

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Proposed Rulemaking

AGENDA REQUESTED: July 6, 2016

DATE OF REQUEST: June 17, 2016

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Derek Baxter, (512) 239-2613

CAPTION: Docket No. 2015-1820-RUL. Consideration for publication of, and hearing on, proposed amended Sections 114.100 and 114.305, and repealed Subchapter F, Division 2, Sections 114.211 - 114.217 and 114.219 of 30 TAC Chapter 114, Control of Air Pollution from Motor Vehicles, and corresponding revisions to the state implementation plan.

The proposed rulemaking would remove the Voluntary Accelerated Vehicle Retirement program regulations; update references to obsolete test methods; and make other non-substantive clarifying changes as needed for accuracy and consistency. (Michael Regan, Sierra Redding) (Rule Project No. 2016-010-114-AI)

Steve Hagle, P.E.
Deputy Director

Joyce Nelson for David Brymer
Division Director

Derek Baxter
Agenda Coordinator

Copy to CCC Secretary? NO YES X

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** June 17, 2016

Thru: Bridget C. Bohac, Chief Clerk
Richard A. Hyde, P.E., Executive Director

From: Steve Hagle, P.E., Deputy Director
Office of Air

Docket No.: 2015-1820-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 114, Control of Air Pollution from Motor Vehicles
Chapter 114 Clean-up and Repeal of the VAVR Program
Rule Project No. 2016-010-114-AI

Background and reason(s) for the rulemaking:

The current state regulations for the Voluntary Accelerated Vehicle Retirement (VAVR) program, as specified under the Chapter 114 vehicle scrappage program rules in §§114.211 - 114.217 and 114.219, were adopted by the commission on April 19, 2000, at the request of stakeholders in the Dallas-Fort Worth (DFW) ozone nonattainment area as an air pollution control strategy to reduce nitrogen oxides and other emissions to assist in achieving attainment of the National Ambient Air Quality Standard for the 1990 one-hour ozone standard. The adopted VAVR program regulations and accompanying state implementation plan (SIP) revision were the result of a coordinated development process involving the United States Environmental Protection Agency (EPA), the commission, local elected officials, citizens, industrial stakeholders, air quality researchers, and hired consultants. The VAVR program SIP revision was submitted to the EPA on April 28, 2000.

Subsequent to the adoption of the VAVR program, the Low-Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) was authorized by House Bill 2134, 77th Legislature, 2001. The LIRAP provides funds to participating counties to assist low-income individuals with repairs, retrofits, or retirement of vehicles that fail an emissions test or are at least 10 years old. The LIRAP has become a very successful program and has been implemented in 16 Texas counties. Due to the success of the LIRAP, the VAVR program never became a viable program in any region of the state including the DFW area that had originally requested it as an air pollution control strategy. The EPA has taken no action on the submitted VAVR program SIP revision but would need to schedule a review and action on this SIP revision consistent with the current focus on addressing the SIP revision backlog in EPA Region 6. The proposed repeal of the VAVR program would remove obsolete rules that provide no current benefit to the state and are no longer considered viable since the adoption and implementation of the LIRAP. If the VAVR program rules are adopted, the TCEQ would request to withdraw §§114.211 - 114.217 and 114.219 from the EPA's consideration as a SIP revision. No SIP credits were taken using the VAVR program.

The proposed rulemaking would also make minor revisions to certain test method requirements in §114.100 and §114.305 to insure that the latest appropriate American Society for Testing and Materials (ASTM) method is referenced. The current state regulations for the approved test method for the oxygen requirements for gasoline in

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§114.100 requires the use of ASTM D4815. The current state regulations for the approved test method to determine compliance with the Chapter 114 Reid vapor pressure (RVP) control requirements in §114.301 as specified in §114.305 require the use of the American Society for Testing and Materials (ASTM) Test Method D5191-99 (Standard Test Method for Vapor Pressure of Petroleum Products (Mini Method)), which is the version of the ASTM test method approved by the ASTM in 1999 but is now obsolete. The most current version of the ASTM D5191 test method was approved by the ASTM in 2013. The executive director has previously approved requests from regulated entities for minor modifications to this test method, as permitted under §114.305(b), to allow the use of the newer version of this test method for consistency with the industry's current testing practices. The proposed amendments to §114.100 and §114.305 would require regulated entities to use the most current, or "active," version of the applicable ASTM methods.

