

The Texas Commission on Environmental Quality (TCEQ or commission) adopts amendment to §114.517 *without change* to the proposed text as published in the March 9, 2012, issue of the *Texas Register* (37 TexReg 1656) and the text will not be republished.

The amended section 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 Rule**

Chapter 114, Subchapter J, Division 2, Locally Enforced Motor Vehicle Idling Limitations, was originally adopted by the commission 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 of the 1997 eight-hour ozone National Ambient Air Quality Standard (NAAQS) as published in the December 3, 2004, issue of the *Texas Register* (29 TexReg 11347). The adopted Motor Vehicle Idling Rule provides any local government in Texas the option of applying the rules in their jurisdiction in the event additional control measures are needed to achieve or maintain attainment of the ozone NAAQS.

The EAC concept of an early, voluntary air quality plan was endorsed by the EPA

Region 6 in June 2002. It was slightly modified and made available nationally in November 2002. A key point of an EAC was the flexibility allowed to areas to select emission reduction measures such as limiting vehicle idling. Beginning on August 1, 2005, members of the Austin EAC and the TCEQ signed the locally enforced idling restrictions memorandum of agreement (MOA). This MOA allowed participating counties and cities to enforce the idling restriction rule in their jurisdictions. Members of the Austin EAC area signing the MOA included Bastrop, Caldwell, Hays, Travis, and Williamson Counties and the cities of Austin, Bastrop, Georgetown, Hutto, Lockhart, Luling, Round Rock, and San Marcos. Idling restrictions are also a control measure put in place in the Austin-Round Rock 1997 Eight-Hour Ozone Flex Plan, which was signed in September 2008.

Four counties, 21 cities, and two towns in the Dallas-Fort Worth (DFW) area have also signed agreements to enforce the Motor Vehicle Idling Rule in their jurisdictions. Idling restrictions are a Voluntary Mobile Emissions Reductions Program (VMEP) control measure in the DFW 1997 Eight-Hour Ozone Attainment Demonstration SIP revision, which was adopted by the commission on May 23, 2007, and approved by the EPA on January 14, 2009 (74 FR 1903).

This adopted rulemaking amends the Motor Vehicle Idling Rule as stated in Chapter 114, Subchapter J, Division 2. The Motor Vehicle Idling Rule limits idling 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 TCEQ delegating 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. A result of reduced idling is the reduction of nitrogen oxides (NO<sub>x</sub>) and volatile organic compound (VOC) emissions, which is necessary to achieve or maintain attainment of the federal eight-hour ozone NAAQS. In addition, idling limitations will lower NO<sub>x</sub> and other pollutants emitted from fuel combustion. Because NO<sub>x</sub> is a precursor to ground-level ozone formation, reduced emissions of NO<sub>x</sub> will result in ground-level ozone reductions.

The 79th Legislature, 2005, enacted House Bill (HB) 1540, establishing Texas Health and Safety Code (THSC), §382.0191, Idling of Motor Vehicle While Using Sleeper Berth, which prohibited the commission from restricting motor vehicle idling while a driver is using the vehicle's sleeper berth for a government-mandated rest period. HB 1540 also restricted idling in a school zone or within 1,000 feet of a public school during its hours of operation and defined the penalty for an offense as a fine not to exceed \$500. HB 1540 did not specify an enforcement period, but it set a September 1, 2007, expiration date on the section. The commission adopted Motor Vehicle Idling Rule revisions to be consistent with HB 1540 on April 26, 2006, as published in the May 12, 2006, issue of the *Texas Register* (31 TexReg 3900).

The 80th Legislature, 2007, enacted Senate Bill (SB) 12, which in part amended THSC, §382.0191, to extend the prohibition on the TCEQ from restricting certain idling activities from September 1, 2007, to September 1, 2009, as published in the February 15, 2008, issue of the *Texas Register* (33 TexReg 1345). The prohibition in §114.512(b) of certain vehicles from idling within 1,000 feet of a school or hospital expired on September 1, 2009. Therefore, this subsection was deleted in a previous rulemaking.

