The Texas Natural Resource Conservation Commission (commission) adopts the repeal of §114.3, concerning Inspection Requirements, and §114.4, concerning Equipment Evaluation Procedures for Vehicle Exhaust Gas Analyzers; and new §114.3, concerning Vehicle Emissions Inspection Requirements; §114.4, concerning Equipment Evaluation Procedures for Vehicle Exhaust Gas Analyzers; §114.6, concerning Waivers and Extensions for Inspection Requirements; and §114.7, concerning Inspection and Maintenance Fees. Sections 114.3, 114.4, 114.6, and 114.7 are adopted with changes to the proposed text as published in the March 26, 1996, issue of the Texas Register (21 TexReg 2451). A revised mobile source control strategy which specifies the administrative, technical, and enforcement provisions of the Inspection/Maintenance (I/M) program is also adopted.

The rule amendments and mobile source control strategy modifications are adopted as a revision to the State Implementation Plan (SIP) for the control of ozone in the Houston/Galveston, Beaumont/Port Arthur, Dallas/Fort Worth (DFW), and El Paso nonattainment areas. This action is the result of Senate Bill (SB) 178 and the Governor's Executive Order which directs the commission to design and develop a new plan for vehicle emissions testing to satisfy Federal Clean Air Act (FCAA) requirements. These revisions to the SIP are also in response to the National Highway System Designation Act of 1995 (NHSDA) signed into law on November 28, 1995.

New §114.3, concerning Vehicle Emissions Inspection Requirements, establishes the primary program requirements of the Texas Motorist’s Choice Program (TMCP) for vehicle emissions testing. This section defines terms for implementation of the program, the affected vehicle population, and the dates

for program startup. Definitions include: adjusted annually, basic program area, core program area, emissions tune-up, enhanced program area, first safety inspection certificate, loaded mode I/M test, motorist, on-road test, out-of-cycle test, primarily operated, program area, retest, revised Texas I/M SIP, and uncommon part.

Section 114.3 also establishes control requirements for motorists and certain federal employees. The affected vehicles are required to comply with the air pollution emissions control related requirements included in the annual vehicle safety inspection administered by the Texas Department of Public Safety (DPS), the vehicle emissions inspection and maintenance requirements contained in the revised Texas I/M SIP, and the on-road emissions test requirements. A motorist whose vehicle has failed the emissions test requirement must have emissions-related repairs performed prior to receiving a vehicle safety inspection certificate. Waiver provisions and time extensions are provided for the control requirements.

Section 114.3 prohibits persons, organizations, businesses, or other entities from activities related to the misrepresentation, misuse, or mishandling of vehicle emissions testing documents or certifications. This section establishes the certification requirements for inspection stations and the requirements for repair technicians allowed in the program.

New §114.4, concerning Equipment Evaluation Procedures for Vehicle Exhaust Gas Analyzers, establishes application, certification, maintenance, and service requirements for manufacturers or

distributors of vehicle testing equipment seeking approval of an exhaust gas analyzer or analyzer system for use in the Texas I/M program. This section also requires applicants to comply with all special provisions and conditions in the notice of approval and notifies applicants of enforcement consequences for misrepresentation or compliance failure.

New §114.6, concerning Waivers and Extensions for Vehicle Emissions Inspection Requirements, establishes two types of waivers and two types of time extensions, along with the associated qualification criteria. The Minimum Expenditure Waiver allows a motorist to forgo compliance with the control requirements after certain minimum expenditure levels are reached. The Individual Vehicle Waiver allows a motorist to forgo compliance with the control requirements after the motorist has taken reasonable measures to comply with the requirements of the vehicle emissions I/M program and the Director of DPS determines that such waiver shall have a minimal impact on air quality. The Minimum Expenditure and Individual Vehicle waivers are allowed once per test cycle. The Low Income Time Extension allows a motorist to forgo the control requirements due to financial considerations. A motorist must pass an emissions test prior to receiving another Low Income Time Extension. The Parts Availability Time Extension, allowed once per test cycle, provides a grace period for those vehicles which need repair parts that are temporarily unavailable.

New §114.7, concerning Inspection and Maintenance Fees, establishes fee schedules for the different counties which must be paid for the emissions inspection of a vehicle at an inspection station. This

section instructs stations on how to charge for vehicle emissions inspections resulting from on-road testing.

In addition to the rule changes, the revisions to the SIP clarify the new program elements such as applicability changes; state resources for the program; the new program performance standard; emissions testing network type; emissions testing; affected vehicle populations; strategies for quality control and quality assurance; projection of waiver rates; enforcement actions related to vehicles and service providers; data collection, analysis, and reporting; inspector training, licensing, and certification; public information strategies; plans for improving repair effectiveness; on-road vehicle emissions testing; and the implementation schedule. The revised SIP excludes the Beaumont/Port Arthur ozone nonattainment area from the I/M program requirements. The I/M program for Dallas and Tarrant counties being proposed exceeds the United States Environmental Protection Agency's (EPA) low enhanced performance standard for these counties. The I/M programs for Harris and El Paso counties meet the low enhanced performance standard specified for these areas.

A total of 58 persons provided testimony, either through the public hearing or written comments. Texas Automobile Dealers Association (TADA); Greater Houston Partnership; Harris County Pollution Control Department (HCPCD); Houston-Galveston Area Council-Regional Air Quality Planning Council (RAQPC); Metropolitan Transit Authority (METRO); Tarrant Coalition for Environmental Awareness (TCEA); Texas State Inspectors Association (TSIA); EPA Region 6 (EPA); People's Action Coalition (PAC); an elected official and eight individuals generally supported the proposed revisions,

however, some commenters suggested improvements. League of Women Voters of Texas (LWV-TX); League of Women Voters of Houston (LWV-H); Citizens' Environmental Coalition (CEC); Commissioners Court of Harris County; El Paso City-County Health and Environmental District; El Paso Metropolitan Planning Organization (El Paso MPO); Greater Dallas Chamber; and 5 individuals suggested improvements to the proposed revision. Most of the suggestions related to the inclusion of all counties in the designated ozone nonattainment areas and of all older vehicles and diesel engine vehicles operating in the affected counties. Automotive Service Association (ASA); Environmental Defense Fund (EDF); Bickerstaff; Heath; Smiley; Pollan; Kever & McDaniel L.L.P. (Bickerstaff) ; FINA Inc. (FINA); Lone Star Chapter of the Sierra Club (Sierra Club); Tejas Testing Technology 1 and 2 (Tejas); and 12 of citizens were against the proposed revisions. The Tax Assessor-Collectors Association of Texas (TACAT) commented that the enforcement of the I/M program should be the sole responsibility of the DPS. An elected official commented on the adequate use of funds in addressing air quality problems. A citizen requested that the commission include in its considerations the impact of the I/M program on low-income individuals. The Texas Vehicle Club Council (TVCC) requested clarification on the exclusion of antique vehicles from the I/M program. Several individuals commented that the notice for the public hearings was inadequate.

PROGRAM EQUIPMENT

TADA expressed concern that certified equipment might not be available in time to meet the state's time line.

The commission and the DPS are working closely with manufacturers that have expressed a desire to participate in the TMCP to make sure approved equipment is available. The phasing of the start dates in DFW and in Houston will assist manufacturers in ensuring that enough certified equipment is available.

An individual commented that the gas cap integrity test is not equal to a test where pressure is held in the line for a leak check. This testing method is not based on the best science or testing method.

A study conducted by the State of California revealed that the majority of the failures indicated by the pressure test were due to an improper sealing by the tank gas cap. The gas cap integrity test procedure is a more convenient, less intrusive, highly effective method for determining if the gas cap is providing an appropriate seal on the vehicles gas tank. The commission will continue to monitor and evaluate the effectiveness of the gas cap integrity test as the program matures. The results will be shared with EPA during the evaluation phase to determine if any adjustments are necessary.

One commenter stated that hoses, gas tank, and other components need to be checked and requested an explanation of "reliable engineering practices" and "good engineering practices".

"Hoses" and "other components" are terms which are too generic for the purposes of listing systems to be inspected. Oftentimes, such "hoses" and "other components" are just a part of the

individual systems to be inspected. The commission does agree that the gas cap (but not "tank") must require inspection and is now specifically listed. The term "reliable engineering practices" is used to address the accuracy of remote sensing screenings. In lieu of actually stating the equipment specifications, use of the term "reliable engineering practices" commits the state to a responsible application of remote sensing technology. The term "good engineering practices" is used to describe acceptable industry standards in relation to the calibration and maintenance of vehicle exhaust gas analyzers. The full scope of calibration and maintenance requirements is too large for inclusion in this section of the SIP. For further information see Appendix G, Specifications For Preconditioned Two-Speed Idle Vehicle Gas Analyzer Systems for Use in the Texas Motorist's Choice Vehicle Emissions Testing Program," dated April 26, 1996, of the revised Texas I/M SIP.

TSIA commented that regardless of manufacturer's assurance, they do not believe enough equipment can be produced by them by the October 1 "second phase" implementation date. TSIA suggested the implementation date for new equipment be January 1997 to avoid a problem with equipment supply.

Equipment manufacturers have committed to an implementation time line of October 31, 1996 and have already begun production or development of hardware and software to meet this date. A pilot program will also be implemented before October 31, to ensure that communication software is functioning properly. The SIP has been modified to reflect the October 31 date.

TSIA recommended that the first phase of the new program beginning in July, 1996 include only the data link pilot program as outlined in the revised SIP.

The first phase of the new program will include, at a minimum, the electronic transmission of data, as well as, changes in year models to be tested, cut points, and the emissions testing fee. The first phase will also include the addition of all vehicle weight classes.

TSIA and one commenter recommended that the initial pilot program should be conducted at a limited number of volunteer testing stations in the DFW area, to allow debugging of the system.

Commission rules have been amended to allow an initial pilot program to be conducted at testing stations utilizing each type of analyzer. Once pilot testing of the equipment has been successfully completed, equipment at the remaining stations will be upgraded.

EPA commented that the steady state idle test "procedures" should reference and be conducted according to Appendix B of the Federal I/M rule and steady state idle test equipment "specifications" should reference Appendix D of the Federal I/M rule.

The commission concurs, and has changed the language in the SIP to reflect that the steady state idle test "procedures" reference, and are conducted, according to Appendix B of the Federal I/M

rule and steady state idle test equipment "specifications" reference Appendix D of the Federal I/M rule.

EPA commented that a reference should be made to following future Acceleration Simulation Mode (ASM) test procedures acceptable to EPA and the state.

The commission concurs, and has changed the language in the SIP narrative to add "and procedures" after "ASM test equipment specifications".

EPA commented that language should be added that alternative calibration and maintenance procedures should receive EPA approval.

The commission concurs, and has included language in the SIP that alternative calibration and maintenance procedures should receive EPA approval.

EPA commented that the SIP should read "emissions control systems" instead of "emission control systems".

The commission concurs, and has changed the language in the SIP to read "emissions" rather than "emission".

Two individuals commented that the technology that will be used in the TMCP is not new, the technology has been in place for 20 years. The state needs to use 1996 technology.

Although the basic technology is not new, the TMCP has incorporated many elements into the equipment specifications that will enhance the program as a whole. For instance, the TX96 analyzer will incorporate a telecommunications element that will allow for centralized collection of all emissions testing data and provide an option to access the most updated repair information available. The equipment also includes a gas cap integrity test. The equipment can be upgraded to include On-Board Diagnostics or other equipment.

An individual commented that the Two-Speed Idle testing technology now proposed by the commission is not comparable to the IM240 testing technology used in the previous centralized program, because the two technologies measure pollutants differently.

The commission acknowledges that the IM240 and BAR90 (two-speed idle) analyzers measure pollutants differently. The IM240 measures vehicle emissions in terms of grams per mile, while the BAR90 measures pollutants in terms of parts per million. Despite the difference, however, the BAR90 has a proven record of validity and the EPA has approved its use in a number of I/M programs nationwide.

METRO acknowledged that METRO will need to upgrade their present emissions testing equipment to accommodate the TX96 specifications. METRO will coordinate with the commission to ensure that equipment used is consistent with the state's requirements for emissions testing.

The commission will provide assistance, such as lists of certified equipment and points of contact for manufacturers, to ensure that all emissions testing equipment is consistent with the state's requirements for emissions testing.

TSIA, ASA, and one individual commented that the phone companies could not complete installations of "dedicated" phone lines in 1200 stations by May 1, 1996.

Inspection stations were required to notify their local telephone service by May 1, 1996, to install a phone line for the modem to guarantee a station to be on-line for the July 1, 1996 program start date in the DFW area. The commission has confirmed Southwestern Bell and GTE can provide service to those who request a new phone line installation in 5 to 7 days. However, stations that delay requesting the telephone line may be brought on-line after July 1, 1996, which may delay their certification to perform emissions inspections.

TSIA is concerned that one manufacturer, which has 80% of the market, will not be able to bring a phone modem update online by June 1.

Automotive Diagnostics (AD) has approximately 80% of the market, and has committed to the state that they will meet the July 1, 1996 implementation date. In order to address this concern, §114.4 and the SIP have been changed to allow a phase-in of software and hardware through July 31, 1996.

TSIA commented that a definition of a "dedicated phone line" is needed.

The telephone line must be a stand-alone line that will be designated for each specific analyzer. The line cannot operate through a switchboard or trunking system (dialing a designated number) to obtain an "outside" line. There can be no interruptions of the phone line during the testing sequence.

TSIA commented that phone companies charge up to $100 to install lines to the exterior of a building, and additional costs could be incurred to install individual jacks inside.

Southwestern Bell and GTE have quoted prices of $61-$75 for line installation depending on the telephone carrier. If an additional telephone jack is required there will be a one time fee for the telephone jack and installation charge .

An individual commented that, from the April 1, 1996, date of the DPS "dedicated phone line notification letter", it is obvious that GTE and Southwestern Bell were not aware of the number of phone line installations that were required in a short time frame.

The local telephone companies were contacted prior to the April 1, 1996, letter regarding their time requirements for phone line installations. Both companies said that a one month notification was sufficient.

HCPCD and one individual commented regarding the economic viability of small businesses that perform safety inspections, since they must purchase at least $15,000 or more worth of equipment. Safety inspections will have little or no value without the emissions testing component**.**

All new businesses that wish to perform safety inspections will be required to offer emissions testing. Businesses currently performing safety inspections will not be required to purchase emissions testing equipment. These stations will still be able to offer safety inspections to those vehicles that do not require an emissions test (ie; diesel vehicles, vehicles twenty-five years old and older, new vehicles, motorcycles). DPS will evaluate the impact of "safety-only" stations for the public and at a later date will determine whether safety-only stations should be permanently allowed in the inspection program. Whether or not to participate in the inspection program will be an individual business decision.

TSIA commented that they would like an opportunity to review the updated specifications and anticipated cost structure.

The final copy of the "Specifications For Preconditioned Two-Speed Vehicle Exhaust Gas Analyzer System For Use In The Texas Motorist's Choice Vehicle Emissions Testing Program," dated April 26, 1996, has been provided to this commenter and others that have expressed an interest in the specifications.

Sun Electric and AD, the manufacturers of 98% of the current vehicle emissions testing equipment in the DFW area, have stated the cost to upgrade existing analyzers to meet the new specifications will be $4200 to $6000. Alltest has not provided an upgrade cost. Each manufacturer will offer financial and business agreements to owners of the analyzers. Environmental Systems Products, Inc. (ESP), will offer a new analyzer for approximately $13,000 that meets the specifications.

TSIA and one individual commented that if the economics of the TMCP do not work for operators, they will not participate.

Each of the approximate 1200 station owners or businesses must make a decision on whether the increase in fee will justify the capital outlay investment needed to upgrade the equipment to meet EPA requirements to continue offering this service to the public.

One individual commented that the state indicated that the cost of emissions testing equipment would be approximately $15,000. The commenter believes the cost will be between $15,000 and $30,000.

One equipment manufacturer, ESP, has indicated the cost of new emissions testing equipment will be approximately $13,000. Other manufacturers have not provided costs for the new testing equipment.

