RESPONSE TO COMMENTS RECEIVED CONCERNING THE BEXAR COUNTY INSPECTION AND MAINTENANCE (I/M) STATE IMPLEMENTATION PLAN (SIP) REVISION

The Texas Commission on Environmental Quality (commission or TCEQ) held a public hearing in San Antonio on July 13, 2023, at 7:00 p.m. During the comment period, which closed on July 17, 2023, the commission received comments from Alamo Area Council of Governments (AACOG), the United States Environmental Protection Agency (EPA), Official Inspection Station (OIS), Rema Investment Group, LLC (REI), San Antonio Auto Service, LLC (SAAS), Texas State Inspection Association (TSIA), and 16 individuals. After the comment period closed, the Texas Department of Public Safety (DPS) submitted a letter to TCEQ regarding the timeline for Bexar County vehicle emissions inspection implementation, which was added to the comments received for commission consideration on this SIP revision. Comments submitted on the concurrent 30 Texas Administrative Code (TAC) Chapter 114 rulemaking concerning the Expansion of Vehicle I/M to Bexar County (Project No. 2022-026-114-AI) have been incorporated into this response to comments.

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GENERAL COMMENTS

RIE, SAAS, and two individuals stated that they were in support of the proposal to implement I/M in Bexar County. AACOG expressed thanks to the TCEQ for holding the public hearing in San Antonio to provide residents an opportunity to testify on the proposal. OIS offered that committee hearings should not be timed or censored and commented that the rule comment period should be extended to allow Texas Department of Public Safety (DPS) to hold information meetings in which inspectors and automotive store owners may participate.

The commission appreciates support for the proposed rulemaking and public hearing. The commission complied with all applicable public notice and rulemaking requirements for this rulemaking: (Texas Government Code, Subchapter B, Chapter 2001; Texas Clean Air Act, Texas Health and Safety Code, §382.017; Texas Water Code, §5.103; 30 TAC Chapter 20; and 40 CFR §51.102). The comment period lasted for 45 days, longer than the required 30 days. The commission applied a time limit for providing oral testimony at its July 13, 2023 public hearing to allow as many potential attendees to participate as possible. No word limit was applied to written comments, which were accepted during the entire 45-day comment period. DPS's outreach efforts are beyond the scope this rulemaking. No changes were made in response to this comment.

AACOG commented that because San Antonio is a poor city, elected officials are concerned about the impact the emissions inspection fee will have on residents.

AACOG thanked TCEQ for including Bexar County elected officials in its outreach efforts and for listening to their concerns.

OIS commented that industry representatives should be notified about information meetings and allowed to provide input. OIS pointed out that the public information meetings held during development of the proposed rulemaking were scheduled for the middle of the workday and were poorly attended by shop owners. OIS noted that no in-person townhall meetings were offered, which was part of the process for previous I/M implementation. Without in-person townhall meetings, OIS stated, industry representatives are unable to participate in an open dialogue on the topic or to provide input, and elected officials do not have the opportunity to hear their input. Not providing an opportunity for elected officials to hear industry's perspective allows them to conclude that industry is supportive of the plan.

The commission appreciates the support for its outreach efforts related to this rulemaking as well the comments suggesting additional outreach. For this rulemaking, the commission was required to offer a public hearing, which it did on July 13, 2023. Prior to that hearing, TCEQ provided information on I/M implementation in Bexar County at meetings held throughout development of this rulemaking. TCEQ presented on I/M implementation planning at a San Antonio Air Quality Technical Information Meeting on August 16, 2021, which was open to the public, and again at a November 8, 2022 meeting of the TSIA. TCEQ then held a public information meeting on January 17, 2023 that was targeted at Bexar County stakeholders. For that meeting, TCEQ contacted area elected officials, TSIA, Texas Clean Air Working Group, regional planning authorities in all of the areas in the state that implement I/M, the Bexar County Environmental Services Department, and the City of San Antonio Metropolitan Health District to invite their representatives to the meeting. Additionally, notice of the meeting was distributed as a bulletin to inspection machines statewide and shared through GovDelivery, TCEQ's Public Information Meeting on the Expansion of Vehicle Inspection and Maintenance (I/M) to Bexar County webpage, which was created for the meeting, and the events calendar on the TCEQ's homepage. The public information meeting was held virtually to maximize attendance, and time was set aside to receive input and questions from attendees.

No changes were made in response to this comment.

The EPA requested that TCEQ review opportunities to incorporate environmental justice (EJ) considerations adequately and appropriately into SIP revisions. The EPA encouraged the TCEQ to screen SIP revisions for EJ concerns and consider civil rights issues for potentially impacted communities early in the SIP revision process. The EPA recommended utilizing EJScreen and knowledge of the impacted area. The EPA expressed that the TCEQ should consider whether pollution sources contribute to community risk.

The purpose of this rulemaking is to implement I/M and set the testing fee applicable in Bexar County in accordance with EPA's guidance and FCAA requirements. TCEQ followed all relevant federal and state statutes, regulations, and guidance in the development of this rulemaking for the Bexar County nonattainment area.

This rulemaking is not the appropriate mechanism to address EJ issues. No federal or state statute, regulation, or guidance provides a process for evaluating or considering the socioeconomic or racial status of communities within an ozone nonattainment area. In a recent proposed approval of a TCEQ submittal for El Paso County, which did not include an EJ evaluation, EPA stated that the FCAA "and applicable implementing regulations neither prohibit nor require such an evaluation" (88 FR 14103). TCEQ continues to be committed to protecting Texas' environment and the health of its citizens regardless of location.

While EPA may encourage states to utilize EJScreen in rulemaking actions, it is not necessary, because the NAAQS are protective of all populations. If the NAAQS are not sufficient to protect public health, it is incumbent upon EPA to revise the NAAQS.

This rulemaking was developed in compliance with the policies and guidance delineated in TCEQ's Language Access Plan (LAP) and TCEQ's Public Participation Plan (PPP). The LAP helps ensure individuals with limited English proficiency may meaningfully access TCEQ programs, activities, and services in a timely and effective manner; and the PPP identifies the methods by which TCEQ interacts with the public, provides guidance and best practices for ensuring meaningful public participation in TCEQ activities, and highlights opportunities for enhancing public involvement in TCEQ activities and programs.

TCEQ translated the Plain Language Summaries, GovDelivery notices, Public Hearing notices, and SIP Hot Topics notices into Spanish for all projects. Newspaper publications were also in Spanish. Additionally, two Spanish translators were available at all hearings, and the notices included a statement that Spanish translation would be available at each hearing.

No changes were made in response to these comments.

PROGRAM DESIGN

AACOG, SAAS, OIS, TSIA, REI, and 13 individuals provided input on the maximum fees set for individual emissions inspections in Texas, with OIS and one individual providing similar input in written comments and oral testimony at the public hearing. AACOG, TSIA, OIS, and four individuals specifically commented on the proposed maximum fee of $11.50 for Bexar County, with AACOG commenting that the low fee is welcome because it will provide relief for the area's low-income drivers. TSIA, OIS, and the four individuals commented that the proposed fee for Bexar County is too low. Three individuals commented that they owned inspections stations that would close if

the fee were not increased. One individual stated they were a station owner in a neighboring county and, though they were unsure whether they would be part of the program, they would not consider conducting emissions inspections if the maximum fee were $11.50.

RIE, SAAS, OIS, TSIA, and 13 individuals commented on the I/M fee in general, all stating that the maximum fee should be increased, and RIE, SAAS, TSIA, and nine of those individuals recommended fees ranging from $22 to $40. OIS, TSIA, and nine individuals expressed concern that the proposed maximum inspection fee will not cover the costs associated with conducting the inspections. One individual commented that the previous TCEQ inspection fee survey indicated that the current fee rates are inadequate. The same individual indicated they participated in multiple inspection fee surveys and claimed that Texas has the lowest inspection fee in the United States.