On May 22, 2008, the National Armored Car Association submitted a petition for rulemaking requesting armored vehicles be exempted from idling restrictions under §114.517. The commission adopted rule changes incorporating the armored vehicle exemption on July 20, 2011. The July 20, 2011, rulemaking also removed the ozone season dates under §114.512 to allow local governments to enforce idling limitations year-round for consistent enforcement (August 5, 2011, issue of the *Texas Register* 36 TexReg 4972).

### *Current Rulemaking*

The 82nd Legislature, 2011, enacted SB 493, amending THSC, Chapter 382, Subchapter B by adding THSC, §382.0191, which prohibits the commission from limiting the idling of a motor vehicle that has a gross vehicle weight rating greater than 8,500 pounds that is equipped with a 2008 or subsequent model year heavy-duty diesel engine or liquefied

or compressed natural gas engine that has been certified by the EPA or a state environmental agency to emit no more than 30 grams of NO<sub>x</sub> emissions per hour when idling. Although SB 493 provides for an exemption of vehicles with a gross vehicle weight greater than 8,500 pounds and equipped with the low-NO<sub>x</sub> engine, the adopted rule change exempts vehicles weighing greater than 14,000 pounds and equipped with the low-NO<sub>x</sub> engine. The reason for this specification is because only vehicles weighing more than 14,000 pounds are subject to the Chapter 114 Motor Vehicle Idling Rule. This adopted rulemaking incorporates the amendment into the existing Motor Vehicle Idling Rule.

*Federal Clean Air Act, §110(l) Demonstration*

The exemption will not interfere with attainment or reasonable further progress in the SIP.

At proposal of the new exemption in §114.517(2), the commission indicated in the preamble that the exemption would not interfere with attainment or reasonable further progress in the SIP because the DFW area achieved an excess of NO<sub>x</sub> and VOC emissions reductions through the VMEP commitments. In response to comments received by the EPA, the §110(l) demonstration has been updated.

The exemption for vehicles employing 2008 and newer engines certified to emit no more

than 30 grams of NO<sub>x</sub> emissions per hour when idling will promote the use of the newer and cleaner vehicles equipped with this technology. Due to the changes in the federal heavy-duty engine emissions standards, i.e., from 2.5 grams per brake horsepower-hour (g/bhp-hr) for 2004 to 2006 vehicles to 0.20 g/bhp-hr for 2007 and newer vehicles, the 2008 and newer engines described in the exemption emit significantly less NO<sub>x</sub> emissions as compared to uncontrolled heavy-duty vehicles both while idling and in transit. Additionally, these engines have a steady emission reduction efficiency rate during idle as compared to other older engines that have declining emission reduction efficiency when idling longer.

Using either the EPA's *Guidance for Quantifying and Using Long Duration Truck Idling Emission Reductions in State Implementation Plans and Transportation Conformity* MOBILE6.2 guidance, or the newer EPA motor vehicle emissions simulator (MOVES) model (the replacement to MOBILE6.2 for SIP and transportation conformity), a heavy-duty engine idling at a rate of 30 grams of NO<sub>x</sub> per hour would emit roughly 80% less than an uncontrolled heavy-duty engine. The MOBILE6.2 guidance establishes the extended idling NO<sub>x</sub> emission rate at 135 grams per hour (gph) for all model years 2002 through 2030, MOVES sets the extended idling NO<sub>x</sub> emission rate at 170 gph for model years 2006 and older, and 150 gph for model years 2007 and newer. In all three comparisons, the overall emissions benefit gained by allowing the exemption of engines certified to emit no more than 30 grams of NO<sub>x</sub> per hour

outweighs any potential increase in idling that may result from the exemption.

Vehicle age distributions are developed for use in estimating on-road mobile source emissions inventories. The age distributions are based to the extent possible on Texas Department of Motor Vehicles (TxDMV) mid-year county registrations data. Where gaps occur in the data the age distributions are based on defaults built into the MOVES model. For heavy-duty vehicles, the TxDMV vehicle population data is aggregated statewide to determine the statewide age distributions for the vehicle class. For historical years, historical-year specific TxDMV data are used. For SIP and transportation conformity purposes, future year age distributions are based upon the most recent year of registration data. For a recent set of SIP inventories, the TCEQ contracted a report by the Texas Transportation Institute (TTI) *Houston-Galveston-Brazoria MOVES-Based Reasonable Further Progress On-Road Inventories and Control Strategy Reductions* that contains statewide vehicle age distributions to include heavy-duty diesel vehicles based on 2011 TxDMV county data aggregated statewide. Using the statewide age distributions documented in the report 12% of heavy-duty diesel vehicles statewide are 2008 or newer. Based upon the same age distribution, by 2018, 53% of heavy-duty vehicles will be 2008 and newer. From TTI's calculations, it is anticipated that the percentage of heavy-duty vehicles which are a 2008 or newer model will continue to increase. Due to the inherent emission benefits of the 2008 or subsequent model year heavy-duty engine that has been certified to emit no more than