TSIA commented that equipment company representatives have told TSIA members that the more stations that participate in the TMCP and share the cost of research and development, the lower the cost will be to each operator.

The commission agrees that economies of scale will result in lower cost to all participants. The state has also been told that the greater the number of station operators that plan to participate, the greater the savings to all.

TSIA, ASA, and an individual commented that they would like to be able to take advantage of off-the-shelf technologies that are available now that may be at a lower cost rather than being pushed to participate in a piecemeal program that's doomed to fail in the near future.

The state is required to combine the emissions test and the safety program which requires the use of a data link system, thus necessitating the use of a modem. Technologies which exist "off-the-shelf" do not incorporate such technology and, therefore, cannot be used in the TMCP. The Utah software has been mentioned by TSIA as a software package that should be utilized in Texas. EPA has rejected some attempts by Utah to claim additional credit, due to insufficient data. The commission developed the current specifications to address EPA's concerns.

An individual expressed concern over those station owners that may be penalized for early entrance into the emissions testing market by paying higher costs for new technology that will decrease in price as more equipment saturates the market.

Private companies are free to market and sell exhaust gas analyzers which meet the specifications established by the commission. Based on competition, prices for these analyzers should be reasonable and fair. As with any market-driven economy, prices may fluctuate either up or down over time depending upon supply and demand. It is the responsibility of the buyer at any given point in time to determine if an investment in an analyzer is worth the cost.

An individual commented the state needs to improve some of the testing methodologies that are being used by stations and address the repair issues as well.

The TMCP has improved testing methodologies by utilizing the real-time data from the data link system. This system will also assist with repair issues by allowing technicians to view a reliable, up to date emissions testing and repair record for the vehicle in question.

An individual commented that they received incorrect information at the time the BAR90 equipment was purchased for the DFW program, and that it is not feasible to pay the money to upgrade their equipment to continue to participate in the emissions testing program.

To obtain the necessary reductions in air pollution as required by the FCAA Amendments, the state must provide a more stringent program in the DFW area than was required in 1990. Additional model years of vehicles, additional weight classifications, real-time data transmission, gas cap integrity tests and additional extensive data collection is needed. Enhancements, such as a barcode scanner, were made optional to keep the cost of the upgrade to a minimum. Each station will need to evaluate the equipment costs and make a business decision based on individual circumstances.

TSIA stated that the bottom line of all of this is a net decrease in revenue to testing stations.

Stations participating in the TMCP will be retaining more income per test than currently collected. This additional income can be used to offset the expenses of equipment upgrades.

An individual commented that if the state paid Tejas $8.3 million not to work, the state should spend $9 million for equipment upgrades for inspection station owners.

All state financial expenditures first require legislative authority. The funds referred to were a loan to Tejas which was approved through legislative authority. Provision of any amount of state funds to station owners would require legislative authority.

An individual commented that if the state changes their guarantees on a written contract, the same type of thing could happen to people who enter into an unwritten contract with the state.

An emissions testing program is required by federal law and has been authorized to be implemented through Texas state law. The program is subject to change based on changes that could occur in the federal and/or state laws which authorize the current program. As with all business decisions, the purchase of an exhaust gas analyzer is a financial risk.

COMPLIANCE RATE

EDF commented that it will be difficult for the I/M program to achieve a 96% compliance rate.

Vast improvements in the data collection and analysis system will enable the state to more accurately monitor vehicles that are registered in the area, but fail to be inspected in the area.

Denial of re-registration of these vehicles would improve the compliance rate. The public information program will also encourage motorists to perform routine maintenance by pointing out the monetary benefits of car maintenance.

Tejas commented that in order to get the compliance rate projected, the TMCP will require registration denial or a prerequisite to re-registration. In 1992, the compliance rate was 63%.

The commission recognizes legislative authority is needed to deny registration renewal to vehicles that have not complied with I/M program requirements. Additionally, the commission recently commissioned a study of safety certificate compliance in the program area. This study concluded that the safety certificate compliance rate was approximately 95%. The commission believes that the proposed program will generate the expected 96% compliance rate based on numerous enforcement enhancements.

VEHICLE RECALL

TADA commented that clarification of the recall process was needed since notices are issued by vehicle manufacturers, not emissions inspection stations.

The Texas Data Link System (TDLS) will be updated on a routine basis with vehicle emissions related recall identification information received from EPA or it's contractor. At the time of the

initial inspection, if a vehicle is found to have failed to respond to a recall, the vehicle must be repaired to comply with the recall notice prior to receiving an emissions test. The rule language has been changed to clarify recall procedures.

EMISSIONS TESTING FEE

TADA commented that the difference in fees could invite unscrupulous operators into the testing business. A single fee, set by the state, would be more credible than the multiple fee structure which is proposed.

The commission concurs, and has established one fee for annual testing and one fee for biennial testing. Section 114.7 has been revised to reflect the following fees: $13 for all annual emissions inspections and $26 for all biennial emissions inspections.

TSIA and a commenter recommended a minimum charge of $23.50 be mandated for the test.

An emission test fee of $13 is combined with the safety inspection fee of $10.50 making a total fee of $23.50. The commission rules have been modified to reflect a standard emissions testing fee for all facility types.

TSIA and four individuals commented that test-and-repair stations with mandated pricing will not be able to compete with test-only facilities that can set their inspection fees per market conditions.

The Texas I/M Rule has been modified to reflect a standard fee for emissions testing, regardless of facility type.

TSIA and two individuals commented that it appears that 75% or more of the price increase to the public will be absorbed by state bureaucracies. This leaves approximately 6% increase to the inspection station and they must spend $8,000 and up for new equipment and/or updates.

The emissions test fee will increase from $8.75 to $13, with $1.75 of the $13 (or 13.5%) attributed to the state for oversight of the program. The station owner will keep the remaining test fee of $11.25 less the cost of the modem transaction (approximately $.88) for each vehicle tested. When a loaded mode, biennial test becomes available, the fee will be $26. The state will collect $1.75 of that fee for oversight of the program and the station owner will keep the remainder, less the cost of the modem transaction (approximately $.88). Equipment for the annual two-speed idle test may be upgraded for a price of $4,200 - $6,000 depending on the manufacturer and new equipment may be obtained for approximately $13,000.

Tejas commented that the Texas SIP states that $1.75 per inspection will be collected and used jointly by the commission and the DPS to monitor the TMCP. California presently spends about $7.00 per

test to monitor its program, and with the new decentralized program that they're putting forward, they plan to increase that amount.

The state feels that $1.75 is sufficient to fund the necessary oversight program for the I/M programs in its three non-attainment areas. California's operating costs are higher than those of Texas due to its greater number of areas operating under an I/M program.

One individual commented that the new I/M program is supposed to be a cheaper and more consumer friendly program. The fee is now higher and vehicles have to be tested more often.

The centralized testing facilities used by the I/M program which operated briefly in January, 1995, were designed to test large numbers of vehicles. Like an assembly line type of production, this created large economies of scale which reduced the cost of an individual test. SB 178 required a redesign of the I/M program. The TMCP provides more facilities which can inspect vehicles, however, each of these facilities conduct fewer tests than a centralized program facility would have. Also, the TMCP incorporates the added expense of the TDLS, along with the additional oversight costs associated with the auditing of the large number of stations in a decentralized program. Consequently, each individual emissions inspection costs more.

An annual test is one option of the TMCP. SB 178 directed the commission and the DPS to offer emissions inspections in conjunction with the annual vehicle safety inspection. The program was

developed to allow individuals the options of getting the emissions test each year in conjunction with the safety inspection, or, of having a biennial emissions test that would alleviate the need for an emissions test the following year.

PROGRAM RESOURCES

RAQPC commented that six additional full time equivalent employees (FTEs) might not be adequate to successfully achieve the overt and covert auditing requirements of quality assurance in three separate metropolitan areas. The commenter asked for a review of the FTE definition.

The I/M SIP establishes only minimum FTE requirements for overt and covert auditing. The DPS will assign at least 10 FTE employees to conduct covert audits and assign at least 35 employees to conduct overt audits, thus exceeding the SIP commitments. At least 50% of the assigned overt auditors' time will be spent in emissions related overt audits, representing at least 17 FTE overt auditors. The DPS believes there is an adequate number of employees planned to respond to the oversight of the emissions program.

The FTE definition relates mainly to FTEs employed by inspection facilities. However, an FTE is based on a 40 hour week, 52 weeks per year wherever it is mentioned within the SIP.

The Sierra Club, Tejas, and two individuals are concerned that the commission and DPS do not have enough enforcement personnel.

The SIP establishes only minimum FTE personnel for program oversight. The DPS will be adding 43 additional FTEs to respond to the additional emissions oversight responsibilities. The DPS currently employs 47 FTEs in the four county emissions testing areas. These FTEs will supervise both the vehicle safety inspection and emissions testing programs. These 90 DPS FTEs and 12 commission FTEs will be responsible for the design, implementation and evaluation of the I/M program.

The Sierra Club and one individual commented that car repair owners, mechanics, and citizens have indicated that it's not a question of whether there will be fraud and abuse in the proposed program, but how much will the commission try to investigate and remedy this fraud.

While the commission does not believe that fraud or abuse will be significant, the revised I/M SIP addresses this possibility. The SIP commits the DPS and the commission to implement a comprehensive set of quality assurance and quality control measures. These measures are described in Sections 8 and 9 in the SIP. The measures include: equipment calibration maintenance procedures, document security, and audit procedures. Taken together, these measures will prevent a great deal of fraud and abuse while allowing easy detection of any actual

attempts. Those motorists or testing inspectors found abusing the program will be subject to a variety of possible penalties up to, and including, criminal prosecution.

An individual commented that the commission, not the DPS, should be primarily responsible for the program and that additional full time employees are necessary.

DPS administers the safety inspection program. Since the emissions testing program will be a part of the safety program, it is more cost effective for DPS to administer the program. It ultimately will result in less confusion for station owners and operators and the motoring public. Minimum employee figures for DPS are included in the SIP.

An individual is concerned about the division of the I/M program between three agencies, the commission, DPS, and the Texas Department of Transportation (TxDOT) and suggested the commission, as the environmental agency, should be in charge of this environmental program.

Each agency involved in the I/M program has expertise and capabilities that can be used to ensure the I/M program, as a whole, operates more efficiently. The agencies have taken care to divide program responsibilities so that there will be little overlap in duties. The DPS, for example, has law enforcement capabilities and experience with safety inspections to enforce program compliance and implement the program. The commission, as the state's air quality

agency, can research and adopt environmental standards for the program, as well as, interface with EPA. TxDOT will supply expertise in vehicle registration.

VEHICLE COVERAGE

The Sierra Club, FINA, the Greater Dallas Chamber, and one individual commented that excluding 1968-1971 model year vehicles is not a good idea because many of the worst emitters on the road are contained in this group.

Older vehicles were designed to meet less stringent standards. However, in Harris county for example, this group comprises a very small percentage (1.4%) of vehicles on the road. Statistically, these vehicles are driven less. Consequently, these vehicles make a minimal contribution to the air quality problem. Vehicles that are twenty-five years old or older could be registered as antique. SB 178 excludes antique vehicles from the program. Computer modeling confirms that the commission can meet all federal requirements without including these vehicles in the TMCP.

An individual commented that if one type of vehicle has to be tested, why not all of the moving vehicles. This should include all on road and off road vehicles, old, antique, classic, fast or slow moving.

SB 178 excludes from testing antique motor vehicles, classic motor vehicles, slow moving vehicles required to display a slow moving vehicle emblem, and circus vehicles.

TVCC commented that the exclusion of antique vehicles is not actually mentioned in the SIP and requested that the SIP be amended to address this concern.

A vehicle twenty-five years old or older may be considered antique. SB 178 excludes antique vehicles from participation in the emissions inspection program. The commission has included language in the SIP to clarify that antique vehicles are not subject to emissions testing.

TVCC has a concern about when vehicles are required to be tested. His assumption is: the program starts on January 1, 1997, vehicles with model years from 1973 to 1997 will be tested and, in 1998, vehicles with model years from 1974 to 1998 will be tested, thus 1973 vehicles will be excluded.

The program is designed with a "rolling" 24 year window with the most recent 24 model years being subject to the I/M program. Mandatory inspections, however, will not begin until a vehicle's second anniversary. Consequently, vehicles from two through 24 model years old are required to undergo mandatory periodic testing. Vehicles less than two model years old will be required to pass an emissions test only if they are identified by a remote sensing scan as a gross polluter. This option was selected due to the small amount of vehicles that are on the road after 25 years and a large percentage of these vehicles being classified as classics and/or antiques,

which are not subject to emissions testing. For a program beginning on January 1, 1997, the 24 year "rolling window" means that vehicles beginning with model year 1973 through 1995 will be subject to scheduled testing. On January 1, 1998, model years 1974 through 1996 will be tested. The "rolling 24 year" is obtained by subtracting 24 from the current year. Older vehicles will be excluded.

Two individuals commented that requiring testing and repair of "clunkers", or "near clunkers" may impact economically disadvantaged motorists.

A waiver provision allows up to 3.0% of the applicable population to maintain a waiver after a set limit is spent on repairing the vehicle. In addition, a low-income time extension is available for motorists that cannot afford repairs on vehicles that fail the emissions test. The test fee was developed to give station owners a return on investment and to recover the costs of state oversight.

An individual commented that all cars should not be tested when less than 20% of the vehicles actually cause most of the pollution.

Although data indicates that less than 20% of vehicles cause most of the air pollution, a state cannot identify which cars are contributing to air pollution problems without having the emissions from each vehicle tested. Remote sensing can be used to identify vehicles that

excessively pollute; the commission is currently reviewing strategies to implement an effective remote sensing program.

EPA commented that the SIP should address the state's plans for testing vehicles with engine switches.

The commission has included language in the SIP that addresses the state's plans for testing vehicles with engine switches.

The Sierra Club and three individuals commented that §114.3(a)(10) which allows a vehicle used less than 60 continuous days to take advantage of a cut-off provision for meeting program requirements, and questions how DPS will prove the person drove 60 days and not 59 days.

EPA's rules do not require vehicles on a federal installation located in an I/M program area to participate in the I/M program as long as such visits do not exceed 60 calendar days per year. The TMCP should not be more stringent for Texas citizens registered in an I/M program area. The rule has been changed to add a presumption that cars are primarily operated in the county in which they are registered.

The Sierra Club and two individuals commented that §114.3(c)(3) has some potential for abuse and the commission needs a way to verify the truthfulness of the self checks.

Federal agencies are required by federal law to participate in local I/M programs. The commission does not believe that federal agencies will seek to avoid compliance with Texas I/M requirements. These facilities are subject to routine audits.

FINA, the Greater Dallas Chamber, El Paso City-County Health District, and one individual commented that "primarily operated" needed to be defined.

The term "primarily operated" is defined in §114.3(a)(10) to refer to a vehicle operated for more than 60 continuous days per year in an I/M program county, with the added presumption that a vehicle is primarily operated in the county in which it is registered.

FINA commented that §114.7(c) addressed vehicles registered outside the core program area. Vehicles registered inside the core program area would also be impacted by out-of-cycle testing.

Under the current design of the TMCP, vehicles registered in the core program areas would be subject to out-of-cycle inspections under the following conditions: 1) a remote sensing scan identifying them as "gross" polluters 2) they are at least six model years old, or older, and ownership is transferred to a person who is not a family member, or 3) they are at least six model years old, or older, and ownership is transferred (with certain exceptions).

Vehicles registered inside the core program area that are required to take an out-of-cycle test, as a result of failing a remote sensing test, will not be required to pay for the emissions inspection. The oversight fee will allow DPS to reimburse stations for tests for vehicles registered in the core program area.

The El Paso MPO, FINA, the Greater Dallas Chamber, and nine individuals commented on the possibility of testing diesel vehicles.

