

Texas Department of Public Safety

CHAPTER 23. VEHICLE INSPECTION

SUBCHAPTER G. VEHICLE EMISSIONS INSPECTION AND MAINTENANCE PROGRAM

37 TAC §23.93

§23.93. Vehicle Emissions Inspection Requirements

As adopted in the Texas Register January 2, 2002 (27 TexReg 277 to 285) effective January 10, 2002.

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5th Grade

Kennedy-Powell Elementary

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The comment further noted that information required by paragraph (7), relating to the date that the person failed to appear or failed to pay or satisfy a judgment, is unnecessary and is not currently reported unless a separate failure to appear violation is submitted. It was suggested that this requirement be deleted in its entirety.

~~RESPONSE: The department disagrees with the proposed revision of paragraph (5). An offense code certainly constitutes a "brief description" of the alleged violation and a political subdivision's use of departmental codes is sufficient to satisfy the requirements of this rule. Furthermore, the language of this subsection is consistent with the terms of the Interlocal Cooperation Contract.~~

~~The department also disagrees with the deletion of paragraph (7). The information required by that paragraph would be necessary if the political subdivision submits a separate failure to appear violation. Furthermore, the language of this subsection is consistent with the terms of the Interlocal Cooperation Contract.~~

~~COMMENT RELATING TO §15.116: The comment stated that requiring the jurisdiction to submit a copy of the local ordinance for approval is unrealistic, due to the number of city ordinances and county orders in existence. In addition, the comment noted that the department has not set up a procedure for the submission and approval of local ordinances.~~

~~RESPONSE: The department agrees that the rule as published should be amended to reflect current practices regarding review of local ordinances. The rule has been modified to include discretionary language which permits the department to request information regarding a local ordinance when there is a question as to whether the ordinance meets the statutory criteria for enforcement under the Failure to Appear program.~~

~~COMMENT RELATING TO §15.118: The comment stated that the rule does not address amendments made by Senate Bill 1371 relating to reports which were submitted in error or destroyed in accordance with the local political subdivision's record retention policy. The comment expressed concern that clearance for offenses submitted in error is subject to abuse and rewards negligence in the processing and reporting of offenses. It was suggested that the rule be clarified to limit clearances to the removal of violators who were identified in error, such as the violator using another person's driver license.~~

~~The comment also indicated that clearances which occur as a result of the political subdivision's record retention policy are not expected to present problems unless the jurisdiction were to adopt a curtailed retention schedule.~~

~~RESPONSE: The department disagrees with the addition of the suggested language relating to reports submitted in error. Texas Transportation Code, §706.005 enumerates the exact circumstances under which a clearance report must be submitted. Those circumstances need not be repeated in the administrative rule. Furthermore, §706.005(b)(3)(A) specifically provides that the department may not continue to deny renewal after receiving notice that the report was sent to the department in error. The statute does not distinguish between types of errors and there is no requirement that the political subdivision explain the nature of the error.~~

~~It should also be noted that §706.005(b)(3)(B) does not provide for a minimum time period that failure to appear reports must~~

~~be maintained by the local political subdivision. As such, the department cannot, by rule, prevent the adoption of a particular retention schedule or the clearance of offenses pursuant to that schedule.~~

~~The new sections are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §706.012.~~

~~§15.113. Contract with Private Vendor.~~

~~The department has contracted with a private vendor to implement the provisions of Texas Transportation Code, Chapter 706. The vendor shall be the primary custodian of all failure to appear violator records and will receive and process reports from contracting local political subdivisions. The vendor will also maintain readily accessible customer support services, including a toll-free telephone service, to advise license holders on how to contact the court in which the failure to appear report originated.~~

~~§15.116. Local Ordinances.~~

~~If the offense alleged is a violation of local ordinance, but not state law, the department may require the political subdivision to provide the department with a copy of the local ordinance alleged to have been violated. Upon such request, the political subdivision shall certify that the ordinance is currently in effect and shall provide any other information required by the department. The department shall determine whether the local ordinance meets the statutory criteria for enforcement under this section.~~

~~This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.~~

~~Filed with the Office of the Secretary of State on December 21, 2001.~~

~~TRD 200108215~~

~~Thomas A. Davis, Jr.~~

~~Director~~

~~Texas Department of Public Safety~~

~~Effective date: January 10, 2002~~

~~Proposal publication date: September 14, 2001~~

~~For further information, please call: (512) 424-2135~~



CHAPTER 23. VEHICLE INSPECTION SUBCHAPTER G. VEHICLE EMISSIONS INSPECTION AND MAINTENANCE PROGRAM

37 TAC §23.93

The Texas Department of Public Safety adopts amendments to §23.93, concerning requirements for vehicle emissions inspection, with changes to the proposed text as published in the November 2, 2001, issue of the *Texas Register* (26 TexReg 8775) and will republish it.

The amendments implement legislative changes enacted by the 77th Texas Legislature, 2001. Tex. H.B. 2134, Acts 2001, 77th Leg., R.S., ch. 1075, §1, replaced the Minimum Expenditure Waiver with a Low Mileage Waiver and provided for an "Emissions Test on Resale" for vehicles sold into a county with an emission testing program from a county without such a program.

H.B. 2134 provided for the emissions testing of vehicles permitted to drive or park on the grounds of institutions of public education located in counties having a vehicle emission inspection and maintenance program.

The amendments to the section align the department's rules with rules adopted by the Texas Natural Resource Conservation Commission (TNRCC) on December 6, 2000 and published in the January 12, 2001, issue of the *Texas Register* (26 TexReg 362). The rules adopted by TNRCC modify the vehicle emissions testing program. TNRCC rules require acceleration simulation mode (ASM-2) testing and on-board diagnostics (OBDII) testing for vehicles that are registered and primarily operated in the counties included in the state's vehicle emission inspection and maintenance program. The rules affect the Dallas/Fort Worth (DFW) I/M program area (Collin, Dallas, Denton, and Tarrant counties), the extended DFW (EDFW) program area (Ellis, Johnson, Kaufman, Parker, and Rockwall counties), the Houston/Galveston (HGA) program area (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller counties), and El Paso County; and become effective in certain counties beginning in May 1, 2002.

