

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §§114.1, 114.2, 114.21, 114.50, 114.53, 114.82 - 114.84, and 114.87.

Sections §§114.1, 114.2, 114.21, 114.50, 114.53, 114.82 - 114.84, and 114.87 are adopted *with changes* to the proposed text as published in the October 11, 2013, issue of the *Texas Register* (38 TexReg 7067).

The adopted amendments to §§114.1, 114.2, 114.21, 114.50, 114.53, 114.82 - 114.84, and 114.87 will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP).

### **Background and Summary of the Factual Basis for the Adopted Rules**

On May 29, 1996, the commission adopted rules implementing an air pollution control strategy involving emissions inspection of vehicles to reduce nitrogen oxides and volatile organic compounds necessary for the counties included in the Dallas-Fort Worth (DFW), Houston-Galveston-Brazoria (HGB), and El Paso ozone nonattainment areas in order to assist in the ability to demonstrate attainment with the one-hour ozone National Ambient Air Quality Standard (NAAQS). The vehicle emissions inspection program, also known as the vehicle emissions inspection and maintenance (I/M) program, began on July 1, 1996 in the DFW, HGB, and El Paso one-hour ozone

nonattainment areas. The I/M rules currently apply to all nine counties (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties) in the DFW 1997 eight-hour ozone nonattainment area, selected counties (Brazoria, Fort Bend, Galveston, Harris, and Montgomery Counties) in the HGB 1997 eight-hour ozone nonattainment area, and El Paso County. The I/M program remains in place in El Paso County as part of the area's maintenance plan for the 1997 eight-hour ozone standard. On November 17, 2004, the commission adopted rules in Chapter 114 implementing an I/M program in Travis and Williamson Counties in the Austin-Round Rock area.

The I/M rules require the TCEQ to implement the I/M program in conjunction with the Texas Department of Public Safety (DPS). The I/M rules also authorize the collection of the state's portion of the vehicle emissions inspection fee by the DPS at the time that vehicle emissions inspection station owners purchased safety and emissions inspection certificates (stickers). Currently, motorists are required to demonstrate compliance with the I/M program by displaying a current valid safety and emissions inspection sticker and a current valid vehicle registration insignia sticker affixed to the vehicle's windshield. The I/M rules also require denying renewal of the registration until the vehicle complies with the I/M program. The TCEQ is currently responsible for: 1) identifying non-compliant vehicles; 2) notifying motorists of the non-compliance; 3) providing information on non-compliant vehicles to the Texas Department of Motor Vehicles (DMV), previously a part of the Texas Department of Transportation; and 4)

assisting motorists to resolve the non-compliance.

Additionally, on December 6, 2000 the commission adopted rules that enhanced the I/M program. The enhanced I/M program includes requirements for vehicle emissions inspections stations to conduct acceleration simulation mode (ASM) emissions tests on model year 1995 and older vehicles and on-board diagnostics (OBD) inspections on model year 1996 and newer vehicles. The ASM emissions test and the OBD inspection have more stringent emissions inspection criteria and were added as replacements for the two-speed idle emissions test used in the I/M program prior to the adopted rules.

This adopted rulemaking will implement applicable sections of House Bill (HB) 2305, 83rd Legislature, 2013, relating to replacing the current Texas dual inspection and registration sticker system with a single vehicle registration insignia sticker and will modify the method used to collect the state's portion of the vehicle emissions inspection fee. HB 2305 mandates that the TCEQ adopt rules necessary to implement the changes prior to March 1, 2014 and that the changes be implemented on March 1, 2015. The adopted rulemaking will put in place applicable requirements necessary for the DPS and the DMV to implement the remaining sections of HB 2305 that affect their respective agencies.

*Demonstrating Noninterference under Federal Clean Air Act, §110(l)*

The commission provides the following information to demonstrate why the adopted change to the I/M program rules in Chapter 114 will not negatively impact the status of the state's progress towards attainment with the 1997 eight-hour ozone NAAQS, El Paso County's maintenance plan for the 1997 eight-hour ozone standard, and the *Austin Area Early Action Compact* for Travis and Williamson Counties; will not interfere with control measures; and will not prevent reasonable further progress toward attainment of the ozone NAAQS.

The amendments to Chapter 114 modify administrative aspects of the existing I/M program in order to implement HB 2305, which replaces the current dual inspection and registration sticker system with a single vehicle registration insignia sticker and modifies the method used to collect the state's portion of the vehicle emissions inspection fee. The compliance rate under the single sticker system will be at least as effective as the dual sticker system since the single sticker system will represent compliance with inspection requirements, registration requirements, and the I/M program requirements. Registrations for non-compliant vehicles will be denied under the single sticker system in the same manner as under the dual sticker system.

Resources allocated to enforcement of the dual sticker system will continue to be used to ensure compliance with the single sticker system. The network of vehicle emissions inspection stations used to conduct vehicle emissions inspections under the dual sticker system will continue to conduct vehicle emissions inspections under the single sticker

system. These vehicle emissions inspection stations were also required to remit the state's portion of the inspection fees to the DPS under the dual sticker system. However, under the single sticker system, the vehicle owner will remit the state's portion of the inspection fee to the DMV or county tax assessor-collector at the time of registration.

The effectiveness of the I/M program is expected to remain the same under the single sticker system as under the dual sticker system because the size of the vehicle population that is subject to the I/M program requirements, the vehicle emissions inspection frequency, and the stringency of the vehicle emissions inspection criteria are not changing. Upon full implementation, the single sticker system is expected to have a compliance rate at least as high as the historically implemented dual sticker system.

For vehicles exempt from annual vehicle registration renewal requirements and registered in the I/M program areas such as those owned by local and state governments, HB 2305 does not specify methods for collecting the state's portion of the inspection fee or exempt these vehicles from the I/M program requirements. Exempt vehicles will still be subject to the I/M program requirements at a time determined by the DPS and the DMV. Verifying compliance with the I/M program requirements using the vehicle registration insignia sticker affixed to the vehicle's windshield may be problematic as exempt vehicles are not currently provided vehicle registration insignia stickers. Owners of exempt vehicles will still be able to provide proof of compliance

using the Vehicle Inspection Report that is provided by the inspection stations. The TCEQ staff plans to work with the DMV and the DPS to develop a remedy for this situation and ensure exempt vehicles maintain compliance with the I/M program requirements. In order to ensure the stability of the I/M program, the current I/M program requirement will remain in place and effective until the provisions of HB 2305 are implemented by the DPS and the DMV.

### **Section by Section Discussion**

The following amendments will ensure that the I/M program rules are consistent with the requirements in HB 2305, which mandates that effective March 1, 2015: 1) the safety and emissions inspection stickers will no longer be used; 2) the vehicle registration insignia stickers will replace the safety and emissions inspection stickers; and 3) the state's portion of the vehicle emissions inspection fee will be collected by the DMV or county tax assessor-collector at the time of registration. While not specifically commented on, the commission has added clarifying language to certain rule provisions associated with the implementation of HB 2305 to more clearly indicate when existing requirements will cease and when new requirements will be initiated. The proposed reference to 37 TAC Chapter 23 was amended for adoption to specifically identify Subchapter E in order to more clearly indicate where the rules adopted by the DPS that contain the requirements for the I/M program can be found. The definition for ASM test was amended for adoption to improve readability, more clearly describe the test

conditions and requirements, and reduce the possibility that readers will conclude that the vehicle is tested while simultaneously accelerating and being held at a constant speed. The amended definition does not change the test conditions or requirements.

The commission is also adopting a new term, "single sticker transition date," to define the date when the dual sticker system will be replaced with the single sticker system. The single sticker transition date will be contingent upon when the DPS and the DMV concurrently implement the single sticker system required by Texas Transportation Code, §502.047, but no earlier than March 1, 2015. This change is necessary to allow for flexibility in the implementation date because coordination between the DMV, the DPS, and the TCEQ is needed to ensure a smooth transition to the single sticker system. The adopted rules replace the specific transition dates included in the proposed rules with references to the single sticker transition date.

In addition to the amendments associated with the implementation of HB 2305, various stylistic, non-substantive changes are included to update rule language to current *Texas Register*-style and format requirements. Such changes include appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. These changes are non-substantive and generally are not specifically discussed in this preamble.

