TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AGENDA ITEM REQUEST

for Rulemaking Adoption

AGENDA REQUESTED: April 10, 2013

DATE OF REQUEST: March 22, 2013

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Michael Parrish, (512) 239-2548

CAPTION: Docket No. 2012-1388-RUL. Consideration of the adoption of amendments to Title 30 Texas Administrative Code Chapter 117, Control of Air Pollution from Nitrogen Compounds, Subchapter D, Combustion Control at Minor Sources in Ozone Nonattainment Areas, Division 2, Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Minor Sources, Sections 117.2103, 117.2130, 117.2135, and 117.2145, and corresponding revisions to the state implementation plan.

The adoption will provide an exemption from the emission testing requirements in Chapter 117 for engines that are used exclusively for product testing and personnel training, operate in limited service, and meet the applicable federal emissions standards in Title 40 Code of Federal Regulations Part 89. Engines used in this type of service will be required to install and operate a non-resettable elapsed run time meter, maintain records of daily hours of operation, and maintain records demonstrating compliance with the applicable federal emissions standards. The proposed rules were published in the November 16, 2012 issue of the *Texas Register* (37 TexReg 9060). (Javier Galván, Alexis Lorick) (Rule Project No. 2012-031-117-AI)

Steve Hagle, P.E.
Deputy Director

David Brymer
Division Director

Michael Parrish
Agenda Coordinator

Copy to CCC Secretary? NO YES X

Texas Commission on Environmental Quality
Interoffice Memorandum

To: Commissioners **Date:** March 22, 2013

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

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

Docket No.: 2012-1388-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 117, Control of Air Pollution from Nitrogen Compounds
Chapter 117 Stationary Diesel Engine Petition
Rule Project No. 2012-031-117-AI

Background and reason(s) for the rulemaking:
On April 5, 2012, Halliburton Energy Services, Incorporated (Halliburton or petitioner) submitted a petition for rulemaking requesting a partial exemption from the rules in 30 Texas Administrative Code (TAC) Chapter 117, Subchapter D, Division 2 that limit nitrogen oxides (NO_X) emissions from minor sources in the Dallas-Fort Worth (DFW) 1997 eight-hour ozone nonattainment area. The commission approved the petition for rulemaking on May 30, 2012 and issued an order on June 1, 2012 directing the executive director to examine the issues in the petition and to initiate rulemaking.

The unique service of the Halliburton Drawworks Engine makes ongoing testing to demonstrate compliance with the Chapter 117 NO_X emission limits impractical and comparatively more expensive than the stationary engine testing envisioned at adoption of the rule in 2007. To comply with the Chapter 117 testing requirements, Halliburton must arrange for the use of a dynamometer, which is typically used by engine manufacturers for testing purposes. Preparing the engine for installation of the dynamometer and returning the engine to operational status subsequent to the emissions testing presents significant safety hazards associated with the removal of the drive train and transmission, removal of the torque converter, and the placement and use of non-dedicated hoisting equipment on the rig floor. Performing a compliant emissions test of the Drawworks Engine takes three to four days to complete whereas typical testing on stationary engines only requires approximately a half day.

Additionally, engines used to raise and lower down-hole equipment in actual oil and gas operations in the field, which the Drawworks Engine is designed to simulate, are typically not subject to similar Chapter 117 testing requirements because those engines are typically not installed at a location long enough to trigger the definition of a stationary internal combustion engine in §117.10. The Drawworks Engine is subject to Chapter 117, Subchapter D, Division 2 because the equipment has been made stationary to provide testing and training facilities for sources that are actually not subject to the rule.

Re: Docket No. 2012-1388-RUL

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

The adopted change expands the list of exempted sources in §117.2103 to include stationary diesel engines that are used exclusively for product testing and personnel training, operate less than 1,000 hours per year on a rolling 12-month basis, and meet applicable Tier emission standards for non-road engines listed in 40 Code of Federal Regulations (CFR) §89.112(a), Table 1 (October 23, 1998) in effect at the time of installation, modification, reconstruction, or relocation. The adopted exemption is narrow in scope and consistent with the similar existing exemptions for stationary diesel engines located at minor sources, such as stationary engines used in research and testing and stationary engines used for purposes of performance verification and testing. The adopted change also revises the operating requirements of §117.2130, the monitoring requirements of §117.2135, and the recordkeeping requirements of §117.2145 to reflect the new category of exempt engines. Although not specifically requested in the petition for rulemaking, the adopted rules require records sufficient to demonstrate the engine meets the applicable emission standard listed in 40 CFR §89.112(a), Table 1 (October 23, 1998) to help ensure compliance with the exemption criteria. Furthermore, the adopted rules will change the petitioner's suggested operating restriction language from "rolling 12-month average" to "rolling 12-month basis" in adopted new §117.2103(10)(B) to make clear that compliance is based on the total annual hours of operation.

Additionally, the existing rule language in §117.2130(c) prohibits a person from starting or operating any stationary diesel or dual-fuel engine in the DFW 1997 eight-hour ozone nonattainment area for testing or maintenance between the hours of 6:00 a.m. and noon except under specific conditions. The petitioner requested clarification that this prohibition did not apply to product testing. The adopted rules amend §117.2130(c)(1) - (3) to distinguish between product testing as used in the new exemption in §117.2103(10) and engine testing as used in the existing rule language in §117.2130(c). The adopted revision clarifies that the prohibition is specific to testing or maintenance of the engine to avoid conflict with the new exemption in §117.2103(10) for stationary engines that are used exclusively for product testing and personnel training and more accurately reflect the intent of the prohibition. The adopted amendments to Chapter 117 will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP).

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

None.

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

None.

Statutory authority:
Texas Government Code, §2001.021, establishes the procedures by which an interested person may petition a state agency for the adoption of a rule and 30 TAC §20.15 provides such procedures specific to the commission.

The following provisions authorize the commission to adopt rules necessary to carry out its powers and duties: 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; Texas Water Code (TWC), §5.102, General Powers, §5.103, Rules, and §5.105, General Policy (these provisions authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC); Texas Health and Safety Code (THSC), Texas Clean Air Act (TCAA), §382.017, Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; 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; and 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.

Also, THSC, §382.016, Monitoring Requirements; Examination of Records, authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; §382.021, Sampling Methods and Procedures, authorizes the commission to prescribe the sampling methods and procedures; and §382.051 Permitting Authority of Commission; Rules, authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Chapter 382. The rule amendments are also adopted under 42 United States Code, §§7401, *et seq*., which requires states to submit SIP revisions that specify the manner in which the National Ambient Air Quality Standards will be achieved and maintained within each air quality control region of the state.

Effect on the:
A.) Regulated community:
The adopted rulemaking will affect owners or operators of stationary diesel engines located at minor sources of NO_X in the DFW 1997 eight-hour ozone nonattainment area and used exclusively for product testing and personnel training, operate in limited service, and meet applicable federal emission standards for non-road engines listed in 40 CFR Part 89. Engines meeting these requirements will be exempt from the emission specifications for attainment demonstration and the emissions testing requirements of Subchapter D, Division 2 of Chapter 117. However, owners or operators of such engines will be required to install and operate a non-resettable elapsed run time meter, maintain written records of the number of hours of operation for each day's operation, and maintain records of manufacturer's specifications or test data sufficient to demonstrate compliance with the corresponding emission standard for non-road engines listed in 40 CFR Part 89.

B.) Public:
The public benefit anticipated from the adopted rules is continued protection of the environment and public health and safety combined with efficient and fair administration of NO_X emission standards for the DFW 1997 eight-hour ozone nonattainment area.

C.) Agency programs:
The adopted rulemaking will not impact agency programs.

Stakeholder meetings:
No stakeholder meetings occurred.

Public comment:
The commission scheduled public hearings on the rulemaking in Fort Worth on December 13, 2012 and in Austin on December 18, 2012. However, the commission did not officially open either hearing because no one registered to provide comments. The public comment period closed on December 19, 2012. Written comments were accepted via mail, fax, and through the eComments system. The commission received comments from the North Central Texas Council of Governments (NCTCOG) objecting to the rulemaking. Significant public comments are summarized as follows.

