

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners

Date: July 1, 2011

Thru: Melissa Chao, Acting Chief Clerk
Mark R. Vickery, P.G., Executive Director

From: Susana M. Hildebrand, P.E, Chief Engineer

Docket No.: 2010-0878-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 114, Control of Air Pollution from Motor Vehicles
Motor Vehicle Idling Rule Revision
Rule Project No. 2009-054-114-EN

Background and reason(s) for the rulemaking:

The National Armored Car Association (NACA) submitted a petition for rulemaking on May 22, 2008, requesting that armored vehicles be added to the current list of idling restriction exemptions under 30 Texas Administrative Code (TAC) §114.517. Staff received approval from the commission on July 9, 2008, to move forward with initiating rulemaking regarding the armored car petition. Action on a proposal was deferred following a stakeholder meeting held on October 6, 2008, in anticipation of potential legislative changes from the 81st Texas Legislature, 2009, Regular Session. However, no legislation relating to motor vehicle idling was enacted by the 81st Texas Legislature. The adopted rulemaking will address the NACA petition and delete the ozone season dates under §114.512 for consistent enforcement year-round. In addition, the adopted rulemaking will remove §114.512(b) and the expiration dates in §114.517, which were established by House Bill (HB) 1540, 79th Texas Legislature, 2005, Regular Session, and extended to September 1, 2009, by Senate Bill (SB) 12, 80th Texas Legislature, 2007, Regular Session, because they are no longer valid. The adopted rulemaking will also remove §114.517(2), which provides a duplicative exemption for all vehicles with gross vehicle weight rating of 14,000 pounds or less.

Scope of the rulemaking:

The adopted rule revision will amend Chapter 114, Subchapter J, as follows:

- amend §114.512 to remove the enforcement period of April 1 through October 31 of each calendar year in subsection (a) to allow enforcement year-round and to remove the prohibition for drivers using sleeper berths to idle in residential areas, school zones, and near hospitals and the expiration date in subsection (b) because it has expired; and
- amend §114.517 to remove the duplicative exemption for a motor vehicle that has a gross vehicle weight rating of 14,000 pounds or less in paragraph (2) and replace it with exemption language for armored vehicles; and to retain the exemption in paragraph (12) for a motor vehicle when idling for heating or air conditioning while

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a driver is using the vehicle's sleeper berth for a government-mandated rest period and not within two miles of a facility offering external heating or conditioning, which expired on September 1, 2009.

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

A.) Summary of what the rulemaking will do:

The adopted rulemaking will allow enforcement year-round; remove the expired prohibition for drivers using sleeper berths to idle in residential areas, school zones, and near hospitals; and remove expiration dates that are no longer applicable. Additionally, the adopted rulemaking will remove the duplicative exemption for a motor vehicle that has a gross vehicle weight rating of 14,000 pounds or less and replace it with a new exemption for armored vehicles; and retain the exemption for a motor vehicle when idling for heating or air conditioning while a driver is using the vehicle's sleeper berth for a government-mandated rest period and not within two miles of a facility offering external heating or conditioning, which expired on September 1, 2009.

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

None.

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

Retaining the exemption in §114.517(12) is not required by the state statute; however, staff recommends reinstating the expired exemption for safety considerations.

Statutory authority:

This rulemaking will be adopted under the authority of Texas Government Code, §2001.021, Petition for the Adoption of Rules, which authorizes an interested person to petition a state agency for the adoption of a rule. The amendments are adopted under Texas Water Code (TWC), §5.102, General Powers, TWC, §5.103, Rules, and TWC, §5.105, General Policy, which provide the commission with the general powers to carry out its duties and authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.013, General Jurisdiction of Commission, which states the commission's authority over various statutory programs. The amendments are also adopted under Texas Health and Safety Code (THSC), §382.017, Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of THSC, Chapter 382 (the Texas Clean Air Act), and to adopt rules that differentiate among particular conditions, particular sources, and particular areas of the state. The amendments are also adopted under THSC, §382.002, 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, General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC,

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§382.012, 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, §382.019, Methods Used to Control and Reduce Emissions From Land Vehicles, which provides the commission the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles; and THSC, §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 THSC, §§382.011, 382.012, 382.019, and 382.208.

Effect on the:

A.) Regulated community:

Local jurisdictions that have signed a Memorandum of Agreement (MOA) with the Texas Commission on Environmental Quality (TCEQ) to implement and enforce the idling restrictions will have to add armored vehicles to their list of vehicles exempt from idling restrictions, and the vehicle operators in local jurisdictions with an MOA will need to comply with the restrictions year-round. There will be no fiscal impacts on the regulated community.

B.) Public:

The adopted rule revisions will not have an adverse effect on the public. There will be no fiscal impacts on the public.

C.) Agency programs:

There is no anticipated effect on any agency program by implementing the adopted rule revisions. There will be no fiscal impacts on the agency.