*§114.1, Definitions*

The amendment to §114.1 revises the definition for "first safety inspection certificate" and adds definitions for four new terms. First safety inspection certificate is defined as the initial DPS certificate issued through the DPS-certified inspection stations for every new vehicle found to be in compliance with the rules and regulations governing safety inspections. The amendment adds language to the definition indicating that safety inspection certificates will no longer be used beginning on the single sticker transition date. The amendment also adds definitions for "single sticker transition date," "first vehicle registration," "vehicle registration," and "vehicle registration insignia sticker." Single sticker transition date is defined as the transition date of the single sticker system that is the later of March 1, 2015 or the date that the DMV and the DPS concurrently implement the single sticker system required by Texas Transportation Code, §502.047. First vehicle registration is defined as the initial vehicle registration insignia sticker issued through the DMV for every new vehicle found to be in compliance with the rules and regulations governing vehicle registration prior to the single sticker transition date and vehicle registration and safety inspections beginning on the single sticker transition date. Vehicle registration is defined as the vehicle characteristics, corresponding owner information, and registration expiration date contained in the DMV's registration system. Vehicle registration insignia sticker is defined as the sticker issued through the DMV to be affixed to the windshield of a vehicle compliant with DMV regulations. The vehicle registration insignia sticker definition also indicates that beginning on the single

sticker transition date, the vehicle registration insignia sticker will be used as proof of compliance with the I/M program requirements, the DMV's rules and regulations governing vehicle registration, and the DPS's rules and regulations governing safety inspections. The amendment ensures that the terms and definitions for "first safety inspection certificate," "first vehicle registration," "single sticker transition date," "vehicle registration," and "vehicle registration insignia sticker" are consistent with the requirements of HB 2305. The amendment also renumbers the definitions in this section as necessary for the addition of new definitions. The definition for "single sticker transition date" was added for adoption to clarify when the dual sticker system will be replaced by the single sticker system. As discussed elsewhere in the Section by Section discussion of this preamble, the adopted amendment to this section contains modifications that replace the references to specific transition dates included in the proposed amendment to this section with references to the single sticker transition date.

*§114.2, Inspection and Maintenance Definitions*

The amendment modifies the definitions of "testing cycle" and "uncommon part." Testing cycle is defined as the annual cycle commencing with the first safety inspection certificate expiration date for which a motor vehicle is subject to a vehicle emissions inspection. The amendment adds language indicating that prior to the single sticker transition date, the testing cycle is the annual cycle commencing with the first safety inspection certificate expiration date for which a motor vehicle is subject to a vehicle

emissions inspection, but effective on the single sticker transition date, the annual cycle will commence with the first vehicle registration expiration date for which a motor vehicle is subject to a vehicle emissions inspection.

Uncommon part was previously defined as 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. The amendment adds language allowing the motorist to prove that the location of the part will exceed the remaining time prior to the expiration of the vehicle safety inspection certificate prior to the single sticker transition date; the vehicle registration beginning on the single sticker transition date; or the 30-day period following an out-of-cycle inspection. The language clarifying that the existing definition of testing cycle will be maintained through the day before the single sticker transition date was not included in the proposed amendment to §114.2.

The definition for acceleration simulation mode test was amended for adoption to more clearly indicate, but not change, the test conditions and requirements for the two modes of the acceleration simulation mode test. The amended definition indicates that the vehicle is tested for 90 seconds upon reaching and maintaining a constant speed of 15

miles per hour (mph) on a dynamometer that simulates acceleration at a rate of 3.3 mph per second by using 50% of the vehicle available horsepower in the 50/15 mode and that the vehicle is tested for 90 seconds upon reaching and maintaining a constant speed of 25 mph on a dynamometer that simulates acceleration at a rate of 3.3 mph per second by using 25% of the vehicle available horsepower in the 25/25 mode. As discussed elsewhere in the Section by Section discussion of this preamble, the adopted amendment to this section contains modifications that replace the references to specific transition dates included in the proposed amendment to this section with references to the single sticker transition date.

*§114.21, Exemptions*

The amendment to §114.21(e) and (f) adds language indicating that the existing requirement to remove and destroy the DPS motor vehicle safety inspection certificates before the vehicle is offered for sale or displayed for public examination will remain in effect prior to the single sticker transition date. The amendment also adds language indicating that beginning on the single sticker transition date, the DMV vehicle registration insignia sticker must be removed and destroyed from a vehicle exempt from vehicle anti-tampering requirements before offering it for sale or displaying it for public examination. The language clarifying that the existing requirements will be maintained prior to the single sticker transition date was not included in the proposed amendment to §114.21(e) and (f). As discussed elsewhere in the Section by Section discussion of this

preamble, the adopted amendment to this section contains modifications that replace the references to specific transition dates included in the proposed amendment to this section with references to the single sticker transition date.

*§114.50, Vehicle Emissions Inspection Requirements*

The amendment to §114.50(b)(1) modifies the method used to demonstrate compliance with the I/M program requirements to retain the existing requirements prior to the single sticker transition date and prescribes new requirements beginning on the single sticker transition date. The language in §114.50(b)(1) requires vehicles operating in the DFW, HGB, and El Paso I/M program areas to demonstrate compliance by displaying a current valid inspection certificate affixed to the vehicle windshield. The amendment requires demonstration of compliance beginning on the single sticker transition date by displaying a current valid DMV vehicle registration insignia sticker since inspection certificates will no longer be used beginning on the single sticker transition date. The language clarifying that the existing requirements will be maintained prior to the single sticker transition date was not included in the proposed amendment to §114.50(b)(1).

The amendment to §114.50(d)(2) adds language retaining the existing requirements prior to the single sticker transition date and prescribes new requirements beginning on the single sticker transition date. The existing requirements prevent the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen vehicle safety

inspection certificates, vehicle inspection reports, or other documents that may be used to circumvent the vehicle emissions I/M requirements in the DFW, HGB, and El Paso I/M program areas. Beginning on the single sticker transition date, the new requirements prevent the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen vehicle registration insignia stickers, vehicle inspection reports, or other documents that may be used to circumvent the vehicle emissions I/M requirements in the DFW, HGB, and El Paso I/M program areas. The language clarifying that the existing requirements will be maintained prior to the single sticker transition date was not included in the proposed amendment to §114.50(d)(2).

The amendment to §114.50(b)(6)(B) and (c) replaces the reference to 37 TAC §23.93 with 37 TAC Chapter 23, Subchapter E, because 37 TAC §23.93 was repealed by the DPS on March 13, 2013. The reference to Subchapter E was not included in the proposed amendment to §114.50(b)(6)(B) and (c). As discussed elsewhere in the Section by Section discussion of this preamble, the reference to Subchapter E was added to provide specific citation where the rules adopted by the DPS that contain the requirements for the I/M program can be found. As discussed elsewhere in the Section by Section discussion of this preamble, the adopted amendment to this section contains modifications that replace the references to specific transition dates included in the proposed amendment to this section with references to the single sticker transition date.

*§114.53, Inspection and Maintenance Fees*

The amendment to §114.53(a)(1) - (3) exempts emissions inspection stations from being required to remit the state's portion of the vehicle emissions inspection fee to the DPS beginning on the single sticker transition date. The amendment also lowers the maximum inspection fee collected by the emissions inspection stations in the DFW, HGB, and El Paso I/M program areas. Beginning on the single sticker transition date, the maximum inspection fee will be lowered by the amount of the state's portion of the vehicle emissions inspection fee that will now be collected by the DMV or county tax assessor-collector at the time of registration.

Beginning on the single sticker transition date, the maximum inspection fee collected by emissions inspection stations inspection in the DFW and HGB I/M program areas will be lowered from \$27 to \$24.50 for vehicles subject to an ASM emissions test and from \$27 to \$18.50 for vehicles subject to an OBD inspection. For the El Paso I/M program area, the maximum inspection fee collected by emissions inspections stations will change based on whether the El Paso I/M program area chooses to participate in the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP). The maximum inspection fee for vehicles subject to an emissions inspection in El Paso County will be lowered to \$11.50 from either \$14 if El Paso County is not participating in the LIRAP or \$16 if El Paso County is participating in the LIRAP.

The language in §114.53(a)(1) - (3) sets the maximum inspection fee that may be collected by the emissions inspection stations located in the DFW, HGB, and El Paso I/M program areas and the state's portion of the vehicle emissions inspection fee that the emissions inspection stations remit to the DPS. The amendment to §114.53 also adds language in proposed subsection (d) that specifies that owners of vehicles subject to vehicle emissions inspections in the DFW, HGB, and El Paso I/M program areas will remit the state's portion of the vehicle emissions inspection fee to the DMV or county tax assessor-collector at the time of registration. The state's portion of the vehicle emissions fee is \$2.50 for vehicles subject to an ASM emissions test and \$8.50 for vehicles subject to an OBD inspection in the DFW and HGB I/M program areas. If the El Paso I/M program area does not participate in the LIRAP, the state's portion of the vehicle emissions fee is \$2.50 for vehicles subject to an emissions inspection in the El Paso I/M program area. If the El Paso I/M program area chooses to participate in the LIRAP, the state's portion of the vehicle emissions fee changes to \$4.50 for vehicles subject to an emissions inspection in the El Paso I/M program area. The language clarifying that the existing fee requirements will be maintained prior to the single sticker transition date was not included in the proposed amendment to §114.53(a)(1) - (3). As discussed elsewhere in the Section by Section discussion of this preamble, the adopted amendment to this section contains modifications that replace the references to specific transition dates included in the proposed amendment to this section with references to the single sticker transition date.