- NCTCOG requested the commission require engines used for training purposes to be located outside of all nonattainment areas or require all eligible engines to be located away from air quality monitors and sensitive groups. *The commenter's suggested change is outside the scope of this rulemaking. Requiring facilities subject to the exemption to relocate to an attainment county or alternative location within the nonattainment county through this rulemaking would be equivalent to revoking an existing facility's authorization and force consideration of location for new New Source Review (NSR) authorizations, which is contrary to the TCEQ's authority under the Texas Clean Air Act (TCAA). Additionally, the adopted exemption will not result in additional NO_X emissions in the DFW area. The exemption criteria require compliance with the federal standards in 40 CFR Part 89 from which the NO_X emission limits for stationary diesel engines in §117.2110 were derived. Based on February 2012 emissions test results, the Drawworks Engine at the Halliburton Carrollton Plant meets Tier 3 emission standards for non-road engines listed in 40 CFR §89.112(a), Table 1 (October 23, 1998) and is well below the applicable emission standards in §117.2110. The commission makes no changes in response to this comment.*

- NCTCOG requested confirmation on the number and location of engines affected by the rulemaking and the projected increase in annual emissions. NCTCOG also asked if the commission considered the possibility and impact of additional engines used for this purpose in the DFW area. NCTCOG requested the commission provide documentation on the analysis of emission estimates and the impact of the additional emissions from the newly exempted engine on air quality monitors and

sensitive populations. *The commission is currently only aware of one engine that meets the adopted new exemption criteria and that is the Halliburton Drawworks Engine located in Carrollton, Texas. The commission does not expect a significant number of engines to meet the new exemption criteria. The new exemption in §117.2103(10) requires the engine to meet the applicable Tier emission standards for non-road engines listed in 40 CFR §89.112(a), Table 1 (October 23, 1998). The NO_X emission limits for stationary diesel engines in §117.2110 were derived from the same Tier standards in 40 CFR §89.112(a). Therefore, even if additional units do meet the exemption criteria in §117.2103(10), the NO_X emissions from such units are not expected to exceed the NO_X emissions anticipated if the same new units were required to meet the applicable NO_X emission limits in §117.2110. The commission makes no changes in response to this comment.*

- NCTCOG asked why the proposed maximum annual operating hours was 1,000 hours given that the existing exemptions in §117.2103(5), (8), and (9) are limited to 100 hours per year. *The existing exemptions in §117.2103(5), (8), and (9) are intended to apply to sources that operate in very limited service, such as emergency backup generator engines. The hours limitations in §117.2103(5), (8), and (9) are designed for engines that are in emergency or limited service. Other existing rules, such as §117.2103(2) and (3), exempt engines used for specific purposes, such as those used in research and testing and those used for the purposes of performance verification and testing. The Halliburton Drawworks Engine is not an emergency backup engine or limited-use engine. Rather, the Drawworks Engine is a primary service engine and is similar to the engines used for specific purposes that qualify for the exemptions in §117.2103(2) and (3). However, the existing exemptions in §117.2103 do not cover the full operating range of Halliburton's Drawworks Engine due to the unique nature of its service. Instead of granting the full exemption afforded to other engines that operate in specific service, the commission is adding an additional layer of stringency to the exemption by limiting the engine's hours of operation. The commission makes no changes in response to this comment.*

- NCTCOG requested the commission justify why the proposed rule provides an exemption from the operating requirements in §117.2130, which prohibit affected engines from being started between the hours of 6:00 a.m. and noon. *The operating requirement in §117.2130(c) prohibits the operation of any stationary diesel or dual-fuel engine for testing or maintenance between the hours of 6:00 a.m. and noon except under limited circumstances. The commission is amending §117.2130(c)(1) - (3) to distinguish between product testing as used in the adopted new exemption in §117.2103(10) and engine testing as used in the existing rule language in §117.2130(c). The commission is not providing an exemption from the operating requirement in §117.2130(c). The adopted revision clarifies that the prohibition is specific to testing or maintenance of the engine to avoid conflict with the adopted new exemption in §117.2103(10) for stationary engines that are used*

exclusively for product testing and personnel training and more accurately reflect the intent of the prohibition. The commission's intent for §117.2130(c) has always been that the prohibition applies to testing and maintenance of the engine itself because these activities can typically be scheduled outside the 6:00 a.m. to noon time frame without significantly interfering with the daily operations of a facility. Section 117.2130(c) does apply to the Halliburton Drawworks Engine when Halliburton operates the engine as part of the engine's routine testing and maintenance. However, §117.2130(c) does not apply when Halliburton is operating the engine as part of the facility's normal operation of testing drilling equipment and training personnel. The commission makes no changes in response to this comment.

- NCTCOG asked if there are recent time-of-day photochemical model sensitivity runs that indicate how early morning NO_X and volatile organic compounds emissions impact afternoon ozone formation. *The commission did not conduct photochemical modeling as part of this rule revision. The DFW Attainment Demonstration SIP Revision for the 1997 Eight-Hour Ozone Standard adopted by the commission on December 7, 2011 (Project Number 2010-022-SIP-NR) contains the most recent photochemical modeling analysis for the DFW area. The photochemical modeling for the 2011 DFW Attainment Demonstration SIP Revision used emissions that were temporally allocated according to emission category but modeling runs were not conducted to determine the sensitivity of the model to changes in emissions by time of day. The commission makes no changes in response to this comment.*

- NCTCOG requested the TCEQ examine the benefits and feasibility of requiring independent third-party verification of industry-reported monitoring and compliance data. *The commenter's request is outside the scope of this rulemaking. The intent of this rulemaking is to provide an exemption for stationary diesel engines that are used exclusively for product testing and personnel training, operate less than 1,000 hours per year, and meet applicable emission standards in 40 CFR §89.112(a), Table 1 (October 23, 1998). The commission makes no changes in response to this comment.*

- NCTCOG requested the TCEQ require training to include smart operating practices such as no idling, proper engine maintenance, and other emission reducing strategies. *The intent of this rulemaking is to provide an exemption for stationary diesel engines that are used exclusively for product testing and personnel training, operate less than 1,000 hours per year, and meet applicable emission standards in 40 CFR §89.112(a), Table 1 (October 23, 1998). The training suggested by the commenter is not necessary to ensure compliance with the adopted new exemption criteria in §117.2103(10). Additionally, applying such training requirements generally under Chapter 117, Subchapter D, Division 2 is outside the scope of this rulemaking. The commission makes no changes in response to this comment.*

- NCTCOG requested the commission require Halliburton to identify and implement emission reduction offsets for increased emissions. *The new exemption will not increase NO_X emissions in the DFW area, and test results indicate the NO_X emissions from Halliburton's Drawworks Engine are below the applicable emission specification in §117.2110. The commission makes no changes in response to this comment.*

Significant changes from proposal:
The commission did not revise the rule from proposal.

Potential controversial concerns and legislative interest:
The Chapter 117 rules for minor sources in the DFW area are included in the SIP. The adopted amendments to Chapter 117 will be submitted to the EPA as a revision to the SIP. The adopted exemption criteria require compliance with the federal standards in 40 CFR Part 89 from which the NO_X emission limits in §117.2110 were derived. Therefore, the adopted exemption will not result in additional NO_X emissions in the DFW area and should not be considered as backsliding under the Federal Clean Air Act. However, the revisions are still subject to EPA review and approval as a SIP revision.

Does this rulemaking affect any current policies or require development of new policies?
No.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?
The affected regulated entity will have to conduct an emissions performance test in accordance with current Chapter 117 requirements for stationary sources. Testing will be required every two years or within 15,000 hours of engine operation after the previous emissions test. In order to run an emissions test, the owner or operator will have to dismantle the transmission in order to install and use the dynamometer. Additionally, these activities will consume three to four days of an owner's or operator's time.

Key points in the adoption rulemaking schedule:
***Texas Register* proposal publication date:** November 16, 2012
Anticipated *Texas Register* publication date: April 26, 2013
Anticipated effective date: May 2, 2013
Six-month *Texas Register* filing deadline: May 16, 2013

Agency contacts:
Javier Galván, Rule Project Manager, 239-1492, Air Quality Division
Alexis Lorick, Staff Attorney, 239-0649
Michael Parrish, Texas Register Coordinator, 239-2548

Re: Docket No. 2012-1388-RUL

Attachments

cc: Chief Clerk, 2 copies
Executive Director's Office
Susana M. Hildebrand, P.E.
Anne Idsal
Curtis Seaton
Tucker Royall
Office of General Counsel
Javier Galván
Michael Parrish

The Texas Commission on Environmental Quality (TCEQ, agency, commission) adopts amendments to §§117.2103, 117.2130, 117.2135, and 117.2145 *without changes* to the proposed text as published in the November 16, 2012 issue of the *Texas Register* (37 TexReg 9060) and the text will not be republished.

