

Jon Niermann, *Chairman*  
Emily Lindley, *Commissioner*  
Bobby Janecka, *Commissioner*  
Kelly Keel, *Interim Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

December 18, 2023

**Docket No. 2023-0317-RUL**  
**Project No. 2022-026-114-AI**

Earthea Nance, PhD, PE  
Regional Administrator  
U.S. Environmental Protection Agency - Region 6  
1201 Elm Street, Suite 500  
Dallas, Texas 75270

Dear Dr. Nance:

On November 29, 2023, the Texas Commission on Environmental Quality (Commission) adopted revisions to the State Implementation Plan (SIP).

The Commission adopted amendments to §§ 114.1, 114.2, 114.50, 114.53, and 114.309 of 30 Texas Administrative Code Chapter 114, Control of Air Pollution from Motor Vehicles and corresponding revisions to the SIP. The adopted rule amendments implement a vehicle emissions inspection and maintenance program in Bexar County and remove Ellis, Johnson, Kaufman, Parker, Rockwall, and Wise Counties from the list of affected counties required to comply with the state's low Reid Vapor Pressure control requirements. The associated adopted revisions to the Texas Inspection and Maintenance State Implementation Plan, the Bexar County Inspection and Maintenance State Implementation Plan Revision (Non-rule Project No. 2022-027-SIP-NR) would implement a vehicle inspection and maintenance program in the Bexar County 2015 eight-hour ozone NAAQS nonattainment area and will be submitted separately.

Enclosed are the proposed revisions to the SIP, a public hearing certification, a complete record of the public hearings, and the accompanying order. I look forward to your expeditious approval of these SIP revisions.

Sincerely,

A handwritten signature in blue ink that reads "Jon Niermann".

Jon Niermann  
Chairman

JN/TS/jz

Enclosures

cc: The Honorable Greg Abbott, Governor of Texas  
Ms. Catarina Gonzales, Office of Budget and Policy, Office of the Governor  
Ms. Kelly Keel, Interim Executive Director, Texas Commission on Environmental Quality

# Texas Commission on Environmental Quality



**Docket No. 2023-0317-RUL**  
**Project No. 2022-026-114-AI**

THE STATE OF TEXAS

COUNTY OF TRAVIS

This is to certify that the attached electronic file is included and that the electronic file is a true and correct copy of documents for a revision to the Texas State Implementation Plan, adopted on November 29, 2023, pursuant to 40 Code of Federal Regulations § 51.104. I am the records administrator for the Air Quality Division of the Texas Commission on Environmental Quality (Commission).

---

Donna F. Huff  
Deputy Director, Air Quality Division  
Texas Commission on Environmental Quality

Texas Commission on Environmental Quality  
Public Hearings  
July 6, 2023 and July 13, 2023

Concerning Revisions to 30 TAC Chapter 114  
Control of Air Pollution from Motor Vehicles:  
Expansion of Vehicle Emissions Inspection and  
Maintenance to Bexar County  
and Removal of Six Dallas-Fort Worth Counties  
from the Regional Low Reid  
Vapor Pressure Gasoline Program

Project No. 2022-026-114-AI

December 18, 2023

**Hearing Book Documentation Re: Docket No. 2023-0317-RUL; Project No. 2022-026-114-AI**

The Backup documents filed for the 30 Texas Administrative Code Chapter 114 rulemaking to implement an inspection and maintenance (I/M) program in Bexar County and to remove Ellis, Johnson, Kaufman, Parker, Rockwall, and Wise Counties from the list of affected counties required to comply with the state's low Reid vapor pressure control requirements included a maximum I/M fee for Bexar County of \$11.50. That fee is reflected in the Texas Commission on Environmental Quality (TCEQ) Interoffice Memorandum dated November 16, 2023, which is included in the Evaluation of Testimony section of this hearing book.

At Commissioners' Agenda on November 29, 2023, the executive director's staff presented the rule package for adoption with the \$11.50 fee. From the dais, the commissioners amended the maximum I/M fee for Bexar County to \$18.50. That fee was adopted into the rulemaking and is reflected in the adoption preamble and rules, which are included in the Staff Recommendation section of this hearing book.

Agenda backup documents for the November 29, 2023 agenda are available on the TCEQ's [Commissioners' Agendas - Marked Agendas](https://www.tceq.texas.gov/agency/decisions/agendas/comm/markcomm_agendas.html) webpage ([https://www.tceq.texas.gov/agency/decisions/agendas/comm/markcomm\\_agendas.html](https://www.tceq.texas.gov/agency/decisions/agendas/comm/markcomm_agendas.html)), and commission discussion at the adoption agenda may be viewed on the [TCEQNews](https://www.youtube.com/user/TCEQNews/videos) YouTube channel (<https://www.youtube.com/user/TCEQNews/videos>).

## **INTRODUCTION**

The Texas Commission on Environmental Quality (TCEQ or commission) scheduled public hearings in Arlington on July 6, 2023 and in San Antonio on July 13, 2023, to receive testimony regarding the proposed amendments to §§114.1, 114.2, 114.50, 114.53, and 114.309 of Title 30 Texas Administrative Code Chapter 114 Control of Air Pollution from Motor Vehicles and corresponding revisions to the State Implementation Plan. The rulemaking implements a vehicle emissions inspection and maintenance program in Bexar County and removes Ellis, Johnson, Kaufman, Parker, Rockwall, and Wise Counties from the list of affected counties required to comply with the state's low Reid Vapor Pressure control requirements.

The comment period closed on July 17, 2023. All testimony and comments have been reviewed and seriously considered. This hearing record contains a complete record of the public hearing and is divided into the following four sections:

- Public Notification and Proposal
- Written and Oral Testimony
- Evaluation of Testimony
- Staff Recommendation (including Order)

Additional copies of this hearing record are maintained in the TCEQ central office at 12100 Park 35 Circle, Austin, Texas 78753. For further information, please contact Edgar Gilmore at (512) 239-2069.

# PUBLIC NOTICE & PROPOSAL

## **PUBLIC NOTIFICATION**

Notification to the public of the proposed revision was conducted by the following procedures:

1. Publication of notice of the public hearing in the following newspapers on the date listed:

*San Antonio Express News* (English & Spanish): June 2, 2023

*Dallas Morning News* (English): June 2, 2023

*Al Día* (Spanish): June 7, 2023

2. Publication of the Notice of Public Hearing in the June 16, 2023 issue of the *Texas Register* (48 TexReg 3339 and 48 TexReg 3340).

3. Correspondence forwarding the Notice of Public Hearing to the following officials and agencies:

Alamo Area Council of Governments

Bexar County Judge

Capital Area Planning Council

City of Dallas, Department of Aviation

City of Dallas, Mayor's Office

City of Dallas, Office of Environmental Quality

City of El Paso, Environmental Services

City of Fort Worth, Code Compliance Environmental Section

City of Houston, Department of Health and Human Services

City of San Antonio, Mayor's Office

Dallas County Judge

East Texas Council of Governments

El Paso Metropolitan Planning Organization  
Federal Highway Administration  
Galveston County Health District  
Harris County Public Health and Environmental Services  
Houston-Galveston Area Council  
North Central Texas Council of Governments  
South East Texas Regional Planning Commission  
Texas Department of Transportation  
Victoria Metropolitan Planning Organization  
Arkansas Department of Pollution Control and Ecology  
Central States Air Resource Agencies Association  
Louisiana Department of Environmental Quality  
New Mexico Environmental Department  
Oklahoma Department of Environmental Quality  
United States Environmental Protection Agency



**EXAMPLE OF NEWSPAPER CLASSIFIED AD**

*The Dallas Morning News, June 2, 2023*

AFFIDAVIT OF PUBLICATION

STATE OF TEXAS

COUNTY OF DALLAS

Before me, a Notary Public in and for Dallas County, this day personally appeared Mert Tezkol, advertising Representative for The Dallas Morning News, being duly sworn by oath, states the attached advertisement of

**NOTICE OF PUBLIC HEARING ON PROPOSED REVISIONS TO THE STATE IMPLEMENTATION PLAN AND PROPOSED RULEMAKING**

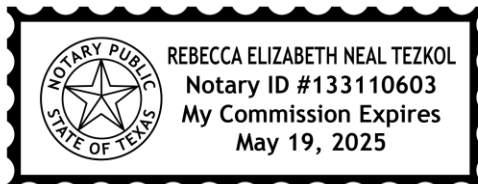
The Texas Commission on Environmental Quality (TCEQ) will offer a public hearing in Arlington on July 6, 2023 at 7:00 p.m. in the Arlington City Council Chambers of Arlington City Hall located at 101 West Abrams Street. The hearing is offered to receive testimony regarding proposed state implementation plan (SIP) revisions resulting from reclassification of the Dallas-Fort Worth (DFW) area from marginal to moderate nonattainment for the 2015 eight-hour ozone National Ambient Air Quality Standard (NAAQS) (Project Nos.: 2022-021-SIP-NR and 2022-023-SIP-NR). The hearing will also be offered to receive testimony regarding proposed mobile source air quality rules resulting from reclassification of the DFW area from serious to severe nonattainment for the 2008 eight-hour ozone NAAQS (Project No. 2022-026-114-A1). The hearing will be conducted in English, and Spanish language interpretation services will be made available. For more information, visit the Texas SIP Revisions webpage at <https://www.tceq.texas.gov/airquality/sip/sipplans.html#prosips>.

**AD# 1849203**

was published in The Dallas Morning News

DATE PUBLISHED

June 2, 2023



A handwritten signature in blue ink, appearing to read "Mert Tezkol".

Mert Tezkol

June 2, 2023

A handwritten signature in blue ink, appearing to read "Rebecca E. Tezkol".

(Notary Public)

30 days after monitoring results from a release detection method indicated a release may have occurred; and 30 TAC §334.50(d)(9)(A)(iv) and §334.72, by failing to report to the TCEQ within 24 hours after monitoring results from a release detection method indicated a release may have occurred; PENALTY: \$23,675; STAFF ATTORNEY: Cynthia Sirois, Litigation, MC 175, (512) 239-3392; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-202302082  
Gitanjali Yadav  
Deputy Director, Litigation  
Texas Commission on Environmental Quality  
Filed: June 6, 2023

### Notice of Public Hearing on Proposed Revisions to the State Implementation Plan

The Texas Commission on Environmental Quality (commission) will offer a public hearing to receive testimony regarding proposed state implementation plan (SIP) revisions resulting from reclassification of the Houston-Galveston-Brazoria (HGB) area from marginal to moderate nonattainment for the 2015 eight-hour ozone National Ambient Air Quality Standard (NAAQS) under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Chapter 2001, Subchapter B; and 40 Code of Federal Regulations §51.102 of the United States Environmental Protection Agency (EPA) concerning SIPs.

The proposed revisions to the SIP include a demonstration that includes a photochemical modeling analysis and a weight-of-evidence assessment that meets EPA modeling guidance (Project No. 2022-022-SIP-NR) and a demonstration that includes an analysis of reasonable further progress (RFP) towards attainment (Project No. 2022-023-SIP-NR). Both proposed SIP revisions include motor vehicle emissions budgets for the 2023 attainment year.

The commission will offer a public hearing on these proposals in Houston on July 11, 2023 at 7:00 p.m. CDT at the Houston-Galveston Area Council, located at 3555 Timmons Lane #100. 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.

The hearing will be conducted in English, and Spanish language interpretation services will be made available. Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Brad Patterson, Office of the Chief Clerk at (512) 239-1201 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

Written comments may be submitted to Vanessa T. De Arman, MC 206, Office of Air, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to either (512) 239-4804 or [fax4808@tceq.texas.gov](mailto:fax4808@tceq.texas.gov). Electronic comments may be submitted via Public Comment system at: <https://tceq.commentinput.com/>. File size restrictions may apply. All comments should reference the respective project number.

The comment period closes at 11:59 p.m. CDT on July 17, 2023. Information concerning the proposed SIP revisions, including proposal documents and instructions for providing public comment, is available at <https://www.tceq.texas.gov/airquality/sip/hgb/hgb-latest-ozone>. For further information, please contact the project manager for the pro-

posed project: for Project No. 2022-022-SIP-NR, contact Vanessa T. De Arman, at (512) 239-5609 and for Project No. 2022-023-SIP-NR, contact Denine Calvin, at (512) 239-0613.

TRD-202302049  
Guy Henry  
Acting Deputy Director, Environmental Law Division  
Texas Commission on Environmental Quality  
Filed: June 2, 2023

### Notice of Public Hearing on Proposed Revisions to the State Implementation Plan

The Texas Commission on Environmental Quality (commission) will offer a public hearing to receive testimony regarding proposed air quality rules and state implementation plan (SIP) revisions resulting from reclassification of Bexar County from marginal to moderate nonattainment for the 2015 eight-hour ozone National Ambient Air Quality Standard (NAAQS) under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Chapter 2001, Subchapter B; and 40 Code of Federal Regulations §51.102 of the United States Environmental Protection Agency (EPA) concerning SIPs.

The proposed rulemaking concerns amendments to 30 Texas Administrative Code (TAC) Chapter 114, Control of Air Pollution from Motor Vehicles (Project No. 2022-026-114-AI). Proposed amendments include implementing a vehicle emissions inspection and maintenance (I/M) program in Bexar County. The proposed revisions to the SIP include: an I/M SIP revision that would expand an I/M program to Bexar County beginning no later than November 1, 2026 (Project 2022-027-SIP-NR); a demonstration that includes a photochemical modeling analysis and a weight-of-evidence assessment that meets EPA modeling guidance (Project No. 2022-025-SIP-NR); and a demonstration that includes an analysis of reasonable further progress (RFP) towards attainment (Project No. 2022-024-SIP-NR). Both the photochemical modeling and RFP demonstration SIP revisions include motor vehicle emissions budgets for the 2023 attainment year.

The commission will offer a public hearing on these proposals in San Antonio on July 13, 2023 at 7:00 p.m. CDT in the Alamo Area Council of Governments board room, located at 2700 NE Loop 410, Suite 101. 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 proposals 30 minutes prior to the hearing.

The hearing will be conducted in English, and Spanish language interpretation services will be made available. Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Brad Patterson, Office of the Chief Clerk at (512) 239-1201 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

Information concerning the proposed rules, including proposal documents and instructions for providing public comment, is available at [https://www.tceq.texas.gov/rules/propose\\_adopt.html](https://www.tceq.texas.gov/rules/propose_adopt.html). Information concerning the proposed SIP revisions, including proposal documents and instructions for providing public comment, is available at <https://www.tceq.texas.gov/airquality/sip/san/san-latest-ozone>.

The comment period closes at 11:59 p.m. CDT on July 17, 2023. Written comments will be accepted through the TCEQ's *Public Comment* system at: <https://tceq.commentinput.com/>. File size restrictions may apply. All comments should reference the respective project number. For additional submission methods or information, contact the project

manager for the proposed project: for Project No. 2022-026-114-AI, contact Edgar Gilmore at (512) 239-2069; for Project Nos. 2022-027-SIP-NR and 2022-025-SIP-NR, contact Alison Stokes at (512) 239-4902; and for Project No. 2022-024-SIP-NR, contact Vanessa De Arman at (512) 239-5609.

TRD-202302050

Guy Henry

Acting Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: June 2, 2023



### Notice of Public Hearing on Proposed Revisions to the State Implementation Plan

The Texas Commission on Environmental Quality (commission) will offer a public hearing to receive testimony regarding proposed state implementation plan (SIP) revisions resulting from reclassification of the Dallas-Fort Worth (DFW) area from marginal to moderate nonattainment for the 2015 eight-hour ozone National Ambient Air Quality Standard (NAAQS). The hearing will also be offered to receive testimony regarding proposed air quality rules resulting from reclassification of the DFW area from serious to severe nonattainment for the 2008 eight-hour ozone NAAQS. These proposals are made under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Chapter 2001, Subchapter B; and 40 Code of Federal Regulations §51.102 of the United States Environmental Protection Agency (EPA) concerning SIPs.

The proposed revisions to the SIP include a demonstration that includes a photochemical modeling analysis and a weight-of-evidence assessment that meets EPA modeling guidance (Project No. 2022-021-SIP-NR) and a demonstration that includes an analysis of reasonable further progress towards attainment (Project No. 2022-023-SIP-NR). Both proposed SIP revisions include motor vehicle emissions budgets for the 2023 attainment year. The proposed rulemaking concerns amendments to 30 Texas Administrative Code (TAC) Chapter 114, Control of Air Pollution from Motor Vehicles (Project No. 2022-026-114-AI). Proposed amendments include removing Ellis, Johnson, Kaufman, Parker, Rockwall, and Wise Counties from the list of affected counties required to comply with the state's low Reid Vapor Pressure control requirements.

The commission will offer a public hearing on these proposals in Arlington on July 6, 2023 at 7:00 p.m. CDT in the Arlington City Council Chambers, located at 101 West Abrams Street. 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.

The hearing will be conducted in English, and Spanish language interpretation services will be made available. Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Brad Patterson, Office of the Chief Clerk at (512) 239-1201 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

Written comments may be submitted to Denine Calvin, MC 206, Office of Air, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to either (512) 239-4804 or [fax4808@tceq.texas.gov](mailto:fax4808@tceq.texas.gov). Electronic comments may be submitted via the *Public Comment* system at: <https://tceq.commentinput.com/>. File size restrictions may apply. All comments should reference the respective project number.

The comment period closes at 11:59 p.m. CDT on July 17, 2023. Information concerning the proposed rules, including proposal documents and instructions for providing public comment, is available at [https://www.tceq.texas.gov/rules/propose\\_adopt.html](https://www.tceq.texas.gov/rules/propose_adopt.html). Information concerning the proposed SIP revisions, including proposal documents and instructions for providing public comment, is available at <https://www.tceq.texas.gov/airquality/sip/dfw/dfw-latest-ozone>. For further information, please contact the project manager for the proposed project: for Project Nos. 2022-021-SIP-NR and 2022-023-SIP-NR, contact Denine Calvin, at (512) 239-0613 and for Project No. 2022-026-114-AI, contact Edgar Gilmore at (512) 239-2069.

TRD-202302051

Guy Henry

Acting Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: June 2, 2023



### Notice of Public Meeting New Permit No. WQ0016247001

**APPLICATION.** Quadvest, L.P., 26926 Farm-to-Market Road 2978, Magnolia, Texas 77354, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016247001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. TCEQ received this application on November 14, 2022.

The facility will be located approximately 2.8 miles south of the intersection of Betka Road and Cochran Road, in Waller County, Texas 77484. The treated effluent will be discharged via pipe to a detention pond and channel, thence to an unnamed tributary, thence to an unnamed impoundment, thence to Dodd Lake, thence to an unnamed tributary, thence to Harris Creek, thence to Irons Creek, thence to Brazos River Below Navasota River in Segment No. 1202 of the Brazos River Basin. The unclassified receiving water uses are limited aquatic life use for the detention pond and channel and for the unnamed tributary upstream of the unnamed impoundment, and high aquatic life use for the unnamed impoundment and Dodd Lake and for the unnamed tributary downstream of Dodd Lake. The designated uses for Segment No. 1202 are primary contact recreation, public water supply, and high aquatic life use. In accordance with 30 Texas Administrative Code §307.5 and TCEQ's *Procedures to Implement the Texas Surface Water Quality Standards* (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in the unnamed impoundment, Dodd Lake, and the unnamed tributary downstream of Dodd Lake, which have been identified as having high aquatic life uses. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application.

<https://gisweb.tceq.texas.gov/LocationMapper/?marker=-95.991666,29.980833&level=18>.

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must

Jon Niermann, *Chairman*  
Emily Lindley, *Commissioner*  
Bobby Janecka, *Commissioner*  
Erin E. Chancellor, *Acting Executive Director*



# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

## NOTICE OF PUBLIC HEARING ON PROPOSED REVISIONS TO THE STATE IMPLEMENTATION PLAN

The Texas Commission on Environmental Quality (commission) will offer a public hearing to receive testimony regarding proposed state implementation plan (SIP) revisions resulting from reclassification of the Dallas-Fort Worth (DFW) area from marginal to moderate nonattainment for the 2015 eight-hour ozone National Ambient Air Quality Standard (NAAQS). The hearing will also be offered to receive testimony regarding proposed air quality rules resulting from reclassification of the DFW area from serious to severe nonattainment for the 2008 eight-hour ozone NAAQS. These proposals are made under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Chapter 2001, Subchapter B; and 40 Code of Federal Regulations §51.102 of the United States Environmental Protection Agency (EPA) concerning SIPs.

The proposed revisions to the SIP include a demonstration that includes a photochemical modeling analysis and a weight-of-evidence assessment that meets EPA modeling guidance (**Project No. 2022-021-SIP-NR**) and a demonstration that includes an analysis of reasonable further progress towards attainment (**Project No. 2022-023-SIP-NR**). Both proposed SIP revisions include motor vehicle emissions budgets for the 2023 attainment year. The proposed rulemaking concerns amendments to 30 Texas Administrative Code (TAC) Chapter 114, Control of Air Pollution from Motor Vehicles (**Project No. 2022-026-114-AI**). Proposed amendments include removing Ellis, Johnson, Kaufman, Parker, Rockwall, and Wise Counties from the list of affected counties required to comply with the state's low Reid Vapor Pressure control requirements.

The commission will offer a public hearing on these proposals in Arlington on July 6, 2023 at 7:00 p.m. CDT in the Arlington City Council Chambers, located at 101 West Abrams Street. 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.

The hearing will be conducted in English, and Spanish language interpretation services will be made available. Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Brad Patterson, Office of the Chief Clerk at (512) 239-1201 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Written comments may be submitted to Denine Calvin, MC 206, Office of Air, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to either (512) 239-4804 or [fax4808@tceq.texas.gov](mailto:fax4808@tceq.texas.gov). Electronic comments may be submitted via the *Public Comment* system at: <https://tceq.commentinput.com/>. File size restrictions may apply. All comments should reference the respective project number.

The comment period closes at 11:59 p.m. CDT on July 17, 2023. Information concerning the proposed rules, including proposal documents and instructions for providing public comment,

is available at [https://www.tceq.texas.gov/rules/propose\\_adopt.html](https://www.tceq.texas.gov/rules/propose_adopt.html). Information concerning the proposed SIP revisions, including proposal documents and instructions for providing public comment, is available at <https://www.tceq.texas.gov/airquality/sip/dfw/dfw-latest-ozone>. For further information, please contact the project manager for the proposed project: for **Project Nos. 2022-021-SIP-NR** and **2022-023-SIP-NR**, contact Denine Calvin, at (512) 239-0613 and for **Project No. 2022-026-114-AI**, contact Edgar Gilmore at (512) 239-2069.



# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

## NOTIFICACION DE AUDIENCIA PUBLICA SOBRE LA REVISION PROPUESTA DEL PLAN DE IMPLEMENTACION ESTATAL

La Comisión de Calidad Ambiental de Texas (comisión) ofrecerá una audiencia pública para recibir testimonios sobre las reglas de calidad del aire propuestas y las revisiones del plan de implementación estatal (SIP) resultantes de la reclasificación del área de Dallas-Fort Worth (DFW) de incumplimiento marginal a moderado para el Estándar Nacional de Calidad del Aire Ambiental (NAAQS) de ozono de ocho horas de 2015. La audiencia también se ofrecerá para recibir testimonios sobre las reglas de calidad del aire propuestas que resultan de la reclasificación del área de DFW de incumplimiento serio a incumplimiento severo para las NAAQS de ozono de ocho horas de 2008. Estas propuestas se hacen bajo los requisitos del Código de Salud y Seguridad de Texas, §382.017; Código de Gobierno de Texas, Capítulo 2001, Subcapítulo B; y 40 Código de Regulaciones Federales §51.102 de la Agencia de Protección Ambiental de los Estados Unidos (EPA) con respecto a los SIP.

Las revisiones propuestas al SIP incluyen una demostración que incluye un análisis de modelado fotoquímico y una evaluación del peso de la evidencia que cumple con la guía de modelado de la EPA (**Proyecto No. 2022-021-SIP-NR**) y una demostración que incluye un análisis de razonable más progreso hacia el logro (**Proyecto No. 2022-023-SIP-NR**). Ambas revisiones SIP propuestas incluyen presupuestos de emisiones de vehículos motorizados para el año de cumplimiento 2023. La reglamentación propuesta se refiere a las enmiendas al 30 Código Administrativo de Texas (TAC), Capítulo 114, Control de la Contaminación del Aire por Vehículos Motorizados (**Proyecto de Regla No. 2022-026-114-AI**). Las enmiendas propuestas incluyen la eliminación de los condados de Ellis, Johnson, Kaufman, Parker, Rockwall y Wise de la lista de condados afectados que deben cumplir con los requisitos de control de baja presión de vapor Reid del estado.

La comisión ofrecerá una audiencia pública sobre estas propuestas en Arlington el 6 de julio de 2023 a las 7:00 p. m. CDT en las Cámaras del Concejo Municipal de Arlington, ubicadas en 101 West Abrams Street. La audiencia está estructurada para recibir comentarios orales o escritos de las personas interesadas. Los particulares podrán presentar declaraciones orales cuando sean llamados por orden de inscripción. No se permitirá la discusión abierta durante la audiencia; sin embargo, los miembros del personal de la comisión estarán disponibles para discutir las propuestas 30 minutos antes de la audiencia.

La audiencia se llevará a cabo en inglés y se pondrán a disposición servicios de interpretación en español. Las personas que tienen necesidades especiales de comunicación u otras adaptaciones que planean asistir a la audiencia deben comunicarse con Brad Patterson, Oficina del Secretario Principal al (512) 239-1201 o 1-800-RELAY-TX (TDD). Las solicitudes deben hacerse con la mayor anticipación posible.

Los comentarios por escrito pueden enviarse a Denine Calvin, MC 206, Office of Air, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, o por fax al (512) 239-4804 o [fax4808@tceq.texas.gov](mailto:fax4808@tceq.texas.gov). Los comentarios electrónicos pueden enviarse a través del sistema de comentarios públicos en: <https://tceq.commentinput.com/>. Pueden

aplicarse restricciones de tamaño de archivo. Todos los comentarios deben hacer referencia al número de proyecto respectivo.

El período de comentarios cierra a las 11:59 p.m. CDT el 17 de julio de 2023. La información sobre las reglas propuestas, incluidos los documentos de la propuesta y las instrucciones para proporcionar comentarios públicos, está disponible en [https://www.tceq.texas.gov/rules/propose\\_adopt.html](https://www.tceq.texas.gov/rules/propose_adopt.html). La información sobre las revisiones del SIP propuestas, incluidos los documentos de la propuesta y las instrucciones para proporcionar comentarios públicos, está disponible en <https://www.tceq.texas.gov/airquality/sip/dfw/dfw-latest-ozone>. Para obtener más información, comuníquese con el gerente del proyecto para el proyecto propuesto: para los **Proyectos No. 2022-021-SIP-NR** y **2022-023-SIP-NR**, comuníquese con Denine Calvin al (512) 239-0613 y para el **Proyecto de Regla No. 2022-026-114-AI**, comuníquese con Edgar Gilmore al (512) 239-2069.



Jon Niermann, *Chairman*  
Emily Lindley, *Commissioner*  
Bobby Janecka, *Commissioner*  
Erin E. Chancellor, *Acting Executive Director*



# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

## NOTICE OF PUBLIC HEARING ON PROPOSED REVISIONS TO THE STATE IMPLEMENTATION PLAN

The Texas Commission on Environmental Quality (commission) will offer a public hearing to receive testimony regarding proposed air quality rules and state implementation plan (SIP) revisions resulting from reclassification of Bexar County from marginal to moderate nonattainment for the 2015 eight-hour ozone National Ambient Air Quality Standard (NAAQS) under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Chapter 2001, Subchapter B; and 40 Code of Federal Regulations §51.102 of the United States Environmental Protection Agency (EPA) concerning SIPs.

The proposed rulemaking concerns amendments to 30 Texas Administrative Code (TAC) Chapter 114, Control of Air Pollution from Motor Vehicles (**Project No. 2022-026-114-AI**). Proposed amendments include implementing a vehicle emissions inspection and maintenance (I/M) program in Bexar County. The proposed revisions to the SIP include: an I/M SIP revision that would expand an I/M program to Bexar County beginning no later than November 1, 2026 (**Project 2022-027-SIP-NR**); a demonstration that includes a photochemical modeling analysis and a weight-of-evidence assessment that meets EPA modeling guidance (**Project No. 2022-025-SIP-NR**); and a demonstration that includes an analysis of reasonable further progress (RFP) towards attainment (**Project No. 2022-024-SIP-NR**). Both the photochemical modeling and RFP demonstration SIP revisions include motor vehicle emissions budgets for the 2023 attainment year.

The commission will offer a public hearing on these proposals in San Antonio on July 13, 2023 at 7:00 p.m. CDT in the Alamo Area Council of Governments board room, located at 2700 NE Loop 410, Suite 101. 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 proposals 30 minutes prior to the hearing.

The hearing will be conducted in English, and Spanish language interpretation services will be made available. Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Brad Patterson, Office of the Chief Clerk at (512) 239-1201 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Information concerning the proposed rules, including proposal documents and instructions for providing public comment, is available at [https://www.tceq.texas.gov/rules/propose\\_adopt.html](https://www.tceq.texas.gov/rules/propose_adopt.html). Information concerning the proposed SIP revisions, including proposal documents and instructions for providing public comment, is available at <https://www.tceq.texas.gov/airquality/sip/san/san-latest-ozone>.

The comment period closes at 11:59 p.m. CDT on July 17, 2023. Written comments will be accepted through the TCEQ's *Public Comment* system at: <https://tceq.commentinput.com/>. File size restrictions may apply. All comments should reference the respective project number. For additional submission methods or information, contact the project manager for the proposed

project: for **Project No. 2022-026-114-AI**, contact Edgar Gilmore at (512) 239-2069; for **Project Nos. 2022-027-SIP-NR** and **2022-025-SIP-NR**, contact Alison Stokes at (512) 239-4902; and for **Project No. 2022-024-SIP-NR**, contact Vanessa De Arman at (512) 239-5609.



# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

## NOTIFICACION DE AUDIENCIA PUBLICA SOBRE LA REVISION PROPUESTA DEL PLAN DE IMPLEMENTACION ESTATAL

La Comisión de Calidad Ambiental de Texas (comisión) ofrecerá una audiencia pública para recibir testimonios sobre las reglas de calidad del aire propuestas y las revisiones del plan de implementación estatal (SIP) resultantes de la reclasificación del condado de Bexar de incumplimiento marginal a moderado para el Estándar Nacional de Calidad del Aire Ambiental (NAAQS) de ozono de ocho horas de 2015, bajo los requisitos del Código de Salud y Seguridad de Texas, §382.017; Código de Gobierno de Texas, Capítulo 2001, Subcapítulo B; y 40 Código de Regulaciones Federales §51.102 de la Agencia de Protección Ambiental de los Estados Unidos (EPA) con respecto a los SIP.

