzer is upgradeable to handle OBD testing requirements. The cost for the upgrade is expected to be as high as \$2,500. The cost implications to the state, related to emissions test analyzers meeting the proposed requirements, is expected to be \$17,500.

If the El Paso County Commissioners Court decides to participate in the LIRAP, state agencies that own vehicles in El Paso County would incur increased costs for each vehicle that is subject to emissions testing. The costs for emissions testing would increase by \$2.00 per vehicle. According to TxDOT vehicle registration records, 1,055 vehicles are registered in El Paso County to local and state governments and other exempt entities such as school districts. According to records from the Texas Building and Procurement Commission, DPS, and TxDOT, there are 388 state vehicles that are two to 24 years old, gasoline-powered, and registered or primarily operated in El Paso County. DPS operates up to 70 subject vehicles in El Paso County, while TxDOT operates 102 subject vehicles in the county. If the El Paso County Commissioners Court decides to participate in LIRAP, the cost to the state would be \$776 annually.

Revenue Implications

If the El Paso County Commissioners Court decides to participate in the LIRAP, funding may increase by as much as \$838,644 per year. There are an estimated 419,322 registered vehicles in El Paso County that may be subject to vehicle emissions testing. The proposed rulemaking would decrease the fee assessed to \$2.00 per vehicle. The funding from the program would return to the county in the

form of pass-through grants and would help county residents who may have difficulty financing needed repairs to their vehicles.

Cost Implications to Local Governments

Proposed changes for §114.50 and §114.51 would have a fiscal impact for units of local government.

There are currently nine local government/school district facilities that perform vehicle emissions testing. Dependent upon the type of analyzer currently being used, the cost for upgrade may be between \$1,200 and \$2,500 if the analyzer can be upgraded or \$15,000 if a new analyzer must be purchased. If all nine facilities are required to purchase new analyzers, the total cost to local governments would be \$135,000. If the El Paso County Commissioners Court votes to participate in the LIRAP, there would be an additional fee of \$2.00 for each vehicle that receives an emissions test.

There are currently 1,055 vehicles owned by local government entities that would be subject to the additional fee. Local government costs would increase by \$2,110 if the County Commissioners Court elected to participate.

PUBLIC BENEFITS AND COSTS

Mr. Perry also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be a reduction in pollutants that contribute to the formation of ozone. Dependent upon the decision of the El Paso County Commissioners Court to participate in the LIRAP, there would be a benefit to county residents who may have difficulty financing needed repairs to their vehicles.

The proposed rule changes would require facilities that conduct emissions testing to purchase new equipment or, where possible, upgrade existing equipment to continue participating in the inspection program once OBD testing begins May 1, 2006. Currently, there are 219 facilities that perform safety inspections in El Paso County. One facility is a privately owned fleet station that provides inspections for privately owned fleet vehicles. Nine of the facilities are government or school stations that perform inspections on government-owned or school-owned vehicles. The remaining 209 facilities are privately owned stations that perform inspections for the general public. The total cost for the facilities to upgrade and replace the necessary equipment for conducting inspections is projected to be \$2,791,300. Under the current rules, if El Paso County participated in the LIRAP, residents would be charged an additional \$3.00 for inspection fees. The proposed rule changes would reduce the additional fee to \$2.00.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

Fiscal implications, which could be adverse, are anticipated for small or micro-businesses as a result of the proposed rulemaking. The amendments would require facilities that conduct emissions testing to purchase new equipment or, where possible, upgrade existing equipment to continue participating in the inspection program once OBD testing begins May 1, 2006. It is not known how many of the facilities conducting emissions testing are small or micro businesses. However, a small or micro-business is expected to incur the same costs as a large business. Equipment upgrades or replacements are estimated to cost between \$1,200 and \$15,000. The cost for a small business is estimated to range from approximately \$12 to \$150 per employee. For a micro-business, the cost is estimated to range from approximately \$60 to \$750 per employee.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it 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 intent of the proposed rules is to continue the program already in place while upgrading the test options that are offered. Therefore, these amendments to Chapter 114 are not specifically intended to protect the environment or to reduce risks to human health from environmental exposure. The rules will not have an adverse material impact on the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, because the continuation of the existing program will not impose new burdens on the public. If El Paso County chooses to participate in LIRAP, the emissions test fee would increase by

