

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §114.1 (Definitions) and §114.4 (Mobile Emission Reduction Credit Definitions), new §114.211 (Purpose), §114.212 (Enterprise Operator Responsibilities), §114.213 (Vehicle Eligibility), §114.214 (Advertising), §114.215 (State Implementation Plan (SIP) Credits for the Voluntary Accelerated Vehicle Retirement Program), §114.216 (Records, Auditing, and Enforcement), §114.217 (Credit Calculations), and §114.219 (Affected Counties). The commission adopts these revisions and new sections in Chapter 114 (Control of Air Pollution from Motor Vehicles), Subchapter A (Definitions), Subchapter F (Mobile Emission Reduction Credits), and to the SIP, to add and revise rules concerning Voluntary Accelerated Vehicle Retirement (VAVR). Sections §§114.4, 114.211-114.217, and 114.219 are adopted with changes to the proposed text as published in the December 31, 1999 issue of the *Texas Register* (24 TexReg 11897). Section 114.1 is adopted without changes to the proposed text and will not be republished.

The VAVR may also be referred to as a vehicle scrappage program. The VAVR program is a voluntary program that local areas may choose to implement. The commission adopts these rules in order to provide local agencies with specific criteria to follow to help ensure emission reductions associated with VAVR programs qualify for SIP credit in order to meet the emission reduction requirements in areas which are nonattainment for the ozone national ambient air quality standard (NAAQS).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The Dallas/Fort Worth (DFW) ozone nonattainment area, an area defined by Collin, Dallas, Denton, and Tarrant Counties, was originally designated “moderate” under the Federal Clean Air Act (FCAA) Amendments of 1990 (42 United States Code (USC)) and thus was required to attain the one-hour NAAQS for ozone by November 15, 1996. As required by the FCAA, the state submitted an attainment demonstration plan in 1994 which projected attainment of the ozone NAAQS by 1996. This plan was based on a volatile organic compound (VOC) reduction strategy. DFW did not attain the ozone NAAQS in 1996. The United States Environmental Protection Agency (EPA) is authorized to redesignate an area to the next higher classification (“bump up”) if the area fails to attain by the required date. In March 1998, in accordance with 42 USC, §7511(b)(2), the EPA reclassified the DFW area from moderate to serious, based on monitored exceedances of the ozone NAAQS between 1994 and 1996. The reclassification required the state to submit a revised SIP that demonstrates that the ozone NAAQS will be met in DFW by November 15, 1999. Because the DFW area continued to exceed the ozone NAAQS in 1999, the EPA may bump up the area to the severe classification. Regardless, the EPA and 42 USC, §7410 and §7502(a)(2), require the state to submit a revised SIP which demonstrates that the area will attain the ozone NAAQS as expeditiously as practicable. The rules adopted for DFW in this notice are one element of the ozone attainment demonstration SIP for DFW being adopted concurrently in this issue of the *Texas Register*. The commission plans to submit this SIP to the EPA in April, 2000.

In 1996, the commission began to develop new modeling for the DFW area and now is using newer air quality models with improved meteorological and emission inputs. The newer modeling since 1996

shows that reductions of oxides of nitrogen (NO_x) in the DFW area and regionally will be necessary to attain the ozone NAAQS. The current modeling also shows that achieving the ozone NAAQS in the DFW area will require strenuous effort because the area's rapid growth has resulted in increasing amounts of emissions due to increased levels of activity in the area. The emissions from increased activity are offsetting the emission reductions being achieved from new emission standards applicable to the on-road and non-road engine source categories which dominate the emissions inventory in the DFW area.

The emission reduction requirements adopted as part of this SIP package are the outcome of a development process which involved the EPA, the commission, local elected officials, citizens, industrial stakeholders, air quality researchers, and hired consultants. Local officials from the DFW area have formally submitted a resolution to the commission requesting the inclusion of many specific emission reduction strategies, including the one contained in these rules.

The NO_x reductions required for the area to attain the ozone NAAQS have been estimated by extensive use of sophisticated air quality grid modeling which, because of its scientific and statutory grounding, is the chief policy tool for designing emission reductions. Title 42 USC, §7511a(c)(2), requires the use of photochemical grid modeling for ozone nonattainment areas designated serious, severe, or extreme.

The modeling has been conducted with input from a technical advisory committee. Hundreds of emission control strategies were considered in developing the modeling. Varying degrees of reductions from point sources and mobile sources were analyzed in at least forty modeling iterations, to test the effectiveness of different NO_x reductions. The attainment demonstration modeling submitted for public

hearing and comment concurrently with these rules shows that, in order for DFW to achieve the ozone NAAQS by 2007, almost all of the practicably achievable NO_x reductions are necessary from each emission source category, including reductions from counties surrounding the DFW nonattainment area. Therefore, each strategy, including the reductions required by this rulemaking, is crucial to meet federal requirements for the DFW nonattainment area.

The revisions are one element of the control strategy for the attainment demonstration SIPs for the ozone nonattainment areas. The purpose of these rules is to provide the basic criteria by which local agencies may voluntarily establish a VAVR, or a vehicle scrappage program, for on-road motor vehicles. This program could include passenger cars and light-duty trucks and could be used as a control measure for each nonattainment area SIP.

The North Texas Clean Air Steering Committee (steering committee) representing the DFW ozone nonattainment area counties requested an air pollution control strategy involving a voluntary accelerated vehicle retirement program to reduce NO_x and other emissions necessary for the counties in the DFW ozone nonattainment area to be able to demonstrate attainment with the ozone NAAQS.

Previously, the state had a vehicle scrappage rule which relied on the Vehicle Inspection/Maintenance (I/M) 240 emissions test for assessment of emission reductions from scrapped vehicles. The original rules were repealed on July 29, 1998. The adopted rules will use modeled averages from the EPA MOBILE model to calculate emission reductions per vehicle, or each participating vehicle can be tested using an emissions analyzer that is capable of determining vehicle emissions in grams per mile.

Selected Texas Department of Public Safety (DPS) vehicle inspection and maintenance waiver facilities will have the capability to perform the required testing using a loaded mode type test which can quantify the emissions in grams per mile.

As the VAVR program rules are not specifically required by the FCAA, (42 USC, §§7401 et seq.), there is no requirement for the commission to have rules regarding scrappage unless the program is necessary in order to demonstrate attainment with the NAAQS. The local areas may choose this program as a control strategy, and implementation of the program is dependent on the local areas.

However, the rules will provide local agencies with specific criteria to follow and help ensure emission reductions associated with VAVR programs qualify for SIP credit in meeting attainment demonstrations. While these rules will apply in all of the non-attainment areas of the state, other areas are not prohibited from starting their own scrappage programs and may use the criteria included in this rule to ensure that their program is sufficient, if it is to be included in the SIP at a future date.

In its effort to ensure that the SIP strategies impose no more burden than necessary to protect health and welfare, the commission has decided not to include the counties of Hunt, Hood, and Henderson as affected counties of these rules due to their limited impact on the air quality within the DFW nonattainment area. Due to the relatively low population, percentage of commuters, and growth rate of these counties, the commission has reevaluated the need for implementing these rules in these three counties. The reevaluation included new photochemical modeling runs which applied these rules in the nine remaining counties only. The results of these runs indicated a minor impact of including Hunt, Hood, and Henderson counties in these rules but also showed that the area could demonstrate attainment

of the NAAQS without those reductions in emissions. However, other control measures which were proposed for these counties do have measurable benefits for attainment of the NAAQS.