The adopted amendments will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP).

Background and Summary of the Factual Basis for the Adopted Rules

On April 5, 2012, Halliburton Energy Services, Incorporated (Halliburton) submitted a petition for rulemaking requesting a partial exemption from the rules in 30 TAC Chapter 117, Subchapter D, Division 2 that limit nitrogen oxides (NO_X) emissions from minor sources in the Dallas-Fort Worth (DFW) 1997 eight-hour ozone nonattainment area (DFW area). The commission approved the petition for rulemaking on May 30, 2012 and issued an order on June 1, 2012 directing the executive director to examine the issues in the petition and to initiate rulemaking (project No. 2012-029-PET-NR).

The unique service of the Halliburton Drawworks Engine makes ongoing testing to demonstrate compliance with the Chapter 117 NO_X emission limits impractical and comparatively more expensive than the stationary engine testing envisioned during the adoption of the Chapter 117 rules in 2007. To comply with the Chapter 117 testing

requirements, Halliburton must arrange for both emissions testing equipment (a normal and expected expense) and for the rental, transport, and use of a dynamometer, which is typically used by engine manufacturers for testing purposes. Preparing the engine for installation of the dynamometer and returning the engine to operational status subsequent to the emissions testing presents significant safety hazards associated with the removal of the drive train and transmission, removal of the torque converter, and the placement and use of non-dedicated hoisting equipment on the rig floor. Performing a compliant emissions test of the Drawworks Engine takes three to four days to complete, whereas compliant emissions testing on a typical stationary engine only requires approximately half a day. Additionally, engines used to raise and lower down-hole equipment in actual oil and gas operations in the field, which the Drawworks Engine is designed to simulate, are typically not subject to similar Chapter 117 testing requirements because they are not installed at a location long enough to trigger the definition of a stationary internal combustion engine in §117.10. The Drawworks Engine is subject to Chapter 117, Subchapter D, Division 2 because the equipment has been made stationary to provide testing and training facilities for sources that are not subject to the rule.

The adopted change will expand the list of exempted sources in §117.2103 to include stationary diesel engines that are used exclusively for product testing and personnel training, operate less than 1,000 hours per year on a rolling 12-month basis, and meet

applicable Tier emission standards for non-road engines listed in 40 Code of Federal Regulations (CFR) §89.112(a), Table 1 (October 23, 1998) in effect at the time of installation, modification, reconstruction, or relocation. The adopted exemption is narrow in scope and consistent with the similar existing exemptions for stationary diesel engines located at minor sources, such as stationary engines used in research and testing and stationary engines used for purposes of performance verification and testing. The adopted change will also revise the operating requirements of §117.2130, the monitoring requirements of §117.2135, and the recordkeeping requirements of §117.2145 to reflect the new category of exempt engines.

Demonstrating Noninterference under Federal Clean Air Act, Section 110(l)

The commission provides the following information to demonstrate why the adopted new exemption in §117.2103 will not negatively impact the status of the state's progress towards attainment with the 1997 eight-hour ozone National Ambient Air Quality Standard (NAAQS), will not interfere with control measures, and will not prevent reasonable further progress toward attainment of the ozone NAAQS.

On December 6, 2000, as part of the Houston-Galveston-Brazoria (HGB) attainment demonstration SIP revision, the commission adopted a new control strategy for stationary reciprocating internal combustion engines, boilers, and process heaters located at minor industrial, commercial, and institutional sources of NO_X in the HGB

area. The adopted rulemaking exempted engines used for specific purposes, such as those used in research and testing and those used for the purposes of performance verification and testing.

On May 23, 2007, as part of the DFW 1997 eight-hour ozone attainment demonstration SIP revision, the commission adopted new emission control requirements for stationary reciprocating internal combustion engines located at minor industrial, commercial, and institutional sources of NO_X in the DFW area. The NO_X emission reductions were necessary for the DFW area to attain the 1997 eight-hour ozone NAAQS. Similar to the HGB rulemaking, the DFW rulemaking also adopted exemptions for engines used for specific purposes, such as those used in research and testing and those used for the purposes of performance verification and testing.

The adopted partial exemption is narrowly tailored and will not adversely impact the DFW area's progress in attaining the 1997 eight-hour ozone NAAQS. During the 2000 and 2007 rulemakings, no stationary engines similar in function to the Halliburton Drawworks Engine were identified in the emissions inventory in the counties impacted by the rulemakings, and no such engines were relied upon for creditable reductions for the SIP revision. Therefore, the adopted rulemaking will not result in a loss of any SIP creditable reductions for the DFW 1997 eight-hour ozone nonattainment area. Additionally, based on February 2012 emissions test results and a limit of no more than

1,000 hours of run time per year, the Drawworks Engine has maximum potential annual NO_X emissions of 0.87 tons per year and is well below the emission standards established in the Chapter 117 minor source NO_X rules. The adopted exemption criteria require compliance with the federal standards in 40 CFR Part 89 to ensure that the adopted exemption will not result in backsliding. Based on the test results, the Drawworks Engine at the Halliburton Carrollton Plant meets Tier 3 emission standards for non-road engines listed in 40 CFR §89.112(a), Table 1 (October 23, 1998). Therefore, the Drawworks Engine will be required to and does meet the applicable federal emission standards in 40 CFR §89.112(a), Table 1 (October 23, 1998) for the engine's size and installation date. The NO_X emission limits for stationary diesel engines in §117.2110 were derived from the Tier standards in 40 CFR Part 89. Therefore, the adopted exemption will not result in additional NO_X emissions in the DFW area.

Based on these factors, the commission has determined that the adopted rule change will not negatively impact the status of the state's attainment demonstration for the 1997 eight-hour ozone NAAQS, will not interfere with control measures, and will not prevent reasonable further progress toward attainment of the ozone NAAQS.

Section by Section Discussion

Section 117.2103, Exemptions

The commission adopts §117.2103(10) to exempt stationary diesel engines that are used

exclusively for product testing and personnel training, operate less than 1,000 hours per year on a rolling 12-month basis, and meet applicable Tier emission standards for non-road engines listed in 40 CFR §89.112(a), Table 1 (October 23, 1998) in effect at the time of installation, modification, reconstruction, or relocation. The adopted exemption only applies to an engine that is in dedicated service for product testing and personnel training and does not apply to an engine used for any additional purpose. The adopted amendment will exempt engines in this unique service from ongoing testing to demonstrate compliance with the Chapter 117 NO_X emission limits because the testing requirements are impractical and comparatively more expensive than the stationary engine testing envisioned at adoption of the rule. Requiring compliance with the federal standards in 40 CFR Part 89 ensures that the adopted exemption will not result in additional NO_X emissions in the DFW area because the Chapter 117 NO_X emission limits were derived from these federal standards. Furthermore, the adopted rules change the petitioner's suggested operating restriction language from "rolling 12-month average" to "rolling 12-month basis" in adopted §117.2103(10)(B) to make clear that compliance is based on the total annual hours of operation.

Section 117.2130, Operating Requirements

The commission amends §117.2130(c)(1) - (3) to distinguish between product testing as used in the adopted exemption in §117.2103(10) and engine testing as used in the existing rule language in §117.2130(c). Existing §117.2130(c) prohibits a person from

starting or operating any stationary diesel or dual-fuel engine in the DFW area for testing or maintenance between the hours of 6:00 a.m. and noon, except under specific conditions. The adopted revision clarifies that the prohibition is specific to testing or maintenance of the engine to avoid potential conflict with the adopted exemption in §117.2103(10) for stationary engines that are used exclusively for product testing and personnel training and more accurately reflect the intent of the prohibition.

Section 117.2135, Monitoring, Notification, and Testing Requirements

The commission amends §117.2135(e) to reference the adopted exemption in §117.2103(10). Revised §117.2135(e) requires sources claiming the adopted exemption in §117.2103(10) to monitor the operating time with a non-resettable elapsed run time meter in order to demonstrate compliance with the operating restrictions in §117.2103(10). To conform to *Texas Register* formatting standards, the commission is also amending subsection (e) by adding a reference to the title of §117.2103.