In addition, the proposed amendments to Chapter 114 would make non-substantive changes in §114.100 and §114.305 to conform to Texas Register formatting and style requirements and to address outdated or obsolete citation references as needed to provide clarity and consistency. If adopted, the revisions to §114.100 and §114.305 will be submitted to the EPA as a SIP revision.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

The proposed rulemaking would repeal Chapter 114, Control of Air Pollution from Motor Vehicles, Subchapter F, Vehicle Retirement and Mobile Emission Reduction Credits, Division 2, Vehicle Scrappage Program, §§114.211 - 114.217 and 114.219 to remove the VAVR program regulations; withdraw the VAVR program SIP revision submitted in April 2000 from consideration by the EPA; amend Subchapter D, Oxygen Requirements for Gasoline, §114.100 to replace the obsolete reference to "Texas Natural Resource Conservation Commission (commission)" with "executive director" in subsection (b) and to specify the "active version" of the ASTM Test Method D4815 referenced in subsection (e)(2) for clarity and consistency with the current rules; and amend Subchapter H, Low Emission Fuels, Division 1, Gasoline Volatility, §114.305 to specify that compliance with the RVP limits in §114.301 must be determined by applying the appropriate test methods and procedures specified in the active version of the ASTM Test Method D5191 (Standard Test Method for Vapor Pressure of Petroleum Products (Mini Method)) for consistency with the current rules and to lessen obsolescence due to future revisions to the testing method.

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

None.

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

None.

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Statutory authority:

The amendments and repeal are proposed under Texas Water Code (TWC), §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC. The amendments and repeal are also proposed under Texas Health and Safety Code (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 the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; and THSC, §382.202, concerning Vehicle Emissions Inspection and Maintenance Program, which authorizes the commission to establish vehicle fuel content standards after January 1, 2004, as long as distribution of low emission diesel as described in the SIP is not required prior to February 1, 2005.

The amendments and repeal implement THSC, §§382.002, 382.011, 382.012, 382.017, and 382.202.

Effect on the:

A.) Regulated community:

The proposed rulemaking to repeal the VAVR program would have no impact on the regulated community. The VAVR program never became a viable program in any region of the state.

The proposed rulemaking to amend §114.305 would have a beneficial effect on the regulated gasoline producers and importers since it would remove the current need for requesting the executive director for approval of minor modifications to the approved test method, which is obsolete, in order to allow the use of the current active version of this test method.

The proposed rule revisions to amend §114.100 would have no impact on the regulated community.

B.) Public:

The proposed rulemaking to repeal the VAVR program would have no impact on the public. The VAVR program never became a viable program in any region of the state and provides no current benefit to the public since the adoption and implementation of the LIRAP.

The proposed rulemaking to amend §114.100 and §114.305 would have no impact on the public.

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C.) Agency programs:

This proposed rulemaking would remove the current need for the executive director to approve minor modifications to obsolete versions of this standard test method, such as the ASTM Test Method D5191-99 that is currently referenced as the approved test method.

Stakeholder meetings:

No stakeholder meetings were held; however, a public hearing is scheduled for this rulemaking on August 18, 2016, in Austin.

Potential controversial concerns and legislative interest:

Councils of Government were contacted regarding the repeal of the VAVR program and no objections were received.

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

This proposed rulemaking will have no significant effect on any current policy nor will it require any new policies to be developed.

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

If this proposal does not move forward, the SIP revision submitted to the EPA for the VAVR program in April 2000 will remain subject to a pending EPA review and any future requests from regulated entities to use the current active version of the ASTM Test Method D-5191 or future versions of this test method will continue to need executive director approval.

Key points in the proposal rulemaking schedule:

Anticipated proposal date: July 6, 2016

Anticipated Texas Register publication date: July 22, 2016

Anticipated public hearing date: August 18, 2016

Anticipated public comment period: July 22, 2016 - August 22, 2016

Anticipated adoption date: December 7, 2016

Agency contacts:

Michael Regan, Rule Project Manager, Air Quality Division, (512) 239-2988

Sierra Redding, Staff Attorney, (512) 239-2496

Derek Baxter, Texas Register Coordinator, (512) 239-2613

Attachments:

None.

Commissioners

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Re: Docket No. 2015-1820-RUL

cc: Chief Clerk, 2 copies
Executive Director's Office
Marshall Coover
Erin Chancellor
Stephen Tatum
Jim Rizk
Office of General Counsel
Michael Regan
Derek Baxter

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §114.100 and §114.305; and the repeal of §§114.211 - 114.217 and 114.219.

If adopted, the revisions to §114.100 and §114.305 would be submitted to the United States Environmental Protection Agency (EPA) as revisions to the State Implementation Plan (SIP). If the repeal of §§114.211 - 114.217 and 114.219 is adopted, the TCEQ would request to withdraw these rules from the EPA's consideration as a SIP revision.

