

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §114.2 (Inspection and Maintenance (I/M)Definitions); §114.50 (Vehicle Emissions Inspection Requirements), §114.51 (Equipment Evaluation Procedures for Vehicle Exhaust Gas Analyzers), §114.52 (Waivers and Extensions for Inspection Requirements), and §114.53 (Inspection and Maintenance Fees). The commission proposes these revisions to Chapter 114 (Control of Air Pollution from Motor Vehicles), and to the State Implementation Plan (SIP) in order to control ground-level ozone in the Dallas/Fort Worth (DFW), Houston/Galveston (HG), and El Paso (ELP) ozone nonattainment areas.

The proposed revisions are one element of the proposed DFW Attainment Demonstration SIP. The purpose of these proposed rules is to establish a vehicle emission testing program as part of the control strategy to reduce emissions of oxides of nitrogen (NO_x) and other pollutants necessary for the counties included in the DFW nonattainment area to be able to demonstrate attainment with the national ambient air quality standard (NAAQS) for ozone.

The proposed revisions detail vehicle emission inspection and maintenance requirements in counties not subject to a specific federal inspection/maintenance (I/M) requirement (Ellis, Henderson, Hood, Hunt, Johnson, Kaufman, Parker, and Rockwall Counties) in response to anticipated resolutions being submitted to the commission by each individual county and the most populous municipality within each county. If one or more of these counties do not submit a formal resolution to the commission, and it is found that the program is not necessary for the attainment demonstration, they may be removed from the rule upon adoption.

The proposed revisions will establish an I/M program utilizing Acceleration Simulation Mode (ASM-2) vehicle emission testing equipment beginning January 1, 2001, in the 12-county DFW consolidated metropolitan statistical area (CMSA). The commission solicits comments on implementing the ASM-2 and on-board diagnostics (OBD) testing program on January 1, 2002 in the surrounding eight-county attainment area. This phase-in approach may make for a smoother implementation of the proposed I/M program while still providing significant air quality improvements. The CMSA includes Collin, Dallas, Denton, Ellis, Henderson, Hood, Hunt, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties. These revisions will also require as of January 1, 2001, an OBD check of all 1996 and newer model year vehicles subject to the I/M program. The I/M program being proposed involving ASM-2 testing of vehicles will reduce NO_x and other emissions necessary for the counties included in the DFW nonattainment area to be able to demonstrate attainment with the ozone NAAQS. In addition, the inclusion of OBD in the I/M program will satisfy a federal mandate. These proposed revisions to the rule and SIP are in response to a request from the North Texas Clean Air Steering Committee (steering committee) representing the DFW ozone nonattainment area counties for an air pollution control strategy involving emissions testing of vehicles, United States Environmental Protection Agency (EPA) regulations at Title 40 Code of Federal Regulations (CFR) Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans), Subpart S (Inspection/Maintenance Program Requirements), and the Federal Clean Air Act (42 United States Code et seq.) as amended on November 15, 1990 (FCAA).

The commission will receive comments regarding conducting OBD only vehicle emissions testing for 1996 and newer vehicles in the counties surrounding the DFW ozone nonattainment area (Ellis,

Henderson, Hood, Hunt, Johnson, Kaufman, Parker, and Rockwall Counties) should they collectively or individually submit a resolution requesting such a program. This would eliminate the ASM-2 requirements in those counties upon adoption.

The commission will receive comments on raising the minimum expenditure waiver amount from \$450, adjusted by the Consumer Price Index (CPI), to an amount of \$750 if the steering committee in the local program area can establish a repair assistance program to provide financial assistance to qualifying motorists.

The commission will also take comments on establishing a market-driven vehicle emissions test fee instead of a set fee for the I/M Program areas upon adoption.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The steering committee representing the DFW ozone nonattainment area counties requested an air pollution control strategy involving emission testing of vehicles to reduce NO_x and other emissions necessary for the counties included in the DFW nonattainment area to be able to demonstrate attainment with the ozone NAAQS. The proposed revisions are one element of the control strategy for the proposed DFW Attainment Demonstration SIP.

At the request of the steering committee, the commission is proposing an air control strategy for NO_x reductions which requires emissions testing of motor vehicles that are registered and primarily operated in the DFW CMSA. The testing would utilize ASM-2 and OBD technologies. Modeling, performed

for the steering committee assessing the benefits of this NO_x emission reduction strategy, demonstrated that significant emission reductions could be achieved from implementing a vehicle emission testing, i.e., I/M program. This proposed I/M program was modeled to cover the 12-county region comprising the DFW CMSA.

The proposed revisions will modify the vehicle emissions testing program by implementing ASM-2 testing in the DFW CMSA. Unlike the current two-speed idle (TSI) test, ASM-2 technology has the ability to detect emissions of NO_x. Because NO_x is a precursor to ground-level ozone formation, reduced NO_x and volatile organic compound (VOC) emissions will result in ground-level ozone reduction.

The proposed rule amendments addressed in this rule change are: adding counties opting into the I/M program; changing the testing technology to ASM-2 in the DFW program area, an update to the minimum expenditure waiver; increase to the emissions inspection fee; incorporation of new technical specifications for emissions test equipment (TSI and ASM-2) by reference; new requirements regarding the servicing and maintenance of emissions test equipment; and the addition of OBD testing requirements to go into effect by January 1, 2001. In addition, the proposed rule and SIP revisions delete outdated language throughout Subchapter C.