OIS and two individuals commented on the consequences of not setting an adequate fee for emissions inspections in Texas. OIS and one individual warned that stations would stop offering inspections, which would lead to longer wait times and frustrated vehicle owners. One individual went on to describe a scenario in which inspection stations close on January 1, 2025, the end date for state vehicle safety inspections, and the long lines and angry vehicle owners result in negative media coverage holding TCEQ accountable for the situation. The individual indicated that the described outcome can be avoided by increasing the emissions inspection fee for all counties in the I/M program.

The commission adopts a maximum vehicle emissions inspection fee of $18.50 for the Bexar County I/M program. This amount was changed from the proposed fee of $11.50. The adopted fee of $18.50 for Bexar County is comparable to the maximum OBD fee of $18.50 for the Houston-Galveston-Brazoria (HGB) and Dallas-Fort-Worth (DFW) program areas. This amount is also consistent with the *Bexar County Inspection and Maintenance Program Study Final Report* (Bexar County I/M Study) that recommended an OBD fee for all program areas between $18 and $22. The Bexar County I/M Study is available at https://wayback.archive-it.org/414/20210528194434/https://www.tceq.texas.gov/assets/public/implementation/air/ms/IM/2020%20Bexar%20County%20IM%20Prog%20Study%20Report.pdf.

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Under THSC, §382.202(f), the commission is required to review the vehicle emissions fee for the I/M program every two years. The next fee study is planned for Fiscal Year 2024. The upcoming study will include a review of changes in costs associated with conducting emissions inspections and could include a review of fees in other states. If additional changes are determined to be necessary, rulemaking could be recommended for the commission's consideration.

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AACOG, OIS, TSIA, and two individuals referenced TCEQ's biennial fee analysis studies to assesses the adequacy of the vehicle emissions inspection fee. In addition to the 2020 fee study, TCEQ conducted a separate program study to explore the efforts needed to implement I/M in Bexar County. AACOG, OIS, TSIA, and the individuals

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referenced the proposed fee of $11.50 in comparison to the 2020 studies' recommendations. AACOG supported the decision, and OIS, TSIA, and the two individuals disagreed with it.

The commission adopts a maximum vehicle emissions inspection fee of $18.50 for the Bexar County I/M program. As mentioned above, this amount was changed from the proposed fee of $11.50 and is comparable to the maximum OBD fee of $18.50 for the HGB and DFW program areas. The adopted fee of $18.50 is also consistent with the Bexar County I/M Study that recommended a fee between $18 and $22. As previously mentioned, the 2024 fee study will specifically consider whether fees in all program areas, including Bexar County, should be changed in light of the elimination of the vehicle safety inspection program.

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The commission appreciates previous participation and looks forward to continued participation in studies regarding the vehicle emissions inspection fee.

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OIS commented that TCEQ is not statutorily required to set a price for emissions testing and that doing so enables potential legal action. OIS suggested that inspection stations be allowed to set their own fees and that specific signage could be prominently displayed for public view indicating the inspection fee at each station.

Emissions inspection fee authority is granted to the commission under Tex. Health & Safety Code (THSC), §382.202. While the statute provides some discretionary authority, the intent of the legislature is clear that the commission exercise authority to set emission inspection fees.

Additionally, since states are required under federal regulations to demonstrate adequate resources to implement their inspection and maintenance programs, and since Texas chose to implement a decentralized emission testing program, the commission's predecessor agencies submitted its fee authority and the fee rules to the EPA as part of its demonstration that the program would have adequate resources for implementation. EPA published approval of the Texas enhanced inspection and maintenance program, including the fees and resource demonstration, on November 14, 2001 (66 FR 57261). That approval made TCEQ's fee authority federally enforceable. No changes were made in response to this comment.

TSIA and 10 individuals commented in support of increasing the inspection fee in various counties other than Bexar County or statewide. One of these individuals commented that there is a significant demand for inspections compared to available inspection stations and without a fee increase, a significant amount of current stations, including three of their own, will close, making it harder for consumers to inspect and register their vehicles. The same individual commented that the higher fees charged in Dallas and Houston are allowing some stations to offer discounts in those areas, so supply and demand are more in balance at a $25.50 fee.

Revising the maximum vehicle emissions inspection fee charged by stations outside of Bexar County is beyond the scope of this rulemaking. No change was made in response to this comment.

OIS commented that TCEQ plans on eliminating 50% of inspection stations, recommending only 458 locations for Bexar County, which would cause motorists to drive further to locate an inspection station and wait four times as long.

The commission does not set the number of inspection stations in emissions testing areas. A 2020 Bexar County Inspection and Maintenance (I/M) Program Study suggested that the county would need approximately 458 inspection stations to adequately test the vehicle fleet for an I/M program. No change was made in response to this comment.

OIS and four individuals provided comments against the end of state safety inspections for noncommercial vehicles. One individual station owner stated their business would close, and OIS commented that the inspection industry will be dismantled when safety inspections end in 2025. An individual station owner offered that their customers are concerned that ending the safety inspection program will result in more cars being left alongside the road, and another individual commented that the safety inspection program helps avoid accidents. That individual went on to suggest that organizations should protest the statutory repeal of the program and keep roads and air safe.

One individual commented that the safety inspection program has contributed to Texas' greatness for 70 years. Another individual conveyed that inspection customers are frustrated by the current system and suggested that the answer is to improve it by modernizing and streamlining the testing process. The same individual provided an example suggestion of eliminating the emergency brake system test.

These comments are outside the scope of this rulemaking, which addresses requirements in the FCAA and 40 CFR Part 51, as amended, to implement a basic vehicle emissions I/M program in the Bexar County 2015 ozone NAAQS nonattainment area. This program is separate from the state's vehicle safety inspection program that will end on January 1, 2025 as a result of HB 3297, 88th Texas Legislature, Regular Session. No changes were made in response to this comment.

Comments were received from AACOG, DPS, OIS, TSIA, and two individuals concerning the proposed start of I/M in Bexar County, November 1, 2026. AACOG commented that it was critical to have as much time as possible to disseminate information about and to implement the program due to the planned end of state safety inspections on January 1, 2025. DPS suggested a start date of January 1, 2025 for vehicle emissions inspections in Bexar County to align with the end of non-commercial safety inspections. DPS commented that safety-only vehicle inspection stations will close and exit the program before January 1, 2025, creating a shortage of available stations when

the emissions inspection program begins in 2026. DPS also commented that the proposed start date of November 1, 2026 would potentially have a negative impact on existing safety stations, the process of closing inspection stations to then open up new stations several months later would be a significant increase in workload for the agency, and that the complexity of educating citizens on the inspection process for the next three years could cause significant confusion. OIS, TSIA, and an individual commented that starting I/M on the proposed date of November 1, 2026 would leave an inspections gap once safety inspections end that would be difficult for stations to endure financially. OIS and TSIA commented that the Bexar County I/M start date should be as close to the end date for safety inspections as possible. OIS went on to comment that there is no statutory requirement or mandate requiring TCEQ to establish a specific start date for I/M in Bexar County, including the proposed November 1, 2026 start date. OIS stated that TCEQ may choose to implement I/M in Bexar County starting January 1, 2025, eliminating the inspections gap, which would preserve the workforce, clean the air, and save lives. OIS added that San Antonio is a poor city but a growing city with poor air quality that needs to be cleaned up.

Under the FCAA, §182(i), states generally must meet new requirements associated with a reclassification according to the schedules prescribed in connection with such requirements. The I/M rules in 40 CFR Part 51, Subpart S allow areas newly required to establish programs up to four years after the effective date of reclassification, 40 CFR §§51.373(b), 51.352(c) and (e)(2). In its final reclassification rule published October 7, 2022 (87 FR 60897), EPA also took comment on, and established, the I/M program implementation deadline of no later than four years after the effective date of reclassification (November 7, 2026). The commission adopts this rulemaking with its proposed November 1, 2026 start date to ensure adequate time for delivery and setup of vehicle emissions inspection equipment and to work with partner agencies to develop and implement a public awareness plan. The commission is aware that the end of state safety inspections will occur before I/M starts in Bexar County and will work with DPS on the transition from safety-only inspections to emissions and commercial safety inspections. No changes were made in response to this comment.

