

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 415-399-3547 or on VHF-FM channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port, or his designated representative.

Dated: March 23, 2005.

**Gordon A. Loebl,**

*Commander, U.S. Coast Guard, Acting Captain of the Port, San Francisco Bay, California.*

[FR Doc. 05-7218 Filed 4-8-05; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[R06-OAR-2005-TX-0007; FRL-7896-7]

### Approval and Promulgation of Implementation Plans; Texas; Locally Enforced Idling Prohibition Rule

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The EPA is taking direct final approval of a State Implementation Plan (SIP) revision for the state of Texas. This revision adds new Division 2, Locally Enforced Motor Vehicle Idling Limitations, in subchapter J, Operational Controls for Motor Vehicles. The rule allows local governments to voluntarily enter into an agreement with the State to enforce vehicle idling restrictions on vehicles over 14,000 pounds within their jurisdiction, with some exemptions.

**DATES:** This rule is effective on June 10, 2005 without further notice, unless EPA receives relevant adverse comment by May 11, 2005. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Regional Material in EDocket (RME) ID No. R06-OAR-2005-TX-0007, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- Agency Web site: <http://docket.epa.gov/rmepub/> Regional Material in EDocket (RME), EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the

system, select "quick search," then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

- U.S. EPA Region 6 "Contact Us" Web site: <http://epa.gov/region6/r6coment.htm>. Please click on "6PD" (Multimedia) and select "Air" before submitting comments.

- E-mail: Mr. Thomas Diggs at [diggs.thomas@epa.gov](mailto:diggs.thomas@epa.gov). Please also cc the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

- Fax: Mr. Thomas Diggs, Chief, Air Planning Section (6PD-L), at fax number 214-665-7263.

- Mail: Mr. Thomas Diggs, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

- Hand or Courier Delivery: Mr. Thomas Diggs, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Regional Material in EDocket (RME) ID No. R06-OAR-2005-TX-0007. EPA's policy is that all comments received will be included in the public file without change, and may be made available online at <http://docket.epa.gov/rmepub/>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through Regional Material in EDocket (RME), regulations.gov, or e-mail if you believe that it is CBI or otherwise protected from disclosure. The EPA RME Web site and the federal regulations.gov are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public file and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties

and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the electronic docket are listed in the Regional Material in EDocket (RME) index at <http://docket.epa.gov/rmepub/>. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in the official file which is available at the Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at (214) 665-7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment: Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

**FOR FURTHER INFORMATION CONTACT:** Sandra Rennie of the EPA Region 6 Air Planning Section at (214) 665-7367 or [rennie.sandra@epa.gov](mailto:rennie.sandra@epa.gov). Alternate contact: William Deese at (214) 665-7253 or [deese.william@epa.gov](mailto:deese.william@epa.gov). Copies of the State submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the State Air Agency. Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

#### SUPPLEMENTARY INFORMATION:

Throughout this document wherever "we," "us," or "our" is used, we mean the EPA.

I. Background

II. What Did the State Submit?

- III. What Does the Rule Contain?
- IV. Why Can We Approve This Rule?
- V. What Action Are We Taking?
- VI. Statutory and Executive Order Reviews

## I. Background

Texas' concept of an early, voluntary eight-hour air quality plan was accepted by the EPA and made available nationally after slight modification as the Early Action Compact (EAC) program in November 2002. Areas that signed on to the EACs enjoy delayed effective dates of ozone nonattainment designations until April 15, 2008, on the condition that all milestones of the program are met. In return those areas must voluntarily adopt and implement programs locally which will keep them or bring them into attainment by 2007. These programs are required to be submitted to EPA as a State Implementation Plan (SIP) for approval.

The vehicle idling rules were proposed and adopted by the State at the request of the Austin EAC area local air quality planning organization. The idling prohibition is a control strategy in the EAC agreement which was later submitted to the State for adoption.

## II. What Did the State Submit?

The idling restriction rules are a new section in 30 TAC 114, Control of Air Pollution from Motor Vehicles; Subchapter J, Operational Controls for Motor Vehicles; Division 2, Locally Enforced Motor Vehicle Idling Limitations. The rule was adopted on November 17, 2004, and submitted to EPA for approval on December 6, 2004, as part of the Austin EAC SIP.

