

The Texas Commission on Environmental Quality (commission or TCEQ) adopts amendments to §114.512 and §114.517 *without changes* to the proposed text as published in the October 5, 2007, issue of the *Texas Register* (32 TexReg 6990) and will not be republished.

The amended sections will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

Chapter 114, Subchapter J, Operational Controls for Motor Vehicles, Division 2, Locally Enforced Motor Vehicle Idling Limitations, was adopted on November 17, 2004, at the request of the local air quality planning organization in the Austin Early Action Compact (EAC) area (Bastrop, Caldwell, Hays, Travis, and Williamson Counties) for use as a control strategy in its EAC agreement to maintain attainment with the federal eight-hour ozone national ambient air quality standards (December 3, 2004, issue of the *Texas Register* (29 TexReg 11355)). The rule package also provided local governments in other areas of the state the option of applying these rules in their areas when additional control measures were needed to achieve or maintain attainment of the federal eight-hour ozone standard in the future.

The concept of an early, voluntary eight-hour air quality plan, or EAC was endorsed by EPA Region 6 in June 2002 then slightly modified and made available nationally in November 2002. A key point of an EAC is the flexibility afforded areas to select emission reduction measures such as limiting vehicle idling. On August 1, 2005, members of the Austin EAC and the commission signed the locally enforced idling restrictions memorandum of agreement (MOA). This MOA allowed participating counties to enforce the idling restriction rule in their jurisdictions. Members of the Austin EAC area signing the MOA included

the counties of Bastrop, Caldwell, Hays, Travis, and Williamson and the cities of Austin, Bastrop, Elgin, Georgetown, Hutto, Lockhart, Luling, Round Rock, and San Marcos.

In meetings with officials of the Austin EAC to develop the idling rule MOA, concerns arose regarding language in the locally enforced idling restrictions. Austin EAC members voiced concern that parts of §114.517, Exemptions, were ambiguous and needed revision. Members of the Austin EAC felt that §114.517(7) and (8) could be misinterpreted to mean that a transit vehicle could idle for a total of one hour. There was also concern that the commission's rule conflicted with Texas Department of Transportation (TxDOT) guidelines for vehicle idling by employees. Austin EAC members brought to the commission's attention TxDOT's policy regarding idling. The guidelines advise employees to idle their vehicles to operate the air conditioner or heating system for employee health and safety while they perform an essential job function related to roadway construction or maintenance. In many instances on-road and off-road vehicles at roadway construction sites must remain in idle mode during normal operations. The commission agreed with the Austin EAC members that the locally enforced idling restrictions should be revised in light of these concerns. At the request of the Austin EAC members, the commission adopted revisions to the locally enforced motor vehicle idling rule (May 12, 2006, issue of the *Texas Register* (31 TexReg 3900)).

In that same rulemaking, the commission also adopted revisions to the idling rule to conform to legislation passed in 2005. The 79th Legislature, 2005, passed House Bill (HB) 1540, amending Texas Health and Safety Code (THSC), Chapter 382, Subchapter B, §382.0191, Idling of Motor Vehicle While Using Sleeper Berth. The bill, stated that the "commission may not prohibit or limit the idling of a motor vehicle when idling is necessary to power a heater or air conditioner while a driver is using the vehicle's

sleeper berth for a government-mandated rest period.” In addition, the bill stated that, “no driver using the vehicle’s sleeper berth may idle the vehicle in a school zone or within 1,000 feet of a public school during its hours of operation,” or else be subject to a fine not to exceed \$500.

This rulemaking amended the rule on idling limits for gasoline and diesel-powered engines in motor vehicles within the jurisdiction of any local government in the state that has signed an MOA with the commission to delegate enforcement to that local government. Local enforcement is crucial to the effective implementation of rules to reduce the extended idling of gasoline and diesel-powered heavy-duty vehicles and will help to ensure the reduction in nitrogen oxides (NO_x) and volatile organic compound (VOC) emissions, which is needed by local governments to achieve or maintain attainment of the federal eight-hour ozone standard. These idling limits will lower NO_x emissions and other pollutants from fuel combustion. Because NO_x is a precursor to ground-level ozone formation, reduced emissions of NO_x will result in ground-level ozone reductions.

In May 2007, the 80th Legislature passed Senate Bill (SB) 12, which in part amended THSC, §382.0191. The legislation further prohibited vehicle idling in residential areas as defined by Local Government Code, §244.001 and within 1,000 feet of hospitals. The legislation also prohibited vehicles with sleeper berths from idling if an electrification facility with external heat and air conditioning hook-ups is located within two miles of where they are stopped. SB 12 extended the expiration of prohibitions on the commission from adopting rules restricting certain idling activities from September 1, 2007, to September 1, 2009.