30 grams of NO<sub>x</sub> emissions per hour when idling, emissions may be reduced by up to 80% as older uncontrolled trucks are replaced by the 2008 and newer vehicles.

### **Section Discussion**

#### *§114.517, Exemptions*

This rulemaking amends §114.517 to include an exemption in paragraph (2) for any motor vehicle with a gross vehicle weight rating greater than 14,000 pounds that is equipped with a 2008 or subsequent model year heavy-duty diesel engine or liquefied or compressed natural gas engine that has been certified by the EPA or another state environmental agency to emit no more than 30 grams of NO<sub>x</sub> emissions per hour when idling. Although SB 493 provides for an exemption of vehicles with a gross vehicle weight greater than 8,500 pounds and equipped with the low-NO<sub>x</sub> engine, the adopted rule exempts vehicles weighing greater than 14,000 pounds and equipped with the low-NO<sub>x</sub> engine. The reason for this specification is because only vehicles weighing more than 14,000 pounds are subject to the idling restrictions. In addition, the current exemptions in existing paragraphs (2) - (12) are renumbered as paragraphs (3) - (13).

### **Final Regulatory Impact Analysis Determination**

The commission reviewed the adopted rule in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the adopted rulemaking does not meet the definition of a major environmental rule. Texas

Government Code, §2001.0225 states that a major environmental rule is a rule for which the specific intent 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. Furthermore, while the adopted rulemaking does not constitute a major environmental rule, even if it did, a regulatory impact analysis would not be required because the adopted rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule. Texas Government Code, §2001.0225 applies only to a major environmental rule that: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds 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) adopts a rule solely under the general powers of the agency instead of under a specific state law. Specifically, it does not meet any of the four applicability criteria listed in Texas Government Code, §2001.0225 because: 1) the adopted rulemaking is part of the SIP, and as such is designed to meet, not exceed the relevant standard set by federal law; 2) parts of the adopted rulemaking are directly required by state law; 3) no contract or delegation agreement covers the topic that is the subject of this adopted rulemaking; and 4) the adopted rulemaking is authorized by specific sections of THSC, Chapter 382 (also

known as the Texas Clean Air Act), and the Texas Water Code, which are cited in the Statutory Authority section of this preamble.

The adopted rule implements requirements of the Federal Clean Air Act (FCAA). Under 42 United States Code (USC), §7410, each state is required to adopt and implement a SIP containing adequate provisions to implement, attain, maintain, and enforce the NAAQS within the state. While 42 USC, §7410 generally does not require specific programs, methods, or reductions in order to meet the standard, SIPs must include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter, (meaning 42 USC, Chapter 85, Air Pollution Prevention and Control, otherwise known as the FCAA). The provisions of the FCAA recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 USC, §7410. States are not free to ignore the requirements of 42 USC, §7410, and must develop programs and control measures to assure that their SIPs provide for

implementation, attainment, maintenance, and enforcement of the NAAQS within the state. Participation in the idling program is voluntary, and currently only the local governments in the Central Texas Area and the North Central Texas Area have signed agreements to implement vehicle idling limitations. The affected idling limitations rules provide all local governments in Texas the option of applying the rules when additional control measures are needed to achieve or maintain attainment of the federal ozone standards.

The specific intent of the rule is to include an exemption implementing SB 493 for any motor vehicle with a gross vehicle weight rating greater than 14,000 pounds that is equipped with a 2008 or subsequent model year heavy-duty diesel engine or liquefied or compressed natural gas engine that has been certified by the EPA or state environmental agency to emit no more than 30 grams of NO<sub>x</sub> emissions per hour when idling.

