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

If adopted, the commission would submit the amendments to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP).

Background and Summary of the Factual Basis for the Proposed Rules

On May 29, 1996, the commission adopted rules implementing an air pollution control strategy involving emissions inspection of vehicles to reduce nitrogen oxides and volatile organic compounds necessary for the counties included in the Dallas-Fort Worth (DFW), Houston-Galveston-Brazoria (HGB), and El Paso ozone nonattainment areas in order to assist in the ability to demonstrate attainment with the one-hour ozone National Ambient Air Quality Standard (NAAQS). The vehicle emissions inspection program, also known as the vehicle emission inspection and maintenance (I/M) program, began on July 1, 1996 in the DFW, HGB, and El Paso one-hour ozone nonattainment areas. The I/M rules currently apply to all nine counties (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties) in the DFW 1997 eight-hour ozone nonattainment area, selected counties (Brazoria, Fort Bend, Galveston, Harris, and Montgomery Counties) in the HGB 1997 eight-hour ozone nonattainment area, and El Paso County. El Paso County was designated nonattainment for the revoked one-hour ozone standard, and was

subsequently designated attainment for the 1997 eight-hour ozone standard, effective June 15, 2004. The I/M program remains in place in El Paso County as part of the area's maintenance plan for the 1997 eight-hour ozone standard. On November 17, 2004, the commission adopted rules in Chapter 114 implementing an I/M program in Travis and Williamson Counties in the Austin-Round Rock area.

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

Additionally, on December 6, 2000, the commission adopted rules that enhanced the I/M program. The enhanced I/M program includes requirements for vehicle emissions

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

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

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

The commission provides the following information to demonstrate why the proposed change to the I/M program rules in Chapter 114 would not negatively impact the status of the state's progress towards attainment with the 1997 eight-hour ozone NAAQS, the El Paso County's maintenance plan for the 1997 eight-hour ozone standard, and the *Austin Eight-Hour Ozone Flex Plan* for Travis and Williamson Counties; will not interfere with

control measures; and would not prevent reasonable further progress toward attainment of the ozone NAAQS.

The proposed amendments to Chapter 114 would modify administrative aspects of the existing I/M program in order to implement HB 2305, which replaces the current dual inspection and registration sticker system with a single registration sticker and modifies the method used to collect the state's portion of the vehicle emissions inspection fee. The compliance rate under the single sticker system would be at least as effective as the dual sticker system as the single sticker system would represent compliance with inspection requirements, registration requirements, and I/M program requirements. Registrations for non-compliant vehicles would be denied under the single sticker system as under the dual sticker system. Resources allocated to enforcement of the dual sticker system would be used to ensure compliance with the single sticker system. The network of vehicle emissions inspection stations used to conduct vehicle emissions inspections under the dual sticker system would continue to conduct vehicle emissions inspections under the single sticker system. These vehicle emissions inspection stations were also required to remit the state's portion of the inspection fees to the DPS under the dual sticker system. However, under the single sticker system, the vehicle owner would remit the state's portion of the inspection fee to the DMV or county tax assessor-collector at the time of registration.

The effectiveness of the I/M program is expected to remain the same under the single

sticker system as under the dual sticker system because the size of the vehicle population that is subject to I/M program requirements, the vehicle emissions inspection frequency, and the stringency of the vehicle emissions inspection criteria are not changing. Similarly, the compliance rate for vehicles subject to I/M program requirements is expected to remain the same as the same resources used to ensure compliance under the dual sticker system will now be used to ensure compliance under the single registration sticker.

For vehicles exempt from annual vehicle registration renewal requirements and registered in I/M program areas such as those owned by local and state governments, HB 2305 does not specify methods for collecting the state's portion of the inspection fee or exempt these vehicles from I/M program requirements. Exempt vehicles would still be subject to I/M program requirements at a time determined by the DPS and DMV. Verifying compliance with I/M program requirements using the vehicle registration insignia sticker affixed to the vehicle's windshield may be problematic as exempt vehicles are not currently provided windshield stickers. Owners of exempt vehicles would still be able to provide proof of compliance using the Vehicle Inspection Report that is provided by the inspection stations. The DMV is considering amending its rules to require owners of exempt vehicles to remit the state's portion of the inspection fee to the DMV and display the vehicle registration insignia sticker on the vehicle's windshield but not remit registration fees from which they are currently exempt. The TCEQ staff would work with the DMV and the DPS to attempt to remedy this situation and ensure exempt vehicles maintain compliance with I/M program

requirements.

Section by Section Discussion

The following proposed amendments would ensure that the I/M program rules are consistent with the requirements in HB 2305, which mandates that effective March 1, 2015: 1) the safety inspection certificates would no longer be used; 2) the vehicle registration insignia stickers would replace the safety inspection certificates; and 3) the state's portion of the vehicle emissions inspection fee would be collected by the DMV or county tax assessor-collector at the time of registration.

In addition to the proposed amendments associated with the implementation of HB 2305, various stylistic, non-substantive changes are included to update rule language to current *Texas Register*-style and format requirements. Such changes include appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. These changes are non-substantive and generally are not specifically discussed in this preamble. Comments received regarding existing rule language that are not related to incorporating the proposed amendments to Chapter 114 or to the specific proposed non-substantive changes discussed in this preamble would not be considered, and no changes would be made based on such comments.

§114.1, Definitions

The proposed amendment to §114.1 would revise the definition for "first safety inspection certificate" and add definitions for three new terms. First safety inspection certificate is currently defined as the initial DPS certificate issued through the DPS-certified inspection stations for every new vehicle found to be in compliance with the rules and regulations governing safety inspections. The proposed amendment would add language to the definition indicating that safety inspection certificates would no longer be used effective March 1, 2015. The proposed amendment would also add definitions for "first vehicle registration," "vehicle registration," and "vehicle registration insignia sticker." First vehicle registration would be defined as the initial vehicle registration insignia sticker issued through the DMV for every new vehicle found to be in compliance with the rules and regulations governing safety inspections. Vehicle registration would be defined as the vehicle characteristics, corresponding owner information, and registration expiration date contained in the DMV's registration system. Vehicle registration insignia sticker would be defined as the sticker issued through the DMV to be affixed on the windshield of a vehicle compliant with DMV regulations. The vehicle registration insignia sticker definition would also indicate that effective March 1, 2015, the vehicle registration insignia sticker would 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. The proposed amendment would ensure that the terms and definitions for "first safety inspection certificate," "first vehicle registration," "vehicle registration," and "vehicle registration insignia sticker" would be consistent with the requirements of HB

2305. The definitions in this section would be renumbered accordingly.

§114.2, Inspection and Maintenance Definitions

The proposed amendment would modify the definitions of "testing cycle" and "uncommon part." Testing cycle is currently defined as the annual cycle commencing with the first safety inspection certificate expiration date for which a motor vehicle is subject to a vehicle emissions inspection. The proposed amendment would add language indicating that the current testing cycle definition applies prior to March 1, 2015 and that effective March 1, 2015, the annual cycle would commence with the first vehicle registration expiration date for which a motor vehicle is subject to a vehicle emissions inspection. Uncommon part is currently defined as a part that takes more than 30 days for expected delivery and installation where a motorist can prove that a reasonable attempt made to locate necessary emission control parts by retail or wholesale part suppliers will exceed the remaining time prior to expiration of the vehicle safety inspection certificate or the 30-day period following an out-of-cycle inspection. The proposed amendment would add language requiring the use of the vehicle safety inspection certificate prior to March 1, 2015 and the use of the vehicle registration on or after March 1, 2015.

§114.21, Exemptions

The proposed amendment to §114.21(e) and (f) would add language indicating that prior to March 1, 2015, the DPS motor vehicle safety inspection certificate must be removed and

destroyed from a vehicle exempt from vehicle anti-tampering requirements before offering it for sale or displaying it for public examination. The proposed amendment would also add language indicating that effective March 1, 2015, the DMV vehicle registration insignia sticker must be removed and destroyed from a vehicle exempt from vehicle anti-tampering requirements before offering it for sale or displaying it for public examination. Currently, §114.21(e) and (f) indicates 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.

