The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to 30 Texas Administrative Code (TAC) §§114.1, 114.2, 114.7, 114.50, 114.51, 114.53, 114.60, 114.64, 114.66, 114.72, 114.80, 114.81, 114.82, 114.84, and 114.87.

If adopted, amended §§114.1, 114.2, 114.50, 114.51, 114.53, 114.80, 114.81, 114.82, 114.84, and 114.87 will be submitted to the U.S. Environmental Protection Agency (EPA) as a revision to the State Implementation Plan (SIP).

Background and Summary of the Factual Basis for the Proposed Rules

Eighteen counties in Texas are subject to 30 TAC Chapter 114 inspection and maintenance (I/M) rules and the I/M SIP: Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties in the Dallas-Fort Worth (DFW) area; Brazoria, Fort Bend, Galveston, Harris, and Montgomery Counties in the Houston-Galveston-Brazoria (HGB) area; Travis and Williamson Counties in the Austin-Round Rock (ARR) area; and El Paso County. The commission adopted revisions to Chapter 114 and the I/M SIP on November 29, 2023, to implement an I/M program in Bexar County by no later than November 1, 2026 (Project Nos. 2022-026-114-AI and 2022-027-SIP-NR).

The I/M rules require the commission to implement the I/M program in conjunction with the Texas Department of Public Safety (DPS) and require vehicles registered in I/M counties to pass an emissions inspection at the time of their annual safety inspection.

The 88th Texas Legislature, 2023, Regular Session, passed two bills that impact the Texas I/M program and require rulemaking and a revision to the I/M SIP. House Bill (HB) 3297 eliminated the mandatory annual vehicle safety inspection program for noncommercial vehicles, effective January 1, 2025. A rulemaking and SIP revision are required to remove references and requirements related to the state's safety inspection program and to revise several provisions in the SIP that are outlined in the bill. Senate Bill (SB) 2102 extends the initial registration and inspection period for rental vehicles from two years to three years. A rulemaking and SIP revision are required to allow one additional year of exemption from emissions inspections for rental vehicles.

The rulemaking will also provide for an overall clean-up of the rule language to remove outdated program-related definitions, references, and requirements. This clean-up is a result of the 2023 quadrennial rule review required for Chapter 114. The clean-up process will include revisions to the rule and SIP to remove a provision of the I/M rule related to vehicles operated by any federal government agency employee under the jurisdiction of a federal government agency that has not been approved as part of the Texas SIP by EPA.

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

Under FCAA, §110(l), EPA cannot approve a SIP revision if it would interfere with attainment of the National Ambient Air Quality Standards (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 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 or carbon monoxide (CO) NAAQS.

The proposed amendments would revise 30 TAC Chapter 114, Subchapters A and C to implement HB 3297 and provide for an overall clean-up of the rule language to remove outdated program-related definitions, references, and requirements. The requirement related to vehicles operated by any federal government agency employee under the jurisdiction of a federal government agency, which would be removed from the I/M rule, has not been approved by EPA as part of the Texas SIP. These amendments do not affect EPA-approved I/M program requirements; therefore, the proposed rulemaking would not negatively impact the state's progress towards attainment of the ozone NAAQS or maintenance of the CO NAAQS.

The proposed amendments to Chapter 114 would also modify Subchapter C to implement SB 2102, extending the initial registration and inspection period for rental vehicles to three years. TCEQ and DPS have implemented an I/M program that meets or exceeds the low-enhanced I/M performance standard required by 40 Code of Federal Regulations (CFR), Part 51. To implement the new requirements for Texas I/M programs specified in SB 2102, TCEQ is proposing updates to the vehicle emissions testing programs for the DFW area, HGB area, ARR area, Bexar County, and El Paso

County. The updated I/M program's implementation year is anticipated to be 2026. Evaluating whether an updated I/M program meets EPA's enhanced performance standard requires demonstrating that the existing program emission rates for nitrogen oxides and volatile organic compounds do not exceed the benchmark program's emission rates. The benchmark program's emission rates include a 0.02 grams per mile buffer for each pollutant. Using the requirements in EPA guidance document, *Performance Standard Modeling for New and Existing Vehicle Inspection and Maintenance (I/M) Programs Using the MOVES Mobile Source Emissions Model* (EPA-420-B-22-034, October 2022), TCEQ performed the required performance standard modeling (PSM) analysis of the five program areas, as detailed in the accompanying HB 3297 and SB 2102 Implementation I/M SIP Revision (Project Number 2025-013-SIP-NR). The analysis demonstrates that the updated DFW area, HGB area, ARR area, Bexar County, and El Paso County I/M program emission rates do not exceed the performance standard benchmark emission rates for all counties required to operate an I/M program within these areas. Therefore, the I/M program performance requirement is met for the updated I/M program in all areas. Additionally, the PSM analysis indicates that ozone precursor emission impacts due to the proposed I/M program updates will be negligible and would not be expected to interfere with any applicable FCAA requirement concerning attainment and reasonable further progress of the ozone NAAQS.

Data from the Texas Department of Motor Vehicles (DMV) indicate that the number of rental vehicles titled in Texas that would be exempt under this provision is

approximately 76,000. This is 0.3% of the overall Texas fleet. Additionally, these vehicles are expected to be the newest model year vehicles and, as such, are expected to meet the required emissions standards even though they are not tested since newer vehicles typically pass emissions inspections at higher rates than older vehicles. This proposed revision due to the passage of SB 2102 would not negatively impact the state's progress towards attainment of the 2008 and 2015 eight-hour ozone NAAQS. While PSM is not required by EPA for CO maintenance areas such as El Paso County, this small percentage of the fleet is not expected to negatively impact maintenance of the CO NAAQS in El Paso County, which is under an approved limited maintenance plan.

Section by Section Discussion

The proposed amendments would revise the I/M program rules to provide for implementation of HB 3297 and SB 2102 and would remove obsolete definitions. Proposed amendments would also remove a state I/M requirement from the rule and state-adopted SIP to be consistent with the EPA-approved federally enforceable Texas SIP. Amendments to clean up Chapter 114 rules result from the 2023 quadrennial rule review process.

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, 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 rulemaking would remove obsolete definitions in §114.1 that have been affirmed by staff as no longer necessary and would revise an additional definition. The obsolete definitions were associated with outdated references to safety inspections and first vehicle registration that are not used in or applicable to current rules in Chapter 114 as proposed. The definitions proposed for removal are first safety inspection certificate and first vehicle registration. The definition for single sticker transition date, which was needed temporarily to implement HB 2305, 83rd Texas Legislature, 2013, Regular Session, is not being proposed for removal in this rulemaking because it is referenced in Chapter 114, Subchapter B, which is not open for this rulemaking. The commission may consider removing this outdated definition in a future rulemaking. The proposed revision to the definition for vehicle registration insignia sticker would remove the reference to the single sticker transition date as that date has passed and the reference is no longer necessary. The remaining definitions would be renumbered as appropriate.

§114.2. Inspection and Maintenance Definitions

The proposed rulemaking would remove obsolete definitions in §114.2 that have been affirmed by staff as no longer necessary, would revise additional definitions, and

would add one definition. The obsolete definitions were associated with outdated test sequences and definitions that are not used in or applicable to current rules in Chapter 114 as proposed. The definitions proposed for removal are acceleration simulation mode (ASM-2) test, consumer price index, controller area network (CAN), low-volume emissions inspection station, two-speed idle (TSI) inspection and maintenance test, and uncommon part. The proposed revision to the definition for testing cycle would remove the reference to the single sticker transition date as previously defined.