La reglamentación propuesta se refiere a las enmiendas al 30 Código Administrativo de Texas (TAC), Capítulo 114, Control de la Contaminación del Aire por Vehículos Motorizados (**Proyecto de Regla No. 2022-026-114-AI**). Las enmiendas propuestas incluyen la implementación de un programa de inspección y mantenimiento (I/M) de emisiones de vehículos en el condado de Bexar. Las revisiones propuestas al SIP incluyen: una revisión del SIP I/M que expandiría un programa I/M al condado de Bexar a partir del 1 de noviembre de 2026 a más tardar (**Proyecto No. 2022-027-SIP-NR**); una demostración que incluye un análisis de modelado fotoquímico y una evaluación del peso de la evidencia que cumple con la guía de modelado de la EPA (**Proyecto No. 2022-025-SIP-NR**); y una demostración que incluye un análisis del progreso adicional razonable (RFP) hacia el logro (**Proyecto No. 2022-024-SIP-NR**). Tanto el modelado fotoquímico como las revisiones SIP de demostración de RFP incluyen presupuestos de emisiones de vehículos motorizados para el año de cumplimiento 2023.

La comisión ofrecerá una audiencia pública sobre estas propuestas en San Antonio el 13 de julio de 2023 a las 7:00 p. m. CDT en la sala de juntas del Consejo de Gobiernos del Área de Alamo, ubicada en 2700 NE Loop 410, Suite 101. La audiencia está estructurada para recibir comentarios orales o escritos de las personas interesadas. Los particulares podrán presentar declaraciones orales cuando sean llamados por orden de inscripción. No se permitirá la discusión abierta durante la audiencia; sin embargo, los miembros del personal de la comisión estarán disponibles para discutir las propuestas 30 minutos antes de la audiencia.

La audiencia se llevará a cabo en inglés y se pondrán a disposición servicios de interpretación en español. Las personas que tienen necesidades especiales de comunicación u otras adaptaciones que planean asistir a la audiencia deben comunicarse con Brad Patterson, Oficina del Secretario Principal al (512) 239-1201 o 1-800-RELAY-TX (TDD). Las solicitudes deben hacerse con la mayor anticipación posible.

La información sobre las reglas propuestas, incluidos los documentos de la propuesta y las instrucciones para proporcionar comentarios públicos, está disponible en [https://www.tceq.texas.gov/rules/propose\\_adopt.html](https://www.tceq.texas.gov/rules/propose_adopt.html). La información sobre las revisiones propuestas del SIP, incluidos los documentos de la propuesta y las instrucciones para proporcionar comentarios públicos, está disponible en <https://www.tceq.texas.gov/airquality/sip/san/san-latest-ozone>.

El período de comentarios cierra a las 11:59 p.m. CDT el 17 de julio de 2023. Se aceptarán comentarios escritos a través del sistema de comentarios públicos de la TCEQ en: <https://tceq.commentinput.com/>. Pueden aplicarse restricciones de tamaño de archivo. Todos los comentarios deben hacer referencia al número de proyecto respectivo. Para obtener información o métodos de presentación adicionales, comuníquese con el gerente del proyecto para el proyecto propuesto: para el **Proyecto No. 2022-026-114-AI**, comuníquese con Edgar Gilmore al (512) 239-2069; para los **Proyectos Nos. 2022-027-SIP-NR** y **2022-025-SIP-NR**, comuníquese con Alison Stokes al (512) 239-4902; y para el **Proyecto No. 2022-024-SIP-NR**, comuníquese con Vanessa De Arman al (512) 239-5609.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 2, 2023.

TRD-202302055

Kara Mace

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Earliest possible date of adoption: July 16, 2023

For further information, please call: (512) 804-4703

## 28 TAC §180.78

**STATUTORY AUTHORITY.** DWC proposes repealing §180.78 under Labor Code §§413.05122, 402.00111, 402.00116, and 402.061.

Labor Code §413.05122 requires the commissioner, after consulting with the medical advisor, to adopt rules concerning the operation of the MQRP.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

**CROSS-REFERENCE TO STATUTE.** Repealing §180.78 implements Labor Code §413.05122, enacted by HB 2605, 82nd Legislature, Regular Session (2011).

*§180.78. Effective Date.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 2, 2023.

TRD-202302056

Kara Mace

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Earliest possible date of adoption: July 16, 2023

For further information, please call: (512) 804-4703

## TITLE 30. ENVIRONMENTAL QUALITY

### PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

#### CHAPTER 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to Title 30 Texas

Administrative Code (TAC) §§114.1, 114.2, 114.50, 114.53, and 114.309.

If adopted, amended §§114.1, 114.2, 114.50, 114.53, and 114.309 will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the State Implementation Plan (SIP).

#### Background and Summary of the Factual Basis for the Proposed Rules

On October 7, 2022, the EPA published its reclassification of Bexar County from marginal to moderate nonattainment for the 2015 eight-hour ozone National Ambient Air Quality Standard (NAAQS), effective November 7, 2022 (87 Federal Register (FR) 60897). Bexar County is subject to the moderate nonattainment requirements in federal Clean Air Act (CAA), §182(b). The CAA and 40 Code of Federal Regulations (CFR) Part 51, as amended, require a basic vehicle emissions inspection and maintenance (I/M) program in ozone nonattainment areas classified as moderate, so the state must implement an I/M program in Bexar County. Rulemaking is required to implement I/M and set the testing fee applicable in Bexar County, and a SIP revision is required to incorporate a Bexar County I/M program into the SIP. The rulemaking and SIP revision were due to the EPA by January 1, 2023, and implementation of the I/M program in Bexar County is required by November 7, 2026.

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

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

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

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

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

tainment, interfere with control measures, or prevent reasonable further progress toward attainment of the ozone NAAQS.

The proposed amendments to Chapter 114 would revise 30 TAC Chapter 114, Subchapters A and C to add program-related definitions, identify vehicles in Bexar County that would be subject to vehicle emissions inspections, require emissions inspection stations in Bexar County to offer the on-board diagnostics (OBD) test approved by the EPA, and establish the maximum fee that Bexar County emissions inspection stations may charge for the OBD test. Additional details regarding the proposed Bexar County I/M program are discussed in the Bexar County I/M SIP revision (Project No. 2022-027-SIP-NR), proposed concurrently with this rulemaking. These amendments do not affect the EPA-approved I/M program requirements for other areas, and the proposed requirements for the Bexar County I/M program meet EPA requirements for implementing an I/M program for moderate ozone nonattainment areas. Therefore, the proposed rulemaking would not negatively impact the state's progress towards attainment of the 2008 and 2015 eight-hour ozone NAAQS.

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

#### Section by Section Discussion

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

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

#### Subchapter A: Definitions

##### §114.1. Definitions

The proposed revisions would remove obsolete definitions in this section that were identified during the 2019 Quadrennial review of Chapter 114 and have been reaffirmed by staff as no longer necessary. The obsolete definitions were associated with re-

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

##### §114.2. Inspection and Maintenance Definitions

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

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

#### Division 1: Vehicle Inspection and Maintenance

##### §114.50. Vehicle Emissions Inspection Requirements

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

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

##### §114.53. Inspection and Maintenance Fees

The proposed revision to §114.53(a) would add a new paragraph (4) to establish the maximum fee of \$11.50 that Bexar County program area emissions inspection stations may charge for the OBD test. In 2020, TCEQ commissioned a study to help prepare for the future implementation of an I/M program in Bexar County. The study is available at <https://wayback.archive-it.org/414/20210528194434/https://www.tceq.texas.gov/assets/public/implementation/air/ms/IM/2020%20Bexar%20County%20IM%20Prog%20Study%20Report.pdf>. The study recommended a fee between \$18 and \$22; however, the proposed maximum fee of \$11.50 for the Bexar County I/M program is comparable to the existing fee in the similar program areas of Austin-Round Rock and El Paso County and will help minimize costs to the public. The proposed revision will not include provisions for the Bexar County program area to participate in the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP), which has not been funded since 2017 and all participating counties have opted out of the LIRAP. If the TCEQ is reappropriated funding in the future to implement LIRAP or a similar program, the TCEQ would initiate rulemaking to designate that Bexar County is eligible to participate effective upon the start date of the I/M program. The proposed revision to §114.53(d)(4) would add a new paragraph that requires affected vehicle owners remit \$2.50 to the DMV or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee to cover the costs to implement, maintain, administer, and enforce the required vehicle I/M program in Bexar County.

## Subchapter H: Low Emission Fuels

### Division 1: Gasoline Volatility

#### §114.309. Affected Counties

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

#### Fiscal Note: Costs to State and Local Government

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

The agency estimates the implementation of amendments to the proposed rule in §§114.2, 114.50, and 114.53 will result in an increase in revenue received by TCEQ and Texas Department of Public Safety (DPS). The proposed rulemaking would cause the Texas Department of Motor Vehicles (DMV) to collect \$2.50 per registration issued when the I/M program begins on November 1, 2026 in Bexar County. During the first year, two months of revenue would be collected during calendar year 2026. During the next four years, twelve months of revenue would be collected. TCEQ would receive \$0.50 in revenue per vehicle registration issued to cover the costs of developing test and equipment specifications, developing a testing program, and providing assistance through a registration denial program. The remaining \$2.00 of the fee would be received by DPS to cover the cost of training technicians on the I/M program, staffing of waiver stations, and enforcement of I/M program requirements. The agency estimates TCEQ will receive as much as \$132,903 in the first year the rule is implemented for two months (\$797,418 annualized), increasing at an assumed 3% annual increase up to \$897,501 in the fifth year after implementation. Correspondingly, DPS would receive as much as \$531,612 in the first year (\$3,189,672 annualized) and increase to as much as \$3,590,004 in the fifth year.

The agency estimates that approximately 114 governmental entities with gasoline-powered vehicles registered in Bexar County, including cities, state governments, water districts, river authorities, and independent school district will be required pay vehicle I/M program and repair costs as a result of implementation of the proposed rule. It is estimated that there will be a total of 10,553 governmental vehicles impacted in the first year increasing by 3% annually to 11,877 estimated vehicles in the fifth year. All entities would be responsible for the \$2.50 to be collected by the DMV per vehicle and any necessary vehicle repair costs. The fees paid to the DMV are estimated at \$3,957 in the first year increasing to a total of \$26,724 in the fifth year. The total repair cost, assuming a 4% failure rate on inspections and \$400 per repair would be approximately \$25,327 in the first year (\$151,962 annualized), increasing to \$171,032 in the fifth year. Some of these entities conduct their own inspections, in which case they would be responsible for purchasing or renting equipment to conduct inspections and additional phone or internet service costs. Entities that pay for their inspections would be responsible for paying an emissions inspection fee not to exceed \$11.50 per vehicle to a vendor.

## Public Benefits and Costs

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

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

The proposed rulemaking would increase revenue for entities that conduct I/M testing and vehicle repairs. Currently, 654 stations conduct vehicle safety inspections in Bexar County, including 544 that offer inspections to the public. Entities that provide the OBD test would earn an amount not to exceed \$11.50 in revenue for each inspection, totaling as much as \$3 million in the first year (\$18.2 million annualized) increasing to as much as \$20.5 million in the fifth year. These and other entities that can conduct necessary repairs so vehicles are able to pass the OBD test are estimated to receive as much as \$4.2 million for these services in the first year (\$25.2 million annualized), increasing to as much as \$28.5 million in the fifth year.

#### Local Employment Impact Statement

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

#### Rural Community Impact Statement

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

#### Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rules are in effect.

#### Small Business Regulatory Flexibility Analysis

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

#### Government Growth Impact Statement

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

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

#### Draft Regulatory Impact Analysis Determination

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

The proposed rulemaking's purpose is to implement the required vehicle I/M program in Bexar County and to remove certain counties in the DFW area from the state low RVP program since they will be subject to the federal RFG rules as of November 7, 2023. These changes are necessary to comply with federal requirements for the implementation of vehicle I/M programs required by 42 United States Code (U.S.C.) §7511a(a), FCAA, §182(b) for the Bexar County 2015 eight-hour ozone nonattainment area and to remove counties in the DFW 2008 eight-hour ozone severe nonattainment area from the state low RVP program that will become subject to requirements for RFG as required by 42 U.S.C. §7545, FCAA, §211(k)(10)(D). The requirement to implement and enforce vehicle I/M programs is specifically required for certain nonattainment areas by the FCAA, and the proposed revisions to 30 TAC Chapter 114 are anticipated

to be used as a control strategy for demonstrating attainment of the 2015 eight-hour ozone NAAQS upon implementation of the program in the Bexar County area, as discussed elsewhere in this preamble.

The proposed rulemaking implements requirements of 42 U.S.C. §7410, FCAA, §110, which requires states to adopt a SIP that provides for the implementation, maintenance, and enforcement of the NAAQS in each air quality control region of the state; as well as the removal of counties from the existing state low RVP program that will become subject to the requirements of the 42 U.S.C. §7545, FCAA, §211(k)(10)(D), as discussed elsewhere in this preamble. While 42 U.S.C. §7410, FCAA, §110 generally does not require specific programs, methods, or reductions in order to meet the standard, vehicle I/M programs are specifically required by the FCAA, as are the requirements for federal RFG for severe ozone nonattainment areas. The SIP must also include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of the FCAA. The provisions of the FCAA recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS, and when programs are specifically required, states may implement them with flexibility allowed under the statute and EPA rules. This flexibility allows states, affected industry, and the public to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 U.S.C. §7410, FCAA, §110; nor does it allow states to ignore specific requirements of the FCAA. States are not free to ignore the requirements of 42 U.S.C. §7410, FCAA, §110 and must develop programs to assure that their contributions to nonattainment areas are reduced so that these areas can be brought into attainment on the schedule prescribed by the FCAA.

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

As discussed earlier in this preamble, states are required to adopt SIPs with enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the FCAA. As discussed in the FISCAL NOTE portion of this preamble, the proposed rules are not anticipated to add any significant additional costs to affected individuals or businesses beyond what is necessary to attain the 2015 eight-hour ozone NAAQS, comply with the specific requirements for vehicle I/M programs, or 42 U.S.C. §7545, FCAA, §211(k)(10)(D) on the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The requirement to provide a fiscal analysis of regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th Legislative Session. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These are identified in the statutory lan-



guage as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law.

As discussed earlier in this preamble, the FCAA does not always require specific programs, methods, or reductions in order to meet the NAAQS, but vehicle I/M programs are specifically required by the FCAA for moderate nonattainment areas, as are the requirements for federal RFG for severe ozone nonattainment areas; thus, states must develop programs for each area contributing to nonattainment to help ensure that those areas will meet the required attainment deadlines and that comply with EPA requirements for vehicle I/M programs and the federal RFG program. Because of the ongoing need to meet federal requirements, the commission routinely proposes and adopts rules incorporating or designed to satisfy specific federal requirements. The legislature is presumed to understand this federal scheme. If each rule proposed by the commission to meet a federal requirement was considered to be a major environmental rule that exceeds federal law, then each of those rules would require the full regulatory impact analysis (RIA) contemplated by SB 633. Requiring a full RIA for all federally required rules is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the LBB, then the intent of SB 633 is presumed to only require the full RIA for rules that are extraordinary in nature. While the proposed rules may have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA and creates no additional impacts since the proposed rules do not impose burdens greater than required to demonstrate attainment of the 2015 eight-hour ozone NAAQS and comply with the requirements for vehicle I/M programs and the federal RFG program as discussed elsewhere in this preamble.

For these reasons, the proposed rules fall under the exception in Texas Government Code, §2001.0225(a), because they are required by, and do not exceed, federal law. The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code, but left this provision substantially unamended. It is presumed that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." (Central Power & Light Co. v. Sharp, 919 S.W.2d 485, 489 (Tex. App. Austin 1995), writ denied with per curiam opinion respecting another issue, 960 S.W.2d 617 (Tex. 1997); Bullock v. Marathon Oil Co., 798 S.W.2d 353, 357 (Tex. App. Austin 1990, no writ). Cf. Humble Oil & Refining Co. v. Calvert, 414 S.W.2d 172 (Tex. 1967); Dudney v. State Farm Mut. Auto Ins. Co., 9 S.W.3d 884, 893 (Tex. App. Austin 2000); Southwestern Life

Ins. Co. v. Montemayor, 24 S.W.3d 581 (Tex. App. Austin 2000, pet. denied); and Coastal Indust. Water Auth. v. Trinity Portland Cement Div., 563 S.W.2d 916 (Tex. 1978).) The commission's interpretation of the RIA requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance" (Texas Government Code, §2001.035). The legislature specifically identified Texas Government Code, §2001.0225 as subject to this standard.

As discussed in this analysis and elsewhere in this preamble, the commission has substantially complied with the requirements of Texas Government Code, §2001.0225. The proposed rules implement the requirements of the FCAA as discussed in this analysis and elsewhere in this preamble. The proposed rules were determined to comply with requirements for vehicle I/M programs and federal RFG requirements and will not exceed any standard set by state or federal law. These proposed rules are not an express requirement of state law. The proposed rules do not exceed a requirement of a delegation agreement or a contract between state and federal government, as the proposed rules, if adopted by the commission and approved by EPA, will become federal law as part of the approved SIP required by 42 U.S.C., §7410, FCAA, §110. The proposed rules were not developed solely under the general powers of the agency but are authorized by specific sections of Texas Health and Safety Code (THSC), Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code, which are cited in the STATUTORY AUTHORITY section of this preamble, including THSC, §§382.011, 382.012, and 382.017. Therefore, this proposed rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

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

#### Takings Impact Assessment

Under Texas Government Code, §2007.002(5), taking means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or §17 or §19, Article I, Texas Constitution; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The commission completed a takings impact analysis for the proposed rulemaking action under the Texas Government Code, Chapter 2007. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to meet federal requirements for the implementation of vehicle I/M pro-

grams and removal of the six specified counties from the state low RVP program since they will become subject to the federal RFG program one year after reclassification to severe for the 2008 eight-hour ozone NAAQS. Therefore, Chapter 2007 does not apply to this proposed rulemaking because it is an action reasonably taken to fulfill an obligation mandated by federal law, as provided by Texas Government Code, §2007.003(b)(4).

As discussed elsewhere in this preamble, the proposed rulemaking implements requirements of the FCAA, 42 U.S.C., §7410, FCAA, §110 which requires states to adopt a SIP that provides for the implementation, maintenance, and enforcement of the NAAQS in each air quality control region of the state. While 42 U.S.C., §7410, FCAA, §110 generally does not require specific programs, methods, or reductions in order to meet the standard, vehicle I/M programs and federal RFG are specifically required by the FCAA. The SIP must include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of the FCAA. The provisions of the FCAA recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public, to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 U.S.C., §7410, FCAA, §110. States are not free to ignore the requirements of 42 U.S.C., §7410, FCAA, §110 and must develop programs to assure that their contributions to nonattainment areas are reduced so that these areas can be brought into attainment on the schedule prescribed by the FCAA.

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

The proposed rules will not create any additional burden on private real property beyond what is required under federal law, as the proposed rules, if adopted by the commission and approved by EPA, will become federal law as part of the approved SIP required by 42 U.S.C., §7410, FCAA, §110. The proposed rules will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007. For these reasons, Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking.

#### Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordi-

nation Act Implementation Rules, 31 TAC §29.11(b)(2) relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

Note: §505.11(b)(2) applies only to air pollutant emissions, on-site sewage disposal systems, and underground storage tanks. §505.11(b)(4) applies to all other actions. The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking will not affect any coastal natural resource areas because the rules only affect counties outside the CMP area and is, therefore, consistent with CMP goals and policies.

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

#### Announcement of Hearing

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

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

#### Submittal of Comments

Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to fax4808@tceq.texas.gov. Electronic comments may be submitted at: <https://tceq.commentinput.com/comment/search>. File size restrictions may apply to comments being submitted via the TCEQ Public Comments system. All comments should reference Rule Project Number 2022-026-114-AI. The comment period closes on July 17, 2023. Please choose one of the methods provided to submit your written comments.

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

## SUBCHAPTER A. DEFINITIONS

### 30 TAC §114.1, §114.2

#### Statutory Authority

The expansion of vehicle I/M to Bexar County is proposed under the authority of Texas Water Code (TWC), §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water

Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act (TCAA).

The expansion of vehicle I/M to Bexar County is also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air and THSC, §382.012, concerning State Air Control Plan, which authorizes of the commission to prepare and develop a general, comprehensive plan for the control of the state's air. Additionally, the expansion of vehicle I/M to Bexar County is authorized under THSC, §382.201, concerning Definitions, which specifies the definitions that apply under Subchapter G of the THSC, Vehicle Emissions; THSC, §382.202, concerning Vehicle Emissions Inspection and Maintenance Program, which authorizes the commission to establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of the federal Clean Air Act; THSC, §382.203, concerning Vehicles Subject to Program; Exemptions, which establishes which vehicles are subject to the I/M program and which are exempt from it; and THSC, §382.205, concerning Inspection Equipment and Procedures, which authorizes the commission to adopt standards and specifications for motor vehicle emissions testing equipment, recordkeeping and reporting procedures, and measurable emissions standards, as well as consult with the Department of Public Safety of the State of Texas.

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

#### §114.1. Definitions.

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

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

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

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

(4) First safety inspection certificate--Initial Texas Department of Public Safety (DPS) certificates issued through DPS-certified inspection stations for every new vehicle found to be in compliance with the rules and regulations governing safety inspections. Beginning on the single sticker transition date as defined in this section, the safety inspection certificates will no longer be used.

(5) First vehicle registration--Initial vehicle registration insignia sticker issued through the Texas Department of Motor Vehicles

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~[(A) the LEV standards applicable under 42 United States Code, Part C, Subchapter H, §§7581 et seq.; or]~~

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

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

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

~~(8) [(45)] Single sticker transition date--The transition date of the single sticker system is the later of March 1, 2015, or the date that the Texas Department of Motor Vehicles and the Texas Department of Public Safety concurrently implement the single sticker system required by Texas Transportation Code, §502.047.~~

~~(9) [(46)] Texas Inspection and Maintenance State Implementation Plan--The portion of the Texas state implementation plan that includes the procedures and requirements of the vehicle emissions inspection and maintenance program as adopted by the commission and approved by the EPA [May 29, 1996, in accordance with 40 Code of Federal Regulations Part 51, Subpart S, issued November 5, 1992; the United States Environmental Protection Agency flexibility amendments dated September 18, 1995; and the National Highway Systems Designation Act of 1995]. A copy of the Texas Inspection and Maintenance State Implementation Plan is available at the Texas Commission on Environmental Quality, 12100 Park 35 Circle, Austin, Texas, 78753; mailing address: P.O. Box 13087, MC 166, Austin, Texas 78711-3087.~~

~~[(17) Tier I federal emission standards--The standards are defined in 42 United States Code, §7521, and in 40 Code of Federal Regulations Part 86. The phase-in of these standards began in model year 1994.]~~

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

~~(10) [(49)] Vehicle registration--Vehicle characteristics, corresponding owner information, and registration expiration date contained in the Texas Department of Motor Vehicles registration system.~~

~~(11) [(20)] Vehicle registration insignia sticker--The sticker issued through the Texas Department of Motor Vehicles (DMV) or county tax assessor-collector for a vehicle compliant with the DMV regulations. Beginning on the single sticker transition date as defined in this section, the vehicle registration insignia sticker, a current valid VIR, or other form of proof authorized by the DPS or the DMV will be used as proof of compliance with inspection and maintenance program requirements, the DMV's rules and regulations governing vehicle registration, and the Texas Department of Public Safety's rules and regulations governing safety inspections.~~

~~[(21) Zero emission vehicle--A vehicle as defined by 40 Code of Federal Regulations Part 88.]~~

#### *§114.2. Inspection and Maintenance Definitions.*

Unless specifically defined in Texas Health and Safety Code, Chapter 382, also known as the Texas Clean Air Act (TCAA), or in the rules of the commission, the terms used by the commission have the mean-

ings commonly ascribed to them in the field of air pollution control. In addition to the terms that are defined by the TCAA, the following words and terms, when used in Subchapter C of this chapter (relating to Vehicle Inspection and Maintenance; Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program; and Early Action Compact Counties), have the following meanings, unless the context clearly indicates otherwise.

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

(A) the 50/15 mode--in which the vehicle is tested for 90 seconds upon reaching and maintaining a constant speed of 15 miles per hour (mph) on a dynamometer that simulates acceleration at a rate of 3.3 mph per second by using 50% of the vehicle available horsepower; and

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

(2) Consumer price index--The consumer price index for any calendar year is the average of the consumer price index for all-urban consumers published by the United States Department of Labor, as of the close of the 12-month period ending on August 31 of the calendar year.

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

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

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

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

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

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

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

that a vehicle is primarily operated in the county in which it is registered.

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

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

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

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

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

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

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

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

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

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

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

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

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

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 2, 2023.

TRD-202302052

Guy Henry

Acting Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: July 16, 2023

For further information, please call: (512) 239-2678



## 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

#### 30 TAC §114.50, §114.53

##### Statutory Authority

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

The expansion of vehicle I/M to Bexar County is also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; and THSC, §382.012, concerning State Air Control Plan, which authorizes of the commission to prepare and develop a general, comprehensive plan for the control of the state's air. Additionally, the expansion of vehicle I/M to Bexar County is authorized under THSC, §382.201, concerning Definitions, which specifies the definitions that apply under Subchapter G of the THSC, Vehicle Emissions; THSC, §382.202, concerning Vehicle Emissions Inspection and Maintenance Program, which authorizes the commission to establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of the federal Clean Air Act; THSC, §382.203, concerning Vehicles Subject to Program; Exemptions, which establishes which vehicles are subject to the I/M program and which are exempt from it; THSC, §382.204, concerning Remote Sensing Program Component, which requires the commission and the Department of Public Safety (DPS) to develop an enforcement program that includes a remote sensing component; THSC, §382.205, concerning Inspection Equipment and Procedures, which authorizes the commission to adopt standards and specifications for motor vehicle emissions testing equipment, recordkeeping and reporting procedures, and measurable emissions standards, as well as consult with the DPS; THSC,

§382.206, Collection of Data; Report, which authorizes the collection of information derived from the emissions inspection and maintenance program; THSC, §382.207, Inspection Stations; Quality Control Audits; which requires standards and procedures for inspection stations as well as other specifics relating to transportation planning and quality control auditing; THSC, §382.208, Attainment Program, which requires the commission to coordinate with federal, state, and local transportation planning agencies to develop and implement transportation programs and other measures necessary to demonstrate and maintain attainment; THSC, §382.209, Low-Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program, which authorizes the commission to establish and authorize the commissioners court of a participating county to implement a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program; and THSC, §382.210, Implementation Guidelines and Assistance, which requires the commission to adopt guidelines to assist a participating county in implementing a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program..

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

*§114.50. Vehicle Emissions Inspection Requirements.*

(a) Applicability. The requirements of this section and those contained in the Texas Inspection and Maintenance (I/M) State Implementation Plan (SIP) must be applied to all gasoline-powered motor vehicles 2 - 24 years old and subject to an annual emissions inspection beginning with the first safety inspection. Military tactical vehicles, motorcycles, diesel-powered vehicles, dual-fueled vehicles that cannot operate using gasoline, and antique vehicles registered with the Texas Department of Motor Vehicles are excluded from the program. Safety inspection facilities and inspectors certified by the Texas Department of Public Safety (DPS) must inspect all subject vehicles in the following program areas as defined in §114.2 of this title (relating to Inspection and Maintenance Definitions), in accordance with the following schedule.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) Beginning November 1, 2026, all vehicle emissions inspection stations in the Bexar County program area must offer the OBD test.

(b) Control requirements.

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

(A) all applicable air pollution emissions control-related requirements included in the annual vehicle safety inspection requirements administered by the DPS as evidenced prior to the single sticker transition date as defined in §114.1 of this title (relating to Definitions) by a current valid inspection certificate affixed to the vehicle windshield, a current valid vehicle inspection report (VIR), or other form of proof authorized by the DPS;

(B) beginning on the single sticker transition date, all applicable air pollution emissions control-related requirements included in the annual vehicle safety inspection requirements administered by the DPS, as evidenced by a current valid vehicle registration insignia sticker, a current valid VIR, or other form of proof authorized by the DPS or the DMV; and

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

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

(3) Any motorist in the DFW, EDFW, HGB, [or] El Paso, or Bexar County program areas who has received a notice from an emissions inspection station that there are recall items unresolved on his or her motor vehicle should furnish proof of compliance with the recall notice prior to the next vehicle emissions inspection, such as a written statement from the dealership or leasing agency indicating that emissions repairs have been completed.

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

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

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

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

(B) satisfy all inspection, extension, or waiver requirements of the vehicle emissions I/M program specified in 37 TAC Chapter 23, Subchapter E (relating to Vehicle Emissions Inspection and Maintenance Program).

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

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

(c) Waivers and extensions. A motorist may apply to the DPS for a waiver or an extension as specified in 37 TAC Chapter 23, Subchapter E, which defers the need for full compliance with vehicle emissions standards for a specified period of time after failing a vehicle emissions inspection.

(d) Prohibitions.

(1) No person may issue or allow the issuance of a VIR, as authorized by the DPS unless all applicable air pollution emissions control-related requirements of the annual vehicle safety inspection and the vehicle emissions I/M requirements are completely and properly performed in accordance with the rules and regulations adopted by the DPS and the commission. Prior to taking any enforcement action regarding this provision, the commission must consult with the DPS.

(2) Before the single sticker transition date as defined in §114.1 of this title, no person may allow or participate in the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen safety inspection certificates, VIRs, VRFs, vehicle emissions repair documentation, or other documents that may be used to circumvent applicable vehicle emissions I/M requirements and to commit an offense specified in Texas Transportation Code, §548.603 (concerning Fictitious or Counterfeit Inspection Certificate or Insurance Document). Beginning on the single sticker transition date, no person may allow or participate in the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen vehicle registration insignia stickers, VIRs, VRFs, vehicle emissions repair documentation, or other documents that may be used to circumvent applicable vehicle emissions I/M requirements and to commit an offense specified in Texas Transportation Code, §548.603.