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to Title 30 Texas Administrative Code (TAC) §§114.1, 114.2, 114.50, 114.53, and 114.309.

Amended §§114.2, 114.50, and 114.309 are adopted *without changes* to the proposed text as published in the June 16, 2023, issue of the *Texas Register* (48 TexReg 3174) and, therefore, will not be republished. Amended §§114.1 and 114.53 are adopted *with changes* to the proposed text and, therefore, will be republished.

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Amended §§114.1, 114.2, 114.50, 114.53, and 114.309 will be submitted 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 Adopted Rules

On October 7, 2022, the EPA published its reclassification of Bexar County from marginal to moderate nonattainment for the 2015 eight-hour ozone National Ambient Air Quality Standard (NAAQS), effective November 7, 2022 (87 *Federal Register* (FR) 60897). Bexar County is subject to the moderate nonattainment requirements in federal Clean Air Act (FCAA), §182(b). The FCAA and 40 Code of Federal Regulations (CFR) Part 51, as amended, require a basic vehicle emissions inspection and maintenance (I/M) program in ozone nonattainment areas classified as moderate, so the state must implement an I/M program in Bexar County. Rulemaking is required to

implement I/M and set the testing fee applicable in Bexar County, and a SIP revision is required to incorporate a Bexar County I/M program into the SIP. The rulemaking and SIP revision were due to the EPA by January 1, 2023, and implementation of the I/M program in Bexar County is required by November 7, 2026.

Also on October 7, 2022, the EPA published its reclassification of the 10-county Dallas-Fort Worth (DFW) area from serious to severe nonattainment for the 2008 eight-hour ozone NAAQS, effective November 7, 2022 (87 FR 60926). Beginning one year after reclassification to severe, participation in the federal reformulated gasoline (RFG) program is required in the 10-county DFW nonattainment area. RFG is gasoline that is blended to burn more cleanly than conventional gasoline to reduce smog-forming and toxic pollutants. In RFG-covered areas, the sale of gasoline that the EPA has not certified as reformulated is prohibited. Collin, Dallas, Denton, and Tarrant Counties are already covered under the federal RFG rules because they opted into the program effective January 1, 1995 under the 1979 one-hour ozone NAAQS (57 FR 46316, October 8, 1992).

Ellis, Johnson, Kaufman, Parker, Rockwall, and Wise Counties are currently subject to the state low Reid Vapor Pressure (RVP) rules in Chapter 114, Subchapter H, Division 1, but on November 7, 2023 they will be subject to the federal RFG program. To avoid overlapping applicability between the state RVP rules and the federal RFG program for those six counties, this rulemaking adoption removes these counties from the state

low RVP program.

During the 2019 Quadrennial review of Chapter 114, staff identified definitions that are no longer necessary. The obsolete definitions were associated with repealed agency programs and are not used in or applicable to current rules in Chapter 114. The adopted revisions remove these obsolete definitions.

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

Under FCAA, §110(l), the EPA cannot approve a SIP revision if it would interfere with attainment of the NAAQS, reasonable further progress toward attainment, or any other applicable requirement of the FCAA. The commission provides the following information to demonstrate why the adopted changes to the I/M program rules and low RVP requirements in Chapter 114 will not: negatively impact the status of the state's progress towards attainment, interfere with control measures, or prevent reasonable further progress toward attainment of the ozone NAAQS.

The adopted amendments to Chapter 114 revise 30 TAC Chapter 114, Subchapters A and C to add program-related definitions, identify vehicles in Bexar County that will be subject to vehicle emissions inspections, require emissions inspection stations in Bexar County to offer the on-board diagnostics (OBD) test approved by the EPA, and establish the maximum fee that Bexar County emissions inspection stations may charge for the OBD test. Additional details regarding the adopted Bexar County I/M program are

discussed in the Bexar County I/M SIP revision (Project No. 2022-027-SIP-NR), adopted concurrently with this rulemaking. These amendments do not affect the EPA-approved I/M program requirements for other areas, and the adopted requirements for the Bexar County I/M program meet EPA requirements for implementing an I/M program for moderate ozone nonattainment areas. Therefore, the adopted rulemaking will not negatively impact the state's progress towards attainment of the 2008 and 2015 eight-hour ozone NAAQS.

The adopted amendments to Chapter 114 also modify administrative aspects of 30 TAC Chapter 114, Subchapter H to remove Ellis, Johnson, Kaufman, Parker, Rockwall, and Wise Counties from the list of affected counties required to comply with the state's low RVP control requirements. The removal of these six counties from the state low RVP program will not interfere with attainment or maintenance of the NAAQS for the DFW area due to implementation of federal RFG requirements, which are more stringent than the state rules. The Chapter 114 low RVP program requires a maximum gasoline RVP of no greater than 7.8 pounds per square inch (psi) and has a seasonal applicability, the specific time period of the summer ozone season. The federal RFG program controls more components of gasoline as well as requiring a lower RVP for gasoline and has no seasonal limitations. The adopted revisions will not negatively impact the state's progress towards attainment of the 2008 and 2015 eight-hour ozone NAAQS.

Section by Section Discussion

The amendments to Chapter 114 revise 30 TAC Chapter 114, Subchapters A and C to repeal obsolete definitions and revise the I/M program rules to provide for implementation of the Bexar County program. The amendments also revise 30 TAC Chapter 114, Subchapter H to remove Ellis, Johnson, Kaufman, Parker, Rockwall, and Wise Counties from the list of affected counties required to comply with the state's low RVP control requirements.

The commission also adopts non-substantive changes to update the rules in accordance with current *Texas Register* style and format requirements, improve readability, establish consistency in the rules, remove outdated definitions identified during the Quadrennial review, and conform to the standards in the Texas Legislative Council Drafting Manual, September 2020. These non-substantive changes are not intended to alter the existing rule requirements in any way and may not be specifically discussed in this preamble.

Subchapter A: Definitions

§114.1. Definitions

The revisions remove obsolete definitions in this section that were identified during the 2019 Quadrennial review of Chapter 114 and have been reaffirmed by staff as no longer necessary and updated the mail code in the Texas Inspection and Maintenance State Implementation Plan definition to MC 206 from MC 166 as included in the

proposed rulemaking. The obsolete definitions were associated with repealed agency programs and are not used in or applicable to current rules in Chapter 114. The definitions removed are: Heavy-duty vehicle, Inherently low emission vehicle, Light-duty vehicle, Loaded mode inspection and maintenance test, Low emission vehicle, Mass transit authority, Reformulated gasoline, Tier I federal emission standards, Ultra low emission vehicle, and Zero emission vehicle. The remaining definitions are renumbered as appropriate.

§114.2. Inspection and Maintenance Definitions

The revisions add new language under the definition for Program area in §114.2(10) to reflect that the new Bexar County program area consists of Bexar County.

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. Vehicle Emissions Inspection Requirements

The revisions to §114.50(a) add new paragraph (5) to specify the program start dates, specify the model year vehicles in the Bexar County program area to be tested, and that all vehicle emissions testing stations must offer OBD tests. The new subparagraph (A) requires all Bexar County vehicles subject to I/M program requirements to receive the EPA-approved OBD test beginning November 1, 2026. The new subparagraph (B)

requires all vehicle emissions inspection stations in the Bexar County program area to offer the OBD test.

The revisions to §114.50(b) amend paragraphs (1), (3), and (6) by adding the Bexar County program area to the list of program areas subject to the control requirements of the subsection.

