

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** November 18, 2016

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

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

Docket No.: 2015-1820-RUL

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

Background and reason(s) for the rulemaking:

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

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

The adopted amendments make minor revisions to certain test method requirements in §114.100 and §114.305. The current state regulations for the approved test method for the oxygen requirements for gasoline in §114.100 requires the use of American Society

Re: Docket No. 2015-1820-RUL

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

In addition, to conform to TCEQ and *Texas Register* formatting requirements, non-substantive revisions were made throughout the adopted amendments to correct citations, acronym usage, and other minor issues. The adopted revisions to §114.100 and §114.305 will be submitted to the EPA as a SIP revision.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

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

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

None.

Re: Docket No. 2015-1820-RUL

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

None.

Statutory authority:

The amendments and repeals are adopted under Texas Water Code (TWC), §5.103, concerning Rules; and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC. The amendments and repeals are also adopted under Texas Health and Safety Code (THSC), §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; and THSC, §382.202, concerning Vehicle Emissions Inspection and Maintenance Program, which authorizes the commission to establish vehicle fuel content standards after January 1, 2004, as long as distribution of low emission diesel as described in the SIP is not required prior to February 1, 2005.

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

Effect on the:

A.) Regulated community:

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

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

The adopted rule revisions to §114.100 will have no impact on the regulated community.

B.) Public:

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

Re: Docket No. 2015-1820-RUL

The adopted rulemaking to amend §114.100 and §114.305 will have no impact on the public.

C.) Agency programs:

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

Stakeholder meetings:

No stakeholder meetings were held.

Public comment:

The commission offered a public hearing on this proposal in Austin on August 18, 2016. The public hearing was not formally opened for comment due to the lack of public attendance. The comment period closed on August 22, 2016 and no comments were received on this rulemaking during the public comment period.

Significant changes from proposal:

There are no changes since proposal.

Potential controversial concerns and legislative interest:

The North Central Texas Council of Government was contacted regarding the repeal of the VAVR program and no objections were received.

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

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

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

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

Key points in the adoption rulemaking schedule:

Texas Register proposal publication date: July 22, 2016

Anticipated Texas Register adoption publication date: December 23, 2016

Anticipated effective date: December 29, 2016

Six-month Texas Register filing deadline: January 22, 2016

Commissioners
Page 5
November 18, 2016

Re: Docket No. 2015-1820-RUL

Agency contacts:

Michael Regan, Rule Project Manager, Air Quality Division, (512) 239-2988
Sierra Redding, Staff Attorney, (512) 239-2496
Derek Baxter, Texas Register Rule/Agenda Coordinator, (512) 239-2613

Attachments:

None.

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