Background and Summary of the Factual Basis for the Proposed Rules

The current state regulations for the Voluntary Accelerated Vehicle Retirement (VAVR) program, as specified in Chapter 114 Vehicle Scrappage Program rules, §§114.211 - 114.217 and 114.219, Subchapter F, Division 2 were adopted by the commission on April 19, 2000, at the request of stakeholders in the Dallas-Fort Worth (DFW) ozone nonattainment area as an air pollution control strategy to reduce nitrogen oxides (NO_x) and other emissions to assist in achieving attainment of the National Ambient Air Quality Standard for the 1990 one-hour ozone standard. The adopted VAVR program regulations and accompanying SIP revision were the result of a coordinated development process involving the EPA, the commission, local elected officials, citizens, industrial stakeholders, air quality researchers, and hired consultants. The SIP revision, which incorporated the VAVR program rules, was submitted to the EPA on April 28, 2000. Subsequent to the adoption of the VAVR program, the Low-Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) was authorized

by House Bill 2134, 77th Texas Legislature, 2001. The LIRAP provides funds to participating counties to assist low-income individuals with repairs, retrofits, or retirement of vehicles that fail an emissions test or are at least 10 years old. The LIRAP has been successfully implemented in 16 Texas counties. Due to the success of the LIRAP, the VAVR program never became a viable program in any region of the state including the DFW area that had originally requested it as an air pollution control strategy. The EPA has taken no action on the submitted SIP revision that incorporated these rules. The proposed repeal of the VAVR program would remove obsolete rules that provide no current benefit to the state and are no longer necessary since the adoption and implementation of the LIRAP.

The proposed amendments would also make minor revisions to certain test method requirements in §114.100 and §114.305. The current state regulations for the approved test method for the oxygen requirements for gasoline in §114.100 requires the use of American Society for Testing and Materials (ASTM) D4815. The proposed amendments to §114.100 would require regulated entities to use the most current, or "active," version of the ASTM and prevent the use of obsolete versions of this test standard. The current state regulations for the approved test method to determine compliance with the Chapter 114 Reid vapor pressure (RVP) control requirements in §114.301 as specified in §114.305 require the use of the ASTM Test Method D5191-99 (Standard Test Method for Vapor Pressure of Petroleum Products (Mini Method)), which is the version of the ASTM test method approved by the ASTM in 1999 but is now obsolete. The most current version of the ASTM D5191 test method was approved by the ASTM in 2013. The executive director

has previously approved requests from regulated entities for minor modifications to this test method, as permitted under §114.305(b), to allow the use of the newer version of this test method for consistency with the industry's current testing practices. The proposed amendment to §114.305 would require regulated entities to use the most current, or "active," version of the ASTM D5191 Test Method for determining compliance with the RVP standards specified in §114.301. This proposed action would remove the current need for the executive director to approve minor modifications to obsolete versions of this standard test method, such as the ASTM Test Method D5191-99 that is currently referenced as the approved test method.

Section by Section Discussion

To conform to TCEQ and *Texas Register* formatting requirements, non-substantive revisions would be made throughout the proposed amendments to correct citations, acronym usage, and other minor issues.

Subchapter D: Oxygen Requirements for Gasoline

§114.100, Oxygenated Fuels

The commission proposes to amend §114.100 to replace the obsolete reference to "Texas Natural Resource Conservation Commission" and "commission" with "executive director" in subsections (b), (c), and (d), and to specify the "active version" of the ASTM Test Method D4815 referenced in subsection (e)(2) for clarity and consistency with the current rules.

Subchapter F: Vehicle Retirement and Mobile Emission Reduction Credits

Division 2: Vehicle Scrappage Program

The commission proposes the repeal of Chapter 114, Subchapter F, Division 2, §§114.211 - 114.217 and 114.219, to remove the VAVR program regulations. The VAVR program is an obsolete program that provides no current benefit to the state and is no longer considered viable since the adoption and implementation of the LIRAP.

Subchapter H: Low Emission Fuels

Division 1: Gasoline Volatility

§114.305, Approved Test Methods

The commission proposes to amend §114.305 to specify that compliance with the RVP limits in §114.301 must be determined by the active version of the ASTM Test Method D5191 (Standard Test Method for Vapor Pressure of Petroleum Products (Mini Method)) for consistency with the current rules and to lessen obsolescence due to future revisions to the testing method.

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Technical Lead Analyst in the Chief Financial Officer's Division, has determined that for the first five-year period the proposed rulemaking is in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules.

The proposed rulemaking would repeal the VAVR program. The proposed rulemaking

would also require regulated entities to use the most current ASTM test method when determining compliance and would make non-substantive changes to address outdated or obsolete citation references as needed to provide clarity and consistency.

The proposed repeal of the VAVR program would remove rules that have become obsolete since the adoption and implementation of the LIRAP was authorized in 2001. There are no fees associated with the VAVR rules, and there were no program expenditures since the program was never implemented by the agency or any local jurisdiction. Therefore, no cost savings are anticipated due to the proposed repeal.

The ASTM test method specified in current §114.305 is obsolete. The proposed rulemaking would require the most current ASTM test method. The most current version of the ASTM test method was approved in 2013. Because this test method is already in common use, no fiscal implications are anticipated due to the addition of the test method in the rule.

The proposed amendment to §114.100 would make non-substantive changes to address outdated citation references as needed to provide clarity and consistency. These proposed changes are not expected to have any fiscal implications for units of state or local government.

Public Benefits and Costs

Mr. Horvath has also determined that for each year of the first five years the proposed

rulemaking is in effect, the public is anticipated to benefit from clear and current rules for agency programs related to the control of air pollution from motor vehicles.