SECTION BY SECTION DISCUSSION

A new Division 2 to Subchapter F is adopted which will include the new VAVR rules proposed in §§114.211-114.217, and 114.219.

The revision to §114.1 updates the definition for mobile emission reduction credit to make it compatible with the new voluntary scrappage program.

The revisions to §114.4 change the title of the section to "Mobile Emission Reduction Credits Definitions," delete the definitions which pertain to the previous Accelerated Vehicle Retirement (or scrappage) program which was repealed by the commission on July 29, 1998, and add new definitions which pertain to the voluntary scrappage program adopted in this rulemaking. The deleted definitions include area wide fleet, dealer, high-emitting vehicle, mobile emission reduction credit, on testing cycle, recycling, replacement vehicle, scrappage sponsor, scrappage vehicle, scrapper, and stationary source. The added definitions include voluntary accelerated vehicle retirement, enterprise operator, dismantler, and designee.

The new §114.211 states the purpose of the VAVR program. The purpose of the rules is to provide the minimum criteria which local agencies must use to establish a voluntary scrappage program for on-road motor vehicles that could be used as a control measure for a nonattainment area SIP.

The new §114.212 establishes enterprise operator responsibilities to include: administering and auditing a VAVR program within their jurisdiction to meet the requirements of the rules, administering and monitoring the use of credits generated for SIP purposes under the rules, and certifying or rejecting the accuracy and validity of any credits generated. The enterprise operators also retain the records received as a result of the program, and may adopt requirements that are more stringent than those specified in these rules. They may add additional or more stringent versions of specific tests, but they may not weaken or omit any of the required functional tests. All responsibilities will be conducted under the oversight of the commission.

The new §114.213 states the minimum requirements for vehicles to be eligible for the program. The minimum requirements are that the vehicle must be registered with the Texas Department of Transportation (TxDOT) within the program area for the immediate past 12 consecutive months or be a vehicle impounded by a law enforcement agency, the vehicle must pass a functional and equipment eligibility inspection performed by the enterprise operator or designee, the person delivering the vehicle must be verified as the legal owner or legal representative of the owner, the vehicle must be destroyed within 60 days of being sold to the enterprise operator, and all corresponding records must be updated with the DPS and the TxDOT. For vehicles meeting the criteria, a certificate is issued indicating the vehicle is eligible for the program, the vehicle is acquired and placed in a holding area separate from other vehicles acquired by the enterprise operator, and permanently destroyed or dismantled. The new §114.213 also lists guidelines which apply to the recycling or sale of vehicle parts. All parts of the vehicle may be recycled or sold except the following items which must be destroyed: the exhaust system (including the catalytic converter), tailpipe, muffler, exhaust inlet pipe, vapor storage canister,

vapor liquid separator, and resonator. Finally, new §114.213 requires that all associated activities must comply with applicable water conservation regulations, energy and hazardous materials response regulations, and soil, surface, and ground water contamination regulations.

The new §114.214 requires that any advertising conducted by the enterprise operator must include a conspicuous disclaimer that states that the program is not operated by the State of Texas, state funds are not used for vehicle purchase, emission reduction credits will be used by the local air pollution agency to assist in meeting air quality goals within the area, and participation is voluntary.

The new §114.215 states that SIP credit may be generated for reductions of NO_x as well as VOC, the amount of the credits will be calculated using the methods outlined in §114.217, and credit use must be in accordance with all federal, state, and local laws and regulations in effect at time of usage. For the purposes of the VAVR program as described in this rule, all credits must be used towards a nonattainment area SIP. Therefore, all references to mobile emission reduction credits (MERC) in the rule have been removed.

The new §114.216 lists the requirements for recordkeeping, auditing, and enforcement on the part of the enterprise operators. The requirements include the submission of an annual report to the commission containing information regarding each vehicle removed from operation, the format of the annual report (paper copies or electronic database), and maintenance of the records for a period of three years. The new §114.216 also states that the commission may conduct announced and unannounced audits and on-site inspections of the enterprise operations and that an enterprise operator is liable to

make additional credits available toward the SIP in the case that the commission discovers that erroneous or fraudulent credits were granted by the enterprise operator.

The new §114.217 provides the method and calculation formulas to be used to calculate SIP credit and states that the credits generated must be used toward the local area's attainment goal within three years of vehicle retirement. The enterprise operators may determine individual vehicle emission credits using either modeled emission reduction estimates using the latest version of the EPA MOBILE model, or by testing the vehicle using an emissions test capable of determining emissions in grams per mile. Selected DPS inspection and maintenance referee facilities will have the capability to test individual vehicles.

The new §114.219 specifies the ozone nonattainment areas and associated counties to which these rules apply. The counties associated with the DFW nonattainment area include nine counties in the DFW area.

FINAL REGULATORY IMPACT ANALYSIS

The commission reviewed this rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute.

"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. The amendments to Chapter 114 are

intended to protect the environment or reduce risks to human health from environmental exposure to ozone, but are not anticipated to 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. The amendments are voluntary, contain no fiscal implications, and are only intended to provide criteria by which local agencies may establish a VAVR program, receive emission reduction credit as part of their strategy to reduce emissions of NO_x, and demonstrate attainment with the ozone NAAQS. The steering committee included a vehicle early retirement initiative in their emission control strategy. These rules will provide local agencies, like the steering committee, with specific criteria to follow to help ensure that emission reductions associated with a vehicle early retirement program will qualify for SIP emission reduction credit. The amendments are the commission response to the potential inclusion of a vehicle early retirement strategy and one element of the DFW, Houston/Galveston (HGA), Beaumont/Port Arthur, and El Paso Attainment Demonstration SIPs. In addition, Texas Government Code, §2001.0225, only applies 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.

Also, this rulemaking does not meet any of these four applicability requirements. Specifically, the VAVR program is voluntary and was developed in order to meet the NAAQS for ozone set by the EPA under 42 USC, §7409, and therefore meets a federal requirement. States are primarily responsible for

ensuring attainment and maintenance of NAAQS once EPA has established those standards. Under 42 USC, §7410, and related provisions, states must submit, for EPA approval, SIPs that provide for the attainment and maintenance of NAAQS through control programs directed to sources of the pollutants involved. This rulemaking action is not an express requirement of state law, but is voluntary and was developed specifically in order to meet the air quality standards established under federal law as NAAQS. This rulemaking action is intended to help bring ozone nonattainment areas into compliance and to help keep attainment and near nonattainment areas from going into nonattainment. The amendments do not exceed a standard set by federal law, exceed an express requirement of state law, nor exceed a requirement of a delegation agreement. The amendments were not developed solely under the general powers of the agency but were specifically developed to provide specific criteria by which local agencies may establish a VAVR program to help ensure emission reductions associated with the VAVR program to qualify for SIP credit in order to meet the emission reduction requirements in ozone nonattainment areas and will help meet the air quality standards established under federal law as NAAQS. There were no comments submitted regarding the draft regulatory impact analysis during the public comment period.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for these rules in accordance with Texas Government Code, §2007.043. The following is a summary of that assessment. The purpose of these rules is to provide the basic criteria by which local agencies may voluntarily establish a VAVR, or scrappage program, for on-road motor vehicles. This program would include passenger cars and light-duty trucks and could be used as a control measure for each ozone nonattainment area SIP. The rules