§114.53. Inspection and Maintenance Fees

The revision to §114.53(a) adds a new paragraph (4) to establish the maximum fee of $18.50 that Bexar County program area emissions inspection stations may charge for the OBD test. In 2020, TCEQ commissioned a study to help prepare for the future implementation of an I/M program in Bexar County. The study is available at https://wayback.archive-it.org/414/20210528194434/https://www.tceq.texas.gov/assets/public/implementation/air/ms/IM/2020%20Bexar%20County%20IM%20Prog%20Study%20Report.pdf. The study recommended a fee between $18 and $22. The Commission adopts a fee of $18.50, as the Commission finds that this amount is comparable to the existing OBD fee in the Houston-Galveston-Brazoria (HGB) and DFW program areas, and this amount is also consistent with the study's recommendation. The revision does not include provisions for the Bexar County program area to participate in the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP), which has not been funded since 2017 and all participating counties have opted out of the

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LIRAP. If TCEQ is reappropriated funding in the future to implement LIRAP or a similar program, TCEQ will initiate rulemaking to designate that Bexar County is eligible to participate effective upon the start date of the I/M program. The revision to §114.53(d)(4) adds a new paragraph that requires affected vehicle owners to remit $2.50 to the Department of Motor Vehicles (DMV) or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee to cover the costs to implement, maintain, administer, and enforce the required vehicle I/M program in Bexar County.

Subchapter H: Low Emission Fuels

Division 1: Gasoline Volatility

§114.309. Affected Counties

The revisions remove Ellis, Johnson, Kaufman, Parker, Rockwall, and Wise Counties from the list of affected counties required to comply with the state's low RVP control requirements. These six counties are subject to the federal RFG program as of November 7, 2023, prior to the anticipated effective date of this rulemaking, if adopted. Federal RFG program requirements are more stringent, and exempting these counties from the state low-RVP rules eliminates unnecessary overlapping state requirements.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking considering the regulatory impact

analysis requirements of Texas Government Code, §2001.0225, and determined that the adopted rulemaking does not meet the definition of a "Major Environmental Rule" as defined in that statute, and in addition, if it did meet the definition, will not be subject to the requirement to prepare a regulatory impact analysis. A "Major Environmental Rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Additionally, the adopted rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Tex. Gov't Code Ann., §2001.0225(a). Tex. Gov't Code Ann., §2001.0225 applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The adopted rulemaking's purpose is to implement the required vehicle I/M program in Bexar County and to remove certain counties in the DFW area from the state low RVP program since they will be subject to the federal RFG rules as of November 7,

2023. These changes are necessary to comply with federal requirements for the implementation of vehicle I/M programs required by 42 United States Code (U.S.C.) §7511a(a), FCAA, §182(b) for the Bexar County 2015 eight-hour ozone nonattainment area and to remove counties in the DFW 2008 eight-hour ozone severe nonattainment area from the state low RVP program that will become subject to requirements for RFG as required by 42 U.S.C. §7545, FCAA, §211(k)(10)(D). The requirement to implement and enforce vehicle I/M programs is specifically required for certain nonattainment areas by the FCAA, and the adopted revisions to 30 TAC Chapter 114 are anticipated to be used as a control strategy for demonstrating attainment of the 2015 eight-hour ozone NAAQS upon implementation of the program in the Bexar County area.

The adopted rulemaking implements requirements of 42 U.S.C. §7410, FCAA, §110, which requires states to adopt a SIP that provides for the implementation, maintenance, and enforcement of the NAAQS in each air quality control region of the state; as well as the removal of counties from the existing state low RVP program that will become subject to the requirements of the 42 U.S.C. §7545, FCAA, §211(k)(10)(D), as discussed elsewhere in this preamble. While 42 U.S.C. §7410, FCAA, §110 generally does not require specific programs, methods, or reductions in order to meet the standard, vehicle I/M programs are specifically required by the FCAA, as are the requirements for federal RFG for severe ozone nonattainment areas. The SIP must also 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 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, and when programs are specifically required, states may implement them with flexibility allowed under the statute and EPA rules. 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 U.S.C. §7410, FCAA, §110; nor does it allow states to ignore specific requirements of the FCAA. States are not free to ignore the requirements of 42 U.S.C. §7410, FCAA, §110 and must develop programs to assure that their contributions to nonattainment areas are reduced so that these areas can be brought into attainment on the schedule prescribed by the FCAA.

If a state does not comply with its obligations under 42 U.S.C., §7410, FCAA, §110 to submit SIPs that comply with the requirements of the FCAA, states are subject to discretionary sanctions under 42 U.S.C., §7410(m), FCAA, §110(m) or mandatory sanctions under 42 U.S.C., §7509, FCAA, §179 as well as the imposition of a FIP under 42 U.S.C., §7410, FCAA, §110(c).

As discussed earlier in this preamble, states are required to adopt SIPs with

enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the FCAA. As discussed in the FISCAL NOTE portion of the preamble to the proposed rule, the adopted rules are not anticipated to add any significant additional costs to affected individuals or businesses beyond what is necessary to attain the 2015 eight-hour ozone NAAQS, comply with the specific requirements for vehicle I/M programs, or 42 U.S.C. §7545, FCAA, §211(k)(10)(D) on 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. No comments were received.

The requirement to provide a fiscal analysis of regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th Legislative Session. 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 will 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.

As discussed earlier in this preamble, the FCAA does not always require specific programs, methods, or reductions in order to meet the NAAQS, but vehicle I/M programs are specifically required by the FCAA for moderate nonattainment areas, as are the requirements for federal RFG for severe ozone nonattainment areas; thus, states must develop programs for each nonattainment area to help ensure that those areas will meet the required attainment deadlines and comply with EPA requirements for vehicle I/M programs and the federal RFG program. Because of the ongoing need to meet federal requirements, the commission routinely proposes and adopts rules incorporating or designed to satisfy specific federal requirements. The legislature is presumed to understand this federal scheme. If each rule proposed by the commission to meet a federal requirement was considered to be a major environmental rule that exceeds federal law, then each of those rules would require the full regulatory impact analysis (RIA) contemplated by SB 633. Requiring a full RIA for all federally required rules 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, then the

intent of SB 633 is presumed to only to require the full RIA for rules that are extraordinary in nature. While the adopted rules may have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA and creates no additional impacts since the rules do not impose burdens greater than required to demonstrate attainment of the 2015 eight-hour ozone NAAQS and comply with the requirements for vehicle I/M programs and the federal RFG program as discussed elsewhere in this preamble.

For these reasons, the adopted rules fall under the exception in Texas Government Code, §2001.0225(a), because they are required by, and do not exceed, 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 RIA 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 subject to this standard.

As discussed in this analysis and elsewhere in this preamble, the commission has substantially complied with the requirements of Texas Government Code, §2001.0225. The adopted rules implement the requirements of the FCAA as discussed in this analysis and elsewhere in this preamble. The adopted rules were determined to comply with requirements for vehicle I/M programs and federal RFG requirements and will not exceed any standard set by state or federal law. These adopted rules are not an express requirement of state law. The adopted rules do not exceed a requirement of a delegation agreement or a contract between state and federal government, as the rules, if adopted by the commission and approved by EPA, will become federal law as part of the approved SIP required by 42 U.S.C., §7410, FCAA, §110. The adopted rules were not developed solely under the general powers of the agency but are authorized by specific sections of Texas Health and Safety Code (THSC), 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 THSC, §§382.011, 382.012, and

382.017. Therefore, this rulemaking adoption is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), taking means 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 §17 or §19, Article I, Texas Constitution; or a governmental action that 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 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 commission completed a takings impact analysis for the adopted rulemaking

action under the Texas Government Code, Chapter 2007. The primary purpose of this adopted rulemaking, as discussed elsewhere in this preamble, is to meet federal requirements for the implementation of vehicle I/M programs and removal of the six specified counties from the state low RVP program since they will become subject to the federal RFG program one year after reclassification to severe for the 2008 eight-hour ozone NAAQS. Therefore, Chapter 2007 does not apply to this adopted rulemaking because it is an action reasonably taken to fulfill an obligation mandated by federal law, as provided by Texas Government Code, §2007.003(b)(4).

