

The Texas Commission on Environmental Quality (commission or TCEQ) proposes amendments to §114.512 and §114.517; and corresponding revisions to the state implementation plan (SIP).

The amended rules will be submitted to the United States Environmental Protection Agency (EPA) as proposed revisions to the SIP.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The concept of an early, voluntary eight-hour air quality plan, or early action compact (EAC), was endorsed by EPA Region 6 in June 2002, then slightly modified and made available nationally in November 2002. The EACs are tailored to local needs and driven by local decisions. A key point of an EAC is the flexibility afforded areas to select emission reduction measures. Based on quality science, signatories may choose the combination of measures that meet both local needs and emission reduction targets. Each EAC recognizes that not every entity within the EAC area will implement every measure.

Chapter 114, Subchapter J, Operational Controls for Motor Vehicles, Division 2, Locally Enforced Motor Vehicle Idling Limitations rule, was proposed at the request of the local air quality planning organization in the Austin EAC area (Bastrop, Caldwell, Hays, Travis, and Williamson Counties) for use as a control strategy in its EAC agreement to maintain attainment with the federal eight-hour ozone national ambient air quality standards. The rule package also provided local governments in other areas of the state the option of applying these rules in their areas when additional control measures

were needed to achieve or maintain attainment of the federal eight-hour ozone standard in the future.

The rules were adopted on November 17, 2004.

The December 18, 2002, EAC committed the commission to incorporate a Clean Air Action Plan for the Austin area into the SIP and adopt a revised SIP by December 31, 2004. The idling restriction rule was part of that attainment demonstration. While the Austin Metropolitan Statistical Area (MSA) was monitoring attainment with the eight-hour ozone standard, future monitoring could have shown nonattainment. Therefore, members of the Austin MSA worked to ratify a memorandum of agreement (MOA) with the TCEQ that would allow them to enforce the idling restriction rule in their region. The Locally Enforced Idling Restriction MOA was signed by the commission and members of the Austin EAC area on August 1, 2005.

In meetings with officials of the Austin EAC to develop the idling rule MOA, concerns arose regarding language in the locally enforced idling restrictions. Austin EAC members voiced concern that parts of §114.517, Exemptions, were ambiguous and needed revision. Members of the EAC felt that §114.517(7) and (8) could be misinterpreted to mean that a transit vehicle could idle for a total of one hour. There was also concern that the commission's rule conflicted with Texas Department of Transportation (TxDOT) guidelines for vehicle idling by employees. Austin EAC members brought to the commission's attention TxDOT's policy regarding idling. The guidelines advise employees to idle their vehicles to operate the air conditioner or heating system for employee health and safety while they perform an essential job function related to roadway construction or maintenance. In many instances on-road and off-road vehicles at roadway construction sites must remain in idle mode during normal

operations. The commission agrees with the Austin EAC members that the locally enforced idling restrictions should be revised in light of these concerns. At the request of the Austin EAC members, the commission is proposing revisions to the locally enforced motor vehicle idling rule.

The commission is also proposing revisions to the idling rule to conform to legislation passed in 2005. On May 16, 2005, the legislature passed House Bill (HB) 1540, amendments to Texas Health and Safety Code, Chapter 382, Subchapter B, §382.0191, Idling of Motor Vehicle While Using Sleeper Berth. The bill, effective September 1, 2005, states that the “commission may not prohibit or limit the idling of 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.” In addition, the bill states that, “no driver using the vehicle’s sleeper berth may idle the vehicle in a school zone or within 1,000 feet of a public school during its hours of operation,” or else be subject to a fine not to exceed \$500.

This proposed rulemaking will amend the rule on idling limits 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 commission to delegate 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 and will help to ensure the reduction in nitrogen oxide (NO_x) and volatile organic compound (VOC) emissions, which is needed by local governments to achieve or maintain attainment of the federal eight-hour ozone standard. These proposed idling limits will lower NO_x emissions and other pollutants from fuel combustion. Because NO_x is a precursor to ground-level ozone formation, reduced emissions of NO_x will result in ground-level ozone reductions.

Currently, there are no federal regulations governing idle time for motor vehicles. Therefore, the state has the authority to control motor vehicle idling. The requirements developed by the commission for this NO_x emission reduction strategy will result in restrictions on the time allowed for motor vehicle idling.

Modeling assessing the benefits of this NO_x emission reduction strategy demonstrated that by the year 2007 the idling limits will reduce NO_x emissions in the Austin MSA by 0.19 tons per day. The commission believes that this proposed amendment to the rule will not reduce the amount of reductions demonstrated.

SECTION BY SECTION DISCUSSION

The proposed amendment to §114.512, Applicability, would amend the existing paragraph as subsection (a). The proposed amendment to §114.512 would also add subsection (b), which would establish that, “no driver of a motor vehicle may use the vehicle’s sleeper berth for a government-mandated rest period if the vehicle is within a school zone or within 1,000 feet of a public school during its hours of operation.” Any offense under proposed subsection (b) is punishable by a fine not to exceed \$500. The requirements under subsection (b) will expire on September 1, 2007, just as in HB 1540.