The rule does not constitute a major environmental rule under Texas Government Code, §2001.0225(g)(3) because while the specific intent of the rulemaking is to protect the environment or reduce risks to human health from environmental exposure, as discussed previously in the *Fiscal Note*, *Public Benefits and Costs*, *Small Business Regulatory Flexibility Analysis*, and the *Local Employment Impact Statement* sections of the proposed version of this rule's preamble, the rulemaking would not adversely affect in a material way the economy, a sector of the economy, productivity, competition,

or jobs; nor would the rulemaking adversely affect in a material way the environment, or the public health and safety of the state or a sector of the state. The idling restrictions are effective only in certain areas of the state where an MOA between the TCEQ and the local government is in effect. The rulemaking is not subject to a regulatory impact analysis under Texas Government Code, §2001.0225 because it is not a major environmental rule.

The requirement to provide a fiscal analysis of regulations in the Texas Government Code was amended by SB 633, 75th Legislature, 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program; or are adopted solely under the general powers of the TCEQ. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded: based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application. The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted rules from the full analysis unless the rule was a major environmental rule that exceeded a federal law.

The FCAA does not always require specific programs, methods, or reductions in order to meet the NAAQS; thus, states must develop programs for each nonattainment area to help ensure that those areas will meet the attainment deadlines. Because of the ongoing need to address nonattainment issues and to meet the requirements of 42 USC, §7410, the commission routinely proposes and adopts revisions to the SIP and rules. The legislature is presumed to understand this federal scheme. If each rule proposed for inclusion in the SIP was considered to be a major environmental rule that exceeds federal law, then every revision to the SIP would require the full regulatory impact analysis contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes and that presumption is based on information provided by state agencies and the LBB, the commission believes that the intent of SB 633 was only to require the full regulatory impact analysis for rules that are extraordinary in nature. While the rules have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA. For these reasons, rules adopted for inclusion in the SIP fall under the exception in Texas Government Code, §2001.0225(a), because they are required by federal law.

The commission has consistently applied this construction to its rules since this statute

was enacted in 1997. Since that time, the legislature has revised the Texas Government Code but left this provision substantially unamended. It is presumed that, when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation. *Central Power & Light Co. v. Sharp*, 919 S.W.2d 485, 489 (Tex. App. Austin 1995), *writ denied with per curiam opinion respecting another issue*, 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.*, 798 S.W.2d 353, 357 (Tex. App. Austin 1990, no writ); *Cf. Humble Oil & Refining Co. v. Calvert*, 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.*, 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor*, 24 S.W.3d 581 (Tex. App. Austin 2000, *pet. denied*); and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.*, 563 S.W.2d 916 (Tex. 1978).

The commission's interpretation of the regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of substantial compliance as required in Texas Government Code, §2001.035. The legislature specifically identified Texas Government Code, §2001.0225 as falling under this standard. The commission has complied with the requirements of Texas Government Code, §2001.0225.

Even if the proposed rulemaking constitutes a major environmental rule under Texas Government Code, §2001.0225(g)(3), a regulatory impact analysis is not required because this exemption is part of the commission's SIP for making progress toward the attainment and maintenance of the NAAQS. Therefore, the proposed rulemaking does not exceed a standard set by federal law or exceed an express requirement of state law, since they are part of an overall regulatory scheme designed to meet, not exceed the relevant standard set by federal law (NAAQS). The commission is charged with protecting air quality within the state and to design and submit a plan to achieve attainment and maintenance of the federally mandated NAAQS. The Third District Court of Appeals upheld this interpretation in *Brazoria County v. Texas Comm'n on Env'tl. Quality*, 128 S.W. 3d 728 (Tex. App. - Austin 2004, *no writ*). The specific intent of the rulemaking is to include the exemption for a motor vehicle that have a gross vehicle weight rating greater than 14,000 pounds and that is equipped with a 2008 or subsequent model year heavy-duty diesel engine or liquefied or compressed natural gas engine that has been certified by the EPA or a state environmental agency to emit no more than 30 grams of NO<sub>x</sub> emissions per hour when idling. This adoption, therefore, does not exceed an express requirement of federal law. The amendment is needed to implement state law but does exceed those new requirements. The rulemaking does 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

amendment does not exceed the requirements of that compact. Finally, this rulemaking was not developed solely under the general powers of the agency, but is authorized by specific sections of THSC, Chapter 382, which are cited in the Statutory Authority section of this preamble, including THSC, §382.012 and §382.019. Because this adopted 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 and no comments were received.