As discussed elsewhere in this preamble, the adopted rulemaking implements requirements of the FCAA, 42 U.S.C., §7410, FCAA, §110 which requires states to adopt a SIP that provides for the implementation, maintenance, and enforcement of the NAAQS in each air quality control region of the state. While 42 U.S.C., §7410, FCAA, §110 generally does not require specific programs, methods, or reductions in order to meet the standard, vehicle I/M programs and federal RFG are specifically required by the FCAA. The SIP 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 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 U.S.C., §7410, FCAA, §110. States are not free to ignore the requirements of 42 U.S.C., §7410, FCAA, §110 and must develop programs to assure that nonattainment areas can be brought into attainment on the schedule prescribed by the FCAA.

States are required to adopt SIPs with enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the FCAA. If a state does not comply with its obligations under 42 U.S.C., §7410, FCAA, §110 to submit SIPs that meet the requirements of the FCAA, states are subject to discretionary sanctions under 42 U.S.C., §7410(m) or mandatory sanctions under 42 U.S.C., §7509, FCAA, §179; as well as the imposition of a FIP under 42 U.S.C., §7410, FCAA, §110(c).

The adopted rulemaking will not create any additional burden on private real property beyond what is required under federal law, as the rules, if adopted by the commission and approved by EPA, will become federal law as part of the approved SIP required by 42 U.S.C., §7410, FCAA, §110. The rules will not affect private real property in a manner that would require compensation to private real property owners under the

United States Constitution or the Texas Constitution. The adopted rulemaking will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the adopted rulemaking will not cause a taking under Texas Government Code, Chapter 2007. For these reasons, Texas Government Code, Chapter 2007 does not apply to this adopted rulemaking.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found the rulemaking is identified in the Coastal Coordination Act Implementation Rules, 31 TAC §29.11(b)(2) relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

Note: §505.11(b)(2) applies only to air pollutant emissions, on-site sewage disposal systems, and underground storage tanks. §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 will not affect any coastal natural resource areas because the rules only affect counties outside the CMP area and is, therefore, consistent with CMP goals and policies.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Public Comment

The commission offered a public hearing on July 6, 2023 at 7:00 p.m. in Arlington, Texas for the state RVP program, but no attendees registered to make comments on the record, so the public hearing was not opened. The commission held a public hearing on July 13, 2023 at 7:00 p.m. for the Bexar County I/M program in San Antonio, Texas, and testimony was received and transcribed for the record. The comment period closed on July 17, 2023. No comments were received regarding the removal of the six DFW area counties from the state low RVP program. Oral and/or written comments on the Bexar County I/M program proposal were received from the following: Alamo Area Council of Governments (AACOG); EPA Region 6; Official Inspection Station (OIS); Rema Investment Group, LLC (RIE); San Antonio Auto Service, LLC (SAAS); Texas State Inspection Association (TSIA); and 16 individuals. After the comment period closed, Texas Department of Public Safety (DPS) submitted a letter to TCEQ regarding the timeline for Bexar County vehicle emissions inspection implementation, which was added to the comments received for commission consideration on this SIP revision. Comments were received concerning the maximum fees set for individual emissions inspections in Bexar County as well as the other I/M counties in Texas. Comments were also received concerning the timing of the proposed start of the I/M program in Bexar County, TCEQ's outreach efforts associated with

implementing I/M in Bexar County, and the end of the state's safety inspection program.

Response to Comments

Comment

RIE, SAAS, and two individuals stated that they were in support of the proposal to implement I/M in Bexar County. AACOG expressed thanks to the TCEQ for holding the public hearing in San Antonio to provide residents an opportunity to testify on the proposal. OIS offered that committee hearings should not be timed or censored and commented that the rule comment period should be extended to allow DPS to hold information meetings in which inspectors and automotive store owners may participate.

Response

The commission appreciates support for the proposed rulemaking and public hearing. The commission complied with all applicable public notice and rulemaking requirements for this rulemaking: (Texas Government Code, Subchapter B, Chapter 2001; Texas Clean Air Act, THSC, §382.017; Texas Water Code, §5.103; 30 TAC Chapter 20; and 40 CFR §51.102). The comment period lasted for 45 days, longer than the required 30 days. The commission applied a time limit for providing oral testimony at its July 13, 2023 public hearing to allow as many potential attendees to participate as possible. No word limit was applied to written comments, which

were accepted during the entire 45-day comment period. DPS's outreach efforts are beyond the scope this rulemaking. No changes were made in response to this comment.

Comment

AACOG commented that because San Antonio is a poor city, elected officials are concerned about the impact the emissions inspection fee will have on residents. AACOG thanked TCEQ for including Bexar County elected officials in its outreach efforts and for listening to their concerns.

OIS commented that industry representatives should be notified about information meetings and allowed to provide input. OIS pointed out that the public information meetings held during development of the proposed rulemaking were scheduled for the middle of the workday and were poorly attended by shop owners. OIS noted that no in-person townhall meetings were offered, which was part of the process for previous I/M implementation. Without in-person townhall meetings, OIS stated, industry representatives are unable to participate in an open dialogue on the topic or to provide input, and elected officials do not have the opportunity to hear their input. Not providing an opportunity for elected officials to hear industry's perspective allows them to conclude that industry is supportive of the plan.

Response

The commission appreciates the support for its outreach efforts related to this rulemaking as well the comments suggesting additional outreach. For this rulemaking, the commission was required to offer a public hearing, which it did on July 13, 2023. Prior to that hearing, TCEQ provided information on I/M implementation in Bexar County at meetings held throughout development of this rulemaking. TCEQ presented on I/M implementation planning at a San Antonio Air Quality Technical Information Meeting on August 16, 2021, which was open to the public, and again at a November 8, 2022 meeting of the TSIA. TCEQ then held a public information meeting on January 17, 2023 that was targeted at Bexar County stakeholders. For that meeting, TCEQ contacted area elected officials, TSIA, Texas Clean Air Working Group, regional planning authorities in all of the areas in the state that implement I/M, the Bexar County Environmental Services Department, and the City of San Antonio Metropolitan Health District to invite their representatives to the meeting. Additionally, notice of the meeting was distributed as a bulletin to inspection machines statewide and shared through GovDelivery, TCEQ's Public Information Meeting on the Expansion of Vehicle Inspection and Maintenance (I/M) to Bexar County webpage, which was created for the meeting, and the events calendar on the TCEQ's homepage. The public information meeting was held virtually to maximize attendance, and time was set aside to receive input and questions from attendees.

No changes were made in response to this comment.

Comment

AACOG, SAAS, OIS, TSIA, REI, and 13 individuals provided input on the maximum fees set for individual emissions inspections in Texas, with OIS and one individual providing similar input in written comments and oral testimony at the public hearing. AACOG, TSIA, OIS, and four individuals specifically commented on the proposed maximum fee of $11.50 for Bexar County, with AACOG commenting that the low fee is welcome because it will provide relief for the area's low-income drivers. TSIA, OIS, and the four individuals commented that the proposed fee for Bexar County is too low. Three individuals commented that they owned inspections stations that would close if the fee were not increased. One individual stated they were a station owner in a neighboring county and, though they were unsure whether they would be part of the program, they would not consider conducting emissions inspections if the maximum fee were $11.50.

RIE, SAAS, OIS, TSIA, and 13 individuals commented on the I/M fee in general, all stating that the maximum fee should be increased, and RIE, SAAS, TSIA, and nine of those individuals recommended fees ranging from $22 to $40. OIS, TSIA, and nine individuals expressed concern that the proposed maximum inspection fee will not cover the costs associated with conducting the inspections. One individual commented that the previous TCEQ inspection fee survey indicated that the current fee rates are

inadequate. The same individual indicated they participated in multiple inspection fee surveys and claimed that Texas has the lowest inspection fee in the United States.

OIS and two individuals commented on the consequences of not setting an adequate fee for emissions inspections in Texas. OIS and one individual warned that stations would stop offering inspections, which would lead to longer wait times and frustrated vehicle owners. One individual went on to describe a scenario in which inspection stations close on January 1, 2025, the end date for state vehicle safety inspections, and the long lines and angry vehicle owners result in negative media coverage holding TCEQ accountable for the situation. The individual indicated that the described outcome can be avoided by increasing the emissions inspection fee for all counties in the I/M program.