§114.50, Vehicle Emissions Inspection Requirements

The proposed amendment to §114.50(b)(1) would modify the method used to demonstrate compliance with I/M program requirements. Currently, §114.50(b)(1) requires vehicles operating in the DFW, HGB, and El Paso I/M program areas to demonstrate compliance by displaying a current valid inspection certificate affixed to the vehicle windshield. The proposed amendment would require demonstration of compliance effective March 1, 2015 by displaying a current valid DMV vehicle registration insignia sticker since inspection certificates would no longer be issued.

The proposed amendment to §114.50(d)(2) would add language preventing the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen vehicle registration insignia stickers, vehicle inspection reports, or other documents that may be

used to circumvent the vehicle emissions I/M requirements in the DFW, HGB, and El Paso I/M program areas effective March 1, 2015. Currently, §114.50(d)(2) prevents the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen safety inspection certificates, vehicle inspection reports, or other documents that may be used to circumvent the vehicle emissions I/M requirements in the DFW, HGB, and El Paso I/M program areas.

The proposed amendment to §114.50(b)(6)(B) and (c) would replace the reference to 37 TAC §23.93 with 37 TAC Chapter 23, because 37 TAC §23.93 was repealed by the DPS on March 13, 2013.

§114.53, Inspection and Maintenance Fees

The proposed amendment to §114.53(a)(1) - (3) would exempt emissions inspection stations from being required to remit the state's portion of the vehicle emissions inspection fee to the DPS effective March 1, 2015. The proposed amendment also would lower the maximum inspection fee collected by the emissions inspection stations in the DFW, HGB, and El Paso I/M program areas. Effective March 1, 2015, the maximum inspection fee would be lowered by the amount of the state's portion of the vehicle emissions inspection fee that would now be collected by the DMV or county tax assessor-collector at the time of registration.

Effective March 1, 2015, the maximum inspection fee collected by emissions inspection stations inspection in the DFW and HGB I/M program areas would be lowered from $27 to $24.50 for vehicles subject to an ASM emissions test and from $27 to $18.50 for vehicles subject to an OBD inspection. For the El Paso I/M program area, the maximum inspection fee collected by emissions inspections stations would change based on whether the El Paso I/M program area chooses to participate in the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP). The maximum inspection fee for vehicles subject to an emissions inspection in El Paso County would be lowered to $11.50 from either $14 if El Paso County is not participating in the LIRAP or $16 if El Paso County is participating in the LIRAP.

Currently, §114.53(a)(1) - (3) set the maximum inspection fee that may be collected by the emissions inspection stations located in the DFW, HGB, and El Paso I/M program areas and the state's portion of the vehicle emissions inspection fee that the emissions inspection stations remit to the DPS. The proposed amendment to §114.53 would also add subsection (d) that specifies that owners of vehicles subject to vehicle emissions inspections in the DFW, HGB, and El Paso I/M program areas would remit the state's portion of the vehicle emissions inspection fee to the DMV or county tax assessor-collector at the time of registration. The state's portion of the vehicle emissions fee is $2.50 for vehicles subject to an ASM emissions test and $8.50 for vehicles subject to an OBD inspection in the DFW and HGB I/M program areas. If the El Paso I/M program area does not participate in the

LIRAP, the state's portion of the vehicle emissions fee is $2.50 for vehicles subject to an emissions inspection in the El Paso I/M program area. If the El Paso I/M program area chooses to participate in the LIRAP, the state's portion of the vehicle emissions fee changes to $4.50 for vehicles subject to an emissions inspection in the El Paso I/M program area.

§114.82, Control Requirements

The proposed amendment to §114.82(a) would modify the method used to demonstrate compliance with I/M program requirements. Currently, §114.82(a) requires vehicles operating in Travis and Williamson Counties, also known as the early action compact counties, to demonstrate compliance by displaying a current valid inspection certificate affixed to the vehicle windshield. The proposed amendment would require demonstration of compliance by displaying a current valid DMV vehicle registration insignia sticker since inspection certificates would no longer be issued.

§114.83, Waivers and Extensions

The proposed amendment to §114.83 would replace the reference to 37 TAC §23.93 with a reference to 37 TAC Chapter 23, because 37 TAC §23.93 was repealed by the DPS on March 13, 2013.

§114.84, Prohibitions

The proposed amendment to §114.84(b) would add language preventing the preparation,

duplication, sale, distribution, or use of false, counterfeit, or stolen vehicle registration insignia stickers, vehicle inspection reports, or other documents that may be used to circumvent the vehicle emissions I/M requirements in Travis and Williamson Counties effective March 1, 2015. Currently, §114.84(b) prevents the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen safety inspection certificates, vehicle inspection reports, or other documents that may be used to circumvent the vehicle emissions I/M requirements in Travis and Williamson Counties.

The proposed amendment to §114.84(d) would also replace the reference to 37 TAC §23.93 with 37 TAC Chapter 23, because 37 TAC §23.93 was repealed by the DPS on March 13, 2013.

§114.87, Inspection and Maintenance Fees

Effective March 1, 2015, the proposed amendment to §114.87(a) would: 1) exempt emissions inspection stations from being required to remit the state's portion of the vehicle emissions inspection fee to the DPS; and 2) lower the maximum inspection fee collected by the emissions inspection stations by the amount of the state's portion of the vehicle emissions inspection fee that would now be collected by the DMV or county tax assessor-collector at the time of registration.

Effective March 1, 2015, the maximum inspection fee collected by emissions inspection

stations would be lowered from $16 to $11.50 for vehicles subject to emissions inspections in Travis and Williamson Counties. Currently, §114.87(a) sets the maximum inspection fee that emissions inspections stations located in Travis and Williamson Counties may collect and the state's portion of the vehicle emissions inspection fee that the emissions inspection stations would remit to the DPS. The proposed amendment to §114.87 would also add language in a proposed subsection (d) that specifies that owners of vehicles subject to vehicle emissions inspections in Travis and Williamson Counties would remit the state's portion of the vehicle emissions inspection fee, $4.50, to the DMV or county tax assessor-collector at the time of registration.

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Strategic Planning and Assessment Section, has determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency or other units of state or local government as a result of administration or enforcement of the proposed rules.

The proposed rules would implement sections of HB 2305 that establish a single combined vehicle safety inspection and vehicle registration windshield sticker to replace the current dual windshield sticker system for vehicle safety inspections and vehicle registrations. The bill also transfers responsibility for the denial of registrations from the commission to the DMV and modifies the method used to collect the state's portion of the vehicle emissions

inspection fee.

Implementation of the bill and the new single registration sticker program is not expected to alter the amount of vehicle emissions inspection fee revenue received by the state. However, the bill would alter the manner by which the fee revenue would be collected and remitted to the state treasury. Currently, inspection stations remit inspection revenues to the DPS who then remits the revenue to the state treasury. The bill requires the state's portion of inspection fee revenue to be remitted to the treasury by the DMV or county tax assessor-collector at the time of the vehicle registration. This change would affect both the vehicle safety inspection fee and the emissions inspection fee collected in Travis and Williamson Counties, and the DFW, HGB, and El Paso I/M program areas, as the DPS currently collects and remits inspection fee revenue for both these activities. The DMV or county tax assessor-collector would now collect these inspection fees in addition to the applicable vehicle registration fees to cover the amount of the emissions and safety inspection fees that would no longer be collected by the DPS. The commission, therefore, proposes to lower the vehicle emissions inspection fees in the I/M program areas by the amount that is the state's portion of the fee that would be collected by the DMV or county tax assessor-collector. Under the proposed rules, effective March 1, 2015, the maximum vehicle emissions inspection fee would be lowered from: 1) $27 to $24.50 for vehicles subject to an ASM emissions test and from $27 to $18.50 for vehicles subject to an OBD inspection in the DFW and HGB I/M program areas; 2) $16 to $11.50 for vehicles subject

to an emissions inspection in Travis and Williamson Counties; and 3) either $14 to $11.50 for vehicles subject to an emissions inspection in the El Paso I/M program area or $16 to $11.50 if the El Paso I/M program area chooses to participate in the LIRAP.