*§114.82, Control Requirements*

The amendment to §114.82(a) modifies the method used to demonstrate compliance with the I/M program requirements to retain the existing requirements prior to the single sticker transition date and prescribes new requirements beginning on the single sticker transition date. The language in §114.82(a) indicates that vehicles registered in Travis and Williamson Counties, also known as the early action compact counties, are required to demonstrate compliance by displaying a current valid inspection certificate affixed to the vehicle windshield. The amendment requires demonstration of compliance beginning on the single sticker transition date by displaying a current valid DMV vehicle registration insignia sticker since inspection certificates will no longer be used beginning on the single sticker transition date. The language clarifying that the existing requirements will be maintained prior to the single sticker transition date was not included in the proposed amendment to §114.82(a). As discussed elsewhere in the Section by Section discussion of this preamble, the adopted amendment to this section contains modifications that replace the references to specific transition dates included in the proposed amendment to this section with references to the single sticker transition date.

*§114.83, Waivers and Extensions*

The amendment to §114.83 replaces the reference to 37 TAC §23.93 with a reference to

37 TAC Chapter 23, Subchapter E, because 37 TAC §23.93 was repealed by the DPS on March 13, 2013. The reference to 37 TAC Chapter 23, Subchapter E was not included in the proposed amendment to §114.83. As discussed elsewhere in the Section by Section discussion of this preamble, the reference to 37 TAC Chapter 23, Subchapter E was added to provide specific citation where the rules adopted by the DPS that contain the requirements for the I/M program can be found.

*§114.84, Prohibitions*

The amendment to §114.84(b) adds language retaining the existing requirements prior to the single sticker transition date and prescribes new requirements beginning on the single sticker transition date. The revised requirements prevent the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen vehicle safety inspection certificates, vehicle inspection reports, or other documents that may be used to circumvent the vehicle emissions I/M requirements in Travis and Williamson Counties prior to the single sticker transition date.

The new requirements prevent the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen vehicle registration insignia stickers, vehicle inspection reports, or other documents that may be used to circumvent the vehicle emissions I/M requirements in Travis and Williamson Counties beginning on the single sticker transition date. The language clarifying that the existing requirements will be

maintained prior to the single sticker transition date was not included the proposed amendment to §114.84(b).

The amendment to §114.84(d) also replaces the reference to 37 TAC §23.93 with 37 TAC Chapter 23, Subchapter E, because 37 TAC §23.93 was repealed by the DPS on March 13, 2013. The reference to 37 TAC Chapter 23, Subchapter E was not included in the proposed amendment to §114.84(d). As discussed elsewhere in the Section by Section discussion of this preamble, the reference to 37 TAC Chapter 23, Subchapter E was added to provide specific citation where the rules adopted by the DPS that contain the requirements for the I/M program can be found. As discussed elsewhere in the Section by Section discussion of this preamble, the adopted amendment to this section contains modifications that replace the references to specific transition dates included in the proposed amendment to this section with references to the single sticker transition date.

*§114.87, Inspection and Maintenance Fees*

Beginning on the single sticker transition date, the amendment to §114.87(a): 1) exempts emissions inspection stations from being required to remit the state's portion of the vehicle emissions inspection fee to the DPS; and 2) lowers the maximum inspection fee collected by the emissions inspection stations by the amount of the state's portion of the vehicle emissions inspection fee that will now be collected by the DMV or county tax assessor-collector at the time of registration.

Beginning on the single sticker transition date, the maximum inspection fee collected by emissions inspection stations will be lowered from \$16 to \$11.50 for vehicles subject to emissions inspections in Travis and Williamson Counties. The language in §114.87(a) sets the maximum inspection fee that emissions inspections stations located in Travis and Williamson Counties may collect and the state's portion of the vehicle emissions inspection fee that the emissions inspection stations remit to the DPS. The amendment to §114.87 also adds language in proposed subsection (d) that specifies that owners of vehicles subject to vehicle emissions inspections in Travis and Williamson Counties will remit the state's portion of the vehicle emissions inspection fee, \$4.50, to the DMV or county tax assessor-collector at the time of registration. The language clarifying when the requirements in proposed subsection (d) go into effect was not included in the proposed amendment to §114.87(d). As discussed elsewhere in the Section by Section discussion of this preamble, the adopted amendment to this section contains modifications that replace the references to specific transition dates included in the proposed amendment to this section with references to the single sticker transition date.

### **Final Regulatory Impact Determination**

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the adopted rules do not meet the definition of a "major environmental rule." Texas Government

Code, §2001.0225 states that 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, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state." Furthermore, while the adopted rulemaking does not constitute a major environmental rule, even if it did, a regulatory impact analysis is not be required because the adopted rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule. Texas Government Code, §2001.0225 applies only to a major environmental rule which, "(1) exceeds a standard set by federal law, unless the rule is specifically required by state law; (2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; (3) exceeds 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) adopts a rule solely under the general powers of the agency instead of under a specific state law."

The adopted rulemaking implements requirements of the Federal Clean Air Act (FCAA). Under 42 United States Code (USC), §7410, each state is required to adopt and implement a SIP containing adequate provisions to implement, attain, maintain, and enforce the NAAQS within the state. While 42 USC, §7410 generally does not require specific programs, methods, or reductions in order to meet the standard, state 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 42 USC, Chapter 85, Air Pollution Prevention and Control, otherwise known as the FCAA). The provisions of the FCAA recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public, to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 USC, §7410. States are not free to ignore the requirements of 42 USC, §7410, and must develop programs and control measures to assure that their SIPs provide for implementation, attainment, maintenance, and enforcement of the NAAQS within the state. Furthermore, while states generally are afforded some flexibility in adopting and implementing a SIP, vehicle I/M programs are required elements of the SIP pursuant to 42 USC, §7511(a) based on the classification of an area.

The specific intent of the adopted rulemaking is to implement applicable sections of HB 2305, relating to replacing the current Texas dual inspection and registration sticker system with a single vehicle registration insignia sticker and modifying the method used

to collect the state's portion of the vehicle emissions inspection fee. The adopted rulemaking does not constitute a major environmental rule under Texas Government Code, §2001.0225(g)(3) because: 1) the specific intent of the adopted rulemaking is not to protect the environment or reduce risks to human health from environmental exposure, but rather to modify administrative aspects of an existing program by implementing HB 2305, which replaces the current dual inspection and registration sticker system with a single vehicle registration insignia sticker and modifies the method used to collect the state's portion of the vehicle emissions inspection fee; and 2) the adopted rulemaking does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs, nor will the adopted rules adversely affect in a material way the environment, or the public health and safety of the state or a sector of the state because the amendments are merely administrative changes to the existing program. Because the adopted rulemaking is not a major environmental rule, it is not subject to a regulatory impact analysis under Texas Government Code, §2001.0225.

While the adopted rulemaking does not constitute a major environmental law, even if it did, it is not be subject to a regulatory impact analysis under Texas Government Code, §2001.0225. The requirement to provide a fiscal analysis of 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 a 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 will 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 will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that will 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 rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law.

The FCAA does not always require specific programs, methods, or reductions in order to meet the NAAQS; thus, states must develop programs for each nonattainment area to help ensure that those areas will meet the attainment deadlines. Because of the ongoing need to address nonattainment issues, and to meet the requirements of 42 USC, §7410, the commission routinely proposes and adopts revisions to the SIP and rules. The legislature is presumed to understand this federal scheme. If each rule adopted for inclusion in the SIP was considered to be a major environmental rule that exceeds federal law, then every revision to the SIP and rules 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 (LBB) in its fiscal notes. Since 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 LBB, 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 and rules have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA. For these reasons, rules adopted for inclusion in the SIP fall under the exception in Texas Government Code, §2001.0225(a) because they are required by federal law.

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. It is presumed 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, 893 (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).

The commission's interpretation of the regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance" (Texas Government Code, §2001.035). The legislature specifically identified Texas Government Code, §2001.0225 as falling under this standard. The commission has substantially complied with the requirements of Texas Government Code, §2001.0225.

