

The Texas Natural Resource Conservation Commission (commission) adopts an amendment to §114.3, concerning Vehicle Emissions Inspection Requirements. This adoption revises the definition of primarily operated to specify that the vehicle emissions inspection requirements apply to affected vehicles operated at least 60 calendar days of the year within a core program area rather than 60 continuous days. The amendment is adopted without changes to the proposed text as published in the October 22, 1996, issue of the *Texas Register* (21 TexReg 10369).

#### EXPLANATION OF RULE

The rule amendment would change the current definition of “primarily operated.” This could broaden the vehicle base which is subject to inspection requirements by making it more difficult to be excluded from the inspection requirements based on the definition of “primarily operated.” This change could also potentially increase the number of vehicles brought to emission testing and test and repair businesses.

This action is part of the Motorist’s Choice Program that was developed in response to Senate Bill 178 (Chapter 34, Acts of the 74th Legislature, Regular Session, 1995) and the Governor’s Executive Order GWB 96-1.

The rule is needed to correct an unintended result from a program element designed to provide an exclusion from inspection requirements for vehicles registered within a core program area yet operated elsewhere.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules pursuant to the Texas Government Code Annotated, §2007.043, and has determined this rule will have no effect on private real property.

#### PUBLIC HEARING AND COMMENTS

A public hearing on the proposal was held in Austin on November 19, 1996. Written testimony was received from the United States Environmental Protection Agency (EPA), Brazos Electric Cooperative, and the El Paso City-County Health and Environmental District.

The EPA and the El Paso City-County Health and Environmental District both supported the proposed rule. The EPA requested that the amendment be incorporated into the SIP at the next major revision or be submitted to the EPA when finalized.

**The commission will submit the amendment as a change to the SIP at the next major revision.**

Brazos Electric Cooperative recommended that §114.3(a)(11) be rewritten to specifically apply only to the vehicles registered in a program area.

**As specified in §114.3(b), the vehicle emission inspection requirements apply only to those vehicles registered and primarily operated in Dallas, Harris, Tarrant, and El Paso Counties; and on-road tests of vehicles registered in a program area and operating in a core program area beginning**

**September 1, 1997. The purpose of the revision to the definition of primarily operated was to specify which vehicles registered in these counties the program requirements apply.**

The new section is 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. 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) - (10) (No change.)

(11) Primarily operated - Use of a motor vehicle greater than 60 calendar 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) - (16) (No change.)

(b) - (h) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on December 20, 1996.