SECTION BY SECTION DISCUSSION

Section 114.2 incorporates numerous editorial changes to ensure that the definitions are consistent with the guiding principles and policies of the commission, and are consistent in format, style, and tone per commission guidelines. New and amended definitions are renumbered to be consistent with *Texas Register* rules, as published in the February 13, 1998 issue (23 TexReg 1289). Several new definitions, modifications to existing definitions, and deletion of existing definitions are proposed in §114.2 to define terms specific to the state I/M program. These new proposed definitions include “acceleration simulation mode (ASM-2) test,” “Consumer Price Index,” and “on-board diagnostic (OBD) system.” Modified definitions include “on-road test,” “primarily operated,” “program area,” and “testing cycle.” The definition for “program area” was modified to include the DFW program area, the ELP program area, and the HG program area. Finally, five definitions were deleted because they were no longer necessary. These deleted definitions include “adjusted annually,” “basic program area,” “core program area,” “emissions tune-up,” and “enhanced program area.”

Revisions to Subchapter C incorporate numerous editorial changes to ensure the language is consistent with the guiding principles and policies of the commission, and is consistent in format, style, and tone per commission guidelines. Revisions to specific sections in Subchapter C are discussed in the following paragraphs.

Proposed amendments to §114.50 establishes revised program requirements for the state I/M program for vehicle testing and inspection. The proposed amendments to the program concern the applicability,

the control requirements, the frequency of testing, the recognized emissions repair technicians requirements, and the certified emissions inspection station requirements.

Subsection 114.50(a) is proposed to be amended by adding some vehicle classes to be excluded from the program. For the DFW, El Paso, and HG areas, the inspection frequency is proposed to be on an annual basis. Subsection (a) is proposed for further modification by deleting paragraphs (1), (2), and (3) concerning testing cycles and previous program start-up dates in Dallas, Tarrant, Harris, and El Paso Counties and by adding new paragraphs (1) - (6). New paragraph (1) defines model year vehicles to be tested using OBD in designated I/M program areas; paragraph (2) defines model year vehicles to be tested using ASM-2 in the DFW program areas; paragraph (3) defines model year vehicles to be tested using the two-speed idle test in designated program counties; paragraphs (4) and (5) clarify that testing stations may not offer an OBD test only, but that they must offer OBD testing in addition to either ASM-2 or TSI testing depending on the area; and paragraph (6) continues the current test program through December 31, 2000.

Subsection 114.50(b) specifies control requirements for motorists and certain federal employees. The affected vehicles are required to comply with the air pollution emission control related requirements included in the annual vehicle safety inspection administered by the 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. Paragraph (1) is amended by incorporating editorial changes; deletion of paragraph (2) which is incorporated into paragraph (1); addition of new paragraph

(2) concerning certifying federal vehicles; addition of “or appointed designee,” after executive director; and renumbering of the subsection.

Subsection 114.50(c) is not proposed for change.

In order to maximize NO_x emissions reductions, the biennial testing requirements in §114.50(d) are proposed to be deleted to put the I/M inspection cycle on an annual basis. Section 114.50(e) is renumbered to §114.50(d). This subsection also establishes that inspection stations and repair technicians in the program must be designated by the DPS.

Subsection (f), Requirements for Recognized Emissions Repair Technician of Texas, and subsection (g), Certified Emissions Inspection Station Requirements, are proposed to be deleted because the requirements of both subsections are contained in DPS rules found in 37 TAC §23.93.

Section §114.51 is proposed to be amended to update the equipment evaluation procedures for vehicle emissions test equipment. This section currently specifies application, certification, maintenance, and service requirements for manufacturers or distributors of vehicle emissions testing equipment seeking approval of an exhaust gas analyzer or analyzer system for use in the Texas I/M program. Subsection 114.51(a) currently specifies a date of April 26, 1996 for the exhaust analyzer technical specifications known as “Specifications for Preconditioned Two Speed Idle Vehicle Exhaust Gas Analyzer Systems for use in the Texas Vehicle Emissions Testing Program.” In order to incorporate new and updated specifications into the program, the proposed rule amendment specifies a date of November 1, 1999 for

both the TSI exhaust analyzer technical specifications, and the “Specifications for Acceleration Simulation Mode Vehicle Exhaust Gas Analyzer System for use in the Texas Vehicle Emissions Testing Program.” This subsection will also require manufacturers to resubmit certification to the commission stating that their existing units meet the requirements of the new specifications.

Subsections 114.51(b) - (d) are unchanged.

Subsection 114.51(e) 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. The proposed amendments to §114.51(e), add paragraph (3) that clarifies the analyzer service requirements for analyzer manufacturers by adding a two-day response time (excluding weekends and holidays) to the rule. This has always been a requirement in the specifications; however, in order to highlight the provision, the commission is adding it to the rule language. Paragraphs (5) and (6) were also added to make clear the on-going service and update requirements for manufacturers.

Subsection (f) is proposed to be deleted because the 1996 start-up date has already passed.

Section 114.52 currently specifies two types of waivers and time extensions, along with the associated qualification criteria. Subsection (b)(1)(A) is proposed to be amended to read that the minimum expenditure waiver amount in any affected county shall be at least \$450 or that amount as adjusted by the CPI. Previously, Dallas and Tarrant Counties had a lower minimum expenditure because the area was classified as a moderate area. However, because the DFW nonattainment area was reclassified as a serious area, the minimum expenditure must be increased to \$450 as adjusted by the CPI. Section

(b)(1)(B) and (D), and (2), and subsection (d)(2) are proposed to be amended by deleting “after January 1, 1997,” since this date has already passed.