The program area definitions in existing §114.2(10), which would be renumbered to §114.2(6), would be revised to combine the DFW program area definition in existing subparagraph (A) with the extended DFW program area definition in existing subparagraph (D) into a revised subparagraph (A). Existing subparagraph (D) would be removed, and existing subparagraph (E) would be renumbered as (D). These proposed amendments to the definition for program area would not change the meaning of the I/M program areas but would bring together all of the DFW area counties under one subparagraph for clarity.

The proposed revisions would add a definition for rental vehicle in §114.2(7) to accommodate proposed rule amendments associated with implementation of SB 2102. The remaining definitions would be renumbered as appropriate.

§114.7. Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program Definitions

The proposed revisions to §114.7 would update the definitions of automobile dealership, proof of transfer, and replacement vehicle. The statutory reference for automobile dealership is not valid; therefore, the proposed revision would replace that term with dealer to match the updated statutory reference in Texas Transportation Code (TTC) §503.001(4). Proposed revisions would also modify the definition to reference a person instead of a business, also to match the updated statutory reference. The proposed revision to proof of transfer would update the term automobile dealer to dealer. The proposed revision to replacement vehicle would modify the definition by removing the requirement that a vehicle have a passing safety inspection to be eligible as a replacement vehicle since the state's mandatory annual vehicle safety inspection program for noncommercial vehicles was eliminated on January 1, 2025. The definitions would be renumbered as appropriate.

Subchapter C: Vehicle Inspection and Maintenance; Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program; and Early Action Compact Counties

§114.50. Vehicle Emissions Inspection Requirements

The proposed revisions to §114.50 would add an emissions inspection exception for rental vehicles, combine I/M program applicability subsections, simplify language concerning test procedures, remove references to the extended DFW program area, remove obsolete references to safety inspections, remove references to the single sticker transition date, and remove a provision that is not part of the EPA-approved I/M SIP for Texas.

Subsection (a) would be revised to add an exception for rental vehicles under emissions inspection applicability provisions that extends their initial inspection period to three years. This amendment is proposed as a result of the passage of SB 2102. Due to passage of HB 3297, which eliminated the mandatory annual vehicle safety inspection program for noncommercial vehicles, the amendments to subsection (a) would include replacing a reference to safety inspection facilities with a reference to inspection facilities.

The proposed revisions would amend §114.50(a)(1) – (4) to combine the I/M program test procedure and applicability provisions for the DFW program area, the HGB program area, and El Paso County under proposed §114.50(a)(1) for clarity and readability, while also removing outdated references to program areas and other outdated references noted further below. The proposed revision would remove paragraphs (a)(2), (a)(3), and (a)(4) and renumber the remaining paragraphs. The proposed revision would remove subparagraphs (a)(1)(A), (B), and (C) as the acceleration simulation mode (ASM) test is no longer used and only the on-board diagnostic (OBD) test applies now. The proposed revisions would remove the references to the extended DFW program area in paragraphs (a)(2), (b)(1), (b)(3), and (b)(6) as that definition is no longer representative of the DFW program area. The proposed revisions would remove references to safety inspections in paragraphs (b)(1)(A) and (d)(1) that are no longer applicable to current rules in Chapter 114 due to the passage of HB 3297. The proposed revisions would remove the references to the

single sticker transition date in paragraphs (b)(1)(B) and (d)(2) as that date has passed and the references are no longer necessary. Existing §114.50(a)(5) would be renumbered as §114.50(a)(2).

This proposed rulemaking would also remove §114.50(b)(2) related to vehicles operated by any federal government agency employee under the jurisdiction of a federal government agency. The provision was first adopted in a 1999 rulemaking, and EPA has not approved this requirement as part of the SIP. EPA did not include the provision in its final approval, published on November 14, 2001 (66 FR 57261). EPA indicated in an April 15, 2014, (79 FR 21179) action that it "will not approve or disapprove the specific requirements of 30 TAC §114.50(b)(2)" because "EPA did not require the state to implement or adopt this reporting requirement dealing with federal installation within I/M areas at the time of program approval." Thus, removing the provision would align the I/M program rules in Subchapter C, Division 1 with federal program requirements and the I/M rules in the EPA-approved SIP. Since existing paragraph (b)(2) would be removed, subsequent paragraphs under subsection (b) would be renumbered.

§114.51. Equipment Evaluation Procedures for Vehicle Exhaust Gas Analyzers

The proposed revision to §114.51 would update the hyperlink location for the most recent version of the "Specifications for Vehicle Exhaust Gas Analyzer Systems for Use in the Texas Vehicle Emissions Testing Program."

§114.53. Inspection and Maintenance Fees

The proposed revisions to §114.53 would combine I/M program fee requirements for several areas, add abbreviations, remove reference to the single sticker transition date, remove reference to the extended DFW program area, and remove language concerning fees associated with the outdated ASM test.

As with proposed amendments to §114.50, provisions in §114.53(a)(1) – (3) would be revised to combine I/M program fee provisions for the DFW program area, the HGB program area, and El Paso County under a revised §114.53(a)(1). Existing paragraphs (2) and (3) would be removed, and existing §114.53(a)(4) would be renumbered as proposed §114.53(a)(2). The proposed revisions to §114.53(a)(4) would update the reference from §114.50(a)(5)(A) to §114.50(a)(2)(A) as it would be renumbered.

The proposed revisions to §114.53(d) would remove reference to the single sticker transition date as that date has passed and the reference is no longer necessary. Reference to the extended DFW program area in §114.53(d)(2) would be removed as that definition is no longer necessary for describing the DFW area counties subject to I/M requirements, and language concerning the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) fees in §114.53(d)(2)(A) and (B) and §114.53(d)(3)(A) and (B) would be revised to remove references to the outdated ASM test and associated LIRAP fee for that test.

§114.60. Applicability for LIRAP

The proposed revisions to §114.60 would update references to statute that were amended by SB 1303, 82nd Texas Legislature, 2011, Regular Session. SB 1303 amended THSC, §382.209(c)(1) by updating a reference of TTC, §§502.274 or 502.275 to TTC, §§504.501 or 504.502. SB 1303 was a general code update bill prepared by the Texas Legislative Council to make non-substantive amendments to enacted codes. TTC, §§502.274 and 502.275 had been removed from statute when HB 2971 repealed TTC, Chapter 502, Subchapter F during the 78th Texas Legislature, 2003, Regular Session. The proposed revisions would change the reference to TTC, §502.274 in §114.60(c)(4) to TTC, §504.501, add "custom vehicle or street rod" to match the statute, and remove "as defined by" since the new reference is not in a definitions section in the statute. The proposed revisions would change the reference to TTC, §502.275 in §114.60(c)(5) to TTC, §504.502 and remove "as defined by" since the new reference is not a definitions section in the statute.

§114.64. LIRAP Requirements

The proposed revisions to §114.64 would remove obsolete requirements related to safety inspections and the ASM test, incorporate changes caused by renumbering, and update a term to match changes made to definitions. The proposed revisions to §114.64(b)(4) would remove a requirement made obsolete by the elimination of the mandatory annual vehicle safety inspection program for noncommercial vehicles as a result of the passage of HB 3297. Subsequent paragraphs under subsection (b) would be renumbered. The proposed revisions to §114.64(c)(1) would incorporate changes in §114.64(c)(1)(A) caused by renumbering in subsection (b), remove a requirement in

§114.64(c)(1)(B) made obsolete by the elimination of the mandatory annual vehicle safety inspection program for noncommercial vehicles as a result of the passage of HB 3297 and by implementation of the state's single sticker registration system, and remove redundant language in §114.64(c)(1)(C) that already appears in existing §114.64(b)(6). The proposed revisions to §114.64(c)(2) would remove an obsolete requirement related to the outdated ASM test and renumber subsequent paragraphs under subsection (c). The proposed revisions to §114.64(e) would remove a requirement made obsolete by the elimination of the mandatory annual vehicle safety inspection program for noncommercial vehicles as a result of the passage of HB 3297. The proposed revisions to §114.64(f) and (f)(1) would change the term "automobile dealership(s)" to "dealer(s)" to match the update proposed in §114.7.