Currently, there are no federal regulations governing idle time for motor vehicles. The requirements developed by the commission for this NO_x emission reduction strategy will result in restrictions on the

time allowed for motor vehicle idling.

SECTION BY SECTION DISCUSSION

§114.512, Control Requirements for Motor Vehicle Idling

The adopted amendment to §114.512(b), Control Requirements for Motor Vehicle Idling, prohibits idling by drivers using the vehicle's sleeper berth in residential areas as defined by Local Government Code, §244.001, or within 1,000 feet of a hospital. Additionally, the expiration of this subsection will be changed from September 1, 2007, to September 1, 2009.

§114.517, Exemptions

The adopted amendment to §114.517(1), Exemptions, will change the expiration date of these paragraphs from September 1, 2007, to September 1, 2009. Adopted §114.57(2) has been added to clarify that after September 1, 2009, vehicles with Gross Vehicle Weight Rating (GVWR) of 14,000 pounds or less will no longer be exempt from the requirements of §114.512. The current exemptions listed as paragraphs (2)-(11) of this section are renumbered as paragraphs (3)-(12) for consistency. Renumbered §114.517(12) is amended by changing the expiration date of the paragraph from September 1, 2007, to September 1, 2009. The adopted amendment to §114.517(11) will also prohibit idling to power a heater or air conditioner if the vehicle is within two miles of a facility offering external heating and air conditioning connections at a time when those connections are available.

The amendments to §114.512 and §114.517 are adopted to ensure that the rules are consistent with the requirements set forth in SB 12.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rules are not subject to §2001.0225 because although the adoption meets the definition of a “major environmental rule” as defined the statute, it does not meet any of the four applicability requirements listed in §2001.0225(a).

The regulatory analysis requirements of Texas Government Code, §2001.0225 only apply 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 commission instead of under a specific state law. Specifically, the adoption will amend the rules that limit heavy-duty motor vehicle idling with the jurisdiction of any local government in the state that has signed an MOA with the commission to delegate enforcement to that local government. The adopted amendments will implement changes to THSC, §382.0191 as a result of passage of SB 12 in the 80th Legislature, 2007. The legislation further prohibited vehicle idling in residential areas and within 1,000 feet of hospitals. The legislation also prohibited vehicles with sleeper berths from idling if an electrification facility with external heat and air conditioning hook-ups is located within two miles of where they are stopped. SB 12 extended the expiration of prohibitions on the commission from adopting rules restricting certain idling activities from September 1, 2007, to September 1, 2009. Currently, there are no federal regulations governing idle time for motor vehicles. These adoptions therefore do not exceed an express requirement of federal law. The amendments are needed to implement state law but do not exceed those new

requirements. The adopted rules do involve a compact (in particular, the Austin EAC), which is an agreement between the state and federal government to implement a state and federal program, however, the adopted amendments do not exceed the requirements of that compact. Finally, this adopted rulemaking was not developed solely under the general powers of the commission, but is authorized by specific sections of THSC, Chapter 382, which are cited in the STATUTORY AUTHORITY section of this preamble, including §382.012 and §382.0191. Because this rulemaking does not meet any of the four applicability requirements, Texas Government Code, §2001.0225(b) does not apply, and a regulatory impact analysis is not required.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period, but did not receive any comments during the public comment period.

TAKINGS IMPACT ASSESSMENT

Under Texas Government Code, §2007.002(5), “taking” means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or §17 or §19, Article I, Texas Constitution; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The commission completed a takings impact assessment for the adopted rules. Promulgation and enforcement of the rules will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The adopted rules will not affect private real property in a manner that restricts or limit an owner's right to the property that would otherwise exist in the absence of the government action. Therefore, the adopted rules will not cause a "taking" as defined under, Texas Government Code, §2007.002(5).

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking action and found that the adoption is an action identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, that will affect an action/authorization identified in §505.11, and therefore will require that applicable goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission determined that under 31 TAC §505.22, the adopted rulemaking action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(1)). No new sources of air contaminants will be authorized and ozone levels will be reduced as a result of the adopted rulemaking. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations in 40 Code of Federal Regulations, to protect and enhance air quality in the coastal area (31 TAC §501.14(q)). This rulemaking action complies with 40 Code of Federal Regulations. Therefore, in compliance with 31 TAC §505.22(e), this rulemaking action is consistent with CMP goals and policies.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period, but did not receive any comments during the public comment period.