will use modeled averages from the EPA MOBILE model to calculate emission reductions per vehicle or each participating vehicle must be tested using an emissions analyzer that is capable of determining vehicle emissions in grams per mile. As the VAVR program rules are not required by the FCAA, there is no requirement for the agency to have rules regarding scrappage. However, the rules will provide local agencies with specific criteria to follow and help ensure emission reductions associated with VAVR programs would qualify for SIP credit in meeting attainment demonstrations. Initiation of a scrappage program will not affect private real property. This program is voluntary for all participants. This action will in no way affect or cause a takings to occur. Therefore, these revisions will not constitute a takings under Chapter 2007 of the Texas Government Code.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission determined that this rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resource Code, §§33.201 et seq.), and the commission rules in 30 TAC Chapter 281, Subchapter B, (Consistency with the Texas Coastal Management Program). As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3), relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal in 31 TAC §501.12(l) to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas. A reduction of air

pollutant emissions would enhance the quality and values of coastal natural resource areas. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations in Title 40 Code of Federal Regulations (40 CFR), to protect and enhance air quality in the coastal area (31 TAC §501.14(q)). The federal regulations which pertain to this rulemaking action are 40 CFR 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans) and 40 CFR 85 (Control of Air Pollution from Mobile Sources). No new sources of air contaminants will be authorized by the rule amendments, and reductions of existing emissions from mobile sources will be achieved by the implementation of these rule amendments. Therefore, in compliance with 31 TAC §505.22(e), the commission affirms that this rulemaking is consistent with CMP goals and policies.

There were no comments submitted on the consistency of the proposed rules with the CMP during the public comment period.

HEARING AND COMMENTERS

The commission held public hearings on this proposal on January 24, 2000 in El Paso; January 25, 2000 in Austin; January 26, 2000 in Longview and Irving; January 27, 2000 in Dallas and Lewisville; January 28, 2000 in Fort Worth; January 31, 2000 in Beaumont and Houston; and February 9, 2000 in Denton. The comment period was originally scheduled to close on February 1, 2000, but was extended until 5:00 p.m. on February 14, 2000. (See the January 21, 2000 issue of the *Texas Register* (25 TexReg 461).) There were 13 persons who provided oral testimony at the hearings and 702 commenters who submitted written testimony. The following commenters generally supported the proposal: Texas Oil and Gas Association (TxOGA); Chairman Troy Mennis of the Texas Vehicle Club

Council (Vehicle Club); Texas Chemical Council (TCC); Mayor Tom Hazelwood of the City of Cleburne (Cleburne); Teodoro J. Benavides, the city manager of the City of Dallas (Dallas); Brown McCarroll and Oaks Hartline, L.L.P. on behalf of their clients in the effected nonattainment areas (Brown McCarroll); League of Women Voters of Texas (LWVT); the EPA; and three individuals. All except Dallas and the LWVT provided additional comments that are addressed in the analysis of testimony. The following commenters generally opposed the proposal: Sierra Club Lone Star Chapter (Sierra-Lone Star); Ross Automotive Supply, Inc. (Ross Auto); Automotive Parts and Service Alliance (APSA); CSK Auto, Inc. (CSK Auto); Ennis Automotive, Inc. (Ennis Auto); Straus-Frank Company doing business as (dba) Carquest Auto Parts (Carquest); Foreign Specialists; Anglo American Enterprise Corporation (AAEC); Technical Chemical Company (Technical Chemical); three letters from National Automotive Parts Association (NAPA); Cardone Industries, Inc. (Cardone); four letters from Genuine Parts Company dba NAPA (Genuine Parts); Conrad's Automotive Center, Inc. (Conrad's Auto); Rare Parts, Inc. (Rare Parts); NAPA- San Antonio; NAPA MI-sheer Auto Supply Inc. and Motor Parts of Lewisville, Inc. (MI-sheer Auto); three letters from Fritch Auto Supply (Fritch Auto); Ernie's Motors (Ernie's); Industry Conference for Auto Repairs and Auto Service Professionals; Car and Parts Magazine (Car & Parts); Rick's Hi-Tech Auto Care, Inc. (Rick's Hi-Tech Auto); Specialty Equipment Market Association (SEMA); A & A Automotive Supplies (A&A Auto); Vintage Air, member of the Council of Vehicle Associations/Classic Vehicle Advocate Group, Inc. (Vintage Air); Continental Vehicle Suppliers, Inc. (CVS); Texas Dismantlers and Automobile Recycler's Association (Texas Dismantlers); TxOGA; Cleburne; TCC; EPA; American Automobile Association of Texas (AAA of Texas); Vehicle Club; Brown McCarroll; Dallas; CSK Auto; 21 letters from Landry Supply, Inc. (Landry); NAPA Auto Parts in Beaumont (NAPA-Beaumont); NAPA Auto Parts in Tyler (NAPA-

Tyler); NAPA Auto Parts in Grapevine (NAPA-Grapevine); NAPA Auto Parts in Marshall (NAPA-Marshall); NAPA Balkamp; three letters from Genuine Parts dba NAPA Dallas Distribution Center (NAPA-Dallas); NAPA Distribution Center in Albuquerque, New Mexico (NAPA-Albuquerque); Walter P. Chrysler Club - Houston Region (Chrysler Club); K&K Vintage Motorcars (K&K); Mustang Owners Club of Austin (Mustang Club); Rick's Specialties, Inc. (Rick's Specialties); Antique Automobile Club of America - Amarillo Region (Antique Auto-Amarillo); Painless Performance Products (Painless Performance); Texas Morgan Motor Car Club (Texas Morgan); Discovery; 50's Unlimited Auto Club (50's Unlimited); Hot Rod Air, Inc. (Hot Rod Air); Dyno-Might Truck Products, Inc. (Dyno-Might Truck); Hill Country Investments, Inc. (Hill Country); Don Hardy Race Cars, Inc. (Don Hardy); Speed Direct; Yearwood Speed and Custom (Yearwood); BENTCO Marketing, Inc. (BENTCO); Class M Corporation (Class M); 18 letters from MSD Ignition (MSD); five letters from the North Houston Street Rods (Street Rods); two letters from GO Industries, Inc. (GO Industries); Space City Cruisers in association with the League City Evening Lion's Club (Space City Cruisers); Dallas Sierra Club; Downwinders At Risk; Fort Worth Sierra Club; Sustainable Economic and Environmental Development (SEED); Texas Campaign for the Environment; Texas Clean Water Action; Texas Public Citizen; and 599 individuals. The following commenters provided additional comment on the proposal that are addressed in the analysis of testimony: Sierra-Lone Star; Ross Auto; APSA; CSK Auto; Ennis Auto; Carquest; Foreign Specialists; AAEC; Technical Chemical; NAPA; Cardone Industries; Genuine Parts; Conrad's Auto; Rare Parts; NAPA-San Antonio; MI-sheer Auto; Fritch Auto; Ernie's; Industry Conference; Car & Parts; Rick's Hi-Tech Auto; SEMA; A&A Auto; Vintage Air; CVS; Texas Dismantlers; TxOGA; Cleburne; TCC; EPA; AAA of Texas; Vehicle Club; Rick's Hi-Tech Auto; Brown McCarroll; Dallas; CSK Auto; Landry; NAPA-Beaumont; NAPA-Tyler;

NAPA-Grapevine; NAPA-Marshall; NAPA Balkamp; NAPA-Dallas; NAPA-Albuquerque; Chrysler Club; K&K; Mustang Club; Rick's Specialties; Vintage Air; Antique Auto-Amarillo; Painless Performance; Texas Morgan; Discovery; 50's Unlimited; Hot Rod Air; Dyno-Might Truck; Hill Country; Don Hardy; Speed Direct; Yearwood; BENTCO; Class M; MSD; Street Rods; GO Industries; Space City Cruisers; TxOGA; Vehicle Club; TCC; Cleburne; Brown McCarroll; EPA; Dallas Sierra Club; Downwinders At Risk; Fort Worth Sierra Club; Sustainable Economic and Environmental Development (SEED); Texas Campaign for the Environment; Texas Clean Water Action; Texas Public Citizen; and 599 individuals.

