

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** October 20, 2023

Thru: Laurie Gharis, Chief Clerk
Kelly Keel, Interim Executive Director

From: Richard C. Chism, Director *RCC*
Office of Air

Docket No.: 2023-0317-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 114, Control of Air Pollution from Motor Vehicles
Expansion of Vehicle Emissions Inspection and Maintenance (I/M) to Bexar County
and Removal of Six Dallas-Fort Worth (DFW) Counties from the Regional Low Reid
Vapor Pressure (RVP) Gasoline Program
Rule Project No. 2022-026-114-AI

Background and reason(s) for the rulemaking:

On October 7, 2022, the United States Environmental Protection Agency (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, Subpart S, §51.350¹, as amended, require a basic vehicle emissions I/M program in ozone nonattainment areas classified as moderate. Rulemaking is required to implement I/M and set the testing fee applicable in Bexar County, and a state implementation plan (SIP) revision is required to incorporate a Bexar County I/M program into the SIP. The rulemaking and SIP revision were due to EPA by January 1, 2023, and implementation of the I/M program is required by November 7, 2026.

Also on October 7, 2022, EPA reclassified the 10-county DFW area from serious to severe nonattainment for the 2008 eight-hour ozone NAAQS, effective November 7, 2022 (87 FR 60926). On November 7, 2023, Ellis, Johnson, Kaufman, Parker, Rockwall, and Wise Counties will be subject to the federal reformulated gasoline program (RFG), which already applies for Collin, Dallas, Denton, and Tarrant Counties due to a voluntary opt-in 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 RVP rules in Chapter 114, Subchapter H, Division 1, and rulemaking is required to remove them from the state program to avoid overlapping applicability between the state and federal programs.

Scope of the rulemaking:

The rulemaking amends 30 Texas Administrative Code (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 EPA, and establish the maximum fee that Bexar County emissions inspection stations may charge for the OBD test. The associated Bexar County I/M SIP revision (Project No. 2022-027-SIP-NR) incorporates the I/M rules into the I/M SIP.

Additionally, the rulemaking revises §114.309 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. This rulemaking revises the SIP and includes a demonstration of non-interference with the SIP to meet FCAA, §110(l) requirements. The demonstration shows that removal of the 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,

¹ [40 CFR Part 51, Subpart S, §51.350](#)

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which are more stringent than the state rules. Implementation of the federal RFG program for the DFW area does not require rulemaking by the state.

A.) Summary of what the rulemaking will do:

The rulemaking amends 30 TAC Chapter 114. The revisions to §114.1 remove obsolete definitions that were identified during the 2019 Quadrennial review of Chapter 114 and have been reaffirmed by staff as no longer necessary and update 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 removed definitions 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 revisions amend §§114.2, 114.50, and 114.53 to implement a new Bexar County I/M program, including adding definitions; specifying the program start dates, the model year vehicles to be tested, and other control requirements; requiring that all vehicle emissions testing stations must offer OBD tests; and establishing the fees. The revisions establish the maximum fee of \$11.50 that Bexar County program area emissions inspection stations may charge for the OBD test. The adopted maximum fee of \$11.50 is comparable to the existing fee in the similar program areas of Austin-Round Rock and El Paso County and will help minimize costs to the public. The adopted revisions would also require affected vehicle owners to remit \$2.50 to the Texas 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.

The revisions amend §114.309 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 coverage of these counties under the federal RFG program beginning November 7, 2023. Federal RFG program requirements are more stringent than the state low-RVP rules and will apply without state rulemaking.

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

Implementation of an I/M program in Bexar County is required by 40 CFR Subchapter C, Part 51, Subpart S, §51.350(a)(4). Upon reclassification to moderate, Texas Health and Safety Code (THSC), §382.202 authorizes the Texas Commission on Environmental Quality (TCEQ, commission, or agency) to implement an I/M program in Bexar County and set the maximum fee for the OBD test.

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

The rulemaking removes obsolete definitions in 30 TAC Chapter 114 as identified during the 2019 Quadrennial review. The rulemaking 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. If the Governor and Texas Legislature provide funding for the LIRAP or a similar program, the Executive Director would initiate rulemaking to include Bexar County as an eligible participating county in the LIRAP.

Effective one year after an area is reclassified as a severe ozone nonattainment area under FCAA, §181(b), such a severe area will become a covered area under the RFG program as required by FCAA, §211(k)(10)(D). The geographic extent of each such covered area must be the nonattainment area boundaries as specified in 40 CFR Part 81, Subpart C, for the ozone NAAQS that was the subject of the reclassification. Removing Ellis, Johnson, Kaufman, Parker, Rockwall, and Wise Counties from the state's low RVP control requirements would alleviate overlapping rule

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applicability for the six DFW counties that will be newly covered under the required federal RFG program and would ensure effective application of the federal requirements.

Statutory authority:

The expansion of vehicle I/M to Bexar County and the removal of six specified counties from the state low RVP program are authorized 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 TWC and the THSC within the commission's jurisdiction; and under 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 and the removal of the six specified counties from the state low RVP program are also authorized 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; 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. Additionally, the expansion of vehicle I/M to Bexar County and removal of the six specified counties from the state low RVP program are 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 FCAA; 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 Department of Public Safety of the State of Texas; 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; and 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.