\$2.00 per vehicle. The impact of an increase of this amount would not be material. In addition, the benefits of the LIRAP, including improved air quality, would accrue to the public in the affected area. Operators of testing stations, as the regulated community, will choose whether to upgrade or replace their test equipment, but will expect to recoup the expense through the continuation of the I/M program. Operators may elect not to participate in the vehicle emissions inspection and I/M program.

Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed rulemaking does not meet any of the four applicability requirements. There is no contract or delegation agreement that covers the topic that is the subject of this rulemaking action. The I/M program was created specifically in response to the requirements of the Federal Clean Air Act (FCAA) in 42 USC and the state law implementing the program. Under 42 USC, §7410, states are required to adopt a SIP that provides for "implementation, maintenance, and enforcement" of the primary NAAQS in each air quality control region of the state. The continuation of the I/M program with adjustments for improved technology, as a strategy to maintain the ozone NAAQS, is in accord with existing law. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

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

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking action and found that the proposal is an action identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, or will affect an action/authorization identified in §505.11, and therefore will require that applicable goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process. The commission determined that under 31 TAC §505.22, the proposed rulemaking action is consistent with

the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). No new sources of air contaminants will be authorized and ozone levels will be reduced as a result of the proposed rulemaking. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations in 40 Code of Federal Regulations (CFR) to protect and enhance air quality in the coastal area (31 TAC §501.32). This rulemaking proposal will not have a detrimental effect on SIP emission reduction obligations relating to maintenance of the ozone NAAQS by continuing the existing TSI testing portion of the I/M program and implementing new OBD testing requirements. This rulemaking action complies with 40 CFR. Therefore, in compliance with 31 TAC §505.22(e), this rulemaking action is consistent with CMP goals and policies. Interested persons may submit comments regarding the consistency of the proposed rulemaking with the CMP during the public comment period.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in El Paso on July 19, 2005, at 6:30 p.m. at the City of El Paso Council Chambers, 2 Civic Center Plaza, 2nd Floor. The hearing is structured for the receipt of oral or written comments by interested persons. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communications or other accommodation needs who are planning to attend the hearing should contact Lola Brown at (512) 239-0348. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lola Brown, MC 205, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments must be received by 5:00 p.m. on August 2, 2005. All comments should reference Rule Project Number 2005-026-114-EN. For further information or questions concerning this proposal, please contact Bob Wierzowiecki, Air Quality Planning and Implementation Division, at (512) 239-1769.

SUBCHAPTER A: DEFINITIONS

§114.2

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which provide the commission with the general powers to carry out its duties and authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and §5.013, which states the commission's authority over various statutory programs. The amendment is also proposed under THSC, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of THSC, Chapter 382 (the Texas Clean Air Act (TCAA)), and to adopt rules that differentiate among particular conditions, particular sources, and particular areas of the state. The amendment is also proposed under THSC, §382.002, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to administer the TCAA and to control the quality of the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.013, which authorizes the commission to designate air quality control regions in order to implement air quality standards; §382.019, which provides the commission the authority to adopt rules that specify the method to be used to control and reduce emissions from engines used to propel land vehicles; §382.202, which provides the commission the authority by rule to establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at

inspection facilities; and §382.205, which authorizes the commission to adopt standards and specifications for motor vehicle emissions testing equipment.

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

§114.2. Inspection and Maintenance Definitions.