### **Takings Impact Assessment**

The commission evaluated the adopted rulemaking and performed an analysis of whether the adopted rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The commission's preliminary assessment indicates Texas Government Code, Chapter 2007 does not apply.

Under Texas Government Code, §2007.002(5), taking means: "(A) 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 Section 17 or 19, Article I, Texas Constitution; or (B) a

governmental action that: (i) 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 (ii) is the producing cause of a reduction of at least 25 percent 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."

Promulgation and enforcement of the rulemaking would be neither a statutory nor a constitutional taking of private real property. The primary purpose of the rule is to implement THSC, §382.0191 added by SB 493. This rule is not burdensome, restrictive, or limiting of rights to private real property because the rulemaking regulates vehicle idling in certain limited areas. Furthermore, the rulemaking benefits the public by providing all local governments the option of applying the Motor Vehicle Idling Rule when additional control measures are needed to achieve or maintain attainment of the federal air quality standards. The rulemaking does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property, nor does it reduce the value of any private real property by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, this rule does not constitute a taking under Texas Government Code, Chapter

2007.

### **Consistency with the Coastal Management Program**

The commission reviewed the rulemaking and found that the adoption is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code §§33.201 *et seq.*, and therefore, must be consistent with all applicable CMP goals and policies. The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the rulemaking does not affect any coastal natural resource areas. The CMP goals applicable to the rulemaking are to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas. No new sources of air contaminants are authorized in those affected counties. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations in the Code of Federal Regulations (CFR) to protect and enhance air quality in the coastal area (40 CFR §501.32). This rulemaking does not have a detrimental effect on SIP emissions reduction obligations relating to maintenance of the ozone NAAQS. This rulemaking action complies with the CFR. Therefore, in compliance with 31 TAC §505.22(e), this rulemaking action is consistent with CMP goals and policies. Promulgation and enforcement of this rule does not violate or exceed any standards identified in the applicable CMP goals and policies because the rulemaking is consistent

with these CMP goals and policies, and because this rule does not create or have a direct or significant adverse effect on any coastal natural resource areas.

The commission invited public comment regarding consistency with the CMP and no comments were received.

### **Public Comment**

The commission offered public hearings for the proposal in Austin on April 2, 2012, and in Fort Worth on April 3, 2012. A question and answer session was held 30 minutes prior to the hearing. The hearing was not officially opened because no party indicated a desire to give comment. The public comment period was from March 9, 2012, through April 9, 2012.

Written comments regarding Chapter 114 were provided by the Texas Motor Transportation Association (TMTA), the North Central Texas Council of Governments (NCTCOG), and the EPA.

### **Response to Comments**

Comment

TMTA submitted comment in full support of the proposed rule revision.

**Response**

**The commission appreciates the support for the proposed rule revision. No changes were made based on this comment.**

Comment

The NCTCOG submitted comment supporting the proposed rule revision and requested that the commission consider a provision to allow only the engines described in the proposed rule revision to idle in sensitive areas such as schools, hospitals, and residential neighborhoods.

**Response**

**The commission acknowledges the concerns for the health and safety of those affected by idling in sensitive areas. The suggested change is outside the scope of this rulemaking. No changes were made in response to this comment.**

Comment

The NCTCOG requested guidance from the commission regarding the creation of local regulations restricting idling beyond provisions laid out in Chapter 114, Subchapter J, Division 2, Locally Enforced Motor Vehicle Idling Limitations.

## **Response**

**The commission is committed to assisting local governments regarding idling as a control strategy option in the Texas SIP but cannot provide legal advice to a local government regarding its own powers and duties.**

**Additionally, giving guidance to a local government regarding its own powers and duties is beyond the scope of this rulemaking. No changes were made in response to this comment.**

## Comment

The EPA recommended that the commission include a §110(l) demonstration in the rule submittal to demonstrate that backsliding will not occur as a result of the new exemption. As part of the §110(l) demonstration, the EPA requested inclusion of a technical analysis or modeling demonstration to show that excess emissions in the DFW VMEP will offset any increase in emissions resulting from the new exemption and an accounting of the offsets used.