§114.66. Disposition of Retired Vehicle

The proposed revisions in §114.66(d) would change the term "automobile dealer" to "dealer" to match the update proposed in §114.7.

§114.72. Local Advisory Panels

The proposed revisions to §114.72 would update obsolete references to statute, update a term to match changes made to definitions, and remove the provision that local advisory panels may consist of representatives from safety inspection facilities. The proposed revisions to §114.72(a)(4) would update references to statute that were amended by SB 1303, 82nd Texas Legislature, 2011, Regular Session to match the updates made in §114.60. The proposed revisions would change the term "automobile

dealerships" to "dealers" in §114.72(c)(1) to match the update proposed in *§114.7. Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program Definitions*. The proposed revisions would remove the provision in §114.72(c)(3) that local advisory panels may consist of representatives from safety inspection facilities due to the elimination of the mandatory annual vehicle safety inspection program for noncommercial vehicles as a result of the passage of HB 3297 and instead allow that they may consist of representatives from emissions inspection facilities.

§114.80. Applicability

The proposed revisions to §114.80 would add an emissions inspection exception for rental vehicles and remove obsolete references to safety inspections. The proposed revisions to §114.80(c) would add an exception for rental vehicles under emissions inspection applicability provisions that extends their initial inspection period to three years. This amendment is proposed as a result of the passage of SB 2102. Due to passage of HB 3297, which eliminated the mandatory annual vehicle safety inspection program for noncommercial vehicles, the amendments to §114.80(c) would include replacing references to safety inspection and safety inspection facilities with references to emissions inspection and inspection facilities.

§114.81. Vehicle Emissions Inspection Requirements

The proposed revisions in §114.81 would remove the references to the two-speed idle (TSI) test for pre-1996 vehicles that are no longer applicable in the program. The proposed revision would remove paragraph (2) and revise paragraphs (1) and (3) as the

TSI test is no longer used and only the OBD test applies. The paragraphs in the section would be renumbered as appropriate.

§114.82. Control Requirements

The proposed revisions in §114.82 would remove references to the safety inspection, the single sticker transition date, 1996 and newer model year vehicles, and the Texas Motor Vehicle Commission Code, and remove a subsection that corresponds to a section not approved by EPA as part of the SIP. Section 114.82(a)(1) would be removed since it only pertains to requirements prior to the single sticker transition date as that date has passed and those requirements are no longer necessary. The proposed revisions to §114.82(a)(2) would remove the reference to the single sticker transition date and safety inspection requirements due to the elimination of the mandatory annual vehicle safety inspection program for noncommercial vehicles that resulted from the passage of HB 3297. Paragraphs of §114.82(a) would be renumbered as appropriate.

The proposed rulemaking would also remove §114.82(b) as it corresponds to §114.50(b)(2), related to vehicles operated by any federal government agency employee under the jurisdiction of a federal government agency, which EPA has not approved as part of the SIP. Removing the provision would align the I/M program rules in Subchapter C, Division 1 with federal program requirements and the I/M rules in the EPA-approved SIP. Since existing subsection (b) would be removed, subsequent subsections §114.82(c) through (h) under would be renumbered as §114.82(b) through

(g). The proposed revisions to §114.82(c) would change the term "dealership(s)" to "dealer(s)" to match the update proposed in *§114.7. Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program Definitions*. The proposed revisions to §114.82(g) would remove the reference to the Texas Motor Vehicle Commission Code as it is no longer applicable and remove the reference to 1996 and newer model year vehicles, as this age range of vehicles no longer needs to be specified.

§114.84. Prohibitions

The proposed revisions in §114.84 would remove obsolete references to safety inspections and the single sticker transition date that are no longer applicable to current rules in Chapter 114. The proposed revision to §114.84(a) would remove the reference to the annual safety inspection due to the elimination of the mandatory annual vehicle safety inspection program for noncommercial vehicles that resulted from the passage of HB 3297. The proposed revision to §114.84(b) would remove an obsolete reference to the single sticker transition date that is no longer applicable as that date has passed and the reference is no longer necessary.

§114.87. Inspection and Maintenance Fees

The proposed revisions in §114.87 would remove obsolete references to the TSI test and the single sticker transition date and update the language used to refer to the emissions test. Subsections (a) and (d) would be revised to remove references to the single sticker transition date that are no longer applicable as that date has passed and

the references are no longer necessary. The proposed revisions to §114.87(a) would remove reference to the two-speed idle test as it is no longer used. The proposed revisions to §114.87(a) would also change on-board diagnostic test to emissions test to match language used to refer to the test in §114.53(a).

Fiscal Note: Costs to State and Local Government

Kyle Girten, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or for other units of state or local government from administration or enforcement of the proposed rule.

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 will be rules that are compliant with state law, specifically HB 3297 and SB 2102 from the 88th Texas Legislature, 2023, Regular Session. Additionally, the public will benefit from the removal of outdated definitions, references, and requirements. The proposed rulemaking is not anticipated to result in fiscal implications for businesses or individuals.

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 Communities Impact Assessment

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 rulemaking would apply to all counties subject to I/M program requirements in the state, and most of these counties are in areas with higher populations.

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, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking amends an existing regulation, and it does not create, expand, repeal, or limit this regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. 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 remove references and requirements related to the state's safety inspection program due to the passage of HB 3297 and revise several provisions in the SIP that are outlined in the bill; and allow one additional year of exemption from emissions inspections for rental vehicles due to the passage of SB 2102 to comply with federal requirements for the implementation of control strategies necessary to attain and maintain the NAAQS for ozone or CO mandated by 42 United States Code (U.S.C.) §7410, FCAA, §110. The requirement to implement and enforce I/M programs is specifically required for certain nonattainment areas by the FCAA, and the proposed revisions to 30 TAC Chapter 114 would be used as a control strategy for demonstrating attainment of the ozone or CO NAAQS in the specific areas designated as nonattainment in Texas, as discussed elsewhere in this preamble.

The proposed rulemaking implements requirements of the FCAA, 42 U.S.C. §7410, 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 generally does not require specific programs, methods, or

reductions in order to meet the standard, I/M programs are specifically required by the FCAA. 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. States are not free to ignore the requirements of 42 U.S.C. §7410 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, 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 federal implementation plan (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 ozone or CO NAAQS or comply with the specific requirements for I/M programs 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 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 I/M programs are specifically required by the FCAA; 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 I/M programs. 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 ozone or CO NAAQS and comply with the requirements for I/M programs, 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 be necessary to attain the ozone or CO NAAQS and comply with requirements for I/M programs 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, 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 percent 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 I/M programs and control strategies necessary to attain and maintain the NAAQS for ozone or CO mandated by 42 U.S.C. §7410, FCAA, §110. 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 FCAA, 42 U.S.C. §7410, 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 generally does not require specific programs, methods, or reductions in order to meet the standard, I/M programs 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. States are not free to ignore the requirements of 42 U.S.C. §7410 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, 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 federal implementation plan (FIP) under 42 U.S.C. §7410, FCAA, §110(c).

