

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §114.1 (Definitions) and §114.4 (Vehicle Retirement and Mobile Emission Reduction Credit Definitions), new §114.211 (Purpose), §114.212 (Enterprise Operator Responsibilities), §114.213 (Vehicle Eligibility), §114.214 (Advertising), §114.215 (Mobile Emission Reduction 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 proposes these revisions and new sections to Chapter 114 (Control of Air Pollution from Motor Vehicles), Subchapter A (Definitions), Subchapter F (Mobile Emission Reduction Credits), and to the State Implementation Plan (SIP), to add and revise rules concerning Voluntary Accelerated Vehicle Retirement (VAVR),

The VAVR may also be referred to as a vehicle scrappage program. The commission proposes 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 PROPOSED RULES

The proposed 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 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 The original rules were repealed on July 29, 1998.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 proposed rules will use modeled averages from the United States Environmental Protection Agency (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 an acceleration simulation mode (ASM-2) analyzer with a Vehicle Mass Analysis System (V-MASS).

As the VAVR program rules are not required by the Federal Clean Air Act (FCAA, 42 United States Code, §§7401 et seq.), there is no requirement for the commission to have rules regarding scrappage. However, the proposed rule 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 state implementation plan.

SECTION BY SECTION DISCUSSION

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

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

The proposed 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 Accelerated Vehicle Retirement (or voluntary scrappage) program proposed in this rulemaking. The definitions being deleted 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 definitions being added include voluntary accelerated vehicle retirement, enterprise operator, dismantler, and designee.

The proposed new §114.211 states the purpose of the VAVR program. The purpose of the proposed 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 nonattainment area SIPs or other air quality need.

The proposed new §114.212 establishes enterprise operator responsibilities to include: administering and auditing a VAVR program within their jurisdiction to meet the requirements of the proposed rules, administering and monitoring the use of credits generated under the proposed 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 proposed 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 proposed new §114.213 states the minimum requirements for vehicles to be eligible for the program. The proposed 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 proposed 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, proposed 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 proposed 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 proposed new §114.215 states that mobile emission reduction credits (MERCs) may be generated for reductions of oxides of nitrogen (NO_x) as well as volatile organic compounds, 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.

The proposed 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 proposed 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 in case the commission discovers that erroneous or fraudulent credits were granted by the enterprise operator.

The proposed new §114.217 provides the method and calculation formulas to be used to calculate MERCs and states that the MERCs must be used 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 on an emissions analyzer capable of determining emissions in grams per mile. Selected DPS inspection and maintenance referee facilities will have the capability to test individual vehicles.

The proposed new §114.219 specifies the ozone nonattainment areas and associated counties to which these proposed rules apply. The counties associated with the Dallas/Fort Worth (DFW) nonattainment area include all 12 counties in the DFW consolidated metropolitan statistical area (CMSA).

FISCAL NOTE

Bob Orozco, Technical Specialist, Strategic Planning and Appropriations Division, has determined that for the first five-year period the revisions as proposed are in effect, there will be no significant fiscal implications for state or local governments as a result of administration or enforcement of the proposed amendments. The proposed amendments would establish a VAVR program for certain areas considered to be nonattainment for the ozone NAAQS. Because the program is voluntary, no fiscal implications are attributable to the proposed amendments.

The proposed amendments to Chapter 114 would establish a VAVR program or vehicle scrappage program as part of the strategy to reduce emissions of NO_x necessary for the counties included in the DFW, Beaumont/Port Arthur (BPA), Houston/Galveston (HGA), and El Paso nonattainment areas to be able to demonstrate attainment with the ozone NAAQS. These proposed rules will provide local agencies with specific criteria to follow to help ensure emission reductions associated with a vehicle early retirement program will qualify for SIP emission reduction credits. A SIP is a plan developed for any region where existing (measured and/or modeled) ambient levels of pollutant exceeds the levels specified in a national standard. The plan sets forth a control strategy that provides emission reductions necessary for attainment and maintenance of the national standards. Voluntary emission reduction is an economical alternative of achieving credit for reducing emissions without imposing stricter pollution control programs on other sources of pollution in nonattainment areas.

The proposed amendments would establish a VAVR program with specific criteria for local agencies to follow to help ensure emission reduction associated with VAVR programs qualify for SIP credit in order to meet the emission reduction requirements in ozone nonattainment areas. Each county within the specified VAVR areas or counties may opt into the program and individual owners of vehicles may volunteer to retire their vehicle(s) in accordance with the proposed rules. The proposed rules will be applicable to on-road motor vehicles, including passenger cars and light-duty trucks in the 12-county DFW CMSA, and the BPA, HGA, and El Paso ozone nonattainment counties. The DFW CMSA consists of Collin, Dallas, Denton, Ellis, Henderson, Hood, Hunt, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties. The BPA nonattainment counties include Hardin, Jefferson, and Orange Counties. The HGA nonattainment area includes Brazoria, Chambers, Fort Bend, Galveston,

Harris, Liberty, Montgomery, and Waller Counties. The El Paso nonattainment area consists of only El Paso County.