Proposed amendments to §114.53 establish fee schedules for the different counties which must be paid for the vehicle emissions inspection at an inspection station. Subsection (a) is proposed to be amended by adding counties opting into the I/M program beginning January 1, 2001. Subsection (a)(1) proposes to change the test fees from \$13 to \$18 in counties implementing ASM-2 and/or OBD beginning January 1, 2001, and to change the portion of test fees remitted by the inspection station to the DPS from \$1.75 to \$2.00. Subsection (a)(2) proposes to change the test fees from \$26 for a biennial test to \$14 for an annual test in counties implementing TSI and/or OBD beginning January 1, 2001, and to change the portion of test fees remitted by the inspection station to the DPS from \$1.75 to \$2.00. Subsection (a)(3) proposes to establish a test fee of \$13 in Dallas, Tarrant, Harris and El Paso counties conducting a two speed idle test until December 31, 2000, with the inspection station remitting \$1.75 to the DPS. These fees are necessary for emission testing stations to recover equipment costs and for the additional state oversight.

In addition to the proposed rule changes, the proposed revisions to the SIP narrative clarify the new program elements such as applicability changes; state resources for the program; new performance standards; 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.

FISCAL NOTE

Bob Orozco, Technical Specialist with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed amendments to Chapter 114 are in effect the fiscal implications for affected units of state and local government as a result of administration or enforcement of the proposed amendments is estimated to be additional annual costs of approximately \$57,100 in the four county area consisting of Collin, Dallas, Denton, and Tarrant counties; \$6,827 in Harris county; and \$1,177 in El Paso county. The Texas Department of Public Safety, which will receive \$1.1 million annually in additional revenue is the only unit of state government that is anticipated to have significant fiscal implications as a result of administration or enforcement of the proposed amendments. The proposed amendments would increase the state share of the emission testing fee from \$1.75 to \$2.00. DPS's share of the state allocation would increase 25 cents from \$1.31 to \$1.56 per inspection.

The proposed amendments to Chapter 114 revise the vehicle emission testing program as part of the control strategy to reduce emissions of NO_x necessary for the counties included in the DFW ozone nonattainment area to be able to demonstrate attainment with the ozone NAAQS. The steering committee representing the DFW ozone nonattainment area has requested an air pollution control strategy, including emission testing of vehicles, to be established to reduce NO_x emissions necessary to demonstrate attainment with the NAAQS. The proposed amendments are part of the commission's response to the request and one element of the proposed DFW Attainment Demonstration SIP. A SIP is

a plan developed for any region where existing (measured and modeled) ambient levels of pollutant exceeds the levels specified in a national standard. The plan sets forth a control strategy that provides emission reductions necessary for attainment and maintenance of the national ozone standard.

The proposed amendments revise the I/M program utilizing ASM-2 vehicle emission testing equipment beginning January 1, 2001, in the 12 county DFW CMSA. Currently, only Dallas and Tarrant counties require emission testing and an I/M program. Collin and Denton counties do not currently have an I/M program but will be required to have an Enhanced I/M program similar to Dallas and Tarrant counties because they are in the DFW nonattainment area. The remaining eight counties in the DFW CMSA, Ellis, Henderson, Hood, Hunt, Johnson, Kaufman, Parker, and Rockwall Counties, may voluntarily participate in the proposed I/M program.

In accordance with EPA requirements, the proposed amendments will require an OBD check of all 1996 and newer model year vehicles subject to the I/M requirements beginning January 1, 2001. It is anticipated that owners of over 2.8 million vehicles in the DFW CMSA could be affected by the vehicle emission inspection and other fee increases and the inspection requirements in the proposed amendments. In addition, owners of vehicle safety and emission inspection stations that opt to perform emission testing under the proposed program will be required to upgrade existing equipment or purchase new equipment in order to comply with the proposed new emission test requirements incorporating ASM-2 and OBD technology. There are currently 1,057 emission inspection stations in Dallas and Tarrant counties. There are an additional 235 safety inspection stations in Collin and Denton counties where the I/M program will now be mandatory. There are an additional 315 safety

inspection stations in the surrounding counties of the DFW CMSA in which the I/M program will be optional.

In addition, the proposed amendments revise the I/M program in Harris and El Paso counties, utilizing OBD technology for all 1996 and newer model vehicles and two-speed idle (TSI) technology for all pre-1996 model vehicles. Owners of vehicle emission inspection stations in Harris and El Paso counties that opt to perform emission testing will be required to upgrade existing equipment or purchase new equipment in order to comply with the proposed new state emission test requirements incorporating TSI and OBD technology. There are 1,058 inspection stations in Harris county and 200 stations in El Paso county that will be affected.

The proposed amendments increase the emission inspection fee in Dallas and Tarrant counties from \$13 to \$18 per inspection. Motorists, state and local government agencies, and businesses owning registered vehicles in Dallas and Tarrant counties that are primarily operated in the DFW CMSA will be required to pay an additional \$5 for each emission inspection utilizing ASM-2 or OBD testing. Emission testing is not currently required in Collin, Denton, Ellis, Henderson, Hood, Hunt, Johnson, Kaufman, Parker, and Rockwall counties. In the proposed amendments, motorists, state and local government agencies, and businesses in Collin and Denton counties owning registered vehicles that are primarily operated in the DFW CMSA will be required to pay \$18 for an emission inspection utilizing ASM-2 or OBD technology. If Ellis, Henderson, Hood, Hunt, Johnson, Kaufman, Parker, and Rockwall counties opt to participate in the I/M program, motorists, state and local government agencies, and businesses in these counties owning registered vehicles that are primarily operated in the

DFW CMSA will be required to pay \$18 for an emission inspection utilizing ASM-2 or OBD technology.

In the proposed amendments, the emission inspection fee in Harris and El Paso counties is increased from \$13 to \$14. Motorists, state and local government agencies, and businesses owning registered vehicles and primarily operated in Harris and El Paso counties will pay an additional \$1 for each emission inspection utilizing OBD testing on 1996 and newer vehicles and for TSI testing on pre-1996 vehicles.