Section 117.2145, Recordkeeping and Reporting Requirements

The commission amends §117.2145(b) by reformatting the existing provision and adding new recordkeeping requirements associated with the adopted exemption in §117.2103(10). The commission is reformatting the existing requirements in §117.2145(b) to accommodate the new recordkeeping requirements associated with the adopted exemption in §117.2103(10). The adopted amendment does not alter the intent

of the existing recordkeeping requirements for sources currently complying with §117.2145(b) or impose any new requirements on engines claimed exempt under §117.2103(5), (8), or (9) or §117.2130(b)(3).

The adopted changes to §117.2145(b) reformat the record retention requirement in existing §117.2145(b) to require the records specified in paragraphs (1) - (3) to be maintained for at least five years and must be made available upon request to representatives of the executive director, the EPA, or any local air pollution control agency having jurisdiction.

Adopted §117.2145(b)(1) requires written records of the number of hours of operation for each day's operation to be maintained for each engine claimed exempt under §117.2103(5), (8), (9), or (10) or §117.2130(b)(3). Adopted §117.2145(b)(1) includes the existing requirements in §117.2145(b) for engines claimed exempt under §117.2103(5), (8), or (9) or §117.2130(b)(3) and applies the same requirements to engines claimed exempt under adopted §117.2103(10). The adopted revision requires sources claiming the adopted exemption in §117.2103(10) to maintain written records of the number of hours of operation for each day's operation in order to demonstrate compliance with the operating restrictions included in §117.2103(10).

Adopted §117.2145(b)(2) includes the existing requirements in §117.2145(b) for the

owner or operator of each engine claimed exempt under §117.2103(5) to maintain written records of the purpose of engine operation and, if operation was for an emergency situation, identification of the type of emergency situation and the start and end times and date(s) of the emergency situation.

Adopted §117.2145(b)(3) requires the owner or operator of each engine claimed exempt under §117.2103(10) to maintain records of manufacturer's specifications or test data sufficient to demonstrate compliance with the corresponding emission standard for non-road engines listed in 40 CFR §89.112(a), Table 1 (October 23, 1998) as specified in §117.2103(10)(C). The petition for rulemaking approved by the commission on May 30, 2012 did not include a specific request for this recordkeeping requirement. However, the commission is adopting this recordkeeping requirement to clearly indicate the records required to demonstrate compliance with the adopted exemption criteria in §117.2103(10) and facilitate enforcement of the adopted exemption. Additionally, the adopted recordkeeping provision in subsection (b)(3) clarifies that either engine manufacturer's specifications or actual emission testing are acceptable for demonstrating that the engine meets the exemption criteria.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the adopted

rulemaking does not meet the definition of a major environmental rule. Texas Government Code, §2001.0225 states that a major environmental rule is a rule for which the specific intent is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Furthermore, while the adopted rulemaking does not constitute a major environmental rule, even if it did, a regulatory impact analysis would not be required because the adopted rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule. Texas Government Code, §2001.0225 applies only to a major environmental rule that: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds 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) adopts a rule solely under the general powers of the agency instead of under a specific state law. Specifically, it does not meet any of the four applicability criteria listed in Texas Government Code, §2001.0225 because: 1) the adopted rulemaking is part of the SIP, and as such is designed to meet, not exceed the relevant standard set by federal law; 2) parts of the adopted rulemaking are directly required by state law; 3) no contract or delegation agreement covers the topic that is the subject of this adopted rulemaking;

and 4) the adopted rulemaking is authorized by specific sections of Texas Health and Safety Code (THSC), Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code, which are cited in the Statutory Authority section of this preamble.

The adopted rulemaking implements requirements of the Federal Clean Air Act (FCAA). Under 42 United States Code (USC), §7410, each state is required to adopt and implement a SIP containing adequate provisions to implement, attain, maintain, and enforce the NAAQS within the state. While 42 USC, §7410 generally does not require specific programs, methods, or reductions in order to meet the standard, SIPs must include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter, (meaning 42 USC, Chapter 85, Air Pollution Prevention and Control, otherwise known as the FCAA). The provisions of the FCAA recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 USC, §7410. States are not free to ignore the requirements of 42 USC, §7410, and must

develop programs and control measures to assure that their SIPs provide for implementation, attainment, maintenance, and enforcement of the NAAQS within the state. The specific intent of the adopted rulemaking is to implement changes within the Chapter 117, Subchapter D, Division 2 rules, which will expand the list of exempted sources operating in limited services in §117.2103 to include stationary diesel engines that are used exclusively for product testing and personnel training, and meet applicable Tier emission standards for non-road engines listed in the applicable CFR.

While the adopted rulemaking protects the environment or reduces risks to human health from environmental exposure, it does not constitute a major environmental rule under Texas Government Code, §2001.0225(g)(3) because it does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs, nor would the rulemaking adversely affect in a material way the environment, or the public health and safety of the state or a sector of the state. The rulemaking as a result is not subject to a regulatory impact analysis under Texas Government Code, §2001.0225 because it is not a major environmental rule.

The requirement to provide a fiscal analysis of regulations in the Texas Government Code was amended by Senate Bill (SB) 633, 75th Legislature, 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These are identified in the statutory language as major environmental rules that will

have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program; or are adopted solely under the general powers of the TCEQ. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded: based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application. The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted rules from the full analysis unless the rule was a major environmental rule that exceeded a federal law.

The FCAA does not always require specific programs, methods, or reductions in order to meet the NAAQS; thus, states must develop programs for each nonattainment area to help ensure that those areas will meet the attainment deadlines. Because of the ongoing need to address nonattainment issues and to meet the requirements of 42 USC, §7410, the commission routinely proposes and adopts revisions to the SIP and rules. The legislature is presumed to understand this federal scheme. If each rule proposed for inclusion in the SIP was considered to be a major environmental rule that exceeds federal law, then every revision to the SIP would require the full regulatory impact analysis contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board

(LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes and that presumption is based on information provided by state agencies and the LBB, the commission believes that the intent of SB 633 was only to require the full regulatory impact analysis for rules that are extraordinary in nature. While the rules have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA. For these reasons, rules adopted for inclusion in the SIP fall under the exception in Texas Government Code, §2001.0225(a), because they are required by federal law.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code but left this provision substantially unamended. It is presumed that, when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation (*Central Power & Light Co. v. Sharp*, 919 S.W.2d 485, 489 (Tex. App. Austin 1995), *writ denied with per curiam opinion respecting another issue*, 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.*, 798 S.W.2d 353, 357 (Tex. App. Austin 1990, *no writ*);) *superseded by statute on another point of law*, Tax Code §112.108, Other Actions Prohibited, *as recognized in*, *First State Bank of Dumas v. Sharp*, 863 S.W.2d 81, 83 (Tex. App. Austin 1993, *no writ*); *Cf. Humble Oil & Refining Co. v. Calvert*, 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.*, 9

S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor*, 24 S.W.3d 581 (Tex. App. Austin 2000, *pet. denied*); and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.*, 563 S.W.2d 916 (Tex. 1978).

The commission's interpretation of the regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of substantial compliance as required in Texas Government Code, §2001.035. The legislature specifically identified Texas Government Code, §2001.0225 as falling under this standard. The commission has complied with the requirements of Texas Government Code, §2001.0225.