In the DFW and HGB I/M program areas, the proposed rules would essentially lower the vehicle emissions inspection fee to the amount retained by the inspection station for the ASM emissions inspection ($24.50) and the OBD inspection ($18.50). Currently, for the OBD inspection, of the $27 assessed for each inspection, $18.50 is retained by the station, $6.00 goes to LIRAP, $0.50 goes to TCEQ for administration costs, and $2.00 goes to the DPS for administrative costs. Currently, for the ASM inspection, of the $27 assessed, $2.00 goes to the DPS and $0.50 goes to TCEQ for administration.

In Travis and Williamson Counties, the proposed rules would lower the vehicle emissions inspection fee from $16 to $11.50. At this time, $11.50 is retained by the station, $2.00 is allocated to LIRAP, and $2.50 in I/M administrative fees for the TCEQ and DPS.

In the El Paso I/M program area, the proposed rules would lower the vehicle emissions inspection fee from $14 to $11.50. Currently, the El Paso I/M program area does not participate in LIRAP and $2.00 of the fee is allocated to the DPS and $0.50 to the TCEQ.

In order to retain collection of the state's portion of the emission inspection fee revenue,

the proposed rules require that registered vehicle owners in the El Paso I/M program area remit $2.50 for vehicles subject to vehicle emissions inspections to the DMV or county tax assessor-collector at the time of the annual vehicle registration as part of the vehicle emissions inspection fee. If the El Paso County Commissioners Court adopts a resolution that is approved by the commission to participate in the LIRAP, registered vehicle owners would remit $4.50 for vehicles subject to vehicles emissions inspections to the DMV or county tax assessor-collector at the time of the annual vehicle registration as part of the vehicle emissions inspection fee beginning upon the date specified by the commission.

Under the proposed rules, in the DFW and HGB I/M program areas, registered vehicle owners would remit $2.50 for vehicles subject to ASM emissions tests and $8.50 for vehicles subject to OBD inspections to the DMV or county tax assessor-collector at the time of the annual vehicle registration as part of the vehicle emissions inspection fee.

Under the proposed rules, registered vehicle owners in Travis and Williamson Counties would remit $4.50 for vehicles subject to vehicle emissions inspections to the DMV or county tax assessor-collector at the time of the annual vehicle registration as part of the vehicle emissions inspection fee.

In order to implement these changes to the I/M program, TCEQ would need to facilitate modifications to the software that operates the four platforms of vehicle emissions

inspection analyzers. The estimated one-time cost to update the resident software would be approximately $200,000 for each of the four vehicle emissions analyzer platforms, or $800,000 in total. The 83rd Legislature, 2013, appropriated funding specifically for this purpose.

In addition to these proposed changes for the vehicle emissions inspection fee, HB 2305 requires that the state's portion of each vehicle safety inspection fee ($5.50 for the annual inspection and $14.75 for the initial two-year inspection) for each passenger car or light truck be collected and remitted by the DMV or county tax assessor-collector instead of the DPS. This portion of the state fee would also be collected at the time the vehicle registration fee is collected. Of the state's portion, $2.00 of each annual inspection and $4.00 of each two-year inspection is allocated to the TCEQ's Clean Air Account where funding is used to support the state's clean air programs. The remaining portion of the state's fee ($3.50 for the annual inspection and $10.75 for the initial two-year inspection) is deposited to the Texas Mobility Fund, which is used by the Texas Department of Transportation.

This fiscal note assumes that the DMV would have a system in place to collect the various fees associated with the I/M program when the vehicle registration fees are collected. It is further assumed that the DMV or county tax assessor-collector would collect the state's portion of the vehicle safety inspection program and that the collected funds would be

allocated to the correct accounts. This funding is critical for supporting the state's clean air programs, including LIRAP, and the state's I/M program. It must be noted, however, that for vehicles exempt from annual vehicle registration renewal requirements and registered in I/M program areas such as those owned by local and state governments, HB 2305 does not specify methods for collecting the state's portion of the inspection fee or exempt these vehicles from I/M program requirements. The possibility exists for a loss in fee revenue for the state and the agency should the DMV fail to adopt a new mechanism for collection of the state inspection fee on exempt vehicles. Exempt vehicles would still be subject to I/M program requirements at a time determined by the DPS and DMV. Verifying compliance with I/M program requirements using the vehicle registration insignia sticker affixed to the vehicle's windshield may be problematic as exempt vehicles are not currently provided with windshield stickers. Owners of exempt vehicles would still be able to provide proof of compliance using the Vehicle Inspection Report that is provided by the inspection stations. The DMV is considering amending its rules to require owners of exempt vehicles to remit the state's portion of the inspection fee to the DMV and display the vehicle registration insignia sticker on the vehicle's windshield but not remit registration fees from which they are currently exempt. If the DMV fails to adopt its rules, the agency and the state could experience a loss in revenue and not have a visible method for ensuring exempt vehicles maintain compliance with I/M program requirements.

HB 2305 now requires the DPS to report the compliance status of vehicles receiving

emissions inspections to the DMV. At this time, TCEQ has responsibility for this registration denial component of the I/M program. A vehicle is denied renewal of the registration until the vehicle complies with the I/M program. The TCEQ's current responsibilities are to: 1) identify non-compliant vehicles; 2) notify motorists of the non-compliance; 3) provide information on non-compliant vehicles to the DMV; and 4) assist motorists to come into compliance.

Under the proposed rules, the TCEQ would implement operational changes to end registration denial activities performed by our agency including providing information to the DMV regarding non-compliant vehicles and mailing notices to motorists regarding the non-compliant status of their vehicles prior to registration renewal. This change would result in some cost savings for the TCEQ. Currently, the TCEQ spends approximately $22,750 annually to mail registration denial notices to motorists. After March 1, 2015, the TCEQ would cease mailing these notices. The TCEQ staff would 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. Cost savings to the TCEQ are not considered significant.

To implement the requirements of HB 2305, the DPS would be required to: create and update program content; modify Information Technology software applications; and communicate and train agency staff. The DPS estimated that it would need to hire

Information Technology contractors and collaborate with DMV and TCEQ to implement the requirements of HB 2305. It is assumed the DPS would use existing resources to implement these changes.

In order the implement the provisions of the bill, the DMV would need to: work with the DPS and TCEQ to adopt rules to implement the program; make programmatic changes to the DMV's automated systems, Web sites, and forms; and provide notice to county tax assessor-collectors, law enforcement, and other agency partners. It is assumed the DMV would implement the provisions of the bill with available resources.

The possibility exists for a loss in fee revenue for the state and the agency should the DMV fail to adopt rules revising the annual registration renewal requirements for exempt vehicles and a new mechanism for collection of the state's portion of the inspection fee from owners of exempt vehicles. The TCEQ staff would work with the DMV and the DPS to attempt to remedy this situation and avoid the loss in revenue and ensure exempt vehicles maintain compliance with I/M program requirements.

Public Benefits and Costs

Mr. Horvath has also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules would be compliance with state law and a consolidated inspection and registration

system. This single system is anticipated to help eliminate vehicle inspection certificate fraud while reducing state costs.

