

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** January 24, 2014

Thru: Bridget C. Bohac, Chief Clerk
Richard A. Hyde, P.E., Executive Director

From: Steve Hagle, P.E., Deputy Director
Office of Air

Docket No.: 2013-1109-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 114, Control of Air Pollution from Motor Vehicles
Inspection and Maintenance (I/M) Rule Revision
Rule Project No. 2013-035-114-AI

Background and reason(s) for the rulemaking:

On May 29, 1996, the Texas Commission on Environmental Quality (commission or TCEQ) adopted rules in 30 Texas Administrative Code (TAC) Chapter 114 to implement a vehicle emissions inspection and maintenance (I/M) program in the Dallas-Fort Worth (DFW), Houston-Galveston-Brazoria (HGB), and El Paso one-hour ozone nonattainment areas. The I/M program is an air pollution control strategy involving emissions inspections of vehicles to reduce nitrogen oxides and volatile organic compounds to assist with demonstrating attainment with the National Ambient Air Quality Standard (NAAQS) for ozone. The Federal Clean Air Act and 40 Code of Federal Regulations, Parts 51 and 85, require an I/M program in nonattainment areas classified as marginal or higher for the ozone NAAQS.

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

The I/M rules require the TCEQ to implement the I/M program in conjunction with the Texas Department of Public Safety (DPS) and require vehicles registered in these areas to pass an emissions inspection at the time of their annual safety inspection. The rules also authorize the collection of the state's portion of the vehicle emissions inspection fee by the DPS at the time that vehicle emissions inspection station owners purchased safety and emissions inspection certificates (stickers). Currently, motorists are required to demonstrate compliance with the I/M program by displaying on the vehicle's windshield:

- a current valid safety and emissions inspection sticker; and
- a current valid registration insignia sticker.

Re: Docket No. 2013-1109-RUL

The I/M rules also require denying renewal of the registration until the vehicle has complied with the I/M program. The TCEQ is currently responsible for:

- identifying non-compliant vehicles;
- notifying motorists of the non-compliance;
- providing information on non-compliant vehicles to the Texas Department of Motor Vehicles (DMV), previously a part of the Texas Department of Transportation; and
- assisting motorists to resolve the non-compliance.

House Bill (HB) 2305, 83rd Texas Legislature, 2013, Regular Session, replaces the current Texas dual inspection and registration sticker system with a single vehicle registration insignia sticker system (single sticker system) and modifies the method used to collect the state's portion of the vehicle safety and emissions inspection fee. HB 2305 requires:

- eliminating the use of the safety and emissions inspection sticker;
- verifying compliance with I/M program requirements using the vehicle inspection report or vehicle registration insignia sticker instead of the current safety and emissions inspection sticker;
- passing of the vehicle safety and emissions inspection no more than 90 days prior to the expiration of the vehicle's registration instead of on the expiration of the vehicle's safety and emissions inspection sticker;
- replacing the TCEQ with the DPS as the entity providing information on compliant vehicles to the DMV; and
- collecting the state's portion of the safety and emissions inspection fee at the time of registration or registration renewal by the DMV or county tax assessor-collector.

HB 2305, which became effective on September 1, 2013, requires the TCEQ, the DMV, and the DPS to adopt rules necessary to implement these changes prior to March 1, 2014 and implement the changes by March 1, 2015. The adopted revisions to 30 TAC Chapter 114, Subchapter A, §114.1 and §114.2, Subchapter B, §114.21, and Subchapter C, §§114.50, 114.53, 114.82 - 114.84, and 114.87 are needed to comply with the requirements of HB 2305.

The adopted revisions to 30 TAC Chapter 114, Subchapter C, §§114.50, 114.83, and 114.84 are necessary to correct references to 37 TAC §23.93, which was repealed by the DPS on March 13, 2013.

Scope of the rulemaking:

The adopted rule revisions will revise applicable sections of Chapter 114 relating to the I/M program and implement the requirements of HB 2305.

In addition to the adopted rule revisions to Chapter 114, various non-substantive changes are included that will update rule language to the current *Texas Register* style and format

Re: Docket No. 2013-1109-RUL

requirements. Such changes include appropriate and consistent use of acronyms, section references, rule structure, and certain terminology.