In addition, TNRCC adopted amendments to 30 TAC §114.2 (relating to Inspection and Maintenance (I/M) Definitions; 30 TAC §114.50 (relating to Vehicle Emissions Inspection Requirements; and the repeal of 30 TAC §114.52 (relating to Waivers and Extensions for Inspection Requirements) published in the November 16, 2001, issue of the *Texas Register* (26 TexReg 9408-9412). 30 TAC §§114.50-114.53 (relating to Vehicle Emissions Inspection Requirements; Equipment Evaluation Procedures for Vehicle Exhaust Gas Analyzers; Early Participation Incentive Program; and Inspection and Maintenance Fees) were adopted with changes to the proposed text as published in the August 24, 2001, issue of the *Texas Register* (26 TexReg 6247). Significant among these adopted changes was the postponement of OBDII emission testing in El Paso County until January 1, 2003. As a consequence, 37 TAC §23.93(d)(6)(B) and §23.93(j)(G) (relating to Vehicle Inspection) have been changed to reflect this program change.

A public hearing was not held on the proposal. The comment period was extended until November 26, 2001, 5:00 p.m. as published in the November 23, issue of the *Texas Register* (26 TexReg 9659). Four comments on the proposal were received. One comment was received from the Environmental Protection Agency (EPA) Region 6 and three comments from the Texas Automobile Dealers Association (TADA).

Following is a summary of the substantive comments and the department's responses thereto:

COMMENT: While EPA supported On-board diagnostic testing, test on resale and emission testing for issuance of parking permits at college campuses in affected counties, they restated concerns expressed during TNRCC rulemaking regarding the "low mileage waiver." EPA does not believe the low mileage waiver will be an adequate substitute for the minimum expenditure waiver. EPA believes low mileage waivers tend to encourage fraud and abuse in I/M programs. EPA was not provided with any estimates for the expected waiver rate in Texas for the low mileage waivers. Finally, EPA believes that increasing the waiver rate beyond the level originally projected could significantly reduce the credit generated by the I/M program, which may cause reevaluation of the credit available for the SIP.

RESPONSE: TNRCC responded to the EPA comment during its rule making and the department concurs with TNRCC. H.B. 2134 requires the removal of the minimum expenditure waiver and its replacement with the low mileage waiver. The overall waiver rate for the testing program in the year 2000 has not exceeded 0.13%, which is well below the 3% waiver rate used in EPA's MOBILE model. Vehicles that do not comply with the program and do not receive a waiver are subject to a Class C misdemeanor punishable by a fine not to exceed \$200. The owner will be subject to an additional citation every time the vehicle is driven. With the establishment of LIRAP, the overall waiver rate should not exceed 3%; therefore, it is unlikely that credits generated by the I/M program will be reduced. The department did not revise the rules in response to this comment.

COMMENT: TADA expressed concern over the definition of "Emissions Test on Resale" contained in subsection (b)(7). TADA does not believe the definition accurately reflects the language of §548.3011 of the Transportation Code, as added by H.B. 2134. TADA believes the trigger for the requirement is the registration or titling of a vehicle in an affected county, not the presence or resale of a vehicle in an affected county. TADA proposed substitute language for subsection (b)(7). Further, TADA believes the insertion of the word "original" between "50,000" and "miles" is confusing and there is no statutory mention of an "original" mile.

RESPONSE: The proposed language of subsection (b)(7) as proposed indicates that an "Emission Test on Resale" is required upon meeting three conditions; first, the vehicle came from another county in the state where emission testing is not required; second, there has been a change of ownership as a result of a retail sell; and third, a registration and/or titling change is required. Mere presence in the county only meets one of those conditions and does not trigger an emissions test. TADA's proposed text, which varies only slightly from the proposed text, would trigger an emissions test only if all the three conditions occurred sequentially. Therefore, the department does not concur with this portion of the comment and makes no change in response to it. The use of the word "original" in the subsection is to prevent the fraud and abuse in I/M programs referred to by the EPA in the previous comment. Only "1996 and newer vehicles that have less than 50,000 miles" are exempt from this test. The obvious intent of the statute is to exempt model year 1996 and newer vehicles, which have been driven less than 50,000 miles. The use of the word "original" was intended to clarify the test would not be circumvented by changes in the odometer reading by repair or tampering and to discourage fraud and abuse. The department agrees with this portion of the comment and subsection (b)(7) has been changed by replacing the word "original" with "actual."

COMMENT: TADA recommends that subsection (d)(5) which states the "owner" may chose either an emissions-only or a safety and emissions inspection should be clarified by using "owner or selling dealer." Since Transportation Code, §501.0234 requires the dealer to perform registration and titling for vehicles sold the burden of having the test performed falls on the dealer and that it must be performed prior to offering the vehicle for resale.

RESPONSE: Subsection (d)(5) aligns this rule with 37 TAC §23.21 (relating to Issuance of Inspection Certificates) under both Transportation Code, §548.301 and §548.3011. Under §548.301 and 37 TAC §23.21 (relating to Issuance of Inspection Certificates), safety inspection certificates are valid for a period

of one year. The requirement for an emissions test under Transportation Code, §548.3011 does not void the safety inspection certificate. The emissions only certificate is issued when a vehicle which already has a valid safety certificate passes a separately given emissions test. The emissions only certificate, which is not dated, expires when the safety certificate already present and dated, expires. Subsection (d)(5) clarifies that an out of cycle safety inspection is not required but may be performed at the choice of the person who will bear the cost of this additional safety inspection. Further, Transportation Code, §548.3011 does not require emissions testing before the resale of a vehicle, but "not earlier than the 90th day before the date on which the new owner's application for certificate of title or registration is filed." However, based on the definition in Transportation Code, §501.002 which defines "owner" as "a person, other than a manufacturer, importer, distributor, or dealer, claiming title to or having a right to operate under a lien a motor vehicle that has been subject to a first sale" and the requirements of Transportation Code, §501.0234, the department concurs with this portion of the comment and subsection (d)(5) has been changed by replacing the term "owner" with "owner or selling dealer."