The proposed rules are not anticipated to have a long term fiscal impact on individuals. After the proposed rules go into effect on March 1, 2015, motorists would begin receiving reminders to get their annual safety and emissions inspection in the form of the vehicle registration renewal notices provided by the DMV, and need to adjust to the revised timing for passing the safety and emissions inspection. Motorists would need to pass a safety and emissions inspection no sooner than 90 days prior to the corresponding vehicle registration expiration date. Prior to March 1, 2015, motorists would need to pass a safety and emissions inspection upon the expiration of the safety inspection certificate.

Owners of vehicles subject to vehicle safety and emissions inspection requirements would experience a reduction in the fee charged by the inspection station and an increase in the fee charged to renew the vehicle's registration; however, the annual total cost for the vehicle inspection and registration renewal would remain the same amount as the state's portion of the inspection fee would now be collected at the time of registration instead of at the time of inspection.

No significant fiscal implications are anticipated for businesses that conduct vehicle safety inspections. Vehicle emission inspection stations would no longer have to purchase or

ensure the safety and integrity of the vehicle emissions inspection windshield stickers, which could result in better cash flow and reduced administrative costs for some stations.

HB 2305 requires the DMV or county tax assessor-collector to collect the portion of the inspection fee that is required to be remitted to the state at the time of registration of the vehicle. The bill requires the DMV or county tax assessor-collectors to remit the collected fees to the Texas Comptroller of Public Accounts. This provision would result in a decrease in vehicle safety inspection fees and emission inspection fees that would be paid by registered vehicle owners and assessed by inspection stations. However, the proposed rules and HB 2305 do not reduce fees allocated to the inspection stations and therefore the amount of revenue collected by them is expected to be unaffected.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses for the first five-year period the proposed rules are in effect. The proposed rules would result in a decrease in vehicle safety inspection fees and vehicle emission inspection fees that would be paid by vehicle owners and assessed by inspection stations. However, the proposed rules and HB 2305 do not reduce fees allocated to the inspection stations and therefore the amount of revenue collected by them is expected to be unaffected.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the proposed rules do not meet the definition of a "major environmental rule." Texas Government Code, §2001.0225 states that a "major environmental rule" is, "a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state." Furthermore, while the proposed rulemaking does not

constitute a major environmental rule, even if it did, a regulatory impact analysis would not be required because the proposed rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule. Texas Government Code, §2001.0225 applies only to a major environmental rule which, "(1) exceeds a standard set by federal law, unless the rule is specifically required by state law; (2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; (3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopts a rule solely under the general powers of the agency instead of under a specific state law."

The proposed rulemaking implements requirements of the Federal Clean Air Act (FCAA). Under 42 United States Code (USC), §7410, each state is required to adopt and implement a SIP containing adequate provisions to implement, attain, maintain, and enforce the NAAQS within the state. While 42 USC, §7410 generally does not require specific programs, methods, or reductions in order to meet the standard, state SIPs must include "enforceable emission limitations and other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter," (meaning 42 USC, Chapter 85, Air Pollution Prevention and Control, otherwise known as the FCAA). The

provisions of the FCAA recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public, to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 USC, §7410. States are not free to ignore the requirements of 42 USC, §7410, and must develop programs and control measures to assure that their SIPs provide for implementation, attainment, maintenance, and enforcement of the NAAQS within the state. Furthermore, while states generally are afforded some flexibility in adopting and implementing a SIP, vehicle I/M programs are required elements of the SIP pursuant to 42 USC, §7511(a) based on the classification of an area.

The specific intent of the proposed rulemaking is to implement applicable sections of HB 2305, relating to replacing the current Texas dual inspection and registration sticker system with a single registration sticker and modifying the method used to collect the state's portion of the vehicle emissions inspection fee. The proposed rulemaking does not constitute a major environmental rule under Texas Government Code, §2001.0225(g)(3) because: 1) the specific intent of the proposed rulemaking is not to protect the environment or reduce risks to human health from environmental exposure, but rather to modify administrative aspects of an existing program by implementing HB 2305, which replaces

the current dual inspection and registration sticker system with a single registration sticker and modifies the method used to collect the state's portion of the vehicle emissions inspection fee; and 2) as discussed in the Fiscal Note, Public Benefits And Costs, Small Business Regulatory Flexibility Analysis, and the Local Employment Impact Statement sections of this preamble, the proposed rulemaking would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs, nor would the proposed rules adversely affect in a material way the environment, or the public health and safety of the state or a sector of the state because the amendments are merely administrative changes to the existing program. Because the proposed rulemaking is not a major environmental rule, it is not subject to a regulatory impact analysis under Texas Government Code, §2001.0225.

While the proposed rulemaking does not constitute a major environmental law, even if it did, it would not be subject to a regulatory impact analysis under Texas Government Code, §2001.0225. The requirement to provide a fiscal analysis of regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th Legislature, 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program; or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the

commission provided a cost estimate for SB 633 that concluded: "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law.

The FCAA does not always require specific programs, methods, or reductions in order to meet the NAAQS; thus, states must develop programs for each nonattainment area to help ensure that those areas will meet the attainment deadlines. Because of the ongoing need to address nonattainment issues, and to meet the requirements of 42 USC, §7410, the commission routinely proposes and adopts revisions to the SIP and rules. The legislature is presumed to understand this federal scheme. If each rule proposed for inclusion in the SIP was considered to be a major environmental rule that exceeds federal law, then every revision to the SIP would require the full regulatory impact analysis contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes and that presumption is based on information provided by state agencies and the LBB, the commission believes that the intent of SB 633 was only to require the full regulatory

impact analysis for rules that are extraordinary in nature. While the SIP has a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA. For these reasons, rules adopted for inclusion in the SIP fall under the exception in Texas Government Code, §2001.0225(a) because they are required by federal law.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code but left this provision substantially unamended. It is presumed that, "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." *Central Power & Light Co. v. Sharp*, 919 S.W.2d 485, 489 (Tex. App. Austin 1995), *writ denied with per curiam opinion respecting another issue*, 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.*, 798 S.W.2d 353, 357 (Tex. App. Austin 1990, *no writ*); *Cf. Humble Oil & Refining Co. v. Calvert*, 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.*, 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor*, 24 S.W.3d 581 (Tex. App. Austin 2000, *pet. denied*); and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.*, 563 S.W.2d 916 (Tex. 1978).

The commission's interpretation of the regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the

legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance" (Texas Government Code, §2001.035). The legislature specifically identified Texas Government Code, §2001.0225 as falling under this standard. The commission has substantially complied with the requirements of Texas Government Code, §2001.0225.

Regardless of whether the proposed rulemaking constitutes a major environmental rule under Texas Government Code, §2001.0225(g)(3), a regulatory impact analysis is not required because this exemption is part of the commission's SIP for making progress toward the attainment and maintenance of the NAAQS. Therefore, the proposed rules do not exceed a standard set by federal law or exceed an express requirement of state law since they are part of an overall regulatory scheme designed to meet, not exceed, the relevant standard set by federal law - the NAAQS. In addition, the adoption and maintenance of the I/M program is directly required by federal law pursuant to 42 USC, §7511(a). The commission is charged with protecting air quality within the state and to design and submit a plan to achieve attainment and maintenance of the federally mandated NAAQS. The Third District Court of Appeals upheld this interpretation in *Brazoria County v. Texas Comm'n on Envtl. Quality*, 128 S.W. 3d 728 (Tex. App. - Austin 2004, *no writ*). In addition, this rulemaking is directly required by HB 2305. Furthermore, no contract or delegation agreement covers the topic that is the subject of this rulemaking.

Finally, this rulemaking was not developed solely under the general powers of the agency but is authorized by specific sections of Texas Health and Safety Code, Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code, which are cited in the Statutory Authority section of this preamble, including Texas Health and Safety Code, §§382.011, 382.012, and 382.017.

This rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), for the following reasons. The proposed rulemaking is not a major environmental law because: 1) the specific intent of the proposed rules is not to protect the environment or reduce risks to human health from environmental exposure but rather to modify administrative aspects of an existing program by implementing HB 2305, which replaces the current dual inspection and registration sticker system with a single registration sticker, and modifies the method used to collect the state's portion of the vehicle emissions inspection fee; and 2) the proposed rulemaking would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs, nor would it adversely affect in a material way the environment, or the public health and safety of the state or a sector of the state because the amendments are merely administrative changes to the existing program. Furthermore, even if the proposed rulemaking was a major environmental rule, it does not meet any of the four applicability criteria listed in Texas Government Code, §2001.0225 because: 1) the proposed rulemaking is part of the SIP, and as such is designed to meet, not exceed the relevant standard set by

federal law; 2) this rulemaking is directly required by state law; 3) no contract or delegation agreement covers the topic that is the subject of this rulemaking; and 4) the proposed rulemaking is authorized by specific sections of Texas Health and Safety Code, Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code, which are cited in the Statutory Authority section of this preamble.

The commission invites public comment regarding the draft regulatory impact analysis determination during the public comment period. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

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

Under Texas Government Code, §2007.002(5), taking means: "(A) a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States

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

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

Promulgation and enforcement of the proposed rules would be neither a statutory nor a constitutional taking of private real property. These rules are not burdensome, restrictive, or limiting of rights to private real property because the proposed rules do not affect a landowner's rights in private real property. This rulemaking does not burden, restrict, or limit the owner's right to property, nor does it reduce the value of any private real property

by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, these rules would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

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

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

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold public hearings on this proposal in Houston on October 29, 2013, at 2:00 p.m. at the Houston-Galveston Area Council, Conference Room A, 3555 Timmons Lane; in Austin on October 30, 2013, at 10:00 a.m. at the TCEQ, Building E, Room 201S, 12100 Park 35 Circle; in Fort Worth on October 31, 2013, at 2:00 p.m. at the TCEQ, Region 4 Office, DFW Public Meeting Room, 2309 Gravel Road; and in El Paso on November 1, 2013, at 3:00 p.m. at El Paso Public Library, Maud Sullivan Gallery, 501 N. Oregon St. The hearings will be 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, commission staff members will be available to discuss the proposal 30 minutes prior to each hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearings should contact Sandy Wong, Office of Legal Services at (512) 239-1802. Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Mr. Michael Parrish, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas

78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.texas.gov/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2013-035-114-AI. The comment period closes on November 4, 2013. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.texas.gov/nav/rules/propose_adopt.html*. For further information, please contact Edgar Gilmore, Air Quality Planning Section, (512) 239-2069.

SUBCHAPTER A: DEFINITIONS

§114.1, §114.2

Statutory Authority

The amendments are proposed 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 propose 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 proposed under Texas Health and Safety Code (THSC), §382.017, Rules, which authorizes the commission to propose rules consistent with the policy and purposes of THSC, Chapter 382 (the Texas Clean Air Act), and to propose rules that differentiate among particular conditions, particular sources, and particular areas of the state. The revisions are also proposed 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 propose rules to

control and reduce emissions from engines used to propel land vehicles; THSC, Chapter 382, Subchapter G, Vehicle Emissions, which provides the commission the authority by rule to establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of Federal Clean Air Act, 42 United States Code, §§7401 *et seq.*; and THSC, Chapter 382, Subchapter H, Vehicle Emissions Programs in Certain Counties, which authorizes the commission to propose an inspection and maintenance program for participating early action compact counties. The rule revisions are proposed pursuant to amendments to Texas Transportation Code, §548.104 and §548.302, which were amended by House Bill (HB) 2305, 83rd Legislature, 2013, and THSC, §382.0622(a), which was also amended by HB 2305.

These amendments implement Texas Transportation Code, §548.104 and §548.302.

§114.1. Definitions.

Unless specifically defined in Texas Health and Safety Code, Chapter 382, also known as the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, the following

words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Dual-fuel vehicle--Any motor vehicle or motor vehicle engine engineered and designed to be operated on two different fuels, but not a mixture of the two.

(2) Emergency vehicle--A vehicle defined as an authorized emergency vehicle according to Texas Transportation Code, §541.201(1).

(3) Emissions--The emissions of oxides of nitrogen, volatile organic compounds, carbon monoxide, particulate, or any combination of these substances.

(4) First safety inspection certificate--Initial Texas Department of Public Safety (DPS) certificates issued through DPS-certified [DPS certified] inspection stations for every new vehicle found to be in compliance with the rules and regulations governing safety inspections. Effective March 1, 2015, the safety inspection certificates will no longer be used.

(5) First vehicle registration--Initial vehicle registration insignia sticker issued through the Texas Department of Motor Vehicles for every new vehicle found to be

in compliance with the rules and regulations governing vehicle registration prior to March 1, 2015 and vehicle registration and safety inspections effective March 1, 2015.

(6) [(5)] Gross vehicle weight rating--The value specified by the manufacturer as the maximum design loaded weight of a vehicle. This is the weight as expressed on the vehicle's registration, and includes the weight the vehicle can carry or draw.

(7) [(6)] Heavy-duty vehicle--Any passenger vehicle or truck capable of transporting people, equipment, or cargo, that has a gross vehicle weight rating (GVWR) greater than 8,500 pounds, and is required to be registered under Texas Transportation Code, §502.002. For purposes of the mobile emission reduction credit trading program the heavy-duty class is divided into the following subclasses:

(A) Light heavy-duty vehicle--Any passenger vehicle or truck capable of transporting people, equipment, or cargo that has a GVWR greater than 8,500 pounds, but less than or equal to 10,000 pounds.

(B) Medium heavy-duty vehicle--Any passenger vehicle or truck capable of transporting people, equipment, or cargo that has a GVWR greater than 10,000 pounds, but less than or equal to 19,500 pounds.

(C) Heavy heavy-duty vehicle--Any passenger vehicle or truck capable of transporting people, equipment, or cargo that has a GVWR greater than 19,500 pounds.

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

(9) [(8)] Law enforcement vehicle--Any vehicle controlled by a local government and primarily operated by a civilian or military police officer or sheriff, or by state highway patrols, or other similar law enforcement agencies, and [which is] used for the purpose of law enforcement activities including, but not limited to, chase, apprehension, surveillance, or patrol of people engaged in or potentially engaged in unlawful activities.

(10) [(9)] Light-duty vehicle--Any passenger vehicle or truck capable of transporting people, equipment, or cargo[,] that has a gross vehicle weight rating (GVWR) less than or equal to 8,500 pounds[,] and registered or required to be registered under Texas Transportation Code, §502.002. For purposes of the mobile emission reduction credit trading program the light-duty class is divided into the following subclasses:

(A) Light-duty vehicle--Any passenger vehicle capable of seating 12 or fewer passengers that has a GVWR less than or equal to 6,000 pounds.

(B) Light-duty truck 1--Any passenger truck capable of transporting people, equipment, or cargo[,] that has a GVWR less than or equal to 6,000 pounds.

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

(11) [(10)] Loaded mode inspection and maintenance test--A measurement of the tailpipe exhaust emissions of a vehicle while the drive wheel rotates on a dynamometer, which simulates the full weight of the vehicle driving down a level roadway. Loaded test equipment specifications must [shall] meet United States Environmental Protection Agency requirements for acceleration simulation mode equipment.

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

(A) the LEV standards applicable under 42 United States Code, Part C, Subchapter II, §§7581 *et seq.*; or

(B) emission limits at least as stringent as the applicable LEV standards for the Federal Clean Fuel Fleet program under 40 Code of Federal Regulations §§88.104-94, 88.105-94, and 88.311-93, as published in the *Federal Register* on September 30, 1994 (59 FR 50042).

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

(14) [(13)] Reformulated gasoline--Gasoline that has been certified as a reformulated gasoline under the federal certification regulations adopted in accordance with 42 United States Code, §7545(k).

