

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** January 7, 2011

**Thru:** LaDonna Castañuela, 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 Proposed Rulemaking  
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 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 proposed rulemaking would also delete the ozone season dates under §114.512 for consistent enforcement year-round. In addition, the proposed rulemaking would 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extended to September 1, 2009, by Senate Bill (SB) 12, 80th Texas Legislature, 2007, Regular Session, because they are no longer valid, and would remove §114.517(2), which provides a duplicative exemption for all vehicles with gross vehicle weight rating of 14,000 pounds or less.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 proposed rulemaking:**

The proposed rule revision would 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.
- 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

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paragraph (12) 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.

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 proposed rulemaking would 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 proposed rulemaking would 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 is proposed 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 proposed 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 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 amendments are also proposed 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 propose rules that differentiate among particular conditions, particular sources, and particular areas of the state. The amendments are also proposed 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, §382.012, State Air Control Plan, which authorizes the commission to prepare and develop

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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 propose 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 proposed 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 would have to add armored vehicles to their list of vehicles exempt from idling restrictions, and the vehicle operators in local jurisdictions with an MOA would need to comply with the restrictions year-round. There would be no fiscal impacts on the regulated community.

**B) Public:**

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

**C) Agency programs:**

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

**Stakeholder meetings:**

Stakeholder meetings were held in Arlington and Austin in April 2010.

**Potential controversial concerns and legislative interest:**

The Texas Motor Transportation Association 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 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, 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 North Central Texas Council of Governments, and the Clean Air Coalition 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

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air conditioner while the 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. 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 proposed 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 regards to 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 FedReg 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 proposed rule revisions to add a new exemption that applies to armored vehicles when idling is necessary while the 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.

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

No policies are affected by this proposed 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 proposed 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;

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- 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;
- 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 would 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 dates in the proposed rulemaking schedule:**

**Anticipated proposal date:** January 26, 2011

**Anticipated *Texas Register* publication date:** February 11, 2011

**Public hearing date (if any):** March 1 and March 3, 2011

**Public comment period:** February 11, 2011 – March 11, 2011

**Anticipated adoption date:** June 22, 2011

**Agency contacts:**

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Ross Henderson, Staff Attorney, 239-6257

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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Kevin Patteson  
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