A.) Summary of what the rulemaking will do:

The adopted rule revisions will revise Chapter 114, Subchapter A, §114.1 and §114.2, Subchapter B, §114.21, and Subchapter C, §§114.50, 114.53, 114.82 - 114.84, and 114.87 relating to the I/M program. The adopted revisions will replace the requirements for vehicles to display a safety and emissions inspection sticker with new requirements for vehicles to display a vehicle registration insignia sticker. The term “safety inspection certificate” will be replaced with “vehicle registration” or “vehicle registration insignia sticker” where applicable. The requirement regarding the amount of the vehicle emissions inspection fee that vehicle emissions inspection stations are authorized to collect will be revised and the amount that a vehicle emissions inspection station owner pays to the DPS will be repealed. The amount of the vehicle emissions inspection fee paid to the state, which will now be collected from registered vehicle owners by the DMV or county tax assessor-collector, will be included in adopted new subsection (d) in §114.53 and §114.87. The amount of the vehicle emissions inspection fee paid to the state and collected by the DMV or county tax assessor-collector will be the same amount currently collected by the DPS. The *Effect on the Regulated Community* and *Effect on the Public* section includes a breakdown of the fee in each of the I/M program areas. Additionally, the adopted revisions will maintain the current I/M program requirements until the new requirements of HB 2305 are concurrently implemented by the DPS and the DMV on a date that is no sooner than March 1, 2015.

- Adopted changes to §114.1 will revise the definition of “first safety inspection certificate” and add definitions for “first vehicle registration,” “single sticker transition date,” “vehicle registration,” and “vehicle registration insignia sticker” to conform to the requirements of HB 2305. Beginning when the new requirements of HB 2305 are concurrently implemented by the DPS and the DMV on a date that is no sooner than March 1, 2015, the vehicle registration insignia sticker will be used as proof of compliance with I/M program requirements, the DMV’s rules and regulations governing vehicle registration, and the DPS’s rules and regulations governing safety inspections.
- Adopted changes to §114.2 will revise the definition of “testing cycle” to indicate that the existing testing cycle definition will continue to apply through the day before the single sticker transition date and that beginning on the single sticker transition date, the testing cycle definition becomes the annual cycle commencing with the first vehicle registration expiration date for which a motor vehicle is subject to a vehicle emissions inspection. The adopted changes will also revise the term “uncommon part” to use the vehicle safety inspection certificate prior to the single sticker transition date and use the vehicle registration beginning on the single sticker transition date.

Re: Docket No. 2013-1109-RUL

- Adopted changes to §114.21 will update the requirement that vehicles exempt from vehicle anti-tampering requirements must remove and destroy the DPS motor vehicle safety inspection certificates before the vehicle is offered for sale or displayed for public examination. Beginning on the single sticker transition date, the DMV vehicle registration insignia sticker will be required to be removed and destroyed from a vehicle exempt from vehicle anti-tampering requirements before offering it for sale or displaying it for public examination.
- Adopted changes to §114.50 will require owners of vehicles operating in the DFW, HGB, and El Paso I/M program areas to demonstrate compliance by displaying a current valid registration insignia sticker affixed to the vehicle's windshield beginning on the single sticker transition date in lieu of a current valid safety and emissions inspection sticker required prior to the single sticker transition date. The adopted revisions to §114.50 will also update language regarding the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen safety and emissions inspection stickers, vehicle inspection reports, or other documents that may be used to circumvent the vehicle emissions requirements in the DFW, HGB, and El Paso I/M program areas to reflect the changes to the I/M program beginning on the single sticker transition date. The adopted changes to §114.50 will also replace the reference to 37 TAC §23.93 with a reference to 37 TAC Chapter 23, Subchapter E.
- Adopted changes to §114.53 will revise the maximum fee that may be collected by emissions inspection stations located in the DFW, HGB, and El Paso I/M program areas and the state's portion of the inspection fee that the emissions inspection stations will remit to the DPS to reflect the change in fee collections required by HB 2305.
- Adopted changes to §114.82 will require owners of vehicles operating in Travis and Williamson Counties to demonstrate compliance by displaying a current valid registration insignia sticker affixed to the vehicle's windshield beginning on the single sticker transition date in lieu of a current valid safety and emissions inspection sticker required prior to the single sticker transition date.
- Adopted changes to §114.83 will replace the reference to 37 TAC §23.93 with a reference to 37 TAC Chapter 23, Subchapter E.
- Adopted changes to §114.84 will update language regarding the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen safety and emissions inspection stickers, vehicle inspection reports, or other documents that may be used to circumvent the vehicle emissions I/M requirements in Travis and Williamson Counties. The adopted revisions will also replace the reference to 37 TAC §23.93 with a reference to 37 TAC Chapter 23, Subchapter E.