The primary pollutants being addressed for the air quality problem in this program are carbon monoxide (CO) and volatile organic compounds (VOC), yet diesels tend to be rather low for CO and VOC, but high for particulate matter and nitrogen oxides (NO_x). However, the I/M SIP revision states that diesel-powered vehicles may be added to the testing program at a later date.

Diesel vehicles make up a small percentage of the vehicle population. However, due to less standardization in diesel vehicles, technology needs more development before diesel opacity testing is initiated. In addition, EPA is working on a policy for testing diesel vehicles. The commission does not want to establish rules in potential conflict with EPA's policy. When EPA's policy is final, the commission expects to add diesel powered vehicles.

FINA, the Greater Dallas Chamber, and one individual stated that motorcycles should be added so that maximum emissions reductions can be achieved.

Because of their low contribution to the mobile emission inventory, it is not cost-effective at this time to include the test and repair of motorcycles. The costs associated with testing and repair for motorcycles result in minimal emissions reduction benefits.

An individual commented that Dallas and Tarrant Counties are responsible for 100% of the pollution in the communities but only represent 60% of the traffic passing through; you should test all vehicles.

Data provided by the 1990 Census indicates that less than 16% of the 2.8 million vehicles potentially operating in Dallas and Tarrant Counties on a given day originate outside of those two counties. Vehicles from Denton and Collin Counties are subject to remote sensing scans.

An individual commented that the state needs to inspect all vehicles that are not required to have state safety inspection certificates.

Vehicles that are not required to have a state safety inspection are an insignificant percentage of the entire vehicle fleet. Vehicles exempted from state safety inspection requirements include farm vehicles and other vehicles rarely driven on public roadways. These vehicles are not large contributors to the air pollution problem in the nonattainment areas. Although exempted from state safety inspections, EPA requires federal vehicles primarily operated in a core I/M program county to participate in the emissions testing program. Additionally, §114.3(c)(3) has been

changed to clarify that governmental and quasi-governmental vehicles outside the normal inspection requirements are still required to meet I/M SIP requirements.

An individual commented that the quality of vehicles is increasing and that the vehicle population, as a whole, is getting younger. Therefore, there is less need for an I/M program.

The average age of a vehicle on the road today is approximately seven years. The number of vehicles on the road is increasing and these vehicles are being driven further. This factor tends to offset improvements in vehicle emissions technology. However, the commission does agree that as the technology to make vehicles cleaner becomes available, the I/M program requirements should reflect that reality.

WAIVERS

The Sierra Club and two individuals commented that the commission, not the DPS, should have the authority to grant waivers.

Executive Order GWB 96-1 directs the commission to establish, by rule, criteria for the issuance of waivers. The DPS, with the responsibility of implementing the emissions testing program, will issue the waivers meeting the commission's criteria.

The Sierra Club and one individual commented that the waiver rate needs to be kept under 1.0% because in Houston that means more than 20,500 cars will pollute, the rate should be kept at 0.5% or lower.

The commission has committed to limit the waiver to no more than 3.0% in each program area. If the waiver rate goes above that level, then the commission has specified a number of options in the I/M SIP that it will exercise to bring the actual rate back within acceptable limits. A waiver rate of no more than 3.0% is sufficient to enable the commission to meet applicable federal program requirements. The commission will monitor waiver rates in all core program areas.

The Sierra Club and two individuals commented that they were against the number of waivers, stating that only one waiver should ever be given to a car in its lifetime and the waiver should be provided only for those persons that are economically disadvantaged. They oppose allowing a person to use work done on the car 60 days ahead of time to qualify for the waiver. The commenters oppose the low waiver fee ($150) for Harris County in 1996 due to the fact that the program will not even be in effect in 1996 in Harris County. The commenters stated that the "to the extent practical" statement is a loophole and should be removed. Also, clarification is needed for the terms "every reasonable effort" and "unreasonable".

The TMCP includes two waiver options: the minimum expenditure waiver and the individual vehicle waiver. The minimum expenditure waiver is available to those who have made repairs to

their vehicle within the established criteria (to include repairs made within sixty days of an inspection) and met the dollar limits established by EPA. The individual vehicle waiver is for those who cannot meet emissions standards despite every reasonable effort by the motorist. A waiver rate of no more than 3.0% is planned for each nonattainment area.

The Low Income Time Extension is available for those who can demonstrate a financial inability to either afford adequate repairs or to meet the applicable minimum expenditure waiver amount. This extension is available for only one test cycle and may not be issued to the same vehicle two test cycles in a row. The rule requires the vehicle to meet emissions standards for at least one test cycle before another extension can be issued.

Waivers are a way to ensure that motorists making every "good faith" effort to comply with I/M program requirements do not incur excessive repair costs and/or are not excessively inconvenienced.

The commission concurs with the comments concerning the 1996 waiver rate for Harris and El Paso Counties and has removed that statement from the SIP and rule.

The "to the extent practical" phrase refers to ensuring that repairs which are difficult to verify are actually performed. For example, rebuilding a carburetor is a legitimate repair for some vehicles which may be necessary to ensure optimum air/fuel control. However, beyond looking at

a repair receipt and seeing that the carburetor has a clean appearance, verifying that the carburetor has actually been rebuilt would require full disassembly and thus, is impractical.

The terms "every reasonable effort" and "unreasonable" cannot be explicitly defined for every situation simply because individual vehicle waivers are handled on a case-by-case basis. For example, a motorist operating a vehicle that burns excessive amounts of oil due to overly worn valves and/or piston rings would not be considered to be making "every reasonable effort".

Three commenters were against any extension of a waiver for more than one test cycle. They were concerned about a vehicle not receiving a test for up to 12 months for a parts availability waiver, which would essentially be the next test cycle.

Waivers are a way to ensure that motorists making every "good faith" effort to comply with I/M program requirements do not incur excessive repair costs and/or are not excessively inconvenienced. Waivers are not extended beyond one test cycle. Vehicle owner's must meet all requirements, and reapply the following year to receive a new waiver for that test cycle.

A parts availability time extension will only be granted for more than 90 days if it can be documented that it will actually take that long to acquire the part.

Vehicles that have received a Low Income Time Extension must pass an emissions test before they will be eligible to reapply for another Low Income Time Extension.

An individual was against "allowing any vehicle, low income or not, to have more than one waiver in its lifetime."

The Low Income Time Extension is designed to provide low income motorists the time they need to obtain expensive repairs. By prohibiting a vehicle from receiving two consecutive time extensions, the commission prohibits motorists from using this extension to delay repairs indefinitely. Allowing more than one extension in the life of a vehicle enables a vehicle's new owner to legitimately apply for a new extension if the vehicle has changed owners. A vehicle's owner may also legitimately apply for a new extension if the vehicle must have a different emissions repair made several years later. For example, if a motorist qualifies for an extension when the vehicle is nine years old, the motorist could qualify again if the vehicle needs more repairs done when it is eleven years old, assuming they passed an emissions inspection in between.

One commenter suggested that the $75 waiver amount for pre-1981 vehicles in basic areas was too low because these are the higher emitting vehicles which need to be removed from the road as soon as possible.

The $75 waiver amount for basic program areas is established by EPA's I/M Program Final Rule and should cover the cost of a majority of basic emissions repairs such as tune-ups and oil changes.

RAQPC commented that allowing a low income time extension waiver to be repeated for a vehicle defeats the air pollution reduction performance standard requirements of low enhanced I/M programs.

EPA's I/M Flexibility Amendments 40 CFR Part 51 removed the requirement that hardship exemptions not be granted more than once per vehicle lifetime. Although the low income time extension may be granted to a vehicle more than once, the vehicle will not be eligible for consecutive extensions. The vehicle must pass a vehicle emissions test before the vehicle will be eligible for an additional Low Income Time Extension.

An individual stated that the individual waiver must be removed as it is a huge loophole preventing cars from being repaired or removed from the road.

To be responsive to the needs of a small portion of motorists, individual vehicle waivers were designed to meet the case-by-case exceptions that may arise. While the final authority will rest with DPS, on a case-by-case basis, vehicles that may be eligible would include: a vehicle for which a necessary part is no longer available (and this could be demonstrated); or a vehicle originally purchased outside the U.S. which was not designed to meet the emissions requirements for its

model year of registration. In each situation, the burden of proof and the proper demonstration of a "good faith" effort will be required of the motorist.

FINA, the Greater Dallas Chamber, and one individual stated that it should be mandatory that a smoking vehicle would not be eligible for a waiver.

As currently designed, a vehicle may receive a waiver if it meets specific criteria. Problems exist with equitable enforcement of not allowing "smoking" vehicles to receive waivers, since all vehicles burn oil to some extent. Waiver denial based on a visual test of the quantity of smoke is inadequate with some forms of emissions testing.

An individual was opposed to the "or longer" statement under the parts availability waiver on page 44 of the SIP "which means up to one year for an extension which means you have a fourth type of waiver."

The parts availability time extension is only granted for a temporary period of time and is dependent on the demonstrated amount of time that it will take to receive the part. A parts availability time extension will only be granted for more than 90 days if it can be documented that it will actually take that long to acquire the part.

PUBLIC INFORMATION

LWV-TX commented that TMCP does not address personal responsibility and states that vehicle owners should contribute to pollution prevention and clean-up. In addition, a representative of the Sierra Club and two individuals commented that a major concern is the failure to address the costs of air pollution and the need to address this in the public awareness plan.

As part of the SIP, the commission and DPS have committed to undertake a public information campaign. Section 18 of the SIP outlines a comprehensive public information campaign which specifically addresses issues such as the significance of the air quality problem, the roles of motor vehicles in the air quality problem, and the benefits of an emissions inspection program.

HCPCD and RAQPC commented regarding concerns that the commission's Public Awareness Plan (Section 18 of SIP) contains the necessary elements, but needs an aggressive and exuberant commitment from the commission to implement. Additionally, delaying program start-up until June 1997 will allow more time for public information.

The commission and the DPS are committed through the SIP to implementing an aggressive public information and education campaign. Some elements of the TMCP require legislation, such as test-on-resale, re-registration denial, and certain enforcement mechanisms of remote sensing. Therefore, these elements cannot be implemented until September 1997. This will give ample time for public education and acceptance of these program elements.

The El Paso MPO commented that a thorough public information campaign with easily understood guidance will be critical to El Paso motorists' acceptance and compliance with this program, and encouraged consumer information in both English and Spanish be made available at all inspection stations to fully explain motorists' rights, responsibilities, and waiver/extension privileges, including the rules and provisions for repair costs under the low-income time extension.

The state commits to a public information campaign in the program areas as necessary to allow for sufficient program start-up and as outlined by the I/M SIP. The DPS has taken the suggestion of consumer information being supplied in both English and Spanish under advisement.

RAQPC requested their involvement with the TMCP public information efforts of DPS and the commission, particularly regarding the public awareness plan and their own on-going efforts in the Houston area.

The SIP requires the commission and DPS to implement public awareness plans that specifically addresses eight subject areas. Specifically, the commission will initiate public education campaigns to address the significance of the air quality problem and the roles of motor vehicles in the air quality problem. Council of governments in each test area will be brought in for assistance with these campaigns.

Thirteen individuals commented that notification of public hearings needs to be improved.

Public notice was posted in the Texas Register and in local daily newspapers in the legal announcement sections. In addition, Media Relations telefaxed press releases on these particular public hearings to all media outlets in each area.

An individual commented that when he arrived at the scheduled time (obtained from the area newspaper) for the public hearing, the meeting seemed to have already started.

The commission satisfied all legal requirements for public notification of hearings and also notified the local news media. The I/M program customarily holds an informal question and answer period prior to these public hearings, which assists in the understanding of the proposal.

HCPCD and the El Paso MPO commented that the federal and state government will not inform the public how much improvement in air quality is to be obtained from the I/M program.

Detailed computer modeling is expected to be completed in June, 1996, which will predict the emissions reduction credits for I/M programs. Those numbers will be included in the 15% SIP. The TMCP will undergo an 18 month evaluation period, beginning at program implementation. The evaluation results will be made public.

One individual commented that people have a responsibility to maintain their cars; and the vehicle emissions test is really a safety test because the pollution emitted from vehicles has the potential to harm family, ourselves and other people.

The TMCP will be implemented as part of the safety inspection and is designed to assist in the reduction of air pollution from vehicle emissions. Vehicles that fail a vehicle emissions inspection will be required to be repaired and retested or qualify for a waiver.

An individual commented that the commission should have resisted changing direction and forcibly worked at educating the public, Governor, and our legislators. The commenter also stated this whole fiasco is undoubtedly going to cost Texans millions of dollars, while at the same time costing some people their lives and health.

SB 178, passed by the 74th Texas Legislature, repealed the commission's legal authority to implement a centralized I/M program using an IM240 type emissions test. The TMCP was designed to comply with a FCAA Amendments to implement vehicle emissions testing programs.

An individual commented that, in the design of the TMCP, goals of convenience, emission reduction, and environmental concerns were lost due to the bureaucracy and legislative process; a program has been developed that is designed to hamper public participation.

Since the passage of SB 178 in May 1995, the commission has made every effort to solicit participation from members of the public in the development of the TMCP. The staff of the agency has regularly met with various interested parties that have wished to express their concerns and provide input. In July 1995, representatives from the agency visited DFW, El Paso, and Houston to meet with stakeholders on three different I/M program scenarios. The TMCP was the scenario that was not only most favored by members of the public, but which also was able to address the many conflicting concerns surrounding the implementation of a revised I/M program. In developing consensus, it is not possible to satisfy every individual's desires, but it is the goal to develop a plan that is acceptable to most people.

REMOTE SENSING

An individual expressed concern that DPS "plans to utilize remote sensing technology." The commenter felt that only 15% of the commuting vehicles being tested by a remote sensor was inappropriate because these vehicles would be coming from counties not subject to an I/M program. The commenter stated that a maximum fine of $200 for not receiving an emissions test (after remote sensor identification) was inappropriate. In addition, the commenter stated that the state should address vehicles that are not repaired immediately after high-emitter identification (through the remote sensor).

Beginning in September 1997, remote sensing will be used to identify a significant portion of high-emitting vehicles commuting into Dallas, Tarrant, and Harris Counties. However, of all the

commuting vehicles identified, only those registered in the program area will be subject to a more thorough follow-up emissions test. Historical data from I/M programs and studies indicate that approximately 15% to 20% of all the vehicles on the road are responsible for the bulk of the excess emissions. Therefore, a target of 15% of the commuting vehicle population was used for projection purposes. It is felt at this time that a maximum fine of $200 per occurrence will be enough to provide sufficient incentive for most motorists to have vehicles receive an emissions test after remote sensor identification. After remote sensor identification, owners of high-emitting vehicles will need sufficient time, approximately 30 days, to obtain an emissions test and, if necessary, another 30 days for repairs.

An elected official commented that remote sensing is an excellent testing methodology, however, technology may improve in the future.

This summer (1996), the commission will conduct an extensive evaluation of remote sensing data from each of the three I/M program areas in Texas. This study will address the reliability of the technology and how it can best be used to improve air quality in Texas. If the state legislature grants legal authority for the desired enforcement of remote sensing, then the commission and the DPS will use the results of this study to implement the technology in the most cost effective and unobtrusive manner possible.

An individual stated that the term "traffic may be subject" was not strong enough. The commenter indicated that a vehicle should simply be tested if it fails the remote sensor.

The term "may be subject" is used because not all vehicles are subject to the I/M program.

LWV-TX commented that the unproven technology of a pilot remote sensing program directed at a sample of 10% of drivers is not an effective substitute for vehicle-by-vehicle inspection.

The TMCP included remote sensing of vehicles as an additional measure to ensure gross polluters are adhering to program requirements. The goal of remote sensing is to screen 10% of the entire vehicle population of all program areas, with an additional focus on the surrounding counties.

HCPCD and three individuals commented that remote sensing numbers are insignificant in Harris County. More non-Harris County commuters should be targeted and captured.

The TMCP included remote sensing of vehicles registered in Harris county as an additional measure to ensure gross polluters are complying with program requirements. The goal of remote sensing is to screen 10% of the entire vehicle population of the eight county area, targeting commuting traffic from the surrounding counties. Testing equipment will be placed to capture the greatest percentage of commuting vehicles.