Currently, the state of Texas receives \$1.75 from each inspection fee. The DPS receives \$1.31 from each inspection to offset their costs of oversight, managing the program, and the commission receives \$.44 from each inspection fee for costs associated with the I/M program. The proposed amendments would increase the state share of the emission testing fee from \$1.75 to \$2.00. DPS's share of the state allocation would increase to \$1.56 per inspection and TNRCC's share of the state allocation would remain unchanged at \$.44 per inspection. This would represent an annual increase in revenue to the DPS in the range of approximately \$1.1 to \$1.2 million depending on how many counties in the DFW CMSA opt into the I/M program. This revenue would offset costs of expanding and enhancing the I/M program.

Units of state and local government that own or operate vehicles subject to I/M requirements in the DFW CMSA and in Harris and El Paso counties will be required to have emission testing and will be required to pay the fees established in the proposed amendments. The fiscal impact on units of state

and local government associated with emission inspection costs are similar to the impacts on business in general. It is estimated that 7,511 state and local government vehicles in Dallas, Collin, Denton, and Tarrant counties will be affected with a total annual cost of approximately \$49,100. It is estimated that an additional 1,214 state and local government vehicles in the other eight county area of the DFW CMSA could be affected if those counties opt into the proposed I/M program. The annual cost impact would be approximately \$20,700 if all counties opt into the I/M program. There are also 6,827 state and local government vehicles in Harris county that will be affected with a \$1 increase in emission inspection fees and 1,177 state and local government vehicles in El Paso county that will also be affected with a \$1 emission inspection fee increase.

Units of state and local government may incur additional cost when a vehicle fails an emission test. The proposed rules increase the “minimum expenditure” on repairs before qualifying for a one year waiver/exemption from emission testing on the affected vehicle. In Dallas and Tarrant counties, the “minimum expenditure” to receive a waiver will be increased from \$200 to \$450 as required by the Environmental Protection Agency (EPA) due to the reclassification of the Dallas/Fort Worth nonattainment area to “serious ozone nonattainment.” Minimum expenditures for waivers in Collin and Denton will also be \$450 because these counties are now in the DFW nonattainment area. The minimum expenditure for waiver in Ellis, Henderson, Hood, Hunt, Johnson, Kaufman, Parker, and Rockwall counties will also be set at \$450, if these counties opt into the I/M program, to remain consistent with the waiver rates in Dallas, Collin, Denton, Tarrant, El Paso, and Harris counties.

PUBLIC BENEFIT

Mr. Orozco has determined that for each year of the first five years the proposed amendments to Chapter 114 are in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendments will be the potential reduction of on-road mobile source emissions, potential reduction in NO_x emissions, potentially improved air quality, and contribution toward demonstration of attainment with the NAAQS for ozone.

There are economic implications anticipated to individuals and businesses as a result of implementing the proposed amendments. Additional costs to affected persons and businesses associated with the proposed amendments include a Minimum Expenditure Waiver increase, increased and additional costs associated with emission test fees, and additional costs for inspection stations that opt to perform emission testing associated with equipment upgrades or purchases. It is estimated that approximately 2.5 to 2.8 million vehicles in the Dallas/Fort Worth CMSA, over 336,000 vehicles in El Paso County, and 1.8 million vehicles in Harris county could potentially be affected by the proposed amendments.

When a vehicle fails an emission test, the owner must spend at least a “minimum expenditure” on repairs before qualifying for a one year waiver/exemption from emission testing on the affected vehicle. In the proposed amendments, the “minimum expenditure” to receive a waiver in Dallas and Tarrant counties will be increased from \$200 to \$450 as required by the EPA due to the reclassification of the Dallas/Fort Worth nonattainment area to “serious ozone nonattainment.” Minimum expenditures for waivers in Collin and Denton will also be \$450 because these counties are in the DFW nonattainment area. The minimum expenditure for waiver in Ellis, Henderson, Hood, Hunt, Johnson, Kaufman,

Parker, and Rockwall counties will also be set at \$450, if these counties opt into the I/M program, to remain consistent with the waiver rates in Dallas, Collin, Denton, Tarrant, El Paso, and Harris counties.

Individual motorists, state and local government agencies, and businesses with vehicles subject to I/M requirements that are registered and primarily operated in the Dallas/Fort Worth CMSA will pay more to have their vehicle's emissions tested incorporating OBD testing on their 1996 and newer vehicles.

Individual motorists, state and local government agencies, and businesses with pre-1996 vehicles subject to I/M requirements that are registered and primarily operated in the DFW CMSA will pay more to have their vehicle's emissions tested incorporating ASM-2 testing. The I/M proposed program is being expanded on a voluntary basis to eight counties in the Dallas/Fort Worth CMSA that are not considered to be in the ozone nonattainment area. The eight county area and Collin and Denton counties could add approximately 768,000 vehicles subject to emission testing to the 2 million vehicles currently in the Dallas and Tarrant county area.

In the proposed amendments, the annual emission inspection fee in Dallas and Tarrant counties is increased from \$13 to \$18. Motorists, state and local government agencies, and businesses owning registered vehicles in Dallas and Tarrant counties that are primarily operated in the DFW CMSA will pay \$5 more for each emission inspection utilizing ASM-2 or OBD testing. Currently, emission inspections are not required in Collin, Denton, Ellis, Henderson, Hood, Hunt, Johnson, Kaufman, Parker, and Rockwall counties. In the proposed amendments, motorists, state and local government agencies, and business owning registered vehicles in Collin and Denton counties that are primarily

operated in the DFW CMSA will pay \$18 for an annual emission inspection utilizing ASM-2 or OBD. All other counties in the DFW CMSA that opt into the I/M program will also pay \$18 for an annual emission inspection utilizing ASM-2 or OBD technology.