COMMENT: TADA comments that subsection (j)(1)(G) contains no guidelines for the implementation of the OBDII-only low volume waiver. TADA suggests that the DPS propose rules about the waiver and suggests that the waiver should be available on an objective basis to all stations willing to operate as low volume stations.

RESPONSE: Subsection (j)(1)(G) provides for the OBDII-only low volume waiver emissions inspection station in the department's fundamental vehicle emissions inspection and maintenance program rule. The department will address the details of the OBD-only low volume waiver in separate rulemaking.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, Chapter 548 as amended by the provisions of Tex. H.B. 2134, Acts 2001, 77th Leg., R.S., ch. 1075, §1.

§23.93. Vehicle Emissions Inspection Requirements.

(a) General. The rules of the Texas Department of Public Safety set out herein are to maintain compliance with the Texas Clean Air Act. The department is authorized to establish and implement a vehicle emissions testing program that is a part of the annual vehicle safety inspection program, in accordance with Texas Transportation Code, Chapter 548, the Health and Safety Code, Chapter 382 and rules adopted thereunder.

(b) Terms and/or Definitions. Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the Texas Department of Public Safety (DPS), the terms used by the DPS have the meanings commonly ascribed to them in the fields of air pollution control and vehicle inspection. In addition to the terms which are defined by the TCAA, the following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Affected county -- refers to any county with a motor vehicle emissions inspection and maintenance program under Texas Transportation Code, §548.301 and Health and Safety Code, §382.037. These counties are specified in Texas Natural Resource Conversation Commission (TNRCC) rules, 30 TAC §114.50.

(2) Acceleration Simulation Mode (ASM-2) I/M test -- the Acceleration Simulation Mode (ASM-2) test is an emissions test using a dynamometer (a set of rollers on which a test vehicle's tires rest) which applies an increasing load or resistance to the drive train of a vehicle thereby simulating actual tailpipe emissions of 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 on the dynamometer simulating the use of 50% of the vehicle available horsepower to accelerate at a rate of 3.3 miles per hour (mph) per second to a constant speed of 15 mph; and

(B) the 25/25 mode -- in which the vehicle is tested on the dynamometer simulating the use of 25% of the vehicle available horsepower to accelerate at a rate of 3.3 mph per second to a constant speed of 25 mph.

(3) Department--refers to the Texas Department of Public Safety.

(4) Designated Vehicles--refers to all motor vehicles, as defined in the Texas Transportation Code, §541.201, unless otherwise exempted or excepted, that are:

(A) capable of being powered by gasoline;

(B) from two years old to and including 24 years old;

(C) registered in or required to be registered in and primarily operated in a designated county; and

(D) subject to "Emissions Test on Resale" requirement.

(5) Director--refers to the director of the Texas Department of Public Safety or the designee of the director.

(6) Emissions control component--refers to a device designed to control or reduce the emissions of substances from a motor vehicle or motor vehicle engine installed on or incorporated in a motor vehicle or motor vehicle engine in compliance with requirements imposed by the Motor Vehicle Air Pollution Control Act (42 United States Code, §1857 et seq) or other applicable law. This term shall include, but not be limited to the following components: air injection system (AIS); catalytic converter; coil; distributor; evaporative canister; exhaust gas recirculation (EGR) valve; fuel filler cap/gas cap; ignition wires; oxygen sensor; positive crank case ventilation (PCV) valve; spark plugs; thermal reactor/thermostatic air cleaner; and hoses, gaskets, belts, clamps, brackets, filters or other accessories and maintenance items related to these emissions control components and systems.

(7) Emissions Test on Resale -- refers to an emissions test performed on a vehicle coming into an affected county from another county within the state which does not have an I/M program (non-affected county); the ownership has changed as the result of a retail sale; and a registration and/or titling change is necessary. This test is not required on model year 1996 and newer vehicles if it has less than 50,000 "actual" miles.

(8) EPA--refers to the United States Environmental Protection Agency; the federal agency that monitors and protects air and water resources.

(9) Exempt vehicles--refers to vehicles otherwise considered "designated vehicles" that are:

(A) antique vehicles, as defined by Texas Transportation Code, §502.275;

(B) slow-moving vehicles, as defined by Texas Transportation Code, §547.001; or

(C) motorcycles, as defined by Texas Transportation Code, §502.001.

(D) motor vehicles registered in an affected county but not primarily operated in an affected county.

(10) I/M--refers to Inspection and Maintenance.

(11) Inspection station--refers to an inspection station/facility as defined in the Texas Transportation Code, §548.001.

(12) Inspector--refers to an inspector as defined in the Texas Transportation Code, §548.001.

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

(14) Out-of-cycle test--refers to an emissions test not associated with the annual vehicle safety inspection testing cycle.

(15) OBD (On-board diagnostic system)--Computer system installed in a 1996 and newer vehicles by the manufacturer which 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.

(16) Person--refers to a human being, a partnership or a corporation that is recognized by law as the subject of rights and duties.

(17) Primarily operated in--refers to the use of a motor vehicle greater than 60 days per calendar year in designated counties. It is presumed that a vehicle is primarily operated in the county in which it is registered; the burden is on the motorist to overcome this presumption by a preponderance of the evidence.