Re: Docket No. 2013-1109-RUL

- Adopted changes to §114.87 will revise the maximum fee that may be collected by emissions inspections stations located in Travis and Williamson Counties and the state's portion of the inspection fee that the emissions inspection stations will remit to the DPS to reflect the change in fee collections required by HB 2305.

B.) Scope required by federal regulations or state statutes:

The adopted rule revisions are needed to ensure that the rules regarding the I/M program will comply with the requirements of HB 2305.

C.) Additional staff recommendations that are not required by federal rule or state statute:

The adopted rule revisions will not include any additional substantive changes beyond the modifications needed to comply with the requirements of HB 2305. The adopted rule revisions will include changes to correct outdated references to 37 TAC §23.93, which was repealed by the DPS on March 13, 2013.

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

Statutory authority:

The rule revisions are adopted under Texas Water Code (TWC), §5.102, General Powers, TWC, §5.103, Rules, and TWC, §5.105, General Policy, which provide the commission with the general powers to carry out its duties and authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.013, General Jurisdiction of Commission, which states the commission's authority over various statutory programs. The revisions are also adopted under Texas Health and Safety Code (THSC), §382.017, Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of THSC, Chapter 382 (the Texas Clean Air Act), and to adopt rules that differentiate among particular conditions, particular sources, and particular areas of the state. The revisions are also adopted under THSC, §382.002, Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.019, Methods Used to Control and Reduce Emissions From Land Vehicles, which provides the commission the authority to adopt rules to control and reduce

Re: Docket No. 2013-1109-RUL

emissions from engines used to propel land vehicles; THSC, Chapter 382, Subchapter G, Vehicle Emissions, which provides the commission the authority by rule to establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of Federal Clean Air Act, 42 United States Code, §§7401 *et seq.*; and THSC, Chapter 382, Subchapter H, Vehicle Emissions Programs in Certain Counties, which authorizes the commission to adopt an I/M program for participating EAC counties. The rule revisions are adopted pursuant to amendments to Texas Transportation Code, §548.104 and §548.302, which were amended by HB 2305, and THSC, §382.0622(a), which was also amended by HB 2305.

Effect on the:

A.) Regulated community:

Beginning on the single sticker transition date, the vehicle emissions inspection station owners will experience a reduction in the maximum vehicle emissions inspection fee that they collect at the time of inspection. The fee will be reduced by the amount of the state's portion of the inspection fee that will now be collected by the DMV or county tax assessor-collector at the time of registration due to the station owner no longer having to purchase safety and emissions inspection stickers from the DPS. The maximum vehicle emissions inspection fee will be lowered from:

- \$27 to \$24.50 for vehicles subject to an acceleration simulation mode emissions inspection and from \$27 to \$18.50 for vehicles subject to an on-board diagnostics inspection in the DFW and HGB areas;
- \$16 to \$11.50 for vehicles subject to an emissions inspection in Travis and Williamson Counties; and
- either \$14 to \$11.50 for vehicles subject to an emissions inspection in El Paso County or \$16 to \$11.50 if El Paso County chooses to participate in the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program.

Motorists will need to adjust to the revised timing for passing the vehicle emissions inspection. Motorists will be required to pass an emissions inspection no earlier than 90 days prior to the corresponding vehicle registration expiration date. Motorists whose vehicle safety and emissions inspection sticker expiration date is more than 90 days prior to the corresponding vehicle registration expiration date may experience paying the inspection fees, including the state portion, for two inspections in less than 12 months during the transition period covering the year before and the year after the single sticker transition date (e.g., March 1, 2014 to March 1, 2016 is the transition period if the single sticker transition date is March 1, 2015).

B.) Public:

Beginning on the single sticker transition date, the maximum vehicle emissions inspection fee will be lowered by the amount of the state's portion of the inspection fee that will now

Re: Docket No. 2013-1109-RUL

be collected by the DMV or county tax assessor-collector at the time of registration, which is:

- \$2.50 for vehicles subject to an acceleration simulation mode (ASM) emissions inspection and \$8.50 for vehicles subject to an on-board diagnostics (OBD) inspection in the DFW and HGB I/M program areas;
- \$4.50 for vehicles subject to an emissions inspection in Travis and Williamson Counties; and
- either \$2.50 for vehicles subject to an emissions inspection in the El Paso I/M program area or \$4.50 if the El Paso I/M program area chooses to participate in the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program.