ANALYSIS OF TESTIMONY

General Comments

The EPA commented that the VAVR rule should support program criteria as outlined in EPA's "Guidance for the Implementation of Accelerated Retirement of Vehicles Program."

The commission agrees and followed the EPA guidance document, dated February 1993, during the development of the VAVR rules.

The EPA stated that the emission reductions generated from the VAVR program that are not part of Voluntary Mobile Source Emission Reduction Program (VMEP) must be creditable, enforceable, surplus, quantifiable, and permanent.

DFW has committed to using a scrappage program as a VMEP initiative in their SIP. The commission is aware that all emission reductions generated from the VAVR program must also be creditable, enforceable, surplus, quantifiable, and permanent to be creditable for a VMEP program. MERCs cannot be generated within the limits of the VAVR rules, and emission reductions from the VAVR rules must be applied to the area's attainment demonstration. Therefore, emission reductions from the VAVR rules cannot be banked, sold, or traded.

I/M

One individual commented that the VAVR program does not use I/M 240, and it allows the use of the “lesser” acceleration simulation mode test.

I/M 240 analyzers are not available in Texas, however, there are loaded mode type transient tests which can provide a similar capability to I/M 240 for determining vehicle emissions in grams per mile. Loaded mode transient tests will be available through selected DPS I/M waiver facilities.

Ross Auto commented that it would be more effective if the inspection maintenance program would help low-income families get their vehicles repaired, rather than scrapping them or giving families funds to purchase newer vehicles.

The VAVR program is a voluntary option available to local areas and is not required to be part of a vehicle I/M program. The commission encourages local areas to evaluate all options when determining what is best for their area.

The Vehicle Club commented that it would like to know how remote sensing fits into VAVR.

The commission did not propose that remote sensing be part of any VAVR program. Remote sensing is an enforcement mechanism for the I/M program. A local VAVR program might inform vehicle owners whose vehicle has failed an I/M test about the VAVR program, but there is no requirement that failed vehicles be scrapped.

Little Air Quality Benefit

CSK Auto; Ross Auto; APSA; CSK Auto; Ennis Auto; Carquest; Foreign Specialists; AAEC; Technical Chemical; Cardone; Landry; NAPA-Beaumont; NAPA-Tyler; NAPA-Grapevine; NAPA-Marshall; NAPA Balkamp; NAPA-Dallas; NAPA-Albuquerque; and 51 individuals commented that the VAVR program will have little effect on improving air quality with its limited benefits, and it will not be cost effective.

The commission crafted the VAVR rule as a voluntary initiative that an area may choose to implement if it is feasible for that area. The amount of air quality benefit and the cost effectiveness of individual area programs will vary depending on the number of vehicles retired and the participation levels within the area. While the commission realizes that this program may not be beneficial for all areas, the commission also recognizes that some areas will need to explore all their options as potential emission reduction strategies.

Credit Usage

Chrysler Club; K&K; Mustang Club; Rick's Specialties; CVS; Vintage Air; Antique Auto-Amarillo; Painless Performance; Texas Morgan; Discovery; 50's Unlimited; Hot Rod Air; Dyno-Might Truck; Hill Country; Don Hardy; Speed Direct; Yearwood; SEMA; BENTCO; Class M; MSD; Street Rods; GO Industries; Space City Cruisers; Rick's Hi-Tech Auto; Vehicle Club; and 25 individuals commented on their disapproval that MERCs could be applied to meet specific regulatory objectives for industry, supplemental environmental projects, mitigation offsets, and the extension of regulatory compliance deadlines. TCC commented that the commission should clarify the proposed definition of a MERC. TCC stated that these credits should be able to meet specific regulatory objectives, and be used for supplemental environmental projects, mitigation offsets, and to extend regulatory compliance deadlines as defined in 30 TAC §101.29(c)(3). TCC also felt that since the VAVR program is voluntary, it is important to allow facilities in non-participating counties in either attainment or nonattainment areas to earn credits, even if their particular county does not opt into the VAVR program.

The commission agrees that it is important to allow facilities in non-participating counties in either attainment or nonattainment areas to earn credits; however, the commission developed the VAVR rules for SIP credit purposes only. It is important to note that the VAVR program and the MERC banking and trading programs are separate programs with different purposes. These rules do not prohibit or limit other scrappage programs with credit uses, such as supplemental environmental projects, mitigation offsets, and the extension of regulatory compliance deadlines, which may be allowed under other commission rules. To this end, the commission is aggressively working on a MERC rule which will be proposed during the summer of 2000, and which will

allow for MERC banking and trading. For clarification in the VAVR rules, the commission has removed references to MERCs in the VAVR rule language, although, the definition of MERC remains in 30 TAC §114.1, Definitions.

Change Program to Repair and Retrofit

SEMA; APSA; NAPA-San Antonio; Carquest; MI-sher Auto; AAEC; Cardone; NAPA; Fritch Auto; Landry; NAPA-Beaumont; NAPA-Tyler; NAPA-Grapevine; NAPA-Marshall; NAPA Balkamp; NAPA-Dallas; NAPA-Albuquerque; AAA of Texas; Chrysler Club; K&K; Mustang Club; CVS; Rick's Specialties; Vintage Air; Antique Auto-Amarillo; Painless Performance; Texas Morgan; Discovery; 50's Unlimited; Hot Rod Air; Dyno-Might Truck; Hill Country; Don Hardy; Speed Direct; Yearwood; BENTCO; Class M; MSD; Street Rods; GO Industries; Space City Cruisers; and seven individuals commented that a repair and retrofit program would be more beneficial than a scrappage program. SEMA provided the commission with a study entitled "Voluntary Repair and Upgrade as an Alternative to Motor Vehicle Scrappage Programs."

The commission provided flexibility in the VAVR rules by allowing a local area, such as DFW which is committed to using a VAVR program in its SIP, to administer its own program. This flexibility allows a local area to either incorporate repair and retrofit elements into the VAVR program if they choose, or to implement a repair and retrofit program separately. The commission appreciates the information and will share the study provided by SEMA with interested local areas.

Enforceability

Fritch Auto and two individuals commented that the VAVR program is unworkable and unenforceable.

The commission provided flexibility in the VAVR rules by allowing local areas to administer their own program. The commission believes this flexibility will provide local operators the ability to adapt the program to their area-specific needs. However, all VAVR programs must comply with 30 TAC §114.216 of the rules which provides consistent reporting and commission oversight to ensure that proper credit is being allocated to the SIP.