(18) Re-test--refers to a successive vehicle emissions inspection following the failure of an initial emissions test by a vehicle.

(19) Revised Texas I/M SIP--refers to the most current Texas Inspection and Maintenance State Implementation Plan.

(20) Safety inspection--refers to a compulsory vehicle inspection performed as required by Texas Transportation Code, Chapter 548, by an official inspection station issued a certificate of appointment by the department.

(21) Safety inspection certificate--refers to an inspection certificate issued under Texas Transportation Code, Chapter 548, after a safety inspection as defined herein.

(22) Tampering-related repairs--refers to repairs to correct tampering modifications, including but not limited to engine modifications, emissions system modifications, or fuel-type modifications disapproved by the TNRCC or the EPA.

(23) Testing cycle--refers to an annual cycle for which a motor vehicle is subject to a vehicle emissions inspection.

(24) Test-only facilities--refers to inspection stations certified to do emissions testing that are not engaged in repairing, replacing and/or maintaining emissions control components of vehicles. Acceptable repairs in test-only facilities shall be oil changes, air filter changes, repairs and/or maintenance of non-emissions control components, and the sale of auto convenience items.

(25) Test-and-repair facilities--refers to inspection stations certified to do emissions testing that engage in repairing, replacing and/or maintaining emissions control components of vehicles.

(26) TNRCC--refers to the Texas Natural Resource Conservation Commission.

(27) Two-speed idle (TSI) I/M test -- a test equipment meeting TNRCC specifications for the 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.

(28) Two years old--refers to a vehicle upon the expiration of the initial two-year inspection certificate or any time the vehicle is presented for inspection or required to be inspected during the year when the vehicle model year is two years less than the current calendar year (current calendar year minus two years), whichever comes first.

(29) Twenty-four years old--refers to a vehicle when the vehicle model year is 24 years less than the current calendar year (current calendar year minus 24 years).

(30) Uncommon part--refers to a part that takes more than 30 days for expected delivery and installation.

(31) VIR--refers to the Vehicle Inspection Report.

(32) VRF--refers to the Vehicle Repair Form.

(c) Applicability. The requirements of this section and those contained in the Revised Texas I/M SIP shall be applied to motorists, vehicles, vehicle inspection stations and inspectors certified by the department to inspect vehicles, and to Recognized Emissions Repair Facilities of Texas and Recognized Emissions Repair Technicians of Texas, as defined herein.

(d) Control requirements.

(1) In affected counties, in order to be certified by the department as a vehicle inspection station, the vehicle inspection station must be certified by the department to perform vehicle emissions testing. This provision does not apply to vehicle inspection stations certified by the department as vehicle inspection stations endorsed only to issue one or more of the following inspection certificates: trailer certificates, motorcycle certificates, commercial windshield certificates, commercial trailer certificates.

(2) In affected counties, only department certified inspection stations that are certified by the department to do emissions testing may perform the annual vehicle safety inspection on designated vehicles.

(3) An inspection station in a county not designated as an affected county herein shall not inspect a vehicle that is capable of being powered by gasoline, from two years old to and including twenty-four years old and registered in an affected county unless the inspection station is certified by the department to do emissions testing, or unless the motorist presenting the vehicle signs an affidavit on a form provided by the department stating one of the following: (The affidavit will be held by the inspection station for collection by the department.)

(A) the vehicle is not a designated vehicle;

(B) the vehicle no longer qualifies as a designated vehicle; or

(C) the vehicle will not return to an affected county prior to the expiration of the current inspection certificate however immediately upon return to an affected county the vehicle will be reinspected at an inspection station certified to do vehicle emissions testing.

(4) All designated vehicles must be emissions tested at the time of and as a part of the designated vehicle's annual vehicle safety inspection at a DPS certified inspection station that is certified to do vehicle emissions testing. The exceptions to this provision are for:

(A) commercial motor vehicles as defined by the Texas Transportation Code, §548.001, that meet the definition of "designated vehicle" as defined herein. Said "designated" commercial motor vehicles must be emissions tested at a DPS certified inspection station that is certified to do vehicle emissions testing and must have a unique emissions test-only inspection certificate, as authorized by Texas Transportation Code, §548.251, affixed to the lower left-hand corner of the windshield of the vehicle, immediately above the registration sticker, prior to receiving a commercial motor vehicle safety inspection certificate pursuant to Texas Transportation Code, Chapter 548. The unique emissions test-only inspection certificate must be issued within 15 calendar days prior to the issuance of the commercial motor vehicle safety inspection certificate. The unique emissions test-only inspection certificate will expire at the same time the newly issued commercial motor vehicle safety inspection certificate expires; and

(B) vehicles presented for inspection by motorists in counties not designated as affected counties that meet the requirements of paragraph (3)(C) of this subsection.

(5) A vehicle with a currently valid safety inspection certificate presented for an "Emissions Test on Resale" inspection shall receive an emissions test. The owner or selling dealer may choose one of two options:

(A) a complete safety and emissions test and receipt of a new inspection certificate, or

(B) an emissions test and receipt of the unique emissions test-only inspection certificate affixed to the lower left-hand corner of the windshield of the vehicle, immediately above the registration sticker. The unique emissions test-only inspection certificate will expire at the same time as the safety inspection certificate currently displayed on the vehicle at the time the unique emissions test-only certificate is issued.

(6) Any vehicle not listed as an exempt vehicle that is capable of being powered by gasoline, from two years old to and including 24 years old, presented for the annual vehicle safety inspection in affected counties will be presumed to be a designated vehicle and will be emissions tested as a part of the annual vehicle safety inspection. Emissions testing will be conducted as follows:

(A) effective until April 30, 2002, all designated vehicles will be emission tested using approved two-speed idle I/M test equipment (TSI).