Response

The commission adopts a maximum vehicle emissions inspection fee of $18.50 for the Bexar County I/M program. This amount was changed from the proposed fee of $11.50. The adopted fee of $18.50 for Bexar County is comparable to the maximum OBD fee of $18.50 for the HGB and DFW program areas. This amount is also consistent with the *Bexar County Inspection and Maintenance Program Study Final Report* (Bexar County I/M Study) that recommended an OBD fee for all program areas between $18 and $22. The Bexar County I/M Study is available at: https://wayback.archive-

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it.org/414/20210528194434/https://www.tceq.texas.gov/assets/public/implementation/air/ms/IM/2020%20Bexar%20County%20IM%20Prog%20Study%20Report.pdf.

Under THSC, §382.202(f), the commission is required to review the vehicle emissions fee for the I/M program every two years. The next fee study is planned for Fiscal Year 2024. The upcoming study will include a review of changes in costs associated with conducting emissions inspections and could include a review of fees in other states. If additional changes are determined to be necessary, rulemaking could be recommended for the commission's consideration.

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No changes were made in response to this comment.¶

Comment

AACOG, OIS, TSIA, and two individuals referenced TCEQ's biennial fee analysis studies to assesses the adequacy of the vehicle emissions inspection fee. In addition to the 2020 fee study, TCEQ conducted a separate program study to explore the efforts needed to implement I/M in Bexar County. AACOG, OIS, TSIA, and the individuals referenced the proposed fee of $11.50 in comparison to the 2020 studies' recommendations. AACOG supported the decision, and OIS, TSIA, and the two individuals disagreed with it.

Response

The commission adopts a maximum vehicle emissions inspection fee of $18.50 for the Bexar County I/M program. As mentioned above, this amount was changed

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from the proposed fee of $11.50 and is comparable to the maximum OBD fee of $18.50 for the HGB and DFW program areas. The adopted fee of $18.50 is also consistent with the Bexar County I/M Study that recommended a fee between $18 and $22. As previously mentioned, the 2024 fee study will specifically consider whether fees in all program areas, including Bexar County, should be changed in light of the elimination of the vehicle safety inspection program.

The commission appreciates previous participation and looks forward to continued participation in studies regarding the vehicle emissions inspection fee.

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Comment

OIS commented that TCEQ is not statutorily required to set a price for emissions testing and that doing so enables potential legal action. OIS suggested that inspection stations be allowed to set their own fees and that specific signage could be prominently displayed for public view indicating the inspection fee at each station.

Response

Emissions inspection fee authority is granted to the commission under Tex. Health & Safety Code (THSC), §382.202. While the statute provides some discretionary authority, the intent of the legislature is clear that the commission exercise authority to set emission inspection fees.

Additionally, since states are required under federal regulations to demonstrate adequate resources to implement their inspection and maintenance programs, and since Texas chose to implement a decentralized emission testing program, the commission's predecessor agencies submitted its fee authority and the fee rules to the EPA as part of its demonstration that the program would have adequate resources for implementation. EPA published approval of the Texas enhanced inspection and maintenance program, including the fees and resource demonstration, on November 14, 2001 (66 FR 57261). That approval made TCEQ's fee authority federally enforceable. No changes were made in response to this comment.

Comment

TSIA and 10 individuals commented in support of increasing the inspection fee in various counties other than Bexar County or statewide. One of these individuals commented that there is a significant demand for inspections compared to available inspection stations and without a fee increase, a significant amount of current stations, including three of their own, will close, making it harder for consumers to inspect and register their vehicles. The same individual commented that the higher fees charged in Dallas and Houston are allowing some stations to offer discounts in those areas, so supply and demand are more in balance at a $25.50 fee.

Response

Revising the maximum vehicle emissions inspection fee charged by stations outside of Bexar County is beyond the scope of this rulemaking. No change was made in response to this comment.

Comment

OIS commented that TCEQ plans on eliminating 50% of inspection stations, recommending only 458 locations for Bexar County, which would cause motorists to drive further to locate an inspection station and wait four times as long.

Response

The commission does not set the number of inspection stations in emissions testing areas. A 2020 Bexar County Inspection and Maintenance (I/M) Program Study suggested that the county would need approximately 458 inspection stations to adequately test the vehicle fleet for an I/M program. No change was made in response to this comment.

Comment

OIS and four individuals provided comments against the end of state safety inspections for noncommercial vehicles. One individual station owner stated their business would close, and OIS commented that the inspection industry will be dismantled when safety inspections end in 2025. An individual station owner offered

that their customers are concerned that ending the safety inspection program will result in more cars being left alongside the road, and another individual commented that the safety inspection program helps avoid accidents. That individual went on to suggest that organizations should protest the statutory repeal of the program and keep roads and air safe.

One individual commented that the safety inspection program has contributed to Texas' greatness for 70 years. Another individual conveyed that inspection customers are frustrated by the current system and suggested that the answer is to improve it by modernizing and streamlining the testing process. The same individual provided an example suggestion of eliminating the emergency brake system test.

Response

These comments are outside the scope of this rulemaking, which addresses requirements in the FCAA and 40 CFR Part 51, as amended, to implement a basic vehicle emissions I/M program in the Bexar County 2015 ozone NAAQS nonattainment area. This program is separate from the state's vehicle safety inspection program that will end on January 1, 2025 as a result of HB 3297, 88th Texas Legislature, Regular Session. No changes were made in response to this comment.

Comment

Comments were received from AACOG, DPS, OIS, TSIA, and two individuals concerning the proposed start of I/M in Bexar County, November 1, 2026. AACOG commented that it was critical to have as much time as possible to disseminate information about and to implement the program due to the planned end of state safety inspections on January 1, 2025. DPS suggested a start date of January 1, 2025 for vehicle emissions inspections in Bexar County to align with the end of non-commercial safety inspections. DPS commented that safety-only vehicle inspection stations will close and exit the program before January 1, 2025, creating a shortage of available stations when the emissions inspection program begins in 2026. DPS also commented that the proposed start date of November 1, 2026 would potentially have a negative impact on existing safety stations, the process of closing inspection stations to then open up new stations several months later would be a significant increase in workload for the agency, and that the complexity of educating citizens on the inspection process for the next three years could cause significant confusion. OIS, TSIA, and an individual commented that starting I/M on the proposed date of November 1, 2026 would leave an inspections gap once safety inspections end that would be difficult for stations to endure financially. OIS and TSIA commented that the Bexar County I/M start date should be as close to the end date for safety inspections as possible. OIS went on to comment that there is no statutory requirement or mandate requiring TCEQ to establish a specific start date for I/M in Bexar County, including the proposed November 1, 2026 start date. OIS stated that TCEQ may choose to implement I/M in

Bexar County starting January 1, 2025, eliminating the inspections gap, which would preserve the workforce, clean the air, and save lives. OIS added that San Antonio is a poor city but a growing city with poor air quality that needs to be cleaned up.

Response

Under the FCAA, §182(i), states generally must meet new requirements associated with a reclassification according to the schedules prescribed in connection with such requirements. The I/M rules in 40 CFR Part 51, Subpart S allow areas newly required to establish programs up to four years after the effective date of reclassification, 40 CFR §§51.373(b), 51.352(c) and (e)(2). In its final reclassification rule published October 7, 2022 (87 FR 60897), EPA also took comment on, and established, the I/M program implementation deadline of no later than four years after the effective date of reclassification (November 7, 2026). The commission adopts this rulemaking with its proposed November 1, 2026 start date to ensure adequate time for delivery and setup of vehicle emissions inspection equipment and to work with partner agencies to develop and implement a public awareness plan. The commission is aware that the end of state safety inspections will occur before I/M starts in Bexar County and will work with DPS on the transition from safety-only inspections to emissions and commercial safety inspections. No changes were made in response to this comment.