RAQPC commented that residents out of Harris County whose vehicles are identified as gross emitters by remote sensing are required to pay for the loaded test mode test if their vehicle fails the test.

Motorist's residing in Harris county are required to pay for an emissions test on an annual or biennial basis. Gross emitters from outlying program counties that commute into Harris county on a regular basis are contributing to Harris county's air pollution problem and should help offset the program costs. These vehicles are required to pay for the test only if they fail the test. These vehicles may have the emissions test performed at any emissions testing facility, and they are not required to have a loaded test.

FINA, and one individual commented that given the short time frame that the DFW area has to get into attainment, the remote sensing program should be initiated earlier.

Neither the commission nor the DPS currently have the statutory authority desired to enforce remote sensing. Both agencies must acquire such authority from the Texas Legislature, which will not meet until January 1997.

Tejas commented that remote sensing must utilize single lanes of traffic and identify 150,000 vehicles pulled from the vehicle population that is not registered in Dallas and Tarrant counties. Tejas stated that the state will be going out on a limb to let Denton and Collin counties off the hook.

The commission believes remote sensing will adequately capture the emissions characteristic of commuting vehicles thus covering the difference in the consolidated metropolitan statistical area (CMSA) population and the population of the 2-county urban area included in the I/M Program.

Tejas commented that, by not testing vehicles in Denton or Collin county, the state is in catch-up mode before the TMCP begins.

By utilizing remote sensing to characterize emissions from vehicles in Denton and Collin counties, the state will be accounting for the vehicle emissions that the federal law requires it to test.

FINA commented that the granting of authority by the legislature should precede the formal rulemaking for remote sensing.

The commission and the DPS commit to facilitate legislation to enforce remote sensing. If the Texas Legislature does not grant this authority, then the commission will explore options that will allow Texas to satisfy all federal requirements, such as expanding the core program areas.

An individual commented that the commission should scrap vehicle testing and use remote sensing only.

Emissions testing of all vehicles in the core program areas is required by the FCAA Amendments and is necessary to meet the mandated pollution reduction requirements of the FCAA Amendments. Remote sensing will used to complete the coverage requirements of the FCAA Amendments by targeting commuting vehicles from the core area's surrounding counties. Remote sensing only checks exhaust emissions. Emissions from evaporation of gasoline due to a leaking gas cap will be identified by the vehicle's scheduled emissions test.

TEST-ON-RESALE

HCPCD, METRO, and three individuals commented that the test-on-resale inspections are troublesome. Vehicles that are inspected annually should not be required to undergo an additional inspection. This requirement could turn otherwise supportive citizens against the program. Used car dealers should be required to have the vehicle's emissions tested prior to resale for consumer protection.

The test-on-resale element of the TMCP was added to protect consumers. All vehicles between six and twenty-four years old must pass an emissions test or receive a waiver within sixty days of sale. Although this element does not affect dealer-to-dealer sales, dealers are required to provide a valid emissions test or a waiver when the vehicle is sold to a consumer. Vehicle sales to family members are not included in this requirement.

RAQPC commented that the requirement for an emissions test within 60 days of resale should be extended to 90 days or some longer period. This off-cycle test may really not be needed if the vehicle passed the regular cycle emissions test, particularly if it passed a loaded mode test.

The test-on-resale element of the TMCP provides additional consumer protection. The test-on-resale element allows a total of 120 days for the seller's vehicle to pass an emissions test or receive a waiver. Any vehicle which has passed the emissions test as part of a regular inspection cycle within 60 days of resale need not have an additional test.

An individual commented that an advantage of the TMCP is that it would serve as a consumer protection measure against the "rising number of used cars on the road or as we know them today program cars."

The commission agrees that the test-on-resale component of the TMCP will protect consumers when they purchase a used vehicle six model years or older. Program cars, however, are typically vehicles that are one or two years old. Auto dealerships use them for demonstration models or company cars provided to sales staff or executives. Additionally, program cars may include vehicles that are used by rental car companies for a time and then sold to the public. Because they tend to be newer used vehicles, they would not be subject to a mandatory emissions inspection upon resale.

The El Paso City-County Health and Environmental District recommends the test-on-resale element be included in the El Paso program.

The proposed TMCP for the El Paso area meets the required reductions without incorporating the test-on-resale component. In addition, with El Paso's proximity to the Mexico border, it was anticipated that test-on-resale could provide additional incentive to take cars for sale across the border. Motorists are encouraged to have vehicles tested before resale.

FINA and an individual commented that the granting of authority for the test-on-resale component by the legislature should precede the formal rulemaking.

At this time, the commission has not included rules requiring "test-on-resale". In the revised Texas I/M SIP, the commission commits to facilitate the necessary legislation to require "test-on-resale".

Neither the commission nor the DPS currently have the statutory authority necessary to mandate test-on-resale immediately. Both agencies must acquire permission from the Texas Legislature, which will not meet until January 1997.

PROGRAM START-UP

HCPCD commented that the timing for implementation should be delayed until June 1997 to allow the Texas Legislature to convene, be briefed and lend support to the program.

The commission must begin the TMCP as soon as possible to ensure that federally required pollution reductions are achieved. Although the basic program will begin in January 1997 in the Harris County area, some elements of the program require legislation. These elements will not begin until the Texas Legislature has adopted any required legislation.

METRO commented that the Harris County implementation schedule in the proposed SIP is ambitious. It is doubtful that testing stations will choose to invest in needed equipment or licensing until final rules are adopted in mid August 1996. The expectation that testing stations will be in place and certified with licensed inspectors within a four month period allows for little schedule slippage. METRO recommends that provisions for delays in implementation or a phase in period be considered.

Some current safety inspection station owners in Harris County have indicated a desire to participate in the TMCP. The commission and DPS anticipate an adequate number of stations will be available for program implementation on January 1, 1997.

REPAIR PROGRAM

Three individuals commented that repair technicians should be "Certified" rather than "Recognized". Quality certification is needed as well as quality technicians to repair vehicles.

The criteria set forth for certification in the previous program are similar to those in effect for recognition in the TMCP. Repair technicians are required to obtain certification in the following four areas offered by the Automotive Service Excellence (ASE): Engine Repair (Test A1), Electrical Systems (Test A6), Engine Performance (Test A8), and beginning January 1, 1998, Advanced Engine Performance Specialist (Test L1). DPS will initiate a program to "Recognize" the repair technicians that are in compliance with all rules and regulations.

An individual commented that the state requires repairs to be completed by technicians that are ASE qualified. There are a lot of good technicians that are not ASE certified, but are excellent mechanics.

The commission does not require emissions-related repairs to be completed by a recognized repair technician. A motorist has the additional options of completing the repairs himself or herself, or using a technician that is not ASE qualified. However, if the motorist wants the labor expense to count toward a waiver, than the repairs must be performed by a recognized repair technician.

An individual commented that requiring ASE technicians will drive a lot of the smaller businesses out of the inspection and repair business. There will be an increase in the wages for the mechanics and the small businesses can not handle this cost increase.

The I/M SIP does not require vehicle repairs to be made by ASE technicians. ASE technicians are required only if the motorist wants to apply labor costs to a waiver. The decision to enter the test-and-repair inspection program and employee wages are individual business decisions that each small business will have to make.

An individual commented that most repair technicians are honest. However, mechanics can make mistakes due to the complexity of vehicles on the road today. These mistakes can result in expensive, unnecessary repair work.

The TMCP includes many elements designed to assist in the reduction of unnecessary repair work and help in alleviating mistakes. These elements include: optional on-line access to repair information from the centralized database system, the recognized repair technician program, reporting of industry performance statistics, and a covert and overt auditing system.

The El Paso MPO commented that the commission and/or the DPS should provide extensive information to repair shops in El Paso County to inform them of the requirements for certification as a Recognized Emissions Repair Technician.

DPS will initiate a program to "Recognize" the repair technicians that are in compliance with all rules and regulations. DPS is currently completing public information plans to notify repair facilities of program requirements.

An individual stated that programs were needed to make low-interest loans accessible to people so they could get rid of polluting vehicles.

At the current time, legislative authority is not available to utilize state funds nor is regulatory authority available to provide low interest loans to motorists. Local areas are encouraged to address this need. The commission will continue to study this and other options that offer innovative and effective ways to improve air quality.

An elected official stated in order to achieve clean air, money should be spent repairing vehicles, not creating bureaucracy.

The commission concurs and has adopted a program that is cost-effective and convenient to the motorists. Participating emissions inspection stations will be required to utilize a data link that will provide vehicle information prior to each emissions inspection. The vehicle information will shorten test time, by alleviating the need to manually enter existing vehicle information.

An individual stressed the need for funds to assist with repair technician training for repair facilities without adequate financial resources.

DPS is currently surveying the training needs of the repair community and resources available within the community to respond to these needs. DPS will provide assistance to ensure adequate training is available.

The Sierra Club recommended that the DPS, the commission or TxDOT check with owners of vehicles that needed major repairs to see if the owner felt the repairs were necessary. For example, repair sites could be required to keep removed parts for thirty days to allow for a follow up inspection by the commission, DPS, or TxDOT.

The TMCP includes DPS oversight of recognized repair facilities. Repair information is stored on a centralized database, and repair effectiveness statistics are generated at least annually, and lists the repair success rate for each facility. Any anomalies will be forwarded to DPS for investigation.

An individual commented that it is likely that the excess emissions from high emitters are VOCs, not NO_x. Houston has a NO_x problem with its high ratio of VOC to NO_x; therefore, testing to identify "clunkers" may not really help reduce ozone even under ordinary atmospheric conditions.

In terms of ozone formation, both the amounts of VOC and NO_X and the ratio of these amounts are important factors. As both VOC and NO_X are necessary for the formation of ozone, it will be beneficial to address reducible amounts of "human-generated" VOC and NO_X. As part of the

emissions testing program, the exhaust gas recirculation system (EGR) will be checked; malfunctioning EGR systems are common vehicle NO_X problems. In addition, any tailpipe emissions test for any number of pollutants merely identifies a problem vehicle. Testing for NO_X can be quite expensive because a dynamometer is required to properly "load" the vehicle. Provided that the vehicle is properly repaired, NO_X will be reduced on some vehicles even though NO_X was not specifically tested. Other than the EGR system, excess NO_X emissions can occur from improperly adjusted ignition timing and/or a faulty catalytic converter. Current data does not indicate a NO_x problem in the Houston area. The area has received a waiver from the FCAA requirements for NO_x reductions.

An individual commented that a few specific maintenance problems are large contributors to high emission cars.

As part of the TMCP, an eight-point anti-tampering check will be performed by the inspector which will include a check for presence and functionality of the EGR system, the evaporative emission control system, the gas cap, the positive crankcase valve (PCV) system, the thermostatic air cleaner, and the air injection system for all model year vehicles. The catalytic converter will also be checked for model year vehicles 1981 and newer. As mentioned in the comment, the fuel metering systems for carbureted vehicles and oxygen sensors for fuel-injected vehicles are engine components that, if malfunctioning, should be easily identified and repaired by the certified technicians participating in the program. Nonetheless, each vehicle must be treated on a case-by-

case basis as it would not be practical and cost effective to perform the same repairs on all vehicles.

PROGRAM CONVENIENCE

RAQPC expressed concern that the minimum of eight hours a day, five days a week for the operation of the vehicle inspection stations was not sufficient to provide adequate consumer convenience. Some portion of the minimum hours of operation should be on week-ends or at night to enhance consumer convenience.

The TMCP does not specifically require evening or weekend hours within the minimum hours of operation. However, this program is a decentralized program and will include the participation of an estimated 500 stations initially in Harris county, approximately 1,200 stations in Dallas and Tarrant counties, and 150 stations in El Paso county. It is expected that many station owners will offer their customers the added convenience of weekend and/or evening hours.

RAQPC commented that the requirement for re-inspections to be made within 15 days in order to be done at no additional cost was not realistic. He was not sure that consumers will get their emissions repairs done and have the vehicle re-tested within 15 days.

Many of the facilities offering vehicle emissions inspections will also offer repairs. Utilizing this service should ensure that repairs will be made in a timely manner. However, motorists still have the option of taking the vehicle to another repair shop or opting to perform the repairs. The current programs in El Paso, Dallas, and Tarrant counties have not reported any significant problems specific to this requirement.

TSIA believes many test-and-repair stations will adopt a "wait and see" position regarding participation in the Motorist's Choice program.

The DPS indicates that, as of May 2, 1996, over 50% of the safety inspection facilities in Dallas and Tarrant Counties have requested phone lines necessary to participate in the TMCP. The DPS and the commission believe that there will be adequate facilities participating to provide a high level of convenient emissions inspection stations.

The Greater Dallas Chamber recommended that companies should be permitted to conduct on site emissions testing of their fleets.

The DPS will allow companies to self test their fleets if they comply with all applicable program requirements for facilities and inspectors regarding certification, testing procedures, and specified equipment.

PROGRAM NETWORK

LWV-TX supports the test-only option of the TMCP because it is an opportunity to reduce fraud that can easily occur at test-and-repair sites. In addition, a representative of the Sierra Club and an individual commented that under §114.3(a)(16), they were opposed to test-and-repair facilities. Studies have shown conclusively that decentralized programs have greater amounts of fraud than centralized programs.

The TMCP contains aggressive enforcement measures such as covert and overt audits to minimize fraud. Information on every inspection is transmitted to a central database at the completion of the inspection. If there is a discrepancy or anomaly, the DPS has immediate access to the inspection information to conduct an investigation.

An individual stated that the commission "must junk this entire proposal and start over" with the enhanced IM240 test and make it more consumer friendly by adding more inspection lanes.
A representative from the Sierra Club also voiced concern that the I/M program is in worse shape than it was two years ago.

A centralized emissions testing program utilizing IM240 inspection technology was implemented in Texas in January of 1995. Soon after implementation, it was suspended and subsequently canceled by SB 178. SB 178 specifically prohibits the use of any "emissions testing technology or

procedure that is more stringent than a technology or procedure" used in a Texas I/M program county prior to January 1, 1994.

TCEA commented that the I/M program seems to be influenced more by political reasons than by health-science.

The TMCP complies with the FCAA Amendments requirement that states implement a program to reduce motor vehicle emissions that contribute to ozone formation. The federal ozone standard is health and science based.

TSIA and two commenters recommend abolishment of the "test-only" and "test-and-repair" classification being proposed.

The classifications of "test-only" and "test-and-repair" have been removed from the rules. The rule language being deleted removes the mandates requiring differences in test fees or requiring vehicles to go to specific facilities for tests. The passage of the NHSDA of 1995 makes the distinction obsolete. A cornerstone of the TMCP is choice and convenience. The SIP continues to contain language in the "Network Type" that outlines the convenience to motorists to allow the choice of either high volume test-only facilities or test-and-repair facilities that offer a wide range of services. Both types of facilities will be able to offer either an annual, two-speed idle test or a biennial, loaded-mode test.

EPA commented that for audits of stations that conduct both testing and repairs, EPA's definition of "test-only" contained in 40 CFR §51.353 should be used for compliance with EPA's covert auditing requirements.

Additional language has been included to ensure that the SIP is in compliance with EPA's requirement that each facility that conducts both tests and repairs be subject to one covert vehicle visit per station per year. The covert audit will include the purchase of repairs and retesting, if the vehicle initially failed the tailpipe emissions test.

The El Paso MPO expressed concern that the program provides for an annual test at decentralized test-and-repair facilities or test-only facilities, or biennial tests at facilities with more advanced equipment, yet, El Paso will only have the annual test at test-and-repair stations.

Adding a biennial element would require additional expenditures by businesses, but only a marginal change in emissions reduction credits. The commission believes that annual emissions testing in El Paso is the most cost-effective vehicle emissions testing program. Inspection businesses in El Paso will be notified when the commission proposes to adopt ASM specifications, if interest is shown in offering a biennial test in El Paso, the I/M SIP could be amended to allow this option.