## **Response**

**In response to the EPA's comment, the commission revised the §110(l) demonstration.**

**The exemption as proposed does not constitute backsliding in the DFW area because the engines certified to emit no more than 30 grams of NO<sub>x</sub> per hour when idling are significantly cleaner than the uncontrolled vehicles currently in use that emit between 135 and 170 grams of NO<sub>x</sub> per hour when idling. As the 2008 and newer vehicles replace the older uncontrolled vehicles, the emissions benefit gained by allowing the exemption of the clean idle engines will outweigh any potential increase in emissions that may result from increased idling. The exempted engines are more efficient both while idling and while in transit. No changes were made to the rule in response to this comment.**

Comment

The EPA requested that the TCEQ provide an explanation of what VMEP emission reduction commitments were made in the DFW 1997 Eight-Hour Ozone Nonattainment Area Attainment Demonstration SIP revision including a breakdown of each of the control measures under the VMEP, the corresponding emission reduction commitments, and the corresponding substitute emissions reductions that are being used as offsets.

## **Response**

**The preamble of the proposed rule stated that the exemption would not interfere with attainment or reasonable further progress in the SIP because the DFW area achieved an excess of NO<sub>x</sub> and VOC emissions reductions through the VMEP commitments. In response to the EPA's comments, the *Federal Clean Air Act, §110(l) Demonstration* portion of this preamble has been revised. No changes were made to the rule in response to this comment.**

## Comment

The EPA stated that when the TCEQ submits the adopted Locally Enforced Motor Vehicle Idling Restrictions to the EPA, it should include a §110(l) demonstration regarding the proposed idling exemption and its effect on the Austin EAC. The EPA requested that the TCEQ include a modeling demonstration or technical analysis as part of the §110(l) demonstration including documentation that maintenance of the NAAQS will continue in the Austin area without the SIP credits affected by the proposed exemption.

## **Response**

**The Austin EAC included idling restrictions in the commitment to**

**demonstrate attainment of the 1997 eight-hour ozone standard. The exemption may increase the amount of idling in the EAC for a brief portion of the demonstration period. However, due to the inherent emission benefits of the 2008 or subsequent model year heavy-duty engine that has been certified to emit no more than 30 grams of NO<sub>x</sub> emissions per hour when idling, any potential increase in idling due to the exempted engines will not increase the overall emissions. No changes were made to the rule in response to this comment.**

**SUBCHAPTER J: OPERATIONAL CONTROLS FOR MOTOR VEHICLES**

**DIVISION 2: LOCALLY ENFORCED MOTOR VEHICLE IDLING**

**LIMITATIONS**

**§114.517**

**Statutory Authority**

The amendment is adopted under the authority of the Texas Government Code and 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 rulemaking 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 amendment is also adopted under Texas Health and Safety Code (THSC), §382.017, Rules, which authorizes the commission to propose 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 amendment is 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, §382.003, concerning Definitions; THSC, §382.011, General Powers and Duties, which authorizes the commission to control the quality of the state's air;

THSC, §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, Attainment Program, 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 amendment implements Senate Bill 493, which established THSC, §382.0191.

**§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;

(2) a motor vehicle that has a gross vehicle weight rating greater than

14,000 pounds and that is equipped with a 2008 or subsequent model year heavy-duty diesel engine or liquefied or compressed natural gas engine that has been certified by the United States Environmental Protection Agency or another state environmental agency to emit no more than 30 grams of nitrogen oxides emissions per hour when idling;

(3) the primary propulsion engine of a motor vehicle being used to provide air conditioning or heating necessary for employee health or safety in an armored vehicle while the employee remains inside the vehicle to guard the contents or while the vehicle is being loaded or unloaded;

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

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

(6) 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;

(7) the primary propulsion engine of a motor vehicle being operated for

maintenance or diagnostic purposes;

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

(9) 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;

(10) 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;

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

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

(13) 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.