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

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

#### §114.53. Inspection and Maintenance Fees.

(a) The following fees must be paid for an emissions inspection of a vehicle at an inspection station. This fee must include one free retest should the vehicle fail the emissions inspection provided that the motorist has the retest performed at the same station where the vehicle originally failed and submits, prior to the retest, a properly completed vehicle repair form showing that emissions-related repairs were performed and the retest is conducted within 15 days of the initial emissions test.

(1) In El Paso County beginning May 1, 2002 and ending on the day before the single sticker transition date as defined in §114.1 of this title (relating to Definitions), any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(4)(A), (B), or (C) of this title (relating to Vehicle Emissions Inspection Requirements) must collect a fee of \$14 and remit \$2.50 to the Texas Department of Public Safety (DPS). If the El Paso County Commissioners Court adopts a resolution that is approved by the commission to participate in the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP), the emissions inspection station in El Paso County must collect a fee of \$16 and remit to the DPS \$4.50 beginning upon the date specified by the commission and ending on the day before the single sticker transition date. Beginning on the single sticker transition date, any emissions inspection station in El Paso County required to conduct an emissions test in accordance with §114.50(a)(4)(A), (B), or (C) of this title must collect a fee not to exceed \$11.50.

(2) In the Dallas-Fort Worth program area beginning May 1, 2002 and ending on the day before the single sticker transition date as defined in §114.1 of this title, any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(1)(A) or (B) of this title and in the extended Dallas-Fort Worth program area beginning May 1, 2003 and ending on the day before the single sticker transition date, any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(2)(A) or (B) of this title must collect a fee not to exceed \$27. Beginning May 1, 2002 and ending on the day before the single sticker transition date in the Dallas-Fort Worth and the extended Dallas-Fort Worth program areas, the emissions inspection station must remit to the DPS \$2.50 for each acceleration simulation mode (ASM-2) test and \$8.50 for each on-board diagnostics (OBD) test. Beginning on the single sticker transition date in the Dallas-Fort Worth and the extended Dallas-Fort Worth program areas, any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(1)(A) or (B) and (2)(A) or (B) of this title must collect a fee not to exceed \$24.50 for each ASM-2 test and \$18.50 for each OBD test.

(3) In the Houston-Galveston-Brazoria program area beginning May 1, 2002 and ending on the day before the single sticker transition date as defined in §114.1 of this title, any emissions inspection station in Harris County required to conduct an emissions test in accordance with §114.50(a)(3)(A) or (B) of this title and beginning May 1, 2003 and ending on the day before the single sticker transition date, any emissions inspection station in Brazoria, Fort Bend, Galveston, and Montgomery Counties required to conduct an emissions test in accordance with §114.50(a)(3)(D) or (E) of this title must collect a fee not to exceed \$27. Beginning May 1, 2002 and ending on the day before the single sticker transition date in Brazoria, Fort Bend, Galveston, Harris, and Montgomery Counties, the emissions inspection station must remit to the DPS \$2.50 for each ASM-2 test and \$8.50 for each OBD test. Beginning on the single sticker transition date in Brazoria, Fort Bend, Galveston, Harris, and Montgomery Counties, any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(3)(A), (B), (D), or (E) of this title must collect a fee not to exceed \$24.50 for each ASM-2 test and \$18.50 for each OBD test.

(4) In the Bexar County program area beginning November 1, 2026, any emissions inspection station in Bexar County required to conduct an emissions test in accordance with §114.50(a)(5)(A) or (B) of this title must collect a fee not to exceed \$11.50.

(b) The per-vehicle fee and the amount the inspection station remits to the DPS for a challenge test at an inspection station designated by the DPS, must be the same as the amounts set forth in subsection (a)

of this section. The challenge fee must not be charged if the vehicle is retested within 15 days of the initial test.

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

(d) Beginning on the single sticker transition date as defined in §114.1 of this title, vehicle owners shall remit as part of the annual vehicle registration fee collected by the Texas Department of Motor Vehicles (DMV) or county tax assessor-collector the amount of the vehicle emissions inspection fee that is required to be remitted to the state.

(1) In El Paso County, the following requirements apply.

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

(B) If participating in the LIRAP and in the process of opting out, vehicle owners shall remit \$4.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee until the LIRAP fee termination effective date as defined in §114.7 of this title. Of the \$4.50 remitted, \$2.00 constitutes the LIRAP fee as defined in §114.7 of this title. Upon the LIRAP fee termination effective date, vehicle owners shall remit \$2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee.

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

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

(A) Vehicle owners in counties participating in the LIRAP shall remit \$2.50 for motor vehicles subject to ASM-2 tests and \$8.50 for motor vehicles subject to OBD tests to the DMV or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee. Of the \$8.50 remitted for OBD tests, \$6.00 constitutes the LIRAP fee as defined in §114.7 of this title.

(B) Vehicle owners in counties participating in the LIRAP that are in the process of opting out shall remit \$2.50 for motor vehicles subject to ASM-2 tests and \$8.50 for motor vehicles subject to OBD tests to the DMV or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee until the LIRAP fee termination effective date as defined in §114.7 of this title. Of the \$8.50 remitted for OBD tests, \$6.00 constitutes the LIRAP fee as defined in §114.7 of this title. Upon the LIRAP fee termination effective date, vehicle owners in participating counties that are in the process of opting out of the LIRAP shall remit \$2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee.



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

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

(A) Vehicle owners in counties participating in the LIRAP shall remit \$2.50 for motor vehicles subject to ASM-2 tests and \$8.50 for motor vehicles subject to OBD tests to the DMV or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee. Of the \$8.50 remitted for OBD tests, \$6.00 constitutes the LIRAP fee as defined in §114.7 of this title.

(B) Vehicle owners in counties participating in the LIRAP that are in the process of opting out shall remit \$2.50 for motor vehicles subject to ASM-2 tests and \$8.50 for motor vehicles subject to OBD tests to the DMV or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee until the LIRAP fee termination effective date as defined in §114.7 of this title. Of the \$8.50 remitted for OBD tests, \$6.00 constitutes the LIRAP fee as defined in §114.7 of this title. Upon the LIRAP fee termination effective date, vehicle owners in participating counties that are in the process of opting out of the LIRAP shall remit \$2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee.

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

(4) In the Bexar County program area, vehicle owners shall remit \$2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 2, 2023.

TRD-202302053

Guy Henry

Acting Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: July 16, 2023

For further information, please call: (512) 239-2678



## SUBCHAPTER H. LOW EMISSION FUELS DIVISION 1. GASOLINE VOLATILITY

### 30 TAC §114.309

Statutory Authority

The proposed removal of the six specified counties from the low Reid Vapor Pressure (LVP) program is proposed under the au-

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

The proposed removal of the six specified counties from the low RVP program is also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012 concerning State Air Control Plan, which authorizes of the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act.

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

#### §114.309. *Affected Counties.*

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

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 2, 2023.

TRD-202302054

Guy Henry

Acting Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: July 16, 2023

For further information, please call: (512) 239-2678



# WRITTEN AND ORAL TESTIMONY

## **INDEX OF WRITTEN TESTIMONY**

<b><u>REFERENCE NUMBER</u></b>	<b><u>SUBMITTED BY</u></b>
W-1	Diane Rath, Alamo Area Council of Governments (similar to oral testimony)
W-2	Aijaz Almani
W-3	Robert Blevins
W-4	Lea Ann Castleschouldt
W-5	Brad Cotton
W-6	Rod Elrifai
W-7	Melanie Magee, U.S. Environmental Protection Agency, Region 6
W-8	Daniel Lozano
W-9	Ruben Meiss
W-10	Amir Mirza
W-11	Faheem Nawaz
W-12	Charissa E. Barnes, Official Inspection Station (similar to oral testimony and includes handout received from Barnes at public hearing)
W-13	Steve Ortiz
W-14	Chris Prokopeas
W-15	Rema Investment Group, LLC

**REFERENCE NUMBER**

**SUBMITTED BY**

W-16

San Antonio Auto Service, LLC

W-17

William Schwartz (similar to oral testimony)

W-18

Texas State Inspection Association (handout received from JoJo Heselmeyer at July 13, 2023 public hearing)

W-19

Wayne Mueller, Texas Department of Public Safety (comment submitted after close of comment period)

W-20

John Valerio

W-21

Mona Wakim

W-22

Joan Woodruff

Diane Rath

AACOG comments are attached



**Board of Directors**

**James E. Teal, Chair**  
County Judge, McMullen County  
**Rob Kelly, Vice Chair**  
County Judge, Kerr County  
**Tommy Calvert**  
Commissioner, Bexar County  
**Rochelle Camacho**  
County Judge, Frio County  
**Rebeca Clay-Flores**  
Commissioner, Bexar County  
**Victor Contreras**  
Mayor, City of Marion  
**Weldon Cude**  
County Judge, Atascosa County  
**Suzanne de Leon**  
Mayor, City of Balcones Heights  
**Mary Dennis**  
Mayor, City of Live Oak  
**Richard A. Evans**  
County Judge, Bandera County  
**Judy Eychner**  
Mayor, City of Kerrville  
**Dr. Adriana Rocha Garcia**  
Councilwoman, City of San Antonio  
**James Hasslocher**  
Board Member, University Health System  
**Wade Hedtke**  
County Judge, Karnes County  
**Daniel Jones**  
County Judge, Gillespie County  
**Sherman Krause**  
County Judge, Comal County  
**Kyle Kutscher**  
County Judge, Guadalupe County  
**Lisa Lewis**  
Chief Administrative Officer, CPS Energy  
**Keith Lutz**  
County Judge, Medina County  
**Jose Menendez**  
Senator, State of Texas, District 26  
**Grant Moody**  
Commissioner, Bexar County  
**Andrew Murr**  
State Representative, District 53  
**Manny Pelaez**  
Councilman, City of San Antonio  
**Darrin Schroeder**  
Mayor, City of Castroville  
**Shane Stolarczyk**  
County Judge, Kendall County  
**Sylvester Vasquez**  
President, Southwest ISD  
**Enrique Valdivia**  
Chair, Edwards Aquifer Authority  
**Hank Whitman**  
County Judge, Wilson County  
**John Williams**  
Mayor, City of Universal City  
**TBD**  
Councilperson, City of New Braunfels  
**TBD**  
Councilperson, City of San Antonio  
**Ryan Guillen (Ex-Officio)**  
State Representative, District 31  
**Brian Hoffman (Ex-Officio)**  
Joint Base San Antonio  
**John Kuempel (Ex-Officio)**  
State Representative, District 44  
**Judith Zaffirini (Ex-Officio)**  
State Senator, District 21

June 28, 2023

Alison Stokes, MC 206  
State Implementation Plan Team  
Air Quality Division  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, TX 78711-3087

Attn: The Honorable Jon Niermann

RE: Bexar County I/M SIP Revision, Project Number 2022-027-SIP-NR

Dear Chairman Niermann:

The Alamo Area Council of Governments (AACOG) appreciates the opportunity to provide comments in response to the proposed Bexar County Inspection and Maintenance (I/M) State Implementation Plan (SIP) Revision and associated 30 Texas Administrative Code (TAC) Chapter 114 rulemaking.

AACOG was established in 1967 as a political subdivision of the State of Texas, under Chapter 391 of the Local Government Code. AACOG is a voluntary association of local governments and organizations that serves its members through planning, information, and coordination activities. AACOG serves State Planning Region 18, covering Atascosa, Bandera, Bexar, Comal, Frio, Gillespie, Guadalupe, Karnes, Kendall, Kerr, Medina, McMullen and Wilson counties. The AACOG Board of Directors is the governing body for the agency, and formally authorizes the submittal of this comment letter.

On November 7, 2022, Bexar County's moderate ozone nonattainment classification took effect, setting a four-year timetable to implement a vehicle emissions I/M program. The proposed SIP Revision and associated proposed rulemaking sets the start date of Bexar County's I/M program as November 1, 2026, and establishes a maximum \$11.50 fee for the inspection.

The proposed start date is one week prior to the federally mandated deadline, providing nearly the maximum amount of time to implement. With the recent repeal of safety inspections potentially causing confusion among the public, having as much time as possible to disseminate a clear message about upcoming emissions inspections is critical. The Proposed fee is well below

a recommendation from a 2020 TCEQ-commissioned study that suggested a minimum fee of \$18. Because Bexar County's relatively high rate of low-income drivers will likely pose barriers to widespread I/M compliance, any relief that can be provided up front will be welcome. For these reasons, AACOG approves of the proposed Bexar County I/M SIP Revision and rulemaking. |

Sincerely,



Diane Rath  
Executive Director

## Aijaz Almani

Hi I am first Generation of immigrant. Left my birth place to seek better life. Belongs to Karachi Pakistan. Where we have less than 20% cars any of our county has. The rate of lung cancer is high due to vehicle smoke there and that was main reason I ansisted my parents to move to USA . but the decissions out governments are making througing our dreams and putng our next generation in same poluted breathing situation as third word countries are facing.

The safety program is best to avoid accidents take the data of third word contries where they dont have sfety inspection tha accident rate os sky high .

I request organizatins to peotest and keep our roads and air safe.



## Robert Blevins

Input for Bexar County inclusion for Emission Testing , current proposal for Fee of \$11.50 will not make adding Emission inspections to my business plan feasible. Hiring and certifying an inspector for a 8 hour day 5 days a week will require a raw labor cost of at least \$800 per week and with the leasing cost of equipment we would have to average at least 3 inspections per hour to try to cover just cost of personnel. The recommendation of increasing the fee to \$18.50 to \$22.00 will increase the possibility of covering actual cost and increase the number of available inspection stations. We currently inspect 5 and 25 safety inspections per day and will probably not participate in Emission program if proposed fee of \$11.50 is adopted. Less stations will create longer lines and more frustrated public

## Lea Castleschouldt

My Business is in Parker County. Customers are questioning the "No Safety Inspection" law that will become effected in January 2025.

Customers are concerned that the state will find more and more cars on the side of road that is left behind because owners are not keeping up with "A Maintenace check" on their vehicles. I totally agree with this statement. As an inspector and owner, we help our customers maintain their vehicles I believe if this law is enforced you are created a Bigger Mess. What happen to Don't Litter In Texas? The trash you see on the side of road has now become bigger.

Lea Ann Castleschouldt

## Brad Cotton

I own and operate two quick lubes in Wilson county which combined do over 2500 inspections per month. Not sure whether we will be part of the emissions testing or not. I do know that at 11.50 per inspection we will not even consider doing emissions testing. The added employees, training, equipment, customer aggravation would not be offset by the 11.50. A more equitable fee would be 22.00 . Once again I'm not sure how emissions testing will affect Wilson County but that's my input.

ROD ELRIFAI

Definitely support this proposal and it's implementation as early as possible.  
The Fee should be between \$30 to \$40 per vehicle emission test.



W-7

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
REGION 6  
1201 ELM STREET, SUITE 500  
DALLAS, TEXAS 75270

July 17, 2023

Mr. Cory Chism, Director  
Office of Air  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

Re: Dallas-Fort Worth (DFW) Moderate Area Attainment Demonstration (AD) State Implementation Plan (SIP) Revision for the 2015 Ozone National Ambient Air Quality Standards (NAAQS), Project No. 2022-021-SIP-NR; Houston-Galveston-Brazoria (HGB) Moderate Area AD SIP Revision for the 2015 Ozone NAAQS, Project No. 2022-022-SIP-NR; DFW and HGB Moderate Areas Reasonable Further Progress (RFP) SIP Revision for the 2015 Ozone NAAQS, Project No. 2022-023-SIP-NR; Bexar County Moderate Area RFP SIP Revision for the 2015 Ozone NAAQS, Project No. 2022-024-SIP-NR; Bexar County Moderate Area AD SIP Revision for the 2015 Eight-Hour Ozone NAAQS, Project No. 2022-025-SIP-NR; Bexar County Inspection and Maintenance (I/M) SIP Revision, Project No. 2022-027-SIP-NR; and the proposed revisions to 30 TAC Chapter 114, Control of Air Pollution from Motor Vehicles rulemaking, Project No. 2022-026-114-AI.

Dear Mr. Chism:

Thank you for acting timely to address the recently reclassified DFW, HGB, and Bexar County Moderate nonattainment areas under the 2015 ozone NAAQS. We appreciate the opportunity to review the seven proposed SIP revisions that address these three areas. We have enclosed comments for your consideration regarding the proposed attainment demonstrations, the proposed RFP plans, the proposed I/M plan, and the proposed revisions to Chapter 114. We appreciate the work by the TCEQ in developing these documents.

We look forward to discussing the enclosed comments with you. Please feel free to contact me at [magee.melanie@epa.gov](mailto:magee.melanie@epa.gov) or 214-665-7161 if you have questions.

Sincerely,

Melanie Magee  
Section Supervisor, Infrastructure & Ozone Section

Enclosures

## Enclosure: EPA's Comments

### **Acronyms used in EPA's comments:**

Alternative Control Technology (ACT)  
Best Available Control Technology (BACT)  
Clean Air Act (CAA)  
Control Techniques Guidelines (CTG)  
Destruction and Removal Efficiency (DRE)  
Differential Absorption LIDAR (DIAL)  
Emissions Specifications for Attainment Demonstration (ESADs)  
Green House Gases (GHGs)  
Highly Reactive Volatile Organic Compounds (HRVOC)  
Infrared (IR)  
Leak Detection and Repair (LDAR)  
Light Detection and Ranging (LIDAR)  
Limited English Proficiency (LEP)  
Lowest Achievable Emissions Rate (LAER)  
Mass Emissions Cap and Trade (MECT)  
National Ambient Air Quality Standards (NAAQS)  
New Source Review (NSR)  
Oxides of Nitrogen (NOx)  
Reasonable Available Control Technology (RACT)  
Rate of Progress (ROP)  
Solar Occultation Flux (SOF)  
Texas Commission on Environmental Quality (TCEQ)  
Volatile Organic Compounds (VOC)

### **Project Number 2022-021-SIP-NR**

#### **Comments addressing DFW Attainment Demonstration (AD) Plan**

We appreciate the detailed work submitted in the AD plan. We have the following concerns:

1. The TCEQ's proposal includes contingency measures that rely on emissions reductions from measures that are already implemented, as opposed to measures that are prospective (i.e., that they be undertaken in the future) in nature. As noted in the TCEQ's proposal, in January 2021 the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA's interpretation of the CAA to allow states to rely on already implemented control measures to meet the statutory requirements of section 172(c)(9) or 182(c)(9) for contingency measures in nonattainment plans for the ozone NAAQS (see 83 FR 62998, 63026). *Sierra Club, et al. v. EPA*, 985 F.3d 1055 (D.C. Cir. 2021). The effect of this decision is that the CAA interpretation that contingency measures must be prospective and conditional applies across the U.S.<sup>1</sup> If finalized as proposed, EPA would have serious concerns regarding the approvability of the contingency measures. EPA Region 6 will support TCEQ in the development of approvable contingency measures for ozone reductions. We encourage TCEQ to incorporate environmental justice considerations in developing such measures.

---

<sup>1</sup> More information on this decision is provided in our proposed disapproval of contingency measures for the DFW and HGB Serious ozone nonattainment areas for the 2008 ozone NAAQS (see 88 FR 24522, April 21, 2023).

2. The TCEQ's proposal asserts that the DFW area is not expected to attain the 2015 ozone NAAQS by the August 3, 2024, attainment date. Therefore, as provided in CAA section 181(b)(3), the TCEQ may request, and EPA must grant, a voluntary reclassification to the next higher classification for the DFW area, which would provide until the August 3, 2027, Serious area attainment date to attain the 2015 ozone NAAQS. We encourage the TCEQ to submit such a request early enough to maximize the available time for assessing, adopting, and implementing emission reduction measures so the area can meet the ozone NAAQS expeditiously and avoid the mandatory statutory consequences for failing to timely attain.
3. The TCEQ's proposal provides a RACT analysis that relies exclusively on a previous RACT analysis from the DFW serious classification attainment demonstration for the 2008 ozone NAAQS adopted by the commission on March 4, 2020. That RACT analysis is based exclusively on EPA's CTGs and ACTs. In EPA's Implementation Rule for the 2008 Ozone NAAQS, EPA stated that "states should refer to the existing CTGs and ACTs for purposes of meeting their RACT requirements, *as well as* all relevant information (including recent technical information and information received during the public comment period) that is available at the time that they are developing their RACT SIPs for the 2008 ozone NAAQS." 80 FR 12264, 12279 (March 6, 2015) (emphasis added). EPA repeated this in the Implementation Rule for the 2015 Ozone NAAQS.<sup>2</sup> As part of their RACT SIP submissions, states should provide adequate documentation that they have considered emission control requirements that are economically and technologically feasible. The analysis of economic and technological feasibility should be based on the information that is current and available as of the time of development of the RACT SIP. TCEQ should document that they examined current and relevant information and should discuss if and how such information affected their RACT determination. This documentation and discussion should be included for all types of RACT: CTG RACT, Major Source VOC RACT, and Major Source NOx RACT.
4. EPA recommends TCEQ consider any potential underreporting of VOC in the DFW area. The presence of the Barnett Shale and associated equipment may provide similar concerns that have been documented in HGB because of the presence of flares and fugitive emissions. TCEQ should consider mobile monitoring studies (fence-line and IR camera measurements) and remote sensing (e.g., satellite-measured columns of formaldehyde to estimate reacted or partially combusted VOC) and any other data and studies that suggest underreporting of VOC persists. Underreported VOC can provide an inaccurate picture of an area being NOx or VOC-limited and produce photochemical modeling results with control strategies that could be inaccurate.
5. In February 2023, the updated guidance document titled "Guidance on Quantifying NOx Benefits for Cetane Improvement Programs for Use in SIPs and Transportation Conformity" was released for cetane improvement programs.<sup>3</sup> This updated guidance accounts for changes in fleet composition and control technology that has occurred since 2004. Please clarify for the record if the updated guidance was considered and provide any supporting documentation.

---

<sup>2</sup> "Consistent with the EPA's prior guidance (80 FR 12279; March 6, 2015), when determining what is RACT for a particular source or source category, air agencies should also consider all other relevant information (including recent technical information and information received during the state's public comment period) that is available at the time they develop their RACT SIPs." 83 FR 62998, 63007 (December 6, 2018).

<sup>3</sup> Link to the main guidance page with a summary on the cetane guidance: <https://www.epa.gov/state-and-local-transportation/guidance-control-strategies-state-and-local-agencies>. Direct link to the cetane guidance: <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockkey=P10161FV.pdf>.

## **Project Number 2022-022-SIP-NR**

### **Comments addressing HGB Attainment Demonstration (AD) Plan**

We appreciate the detailed work submitted in the AD plan. We have the following concerns:

1. The TCEQ's proposal includes contingency measures that rely on emissions reductions from measures that are already implemented, as opposed to measures that are prospective (i.e., that they be undertaken in the future) in nature. As noted in the TCEQ's proposal, in January 2021 the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA's interpretation of the CAA to allow states to rely on already implemented control measures to meet the statutory requirements of section 172(c)(9) or 182(c)(9) for contingency measures in nonattainment plans for the ozone NAAQS (see 83 FR 62998, 63026). *Sierra Club, et al. v. EPA*, 985 F.3d 1055 (D.C. Cir. 2021). The effect of this decision is that the CAA interpretation that contingency measures must be prospective and conditional applies across the U.S.<sup>4</sup> If finalized as proposed, EPA would have serious concerns regarding the approvability of the contingency measures. EPA Region 6 will support TCEQ in the development of approvable contingency measures for ozone reductions. We encourage TCEQ to incorporate environmental justice considerations in developing such measures.
2. The TCEQ's proposal asserts that the HGB area is not expected to attain the 2015 ozone NAAQS by the August 3, 2024, attainment date. Therefore, as provided in CAA section 181(b)(3), the TCEQ may request, and EPA must grant, a voluntary reclassification to the next higher classification for the HGB area, which would provide until the August 3, 2027, Serious area attainment date to attain the 2015 ozone NAAQS. We encourage the TCEQ to submit such a request early enough to maximize the available time for assessing, adopting, and implementing emission reduction measures so the area can meet the ozone NAAQS expeditiously and avoid the mandatory statutory consequences for failing to timely attain.
3. The TCEQ's proposal provides a RACT analysis that relies exclusively on a previous RACT analysis from the HGB serious classification attainment demonstration for the 2008 ozone NAAQS adopted by the commission on March 4, 2020. That RACT analysis is based exclusively on EPA's CTGs and ACTs. In EPA's Implementation Rule for the 2008 Ozone NAAQS, EPA stated that "states should refer to the existing CTGs and ACTs for purposes of meeting their RACT requirements, *as well as* all relevant information (including recent technical information and information received during the public comment period) that is available at the time that they are developing their RACT SIPs for the 2008 ozone NAAQS." 80 FR 12264, 12279 (March 6, 2015) (emphasis added). EPA repeated this in the Implementation Rule for the 2015 Ozone NAAQS.<sup>5</sup> As part of their RACT SIP submissions, states should provide adequate documentation that they have considered emission control requirements that are economically and technologically feasible. The analysis of economic and technological feasibility should be based on the information that is current and available as of the time of development of the RACT SIP. TCEQ should document that they examined current and relevant information and should discuss if and how such information affected their RACT determination. This documentation and discussion should be included for all types of RACT: CTG RACT, Major Source VOC RACT, and Major Source NOx RACT.
4. We understand that TCEQ is relying on its MECT Program to implement RACT requirements for NOx in the HGB area. EPA's Implementation rule for the 2015 ozone NAAQS explained that "states may

---

<sup>4</sup> More information on this decision is provided in our proposed disapproval of contingency measures for the DFW and HGB Serious ozone nonattainment areas for the 2008 ozone NAAQS (see 88 FR 24522, April 21, 2023).

<sup>5</sup> "Consistent with the EPA's prior guidance (80 FR 12279; March 6, 2015), when determining what is RACT for a particular source or source category, air agencies should also consider all other relevant information (including recent technical information and information received during the state's public comment period) that is available at the time they develop their RACT SIPs." 83 FR 62998, 63007 (December 6, 2018).



demonstrate as part of their NOx RACT SIP submission that the weighted average NOx emission rate of all sources in the nonattainment area subject to RACT meets NOx RACT requirements; states are not required to demonstrate RACT-level controls on a source-by- source basis.” 83 FR 62998, 63007 (December 6, 2018). This longstanding policy on area wide average emission rates is also explained in the final implementation rule the 2008 ozone NAAQS: “...states have the option of conducting a technical analysis for a nonattainment area considering the emissions controls required by a regional cap-and-trade program, and demonstrating that compliance by certain sources participating in the cap- and-trade program results in actual emission reductions in the particular nonattainment area that are equal to or greater than the emission reductions that would result if RACT were applied to an individual source or source category within the nonattainment area.” 80 FR 12264, 12279 (March 6, 2015). The SIP should explain how the TCEQ’s program achieves this “equal to or greater than” standard. The SIP should also include such technical analysis to demonstrate and document how the MECT program achieves RACT for the HGB NAA. A successful demonstration must show that the MECT program will result in actual emissions reductions that are equal to or greater than reductions that would be achieved by applying RACT on a source-by-source basis in the HGB NAA. Based on EPA’s understanding of the MECT program, we believe the demonstration should include, among other things, (1) evaluation of the ESADs and a determination that each ESAD represents RACT, (2) an evaluation of the number of allowances based on a recent basis for number of sources and activity level, (3) a baseline for allowances that is reflective of the current controls in place and current operation of NOx sources, and (4) demonstrate how the implementation on an annual average to meet the MECT is protective of short-term ozone. EPA Region 6 is ready to work with TCEQ on questions going forward. The analysis included in the SIP to support these demonstrations should be based on current relevant information.<sup>6</sup>

5. In light of the difficulty in demonstrating attainment, EPA offers the following suggestions:
  - a. Further control and monitoring of specific VOC other than the currently targeted HRVOC to help achieve attainment in the HGB area. TCEQ previously proposed controlling emissions of other VOC in the HGB 2004 Attainment Demonstration proposal that may be a starting point; TCEQ should also consider VOC species that have elevated levels (both retrospectively and large/increasing proportions in more recent years) in various monitoring efforts, including the extensive interagency cooperative air quality field campaigns since 2000<sup>7</sup> (see next comment). In fact, some of the more recent campaigns have measured very large (including short-lived emission events) ambient fluxes of aromatics and alkanes.<sup>8</sup>

---

<sup>6</sup> “Consistent with the EPA’s prior guidance (80 FR 12279; March 6, 2015), when determining what is RACT for a particular source or source category, air agencies should also consider all other relevant information (including recent technical information and information received during the state’s public comment period) that is available at the time they develop their RACT SIPs.” 83 FR 62998, 63007 (December 6, 2018).

<sup>7</sup> Texas Air Quality Study (TexAQS 2000), Texas Air Quality Study II (2006), Study of Houston Atmospheric Radical Precursors (SHARP, 2009), Deriving Information on Surface conditions from Column and Vertically Resolved Observations Relevant to Air Quality (DISCOVER-AQ, 2013), and Tracking Aerosol Convection Experiment-Air Quality (TRACER-AQ, 2021-22).

<sup>8</sup> “Air Quality Data Collection for TRACER-AQ-2 Field Campaign in Houston - Monitoring Report”, FluxSense AQRP contract report, March 2023. Table 27 (page 51) of this report concludes that compared to studies done in 2009 and since with remote sensing flux “curtains”, Houston Ship Channel HRVOC and alkane fluxes are essentially unchanged in 2022, with the reported 2013 EI about 10% of these measured flux values, whereas NO2 fluxes match reported emissions well. Mont Belvieu of that same table has seen more measured flux reductions from

- b. Measures to address underreporting that is indicated for VOC in the HGB area. Remote sensing techniques, both ground-based (stationary and mobile, e.g., fence-line, IR camera measurements, and ambient flux measurements with SOF and DIAL technologies)<sup>9</sup> and satellite-based remote sensing (e.g., measured columns of VOC, GHGs, or formaldehyde to estimate reacted or partially combusted VOC) conclude that underreporting of VOC persists.<sup>10</sup> This was specifically noted in a Journal of Geophysical Research synthesis report of the 2009 SHARP field campaign.<sup>11</sup> Underreported VOC can provide an inaccurate picture of an area being NO<sub>x</sub> or VOC-limited and produce photochemical modeling results with control strategies that could be inaccurate. This was one of the study goals for the TRACER-AQ field campaign of 2021-22.<sup>12</sup> The EPA has not yet seen a synthesis of TRACER-AQ findings.
- c. One source of underreporting that could be addressed is use of the default (maximum allowed) flare DRE values for flared VOC and HRVOC, as described in the attached letter EPA provided to TCEQ on May 8, 2023, providing Quadrennial Review Comments (“Attachment 1”). When DRE is allowed to be overestimated, actual emissions are underestimated and underreported; thus, related attainment demonstrations would not contain accurate emissions of VOC for accurate photochemical ozone reactions. See the FluxSense footnote above for the conclusions concerning poor combustion efficiency, hence large propylene emissions, from propylene flares in its flux measurement data. In 2009, the TCEQ had a Flare

---

2009 to 2022, but the tabulated EI is still roughly 10% of the 2022 measured fluxes of HRVOC and alkanes. The report also concludes that many of the fluxes appear to still come from directions of propylene flares with poor combustion efficiency, as was found in the earlier studies.