FUTURE TECHNOLOGY

TSIA and an individual recommended that the SIP should be amended to plan for future technology.

The commission will continue to evaluate technological advances in emissions testing to ensure the best possible testing methodologies and equipment are considered in future program development.

TSIA and an individual commenter recommended that the state implement a pilot program allowing the state to negotiate with EPA for additional time to allow new technologies and products be developed to ease economic burdens on both equipment manufacturers and people that buy the equipment.

The TMCP incorporates the technology required of an approvable I/M program. I/M program start dates can not be based on technological development, as technology will continue to evolve over time. However, the commission will continue to evaluate technological advances in emissions testing to ensure the best possible testing methodologies and equipment are considered in future program development. Programs must be implemented in a timely manner to achieve air quality benefits.

EPA commented that the SIP should include a statement that the program will update emission test equipment to accommodate new technology vehicles and changes to the program as necessary.

The commission has included language in the SIP that the program will update emissions test equipment to accommodate new technology vehicles and changes to the program as necessary.

An individual commented that the SIP should be developed so that it has removable pages and could be changed easily. The state should not enter into contracts without allowing for the addition of different forms of technology on the automobile, in the fuel, in other areas that would improve air quality. The SIP must be flexible and allow for pilot programs of new technology.

The commission has striven for flexibility in its design of the TMCP. Federal law, however, requires that the commission make certain minimum commitments according to a legally required timetable. It is necessary for the commission to implement a testing program in the immediate future. The commission believes that the BAR90 technology chosen represents a reasonable choice at this time. The commission may revise the TMCP at a later date as new technology becomes available and is proven effective. Revisions to the SIP must adhere to the same public notice, hearing, and comment requirements that apply to commission rules. There is a minimum length of time associated with any change to the SIP.

An individual commented that with recent technological developments and requirements for on-board diagnostics in new vehicles, the I/M program is redundant.

The commission agrees that on-board diagnostic (OBD) devices will allow for the convenient monitoring of vehicle emissions. Vehicles with these devices would still need to visit a testing facility and have on-board data analyzed. This process would, however, likely be a great deal more convenient than current testing methods. Unfortunately, most vehicles on the road today do not have such devices and these vehicles will continue to operate for a number of years. Some experts predict vehicles without OBD will be on the road for 15 years. Thus, the need for more traditional I/M programs continues. As this important technology continues to develop, the commission will continue to work with its partners in government and industry to best ascertain how this technology should be utilized and implemented.

An individual commented that testing methodologies for mass emissions exist and are affordable.

The commission agrees that testing methodologies for mass emissions testing exist. These technologies include (from highest to lowest cost) the Federal Test Procedure, IM240, and RG240/IG240. Currently, repair-grade mass emissions test equipment is available from a few manufacturers. However, specifications for inspection-grade mass emissions test equipment (IG240) are not currently available; thus, it is difficult to predict the final cost of such equipment for an inspection station owner. In addition to an analyzer, mass emissions testing equipment requires a dynamometer, a constant volume sampler, and other miscellaneous items such as special software, gas bottles, etc. Based on currently available information, a complete IG240

package could cost anywhere from $50,000-75,000. The commission does not feel that this is an "affordable" amount for most of the current safety inspection station operators.

An individual commented that most of the emissions from relatively new cars occur on start up and the catalyst in the converter is cold. After warm up the emissions are very low. Testing of recent model cars would have little payout because so few are likely to be major contributors to emissions and in the future cars with pre-warmed catalyst would result in an emissions testing program being less effective.

The TMCP is designed to test vehicles on a 24-model year rolling window in order to characterize emissions from that portion of the fleet which does not have the newer emissions control technology. Even though newer vehicles are both more reliable and equipped with superior technology, they also become high emitters when not maintained properly. Therefore, emissions testing or verification of some sort can still identify excess emitters.

STATE COMPLIANCE

An individual requested that the word "must" replace the word "may" in a sentence describing station penalties.

Each complaint against an inspection station should be handled on a case-by-case basis so an assessment can be made of the facts specific to that situation. The word "may" as opposed to

"must" is used because a penalty is not always the appropriate course of action for all complaints.

An individual commented that we are going to have a problem with fraud, that anyone can pay $20 to $50 and get a state inspection sticker. The enforcement of this program needs to be beefed up to handle the fraud and abuse currently in the system.

Regular auditing, both covert and overt, of the testing facilities will be conducted by the DPS. Citizens are encouraged to contact their local DPS office to report information regarding fraudulent activities.

TCEA commented that the TMCP should have continual surveillance and strengthening measures should be added as quickly as possible according to state-of-the-art technology and according to needs indicated by health-science.

The TMCP will have an aggressive oversight program operated by the DPS to conduct overt and covert audits. In addition to the audits, the TDLS will be used to flag any irregularities in testing such as an exceptional amount of vehicles "passing" or "failing" an emissions test. The commission will continue to evaluate technological advances in emissions testing to ensure the best possible testing methodologies and equipment are considered in future program development.

EPA commented that a penalty schedule for enforcement against contractors, stations, and inspectors has not been developed.

Applicable emissions penalty ranges are established by state law and adjudication and sentencing are accomplished through the judicial system by criminal or administrative judges. Current language in the SIP commits the commission to develop the penalty schedule. The penalty schedule is currently under development and will be submitted to the EPA as soon as it is finalized.

An individual commented that the SIP states that the DPS "may" perform random audits. The commission must also conduct covert audits to ensure more of these important enforcement checks are done.

DPS has enforcement responsibilities and has committed to conduct EPA required covert audits and overt audits.

EPA commented that for covert audit purposes, the vehicle operator needs to have access to the test area to observe the entire inspection.

Individual stations have liability concerns that prohibit customers from being in the work area, but the customer/auditor may observe from a distance.

An individual commented that there is not a way to conduct covert audits on fleets which do their own I/M program testing.

DPS is developing the methods for conducting audits of fleets which do their own I/M program testing. For example, the DPS may use remote sensing technology to conduct random audits of fleets to ensure testing integrity.

EPA commented that the inspector suspension process should include provisions that effectively bar the individual from any direct or indirect involvement in the inspection operation.

The Texas Transportation Code and DPS rules include provisions that bar an individual from direct involvement in the inspection operation.

EPA commented that mandatory training should be required for inspector incompetence.

The DPS is authorized to require mandatory training in case of inspector incompetence.

EPA commented that the final SIP submission should include a Texas State Attorney General opinion in the case of state constitutional impediments to immediate suspension authority or a commitment to get additional needed authority to immediately suspend inspectors for violations that directly affect emission reduction benefits.

The commission has requested an opinion from the Attorney General regarding state constitutional impediments to immediate suspension authority. The Attorney General has 180 days to respond to the request. The opinion will be submitted to the EPA as soon as it is available. If needed, the DPS commits to seek additional authority to immediately suspend inspectors for violations that directly affect emissions reduction benefits.

EPA commented that any state interagency agreements and memorandum of understanding established for the implementation of the requirements of the I/M SIP should be included in the finalized submittal.

The commission commits to submit to the EPA any state interagency agreements and memorandum of understanding established for the implementation of the requirements of the I/M SIP upon availability.

An individual commented that the state intentionally wrote a weak SIP leaving out such items as public education, technician training, a modified waiver program in which point source could alleviate the burden on the poor and the research outreach program.

The TMCP offers greater convenience to the motorist, while still meeting the federal requirements for an I/M program. The I/M SIP amendment provides for an aggressive public education campaign and technician training. It also includes a revised waiver program that offers a Low Income Time Extension that can be granted more than once in the lifetime of the

vehicle. This extension will help to alleviate the burden of vehicle repair costs to low income motorists.

The emissions trading program at the commission includes an option that would allow stationary sources to receive emissions reduction credits by providing financial support for repair or scrappage of gross polluting vehicles belonging to low income motorists. The commission will continue to study this and other options that offer innovative and effective ways to improve air quality.

An individual commented that recent reports indicate that EPA may be considering revising the ozone standard from 120 ppb for four hours in three years to 70 to 90 ppb over eight hours.

This comment is beyond the scope of this rule.

MOTORIST COMPLIANCE

TACAT is concerned that registration-based denial would be excessively expensive if done through the Registration and Title System and not at all workable if done from a hard copy print-out.

The proposed re-registration denial system will be very different from the system used in the discontinued IM240 program. The new system will not require a citizen to verify either their

residence or show proof of emissions inspection unless a computer comparison of emissions inspection and registration records indicates the vehicle has not complied with state law. The commission believes that this would involve no more than 2.0% of subject vehicles in nonattainment areas (38,000 in Harris County; 6,900 in El Paso County; and 43,000 in Dallas and Tarrant Counties). This is very different from the registration denial enforcement previously used. A list of noncomplying vehicles can easily be made available to County Tax Assessor-Collectors and their agents on a monthly basis. Also, TxDOT can "flag" renewal notices sent to noncomplying vehicles.

TACAT stated that enforcement of this program needs to be the sole responsibility of the DPS through vehicle inspection. The highly effective compliance of state inspection would not be enhanced significantly by registration denial.

The commission recently had a safety certificate compliance study conducted in the Dallas and Tarrant nonattainment counties. This study concluded that the safety certificate compliance rate was 95%. The proposed enforcement process will encourage compliance and increase the effectiveness of sticker based enforcement, and will generate the proposed 96% compliance rate. The TMCP's compliance enforcement element is the least invasive and impacts the fewest people.

TACAT stated that motor vehicle title clerks are not law enforcement officers and should not be placed in the position of trying to enforce this law. It will cause terrible public relations problems for the

county tax offices and will cost too much money to make it effective through the Registration and Title System.

Denying re-registration for noncompliance of emissions testing requirements will be similar to the current practice of title clerks denying re-registration to motorists who cannot provide proof of liability insurance.

Two individuals commented that the projected 96% compliance rate would not be good for Houston because that would result in 81,955 vehicles being out of compliance. The commenter stated that the health of many citizens would be endangered as a result of this additional air pollution. Also, a representative from the Sierra Club commented that the compliance rate should be 99% or higher.

The 96% compliance rate is based on historical compliance rates in other states which have had I/M programs. As with the vehicle population in general, the 4% projected to not comply will consist of a mix of both low and high emitters.

EPA stated the SIP should include a discussion on the timing of the enforcement process; commit that subsequent compliance deadlines for vehicles in this process will be based upon the date of scheduled compliance not actual compliance; explain the registration and testing database comparison computer system; and commit to compile and report monthly summaries and statistics on each stage of this

process. The SIP should also commit to track the number and percentage that are initially identified as requiring testings but are junked, sold out of the I/M area or are never tested for some other reason.

The TMCP is complying with 40 CFR Part 51 §51.361 Motorists Compliance Enforcement through Sticker Based Enforcement. The commission commits in the SIP to meet all requirements of this section along with enhancing compliance by implementing components of computer matching. Since the program is not basing compliance on computer matching, the commission does not commit to meeting EPA rule requirements for computer matching. This position will be clarified through further discussion with EPA.

EPA commented that the SIP should include a commitment that quality control written procedures will be consistence with the quality assurance and quality control requirements of the motorists compliance oversight portion of the I/M rule.

The commission has included language in the SIP committing that quality control written procedures referenced will be consistent with the I/M rule requirements for motorists compliance oversight.

LEGAL AUTHORITY

Bickerstaff commented that SB 178 is unconstitutional, therefore, the commission may not rely on SB 178 as a basis for the SIP revisions.

At this time, the commission is not aware of any court decision that declares SB 178 unconstitutional in its entirety. The commission must obey all state and federal laws currently in force.

Bickerstaff commented that the proposed revisions do not comply with the applicable requirements of the Clean Air Act and federal regulations implementing it.

Before the revised Texas I/M SIP was presented to the commission for action, it was reviewed by the commission's legal staff and found to be in compliance with the FCAA Amendments and the federal regulations which implement this law. Additionally, EPA comments gave no preliminary indication that the program, as designed, could not comply with federal law and regulations.

Bickerstaff commented that the proposed revisions would violate the state's commitment in the existing I/M SIP and an automatic bankruptcy stay.

SB 178, passed by the 74th Texas Legislature, repealed the commission's legal authority to implement a centralized I/M program using IM240-type emissions test. The NHSDA provided opportunities that allow states to modify their SIP no later that March 27, 1995. This action

allowed the commission to revise the I/M SIP. The proposed revisions to the I/M SIP would not violate the automatic bankruptcy stay. Commencement or continuation of actions and proceedings by governmental units to enforce police or regulatory powers is excepted from the automatic stay by 11 U.S.C.A. §362(b)(4) (West 1993). The proposed revisions are clearly an exercise of regulatory power by the commission and are, therefore, excluded from the bounds of an automatic bankruptcy stay.

Bickerstaff and Tejas commented that the state does not have the authority to implement the revisions proposed, such as implementing remote sensing, test-on-resale, and denial of vehicle re-registration. The Clean Air Act specifically requires registration denial to be included in enhanced programs. In addition, the specific federal law on which this particular proposal is based, NHSDA, §348, authorizes EPA approval only if the state "has all the statutory authority necessary to implement revisions." EPA therefore cannot approve the revisions.

The commission does not currently have the statutory authority necessary to implement test-on-resale, registration denial, and certain enforcement mechanisms of remote sensing as proposed. EPA indicated, however, that it can approve the revised Texas I/M SIP on a conditional/interim basis. A final approval of the revised SIP depends upon the Texas Legislature passing the necessary authority during its 1997 legislative session.

42 U.S.C. §7511 a(c)(iv) does not mandate the use of registration denial in every enhanced I/M program. EPA's Final Rule allows states with I/M programs in place prior to November 15, 1990, to adopt an alternative enforcement method if the state can demonstrate (to EPA's satisfaction) that those methods are either, (1) in an enhanced program area, more effective than registration denial or, (2) in a basic area, as effective as registration denial. The commission had a survey conducted, submitted in Appendix K of the revised SIP, which showed that enforcement through Safety Inspection certificates would be more effective than registration denial.

RAQPC commented that three components of the program require legislative approval -- remote sensing, re-registration denial, and testing on resale. These components are essential to the overall success of the TMCP, and it is critical that appropriate and timely legislative approval occur on these components.

The commission, TxDOT and DPS will facilitate legislative approval for remote sensing enforcement, re-registration denial, and test-on-resale. Currently, DPS has the authority to issue a misdemeanor citation to a motorist operating a vehicle in violation of Texas Transportation Code, Chapter 548, Texas Transportation Code, which includes emissions related inspections.

Tejas commented that SB 178 is void, and at the time of passage of SB 178, the state lacked the legislative authority to amend the SIP.

At this time the commission is not aware of any court decision which renders SB 178 null and void. Until such a decision is made, the commission must obey state and federal laws currently in force.

PROGRAM EVALUATION

EDF commented that the commission proposes to evaluate the I/M program on a continuous basis to assess its effectiveness, however, the first report will not be submitted until January 1999. The commission should complete its first assessment by January 1998 and update it in January 1999 allowing time for program corrections.

The commission will monitor and evaluate the program continuously. The first program evaluation will be provided to EPA no earlier than March 1998. The actual date will be established once interim approval has been granted by EPA.

An individual commented that, within the 18 months for TMCP evaluation, it is a very low return on the equipment investment that the shop owners are to make. At the end of this 18 months, the requirements of the equipment in which they've invested could change. The state does not realize the economic impact that it makes on the public.

Should the state be required to modify the TMCP after the 18 month evaluation, provisions may be made for the continued use of equipment purchased by station owners at the start of the TMCP. This will allow for a continued return on the investment of the test equipment. Some equipment manufacturers are expected to offer equipment that is capable of being upgraded to handle new technology.

RAQPC commented on concerns relating to the schedule of the SIP, the associated rule-making, and the time constraints imposed by the NHSDA on "full credit amounts."

The commission anticipates interim/conditional approval in the fall of 1996, with a program start date scheduled for July 1, 1996 in Dallas and Tarrant Counties.