(15) [(14)] Texas Inspection and Maintenance State Implementation Plan--The portion of the Texas state implementation plan that includes the procedures and requirements of the vehicle emissions inspection and maintenance program as adopted by the commission May 29, 1996[,] in accordance with 40 Code of Federal Regulations Part 51, Subpart S, issued November 5, 1992; the United States Environmental Protection Agency flexibility amendments dated September 18, 1995; and the National Highway

Systems Designation Act of 1995. A copy of the Texas Inspection and Maintenance State Implementation Plan is available at the Texas Commission on Environmental Quality, 12100 Park 35 Circle, Austin, Texas, 78753; mailing address: P.O. Box 13087, MC 166, Austin, Texas 78711-3087.

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

(17) [(16)] Ultra low emission vehicle--A vehicle as defined by 40 Code of Federal Regulations[,] Part 88.

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

(19) Vehicle registration insignia sticker--The sticker issued through the Texas Department of Motor Vehicles (DMV) or county tax assessor-collector to be affixed on the windshield of a vehicle compliant with the DMV regulations. Effective March 1, 2015, the vehicle registration insignia sticker will be used as proof of compliance with inspection and maintenance program requirements, the DMV's rules and regulations

governing vehicle registration, and the Texas Department of Public Safety's rules and regulations governing safety inspections.

(20) [(17)] Zero emission vehicle--A vehicle as defined by 40 Code of Federal Regulations[,] Part 88.

§114.2. Inspection and Maintenance Definitions.

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

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

(A) the 50/15 mode--in which the vehicle is tested 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) Consumer price index--The consumer price index for any calendar year is the average of the consumer price index for all-urban consumers published by the United States Department of Labor, as of the close of the 12-month period ending on August 31 of the calendar year.

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

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

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

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

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

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

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

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

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

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

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

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

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

(12) Testing cycle--Annual cycle commencing with the first safety inspection certificate expiration date for which a motor vehicle is subject to a vehicle emissions inspection <u>or effective March 1, 2015, the annual cycle commencing with the first vehicle registration expiration date for which a motor vehicle is subject to a vehicle emissions inspection</u>.

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

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

remaining time prior to expiration of: [the vehicle safety inspection certificate or the 30-day period following an out-of-cycle inspection.]

(A) the vehicle safety inspection certificate prior to March 1, 2015;

(B) the vehicle registration effective March 1, 2015; or

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

SUBCHAPTER B: MOTOR VEHICLE ANTI-TAMPERING REQUIREMENTS

§114.21

Statutory Authority

The amendment is proposed 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 propose 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 proposed under Texas Health and Safety Code (THSC), §382.017, Rules, which authorizes the commission to propose rules consistent with the policy and purposes of THSC, Chapter 382 (the Texas Clean Air Act), and to propose rules that differentiate among particular conditions, particular sources, and particular areas of the state. The revisions are also proposed 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 propose rules to

control and reduce emissions from engines used to propel land vehicles; THSC, Chapter 382, Subchapter G, Vehicle Emissions, which provides the commission the authority by rule to establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of Federal Clean Air Act, 42 United States Code, §§7401 *et seq.*; and THSC, Chapter 382, Subchapter H, Vehicle Emissions Programs in Certain Counties, which authorizes the commission to propose an inspection and maintenance program for participating early action compact counties. The rule revisions are proposed pursuant to amendments to Texas Transportation Code, §548.104 and §548.302, which were amended by House Bill (HB) 2305, 83rd Legislature, 2013, and THSC, §382.0622(a), which was also amended by HB 2305.

This amendment implements Texas Transportation Code, §548.104 and §548.302.

§114.21. Exemptions.

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

(1) Motor vehicles or motor vehicle engines which are intended solely or primarily for legally sanctioned motor competitions, for research and development uses, or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The DPS motor vehicle safety inspection certificates must be removed from the vehicle and destroyed before the vehicle may be offered for sale or displayed for public examination, or, effective March 1, 2015, the Texas Department of Motor Vehicles (DMV) vehicle registration insignia sticker must be removed from the vehicle and destroyed before the vehicle may be offered for sale or displayed for public examination.

(2) All potential buyers of the vehicle must be informed that deficiencies may be present in the vehicle pollution control systems on the vehicle. The buyer must also be informed of the liabilities to the buyer under §114.20 of this title and §114.50 of this title (relating to Vehicle Emissions Inspection Requirements) of operating the vehicle prior to the adequate restoration of all pollution control systems or devices on the vehicle as originally equipped. The seller of the vehicle shall provide to the buyer a written acknowledgment of the receipt of this information which must be signed by the buyer prior to completion of the sales transaction. The seller shall retain a copy of this signed acknowledgment for two years and shall make it available, upon request.

(f) The owner of a motor vehicle that [which] has been totally disabled by accident, age, or malfunction and [which] will no longer be operated is exempt from the provisions of §114.20(c) of this title if the DPS motor vehicle safety inspection certificate is removed and destroyed before the vehicle is offered for sale or displayed for public examination. Effective March 1, 2015, the owner of a motor vehicle that has been totally disabled by accident, age, or malfunction and will no longer be operated is exempt from the provisions of §114.20(c) of this title if the DMV vehicle registration insignia sticker is removed and destroyed before the vehicle is offered for sale or displayed for public examination.

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

DIVISION 1: VEHICLE INSPECTION AND MAINTENANCE

§114.50, §114.53

Statutory Authority

The amendments are proposed 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 propose 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 proposed under Texas Health and Safety Code (THSC), §382.017, Rules, which authorizes the commission to propose rules consistent with the policy and purposes of THSC, Chapter 382 (the Texas Clean Air Act), and to propose rules that differentiate among particular conditions, particular sources, and particular areas of the state. The revisions are also proposed 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 propose rules to control and reduce emissions from engines used to propel land vehicles; THSC, Chapter 382, Subchapter G, Vehicle Emissions, which provides the commission the authority by rule to establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of Federal Clean Air Act, 42 United States Code, §§7401 *et seq.*; and THSC, Chapter 382, Subchapter H, Vehicle Emissions Programs in Certain Counties, which authorizes the commission to propose an I/M program for participating Early Action Compact counties. The rule revisions are proposed pursuant to amendments to Texas Transportation Code, §548.104 and §548.302, which were amended by House Bill (HB) 2305, 83rd Legislature, 2013, and THSC, §382.0622(a), which was also amended by HB 2305.

These amendments implement Texas Transportation Code, §548.104 and §548.302.

§114.50. Vehicle Emissions Inspection Requirements.

(a) Applicability. The requirements of this section and those contained in the Texas Inspection and Maintenance (I/M) State Implementation Plan (SIP) <u>must</u> [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. Military tactical vehicles, motorcycles, diesel-powered vehicles, dual-fueled vehicles that cannot operate using gasoline, and antique vehicles registered with the Texas Department of Motor Vehicles [Transportation] are excluded from the program. Safety inspection facilities and inspectors certified by the Texas Department of Public Safety (DPS) must [shall] inspect all subject vehicles[,] in the following program areas[,] as defined in §114.2 of this title (relating to Inspection and Maintenance Definitions), in accordance with the following schedule.

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

(A) Beginning May 1, 2002, all 1996 and newer model year vehicles registered and primarily operated in Collin, Dallas, Denton, and Tarrant Counties equipped with on-board diagnostic (OBD) systems must [shall] be tested using United States Environmental Protection Agency (EPA)-approved OBD test procedures.

(B) Beginning May 1, 2002, all pre-1996 model year vehicles registered and primarily operated in Collin, Dallas, Denton, and Tarrant Counties must [shall] be tested using an acceleration simulation mode (ASM-2) test[,] or a vehicle emissions test approved by the EPA.