Stakeholder meetings:

Stakeholder meetings were held in Arlington and Austin in April 2010. The stakeholder meetings were open participation.

Public comment:

The commission held public hearings on the proposal in Austin on March 1, 2011, and in Fort Worth on March 3, 2011. Oral comments regarding Chapter 114 were presented by the Capital Area Council of Governments (CAPCOG), FFE Transportation, the North Central Texas Council of Governments (NCTCOG), and the Texas Motor Transportation Association (TMTA). The public comment period was from February 11, 2011, to March 11, 2011.

The commission received written comments from A Better Tripp Moving and Storage Co.Inc., Acme Truck Line, Ahrens Bros. Trucking (HPI), Alamo Relocation & Storage, Inc., All Ways Trucking, AllTrans Medical Solutions, ARB Transport, Averitt Express, B&D

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Owens Co., B.I.B. Trucking, Baldwin Distribution Services, Ltd, Bamm Express Transport LLC, BigFoot's Hotshot Transport, Bobby Lehmann, Inc., BPI, Brookshire Grocery Co., C. Lawless Trucking, LLC, Canal Cartage Company, Capital Texas Clean Air Coalition (CAC), Cargil Meat Logistics Solutions, Celanon, Charlie Slusser's Hauling Service, Creekside Nursery, Crete Carrier, CRST, C-T Trucking, Cullen Trucking, City of Dallas, Dart Transit, Dist-Tech, Dorsey Trans, E.L. Farmer & Company, EPA, Excargo Services, Fikes Truck Line, Fremont Contract Carriers, Gandy & Son's Inc., Glenn Broussard Trucking, Guy M. Turner, H & H Logistical Services, Hirschfield Transportation, Hot Shot Express, Housley Communication, Inc., Hyden Highway Hauling LLC, Johnsrud Transport, Inc., Klaus Leinenbach Trucking, Ladybug Freight, Landstar, Lanstar, Mayberry Express, McClatchy Bros., Inc., MLC LLC, Morse Trucking, Nabors Well Services, NCTCOG, Oklahoma Tank Lines, OOIDA, Panel Truss, Pappas Restaurants, Parkway Transport, Inc., Payan Express Transportation Services, Inc., Phagan Express of Texas, Phil Brewer Trucking, Phil Brewer Trucking, Pressinon, Inc., Queen Moving & Storage Co., Randy Bundy Trucking, RCL Trucking, Reed's Sand & Gravel LLC, Refrigerated Transport, Inc., Rex Long Transport Co., Skinner Transportation Inc., Skinner Transportation Inc., Specialized Transport Service, Inc. aka STS Heavy Hauling, Star Fleet Trucking, Sterling's Vacuum Service, Stevens Van Lines, Inc., Swift Transportation, Texas Hot Oilers, Inc., TMTA, Texas Moving Co., Inc., Tom Taylor Trucking, Transwood, Inc., Tri Dal, Ltd, Turner Bros. LLC, Two Ts Trucking, USA Truck Inc., USFW, W. M. Dewey & Son, Inc., Werner Enterprises, Inc., and 31 individuals. Significant public comments are summarized as follows.

General Comments

Multiple commenters opposed idling restrictions based on the numerous rules already placed on truck drivers, the economic consequences of this rule and asked the commission to consider the cause and effect of the commission's decision, including long-term consequences. *No changes were made in response to this comment.*

§114.512, Control Requirements for Motor Vehicle Idling

The CAC, the EPA, and the NCTCOG suggested that the commission should retain the prohibition for drivers using sleeper berths to idle 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 to help reduce the amount of emissions from idling in these sensitive areas. If the sleeper berth exemption is reinstated, the health of persons in these areas must continue to be protected. *No changes were made in response to this comment.*

§114.517, Exemptions

The CAC commented that it does not support adoption of the sleeper berth exemption, because it will make the rule difficult to enforce, diminish incentives for installation of idle reduction measures, and discourage jurisdictions from participation in the MOA. The CAC commented that retaining the exemption is not consistent with the legislative intent to allow the exemption to expire. The CAC recommended that the sleeper berth exemption should be limited if the commission adopts the exemption such as, prohibit sleeper berth idling in sensitive areas; to restrict heavy-duty vehicles only; allow the exemption for no

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longer than a two-year period; or modify the geographic applicability to no idling within 30 miles of a facility offering external heating or air conditioning. The CAC suggested that the commission should focus on what modifications would make the rule more effective at reducing emissions from idling, rather than trying to discern the legislature's intent in expired statutes. *No changes were made in response to this comment.*

The EPA commented that it would not be able to approve the proposed idling restriction sleeper berth exemption in the SIP unless the commission can provide substitute reductions or modeling to show that attainment can be met without the credits affected by the exemption. *In response to the EPA's comments, the §110(l) demonstration of the adoption preamble was updated to show that retaining the sleeper berth exemption will not interfere with attainment or reasonable further progress in the SIP.*

Many commenters expressed concern about the ability of truckers to get adequate quality sleep without using air conditioning or heating that would require idling during rest periods. *No changes were made in response to this comment.*

Outside the Scope

The CAC and the NCTCOG suggested that the commission take action to permit Texas Emissions Reduction Plan funding for idle reduction technology independent to whether idling occurs within a local jurisdiction that has adopted idling rules. *No changes were made in response to this comment.*

The CAC suggested the commission make the effective date of any rule change at the end of the current ozone season to avoid any disruption to implementation of the existing rules in this ozone season. *No changes were made in response to this comment.*

Significant changes from proposal:

There are no changes from proposal.