The proposed rulemaking is not anticipated to result in fiscal implications for businesses or individuals. The proposed repeal of the VAVR program would remove obsolete rules that provide no current benefit and are no longer necessary since the adoption and implementation of the LIRAP. Businesses and individuals would not be affected by the repeal of the program since it has never been implemented.

The proposed amendments would require regulated entities to use the most current ASTM test method when determining compliance. Because this test method is already in common use, no fiscal implications are anticipated for businesses or individuals.

The proposed amendments would also make non-substantive changes to address outdated citation references and these proposed changes are not expected to have any effect on businesses or individuals.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect for small or micro-businesses. The rulemaking does not propose additional or new requirements or expand or delete the coverage of current requirements.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rulemaking is necessary under federal law and does not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Local Employment Impact Statement

The commission has 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 rules are in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed this proposed rulemaking in light of the Regulatory Impact Analysis requirements of Texas Government Code, §2001.0225, and determined that this proposed rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule." 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, this 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 Texas Government Code, §2001.0225(a).

Texas Government Code, §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. This rulemaking proposes to repeal the VAVR program and to make minor revisions to §§114.100 and 114.305. The proposed revision to §114.305 would require regulated entities to use the most current, or "active," version of the ASTM D5191 Test Method for determining compliance with the RVP standards specified in §114.301. Neither of these proposed changes exceed a standard set by federal law. In addition, these proposed changes do not exceed an express requirement of state law and are not proposed solely under the general powers of the agency, but are specifically authorized by the provisions cited in the Statutory Authority section of this preamble. Finally, these changes do not exceed a requirement of a delegation agreement or contract to implement a state and federal program.

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

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007 is applicable. The specific intent of this proposed rulemaking is to repeal the VAVR program in addition to making minor changes to require regulated entities to use the most current, or "active," version of the ASTM D5191 Test Method for determining compliance with the RVP standards specified in §114.301. Nevertheless, the commission further evaluated the proposed rulemaking and performed an assessment of whether this proposed rulemaking constitutes a "taking" under Texas Government Code, Chapter 2007. Promulgation and enforcement of this proposed rulemaking would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulations do not affect a landowner's rights in private real property because this rulemaking would not burden (constitutionally), nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations.

In addition, because the subject proposed regulations do not provide more stringent requirements, they do not burden, restrict, or limit an owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, this proposed rulemaking would not constitute 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 this rulemaking for consistency with the Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking is administrative in nature and will have no substantive effect on commission actions subject to the CMP 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.

Effect on Sites Subject to the Federal Operating Permits Program

This proposed rulemaking will not impact facilities with air emissions that have applicable (federal or state) requirements with the Federal Operating Permit (30 Texas Administrative Code Chapter 122).

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on August 18, 2016, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. 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.

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

Submittal of Comments

Written comments may be submitted to Derek Baxter, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at:

<http://www1.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2016-010-114-AI. The comment period closes on August 22, 2016. Copies of the proposed rulemaking can be obtained from the commission's website at *http://www.tceq.texas.gov/rules/propose_adopt.html*. For further information, please contact Michael Regan, Air Quality Division, at (512) 239-2988.

SUBCHAPTER D: OXYGEN REQUIREMENTS FOR GASOLINE

§114.100

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC. The amendment is also proposed under Texas Health and Safety Code (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 the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; and THSC, §382.202, concerning Vehicle Emissions Inspection and Maintenance Program, which authorizes the commission to establish vehicle fuel content standards after January 1, 2004, as long as distribution of low emission diesel as described in the State Implementation Plan is not required prior to February 1, 2005.

The amendment implements THSC, §§382.002, 382.011, 382.012, 382.017, and 382.202.

§114.100. Oxygenated Fuels.

(a) Beginning October 1, 1992, no person shall supply, sell, or dispense any gasoline for use as motor vehicle fuel in El Paso County during the period of October 1 through March 31 of each year, unless the gasoline has a minimum oxygen content of 2.7% by weight, except as allowed under subsection (g) of this section.

(b) No averaging, banking, or trading of oxygenate credits will be allowed until such time as a mechanism for the reporting and tracking of these credits is established by the executive director [Texas Natural Resource Conservation Commission (commission)].

(c) All gasoline storage, refining, and blending facilities; gasoline terminal and bulk plants; and gasoline transporters affected by this section shall be registered with the commission and the El Paso City-County Health District. The owner or operator of each affected facility shall provide the following information to the executive director [commission] and shall update this information, as necessary, by September 1st [1] of each year:

(1) company name, mailing address, local street address, and telephone number;

(2) name and title of the company's chief executive officer and a local contact;

(3) type of facility;

(4) commission account numbers, if applicable; and

(5) description of the affected operation.