Pollution Burden Should be on Industry

APSA; NAPA-San Antonio; Carquest; MI-sher Auto; AAEC; Cardone; NAPA; Fritch Auto; Landry; NAPA-Beaumont; NAPA-Tyler; NAPA-Grapevine; NAPA-Marshall; NAPA Balkamp; NAPA-Dallas; NAPA-Albuquerque; A&A Auto; and Vintage Air commented that the burden to reduce air pollution should be put back on industry since according to the AAA the primary source of pollution are refiners and not automobiles.

The commission established the VAVR rules to provide another voluntary mobile source option that an area may choose to help reduce emissions of VOC and NO_x. Modeling shows that the air quality in the Texas ozone nonattainment areas is impacted by point, area, and mobile sources. For example, in the DFW area the commission estimates that 43% of the NO_x emissions are generated from on-road sources, and another 36% are generated from area/non-road sources, leaving only 21% from point or industrial sources. Modeling also indicated, however, that for an

area such as DFW to reach attainment of the ozone NAAQS, the area will need to reduce emission reductions from all of these sources.

Why Reduce NO_x and VOC

The Vehicle Club commented that they are “confused” as to why VAVR is being introduced as a way to reduce VOCs and NO_x.

The commission established the VAVR rules to provide another voluntary mobile source initiative that an area may choose to help reduce emissions of NO_x and VOCs. For example, in the DFW area it is estimated that 43% of the NO_x emissions and 19% of the VOC emissions are generated from on-road mobile sources. Thus, removing vehicles which are emitting high levels of VOC and NO_x, and which would be too expensive to repair, supports the overall strategy to reduce these pollutants.

Should be Required to Maintain Vehicle

Rare Parts and three individuals commented that vehicles should be maintained properly.

The commission agrees that vehicles should be properly maintained. The I/M program currently in effect in the DFW, HGA, and El Paso areas emphasizes that vehicle maintenance is an important part of maintaining good air quality.

Hurt Repair Industry and Car Dealerships

SEMA; Foreign Specialists; Landry; NAPA-Beaumont; NAPA-Tyler; NAPA-Grapevine; NAPA-Marshall; NAPA Balkamp; NAPA-Dallas; NAPA-Albuquerque; APSA; Industry Conference; and NAPA; CVS; Chrysler Club; K&K; Mustang Club; Rick's Specialties; Vintage Air; Antique Auto-Amarillo; Painless Performance; Texas Morgan; Discovery; 50's Unlimited; Hot Rod Air; Dyno-Might Truck; Hill Country; Don Hardy; Speed Direct; Yearwood; BENTCO; Class M; MSD; Street Rods; GO Industries; Space City Cruisers; and eight individuals commented that the VAVR program will hurt jobs that depend on the car repair and the resale industry.

The commission believes that because the VAVR program is a voluntary initiative, local areas may choose to implement a repair and retrofit program and/or a VAVR program. However, in either program some vehicles will not be worth repairing. It is these vehicles that could be candidates for scrappage, but only if the vehicle owner makes that choice. The commission, therefore, does not believe there will be any significant impact on jobs that depend on the car repair and the resale industry.

After-Market Parts and Recycling

CSK Auto; SEMA; APSA; Conrad's Auto; Rare Parts; Ernie's; Car & Parts; CSK Auto; Texas Dismantlers; Chrysler Club; K&K; Mustang Club; CVS; Rick's Specialties; Vintage Air; Antique Auto-Amarillo; Painless Performance; Texas Morgan; Discovery; 50's Unlimited; Hot Rod Air; Dyno-Might Truck; Hill Country; Don Hardy; Speed Direct; Yearwood; BENTCO; Class M; MSD; Street Rods; GO Industries; Space City Cruisers; and 15 individuals commented that the VAVR program will

reduce the availability of after market parts for older vehicles, in particular the exhaust system and the engine components. The AAA of Texas also commented that the VAVR program should include provisions for recycling parts. APSA; Ennis Auto; and Brown McCarroll commented that the VAVR rules do not require the scrapped vehicle parts to be recycled.

The commission allowed flexibility in the parts that may be resold in 30 TAC §114.213(f)(2)(A) and (B). The section allows for all parts of the vehicle to be recycled or resold except the exhaust system, including the catalytic converter, tailpipe, muffler, exhaust inlet pipe, vapor storage canister, vapor liquid separator, resonator, and the engine with all components attached. The cylinder block and other engine components can be recycled or resold if the components are removed and recycled or sold individually.

Modeling Concerns

The AAA of Texas; SEMA; Chrysler Club; K&K; Mustang Club; Rick's Specialties; Vintage Air; Antique Auto-Amarillo; Painless Performance; Texas Morgan; Discovery; 50's Unlimited; Hot Rod Air; Dyno-Might Truck; Hill Country; CVS; Don Hardy; Speed Direct; Yearwood; BENTCO; Class M; MSD; Street Rods; GO Industries; Space City Cruisers; and six individuals expressed their concerns over the use of modeling to determine the emission reductions from the VAVR program.

The commission provided two options for the calculation of emission reduction benefits. These options provide local areas the flexibility to use a loaded-mode emission analyzer with the capability of determining emissions in grams per mile to quantify actual in-use emissions, or to use

the EPA MOBILE model. The MOBILE model option is based on EPA's "Guidance for the Implementation of Accelerated Retirement of Vehicles Program" and provides the best available estimate of the vehicle emissions.

Fees Should be Charged to Support VAVR

Car Parts and 47 individuals commented that some kind of vehicle usage fee should be levied to provide funding for the VAVR program and for replacement vehicles for those that are scrapped.

The commission agrees that a vehicle usage fee is one method of funding a VAVR program. However, establishing vehicle usage fees to support the VAVR program is beyond the scope of this rulemaking, and would require legislative action. The appropriate funding of local VAVR programs will need to be determined by local officials.

Economic Discrimination

Ennis Auto; Industry Conference; APSA; Foreign Specialists; Technical Chemical; Landry; SEMA; NAPA-Beaumont; NAPA-Tyler; NAPA-Grapevine; NAPA-Marshall; NAPA Balkamp; NAPA-Dallas; NAPA-Albuquerque; NAPA; and 112 individuals expressed their concerns that the VAVR program encourages economic discrimination against low-income individuals who cannot afford newer vehicles or vehicle repairs. Conrad's Auto; MI-sher Auto; Landry; NAPA-Beaumont; NAPA-Tyler; NAPA-Grapevine; NAPA-Marshall; NAPA Balkamp; NAPA-Dallas; NAPA-Albuquerque; and two individuals commented that the financial burden of forcing tax payers to replace older vehicles will fall onto the most vulnerable part of society.

The VAVR program is a voluntary program for both the local areas as well as those who choose to participate by allowing their vehicles to be scrapped. No individual will be required to participate in a VAVR program. In some cases a VAVR program could expand the options of low-income individuals whose vehicles cannot pass an I/M test. The commission agrees that, in crafting a program, local areas will need to consider the economic implications of the program on affected citizens when determining whether a program should be publicly or privately funded.

Impounded Vehicles

Cleburne and Vintage Air commented that the VAVR rules do not specify how high-emitting vehicles impounded by local, state, and federal law enforcement groups can be scrapped.