Beginning on the single sticker transition date, registered vehicle owners subject to I/M program requirements will experience a reduction in the fee charged by the inspection station and an increase in the fee charged to renew the vehicle's registration. The total amount collected from registered vehicle owners for the vehicle emissions inspection and vehicle registration will not increase or decrease. The change will only affect who collects the various fees and when those fees are collected. As previously stated, motorists will need to adjust to the revised timing for passing the vehicle emissions inspection.

C.) Agency programs:

The adopted rule revisions will require operational changes to the vehicle emissions inspection analyzer software and to the TCEQ's Air Quality Division work procedures since the TCEQ will no longer be responsible for registration denial activities. Throughout the transition of this component of the I/M program, the TCEQ staff will coordinate with the DPS and the DMV.

The TCEQ's staff will implement operational changes to end registration denial activities including providing information to the DMV regarding non-compliant vehicles and mailing notices to registered vehicle owners regarding the non-compliant status of their vehicles prior to registration renewal. Currently, the TCEQ spends approximately \$22,750 annually to mail registration denial notices to registered vehicle owners. Beginning on the single sticker transition date, the TCEQ will cease mailing these notices resulting in a cost savings to the agency. The TCEQ staff will continue providing information regarding compliant vehicles to the DPS but may need to develop a new method for transmitting this information or revise the current method.

HB 2305 requires the DPS to report the compliance status of vehicles receiving emissions inspections to the DMV. The TCEQ will provide vehicle inspection data received from the vehicle emissions inspection stations to the DPS to help fulfill this requirement. The TCEQ staff will facilitate the modifications to the software that operates the vehicle emissions inspection analyzers to allow proper implementation of the requirements in HB 2305. The 83rd Texas Legislature, 2013, Regular Session provided \$800,000 in funding through a contingency rider in Article IX of the General Appropriations Act for the purpose of updating the vehicle emissions inspection analyzers to comply with HB 2305.

Re: Docket No. 2013-1109-RUL

Stakeholder meetings:

No stakeholder meetings were held because of the limited time to implement HB 2305. However, public comments were received and public hearings were offered. Program staff will coordinate with the agency's media communications, as well as the DPS and the DMV, in an effort to inform the public of these changes.

Public comment:

Public hearings were offered in Houston on October 29, 2013; in Austin on October 30, 2013; in Fort Worth on October 31, 2013; and in El Paso on November 1, 2013. No member of the public wished to present comments, so staff did not formally open the public hearings. The comment period opened September 27, 2013 and closed November 4, 2013. The commission received written comments from the City of Houston's Department of Health and Human Services, Envirotec Systems Holdings Corporation, the United States Environmental Protection Agency (EPA), and the North Central Texas Council of Governments.

The EPA and the NCTCOG expressed support for the proposed revisions to the rules and the I/M SIP. The NCTCOG and Envirotec suggested changes to the proposed revisions to the rules and the I/M SIP. Significant public comments are summarized as follows.

- The EPA commented that the revisions will implement the preferred registration denial enforcement strategy and may improve the enforcement and compliance components of the I/M program. *The commission appreciates the EPA's support of the revisions.*
- The EPA requested an explanation regarding how vehicle owners will be made aware of the requirement to perform an emissions inspection no earlier than 90 days before the expiration of the vehicle registration. *The TCEQ staff plans to work with the DMV and the DPS to develop a public outreach campaign to alert vehicle owners of the revised requirement to have the vehicle inspected within 90 days of the expiration of the current vehicle registration.*
- The EPA requested an explanation of the process that will be used to transition vehicle owners from the current Texas dual inspection and registration sticker system to a single sticker system. *No special provisions or exemptions are included in this rulemaking. The TCEQ staff plans to work with the DMV and the DPS to develop the process for implementing the transition from sticker-based enforcement to registration denial enforcement of the I/M program requirements. The TCEQ staff anticipates that the details of the process will be provided as part of a public outreach campaign after the development of the transition process is completed. The current dual sticker system will remain in place and effective until the provisions of HB 2305 are implemented by the DPS and the DMV to ensure stability of the I/M program.*