In addition, the commission's assessment indicates that Texas Government Code, Chapter 2007 does not apply to these proposed rules because this action is taken in response to a real and substantial threat to public health and safety; that is designed to significantly advance the health and safety purpose; and that it does not impose a greater burden than is necessary to achieve the health and safety purpose. Thus, this action is exempt under Texas Government Code, §2007.003(b)(13). The proposed rules fulfill the FCAA requirement for states to create plans including control strategies to attain and maintain the NAAQS, as discussed elsewhere in this preamble. The proposed rules would assist in achieving the timely attainment of the ozone or CO NAAQS and reduced public exposure to ozone or CO. The NAAQS are promulgated by the EPA in accord with the FCAA, which requires EPA to identify and list air pollutants that "cause[s] or contribute[s] to air pollution which may reasonably be anticipated to endanger public health and welfare" and "the presence of which in the ambient air results from numerous or diversion mobile or stationary sources," as required by 42 U.S.C. §7408. For those air pollutants listed, EPA then is required to issue air quality criteria identifying the latest scientific knowledge regarding on adverse health and

welfare effects associated with the listed air pollutant, in accord with 42 U.S.C. §7408. For each air pollutant for which air quality criteria have been issued, EPA must publish proposed primary and secondary air quality standards based on the criteria that specify a level of air quality requisite to protect the public health and welfare from any known or anticipated adverse effects associated with the presence of the air pollutant in the ambient air, as required by 42 U.S.C. §7409. As discussed elsewhere in this preamble, states have the primary responsibility to adopt plans designed to attain and maintain the NAAQS.

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: §29.11(b)(2) applies only to air pollutant emissions, on-site sewage disposal systems, and underground storage tanks. Section 29.11(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 and SIP revision would ensure that the amendments comply with 40 CFR Part 50, National Primary and Secondary Air Quality Standards, and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plan 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 a virtual public hearing on this proposal on May 29, 2025, at 2:00 p.m. The hearing is 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.

Individuals who plan to attend the virtual hearing and want to provide oral comments and/or want their attendance on record must register by May 22, 2025. To register for the hearing, please e-mail siprules@tceq.texas.gov and provide the following information: your name, your affiliation, your e-mail address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on May 27, 2025, to those who register for 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 2025-012-114-AI. The comment period closes on

June 3, 2025. 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 David Serrins, Air Quality Planning Section, 512-239-1954.

SUBCHAPTER A: DEFINITIONS

§114.1, §114.2, §114.7

Statutory Authority

The amendments to 30 Texas Administrative Code (TAC) §§114.1, 114.2, and 114.7 are 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, §7.0002, 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 amendments to 30 TAC Chapter 114 are 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, §382.051, concerning Permitting Authority of the Commission of the Commission; Rules which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the TCAA. Additionally, the amendments to 30 TAC Chapter 114 are authorized under THSC, §382.202, concerning Vehicle Emissions Inspection and Maintenance (I/M)

Program, which authorizes the commission to establish vehicle fuel content standards after January 1, 2004, as long as distribution of low emission diesel as described in the state implementation plan (SIP) is not required prior to February 1, 2005; 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 (DPS) of the State of Texas.

§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.]

(4)[(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.

(5)[(7)] 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.

(6)[(8)] 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 (DMV) and the Texas Department of Public Safety (DPS) concurrently implement the single sticker system required by Texas Transportation Code, §502.047.

(7)[(9)] 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. 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 206, Austin, Texas 78711-3087.

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

(9)[(11)] Vehicle registration insignia sticker--The sticker issued through the DMV[Texas Department of Motor Vehicles (DMV)] or county tax assessor-collector for a vehicle compliant with the DMV regulations. The[Beginning on the single sticker transition date as defined in this section, the] vehicle registration insignia sticker, a current valid vehicle inspection report (VIR)[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 DPS's[Texas Department of Public Safety's] rules and regulations governing [safety] inspections.

§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.]

(1)[(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.

(2)[(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.

(3)[(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.

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

(5)[(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.

(6)[(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, Ellis, Johnson, Kaufman, Parker, Rockwall, 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]

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

(7) Rental vehicle--A motor vehicle for which a rental certificate has been furnished as provided by Texas Tax Code, §152.061.

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

(9)[(12)] Testing cycle--The[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.]

§114.7. Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used in this chapter 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, §§3.2, 101.1, and 114.1 of this title (relating to Definitions), the following words and terms, when used in Subchapter C, Division 2 of this chapter (relating to Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program) have the following meanings, unless the context clearly indicates otherwise.

(1) Affected county--A county with a motor vehicle emissions inspection and maintenance program established under Texas Transportation Code, §548.301.

[(2) Automobile dealership--A business that regularly and actively buys, sells, or exchanges vehicles at an established and permanent location as defined under Texas Transportation Code, §503.301. The term includes a franchised motor vehicle dealer and an independent motor vehicle dealer.]

(2)[(3)] Car--A motor vehicle, other than a golf cart, truck or bus, designed or used primarily for the transportation of persons. A passenger van or sports utility vehicle may be considered a car under this section.

(3)[(4)] Commercial vehicle--A vehicle that is owned or leased in the regular course of business of a commercial or business entity.

(4) Dealer--A person who regularly and actively buys, sells, or exchanges vehicles at an established and permanent location as defined under Texas Transportation Code, §503.001. The term includes a franchised motor vehicle dealer and an independent motor vehicle dealer.

(5) Destroyed--Crushed, shredded, scrapped, or otherwise dismantled to render a vehicle, vehicle's engine, or emission control components permanently and irreversibly incapable of functioning as originally intended.

(6) Dismantled--Extraction of parts, components, and accessories for use in the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program or sold as used parts.

(7) Electric vehicle--A motor vehicle that draws propulsion energy only from a rechargeable energy storage system.

(8) Emissions control equipment--Relating to a motor vehicle that is subject to §114.50(a) of this title (relating to Vehicle Emissions Inspection Requirements). If the vehicle is so equipped, these include: exhaust gas recirculation system, power control module, catalytic converter, oxygen sensors, evaporative purge canister, positive crankcase ventilation valve, and gas cap.

(9) Engine--The fuel-based mechanical power source of a motor vehicle that is subject to §114.50(a) of this title (relating to Vehicle Emissions Inspection Requirements), which includes the crankcase, cylinder block, and cylinder head(s) and their initial internal components, the oil pan and cylinder head valve covers, and the intake and exhaust manifolds.

(10) Fleet vehicle--A motor vehicle operated as one of a group that consists of more than ten motor vehicles and that is owned and operated by a public or commercial entity or by a private entity other than a single household.

(11) Hybrid vehicle--A motor vehicle that draws propulsion energy from both gasoline or conventional diesel fuel and a rechargeable energy storage system.

(12) LIRAP--Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program.

(13) LIRAP fee--The portion of the vehicle emissions inspection fee that is required to be remitted to the state at the time of annual vehicle registration, as authorized by Texas Health and Safety Code, §382.202, in counties participating in the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program.

(14) LIRAP fee termination date--The first day of the month for the month that the Texas Department of Motor Vehicles issues registration notices without the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) fee, as defined in this section, in a participating county opting out of the LIRAP.

(15) LIRAP opt-out effective date--The date upon which a county that was participating in the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) becomes a non-participating county, which occurs when the grant contract between the county and the executive director, established in

§114.64(a) of this title (relating to LIRAP Requirements), is ended, but no earlier than the LIRAP fee termination effective date.

(16) Motor vehicle--A fully self-propelled vehicle having four wheels that has as its primary purpose the transport of a person, persons, or property on a public highway.

(17) Natural gas vehicle--A motor vehicle that uses only compressed natural gas or liquefied natural gas as fuel.

(18) Non-participating county--An affected county that has either:

(A) not opted into the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) authorized by Texas Health and Safety Code, §382.209; or

(B) opted out of the LIRAP according to the procedures specified in §114.64(g) of this title (relating to LIRAP Requirements) and has been released from all program requirements, including assessment of the LIRAP fee as defined in this section and participation in LIRAP grant programs.

(19) Participating county--An affected county in which the commissioners court by resolution has chosen to implement a Low Income Vehicle Repair Assistance,

Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) authorized by Texas Health and Safety Code, §382.209. An affected county that is in the process of opting out of the LIRAP is considered a participating county until the LIRAP opt-out effective date as defined in this section.