Proposed §114.517(1) would still provide an exemption for a motor vehicle that has a gross vehicle weight rating of 14,000 pounds or less, but only if before September 1, 2007, it does not contain a sleeping berth. That is to say, after September 1, 2007, any vehicle that has a gross vehicle weight

rating of 14,000 pounds or less will be exempt from any idling restriction. Until then, these vehicles that contain a sleeper berth are subject to the rule. The proposed amendment to §114.517(4) would replace the phrase, “not including” with “other than.” The proposed amendment to §114.517(7) would replace the phrase, “comfort/safety” with “comfort and safety.” The proposed amendment to §114.517(4) would also add the phrase, “or public.” This change is necessary to combine exemptions §114.517(7) and (8), thereby clarifying the intent of the rule. The proposed amendment to §114.517(8) eliminates language exempting idling up to 30 minutes for, “the primary propulsion engine of a motor vehicle used for transit operations.” The proposed amendment to §114.517(8) would add a new exemption for, “the primary propulsion engine of a motor vehicle being used to operate the air conditioning or heating system for employee health or safety when the employee is using the vehicle to perform an essential job function related to roadway construction or maintenance.” One reason this exemption has been added is because in most types of construction equipment (e.g., dump trucks, etc.) the operator must remain in the vehicle throughout the workday for both operational and safety reasons. Furthermore, most heavy-duty, on-road vehicles such as dump trucks, asphalt maintenance units, and aerial devices have power takeoff units that operate ancillary equipment attached to the vehicle and that are powered by the primary propulsion engine. Therefore, the primary propulsion engine must remain in an idling mode. Proposed §114.517(11) would allow for the exemption of, “the primary propulsion engine of a motor vehicle when it is necessary for the driver to power a heater or air conditioner while he/she is using the vehicle’s sleeper berth for a government-mandated rest period.” Section 114.517(11) expires on September 1, 2007. This language has been added in order to ensure that the rule is compliant with the requirements set forth in HB 1540.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeffrey Horvath, Analyst, Strategic Planning and Assessment, determined that for the first five-year period the proposed amendments are in effect, no fiscal implications are anticipated for units of state or local government.

The proposed rules implement HB 1540, 79th Legislature, 2005, by amending the idling limits 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 commission to implement the locally enforced motor vehicle idling rule. The proposed rules would allow operators of motor vehicles with sleeper berths to idle for reasons not permitted by the current rules. Specifically, commercial vehicles would be allowed to idle the motor to heat or cool the vehicle in which the driver is using the sleeper berth for a government mandated rest break. The proposed rules would prohibit a commercial driver from using the sleeper berth and idling the engine within a school zone or within 1,000 feet of a public school during its hours of operation. The proposed rules also include an idling exemption for construction and repair vehicles and remove an idling exemption for transit vehicles.

The proposed rules will impact the Austin EAC members and any other local governments in the state who wish to adopt additional control measures to achieve or maintain attainment of the federal eight-hour ozone standard. Any enforcement costs for local governments to implement the agreement for the idling controls are voluntary. However, the proposed rules do provide local governments the authority to fine drivers \$500 for using their sleeper berths and idling within a school zone or within 1,000 feet of a public school during its hours of operation. No fiscal implications are expected for the agency as

enforcement of the idling rule is delegated to local governments who enter into an agreement with the commission.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the enforcement of and compliance with the proposed rules would be the provision of additional options for local governments to use to ensure a reduction in NO_x and VOC emissions needed to maintain attainment with the federal eight-hour ozone standards.

No fiscal implications are anticipated to businesses or individuals as a result of the implementation of the proposed amendments. The exemptions from the idling rule will allow drivers to idle the motor to heat or cool the vehicle in which the driver is using the sleeper berth for a government mandated rest break.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of implementation of the proposed amendments. Any fiscal implications would be the same as those for large businesses.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed amendments do not adversely affect a local economy in a material way for the first five years that the proposed amendments are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rules are not subject to §2001.0225 because although the proposal meets the definition of a “major environmental rule” as defined in the statute, it does not meet any of the four applicability requirements listed in §2001.0225(a). The regulatory analysis requirements of Texas Government Code, §2001.0225 only apply to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed 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) adopt a rule solely under the general powers of the agency instead of under a specific state law. Specifically, this proposal will amend the rules that limit heavy-duty motor vehicle idling within the jurisdiction of any local government in the state that has signed an MOA with the commission to delegate enforcement to that local government. The amendments will clarify current rule requirements and implement the new requirements of HB 1540. Currently, there are no federal regulations governing idle time for motor vehicles. This proposal therefore does not exceed a standard set by federal law. The amendments are needed to implement state law, and the proposal therefore does not exceed an express requirement of state law. The proposed rules do involve a compact, which is an agreement or contract between the state and an agency or representative of federal government to implement a state and federal program, however, the proposed amendments do not exceed the requirements of that compact. This proposed rulemaking helps the Austin EAC area continue to meet the milestones of the compact and demonstrate continuing

attainment of the eight-hour ozone standard. Finally, this proposed rulemaking was not developed solely under the general powers of the agency. Because this rulemaking does not meet any of the four applicability requirements, Texas Government Code, §2001.0225 does not apply, and a regulatory impact analysis is not required.