Even if the adopted rulemaking constituted a major environmental rule under Texas Government Code, §2001.0225(g)(3), a regulatory impact analysis is not required because this exemption is part of the commission's SIP for making progress toward the attainment and maintenance of the NAAQS. Therefore, the adopted rules do not exceed a standard set by federal law or exceed an express requirement of state law since they are part of an overall regulatory scheme designed to meet, not exceed, the relevant standard set by federal law - the NAAQS. In addition, the adoption and maintenance of the I/M program is directly required by federal law pursuant to 42 USC, §7511(a). The commission is charged with protecting air quality within the state and to design and

submit a plan to achieve attainment and maintenance of the federally mandated NAAQS. The Third District Court of Appeals upheld this interpretation in *Brazoria County v. Texas Comm'n on Env'tl. Quality*, 128 S.W. 3d 728 (Tex. App. - Austin 2004, *no writ*). In addition, this rulemaking is directly required by HB 2305.

Furthermore, no contract or delegation agreement covers the topic that is the subject of this rulemaking. Finally, this rulemaking was not developed solely under the general powers of the agency but is authorized by specific sections of Texas Health and Safety Code (THSC), Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code (TWC), which are cited in the Statutory Authority section of this preamble, including THSC, §§382.011, 382.012, and 382.017.

This rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), for the following reasons. The adopted rulemaking is not a major environmental law because: 1) the specific intent of the adopted rules is not to protect the environment or reduce risks to human health from environmental exposure but rather to modify administrative aspects of an existing program by implementing HB 2305, which replaces the current dual inspection and registration sticker system with a single vehicle registration insignia sticker, and modifies the method used to collect the state's portion of the vehicle emissions inspection fee; and 2) the adopted rulemaking does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs, nor will it adversely affect in a

material way the environment, or the public health and safety of the state or a sector of the state because the amendments are merely administrative changes to the existing program. Furthermore, even if the adopted rulemaking was a major environmental rule, it does not meet any of the four applicability criteria listed in Texas Government Code, §2001.0225 because: 1) the adopted rulemaking is part of the SIP, and as such is designed to meet, not exceed the relevant standard set by federal law; 2) this rulemaking is directly required by state law; 3) no contract or delegation agreement covers the topic that is the subject of this rulemaking; and 4) the adopted rulemaking is authorized by specific sections of THSC, Chapter 382 (also known as the Texas Clean Air Act), and the TWC, which are cited in the Statutory Authority section of this preamble.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period, and no comments were received.

### **Takings Impact Assessment**

The commission evaluated the adopted rules and performed an analysis of whether the adopted rules constitute a taking under Texas Government Code, Chapter 2007. The commission's assessment indicates Texas Government Code, Chapter 2007 does not apply.

Under Texas Government Code, §2007.002(5), taking means: "(A) a governmental

action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Article I, Texas Constitution; or (B) a governmental action that: (i) affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and (ii) is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect."

The specific purpose of the adopted rules is to implement applicable sections of HB 2305, relating to administrative changes to the I/M safety inspection process. HB 2305 requires replacement of the current Texas dual inspection and registration sticker system with a single vehicle registration insignia sticker and modifies the method used to collect the state's portion of the vehicle emissions inspection fee. Therefore, the adopted rules do not have any impact on private real property.

Promulgation and enforcement of the adopted rules is neither a statutory nor a

constitutional taking of private real property. These rules are not burdensome, restrictive, or limiting of rights to private real property because the adopted rules do not affect a landowner's rights in private real property. These rules do not burden, restrict, or limit the owner's right to property, nor does it reduce the value of any private real property by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, these rules do not constitute a taking under Texas Government Code, Chapter 2007.

### **Consistency with the Coastal Management Program**

The commission reviewed the adopted rulemaking and found the adoption is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), relating to rules subject to the Coastal Management Program (CMP), and will, therefore, require that goals and policies of the CMP be considered during the rulemaking process. 31 TAC §505.11(b)(2) applies only to air pollutant emissions, on-site sewage disposal systems, and underground storage tanks and 31 TAC §505.11(b)(4) applies to all other actions.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore,

consistent with CMP goals and policies.

The commission invited public comment regarding the consistency with the CMP during the public comment period and no comments were received.

### **Public Comment**

Public hearings were offered in Houston on October 29, 2013; in Austin on October 30, 2013; in Fort Worth on October 31, 2013; and in El Paso on November 1, 2013. The hearings were not officially opened because no one registered to provide oral comments. The comment period opened on September 27, 2013 and closed on November 4, 2013. The commission received written comments from the City of Houston's Department of Health and Human Services, Envirotest Systems Holdings Corporation (Envirotest), the EPA, and the North Central Texas Council of Governments (NCTCOG). Two commenters expressed support for the revisions to the rules and the I/M SIP. Two commenters suggested changes to the revisions to the rules and the I/M SIP.

### **Responses to Comments**

The EPA expressed support for the revisions to §§114.1, 114.2, 114.21, 114.50, 114.53, 114.82 - 114.84, and 114.87 and commented that the revisions will implement the preferred registration denial enforcement strategy and may improve the enforcement and compliance components of the I/M program.

**The commission appreciates the EPA's support of this rulemaking and this I/M SIP revision. No changes were made in response to this comment.**

The EPA requested an explanation regarding how vehicle owners will be made aware of the requirement to perform an emissions inspection no earlier than 90 days before the expiration of the vehicle registration.

**The TCEQ staff plans to work with the DMV and the DPS to develop the details of a public outreach campaign to alert vehicle owners of the revised requirement to have the vehicle inspected within 90 days prior to the expiration of the vehicle registration. No changes were made in response to this comment.**

The EPA requested an explanation of how the transition from sticker-based enforcement to registration denial enforcement starting March 1, 2015 will take place, especially when inspection due dates and vehicle registration dates do not coincide. The EPA commented that under such a scenario some vehicles would have to be inspected more than once in a 12-month period and asked what special provisions or exemptions might be afforded to those vehicle owners.

**No special provisions or exemptions are included in this rulemaking. The TCEQ staff plans to work with the DMV and the DPS to develop the process for implementing the transition from sticker-based enforcement to registration denial enforcement of the I/M program requirements. The TCEQ staff anticipates that the details of the process will be provided as part of a public outreach campaign after the development of the transition process is completed. The current dual sticker system will remain in place and effective until the provisions of HB 2305 are implemented by the DPS and the DMV to ensure stability of the I/M program. No changes were made in response to this comment.**

The NCTCOG conveyed its support for HB 2305. The NCTCOG recommended that the TCEQ establish a robust educational program to help the public understand the changes taking place, especially as the changes relate to the fees charged at the inspection station for ASM and OBD tests since the LIRAP fee will no longer be collected at the time of inspection. The NCTCOG commented that a proper education program in place will help to avoid potential disproportionate imprints under Executive Order 12898 (Environmental Justice) since ASM vehicles are older and often owned by lower-income individuals.

**Executive Order 12898 only applies to actions by federal agencies and does not apply to the TCEQ's rulemaking; however, the TCEQ staff plans to work with the DMV and the DPS to develop the plan for implementing the changes to the I/M program requirements contained in this rulemaking. The TCEQ staff anticipates that the details of the plan will be provided as part of a public outreach campaign that will inform motorists of the changes to the fees charged by the inspection station at the time of the vehicle inspection and by the DMV or county tax assessor-collector at the time of vehicle registration. No changes were made in response to this comment.**

The NCTCOG expressed support for the use of remote sensing technology to identify high-emitting vehicles and conveyed its belief that this technology is not being used often enough to be effective. The NCTCOG included a June 2011 report entitled, "Enhanced Remote Sensing Performance Based Pilot Programs," based upon a study conducted by the NCTCOG and Envirotest. The NCTCOG commented that based upon the referenced study, more stringent cut-points and a greater sampling of vehicles are key to making remote sensing successful. The NCTCOG suggested that the increased use of remote sensing would assist the DPS in enforcing the requirement to conduct emissions tests on vehicles that are registered outside of an I/M county but travel within an I/M area more than 60 days per year.

**The commission appreciates the NCTCOG's support on enforcement of the I/M program; however, expanding the role of the remote sensing component of the current I/M program is beyond the scope of this rulemaking. No changes were made in response to this comment.**

The NCTCOG expressed support for the revisions to §114.21(e) and (f) that requires removal and destruction of the vehicle inspection certificate and vehicle registration insignia sticker from vehicles currently exempt from anti-tampering requirements before the vehicles are offered for sale or public examination. The NCTCOG suggested that this requirement be extended to all retail vehicle sales and to all vehicles sold at auction.