(d) All facilities affected by this section shall maintain complete and accurate records for at least two years and shall make such records available to representatives of the executive director [commission], United States Environmental Protection Agency (EPA) [EPA], or local air pollution agency having jurisdiction in the area upon request. The information in the records shall include, but shall not be limited to, the following:

(1) for refiners/importers of oxygenated gasoline:

(A) copies of all results of tests for oxygen content performed on batches of gasoline prior to transfer. For purposes of this rule, a batch of gasoline is considered any quantity greater than one gallon;

(B) copies of all bills of lading or transfer documents for each batch;

and

(C) documents stating whether or not shipments of gasoline to any facility in a control area for use during a control period were oxygenated or non-oxygenated and stating oxygen content by weight of the gasoline, type of oxygenate used, and oxygenate content by volume.

(2) for blenders, gasoline terminals, and bulk plants:

(A) copies of all results of tests for oxygen content performed on batches of gasoline prior to transfer, or records of automated blending operations;

(B) copies of all documents stating the quantity and oxygen content of the gasoline received and the type of oxygenate received by the facility; and

(C) copies of all documents stating the quantity of gasoline shipped, whether gasoline shipments from the facility were oxygenated or non-oxygenated, and the type of oxygenate used.

(3) for gasoline transporters:

(A) copies of all documents stating the quantity of gasoline received by the transporter, whether the gasoline is oxygenated or non-oxygenated, and the type of oxygenate used; and

(B) copies of all bills of lading or transfer documents for each batch.

(4) for retailer and wholesale purchaser-consumer:

(A) copies of all documents stating the quantity of gasoline received by the facility, whether the gasoline is oxygenated or non-oxygenated, and the type of oxygenate used; and

(B) copies of all bills of lading or transfer documents for each batch.

(e) The oxygen content of gasoline at facilities affected by this section shall be determined by the following test methods:

(1) gasoline sampling methodology described in 40 Code of Federal Regulations [CFR], Part 80, Appendix D;

(2) the active version of American Society for Testing and Materials Test Method D4815 for the control periods beginning in 1992 and thereafter;

(3) EPA Oxygenate Flame Ionization Detector Test Method; or

(4) other test methods approved by EPA beginning in 1995 and thereafter.

(f) Each gasoline pump at a retail outlet from which oxygenated gasoline is dispensed shall display a legible and conspicuous label on which either the statement in paragraph (1) or [the statement] in paragraph (2) of this subsection is printed in 36-point bold type in a color contrasting with the intended background. This label shall be placed so it is clearly legible from each side of the pump from which fuel can be dispensed.

(1) A label on which the following statement is printed shall be displayed only during the period of October 1 through March 31: "The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles."

(2) A label on which the following statement is printed shall be displayed during the period of October 1 through March 31 and may be displayed at any other time up to year-round: "From October 1 through March 31, the gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles."

(g) The sale or distribution of non-oxygenated gasoline in a control area during the control period shall be allowed only under the following conditions:

(1) such gasoline is segregated from oxygenated gasoline;

(2) the documents which accompany such gasoline are clearly marked as "non-oxygenated gasoline, not for sale to ultimate consumers in a control area," and shall accompany the gasoline at all times;

(3) the product is clearly labeled as "blendstock," "export," "storage," or a similar statement to prohibit improper distribution; and

(4) the non-oxygenated gasoline is in fact not sold or dispensed to ultimate consumers during the control period in the control area.

[SUBCHAPTER F: VEHICLE RETIREMENT AND MOBILE EMISSION REDUCTION

CREDITS]

[DIVISION 2: VEHICLE SCRAPPAGE PROGRAM]

[§§114.211 - 114.217, 114.219]

Statutory Authority

The repealed sections are proposed under Texas Water Code (TWC), §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC. The repeal is also proposed under Texas Health and Safety Code (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 the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; and THSC, §382.202, concerning Vehicle Emissions Inspection and Maintenance Program, which authorizes the commission to establish vehicle fuel content standards after January 1, 2004, as long as distribution of low emission diesel as described in the State Implementation Plan is not required prior to February 1, 2005.

The proposed repeal implements THSC, §§382.002, 382.011, 382.012, 382.017, and 382.202.

[§114.211. Purpose.]

[The provisions of this rule provide the minimum criteria which local agencies must use to establish a voluntary accelerated vehicle retirement (VAVR) program for on-road motor vehicles, including passenger cars and light-duty trucks, that could be used as a control measure for the nonattainment area state implementation plan. The VAVR rules provide for a voluntary program that local areas may choose to implement.]

[§114.212. Enterprise Operator Responsibilities.]

[(a) Each participating enterprise operator shall have the responsibility, with commission oversight, to administer and audit the voluntary accelerated vehicle retirement (VAVR) program enterprises conducted within its jurisdiction to meet the requirements of §§114.211-114.217 of this title (relating to Purpose; Enterprise Operator Responsibilities; Vehicle Eligibility; Advertising; State Implementation Plan (SIP) Credits for the Voluntary Accelerated Vehicle Retirement Program; Records, Auditing, and Enforcement; and Credit Calculations).]

