

The commission adopts the repeal of §114.200, concerning the Accelerated Vehicle Retirement (AVR or vehicle scrappage) Program without changes to the proposal as published in the March 20, 1998 issue of the *Texas Register* (23 TexReg 2952).

EXPLANATION OF REPEALED RULE

This repeal is part of the regulatory reform effort. Regulatory reform projects identify rules and regulations which need clarification for the benefit of the public; are outdated; impose regulatory requirements in excess of their contribution to the commission's mission; or are duplicated, unnecessary, or inconsistent. This rule is inconsistent with the current Inspection/Maintenance (I/M) program, which lacks a loaded mode I/M 240 test. Additionally, this rule is currently not being used by the agency and is not required by state or federal law.

The commission supports and will continue to work closely with local areas in developing scrappage programs as potential emission reduction strategies to assist them in moving towards attainment.

The repeal further allows flexibility for local areas to create their own vehicle scrappage programs based on future guidance from the agency.

FINAL REGULATORY IMPACT ANALYSIS

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

not meet any of the four applicability requirements listed in §2001.0225(a). There was no public comment on the Regulatory Impact Analysis.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for this repeal under Texas Government Code, §2007.043. Promulgation and enforcement of this rule repeal will not affect private real property.

COASTAL MANAGEMENT PLAN

The commission has determined that the rule repeal 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 CMP. 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 policy applicable to this rule repeal is the policy that commission rules comply with regulations at Title 40, Code of Federal Regulations (40 CFR), to protect and enhance air quality in the coastal area (31 TAC §501.14(q)). This repeal does not change existing requirements which already comply with regulations at 40 CFR and is therefore consistent with this policy.

PUBLIC HEARING AND COMMENTERS

A public hearing was held on April 14, 1998 in Austin to consider the scrappage rule revocation. Oral comments were received from the Harris County Auto Recyclers Association and the Houston-Galveston Area Council (H-GAC). Written comments on the rule repeal were received by the City of Austin; North Central Texas Council of Governments (NCTCOG) and the United States Environmental Protection Agency (EPA).

Scrappage Rule Repeal

All of the comments received indicate a desire to have scrappage programs available as a means to reduce air pollution. NCTCOG, H-GAC and the Harris County Auto Recyclers Association commented that they want a revised state scrappage rule.

Commission staff is still assessing whether or not guidance or a new scrappage rule will be issued. A rule may have to be developed in order to trade mobile emission reduction credits and for the EPA to deem credible emission reduction credits in a State Implementation Plan. The commission is in the process of conducting dialogue with staff members and stakeholders from outside the agency, which will facilitate discussions on the issue of vehicle scrappage, including the possible need for a rule.

Perception of the Scrappage Rule Revocation

NCTCOG and the H-GAC expressed concern that the public will perceive the withdrawal of the scrappage rule as the commission being unsupportive of scrappage programs.

The repeal of the scrappage rule is needed due to the fact that measurements of emission reductions were based on unavailable I/M 240 technology. The Commissioners have publicly stated their support for the development of local vehicle scrappage programs.

Effectiveness of a Scrappage Program

The City of Austin and the H-GAC explicitly stated that they believe a scrappage program would be a cost-effective way to reduce vehicle emissions.

Analysis by the commission indicates that scrappage programs have the potential to be cost-effective, as long as program criteria are carefully defined. The commission recognizes that successful scrappage programs have been conducted in other states and is in the process of researching and analyzing these programs.

Environmental Justice Issues

EPA stated that an awareness of environmental justice issues is necessary while developing vehicle scrappage programs. H-GAC and the Harris County Auto Recyclers Association commented that

environmental justice complaints against scrappage programs are misdirected, and that emission reductions from scrappage programs have beneficial results for all regions of the nonattainment area.

The commission is aware of environmental justice complaints against a scrappage program in California, and that similar protests could result in Texas. However, the commission believes that local scrappage programs can be developed in a way so that pollution emissions do not disproportionately affect minority and low income communities.

STATUTORY AUTHORITY

The repeal is adopted under the Texas Clean Air Act, Texas Health and Safety Code §382.017. The repeal authority is also authorized under Texas Water Code §5.103, and Texas Health and Safety Code, §382.017. Section 5.103 requires the commission to adopt rules any time it is repealing any agency statement of general applicability that describes its procedure or practice requirements. Section 382.017 provides the commission with the authority to adopt rules.

SUBCHAPTER F : VEHICLE RETIREMENT AND

MOBILE EMISSION REDUCTION CREDITS

§114.200

114.200. Accelerated Vehicle Retirement Program. Repealed