Comment

The EPA requested that TCEQ review opportunities to incorporate environmental justice (EJ) considerations adequately and appropriately into SIP revisions. The EPA encouraged the TCEQ to screen SIP revisions for EJ concerns and consider civil rights issues for potentially impacted communities early in the SIP revision process. The EPA recommended utilizing EJScreen and knowledge of the impacted area. The EPA expressed that the TCEQ should consider whether pollution sources contribute to community risk.

Response

The purpose of this rulemaking is to implement I/M and set the testing fee applicable in Bexar County in accordance with EPA's guidance and FCAA requirements. TCEQ followed all relevant federal and state statutes, regulations, and guidance in the development of this rulemaking for the Bexar County nonattainment area.

This rulemaking is not the appropriate mechanism to address EJ issues. No federal or state statute, regulation, or guidance provides a process for evaluating or considering the socioeconomic or racial status of communities within an ozone nonattainment area. In a recent proposed approval of a TCEQ submittal for El Paso County, which did not include an EJ evaluation, EPA stated that the FCAA "and applicable implementing regulations neither prohibit nor require such an

evaluation" (88 FR 14103). TCEQ continues to be committed to protecting Texas' environment and the health of its citizens regardless of location.

While EPA may encourage states to utilize EJScreen in rulemaking actions, it is not necessary, because the NAAQS are protective of all populations. If the NAAQS are not sufficient to protect public health, it is incumbent upon EPA to revise the NAAQS.

This rulemaking was developed in compliance with the policies and guidance delineated in TCEQ's Language Access Plan (LAP) and TCEQ's Public Participation Plan (PPP). The LAP helps ensure individuals with limited English proficiency may meaningfully access TCEQ programs, activities, and services in a timely and effective manner; and the PPP identifies the methods by which TCEQ interacts with the public, provides guidance and best practices for ensuring meaningful public participation in TCEQ activities, and highlights opportunities for enhancing public involvement in TCEQ activities and programs.

TCEQ translated the Plain Language Summaries, GovDelivery notices, Public Hearing notices, and SIP Hot Topics notices into Spanish for all projects. Newspaper publications were also in Spanish. Additionally, two Spanish translators were available at all hearings, and the notices included a statement that Spanish translation would be available at each hearing.

No changes were made in response to these comments.

SUBCHAPTER A: DEFINITIONS

§114.1, §114.2

Statutory Authority

The expansion of the vehicle I/M program to Bexar County is adopted under the

authority of Texas Water Code (TWC), §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act (TCAA).

The expansion of the vehicle I/M program to Bexar County is also adopted under THSC, §382.002, concerning 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, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air and THSC, §382.012, concerning State Air Control Plan, which authorizes of the commission to prepare and develop a general, comprehensive plan for the control of the state's air. Additionally, the expansion of the vehicle I/M program to Bexar County is authorized under THSC, §382.201, concerning Definitions, which specifies the definitions that apply under Subchapter G of the THSC, Vehicle Emissions; THSC, §382.202, concerning Vehicle Emissions Inspection and Maintenance Program, which authorizes the commission to establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of the federal Clean Air Act;

THSC, §382.203, concerning Vehicles Subject to Program; Exemptions, which establishes which vehicles are subject to the I/M program and which are exempt from it; and THSC, §382.205, concerning Inspection Equipment and Procedures, which authorizes the commission to adopt standards and specifications for motor vehicle emissions testing equipment, recordkeeping and reporting procedures, and measurable emissions standards, as well as consult with the Department of Public Safety of the State of Texas.

The adopted rules implement TWC, §§5.103, 5.105 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.017, 382.201-382.203 and 382.205.

§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 inspection stations for every new vehicle found to be in compliance with the rules and regulations governing safety inspections. Beginning on the single sticker transition date as defined in this section, 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 the single sticker transition date as defined in this section and vehicle registration and safety inspections beginning on the single sticker transition date.

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

(7) [(9)] 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 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) 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) 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 meet United States Environmental Protection Agency requirements for acceleration simulation mode equipment.]

[(12) 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) 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) 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).]

(8) [(15)] Single sticker transition date--The transition date of the single sticker system is the later of March 1, 2015, or the date that the Texas Department of Motor Vehicles and the Texas Department of Public Safety concurrently implement the single sticker system required by Texas Transportation Code, §502.047.

(9) [(16)] 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 and approved by the EPA[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~~ 206, Austin, Texas 78711-3087.

[(17) 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.]

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

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

(11) [(20)] Vehicle registration insignia sticker--The sticker issued through the Texas Department of Motor Vehicles (DMV) or county tax assessor-collector for a vehicle compliant with the DMV regulations. Beginning on the single sticker transition date as defined in this section, the vehicle registration insignia sticker, a current valid VIR, or other form of proof authorized by the DPS or the DMV 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.

[(21) 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; Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program; 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 for 90 seconds upon reaching and maintaining a constant speed of 15 miles per hour (mph) on a dynamometer that simulates acceleration at a rate of 3.3 mph per second by using 50% of the vehicle available horsepower; and

(B) the 25/25 mode--in which the vehicle is tested for 90 seconds upon reaching and maintaining a constant speed of 25 mph on a dynamometer that simulates acceleration at a rate of 3.3 mph per second by using 25% of the vehicle available horsepower.

(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; and[.]

(E) the Bexar County program area, consisting of Bexar County.

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

(12) Testing cycle--Before the single sticker transition date as defined in §114.1 of this title (relating to Definitions), the annual cycle commencing with the first safety inspection certificate expiration date for which a motor vehicle is subject to a vehicle emissions inspection or beginning on the single sticker transition date, the annual cycle commencing with the first vehicle registration expiration date for which a motor vehicle is subject to a vehicle emissions inspection.

(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:

(A) the vehicle safety inspection certificate prior to the single sticker transition date as defined in §114.1 of this title (relating to Definitions);

(B) the vehicle registration beginning on the single sticker transition date as defined in §114.1 of this title; or

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

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

DIVISION 1: VEHICLE INSPECTION AND MAINTENANCE

§114.50, §114.53

Statutory Authority

The expansion of vehicle I/M program to Bexar County is adopted under the authority of Texas Water Code (TWC), §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to carry out its powers and duties under the TWC; TWC, §.7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The expansion of vehicle I/M to Bexar County is also adopted under THSC, §382.002, concerning 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, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; and THSC, §382.012, concerning State Air Control Plan, which authorizes of the

commission to prepare and develop a general, comprehensive plan for the control of the state's air. Additionally, the expansion of vehicle I/M to Bexar County is authorized under THSC, §382.201, concerning Definitions, which specifies the definitions that apply under Subchapter G of the THSC, Vehicle Emissions; THSC, §382.202, concerning Vehicle Emissions Inspection and Maintenance Program, which authorizes the commission to establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of the federal Clean Air Act; THSC, §382.203, concerning Vehicles Subject to Program; Exemptions, which establishes which vehicles are subject to the I/M program and which are exempt from it; THSC, §382.204, concerning Remote Sensing Program Component, which requires the commission and the Department of Public Safety (DPS) to develop an enforcement program that includes a remote sensing component; THSC, §382.205, concerning Inspection Equipment and Procedures, which authorizes the commission to adopt standards and specifications for motor vehicle emissions testing equipment, recordkeeping and reporting procedures, and measurable emissions standards, as well as consult with the DPS; THSC, §382.206, Collection of Data; Report, which authorizes the collection of information derived from the emissions inspection and maintenance program; THSC, §382.207, Inspection Stations; Quality Control Audits; which requires standards and procedures for inspection stations as well as other specifics relating to transportation planning and quality control auditing; THSC, §382.208, Attainment Program, which requires the commission to coordinate with federal, state, and local transportation

planning agencies to develop and implement transportation programs and other measures necessary to demonstrate and maintain attainment; THSC, §382.209, Low-Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program, which authorizes the commission to establish and authorize the commissioners court of a participating county to implement a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program; and THSC, §382.210, Implementation Guidelines and Assistance, which requires the commission to adopt guidelines to assist a participating county in implementing a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program..

