

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

If adopted, 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 Proposed 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 proposed rulemaking would remove 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 proposed revisions would 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 proposed 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 proposed amendments to Chapter 114 would revise 30 TAC Chapter 114, Subchapters A and C to add program-related definitions, identify vehicles in Bexar County that would 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 proposed Bexar County I/M program are discussed in the Bexar County I/M SIP revision (Project No. 2022-027-SIP-NR), proposed concurrently with this rulemaking. These amendments do not affect the EPA-approved I/M program requirements for other areas, and the proposed requirements for the Bexar County I/M program meet EPA requirements for implementing an I/M program for moderate ozone nonattainment areas. Therefore, the proposed rulemaking would not negatively impact the state's progress towards attainment of the 2008 and 2015 eight-hour ozone NAAQS.

The proposed amendments to Chapter 114 would 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 would 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 proposed revisions would not negatively impact the state's progress towards attainment of the 2008 and 2015 eight-hour ozone NAAQS.

Section by Section Discussion

The proposed amendments to Chapter 114 would 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 proposed amendments would also amend 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 proposes 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 by 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 proposed revisions would 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. The obsolete definitions were associated with repealed agency programs and are not used in or applicable to current rules in Chapter 114. The definitions proposed for removal 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 will be renumbered as appropriate.

§114.2. Inspection and Maintenance Definitions

The proposed revisions would 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 proposed revisions to §114.50(a) would 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 proposed new subparagraph (A) would require all Bexar County vehicles subject to I/M program requirements to receive the EPA-approved OBD test beginning November 1, 2026. The proposed new subparagraph (B) would require all vehicle emissions inspection stations in the Bexar County program area to offer the OBD test.

The proposed revisions to §114.50(b) would 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 proposed revision to §114.53(a) would add a new paragraph (4) to establish the maximum fee of \$11.50 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; however, the proposed maximum fee of \$11.50 for the Bexar County I/M program 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 proposed revision will 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 LIRAP. If the TCEQ is reappropriated funding in the future to implement LIRAP or a similar program, the TCEQ would initiate rulemaking to designate that Bexar County is eligible to participate effective upon the start date of the I/M program. The proposed revision to §114.53(d)(4) would add a new paragraph that requires affected vehicle owners remit \$2.50 to the 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 proposed revisions would 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 will become subject to the federal RFG program beginning 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 will eliminate the unnecessary overlapping state requirements.

Fiscal Note: Costs to State and Local Government

Kyle Girtten, an Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rules are in effect, fiscal implications are anticipated for state and local government as a result of administration or enforcement of the proposed rule.

The agency estimates the implementation of amendments to the proposed rule in §§114.2, 114.50, and 114.53 will result in an increase in revenue received by TCEQ and Texas Department of Public Safety (DPS). The proposed rulemaking would cause the Texas Department of Motor Vehicles (DMV) to collect \$2.50 per registration issued when the I/M program begins on November 1, 2026 in Bexar County. During the first year, two months of revenue would be collected during calendar year 2026. During the next four years, twelve months of revenue would be collected. TCEQ would receive \$0.50 in revenue per vehicle registration issued to cover the costs of developing test

and equipment specifications, developing a testing program, and providing assistance through a registration denial program. The remaining \$2.00 of the fee would be received by DPS to cover the cost of training technicians on the I/M program, staffing of waiver stations, and enforcement of I/M program requirements. The agency estimates TCEQ will receive as much as \$132,903 in the first year the rule is implemented for two months (\$797,418 annualized), increasing at an assumed 3% annual increase up to \$897,501 in the fifth year after implementation.

Correspondingly, DPS would receive as much as \$531,612 in the first year (\$3,189,672 annualized) and increase to as much as \$3,590,004 in the fifth year.

The agency estimates that approximately 114 governmental entities with gasoline-powered vehicles registered in Bexar County, including cities, state governments, water districts, river authorities, and independent school district will be required pay vehicle I/M program and repair costs as a result of implementation of the proposed rule. It is estimated that there will be a total of 10,553 governmental vehicles impacted in the first year increasing by 3% annually to 11,877 estimated vehicles in the fifth year. All entities would be responsible for the \$2.50 to be collected by the DMV per vehicle and any necessary vehicle repair costs. The fees paid to the DMV are estimated at \$3,957 in the first year increasing to a total of \$26,724 in the fifth year. The total repair cost, assuming a 4% failure rate on inspections and \$400 per repair would be approximately \$25,327 in the first year (\$151,962 annualized), increasing to \$171,032 in the fifth year. Some of these entities conduct their own inspections, in which case they would be responsible for purchasing or renting equipment to conduct inspections and

additional phone or internet service costs. Entities that pay for their inspections would be responsible for paying an emissions inspection fee not to exceed \$11.50 per vehicle to a vendor.