Even if the adopted rulemaking constitutes a major environmental rule under Texas Government Code, §2001.0225(g)(3), a regulatory impact analysis is not required because this exemption is part of the commission's SIP for making progress toward the attainment and maintenance of the NAAQS. Therefore, the adopted rulemaking does not exceed a standard set by federal law or exceed an express requirement of state law, since they are part of an overall regulatory scheme designed to meet, not exceed the relevant standard set by federal law (NAAQS). The commission is charged with protecting air quality within the state and to design and submit a plan to achieve

attainment and maintenance of the federally mandated NAAQS. The Third District Court of Appeals upheld this interpretation in *Brazoria County v. Texas Comm'n on Envtl. Quality*, 128 S.W. 3d 728 (Tex. App. - Austin 2004, *no writ*). The specific intent of the adopted rulemaking is to implement changes within the Chapter 117, Subchapter D, Division 2 rules expanding the list of exempted sources listed in §117.2103 to include stationary diesel engines used exclusively for product testing and personnel training and meet applicable Tier emission standards for non-road engines listed in the applicable CFR. This adoption, therefore, does not exceed an express requirement of federal law. The amendments are needed to implement state law but do exceed those new requirements. Finally, this rulemaking was not developed solely under the general powers of the agency but is authorized by specific sections of THSC, Chapter 382, which are cited in the Statutory Authority section of this preamble, including THSC, §382.012 and §382.019. Because this adopted rulemaking does not meet any of the four applicability requirements, Texas Government Code, §2001.0225(b) does not apply and a regulatory impact analysis is not required.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period and received no comments.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an analysis of

whether the adopted rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The commission's preliminary assessment indicates Texas Government Code, Chapter 2007 does not apply.

Under Texas Government Code, §2007.002(5), taking means: "(A) 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 Section 17 or 19, Article I, Texas Constitution; or (B) a governmental action that: (i) 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 (ii) is the producing cause of a reduction of at least 25 percent 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."

Promulgation and enforcement of the rulemaking would be neither a statutory nor a constitutional taking of private real property. The primary purpose of the rulemaking is an update to Chapter 117, Subchapter D, Division 2 expanding the list of exempted

sources listed in §117.2103 to include stationary diesel engines used exclusively for product testing and personnel training and meet applicable Tier emission standards for non-road engines. This rulemaking is not burdensome, restrictive, or limiting of rights to private real property because the rulemaking regulates the use of stationary engines in limited circumstances. Furthermore, the rulemaking benefits the public by providing oil and gas field operators an opportunity for safe simulation without incurring the significant safety hazards typically associated with the current testing requirements of stationary engines.

The rulemaking does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property, nor does it reduce the value of any private real property by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, this rulemaking does not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found the adoption is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) relating to rules subject to the Coastal Management Program (CMP), and will, therefore, require that goals and policies of the CMP be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking will not affect any coastal natural resource areas because the rules only affect counties outside the CMP area and is, therefore, consistent with CMP goals and policies.

The commission invited public comment regarding the consistency with the CMP during the public comment period. The commission received no comments on the CMP.

Effect on Sites Subject to the Federal Operating Permits Program

Chapter 117 is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program. Owners or operators subject to the federal operating permit program must, consistent with the revision process in Chapter 122, upon the effective date of the rulemaking, revise their operating permit to include the new Chapter 117 requirements.

Public Comment

The commission scheduled a public hearing on the rulemaking in Fort Worth on December 13, 2012 and a second hearing in Austin on December 18, 2012. The commission did not open either hearing as no interested individuals registered to provide comments. The public comment period closed on December 19, 2012. The commission received one comment from the North Central Texas Council of

Governments (NCTCOG) opposing the proposed rule revisions.

Response to Comments

Comment

NCTCOG commented that this and similar training sites should be located outside of all nonattainment areas in the state because approving an exemption could contribute to the exceedance of federal ozone standards in the DFW area. Alternatively, NCTCOG requested that if the commission approves the exemption, it require that all eligible engines be located away from air quality monitors and sensitive groups.

Response

The commission makes no changes to the adopted rules in response to this comment. The intent of this rulemaking is to provide an exemption for stationary diesel engines that are used exclusively for product testing and personnel training, operate less than 1,000 hours per year, and meet applicable emission standards in 40 CFR §89.112(a), Table 1 (October 23, 1998). The commenter's suggested change is outside the scope of this rulemaking. Requiring facilities subject to the exemption to relocate to an attainment county or alternative location within the nonattainment county through this rulemaking would be equivalent to revoking an existing facility's authorization and force consideration of location for new New

Source Review authorizations, which is contrary to the TCEQ's authority under the Texas Clean Air Act. Additionally, the adopted exemption will not result in additional NO_X emissions in the DFW area. The exemption criteria require compliance with the federal standards in 40 CFR Part 89 from which the NO_X emission limits for stationary diesel engines in §117.2110 were derived. Based on February 2012 emissions test results, the Drawworks Engine at the Halliburton Carrollton Plant meets Tier 3 emission standards for non-road engines listed in 40 CFR §89.112(a), Table 1 (October 23, 1998) and is well below the applicable emission standards in §117.2110.

Comment

NCTCOG requested confirmation that the engine referenced in Halliburton's petition for rulemaking is located in Carrollton, Texas. NCTCOG requested the commission confirm that the proposed rulemaking only exempts one engine or alternatively confirm the number of affected engines and the projected increase in annual emissions. NCTCOG also requested the commission provide documentation on the analysis of emission estimates and the impact of the additional emissions from the newly exempted engine on air quality monitors and sensitive populations. NCTCOG asked if the proposed exemption allows additional training sites to be located in the DFW area. NCTCOG also asked if the commission considered the possibility and impact of additional engines

used for this purpose in the DFW area.

Response

The commission is currently aware of only one engine that meets the newly adopted exemption criteria, and that is the Halliburton Drawworks Engine located in Carrollton, Texas. However, other engines that meet the adopted exemption criteria in §117.2103(10) could also qualify for exemption. As discussed in the Background and Summary of the Factual Basis for the Adopted Rules, and Response to Comments sections of this preamble, the adopted exemption will not increase annual NO_X emissions in the DFW area. The exemption in §117.2103(10) requires the engine to meet the applicable Tier emission standards for non-road engines listed in 40 CFR §89.112(a), Table 1 (October 23, 1998). The NO_X emission limits for stationary diesel engines in §117.2110 were derived from the same Tier standards in 40 CFR §89.112(a). Therefore, even if additional units do meet the exemption criteria in §117.2103(10), the NO_X emissions from such units are not expected to exceed the NO_X emissions anticipated if the same new units were required to meet the applicable NO_X emission limits in §117.2110. The commission makes no changes in response to this comment.

Comment

NCTCOG asked why the proposed maximum annual operating hours were 1,000 hours given that the existing exemptions in §117.2103(5), (8), and (9) are limited to 100 hours per year.

Response

The existing exemptions in §117.2103(5), (8), and (9) are intended to apply to sources that operate in very limited service, such as emergency backup generator engines. The hours limitations in §117.2103(5), (8), and (9) are designed for engines that are in emergency or limited service. Other existing rules, such as §117.2103(2) and (3), exempt engines used for specific purposes, such as those used in research and testing and those used for the purposes of performance verification and testing. The Halliburton Drawworks Engine is not an emergency backup engine or limited-use engine. Rather, the Drawworks Engine is a primary service engine and is similar to the engines used for specific purposes that qualify for the exemptions in §117.2103(2) and (3). However, the existing exemptions in §117.2103 do not cover the full operating range of Halliburton's Drawworks Engine due to the unique nature of its service. Instead of granting the full exemption afforded to other engines that operate in specific service, the commission is adding an additional layer of stringency to the exemption by limiting the engine's hours of operation. The commission makes no changes

in response to this comment.

Comment

NCTCOG requested the commission justify why the proposed rule provides an exemption from the operating requirements in §117.2130, which prohibit affected engines from being started between the hours of 6:00 a.m. and noon.

Response

The operating requirement in §117.2130(c) prohibits the operation of any stationary diesel or dual-fuel engine for testing or maintenance between the hours of 6:00 a.m. and noon except under limited circumstances. The commission is amending §117.2130(c)(1) - (3) to distinguish between product testing as used in the adopted exemption in §117.2103(10) and engine testing as used in the existing rule language in §117.2130(c). The commission is not providing an exemption from the operating requirement in §117.2130(c). The adopted revision clarifies that the prohibition is specific to testing or maintenance of the engine to avoid conflict with the adopted exemption in §117.2103(10) for stationary engines that are used exclusively for product testing and personnel training and more accurately reflect the intent of the prohibition. The commission's intent for §117.2130(c) has always been that the prohibition applies to testing and

maintenance of the engine itself. These activities can typically be scheduled outside the 6:00 a.m. to noon time-frame without significantly interfering with the daily operations of a facility. Section 117.2130(c) does apply to the Halliburton Drawworks Engine when Halliburton operates the engine as part of the engine's routine testing and maintenance. However, §117.2130(c) does not apply when Halliburton is operating the engine as part of the facility's normal operation of testing drilling equipment and training personnel. The commission makes no changes in response to this comment.