[(b) Each participating enterprise operator shall administer and monitor the use of credits generated under these regulations for SIP credit, and shall, with commission oversight, certify or reject the accuracy and validity of any credits generated, as required.]

Each enterprise operator shall administer the program in accordance with all state, federal, and local laws, rules, and regulations.]

[(c) Each participating enterprise operator shall retain the records received according to §114.216(a)(1) of this title for a period not less than the life of the related credits, or three years, whichever is longer.]

[(d) Enterprise operators may adopt requirements that are more stringent than those specified in §§114.211 - 114.217 of this title. The enterprise operators may add additional tests or adopt a more stringent version of specific tests; however, they may not omit or weaken any of the required functional or equipment tests.]

[§114.213. Vehicle Eligibility.]

[(a) On-road vehicles are eligible for generation of state implementation plan (SIP) credit within the voluntary accelerated vehicle retirement (VAVR) program if these vehicles meet the following criteria.]

[(1) The vehicle must be registered with the Texas Department of Transportation (TxDOT) for at least the past immediate 12 consecutive months to an address within a participating county in which the VAVR program is being operated.]

[(2) Determination of an individual vehicle registration history shall be based on:]

[(A) registration data for that vehicle obtained from TxDOT records;
or]

[(B) if subparagraph (A) of this paragraph provides inconclusive results for an individual vehicle, then copies of the applicable vehicle registration certificates.]

[(3) If a vehicle has been impounded by a law enforcement agency which approves of the recycling, the vehicle may be eligible for the VAVR program without meeting the requirements in subsections (a) and (c) of this section.]

[(b) Each vehicle must pass a functional and equipment eligibility inspection performed by an enterprise operator or designee. The following elements must be included in the inspection.]

[(1) The candidate vehicle must have been driven to the inspection site under its own power. If an enterprise operator or its designee has knowledge that a vehicle was towed or pushed for any portion of the trip to the inspection site, then the enterprise operator or its designee shall not approve the vehicle for eligibility in a VAVR program.]

[(2) The enterprise operator or its designee must inspect the vehicle to ensure it meets the following requirements and shall reject the vehicle for SIP credit generation if the vehicle fails to meet any of the following requirements.]

[(A) All doors shall be present and, at a minimum, one door per passenger compartment (i.e. front seat and back seat) shall be operable. Doors shall be deemed operable if they can open and remain closed without the use of ropes, wire, tape, or any other add-on device or material that was not part of the original design of the vehicle.]

[(B) The trunk lid shall remain closed utilizing a functional latching mechanism.]

[(C) The hood (metal cover providing access to the engine) shall open and shall remain closed utilizing a functional latching mechanism.]

[(D) The windshield and rear window shall be present.]

[(E) Interior pedals (flat surface attached to a lever controlling the brake, clutch, and accelerator) shall be present.]

[(F) The vehicle shall contain bumpers, fenders, exhaust system, and side and quarter panels as originally supplied by the manufacturer or aftermarket part

equivalent, and they should not be damaged to the extent that the operability of the vehicle is impaired.]

[(G) Headlights, taillights, turn signal lights, and brake lights shall be present and operational. Burned out light bulbs shall not result in a failure of this requirement provided that the operability of the above lighting systems can be verified.]

[(H) There should be no obvious indications that the vehicle is not operated on a routine basis for extended periods of time.]

[(3) The enterprise operator or designee shall complete the following functional inspection, and shall reject the vehicle for SIP credit generation if the vehicle fails to complete any of the following requirements. Prior to implementing the functional inspection, the vehicle engine shall be turned off.]

[(A) The vehicle engine must start using keyed ignition system. In addition to the keyed ignition switch, an ignition or fuel kill switch may be activated if required to start engine.]

[(B) The vehicle must idle without the use of the accelerator pedal for a minimum of ten seconds.]

[(C) For vehicles with automatic transmissions, the transmission must be shifted into forward gear with brake pedal applied. The vehicle engine shall remain operating without use of the accelerator pedal for a minimum of ten seconds.]

[D] The vehicle shall be driven forward and in reverse for a minimum of 25 feet each direction under its own power.]

[E] Under its own power, the vehicle shall be driven forward for a minimum of 100 feet beginning at zero miles per hour, and the vehicle shall be completely stopped at the end of this test using the vehicle braking system. The vehicle shall travel the first 60 feet of this test within 5.5 seconds. After 100 feet have been traveled, the vehicle shall turn around and return to its point of origin.]

[(4) The enterprise operator or designee must reject the vehicle for SIP credit if any of the following occurs during implementation of the functional tests specified in paragraphs (2) and (3) of this subsection:]

[A] the engine repeatedly shuts down subsequent to keyed ignition start;]

[B] the engine emits excessive whining, grinding, clanking, squealing, knocking noises, or noises from engine backfire; or]

[C] the brake pedal drops to the floor when the inspector or designee attempts to stop the vehicle.]