Re: Docket No. 2013-1109-RUL

- The NCTCOG recommended that a robust educational program be established to help the public understand the changes to the requirements and to the fees charged for ASM and OBD tests at the time of inspection. The NCTCOG suggested that the education program will help to avoid potential disproportionate imprints under Executive Order 12898 (Environmental Justice) since ASM vehicles are older and often owned by lower-income individuals. *Executive Order 12898 only applies to actions by federal agencies and does not apply to the TCEQ's rulemaking; however, the TCEQ staff plans to work with the DMV and the DPS to develop the plan for implementing the changes to the I/M program requirements. The TCEQ staff anticipates that the details of the plan will be provided as part of a public outreach campaign informing motorists of the changes to the fees charged by the inspection station at the time of the vehicle inspection and by the DMV or county tax assessor-collector at the time of vehicle registration.*
- The NCTCOG expressed support for the use of remote sensing technology to identify high-emitting vehicles, provided a report supporting its belief that this technology is not being used often enough to be effective, and suggested that increased use would increase the effectiveness. *The commission appreciates the NCTCOG's support on enforcement of the I/M program; however, expanding the role of the remote sensing component of the current I/M program is beyond the scope of this rulemaking.*
- The NCTCOG suggested that §114.21(e) and (f), which requires the removal and destruction of the safety and emissions inspection sticker and the vehicle registration insignia sticker from vehicles currently exempt from anti-tampering requirements before being offered for sale or public examination, be modified to extend this requirement to all retail vehicle sales and to all vehicles sold at auction. *The commission appreciates the NCTCOG's support of this revision to §114.21(e) and (f); however, expanding the use of this requirement to all retail vehicle or auction sales is beyond the scope of this rulemaking.*
- The NCTCOG requested more transparency be brought to the state's Vehicle Inspection Advisory Committee and suggested that meeting notices be posted on the TCEQ, DPS, and DMV websites, and that an e-mail distribution list be developed to inform interested parties of upcoming meetings. The NCTCOG also recommended that Committee meetings be hosted in each of the four I/M regions once per year to help increase attendance. *The purpose and task of the State's Vehicle Inspection Advisory Committee are the responsibility of the DPS. The TCEQ is responsible for appointing one member to the committee and will inform the committee of the NCTCOG's suggestions.*
- Envirotest expressed support for the I/M SIP revision, continued use of remote sensing technology, and enforcement of the Texas I/M program requirements.

Re: Docket No. 2013-1109-RUL

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

Significant changes from proposal:

The specific transition dates included in the proposal were replaced with references to the single sticker transition date, which will be contingent upon when the DPS and the DMV concurrently implement the single sticker system required by Texas Transportation Code §502.047, but no earlier than March 1, 2015. Additionally, minor non-programmatic updates to rule language were made to correct outdated references and for general clarity.

Potential controversial concerns and legislative interest:

At this time, the TCEQ cannot provide the explanations requested by the EPA regarding the details for the transition to the single sticker system, whether special provisions or exemptions may be provided, or how public outreach will be performed. The exact details of the information requested by the EPA will be dependent on actions taken by the DMV and the DPS, neither of which have finalized plans for the implementation of HB 2305.

Although the exact details requested by the EPA are not included in this rulemaking, these details can be provided to the EPA when finalized. The EPA could delay action on the Chapter 114 rulemaking and associated I/M SIP revision until the requested information is provided.

Does this rulemaking affect any current policies or require development of new policies?

The adopted rule revisions will modify criteria within the current I/M program but will not affect the current agency policies regarding implementation, enforcement, and oversight of the I/M program as required by the current rules.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

If this rule revision does not go forward, the existing rules will conflict with the requirements of HB 2305. There are no viable alternatives to a rule revision since HB 2305 directs the DMV or county tax assessor-collector to collect the state's portion of the vehicle emissions inspection fee at the time of registration and requires the dual inspection and registration sticker system to be replaced with a single sticker system.

Key points in the adoption rulemaking schedule:

Proposal date:

September 24, 2013

Texas Register proposal publication date:

October 11, 2013

Commissioners
Page 11
January 24, 2014

Re: Docket No. 2013-1109-RUL

Anticipated *Texas Register* adoption publication date: February 28, 2014
Anticipated effective date: March 6, 2014
Six-month *Texas Register* filing deadline: April 11, 2014

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Attachments

HB2305

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