In general, the vehicle retirement program applies to any on-road vehicle that has been registered with the TxDOT for the past immediate 12 consecutive months to an address within a participating county in which the program is adopted. To qualify for emission credits or retirement payment, the vehicle must meet certain criteria contained in the proposed amendments.

The staff anticipates that the VAVR program will provide either emission credits or cash payments to individuals and businesses for each vehicle that is retired. Each participating county or area will establish their own schedule of payments and other particulars of their program. One area has estimated that it could cost the enterprise operator up to approximately \$500 per retired vehicle to participate in this program.

PUBLIC BENEFIT

Mr. Orozco also has determined that for each year of the first five years the proposed amendments to Chapter 114 are in effect, the public benefit anticipated from enforcement of and compliance with the proposed rules will be the potential reduction of on-road mobile source emissions, potential reduction in NO_x and other vehicle emissions, potentially improved air quality, and contribution toward demonstration of attainment with the NAAQS for ozone.

There are no anticipated economic implications anticipated to individuals or businesses as a result of implementing the proposed amendments because the VAVR program is voluntary on the part of participating counties and voluntary on the part of vehicle owners. It is anticipated that the decision to voluntarily retire vehicles will be based on the economics associated with each individual vehicle and potential replacement costs, along with emission reduction requirements.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

There are no anticipated fiscal implications to small businesses and micro-businesses as a result of implementing the proposed amendments because the program is voluntary. It is anticipated that the decision to voluntarily retire vehicles will be based on the economics associated with each individual vehicle and potential replacement costs, along with emission reduction requirements.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has 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 proposed 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 proposed 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 North Central Texas Clean Air Steering Committee (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 emission reductions associated with a vehicle early retirement program will qualify for SIP emission reduction credit. The proposed amendments are the commission response to the potential inclusion of a vehicle early retirement strategy and one element of the proposed DFW, HGA, BPA, and El Paso Attainment Demonstration SIP. 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 the FCAA, §7409, and therefore meet a federal requirement. States are primarily responsible for ensuring attainment and maintenance of NAAQS once EPA has established those standards. Under the

FCAA, §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 proposal 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 proposal is intended to help bring ozone nonattainment areas into compliance and to help keep attainment and near nonattainment areas from going into nonattainment. The proposed amendments do not exceed a standard set by federal law, exceed an express requirement of state law unless specifically required by federal law, nor exceed a requirement of a delegation agreement. The proposed 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. The commission invites public comment on the draft regulatory impact analysis.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these proposed 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 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 proposed rules will use modeled averages from EPA's MOBILE Model to calculate emission reductions per vehicle. 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 proposed 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 has 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's rules in 30 TAC Chapter 281, Subchapter B, concerning 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 has reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and has 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 40 Code of Federal Regulations (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.

Interested persons may submit comments on the consistency of the proposed rules with the CMP during the public comment period.

PUBLIC HEARING

The commission will hold public hearings on this proposal at the following times and locations:

January 24, 2000, 2:00 p.m., City of El Paso Council Chambers, 2 Civic Center Plaza, 2nd floor, El Paso; January 25, 2000, 10:00 a.m., Building E, Room 201S, Texas Natural Resource Conservation Commission Complex, 12100 Park 35 Circle, Austin; January 26, 2000, 10:00 a.m., Longview City Hall Council Chambers, 300 West Cotton Street, Longview; January 26, 2000, 7:00 p.m., City of Irving Central Library Auditorium, 801 West Irving Boulevard, Irving; January 27, 2000, 10:00 a.m., Dallas Public Library Auditorium, 1515 Young Street, Dallas; January 27, 2000, 7:00 p.m., Lewisville City Council Chambers, Municipal Center, Lewisville; January 28, 2000, 10:00 a.m., Council Chambers, 2nd floor, Fort Worth City Hall, 1000 Throckmorton Street, Fort Worth; January 31, 2000, 1:30 p.m., John Grey Institute, 855 Florida Avenue, Beaumont; and January 31, 2000, 7:00 p.m.,

Houston-Galveston Area Council, 3555 Timmons Lane, Houston. The hearings are structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearings; however, agency staff members will be available to discuss the proposal 30 minutes prior to the hearings and will answer questions before and after the hearings.

Persons with disabilities who have special communication or other accommodation needs, who are planning to attend the hearing, should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Ms. Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 99055F-114-AI. Comments must be received by 5:00 p.m., February 1, 2000. For further information, please contact Alan Henderson at (512) 239-1510 or Bob Reese at (512) 239-1439.

STATUTORY AUTHORITY

The amendments are proposed under the Texas Health and Safety Code, Texas Clean Air Act (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.

The amendments implement TCAA, §382.002, relating to Policy and Purpose; §382.011, relating to General Powers and Duties; §382.012, relating to State Air Control Plan; §382.019, relating to Methods Used to Control and Reduce Emissions from Land Vehicle; and §382.039, relating to Attainment Program.

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) - (12) (No change.)