## III. What Does the Rule Contain?

The idling rule implements idling limits for gasoline and diesel-powered engines in heavy-duty motor vehicles within the jurisdiction of any local government in the State that has signed a Memorandum of Agreement with the Texas Commission on Environmental Quality. Heavy duty vehicles with a Gross Vehicle Weight Rating greater than 14,000 pounds are affected. Idling is not allowed for more than five consecutive minutes when the motor vehicle is not in motion. Idling activity by subject vehicles during the period April 1 through October 31 of each calendar year is controlled by this rule.

In addition to the lighter weight motor vehicles, other exemptions apply because of traffic conditions; to military, emergency, and law enforcement vehicles; where the propulsion engine provides power for a mechanical operation of that vehicle; during vehicle maintenance or diagnostic purposes; when defrosting a windshield; when

supplying heat or air conditioning necessary for passenger comfort (maximum 30 minutes allowed for commercial transportation or school buses); to airport ground support equipment; and when a lessee operates the vehicle and is not employed by the vehicle owner.

The local government that signs the MOA is delegated the authority to enforce the program within its jurisdiction. Any non-compliance is a violation of State regulations.

## IV. Why Can We Approve This Rule?

There are no federal laws or regulations which govern idle time for heavy-duty motor vehicles. EPA's Guidance for Quantifying and Using Long Duration Truck Idling Emission Reductions in State Implementation Plans and Transportation Conformity<sup>1</sup> is not intended to apply to emission reductions resulting entirely from state or local anti-idling laws, regulations, or ordinances. Although this guidance was not used as a primary tool for evaluation, parts of it were used as a basis for consistency. California Air Resources Board (CARB) adopted a truck idling rule which will become effective in early 2005 pending their Office of Administrative Law (OAL) approval. This pending rule was also used as a basis for consistency. See the Technical Support Document for a detailed analysis of the idling rule. We are approving the Texas Locally Enforced Idling Prohibition Rule because it is consistent with existing EPA guidance and CARB regulations, and because it strengthens the SIP.

## V. What Action Are We Taking?

We are granting final approval for Texas' Locally Enforced Idling Prohibition Rule.

The EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no relevant adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are received. This rule will be effective on June 10, 2005 without further notice unless we receive relevant adverse comment by May 11, 2005. If we receive relevant adverse comments, we will publish a timely

<sup>1</sup> Memorandum from Margo Tsigotis Oge, Director, Office of Transportation and Air Quality and Steve Page, Director Office of Air Quality Planning and Standards to Regional Air Division Directors, January 14, 2004, Guidance for Quantifying and Using Long Duration Truck and Locomotive Idling Emission Reductions.

withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of a relevant adverse comment.

## VI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a

Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides

that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 10, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide,

Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 29, 2005.

**Richard E. Greene,**

*Regional Administrator, Region 6.*

■ 40 CFR Part 52 is amended as follows:

#### PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7402 *et seq.*

#### Subpart SS—Texas

■ 2. The table in § 52.2270(c) entitled "EPA Approved Regulations in the Texas SIP" is amended under chapter 114, subchapter J, immediately following section 114.509, by adding a new centered heading "Division 2—Locally Enforced Motor Vehicle Idling Limitations," immediately followed by new entries for sections 114.510, 114.511, 114.512 and 114.517 to read as follows:

#### § 52.2270 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

#### EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/ submittal date	EPA approval date	Explanation
* * *	* * *	* * *	* * *	* * *
<b>Chapter 114 (Reg 4)—Control of Air Pollution from Motor Vehicles</b>				
* * *	* * *	* * *	* * *	* * *
<b>Subchapter J—Operational Controls for Motor Vehicles</b>				
* * *	* * *	* * *	* * *	* * *
<b>Division 2: Locally Enforced Motor Vehicle Idling Limitations</b>				
Section 114.510 .....	Definitions .....	11/17/04	4/11/05 [Insert FR page number where document begins].	
Section 114.511 .....	Applicability .....	11/17/04	4/11/05 [Insert FR page number where document begins].	
Section 114.512 .....	Control Requirements for Motor Vehicle Idling.	11/17/04	4/11/05 [Insert FR page number where document begins].	