Public Benefits and Costs

Mr. Girten determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated will be a reduction of pollutants that contribute to ozone formation in Bexar County. Failure to conduct this rulemaking could result in sanctions and possibly a federal implementation plan (FIP) imposed by the EPA.

The proposed rulemaking would result in fiscal implications for businesses and individuals in Bexar County. Individuals and organizations that own vehicles subject to I/M testing will have to pay more for vehicle inspections and registrations. Subject vehicles must pass the inspection prior to receiving their vehicle registration. In total, 264,223 vehicles for businesses and individuals are estimated to be inspected in the first year (1,585,338 annualized), increasing to 1,784,313 in the fifth year. The total estimated cost, including the emissions inspection fee of \$11.50, the costs of repairs that would be needed to pass the OBD test, and the state's portion of the inspection fee of \$2.50 is estimated at \$7.9 million in the first year (\$47.5 million annualized) increasing to \$53.5 million in the fifth year.

The proposed rulemaking would increase revenue for entities that conduct I/M testing and vehicle repairs. Currently, 654 stations conduct vehicle safety inspections in Bexar

County, including 544 that offer inspections to the public. Entities that provide the OBD test would earn an amount not to exceed \$11.50 in revenue for each inspection, totaling as much as \$3 million in the first year (\$18.2 million annualized) increasing to as much as \$20.5 million in the fifth year. These and other entities that can conduct necessary repairs so vehicles are able to pass the OBD test are estimated to receive as much as \$4.2 million for these services in the first year (\$25.2 million annualized), increasing to as much as \$28.5 million in the fifth year.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the

implementation or administration of the proposed rule for the first five-year period the proposed rules are in effect.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions or eliminate current employee positions. The proposed rulemaking will result in an increase in fees received by TCEQ and DPS. The TCEQ would receive \$0.50 in revenue per vehicle registration issued to cover the costs of developing test and equipment specifications, developing a testing program, and providing assistance through a registration denial program. The DPS would receive \$2.00 per vehicle registration to cover the cost of training technicians on the I/M program, staffing of waiver stations, and enforcement of I/M program requirements.

The proposed rulemaking increases the number of individuals subject to its applicability, to include individuals and entities in Bexar County with gas-powered vehicles that are 2-24 years old upon implementation of the program. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking considering the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed 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, would 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 proposed 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 proposed 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 proposed 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, as discussed elsewhere in this preamble.

The proposed 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 this preamble, the proposed 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.

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

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 area contributing to nonattainment to help ensure that those areas will meet the required attainment deadlines and that 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 proposed 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 proposed 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 proposed 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 proposed rules implement the requirements of the FCAA as discussed in this analysis and elsewhere in this preamble. The proposed 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 proposed rules are not an express requirement of state law. The proposed rules do not exceed a requirement of a delegation agreement or a contract between state and federal government, as the proposed 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 proposed 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 proposed rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invites public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

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 proposed rulemaking action under the Texas Government Code, Chapter 2007. The primary purpose of this proposed rulemaking action, 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 proposed 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 proposed 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 their contributions to nonattainment areas are reduced so that these 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 proposed rules will not create any additional burden on private real property beyond what is required under federal law, as the proposed 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 proposed 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 proposal also 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 proposed 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 proposed rulemaking.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §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.

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

Announcement of Hearing

The commission will offer public hearings on this proposal in Arlington on July 6, 2023 at 7 p.m. in the Arlington City Council Chambers located at 101 W Abrams St, Arlington, Texas 76010 and in San Antonio on July 13, 2023 at 7 p.m. in Suite 101 of the Alamo Area Council of Governments located at 2700 NE Loop 410, San Antonio, Texas 78217. The hearings are structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-

3087, or faxed to *fax4808@tceq.texas.gov*. Electronic comments may be submitted at: <https://tceq.commentinput.com/comment/search>. File size restrictions may apply to comments being submitted via the TCEQ Public Comments system. All comments should reference Rule Project Number 2022-026-114-AI. The comment period closes on July 17, 2023. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at https://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Edgar Gilmore, Air Quality Planning Section, 512-239-2069.

SUBCHAPTER A: DEFINITIONS

§114.1, §114.2

Statutory Authority

The expansion of vehicle I/M to Bexar County is proposed 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 vehicle I/M to Bexar County is also proposed 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; 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 proposed 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, 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 to Bexar County is proposed 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 proposed 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 proposed 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 \$11.50.

(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 proposed removal of the six specified counties from the low Reid Vapor Pressure (LVP) program is proposed 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 proposed removal of the six specified counties from the low RVP program is also proposed 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 proposed 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.