Potential controversial concerns and legislative interest:

The TMTA expressed concerns to the TCEQ Intergovernmental Relations staff regarding the expiration dates in §114.512 and §114.517 that were not extended by the 81st Texas Legislature, 2009, Regular Session. The TMTA felt that the expiration date of the exemption in §114.517 obligates the operators of motor vehicles with sleeper berths to now adhere to the idling rule. If the exemption remains expired, the TMTA was concerned that motor vehicle drivers with sleeper berths will be prohibited from idling longer than five minutes during their federal government-mandated rest period in local jurisdictions that have signed an MOA with the TCEQ to implement vehicle idling restrictions.

During the stakeholder informal comment period, the EPA, the NCTCOG, and the CAC Advisory Committee expressed concerns with proposed revisions to §114.517. The revisions to §114.517(12), would retain the exemption that applies to motor vehicles when idling is necessary to power a heater or air conditioner while the driver is using the

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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. The EPA indicated that if the Texas Legislature were to take action to retain this exemption, the EPA would understand why the TCEQ would adopt these changes. However, the EPA would not be able to approve these changes in the SIP because retaining this exemption would weaken the SIP, unless the TCEQ could provide substitute reductions or modeling to show that attainment can be met without these credits. In regard to the EPA's comment, on April 9, 2010, the EPA published its approval of revisions to the SIP regarding the idling rule that the TCEQ submitted on February 28, 2008 (75 *Federal Register* 18061). In this approval, the EPA did not address the previous revisions to §114.512(b) prohibiting idling of a vehicle within a school zone or within 1,000 feet of a public school during operating hours and §114.517(12) exempting the idling of the primary propulsion engine of a vehicle to provide air conditioning when powering an air conditioner in the vehicle's sleeper berth for a government-mandated rest period, because these provisions of the rule had already expired.

The EPA also expressed concern with the rule revisions to add a new exemption that applies to armored vehicles when idling is necessary while an employee remains inside the vehicle to guard the contents or while the vehicle is being loaded or unloaded. The EPA believes that adding this new exemption would weaken the motor vehicle idling rules that were approved in the SIP and stated it would not be able to approve this revision in the SIP unless substitute reductions or modeling were provided to show that attainment can be met without those credits. However, the EPA's Model State Idling Law guidance specifically exempts armored vehicles when a person remains inside the vehicle to guard the contents or while the vehicle is being loaded or unloaded.

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

No policies are affected by this adopted rulemaking.

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

Armored vehicles will not be added to the exemption list and operators of motor vehicles with sleeper berths will not be allowed to idle during the government-mandated rest period in areas that have signed an MOA with the TCEQ to enforce the idling rules. Also, the idling restrictions would only be enforceable during the period of April 1 through October 31 each calendar year.

Alternatives to the adopted rulemaking could be one or any combination of the following modifications to §114.512 and §114.517:

- add armored vehicles to the list of idling restriction exemptions in §114.517;
- allow the prohibition on idling in residential areas, school zones, or near hospitals with a fine of \$500 per offense, which expired on September 1, 2009, to remain in §114.512;

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- allow the exemption for a motor vehicle when idling for heating or air conditioning while a driver is using the vehicle's sleeper berth for a government-mandated rest period and not within two miles of a facility offering external heating or conditioning, which expired on September 1, 2009, to remain in §114.517; or
- remove provisions in §114.512 and §114.517 that have expired and are no longer applicable.

Failure to address the expired exemption in §114.517 will restrict operators of motor vehicles with sleeper berths from idling during their government-mandated rest period in areas that have signed an MOA with the TCEQ to enforce the idling rules.

Key points in the adoption rulemaking schedule:

Texas Register proposal publication date: February 11, 2011

Anticipated *Texas Register* publication date: August 5, 2011

Anticipated effective date: August 11, 2011

Six-month *Texas Register* filing deadline: August 11, 2011

Agency contacts:

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Michael Parrish, Texas Register Coordinator, 239-2548

Attachments

SB 12, 80th Texas Legislature, 2007, Regular Session

HB 1540, 79th Texas Legislature, 2005, Regular Session

National Armored Car Association Petition

Decision of the Commission Regarding the National Armored Car Association Petition

cc: Chief Clerk, 2 copies
Executive Director's Office
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