In the proposed amendments, the annual emission inspection fee in Harris and El Paso counties is increased from \$13 to \$14. Motorists, state and local government agencies, and businesses owning registered vehicles and primarily operated in Harris and El Paso counties will pay \$1 more for each annual emission inspection utilizing OBD testing on 1996 and newer vehicles and for TSI testing on pre-1996 vehicles.

Normally, the annual vehicle safety inspection and emission testing, where required, is accomplished at the same facility. The decision by each inspection facility to accomplish the proposed emission testing is voluntary and could have economic implications. Safety inspection stations in the DFW CMSA that opt to perform emission testing for the I/M program would be required to upgrade existing equipment or may have to purchase new equipment in order to comply with the proposed new state emissions test requirements incorporating OBD and ASM-2 testing. Emission inspection stations in El Paso and Harris counties that opt to perform emission testing would be required to upgrade existing equipment or may have to purchase new equipment to comply with the proposed new state emissions test requirements incorporating TSI and OBD testing technology. It is anticipated that the economic decision to upgrade or purchase the required equipment will include the economics of labor costs, potential alternative use of labor's time, the equipment capital costs, and volume of anticipated inspections, current equipment, and other anticipated costs associated with emission testing. It is anticipated that

some inspection stations that must upgrade their equipment or purchase new equipment in order to comply with the proposed emission testing requirements in the proposed amendments will find it uneconomic to do so for various reasons and will be unable to accomplish emission inspections. It is anticipated that this business decision will be made by each inspection station.

According to DPS records, there are currently 1,057 inspection stations in Dallas and Tarrant counties. If these inspection stations opt to perform emission testing, the commission staff estimated that 75% (approximately 793) of the current inspection stations in Dallas and Tarrant counties would have to purchase new ASM-2 equipment in order to conduct ASM or OBD vehicle emission testing. Each new analyzer costs approximately \$40,000. If this equipment cost is capitalized, the monthly costs for the new equipment is estimated to be approximately \$830 per month for 5 years. The commission staff also estimated that the remaining 25% (approximately 264) of the inspection stations in Dallas and Tarrant counties could upgrade currently owned analyzers at a cost of approximately \$25,000. If this equipment cost is capitalized, the monthly costs for the new equipment is estimated to be approximately \$519 per month for 5 years.

According to DPS records, there are 235 safety inspection stations in Collin and Denton counties where the I/M program is proposed. DPS records also indicate that there are an additional 315 stations in the surrounding counties of the CMSA in which the I/M program will be optional. Because there is no existing emission testing in Collin, Denton, Ellis, Henderson, Hood, Hunt, Johnson, Kaufman, Parker, and Rockwall counties, the commission staff estimated that those inspection stations that opt to perform

emission testing would have to purchase new ASM-2 testing equipment in order to conduct the proposed emission testing.

According to DPS records, there are 1,058 emission inspection stations in Harris county. The commission staff estimated that 10% (approximately 106) of the current inspection stations would have to purchase new TSI analyzers to incorporate OBD emission testing if they opt to perform emission testing. Each analyzer will cost approximately \$20,000. If this equipment cost is capitalized, the monthly costs for the new equipment is estimated to be approximately \$415 per month for 5 years. The commission staff also estimated that the remaining 90% (approximately 952) of the inspection stations in Harris county would be able to upgrade current analyzers at a cost of approximately \$2,000 each.

According to DPS records, there are 205 inspection stations in El Paso county. The commission staff estimated that 60% (approximately 125) of the current inspection stations will have to purchase new TSI analyzers to incorporate OBD emission testing if they opt to perform emission testing. Each analyzer will cost approximately \$20,000. If this equipment cost is capitalized, the monthly costs for the new equipment is estimated to be approximately \$415 per month for 5 years. The commission staff also estimated that the remaining 40% (approximately 80) of the inspection stations in El Paso county would be able to upgrade current analyzers at a cost of approximately \$2,000 each.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSES

There are anticipated fiscal implications to small business and micro-business as a result of implementing the proposed amendments. The fiscal implications include increased minimum expenditure costs for waivers and increased costs for emission testing of business-owned vehicles.

In general, the costs indicated in the Public Benefit portion of this preamble for individuals, state and local government agencies, and businesses will apply to small and micro-business. The minimum expenditure to receive a waiver in counties under the proposed I/M program will be \$450. This is an increase of \$250 in Dallas and Tarrant counties and a new \$450 cost in Collin and Denton counties for the minimum expenditure waiver. This will also be a new \$450 cost for all other counties that opt into the proposed I/M program for the minimum expenditure waiver.

The annual emission inspection fee will be \$18 for counties under the proposed I/M program in the DFW CMSA. This is an increase of \$5 in Dallas and Tarrant counties and a new \$18 fee for the emission test in Collin and Denton counties. This will also be a new \$18 fee for the emission test in all other counties in the DFW CMSA that opt into the proposed I/M program. In the proposed amendments, the annual emission inspection fee in Harris and El Paso counties will be \$14. This is an increase of \$1 from current emission testing fees.