Unless specifically defined in Texas Health and Safety Code, Chapter 382, also known as the Texas Clean Air Act (TCAA), or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms that [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; and Early Action Compact Counties), have the following meanings, unless the context clearly indicates otherwise.

(1) **Acceleration simulation mode (ASM-2) test** - An emissions test using a dynamometer (a set of rollers on which a test vehicle's tires rest) that [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) - (B) (No change.)

(2) (No change.)

(3) **Controller area network (CAN)** - A vehicle manufacturer's communications protocol that connects to the various electronic modules in a vehicle. CAN provides one protocol that collects information from the vehicle's electronic systems including the on-board diagnostics (OBD) emissions testing system. The United States Environmental Protection Agency requires the CAN protocol to be installed in OBD-compliant vehicles beginning with some model year 2003 vehicles and phasing in to all OBD-compliant vehicles by the 2008 model year.

(4) [(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.

(5) [(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.

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

(7) [(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.

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

(9) [(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.

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

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

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

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

(D) the extended Dallas-Fort Worth [Dallas/Fort Worth] program area, consisting of Ellis, Johnson, Kaufman, Parker, and Rockwall Counties. These counties became [will become] part of the program area as of May 1, 2003.

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

(12) [(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.

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

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

DIVISION 1: VEHICLE INSPECTION AND MAINTENANCE

§§114.50, 114.51, 114.53

STATUTORY AUTHORITY

The amendments are proposed under TWC, §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which provide the commission with the general powers to carry out its duties and authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and §5.013, which states the commission's authority over various statutory programs. The amendments are also proposed under THSC, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of THSC, Chapter 382 (the TCAA), and to adopt rules that differentiate among particular conditions, particular sources, and particular areas of the state. The amendments are also proposed under THSC, §382.002, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.013, which authorizes the commission to designate air quality control regions in order to implement air quality standards; §382.019, which provides the commission the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles; and THSC, Subchapter G, §§382.201 - 382.216, which provides the commission the authority by rule to establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities

consistent with the requirements of FCAA, §§7401 *et seq.*, to coordinate with federal, state, and local transportation planning agencies to develop and implement transportation programs and other measures necessary to demonstrate and maintain attainment of the NAAQS, and to fund the establishment of the LIRAP.

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

§114.50. Vehicle Emissions Inspection Requirements.

(a) Applicability. The requirements of this section and those contained in the Texas Inspection and Maintenance (I/M) State Implementation Plan (SIP) shall be applied to all gasoline-powered motor vehicles two - 24 years old and subject to an annual emissions inspection, beginning with the first safety inspection. Military [Currently, military] tactical vehicles, motorcycles, diesel-powered vehicles, dual-fueled vehicles that [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.]

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

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

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

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

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

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

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

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

(3) [(4)] This paragraph applies to all vehicles registered and primarily operated in the Houston-Galveston-Brazoria (HGB) [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.

(4) [(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 two-speed idle (TSI) test through April 30, 2006.

(B) Beginning May 1, 2006, all 1996 and newer model year vehicles equipped with OBD systems shall be tested using EPA-approved OBD test procedures.

(C) Beginning May 1, 2006, all pre-1996 model year vehicles shall be tested using a TSI test.

(D) Beginning May 1, 2006, all vehicle emissions inspection stations in the El Paso program area shall offer both the TSI test and OBD test.

[(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, HGB [HGA], and El Paso program areas that [which] does not comply with:

(A) - (B) (No change.)

(2) All federal government agencies shall require a motor vehicle operated by any federal government agency employee on any property or facility under the jurisdiction of the federal government agency and located in a program area to comply with all vehicle emissions I/M requirements specified in Texas Health and Safety Code, Subchapter G, §§382.201 - 382.216 (relating to Vehicle Emissions) [contained in the Texas I/M SIP]. Commanding officers or directors of federal facilities shall certify annually to the executive director, or appointed designee, that all subject vehicles have been tested and are in compliance with the Federal Clean Air Act (42 United States Code, §§7401 *et seq.*). This requirement shall not apply to visiting federal government agency, employee, or military personnel vehicles as long as such visits do not exceed 60 calendar days per year.