Section 114.213(a)(3) allows cities or municipalities to voluntarily scrap impounded vehicles in lieu of auctioning the vehicles. Authority is provided in House Bill 1672, 76th Legislature, 1999, which amended Texas Transportation Code, §683.051, Application for Authorization to Dispose of Certain Motor Vehicles. As amended, §683.051 states that if the motor vehicle is: abandoned, more than eight years old, does not comply with all applicable air pollution emissions control related requirements, was authorized to be towed by a law enforcement agency, and such agency approves of the destruction of the vehicle; then the vehicle may be scrapped. This application of the VAVR program is geared toward seized and abandoned vehicles that do not meet air quality standards, and that could potentially be auctioned off by law enforcement agencies. The emission reduction benefits derived from impounded vehicles scrapped through the VAVR program, could then be credited toward an area's SIP.

Fraud Potential

Vintage Air and three individuals commented on potential fraud and misuse of the VAVR program.

The commission shares the commenters concerns regarding potential misuse of the VAVR program. As a result, the commission established several checks and balances in 30 TAC §114.216. This section establishes recordkeeping, auditing, and enforcement measure requirements for the VAVR program.

Analysis of Program

Ennis Auto and the TCC commented that the commission should conduct a complete analysis of the VAVR program's burden to inform the enterprise operator of program costs and benefits, and determine the burden to individuals who will be effected by the VAVR program.

The commission disagrees that the VAVR program will be a burden. The VAVR program is voluntary and therefore, will not be of any burden to individuals. The costs and benefits for enterprise operators will need to be analyzed by the local areas to determine if the VAVR program is feasible for their area since participation is also voluntary for the local areas.

Removing Older Cars

Chrysler Club; K&K; CVS; Mustang Club; Rick's Specialties; Vintage Air; Antique Auto-Amarillo; Painless Performance; Texas Morgan; Discovery; 50's Unlimited; Hot Rod Air; Dyno-Might Truck;

Hill Country; Don Hardy; Speed Direct; Yearwood; BENTCO; Class M; MSD; Street Rods; GO Industries; Space City Cruisers; and 11 individuals expressed their concerns of the commission removing older vehicles from the road. Such concerns were: individuals collect older vehicles; the VAVR rules are designed to “do away” with older vehicles; the automobile’s heritage is not being protected; and it is “un-American” to take cars and crush them.

While the aim of the program is the removal of high-polluting vehicles, not necessarily older vehicles, the VAVR rules are a voluntary program for both the local areas as well as those who choose to participate by scrapping their vehicles. No individual will be required to participate in the VAVR program.

TCC; Brown McCarroll; and the Vehicle Club commented that specific model year vehicles should be targeted for scrapping and that all vehicle parts should be destroyed. Landry; SEMA; CVS; Chrysler Club; K&K; Mustang Club; Rick’s Specialties; Vintage Air; Antique Auto-Amarillo; Painless Performance; Texas Morgan; Discovery; 50's Unlimited; Hot Rod Air; Dyno-Might Truck; Hill Country; Don Hardy; Speed Direct; Yearwood; BENTCO; Class M; MSD; Street Rods; GO Industries; Space City Cruisers; NAPA-Beaumont; NAPA-Tyler; NAPA-Grapevine; NAPA-Marshall; NAPA Balkamp; NAPA-Dallas; NAPA-Albuquerque; NAPA-San Antonio; NAPA; and seven individuals commented that the age of the vehicle should not be the determining factor in the amount of pollution the vehicle emits.

Although the VAVR program targets high-polluting vehicles, the commission is aware that not all newer vehicles are low-polluting, and not all older vehicles are high-polluting vehicles. As such, the VAVR rules do not specify any particular model year vehicles. In addition, the VAVR rules provide a program to destroy emission-related parts from high-polluting vehicles. The commission does not believe that the resale of non-emission related parts is detrimental to the environment. Therefore, no change has been made to the rule language in response to these comments.

Mandatory VAVR

Genuine Parts; Fritch Auto; NAPA; and the AAA of Texas expressed concerns that the VAVR program will become mandatory.

On the other hand, TCC and Brown McCarroll commented that the commission should strengthen the VAVR program requirements by adding mandatory elements to the program. The TCC stated that it would be important to address the control or elimination of service to those gasoline-powered vehicles that are beyond 24 years old, because they emit in the order of 10-15 times the amount of pollutants (NO_x and VOCs) as post-1994 model year vehicles. Brown McCarroll commented that in order for a retirement program to make significant reductions, all high-emission vehicles must be participating over a relatively short time frame. Brown McCarroll stated that by the end of the year 2002, vehicles older than 1975 should be required to participate in the VAVR program; that by the end of the year 2003, 1975-1980 model year vehicles should be retired; and the VAVR program should move progressively forward on five-year model increments.

The commission crafted the VAVR rules as a voluntary alternative for an area to use to generate SIP credit. It is not the intent of the commission to mandate a VAVR program. The commission believes that it has provided flexibility that will allow local areas to adapt the VAVR program to their specific needs. If local areas feel that they should target specific model years or highest polluters, it will be at their discretion. In any case, the participation by individuals must be voluntary. It is not the intention of these rules to mandate specific vehicle age ranges to be considered for scrappage.

Replacement Transportation

Sierra-Lone Star and fourteen individuals expressed their concerns that the VAVR program does not encourage the purchase of a newer or cleaner vehicle than the vehicle that was scrapped.

The primary focus of the VAVR rules is to provide a flexible voluntary program developed specifically for a local area's needs. These rules do not include requirements on replacement vehicles for individuals voluntarily scrapping a vehicle. However, the commission anticipates that local areas participating in the program will most likely include elements in their local program to provide incentives and/or help program participants find suitable alternatives.

Using Tax Dollars

Genuine Auto; A&A Auto; NAPA-San Antonio, Foreign Specialists; Technical Chemical; Fritch Auto; Brown McCarroll; and one individual commented that they opposed using Texas tax dollars for any type of commission oversight.

The commission supports a wide variety of voluntary and mandatory air quality emission reduction strategies throughout the state. These rules provide another voluntary option for local areas and it is the local area responsibility to administer the program. The commission does not believe that the oversight requirements provided in these rules are unreasonable given the benefit of cleaner air. Additionally, it is the responsibility of the commission to adopt and implement the SIP in which the programs will be included. Therefore, commission oversight is a necessary element of this program.

Use of Tax Dollars to Buy Vehicles

CSK Auto commented that it is not cost effective to use taxpayer funds to compensate car owners for their scrapped vehicles.

Funding sources for VAVR programs are at the discretion of the local area administering the program. The commission anticipates that local areas will closely evaluate the availability and appropriateness of public and private funding sources when determining if a VAVR program is feasible for the local area. These rules do not specify funding criteria.

Environmental Effects

APSA commented that scrappage programs can cause other negative environmental effects from the disposal of the older vehicles and the manufacturing of new replacement vehicle. APSA also commented that the total negative environmental impact of encouraging the discarding and replacing of older vehicles are not being considered.

The commission believes that the level of anticipated participation with a VAVR program will have little impact on the manufacturing of new cars. The VAVR rules state that, with the exception of specific emission-related parts, all parts of the car may be resold or recycled. In addition, §114.213(h) requires that all activities associated with retiring the vehicles including, but not limited to, the disposal of the 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.