<sup>9</sup> A good synthesis reference for this was provided in presentations hosted by the Houston Advance Research Center (HARC) as part of “Remote Sensing VOCs and GHGs”, December 7, 2009.

<sup>10</sup> Id. Also note that NASA Health and Air Quality Applied Sciences Team (HAQAST) and its predecessor, AQAQ, provided many good analyses, reports, and publications from academic researchers of the various campaigns. For formaldehyde, especially note the July 2014 presentation by Dan Cohan at <https://haqast.org/aqast-presentations/>, which concluded that “Houston HRVOC emissions in the 2008 NEI are 5x too low.” HAQAST meetings and presentations newer than 2016 can be found at <https://haqast.org/get-involved/meetings/>. Also note that even before TexAQS 2000 and TexAQS II (2006) (see <https://www.tceq.texas.gov/airquality/research/txaqs>), additions of VOC were provided to modeling inventories to help match monitored values in areas of HGB and to assist the photochemical models to perform better (simulate ozone in the right places at the right times to correspond with the ozone monitors). This was performed via the addition of rule effectiveness for specific source categories and for known emissions upsets. TCEQ no longer includes these in its modeled emissions inventory. Improvements were suggested through various TCEQ and pass-through funding for contract projects through the Texas Environmental Research Consortium in coordination with the Houston Advanced Research Center (<https://www.tercresearch.org/aqr/projects>). These pointed out many unknowns and future potential projects to study regarding HGB emissions. Some of these have been addressed, others have not. TCEQ does spend money on Air Quality Research Program (AQRP) (<https://www.tceq.texas.gov/airquality/airmod/project/pj.html>) contracts for emissions inventory improvement and photochemical modeling projects. EPA would like to see TCEQ implement the suggestions from these projects to understand emissions events and ongoing underreported emissions variables better, so that meaningful emission reductions can be made for improved modeled and monitored ozone impacts.

<sup>11</sup> “Overview of the SHARP campaign: Motivation, design, and major outcomes”, Olaguer, EP, et al, 2014: <http://easd.geosc.uh.edu/rappenglueck/pdf/Olaguer%20et%20al%20JGR%202014%20SHARP.pdf>

<sup>12</sup> TRacking Aerosol Convection Experiment-Air Quality (TRACER-AQ, 2021-22), at <https://www-air.larc.nasa.gov/missions/tracer-aq/>. TCEQ “HGB Technical Information Meeting, June 28, 2022” presentation: <https://www.tceq.texas.gov/downloads/air-quality/modeling/meetings/hgb/2022/20220728-traceraq-tceq-knapp.pdf>

Task Force, including internal teams, stakeholders, and a subsequent 2010 Flare Study.<sup>13</sup> EPA encourages TCEQ to resurrect the Flare Task Force and not rely on 40 CFR 60.18 default maximum 98% DRE and its unproven 99% DRE for 3-carbon or less VOC, which include two of the most prevalent HRVOC in HGB – ethylene (ethene) and propylene (propene). For the reasons identified throughout Attachment 1, EPA also encourages TCEQ to re-evaluate the flare DRE assumptions allowed by its guidance for 40 CFR 60.18-compliant flares and ensure that appropriate DRE assumptions are identified.

- d. We encourage TCEQ to establish requirements to retrofit improvements (including monitoring or testing) and for replacements for old flares, especially those that are not emergency flares. Standard process vents can almost always be routed to relatively inexpensive condensers. BACT or LAER for controlling standard process waste gases should almost never include flares. Best practices should include flare minimization and alternative control processes for waste gases, and TCEQ should incentivize such. For many industrial processes, better technology exists. TCEQ studies and guidance (see prior references and Attachment 1) identify most of the variables that make for best practices, and we would like TCEQ to implement such improvements. Permit conditions vary on a case-by-case basis, and we would like TCEQ to take a retrospective look at existing flares upon permit renewal.

#### **Project Number 2022-023-SIP-NR**

#### **Comments addressing the DFW and HGB Reasonable Further Progress (RFP) Plans**

We appreciate the detailed work submitted in the RFP plan. We have the following concerns:

1. The TCEQ’s proposal includes contingency measures that rely on emissions reductions from measures that are already implemented, as opposed to measures that are prospective (i.e., that they be undertaken in the future) in nature. As noted in the TCEQ’s proposal, in January 2021 the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA’s interpretation of the CAA to allow states to rely on already implemented control measures to meet the statutory requirements of section 172(c)(9) or 182(c)(9) for contingency measures in nonattainment plans for the ozone NAAQS (see 83 FR 62998, 63026). *Sierra Club, et al. v. EPA*, 985 F.3d 1055 (D.C. Cir. 2021). The effect of this decision is that the CAA interpretation that contingency measures must be prospective and conditional applies across the U.S.<sup>14</sup> If finalized as proposed, EPA would have serious concerns regarding the approvability of the contingency measures. EPA Region 6 will support TCEQ in the development of approvable contingency measures for ozone reductions. We encourage TCEQ to incorporate environmental justice considerations in developing such measures. EPA has explained that “[s]ection 182(c)(9) requires that certain state submissions must provide for the implementation of contingency measures in the event of a failure to meet a milestone; it does not require the state to submit separate and distinct contingency measures allocated exclusively for a failure to meet a milestone.” 86 FR 27524 at 27527 (May 21, 2021).
2. In February 2023, the updated guidance document titled “Guidance on Quantifying NOx Benefits for Cetane Improvement Programs for Use in SIPs and Transportation Conformity” was released for

---

<sup>13</sup> [https://www.tceq.texas.gov/airquality/stationary-rules/stakeholder/flare\\_stakeholder.html](https://www.tceq.texas.gov/airquality/stationary-rules/stakeholder/flare_stakeholder.html). The TCEQ’s 2022 Emissions Inventory Guidelines document, Appendix A, Technical Supplement 4, Flares, found at <https://www.tceq.texas.gov/airquality/point-source-ei/rg-360-22> also discusses much of this topic, and has provided updates to this since 2012. The TCEQ’s NSR permitting guidance, as identified in Attachment 1, provides similar details.

<sup>14</sup> More information on this decision is provided in our proposed disapproval of contingency measures for the DFW and HGB Serious ozone nonattainment areas for the 2008 ozone NAAQS (see 88 FR 24522, April 21, 2023).

cetane improvement programs.<sup>15</sup> This updated guidance accounts for changes in fleet composition and control technology that has occurred since 2004. Please clarify for the record if the updated guidance was considered and provide any supporting documentation.

### **Project Number 2022-024-SIP-NR**

#### **Comments addressing the Bexar County Reasonable Further Progress (RFP) Plan**

We appreciate the detailed work submitted in the RFP plan. We have the following concerns:

1. Bexar County was not classified as Moderate nonattainment or higher under a previous ozone NAAQS and thus, does not have a previously approved RFP or Rate of Progress (ROP) plan for a previous ozone NAAQS. In accordance with the CAA and EPA's associated regulations, the state shall submit a plan consistent with CAA section 182(b)(1): "... the State shall submit a revision to the applicable implementation plan to provide for volatile organic compound emission reductions ... of at least 15 percent from baseline emissions ...."<sup>16</sup> However, the TCEQ's proposal does not demonstrate the required initial 15 percent ROP in emission reductions for VOC. The TCEQ's proposal declares that emission reductions of NOx are expected to be more effective at reducing ozone concentrations in the Bexar County nonattainment area than VOC emission reductions and thus, relies on a mix of NOx and VOC emissions reductions to provide the 15 percent ROP through the attainment year (2023). The statute and implementing regulations for the 2015 ozone NAAQS at 40 CFR 51.1310(a)(4) are clear regarding the initial VOC ROP requirement for nonattainment areas without an approved prior ozone NAAQS 15 percent VOC ROP plan, and EPA's action must be consistent with such rules.

We recognize the TCEQ has engaged a contractor to further investigate potential reductions. We encourage TCEQ to fully investigate feasible reductions to meet the requirement. The CAA appears to provide only one option if the 15% reductions cannot be achieved. CAA section 182(b)(1)(A)(ii) provides that a percentage less than 15 percent may be used for purposes of [CAA section 182(b)(1)(A)(i)] in the case of any State which demonstrates to the satisfaction of the Administrator that—

- (I) new source review provisions are applicable in the nonattainment areas in the same manner and to the same extent as required under subsection (e) of this section in the case of Extreme Areas (with the exception that, in applying such provisions, the terms "major source" and "major stationary source" shall include (in addition to the sources described in section 7602 of this title) any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 5 tons per year of volatile organic compounds);
- (II) reasonably available control technology is required for all existing major sources (as defined in subclause (I)); and
- (III) the plan reflecting a lesser percentage than 15 percent includes all measures that can feasibly be implemented in the area, in light of technological achievability.

---

<sup>15</sup> Link to the main guidance page with a summary on the cetane guidance: <https://www.epa.gov/state-and-local-transportation/guidance-control-strategies-state-and-local-agencies>. Direct link to the cetane guidance: <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockkey=P10161FV.pdf>.

<sup>16</sup> See 83 FR 62998, 63034 (December 6, 2018), 40 CFR 51.1300(m), and 40 CFR 51.1310(a)(4).

To qualify for a lesser percentage under this clause, a State must demonstrate to the satisfaction of the Administrator that the plan for the area includes the measures that are achieved in practice by sources in the same source category in nonattainment areas of the next higher category.

2. The TCEQ's proposal indicates that the TCEQ will require additional analysis to determine the best means to address the 15 percent VOC ROP requirement. What is the TCEQ's schedule for such analysis?
3. The TCEQ's proposal includes contingency measures that rely on emissions reductions from measures that are already implemented, as opposed to measures that are prospective (i.e., that they be undertaken in the future) in nature. As noted in the TCEQ's proposal, in January 2021 the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA's interpretation of the CAA to allow states to rely on already implemented control measures to meet the statutory requirements of section 172(c)(9) or 182(c)(9) for contingency measures in nonattainment plans for the ozone NAAQS (see 83 FR 62998, 63026). *Sierra Club, et al. v. EPA*, 985 F.3d 1055 (D.C. Cir. 2021). The effect of this decision is that the CAA interpretation that contingency measures must be prospective and conditional applies across the U.S.<sup>17</sup> If finalized as proposed, EPA would have serious concerns regarding the approvability of the contingency measures. EPA Region 6 will support TCEQ in the development of approvable contingency measures for ozone reductions. We encourage TCEQ to incorporate environmental justice considerations in developing such measures.

#### **Project No. 2022-025-SIP-NR**

#### **Comments addressing the Bexar County Attainment Demonstration (AD) Plan**

We appreciate the detailed work submitted in the AD plan. We have the following concerns:

1. The TCEQ's proposal includes contingency measures that rely on emissions reductions from measures that are already implemented, as opposed to measures that are prospective (i.e., that they be undertaken in the future) in nature. As noted in the TCEQ's proposal, in January 2021 the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA's interpretation of the CAA to allow states to rely on already implemented control measures to meet the statutory requirements of section 172(c)(9) or 182(c)(9) for contingency measures in nonattainment plans for the ozone NAAQS (see 83 FR 62998, 63026). *Sierra Club, et al. v. EPA*, 985 F.3d 1055 (D.C. Cir. 2021). The effect of this decision is that the CAA interpretation that contingency measures must be prospective and conditional applies across the U.S.<sup>18</sup> If finalized as proposed, EPA would have serious concerns regarding the approvability of the contingency measures. EPA Region 6 will support TCEQ in the development of approvable contingency measures for ozone reductions. We encourage TCEQ to incorporate environmental justice considerations in developing such measures.
2. The TCEQ's proposal does not include a RACT analysis. For each nonattainment area classified Moderate or higher, the state shall submit a SIP revision that meets the VOC and NOx RACT requirements in CAA sections 182(b)(2) and 182(f).<sup>19</sup> We look forward to reviewing the TCEQ's proposed Bexar County RACT SIP revision later in 2023 and appreciate that the AD proposal indicates the final adopted RACT analysis and any regulations to implement RACT will be submitted to the EPA by May 7, 2024.
3. The TCEQ's proposal asserts that Bexar County is not expected to attain the 2015 ozone NAAQS by the September 24, 2024, attainment date and declares that ozone formation in the San Antonio

---

<sup>17</sup> More information on this decision is provided in our proposed disapproval of contingency measures for the DFW and HGB Serious ozone nonattainment areas for the 2008 ozone NAAQS (see 88 FR 24522, April 21, 2023).

<sup>18</sup> More information on this decision is provided in our proposed disapproval of contingency measures for the DFW and HGB Serious ozone nonattainment areas for the 2008 ozone NAAQS (see 88 FR 24522, April 21, 2023).

<sup>19</sup> 40 CFR 51.1312.

nonattainment area is primarily NO<sub>x</sub> limited. Therefore, as provided in CAA section 181(b)(3), the TCEQ may request, and EPA must grant, a voluntary reclassification to the next higher classification for the Bexar County area, which would provide until the September 24, 2027, Serious area attainment date to attain the 2015 ozone NAAQS. We encourage the TCEQ to submit such a request early enough to maximize the available time for assessing, adopting, and implementing emission reduction measures so the area can meet the ozone NAAQS expeditiously and avoid the mandatory statutory consequences for failing to timely attain.

4. How many tons of NO<sub>x</sub> reductions does the model predict as needed for the Bexar County nonattainment area to attain the ozone NAAQS?
5. In February 2023, the updated guidance document titled “Guidance on Quantifying NO<sub>x</sub> Benefits for Cetane Improvement Programs for Use in SIPs and Transportation Conformity” was released for cetane improvement programs.<sup>20</sup> This updated guidance accounts for changes in fleet composition and control technology that has occurred since 2004. Please clarify for the record if the updated guidance was considered and provide any supporting documentation.
6. The TCEQ’s proposal includes a certification that nonattainment new source review and Stage I gasoline vapor recovery program requirements have been met for the Bexar County nonattainment area for the moderate classification. 30 TAC Chapter 115.229 in the approved SIP addresses gasoline dispensing facilities in Bexar County that dispense at least 25,000 gallons of gasoline per month. We encourage TCEQ to adopt the same Stage I requirements for Bexar County as are implemented in the DFW and HGB areas, which currently exempt gasoline dispensing facilities that dispense less than 10,000 gallons of gasoline per month from the Stage I requirements.
7. We support the inclusion of the SmartWay Transport Partnership program, which works to reduce mobile source emissions from partners located in and traveling through Bexar County.
8. We support the energy efficiency/renewable energy (EE/RE) measures, even though the EE/RE emission reductions are not quantified in the SIP. We appreciate that these EE/RE measures result in lower emissions from fossil-fuel fired electric generating facilities state-wide.
9. We support the continued implementation of the TERP, which has been a cost-effective way to reduce NO<sub>x</sub> from mobile sources.
10. EPA would like the TCEQ to consider field study data conducted<sup>21</sup> around the Eagle Ford Shale area indicating emissions contribute to upwind ozone production; this should include upwind/downwind analysis of Bexar County monitors that showed elevated NO<sub>x</sub> and VOC levels when Eagle Ford Shale emission sources are upwind of Bexar County monitors.

---

<sup>20</sup> Link to the main guidance page with a summary on the cetane guidance: <https://www.epa.gov/state-and-local-transportation/guidance-control-strategies-state-and-local-agencies>. Direct link to the cetane guidance: <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockkey=P10161FV.pdf>.

<sup>21</sup> One of these studies is “Comparing Permitted Emissions to Atmospheric Observations of Hydrocarbons in the Eagle Ford Shale Suggests Permit Violations,” Holliman and Schade, Texas A&M Univ., Feb 2021, <https://www.mdpi.com/1996-1073/14/3/780>. Another example study for this area “Quantifying Emissions from the Eagle Ford Shale Using Ethane Enhancement,” Roest and Schade, Texas A&M Univ., Dec 2014, <https://ui.adsabs.harvard.edu/abs/2014AGUFM.A13F3250R/abstract>

## **Project Number 2022-026-114-AI**

### **Comments addressing 30 TAC Chapter 114, Control of Air Pollution from Motor Vehicles**

30 TAC 114.1 (Definitions): We have no comments regarding the proposed revisions to these definitions.

30 TAC 114.2 (Inspection and Maintenance Definitions): We have no comments regarding the revisions to 114.2(10)(D) and (10)(E).

30 TAC 114.50 (Vehicle Emission Inspection Requirements): We have no comments regarding the revisions, which add Bexar County to the vehicle emission inspection requirements.

30 TAC 114.53 (Inspection and Maintenance Fees): We have no comments regarding these revisions, which add Bexar County to the various sections addressing I/M fees.

30 TAC 114.309 (Affected Counties): We have no comments regarding the removal of Ellis, Johnson, Kaufman, Parker, Rockwall, and Wise counties from this list of counties required to comply with the low Reid Vapor Pressure (RVP) program.

### **Environmental Justice and Civil Rights**

Executive Order 12898, directed each listed federal agency to make “achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.”<sup>22</sup> Executive Order 14008, made explicit that federal agencies should address “climate-related and other cumulative impacts on disadvantaged communities, as well as the accompanying economic challenges of such impacts.”<sup>23</sup> Provisions ensuring that environmental justice and civil rights be addressed in a State Implementation Plan (SIP) is one way to help ensure fair treatment of all communities affected by government decisions all represent a fairer distribution of environmental burdens and benefits. The TCEQ should carefully review applicable authorities for opportunities to incorporate environmental justice considerations and to ensure that such considerations are adequately and appropriately incorporated into SIP revisions.

EPA is committed to advancing environmental justice (EJ) and incorporating equity considerations into all aspects of our work. We encourage the TCEQ to screen their SIP actions for EJ concerns and to consider potential issues related to civil rights of the communities potentially impacted early in the SIP process by utilizing EJScreen and knowledge of the impacted area.<sup>24</sup> This screening will indicate whether a SIP revision has the potential to contribute to significant public health or environmental impacts, if the community may be particularly vulnerable to impacts from the SIP revision, and whether the community is already disproportionately impacted by public health and/or environmental burdens. A sound screening practice will also provide important information as to whether there are residents of the affected community who could be disproportionately subjected to adverse health, environmental and/or quality of life impacts on the basis of income, national origin (including LEP status), or other demographic factors. The TCEQ should also take into consideration whether facilities (major and minor sources of pollution) contribute to community risk. An area with an above average number of sources, especially if those sources are large or in close proximity to residents, is an area of concern.

---

<sup>22</sup> Exec. Order No. 12898, 59 FR 7629 (February 16, 1994)

<sup>23</sup> Exec. Order No. 14008, 86 FR 7619 (February 1, 2021)

<sup>24</sup> EJScreen is an environmental justice mapping and screening tool that provides the EPA with a nationally consistent dataset and approach for combining various environmental and demographic indicators. The EJScreen tool is publicly available at <https://www.epa.gov/ejscreen>.

## Daniel Lozano

I am a Safety Inspector and Station Owner we currently have Two Stations that have been in business nearly 25 years. We have been informing our customers of the recent changes I.E.( H.B. 3297 ) the majority of them are very concerned of what will become of our Texas roads and highways. The fact is the proposed Emission fee of \$11.50 will force us to close our business with the up keep cost of the emission analyzer, fuel tester and our labor its simply not enough.



## Ruben Meiss

The emissions test fee has been \$18.50 since my business partner and I opened our shop in April of 2012 and the man we bought the shop from said this fee had not been raised in years if ever. With the termination of the safety inspections (and the subsequent fee) on January 1, 2025, our independent station will lose more than a third of its income. What with inflation and increased employee costs I feel the emissions test fee needs to be increased by no less than \$10 per inspection to \$28.50 for ALL emissions testing inspection stations, including Bexar county. Give us independent stations a chance to earn a living.

Amir Mirza

State inspection fee should be increased to \$35

FAHEEM NAWAZ

We are in favor for expansion of the emissions inspection program to include Bexar County and would like to suggest a \$40 fee per vehicle emission inspection ON ALL EMISSIONS TEST COUNTIES INCLUDING MONTGOMERY COUNTY.

# Current Emissions Testing Plan in Bexar County

## Introduction

My name is Charissa E. Barnes and I am the CEO of Official Inspection Station. I have been in the automotive industry for over 30 years, specializing in vehicle safety inspections in order to save lives. Aside from owning and operating several locations throughout Bexar County, I have served on multiple boards and committees such as AACOG Air Improvement Resources Committee and the Texas State Inspection Association. For the purpose of successfully launching emissions programs in Texas, I have worked with multiple stakeholders such as state agencies (TCEQ and DPS), AACOG, state legislators, and local elected officials.

## Background/Plan

Due to Bexar County's "moderate nonattainment" classification by EPA, implementation of an I/M program is required. This means that almost 2 million Bexar County constituents would be required to complete vehicle emission inspections no later than November 2026. This is 22 months after Vehicle Safety Inspections will be eliminated in Texas. The rule making proposed by TCEQ sets a fee of \$11.50, despite the results of a TCEQ commissioned study in 2020, 6 years prior to the expected start date, that recommend a fee of \$18 to \$22 for OBD testing in Bexar County. This study most likely did not account for post-pandemic inflation and labor shortages. Other counties such as Travis, Dallas, and El Paso already have emissions testing in place and have yet to see a price increase since 2001. Currently, El Paso and Austin areas have a mandated price \$11.50, while Dallas and Houston areas are \$18.50 for emissions testing. Aside from establishing a set price for OBD testing, TCEQ plans on eliminating 50 percent of inspection stations recommending only 458 locations. Information about this plan was provided in January in a Zoom meeting scheduled for the middle of work day. There were few shop owners present at this meeting because there were no in-person town-hall meetings which is typical, historical, and customary of implementing emissions testing.

**Risks/Downsides**

Emissions testing takes approximately 15 to 30 minutes, more than double the time of a standard vehicle safety inspection. With the average labor hour rate being \$145 in Bexar County, TCEQ's proposed \$11.50 for emissions testing would not allow companies to be viable, resulting in a lack of participating shops. TCEQ is not mandated to set a price for emissions testing, and is enabling the potential for legal action. Without a minimum number of participating shops, the program would be destined to fail. Firestone and Goodyear have already announced they will no longer be conducting inspections in Texas, the first of many automotive companies who will eliminate opportunity for development of Bexar County, at the hands of TCEQ. With the number of inspection stations being cut in half, and the time length for emissions testing doubling, constituents would experience wait times that are approximately 4 times longer than current safety inspections. History has proven that when we launch an emissions program with fewer shops and longer wait times, constituents are inconvenienced and therefore angry, flooding elected officials and the media with complaints. With the elimination of the safety inspection program, our inspection industry, labor force, and participating shops will be completely dismantled. If TCEQ does not hold in person town hall meetings, the industry will be left in the dark and not be able to give their feedback on the proposed program. These town hall meeting allow for an open dialogue and questions. Without this, elected officials will not have the opportunity to receive feedback from the industry.

**Proposed Solution**

Considering the risks of the current proposed I/M program plan in Bexar County, we recommend several changes that would gear the program towards success. TCEQ is not required in statute to set a price that private businesses charge for emissions testing. For this reason, we propose allowing businesses to set their own prices, while TCEQ implements a fee to cover costs for overseeing the program. Shops would be required to display their prices on a prescribed form (see attached), displayed in a conspicuous area where customers could see

and on the company's website. We are also proposing an exterior sign with the state of Texas and a check mark (see attached). To address the negative effect of 22 months without safety inspections in Texas, we recommend that I/M testing begin immediately after vehicle safety inspections end on January 1, 2025. There is no statutory requirement or mandate that TCEQ implement the emissions program on the drop dead date of November 2026 nor is there a statutory requirement or mandate that prohibits TCEQ from selecting a more appropriate date to launch the emissions program. There is no statutory requirement or mandate that any elected official or body must take action to have the implementation date be sooner than the November 2026 drop date. Simply put, TCEQ can choose to implement the I/M program in Bexar County at January 1, 2025 which would preserve our workforce and begin cleaning the air, as well as save lives. Finally, it is important that members of the industry are notified about information sessions and are able to provide input as operators of the I/M program. The rule comment period should be extended to allow DPS to hold informative meetings that are more accessible to inspectors and automotive store owners. In the future, TCEQ committee hearings should not be timed or censored as it is not appropriate.

### **Conclusion**

Implementing emissions testing in Bexar County at \$11.50 per 15-30 minute test will not allow automotive industry entrepreneurs to successfully operate, so private businesses should set their price. If TCEQ proceeds in this way, we foresee the program being unsuccessful and the air quality not improving in Bexar County. Negative effects of an unsuccessful emissions testing program are increased sick people, dirty air, and angry constituents. Considering the program is already in place in other Texas counties, we predict the start date can be a lot sooner than the November 2026 deadline. Lastly, the rule making deadline should be extended and in person meetings should be held to ensure the attendance of shop owners and politicians.

**Important Links**

[https://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?](https://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=30&pt=1&ch=114&sch=C&div=1&rl=Y)

[tac\\_view=5&ti=30&pt=1&ch=114&sch=C&div=1&rl=Y](https://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=30&pt=1&ch=114&sch=C&div=1&rl=Y)

Texas Administrative Code: Environmental Quality

[https://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?](https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=30&pt=1&ch=114&rl=53)

[sl=R&app=9&p\\_dir=&p\\_rloc=&p\\_tloc=&p\\_ploc=&pg=1&p\\_tac=&ti=30&pt=1&ch=114&rl=53](https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=30&pt=1&ch=114&rl=53)

Texas Admin Code: Inspection and Maintenance Fees

[https://www.tceq.texas.gov/downloads/rules/current/22026114\\_pex.pdf](https://www.tceq.texas.gov/downloads/rules/current/22026114_pex.pdf)

TCEQ: Rule Proposal for Bexar County Expansion



**Charissa E. Barnes, President**  
**4737 College Park Ste 105**  
**San Antonio, Texas 78249**  
**210-698-1000**  
**[cbarnes@inspectionsticker.com](mailto:cbarnes@inspectionsticker.com)**





# Texas Emissions Inspection Pricing



**Gasoline-powered vehicles 2 through 24 years old are  
required to have an emissions inspection.**

Passenger Vehicle ..... \$ \_\_\_\_\_

Truck/SUV Vehicle ..... \$ \_\_\_\_\_

**Counties requiring emission tests:**

Brazoria, Bexar, Collin, Dallas, Denton, Ellis, El Paso, Fort Bend, Galveston, Harris, Johnson,  
Kaufman, Montgomery, Parker, Rockwall, Tarrant, Travis and Williamson

# Mandatory Posting of Emissions Sign



## TCEQ Public Hearing On Proposed Revisions to State Implementation Plan: Talking Points

- Emissions testing must begin in Bexar County no later than November 7, 2026. This date is about 2 years after vehicle safety inspections are no longer being conducted in the State of Texas. Some of these shops would not have the capability to reopen, and the industry would be destroyed. We may not have enough inspectors or stations to launch the program and clean up the air. Our recommendation is to begin emissions testing January 1, 2025.
- Currently we have over 1000 inspection stations in Bexar County. TCEQ is proposing we only need 458 stations to successfully operate emission tests for 2 million vehicles. This is approximately 50 percent less than the current number of inspection stations. This would cause motorists to drive further to locate an inspection station and wait 4 times as long.
- If businesses cannot set a reasonable price to cover their expenses and make a profit, the program will lack participating shops. This would have a negative effect on job availability, Texas highway funding, and air quality. A successful I/M program depends on the automotive business owners and their willingness/ability to serve the community. Firestone and Goodyear have already announced they will no longer be part of the inspection industry in Texas. High volume drive through quick service automotive like drive-through inspection stations and drive through oil changes account for approximately 30 percent of inspections in Bexar County. Loss of these businesses would be detrimental to the success of emissions testing.
- Official Inspection Station's cost of labor is currently over \$20 an hour. According to CarMd state index, the average is shop labor rate in Texas is \$145 an hour. The average time to perform an emissions test is 15 to 30 minutes and is expected to increase with the incorporation of safety inspection elements.
- TCEQ is not required in statute to set the price that private businesses charge for emissions testing. Automotive entrepreneurs should have the flexibility to alter their pricing to account for all costs associated with this automotive service and meet the demand of a growing population in Bexar County. We recommend that stations are able to set their own price by posting the pricing in a conspicuous place and on their website so motorists are can make an informed choice.

## TCEQ Public Hearing On Proposed Revisions to State Implementation Plan: Talking Points

- Emissions testing must begin in Bexar County no later than November 7, 2026. This date is about 2 years after vehicle safety inspections are no longer being conducted in the State of Texas. Some of these shops would not have the capability to reopen, and the industry would be destroyed. We may not have enough inspectors or stations to launch the program and clean up the air. Our recommendation is to begin emissions testing January 1, 2025.
- Currently we have over 1000 inspection stations in Bexar County. TCEQ is proposing we only need 458 stations to successfully operate emission tests for 2 million vehicles. This is approximately 50 percent less than the current number of inspection stations. This would cause motorists to drive further to locate an inspection station and wait 4 times as long.
- Meetings are not being conducted in a manner that includes shop owners. In January, an informational session to address emissions testing was held by TCEQ via Zoom in the middle of the work day. For this reason, many automotive entrepreneurs were not in attendance. To ensure the actual implementors of emissions testing in Bexar County are able to provide feedback for operation, TCEQ/DPS should hold in-person town hall meetings. I made the request for these in person meetings in January.
- If businesses cannot set a reasonable price to cover their expenses and make a profit, the program will lack participating shops. This would have a negative effect on job availability, Texas highway funding, and air quality. A successful I/M program depends on the automotive business owners and their willingness/ability to serve the community. Firestone and Goodyear have already announced they will no longer be apart of the inspection industry in Texas. High volume drive through quick service automotive like drive-through inspection stations and drive through oil changes account for approximately 30 percent of inspections in Bexar County. Loss of these businesses would be detrimental to the success of emissions testing.
- Official Inspection Station's cost of labor is currently over \$20 an hour. According to CarMd state index, the average is shop labor rate in Texas is \$145 an hour. The average time to perform an emissions test is 15 to 30 minutes and is expected to increase with the incorporation of safety inspection elements.
- TCEQ is not required in statute to set the price that private businesses charge for emissions testing. Automotive entrepreneurs should have the flexibility to alter their pricing to account for all costs associated with this automotive service and meet the demand of a growing population in Bexar County. We recommend that stations are able to set their own price by positing the pricing in a conspicuous place and on their website so motorists can make an informed choice.