## EPA APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State approval/ submittal date	EPA approval date	Explanation
Section 114.517 .....	Exemptions .....	11/17/04	4/11/05 [Insert FR page number where document begins].	
*	*	*	*	*

[FR Doc. 05-7048 Filed 4-8-05; 8:45 am]

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**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Parts 13 and 21**

RIN 1018-AC57

**Revisions to General Permit Procedures****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Final rule.

**SUMMARY:** This final rule revises the U.S. Fish and Wildlife Service's permit application fee schedule for permits issued by the Divisions of Migratory Bird Management, Endangered Species, Law Enforcement, and Management Authority. The rule also clarifies several aspects of Service permit application procedures, and updates permit-related Service addresses. Additionally, the rule extends the tenure of two types of migratory bird permits.

**DATES:** This rule goes into effect on May 11, 2005.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours, in the office of the Division of Migratory Bird Management; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive; MBSP-4107; Arlington, Virginia 22203-1610.

**FOR FURTHER INFORMATION CONTACT:** Brian Millsap, Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 703/358-1714.

**SUPPLEMENTARY INFORMATION:****Background**

In implementing its responsibilities under the Endangered Species Act of 1973, as amended (ESA), the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Migratory Bird Treaty Act (MBTA), the Bald and Golden Eagle

Protection Act (BGEPA), and other wildlife laws, the U.S. Fish and Wildlife Service issues permits, licenses, and certificates that authorize the holders to engage in certain wildlife-related activities that are regulated by international treaty or laws of the United States. The Service charges user fees to offset the cost of processing applications for these permits, licenses, and certificates, as well as the cost of monitoring and maintaining active permit files.

The general statutory authority to charge fees for processing applications for permits and certificates is found in 31 U.S.C. 9701, which states that services provided by Federal agencies are to be "self-sustaining to the extent possible." The authority to charge fees is also found under various wildlife laws. Specifically, the ESA, 16 U.S.C. 1540(f), authorizes the Secretary to "charge reasonable fees for expenses to the Government connected with permits or certificates authorized by [the ESA] including processing applications." The Marine Mammal Protection Act (MMPA), 16 U.S.C. 1374(g), also provides that the "Secretary shall establish and charge a reasonable fee for permits" issued under the MMPA.

Federal user fee policy, as stated in Office of Management and Budget (OMB) Circular No. A-25, requires Federal agencies to recoup the costs of "special services" that provide benefits to identifiable recipients. Permits are special services, authorizing identifiable recipients to engage in activities not otherwise authorized for the general public. Some of the Service's programs that issue permits receive little or no designated budget appropriations specifically for permitting activities. Others receive some funding, but such funding is part of the overall program budget and is not enough to completely cover the permitting activity costs. Our ability to effectively provide these special services depends in large part on user fees. As a result, we have revised the standard permit application fee, designated under title 50 of the Code of

Federal Regulations (CFR) at § 13.11(d)(4), which has not been revised since 1982, in order to recoup more of the costs associated with providing permitting services. [For additional discussion of why the Service must raise the current application fees, please refer to the proposed rule (68 FR 51222, published on August 26, 2003).]

While the fee revisions promulgated by this rule will help the Service to recover a greater portion of the cost of administering permits, the increases are not sufficient to cover the total cost of our permit programs (much less defray other program costs). The new fee structure is a compromise between recouping the entire cost of providing these special services and the need to establish a fee schedule that will not unduly burden individual applicants.

**Summary of Comments and Recommendations**

During the comment period, which was open from August 26 through October 10, 2003, the Service received a total of 273 comments. Thirteen of these comments were in agreement with raising application fees and did not raise any specific concerns. Eighty-six comments were in general disagreement with raising fees, but also did not raise any specific concerns beyond objecting to the concept of raising fees. Two comments addressed issues that were outside the scope of the proposed rule and therefore will not be addressed here (these comments will be passed on to the relevant Service office for further consideration). The remaining issues raised by the commenters, and our responses to each, are summarized below.

*Issue 1:* We received three comments recommending that tribal entities and Native Americans be exempted from application fees. The proposed rule would have waived permit application fees only for Federal and State agencies and their agents, and for permits for Indian religious use. Generally, these commenters requested that the fee waiver be expanded to include all