Effect on the:

A.) Regulated community:

For vehicle inspection station owners, participation in the Bexar County I/M program will be voluntary. Station owners that opt to participate will be required to purchase or lease vehicle emissions inspection equipment needed to perform vehicle emissions inspections. The estimated purchase price of the vehicle emissions inspection equipment is between \$6,895 and \$7,450 per device whereas the estimated price to lease is approximately \$200 per month. Station owners who choose not to participate may experience a reduction in the number of vehicles they inspect.

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Effective November 7, 2023, fuel terminals and gasoline-dispensing facilities in Ellis, Johnson, Kaufman, Parker, Rockwall, and Wise Counties will be required to comply with federal RFG regulations. Upon the effective date of EPA's approval of this rulemaking, if adopted by the commission, fuel terminals and gasoline-dispensing facilities in the six affected counties will no longer be subject to the state low-RVP rules.

B.) Public:

Owners of vehicles subject to emissions testing in Bexar County will pay an increased fee at the time of inspection and will pay an increased state portion of the inspection fee that is set by state statute and collected by DMV at the time of vehicle registration. Vehicle owners with failing inspections will be required to repair emissions-related malfunctions and pay the associated repair costs prior to obtaining their vehicle registration. Removal of the state's low RVP control requirements will not affect the public.

C.) Agency programs:

Implementing a Bexar County I/M program requires operational changes to the system used to collect vehicle emissions inspection data but without additional cost to the agency and without additional agency resources. TCEQ staff will coordinate implementation of a Bexar County I/M program with DPS and DMV. Removal of the state's low RVP control requirements will not affect agency programs.

Stakeholder meetings:

The commission held a public information meeting on January 17, 2023 to provide information on implementation of the Bexar County I/M program. Attendees included owners of vehicle inspection stations and vehicle repair facilities located in Bexar County, local county and government officials, and members of the public.

The removal of the state's low RVP control requirements was not discussed during the Bexar County public information meeting because this adopted change does not affect Bexar County.

Public Involvement Plan

Yes.

Alternative Language Requirements

Yes. Spanish.

Public comment:

The commission offered a public hearing on July 6, 2023 for the state RVP program in Arlington, Texas, but no attendees registered to make comment on the record, so the hearing was not opened. The commission held a public hearing on July 13, 2023 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's RVP program. Oral and/or written comments were received on the Bexar County I/M program proposal elements from the following: Alamo Area Council of Governments (AACOG); United States Environmental Protection Agency's Region 6 (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, 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. AACOG and EPA Region 6 generally supported the proposal. DPS, OIS, RIE, SAAS, TSIA, and 14 individuals wanted to start the program earlier than the

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implementation date in the proposal and OIS, RIE, SAAS, TSIA, and 14 individuals wanted either a higher maximum or no maximum vehicle emissions inspection fee. Two individuals expressed safety concerns relating to the repeal of state safety inspections for noncommercial vehicles by the state legislature. Commenters also expressed concern that without an earlier start date and a fee increase, there would be an inadequate number of stations to provide inspections.

Significant changes from proposal:

None.

Potential controversial concerns and legislative interest:

The current project timeline allows for submission to the EPA by the end of 2023, after the EPA's January 1, 2023, submittal deadline for the Bexar County I/M rule and SIP revision. Missing the submittal deadline could lead to the EPA issuing a finding of failure to submit prior to the TCEQ's planned submittal, which would start sanctions and federal implementation plan (FIP) clocks. The EPA would be required to promulgate a FIP anytime within two years after finding the TCEQ failed to make the required submission, unless the TCEQ submits, and the EPA approves a plan revision correcting the deficiency prior to promulgating the FIP. Sanctions could include transportation funding restrictions, grant withholdings, and 2-to-1 emissions offset requirements for new construction and major modifications of stationary sources in the Bexar County 2015 ozone nonattainment area.

Under the new I/M program, owners of vehicles subject to vehicle emissions inspections in Bexar County will incur increased inspection and registration fees. The Bexar County vehicle inspection station owners opting to participate will incur the cost of the vehicle emissions inspection equipment. During the public comment period, vehicle inspection station owners expressed concerns that the maximum inspection fee will be insufficient to remain profitable, forcing closure of stations. Additionally, the vehicle inspection station owners have concerns about the length of time between the repeal of state safety inspections for noncommercial vehicles on January 1, 2025, resulting from the passage of HB 3297 by the 88th Texas Legislature, and the implementation date of the new I/M program on November 1, 2026.

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

TCEQ staff does not anticipate that the rules will affect current policies or require development of new policies. The agency can handle the responsibilities with existing resources.

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

If the rulemaking and SIP revision are not adopted and submitted to the EPA, the state would be subject to sanctions and possibly a FIP imposed by the EPA to implement a Bexar County I/M program where the state failed to do so. There are no viable alternatives to adopting the rulemaking and SIP revision with the reclassification of Bexar County to moderate nonattainment, making the county subject to federal I/M SIP requirements.

Not removing the state's low RVP control requirements would create overlapping applicability between state and federal gasoline fuel requirements for the six affected counties.

Key points in the adoption rulemaking schedule:

Texas Register proposal publication date: June 16, 2023

Anticipated *Texas Register* adoption publication date: November 24, 2023

Anticipated effective date: November 30, 2023

Six-month *Texas Register* filing deadline: December 16, 2023

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