(20) Proof of sale--A notice of sale or transfer filed with the Texas Department of Motor Vehicles as required under Texas Transportation Code, §503.005, or if unavailable, an affidavit from the selling dealer or documents approved by the commission.

(21) Proof of transfer--A TCEQ form that identifies the vehicle to be destroyed and tracks the transfer of the vehicle to the recycler from the participating county, [automobile]dealer, and dismantler.

(22) Qualifying motor vehicle--A motor vehicle that meets the requirements for replacement in §114.64 of this title (relating to LIRAP Requirements).

(23) Recognized emissions repair facility--An automotive repair facility as provided in 37 Texas Administrative Code §23.51 (relating to Vehicle Emissions Inspection Requirements).

(24) Recycled--Conversion of metal or other material into raw material products that have prepared grades; an existing or potential economic value; and using these raw material products in the production of new products.

(25) Replacement vehicle--A vehicle that is in a class or category of vehicles that has been certified to meet federal Tier 2, Bin 5 or cleaner Bin certification under 40 Code of Federal Regulations §86.1811-04 or federal Tier 3, Bin 160 or cleaner Bin certification under 40 Code of Federal Regulations (CFR) §86.1811-17; has a gross vehicle weight rating of less than 10,000 pounds; have an odometer reading of not more than 70,000 miles; the total cost does not exceed $35,000 and up to $45,000 for hybrid, electric, or natural gas vehicles, or vehicles certified as Tier 2, Bin 3 or cleaner Bin certification under 40 CFR §86.1811-04 or federal Tier 3, Bin 85 or cleaner Bin certification under 40 CFR §86.1811-17; and has passed a Texas Department of Public Safety motor vehicle [safety inspection or safety and]emissions inspection within the 15-month period before the application is submitted.

(26) Retrofit--To equip, or the equipping of, an engine or an exhaust or fuel system with new, emissions-reducing parts or equipment designed to reduce air emissions and improve air quality, after the manufacture of the original engine or exhaust or fuel system, so long as the parts or equipment allow the vehicle to meet or exceed state and federal air emissions reduction standards.

(27) Retrofit equipment--Emissions-reducing equipment designed to reduce air emissions and improve air quality that is approved by the United States Environmental Protection Agency and is installed after the manufacture of the original engine, exhaust, or fuel system.

(28) Total cost--The total amount of money paid or to be paid for the purchase of a motor vehicle as set forth as the sales price in the form entitled "Application for Texas Certificate of Title" promulgated by the Texas Department of Motor Vehicles. In a transaction that does not involve the use of that form, the term means an amount of money that is equivalent, or substantially equivalent, to the amount that would appear as the sales price on the application for Texas Certificate of Title if that form were used.

(29) Truck--A motor vehicle having a gross vehicle weight rating of less than 10,000 pounds and designed primarily for the transport of persons and cargo.

(30) Vehicle--A motor vehicle subject to §114.50(a) of this title (relating to Vehicle Emissions Inspection Requirements).

(31) Vehicle owner--For the purposes of repair assistance or retrofit, the person who holds the Certificate of Title for the vehicle and/or the operator who is granted possession and is authorized to make repairs under a lease or purchase

agreement; and for the purposes of accelerated retirement, the person who holds the Certificate of Title for the vehicle.

(32) Vehicle retirement facility--A facility that, at a minimum, is licensed, certified, or otherwise authorized by the Texas Department of Motor Vehicles to destroy, recycle, or dismantle vehicles.

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

DIVISION 1: VEHICLE INSPECTION AND MAINTENANCE

§114.50, §114.51, §114.53

Statutory Authority

The amendments to 30 Texas Administrative Code (TAC) §§114.50, 114.51, and 114.53 are 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, §7.0002, 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 amendments to 30 TAC Chapter 114 are 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, §382.051, concerning Permitting Authority of the Commission of the Commission; Rules which authorizes the commission to adopt rules as necessary to

comply with changes in federal law or regulations applicable to permits issued under the TCAA. Additionally, the amendments to 30 TAC Chapter 114 are authorized under THSC, §382.202, concerning Vehicle Emissions Inspection and Maintenance (I/M) Program, which authorizes the commission to establish vehicle fuel content standards after January 1, 2004, as long as distribution of low emission diesel as described in the state implementation plan (SIP) is not required prior to February 1, 2005; 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 (DPS) of the State of Texas.

§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, with the exception of rental vehicles as defined in §114.2 of this title (relating to Inspection and Maintenance Definitions) which are subject to an annual emissions inspection at 3 – 24 years old[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. Inspection[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) All 1996 and newer model year vehicles registered and primarily operated in the Dallas-Fort Worth (DFW) program area, the Houston-Galveston-Brazoria (HGB) program area, or El Paso County equipped with on-board diagnostic (OBD) systems must be tested using United States Environmental Protection Agency (EPA)-approved OBD test procedures. [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.]

(2)[(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, 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;]

(A)[(B)] All[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 vehicle inspection report (VIR)[VIR], or other form of proof authorized by the DPS or the DMV; and

(B)[(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.]

(2)[(3)] Any motorist in the DFW, [EDFW,]HGB, 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 dealer[dealership] or leasing agency indicating that emissions repairs have been completed.

(3)[(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.

(4)[(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.

(5)[(6)] A motorist whose vehicle is registered in the DFW, [EDFW,]HGB, 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).

(6)[(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 VIR[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.

(7)[(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) No[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 (concerning Fictitious or Counterfeit Inspection Certificate or Insurance Document).

(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.

§114.51. Equipment Evaluation Procedures for Vehicle Exhaust Gas Analyzers.

(a) Any manufacturer or distributor of vehicle testing equipment may apply to the executive director of the commission or his appointee, for approval of an exhaust gas analyzer or analyzer system for use in the Texas Inspection and Maintenance (I/M) program administered by the Texas Department of Public Safety. Each manufacturer shall submit a formal certificate to the commission stating that any analyzer model sold or leased by the manufacturer or its authorized representative and any model currently in use in the I/M program will satisfy all design and performance criteria set forth in the most recent version of the "Specifications for Vehicle Exhaust Gas Analyzer Systems for Use in the Texas Vehicle Emissions Testing Program." Copies of this document are available at the commission's Central Office, located at 12100 Park 35 Circle, Austin, Texas 78753 or at https://www.tceq.texas.gov/downloads/air-quality/mobile-source/txvehanlspecs.pdf.

[*http://www.tceq.state.tx.us/assets/public/implementation/air/ms/IM/txvehanlspecs.pdf*.] The manufacturer shall also provide sufficient documentation to demonstrate conformance with these criteria including a complete description of all hardware components, the results of appropriate performance testing, and a point-by-point response to each specific requirement.

(b) All equipment must be tested by an independent test laboratory. The cost of the certification must be absorbed by the manufacturer. The conformance demonstration must include, but is not limited to:

(1) certification that equipment design and construction conform with the specifications referenced in subsection (a) of this section;

(2) documentation of successful results from appropriate performance testing;

(3) evidence of necessary changes to internal computer programming, display format, and data recording sequence;

(4) a commitment to fulfill all maintenance, repair, training, and other service requirements described in the specifications referenced in subsection (a) of this section. A copy of the minimum warranty agreement to be offered to the purchaser of

an approved vehicle exhaust gas analyzer must be included in the demonstration of conformance; and

(5) documentation of communication ability using protocol provided by the commission or the commission Texas Information Management System (TIMS) contractor.

(c) If a review of the demonstration of conformance and all related support material indicates compliance with the criteria listed in subsections (a) and (b) of this section, the executive director or his appointee may issue a notice of approval to the analyzer manufacturer that endorses the use of the specified analyzer or analyzer system in the Texas I/M program.