Scrapped Vehicles not Driven Regularly

APSA; Rare Parts; and 62 individuals commented that vehicles which will be scrapped are not driven regularly and would be scrapped potentially anyway.

The commission agrees that some of the scrapped vehicles would fit this category. However, in order to ensure that the scrapped vehicles result in emission reductions, the commission listed requirements in §114.213(a)(1) and (2) and §114.213(b)(2)(H) that the vehicle be registered with the TxDOT in the past immediate 12 months in the participating county, and there should be no indications that the vehicle has not operated on a routine basis for extended periods of time.

No Restrictions on Nonattainment Areas

One individual commented that the VAVR rules do not restrict where vehicles must come from within the nonattainment area.

The commission listed a requirement in §114.213(a)(1) that the vehicle be registered with the TxDOT in the past immediate 12 months in a participating county. Therefore, only vehicles from a participating area may generate credits toward that area's SIP. Since these rules deal with mobile sources, it is presumed that a vehicle registered anywhere within the nonattainment area impacts the air quality of the whole area.

Circumventing the Legislature

SEMA; CVS; Chrysler Club; K&K; Mustang Club; Rick's Specialties; Vintage Air; Antique Auto-Amarillo; Painless Performance; Texas Morgan; Discovery; 50's Unlimited; Hot Rod Air; Dyno-Might Truck; Hill Country; Don Hardy; Speed Direct; Yearwood; BENTCO; Class M; MSD; Street Rods; GO Industries; Space City Cruisers; and seven individuals commented that the commission is circumventing the legislative process and is going against the desires of the Legislature by proposing the VAVR rules.

The commission believes that it is within its statutory authority to implement a scrappage program. In fact, until recently the commission has had its own scrappage program which was implemented by rule. In this rule, there is no requirement that any area implement a scrappage program. Instead this rule simply lays out the minimum criteria for any scrappage program which is meant to be used as a control strategy in the SIP. The commission intends to encourage the adoption of scrappage programs on a local basis so that the program can be tailored to meet the air quality needs of the area and to allow flexibility depending on the resources of the area.

The legislature delegated to the commission all powers necessary to develop a plan to achieve and maintain the NAAQS through Texas Health & Safety Code, Texas Clean Air Act (TCAA), §§382.011 (General Powers and Duties), 382.012 (State Air Control Plan), and 382.039 (Attainment Program). The commission is responsible for developing the SIP and all strategies needed to complete such a plan. Additionally, the legislature has specifically given the commission authority to control emissions from motor vehicles for purposes of the SIP and to protect the health and welfare of the public as found in TCAA, §382.019 (Methods Used to Control and Reduce Emissions From Land Vehicles), and §382.039. These rules enable local areas to fulfill their commitments to adopt a VAVR program as part of a control strategy that could be relied upon in the SIP. In accordance with these specific grants of legislative authority, the commission adopts these rules.

VAVR will Artificially Impact Market

One individual commented that the VAVR program will “artificially” impact the market value for older vehicles.

Although it is difficult to anticipate the level of participation in a voluntary program such as the VAVR program, the commission does not anticipate that a local area scrappage program will have a significant impact on the market value of older cars.

Welfare to Work

One individual commented that it is important to consider the effects of the VAVR program on welfare to work programs and vehicles that will be needed to get individuals off welfare.

The Texas Workforce Commission is currently administering the state's "Welfare to Work" programs. The commission does not anticipate that a local scrappage program will have an impact on the Welfare to Work programs.

Destruction Within 60 Days

The Texas Dismantlers commented that by crushing and destroying vehicles within 60 days they will not recoup any of their manpower or bookkeeping costs by crushing. The Texas Dismantlers also commented that it would like to work with commission to come up with a solution to their concerns.

The commission believes that if an area is going to generate SIP credit for scrapping vehicles, those vehicles must be scrapped expeditiously. The commission anticipates that issues such as the cost for crushing and destroying vehicles will be addressed as the programs are developed by the local enterprise operators, and welcomes the offer of assistance from the commenter. In addition, since local areas will be developing their own VAVR programs, the commission also encourages interested parties to coordinate with the local areas as they develop VAVR programs specific to their area.

Insurance Requirement

One individual commented that having insurance should not be a requirement of the VAVR program.

The commission agrees and therefore did not list proof of current insurance as a requirement for the VAVR program.

Increase Remaining Life of Vehicle to Six Years

The TxOGA commented that the remaining useful life of the vehicle should be increased to six years.

The remaining useful life of a vehicle is based on EPA's "Guidance for the Implementation of Accelerated Retirement of Vehicle Programs" which establishes the life expectancy for scrapped vehicles as three years. In order to conform with this EPA guidance, the commission has made no change in response to this comment.

Reimburse Cities for Lost Income

Cleburne commented that a system should be in place to reimburse cities for lost sale income or other monetary program credit for scrappage.

The VAVR program is completely voluntary. The costs of administering a local program, and availability of local partnerships, etc., to help mitigate these costs, should be one of the considerations a local area would assess to determine whether the area should implement a VAVR

program. If a local area determines that a VAVR program is not suited for their situation, then there is no requirement to implement a program.

Set Price for Vehicle

NAPA commented that the VAVR program does not offer a set price for vehicles.

Since the VAVR program is voluntary, the commission believes it to be the responsibility of each participating area to establish and determine their own price for potential vehicles.

Improved Public Safety

Brown McCarroll commented that strengthening and expanding the VAVR program would improve public safety because model year 1987 or before vehicles are involved in 25% or more significant (death or tow away) accidents than are attributable to vehicles model years 1988 or later.

The commission agrees that a side benefit of scrapping the older, higher-polluting vehicles would also be the removal of many unsafe vehicles from our highways. However, the VAVR program is based on voluntary participation of the local areas and does not focus on any particular model year group of vehicles. Therefore, if the local area determines that it is to their advantage to scrap specific vehicle model years, they may include that in their voluntary program.

Increase of Old Parts

Brown McCarroll commented that the current VAVR proposal would “. . . increase the supply of cheap, used car parts . . .” which “. . . will quickly increase the resistance to voluntary scrappage, since it will be cheaper to maintain the oldest cars that remain.”

A local VAVR program could result in another source for used car parts. Although it is difficult to determine the level of participation in a voluntary program, the commission does not anticipate that the used car parts available through a voluntary scrappage program will be significant enough to impact the level of participation in the program.

Not Federally Mandated

The Vehicle Club’s chairman commented that the VAVR program is not mandated by the FCAA.

The commission is aware that the VAVR program is not specifically mandated by the FCAA or its amendments. However, it may be necessary in order to demonstrate attainment with the NAAQS, and therefore federally required. Participation in a VAVR program is voluntary for local areas, as well as for potential participants.

Enterprise Operator

TCC commented that §114.212(d) should be deleted from the VAVR rules. TCC stated that enterprise operators should not be given the authority to adopt new requirements and that they should defer to the commission for all program changes. TCC also stated that giving the enterprise operator this authority

would create a new regulatory body and that the commission should consider allowing its regional offices to act as enterprise operators. TCC also commented that if the program responsibility is spread out among multiple county agencies with no common link to the commission, the program administration may be hampered and available credits maybe curtailed.