(B) effective May 1, 2002:

(i) all 1996 model year and newer designated vehicles, which are equipped with an On-board diagnostic system, will be emission tested using approved OBD I/M test equipment, excluding El Paso County; and

(ii) all 1995 model year and older designated vehicles in all affected counties, excluding El Paso County, will be emission tested using a Acceleration Simulation Mode (ASM-2) I/M test. All 1995 model year designated vehicles in El Paso will be emissions tested using approved two-speed idle I/M test equipment (TSI).

(iii) Vehicles which can not be tested using the prescribed emission testing equipment will be tested using the following default methods. OBD vehicles will be tested using ASM-2, if the vehicle cannot be tested on ASM-2 (except for El Paso County, four-wheel drive and unique transmissions), then the vehicle will be tested using TSI.

(C) effective January 1, 2003, in El Paso County:

(i) all 1996 model year and newer designated vehicles, which are equipped with an On-board diagnostic system, will be emission tested using approved OBD I/M test equipment; and

(ii) all 1995 model year and older designated vehicles will be emissions tested using approved two-speed idle I/M test equipment (TSI).

(iii) OBD vehicles which can not be tested using the prescribed emission testing equipment will be tested using the approved two-speed idle I/M test equipment (TSI).

(7) Vehicles registered in affected counties will be identified by a distinguishing validation registration sticker as determined by the Texas Department of Transportation.

(8) Vehicles inspected under the vehicle emissions testing program and found to meet the requirements of the program in addition to all other vehicle safety inspection requirements will be passed by the certified inspector, who will thereafter affix to the windshield a unique emissions inspection certificate pursuant to Texas Transportation Code, §548.251. The only valid inspection certificate for designated vehicles shall be a unique emissions inspection certificate issued by the department, unless otherwise provided herein.

(9) The department shall perform challenge tests to provide for the reinspection of a motor vehicle at the option of the owner of the vehicle as a quality control measure of the emissions testing program. A motorist whose vehicle has failed an emissions test may request a free challenge test through the department within 15 calendar days, not including the date of the emissions test being challenged or questioned.

(10) Federal and State governmental or quasi-governmental agency vehicles that are primarily operated in affected counties that fall outside the normal registration or inspection process shall be required to comply with all vehicle emissions I/M requirements contained in the Texas I/M SIP.

(11) Any motorist in an affected county whose designated vehicle has been issued an emissions-related recall notice shall furnish proof of compliance with the recall notice prior to having their vehicle emissions tested the next testing cycle. As proof of compliance, the motorist may present a written statement from the dealership or leasing agency indicating the emissions repairs have been completed.

(12) Inspection certificates issued prior to an effective date in this section shall be valid and shall remain in effect until the expiration date thereof.

(13) A unique emissions test-only inspection certificate expires at the same time the annual vehicle safety inspection certificate it relates to expires.

(14) The department will perform quarterly gas audits on all vehicle exhaust gas analyzers used to perform vehicle emissions tests. If a vehicle exhaust gas analyzer fails the calibration process during the gas audit, the department shall cause the appropriate inspection station to cease vehicle emissions testing with the failing exhaust gas analyzer until all necessary corrections are made and the vehicle exhaust gas analyzer passes the calibration process.

(15) Pursuant to the Revised Texas I/M SIP, the department shall administer and monitor a follow-up loaded mode I/M test on at least 0.1% of the vehicles subject to vehicle emissions testing in a given year to evaluate the mass emissions test data as required in 40 CFR 51.353(c)(3). A contractor(s) may be used to assist in collecting, reviewing and evaluating program data.

(16) On-road testing (Remote Sensing Program) verification emissions inspection. Vehicle owners receiving a notice from the

department requiring an emission test shall receive an out-of-cycle test, if the vehicle already has a valid safety and emission inspection certificate. This test will be conducted in accordance with the terms of the department's notice. The results of this verification emissions inspection shall be reported (on-line) to the Texas Information Management System Vehicle Identification Database (VID). Vehicles identified to be tested by the notice will receive the prescribed test regardless of the county of registration and whether the vehicle has a currently valid safety inspection certificate or a valid safety and emissions inspection certificate. When the vehicle has a currently valid safety inspection certificate or a valid safety and emissions inspection certificate, the owner may choose one of two options:

(A) a complete safety and emissions test and receipt of a new inspection certificate, or

(B) an emissions test and receipt of the unique emissions test-only inspection certificate affixed to the lower left-hand corner of the windshield of the vehicle, immediately above the registration sticker. The unique emissions test-only inspection certificate will expire at the same time as the safety inspection certificate currently displayed on the vehicle at the time the unique emissions test-only certificate is issued.

(17) Emissions testing of vehicles requiring vehicle identification insignias issued by public institutes of higher learning. Effective January 1, 2002 as per §51.207 of the Texas Education Code, public institutions of higher learning located in affected counties will require vehicles to be emissions tested as a condition to receive a permit to park or drive on the grounds of the institution, including vehicles registered out-of-state. The following instructions are provided for handling this type of inspection.

(A) Vehicles presented under this subsection shall receive an emissions inspection and be issued a unique emissions test-only inspection certificate which will be affixed to the lower left-hand corner of the windshield of the vehicle. Since this inspection certificate is not dated, this certificate will expire as follows:

(i) Vehicles registered in this state from counties without an emissions testing program. The unique emissions test-only inspection certificate will expire at the same time as the safety inspection certificate currently displayed on the vehicle at the time the unique emissions test-only certificate is issued.

(ii) Vehicles registered in another state. The unique emissions test-only inspection certificate will expire on the twelfth (12th) month after the month indicated on the date of the Vehicle Inspection Report (VIR) generated by the emissions inspection. Under no circumstances is the inspection station authorized to remove an out-of-state inspection and/or registration certificate, to include either safety, emissions, or combination of any of the aforementioned.