(d) The applicant shall comply with all special provisions and conditions specified by the executive director or his appointee in the notice of approval.

(e) Any manufacturer or distributor that receives a notice of approval from the executive director or the executive director's appointee for vehicle emissions test equipment for use in the Texas I/M program may be subject to appropriate enforcement action and penalties prescribed in the Texas Clean Air Act or the rules and regulations promulgated thereunder if:

(1) any information included in the conformance demonstration as required in subsection (b) of this section is misrepresented resulting in the purchase or operation of equipment in the Texas I/M program that does not meet the specifications referenced in subsection (a) of this section;

(2) the applicant fails to comply with any requirement or commitment specified in the notice of approval issued by the executive director or implied by the representations submitted by the applicant in the conformance demonstration required by subsection (b) of this section;

(3) the manufacturer or distributor fails to provide on-site service response by a qualified repair technician within two business days of a request from an inspection station, excluding Sundays, national holidays (New Year's Day, Martin Luther King Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, and Christmas Day), and other days when a purchaser's business might be closed;

(4) the manufacturer or distributor fails to fulfill, on a continuing basis, the requirements described in this section or in the specifications referenced in subsection (a) of this section; or

(5) the manufacturer fails to provide analyzer software updates within six months of request and fails to install analyzer updates within 90 days of commission written notice of acceptance.

§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) Any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(1) of this title (relating to Vehicle Emissions Inspection Requirements) in El Paso County must collect a fee not to exceed $11.50, and any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(1) of this title in the Dallas-Fort Worth and Houston-Galveston-Brazoria program areas must collect a fee not to exceed $18.50. [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.]

(2)[(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)(2)(A)[§114.50(a)(5)(A)] or (B) of this title must collect a fee not to exceed $18.50.

(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 Texas Department of Public Safety (DPS)[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) Vehicle[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 Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP)[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 program area[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 C: VEHICLE INSPECTION AND MAINTENANCE; LOW INCOME VEHICLE REPAIR ASSISTANCE, RETROFIT, AND ACCELERATED VEHICLE RETIREMENT PROGRAM; AND EARLY ACTION COMPACT COUNTIES

DIVISION 2: LOW INCOME VEHICLE REPAIR ASSISTANCE, RETROFIT, AND ACCELERATED VEHICLE RETIREMENT PROGRAM

§114.60, §114.64, §114.66, §114.72

Statutory Authority

The amendments to 30 Texas Administrative Code (TAC) §§114.60, 114.64, 114.66, and 114.72 are 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, §7.0002, 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 amendments to 30 TAC Chapter 114 are 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, §382.051, concerning Permitting Authority of the Commission of the

Commission; Rules which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the TCAA. Additionally, the amendments to 30 TAC Chapter 114 are authorized under THSC, §382.202, concerning Vehicle Emissions Inspection and Maintenance (I/M) Program, which authorizes the commission to establish vehicle fuel content standards after January 1, 2004, as long as distribution of low emission diesel as described in the state implementation plan (SIP) is not required prior to February 1, 2005; 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 (DPS) of the State of Texas.

§114.60. Applicability for LIRAP.

(a) The provisions of §114.7 of this title (relating to Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program Definitions) and Division 2 of this subchapter (relating to Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program) provide the minimum requirements for county implementation of a Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) and apply to counties

that implement a vehicle emissions inspection program and have elected to implement LIRAP provisions.

(b) To be eligible for assistance under this division, vehicles must be subject to §114.50(a) of this title (relating to Vehicle Emissions Inspection Requirements).

(c) LIRAP does not apply to a vehicle that is a:

(1) fleet vehicle;

(2) commercial vehicle;

(3) vehicle owned or leased by a governmental entity;

(4) vehicle registered as a classic motor vehicle, custom vehicle, or street rod under[as defined by] Texas Transportation Code, §504.501[§502.274];

(5) vehicle registered as an exhibition vehicle, including antique or military vehicles, under[as defined by] Texas Transportation Code, §504.502[§502.275];

(6) vehicle not regularly used for transportation during the normal course of daily activities; or

(7) vehicle subject to §114.50(a) of this title that is registered in a non-participating county.

(d) A participating county must ensure that owners of vehicles under subsection (c) of this section do not receive monetary or compensatory assistance under LIRAP.

§114.64. LIRAP Requirements.

(a) Implementation. Participation in the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) is voluntary. An affected county may choose to participate in the program at its discretion. Upon receiving a written request to participate in the LIRAP by a county commissioner's court, the executive director shall authorize the implementation of a LIRAP in the requesting county. The executive director and county shall enter into a grant contract for the implementation of the LIRAP.

(1) The grant contract must provide conditions, requirements, and projected funding allowances for the implementation of the LIRAP.

(2) A participating county may contract with an entity approved by the executive director for services necessary to implement the LIRAP. A participating county or its designated entity shall demonstrate to the executive director that, at a minimum, the county or its designated entity has provided for appropriate measures

for determining applicant eligibility and repair effectiveness and ensuring against fraud.

(3) The participating county shall remain the contracted entity even if the county contracts with another county or another entity approved by the executive director to administer the LIRAP.

(b) Repair and retrofit assistance. A LIRAP must provide for monetary or other compensatory assistance to eligible vehicle owners for repairs directly related to bringing certain vehicles that have failed a required emissions test into compliance with emissions requirements or for installing retrofit equipment on vehicles that have failed a required emissions test, if practically and economically feasible, in lieu of or in combination with repairs performed to bring a vehicle into compliance with emissions requirements. Vehicles under the LIRAP must be repaired or retrofitted at a recognized emissions repair facility. To determine eligibility, the participating county or its designated entity shall make applications available for LIRAP participants. The application, at a minimum, must require the vehicle owner to demonstrate that:

(1) the vehicle has failed a required emissions test within 30 days of application submittal;

(2) the vehicle can be driven under its own power to the emissions inspection station or vehicle retirement facility;

(3) the vehicle is currently registered in and has been registered in the participating program county for at least 12 of the 15 months immediately preceding the application for assistance;

[(4) the vehicle has passed the safety portion of the Texas Department of Public Safety (DPS) motor vehicle safety and emissions inspection as recorded in the Vehicle Inspection Report, or provide assurance that actions will be taken to bring the vehicle into compliance with safety requirements;]

(4)[(5)] the vehicle owner's net family income is at or below 300% of the federal poverty level; and

(5)[(6)] any other requirements of the participating county or the executive director are met.

(c) Accelerated vehicle retirement. A LIRAP must provide monetary or other compensatory assistance to eligible vehicle owners to be used toward the purchase of a replacement vehicle.

(1) To determine eligibility, the participating county or its designated entity shall make applications available for LIRAP participants. The application, at a minimum, must require the vehicle owner to demonstrate that[:]

[(A)] the vehicle meets the requirements under subsection (b)(1) – [(3) and](5) of this section.[;]

[(B) the vehicle has passed a DPS motor vehicle safety or safety and emissions inspection within 15 months prior to application submittal; and]

[(C) any other requirements of the participating county or the executive director are met.]

[(2) Eligible vehicle owners of pre-1996 model year vehicles that pass the required United States Environmental Protection Agency (EPA) Start-Up Acceleration Simulation Mode (ASM) standards emissions test, but would have failed the EPA Final ASM standards emissions test, or some other criteria determined by the commission, may be eligible for accelerated vehicle retirement and replacement compensation under this section.]

(2)[(3)] Notwithstanding the vehicle requirement provided under subsection (b)(1) of this section, an eligible vehicle owner of a vehicle that is gasoline powered and is at least 10 years old as determined from the current calendar year (i.e., 2010 minus 10 years equals 2000) and meets the requirements under subsection (b)(2), (3), and (4)[(5)] of this section, may be eligible for accelerated vehicle retirement and compensation.

