

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners

**Date:** February 3, 2012

**Thru:** Bridget Bohac, Chief Clerk  
Mark R. Vickery, P.G., Executive Director

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

**Docket No.:** 2011-1639-RUL

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

### **Background and reason for the rulemaking:**

Title 30 Texas Administrative Code 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, 28 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<sub>x</sub>) emissions per hour when idling. Though 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 proposed rule change exempts vehicles weighing greater than 14,000 pounds and equipped with the low-NO<sub>x</sub> engine because only vehicles weighing more than 14,000 pounds are subject to the idling restrictions.

Staff received approval from the executive director on July 19, 2011, to move forward with initiating rulemaking regarding SB 493. This proposed rulemaking would incorporate the amendment into the existing Motor Vehicle Idling Rule.

### **Scope of the rulemaking:**

#### **A.) Summary of what the rulemaking will do:**

The proposed rule revision would amend Chapter 114, Subchapter J, as follows:

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- 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 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.

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 proposed 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 proposed under 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 amendment is 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 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 amendment implements THSC, §382.0191.

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**Effect on the:**

**A.) Regulated community:**

Local jurisdictions that have signed an MOA with the TCEQ to implement and enforce the idling restrictions would have to add vehicles weighing greater than 14,000 pounds that are equipped with a 2008 or newer engine certified to emit no more than 30 grams of NO<sub>x</sub> emissions per hour when idling to their list of vehicles exempt from idling restrictions. 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:**

No stakeholder meetings were held for this rulemaking.

**Potential controversial concerns and legislative interest:**

It is expected that the EPA and local governments will express concern that the proposed rulemaking constitutes backsliding because it allows a further exemption to the idling rule. However, the exemption will not interfere with attainment or reasonable further progress in the SIP because the excess NO<sub>x</sub> reduction achieved through the Voluntary Mobile Emissions Reduction Program commitments demonstrate that backsliding will not occur. Any potential increases resulting from an exemption should be offset by these reductions.

During the previous Motor Vehicle Idling Rule change, the TCEQ received comment from local governments and the EPA regarding objections that the agency did not reinstate the prohibition from idling in a school zone, within 1,000 feet of a hospital, or within 1,000 feet of a public school during operating hours. This prohibition had previously been in the Motor Vehicle Idling Rule but expired September 1, 2009. The TCEQ determined that there was not sufficient evidence connecting NO<sub>x</sub> reductions and this prohibition. As a result, the TCEQ did not reinstate the prohibition. This proposed rulemaking will likely receive similar comment.

**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?**

Not going forward with this rulemaking would put the Motor Vehicle Idling rule out of compliance with state statute.

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**Key points in the proposal rulemaking schedule:**

**Anticipated proposal date:** February 22, 2012

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

**Public hearing dates:** April 2, and April 3, 2012

**Public comment period:** March 2, 2012 – April 9, 2012

**Anticipated adoption date:** August 8, 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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