## Steve Ortiz

I am the Owner/Manager/Janitor of my Inspection Station here in San Angelo and will be put out of business in 2025. The Fee should be the max for my fellow Inspectors. People do not respect a low fee, low fees are associated with incompetence.

To comment further, when people refuse to police themselves, then the Law has to do it for them, for 70 years the Vehicle Inspection Program has contributed to Texas greatness, a Safety Net for us all.

## CHRIS PROKOPEAS

I am an inspection owner in Arlington, Texas which is in Tarrant County. I would like to state that TCEQ should raise the emissions fee to a minimum of \$25.50; preferable \$29.50, by January 1, 2025 to be able to cover my costs. There have been multiple studies throughout the years and I have been part of at least three and all of them state that the emissions fees need to be raised since they have not gone up in over 20 years. Also, we have the lowest emissions fees of any program in the US. California, for example, charges \$75.00 for their emissions inspections.

## REMA Investment Group LLC

We are in favor for expansion of the emissions inspection program to include Bexar County and would like to suggest a \$40 fee per vehicle emission inspection.

## San Antonio Auto Service, LLC

We are in favor for expansion of the emissions inspection program to include Bexar County and would like to suggest a \$40 fee per vehicle emission inspection.



## WILLIAM SCHWARTZ

Emission inspections in the State of Texas, including Bexar County, will cost at least \$25.50 by 2026. There are two ways to get there. The current path Tceq is on will involve many thousands frustrated consumers and a lot of bad media coverage asserting the incompetence of the TCEQ staff and board. However, it can be avoided..

First some background on me. I own 3 inspection only stations in the Austin area that do approximately 75,000 inspections per year. I am a CPA and have been in the inspections business over 10 years so I have a very detailed understanding of the economics of the inspection business. We currently charge \$18.50 for inspections and our volume is up 60% in the last 2 years as many inspection stations that are combined with lube or repair business are eliminating or doing far fewer inspections due to the deteriorating economics of inspections. We are running at full capacity and regularly have customers complain that they called or visited multiple other shops and could not get an inspection. There is a significant excess of demand for inspections compared to supply even at \$18.50.

Below is what is going to happen based on the current path TCEQ is on:

In January 2025 the safety inspection will cease to exist and the inspection price will drop to \$11.50 in the Austin and El Paso area (\$25.50 down to \$18.50 in Houston and Dallas). Since inspectors do much of the safety inspection while the emissions computer is doing its testing there will be minimal efficiency gained from eliminating the safety portion of the inspections. The business will instantly become unprofitable as labor costs will consume 92% of revenue. I will close my shops on January 1, 2025. All the other inspection only shops will close a few months later as they realize there is no way to cover costs. These shops do between 15 and 25% of all inspections in the Austin area. There will be at least 300,000 consumers who no longer have an inspection station in a city where demand for inspections already exceeds supply. More lube and repair shops will eliminate or further reduce inspections. There will not be nearly enough capacity to allow all consumers to get an inspection. Consumers will be left with repair shops that use the inspection to upsell unneeded diagnostic services or the lube shop that occasionally has an inspector on staff who is not busy doing more profitable oil changes. The same problem will occur in Dallas and Houston but will be a little less acute as they will be charging \$18.50. By April of 2025 it will become nearly impossible to get an emissions inspection in Austin and El Paso. Those consumers who are able to get an inspection will spend many hours or spend hundreds of dollars to obtain one.

When thousands of consumers are unable to get their car inspected and renew their registration it will eventually come to the attention of the media. The media reports will portray the TCEQ staff as incompetent bureaucrats and the board will be branded useless political hacks who were asleep at the switch. This will be a crisis/pr problem that, while slower moving, will be on par with the Ercot crisis following the February 2021 blackouts. The problems will continue to grow each month as more cars need and cant obtain an inspection. The media will start reporting on the similar problems in Houston and Dallas.

If the pricing of inspections is not increased prior to the Bexar county rollout, that rollout will fail. As most inspection station operators are not financial analysts, some people will sign up for the

Bexar county program. However, after a few months they will learn from their bank accounts that \$11.50 doesn't come close to covering costs and they will cease offering inspections.

The bad media coverage and lack of customer's ability to register their vehicles will eventually force you to increase the price of the inspection. To entice more inspection stations to open and the existing ones to increase volume the price will be set at at least \$25. Unfortunately the bad media coverage and frustration for consumers won't end there. It will take many months for new stations to open and hire/certify inspectors so the supply and demand imbalance will continue. I would estimate this to be an additional 6-9 months of pain.

How can all this be avoided?

The solution is very simple. Increase the fee enough to cause supply of inspections to equal demand.

While flawed, the TCEQ inspection cost survey done every 2 years shows that the \$11.50 fee is unprofitable so your own records justify this. I would be happy to share my financials and open my books and records to demonstrate the utter inadequacy of an \$11.50 fee.

Consumers in Texas are conditioned to paying \$18.50 to \$25.50 for an inspection and know that it hasn't changed in many years. The consumer feedback and media coverage of an increase in the inspection fee would be minimal, if any, as many customers would gladly pay more to be able to easily get an inspection.

As I can see in my business, there is currently a significant and increasing supply and demand imbalance in the Austin area at \$18.50. While I don't operate in Dallas and Houston, I see ads for inspection places and some discounting in those markets. This leads me to believe that supply and demand are more in balance at a \$25.50 fee. The clear solution to avoid the crisis above is to set the inspection fee in Bexar county and statewide to at least \$25.50.

The choice is yours. Do you want to help make consumers' lives better or do you want to create an entirely avoidable crisis and be portrayed in the media as yet another incompetent government agency?



**Texas State Inspection Association**  
**Comments on Rules**  
**Docket # 2023-0317-RUL**  
**July 13, 2023**

- In 2020 TCEQ commissioned a study to help prepare for the future Implementation of an I/M program in Bexar County. The study recommended a fee between \$18 and \$22, which would be more in line with the fees charged in the Houston and Dallas areas currently set at \$18.50, however, the decision was made by TCEQ to set the fee at \$11.50 to match Travis/Williamson/El Paso areas instead.
- The \$11.50 fee that is being proposed does not come anywhere close to covering the cost of providing the service. Business owners will choose not to provide inspections at that cost, which will require citizens to drive further and wait in line longer to get an inspection before they can register their vehicle. Citizens would rather pay more, and not have to wait in line.
- There are varying fees across the state for emissions tests. DFW and Houston are at \$18.50, while Austin and El Paso areas are at \$11.50. With the elimination of safety inspections, many inspection stations in those areas are choosing to get out of the inspection business because at \$11.50, inspections are a loss leader. Setting a statewide fee would limit confusion for citizens on what amount they should pay to an inspection station for their emissions inspection, and TSIA recommends the fee should be set at \$22 to ensure there are enough stations willing to remain in the business and enough stations to continue to come into the business in an effort to reduce the wait times for citizens.
- With the passing of HB 3297 this legislative session, all non-commercial vehicle safety inspections will go away 1/1/2025. If emissions testing in Bexar County doesn't start until November 7, 2026 then there will be an 18 month gap where vehicle inspection stations will be forced to shut down the station and certified inspectors will have to look for other employment.



- There are currently a little under 2 million vehicles registered in Bexar county that will need to be emissions tested and if many of the current inspection stations and inspectors leave the industry it will be difficult for Bexar county residents to be inspected and subsequently registered. TCEQ estimates it will take 458 stations to adequately test the Bexar County vehicle fleet. TSIA's recommendation would be to implement emissions testing in Bexar County closer to the elimination date of vehicle safety inspections in Texas which takes effect January 1, 2025 to avoid confusion and possible shortages of emissions inspection stations.
- There are 4 inspection items that will have to move from the current safety inspection process over to the emissions inspection process after 1/1/25 statewide. Currently stations collect \$7 for the safety inspection, after 1/1/25 the \$7 fee for stations goes away but now emissions inspection stations will have to pick up inspecting these additional items adding time to the inspection process with no compensation to the station (this is why TSIA recommends a \$22 emissions inspection fee across the board in all 18 counties in Texas). The 4 items that will need to move are the exhaust system, exhaust emission system, fuel tank cap, using approved pressurized testing equipment, and emissions control equipment. Without a fee increase to the stations associated with this change it will no longer make business sense to continue to provide inspections. Firestone and Goodyear have already commented that without a fee increase they will no longer be in the inspection business in Texas, other stations will follow, which means longer drive times and longer wait times for citizens (especially in Bexar/Travis/Williamson/El Paso counties at their current fee structure).
- The current fee of \$7 for the safety inspection in combination with the emissions fee helped to address the ever-increasing costs of inflation (especially after the pandemic), labor shortages, supply increases etc. When the \$7 fee goes away there may be an impact in the number of emissions inspection stations that will be able to continue to operate and provide this service. Without these stations this will result in long lines and frustration from Texas citizens.

**Texas State Inspection Association**  
**512.574.6250 [jojo@texasvehicleinspections.com](mailto:jojo@texasvehicleinspections.com)**

# TEXAS DEPARTMENT OF PUBLIC SAFETY

5805 N LAMAR BLVD • BOX 4087 • AUSTIN, TEXAS 78773-0001

512/424-2000

[www.dps.texas.gov](http://www.dps.texas.gov)



STEVEN C. McCRAW  
DIRECTOR  
FREEMAN F. MARTIN  
DWIGHT D. MATHIS  
JEOFF WILLIAMS  
DEPUTY DIRECTORS



COMMISSION  
STEVEN P. MACH, CHAIRMAN  
NELDA L. BLAIR  
LARRY B. LONG  
STEVE H. STODGHILL  
DALE WAINWRIGHT

August 25, 2023

Chairman Jon Niermann  
MC 100  
TCEQ  
P.O. Box 13087  
Austin, TX 78711-3087

Chairman Niermann,

With the passage of House Bill 3297 in the 88<sup>th</sup> Legislative Session, effective January 1, 2025, most safety inspections will be eliminated statewide. The bill abolishes the Vehicle Safety Inspection Program for non-commercial vehicles by amending Chapter 382 of the Health and Safety Code and Chapters 502, 507, and 548 of the Transportation Code.

Based on a review of information provided on the Texas Commission on Environmental (TCEQ) website, the timeline for Bexar County vehicle emissions implementation is currently unspecified as outlined by the following quote: “Dates for when stations will need to have emissions analyzers in place and when emissions testing will be needed for vehicle registration have yet to be determined but will be no later than November 7, 2026.”

The Texas Department of Public Safety (DPS) strongly encourages the TCEQ to accelerate the implementation of vehicle emissions testing in Bexar County. This would not only be a proactive approach in working towards achieving clean air standards, but it would also reduce the hardship on the vehicle inspection stations that currently conduct safety-only inspections and the citizens of Texas who reside in Bexar County.

Clearly, the closing out of safety inspections on January 1, 2025, and the mandate to have emissions testing in Bexar County by no later than November 7, 2026, potentially creates a large disparity where safety inspections will be eliminated well before emissions inspections are required. This could have a negative impact on existing safety stations that plan to convert to emission stations and require extensive state resources in the closing and potential opening of stations several months later. Additionally, as the regulator of the licensing program, the process of standing down all stations in the largest populated non-attainment county, only to then standup new stations and inspector several months later, will be a significant increase in workload.

In addition, DPS anticipates that many safety-only vehicle inspection stations will close and exit the program before the January 1, 2025, effective date of House Bill 3297. If this holds true for Bexar County, a large populous of Texas located in Bexar County could be facing a shortage of available

vehicle stations if the emissions program begins in late 2026. This could also potentially widen the gap between station closures and the beginning of emissions testing which may further reduce the pool of existing stations that are willing to switch from safety to emissions in Bexar County.

The burden could be reduced on both vehicle stations and the citizens of Bexar County if the date of the emissions inspection requirement and the elimination of the safety-only inspections could be aligned to January 1, 2025. Otherwise, the complexity of educating Bexar County citizens on the inspection process for the next three years would potentially cause significant confusion:

- 1) Bexar County citizens would not need any type of inspection for 2025.
- 2) Depending on the month of registration, Bexar County citizens may or may not need an emissions inspection in 2026.
- 3) Finally, all would need an emissions inspection in 2027.

I have copied Bexar County Judge Peter Sakai and Walt Goodson, DPS Deputy Director, Law Enforcement Services for awareness. Thank you for your consideration of this request.

Sincerely,



Wayne Mueller, Chief  
Regulatory Services Division  
Texas Department of Public Safety

Cc: Bexar County Judge Peter Sakai  
101 W. Nueva, 10th Floor  
San Antonio, TX 78205

Walt Goodson, DPS Deputy Director, Law Enforcement Services



LICENSING AND REGISTRATION SERVICE MSC 0245  
TEXAS DEPARTMENT OF PUBLIC SAFETY  
PO BOX 4087  
AUSTIN TX 78773-0245

Chairman Jon Niermann  
MC 100  
TCEQ  
P.O. BOX 13087  
Austin, TX 78711-3087

RECEIVED  
AUG 28 2023  
TCEQ MAIL CENTER  
WT

RECEIVED  
AUG 28 2023  
Texas Commission on Environmental Quality  
Commissioners' Office

**INTERAGENCY**

## John Valerio

\$40 per inspect. The hassle, maintenance, extra staff, facilities, machine cost, space, and loss of revenue from safety items asks for this. Inflation commands this.



## Mona Wakim

Customers and business owners are frustrated by the inspection system as it currently stands. I personally have asked numerous people what they think about the inspection program and all believe it's important because most consumers would not check their car if they weren't required to. There have been extensive studies showing the impact on lives saved with the inspection program. We must not only continue the program but strengthen it by analyzing the current test procedure and making it better for both the businesses and the consumer. Oftentimes people feel bad paying only \$7 \$11.50 for an inspection. Most can't believe a cup of coffee at Starbucks is more expensive. You have to also consider the risk the inspector is taking, driving someone's vehicle is a liability of property. That in itself is worth more than the current dollar amount. Take in to account the time it takes to do an inspection is typically 20 minutes-that turns into \$0.35 per minute of the inspector's time/expertise. It's truly a joke in this day how little the fees are. Again, inspectors, auto shop owners, customers are all together frustrated by the current system. The answer is not to reduce fees or testing, the answer is to correct the current system to improve it by narrowing the tests performed to keep up with the times for example to get rid of testing the emergency brake system as most cars automatically utilize the emergency brake so it cannot be tested in most new cars. By streamlining the current inspection tests, you can save the inspector time and energy to be more efficient and can charge a more reasonable and higher fee for the expertise, time and accountability it takes. You have to remember there are vehicles out there that are worth more than some houses, and you allow such a small charge for such a big risk/responsibility of property. It's truly outrageous. Again, the inspection process needs to be perfected to keep up with the new technology/vehicles and the fees need to reflect a reasonable amount for the time and liability shops/inspectors put in. Everyone is frustrated and the two things to improve are raising the cost and improving the test.

**From:** [Joan Woodruff](#)  
**To:** [Edgar Gilmore](#)  
**Subject:** Fee for emission inspections  
**Date:** Monday, July 10, 2023 9:21:35 PM

---

Hello Edgar,

I haven't spoken to you in years, since I got rid of my worldwide machines and got Esp Mechine's. Completely cured my problem anyway, I just found out that you were looking to include Bexar county as an emissions county. While I'm not against it, I don't live there and I don't think I should have a say in it what I would like to suggest is the fact that the first time we took over 40% cut, and we have never had a raise since we began emissions inspections. I think with the cost that it cost to have a run an inspection station, pretty equipment, maintenance insurance, liability, employees, locations, rent, etc. we are long overdue for .I think with the cost that it cost to have and run an inspection station for the equipment, the maintenance, the insurance, the liability employees, the locations, rent, etc. we are long overdue for a raise.

If you do go to \$40 a sticker, we should be getting the difference in profit and it would be nice if we did not have to pay GDITims for their services either.

Hope you're doing well and God bless.

Joan Woodruff

Sent from my iPhone

## **INDEX OF ORAL TESTIMONY**

<b><u>REFERENCE NUMBER</u></b>	<b><u>SUBMITTED BY</u></b>
O-1	Charissa Barnes, Official Inspection Station
O-2	JoJo Heselmeyer, Texas State Inspection Association
O-3	Jose Garcia
O-4	Diane Rath, Alamo Area Council of Governments (similar to written comments)
O-5	Bill (William) Schwartz (similar to written comments)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

TRANSCRIPTION OF AUDIO-RECORDING  
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
JULY 13, 2023

1 JULY 13, 2023

2 DANIEL SCHROEDER: Good evening. I would  
3 like to come to the formal session of this meeting.  
4 First I'm going to have the translation services  
5 make a quick announcement.

6 THE INTERPRETER: (Spanish)

7 DANIEL SCHROEDER: I'd like to welcome  
8 everyone to this public hearing being conducted by  
9 the Texas Commission of Environmental Quality. My  
10 name is Daniel Schroeder with the Office of the  
11 Chief Clerk.

12 I would also like to introduce Donna Huff,  
13 Walker Williamson, Danielle Nesvacil, Bobby Gifford,  
14 Edgar Gilmore, Allison Stokes, and Stephanie  
15 Fredrick with the Air Quality division, and Terry  
16 Salem with the Environmental Law division.

17 We are here to receive comments on the  
18 following four proposals: amendments to 30 Texas  
19 Administrative Code, Chapter 114, Control of Air  
20 Pollution for Motor Vehicles.

21 The Bexar County Inspection and Maintenance  
22 State Implementation Plan or SIP revision.

23 And the Bexar County Moderate Area  
24 Attainment Demonstration, SIP revision.

25 And Reasonable Further Progress, SIP

1 revision, both for the 2015 eight-hour ozone  
2 national ambient air quality standard.

3 This hearing is structured strictly for the  
4 receipt of comments on the proposals. Open  
5 discussion during the initial hearing is not  
6 allowed.

7 Due to the amount of people that have  
8 signed up to speak this evening, we would like to  
9 ask two favors of you.

10 First, please try to keep your comments as  
11 brief as you can, and no longer than three minutes.  
12 We would like to be sure that everyone has an  
13 opportunity to speak.

14 Second, if someone who spoke before you  
15 addressed your concerns, it is not necessary to  
16 repeat that comment. You can simply indicate your  
17 endorsement of those comments, and in the Adopt a  
18 Project documentation, we will acknowledge those --  
19 that those were your concerns as well.

20 Thank you for your courtesy in recognizing  
21 the time limit. If necessary, a 10-minute break  
22 will be taken every 40 minutes of testimony.

23 If you have not yet signed in at the  
24 registration table, please sign in now. If you  
25 intend to present oral comments, please indicate

1 that on the sign-in sheet.

2 Printed copies of the proposed rule and SIP  
3 revisions are available at the registration table  
4 for your reference while here.

5 Several handouts are also provided for you  
6 on the registration table, including the hearing  
7 notice and plain-language summary of the proposals  
8 we are taking comments on today. These handouts are  
9 provided in both English and Spanish. The handouts  
10 contain relevant web addresses and comment submittal  
11 information. These documents are available on the  
12 TCEQ website as well.

13 We will now begin receiving comments in the  
14 order in which you registered. We will be recording  
15 your comments for transcription, so please speak  
16 directly into the microphone so that we can hear  
17 your comments. When I call your name, please come  
18 up to the microphone, state your name and who you  
19 represent, and you can begin your comments.

20 So the first person I have on the list is  
21 JoJo Heselmeyer.

22 JOJO HESELMAYER: Hi there. Good evening.  
23 For the record, JoJo Heselmeyer, and I'm with the  
24 Texas State Inspection Association. I've also  
25 brought my comments in writing, so it might make it

1 easier for you guys when you have to go to  
2 transcribe.

3           So in opening, I just want to start out  
4 that in 2020, TCEQ commissioned a study to help  
5 prepare for the future implementation of an IM  
6 program in Bexar County. The study recommended a  
7 fee between 18 and \$22, which would be more in line  
8 with the fees charged in the Houston and Dallas  
9 areas, currently set at 18.50. However, the  
10 decision was made by TCEQ to set the fee at 11.50 to  
11 match Travis, Williamson, and El Paso areas instead  
12 of the Dallas and Houston.

13           TSIA feels that this is going to have a  
14 negative impact. With the passing of House Bill  
15 3297 this legislative session, all noncommercial  
16 vehicle safety inspections will go away January 1,  
17 '25. If emissions testing in Bexar County doesn't  
18 start until November 7th of 2026, this will leave an  
19 18-month-plus gap where vehicle inspection stations  
20 will be forced to shut down, and certified  
21 inspectors will have to look for other employment.

22           The current fee of \$7 for the safety  
23 inspection in combination with the emissions fee  
24 helped to address the ever-increasing cost of  
25 inflation, especially after the pandemic, labor



1 shortages, supply increases, et cetera. When the \$7  
2 fee goes away, there may be an impact in the number  
3 of emissions inspection stations that will be able  
4 to continue to operate and provide this services.  
5 Without these stations, this will result in long  
6 lines and frustration from Texas citizens.

7           There are four inspection items that are  
8 going to have to move from the current safety  
9 process over to the emissions inspection process  
10 after January of '25.

11           So currently, the station collects that \$7  
12 for the safety inspection. After 1/1/25, the fee  
13 for the station goes away, but now emissions  
14 inspection stations will have to pick up inspecting  
15 these additional items, adding to the inspection  
16 process with no compensation to the station. Again,  
17 this is why TSIA recommends a \$22 emissions  
18 inspection fee across the board in all 18 counties  
19 in Texas.

20           The four items that will need to be moved  
21 over are the exhaust system, exhaust emission  
22 system, fuel tank cap using an approved pressurized  
23 testing equipment, and the emissions control  
24 equipment.

25           Without a fee increase to the stations

1 associated with this change, it will no longer make  
2 business sense to continue to provide inspections.

3 Firestone and Goodyear have already made  
4 comment that without a fee increase, they will no  
5 longer be able to inspect businesses in Texas, and  
6 other stations will follow, which means longer drive  
7 times and longer wait times for citizens, especially  
8 in the Bexar, Travis, Williamson, and El Paso  
9 counties.

10 There are varying fees across the state for  
11 emissions test. DFW and Houston are at 18.50,  
12 again, while Austin and El Paso areas are at 11.50.  
13 With the elimination of safety inspections, many  
14 inspection stations in those areas, again, are  
15 choosing to get out of this business.

16 Setting a statewide fee would limit  
17 confusion for citizens on what amount they should  
18 pay to an inspection station for their emissions  
19 inspection. And again, TSIA recommends that fee be  
20 set at \$22 to ensure there are enough stations  
21 willing to remain in the business and enough  
22 stations to continue to come into the business in an  
23 effort to reduce the wait times for citizens.

24 You guys let me know when I'm out of time.  
25 I'm almost done.

1           There are currently a little under two  
2 million vehicles registered in Bexar County that  
3 will need to be emissions tested. And again, if  
4 many of the current inspection stations and  
5 inspectors leaves the industry, it will be difficult  
6 for Bexar County residents to be inspected and,  
7 subsequently, registered.

8           TCEQ estimates it will take 458 stations to  
9 adequately test their county vehicle fleet. TSIA's  
10 recommendation would be to implement emissions  
11 testing in Bexar County closer to the elimination  
12 date of the vehicle safety inspection in Texas,  
13 which again, takes effect 1/1/25, to avoid  
14 confusion, possible shortages, and those types of  
15 things.

16           DANIEL SCHROEDER: That's time.

17           JOJO HESELMAYER: That's all right. That's  
18 what I have though.

19           DANIEL SCHROEDER: Thank you.

20           JOJO HESELMAYER: You're welcome. Who do I  
21 leave this with?

22           DANIEL SCHROEDER: So next on the list that  
23 I have is Bill Schwartz.

24           BILL SCHWARTZ: My comments are also filed  
25 on your website, so you can see them there.

1 Emissions inspections in the state of Texas  
2 and Bexar County are going to cost north of \$20 by  
3 2026. It's just a fact. You guys are going to be  
4 forced to increase it.

5 There are two ways to get there. The  
6 current path TCEQ is proposing with an \$11.50 fee is  
7 going to cost many thousands of frustrated consumers  
8 throughout the state and a lot of bad media coverage  
9 for TCEQ.

10 Personal background on me. I own three  
11 inspection-only stations in the Austin area. We do  
12 approximately 75,000 inspections a year. I'm a CPA,  
13 and I have been in the inspection business for 10  
14 years. So I have a better, very detailed  
15 understanding of the finances of this business.

16 We currently charge 18.50 for inspections.  
17 Our volume is up 60 percent in the last two years  
18 because so many, a combination of lube or repair  
19 shops, are not doing inspections or are reducing  
20 volumes of inspections. So customers are having to  
21 call or go to four or five different places, and  
22 they end up with me. I love the volume, but I'm at  
23 full capacity; and I can't do many more.

24 There is a significant excess demand for  
25 inspections compared to supply, even at \$18.50 in

1 Travis County, and Williamson.

2 Below is what's going to happen based on  
3 the TCEQ plan. In January 2025, safety inspections  
4 are going to go away. My price will go down to  
5 \$11.50. My labor cost will be 92 percent of my  
6 revenue at that point. So I will be closing down my  
7 stations in January 2025.

8 Soon thereafter, my cohorts that also run  
9 inspection-only stations are going to figure out  
10 that they're not making any money. They will close  
11 down also. That's approximately 300,000 inspections  
12 a year that are going to go away in Austin, Travis  
13 County, maybe 10, 15, 20 percent. I don't have the  
14 exact numbers, but a significant percentage of the  
15 cars inspected in Travis County will no longer have  
16 an inspection station.

17 The only places that will be left are  
18 repair places and lube places. They are already  
19 pulling back on inspections at 18.50. They're going  
20 to pull back more at 11.50. The same problem is  
21 going to occur in Dallas and Houston, but it will be  
22 a little less acute since they will then be getting  
23 \$18 as opposed to the 11 that we're getting in  
24 Austin and eventually Bexar County.

25 The consumers who are able to get an

1 inspection will spend many hours or spend hundreds  
2 of dollars because they're going to go to places  
3 that are doing inspections just to upsell them  
4 repair fees or costly diagnostics that are not  
5 needed for the inspection. We see it happening now  
6 at 18.50. At 11.50 it's going to be rampant and  
7 acute.

8           When thousands of consumers are unable to  
9 get their cars inspected and renew their  
10 registration, it will eventually come to the  
11 attention of media. Media reports will portray TCEQ  
12 staff as incompetent and asleep at the switch. This  
13 will be a crisis or PR problem that will be slower  
14 moving but on par with the ERCOT crisis after the  
15 freeze in 2021. The problems will --

16           DANIEL SCHROEDER: I'm sorry, but that  
17 time.

18           UNIDENTIFIED FEMALE: Before you leave, can  
19 you please identify yourself for the record?

20           BILL SCHWARTZ: Bill Schwartz.

21           I can't continue?

22           DANIEL SCHROEDER: No. We have a time  
23 limit.

24           BILL SCHWARTZ: Okay. Thank you.

25           DANIEL SCHROEDER: Thank you, though.

1                   Next on my list I have is Jose Dario.

2                   JOSE GARCIA: Garcia? (Indiscernible) Jose  
3 Garcia (Indiscernible).

4                   DANIEL SCHROEDER: I have a Jose Dario.

5                   JOSE GARCIA: Good evening, ladies and  
6 gentlemen. My name is Jose Garcia. I'm an owner of  
7 an inspection station. We don't have any other  
8 business in our location. We're just exclusive  
9 inspection station. We've been in business for  
10 about 15 years, and we have gone through changes  
11 during this time but nothing like this.

12                   The changes that are coming I think are  
13 going to have a catastrophic consequence to the  
14 station owners and the residents of Bexar County,  
15 and also the office of Tax Assessor, Collector,  
16 Mr. Albert Uresti.

17                   Due to the fact that that gap of 18 months  
18 if this new proposal that is supposed to take effect  
19 in 2026 is necessary to register a vehicle, Bexar  
20 County is going to have a hard time to recruit  
21 inspectors and open stations with an 18-month gap.  
22 There is no way I can survive 18 months without an  
23 income. And you have to find -- I mean, there's a  
24 lot of things. It's just not doing inspection.  
25 You've got to pay -- you have to rent a commercial

1 place. You have to have probably like I heard  
2 something like \$19,000 equipment. It's not -- it's  
3 very big change.

4 The idea is okay. But the main problem  
5 I've got is that gap. It's very difficult to stay  
6 -- there's no way we can stay in business. And we  
7 love the community. We've been with the community  
8 for many, many years. And something has to be done  
9 between whoever makes this decision - the politics,  
10 you guys, DPS. I don't know who's doing what. But  
11 it's going to have a big -- I'm telling you, it's  
12 going to be a big problem in Bexar County.

13 And the 11.50 also, that's -- that's not  
14 going to be enough. Considering I've got  
15 (indiscernible) this day. And I used to buy a pan  
16 of fajita. Go right now and try to eat fajita every  
17 day. You cannot eat fajita every day. And that's  
18 how -- and in 2026 cost of living is going to be a  
19 lot more.

20 So whoever is in charge of this or can do  
21 something about it, I think you all take into  
22 consideration what we're saying here tonight. Thank  
23 you.

24 DANIEL SCHROEDER: Thank you.

25 Next on my list I have is Diane Rath.



1           DIANE RATH:     Thank you.     I'm Diane Rath,  
2     Executive Director of Alamo Council of Governments,  
3     and our board of directors has previously submitted  
4     their comments to you.

5           But I want to take this opportunity to  
6     really tell you how much we appreciate your holding  
7     this hearing here so that our residents have an  
8     opportunity to testify to you and to submit any  
9     questions that they may have for your later  
10    response.    We realize it's the middle of summer, and  
11    it's an extra burden.    So thank you all very much  
12    for doing that.

13           I also have to really publicly acknowledge  
14    the effort that you all have done over the past year  
15    in meeting with our elected officials.    You all had  
16    several meetings, both with Mayor Nirenberg and with  
17    both Judge Wolff and Judge Sakai, really involving  
18    them in the process, making sure they understood  
19    what was coming and what was happening.    And I  
20    appreciate your listening to them and the very  
21    serious concerns they have about this additional fee  
22    on the residents of this community because we're a  
23    very poor city, particularly compared to Dallas, and  
24    Houston, and other areas.    And they are very  
25    concerned about the impact on our population,

1 particularly our poorer residents.