(B) The operator of a vehicle presented for an emissions inspection under this subsection will be notified to retain the Vehicle Inspection Report (VIR) as proof of emissions testing under the requirements of §51.207 of the Texas Education Code.

(e) Waivers and extensions. Under this section, the department may issue an emissions testing waiver or time extension to any vehicle that passes all requirements of the standard safety inspection portion of the annual vehicle safety inspection and meets the established criteria for a particular waiver or time extension. An emissions testing waiver or a time extension defers the need for full compliance with vehicle emissions standards of the vehicle emissions I/M program for a specified period of time after a vehicle fails an emissions test. The department will accept applications for emissions testing waivers and time extensions. There are four types of emissions testing waivers

and time extensions: Low Mileage Waiver; Individual Vehicle Waiver; Parts Availability Time Extension; and Low-Income Time Extension. The motorist may apply once each testing cycle for the Low Mileage Waiver, Individual Vehicle Waiver, and Parts Availability Time Extension. The motorist may apply every other testing cycle for the Low-Income Time Extension.

(1) Low Mileage Waiver.

(A) Eligibility. A vehicle may be eligible for a Low Mileage Waiver provided that it has:

(i) failed both its initial emissions inspection and re-test; and

(ii) incurred qualified emissions-related repairs, as defined herein, whose cost is equal to at least \$100; and

(iii) the vehicle has been driven less than 5,000 miles in the previous inspection cycle; and

(iv) the vehicle will be reasonably expected to be driven fewer than 5,000 miles before the next safety inspection is required.

(B) Qualified Emissions-Related Repairs. Qualified emissions-related repairs are those repairs to emissions control components, including diagnosis, parts and labor, which count toward a Low Mileage Waiver. In order to be considered qualified emissions-related repairs, the repair(s):

(i) must be directly applicable to the cause for the emissions test failure;

(ii) must be performed after the initial emissions test or have been performed within 60 days prior to the initial emissions test;

(iii) must not be tampering-related repairs, as defined herein;

(iv) must not be covered by any available warranty coverage unless the warranty remedy has been denied in writing by the manufacturer or authorized dealer; and

(v) must be performed by a Recognized Emissions Repair Technician of Texas at a Recognized Emissions Repair Facility of Texas in order to include the labor cost and/or diagnostic costs. When repairs are not performed by a Recognized Emissions Repair Technician of Texas at a Recognized Emissions Repair Facility of Texas, only the purchase price of parts, applicable to the emissions test failure, qualify as a repair expenditure for the Low Mileage Waiver.

(C) Conditions. The following conditions must be met in order to receive a Low Mileage Waiver:

(i) the vehicle must pass a visual inspection performed by a department representative to insure that the emissions repairs being claimed have actually been performed;

(ii) the diagnosis, parts and labor receipts for the qualified emissions-related repairs must be presented to the department and support that the emissions repairs being claimed have actually been performed; and

(iii) the valid re-test Vehicle Inspection Report (VIR) and valid Vehicle Repair Form (VRF) for the applicant vehicle must be presented to the department. If labor and/or diagnostic charges are being claimed towards the low mileage waiver amount, the VRF shall be completed by a Recognized Emissions Repair Technician of Texas.

(2) **Low-Income Time Extension.** A Low-Income Time Extension may be granted in accordance with the following conditions:

(A) The applicant must supply to the department proof in writing that:

(i) the vehicle failed the initial emissions inspection test; proof shall be in the form of the original failed VIR;

(ii) the vehicle has not been granted a Low-Income Time Extension in the previous testing cycle;

(iii) the applicant is the owner of the vehicle that is the subject of the Low-Income Time Extension; and

(iv) the applicant receives financial assistance from the Texas Department of Human Services due to indigence (subject to approval by the director) or the applicant's adjusted gross income (if the applicant is married, the applicant's adjusted gross income is equal to the applicant's adjusted gross income plus the applicant's spouse's adjusted gross income) is at or below the current federal poverty level as published by the United States Department of Health and Human Services, Office of the Secretary, in the Federal Register; proof shall be in the form of a federal income tax return or other documentation authorized by the director that the applicant certifies as true and correct.

(B) After a vehicle receives an initial Low-Income Time Extension, the vehicle must pass an emissions test prior to receiving another Low-Income Time Extension.

(3) **Parts Availability Time Extension.** A Parts Availability Time Extension may be granted in accordance with the following conditions:

(A) The applicant must demonstrate to the department:

(i) reasonable attempts were made to locate necessary emissions control parts by retail or wholesale parts suppliers; and

(ii) emissions-related repairs cannot be completed before the expiration of the safety inspection certificate or before the 30-day period following an out-of-cycle inspection because the repairs require an uncommon part, as defined herein.

(B) The applicant shall provide to the department:

(i) an original VIR indicating the vehicle failed the emissions test;

(ii) an invoice, receipt, or original itemized document indicating the uncommon part(s) ordered by: name; description; catalog number; order number; source of part(s), including name, address and phone number of parts distributor; and expected delivery and installation date(s). The original itemized document must be prepared by a Recognized Emissions Repair Technician of Texas before a Parts Availability Time Extension can be issued.

(C) A Parts Availability Time Extension is not allowed for tampering-related repairs, as defined herein.

(D) If the vehicle does not pass an emissions re-test prior to the expiration of the Parts Availability Time Extension, the applicant must provide to the department, adequate documentation that one of the following conditions exists:

(i) the motorist qualifies for a Low Mileage Waiver, Low-Income Time Extension or Individual Vehicle Waiver; or

(ii) the motor vehicle will no longer be operated in the affected county.

(E) A vehicle that receives a Parts Availability Time Extension in one testing cycle must have the vehicle repaired and re-tested

prior to the expiration of such extension or must qualify for another type of waiver or time extension, in order to be eligible for a Parts Availability Time Extension in the subsequent testing cycle.