**The commission appreciates the NCTCOG's support of this revision to §114.21(e) and (f); however, expanding the use of this requirement to all retail vehicle or auction sales is beyond the scope of this rulemaking. No changes were made in response to this comment.**

The NCTCOG requested more transparency be brought to the state's Vehicle Inspection Advisory Committee and suggested that meeting notices be posted on the TCEQ, DPS,

and DMV websites, and that an e-mail distribution list be developed to inform interested parties of upcoming meetings. The NCTCOG also recommended that committee meetings be hosted in each of the four I/M regions once per year to help increase attendance.

**The commission appreciates the NCTCOG's suggestions regarding the State's Vehicle Inspection Advisory Committee. The purpose and task of the advisory committee are the responsibility of the DPS. The TCEQ is responsible for appointing one member to the committee and will inform the committee of the NCTCOG's suggestions. No changes were made in response to this comment.**

Envirotest commented that it applauds the TCEQ's SIP programs and supports the I/M SIP revision. Envirotest urged the TCEQ to continue vigorous enforcement of the I/M requirements and identified I/M programs as essential to attainment of health standards in nonattainment areas. Envirotest urged continued use of remote sensing technology and rigorous enforcement of the Texas I/M program requirements in support of the Texas SIP and to help prevent backsliding. Envirotest also suggested increasing the use of the remote sensing technology in order to restore the on-road program to measuring 10% - 20% of I/M area registered vehicles.

**The commission appreciates Envirotest's support. As discussed in the *Demonstrating Noninterference under Federal Clean Air Act, §110(l)* portion of the Background and Summary section of this preamble, no backsliding is anticipated as a result of these changes. Expanding the role of the remote sensing component of the I/M program is beyond the scope of this rulemaking. No changes were made in response to this comment.**

The City of Houston's Department of Health and Human Services offered to assist the TCEQ with the public hearings as needed.

**The commission appreciates City of Houston's Department of Health and Human Services offer for assistance with the public hearing process for this rulemaking and this I/M SIP revision. No changes were made in response to this comment.**

## **SUBCHAPTER A: DEFINITIONS**

### **§114.1, §114.2**

#### **Statutory Authority**

The amendments are adopted under Texas Water Code (TWC), §5.102, General Powers, TWC, §5.103, Rules, and TWC, §5.105, 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 TWC, §5.013, General Jurisdiction of Commission, which states the commission's authority over various statutory programs. The revisions are also adopted under Texas Health and Safety Code (THSC), §382.017, Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of THSC, Chapter 382 (the Texas Clean Air Act), and to adopt rules that differentiate among particular conditions, particular sources, and particular areas of the state. The revisions are also adopted under THSC, §382.002, Policy and Purpose, 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; THSC, §382.011, General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.019, Methods Used to

Control and Reduce Emissions From Land Vehicles, which provides the commission the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles; THSC, Chapter 382, Subchapter G, Vehicle Emissions, 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 Federal Clean Air Act, 42 United States Code, §§7401 *et seq.*; and THSC, Chapter 382, Subchapter H, Vehicle Emissions Programs in Certain Counties, which authorizes the commission to adopt an inspection and maintenance program for participating early action compact counties. The rule revisions are adopted pursuant to amendments to Texas Transportation Code, §548.104 and §548.302, which were amended by House Bill (HB) 2305, 83rd Legislature, 2013, and THSC, §382.0622(a), which was also amended by HB 2305.

The amendments implement THSC, §382.019 and §382.0622(a), Chapter 382, Subchapter G, in addition to Texas Transportation Code, §548.104 and §548.302.

**§114.1. 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 which are defined by the TCAA, the following words and terms, when used in this chapter, 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. Beginning on the single sticker transition date as defined in this section, the safety inspection certificates will no longer be used.

(5) First vehicle registration--Initial vehicle registration insignia sticker issued through the Texas Department of Motor Vehicles for every new vehicle found to be in compliance with the rules and regulations governing vehicle registration prior to the single sticker transition date as defined in this section and vehicle registration and safety inspections beginning on the single sticker transition date.

(6) Gross vehicle weight rating--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.

(7) Heavy-duty vehicle--Any passenger vehicle or truck capable of transporting people, equipment, or cargo, that has a gross vehicle weight rating (GVWR) greater than 8,500 pounds, and is required to be registered under Texas Transportation Code, §502.002. For purposes of the mobile emission reduction credit 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, but less than or equal to 10,000 pounds.

(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, but less than or equal to 19,500 pounds.

(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.

(8) Inherently low emission vehicle--A vehicle as defined by 40 Code of Federal Regulations Part 88.

(9) 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 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.

(10) Light-duty vehicle--Any passenger vehicle or truck capable of transporting people, equipment, or cargo that has a gross vehicle weight rating (GVWR) less than or equal to 8,500 pounds and registered or required to be registered under

Texas Transportation Code, §502.002. For purposes of the mobile emission reduction credit 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.

(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.

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

(11) Loaded mode inspection and maintenance 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 must meet United States Environmental Protection Agency requirements for acceleration simulation mode equipment.

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

(A) the LEV standards applicable under 42 United States Code, Part C, Subchapter II, §§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, as published in the *Federal Register* on September 30, 1994 (59 FR 50042).

(13) Mass transit authority--A transportation or transit authority or department established under Chapter 141, 63rd Legislature (1973), as defined in Texas Transportation Code, Chapters 451 - 453 (relating to Metropolitan Rapid Transit Authorities, Regional Transportation Authorities, and Municipal Transit Departments) that operates a mass transit system under any of those laws.

(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).

(15) Single sticker transition date--The transition date of the single sticker system is the later of March 1, 2015 or the date that the Texas Department of Motor Vehicles and the Texas Department of Public Safety concurrently implement the single sticker system required by Texas Transportation Code, §502.047.

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

(17) Tier I federal emission standards--The standards are defined in 42 United States Code, §7521, and in 40 Code of Federal Regulations Part 86. The phase-in of these standards began in model year 1994.

(18) Ultra low emission vehicle--A vehicle as defined by 40 Code of Federal Regulations Part 88.

(19) Vehicle registration--Vehicle characteristics, corresponding owner information, and registration expiration date contained in the Texas Department of Motor Vehicles registration system.

(20) Vehicle registration insignia sticker--The sticker issued through the Texas Department of Motor Vehicles (DMV) or county tax assessor-collector to be affixed on the windshield of a vehicle compliant with the DMV regulations. Beginning on the single sticker transition date as defined in this section , the vehicle registration insignia sticker will be used as proof of compliance with inspection and maintenance program requirements, the DMV's rules and regulations governing vehicle registration, and the Texas Department of Public Safety's rules and regulations governing safety inspections.

(21) Zero emission vehicle--A vehicle as defined by 40 Code of Federal Regulations Part 88.

**§114.2. Inspection and Maintenance Definitions.**

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

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

(A) the 50/15 mode--in which the vehicle is tested for 90 seconds upon reaching and maintaining a constant speed of 15 miles per hour (mph) on a dynamometer that simulates acceleration at a rate of 3.3 mph per second by using 50% of the vehicle available horsepower; and

(B) the 25/25 mode--in which the vehicle is tested for 90 seconds upon reaching and maintaining a constant speed of 25 mph on a dynamometer that

simulates acceleration at a rate of 3.3 mph per second by using 25% of the vehicle available horsepower.

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

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

(4) Low-volume emissions inspection station--A vehicle emissions inspection station that meets all criteria for obtaining a low-volume waiver from the Texas Department of Public Safety.

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

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

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

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

(9) Primarily operated--Use of a motor vehicle greater than 60 calendar days per testing cycle in an affected county. Motorists shall comply with emissions

requirements for such counties. It is presumed that a vehicle is primarily operated in the county in which it is registered.

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

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

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

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

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

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

(12) Testing cycle--Before the single sticker transition date as defined in §114.1 of this title (related to Definitions), the annual cycle commencing with the first safety inspection certificate expiration date for which a motor vehicle is subject to a vehicle emissions inspection or beginning on the single sticker transition date, the annual cycle commencing with the first vehicle registration expiration date for which a motor vehicle is subject to a vehicle emissions inspection.

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

(14) Uncommon part--A part that takes more than 30 days for expected delivery and installation where a motorist can prove that a reasonable attempt made to locate necessary emission control parts by retail or wholesale part suppliers will exceed the remaining time prior to expiration of:

(A) the vehicle safety inspection certificate prior to the single sticker transition date as defined in §114.1 of this title (relating to Definitions) ;

(B) the vehicle registration beginning on the single sticker transition date as defined in §114.1 of this title ; or

(C) the 30-day period following an out-of-cycle inspection.