2 So I thank you for doing that, and we  
3 really, again, appreciate what you've done to  
4 persevere, the collaborative and cooperative spirit  
5 of working with all the elected officials here. So  
6 thank you.

7 DANIEL SCHROEDER: Thank you.

8 Next on my list I have is Charissa Barnes.

9 (Pause)

10 CHARISSA BARNES: I have an announcement to  
11 make. Ready?

12 DANIEL SCHROEDER: Go ahead.

13 CHARISSA BARNES: Okay. Hi. Good evening.  
14 Thank you for holding this hearing for us today. My  
15 name is Charissa Barnes. I'm the President and CEO  
16 of Official Inspection Station, and I save lives.

17 My company has been established since 1985.  
18 I'm a multigenerational small-business owner, and we  
19 specialize in vehicle inspections. I am one of the  
20 few people in this room that have participated and  
21 worked with many different stakeholders. I've been  
22 on the Air Improvement Resources Committee here at  
23 ACOG, where I helped ACOG and elected officials --  
24 our local elected officials, determine whether or  
25 not San Antonio would opt into an emissions program

1 in the early 2000s.

2 I've also been a board member of the Texas  
3 State Inspection Association, and through my work I  
4 have worked at the legislative level, where we have  
5 written bills, worked with elected officials on the  
6 state level, and at the local level, the automotive  
7 inspection industry, to successfully launch a  
8 program in the Dallas and Houston area back in the  
9 early 2000s.

10 I will not spend a lot of time reiterating  
11 what some of my other colleagues have said, but  
12 what's most important is that our program launches.  
13 You've heard tonight several people in our industry  
14 have said, well, the fee is just not appropriate to  
15 be able to encourage and entice private business to  
16 perform these inspections. Although we just heard  
17 that San Antonio is a poor city, but we are a  
18 growing city. And we have poor air quality. It's  
19 important that we clean that up.

20 I want to talk about, that there was a  
21 meeting in January I attended. It was hosted by  
22 TCEQ. And I asked, would there be an opportunity  
23 for the Department of Public Safety, in conjunction  
24 with the TCEQ, to invite inspection station owners  
25 to the meeting so they can describe and explain and

1 answer questions prior to rule submission. That did  
2 not happen.

3 In previous -- in our previous works in the  
4 Dallas, Houston, Austin area, it is very customary,  
5 and has happened historically, where the DPS and  
6 TCEQ will hold a meeting. Not just a rulemaking,  
7 but where inspection station owners and operators  
8 can come and ask questions. At the time this  
9 meeting happened in January, the price had not yet  
10 been set, and we have not had an opportunity.

11 I think the elected officials from San  
12 Antonio need the opportunity to hear from the local  
13 automotive industry about what their concerns are.  
14 Not simply through a hearing right here where we can  
15 just give oral testimony, but a true discussion  
16 because that has been historical and customary in  
17 our industry. And I think we are short-changing our  
18 elected officials into thinking that the industry  
19 will be here and be able to participate and support  
20 our community through the emissions program. And  
21 it's simply going to be extremely challenging.

22 I also would like to say that Texas -- I'm  
23 sorry -- the Texas Commission of Environmental  
24 Quality does not have a statutory mandate to set the  
25 fee. I will say that again. There is nothing in

1 the health and safety code that says TCEQ must set  
2 the fee. Private businesses are being asked to  
3 participate in this program to help us clean up the  
4 air, to help us save lives.

5 So why is it happening? Well, TCEQ has  
6 been setting the fee for a very long time. But  
7 unfortunately, TCEQ sets the fee and then doesn't  
8 increase the fee for about two decades. And what  
9 happens is our program deteriorates, and it invites  
10 a criminal element to come into our industry and do  
11 fraudulent safety -- excuse me -- emissions  
12 inspections. It's run rampant all over Texas. It's  
13 all over the news. We don't want that for Bexar  
14 County.

15 What I propose -- and I've given it to you  
16 today -- two things. Number one, that we allow the  
17 private businesses to set their price. I've given  
18 you -- I know my time is up. Please permit me  
19 another 20 seconds.

20 We've put forth a form where the private  
21 businesses will post their price for consumers to  
22 make their choice. This allows more private  
23 businesses to come into the program. This also  
24 allows for inspection stations to be in a fast-  
25 growing areas of San Antonio where we don't have

1 enough inspection stations today.

2 And then finally, that there would be a  
3 sign that we put on the front of the building, which  
4 is customary for a safety inspection station today,  
5 and it simply has a green plus. And that lets  
6 consumers know before they ever drive onto the  
7 property, that, in fact, this store has additional  
8 price, and you can find that either on our website  
9 or you can find it in the customer lobby area. And  
10 it is something that happens all over the United  
11 States. And it allows us to actually launch a  
12 program to help us clean up the air.

13 Times up? Yeah.

14 DANIEL SCHROEDER: Yes. Sorry.

15 CHARISSA BARNES: Okay. Thanks.

16 DANIEL SCHROEDER: Thank you.

17 So at this time that is everyone that I  
18 have on my list that signed up to make oral  
19 comments. Is there anybody else who has not made  
20 oral comments that would like to do so?

21 Okay. So we are accepting written comments  
22 on the proposal today. The TCEQ will continue to  
23 accept written comments on these proposals via the  
24 TCEQ public comment system until 11:59 p.m. on July  
25 17, 2023. All comments should reference the rule or

1 project number that the comment pertains to. As a  
2 reminder, copies of the proposed rule and SIP  
3 revisions, including appendices, can be obtained  
4 from the Commission's website. The handouts contain  
5 the relevant web addresses for obtaining electronic  
6 copies of the proposed rule and SIP revision and  
7 access to the TCEQ public comment system.

8 We appreciate all comments, and we thank  
9 you for coming. If there are no further comments,  
10 this hearing will be closed, and I hope everyone has  
11 a good night. Thank you.

12 (END OF AUDIO RECORDING)  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

## 1 CERTIFICATE OF TRANSCRIPTIONIST

2 I certify that the foregoing is a true and  
3 accurate transcript of the digital recording  
4 provided to me in this matter.

5 I do further certify that I am neither a  
6 relative, nor employee, nor attorney of any of the  
7 parties to this action, and that I am not  
8 financially interested in the action.

9

10

11

12

13

---

Julie Thompson, CET-1036

14

15

16

17

18

19

20

21

22

23

24

25



# Texas Commission on Environmental Quality Public Hearing Registration

Date July 13, 2022  
Time 7:00 p.m.

Project Nos.: 2022-024-SIP-NR; 2022-025-SIP-NR; 2022-027-SIP-NR; and 2022-026-114-AI

Short Title: Bexar County 2015 Ozone NAAQS Moderate Reasonable Further Progress SIP Revision; Bexar County 2015 Ozone NAAQS Moderate Attainment Demonstration SIP Revision; Bexar County Inspection and Maintenance SIP Revision; and Chapter 114 Bexar County I/M Expansion, Low-RVP Clean up, and Definitions Clean-Up

Location: Alamo Area Council of Governments, 2700 NE Loop 410, San Antonio, Texas

Concerning: Proposed revisions Bexar County moderate classification SIP revisions for the 2015 Eight-Hour Ozone National Ambient Air Quality Standard and proposed revisions to 30 TAC Chapter 114, Control of Air Pollution from Motor Vehicles

Name (Please Print)	Representing (Business, Organization, Government Official)	Presenting Oral Testimony? (Circle One)
Kyle Cunningham	SA Metro Health	Yes <input checked="" type="radio"/> No
Jojo Heselmeier	Texas State Inspection Assoc.	<input checked="" type="radio"/> Yes No
Amber Chapman	Southwest Research Institute	Yes <input checked="" type="radio"/> No
STEVEN FLEMING	_____	Yes <input checked="" type="radio"/> No
ANDREW FRYE	CAPITOL ACCREDITED	Yes <input checked="" type="radio"/> No
BILL SCHWARTZ	STICKER EXPRESS	<input checked="" type="radio"/> Yes No
Gose Dario	INSPECTION STATION	<input checked="" type="radio"/> Yes No
Diane Rath	AACOG	<input checked="" type="radio"/> Yes No
David Simon	JART	Yes <input checked="" type="radio"/> No
Lindsey Carnett	SA Report	Yes <input checked="" type="radio"/> No
Steven Hellwig	Bexar County	Yes <input checked="" type="radio"/> No

# Texas Commission on Environmental Quality

## Public Hearing Registration

Date July 13, 2022

Time 7:00 p.m.

Project Nos.: 2022-024-SIP-NR; 2022-025-SIP-NR; 2022-027-SIP-NR; and 2022-026-114-AI

Short Title: Bexar County 2015 Ozone NAAQS Moderate Reasonable Further Progress SIP Revision; Bexar County 2015 Ozone NAAQS Moderate Attainment Demonstration SIP Revision; Bexar County Inspection and Maintenance SIP Revision; and Chapter 114 Bexar County I/M Expansion, Low-RVP Clean up, and Definitions Clean-Up

Location: Alamo Area Council of Governments, 2700 NE Loop 410, San Antonio, Texas

Concerning: Proposed revisions Bexar County moderate classification SIP revisions for the 2015 Eight-Hour Ozone National Ambient Air Quality Standard and proposed revisions to 30 TAC Chapter 114, Control of Air Pollution from Motor Vehicles

Name (Please Print)	Representing (Business, Organization, Government Official)	Presenting Oral Testimony? (Circle One)
Travis Nedrich	AAMPO	Yes <input checked="" type="radio"/> No
Clifton Hall	Alamo Area MPO	Yes <input checked="" type="radio"/> No
Dee Dee Bolmaros	Public Citizen	Yes <input checked="" type="radio"/> No
DAN YOXALL	SAN ANTONIO MFG ASSOC.	Yes <input checked="" type="radio"/> No
Charissa Barnes	Official Insp Station	<input checked="" type="radio"/> Yes No
Felix Venzas	Official Inspection	Yes <input checked="" type="radio"/> No
		Yes No
		Yes No
		Yes No
		Yes No
		Yes No

# Texas Commission on Environmental Quality



## HEARING OFFICER REPORT

I am the hearing officer assigned to conduct the public hearing regarding the proposed Dallas-Fort Worth (DFW) 2015 Eight-Hour Ozone Moderate Classification Attainment Demonstration State Implementation Plan (SIP) Revision (Project No. 2022-021-SIP-NR); DFW and Houston-Galveston-Brazoria (HGB) 2015 Eight-Hour Ozone Moderate Classification Reasonable Further Progress SIP Revision (Project No. 2022-023-SIP-NR); and Expansion of Vehicle Emissions Inspection and Maintenance to Bexar County and Removal of Six DFW Counties from the Regional Low Reid Vapor Pressure Gasoline Program (Rule Project No. 2022-026-114-AI).

A public hearing was scheduled for July 6, 2023 at 7:00 p.m. in the Arlington City Council Chambers at 101 West Abram Street, Arlington, Texas, 76010.

At 6:30 p.m., the room was open and TCEQ staff members were available to discuss the proposals. At 7:00 p.m., TCEQ staff were present and ready to open the hearing for public comment. After waiting for 15 minutes, no one had arrived to make comments on the record. Therefore, the public hearing was not formally opened for comment and a transcript was not prepared.

  
\_\_\_\_\_

Denine Calvin, Hearing Officer

07.07.2023

Date signed

# EVALUATION OF TESTIMONY

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** November 16, 2023

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

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

**Docket No.:** 2023-0317-RUL

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

### **Background and reason(s) for the rulemaking:**

On October 7, 2022, the United States Environmental Protection Agency (EPA) published its reclassification of Bexar County from marginal to moderate nonattainment for the 2015 eight-hour ozone National Ambient Air Quality Standard (NAAQS), effective November 7, 2022 (87 *Federal Register* (FR) 60897). Bexar County is subject to the moderate nonattainment requirements in federal Clean Air Act (FCAA), §182(b). The FCAA and 40 Code of Federal Regulations (CFR) Part 51, Subpart S, §51.350<sup>1</sup>, as amended, require a basic vehicle emissions I/M program in ozone nonattainment areas classified as moderate. Rulemaking is required to implement I/M and set the testing fee applicable in Bexar County, and a state implementation plan (SIP) revision is required to incorporate a Bexar County I/M program into the SIP. The rulemaking and SIP revision were due to EPA by January 1, 2023, and implementation of the I/M program is required by November 7, 2026.

Also on October 7, 2022, EPA reclassified the 10-county DFW area from serious to severe nonattainment for the 2008 eight-hour ozone NAAQS, effective November 7, 2022 (87 FR 60926). On November 7, 2023, Ellis, Johnson, Kaufman, Parker, Rockwall, and Wise Counties will be subject to the federal reformulated gasoline program (RFG), which already applies for Collin, Dallas, Denton, and Tarrant Counties due to a voluntary opt-in under the 1979 one-hour ozone NAAQS (57 FR 46316, October 8, 1992). Ellis, Johnson, Kaufman, Parker, Rockwall, and Wise Counties are currently subject to the state low RVP rules in Chapter 114, Subchapter H, Division 1, and rulemaking is required to remove them from the state program to avoid overlapping applicability between the state and federal programs.

### **Scope of the rulemaking:**

The rulemaking amends 30 Texas Administrative Code (TAC) Chapter 114, Subchapters A and C to add program-related definitions, identify vehicles in Bexar County that will be subject to vehicle emissions inspections, require emissions inspection stations in Bexar County to offer the on-board diagnostics (OBD) test approved by EPA, and establish the maximum fee that Bexar County emissions inspection stations may charge for the OBD test. The associated Bexar County I/M SIP revision (Project No. 2022-027-SIP-NR) incorporates the I/M rules into the I/M SIP.

Additionally, the rulemaking revises §114.309 to remove Ellis, Johnson, Kaufman, Parker, Rockwall, and Wise Counties from the list of affected counties required to comply with the state's low RVP control requirements. This rulemaking revises the SIP and includes a demonstration of non-interference with the SIP to meet FCAA, §110(l) requirements. The demonstration shows that removal of the six counties from the state low RVP program will not interfere with attainment or maintenance of the NAAQS for the DFW area due to implementation of federal RFG requirements,

---

<sup>1</sup> [40 CFR Part 51, Subpart S, §51.350](#)

Re: Docket No. 2023-0317-RUL

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

**A.) Summary of what the rulemaking will do:**

The rulemaking amends 30 TAC Chapter 114. The revisions to §114.1 remove obsolete definitions that were identified during the 2019 Quadrennial review of Chapter 114 and have been reaffirmed by staff as no longer necessary and update the mail code in the Texas Inspection and Maintenance State Implementation Plan definition to MC 206 from MC 166 as included in the proposed rulemaking. The removed definitions are: heavy-duty vehicle, inherently low emission vehicle, light-duty vehicle, loaded mode inspection and maintenance test, low emission vehicle, mass transit authority, reformulated gasoline, tier I federal emission standards, ultra low emission vehicle, and zero emission vehicle.

The revisions amend §§114.2, 114.50, and 114.53 to implement a new Bexar County I/M program, including adding definitions; specifying the program start dates, the model year vehicles to be tested, and other control requirements; requiring that all vehicle emissions testing stations must offer OBD tests; and establishing the fees. The revisions establish the maximum fee of \$11.50 that Bexar County program area emissions inspection stations may charge for the OBD test. The adopted maximum fee of \$11.50 is comparable to the existing fee in the similar program areas of Austin-Round Rock and El Paso County and will help minimize costs to the public. The adopted revisions would also require affected vehicle owners to remit \$2.50 to the Texas Department of Motor Vehicles (DMV) or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee to cover the costs to implement, maintain, administer, and enforce the required vehicle I/M program in Bexar County.

The revisions amend §114.309 to remove Ellis, Johnson, Kaufman, Parker, Rockwall, and Wise Counties from the list of affected counties required to comply with the state's low RVP control requirements. The removal of these six counties from the state low RVP program will not interfere with attainment or maintenance of the NAAQS for the DFW area due to coverage of these counties under the federal RFG program beginning November 7, 2023. Federal RFG program requirements are more stringent than the state low-RVP rules and will apply without state rulemaking.

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

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

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

The rulemaking removes obsolete definitions in 30 TAC Chapter 114 as identified during the 2019 Quadrennial review. The rulemaking does not include provisions for the Bexar County program area to participate in the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP), which has not been funded since 2017. If the Governor and Texas Legislature provide funding for the LIRAP or a similar program, the Executive Director would initiate rulemaking to include Bexar County as an eligible participating county in the LIRAP.

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

Re: Docket No. 2023-0317-RUL

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

**Statutory authority:**

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

The expansion of vehicle I/M to Bexar County and the removal of the six specified counties from the state low RVP program are also authorized under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air and THSC, §382.012, concerning State Air Control Plan, which authorizes of the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. Additionally, the expansion of vehicle I/M to Bexar County and removal of the six specified counties from the state low RVP program are authorized under THSC, §382.201, concerning Definitions, which specifies the definitions that apply under Subchapter G of the THSC, Vehicle Emissions; THSC, §382.202, concerning Vehicle Emissions Inspection and Maintenance Program, which authorizes the commission to establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of the FCAA; THSC, §382.203, concerning Vehicles Subject to Program; Exemptions, which establishes which vehicles are subject to the I/M program and which are exempt from it; THSC, §382.204, concerning Remote Sensing Program Component, which requires the commission and the Department of Public Safety (DPS) to develop an enforcement program that includes a remote sensing component; THSC, §382.205, concerning Inspection Equipment and Procedures, which authorizes the commission to adopt standards and specifications for motor vehicle emissions testing equipment, recordkeeping and reporting procedures, and measurable emissions standards, as well as consult with the Department of Public Safety of the State of Texas; THSC, §382.206, Collection of Data; Report, which authorizes the collection of information derived from the emissions inspection and maintenance program; THSC, §382.207, Inspection Stations; Quality Control Audits; which requires standards and procedures for inspection stations as well as other specifics relating to transportation planning and quality control auditing; and THSC, §382.208, Attainment Program, which requires the commission to coordinate with federal, state, and local transportation planning agencies to develop and implement transportation programs and other measures necessary to demonstrate and maintain attainment.

**Effect on the:**

**A.) Regulated community:**

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

Re: Docket No. 2023-0317-RUL

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

**B.) Public:**

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

**C.) Agency programs:**

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

**Stakeholder meetings:**

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

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

**Public Involvement Plan**

Yes.

**Alternative Language Requirements**

Yes. Spanish.

**Public comment:**

The commission offered a public hearing on July 6, 2023 for the state RVP program in Arlington, Texas, but no attendees registered to make comment on the record, so the hearing was not opened. The commission held a public hearing on July 13, 2023 for the Bexar County I/M program in San Antonio, Texas, and testimony was received and transcribed for the record. The comment period closed on July 17, 2023. No comments were received regarding the removal of the six DFW area counties from the state's RVP program. Oral and/or written comments were received on the Bexar County I/M program proposal elements from the following: Alamo Area Council of Governments (AACOG); United States Environmental Protection Agency's Region 6 (EPA Region 6); Official Inspection Station (OIS); Rema Investment Group, LLC (RIE); San Antonio Auto Service, LLC (SAAS); Texas State Inspection Association (TSIA); and 16 individuals. After the comment period closed, DPS submitted a letter to TCEQ regarding the timeline for Bexar County vehicle emissions inspection implementation, which was added to the comments received for commission consideration on this SIP revision. AACOG and EPA Region 6 generally supported the proposal. DPS, OIS, RIE, SAAS, TSIA, and 14 individuals wanted to start the program earlier than the



Re: Docket No. 2023-0317-RUL

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

**Significant changes from proposal:**

None.

**Potential controversial concerns and legislative interest:**

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

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

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

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

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

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

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

**Key points in the adoption rulemaking schedule:**

*Texas Register* proposal publication date: June 16, 2023

Anticipated *Texas Register* adoption publication date: December 15, 2023

Anticipated effective date: December 21, 2023

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

Commissioners  
Page 6  
November 16, 2023

Re: Docket No. 2023-0317-RUL

**Agency contacts:**

Edgar Gilmore, Rule Project Manager, Air Quality Division, (512) 239-2069  
Terry Salem, Staff Attorney, Environmental Law Division, (512) 239-0469  
Contessa N. Gay, Staff Attorney, Environmental Law Division, (512) 239-5938  
Gwen Ricco, Agenda Coordinator, General Law Division, (512) 239-2678

cc: Chief Clerk, 2 copies  
Executive Director's Office  
Jim Rizk  
Keisha Townsend  
Krista Kyle  
Office of General Counsel  
Edgar Gilmore  
Contessa N. Gay  
Terry Salem  
Gwen Ricco

## Evaluation of Testimony

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

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

Amended §§114.1, 114.2, 114.50, 114.53, and 114.309 will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the State Implementation Plan (SIP).

### **Background and Summary of the Factual Basis for the Adopted Rules**

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

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

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

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

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

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

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

The adopted amendments to Chapter 114 revise 30 TAC Chapter 114, Subchapters A and C to add program-related definitions, identify vehicles in Bexar County that will be subject to vehicle emissions inspections, require emissions inspection stations in Bexar County to offer the on-board diagnostics (OBD) test approved by the EPA, and establish the maximum fee that Bexar County emissions inspection stations may charge for the OBD test. Additional details regarding the adopted Bexar County I/M program are discussed in the Bexar County I/M SIP revision (Project No. 2022-027-SIP-NR), adopted concurrently with this rulemaking. These amendments do not affect the EPA-approved I/M program requirements for other areas, and the adopted requirements for the Bexar

County I/M program meet EPA requirements for implementing an I/M program for moderate ozone nonattainment areas. Therefore, the adopted rulemaking will not negatively impact the state's progress towards attainment of the 2008 and 2015 eight-hour ozone NAAQS.

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

### **Section by Section Discussion**

The amendments to Chapter 114 revise 30 TAC Chapter 114, Subchapters A and C to repeal obsolete definitions and revise the I/M program rules to provide for implementation of the Bexar County program. The amendments also revise 30 TAC

Chapter 114, Subchapter H to remove Ellis, Johnson, Kaufman, Parker, Rockwall, and Wise Counties from the list of affected counties required to comply with the state's low RVP control requirements.

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

#### *Subchapter A: Definitions*

##### *§114.1. Definitions*

The revisions remove obsolete definitions in this section that were identified during the 2019 Quadrennial review of Chapter 114 and have been reaffirmed by staff as no longer necessary and updated the mail code in the Texas Inspection and Maintenance State Implementation Plan definition to MC 206 from MC 166 as included in the proposed rulemaking. The obsolete definitions were associated with repealed agency programs and are not used in or applicable to current rules in Chapter 114. The definitions removed are: Heavy-duty vehicle, Inherently low emission vehicle, Light-duty vehicle, Loaded mode inspection and maintenance test, Low emission vehicle, Mass transit authority, Reformulated gasoline, Tier I federal emission standards, Ultra

low emission vehicle, and Zero emission vehicle. The remaining definitions are renumbered as appropriate.

*§114.2. Inspection and Maintenance Definitions*

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

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

*Division 1: Vehicle Inspection and Maintenance*

*§114.50. Vehicle Emissions Inspection Requirements*

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

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



*§114.53. Inspection and Maintenance Fees*

The revision to §114.53(a) adds a new paragraph (4) to establish the maximum fee of \$18.50 that Bexar County program area emissions inspection stations may charge for the OBD test. In 2020, TCEQ commissioned a study to help prepare for the future implementation of an I/M program in Bexar County. The *Bexar County Inspection and Maintenance Program Study Final Report* (Bexar County I/M Study) is available at <https://wayback.archive-it.org/414/20210528194434/https://www.tceq.texas.gov/assets/public/implementation/air/ms/IM/2020%20Bexar%20County%20IM%20Prog%20Study%20Report.pdf>. The Bexar County I/M Study recommended a fee between \$18 and \$22. The Commission adopts a fee of \$18.50, as the Commission finds that this amount is comparable to the existing OBD fee in the Houston-Galveston-Brazoria and Dallas-Fort Worth program areas, and this amount is also consistent with the Bexar County I/M Study's recommendation. The revision does not include provisions for the Bexar County program area to participate in the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP), which has not been funded since 2017 and all participating counties have opted out of the LIRAP. If TCEQ is reappropriated funding in the future to implement LIRAP or a similar program, TCEQ will initiate rulemaking to designate that Bexar County is eligible to participate effective upon the start date of the I/M program. The revision to §114.53(d)(4) adds a new paragraph that requires affected vehicle owners to remit \$2.50 to the Department of Motor Vehicles (DMV) or county tax assessor-collector at the time of annual vehicle

registration as part of the vehicle emissions inspection fee to cover the costs to implement, maintain, administer, and enforce the required vehicle I/M program in Bexar County.

*Subchapter H: Low Emission Fuels*

*Division 1: Gasoline Volatility*

*§114.309. Affected Counties*

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

**Final Regulatory Impact Determination**

The commission reviewed the adopted rulemaking considering the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the adopted rulemaking does not meet the definition of a "Major Environmental Rule" as defined in that statute, and in addition, if it did meet the definition, will not be subject to the requirement to prepare a regulatory impact analysis. A "Major Environmental Rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that

may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Additionally, the adopted rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Tex. Gov't Code Ann., §2001.0225(a). Tex. Gov't Code Ann., §2001.0225 applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The adopted rulemaking's purpose is to implement the required vehicle I/M program in Bexar County and to remove certain counties in the DFW area from the state low RVP program since they will be subject to the federal RFG rules as of November 7, 2023. These changes are necessary to comply with federal requirements for the implementation of vehicle I/M programs required by 42 United States Code (U.S.C.) §7511a(a), FCAA, §182(b) for the Bexar County 2015 eight-hour ozone nonattainment area and to remove counties in the DFW 2008 eight-hour ozone severe nonattainment area from the state low RVP program that will become subject to requirements for RFG as required by 42 U.S.C. §7545, FCAA, §211(k)(10)(D). The requirement to implement and enforce vehicle I/M programs is specifically required for certain nonattainment

areas by the FCAA, and the adopted revisions to 30 TAC Chapter 114 are anticipated to be used as a control strategy for demonstrating attainment of the 2015 eight-hour ozone NAAQS upon implementation of the program in the Bexar County area.

The adopted rulemaking implements requirements of 42 U.S.C. §7410, FCAA, §110, which requires states to adopt a SIP that provides for the implementation, maintenance, and enforcement of the NAAQS in each air quality control region of the state; as well as the removal of counties from the existing state low RVP program that will become subject to the requirements of the 42 U.S.C. §7545, FCAA, §211(k)(10)(D), as discussed elsewhere in this preamble. While 42 U.S.C. §7410, FCAA, §110 generally does not require specific programs, methods, or reductions in order to meet the standard, vehicle I/M programs are specifically required by the FCAA, as are the requirements for federal RFG for severe ozone nonattainment areas. The SIP must also include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of the FCAA. The provisions of the FCAA recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS, and when programs are specifically required, states may implement them with flexibility allowed under the statute and EPA rules. This flexibility allows states, affected industry, and the public to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though the FCAA allows states to develop

their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 U.S.C. §7410, FCAA, §110; nor does it allow states to ignore specific requirements of the FCAA. States are not free to ignore the requirements of 42 U.S.C. §7410, FCAA, §110 and must develop programs to assure that their contributions to nonattainment areas are reduced so that these areas can be brought into attainment on the schedule prescribed by the FCAA.

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

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

comments were received.

The requirement to provide a fiscal analysis of regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th Legislative Session. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement will seldom apply, the commission provided a cost estimate for SB 633 that concluded “based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application.” The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law.

As discussed earlier in this preamble, the FCAA does not always require specific programs, methods, or reductions in order to meet the NAAQS, but vehicle I/M programs are specifically required by the FCAA for moderate nonattainment areas, as are the requirements for federal RFG for severe ozone nonattainment areas; thus, states must develop programs for each nonattainment area to help ensure that those

areas will meet the required attainment deadlines and comply with EPA requirements for vehicle I/M programs and the federal RFG program. Because of the ongoing need to meet federal requirements, the commission routinely proposes and adopts rules incorporating or designed to satisfy specific federal requirements. The legislature is presumed to understand this federal scheme. If each rule proposed by the commission to meet a federal requirement was considered to be a major environmental rule that exceeds federal law, then each of those rules would require the full regulatory impact analysis (RIA) contemplated by SB 633. Requiring a full RIA for all federally required rules is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the LBB, then the intent of SB 633 is presumed to only to require the full RIA for rules that are extraordinary in nature. While the adopted rules may have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA and creates no additional impacts since the rules do not impose burdens greater than required to demonstrate attainment of the 2015 eight-hour ozone NAAQS and comply with the requirements for vehicle I/M programs and the federal RFG program as discussed elsewhere in this preamble.

For these reasons, the adopted rules fall under the exception in Texas Government Code, §2001.0225(a), because they are required by, and do not exceed, federal law. The commission has consistently applied this construction to its rules since this statute

was enacted in 1997. Since that time, the legislature has revised the Texas Government Code, but left this provision substantially unamended. It is presumed that “when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency’s interpretation.” (*Central Power & Light Co. v. Sharp*, 919 S.W.2d 485, 489 (Tex. App. Austin 1995), *writ denied with per curiam opinion respecting another issue*, 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.*, 798 S.W.2d 353, 357 (Tex. App. Austin 1990, *no writ*). *Cf. Humble Oil & Refining Co. v. Calvert*, 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.*, 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor*, 24 S.W.3d 581 (Tex. App. Austin 2000, *pet. denied*); and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.*, 563 S.W.2d 916 (Tex. 1978).) The commission’s interpretation of the RIA requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of “substantial compliance” (Texas Government Code, §2001.035). The legislature specifically identified Texas Government Code, §2001.0225 as subject to this standard.