In addition, it is anticipated that many of the inspection stations are small or micro-businesses that will be required to upgrade their current testing equipment or purchase new analyzers. New analyzer equipment required to conduct ASM-2 (with integrated OBD) vehicle emission testing costs

approximately \$40,000. The cost to upgrade currently owned analyzers to conduct ASM-2 (with integrated OBD) testing costs approximately \$25,000. The cost to purchase new TSI analyzers to incorporate OBD emission testing will cost approximately \$20,000. The cost to upgrade current TSI analyzers is approximately \$2,000 each. It is anticipated that the economic decision to upgrade or purchase the required equipment will include the economics of labor costs, potential alternative use of labor's time, the equipment capital costs, and volume of anticipated inspections, current equipment, and other anticipated costs associated with emission testing. It is anticipated that some small or micro-business inspection stations that must upgrade their equipment or purchase new equipment in order to comply with the proposed emission testing requirements in the proposed amendments will find it uneconomic to do so for various reasons and will be unable to continue emission inspections. It is anticipated that this business decision will be made by each inspection station.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments to Chapter 114 are intended to protect the environment or reduce risks to human health from environmental exposure to ozone. However, the inspection stations in and around nonattainment

areas would not normally be considered a sector of the economy. In addition, the commission has structured the fees in this program to ensure that most additional costs of equipment can be recovered. Therefore, the proposed rules do not affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments are intended to establish a vehicle emission testing program as part of the control strategy to reduce NO_x emissions necessary for the counties included in the Dallas Fort Worth nonattainment area to be able to demonstrate attainment with the ozone NAAQS. While the I/M program is mandatory for nonattainment counties, it may be voluntary for attainment counties. The steering committee representing the DFW ozone nonattainment area counties has requested an air pollution control strategy, including emission testing of vehicles, to be established to reduce NO_x emissions necessary to demonstrate attainment with the NAAQS. The proposed amendments are part of the commission response to the request and one element of the proposed SIP. As defined in Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1. exceed a standard set by federal law, unless the rule is specifically required by state law; 2. exceed an express requirement of state law, unless the rule is specifically required by federal law; 3. exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4. adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability requirements. Specifically, the emission testing program within this proposal was developed in order to meet the NAAQS for ozone set by the EPA under the FCAA, §7409, and therefore meet a federal requirement. States are primarily responsible for ensuring attainment and maintenance of NAAQS once EPA has established those standards. Under the FCAA, §7410 and

related provisions, states must submit, for EPA approval, SIPs that provide for the attainment and maintenance of NAAQS through control programs directed to sources of the pollutants involved. This proposal is not an express requirement of state law, but was developed specifically in order to meet the air quality standards established under federal law as NAAQS. This proposal is intended to help bring the DFW ozone nonattainment area into compliance. The proposed amendments do not exceed a standard set by federal law, exceed an express requirement of state law unless specifically required by federal law, nor exceed a requirement of a delegation agreement. The proposed amendments were not developed solely under the general powers of the agency but were specifically developed to meet the air quality standards established under federal law as NAAQS. The commission invites public comment on the draft regulatory impact analysis.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules in accordance with Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rulemaking is to implement a revised I/M program in the ELP and HG ozone nonattainment areas and in the 12-county DFW CMSA as part of the strategy to reduce emissions of ozone precursors necessary for the areas to be able to demonstrate attainment with the ozone NAAQS. Promulgation and enforcement of the proposed rules will not burden private, real property because this proposed rulemaking action does not require the installation of permanent equipment. Although the proposed rule revisions do not directly prevent a nuisance or prevent an immediate threat to life or property, they do prevent a real and substantial threat to public health and safety and partially fulfill a federal mandate under the FCAA, §7410. Specifically, the emission limitations and control requirements within this

proposal were developed in order to meet the ozone NAAQS set by the EPA under the FCAA, §7409. States are primarily responsible for ensuring attainment and maintenance of the NAAQS once the EPA has established them. Under the FCAA, §7410 and related provisions, states must submit, for approval by the EPA, SIPs that provide for the attainment and maintenance of NAAQS through control programs directed to sources of the pollutants involved. Therefore, the purpose of the rule proposal is to implement a revised I/M program which is necessary for the ozone nonattainment areas to meet the air quality standards established under federal law as NAAQS. Consequently, the exemption which applies to these proposed rules is that of an action reasonably taken to fulfill an obligation mandated by federal law. Therefore, this revision will not constitute a takings under Chapter 2007 of the Texas Government Code.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has determined that the proposed rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et seq.), and the commission's rules in 30 TAC Chapter 281, Subchapter B (Consistency with the CMP). As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this proposed action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and has determined that the proposed action is consistent with the applicable CMP goals and policies. The CMP policy applicable to this rulemaking action is the policy (31 TAC §501.14(q)) that commission rules comply with federal

regulations in 40 CFR to protect and enhance air quality in the coastal area (31 TAC §501.14(q)). This rulemaking proposal will have a beneficial effect on SIP emission reduction obligations relating to reasonable further progress and attainment demonstrations by making additional emissions reductions over those made by the existing I/M Program. Further, no new air contaminants will be authorized by the rule revisions. Therefore, in compliance with 31 TAC §505.22(e), this rulemaking is consistent with CMP goals and policies.

Interested persons may submit comments on the consistency of the proposed rules with the CMP during the public comment period.

PUBLIC HEARING

The commission will hold public hearings on this proposal at the following times and locations:

January 24, 2000, 2:00 p.m., City of El Paso Council Chambers, 2 Civic Center Plaza, 2nd floor, El Paso; January 25, 2000, 10:00 a.m., Building E, Room 201S, Texas Natural Resource Conservation Commission Complex, 12100 Park 35 Circle, Austin; January 26, 2000, 10:00 a.m., Longview City Hall Council Chambers, 300 West Cotton Street, Longview; January 26, 2000, 7:00 p.m., City of Irving Central Library Auditorium, 801 West Irving Boulevard, Irving; January 27, 2000, 10:00 a.m., Dallas Public Library Auditorium, 1515 Young Street, Dallas; January 27, 2000, 7:00 p.m., Lewisville City Council Chambers, Municipal Center, Lewisville; January 28, 2000, 10:00 a.m., Council Chambers, 2nd floor, Fort Worth City Hall, 1000 Throckmorton Street, Fort Worth; January 31, 2000, 1:30 p.m., John Grey Institute, 855 Florida Avenue, Beaumont; and January 31, 2000, 7:00 p.m., Houston-Galveston Area Council, 3555 Timmons Lane, Houston. The hearings are structured for the

receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearings; however, agency staff members will be available to discuss the proposal 30 minutes prior to the hearings and will answer questions before and after the hearings.