The commission provided flexibility in the VAVR rules by allowing local areas to administer their own program. The commission believes that it is important for local operators to have the flexibility to enhance, or to make more stringent, the criteria outlined in the rule based on local area requirements. A common link to the commission for all local areas will be the oversight and reporting requirements that are listed in §114.216. Additionally, these rules do not provide authority for local programs to operate a VAVR program. The local program must have its own authority through its charter or other relevant law. These rules simply set the minimum criteria in order for a program to be creditable in the SIP. Therefore, no change has been made to the rule language in response to this comment.

Disposal of Parts

Brown McCarroll expressed concern that the VAVR rules are too lenient regarding the transfer of the vehicles from the owner to the enterprise operator and its disposal.

The commission does not believe that procedures in §114.213 are too lenient. Section 114.213 outlines the minimum vehicle eligibility requirements for the VAVR rules, as well as vehicle registration. In §114.213(a)(1), the vehicle must be registered with the 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. Local areas have the option of making any requirements more stringent than the rules provide. The commission also requires in §114.213(h) that all activities associated with retiring the vehicles including, but not limited to, the disposal of the 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. Therefore, no change has been made to the rule language in response to this comment.

STATUTORY AUTHORITY

The amendments are adopted under the Texas Water Code (TWC), §5.103, which provides the commission the authority to adopt rules necessary to carry out its powers and duties under the TWC. The amendments are also adopted under the Texas Health and Safety Code, TCAA, §382.011, which provides the commission the authority to control the quality of the state's air; §382.012, which provides the commission the authority to prepare and develop a general, comprehensive plan for the control of the state's air; §382.017, which provides the commission the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.019, which provides the commission the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles; and §382.039, which provides the commission the authority to develop and implement transportation programs and other measures necessary to demonstrate attainment and protect the public from exposure to hazardous air contaminants from motor vehicles.

SUBCHAPTER A: DEFINITIONS

§114.1, §114.4

§114.1. Definitions.

Unless specifically defined in the TCAA or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

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

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

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

(4) **First safety inspection certificate** - Initial Department of Public Safety (DPS) certificates issued through DPS certified inspection stations for every new vehicle found to be in compliance with the rules and regulations governing safety inspections.

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

(6) **Heavy-duty vehicle** - Any passenger vehicle or truck capable of transporting people, equipment, or cargo, that has a GVWR greater than 8,500 lbs., and is required to be registered under the Texas Transportation Code, §502.002. For purposes of the Mobile Emission Reduction Credit (MERC) trading program the heavy-duty class is divided into the following subclasses:

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

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

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

(7) **Inherently low emission vehicle** - A vehicle as defined by Title 40, Code of Federal Regulations (40 CFR), Part 88.

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

(9) **Light-duty vehicle** - Any passenger vehicle or truck capable of transporting people, equipment, or cargo, that has a GVWR less than or equal to 8,500 lbs., and registered or required to be registered under Texas Transportation Code, §502.002. For purposes of the MERC trading program the light-duty class is divided into the following subclasses:

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

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

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

(10) **Loaded mode inspection and maintenance (I/M) test** - A measurement of the tailpipe exhaust emissions of a vehicle while the drive wheel rotates on a dynamometer, which

simulates the full weight of the vehicle driving down a level roadway. Loaded test equipment specifications shall meet EPA requirements for Acceleration Simulation Mode equipment.

(11) **Low emission vehicle (LEV)** - A vehicle in a class or category of vehicles that has been certified by the EPA for any model year to meet:

(A) the LEV standards applicable under the Federal Clean Air Act as amended Part C, Subchapter II, (U.S.C. 42 Section 7581 et seq.); or

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

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

(13) **Mobile emission reduction credit (MERC)** - A credit representing the amount of emission reductions from a mobile source program. These emission reductions are voluntary and must be in addition to compliance with requirements of state and federal regulations. MERCs are any

enforceable, permanent, and quantifiable emission reduction (exhaust and/or evaporative) generated by a mobile source, which has been banked in accordance with the rules of the commission. MERCs can be banked, purchased, traded, and sold to meet clean air mandates for specified air programs, which can be applied to the emission reduction obligations of another air quality source or to air quality attainment goals.

(14) **Reformulated gasoline** - Gasoline that has been certified as a reformulated gasoline under the federal certification regulations adopted in accordance with the Federal Clean Air Act, §211(k)(42 United States Code, §7545(k)).

(15) **Revised Texas I/M State Implementation Plan (SIP)** - The portion of the Texas SIP which includes the procedures and requirements of the vehicle emissions inspection and maintenance program as adopted by the commission May 29, 1996, in accordance with the 40 CFR Part 51, Subpart S, issued November 5, 1992; the EPA flexibility amendments dated September 18, 1995; and the National Highway Systems Designation Act of 1995. A copy of the revised Texas I/M SIP is available at the Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas, 78753; mailing address: P.O. Box 13087, MC 166, Austin, Texas 78711-3087.

(16) **Tier I federal emission standards** - The standards are defined in the FCAA as amended in §202, USC Title 42 §7521, and in 40 CFR, Part 86. The phase-in of these standards began in model year 1994.

(17) **Ultra low emission vehicle** - A vehicle as defined by 40 CFR, Part 88.

(18) **Zero emission vehicle** - A vehicle as defined by 40 CFR, Part 88.

§114.4. Mobile Emission Reduction Credit Definitions.

Unless specifically defined in the TCAA or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, the following words and terms, when used in Subchapter F of this chapter (relating to Mobile Emission Reduction Credits), shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Designee** - A person or entity designated by the enterprise operator to oversee the dismantlers of the vehicles used in conjunction with the voluntary accelerated vehicle retirement program. The enterprise operator still maintains all program liability.

(2) **Dismantler** - The person or business, defined and licensed according to the requirements of the Texas Department of Transportation and other business codes and regulations which may apply, that dismantles or otherwise removes from service those vehicles obtained as part of a voluntary accelerated vehicle retirement program.

(3) Enterprise operator - The local agency which conducts a voluntary accelerated vehicle retirement program in accordance with Subchapter F of this chapter. The enterprise operator is responsible for the purchase of vehicles and arrangements for the permanent removal of the vehicles from operation. The enterprise operator will receive any mobile emission reduction credit generated.

(4) Voluntary accelerated vehicle retirement - The use of cash payments or other incentives to encourage a vehicle owner to voluntarily retire a vehicle from service earlier than otherwise would have occurred.

SUBCHAPTER F: MOBILE EMISSION REDUCTION CREDITS

DIVISION 2: VEHICLE SCRAPPAGE PROGRAM

§§114.211-114.217, 114.219

STATUTORY AUTHORITY

The new sections are adopted under the Texas Water Code (TWC), §5.103, which provides the commission the authority to adopt rules necessary to carry out its powers and duties under the TWC. The amendments are also adopted under the Texas Health and Safety Code, TCAA, §382.011, which provides the commission the authority to control the quality of the state's air; §382.012, which provides the commission the authority to prepare and develop a general, comprehensive plan for the control of the state's air; §382.017, which provides the commission the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.019, which provides the commission the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles; and §382.039, which provides the commission the authority to develop and implement transportation programs and other measures necessary to demonstrate attainment and protect the public from exposure to hazardous air contaminants from motor vehicles.

§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)

$$\text{Total pounds of emission reduction} = \frac{VMT(ER1 - ER2)3yr}{454g / lb.}$$

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.