## **SUBCHAPTER B: MOTOR VEHICLE ANTI-TAMPERING REQUIREMENTS**

### **§114.21**

#### **Statutory Authority**

The amendment is adopted under Texas Water Code (TWC), §5.102, General Powers, TWC, §5.103, Rules, and TWC, §5.105, 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 TWC, §5.013, General Jurisdiction of Commission, which states the commission's authority over various statutory programs. The revisions are also adopted under Texas Health and Safety Code (THSC), §382.017, Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of THSC, Chapter 382 (the Texas Clean Air Act), and to adopt rules that differentiate among particular conditions, particular sources, and particular areas of the state. The revisions are also adopted under THSC, §382.002, Policy and Purpose, 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; THSC, §382.011, General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, State Air Control Plan, which authorizes the commission to prepare and develop a general,

comprehensive plan for the control of the state's air; THSC, §382.019, Methods Used to Control and Reduce Emissions From Land Vehicles, which provides the commission the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles; THSC, Chapter 382, Subchapter G, Vehicle Emissions, 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 Federal Clean Air Act, 42 United States Code, §§7401 *et seq.*; and THSC, Chapter 382, Subchapter H, Vehicle Emissions Programs in Certain Counties, which authorizes the commission to adopt an inspection and maintenance program for participating early action compact counties. The rule revisions are adopted pursuant to amendments to Texas Transportation Code, §548.104 and §548.302, which were amended by House Bill (HB) 2305, 83rd Legislature, 2013, and THSC, §382.0622(a), which was also amended by HB 2305.

The amendment implements THSC, §382.019 and §382.0622(a), Chapter 382, Subchapter G, in addition to Texas Transportation Code, §548.104 and §548.302.

**§114.21. Exemptions.**

(a) The following exemptions apply to specified motor vehicles or motor vehicle engines.

(1) Motor vehicles or motor vehicle engines which are intended solely or primarily for legally sanctioned motor competitions, for research and development uses, or for instruction in a bona fide vocational training program where the use of a system or device would be detrimental to the purpose for which the vehicle or engine is intended to be used are exempt from the provisions of §114.20(a), (b), and (d) of this title (relating to Maintenance and Operation of Air Pollution Control Systems or Devices Used to Control Emissions from Motor Vehicles).

(2) Motor vehicles or motor vehicle engines intended solely or primarily for research and development uses, or for instruction in a bona fide vocational training program where the introduction of leaded gasoline or the circumvention of an emission control system or device is necessary for the intended purposes of the program are exempt from the provisions of §114.20(e) of this title.

(b) Vehicles belonging to members of the United States Department of Defense (DoD) participating in the DoD Privately Owned Vehicle Import Control Program or other persons being transferred to a foreign country are exempt from the provisions of §114.20(a), (b), and (d) of this title if the following conditions are met.

(1) Only the catalytic converter, oxygen sensor, and/or the fuel filler inlet restrictor are removed from the vehicle.

(2) The vehicle is delivered to the appropriate port for overseas shipment within 30 days after the emission control device(s) is removed.

(3) If the vehicle is returned to the United States, all systems or devices used to control emissions from the vehicle are restored to good operable condition within 30 days of pick-up of the vehicle from the appropriate port of importation.

(4) Documentation must be kept with the vehicle at all times while the vehicle is operated in Texas that provides sufficient information to demonstrate compliance with all appropriate qualifications and conditions of this exemption, including the following:

(A) the unique vehicle identification number (VIN) of the subject vehicle;

(B) the agency, company, or organization that employs the owner of the subject vehicle;

(C) the country to which the owner of the subject vehicle is being transferred;

(D) the dates when applicable alterations were performed on the subject vehicle;

(E) the date when the subject vehicle is scheduled to be delivered to the appropriate port for shipment out of the United States; and

(F) the date when the subject vehicle is picked up from the port of importation upon returning to the United States.

(c) Motor vehicles are exempt from the provisions of §114.20(a), (b), and (d) of this title if the following conditions apply:

(1) the motor vehicles are registered as farm vehicles with the Vehicle Titles and Registration Division of the Texas Department of Motor Vehicles, are intended solely or primarily for use on a farm or ranch, and their air pollution control devices or systems were removed or made inoperable prior to June 1, 2000; or

(2) the motor vehicles were granted an exemption from the provisions of §114.20(a) and (b) of this title by the commission or its predecessor agency prior to June 1, 2000.

(A) A copy of the exemption must be kept with the vehicle at all times and available for inspection by representatives of the commission, the Texas Department of Public Safety (DPS), or any other law enforcement agency upon request. The approved exclusion must also be presented to the certified vehicle inspector before each annual vehicle safety inspection of the vehicle as administered by the DPS.

(B) The exemption must be void and all pollution control systems and devices replaced on the vehicle and/or engine covered by the exclusion when the vehicle changes ownership or is no longer used for the purpose identified in the exclusion application. The executive director shall be informed in writing prior to the change of ownership or usage.

(d) The following vehicle transactions involving a "dealer" as defined in Texas Transportation Code, §503.001, are exempt from the requirements of §114.20(c) of this title:

(1) sales or transfers from one dealer to another; and

(2) sales, transfers, or trade-ins from an individual to a dealer.

(e) Federal, state, and local agencies or their agents that sell abandoned, confiscated, or seized vehicles and any commercial vehicle auction facilities are exempt from the provisions of §114.20(c) of this title if the following conditions are met.

(1) Before the single sticker transition date as defined in §114.1 of this title (relating to Definitions), the DPS motor vehicle safety inspection certificates must be removed from the vehicle and destroyed before the vehicle may be offered for sale or displayed for public examination. Beginning on the single sticker transition date, , the Texas Department of Motor Vehicles (DMV) vehicle registration insignia sticker must be removed from the vehicle and destroyed before the vehicle may be offered for sale or displayed for public examination.

(2) All potential buyers of the vehicle must be informed that deficiencies may be present in the vehicle pollution control systems on the vehicle. The buyer must also be informed of the liabilities to the buyer under §114.20 of this title and §114.50 of this title (relating to Vehicle Emissions Inspection Requirements) of operating the vehicle prior to the adequate restoration of all pollution control systems or devices on the vehicle as originally equipped. The seller of the vehicle shall provide to the buyer a

written acknowledgment of the receipt of this information which must be signed by the buyer prior to completion of the sales transaction. The seller shall retain a copy of this signed acknowledgment for two years and shall make it available, upon request.

(f) Before the single sticker transition date as defined in §114.1 of this title, the owner of a motor vehicle that has been totally disabled by accident, age, or malfunction and will no longer be operated is exempt from the provisions of §114.20(c) of this title if the DPS motor vehicle safety inspection certificate is removed and destroyed before the vehicle is offered for sale or displayed for public examination. Beginning on the single sticker transition date, the owner of a motor vehicle that has been totally disabled by accident, age, or malfunction and will no longer be operated is exempt from the provisions of §114.20(c) of this title if the DMV vehicle registration insignia sticker is removed and destroyed before the vehicle is offered for sale or displayed for public examination.

**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, §114.53**

**Statutory Authority**

The amendments are adopted under Texas Water Code (TWC), §5.102, General Powers, TWC, §5.103, Rules, and TWC, §5.105, 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 TWC, §5.013, General Jurisdiction of Commission, which states the commission's authority over various statutory programs. The revisions are also adopted under Texas Health and Safety Code (THSC), §382.017, Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of THSC, Chapter 382 (the Texas Clean Air Act), and to adopt rules that differentiate among particular conditions, particular sources, and particular areas of the state. The revisions are also adopted under THSC, §382.002, Policy and Purpose, 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; THSC, §382.011, General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.019, Methods Used to Control and Reduce Emissions From Land Vehicles, which provides the commission the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles; THSC, Chapter 382, Subchapter G, Vehicle Emissions, 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 Federal Clean Air Act, 42 United States Code, §§7401 *et seq.*; and THSC, Chapter 382, Subchapter H, Vehicle Emissions Programs in Certain Counties, which authorizes the commission to adopt an I/M program for participating Early Action Compact counties. The rule revisions are adopted pursuant to amendments to Texas Transportation Code, §548.104 and §548.302, which were amended by House Bill (HB) 2305, 83rd Legislature, 2013, and THSC, §382.0622(a), which was also amended by HB 2305.

The amendments implement THSC, §382.019 and §382.0622(a), Chapter 382, Subchapter G, in addition to Texas Transportation Code, §548.104 and §548.302.