As discussed in this analysis and elsewhere in this preamble, the commission has substantially complied with the requirements of Texas Government Code, §2001.0225. The adopted rules implement the requirements of the FCAA as discussed in this analysis and elsewhere in this preamble. The adopted rules were determined to comply



with requirements for vehicle I/M programs and federal RFG requirements and will not exceed any standard set by state or federal law. These adopted rules are not an express requirement of state law. The adopted rules do not exceed a requirement of a delegation agreement or a contract between state and federal government, as the rules, if adopted by the commission and approved by EPA, will become federal law as part of the approved SIP required by 42 U.S.C., §7410, FCAA, §110. The adopted rules were not developed solely under the general powers of the agency but are authorized by specific sections of Texas Health and Safety Code (THSC), Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code, which are cited in the STATUTORY AUTHORITY section of this preamble, including THSC, §§382.011, 382.012, and 382.017. Therefore, this rulemaking adoption is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

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

### **Takings Impact Assessment**

Under Texas Government Code, §2007.002(5), taking means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or §17 or §19, Article I, Texas Constitution; or a governmental action that

affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

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

As discussed elsewhere in this preamble, the adopted rulemaking implements requirements of the FCAA, 42 U.S.C., §7410, FCAA, §110 which requires states to adopt a SIP that provides for the implementation, maintenance, and enforcement of the NAAQS in each air quality control region of the state. While 42 U.S.C., §7410, FCAA, §110 generally does not require specific programs, methods, or reductions in order to

meet the standard, vehicle I/M programs and federal RFG are specifically required by the FCAA. The SIP must include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of the FCAA. The provisions of the FCAA recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public, to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 U.S.C., §7410, FCAA, §110. States are not free to ignore the requirements of 42 U.S.C., §7410, FCAA, §110 and must develop programs to assure that nonattainment areas can be brought into attainment on the schedule prescribed by the FCAA.

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

FCAA, §110(c).

The adopted rulemaking will not create any additional burden on private real property beyond what is required under federal law, as the rules, if adopted by the commission and approved by EPA, will become federal law as part of the approved SIP required by 42 U.S.C., §7410, FCAA, §110. The rules will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The adopted rulemaking will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action.

Therefore, the adopted rulemaking will not cause a taking under Texas Government Code, Chapter 2007. For these reasons, Texas Government Code, Chapter 2007 does not apply to this adopted rulemaking.

### **Consistency with the Coastal Management Program**

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

Note: §505.11(b)(2) applies only to air pollutant emissions, on-site sewage disposal systems, and underground storage tanks. §505.11(b)(4) applies to all other actions. The

commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking will not affect any coastal natural resource areas because the rules only affect counties outside the CMP area and is, therefore, consistent with CMP goals and policies.

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

### **Public Comment**

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

implementation, which was added to the comments received for commission consideration on this SIP revision. Comments were received concerning the maximum fees set for individual emissions inspections in Bexar County as well as the other I/M counties in Texas. Comments were also received concerning the timing of the proposed start of the I/M program in Bexar County, TCEQ's outreach efforts associated with implementing I/M in Bexar County, and the end of the state's safety inspection program.

## **Response to Comments**

### *Comment*

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

### **Response**

**The commission appreciates support for the proposed rulemaking and public hearing. The commission complied with all applicable public notice and rulemaking requirements for this rulemaking: (Texas Government Code, Subchapter B, Chapter 2001; Texas Clean Air Act, THSC, §382.017; Texas Water Code, §5.103; 30 TAC**

**Chapter 20; and 40 CFR §51.102). The comment period lasted for 45 days, longer than the required 30 days. The commission applied a time limit for providing oral testimony at its July 13, 2023 public hearing to allow as many potential attendees to participate as possible. No word limit was applied to written comments, which were accepted during the entire 45-day comment period. DPS's outreach efforts are beyond the scope this rulemaking. No changes were made in response to this comment.**

*Comment*

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

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

providing an opportunity for elected officials to hear industry's perspective allows them to conclude that industry is supportive of the plan.

## **Response**

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



**and questions from attendees.**

**No changes were made in response to this comment.**

*Comment*

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

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

that the previous TCEQ inspection fee survey indicated that the current fee rates are inadequate. The same individual indicated they participated in multiple inspection fee surveys and claimed that Texas has the lowest inspection fee in the United States.

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

### ***Response***

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

[ation/air/ms/IM/2020%20Bexar%20County%20IM%20Prog%20Study%20Report.pdf](#).

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

#### Comment

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

#### Response

**The commission adopts a maximum vehicle emissions inspection fee of \$18.50 for the Bexar County I/M program. As mentioned above, this amount was changed from the proposed fee of \$11.50 and is comparable to the maximum OBD fee of \$18.50 for the HGB and DFW program areas. The adopted fee of \$18.50 is also**

**consistent with the Bexar County I/M Study that recommended a fee between \$18 and \$22. As previously mentioned, the 2024 fee study will specifically consider whether fees in all program areas, including Bexar County, should be changed in light of the elimination of the vehicle safety inspection program.**

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

*Comment*

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

*Response*

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

**Additionally, since states are required under federal regulations to demonstrate adequate resources to implement their inspection and maintenance programs, and since Texas chose to implement a decentralized emission testing program, the**

**commission's predecessor agencies submitted its fee authority and the fee rules to the EPA as part of its demonstration that the program would have adequate resources for implementation. EPA published approval of the Texas enhanced inspection and maintenance program, including the fees and resource demonstration, on November 14, 2001 (66 FR 57261). That approval made TCEQ's fee authority federally enforceable. No changes were made in response to this comment.**

*Comment*

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

*Response*

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

*Comment*

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

*Response*

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

*Comment*

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

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

*Response*

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

*Comment*

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

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

***Response***

**Under the FCAA, §182(i), states generally must meet new requirements associated with a reclassification according to the schedules prescribed in connection with**



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

*Comment*

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

*Response*

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

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

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

This rulemaking was developed in compliance with the policies and guidance delineated in TCEQ's Language Access Plan (LAP) and TCEQ's Public Participation

**Plan (PPP). The LAP helps ensure individuals with limited English proficiency may meaningfully access TCEQ programs, activities, and services in a timely and effective manner; and the PPP identifies the methods by which TCEQ interacts with the public, provides guidance and best practices for ensuring meaningful public participation in TCEQ activities, and highlights opportunities for enhancing public involvement in TCEQ activities and programs.**

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

**No changes were made in response to these comments.**

**STAFF  
RECOMMENDATION  
(INCLUDING ORDER)**

## **Chapter 114: Control of Air Pollution from Motor Vehicles**

### **SUBCHAPTER A: DEFINITIONS**

#### **§114.1, §114.2**

##### **Statutory Authority**

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

The expansion of the vehicle I/M program to Bexar County is also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air and THSC, §382.012, concerning State Air Control Plan, which authorizes of the commission to prepare and develop a general, comprehensive plan for the control of the state's air. Additionally, the expansion of the vehicle I/M program to Bexar County is authorized under THSC, §382.201, concerning Definitions, which specifies the definitions that apply under Subchapter G of the THSC, Vehicle Emissions; THSC, §382.202, concerning Vehicle Emissions Inspection and Maintenance Program, which authorizes the commission to establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at

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

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

**§114.1. Definitions.**

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

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

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

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

(4) First safety inspection certificate--Initial Texas Department of Public Safety (DPS) certificates issued through DPS-certified inspection stations for every new vehicle found to be in compliance with the rules and regulations governing safety inspections. Beginning on the single sticker transition date as defined in this section, the safety inspection certificates will no longer be used.

(5) First vehicle registration--Initial vehicle registration insignia sticker issued through the Texas Department of Motor Vehicles for every new vehicle found to be in compliance with the rules and regulations governing vehicle registration prior to the single sticker transition date as defined in this section and vehicle registration and safety inspections beginning on the single sticker transition date.

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

[(7) Heavy-duty vehicle--Any passenger vehicle or truck capable of transporting people, equipment, or cargo, that has a gross vehicle weight rating (GVWR) greater than 8,500 pounds, and is required to be registered under Texas

Transportation Code, §502.002. For purposes of the mobile emission reduction credit trading program the heavy-duty class is divided into the following subclasses:]

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

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

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

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

(7) [(9)] Law enforcement vehicle--Any vehicle controlled by a local government and primarily operated by a civilian or military police officer or sheriff, or by state highway patrols, or other similar law enforcement agencies, and used for the purpose of law enforcement activities including, but not limited to, chase,



apprehension, surveillance, or patrol of people engaged in or potentially engaged in unlawful activities.

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

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

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

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

[(11) Loaded mode inspection and maintenance test--A measurement of the tailpipe exhaust emissions of a vehicle while the drive wheel rotates on a dynamometer, which simulates the full weight of the vehicle driving down a level

roadway. Loaded test equipment specifications must meet United States Environmental Protection Agency requirements for acceleration simulation mode equipment.]

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

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

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

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

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

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

(9) [(16)] Texas Inspection and Maintenance State Implementation Plan--The portion of the Texas state implementation plan that includes the procedures and requirements of the vehicle emissions inspection and maintenance program as adopted by the commission and approved by the EPA[ May 29, 1996, in accordance with 40 Code of Federal Regulations Part 51, Subpart S, issued November 5, 1992; the United States Environmental Protection Agency flexibility amendments dated September 18, 1995; and the National Highway Systems Designation Act of 1995]. A copy of the Texas Inspection and Maintenance State Implementation Plan is available at the Texas Commission on Environmental Quality, 12100 Park 35 Circle, Austin, Texas, 78753; mailing address: P.O. Box 13087, MC 166 206, Austin, Texas 78711-3087.

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

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

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

~~(11)~~ [(20)] Vehicle registration insignia sticker--The sticker issued through the Texas Department of Motor Vehicles (DMV) or county tax assessor-collector for a vehicle compliant with the DMV regulations. Beginning on the single sticker transition date as defined in this section, the vehicle registration insignia sticker, a current valid VIR, or other form of proof authorized by the DPS or the DMV will be used as proof of compliance with inspection and maintenance program requirements, the DMV's rules and regulations governing vehicle registration, and the Texas Department of Public Safety's rules and regulations governing safety inspections.

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

#### **§114.2. Inspection and Maintenance Definitions.**

Unless specifically defined in Texas Health and Safety Code, Chapter 382, also known as the Texas Clean Air Act (TCAA), or in the rules of the commission, the terms

used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms that are defined by the TCAA, the following words and terms, when used in Subchapter C of this chapter (relating to Vehicle Inspection and Maintenance; Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program; and Early Action Compact Counties), have the following meanings, unless the context clearly indicates otherwise.

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

(A) the 50/15 mode--in which the vehicle is tested for 90 seconds upon reaching and maintaining a constant speed of 15 miles per hour (mph) on a dynamometer that simulates acceleration at a rate of 3.3 mph per second by using 50% of the vehicle available horsepower; and

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

(2) Consumer price index--The consumer price index for any calendar year is the average of the consumer price index for all-urban consumers published by the United States Department of Labor, as of the close of the 12-month period ending on August 31 of the calendar year.

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

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

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

(6) On-board diagnostic (OBD) system--The computer system installed in a vehicle by the manufacturer that monitors the performance of the vehicle emissions

control equipment, fuel metering system, and ignition system for the purpose of detecting malfunction or deterioration in performance that would be expected to cause the vehicle not to meet emissions standards. All references to OBD should be interpreted to mean the second generation of this equipment, sometimes referred to as OBD II.

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

**SUBCHAPTER C: VEHICLE INSPECTION AND MAINTENANCE; LOW INCOME VEHICLE  
REPAIR ASSISTANCE, RETROFIT, AND ACCELERATED VEHICLE RETIREMENT  
PROGRAM; AND EARLY ACTION COMPACT COUNTIES DEFINITIONS  
DIVISION 1: VEHICLE INSPECTION AND MAINTENANCE**

**§114.50, §114.53**

**Statutory Authority**

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

The expansion of vehicle I/M to Bexar County is also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; and THSC, §382.012, concerning State Air Control Plan, which authorizes of the commission to prepare and develop a general, comprehensive plan for the control of

the state's air. Additionally, the expansion of vehicle I/M to Bexar County is authorized under THSC, §382.201, concerning Definitions, which specifies the definitions that apply under Subchapter G of the THSC, Vehicle Emissions; THSC, §382.202, concerning Vehicle Emissions Inspection and Maintenance Program, which authorizes the commission to establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of the federal Clean Air Act; THSC, §382.203, concerning Vehicles Subject to Program; Exemptions, which establishes which vehicles are subject to the I/M program and which are exempt from it; THSC, §382.204, concerning Remote Sensing Program Component, which requires the commission and the Department of Public Safety (DPS) to develop an enforcement program that includes a remote sensing component; THSC, §382.205, concerning Inspection Equipment and Procedures, which authorizes the commission to adopt standards and specifications for motor vehicle emissions testing equipment, recordkeeping and reporting procedures, and measurable emissions standards, as well as consult with the DPS; THSC, §382.206, Collection of Data; Report, which authorizes the collection of information derived from the emissions inspection and maintenance program; THSC, §382.207, Inspection Stations; Quality Control Audits; which requires standards and procedures for inspection stations as well as other specifics relating to transportation planning and quality control auditing; THSC, §382.208, Attainment Program, which requires the commission to coordinate with federal, state, and local transportation planning agencies to develop and implement transportation programs and other measures necessary to demonstrate and maintain attainment; THSC, §382.209, Low-

Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program, which authorizes the commission to establish and authorize the commissioners court of a participating county to implement a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program; and THSC, §382.210, Implementation Guidelines and Assistance, which requires the commission to adopt guidelines to assist a participating county in implementing a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program..

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

**§114.50. Vehicle Emissions Inspection Requirements.**

(a) Applicability. The requirements of this section and those contained in the Texas Inspection and Maintenance (I/M) State Implementation Plan (SIP) must be applied to all gasoline-powered motor vehicles 2 - 24 years old and subject to an annual emissions inspection beginning with the first safety inspection. Military tactical vehicles, motorcycles, diesel-powered vehicles, dual-fueled vehicles that cannot operate using gasoline, and antique vehicles registered with the Texas Department of Motor Vehicles are excluded from the program. Safety inspection facilities and inspectors certified by the Texas Department of Public Safety (DPS) must inspect all subject vehicles in the following program areas as defined in §114.2 of this title (relating to Inspection and Maintenance Definitions), in accordance with the following schedule.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) Beginning November 1, 2026, all vehicle emissions inspection stations in the Bexar County program area must offer the OBD test.

(b) Control requirements.



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

(A) all applicable air pollution emissions control-related requirements included in the annual vehicle safety inspection requirements administered by the DPS as evidenced prior to the single sticker transition date as defined in §114.1 of this title (relating to Definitions) by a current valid inspection certificate affixed to the vehicle windshield, a current valid vehicle inspection report (VIR), or other form of proof authorized by the DPS;

(B) beginning on the single sticker transition date, all applicable air pollution emissions control-related requirements included in the annual vehicle safety inspection requirements administered by the DPS, as evidenced by a current valid vehicle registration insignia sticker, a current valid VIR, or other form of proof authorized by the DPS or the DMV; and

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

(2) All federal government agencies must require a motor vehicle operated by any federal government agency employee on any property or facility under

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

(3) Any motorist in the DFW, EDFW, HGB, [or] El Paso, or Bexar County program areas who has received a notice from an emissions inspection station that there are recall items unresolved on his or her motor vehicle should furnish proof of compliance with the recall notice prior to the next vehicle emissions inspection, such as a written statement from the dealership or leasing agency indicating that emissions repairs have been completed.

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

(5) A motorist whose vehicle has failed an emissions test and has not requested a challenge retest or whose vehicle has failed a challenge retest shall have

emissions-related repairs performed and submit a properly completed vehicle repair form (VRF) in order to receive a retest. In order to receive a waiver or time extension, the motorist shall submit a VRF or applicable documentation as deemed necessary by the DPS.

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

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

(B) satisfy all inspection, extension, or waiver requirements of the vehicle emissions I/M program specified in 37 TAC Chapter 23, Subchapter E (relating to Vehicle Emissions Inspection and Maintenance Program).

(7) A subject vehicle registered in a county without an I/M program that meets the applicability criteria of subsection (a) of this section and the ownership of which has changed through a retail sale as defined by Texas Occupations Code, §2301.002, is not eligible for title receipt or registration in a county with an I/M program unless proof is presented that the vehicle has passed an approved vehicle emissions inspection within 90 days before the title transfer. The evidence of proof required may be in the form of the vehicle inspection report (VIR) or another proof of

the program compliance as authorized by the DPS. All 1996 and newer model year vehicles with less than 50,000 miles are exempt from the test-on-resale requirements of this paragraph.

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

(c) Waivers and extensions. A motorist may apply to the DPS for a waiver or an extension as specified in 37 TAC Chapter 23, Subchapter E, which defers the need for full compliance with vehicle emissions standards for a specified period of time after failing a vehicle emissions inspection.

(d) Prohibitions.

(1) No person may issue or allow the issuance of a VIR, as authorized by the DPS unless all applicable air pollution emissions control-related requirements of the annual vehicle safety inspection and the vehicle emissions I/M requirements are completely and properly performed in accordance with the rules and regulations adopted by the DPS and the commission. Prior to taking any enforcement action regarding this provision, the commission must consult with the DPS.

(2) Before the single sticker transition date as defined in §114.1 of this title, no person may allow or participate in the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen safety inspection certificates, VIRs, VRFs, vehicle emissions repair documentation, or other documents that may be used to circumvent applicable vehicle emissions I/M requirements and to commit an offense specified in Texas Transportation Code, §548.603 (concerning Fictitious or Counterfeit Inspection Certificate or Insurance Document). Beginning on the single sticker transition date, no person may allow or participate in the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen vehicle registration insignia stickers, VIRs, VRFs, vehicle emissions repair documentation, or other documents that may be used to circumvent applicable vehicle emissions I/M requirements and to commit an offense specified in Texas Transportation Code, §548.603.

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

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

**§114.53. Inspection and Maintenance Fees.**

(a) The following fees must be paid for an emissions inspection of a vehicle at an inspection station. This fee must include one free retest should the vehicle fail the emissions inspection provided that the motorist has the retest performed at the same station where the vehicle originally failed and submits, prior to the retest, a properly completed vehicle repair form showing that emissions-related repairs were performed and the retest is conducted within 15 days of the initial emissions test.

(1) In El Paso County beginning May 1, 2002 and ending on the day before the single sticker transition date as defined in §114.1 of this title (relating to Definitions), any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(4)(A), (B), or (C) of this title (relating to Vehicle Emissions Inspection Requirements) must collect a fee of \$14 and remit \$2.50 to the Texas Department of Public Safety (DPS). If the El Paso County Commissioners Court adopts a resolution that is approved by the commission to participate in the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP), the emissions inspection station in El Paso County must collect a fee of \$16 and remit to the DPS \$4.50 beginning upon the date specified by the commission and ending on the day before the single sticker transition date. Beginning on the single sticker transition date, any emissions inspection station in El Paso County required to conduct an emissions test in accordance with §114.50(a)(4)(A), (B), or (C) of this title must collect a fee not to exceed \$11.50.

(2) In the Dallas-Fort Worth program area beginning May 1, 2002 and ending on the day before the single sticker transition date as defined in §114.1 of this title, any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(1)(A) or (B) of this title and in the extended Dallas-Fort Worth program area beginning May 1, 2003 and ending on the day before the single sticker transition date, any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(2)(A) or (B) of this title must collect a fee not to exceed \$27. Beginning May 1, 2002 and ending on the day before the single sticker transition date in the Dallas-Fort Worth and the extended Dallas-Fort Worth program areas, the emissions inspection station must remit to the DPS \$2.50 for each acceleration simulation mode (ASM-2) test and \$8.50 for each on-board diagnostics (OBD) test. Beginning on the single sticker transition date in the Dallas-Fort Worth and the extended Dallas-Fort Worth program areas, any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(1)(A) or (B) and (2)(A) or (B) of this title must collect a fee not to exceed \$24.50 for each ASM-2 test and \$18.50 for each OBD test.

(3) In the Houston-Galveston-Brazoria program area beginning May 1, 2002 and ending on the day before the single sticker transition date as defined in §114.1 of this title, any emissions inspection station in Harris County required to conduct an emissions test in accordance with §114.50(a)(3)(A) or (B) of this title and beginning May 1, 2003 and ending on the day before the single sticker transition date, any emissions inspection station in Brazoria, Fort Bend, Galveston, and Montgomery

Counties required to conduct an emissions test in accordance with §114.50(a)(3)(D) or (E) of this title must collect a fee not to exceed \$27. Beginning May 1, 2002 and ending on the day before the single sticker transition date in Brazoria, Fort Bend, Galveston, Harris, and Montgomery Counties, the emissions inspection station must remit to the DPS \$2.50 for each ASM-2 test and \$8.50 for each OBD test. Beginning on the single sticker transition date in Brazoria, Fort Bend, Galveston, Harris, and Montgomery Counties, any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(3)(A), (B), (D), or (E) of this title must collect a fee not to exceed \$24.50 for each ASM-2 test and \$18.50 for each OBD test.

(4) In the Bexar County program area beginning November 1, 2026, any emissions inspection station in Bexar County required to conduct an emissions test in accordance with §114.50(a)(5)(A) or (B) of this title must collect a fee not to exceed \$11.50\$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 DPS, must be the same as the amounts set forth in subsection (a) of this section. The challenge fee must not be charged if the vehicle is retested within 15 days of the initial test.

(c) Inspection stations performing out-of-cycle vehicle emissions inspections for the state's remote sensing element must charge a motorist for an out-of-cycle emissions inspection in the amount specified in subsection (a) of this section resulting



from written notification that subject vehicle failed on-road testing. If the vehicle passes the vehicle emissions inspection, the vehicle owner may request reimbursement from the DPS.

(d) Beginning on the single sticker transition date as defined in §114.1 of this title, vehicle owners shall remit as part of the annual vehicle registration fee collected by the Texas Department of Motor Vehicles (DMV) or county tax assessor-collector the amount of the vehicle emissions inspection fee that is required to be remitted to the state.

(1) In El Paso County, the following requirements apply.

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

(B) If participating in the LIRAP and in the process of opting out, vehicle owners shall remit \$4.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee until the LIRAP fee

termination effective date as defined in §114.7 of this title. Of the \$4.50 remitted, \$2.00 constitutes the LIRAP fee as defined in §114.7 of this title. Upon the LIRAP fee termination effective date, vehicle owners shall remit \$2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee.

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

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

(A) Vehicle owners in counties participating in the LIRAP shall remit \$2.50 for motor vehicles subject to ASM-2 tests and \$8.50 for motor vehicles subject to OBD tests to the DMV or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee. Of the \$8.50 remitted for OBD tests, \$6.00 constitutes the LIRAP fee as defined in §114.7 of this title.

(B) Vehicle owners in counties participating in the LIRAP that are in the process of opting out shall remit \$2.50 for motor vehicles subject to ASM-2 tests

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

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

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

(A) Vehicle owners in counties participating in the LIRAP shall remit \$2.50 for motor vehicles subject to ASM-2 tests and \$8.50 for motor vehicles subject to OBD tests to the DMV or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee. Of the \$8.50

remitted for OBD tests, \$6.00 constitutes the LIRAP fee as defined in §114.7 of this title.

(B) Vehicle owners in counties participating in the LIRAP that are in the process of opting out shall remit \$2.50 for motor vehicles subject to ASM-2 tests and \$8.50 for motor vehicles subject to OBD tests to the DMV or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee until the LIRAP fee termination effective date as defined in §114.7 of this title. Of the \$8.50 remitted for OBD tests, \$6.00 constitutes the LIRAP fee as defined in §114.7 of this title. Upon the LIRAP fee termination effective date, vehicle owners in participating counties that are in the process of opting out of the LIRAP shall remit \$2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee.

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

(4) In the Bexar County program area, vehicle owners shall remit \$2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-

assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee.

## **SUBCHAPTER H: LOW EMISSION FUELS**

### **DIVISION 1: GASOLINE VOLATILITY**

#### **§114.309**

##### **Statutory Authority**

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

The removal of the six specified counties from the low RVP program is also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012 concerning State Air Control Plan, which authorizes of the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and THSC, §382.017, concerning Rules, which

authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act.

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

**§114.309. Affected Counties.**

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

# Texas Commission on Environmental Quality



## ORDER ADOPTING AMENDED RULES AND REVISIONS TO THE STATE IMPLEMENTATION PLAN

Docket No. 2023-0317-RUL  
Project No. 2022-026-114-AI

On November 29, 2023, the Texas Commission on Environmental Quality (Commission), during a public meeting, considered the adoption of amendments to §§ 114.1, 114.2, 114.50, 114.53, and 114.309 of 30 Texas Administrative Code Chapter 114, Control of Air Pollution from Motor Vehicles and corresponding revisions to the state implementation plan (SIP). The adopted amendments expand the existing vehicle emissions inspection and maintenance (I/M) program into the Bexar County 2015 ozone NAAQS nonattainment area and remove Ellis, Johnson, Kaufman, Parker, Rockwall, and Wise Counties from the list of affected counties required to comply with the state's low Reid Vapor Pressure (RVP) program control requirements. Under Tex. Health & Safety Code Ann. §§ 382.011, 382.012, and 382.023 (West 2016), the Commission has the authority to control the quality of the state's air and to issue orders consistent with the policies and purposes of the Texas Clean Air Act, Chapter 382 of the Tex. Health & Safety Code. The proposed rules were published for comment in the June 16, 2023, issue of the *Texas Register* (48 *TexReg* 3174).

Notice of the public hearings regarding the amended rules were published in English for comment in the June 16, 2023 issue of the *Texas Register* (48 *TexReg* 3339 and 3340). Notice for the Arlington, Texas, public hearing was also published in English in the *Dallas Morning News* newspaper on June 2, 2023, and in Spanish in the *Al Día* newspaper on June 7, 2023. Notice for the San Antonio, Texas public hearing was also published in the *San Antonio Express-News* newspaper in English and Spanish on June 2, 2023. Notices in English and Spanish were also distributed to subscribers through GovDelivery and posted to TCEQ's website.

Pursuant to Tex. Health & Safety Code Ann. § 382.017 (West 2016), Tex. Gov't Code Ann., Chapter 2001 (West 2016), and 40 Code of Federal Regulations § 51.102, and after proper notice, the Commission offered a public hearing on July 6, 2023 for the removal of the specified counties from the state RVP program in Arlington, Texas, but no attendees registered to make comment on the record, so the hearing was not opened. The commission held a public hearing on July 13, 2023, for the Bexar County I/M program in San Antonio, Texas; testimony was received, and a transcript was prepared. Proper notice included prominent advertisement in the areas affected at least 30 days prior to the dates of the hearings. Spanish language interpreters were available, and a plain language summary of the proposed amendments was provided in both English and Spanish at the public hearings.

The Commission circulated hearing notices of its intended action to the public, including interested persons, the Regional Administrator of the EPA, and all applicable local air pollution control agencies. The public was invited to submit data, views, and recommendations on the proposed amended rules and SIP revisions, either orally or in writing, at the hearings or during the comment period. Prior to the scheduled hearings, copies of the proposed amended rules and SIP



revisions were available for public inspection at the Commission's central office and on the Commission's website.

Data, views, and recommendations of interested persons regarding the proposed amended rules and SIP revisions were submitted to the Commission during the comment period and were considered by the Commission as reflected in the analysis of testimony incorporated by reference to this Order. The Commission finds that the analysis of testimony includes the names of all interested groups or associations offering comment on the proposed amended rules and the SIP revisions and their position concerning the same.


IT IS THEREFORE ORDERED BY THE COMMISSION that the amended rules and revisions to the SIP incorporated by reference to this Order are hereby adopted. The Commission further authorizes staff to make any non-substantive revisions to the rules necessary to comply with *Texas Register* requirements. The adopted rules and the preamble to the adopted rules and the revisions to the SIP are incorporated by reference in this Order as if set forth at length verbatim in this Order.

IT IS FURTHER ORDERED BY THE COMMISSION that on behalf of the Commission, the Chairman should transmit a copy of this Order, together with the adopted rules and revisions to the SIP, to the Regional Administrator of EPA as proposed revisions to the Texas SIP pursuant to the federal Clean Air Act, codified at 42 U.S. Code Ann. §§ 7401 - 7671q, as amended.

This Order constitutes the Order of the Commission required by the Administrative Procedure Act, Tex. Gov't Code Ann., Chapter 2001 (West 2016).

If any portion of this Order is for any reason held to be invalid by a court of competent jurisdiction, the invalidity of any portion shall not affect the validity of the remaining portions.

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

  
\_\_\_\_\_  
Jon Niermann, Chairman

12/6/23  
\_\_\_\_\_  
Date Signed

The adopted amendment to 22 TAC §851.22 would eliminate an unnecessary barrier to possible licensure. The adopted amendment would also allow the person who failed an exam to apply for a waiver of the exam after five years have passed since the applicant last failed the exam. Five years offers an applicant sufficient time to gain further education and experience that would possibly qualify the person to become licensed without the need to take the exam the applicant previously failed.

No public comments were received regarding the proposal.

This amendment is authorized by the Texas Geoscience Practice Act, Texas Occupations Code §1002.151, which authorizes the Board to adopt and enforce all rules and regulations consistent with the Act as necessary for the performance of its duties, and the regulation of the practice of geoscience in this state; and §1002.259, which authorizes the Board to waive any requirement for licensure except for the payment of required fees.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 4, 2023.

TRD-202304476

Rene Truan

Executive Director

Texas Board of Professional Geoscientists

Effective date: December 24, 2023

Proposal publication date: October 13, 2023

For further information, please call: (512) 936-4428



## TITLE 30. ENVIRONMENTAL QUALITY

### PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

#### CHAPTER 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES

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

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

Amended §§114.1, 114.2, 114.50, 114.53, and 114.309 will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the State Implementation Plan (SIP).

Background and Summary of the Factual Basis for the Adopted Rules

On October 7, 2022, the EPA published its reclassification of Bexar County from marginal to moderate nonattainment for the 2015 eight-hour ozone National Ambient Air Quality Standard (NAAQS), effective November 7, 2022 (87 *Federal Register* (FR)

60897). Bexar County is subject to the moderate nonattainment requirements in federal Clean Air Act (FCAA), §182(b). The FCAA and 40 Code of Federal Regulations (CFR) Part 51, as amended, require a basic vehicle emissions inspection and maintenance (I/M) program in ozone nonattainment areas classified as moderate, so the state must implement an I/M program in Bexar County. Rulemaking is required to implement I/M and set the testing fee applicable in Bexar County, and a SIP revision is required to incorporate a Bexar County I/M program into the SIP. The rulemaking and SIP revision were due to the EPA by January 1, 2023, and implementation of the I/M program in Bexar County is required by November 7, 2026.