The adopted rules implement TWC, §§5.103, 5.105 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.017, 382.201-382.210.

§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) must 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 are excluded from the program. Safety inspection facilities and inspectors certified by the Texas Department of Public Safety (DPS) must 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 be tested using EPA-approved OBD test procedures.

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

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

(5) This paragraph applies to all vehicles registered and primarily operated in the Bexar County program area.

(A) Beginning November 1, 2026, all 2 - 24 year old subject vehicles equipped with OBD systems must be tested using EPA-approved OBD test procedures.

(B) Beginning November 1, 2026, all vehicle emissions inspection stations in the Bexar County program area must offer the 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, and Bexar County program areas that does not comply with:

(A) all applicable air pollution emissions control-related requirements included in the annual vehicle safety inspection requirements administered by the DPS as evidenced prior to the single sticker transition date as defined in §114.1 of this title (relating to Definitions) 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;

(B) beginning on the single sticker transition date, 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, a current valid VIR, or other form of proof authorized by the DPS or the DMV; and

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

(2) All federal government agencies must 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 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, or Bexar County 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 a written statement from the dealership or leasing agency indicating that emissions repairs have been completed.

(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 have emissions-related repairs performed and 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 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, or Bexar County 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, Subchapter E (relating to Vehicle Emissions Inspection and Maintenance Program).

(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 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, Subchapter E, which defers 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 unless all applicable air pollution emissions 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 consult with the DPS.

(2) Before the single sticker transition date as defined in §114.1 of this title, 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). Beginning on the single sticker transition date, 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 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 on the day before the single sticker transition date as defined in §114.1 of this title (relating to

Definitions), 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 collect a fee of $14 and 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 (LIRAP), the emissions inspection station in El Paso County must collect a fee of $16 and remit to the DPS $4.50 beginning upon the date specified by the commission and ending on the day before the single sticker transition date. Beginning on the single sticker transition date, any emissions inspection station in El Paso County 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 on the day before the single sticker transition date as defined in §114.1 of this title, 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 on the day before the single sticker transition date, any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(2)(A) or (B) of this title must collect a fee not to exceed $27. Beginning May 1, 2002 and ending on the day before the single sticker transition date in the Dallas-Fort Worth and the extended Dallas-Fort Worth

program areas, the emissions inspection station must remit to the DPS $2.50 for each acceleration simulation mode (ASM-2) test and $8.50 for each on-board diagnostics (OBD) test. Beginning on the single sticker transition date 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 on the day before the single sticker transition date as defined in §114.1 of this title, 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 on the day before the single sticker transition date, 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 collect a fee not to exceed $27. Beginning May 1, 2002 and ending on the day before the single sticker transition date in Brazoria, Fort Bend, Galveston, Harris, and Montgomery Counties, the emissions inspection station must remit to the DPS $2.50 for each ASM-2 test and $8.50 for each OBD test. Beginning on the single sticker transition date 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.

(4) In the Bexar County program area beginning November 1, 2026, any emissions inspection station in Bexar County required to conduct an emissions test in accordance with §114.50(a)(5)(A) or (B) of this title must collect a fee not to exceed $18.50.

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(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 set forth 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 for the state's remote sensing element must 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) Beginning on the single sticker transition date as defined in §114.1 of this title, 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, the following requirements apply.

(A) If participating in the LIRAP, vehicle owners shall remit $4.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee. Of the $4.50 remitted, $2.00 constitutes the LIRAP fee as defined in §114.7 of this title (relating to Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program Definitions).

(B) If participating in the LIRAP and in the process of opting out, vehicle owners shall remit $4.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee until the LIRAP fee termination effective date as defined in §114.7 of this title. Of the $4.50 remitted, $2.00 constitutes the LIRAP fee as defined in §114.7 of this title. Upon the LIRAP fee termination effective date, 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 annual vehicle registration as part of the vehicle emissions inspection fee.

(C) If not participating in the LIRAP, 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 annual vehicle registration as part of the vehicle emissions inspection fee.

(2) In the Dallas-Fort Worth and the extended Dallas-Fort Worth program areas, the following requirements apply.

(A) Vehicle owners in counties participating in the LIRAP 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 annual vehicle registration as part of the vehicle emissions inspection fee. Of the $8.50 remitted for OBD tests, $6.00 constitutes the LIRAP fee as defined in §114.7 of this title.

(B) Vehicle owners in counties participating in the LIRAP that are in the process of opting out 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 annual vehicle registration as part of the vehicle emissions inspection fee until the LIRAP fee termination effective date as defined in §114.7 of this title. Of the $8.50 remitted for OBD tests, $6.00 constitutes the LIRAP fee as

defined in §114.7 of this title. Upon the LIRAP fee termination effective date, vehicle owners in participating counties that are in the process of opting out of the LIRAP shall remit $2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee.

(C) Vehicle owners in counties not participating in the LIRAP shall remit $2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee.

(3) In the Houston-Galveston-Brazoria program area, the following requirements apply.

(A) Vehicle owners in counties participating in the LIRAP 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 annual vehicle registration as part of the vehicle emissions inspection fee. Of the $8.50 remitted for OBD tests, $6.00 constitutes the LIRAP fee as defined in §114.7 of this title.

(B) Vehicle owners in counties participating in the LIRAP that are in the process of opting out 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 annual vehicle registration as part of the vehicle emissions inspection fee until the LIRAP fee termination effective date as defined in §114.7 of this title. Of the $8.50 remitted for OBD tests, $6.00 constitutes the LIRAP fee as defined in §114.7 of this title. Upon the LIRAP fee termination effective date, vehicle owners in participating counties that are in the process of opting out of the LIRAP shall remit $2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee.

(C) Vehicle owners in counties not participating in the LIRAP shall remit $2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee.

(4) In the Bexar County program area, 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 annual vehicle registration as part of the vehicle emissions inspection fee.

SUBCHAPTER H: LOW EMISSION FUELS

DIVISION 1: GASOLINE VOLATILITY

§114.309

Statutory Authority

The removal of the six specified counties from the low Reid Vapor Pressure (LVP) program is adopted under the authority of Texas Water Code (TWC), §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorizes the commission to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The removal of the six specified counties from the low RVP program is also adopted under THSC, §382.002, concerning 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, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012 concerning State Air Control Plan, which authorizes of the commission to prepare and develop a general, comprehensive plan

for the control of the state's air; and THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act.

The adopted rules implement TWC, §§5.103, 5.105 and 7.002; and THSC, §§382.002, 382.011, 382.012 and 382.017.

§114.309. Affected Counties.

All affected persons in the following counties shall be in compliance with §§114.301 and 114.305 - 114.307 of this title (relating to Control Requirements for Reid Vapor Pressure; Approved Test Methods; Recordkeeping Requirements; and Exemptions) no later than the dates specified in §114.301(b) of this title: Anderson, Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bell, Bexar, Bosque, Bowie, Brazos, Burleson, Caldwell, Calhoun, Camp, Cass, Cherokee, Colorado, Comal, Cooke, Coryell, De Witt, Delta, [Ellis,] Falls, Fannin, Fayette, Franklin, Freestone, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Harrison, Hays, Henderson, Hill, Hood, Hopkins, Houston, Hunt, Jackson, Jasper, [Johnson,] Karnes, [Kaufman,] Lamar, Lavaca, Lee, Leon, Limestone, Live Oak, Madison, Marion, Matagorda, McLennan, Milam, Morris, Nacogdoches, Navarro, Newton, Nueces, Panola, [Parker,] Polk, Rains, Red River, Refugio, Robertson, [Rockwall,] Rusk, Sabine, San Augustine, San Jacinto, San Patricio, Shelby, Smith, Somervell, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Washington, Wharton, Williamson, Wilson, [Wise,] and Wood.

for the control of the state's air; and THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act.

The adopted rules implement TWC, §§5.103, 5.105 and 7.002; and THSC, §§382.002, 382.011, 382.012 and 382.017.

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