(3)[(4)] Replacement vehicles must:

(A) be in a class or category of vehicles that has been certified to meet federal Tier 2, Bin 5 or cleaner Bin certification under 40 Code of Federal Regulations (CFR) §86.1811-04 or federal Tier 3, Bin 160 or cleaner Bin certification under 40 CFR §86.1811-17;

(B) have a gross vehicle weight rating of less than 10,000 pounds;

(C) have an odometer reading of not more than 70,000 miles;

(D) be a vehicle, the total cost of which does not exceed $35,000 or up to $45,000 for hybrid, electric, or natural gas vehicles, or vehicles certified as Tier 2, Bin 3 or cleaner Bin certification under 40 CFR §86.1811-04 or federal Tier 3, Bin 85 or cleaner Bin certification under 40 CFR §86.1811-17; and

(E) have passed an[a DPS motor vehicle safety inspection or safety and] emissions inspection within the 15-month period before the application is submitted.

(d) Compensation. The participating county shall determine eligibility and approve or deny the application promptly. If the requirements of subsection (b) or (c)

of this section are met and based on available funding, the county shall authorize monetary or other compensations to the eligible vehicle owner.

(1) Compensations must be:

(A) no more than $600 and no less than $30 per vehicle annually to be used for emission-related repairs or retrofits performed at recognized emissions repair facilities, including diagnostics tests performed on the vehicle; or

(B) based on vehicle type and model year of a replacement vehicle for the accelerated retirement of a vehicle meeting the requirements under this subsection. Only one retirement compensation can be used toward one replacement vehicle annually per applicant. The maximum amount toward a replacement vehicle must not exceed:

(i) $3,000 for a replacement car of the current model year or previous three model years, except as provided by clause (iii) of this subparagraph;

(ii) $3,000 for a replacement truck of the current model year or the previous two model years, except as provided by clause (iii) of this subparagraph; and

(iii) $3,500 for a replacement hybrid, electric, natural gas, and federal Tier 2, Bin 3 or cleaner Bin certification under 40 CFR §86.1811-04 or

federal Tier 3, Bin 85 or cleaner Bin certification under 40 CFR §86.1811-17 vehicle of the current model year or the three previous model years.

(2) Vehicle owners shall be responsible for paying the first $30 of emission-related repairs or retrofit costs that may include diagnostics tests performed on the vehicle.

(3) For accelerated vehicle retirement, provided that the compensation levels in paragraph (1)(B) of this subsection are met and minimum eligibility requirements under subsection (c) of this section are met, a participating county may set a specific level of compensation or implement a level of compensation schedule that allows flexibility. The following criteria may be used for determining the amount of financial assistance:

(A) model year of the vehicle;

(B) miles registered on the vehicle's odometer;

(C) fair market value of the vehicle;

(D) estimated cost of emission-related repairs necessary to bring the vehicle into compliance with emission standards;

(E) amount of money the vehicle owner has already spent to bring the vehicle into compliance, excluding the cost of the vehicle emissions inspection; and

(F) vehicle owner's income.

(e) Reimbursement for repairs and retrofits. A participating county shall reimburse the appropriate recognized emissions repair facility for approved repairs and retrofits within 30 calendar days of receiving an invoice that meets the requirements of the county or designated entity. Repaired or retrofitted vehicles must pass an[a DPS safety and] emissions inspection before the recognized emissions repair facility is reimbursed. In the event that the vehicle does not pass the emissions retest after diagnosed repairs are performed, the participating county has the discretion, on a case-by-case basis, to make payment for diagnosed emissions repair work performed.

(f) Reimbursements for replacements. A participating county shall ensure that funds are transferred to a participating dealer[automobile dealership] no later than 10 business days after the county receives proof of the sale, proof of transfer to a dismantler, and any administrative documents that meet the requirements of the county or designated entity. A list of all administrative documents must be included in the agreements that are entered into by the county or designated entity and the participating dealers[automobile dealerships].

(1) A participating county shall provide an electronic means for distributing replacement funds to a participating dealer[automobile dealership] once all program criteria have been met. The replacement funds may be used as a down payment toward the purchase of a replacement vehicle. Participating [automobile]dealers shall be located in the State of Texas. Participation in the LIRAP by a[an automobile] dealer is voluntary.

(2) Participating counties shall develop a document for confirming a person's eligibility for purchasing a replacement vehicle and for tracking such purchase.

(A) The document must include at a minimum, the full name of applicant, the vehicle identification number of the retired vehicle, expiration date of the document, the program administrator's contact information, and the amount of money available to the participating vehicle owner.

(B) The document must be presented to a participating dealer by the person seeking to purchase a replacement vehicle before entering into negotiations for a replacement vehicle.

(C) A participating dealer who relies on the document issued by the participating county has no duty to confirm the eligibility of the person purchasing a replacement vehicle in the manner provided by this section.

(g) Opting out of the LIRAP. Participation in the LIRAP is voluntary. A participating county may opt out of the program. Procedures to release a participating county from the LIRAP shall be initiated upon the receipt of a written request to the executive director by the county commissioner's court in a participating county.

(1) A written request to opt out of the LIRAP shall request release from 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) and the grant contract established in subsection (a) of this section. The written request shall include one of the following possible LIRAP opt-out effective dates as defined in §114.7 of this title:

(A) the LIRAP fee termination effective date as defined in §114.7 of this title; or

(B) the last day of the legislative biennium in which the LIRAP fee termination effective date as defined in §114.7 of this title occurred.

(2) Upon receipt of a written request to be released from participation in the LIRAP, the executive director shall notify, in writing, with a copy sent to the requesting county, the Texas Department of Motor Vehicles, DPS, and the Legislative

Budget Board of Texas that the LIRAP fee should no longer be collected for vehicles undergoing inspection and registration in the affected county.

(3) A county opting out of the LIRAP remains a participating county until the LIRAP opt-out effective date as defined in §114.7 of this title, on which date the county is no longer subject to the LIRAP fee, and the grant contract established in subsection (a) of this section is ended. Not more than 90 days after a county's LIRAP opt-out effective date, the unspent balance of allocated LIRAP funds for that county will be returned to the commission unless the county opting out has entered into an official inter-county elective agreement with other participating counties in the same region to share allocated LIRAP funds. If the county opting out has entered into an official inter-county elective agreement with other participating counties in the same region to share allocated LIRAP funds, then the portion of LIRAP allocations that is shared and unspent as of the LIRAP opt-out effective date will be redistributed among the remaining participating counties that are part of that agreement. This redistribution of funds will occur not more than 90 days after a county's LIRAP opt-out effective date.

§114.66. Disposition of Retired Vehicle.

(a) Vehicles retired under a Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) may not be resold or reused in their entirety in this or another state. Any dismantling of vehicles or salvaging of steel under this section must be performed at a facility located in the state of Texas.

(b) The vehicle must be:

(1) destroyed;

(2) recycled;

(3) dismantled and its parts sold as used parts or used in the LIRAP;

(4) placed in a storage facility and subsequently destroyed, recycled, or dismantled within 12 months of the vehicle retirement date and its parts sold or used in the LIRAP; or

(5) repaired, brought into compliance, and used as a replacement vehicle under this division. Not more than 10% of all vehicles eligible for retirement may be used as replacement vehicles.

(c) Notwithstanding subsection (b) of this section, the dismantler of a vehicle shall destroy the emissions control equipment and engine, certify those parts have been destroyed and not resold into the market place. The dismantler shall remove any mercury switches and shall comply with state and federal laws applicable to the management of those mercury switches.