**§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) must be applied to all gasoline-powered motor vehicles 2 - 24 years old and subject to an annual emissions inspection beginning with the first safety inspection. Military tactical vehicles, motorcycles, diesel-powered vehicles, dual-fueled vehicles that cannot operate using gasoline, and antique vehicles registered with the Texas Department of Motor Vehicles are excluded from the program. Safety inspection facilities and inspectors certified by the Texas Department of Public Safety (DPS) must inspect all subject vehicles in the following program areas as defined in §114.2 of this title (relating to Inspection and Maintenance Definitions), in accordance with the following schedule.

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

(A) Beginning May 1, 2002, all 1996 and newer model year vehicles registered and primarily operated in Collin, Dallas, Denton, and Tarrant Counties equipped with on-board diagnostic (OBD) systems must 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 must be tested using an acceleration simulation mode (ASM-2) test or a vehicle emissions test approved by the EPA.

(C) All vehicle emissions inspection stations in affected program areas must 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 shall petition the DPS in accordance with the rules and procedures established by the DPS.

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

(A) Beginning May 1, 2003, all 1996 and newer model year vehicles registered and primarily operated in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties equipped with OBD systems must 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 must be tested using an ASM-2 test or a vehicle emissions test approved by the EPA.

(C) All vehicle emissions inspection stations in affected program areas must 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 shall petition the DPS in accordance with the rules and procedures established by the DPS.

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

(A) Beginning May 1, 2002, all 1996 and newer model year vehicles registered and primarily operated in Harris County equipped with OBD systems must 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 must be tested using an ASM-2 test or a vehicle emissions test approved by the EPA.

(C) All vehicle emissions inspection stations in affected program areas must 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 shall petition the DPS in accordance with the rules and procedures established by the 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 must 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 must be tested using the ASM-2 test procedures or a vehicle emissions test approved by the EPA.

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

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

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

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

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

(b) Control requirements.

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

(A) all applicable air pollution emissions control-related requirements included in the annual vehicle safety inspection requirements administered by the DPS as evidenced prior to the single sticker transition date as defined in §114.1 of this title (relating to Definitions) by a current valid inspection

certificate affixed to the vehicle windshield, a current valid vehicle inspection report (VIR), or other form of proof authorized by the DPS;

(B) beginning on the single sticker transition date, all applicable air pollution emissions control-related requirements included in the annual vehicle safety inspection requirements administered by the DPS, as evidenced by a current valid vehicle registration insignia sticker affixed to the vehicle windshield, a current valid VIR, or other form of proof authorized by the DPS; and

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

(2) All federal government agencies must require a motor vehicle operated by any federal government agency employee on any property or facility under the jurisdiction of the federal government agency and located in a program area to comply with all vehicle emissions I/M requirements specified in Texas Health and Safety Code, Subchapter G, §§382.201 - 382.216 (concerning Vehicle Emissions), and this chapter. Commanding officers or directors of federal facilities shall certify annually to the executive director, or appointed designee, that all subject vehicles have been tested and are in compliance with the Federal Clean Air Act (42 United States Code, §§7401 *et seq.*). This requirement will not apply to visiting federal government agency, employee,

or military personnel vehicles as long as such visits do not exceed 60 calendar days per year.

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

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

(5) A motorist whose vehicle has failed an emissions test and has not requested a challenge retest or whose vehicle has failed a challenge retest shall have emissions-related repairs performed and 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 shall submit a VRF or applicable documentation as deemed necessary by the DPS.

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

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

(B) satisfy all inspection, extension, or waiver requirements of the vehicle emissions I/M program specified in 37 TAC Chapter 23, Subchapter E (relating to Vehicle Emissions Inspection And Maintenance Program ).

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

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

(c) Waivers and extensions. A motorist may apply to the DPS for a waiver or an extension as specified in 37 TAC Chapter 23, Subchapter E, which defers 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 the DPS unless all applicable air pollution emissions control-related requirements of the annual vehicle safety inspection and the vehicle emissions I/M requirements are completely and properly performed in accordance with the rules and regulations adopted by the DPS and the commission. Prior to taking any enforcement action regarding this provision, the commission must consult with the DPS.

(2) Before the single sticker transition date as defined in §114.1 of this title, no person may allow or participate in the preparation, duplication, sale, distribution, or

use of false, counterfeit, or stolen safety inspection certificates, VIRs, VRFs, vehicle emissions repair documentation, or other documents that may be used to circumvent applicable vehicle emissions I/M requirements and to commit an offense specified in Texas Transportation Code, §548.603 (concerning Fictitious or Counterfeit Inspection Certificate or Insurance Document). Beginning on the single sticker transition date, no person may allow or participate in the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen vehicle registration insignia stickers, VIRs, VRFs, vehicle emissions repair documentation, or other documents that may be used to circumvent applicable vehicle emissions I/M requirements and to commit an offense specified in Texas Transportation Code, §548.603.

(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 the DPS, without first obtaining and maintaining DPS recognition.

**§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 must include one free retest should the vehicle fail the emissions inspection provided that the motorist has the retest performed at the same station where the vehicle originally failed and submits, prior to the retest, a properly completed vehicle repair form showing that emissions-related repairs were performed and the retest is conducted within 15 days of the initial emissions test.

(1) In El Paso County beginning May 1, 2002 and ending on the day before the single sticker transition date as defined in §114.1 of this title (relating to Definitions) , any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(4)(A), (B), or (C) of this title (relating to Vehicle Emissions Inspection Requirements) must collect a fee of \$14 and remit \$2.50 to the Texas Department of Public Safety (DPS). If the El Paso County Commissioners Court adopts a resolution that is approved by the commission to participate in the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program, the emissions inspection station in El Paso County must collect a fee of \$16 and remit to the DPS \$4.50 beginning upon the date specified by the commission and ending on the day before the single sticker transition date. Beginning on the single sticker transition date, any emissions inspection station in El Paso County required to conduct an emissions

test in accordance with §114.50(a)(4)(A), (B), or (C) of this title must collect a fee not to exceed \$11.50.

(2) In the Dallas-Fort Worth program area beginning May 1, 2002 and ending on the day before the single sticker transition date as defined in §114.1 of this title, any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(1)(A) or (B) of this title and in the extended Dallas-Fort Worth program area beginning May 1, 2003 and ending on the day before the single sticker transition date, any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(2)(A) or (B) of this title must collect a fee not to exceed \$27. Beginning May 1, 2002 and ending on the day before the single sticker transition date in the Dallas-Fort Worth and the extended Dallas-Fort Worth program areas, the emissions inspection station must remit to the DPS \$2.50 for each acceleration simulation mode (ASM-2) test and \$8.50 for each on-board diagnostics (OBD) test. Beginning on the single sticker transition date in the Dallas-Fort Worth and the extended Dallas-Fort Worth program areas, any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(1)(A) or (B) and (2)(A) or (B) of this title must collect a fee not to exceed \$24.50 for each ASM-2 test and \$18.50 for each OBD test.

(3) In the Houston-Galveston-Brazoria program area beginning May 1, 2002 and ending on the day before the single sticker transition date as defined in §114.1 of this title, any emissions inspection station in Harris County required to conduct an emissions test in accordance with §114.50(a)(3)(A) or (B) of this title and beginning May 1, 2003 and ending on the day before the single sticker transition date, any emissions inspection station in Brazoria, Fort Bend, Galveston, and Montgomery Counties required to conduct an emissions test in accordance with §114.50(a)(3)(D) or (E) of this title must collect a fee not to exceed \$27. Beginning May 1, 2002 and ending on the day before the single sticker transition date in Brazoria, Fort Bend, Galveston, Harris, and Montgomery Counties, the emissions inspection station must remit to the DPS \$2.50 for each ASM-2 test and \$8.50 for each OBD test. Beginning on the single sticker transition date in Brazoria, Fort Bend, Galveston, Harris, and Montgomery Counties, any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(3)(A), (B), (D), or (E) of this title must collect a fee not to exceed \$24.50 for each ASM-2 test and \$18.50 for each OBD test.

(b) The per-vehicle fee and the amount the inspection station remits to the DPS for a challenge test at an inspection station designated by the DPS, must be the same as the amounts set forth in subsection (a) of this section. The challenge fee must 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 must 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 the DPS.

(d) Beginning on the single sticker transition date as defined in §114.1 of this title, vehicle owners shall remit as part of the annual vehicle registration fee collected by the Texas Department of Motor Vehicles (DMV) or county tax assessor-collector the amount of the vehicle emissions inspection fee that is required to be remitted to the state, as specified by the following requirements:

(1) In El Paso County, vehicle owners shall remit \$2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax assessor-collector at the time of the annual vehicle registration as part of the vehicle emissions inspection fee. 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, vehicle owners shall remit \$4.50 for motor vehicles subject to vehicles emissions inspections to the DMV or county tax assessor-

collector at the time of the annual vehicle registration as part of the vehicle emissions inspection fee beginning upon the date specified by the commission.

