

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** July 20, 2012

Thru: Bridget C. Bohac, Chief Clerk
Zak Covar, Executive Director

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

Docket No.: 2011-1639-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 114, Control of Air Pollution from Motor Vehicles
SB 493: Motor Vehicle Idling
Rule Project No. 2011-060-114-EN

Background and reason for the rulemaking:

30 Texas Administrative Code (TAC) Chapter 114, Subchapter J, Division 2, Locally Enforced Motor Vehicle Idling Limitations, was originally adopted by the Texas Commission on Environmental Quality (TCEQ) on November 17, 2004, for use as a control strategy in the Austin area to maintain attainment with the 1997 eight-hour ozone National Ambient Air Quality Standard (NAAQS). The adopted idling limitations rules provided any local government in Texas the option of applying the rules in their jurisdiction should additional control measures be needed to achieve or maintain attainment of the ozone NAAQS. Since its inception, 29 cities, two towns, and nine counties have signed memorandums of agreement (MOA) to enforce the idling restriction in their jurisdictions.

The 82nd Legislature, 2011, Regular Session, enacted Senate Bill (SB) 493, amending Chapter 382, Subchapter B, of the Texas Health and Safety Code (THSC) by adding §382.0191, which prohibits the commission from limiting the idling of 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 (EPA) or another state environmental agency to emit no more than 30 grams of nitrogen oxides (NO_x) 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_x engine, the rule change exempts vehicles weighing greater than 14,000 pounds and equipped with the low-NO_x engine because only vehicles weighing more than 14,000 pounds are subject to the idling restrictions.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

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

- Amend §114.517 to include an exemption for motor vehicles having a gross vehicle weight rating greater than 14,000 pounds and equipped with a 2008 or subsequent model year heavy-duty diesel engine or liquefied or compressed natural gas engine

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that has been certified by the EPA or another state environmental agency to emit no more than 30 grams of NO_x emissions per hour when idling.

The amended section will be submitted to the EPA as a revision to the state implementation plan (SIP).

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

The amendment is required to incorporate SB 493 enacted by the 82nd Legislature, 2011, Regular Session.

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

None.

Statutory authority:

This rulemaking is adopted under the authority of 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 propose 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 amendment is also adopted under 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 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, 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 SB 493, which established THSC, §382.0191.

Effect on the:

A.) Regulated community:

Local jurisdictions that have signed an MOA with the TCEQ to implement and enforce the idling restrictions will have to add vehicles weighing greater than 14,000 pounds that are

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equipped with a 2008 or newer engine certified to emit no more than 30 grams of NO_x emissions per hour when idling to their list of vehicles exempt from idling restrictions. There is no fiscal impact on the regulated community.

B.) Public:

The rule revision does not have an adverse effect on the public. There is no fiscal impact on the public.

C.) Agency programs:

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

Stakeholder meetings:

No stakeholder meetings were held for this rulemaking.

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.

The commission received written comments from Texas Motor Transportation Association (TMTA), North Central Texas Council of Governments (NCTCOG), and the EPA.

General Comments

TMTA and NCTCOG submitted comment in support of the rulemaking. *No changes were made in response to this comment.*

§110(l) Demonstration

The EPA commented that it would not be able to approve the proposed exemption in the SIP unless the commission provided 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 demonstrate that the clean idle engine exemption will not interfere with attainment or reasonable further progress in the SIP.*

§114.512, Control Requirements for Motor Vehicle Idling

The NCTCOG suggested the commission consider reinstating the prohibition from idling in sensitive areas including school zones, hospitals, and neighborhoods. *No changes were made in response to this 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,

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Division 2, Locally Enforced Motor Vehicle Idling Limitations. *No changes were made in response to this comment.*

Significant changes from proposal:

The §110(l) demonstration was updated in response to comments made by the EPA. No changes were made to §114.517 in response to comments.

Potential controversial concerns and legislative interest:

None.

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?

If this rulemaking does not go forward, the TAC will be inconsistent with THSC, §382.0191. There are no alternatives to rulemaking.

Key points in the adoption rulemaking schedule:

***Texas Register* proposal publication date:** March 9, 2012

Anticipated *Texas Register* publication date: August 24, 2012

Anticipated effective date: August 30, 2012

Six-month *Texas Register* filing deadline: September 10, 2012

Agency contacts:

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Attachments

SB 493, 82nd Texas Legislature, 2011, Regular Session

cc: Chief Clerk, 2 copies
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