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

(4) (No change.)

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

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

(A) (No change.)

(B) satisfy all inspection, extension, or waiver requirements of the vehicle emissions I/M program specified in 37 TAC §23.93 (relating to Vehicle Emission Inspection Requirements) [contained in the Texas I/M SIP].

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

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

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

(d) Prohibitions.

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

(2) No person may allow or participate in the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen safety inspection certificates, VIRs, VRFs, vehicle emissions repair documentation, or other documents that [which] may be used to circumvent applicable [the] vehicle emissions I/M requirements and to commit an offense specified in Texas Transportation Code, §548.603 (relating to Fictitious or Counterfeit Inspection Certificate or Insurance Document) [procedures contained in the Texas I/M SIP].

(3) - (4) (No change.)

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

(a) Any manufacturer or distributor of vehicle testing equipment may apply to the executive director of the commission or his appointee, for approval of an exhaust gas analyzer or analyzer system for use in the Texas Inspection and Maintenance (I/M) program administered by the Texas Department of Public Safety. Each manufacturer shall submit a formal certificate to the commission stating that any analyzer model sold or leased by the manufacturer or its authorized representative and any model currently in use in the I/M program will satisfy all design and performance criteria set forth in "Specifications for Vehicle Exhaust Gas Analyzer Systems for Use in the Texas Vehicle Emissions Testing Program," dated May 1, 2005, [October 15, 2001] or in "Specifications for On-Board Diagnostics II for Use [use] in the Texas Vehicle Emissions Testing Program," dated May 1, 2005 [October 15, 2001]. Copies of these documents are available at the commission's Central Office, located at 12100 Park 35 Circle, Austin, Texas 78753. The manufacturer shall also provide sufficient documentation to demonstrate conformance with these criteria including a complete description of all hardware components, the results of appropriate performance testing, and a point-by-point response to each specific requirement.

(b) (No change.)

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

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

(d) (No change.)

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

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

(2) - (5) (No change.)

§114.53. Inspection and Maintenance Fees.

(a) The following fees must be paid for an emissions inspection of a vehicle at an inspection station. This fee shall include one free retest should the vehicle fail the emissions inspection, provided that the motorist has the retest performed at the same station where the vehicle originally failed and

submits, prior to the retest, a properly completed vehicle repair form showing that emissions-related repairs were performed and the retest is conducted within 15 days of the initial emissions test.

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

(1) [(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)(4)(A), (B), or (C) [§114.50(a)(1) or (5)(A), or (B)] of this title (relating to Vehicle Emissions Inspection Requirements) shall collect a fee of \$14 and shall remit \$2.50 to the Texas Department of Public Safety (DPS) [DPS]. If the El Paso County Commissioners Court adopts a resolution that is approved by the commission to participate in the [“]Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program,[”] the emissions inspection station shall collect a fee of \$16 [\$17] and shall remit to DPS \$4.50 [\$5.50] beginning upon the date specified by the commission upon approval of the resolution.

(2) [(3)] In the Dallas-Fort Worth [Dallas/Fort Worth] program area beginning May 1, 2002, any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(1)(A) or (B) [§114.50(a)(2)(A) or (B)] of this title, and in the extended Dallas-Fort Worth [Dallas/Fort Worth] program area beginning May 1, 2003, any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(2)(A) or (B) [§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.

(3) [(4)] In the Houston-Galveston-Brazoria [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)(3)(A) or (B) [§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)(3)(D) or (E) [§114.50(a)(4)(D) or (E)] of this title; shall collect a fee not to exceed \$27. The emissions inspection station shall remit to the DPS \$2.50 for each ASM-2 [acceleration simulation mode] test and \$8.50 for each OBD [on-board diagnostics] test.

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