(d) The dismantler shall provide certification that the vehicle has been destroyed to the [automobile]dealer from whom the dismantler has taken receipt of a vehicle for retirement. The [automobile]dealer shall submit to the participating county or its designated entity the proof of destruction from the dismantler.

(e) The dismantler shall provide the residual scrap metal of a retired vehicle under this section to a recycling facility at no cost, except for the cost of transportation of the residual scrap metal to the recycling facility.

§114.72. Local Advisory Panels.

(a) The commissioners court of a participating county may appoint one or more local advisory panels to provide advice on Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) and to assist in identifying vehicles with intrinsic value that make these vehicles existing or future collectibles. A vehicle identified under this section may be sold to an individual if the vehicle is:

(1) repaired and brought into compliance;

(2) removed from the state;

(3) removed from an affected county; or

(4) stored for future restoration and cannot be registered in an affected county except under Transportation Code, §504.501[§502.274] or §504.502[§502.275].

(b) A commissioners court may delegate all or part of the financial and administrative matters to any of the local advisory panels that it appoints.

(c) A local advisory panel may consist of representatives from:

(1) dealers[automobile dealerships];

(2) automotive repair industry;

(3) emissions[safety] inspection facilities;

(4) the general public;

(5) antique and vintage car clubs;

(6) local nonprofit organizations; and

(7) locally affected governments.

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

DIVISION 3: EARLY ACTION COMPACT COUNTIES

§§114.80, 114.81, 114.82, 114.84, 114.87

Statutory Authority

The amendments to 30 Texas Administrative Code (TAC) §§114.80, 114.81, 114.82, 114.84, and 114.87 are 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, §7.0002, 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 amendments to 30 TAC Chapter 114 are 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, §382.051, concerning Permitting Authority of the Commission of the Commission; Rules which authorizes the commission to adopt rules as necessary to

comply with changes in federal law or regulations applicable to permits issued under the TCAA. Additionally, the amendments to 30 TAC Chapter 114 are authorized under THSC, §382.202, concerning Vehicle Emissions Inspection and Maintenance (I/M) Program, which authorizes the commission to establish vehicle fuel content standards after January 1, 2004, as long as distribution of low emission diesel as described in the state implementation plan (SIP) is not required prior to February 1, 2005; 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 (DPS) of the State of Texas.

§114.80. Applicability.

(a) The requirements of this section apply only to counties that have adopted an early action compact (EAC) clean air action plan, and that along with the largest municipality in each county have submitted to the commission a resolution requesting implementation of a vehicle inspection and maintenance (I/M) program in that county.

(b) Travis and Williamson Counties are the only counties in the Austin/Round Rock metropolitan statistical area affected by subsections (a) and (c) of this section.

(c) The EAC I/M program requires all gasoline-powered motor vehicles 2 - 24 years old that are registered and primarily operated in Travis and Williamson Counties to undergo an annual emissions inspection[, beginning with the first safety inspection]. The program requires all gasoline-powered rental vehicles, as defined in §114.2 of this title (relating to Inspection and Maintenance (I/M) Definitions), 3 – 24 years old that are registered and primarily operated in Travis and Williamson Counties to undergo an annual emissions 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 Transportation are excluded from the program. Inspection[Safety inspection] facilities and inspectors certified by the Texas Department of Public Safety shall inspect all subject vehicles.

§114.81. Vehicle Emissions Inspection Requirements.

This section applies to all vehicles registered and primarily operated, as defined in §114.2 of this title (relating to Inspection and Maintenance (I/M) Definitions), in the affected early action compact (EAC) program counties, except as provided in §114.80 of this title (relating to Applicability).

(1) All[Beginning September 1, 2005, all 1996 and newer model year] vehicles registered and primarily operated in affected EAC counties equipped with on-board diagnostic (OBD) systems must be tested using United States Environmental Protection Agency (EPA)-approved OBD test procedures.

[(2) Beginning September 1, 2005, all pre-1996 model year vehicles registered and primarily operated in affected EAC counties must be tested using a two-speed idle (TSI) test, or a vehicle emissions test that meets state implementation plan emissions reduction requirements and is approved by the EPA.]

(2)[(3)] All vehicle emissions inspection stations in affected EAC program counties shall offer [both]the OBD test[and the TSI test].

§114.82. Control Requirements.

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

[(1) all applicable air pollution emissions control-related requirements included in the annual vehicle safety inspection requirements administered by the Texas Department of Public Safety (DPS) as evidenced 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;]

(1) All[(2) 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 Texas Department of Public

Safety (DPS)[DPS] as evidenced by a current valid vehicle registration insignia sticker or a current valid vehicle inspection report (VIR)[VIR], or other form of proof authorized by the DPS or the Texas Department of Motor Vehicles[DMV]; and

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

[(b) 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 agency and located in an affected EAC county to comply with all vehicle emissions I/M requirements contained in the Austin Area Early Action Compact Ozone State Implementation Plan Revision. Commanding officers or directors of federal facilities shall certify annually to the executive director, or appointed designee, that all subject vehicles have been tested and are in compliance with the Federal Clean Air Act (42 United States Code, §§7401 et seq.). This requirement does not apply to visiting agency, employee, or military personnel vehicles as long as such visits do not exceed 60 calendar days per year.]

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

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

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

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

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

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

(f)[(g)] A vehicle registered in a county without an I/M program that meets the applicability criteria of §114.80(c) of this title (relating to Applicability), and the ownership of which has changed through a retail sale as defined by [Texas Motor Vehicle Commission Code, Article 4413(36), §1.03 (moved to]Texas Occupations Code, §2301.002[, effective June 1, 2003)], is not eligible for title receipt or registration in an affected EAC program county with an I/M program unless proof is presented that the vehicle has passed an approved vehicle emissions inspection within 90 days before the title transfer. The evidence of proof required may be in the form of the vehicle inspection report or another proof of the program compliance as authorized by the DPS. All [1996 and newer model year]vehicles with less than 50,000 miles are exempt from the test-on-resale requirements of this subsection.

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

§114.84. Prohibitions.

(a) No person may issue or allow the issuance of a vehicle inspection report, as authorized by the Texas Department of Public Safety (DPS), unless all applicable air pollution emissions control-related requirements of [the annual vehicle safety inspection and]the vehicle emissions inspection and maintenance (I/M) requirements and procedures contained in the Austin Area Early Action Compact Ozone State

Implementation Plan Revision are completely and properly performed in accordance with the rules and regulations adopted by the DPS and the commission. Prior to taking any enforcement action regarding this provision, the executive director shall consult with the DPS.

(b) No[Before the single sticker transition date as defined in §114.1 of this title (relating to Definitions), no person may allow or participate in the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen safety inspection certificates, vehicle inspection reports, vehicle repair forms, vehicle emissions repair documentation, or other documents that may be used to circumvent the vehicle emissions I/M requirements and procedures contained in the Austin Area Early Action Compact Ozone State Implementation Plan Revision. 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, vehicle inspection reports, vehicle repair forms, vehicle emissions repair documentation, or other documents that may be used to circumvent the vehicle emissions I/M requirements and procedures contained in the Austin Area Early Action Compact Ozone State Implementation Plan Revision.

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

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

§114.87. Inspection and Maintenance Fees.

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

test in accordance with §114.80 of this title (relating to Applicability) must collect a fee not to exceed $11.50 for each emissions[on-board diagnostic and two-speed idle] test.

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

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

(d) In[Beginning on the single sticker transition date as defined in §114.1 of this title in] Travis and Williamson Counties, the following requirements apply.

(1) Vehicle owners in counties participating in Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) shall remit $4.50 for motor vehicles subject to vehicle emissions inspections 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. 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).

(2) Vehicle owners in counties participating in the LIRAP and in the process of opting out shall remit $4.50 for motor vehicles subject to emissions inspection 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 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.

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