(C) All vehicle emissions inspection stations in affected program areas must [shall] offer both the ASM-2 test and the OBD test[,] except low volume emissions inspection stations. If an owner or operator wishes to have his or her station classified as a low volume emissions inspection station, the station owner or operator shall [must] petition the DPS in accordance with the rules and procedures established by the DPS.

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

(A) Beginning May 1, 2003, all 1996 and newer model year vehicles registered and primarily operated in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties equipped with OBD systems must [shall] be tested using EPA-approved OBD test procedures.

(B) Beginning May 1, 2003, all pre-1996 model year vehicles registered and primarily operated in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties must [shall] be tested using an ASM-2 test[,] or a vehicle emissions test approved by the EPA.

(C) All vehicle emissions inspection stations in affected program areas must [shall] offer both the ASM-2 test and the OBD test[,] except low volume emissions inspection stations. If an owner or operator wishes to have his or her station classified as a

low volume emissions inspection station, the station owner or operator shall [must] petition the DPS in accordance with the rules and procedures established by the DPS.

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

(A) Beginning May 1, 2002, all 1996 and newer model year vehicles registered and primarily operated in Harris County equipped with OBD systems must [shall] be tested using EPA-approved OBD test procedures.

(B) Beginning May 1, 2002, all pre-1996 model year vehicles registered and primarily operated in Harris County must [shall] be tested using an ASM-2 test[,] or a vehicle emissions test approved by the EPA.

(C) All vehicle emissions inspection stations in affected program areas must [shall] offer both the ASM-2 test and the OBD test[,] except low volume emissions inspection stations. If an owner or operator wishes to have his or her station classified as a low volume emissions inspection station, the station owner or operator shall [must] petition the DPS in accordance with the rules and procedures established by the DPS.

(D) Beginning May 1, 2003, all 1996 and newer model year vehicles equipped with OBD systems and registered and primarily operated in Brazoria, Fort Bend, Galveston, and Montgomery Counties must [shall] be tested using EPA-approved OBD test procedures.

(E) Beginning May 1, 2003, all pre-1996 model year vehicles registered and primarily operated in Brazoria, Fort Bend, Galveston, and Montgomery Counties must [shall] be tested using the ASM-2 test procedures[,] or a vehicle emissions test approved by the EPA.

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

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

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

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

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

(b) Control requirements.

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

(A) prior to March 1, 2015, all applicable air pollution emissions control-related [control related] requirements included in the annual vehicle safety inspection requirements administered by the DPS, as evidenced by a current valid inspection certificate affixed to the vehicle windshield, a current valid vehicle inspection report (VIR), or other form of proof authorized by the DPS; [and]

(B) effective March 1, 2015, all applicable air pollution emissions control-related requirements included in the annual vehicle safety inspection requirements administered by the DPS, as evidenced by a current valid vehicle registration insignia

sticker affixed to the vehicle windshield, a current valid VIR, or other form of proof authorized by the DPS; and

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

(2) All federal government agencies must [shall] require a motor vehicle operated by any federal government agency employee on any property or facility under the jurisdiction of the federal government agency and located in a program area to comply with all vehicle emissions I/M requirements specified in Texas Health and Safety Code, Subchapter G, §§382.201 - 382.216 (concerning Vehicle Emissions), and this chapter. Commanding officers or directors of federal facilities shall certify annually to the executive director, or appointed designee, that all subject vehicles have been tested and are in compliance with the Federal Clean Air Act (42 United States Code, §§7401 *et seq.*). This requirement will [shall] not apply to visiting federal government agency, employee, or military personnel vehicles as long as such visits do not exceed 60 calendar days per year.

(3) Any motorist in the DFW, EDFW, HGB, or El Paso program areas who has received a notice from an emissions inspection station that there are recall items unresolved on his or her motor vehicle[,] should furnish proof of compliance with the recall notice prior to the next vehicle emissions inspection, such as [. 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) A motorist whose vehicle has failed an emissions test may request a challenge retest through the DPS. If the retest is conducted within 15 days of the initial inspection, the retest is free.

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

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

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

(B) satisfy all inspection, extension, or waiver requirements of the vehicle emissions I/M program specified in 37 TAC Chapter 23 (relating to Vehicle Inspection) [§23.93 (relating to Vehicle Emission Inspection Requirements)].

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

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

(c) Waivers and extensions. A motorist may apply to the DPS for a waiver or an extension as specified in 37 TAC Chapter 23, [§23.93,] which defers [defer] the need for

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

(d) Prohibitions.

(1) No person may issue or allow the issuance of a VIR, as authorized by the DPS [DPS,] unless all applicable air pollution emissions control-related [control related] requirements of the annual vehicle safety inspection and the vehicle emissions I/M requirements are completely and properly performed in accordance with the rules and regulations adopted by the DPS and the commission. Prior to taking any enforcement action regarding this provision, the commission must [shall] consult with the 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 that may be used to circumvent applicable vehicle emissions I/M requirements and to commit an offense specified in Texas Transportation Code, §548.603 (concerning Fictitious or Counterfeit Inspection Certificate or Insurance Document). Effective March 1, 2015, no person may allow or participate in the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen vehicle registration insignia stickers, VIRs, VRFs, vehicle emissions repair documentation, or other documents that may be used to circumvent applicable

vehicle emissions I/M requirements and to commit an offense specified in Texas Transportation Code, §548.603.

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

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

§114.53. Inspection and Maintenance Fees.

(a) The following fees must be paid for an emissions inspection of a vehicle at an inspection station. This fee must [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.

(1) In El Paso County beginning May 1, 2002 and ending February 28, 2015, any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(4)(A), (B), or (C) of this title (relating to Vehicle Emissions Inspection Requirements) must [shall] collect a fee of $14 and [shall] remit $2.50 to the Texas Department of Public Safety (DPS). If the El Paso County Commissioners Court adopts a resolution that is approved by the commission to participate in the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program, the emissions inspection station must [shall] collect a fee of $16 and [shall] remit to the DPS $4.50 beginning upon the date specified by the commission [upon approval of the resolution] but prior to March 1, 2015. Effective March 1, 2015, any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(4)(A), (B), or (C) of this title must collect a fee not to exceed $11.50.

(2) In the Dallas-Fort Worth program area beginning May 1, 2002 and ending February 28, 2015, any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(1)(A) or (B) of this title[,] and in the extended Dallas-Fort Worth program area beginning May 1, 2003 and ending February 28, 2015, any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(2)(A) or (B) of this title must [shall] collect a fee not to exceed $27. The emissions inspection station must [shall] remit to the DPS $2.50 for each acceleration simulation mode (ASM-2) test and $8.50 for each on-board diagnostics (OBD) test.

Effective March 1, 2015 in the Dallas-Fort Worth and the extended Dallas-Fort Worth program areas, any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(1)(A) or (B) and (2)(A) or (B) of this title must collect a fee not to exceed $24.50 for each ASM-2 test and $18.50 for each OBD test.

(3) In the Houston-Galveston-Brazoria program area beginning May 1, 2002 and ending February 28, 2015, any emissions inspection station in Harris County required to conduct an emissions test in accordance with §114.50(a)(3)(A) or (B) of this title[;] and beginning May 1, 2003 and ending February 28, 2015, any emissions inspection station in Brazoria, Fort Bend, Galveston, and Montgomery Counties required to conduct an emissions test in accordance with §114.50(a)(3)(D) or (E) of this title must [; shall] collect a fee not to exceed $27. The emissions inspection station must [shall] remit to the DPS $2.50 for each ASM-2 test and $8.50 for each OBD test. Effective March 1, 2015 in Brazoria, Fort Bend, Galveston, Harris, and Montgomery Counties, any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(3)(A), (B), (D), or (E) of this title must collect a fee not to exceed $24.50 for each ASM-2 test and $18.50 for each OBD test.

(b) The per-vehicle fee and the amount the inspection station remits to the DPS for a challenge test[,] at an inspection station designated by the DPS, must [shall] be the same

as the amounts set forth in subsection (a) of this section. The challenge fee must [shall] not be charged if the vehicle is retested within 15 days of the initial test.