(F) The length of a Parts Availability Time Extension shall depend upon expected delivery and installation date(s) of the uncommon part(s) as determined by the department representative on a case by case basis. Parts Availability Time Extensions will be issued for either 30, 60 or 90 days.

(G) The department shall issue a unique time extension sticker for Parts Availability Time Extensions.

(4) **Individual Vehicle Waiver.** If a vehicle has failed an emissions test, a motorist may petition the director for an Individual Vehicle Waiver. Upon demonstration that the motorist has taken every reasonable measure to comply with the requirements of the vehicle emissions I/M program contained in the Revised Texas I/M SIP and such waiver shall have minimal impact on air quality, the director may approve the petition, and the motorist may receive a waiver. Motorists may apply for the Individual Vehicle Waiver each testing cycle.

(f) **Prohibitions.**

(1) No person may operate or allow to be operated any motor vehicle that does not comply with:

(A) all applicable air pollution emissions control-related requirements included in the annual vehicle safety inspection administered by the department, as evidenced by a current valid inspection certificate affixed to the vehicle windshield; and

(B) the vehicle emissions inspection and maintenance requirements contained in the Revised Texas I/M SIP.

(2) No person or entity may own, operate, or allow the operation of a designated vehicle in an affected county unless the vehicle has complied with all applicable vehicle emissions inspection and maintenance requirements contained in the Revised Texas I/M SIP, unless otherwise provided for herein.

(3) No person may issue or allow the issuance of a Vehicle Inspection Report (VIR), as authorized by the department, unless all applicable air pollution emissions control-related requirements of the annual vehicle safety inspection and the vehicle emissions inspection and maintenance requirements and procedures contained in the Revised Texas I/M SIP are completely and properly performed in accordance with the rules and regulations adopted by the department and the TNRCC.

(4) No person may allow or participate in the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen inspection certificates, VIRs, VRFs, vehicle emissions repair documentation, or other documents which may be used to circumvent the vehicle emissions inspection and maintenance requirements and procedures contained in Texas Transportation Code, Chapter 548 and the Revised Texas I/M SIP.

(5) No organization, business, person, or other entity may represent itself as an inspector certified by the department, unless such certification has been issued pursuant to the certification requirements and procedures contained in the Revised Texas I/M SIP and the rules and regulations of the department.

(6) No person may act as or offer to perform services as a Recognized Emissions Repair Technician of Texas or a Recognized Emissions Repair Facility of Texas, as defined in subsections (h) and (i) of this section, without first obtaining and maintaining recognition by the department.

(g) Violation/Penalties. Pursuant to Texas Transportation Code, §548.601, any person who operates a designated vehicle in an affected county without displaying a valid unique emissions inspection certificate, may be subject to a fine in an amount not to exceed that set out in Texas Transportation Code, §548.604.

(h) Requirements for Recognized Emissions Repair Technicians of Texas. The department will recognize automotive repair technicians that meet the qualifications as set forth herein.

(1) In order to be recognized by the department as a Recognized Emissions Repair Technician of Texas, the technician must:

(A) have a minimum of three years full-time automotive repair service experience;

(B) possess current certification in the following areas based on the following tests offered by the National Institute of Automotive Service Excellence (ASE):

- (i) Engine Repair (ASE Test A1);
- (ii) Electrical/Electronic Systems (ASE Test A6);
- (iii) Engine Performance (ASE Test A8); and
- (iv) Advanced Engine Performance Specialist (ASE Test L1); and

(C) must be employed by a Recognized Emissions Repair Facility of Texas, as defined herein.

(2) A Recognized Emissions Repair Technician of Texas shall perform the following duties:

(A) complete and certify the VRF form(s); and

(B) notify the DPS in writing within 14 days of changes in the technician's ASE testing status.

(3) Failure to comply with these rules and failure to meet the qualifications set out herein may result in the department ceasing to recognize the technician.

(i) Requirements for Recognized Emissions Repair Facilities of Texas.

(1) In order to be recognized by the department as a Recognized Emissions Repair Facility of Texas, the facility must:

(A) employ at least one full-time Recognized Emissions Repair Technician of Texas, as described in subsection (h) of this section; and

(B) possess equipment to perform the functionality of the following items:

- (i) ammeter;
- (ii) compression tester;
- (iii) cooling system tester;
- (iv) dwellmeter;
- (v) engine analyzer;
- (vi) five gas exhaust analyzer (which can perform diagnostic repair for at least hydrocarbon (HC), carbon monoxide (CO), carbon dioxide (CO₂), and oxides of nitrogen (NOX));
- (vii) fuel pressure/pressure drop tester;
- (viii) ohmmeter;
- (ix) repair reference information;
- (x) scan tool/or OBDII capable testing equipment;

(xi) tachometer;

(xii) timing light;

(xiii) vacuum/pressure gauge;

(xiv) vacuum pump; and;

(xv) volt meter.

(2) A Recognized Emissions Repair Facility of Texas shall:

(A) notify the DPS in writing within 14 days of changes in the facility's technicians' ASE testing status or employment status and the facility's equipment functionality status; and

(B) agree in writing upon application for recognition by the department to maintain compliance with the qualifications enumerated in paragraph (1) of this subsection, in order to maintain recognition by the department.

(3) Failure to comply with these rules and failure to meet the qualifications set out herein, may result in the department ceasing to recognize the facility.

(j) Certified emissions inspection station requirements.