[(5) Upon satisfactory completion of the functional inspection, the enterprise operator or designee will complete a certificate of functional and equipment eligibility stating the vehicle is eligible for the VAVR program.]

[(6) Vehicles that do not meet the functional and equipment eligibility criteria of this section, as determined by the enterprise operator or designee, will not be eligible and cannot be retired to generate SIP credit through a VAVR enterprise.]

[(c) At time of final sale of a vehicle, the enterprise operator or designee shall verify that the person delivering the vehicle for sale is the legal owner, or a legal representative of the legal owner, properly empowered to complete the sale.]

[(d) A vehicle purchased as part of a VAVR program and whose accelerated retirement creates emission reductions that are to be used as the basis for generating SIP credits, shall be permanently destroyed by the enterprise operator, or the enterprise operator's contracted dismantler, within 60 days of the date it is sold to the enterprise operator. The vehicle may not be resold to the public or put into operation in any way, except such a vehicle may be briefly operated for purposes related to the disposal of the vehicle as part of normal disposal procedures.]

[(e) For purposes of this section, the vehicle will be considered destroyed when it has been crushed, shredded, or otherwise rendered permanently and irreversibly incapable of functioning as originally intended, and when all appropriate records

maintained by the Department of Public Safety and TxDOT have been updated to reflect that the vehicle has been acquired by a licensed auto dismantler for the purposes of dismantling.]

[f) The following guidelines apply to any retired vehicle for the purpose of generating SIP credit.]

[(1) Tires and batteries may be sold to an intermediary tire/battery recycler only. All facilities generating or receiving waste tires must use the services of a registered tire hauler/recycler. Battery recyclers must be registered and licensed to handle batteries.]

[(2) All parts may be recycled or sold with the following exceptions:]

[(A) the exhaust system, including the catalytic converter, tailpipe, muffler, exhaust inlet pipe, vapor storage canister, vapor liquid separator, and resonator. All of these items must be destroyed. The catalytic converter can be recycled for precious metals, but cannot be reused; and]

[(B) the engine with all components attached. The cylinder block and other engine components can be recycled only if the components are removed and recycled individually.]

[(g) All vehicles from which emission reduction credits are to be generated must be confined in a holding area separate from other vehicles procured by the enterprise operator or its designee until they are permanently destroyed or dismantled.]

[(h) All activities associated with retiring vehicles including, but not limited to, the disposal of vehicle fluids and vehicle components, shall comply with local water conservation regulations; state, county, and city energy and hazardous materials response regulations; and local water agency soil, surface, and ground water contamination regulations.]

[§114.214. Advertising.]

[(a) Any advertising conducted by an enterprise operator for the purpose of recruiting vehicle owners to sell their cars into the voluntary accelerated vehicle retirement (VAVR) program shall include the following disclaimer statement conspicuously located: "This voluntary accelerated vehicle retirement program is conducted by {name of agency}. It is not operated by the State of Texas. State funds are not used for the purchase of vehicles. The resulting emission reductions will be used by the local air pollution agency to assist in meeting air quality goals within your area. Your participation is entirely voluntary."]

[(b) This disclaimer statement shall also be prominently displayed in any contracts or agreements between a vehicle seller and an enterprise operator or designee relating to the sale of a vehicle into the VAVR program.]

§114.215. State Implementation Plan (SIP) Credit for the Voluntary Accelerated Vehicle Retirement Program.]

[(a) SIP credit can be generated for reductions of emissions of oxides of nitrogen and volatile organic compounds, as provided in this section. The magnitude of the credit for each of these pollutants must be based on mobile emission reduction benefits as calculated using the methods outlined in §114.217 of this title (relating to Credit Calculations).]

[(b) Credit use must be in accordance with all federal, state, and local laws and regulations in effect at time of usage.]

§114.216. Records, Auditing, and Enforcement.]

[The following requirements for records, auditing, and enforcement shall be met by the enterprise operator.]

[(1) An enterprise operator must transmit the following information to the commission in an annual report at the end of each calendar year. The annual report must

include each vehicle removed from operation for the purpose of the voluntary accelerated vehicle retirement (VAVR) program. The report shall include the following information for each vehicle:]

[(A) vehicle identification number (VIN);]

[(B) vehicle license plate number;]

[(C) vehicle model year;]

[(D) vehicle odometer reading;]

[(E) vehicle make and model;]

[(F) name, address, and phone number of legal owner selling vehicle to the enterprise operator for each vehicle;]

[(G) name, address, and phone number of registered owner if different from subparagraph (F) of this paragraph;]

[(H) name and business address of the enterprise operator or designee conducting the vehicle's eligibility inspection;]

[(I) date of purchase of vehicle by enterprise operator;]

[(J) date of vehicle retirement;]

[(K) the SIP credit amount calculated in accordance with §114.217 of this title (relating to Credit Calculations); and]

[(L) any other pertinent data requested by the commission.]