Under the NHSDA, current implementation time lines allow an interim/conditional program to begin and undergo an evaluation period of eighteen months rather than a two year evaluation period. EPA is to approve state programs based on emissions reduction credits as estimated by the state if the state estimates reflect a "good faith" expectation of performance. EPA also has indicated that at least six months of program operation are needed to evaluate performance. After this six month period, evaluation of data collected will determine whether adjustments are necessary. Approval based on the state's proposed emissions reductions can be made permanent if the interim program demonstrated that the credits are appropriate. Early legislative approval of the remote sensing enforcement mechanisms and the test-on-resale element will allow sufficient

time for data collection. The re-registration element will impact the compliance rate of the program. The commission is confident that sufficient data will be available to meet the program evaluation requirements.

RAQPC commented that the commission should develop contingency measures in the vehicle emissions testing and inspection program in the event that current components are determined by EPA to not achieve "full credit amounts," or in the event there is insufficient time to thoroughly evaluate them.

The commission expects EPA to grant "full credit" for the portion of the program that is conducted at test-and-repair stations, and expects to meet the time line required by the NHSDA for program evaluation. After EPA has released final ASM specifications, the commission will develop the loaded mode element; resulting in additional credit for the I/M program.

The commission anticipates the adoption of ASM specifications within nine months of EPA promulgation. Any ASM facilities certified would produce extra credits not currently counted in the state's estimates.

As noted in the SIP, the Texas Health and Safety Code 382.037 A-1 gives the authority to expand the geographic coverage of the I/M program beyond urbanized area boundaries to include areas that contribute in a significant way to mobile source emissions inventory in the nonattainment area. The commission has authority to extend the I/M program area, and has designed the

TMCP to correspond with county boundaries. Other measures that would be considered include adjustments to cut points, modifying waiver criteria, or adding additional testing requirements. Additional contingency measures will be developed if needed.

An individual noted that the commission does not commit to accepting and working jointly with EPA to develop a protocol for this program.

The commission is currently assisting with the development of a joint program evaluation protocol by participating in workgroups with several other states and representatives of EPA. It is anticipated that a jointly developed protocol will be available in July 1996.

MODELING/GOOD FAITH EFFORTS

EDF commented that the commission's calculations of emissions reductions were not based on "good faith" estimates, but rather on unsubstantiated assumptions, therefore the SIP does not meet the minimum requirements for approval by EPA.

The TMCP is based on "good faith" estimates. The 1990 FCAA Amendments clearly anticipated EPA issuance of guidance allowing the use of "an electronically connected testing system, a licensing system, or other measures to be considered as equally effective" as a centralized I/M program. A contract with the commission has been awarded to MCI to provide an electronically

connected testing system that will prevent shopping around by motorists. Other measures to be implemented include remote sensing technology, a test-on-resale component, recognized repair technicians, and testing of heavy duty vehicles. The commission believes that the SIP meets the requirements for EPA approval.

EDF commented that although it may be possible to design a decentralized program that would be equally effective as a centralized one, the commission does not provide any data to demonstrate the validity of that assumption and provides no numerical breakdown of the emissions reductions from individual program elements. It is therefore difficult to gauge by how much the commission has overestimated the overall emissions reductions from the revised I/M program.

The MOBILE computer model does not lend itself to segmenting portions of an I/M program. There is not a linear relationship as many of the testing elements are inter-related, other testing elements only apply to certain vehicles in the mix. The MOBILE model includes an automatic deduction of 50% for test-and-repair tailpipe emissions tests, purge tests, evaporative system integrity tests, catalyst check, and gas cap check; and 75% less for the evaporative canister checks, PCV check, and air system checks. Pursuant to the NHSDA, the commission claimed 100% credit for the tailpipe emissions test, gas cap, catalyst, evaporative canister, PCV, and air system checks pursuant to the NHSDA.

Bickerstaff, representing Tejas, commented that the state cannot support its request for full credit. Congress removed the automatic discount, but it did not amend the existing Clean Air Act requirement that enhanced programs must operate "on a centralized basis unless the state demonstrates to the satisfaction of EPA that a decentralized program will be equally effective."

The commission believes that test-and-repair emissions inspections facilities are honest and capable and that the data link system has not been allowed to be proven as an effective measure to deter fraud. Legislation passed by Congress in November 1995, allows Texas and other states the necessary time to demonstrate that its decentralized, hybrid (partially test-only and partially test-and-repair) I/M program can receive full credit. The commission believes that a good faith claim of 100% of possible reduction credits is reasonable.

Bickerstaff and Tejas commented that the state contemplates that 40% of the affected motorists will choose loaded-mode test-only facilities. In fact, there are no such facilities currently available.

The commission concurs with this statement and has changed language in the Technical Supplement to reflect that the affected vehicle population will have their emissions tests performed at decentralized, two-speed idle facilities. The commission plans to adopt ASM testing specifications and procedures within 9 months of EPA's final action on the ASM specifications.

The Sierra Club and one individual commented that the SIP is not clear in describing how a delay of two years in emissions reductions will be gained back. The commenter requested that the commission explain the actual reductions expected from this "weaker program" versus what Congress will allow the commission to claim.

The I/M SIP is based on demonstration that the proposed program meets or exceeds EPA's low enhanced performance standard. In order to accurately compare EPA's standard and the TMCP, the commission, with EPA approval, modeled the program with the same start dates. With the performance demonstration of the TMCP, initial modeling indicates the necessary credit for the Rate of Progress (ROP) SIP will exist with the program starting as proposed (1996/1997).

The passage of the NHSDA allows the dismissal of the 50% reduction credit for test-and-repair facilities. With the increased enforcement elements of the TMCP, the state feels that the program will be as effective as a test-only program.

Two individuals commented that the high enhanced performance standard should be required in Houston.

The TMCP is one of many control strategies in the SIP for Houston. The 15% and 9% plans for Houston will meet the emissions reduction requirements of the FCAA Amendments.

LWV-H expressed concerns that the I/M program for Harris County will result in less improvement in Houston's air quality.

Modeling indicates that the revised emissions testing program will achieve the appropriate amount of emissions credits needed to meet or exceed the 15% and 9% SIP requirements. In order to be effective, an emissions testing program must be both convenient and acceptable to the motoring public.

A representative from the LWV-H and an individual commented that the new program will gain fewer emission reduction credits for the area as the centralized system.

The amount of credits the TMCP receives at this time is sufficient to meet the requirements of the state's 15% and 9% SIPs.

EPA commented that the state proposal on credit estimates deviates from past guidance in three areas and will need to be included in the program demonstration. The three areas are: 1) full credit for test-and-repair, 2) full credit for self testing of fleet vehicles, and 3) full pressure test credit for gas cap integrity test.

The commission concurs with these comments.

EPA commented that the SIP should include an explanation of the basis for determining the 60/40 split for annual idle and biennial loaded mode tests.

The commission has removed any language referring to a 60/40 split, and will submit modeling to reflect 100% of the affected vehicle population having their emissions test performed on an annual basis at two speed idle facilities. The revised figures for Dallas and Tarrant counties are submitted as part of this action. Revised figures for Harris County will be submitted as soon as they are available.

EPA commented that the SIP should include a commitment that if the number of exempt on-road vehicles exceeds 0.5% of the vehicle fleet it will be accounted for in the modeling credit estimates.

The commission has included language in the SIP to revise credit estimates if the number of exempt on-road vehicles exceeds 0.5%.

RAQPC commented that the TMCP is estimated to achieve about 15% of the total 215 tons per day of reduction in volatile organic compounds that are required in the 1996 ROP SIP at a cost per ton that is significantly lower than almost any other control strategy in that plan.

The commission concurs with this comment.

FINA commented that a shortfall in emissions reduction from the TMCP will ultimately be borne by the business community.

The amount of credits the TMCP receives at this time is sufficient to meet the requirement's of the state's 9% and 15% SIPs. The commission will continuously evaluate the TMCP and if data indicates program changes are required to meet federal mandates, other program options may be considered.

FINA commented that businesses have borne the brunt of the required pollution reductions to date and are now required to make additional reductions to address Mobile Sources that contribute to air pollution. Also, VOC's are reduced at a cost of approximately $500/tons, making mobile sources one of the most cost effective means to reduce emissions.

No additional point or area source reductions are required to meet the 9% or 15% SIPs as a result of the redesign of the I/M program.

An individual commented that extensive vehicle testing is not a cost effective means to try to comply with the FCAA ozone standards in areas such as Houston.

In the state's effort to comply with the FCAA ozone standards in Houston, three source types are targeted for emissions reductions: stationary, area, and mobile. As the state's 9% and 15% SIPs

are written, stationary sources have substantial requirements to reduce emissions. To avoid further restrictions on stationary sources that may be more costly, the I/M program provides a substantial portion of the planned emissions reduction requirements in the state's air quality plans. Vehicle emissions reductions are one of the least costly control strategies.

GEOGRAPHIC COVERAGE

Bickerstaff commented that the revisions do not include Beaumont/Port Arthur, a moderate area requiring a basic I/M program.

In its initial I/M rules following the 1990 FCAA Amendments, EPA required moderate nonattainment areas to implement a basic I/M program in any 1990 census-defined urbanized area. On September 18, 1995, EPA published a revision that required a basic I/M program in any 1990 census-defined urbanized area with a 1980 Census population of 200,000 or more inside the nonattainment area. Neither Beaumont nor Port Arthur's urbanized area inside the metropolitan statistical area (MSA) contains 200,000 or more people (based on the 1980 Census population). Therefore, a basic I/M program is not required.

The Sierra Club, Harris County Commissioners Court, LWVH, LWV-TX, HCPCD, RAQPC, PAC, and four individuals commented that all eight counties in the Houston-Galveston nonattainment area

need to be included in the I/M program. Thousands and thousands of vehicles will escape effective regulation under this loophole in §114.3(3). Ozone levels do not stop at county lines.

EPA's I/M Final rule requires that the I/M program area in the Houston/Galveston CMSA cover an area with a population equal to the CMSA's census-defined urbanized area population for 1990. The urbanized area in this CMSA is almost entirely within Harris County. EPA has determined that the state can limit the emissions testing portion of the safety inspection program area to Harris County. The difference between the population of Harris County and the urbanized area (approximately 80,000 people in the Houston/Galveston nonattainment area) would be accounted for through remote sensing of a representative number, or more, of commuting vehicles registered in surrounding counties. EPA has indicated that 40 CFR §51.350 (b) (2) of the I/M Final Rule allows for such a procedure.

The TMCP does not exempt vehicles in all counties surrounding Harris County. Vehicles registered in surrounding counties that travel into Harris County will be targeted by remote sensing after September 1, 1997. Those subject vehicles failing remote sensing will be required to pass an emissions test or qualify for a waiver. Vehicles from rural parts of Harris County will be subject to the same testing requirements as all other parts of Harris County. Many of the counties surrounding Harris County are largely rural. It does not appear to be an effective use of resources to require testing of these vehicles that are routinely driven in areas that contribute

little to air quality problems in Harris County. The TMCP is designed to achieve the greatest pollution reduction benefit, while maintaining convenience to individuals as a high priority.

EDF commented that the exclusion of Collin and Denton Counties from the DFW area means that the SIP is inadequate. While this exclusion may result in a failure to inspect only 147,000 "commuting" vehicles, it also leaves out 304,000 other, non-commuting vehicles in the two counties.

The proposed program will require 82% of the four county area's subject vehicles (based on estimated 1996 registration figures), to be tested periodically. Much of northern Collin and Denton Counties are rural. It does not appear to be an effective use of resources to require testing of these vehicles that are routinely driven in areas that are upwind of the monitors and contribute little to air quality problems in Dallas and Tarrant Counties.

FINA, the Greater Dallas Chamber, LWV-TX, and three individuals made comments to include Collin and Denton Counties in the program. The projected growth rates for Collin and Denton Counties are higher than Dallas and Tarrant Counties. Excluding these high growth areas will only exacerbate the regional air quality problems in the future.

Data provided by the 1990 Census indicates that there are approximately 2.8 million vehicles in the program area that could be operating daily in Dallas and Tarrant Counties. Data also indicates that potentially 450,000 of these vehicles could originate in Denton and Collin Counties.

Consequently, less than 16% of all vehicles operating in Dallas and Tarrant Counties potentially originate in Denton or Collin Counties on a given day. The TMCP will be able to satisfy all federal requirements without requiring every vehicle in Denton and Collin Counties to undergo emissions inspections. The commission and the DPS will locate remote sensing sites in Dallas and Tarrant Counties so they can detect gross polluting vehicles commuting from outlying areas.

FINA and the Greater Dallas Chamber recommended that remote sensing locations should include Collin and Denton Counties.

The TMCP will be able to meet all federal requirements without putting remote sensing sites in Denton or Collin Counties or subjecting every vehicle in those counties to mandatory emissions testing. The commission will locate remote sensing sites so that they will detect gross polluting vehicles commuting from Denton and Collin Counties. Denton and Collin were excluded from regular testing requirements because that level of participation was not necessary to meet federal requirements and the commission sought to minimize the economic impact for motorists in Denton and Collin Counties, as well as the cost to the state of Texas of administering the I/M program.

FINA commented that since the I/M program and remote sensing affected only Dallas and Tarrant Counties, it is not clear why Collin and Denton are included in the definition of “Program Area”.

Denton and Collin Counties are included in the definition because "program area" defines any county that is included in any element of the I/M program. Since vehicles in Denton and Collin Counties may be subject to remote sensing, they are included in this definition.

HCPCD commented that if two vehicles were gross polluters within Harris County, they should both be tested. For example if two vehicles start from one point and end at the same point, it shouldn't matter that one vehicle is from Harris County and one vehicle is from Fort Bend County.

Vehicles from Fort Bend are excluded from periodic testing. However, gross polluters from the program area, which includes Fort Bend, are subject to remote sensing scans when they commute into the core program area. If a vehicle is identified as a gross polluter by a remote sensing scan, this vehicle will be required to have an emissions test.

An individual commented that the counties surrounding Harris County are going to grow. With this growth, the surrounding counties will make up a larger percentage of the air quality problem. Also, the Greater Houston Partnership commented that if additional reductions are necessary, then the inclusion of the remaining seven counties should be the first option the state considers. FINA commented that a time line should be set up when all counties are included in the program.

The commission will continuously evaluate the TMCP. If data indicates program changes are required to meet federal mandates, the option of additional county coverage may be considered if appropriate.

HCPCD commented that the state will target 75,000 vehicles in the Houston area for remote sensing scanning with 10,000 vehicles subject to an emissions test. This number is insignificant in terms of 2,000,000 vehicles having to be inspected in Harris County. Adding 10,000 vehicles to the total amount of vehicles that have to be tested will not cover the shortage in EPA's required population coverage.

The shortage in required population coverage in the Houston area is approximately 84,000. According to the 1990 census, the commuting vehicle/persons ratio from surrounding counties is 77.3%. Using this information, the TMCP can cover the shortage in population coverage with the addition of approximately 65,000 vehicles. EPA has indicated acceptance of the TMCP urbanized area description.

Four individuals commented that the people of Harris, Dallas, Tarrant and El Paso Counties are being discriminated against because they were the only counties subject to routine emissions testing. All counties in Texas should be included in emissions testing.

Most areas of Texas maintain compliance with federal air quality standards. Harris, Dallas, Tarrant, and El Paso Counties are not in compliance with federal air quality standards, and are, therefore, required to implement an emissions testing program.

INSPECTOR REQUIREMENTS

METRO is in agreement with the stringent licensing requirements for testing stations and inspectors and is prepared to meet all provisions for testing of METRO's gasoline fueled vehicle fleet as a self-testing, licensed station.

Comment noted.

METRO fully supports the requirements established for certification of test stations and inspectors, but noted an inconsistency in the prerequisites for license application in the draft revisions. To become a licensed inspector, the inspector must be employed by a licensed inspection station. To become a licensed inspection station, the station must employ a licensed inspector.