Comment

NCTCOG asked if there are recent time-of-day photochemical model sensitivity runs that indicate how early morning NO_X and volatile organic compound emissions impact afternoon ozone formation.

Response

The commission did not conduct photochemical modeling in support of this rule revision. The DFW attainment demonstration SIP revision for the 1997 eight-hour ozone standard adopted by the commission on December 7, 2011 (Project Number 2010-022-SIP-NR) contains the most recent photochemical modeling analysis for the DFW area. The photochemical modeling for the 2011 DFW attainment demonstration SIP revision used

emissions that were temporally allocated according to emission category but modeling runs were not conducted to determine the sensitivity of the model to changes in emissions by time of day. The commission makes no changes in response to this comment.

Comment

NCTCOG requested the TCEQ examine the benefits and feasibility of requiring independent third-party verification of industry-reported monitoring and compliance data.

Response

The commenter's request is outside the scope of this rulemaking. The intent of this rulemaking is to provide an exemption for stationary diesel engines that are used exclusively for product testing and personnel training, operate less than 1,000 hours per year, and meet applicable emission standards in 40 CFR §89.112(a), Table 1 (October 23, 1998). The commission makes no changes in response to this comment.

Comment

NCTCOG requested the TCEQ require training to include smart operating practices such as no idling, proper engine maintenance, and other emission reducing strategies.

Response

The intent of this rulemaking is to provide an exemption for stationary diesel engines that are used exclusively for product testing and personnel training, operate less than 1,000 hours per year, and meet applicable emission standards in 40 CFR §89.112(a), Table 1 (October 23, 1998). The training suggested by the commenter is not necessary to ensure compliance with the adopted exemption criteria in §117.2103(10). Additionally, applying such training requirements generally under Chapter 117, Subchapter D, Division 2 is outside the scope of this rulemaking. The commission makes no changes in response to this comment.

Comment

NCTCOG requested the TCEQ require Halliburton to identify and implement emission reduction offsets for increased emissions.

Response

As discussed in the Background and Summary of the Factual Basis for the Adopted Rules, and Response to Comments sections of this preamble, the adopted exemption will not increase NO_X emissions in the DFW area. Therefore, emission reduction offsets are not necessary. The adopted

exemption in §117.2103(10) requires the engine to meet the federal Tier standard used to derive the applicable Chapter 117 NO_X emission specification. The federal standard is at least as stringent as the corresponding NO_X emission limit in §117.2110 and therefore the adopted exemption will not result in additional NO_X emissions in the DFW area. In addition, test results indicate the NO_X emissions from Halliburton's Drawworks Engine are below the applicable Chapter 117 NO_X emission specification. The commission makes no changes in response to this comment.

SUBCHAPTER D: COMBUSTION CONTROL AT MINOR SOURCES IN OZONE NONATTAINMENT AREAS
DIVISION 2: DALLAS-FORT WORTH EIGHT-HOUR OZONE NONATTAINMENT AREA MINOR SOURCES

§§117.2103, 117.2130, 117.2135, and 117.2145

Statutory Authority

This rulemaking is adopted under the authority of the following: 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; Texas Water Code (TWC), §5.102, General Powers, §5.103, Rules, and §5.105, General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties as well as all general policies under the TWC; Texas Health and Safety Code (THSC), The Texas Clean Air Act (TCAA), §382.017, Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; 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; and THSC, TCAA, §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. The amendments are also adopted under THSC, §382.016, Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources

to make and maintain records of emissions measurements; THSC, §382.021, Sampling Methods and Procedures, which authorizes the commission to prescribe sampling methods and procedures; and THSC, §382.051(d), Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under THSC, Chapter 382. Finally, the amendments are also adopted under the Federal Clean Air Act (FCAA), 42 USC, §§7401, *et seq*., which requires states to submit state implementation plan revisions that specify the manner in which the National Ambient Air Quality Standard will be achieved and maintained within each air quality control region of the state.

The adopted amendments implement TWC, §5.103 and §5.105, THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, 382.021, 382.051; and FCAA, 42 USC, §§7401, *et seq*.

§117.2103. Exemptions.

This division (relating to Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Minor Sources) does not apply to the following stationary engines, except as specified in §§117.2130(c), 117.2135(e), and 117.2145(b) and (c) of this title (relating to Operating Requirements; Monitoring, Notification, and Testing Requirements; and Recordkeeping and Reporting Requirements):

(1) engines with a horsepower (hp) rating of less than 50 hp;

(2) engines used in research and testing;

(3) engines used for purposes of performance verification and testing;

(4) engines used solely to power other engines or gas turbines during startups;

(5) engines operated exclusively in emergency situations, except that operation for testing or maintenance purposes is allowed for up to 100 hours per year, based on a rolling 12-month average. Any new, modified, reconstructed, or relocated stationary diesel engine placed into service on or after June 1, 2007, is ineligible for this exemption. For the purposes of this subparagraph, the terms "modification" and "reconstruction" have the meanings defined in §116.10 of this title (relating to General Definitions) and 40 Code of Federal Regulations (CFR) §60.15 (December 16, 1975), respectively, and the term "relocated" means to newly install at an account, as defined in §101.1 of this title (relating to Definitions), a used engine from anywhere outside that account;

(6) engines used in response to and during the existence of any officially declared disaster or state of emergency;

(7) engines used directly and exclusively by the owner or operator for agricultural operations necessary for the growing of crops or raising of fowl or animals;

(8) diesel engines placed into service before June 1, 2007, that:

(A) operate less than 100 hours per year, based on a rolling 12-month average; and

(B) have not been modified, reconstructed, or relocated on or after June 1, 2007. For the purposes of this clause, the terms "modification" and "reconstruction" have the meanings defined in §116.10 of this title and 40 CFR §60.15 (December 16, 1975), respectively, and the term "relocated" means to newly install at an account, as defined in §101.1 of this title, a used engine from anywhere outside that account; [and]

(9) new, modified, reconstructed, or relocated stationary diesel engines placed into service on or after June 1, 2007, that:

(A) operate less than 100 hours per year, based on a rolling 12-month average, in other than emergency situations; and

(B) meet the corresponding emission standard for non-road engines listed in 40 CFR §89.112(a), Table 1 (October 23, 1998) and in effect at the time of installation, modification, reconstruction, or relocation. For the purposes of this subparagraph, the terms "modification" and "reconstruction" have the meanings defined in §116.10 of this title and 40 CFR §60.15 (December 16, 1975), respectively, and the term "relocated" means to newly install at an account, as defined in §101.1 of this title, a used engine from anywhere outside that account; and[.]

(10) new, modified, reconstructed, or relocated stationary diesel engines placed into service on or after June 1, 2007, that:

(A) are used solely for product testing and personnel training;

(B) operate less than 1,000 hours per year, on a rolling 12-month basis; and

(C) meet the corresponding emission standard for non-road engines listed in 40 CFR §89.112(a), Table 1 (October 23, 1998) and in effect at the time of

installation, modification, reconstruction, or relocation. For the purposes of this subparagraph, the terms "modification" and "reconstruction" have the meanings defined in §116.10 of this title and 40 CFR §60.15 (December 16, 1975), respectively, and the term "relocated" means to newly install at an account, as defined in §101.1 of this title, a used engine from anywhere outside that account.

§117.2130. Operating Requirements.

(a) The owner or operator shall operate any unit subject to the emission specifications of §117.2110 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration) in compliance with those specifications.

(b) All units subject to §117.2110 of this title must be operated so as to minimize nitrogen oxides (NO_X) emissions, consistent with the emission control techniques selected, over the unit's operating or load range during normal operations. Such operational requirements include the following.

(1) Each unit controlled with post-combustion control techniques must be operated such that the reducing agent injection rate is maintained to limit NO_X concentrations to less than or equal to the NO_X concentrations achieved at maximum rated capacity.

(2) Each stationary internal combustion engine controlled with nonselective catalytic reduction must be equipped with an automatic air-fuel ratio (AFR) controller that operates on exhaust O_2 or CO control and maintains AFR in the range required to meet the engine's applicable emission specifications.

(3) Each stationary internal combustion engine must be checked for proper operation according to §117.8140(b) of the title (relating to Emission Monitoring for Engines).