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

SUBMITTAL OF COMMENTS

Written comments may be submitted to Ms. Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808.

All comments should reference Rule Log Number 99055C-114-AI. Comments must be received by 5:00 p.m., February 1, 2000. For further information, please contact Mr. Alan Henderson, Policy and Regulations Division, at (512) 239-1510 or Hazel Barbour, Technical Analysis Division, (512) 239-1440.

STATUTORY AUTHORITY

The amendment is proposed under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.011, which provides the commission the authority to control the quality of the state's air; §382.012, which provides the commission the authority to prepare and develop a general, comprehensive plan for the control of the state's air; §382.017, which provides the commission the

authority to adopt rules consistent with the policy and purposes of the TCAA; §382.019, which provides the commission the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles; §382.037, which provides the commission the authority by rule to establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of the FCAA; and §382.039, which provides the commission the authority to coordinate with federal, state, and local transportation planning agencies to develop and implement transportation programs and other measures necessary to demonstrate and maintain attainment of NAAQS and to protect the public from exposure to hazardous air contaminants from motor vehicles.

The amendment implements TCAA, §382.002, relating to Policy and Purpose; §382.011, relating to General Powers and Duties; §382.012, relating to State Air Control Plan; §382.019, relating to Methods Used to Control and Reduce Emissions from Land Vehicles; §382.037, relating to Vehicle Emissions Inspection and Maintenance Program; and §382.039, relating to Attainment Program.

SUBCHAPTER A : DEFINITIONS

§114.2

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

Unless specifically defined in the 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] Subchapter C of this chapter (relating to Vehicle Inspection and Maintenance), 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.]

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

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

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

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

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

[(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.]

(3) [(6)] 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.

(4) On-board diagnostic (OBD) system - The computer system installed in a vehicle by the manufacturer which monitors the performance of the vehicle emission control equipment, fuel metering system, and ignition system for the purpose of detecting malfunction or deterioration in performance that would be expected to cause the vehicle not to meet emissions standards.

(5) [(7)] On-road test - Utilization of remote sensing technology to identify vehicles operating within the [core] inspection and maintenance [I/M] program areas [area] that have a high probability of being high-emitters.

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

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

(8) [(10)] Program area - County or counties in which the Texas Department of Public Safety, in coordination with the commission, administers the vehicle emissions inspection and

maintenance program contained in the revised Texas Inspection and Maintenance [I/M] State Implementation Plan. These program areas and counties include: [Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Harris, Galveston, Liberty, Montgomery, Tarrant, and Waller.]

(A) the Dallas/Fort Worth (DFW) program area which consists of the following counties: Dallas, Denton, Collin, and Tarrant; and beginning January 1, 2001, Ellis, Henderson, Hood, Hunt, Johnson, Kaufman, Parker, and Rockwall Counties;

(B) the El Paso program area which consists of El Paso County; and

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

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

(10) [(12)] 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.

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

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

SUBCHAPTER C : VEHICLE INSPECTION AND MAINTENANCE

§§114.50-114.53

STATUTORY AUTHORITY

The amendments are proposed under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.011, which provides the commission the authority to control the quality of the state's air; §382.012, which provides the commission the authority to prepare and develop a general, comprehensive plan for the control of the state's air; §382.017, which provides the commission the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.019, which provides the commission the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles; §382.037, which provides the commission the authority by rule to establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of the FCAA; and §382.039, which provides the commission the authority to coordinate with federal, state, and local transportation planning agencies to develop and implement transportation programs and other measures necessary to demonstrate and maintain attainment of NAAQS and to protect the public from exposure to hazardous air contaminants from motor vehicles.

The amendments implement TCAA, §382.002, relating to Policy and Purpose; §382.011, relating to General Powers and Duties; §382.012, relating to State Air Control Plan; §382.019, relating to Methods Used to Control and Reduce Emissions from Land Vehicles; §382.037, relating to Vehicle Emissions Inspection and Maintenance Program; and §382.039, relating to Attainment Program.

§114.50. Vehicle Emissions Inspection Requirements.

(a) Applicability. The requirements of this section and those contained in the revised Texas Inspection and Maintenance (I/M) State Implementation Plan (SIP) shall be applied to all gasoline-powered motor vehicles 2 - 24 years old and subject to an annual emissions inspection, beginning with the first safety inspection. Currently, military tactical vehicles, motorcycles, diesel-powered vehicles, dual-fueled vehicles which cannot operate using gasoline, and antique vehicles registered with the Texas Department of Transportation are excluded from the program. [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] Safety inspection facilities and inspectors certified by the Texas Department of Public Safety (DPS) [to] shall inspect all subject vehicles, in the following 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.]