The commission has modified SIP language to clarify requirements. DPS rules and regulations allow for a simultaneous process to become a licensed station and a licensed inspector. A station must employ at least one licensed inspector before it can become a licensed inspection station. To become a licensed inspector, the inspector must be affiliated with a licensed station. If a licensed

inspector leaves employment of a licensed station, the inspector has three months to enter employment with another licensed station. If this time period expires, the inspector's license will also expire.

OTHER ISSUES

EDF stated that the NHSDA did not grant "presumptive equivalency" between test-only and test-and-repair components, as claimed by the commission.

The commission agrees with this comment. The "Presumptive Equivalency" subsection title has been changed to read "National Highway System Designation Act of 1995 Good Faith Estimates".

RAQPC commented that the TMCP will likely be revised several times before 2007.

The commission will continuously evaluate the TMCP. If data indicates program changes are required to meet federal mandates, other program options may be considered.

An individual stated support for any type of emissions testing program.

Comment noted.

METRO recommends that provisions be made to replace inspection certificates which are lost due to broken windshields.

This comment is beyond the scope of this rule.

Greater Houston Partnership stated that the organization supports the proposed TMCP and commends the state for developing a program that is more convenient and less intrusive than previously proposed plans and still meets the ozone reduction requirements.

Comment noted.

TADA commented that the association supports the TMCP and views it as a vast improvement over the centralized plan that was repealed by the 74th Legislature.

Comment noted.

The El Paso MPO commented that four testing stations and one referee station were built for the now-defunct centralized emissions testing program. The MPO would like to hear from the commission on their plans for these structures.

The facilities that were built in El Paso for the previous IM240 centralized emissions testing program are currently not the property of the state. MARTA Technologies, the IM240 contractor that was selected for El Paso, is current owner and is in negotiations with the state.

LWV-TX stated the League's positions are based on public health concerns. But there are economic benefits of cleaner air including fewer sick days off, lower medical costs, and fewer pollution-associated deaths. In addition, businesses attracted by the state's quality of life would be adversely affected by sanctions imposed by the federal government if federal ozone reductions requirements are not met.

Comment noted. The TMCP will meet federal requirements for the I/M, 9% and 15% SIPs.

CEC urged all policy makers and stakeholders to do everything possible to reduce emissions on all fronts.

The commission recognizes the comment of the CEC. The commission is charged with developing an I/M program that satisfies the law and serves the best interest of all Texas citizens.

An individual commented that the TMCP was lacking in common sense.

The commission tries to base policy on sound science and common sense. The commission believes that the TMCP represents the highest degree of sound science and common sense possible, given the requirements that the program must meet.

An elected official stated monitors should be placed in Gainesville to determine the impact of pollution from Denton and Collin Counties. Pollution from Ellis County and those south of the metroplex cause problems in the nonattainment area.

The placement of monitors is beyond the scope of this plan.

An individual commented that the I/M program was a health issue.

Comment noted.

An individual commented that people with new cars in the previous arrangement had to pay a mitigation fee or a hidden tax.

The commission has never required that a mitigation fee be paid by owners of new vehicles.

An individual commented that they wanted to see it published that the state has paid $8.3 million to get out of the previous emissions testing program and the outcome of the lawsuit is still unknown.

The amount of funds referred to in the comment was approved through legislative authority and was a loan to Tejas.

An individual commented that air pollution will not be identified without proper testing techniques and will never be resolved without good credible repair techniques.

Several studies have demonstrated that two-speed idle (or "BAR90") testing technology is an effective technique for identification of high-emitting vehicles. As with all testing technologies, it is imperative that proper procedures be followed by the inspector conducting the test. The commission agrees effective repairs are important and has incorporated effectiveness components into the program as detailed in Section 20 of the SIP.

An individual commented that the state should look into the possibility of creating a new safety program that is designed to be used in a two-year testing cycle.

This comment is beyond the scope of this rule.

An individual commented that he cannot support the TMCP concept because clean air is deserved by all Texas citizens.

As with all emissions testing programs, the TMCP is based on testing vehicles to identify high-emitters and requiring that such vehicles receive effective repairs. Another goal of the program is to promote increased awareness of the value of routine maintenance.

An individual commented that the state is replacing a program that took them 2 years to develop with one which took them 3 to 4 months to develop and which hasn't been tested yet.

The TMCP which is being implemented is an enhancement of the emissions testing program which has been a component of the annual safety inspection in DFW and El Paso since 1990 and 1987, respectively. A primary aspect of the enhancement is greater efficiency in the data collection process which will be provided by the Vehicle Inspection Database (VID).

An individual commented that air pollution is unburned fuel. People spend more on their fuel bills to operate vehicles that are not properly tuned. Properly tuned vehicles will meet test standards and cost less to operate.

Comment noted.

An individual expressed concern that the public will have to sit in line to have their car tested. The individual also expressed concern of having vehicle identification numbers placed in the data link system each year and having it tied to their name.

The wait time for having a vehicle tested under the TMCP should be minimal and determined by the motorist. The motorist is allowed to choose which station they would like to have test their vehicle. If the line at one facility is too long for the motorist's liking, they may choose another facility. The vehicle database is securely managed with very limited access. While the state understands concerns of having personal information in the database such as a motorist's name and VIN, such information is necessary to ensure compliance and to run an effective program.

An individual commented that this proposal is as bad as the centralized testing program.

The TMCP has been designed to appeal to as many segments of the effected community as possible. The TMCP offers improved convenience over the old centralized program by being offered at more facilities in each area and being combined with the safety inspection. The TMCP also allows for more inspectors to participate by having a decentralized network rather than a centralized contractor. While the state realizes that this program cannot be all things to all people, it has tried to design a program which will satisfy as many interests as possible.

An individual commented that EPA is forcing states to adopt the emissions testing of vehicles, and that politics has taken precedence over science.

The TMCP is being implemented in accordance with both state and federal law. If either state and/or federal law require I/M program changes in the future, such changes will be instituted.

An individual commented that the commission should consider testing commercial and military aircraft.

The commission does not have regulatory authority over these vehicles.

Several individuals commented on landfills in the Houston area, reformulated gasoline, freon, and other issues.

These comments are beyond the scope of this rulemaking.

COMMISSION COMMENTS

§114.3 Rule Modifications

The commission made the following changes to §114.3 for clarification: Commission was substituted in place of all references to TNRCC, and in §114.3(f)(2) certificates was substituted in place of stickers.

The commission added §114.3(a)(6), a definition for "First safety inspection certificate." Due to procedural requirements the commission renumbered §114.3(a)(6) through §114.3(a)(16) appropriately.

Section 114.3(a)(8) was changed in order to clarify the definition: changed Utilizing remote sensing… to read Utilization of remote sensing.

Section 114.3(a)(10) was changed in order to clarify the definition: changed …60 continuous days per year… to read …60 continuous days per testing cycle… and added It is presumed that a vehicle is primarily operated in the county in which it is registered.

Section 114.3(a)(13) was changed in order to clarify the definition: changed The Texas SIP as revised in accordance with the 40 Code of Federal Regulations Part 51, Subpart S, issued November 5, 1992 and proposed revisions dated February 28, 1996, as provided for in the National Highway Systems designation Act of 1995, including the procedures and requirements of the vehicle emissions inspection and maintenance program. A copy of the revised Texas I/M SIP is available at the Texas Natural Resource Conservation Commission, 12124 Park 35 Circle, Austin, Texas, 78753 to read The portion of the Texas SIP which includes the procedures and requirements of the vehicle emissions inspection maintenance program as adopted by the commission May 29, 1996, in accordance with the 40 Code of Federal Regulations Part 51, Subpart S, issued November 5, 1992; the EPA flexibility amendments dated September 18, 1995; and the National Highway System Designation Act of 1995. A copy of the revised Texas I/M SIP is available at the Texas Natural Resource Conservation Commission, 12124 Park 35 Circle, Austin, Texas, 78753; mailing address: P.O. Box 13087, MC166, Austin, Texas 78711-3087.

Since there is no reason to differentiate between test-only and test-and-repair facilities, the commission deleted §114.3(a)(15) and §114.3(a)(16).

Section 114.3(b)(1) was changed in order to clarify the requirement to begin emissions testing on an applicable vehicle: added …beginning with the first safety inspection certificate expiration date.

Section 114.3(b)(2) was changed in order to clarify the requirement to begin emissions testing on an applicable vehicle: deleted …El Paso and, and added …beginning with the first safety inspection certificate expiration date.

Section 114.3(b)(3) was changed in order to clarify the requirement to begin emissions testing on an applicable vehicle: changed §114.3(b)(3) to §114.3(b)(4); and inserted new §114.3(b)(3).

Section 114.3(c)(3) was changed in order to clarify the requirement for commanding officers or directors of federal facilities: added …to the Executive Director… to the requirement "Commanding officers or directors of federal facilities shall certify annually to the Executive Director that all subject vehicles have been tested and are in compliance the Federal Clean Air Act (FCAA)."

Section 114.3(c)(4) was changed in order to clarify the requirement for recall notice compliance: changed Any motorists in an enhanced program area whose motor vehicle has been issued an emissions recall notice from an emissions inspection station stating there are unresolved recall items shall furnish proof of compliance… to read Any motorists in an enhanced program area who has received a notice from an emissions inspection station that there are recall items unresolved on their motor vehicle should furnish proof of compliance.

Section 114.3(c)(7) was changed in order to clarify the requirement for on-road testing: changed A motorist whose motor vehicle… to read …A motorist whose vehicle… and changed …administered by the TNRCC or DPS… to read …administered by the DPS.

Section 114.3(c)(7)(A) was changed in order to clarify the requirement for on-road testing: changed …submit the motor vehicle… to read …submit the vehicle… and changed …notice by the TNRCC or DPS… to read …notice by the DPS.

Section 114.3(c)(7)(B) was changed in order to clarify the requirement for on-road testing: changed…notice by the TNRCC or DPS… to read …notice by the DPS.

Section 114.3(c)(8) was changed in order to clarify the requirement for state, government, and quasi-governmental agencies: changed…registration renewal process… to read …registration or inspection process… and added …for vehicles primarily operated in I/M program areas.

Section 114.3(e) was changed in order to clarify the requirement for biennial testing: deleted …at a test-only facility… and added This does not include out-of-cycle tests.

Section 114.3(f)(3) was changed for clarification of the requirement: changed …as an inspector certified by… to read …as an emissions inspector certified by.

Section 114.3(h) was changed in order to clarify the requirement: changed …for certification… to read …for DPS certification.

The commission added §114.3(h)(4) to clarify the requirements to be a certified emissions inspection station, and added §114.3(h)(5) and §114.3(h)(6) to facilitate a phase-in approach and pilot program for the TX96 analyzer.

§114.4 Rule Modifications

Commission was substituted in place of TNRCC in §114.4 due to procedural requirements.

The commission added §114.4(f) to facilitate a phase-in approach and pilot program for the TX96 analyzer.

§114.6 Rule Modifications

Section 114.6(b)(1) was changed in order to clarify the requirement for a minimum expenditure waiver: changed The motor vehicle must have a valid Vehicle Inspection Report (VIR), a valid Vehicle Repair Form (VRF), and have failed a retest after repairs, which meet the following conditions: to read The applicant must have a valid retest Vehicle Inspection Report (VIR), a valid Vehicle Repair Form (VRF), and the vehicle must have failed a retest after all qualifying repairs. Qualifying repairs must meet the following conditions:.

Section 114.6(b)(1)(C) was changed in order to clarify qualifying repairs for a minimum expenditure waiver: added (repairs conducted up to 60 days prior to the initial test may count towards the waiver amount).

Section 114.6(c)(2)(C)(ii) was changed in order to clarify qualifying adjusted gross income levels for the low income time extension: deleted …the following maximum income limits (for families of more than 10 members, add $267 for each additional person) or… and the associated chart. Section 114.6(c)(2)(C)(ii) now reads …"the applicant's adjusted gross income is within the current federal poverty income guidelines."

Section 114.6(d)(5) was changed in order to clarify the requirement for parts availability waivers: added…in addition to other penalties authorized for non-compliance.

§114.7 Rule Modifications

Section 114.7(a) was changed in order to clarify applicability: changed …for Dallas, Tarrant, Harris, and El Paso Counties… to read …for vehicles registered in Dallas, Tarrant, Harris, and El Paso Counties.

Section 114.7(a)(1) was changed in order to set standard fees for emissions testing stations: changed …Test and Repair Stations… to read …Emissions Inspection Stations.

The commission deleted §114.7(a)(2) in order to set standard fees for emissions testing stations.

The commission made the following changes to §114.7(a)(3) in order to set standard fees for emissions testing stations: changed §114.7(a)(3) to read §114.7(a)(2) due to procedural requirements, changed …Test and Repair Stations… to read …Emissions Inspection Stations…, and changed …Market Driven (Fee set by inspection station)… to read …$26.

The commission changed §114.7(a)(4) to read §114.7(a)(3) due to procedural requirements.

Section 114.7(c) was changed in order to clarify the fee for out of cycle vehicle emissions inspections: changed …emissions inspection, resulting… to read …emissions inspection in the amount specified in subsection (a) of this section, resulting.

Analyzer Specifications Modifications

The commission clarified portions of the draft Specifications For Preconditioned Two Speed Idle Vehicle Exhaust Gas Analyzer System For Use In The Texas Motorist's Choice Emissions Testing Program, dated February 23, 1996, to facilitate and improve the design of the analyzer system. The final specifications are dated April 26, 1996 and changes have been incorporated into the final version. A copy of the specifications and all changes are available upon request.

To facilitate the requirement for phasing in the program and a pilot program, the commission modified the specifications to reflect §114.4(f)(1) and §114.4(f)(2).

The new sections are adopted under the Texas Health and Safety Code (Vernon 1992), the Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

MOTOR VEHICLES

§§114.3, 114.4, 114.6, 114.7

§114.3. Vehicle Emissions Inspection Requirements.

(a) Definitions. Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the Texas Natural Resource Conservation Commission (commission), the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, the following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Adjusted annually** - Percentage, if any, by which the Consumer Price Index (CPI) for the preceding calendar year differs (as of August 31) from the CPI for 1989; adjustments shall be effective on January 1 of each year.

(2) **Basic program area** - Collin, Dallas, Denton, and Tarrant Counties.

(3) **Core program area** - Dallas, El Paso, Harris, and Tarrant Counties.

(4) **Emissions tune-up** - A basic tune-up along with functional checks and any necessary replacement or repair of emissions control components.

(5) **Enhanced program areas** - Harris, Waller, Galveston, Montgomery, Chambers, Liberty, Fort Bend, Brazoria, and El Paso Counties.

(6) **First safety inspection certificate** - Initial 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.

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

(8) **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.

(9) **On-road test** - Utilization of remote sensing technology to identify vehicles operating within the core I/M program area that have a high probability of being high-emitters.

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

(11) **Primarily operated** - Use of a motor vehicle greater than 60 continuous days per testing cycle in a county, motorists shall comply with emissions requirements for such county. It is presumed that a vehicle is primarily operated in the county which it is registered.

(12) **Program area** - County or counties in which the DPS, in coordination with the commission, administers the vehicle emissions inspection and maintenance program contained in the revised Texas I/M State Implementation Plan (SIP). These counties include Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Harris, Galveston, Liberty, Montgomery, Tarrant, and Waller.

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

(14) **Revised Texas I/M SIP** - The portion of the Texas SIP which includes the procedures and requirements of the vehicle emissions inspection and maintenance program as adopted by the commission May 29, 1996, in accordance with the 40 Code of Federal Regulations Part 51, Subpart S, issued November 5, 1992; the EPA flexibility amendments dated September 18, 1995; and the National Highway Systems Designation Act of 1995. A copy of the revised Texas I/M SIP is available at the Texas Natural Resource Conservation Commission, 12124 Park 35 Circle, Austin, Texas, 78753; mailing address: P.O. Box 13087, MC 166, Austin, Texas 78711-3087.