(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. [The credit obtained from a quantifiable, permanent, enforceable, and surplus (with respect to other federal and state regulations) emission reduction generated by a mobile source as set forth in Subchapter F of this chapter (relating to Vehicle Retirement and Mobile Emission Reduction

Credits) and which has been banked in accordance with §101.29 of this title (relating to Emissions Credit Banking and Trading).]

(14) - (18) (No change.)

§114.4. Vehicle Retirement and Mobile Emission Reduction Credit Definitions.

Unless specifically defined in the TCAA or in the rules of the [Texas Natural Resource Conservation Commission (commission)] 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 Vehicle Retirement and Mobile Emission Reduction Credits), shall have the following meanings, unless the context clearly indicates otherwise. [:]

[(1) Area wide fleet - All the automobiles and light duty trucks covered under the Texas Inspection and Maintenance program as set forth in §114.50 of this title (relating to the Vehicle Emission Inspection and Maintenance Program) in the ozone nonattainment area.]

[(2) High-emitting vehicle - A vehicle that fails the Texas Inspection and Maintenance emission test.]

[(3) Dealer - The entity that locates the potential scrappage vehicles, purchases the vehicles, sells the mobile source emission reduction credits, and initiates the proper recycling and reclamation of the vehicle by a scrapper; the broker or middleman that may exist between the scrappage sponsor and the scrapper.]

(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) Mobile Source Emission Reduction Credit (MERC) - The credit obtained from an enforceable, permanent, quantifiable, and surplus (to other federal and state regulations) emission reduction that results from the permanent removal of a high-emitting vehicle from the area wide vehicle

fleet and which has been banked in accordance with §101.29 of this title (relating to Emissions Banking and Trading).]

[(5) On testing cycle - The vehicle's required emission test is within the six months preceding the deadline for emission testing and vehicle registration under the Texas Inspection and Maintenance Program. The 18 months following the vehicle registration expiration date are the off cycle months.]

[(6) Recycling - Refer to the Code of Federal Regulations, Title 40, §261.1.]

[(7) Replacement vehicle - The vehicle the motorist is assumed to drive after his/her original vehicle is sold to a scrapper. The replacement vehicle is equal to the average fleet vehicle for that ozone nonattainment area as calculated from the most current auto registrations and the most recent version of the EPA MOBILE Model.]

[(8) Scrappage sponsor - Any organization that funds the purchase of high-emitting vehicles for the purpose of obtaining mobile source emission reduction credits. The sponsor and the dealer can be the same enterprise.]

[(9) Scrappage vehicle - An automobile or light-duty truck in the area wide fleet that is sold or will be sold to a scrapper for recycling and reclamation.]

[(10) Scrapper - The entity, such as a salvage yard, automotive dismantler, or parts recycler, that recycles and reclaims the scrappage vehicle under the Accelerated Vehicle Retirement program. The scrapper can also purchase the vehicle from the motorist, making the scrapper and the dealer the same enterprise. Each scrapper shall be certified by the commission in accordance with §114.200(d) of this title (relating to Accelerated Vehicle Retirement Program).]

[(11) Stationary source (applies only to nonattainment area, new source review rules under FCAA provisions) - Any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the FCAA.]

(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 [MOBILE EMISSION REDUCTION
CREDITS]**

§§114.211-114.217, 114.219

STATUTORY AUTHORITY

The new sections are proposed under the Texas Health and Safety Code, Texas Clean Air Act (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.

The new sections implement TCAA, §382.002, relating to Policy and Purpose; §382.011, relating to General Powers and Duties; §382.012, relating to State Air Control Plan; §382.019, relating to Methods Used to Control and Reduce Emissions from Land Vehicle; and §382.039, relating to Attainment Program.

§114.211. Purpose.

The provisions of this rule provide the minimum criteria which local agencies must use to establish a voluntary accelerated vehicle retirement 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.

§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; Mobile Emission Reduction 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, 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 mobile emission reduction credits (MERC) within the voluntary accelerated vehicle retirement (VAVR) program if these vehicles meet the following criteria.

(1) At a minimum, the vehicle must be registered with the Texas Department of Transportation (TxDOT) for 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 mobile emission reduction 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 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) 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) 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 MERC generation 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 mobile emission reduction credits 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 MERCs, 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 MERCs.

(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. Resultant mobile emission reduction credits 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. Mobile Emission Reduction Credits for the Voluntary Accelerated Vehicle Retirement Program.

(a) Mobile emission reduction credits (MERC) 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 mobile emission reduction amount calculated in accordance with §114.217 of this title; 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 MERC miscalculations have erroneously or fraudulently granted a higher credit amount for a particular vehicle or vehicles, the enterprise operator will make available additional credits 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) Mobile emission reduction credits (MERC) for the voluntary accelerated vehicle retirement program must be determined using the following formula: Figure: 30 TAC §114.217(a)

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

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; Mobile Emission Reduction 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 in the Dallas/Fort Worth nonattainment all counties included in the consolidated metropolitan statistical area (CMSA). These areas and affected counties include:

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

(2) Dallas/Fort Worth CMSA which consists of Collin, Dallas, Denton, Ellis, Henderson, Hood, Hunt, 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.