(1) beginning January 1, 2001, all 1996 and newer model year vehicles equipped with on-board diagnostic (OBD) systems shall be tested using United States Environmental Protection Agency (EPA)-approved OBD test procedures. If OBD data cannot be collected from the vehicle, an EPA-approved tail-pipe emissions test will be used. This subsection applies to all vehicles registered and primarily operated in the Dallas/Fort Worth (DFW) and El Paso program areas and Harris County;

(2) beginning January 1, 2001, all pre-1996 and older model year vehicles registered and primarily operated in the DFW program area shall be tested using the acceleration simulation mode test;

(3) beginning January 1, 2001, all pre-1996 and older vehicles registered and primarily operated in Harris and El Paso Counties shall be tested using a two-speed idle test;

(4) beginning January 1, 2001, all vehicle emissions test stations operating in the DFW program area must offer both ASM-2 and OBD tests to the public;

(5) beginning January 1, 2001, all vehicle emissions test stations operating in El Paso or Harris Counties must offer both two-speed idle and OBD tests to the public; and

(6) all vehicles registered and primarily operated in Dallas, Tarrant, Harris and El Paso Counties shall be tested using a two-speed idle test through December 31, 2000.

(b) Control requirements.

(1) No person or entity may operate, or allow the operation of, a [any] motor vehicle registered in the DFW, Houston/Galveston (HG), and El Paso program areas which does not comply with:

(A) (No change.)

(B) the vehicle emissions inspection and maintenance requirements contained in this subchapter [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.]

(2) [(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, or appointed designee, that all subject vehicles have been tested and are in compliance with the Federal Clean Air Act (42 United States Code, et seq.) [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.

(3) [(4)] Any motorist in [an enhanced] the DFW or El Paso program areas [area] or Harris County 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 the next [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.

(4) [(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.

(5) [(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.

~~(6)~~ [(7)] A motorist whose vehicle is registered in the DFW, HG, or El Paso [a] program areas [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.

~~(7)~~ [(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.

(c) (No change.)

[(d) 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.]

(d) [(e)] 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 I/M requirements and procedures contained in the revised Texas I/M SIP are completely and properly performed in accordance with the rules and regulations adopted by DPS and the commission. Prior to taking any enforcement action regarding this provision, the commission shall consult with DPS.

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

(3) No organization, business, person, or other entity may represent itself as an emissions inspector certified by the DPS, unless such certification has been issued under the certification requirements and procedures contained in 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] designated by DPS), without first obtaining and maintaining DPS recognition.

[(f) 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.]

[(g) 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 §114.51 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 under §114.51(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 under §114.51(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.]

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

(a) Any manufacturer or distributor of vehicle testing equipment may apply to the executive director of the 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 and Maintenance (I/M) program administered by the Texas Department of Public Safety. Each manufacturer shall submit a formal certificate to the commission stating that any analyzer model sold or leased by the manufacturer or its authorized representative and any model currently in [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 November 1, 1999 [April 26, 1996], or in "Specifications for Acceleration Simulation Mode (ASM-2) Vehicle Exhaust Gas Analyzer Systems for use in the Texas Vehicle Emissions Testing Program," dated November 1, 1999. Copies of these [this] documents [document] are available at the commission's Central Office, located at 12100 Park 35 Circle, Austin, Texas 78753. The manufacturer shall also provide sufficient documentation to demonstrate conformance with these criteria including a complete description of all hardware components, the results of appropriate performance testing, and a point-by-point response to each specific requirement.

(b) 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 conform [conforms] with the specifications referenced in subsection (a) of this section;

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

(c) - (d) (No change.)

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

(1) any [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 [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; or [.]

(3) the manufacturer or distributor fails to provide on-site service response by a qualified repair technician within two business days of a request from an inspection station, excluding Sundays, national holidays (New Year's Day, Martin Luther King Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, and Christmas Day), and other days when a purchaser's business might be closed;

(4) the manufacturer or distributor fails to fulfill, on a continuing basis, the requirements described in this section or in the specifications referenced in subsection (a) of this section; or

(5) the manufacturer fails to provide analyzer software updates within six months of request and fails to install analyzer updates within 90 days of commission written notice of acceptance.

[(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.]

§114.52. Waivers and Extensions for Inspection Requirements.

(a) (No change.)

(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 EPA. 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 waiver in any program area shall be at least \$450 or that amount adjusted by the Consumer Price Index. [:]

[(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] All qualifying repairs shall be performed by a Recognized Emissions Repair Technician of Texas (as designated by DPS) 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 toward [towards] the waiver amount)._ [;]

(D) [After January 1, 1997, when] 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 toward [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) meet(s) [meets] the following conditions:

(A) the low income time extension applicant is the owner of the vehicle that has failed an inspection and maintenance (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; sources [source] of parts, including addresses and phone numbers; and expected delivery and installation dates of uncommon parts before a parts availability time extension can be issued.

(3) - (5) (No change.)

(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) (No change.)

§114.53. Inspection and Maintenance Fees.

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

(1) Beginning January 1, 2001, any emissions inspection station required to conduct an acceleration simulation mode test and/or on-board diagnostic (OBD) test in accordance with §114.50(a)(1), (2), and (4) of this title (relating to Vehicle Emissions Inspection Requirements) shall collect a fee of \$18 and [Emissions Inspection Stations (Two Speed Idle/Annual Test): \$13. The inspection station] shall remit \$2.00 [\$1.75] to the Department of Public Safety (DPS).

(2) Beginning January 1, 2001, any emissions inspection station required to conduct a two speed idle test and/or OBD test in accordance with §114.50(a)(1), (3), and (5) of this title shall collect a fee of \$14 and [Emissions Inspection Stations (Loaded or Transient/Biennial Test): \$26. The inspection station] shall remit \$2.00 [\$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 §114.50(a) of this title (relating to Applicability).]

(3) Through December 31, 2000, any emissions inspection station required to conduct a two-speed idle test in accordance with §114.50(a)(6) of this title shall collect a fee of \$13 and shall remit \$1.75 to the DPS.

(b) (No change.)

(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.