(c) No person shall start or operate any stationary diesel or dual-fuel engine for testing or maintenance <u>of the engine</u> between the hours of 6:00 a.m. and noon, except:

(1) for specific manufacturer's recommended testing requiring a run of over 18 consecutive hours;

(2) to verify reliability of emergency equipment (e.g., emergency generators or pumps) immediately after unforeseen repairs. Routine maintenance such as an oil change is not considered to be an unforeseen repair; or

(3) firewater pumps for emergency response training conducted in the months of April through October.

§117.2135. Monitoring, Notification, and Testing Requirements.

(a) Oxygen (O_2) monitors. If the owner or operator installs an O_2 monitor, the criteria in §117.8100(a) of this title (relating to Emission Monitoring System Requirements for Industrial, Commercial, and Institutional Sources) should be considered the appropriate guidance for the location and calibration of the monitor.

(b) Nitrogen oxides (NO_X) monitors. If the owner or operator installs a continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS), the CEMS or PEMS must meet the requirements of §117.8100(a) or (b) of this title. If a PEMS is used, the PEMS must predict the pollution emissions in the units of the applicable emission limitations of this division.

(c) Monitor installation schedule. Installation of monitors must be performed in accordance with the schedule specified in §117.9210 of this title (relating to Compliance Schedule for Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Minor Sources).

(d) Testing requirements. The owner or operator of any unit subject to §117.2110 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration) shall comply with the following testing requirements.

(1) Each unit must be tested for NO_X, carbon monoxide (CO), and O_2 emissions.

(2) One of the ammonia monitoring procedures specified in §117.8130 of this title (relating to Ammonia Monitoring) must be used to demonstrate compliance with the ammonia emission specification of §117.2110(h)(2) of this title for units that inject urea or ammonia into the exhaust stream for NO_X control.

(3) For units not equipped with CEMS or PEMS, all testing must be conducted according to §117.8000 of this title (relating to Stack Testing Requirements). In lieu of the test methods specified in §117.8000 of this title, the owner or operator may use American Society for Testing and Materials (ASTM) D6522-00 to perform the NO_X, CO, and O_2 testing required by this subsection on natural gas-fired reciprocating engines. If the owner or operator elects to use ASTM D6522-00 for the testing requirements, the report must contain the information specified in §117.8010 of this title (relating to Compliance Stack Test Reports).

(4) Test results must be reported in the units of the applicable emission specifications and averaging periods. If compliance testing is based on 40 Code of Federal Regulations Part 60, Appendix A reference methods, the report must contain the information specified in §117.8010 of this title.

(5) For units equipped with CEMS or PEMS, the CEMS or PEMS must be installed and operational before testing under this subsection. Verification of operational status must, at a minimum, include completion of the initial monitor certification and the manufacturer's written requirements or recommendations for installation, operation, and calibration of the device.

(6) Initial compliance with the emission specifications of §117.2110 of this title for units operating with CEMS or PEMS must be demonstrated after monitor certification testing using the NO_X CEMS or PEMS.

(7) For units not operating with CEMS or PEMS, the following apply.

(A) Retesting as specified in paragraphs (1) - (4) of this subsection is required within 60 days after any modification that could reasonably be expected to increase the NO_X emission rate.

(B) Retesting as specified in paragraphs (1) - (4) of this subsection may be conducted at the discretion of the owner or operator after any modification that could reasonably be expected to decrease the NO_X emission rate, including, but not limited to, installation of post-combustion controls, low-NO_X burners, low excess air operation, staged combustion (for example, overfire air), flue gas recirculation, and fuel-lean and conventional (fuel-rich) reburn.

(C) Stationary, reciprocating internal combustion engines not equipped with CEMS or PEMS must be periodically tested for NO_X and CO emissions as specified in §117.8140(a) of this title (relating to Emission Monitoring for Engines).

(8) Testing must be performed in accordance with the schedule specified in §117.9210 of this title.

(9) All test reports must be submitted to the executive director for review and approval within 60 days after completion of the testing.

(10) The owner or operator of an affected unit in the Dallas-Fort Worth eight-hour ozone nonattainment area must submit written notification of any CEMS or PEMS relative accuracy test audit (RATA) or testing required under this section to the

appropriate regional office and any local air pollution control agency having jurisdiction at least 15 days in advance of the date of RATA or testing.

(e) Run time meters. The owner or operator of any stationary diesel engine claimed exempt using the exemption of §117.2103(5), (8), [or] (9), or (10) of this title (relating to Exemptions) shall record the operating time with a non-resettable elapsed run time meter.

§117.2145. Recordkeeping and Reporting Requirements.

(a) Recordkeeping. The owner or operator of a unit subject to §117.2110 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration) shall maintain written or electronic records of the data specified in this subsection. Such records must be kept for a period of at least five years and must be made available upon request by authorized representatives of the executive director, the United States Environmental Protection Agency, or local air pollution control agencies having jurisdiction. The records must include:

(1) for each unit using a continuous emission monitoring system (CEMS) or predictive emission monitoring system (PEMS) in accordance with §117.2135(b) of

this title (relating to Monitoring, Notification, and Testing Requirements) monitoring records of:

(A) hourly emissions for units complying with an emission specification enforced on a block one-hour average; and

(B) daily emissions for units complying with an emission specification enforced on a rolling 30-day average. Emissions must be recorded in units of:

(i) pounds per million British thermal units (MMBtu) heat input; and

(ii) pounds or tons per day;

(2) for each stationary internal combustion engine subject to §117.2110 of this title, records of:

(A) emissions measurements required by §117.2130(b)(3) of this title (relating to Operating Requirements); and

(B) catalytic converter, air-fuel ratio controller, or other emissions-related control system maintenance, including the date and nature of corrective actions taken;

(3) records of carbon monoxide (CO) measurements specified in §117.2130(b)(3) of this title;

(4) records of the results of initial certification testing, evaluations, calibrations, checks, adjustments, and maintenance of CEMS, PEMS, or steam-to-fuel or water-to-fuel ratio monitoring systems; and

(5) records of the results of performance testing, including the testing conducted in accordance with §117.2135(d) of this title.

(b) Records for exempt engines. [Written records of the number of hours of operation for each day's operation must be made for each engine claimed exempt under §117.2103(5), (8), or (9) of this title or §117.2130(b)(3) of this title. In addition, for each engine claimed exempt under §117.2103(5) of this title, written records must be maintained of the purpose of engine operation and, if operation was for an emergency situation, identification of the type of emergency situation and the start and end times and date(s) of the emergency situation.] The <u>following</u> records must be maintained for

at least five years and must be made available upon request to representatives of the executive director, the United States Environmental Protection Agency, or any local air pollution control agency having jurisdiction.

(1) Written records of the number of hours of operation for each day's operation must be maintained for each engine claimed exempt under §117.2103(5), (8), (9), or (10) of this title (relating to Exemptions) or §117.2130(b)(3) of this title.

(2) For each engine claimed exempt under §117.2103(5) of this title, written records must be maintained of the purpose of engine operation and, if operation was for an emergency situation, identification of the type of emergency situation and the start and end times and date(s) of the emergency situation.

(3) For each engine claimed exempt under §117.2103(10) of this title, records must be maintained of manufacturer's specifications or test data sufficient to demonstrate compliance with the emission standard specified in §117.2103(10)(C) of this title.

(c) Records of operation for testing and maintenance. The owner or operator of each stationary diesel or dual-fuel engine shall maintain the following records for at least five years and make them available upon request by authorized representatives of

the executive director, the United States Environmental Protection Agency, or local air pollution control agencies having jurisdiction:

(1) date(s) of operation;

(2) start and end times of operation;

(3) identification of the engine; and

(4) total hours of operation for each month and for the most recent 12 consecutive months.