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

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

(b) Applicability. The requirements of this section and those contained in the revised Texas I/M SIP shall be applied to model years 24 years and newer of gasoline-powered motor vehicles, excluding motorcycles and dual-fueled vehicles which cannot be operated using gasoline, and safety inspection facilities and inspectors certified by DPS to inspect vehicles, in the program areas in accordance with the following schedule:

(1) annual or biennial emissions inspection of vehicles registered and primarily operated in Dallas and Tarrant Counties beginning on July 1, 1996, beginning with the first safety inspection certificate expiration date;

(2) annual or biennial emissions inspection of vehicles registered and primarily operated in Harris County beginning on January 1, 1997, beginning with the first safety inspection certificate expiration date;

(3) annual emissions inspection of vehicles registered and primarily operated in El Paso County beginning on January 1, 1997, beginning with the first safety inspection certificate expiration date; and

(4) on-road tests of vehicles registered in a program area and operating in a core program area beginning on September 1, 1997.

(c) Control requirements.

(1) No person may operate any motor vehicle which does not comply with:

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

(B) the vehicle emissions inspection and maintenance requirements contained in the revised Texas I/M SIP.

(2) No person or entity may own, operate, or allow the operation of a vehicle registered in a program area, unless the vehicle has complied with all applicable vehicle emissions I/M requirements contained in the revised Texas I/M SIP.

(3) All federal government agencies shall require a motor vehicle operated by any federal government agency employee on any property or facility under the jurisdiction of the agency and located in a program area to comply with all vehicle emissions I/M requirements contained in the revised Texas I/M SIP. Commanding officers or directors of federal facilities shall certify annually to the Executive Director that all subject vehicles have been tested and are in compliance with the Federal Clean Air Act (FCAA). This requirement shall not apply to visiting agency, employee, or military personnel vehicles as long as such visits do not exceed 60 calendar days per year.

(4) Any motorist in an enhanced program area who has received a notice from an emissions inspection station that there are recall items unresolved on their motor vehicle should furnish proof of compliance with the recall notice prior to having their vehicle emissions inspection for their next testing cycle. The motorist may present a written statement from the dealership or leasing agency indicating that emissions repairs have been completed as proof of compliance.

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

(6) A motorist whose vehicle has failed an emissions test and has not requested a challenge retest or has failed a challenge retest must have emissions-related repairs performed and must submit a properly completed Vehicle Repair Form (VRF) in order to receive a retest, a minimum expenditure waiver, or a parts availability time extension.

(7) A motorist whose vehicle is registered in a program area and has failed an on-road test administered by the DPS shall:

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

(B) satisfy all inspection, extension, or waiver requirements of the vehicle emissions I/M program contained in the revised Texas I/M SIP within 60 days of written notice by the DPS.

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

(d) Waivers and extensions. A motorist may apply to the DPS for a waiver or an extension as specified in §114.6 of this title (relating to Waivers and Extensions for Inspection Requirements),

which defer the need for full compliance with vehicle emissions standards for a specified period of time after failing a vehicle emissions inspection.

(e) Biennial testing. If a vehicle has passed a loaded mode I/M test, the vehicle is exempt from the emissions testing requirement for the following year. This does not include out-of-cycle tests.

(f) Prohibitions.

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

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

(3) No organization, business, person, or other entity may represent itself as an emissions inspector certified by the DPS, unless such certification has been issued pursuant to the certification requirements and procedures contained in the revised Texas I/M SIP.

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

(g) Requirements for Recognized Emissions Repair Technician of Texas.

(1) The following requirements must be met before DPS recognition:

(A) demonstration to the National Institute of Automotive Service Excellence (ASE) of a minimum of three years of full-time automotive repair service experience;

(B) certification in the following four tests offered by the ASE: Engine Repair (Test A1), Electrical Systems (Test A6), Engine Performance (Test A8), and beginning January 1, 1998 Advanced Engine Performance Specialist (Test L1);

(C) notification by DPS that verification of certification by the National Institute of Automotive Service Excellence is completed; and

(D) any other demonstration required by DPS rule.

(2) A Recognized Emissions Repair Technician shall perform the following duties:

(A) certify the emissions related repairs on the VRF form to be submitted to the DPS;

(B) complete and certify the VRF form for customers;

(C) notify the DPS in writing within 14 days of changes in the technician's ASE testing status.

(h) Certified Emissions Inspection Station Requirements. The following requirements must be met for DPS certification to be issued and renewed:

(1) meet all requirements established by DPS rules and regulations;

(2) purchase or lease emissions testing equipment that has been certified as specified in §114.4 of this title (relating to Equipment Evaluation Procedures for Vehicle Exhaust Gas Analyzers);

(3) have a dedicated phone line for each vehicle exhaust gas analyzer to be used to inspect vehicles;

(4) enter a business arrangement with the Texas Data Link contractor to obtain a telecommunications link to the Texas Data Link System Vehicle Identification Database for each vehicle exhaust gas analyzer to be used to inspect vehicles;

(5) for inspection stations using equipment conditionally approved pursuant to §114.4(f)(1) of this title, the inspection station must have the equipment ordered from the manufacturer by June 30, 1996 in order to operate using the conditional approval; and

(6) for inspection stations using equipment conditionally approved pursuant to §114.4(f)(1) of this title, remit to the Texas Data Link contractor the amount of $.88 for each test conducted prior to securing a telecommunications link to the Texas Data Link System Vehicle Identification Database.

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

(a) Any manufacturer or distributor of vehicle testing equipment may apply to the Executive Director of the Texas Natural Resource Conservation Commission (commission) or his appointee, for approval of an exhaust gas analyzer or analyzer system for use in the Texas Inspection/Maintenance

(I/M) program administered by the Texas Department of Public Safety. Each manufacturer shall submit a formal certificate to the commission stating that any analyzer sold or leased by the manufacturer or its authorized representative for use in the I/M program will satisfy all design and performance criteria set forth in "Specifications for Preconditioned Two Speed Idle Vehicle Exhaust Gas Analyzer Systems for Use in the Texas Motorist's Choice Vehicle Emissions Testing Program," dated April 26, 1996. Copies of this document are available at the commission Central Office, 12100 Park 35 Circle, Austin, Texas 78753. The manufacturer shall also provide sufficient documentation to demonstrate conformance with these criteria including a complete description of all hardware components, the results of appropriate performance testing, and a point-by-point response to each specific requirement.

(b) All equipment shall be tested by an independent test laboratory. The cost of the certification shall be absorbed by the manufacturer. The conformance demonstration shall include, but is not limited to:

(1) certification that equipment design and construction conforms with the specifications referenced in subsection (a) of this section;

(2) documentation of successful results from appropriate performance testing;

(3) evidence of necessary changes to internal computer programming, display format, and data recording sequence;

(4) a commitment to fulfill all maintenance, repair, training, and other service requirements described in the specifications referenced in subsection (a) of this section. A copy of the minimum warranty agreement to be offered to the purchaser of an approved vehicle exhaust gas analyzer shall be included in the demonstration of conformance; and

(5) documentation of communication ability using protocol provided by the commission or the commission Texas Data Link contractor.

(c) If a review of the demonstration of conformance and all related support material indicates compliance with the criteria listed in subsections (a) and (b) of this section, the Executive Director or his appointee may issue a notice of approval to the analyzer manufacturer which endorses the use of the specified analyzer or analyzer system in the Texas I/M program.

(d) The applicant shall comply with all special provisions and conditions specified by the Executive Director or his appointee in the notice of approval.

(e) Any manufacturer or distributor which receives a notice of approval from the Executive Director or his appointee for a vehicle exhaust gas analyzer for use in the Texas I/M program may be

subject to appropriate enforcement action and penalties prescribed in the Texas Clean Air Act or the rules and regulations promulgated thereunder if:

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

(2) The applicant fails to comply with any requirement or commitment specified in the notice of approval issued by the Executive Director or implied by the representations submitted by the applicant in the conformance demonstration required by subsection (b) of this section.

(f) The Executive Director may issue conditional notice of approval for an analyzer which does not meet every requirement of subsections (a) and (b) of this section in accordance with the following schedule and stipulations:

(1) For the purpose of phasing in the program, the Executive Director or his appointee may issue to the analyzer manufacturer a notice of approval which endorses the use of the specified analyzer system during the month of July 1996 in the Texas I/M program conditional upon the equipment meeting subsections (a) and (b) of this section by July 31, 1996.

(2) For use in a pilot program, the Executive Director or his appointee may issue to the analyzer manufacturer a notice of approval which endorses the use of the specified analyzer system prior to October 31, 1996 in the Texas I/M program conditional upon the equipment meeting subsections (a) and (b) of this section by October 31, 1996.

§114.6. Waivers and Extensions for Inspection Requirements.

(a) Applicability. The waivers and extensions apply to any motorist who can satisfy the conditions of a specific waiver or extension. Applications must be made to the Department of Public Safety (DPS). For the minimum expenditure waiver, individual vehicle waiver, and parts availability time extension, the motorist may apply only once for each testing cycle. For the low income time extension, the motorist may apply every other test cycle.

(b) Minimum expenditure waiver. A motorist shall use any available warranty coverage to obtain needed repairs before expenditures shall be used in calculating the minimum repair expenditures to qualify for a minimum expenditure waiver, unless the warranty remedy has been denied in writing from the manufacturer or authorized dealer. A motorist may not use or attempt to use expenditures for tampering-related repairs in calculating the minimum repair expenditures to qualify for a minimum expenditure waiver. A minimum expenditure waiver shall be valid for the remaining portion of the testing cycle. Tampering includes, but is not limited to, engine modifications, emissions system modifications, or fuel-type modifications disapproved by the Texas Natural Resource Conservation

Commission or United States Environmental Protection Agency. A minimum expenditure waiver may be granted in accordance with the following conditions:

(1) The applicant must have a valid retest Vehicle Inspection Report (VIR), a valid Vehicle Repair Form (VRF), and the vehicle must have failed a retest after all qualifying repairs. Qualifying repairs must meet the following conditions:

(A) The minimum expenditure shall be:

(i) at least $300 until December 31, 1997 and beginning January 1, 1998 a minimum of $450, adjusted annually, in enhanced program areas; or

(ii) at least $75 for pre-1981 model year vehicles and at least $200 for 1981 and later model year vehicles in basic program areas;

(B) After January 1, 1997, for 1981 and newer model year vehicles, all qualifying repairs shall be performed by a Recognized Emissions Repair Technician of Texas in order to count labor cost and/or diagnostic costs;

(C) Qualifying repairs must be directly applicable to the cause for the test failure (repairs conducted up to 60 days prior to the initial test may count towards the waiver amount); and

(D) After January 1, 1997, when repairs are not performed by a Recognized Emissions Repair Technician of Texas, only the purchase price of parts, applicable to the failure, qualify as a repair expenditure for the minimum expenditure waiver.

(2) The motorist provides to the DPS an original retest VIR, a properly completed VRF, and an original itemized receipt indicating the emissions-related repairs performed. If labor and/or diagnostic charges are being claimed towards the minimum expenditure, the VRF shall be completed by a Recognized Emissions Repair Technician of Texas after January 1, 1997.

(c) Low income time extension. A low income time extension may be granted in accordance with the following conditions:

(1) A motorist must supply proof that the subject vehicle failed the initial emissions inspection test in the form of an original failed vehicle inspection report.

(2) A motorist shall provide proof in writing to the DPS that the registered vehicle owner(s) meets the following conditions:

(A) the low income time extension applicant is the owner of the vehicle that has failed an I/M test; and

(B) the vehicle has not been granted a low income time extension waiver in the previous inspection cycle; and

(C) the applicant meets one of the following:

(i) the applicant receives financial assistance from the Texas Department of Human Services (subject to approval by the Director of DPS); or

(ii) the applicant's adjusted gross income is within the current federal poverty income guidelines.

(D) the applicant shows proof of conformity with paragraph (2)(C) of this subsection by providing to the DPS one of the following, which the applicant certifies are true and correct:

(i) a federal income tax return; or

(ii) other documentation authorized by the Director of the DPS.

(3) After a motorist receives an initial low income time extension, the vehicle must pass an emissions test prior to receiving another low income time extension or any waiver or extension.

(d) Parts availability time extension. The parts availability time extension does not exempt the vehicle from the compliance requirements of the I/M program but merely extends the period for compliance. By the end of the time extended, the vehicle must be repaired, retested, and receive a passing VIR or comply with paragraph (4) of this subsection. Only one parts availability time extension is allowed in each test cycle for each vehicle. A parts availability time extension may be granted in accordance with the following conditions:

(1) The motorist can document that emissions-related repairs cannot be completed before the expiration of the safety inspection certificate or before the 30-day period following an out-of-cycle inspection because the repairs require an uncommon part;

(2) The motorist shall provide to the DPS an original VIR indicating that the vehicle failed the emissions test and an original itemized documentation by a Recognized Emissions Repair Technician of Texas (after January 1, 1997), indicating parts ordered by name; description and catalog number; order number; source of parts, including address and phone number; and expected delivery and installation dates of uncommon parts before a parts availability time extension can be issued.

(3) The motorist shall return the motor vehicle to the DPS for a retest and verification of repairs upon completion of the repairs.

(4) The motorist shall provide to the DPS, prior to expiration of a parts availability time extension, adequate documentation that one of the following conditions exists:

(A) the motor vehicle passed a retest;

(B) the motorist qualifies for a Minimum Expenditure Waiver or Low Income Time Extension; or

(C) the motor vehicle shall no longer be operated in the program area.

(5) A vehicle which receives a parts availability time extension in one test cycle must have the vehicle repaired and retested prior to the expiration of such extension or the vehicle shall be ineligible for a parts availability time extension in the subsequent test cycle in addition to other penalties authorized for non-compliance.

(6) The length of a parts availability time extension shall depend upon expected delivery and installation dates of uncommon parts as determined by the DPS representative on a case

by case basis and issued for either 30, 60, or 90 days or longer if necessary, but shall not exceed one test cycle.

(e) Individual vehicle waiver. If a vehicle has failed an inspection and maintenance (I/M) test, a motorist may petition the Director of the DPS for an individual vehicle waiver. Upon demonstration that the motorist has taken reasonable measures to comply with the requirements of the vehicle emissions I/M program contained in the revised Texas I/M SIP and that such waiver shall have minimal impact on air quality, the Director may approve the petition, and the motorist may receive a waiver. Motorists may apply for the individual vehicle waiver each test cycle.

§114.7. Inspection and Maintenance Fees.

(a) The following fees must be paid for an emissions inspection of a vehicle at an inspection station. This fee shall include one free retest should the vehicle fail the emissions inspection, provided that the motorist has the retest performed at the same station where the vehicle originally failed and submits, prior to the retest, a properly completed Vehicle Repair Form showing that emissions-related repairs were performed and the retest is conducted within 15 days of the initial emissions test. For vehicles registered in Dallas, Tarrant, Harris, and El Paso Counties:

(1) Emissions Inspection Stations (Two Speed Idle / Annual Test): $13. The inspection station shall remit $1.75 to the Department of Public Safety (DPS).

(2) Emissions Inspection Stations (Loaded or Transient / Biennial Test): $26. The inspection station shall remit $1.75 to the DPS.

(3) The collection of inspection fees set forth in this subsection will coincide with the program start dates outlined in §114.3(b) of this title (relating to Applicability).

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

(c) Inspection stations performing out-of-cycle vehicle emissions inspections for the state's remote sensing element shall charge a motorist for an out-of-cycle emissions inspection in the amount specified in subsection (a) of this section, resulting from written notification that subject vehicle failed on-road testing, only, if such vehicle fails the emissions inspection and is registered outside the core program area. Inspection stations shall charge the DPS for all other vehicle emissions inspections resulting from on-road testing.

This agency hereby certifies that the sections as adopted have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 29, 1996.

MOTOR VEHICLES

The repeals are adopted under the Texas Health and Safety Code (Vernon 1992), the Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§114.3. Inspection Requirements. (Repeal.)

§114.4. Equipment Evaluation Procedures for Vehicle Exhaust Gas Analyzers. (Repeal.)

This agency hereby certifies that the sections as adopted have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 29, 1996.