[(2) Upon request of the commission, the data contained in records required in paragraph (1)(A)-(L) of this subsection shall be transmitted to the state in paper copies or in an electronic database format, to be determined by mutual agreement between the state and the enterprise operator.]

[(3) The enterprise operator will maintain copies of the information listed in paragraph (1)(A) through (L) of this subsection for a minimum period of three years.]

[(4) The commission may conduct announced and unannounced audits and on-site inspections of VAVR enterprise program operations to ensure that they are being operated according to all applicable rules and regulations.]

[(5) Enterprise operators or designees and auto dismantlers shall allow the commission to conduct announced and unannounced audits and inspections, and shall cooperate fully in such situations.]

[(6) Upon notification by the commission that state implementation plan (SIP) credit miscalculations have been erroneously or fraudulently granted a higher credit amount for a particular vehicle or vehicles, the enterprise operator will make available additional credits to be used toward the SIP in the amount of the shortfall, prorated over the time period of the usage of the credit shortfall. The purpose of this paragraph is to provide immediate reductions equal to the excess emissions that have already occurred in the amount of the miscalculated mobile credits.]

[§114.217. Credit Calculations.]

[(a) State implementation plan credits for the voluntary accelerated vehicle retirement program must be determined using the following formula.]

[Figure: 30 TAC §114.217(a)]

[VMT = the annual vehicle miles traveled for the retired vehicle model year as estimated by the EPA MOBILE model.]

[ER1 = the emission rate of the vehicle being retired in grams per mile. This rate is determined by using one of the methods: 1) each participating vehicle is tested using an emissions analyzer that is capable of determining vehicle emissions in grams per mile (selected Texas Department of Public Safety vehicle inspection and maintenance waiver facilities have the capability to perform the required testing) or 2) using the most recent version of the EPA MOBILE model, estimate a three-year vehicle-emissions average for the model year of the vehicle being retired using the current calendar year plus the next two years.]

[ER2 = an average of the emission rates (in grams per mile) for the nonattainment area's fleet over the same three-year time period.]

[Three years is used to account for the presumed life of the credit.]

[454 g/lb is used to convert grams to pounds.]

[(b) Credit for a retired vehicle must be used within three years of the vehicle retirement.]

[§114.219. Affected Counties.]

[The provisions of §§114.211 - 114.217 of this title (relating to Purpose; Enterprise Operator Responsibilities; Vehicle Eligibility; Advertising; State Implementation Plan (SIP) Credits for the Voluntary Accelerated Vehicle Retirement Program; Records, Auditing, and Enforcement; and Credit Calculations) are applicable only to the counties associated with ozone nonattainment areas within the state, except for the Dallas/Fort Worth (DFW) nonattainment area where the provisions are applicable to specified counties in the DFW area. However, other areas of the state are not prohibited from starting their own scrappage programs and may use the criteria included in §§114.211 - 114.217 of this title to ensure that their programs are sufficient if they may be included in the SIP at a future date. These areas and affected counties include:]

[(1) Beaumont/Port Arthur which consists of Hardin, Jefferson, and Orange Counties;]

[(2) Dallas/Fort Worth area which consists of Collin, Dallas, Denton, Ellis, Kaufman, Johnson, Parker, Rockwall, and Tarrant Counties;]

[(3) El Paso which consists of El Paso County; and]

[(4) Houston/Galveston which consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties.]

SUBCHAPTER H: LOW EMISSION FUELS

DIVISION 1: GASOLINE VOLATILITY

§114.305

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC. The amendment is also proposed under Texas Health and Safety Code (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 the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; and THSC, §382.202, concerning Vehicle Emissions Inspection and Maintenance Program, which authorizes the commission to establish vehicle fuel content standards after January 1, 2004, as long as distribution of low emission diesel as described in the State Implementation Plan is not required prior to February 1, 2005.

The proposed amendment implements THSC, §§382.002, 382.011, 382.012, 382.017, and 382.202.

§114.305. Approved Test Methods.

(a) Compliance with the Reid vapor pressure (RVP) limitations of §114.301 of this title (relating to Control Requirements for Reid Vapor Pressure) must [shall] be determined by the active version of the American Society for Testing and Materials [(ASTM)] Test Method D5191 [D5191-99] (Standard Test Method for Vapor Pressure of Petroleum Products (Mini Method)) for the measurement of RVP using the following correlation correction equation to calculate RVP equivalent to that determined by test methods prescribed in [Title] 40 Code of Federal Regulations (CFR) Part 80, Appendix E, Method 3, dated March 17, 1993.

Figure: 30 TAC §114.305(a) (No change to the figure as it currently exists in the TAC)

(b) Minor modifications to these test methods may be used, if approved by the executive director.

(c) Test methods other than those specified in subsection (a) of this section, may be used if validated by 40 CFR Part 63, Appendix A, Test Method 301 (effective December 29, 1992). For the purposes of this subsection, substitute "executive director" each place that Test Method 301 references "administrator."