(2) In the Dallas-Fort Worth and the extended Dallas-Fort Worth program areas, vehicle owners shall remit \$2.50 for motor vehicles subject to ASM-2 tests and \$8.50 for motor vehicles subject to OBD tests to the DMV or county tax assessor-collector at the time of the annual vehicle registration as part of the vehicle emissions inspection fee.

(3) In the Houston-Galveston-Brazoria program area, vehicle owners shall remit \$2.50 for motor vehicles subject to ASM-2 tests and \$8.50 for motor vehicles subject to OBD tests to the DMV or county tax assessor-collector at the time of the annual vehicle registration as part of the vehicle emissions inspection fee.

**SUBCHAPTER C: VEHICLE INSPECTION AND MAINTENANCE;  
LOW INCOME VEHICLE REPAIR ASSISTANCE, RETROFIT,  
AND ACCELERATED VEHICLE RETIREMENT PROGRAM;  
AND EARLY ACTION COMPACT COUNTIES**

**DIVISION 3: EARLY ACTION COMPACT COUNTIES**

**§§114.82 - 114.84, and 114.87**

**Statutory Authority**

The amendments are adopted under Texas Water Code (TWC), §5.102, General Powers, TWC, §5.103, Rules, and TWC, §5.105, 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 TWC, §5.013, General Jurisdiction of Commission, which states the commission's authority over various statutory programs. The revisions are also adopted under Texas Health and Safety Code (THSC), §382.017, Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of THSC, Chapter 382 (the Texas Clean Air Act), and to adopt rules that differentiate among particular conditions, particular sources, and particular areas of the state. The revisions are also adopted under THSC, §382.002, Policy and Purpose, 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; THSC, §382.011, General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.019, Methods Used to Control and Reduce Emissions From Land Vehicles, which provides the commission the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles; THSC, Chapter 382, Subchapter G, Vehicle Emissions, 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 Federal Clean Air Act, 42 United States Code, §§7401 *et seq.*; and THSC, Chapter 382, Subchapter H, Vehicle Emissions Programs in Certain Counties, which authorizes the commission to adopt an inspection and maintenance program for participating early action compact counties. The rule revisions are adopted pursuant to amendments to Texas Transportation Code, §548.104 and §548.302, which were amended by House Bill (HB) 2305, 83rd Legislature, 2013, and THSC, §382.0622(a), which was also amended by HB 2305.

The amendments implement THSC, §382.019 and §382.0622(a), Chapter 382, Subchapter G, in addition to Texas Transportation Code, §548.104 and §548.302.

**§114.82. Control Requirements.**

(a) No person or entity may operate, or allow the operation of, a motor vehicle registered in the affected early action compact (EAC) counties that does not comply with:

(1) all applicable air pollution emissions control-related requirements included in the annual vehicle safety inspection requirements administered by the Texas Department of Public Safety (DPS) as evidenced prior to the single sticker transition date as defined in §114.1 of this title (relating to Definitions) by a current valid inspection certificate affixed to the vehicle windshield, a current valid vehicle inspection report (VIR), or other form of proof authorized by the DPS;

(2) beginning on the single sticker transition date, all applicable air pollution emissions control-related requirements included in the annual vehicle safety inspection requirements administered by the DPS as evidenced by a current valid vehicle registration insignia sticker affixed to the vehicle windshield or a current valid VIR, or other form of proof authorized by the DPS; and

(3) the vehicle emissions inspection and maintenance (I/M) requirements contained in this subchapter.

(b) All federal government agencies must 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 an affected EAC county to comply with all vehicle emissions I/M requirements contained in the Austin Area Early Action Compact Ozone State Implementation Plan Revision. 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 does not apply to visiting agency, employee, or military personnel vehicles as long as such visits do not exceed 60 calendar days per year.

(c) A motorist in an affected EAC county who has received a notice from an emissions inspection station that there are unresolved recall items on the motor vehicle shall furnish proof of compliance with the recall notice prior to the next vehicle emissions inspection, such as a written statement from the dealership or leasing agency indicating that emissions repairs have been completed.

(d) 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 cost of the retest is free.

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

(f) A motorist whose vehicle is registered in an affected EAC county, or in any county adjacent to an affected EAC county, and has failed an on-road test administered by the DPS shall:

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

(2) satisfy all inspection, extension, or waiver requirements of the vehicle emissions I/M program contained in the Austin Area Early Action Compact Ozone State Implementation Plan Revision.

(g) A vehicle registered in a county without an I/M program that meets the applicability criteria of §114.80(c) of this title (relating to Applicability), 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 an affected EAC program 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 or another proof of the program compliance as authorized by the DPS. All 1996 and newer model year vehicles with less than 50,000 miles are exempt from the test-on-resale requirements of this subsection.

(h) State, governmental, and quasi-governmental agencies that fall outside the normal registration or inspection process must comply with all vehicle emissions I/M requirements contained in the Austin Area Early Action Compact Ozone State Implementation Plan Revision for vehicles primarily operated in I/M program areas.

**§114.83. Waivers and Extensions.**

A motorist may apply to the Texas Department of Public Safety for a waiver or an extension as specified in 37 TAC Chapter 23, Subchapter E (relating to Vehicle Emissions Inspection and Maintenance Program ), which defers the need for full compliance with vehicle emissions standards for a specified period of time after failing a vehicle emissions inspection.

**§114.84. Prohibitions.**

(a) No person may issue or allow the issuance of a vehicle inspection report, as authorized by the Texas Department of Public Safety (DPS), unless all applicable air pollution emissions control-related requirements of the annual vehicle safety inspection and the vehicle emissions inspection and maintenance (I/M) requirements and procedures contained in the Austin Area Early Action Compact Ozone State Implementation Plan Revision are completely and properly performed in accordance with the rules and regulations adopted by the DPS and the commission. Prior to taking any enforcement action regarding this provision, the executive director shall consult with the DPS.

(b) Before the single sticker transition date as defined in §114.1 of this title (relating to Definitions), no person may allow or participate in the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen safety inspection certificates, vehicle inspection reports, vehicle repair forms, vehicle emissions repair documentation, or other documents that may be used to circumvent the vehicle emissions I/M requirements and procedures contained in the Austin Area Early Action Compact Ozone State Implementation Plan Revision. Beginning on the single sticker transition date, no person may allow or participate in the preparation, duplication, sale,

distribution, or use of false, counterfeit, or stolen vehicle registration insignia stickers, vehicle inspection reports, vehicle repair forms, vehicle emissions repair documentation, or other documents that may be used to circumvent the vehicle emissions I/M requirements and procedures contained in the Austin Area Early Action Compact Ozone State Implementation Plan Revision.

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

(d) No person may act as or offer to perform services as a Recognized Emissions Repair Technician of Texas, as designated by the DPS, without first obtaining and maintaining DPS recognition. Requirements to become a DPS Recognized Emission Repair Technician are contained in 37 TAC Chapter 23, Subchapter E, (relating to Vehicle Emissions Inspection and Maintenance Program) .

**§114.87. Inspection and Maintenance Fees.**

(a) The following fees must be paid for an emissions inspection of a vehicle at an inspection station in an affected early action compact program county. This fee must

include one free retest if the vehicle fails the emissions inspection, provided that the motorist has the retest performed at the same station where the vehicle originally failed; the motorist 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. In Travis and Williamson Counties beginning September 1, 2005 and ending on the day before the single sticker transition date as defined in §114.1 of this title (relating to Definitions), any emissions inspection station required to conduct an emissions test in accordance with §114.80 of this title (relating to Applicability) must collect a fee not to exceed \$16 and remit \$4.50 to the Texas Department of Public Safety (DPS) for each on-board diagnostic and two-speed idle test. In Travis and Williamson Counties beginning on the single sticker transition date, any emissions inspection station required to conduct an emissions test in accordance with §114.80 of this title must collect a fee not to exceed \$11.50 for each on-board diagnostic and two-speed idle 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 must be the same as the amounts specified in subsection (a) of this section. The challenge fee must 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 resulting from written notification that the subject vehicle failed on-road testing (remote sensing) must charge a motorist for an out-of-cycle emissions inspection in the amount specified in subsection (a) of this section. If the vehicle passes the vehicle emissions inspection, the vehicle owner may request reimbursement from the DPS.

(d) Effective on the single sticker transition date as defined in §114.1 of this title in Travis and Williamson Counties, vehicle owners shall remit \$4.50 for motor vehicles subject to vehicle emissions inspections to the Texas Department of Motor Vehicles or county tax assessor-collector at the time of the annual vehicle registration as part of the vehicle emissions inspection fee.