The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

Under Texas Government Code, §2007.002(5), “taking” means: 1) 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 §17 or §19, Article I, Texas Constitution; or 2) a governmental action that 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 is the producing cause of a reduction of at least 25% 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.

The commission completed a taking impact analysis for the proposed rules. Promulgation and enforcement of the rules will not affect private real property in a manner that would require

compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposed rules also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rules will not cause a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking action and found that the proposal is an action identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, or will affect an action/authorization identified in §505.11, and therefore will require that applicable goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission determined that under 31 TAC §505.22, the proposed rulemaking action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). No new sources of air contaminants will be authorized and ozone levels will be reduced as a result of the proposed rulemaking. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations in 40 Code of Federal Regulations, to protect and enhance air quality in the coastal area (31 TAC §501.14(q)). This rulemaking action complies with 40 Code of Federal Regulations. Therefore, in compliance with 31 TAC §505.22(e), this rulemaking action is consistent with CMP goals and policies. Interested persons

may submit comments regarding the consistency of the proposed amendments with the CMP during the public comment period.

ANNOUNCEMENT OF HEARING

Public hearings for this proposed rulemaking have been scheduled for the following time and location: January 10, 2006, 10:00 a.m., Texas Commission on Environmental Quality, 12100 North I-35, Building E, Room 201S, Austin. The hearings will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearings. Individuals may present oral statements when called upon in order of registration. A time limit may be established at each hearing to assure that enough time is allowed for every interested person to speak. There will be no open discussion during the hearings; however, commission staff members will be available to discuss the proposal 30 minutes before each hearing and will answer questions before and after each hearing.

Persons planning to attend the hearing who have special communication or other accommodation needs, should contact the Chief Engineer's Office at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Brandon Smith, MC 206, Chief Engineer's Office, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087; faxed to (512) 239-5687; or emailed to siprules@tceq.state.tx.us. All comments should reference Rule Project Number 2005-064-

114-EN. Comments must be received by 5:00 p.m. on January 17, 2006. The proposed rules may be viewed on the commission's Web site at http://www.tceq.state.tx.us/us/nav/rules/propose_adopt.html.

For further information, please contact Roland Castaneda, Air Quality Planning and Implementation Division, at (512) 239-0774.

SUBCHAPTER J: OPERATIONAL CONTROLS FOR MOTOR VEHICLES

DIVISION 2: LOCALLY ENFORCED MOTOR VEHICLE IDLING LIMITATIONS

§114.512, §114.517

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC, and under Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA. The amendments are also proposed under TCAA, §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.019, which authorizes the commission to adopt rules to control and reduce emissions from engines used to propel land vehicles; §382.0191, which authorizes use of a sleeping berth for a government-mandated rest period; and §382.039, 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 TCAA, §§382.002, 382.011, 382.012, 382.019, 382.0191, and 382.039.

§114.512. Control Requirements for Motor Vehicle Idling.

(a) No person shall cause, suffer, allow, or permit the primary propulsion engine of a motor vehicle to idle for more than five consecutive minutes when the motor vehicle, as defined in §114.510 of this title (relating to Definitions), is not in motion during the period of April 1 through October 31 of each calendar year.

(b) No driver using the vehicle's sleeper berth may idle the vehicle in a school zone or within 1,000 feet of a public school during its hours of operation. An offense under this subsection may be punishable by a fine not to exceed \$500. This subsection expires September 1, 2007.

§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, and if before September 1, 2007, does not have a sleeper berth;

(2) - (3) (No change.)

(4) the primary propulsion engine of a motor vehicle providing a power source necessary for mechanical operation, other than [not including] propulsion, and/or passenger compartment heating, or air conditioning;

(5) - (6) (No change.)

(7) the primary propulsion engine of a motor vehicle that is being used to supply heat or air conditioning necessary for passenger comfort and safety [comfort/safety] in [those] vehicles intended for commercial or public passenger transportation, or passenger transit operations, [school buses] in which case idling up to a maximum of 30 minutes is allowed;

(8) 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 [the primary propulsion engine of a motor vehicle used for passenger transit operations in which case idling up to a maximum of 30 minutes is allowed];

(9) the primary propulsion engine of a motor vehicle being used as airport ground support equipment; [or]

(10) the owner of a motor vehicle rented or leased to a person that [who] operates the vehicle and is not employed by the owner; or [.]

(11) 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. This subsection expires September 1, 2007.