(1) In order to be certified by the department as an emissions inspection station, for purposes of the emissions I/M program, the station must:

(A) be licensed by the department as an official vehicle inspection station;

(B) comply with the DPS Rules and Regulations Manual for Official Vehicle Inspection Stations and Certified Inspectors and other applicable rules and regulations of the department;

(C) complete all applicable forms and reports as required by the department;

(D) purchase or lease emissions testing equipment that is currently certified by the TNRCC to emissions test vehicles, or upgrade existing emissions testing equipment to meet the current certification requirements of the TNRCC;

(E) have a designated telephone line dedicated for each vehicle exhaust gas analyzer to be used to perform vehicle emissions tests; and

(F) enter into and maintain a business arrangement with the Texas Information Management System contractor to obtain a telecommunications link to the Texas Information Management System Vehicle Identification Database (VID) for each vehicle exhaust gas analyzer to be used to inspect vehicles as described in the Revised Texas I/M SIP.

(G) All public certified emissions inspection stations in affected counties, excluding El Paso County shall offer both the ASM-2 test and the OBD test. Certified emissions inspection stations in these affected counties desiring to offer OBD-only emission testing to the public must request a waiver as low volume emissions inspection station from the department Regional Supervisor. All public certified emissions inspection stations in El Paso County shall offer the TSI test. Effective January 1, 2002, all public certified emissions inspection stations in El Paso County shall offer both and the OBD and TSI test.

(2) Failure to comply with these rules may result the in denial, suspension or revocation of an inspection station's certificate of appointment, pursuant to Texas Transportation Code, §548.405, or in a fine, pursuant to Texas Transportation Code, §542.301, in an amount not to exceed that set out in Texas Transportation Code, §542.401.

(k) Certified emissions inspector requirements.

- (1) To qualify as a certified inspector, an individual must:
- (A) be licensed by the department as an official vehicle inspector;
 - (B) must complete the training required for the Vehicle Emissions Inspection Program and receive the department's current approved inspector's certificate for such training;
 - (C) must comply with the DPS Rules and Regulations Manual for Official Vehicle Inspection Stations and Certified Inspectors and other applicable rules and regulations of the department; and
 - (D) complete all applicable forms and reports as required by the department.

(2) Failure to comply with these rules may result in the denial, suspension or revocation of a certified inspector's certificate, pursuant to Texas Transportation Code, §548.405, or in a fine, pursuant to Texas Transportation Code, §542.301, in an amount not to exceed that set out in Texas Transportation Code, §542.401.

(l) Inspection and Maintenance Emissions Testing Fees. The fees for emissions testing will be set by the TNRCC. The fee for an emissions test shall provide for one free re-test for each failed initial emissions inspection, provided that the motorist has the re-test performed at the same inspection station where the vehicle originally failed and the re-test is conducted within 15 calendar days of the initial emissions test, not including the date of the initial emissions test.

(m) Audits.

(1) The department is authorized to perform covert and overt audits pertaining to the emissions testing program.

(2) The department may authorize enforcement personnel or other individuals to remove, disconnect, adjust, or make inoperable vehicle emissions control equipment, devices, or systems and to operate a vehicle in the tampered condition in order to perform a quality control audit of an inspection station or other quality control activities as necessary to assess and ensure the effectiveness of the vehicle emissions inspection and maintenance program.

(n) Authority to publish manuals. The Public Safety Commission authorizes the director of the Department of Public Safety to promulgate, publish and distribute necessary manuals of instruction and procedure for the implementation of the emissions I/M testing program in a manner not inconsistent with these rules. The department adopts by reference the VEHICLE EMISSIONS INSPECTION AND MAINTENANCE RULES AND REGULATIONS MANUAL FOR OFFICIAL VEHICLE INSPECTION STATIONS AND CERTIFIED INSPECTORS as the standard for conducting emissions inspections in designated counties. Any violation of these rules and regulations may result in the suspension or revocation of the certificate of appointment of the vehicle inspection station or certificate of the certified inspector. Such manual(s) shall be available for public inspection at reasonable times at offices of the department as designated by the director.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 21, 2001.

TRD-200108217

Thomas A. Davis, Jr.
 Director
 Texas Department of Public Safety
 Effective date: January 10, 2002
 Proposal publication date: November 2, 2001
 For further information, please call: (512) 424-2135

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~~PART 12. TEXAS MILITARY FACILITIES COMMISSION~~

~~CHAPTER 377. PREVAILING WAGE RATE DETERMINATION~~

~~The Texas Military Facilities Commission (Commission) adopts an amendment to §377.1, relating to Prevailing Wage Rates and the repeal of §§377.2-377.4, relating to Data Gathering Procedures, Ascertain Prevailing Wage Rates, and Use of Determinations, without changes to the proposed text as published in the July 13, 2001 issue of the Texas Register (26 TexReg 5226) and will not be republished.~~

~~The amendment and repeals are adopted to conform the Commission's prevailing wage rate determinations and procedures with the requirements of Government Code, Chapter 2258. Amended §377.1 is also adopted to give the Commission the flexibility to base prevailing wage rate determinations on Commission surveys, under certain circumstances.~~

~~No comments were received regarding adoption of the rules.~~

~~37 TAC §377.1~~

~~The amendment is adopted under the Government Code, §435.011 and Chapter 2258. The Commission interprets §435.011 as vesting in it the authority to promulgate rules. The Commission interprets Chapter 2258 as authorizing it to conduct its own wage surveys under certain circumstances and to provide that the Commission will not be a party to any binding arbitration as required by the Chapter.~~

~~This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.~~

~~Filed with the Office of the Secretary of State on December 21, 2001.~~

~~TRD-200108214~~

~~John A. Wells~~

~~Executive Director~~

~~Texas Military Facilities Commission~~

~~Effective date: January 20, 2002~~

~~Proposal publication date: July 13, 2001~~

~~For further information, please call: (512) 406-6907~~

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~~37 TAC §§377.2 - 377.4~~

~~The repeals are adopted under the Government Code, §435.011 and Chapter 2258. The Commission interprets §435.011 as vesting in it the authority to promulgate rules. The Commission interprets Chapter 2258 as authorizing it to conduct its own wage surveys under certain circumstances and to provide that~~