PUBLIC COMMENT

The public hearing on this adoption was held in Austin on October 22, 2007, at 10:00 a.m. at the Texas Commission on Environmental Quality complex located at 12100 Park 35 Circle in Building F, Room 2210.

The City of Dallas submitted written comments in support of the rulemaking. One individual submitted a written comment not directly related to the idling rulemaking.

RESPONSE TO COMMENTS

Support of Rule

The City of Dallas commented that the city is in support of all changes proposed to Chapter 114 because they are of great importance in the effort to improve air quality.

The commission appreciates the support for the changes in this rule. No changes were made as a result of this comment.

Year Round Idling Restrictions Comment

The City of Dallas commented that they are in support of year-round idling restrictions and asked if the

effective period could be moved from during ozone season to year-round.

The commission acknowledges the request to implement year round idling restrictions. This particular rulemaking is limited to implementation of changes found in SB 12. The commission did not propose to change the idling season to year-round. No changes to the idling restriction season were made as a result of this comment. The idling limitations will remain, as they currently exist for consistency with the SIP.

Non-Idling Rule Comments

An individual commented in favor of ending the oxygenation fuel program in the El Paso area.

The commission appreciates the commenter’s interest in air quality. The comments do not relate to the proposed idling restriction amendments and no changes have to the rule have been made in response to them.

SUBCHAPTER J: OPERATIONAL CONTROLS FOR MOTOR VEHICLES

DIVISION 2: LOCALLY ENFORCED MOTOR VEHICLE IDLING LIMITATIONS

§114.512, §114.517

STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC, and under Texas Health and Safety Code (THSC), Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA. The amendments are adopted under TCAA, §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.019, which authorizes the commission to adopt rules to control and reduce emissions from engines used to propel land vehicles; §382.0191, which authorizes use of a sleeping berth for a government-mandated rest period; and §382.208, which authorizes the commission 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 adopted amendments implement TWC, §5.103, THSC, §§382.002, 382.011, 382.012, 382.017, 382.019, 382.0191, and 382.208, and SB 12, Article 4, 80th Legislature, 2007.

§114.512. Control Requirements for Motor Vehicle Idling.

(a) No person shall cause, suffer, allow, or permit the primary propulsion engine of a motor vehicle to idle for more than five consecutive minutes when the motor vehicle, as defined in §114.510 of this title (relating to Definitions), is not in motion during the period of April 1 through October 31 of each calendar year.

(b) No driver using the vehicle's sleeper berth may idle the vehicle: in a residential area as defined by Local Government Code, §244.001, in a school zone, within 1,000 feet of a hospital, or within 1,000 feet of a public school during its hours of operation. An offense under this subsection may be punishable by a fine not to exceed \$500. This subsection expires September 1, 2009.

§114.517. Exemptions.

The provisions of §114.512 of this title (relating to Control Requirements for Motor Vehicle Idling) do not apply to:

(1) a motor vehicle that has a gross vehicle weight rating of 14,000 pounds or less and does not have a sleeper berth;

(2) a motor vehicle that has a gross vehicle weight rating of 14,000 pounds or less, after September 1, 2009;

(3) a motor vehicle forced to remain motionless because of traffic conditions over which the operator has no control;

(4) a motor vehicle being used by the United States military, national guard, or reserve forces, or as an emergency or law enforcement motor vehicle;

(5) the primary propulsion engine of a motor vehicle providing a power source necessary for mechanical operation, other than propulsion, and/or passenger compartment heating, or air conditioning;

(6) the primary propulsion engine of a motor vehicle being operated for maintenance or diagnostic purposes;

(7) the primary propulsion engine of a motor vehicle being operated solely to defrost a windshield;

(8) the primary propulsion engine of a motor vehicle that is being used to supply heat or air conditioning necessary for passenger comfort and safety in vehicles intended for commercial or public passenger transportation, or passenger transit operations, in which case idling up to a maximum of 30 minutes is allowed;

(9) the primary propulsion engine of a motor vehicle being used to provide air conditioning or heating necessary for employee health or safety while the employee is using the vehicle to perform an essential job function related to roadway construction or maintenance;

(10) the primary propulsion engine of a motor vehicle being used as airport ground support equipment;

(11) the owner of a motor vehicle rented or leased to a person that operates the vehicle and is not employed by the owner; or

(12) a motor vehicle when idling is necessary to power a heater or air conditioner while a driver is using the vehicle's sleeper berth for a government-mandated rest period and is not within two miles of a facility offering external heating and air conditioning connections at a time when those connections are available. This subsection expires September 1, 2009.