(c) Inspection stations performing out-of-cycle vehicle emissions inspections for the state's remote sensing element must [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. If the vehicle passes the vehicle emissions inspection, the vehicle owner may request reimbursement from the DPS.

(d) Effective March 1, 2015, vehicle owners shall remit as part of the annual vehicle registration fee collected by the Texas Department of Motor Vehicles (DMV) or county tax assessor-collector the amount of the vehicle emissions inspection fee that is required to be remitted to the state.

(1) In El Paso County, vehicle owners shall remit $2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax assessor-collector at the time of the annual vehicle registration as part of the vehicle emissions inspection fee. If the El Paso County Commissioners Court adopts a resolution that is approved by the commission to participate in the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program, vehicle owners shall remit $4.50 for motor vehicles subject to vehicles emissions inspections to the DMV or county tax assessor-

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

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

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

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

DIVISION 3: EARLY ACTION COMPACT COUNTIES

§§114.82 - 114.84, and 114.87

Statutory Authority

The amendments are proposed 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 propose 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 proposed under Texas Health and Safety Code (THSC), §382.017, Rules, which authorizes the commission to propose rules consistent with the policy and purposes of THSC, Chapter 382 (the Texas Clean Air Act), and to propose rules that differentiate among particular conditions, particular sources, and particular areas of the state. The revisions are also proposed 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 propose rules to control and reduce emissions from engines used to propel land vehicles; THSC, Chapter 382, Subchapter G, Vehicle Emissions, which provides the commission the authority by rule to establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of Federal Clean Air Act, 42 United States Code, §§7401 *et seq.*; and THSC, Chapter 382, Subchapter H, Vehicle Emissions Programs in Certain Counties, which authorizes the commission to propose an inspection and maintenance program for participating early action compact counties. The rule revisions are proposed pursuant to amendments to Texas Transportation Code, §548.104 and §548.302, which were amended by House Bill (HB) 2305, 83rd Legislature, 2013, and THSC, §382.0622(a), which was also amended by HB 2305.

These amendments implement Texas Transportation Code, §548.104 and §548.302.

§114.82. Control Requirements.

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

(1) prior to March 1, 2015, all applicable air pollution emissions control-related requirements included in the annual vehicle safety inspection requirements administered by the Texas Department of Public Safety (DPS)[,] as evidenced by a current valid inspection certificate affixed to the vehicle windshield, a current valid vehicle inspection report (VIR), or other form of proof authorized by the DPS; [and]

(2) effective March 1, 2015, all applicable air pollution emissions control-related requirements included in the annual vehicle safety inspection requirements administered by the DPS as evidenced by a current valid vehicle registration insignia sticker affixed to the vehicle windshield or a current valid VIR, or other form of proof authorized by the DPS; and

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

(b) All federal government agencies must [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 an affected EAC county to comply with all vehicle emissions I/M requirements contained in the Austin Area Early Action Compact Ozone State Implementation Plan Revision. Commanding officers or directors of federal facilities shall certify annually to the executive director, or appointed designee, that all subject vehicles

have been tested and are in compliance with the Federal Clean Air Act (42 United States Code, §§7401 *et seq.)*. This requirement does not apply to visiting agency, employee, or military personnel vehicles as long as such visits do not exceed 60 calendar days per year.

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

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

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

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

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

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

(g) A vehicle registered in a county without an I/M program that meets the applicability criteria of §114.80(c) of this title (relating to Applicability), and the ownership of which has changed through a retail sale as defined by Texas Motor Vehicle Commission Code, Article 4413(36), §1.03 (moved to Texas Occupations Code, §2301.002, effective June 1, 2003), is not eligible for title receipt or registration in an affected EAC program county with an I/M program unless proof is presented that the vehicle has passed an approved vehicle emissions inspection within 90 days before the title transfer. The evidence of proof required may be in the form of the vehicle inspection report or another proof of the program compliance as authorized by the DPS. All 1996 and newer model year

vehicles with less than 50,000 miles are exempt from the test-on-resale requirements of this subsection.

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

§114.83. Waivers and Extensions.

A motorist may apply to the Texas Department of Public Safety for a waiver or an extension as specified in 37 TAC Chapter 23 (relating to Vehicle Inspection), [§23.93 (relating to Vehicle Emissions Inspection Requirements),] which defers the need for full compliance with vehicle emissions standards for a specified period of time after failing a vehicle emissions inspection.

§114.84. Prohibitions.

(a) No person may issue or allow the issuance of a vehicle inspection report, as authorized by the Texas Department of Public Safety (DPS), unless all applicable air pollution emissions control-related requirements of the annual vehicle safety inspection

and the vehicle emissions inspection and maintenance (I/M) requirements and procedures contained in the Austin Area Early Action Compact Ozone State Implementation Plan Revision are completely and properly performed in accordance with the rules and regulations adopted by the DPS and the commission. Prior to taking any enforcement action regarding this provision, the executive director shall consult with the DPS.

(b) No person may allow or participate in the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen safety inspection certificates, vehicle inspection reports, vehicle repair forms, vehicle emissions repair documentation, or other documents that may be used to circumvent the vehicle emissions I/M requirements and procedures contained in the Austin Area Early Action Compact Ozone State Implementation Plan Revision. Effective March 1, 2015, no person may allow or participate in the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen vehicle registration insignia stickers, vehicle inspection reports, vehicle repair forms, vehicle emissions repair documentation, or other documents that may be used to circumvent the vehicle emissions I/M requirements and procedures contained in the Austin Area Early Action Compact Ozone State Implementation Plan Revision.

(c) No organization, business, person, or other entity may represent itself as an emissions inspector certified by the DPS[,] unless the certification has been issued under

the certification requirements and procedures contained in Texas Transportation Code, §§548.401 - 548.404.

(d) No person may act as or offer to perform services as a Recognized Emissions Repair Technician of Texas, as designated by the DPS, without first obtaining and maintaining DPS recognition. Requirements to become a DPS Recognized Emission Repair Technician are contained in 37 TAC Chapter 23 (relating to Vehicle Inspection) [§23.93 (relating to Vehicle Emissions Inspection Requirements)].

§114.87. Inspection and Maintenance Fees.

(a) The following fees must be paid for an emissions inspection of a vehicle at an inspection station in an affected early action compact program county. This fee must include one free retest if the vehicle fails the emissions inspection, provided that the motorist has the retest performed at the same station where the vehicle originally failed; the motorist submits, prior to the retest, a properly completed vehicle repair form showing that emissions-related repairs were performed; and the retest is conducted within 15 days of the initial emissions test. In Travis and Williamson Counties beginning September 1, 2005 and ending February 28, 2015, any emissions inspection station required to conduct an emissions test in accordance with §114.80 of this title (relating to Applicability) must [shall] collect a fee not to exceed $16 and [shall] remit $4.50 to the Texas Department of

Public Safety (DPS) for each on-board diagnostic and two-speed idle test. In Travis and Williamson Counties effective March 1, 2015, any emissions inspection station required to conduct an emissions test in accordance with §114.80 of this title must collect a fee not to exceed $11.50 for each on-board diagnostic and two-speed idle test.

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

(c) Inspection stations performing out-of-cycle vehicle emissions inspections resulting from written notification that the subject vehicle failed on-road testing (remote sensing) must [shall] charge a motorist for an out-of-cycle emissions inspection in the amount specified in subsection (a) of this section. If the vehicle passes the vehicle emissions inspection, the vehicle owner may request reimbursement from the DPS.

(d) In Travis and Williamson Counties, vehicle owners shall remit $4.50 for motor vehicles subject to vehicle emissions inspections to the Texas Department of Motor Vehicles or county tax assessor-collector at the time of the annual vehicle registration as part of the vehicle emissions inspection fee.