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

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

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

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

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

The adopted amendments to Chapter 114 revise 30 TAC Chapter 114, Subchapters A and C to add program-related definitions, identify vehicles in Bexar County that will be subject to vehicle emissions inspections, require emissions inspection stations in Bexar County to offer the on-board diagnostics (OBD) test approved by the EPA, and establish the maximum fee that Bexar County emissions inspection stations may charge for the OBD test. Additional details regarding the adopted Bexar County I/M program are discussed in the Bexar County I/M SIP revision (Project No. 2022-027-SIP-NR), adopted concurrently with this rulemaking. These amendments do not affect the EPA-

approved I/M program requirements for other areas, and the adopted requirements for the Bexar County I/M program meet EPA requirements for implementing an I/M program for moderate ozone nonattainment areas. Therefore, the adopted rule-making will not negatively impact the state's progress towards attainment of the 2008 and 2015 eight-hour ozone NAAQS.

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

#### Section by Section Discussion

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

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

#### Subchapter A: Definitions

##### §114.1. Definitions

The revisions remove obsolete definitions in this section that were identified during the 2019 Quadrennial review of Chapter 114 and have been reaffirmed by staff as no longer necessary and updated the mail code in the Texas Inspection and Maintenance State Implementation Plan definition to MC 206 from MC 166 as included in the proposed rulemaking. The obsolete definitions were associated with repealed agency programs and are not used in or applicable to current rules in Chapter 114. The definitions removed are: Heavy-duty vehicle, Inherently low emission vehicle, Light-duty vehicle, Loaded mode inspection and maintenance test, Low emission vehicle, Mass transit authority, Reformulated gasoline, Tier I federal emission standards, Ultra low emission vehicle, and Zero emission vehicle. The remaining definitions are renumbered as appropriate.

##### §114.2. Inspection and Maintenance Definitions

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

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

#### Division 1: Vehicle Inspection and Maintenance

##### §114.50. Vehicle Emissions Inspection Requirements

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

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

##### §114.53. Inspection and Maintenance Fees

The revision to §114.53(a) adds a new paragraph (4) to establish the maximum fee of \$18.50 that Bexar County program area emissions inspection stations may charge for the OBD test. In 2020, TCEQ commissioned a study to help prepare for the future implementation of an I/M program in Bexar County. The Bexar County Inspection and Maintenance Program Study Final Report (Bexar County I/M Study) is available at <https://wayback.archive-it.org/414/20210528194434/https://www.tceq.texas.gov/assets/public/implementation/air/ms/I/M/2020%20Bexar%20County%20IM%20Prog%20Study%20Report.pdf>. The Bexar County I/M Study recommended a fee between \$18 and \$22. The Commission adopts a fee of \$18.50, as the Commission finds that this amount is comparable to the existing OBD fee in the Houston-Galveston-Brazoria and Dallas-Fort Worth program areas, and this amount is also consistent with the Bexar County I/M Study's recommendation. The revision does not include provisions for the Bexar County program area to participate in the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP), which has not been funded since 2017 and all participating counties have opted out of the LIRAP. If TCEQ is reappropriated funding in the future to implement LIRAP or a similar program, TCEQ will initiate rulemaking to designate that Bexar County is eligible to participate effective upon the start date of the I/M program. The revision to §114.53(d)(4) adds a new paragraph that requires affected vehicle owners to remit \$2.50 to the Department of Motor Vehicles (DMV) or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee to cover the costs to implement, maintain, administer, and enforce the required vehicle I/M program in Bexar County.

#### Subchapter H: Low Emission Fuels

#### Division 1: Gasoline Volatility

##### §114.309. Affected Counties

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

program requirements are more stringent, and exempting these counties from the state low-RVP rules eliminates unnecessary overlapping state requirements.

#### Final Regulatory Impact Determination

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

The adopted rulemaking's purpose is to implement the required vehicle I/M program in Bexar County and to remove certain counties in the DFW area from the state low RVP program since they will be subject to the federal RFG rules as of November 7, 2023. These changes are necessary to comply with federal requirements for the implementation of vehicle I/M programs required by 42 United States Code (U.S.C.) §7511a(a), FCAA, §182(b) for the Bexar County 2015 eight-hour ozone nonattainment area and to remove counties in the DFW 2008 eight-hour ozone severe nonattainment area from the state low RVP program that will become subject to requirements for RFG as required by 42 U.S.C. §7545, FCAA, §211(k)(10)(D). The requirement to implement and enforce vehicle I/M programs is specifically required for certain nonattainment areas by the FCAA, and the adopted revisions to 30 TAC Chapter 114 are anticipated to be used as a control strategy for demonstrating attainment of the 2015 eight-hour ozone NAAQS upon implementation of the program in the Bexar County area.

The adopted rulemaking implements requirements of 42 U.S.C. §7410, FCAA, §110, which requires states to adopt a SIP that provides for the implementation, maintenance, and enforcement of the NAAQS in each air quality control region of the state; as well as the removal of counties from the existing state low RVP program that will become subject to the requirements of the 42 U.S.C. §7545, FCAA, §211(k)(10)(D), as discussed elsewhere in this preamble. While 42 U.S.C. §7410, FCAA, §110 generally does not require specific programs, methods, or reductions in order to meet the standard, vehicle I/M programs are specifically required by the FCAA, as are the requirements for federal RFG for severe ozone nonattainment areas. The SIP must also include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emis-

sions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of the FCAA. The provisions of the FCAA recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS, and when programs are specifically required, states may implement them with flexibility allowed under the statute and EPA rules. This flexibility allows states, affected industry, and the public to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 U.S.C. §7410, FCAA, §110; nor does it allow states to ignore specific requirements of the FCAA. States are not free to ignore the requirements of 42 U.S.C. §7410, FCAA, §110 and must develop programs to assure that their contributions to nonattainment areas are reduced so that these areas can be brought into attainment on the schedule prescribed by the FCAA.

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

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

The requirement to provide a fiscal analysis of regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th Legislative Session. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement will seldom apply, the commission provided a cost estimate for SB 633 that concluded "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law.

As discussed earlier in this preamble, the FCAA does not always require specific programs, methods, or reductions in order to meet the NAAQS, but vehicle I/M programs are specifically required by the FCAA for moderate nonattainment areas,

as are the requirements for federal RFG for severe ozone nonattainment areas; thus, states must develop programs for each nonattainment area to help ensure that those areas will meet the required attainment deadlines and comply with EPA requirements for vehicle I/M programs and the federal RFG program. Because of the ongoing need to meet federal requirements, the commission routinely proposes and adopts rules incorporating or designed to satisfy specific federal requirements. The legislature is presumed to understand this federal scheme. If each rule proposed by the commission to meet a federal requirement was considered to be a major environmental rule that exceeds federal law, then each of those rules would require the full regulatory impact analysis (RIA) contemplated by SB 633. Requiring a full RIA for all federally required rules is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the LBB, then the intent of SB 633 is presumed to only to require the full RIA for rules that are extraordinary in nature. While the adopted rules may have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA and creates no additional impacts since the rules do not impose burdens greater than required to demonstrate attainment of the 2015 eight-hour ozone NAAQS and comply with the requirements for vehicle I/M programs and the federal RFG program as discussed elsewhere in this preamble.

For these reasons, the adopted rules fall under the exception in Texas Government Code, §2001.0225(a), because they are required by, and do not exceed, federal law. The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code, but left this provision substantially unamended. It is presumed that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." (*Central Power & Light Co. v. Sharp*, 919 S.W.2d 485, 489 (Tex. App. Austin 1995), *writ denied with per curiam opinion respecting another issue*, 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.*, 798 S.W.2d 353, 357 (Tex. App. Austin 1990, *no writ*). *Cf. Humble Oil & Refining Co. v. Calvert*, 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.*, 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor*, 24 S.W.3d 581 (Tex. App. Austin 2000, *pet. denied*); and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.*, 563 S.W.2d 916 (Tex. 1978).) The commission's interpretation of the RIA requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance" (Texas Government Code, §2001.035). The legislature specifically identified Texas Government Code, §2001.0225 as subject to this standard.

As discussed in this analysis and elsewhere in this preamble, the commission has substantially complied with the requirements of Texas Government Code, §2001.0225. The adopted rules implement the requirements of the FCAA as discussed in this analysis and elsewhere in this preamble. The adopted rules were determined to comply with requirements for vehicle I/M programs

and federal RFG requirements and will not exceed any standard set by state or federal law. These adopted rules are not an express requirement of state law. The adopted rules do not exceed a requirement of a delegation agreement or a contract between state and federal government, as the rules, if adopted by the commission and approved by EPA, will become federal law as part of the approved SIP required by 42 U.S.C., §7410, FCAA, §110. The adopted rules were not developed solely under the general powers of the agency but are authorized by specific sections of Texas Health and Safety Code (THSC), Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code, which are cited in the STATUTORY AUTHORITY section of this preamble, including THSC, §§382.011, 382.012, and 382.017. Therefore, this rulemaking adoption is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

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

#### Takings Impact Assessment

Under Texas Government Code, §2007.002(5), taking means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or §17 or §19, Article I, Texas Constitution; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

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

As discussed elsewhere in this preamble, the adopted rulemaking implements requirements of the FCAA, 42 U.S.C., §7410, FCAA, §110 which requires states to adopt a SIP that provides for the implementation, maintenance, and enforcement of the NAAQS in each air quality control region of the state. While 42 U.S.C., §7410, FCAA, §110 generally does not require specific programs, methods, or reductions in order to meet the standard, vehicle I/M programs and federal RFG are specifically required by the FCAA. The SIP must include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of the FCAA. The provisions of the

FCAA recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public, to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 U.S.C., §7410, FCAA, §110. States are not free to ignore the requirements of 42 U.S.C., §7410, FCAA, §110 and must develop programs to assure that nonattainment areas can be brought into attainment on the schedule prescribed by the FCAA.

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

The adopted rulemaking will not create any additional burden on private real property beyond what is required under federal law, as the rules, if adopted by the commission and approved by EPA, will become federal law as part of the approved SIP required by 42 U.S.C., §7410, FCAA, §110. The rules will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The adopted rulemaking will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the adopted rulemaking will not cause a taking under Texas Government Code, Chapter 2007. For these reasons, Texas Government Code, Chapter 2007 does not apply to this adopted rulemaking.

#### Consistency with the Coastal Management Program

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

Note: §505.11(b)(2) applies only to air pollutant emissions, on-site sewage disposal systems, and underground storage tanks. §505.11(b)(4) applies to all other actions. The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking will not affect any coastal natural resource areas because the rules only affect counties outside the CMP area and is, therefore, consistent with CMP goals and policies.

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

#### Public Comment

The commission offered a public hearing on July 6, 2023 at 7:00 p.m. in Arlington, Texas for the state RVP program, but no attendees registered to make comments on the record, so the public hearing was not opened. The commission held a public hearing

on July 13, 2023 at 7:00 p.m. for the Bexar County I/M program in San Antonio, Texas, and testimony was received and transcribed for the record. The comment period closed on July 17, 2023. No comments were received regarding the removal of the six DFW area counties from the state low RVP program. Oral and/or written comments on the Bexar County I/M program proposal were received from the following: Alamo Area Council of Governments (AACOG); EPA Region 6; Official Inspection Station (OIS); Rema Investment Group, LLC (RIE); San Antonio Auto Service, LLC (SAAS); Texas State Inspection Association (TSIA); and 16 individuals. After the comment period closed, Texas Department of Public Safety (DPS) submitted a letter to TCEQ regarding the timeline for Bexar County vehicle emissions inspection implementation, which was added to the comments received for commission consideration on this SIP revision. Comments were received concerning the maximum fees set for individual emissions inspections in Bexar County as well as the other I/M counties in Texas. Comments were also received concerning the timing of the proposed start of the I/M program in Bexar County, TCEQ's outreach efforts associated with implementing I/M in Bexar County, and the end of the state's safety inspection program.

#### Response to Comments

##### Comment

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

##### Response

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

##### Comment

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

OIS commented that industry representatives should be notified about information meetings and allowed to provide input. OIS pointed out that the public information meetings held during development of the proposed rulemaking were scheduled for the middle of the workday and were poorly attended by shop owners. OIS noted that no in-person townhall meetings were offered, which was part of the process for previous I/M implementation.

Without in-person townhall meetings, OIS stated, industry representatives are unable to participate in an open dialogue on the topic or to provide input, and elected officials do not have the opportunity to hear their input. Not providing an opportunity for elected officials to hear industry's perspective allows them to conclude that industry is supportive of the plan.

#### Response

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

No changes were made in response to this comment.

#### Comment

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

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

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

#### Response

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

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

#### Comment

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

#### Response

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

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

#### Comment

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

#### Response

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

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

#### Comment

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

#### Response

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

#### Comment

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

#### Response

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

#### Comment

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

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

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

#### Response

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

#### Comment

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

#### Response

Under the FCAA, §182(i), states generally must meet new requirements associated with a reclassification according to the schedules prescribed in connection with such requirements. The I/M rules in 40 CFR Part 51, Subpart S allow areas newly required to establish programs up to four years after the effective date of reclassification, 40 CFR §§51.373(b), 51.352(c) and



(e)(2). In its final reclassification rule published October 7, 2022 (87 FR 60897), EPA also took comment on, and established, the I/M program implementation deadline of no later than four years after the effective date of reclassification (November 7, 2026). The commission adopts this rulemaking with its proposed November 1, 2026 start date to ensure adequate time for delivery and setup of vehicle emissions inspection equipment and to work with partner agencies to develop and implement a public awareness plan. The commission is aware that the end of state safety inspections will occur before I/M starts in Bexar County and will work with DPS on the transition from safety-only inspections to emissions and commercial safety inspections. No changes were made in response to this comment.

#### *Comment*

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

#### *Response*

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

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

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

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

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

No changes were made in response to these comments.

## SUBCHAPTER A. DEFINITIONS

### 30 TAC §114.1, §114.2

#### Statutory Authority

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

The expansion of the vehicle I/M program to Bexar County is also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air and THSC, §382.012, concerning State Air Control Plan, which authorizes of the commission to prepare and develop a general, comprehensive plan for the control of the state's air. Additionally, the expansion of the vehicle I/M program to Bexar County is authorized under THSC, §382.201, concerning Definitions, which specifies the definitions that apply under Subchapter G of the THSC, Vehicle Emissions; THSC, §382.202, concerning Vehicle Emissions Inspection and Maintenance Program, which authorizes the commission to establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of the federal Clean Air Act; THSC, §382.203, concerning Vehicles Subject to Program; Exemptions, which establishes which vehicles are subject to the I/M program and which are exempt from it; and THSC, §382.205, concerning Inspection Equipment and Procedures, which authorizes the commission to adopt standards and specifications for motor vehicle emissions testing equipment, recordkeeping and reporting procedures, and measurable emissions standards, as well as consult with the Department of Public Safety of the State of Texas.

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

#### *§114.1. Definitions.*

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

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

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

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

(4) First safety inspection certificate--Initial Texas Department of Public Safety (DPS) certificates issued through DPS-certified inspection stations for every new vehicle found to be in compliance with the rules and regulations governing safety inspections. Beginning on the single sticker transition date as defined in this section, the safety inspection certificates will no longer be used.

(5) First vehicle registration--Initial vehicle registration insignia sticker issued through the Texas Department of Motor Vehicles for every new vehicle found to be in compliance with the rules and regulations governing vehicle registration prior to the single sticker transition date as defined in this section and vehicle registration and safety inspections beginning on the single sticker transition date.

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

(7) 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.

(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 and the Texas Department of Public Safety concurrently implement the single sticker system required by Texas Transportation Code, §502.047.

(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.

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

(11) Vehicle registration insignia sticker--The sticker issued through the Texas Department of Motor Vehicles (DMV) or county tax assessor-collector for a vehicle compliant with the DMV regulations. Beginning on the single sticker transition date as defined in this section, the vehicle registration insignia sticker, a current valid VIR, or other form of proof authorized by the DPS or the DMV will be used as proof of compliance with inspection and maintenance program requirements, the DMV's rules and regulations governing vehicle registration, and the Texas Department of Public Safety's rules and regulations governing safety inspections.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 1, 2023.

TRD-202304417

Charmaine Backens

Deputy Director, Environmental Law Division  
Texas Commission on Environmental Quality

Effective date: December 21, 2023

Proposal publication date: June 16, 2023

For further information, please call: (512) 239-6087



## 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

#### **30 TAC §114.50, §114.53**

##### Statutory Authority

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

The expansion of vehicle I/M to Bexar County is also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; and THSC, §382.012, concerning State Air Control Plan, which authorizes of the commission to prepare and develop a general, comprehensive plan for the control of the state's air. Additionally, the expansion of vehicle I/M to Bexar County is authorized under THSC, §382.201, concerning Definitions, which specifies the definitions that apply under Subchapter G of the THSC, Vehicle Emissions; THSC, §382.202, concerning Vehicle Emissions Inspection and Maintenance Program, which authorizes the commission to establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of the federal Clean Air Act; THSC, §382.203, concerning Vehicles Subject to Program; Exemptions, which establishes which vehicles are subject to the I/M program and which are exempt from it; THSC, §382.204, concerning Remote Sensing Program Component, which requires the commission and the Department of Public Safety (DPS) to develop an enforcement program that includes a remote sensing component; THSC, §382.205, concerning Inspection Equipment and Procedures, which authorizes the commission to adopt standards and specifications for motor vehicle emissions testing equipment, recordkeeping and reporting procedures, and measurable

emissions standards, as well as consult with the DPS; THSC, §382.206, Collection of Data; Report, which authorizes the collection of information derived from the emissions inspection and maintenance program; THSC, §382.207, Inspection Stations; Quality Control Audits; which requires standards and procedures for inspection stations as well as other specifics relating to transportation planning and quality control auditing; THSC, §382.208, Attainment Program, which requires the commission to coordinate with federal, state, and local transportation planning agencies to develop and implement transportation programs and other measures necessary to demonstrate and maintain attainment; THSC, §382.209, Low-Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program, which authorizes the commission to establish and authorize the commissioners court of a participating county to implement a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program; and THSC, §382.210, Implementation Guidelines and Assistance, which requires the commission to adopt guidelines to assist a participating county in implementing a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program..

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

*§114.53. Inspection and Maintenance Fees.*

(a) The following fees must be paid for an emissions inspection of a vehicle at an inspection station. This fee must include one free retest should the vehicle fail the emissions inspection provided that the motorist has the retest performed at the same station where the vehicle originally failed and submits, prior to the retest, a properly completed vehicle repair form showing that emissions-related repairs were performed and the retest is conducted within 15 days of the initial emissions test.

(1) In El Paso County beginning May 1, 2002 and ending on the day before the single sticker transition date as defined in §114.1 of this title (relating to Definitions), any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(4)(A), (B), or (C) of this title (relating to Vehicle Emissions Inspection Requirements) must collect a fee of \$14 and remit \$2.50 to the Texas Department of Public Safety (DPS). If the El Paso County Commissioners Court adopts a resolution that is approved by the commission to participate in the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP), the emissions inspection station in El Paso County must collect a fee of \$16 and remit to the DPS \$4.50 beginning upon the date specified by the commission and ending on the day before the single sticker transition date. Beginning on the single sticker transition date, any emissions inspection station in El Paso County required to conduct an emissions test in accordance with §114.50(a)(4)(A), (B), or (C) of this title must collect a fee not to exceed \$11.50.

(2) In the Dallas-Fort Worth program area beginning May 1, 2002 and ending on the day before the single sticker transition date as defined in §114.1 of this title, any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(1)(A) or (B) of this title and in the extended Dallas-Fort Worth program area beginning May 1, 2003 and ending on the day before the single sticker transition date, any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(2)(A) or (B) of this title must collect a fee not to exceed \$27. Beginning May 1, 2002 and ending on the day before the single sticker transition date in the Dallas-Fort Worth and the extended Dallas-Fort Worth program areas, the emissions inspection station must remit to the DPS \$2.50 for each ac-

celeration simulation mode (ASM-2) test and \$8.50 for each on-board diagnostics (OBD) test. Beginning on the single sticker transition date in the Dallas-Fort Worth and the extended Dallas-Fort Worth program areas, any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(1)(A) or (B) and (2)(A) or (B) of this title must collect a fee not to exceed \$24.50 for each ASM-2 test and \$18.50 for each OBD test.

(3) In the Houston-Galveston-Brazoria program area beginning May 1, 2002 and ending on the day before the single sticker transition date as defined in §114.1 of this title, any emissions inspection station in Harris County required to conduct an emissions test in accordance with §114.50(a)(3)(A) or (B) of this title and beginning May 1, 2003 and ending on the day before the single sticker transition date, any emissions inspection station in Brazoria, Fort Bend, Galveston, and Montgomery Counties required to conduct an emissions test in accordance with §114.50(a)(3)(D) or (E) of this title must collect a fee not to exceed \$27. Beginning May 1, 2002 and ending on the day before the single sticker transition date in Brazoria, Fort Bend, Galveston, Harris, and Montgomery Counties, the emissions inspection station must remit to the DPS \$2.50 for each ASM-2 test and \$8.50 for each OBD test. Beginning on the single sticker transition date in Brazoria, Fort Bend, Galveston, Harris, and Montgomery Counties, any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(3)(A), (B), (D), or (E) of this title must collect a fee not to exceed \$24.50 for each ASM-2 test and \$18.50 for each OBD test.

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

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

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

(d) Beginning on the single sticker transition date as defined in §114.1 of this title, vehicle owners shall remit as part of the annual vehicle registration fee collected by the Texas Department of Motor Vehicles (DMV) or county tax assessor-collector the amount of the vehicle emissions inspection fee that is required to be remitted to the state.

(1) In El Paso County, the following requirements apply.

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

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

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

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

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

(A) Vehicle owners in counties participating in the LIRAP shall remit \$2.50 for motor vehicles subject to ASM-2 tests and \$8.50 for motor vehicles subject to OBD tests to the DMV or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee. Of the \$8.50 remitted for OBD tests, \$6.00 constitutes the LIRAP fee as defined in §114.7 of this title.

(B) Vehicle owners in counties participating in the LIRAP that are in the process of opting out shall remit \$2.50 for motor vehicles subject to ASM-2 tests and \$8.50 for motor vehicles subject to OBD tests to the DMV or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee until the LIRAP fee termination effective date as defined in §114.7 of this title. Of the \$8.50 remitted for OBD tests, \$6.00 constitutes the LIRAP fee as defined in §114.7 of this title. Upon the LIRAP fee termination effective date, vehicle owners in participating counties that are in the process of opting out of the LIRAP shall remit \$2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee.

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

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

(A) Vehicle owners in counties participating in the LIRAP shall remit \$2.50 for motor vehicles subject to ASM-2 tests and \$8.50 for motor vehicles subject to OBD tests to the DMV or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee. Of the \$8.50 remitted for OBD tests, \$6.00 constitutes the LIRAP fee as defined in §114.7 of this title.

(B) Vehicle owners in counties participating in the LIRAP that are in the process of opting out shall remit \$2.50 for motor vehicles subject to ASM-2 tests and \$8.50 for motor vehicles subject to OBD tests to the DMV or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee until the LIRAP fee termination effective date as defined in §114.7 of this title. Of the \$8.50 remitted for OBD tests, \$6.00 constitutes the LIRAP fee as defined in §114.7 of this title. Upon the LIRAP fee termination effective date, vehicle owners in participating counties that are in the process of opting out of the LIRAP shall remit \$2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee.

(C) Vehicle owners in counties not participating in the LIRAP shall remit \$2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-assessor-collector at the

time of annual vehicle registration as part of the vehicle emissions inspection fee.

(4) In the Bexar County program area, vehicle owners shall remit \$2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 1, 2023.

TRD-202304418

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Effective date: December 21, 2023

Proposal publication date: June 16, 2023

For further information, please call: (512) 239-6087



## SUBCHAPTER H. LOW EMISSION FUELS DIVISION 1. GASOLINE VOLATILITY

### 30 TAC §114.309

#### Statutory Authority

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

The removal of the six specified counties from the low RVP program is also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012 concerning State Air Control Plan, which authorizes of the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 1, 2023.

TRD-202304419

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Effective date: December 21, 2023

Proposal publication date: June 16, 2023

For further information, please call: (512) 239-6087

◆ ◆ ◆

## CHAPTER 290. PUBLIC DRINKING WATER

### SUBCHAPTER D. RULES AND REGULATIONS FOR PUBLIC WATER SYSTEMS

#### 30 TAC §§290.38, 290.39, 290.41 - 290.47

The Texas Commission on Environmental Quality (TCEQ) adopts amendments to 30 Texas Administrative Code (TAC) §§290.38, 290.39, and 290.41 - 290.47.

Amended §§290.38, 290.39, 290.41 - 290.44 and 290.47 are adopted *without changes* to the adopted text as published in the July 14, 2023, issue of the *Texas Register* (48 TexReg 3835) and, therefore, will not be republished. Amended §290.45 and §290.46 are adopted *with changes* to the adopted text as published in the July 14, 2023, issue of the *Texas Register* and, therefore, will be republished.

#### Background and Summary of the Factual Basis for the Adopted Rules

In 2021, the 87th Legislature passed Senate Bill (SB) 3, which relates to preparing for, preventing, and responding to weather emergencies and power outages. SB 3 requires that certain water service providers ensure emergency operations during an extended power outage. SB 3 amended Texas Water Code (TWC), Chapter 13, by adding §13.1394, Standards of Emergency Operations, and amending §13.1395, Standards of Emergency Operations in Certain Counties. New TWC, §13.1394, requires that affected utilities create an emergency preparedness plan that shows how an affected utility will provide emergency operations and submit that plan to the TCEQ for review and approval. TWC, §13.1394, stipulates that a water service provider must maintain 20 pounds per square inch (psi) of pressure, or a water pressure approved by the executive director, during power outages that last longer than 24 hours as soon as it is safe and practicable following a natural disaster. The statute also specifies that the TCEQ has 90 days to review the plan, once the plan is submitted, and either approve it or recommend changes. Once the TCEQ approves the plan the water service provider must operate in accordance with the plan and maintain any generators in accordance with manufacturer's specifications. TWC, §13.1394 also specifies that the TCEQ will conduct inspections to ensure compliance and that waivers to these requirements are available under certain circumstances. SB 3 stated in Section 36(b) that each affected utility was to submit to the TCEQ an emergency preparedness plan required by TWC, §13.1394, no later than March 1, 2022, and stated in 36(c) that the emergency preparedness plan was to be implemented no later than July 1, 2022, unless the affected utility had obtained an adjusted, TCEQ approved timeline.

Amended TWC, §13.1395, excludes from the requirement of creating an emergency preparedness plan those raw water services that are unnecessary or otherwise subject to interruption or curtailment during emergencies pursuant to contract.

In response to the widespread power and equipment failures and drinking water outages and shortages during Winter Storm Uri in 2021, the TCEQ organized an after-action review to evaluate the factors that impacted public water systems across the state. This review resulted in findings and recommendations to enhance and integrate additional public water system critical infrastructure resiliency measures. These findings and recommendations were presented to the TCEQ during a work session, held on May 19, 2022.

#### Section by Section Discussion

##### §290.38, Definitions

The TCEQ adopts this rulemaking to add a definition to §290.38 for "accredited laboratory" to clarify the requirements for laboratories used to analyze drinking water samples for determination of compliance with maximum contaminant levels, actions levels, and microbial contaminants. This adopted change corresponds to the definition of "certified laboratory" in §290.38(12), which indicates that laboratories must be accredited, rather than certified, after June 30, 2008. Laboratory accreditation is issued by the TCEQ under Texas Water Code, Chapter 5, Subchapter R, and its associated TCEQ rules.

The TCEQ adopts this rulemaking to add a definition to §290.38 for "adverse weather conditions". This adopted change is a recommendation which resulted from the after-action review findings.

The TCEQ adopts this rulemaking to amend the definition of "affected utility" by adding language to encompass the definitions of affected utility in TWC, §13.1394 and §13.1395. The TCEQ adopts these amendments to reflect the requirements of TWC, §13.1394(a)(1) and §13.1395(a)(1).

The TCEQ adopts this rulemaking to amend the definition of "approved laboratory" to clarify that laboratory approval is required for determining compliance with treatment technique requirements in addition to maximum or minimum allowable constituent levels currently stated in rule.

The TCEQ adopts this rulemaking to amend the definition of "emergency operations" to clarify the minimum required water pressure that affected utilities must provide during emergency operations. This clarification is consistent with the requirements under TWC, §13.1394, which is 20 pounds per square inch, or a pressure approved by the executive director, and TWC, §13.1395, which is 35 pounds per square inch.

The TCEQ also adopts this rulemaking to amend sequential numbering for this section as necessary.

##### §290.39, General Provisions

The TCEQ's adopted amendments for this section will clarify existing rules and also add provisions relating to TWC, §13.1394 and §13.1395 to implement SB 3.

The TCEQ adopts this rulemaking to amend §290.39(a) to include a statement that authority for this subchapter includes TWC, §13.1394.

The TCEQ adopts this rulemaking to amend §290.39(c)(4) by adding language that references TWC, §13.1394 and §13.1395, replacing §§290.39(c)(4)(A) through 290.39(c)(4)(E) with a refer-

## United States

# ENVIRONMENTAL PROTECTION AGENCY

## State Implementation Plans (SIPs) Summary

### Section 110

Plan Name:	TX_Chapter 114 Expansion of IM to Bexar County and Removal of Six DFW Counties from Low RVP Program_12182023
State(s):	TX
Submitted By:	Jamie M Zech, TX
Submitted:	December 18, 2023, 10:39 AM (EST)

### Plan Submission Information

---

Enter a brief title of the plan or plan elements you are submitting. TX\_Chapter 114 Expansion of IM to Bexar County and Removal of Six DFW Counties from Low RVP Program\_12182023

What type of material are you submitting?

Rule revisions to 30 Texas Administrative Code Chapter 114, Control of Air Pollution from Motor Vehicles, concerning the expansion of vehicle emissions inspection and maintenance into Bexar County and removal of six Dallas-Fort Worth counties from the Regional Low Reid Vapor Pressure Gasoline Program.

### Document Upload

---

### Completeness Certification

---

Verify that all applicable completeness requirements are included in this submittal. I have included all of the applicable completeness requirements in my submittal.

Does this SIP submission include additional documentation (e.g., large modeling files) that is not submitted through this electronic system? No

## Uploaded Documentation

FILE NAME	FILE TYPE	FILE DESCRIPTION
<a href="#">22026114_SignedLtr_Dated121823.pdf</a>	pdf	Chapter 114 Bexar County I/M Expansion Signed Letter
<a href="#">22026114_Hearing_Book_112923Ado.pdf</a>	pdf	Chapter 114 Bexar County I/M Expansion Hearing Book
<a href="#">22026114_Cert dfh.pdf</a>	pdf	Chapter 114 Bexar County I/M Expansion Certification Letter