ORDER ADOPTING AMENDED RULES AND
REVISIONS TO THE STATE IMPLEMENTATION PLAN

Docket No. 2012-1388-RUL
Rule Project No. 2012-031-117-AI

On April 10, 2013, the Texas Commission on Environmental Quality (Commission), during a public meeting, considered adoption of amended §§ 117.2103, 117.2130, 117.2135, and 117.2145. The Commission adopts this amendment, in Chapter 117, Control of Air Pollution from Nitrogen Compounds, Subchapter D, Combustion Control at Minor Sources in Ozone Nonattainment Areas, Division 2, Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Minor Sources; and corresponding revisions to the state implementation plan (SIP). The adopted amendments will provide an exemption from the emission testing requirements in Chapter 117 for engines that are used exclusively for product testing and personnel training, operate in limited service, and meet the applicable federal emissions standards in 40 Code of Federal Regulations Part 89. Engines used in this type of service will be required to install and operate a non-resettable elapsed run time meter, maintain records of daily hours of operation, and maintain records demonstrating compliance with the applicable federal emissions standards. The rulemaking is a follow-up to a petition for rulemaking approved by the Commission on May 30, 2012. Under Tex. Health & Safety Code Ann. §§ 382.011, 382.012, and 382.023 (Vernon 2011), the Commission has the authority to control the quality of the state's air and to issue orders consistent with the policies and purposes of the Texas Clean Air Act, Chapter 382 of the Tex. Health & Safety Code. The proposed rules were published for comment in the November 16, 2012, issue of the *Texas Register* (37 TexReg 9060).

Pursuant to Tex. Health & Safety Code Ann. § 382.017 (Vernon 2001), Tex. Gov't Code Chapter 2001 (Vernon 2008), and 40 Code of Federal Regulations § 51.102, and after proper notice, the Commission conducted public hearings to consider the amended rules and revisions to the SIP. Proper notice included prominent advertisement in the areas affected at least 30 days prior to the dates of the hearings. Public hearings for this rulemaking were held in Fort Worth, Texas on December 13, 2012 and in Austin, Texas on December 18, 2012.

The Commission circulated hearing notices of its intended action to the public, including interested persons, the Regional Administrator of the EPA, and all applicable local air pollution control agencies. The public was invited to submit data, views, and

recommendations on the proposed amended rules and SIP revisions, either orally or in writing, at the hearings or during the comment period. Prior to the scheduled hearings, copies of the proposed amended rules and SIP revisions were available for public inspection at the Commission's central office and on the Commission's Web site.

Data, views, and recommendations of interested persons regarding the proposed amended rules and SIP revisions were submitted to the Commission during the comment period, and were considered by the Commission as reflected in the analysis of testimony incorporated by reference to this Order. The Commission finds that the analysis of testimony includes the names of all interested groups or associations offering comment on the proposed amended rules and the SIP revisions and their position concerning the same.

IT IS THEREFORE ORDERED BY THE COMMISSION that the amended rules and revisions to the SIP incorporated by reference to this Order are hereby adopted. The Commission further authorizes staff to make any non-substantive revisions to the rules necessary to comply with *Texas Register* requirements. The adopted rules and the preamble to the adopted rules and the revisions to the SIP are incorporated by reference in this Order as if set forth at length verbatim in this Order.

IT IS FURTHER ORDERED BY THE COMMISSION that on behalf of the Commission, the Chairman should transmit a copy of this Order, together with the adopted rules and revisions to the SIP, to the Regional Administrator of EPA as a proposed revision to the Texas SIP pursuant to the Federal Clean Air Act, codified at 42 U.S. Code Ann. §§ 7401 - 7671q, as amended.

This Order constitutes the Order of the Commission required by the Administrative Procedure Act, Tex. Gov't Code, § 2001.033 (Vernon 2008).

If any portion of this Order is for any reason held to be invalid by a court of competent jurisdiction, the invalidity of any portion shall not affect the validity of the remaining portions.

Issued date:

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

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Bryan W. Shaw, Ph.D., Chairman

DRAFT

telemedicine medical services or telehealth services. Health care or treatment provided using telemedicine medical services or telehealth services after a THSteps preventive health visit for conditions identified during a THSteps preventive health visit may be reimbursed.

(B) Documentation in the patient's medical record for a telemedicine medical service or a telehealth service must be the same as for a comparable in-person evaluation.

(C) Providers of telemedicine medical services and telehealth services must maintain confidentiality of protected health information (PHI) as required by 42 CFR Part 2, 45 CFR Parts 160 and 164, chapters 111 and 159 of the Occupations Code, and other applicable federal and state law.

(D) Providers of telemedicine medical services and telehealth services must comply with the requirements for authorized disclosure of PHI relating to patients in state mental health facilities and residents in state supported living centers, which are included in, but not limited to, 42 CFR Part 2, 45 CFR Parts 160 and 164, Health and Safety Code §611.004, and other applicable federal and state law.

(E) Telemedicine medical services and telehealth services are reimbursed in accordance with Chapter 355 of this title (relating to Reimbursement Rates).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 5, 2012.

TRD-201205694
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: December 16, 2012
For further information, please call: (512) 424-6900

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 117. CONTROL OF AIR POLLUTION FROM NITROGEN COMPOUNDS

SUBCHAPTER D. COMBUSTION CONTROL AT MINOR SOURCES IN OZONE NONATTAINMENT AREAS

DIVISION 2. DALLAS-FORT WORTH EIGHT-HOUR OZONE NONATTAINMENT AREA MINOR SOURCES

30 TAC §§117.2103, 117.2130, 117.2135, 117.2145

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§117.2103, 117.2130, 117.2135, and 117.2145.

If adopted, the amended sections will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP).

Background and Summary of the Factual Basis for the Proposed Rules

On April 5, 2012, Halliburton Energy Services, Incorporated (Halliburton) submitted a petition for rulemaking requesting a partial exemption from the rules in 30 TAC Chapter 117, Subchapter D, Division 2 that limit nitrogen oxides (NO_x) emissions from minor sources in the Dallas-Fort Worth (DFW) 1997 eight-hour ozone nonattainment area. The commission approved the petition for rulemaking on May 30, 2012, and issued an order on June 1, 2012, directing the executive director to examine the issues in the petition and to initiate rulemaking (Project No. 2012-029-PET-NR).

The unique service of the Halliburton Drawworks Engine makes ongoing testing to demonstrate compliance with the Chapter 117 NO_x emission limits impractical and comparatively more expensive than the stationary engine testing envisioned during the adoption of the Chapter 117 rules in 2007. To comply with the Chapter 117 testing requirements, Halliburton must arrange for both emissions testing equipment (a normal and expected expense) and for the rental, transport, and use of a dynamometer, which is typically used by engine manufacturers for testing purposes. Preparing the engine for installation of the dynamometer and returning the engine to operational status subsequent to the emissions testing presents significant safety hazards associated with the removal of the drive train and transmission, removal of the torque converter, and the placement and use of non-dedicated hoisting equipment on the rig floor. Performing a compliant emissions test of the Drawworks Engine takes three to four days to complete, whereas compliant emissions testing on a typical stationary engine only requires approximately half a day. Additionally, engines used to raise and lower down-hole equipment in actual oil and gas operations in the field, which the Drawworks Engine is designed to simulate, are typically not subject to similar Chapter 117 testing requirements because they are not installed at a location long enough to trigger the definition of a stationary internal combustion engine in §117.10. The Drawworks Engine is subject to Chapter 117, Subchapter D, Division 2 because the equipment has been made stationary to provide testing and training facilities for sources that are not subject to the rule.

The proposed change would expand the list of exempted sources in §117.2103 to include stationary diesel engines that are used exclusively for product testing and personnel training, operate less than 1,000 hours per year on a rolling 12-month basis, and meet applicable Tier emission standards for non-road engines listed in 40 Code of Federal Regulations (CFR) §89.112(a), Table 1 (October 23, 1998) in effect at the time of installation, modification, reconstruction, or relocation. The proposed exemption is narrow in scope and consistent with the similar existing exemptions for stationary diesel engines located at minor sources, such as stationary engines used in research and testing and stationary engines used for purposes of performance verification and testing. The proposed change would also revise the operating requirements of §117.2130, the monitoring requirements of §117.2135, and the recordkeeping requirements of §117.2145 to reflect the new category of exempt engines.

Demonstrating Noninterference under Federal Clean Air Act, Section 110(l)

The commission provides the following information to demonstrate why the proposed new exemption in §117.2103 would not negatively impact the status of the state's progress towards attainment with the 1997 eight-hour ozone National Ambient Air Quality Standard (NAAQS), would not interfere with control measures, and would not prevent reasonable further progress toward attainment of the ozone NAAQS.

On December 6, 2000, as part of the Houston-Galveston-Brazoria (HGB) attainment demonstration SIP, the commission adopted a new control strategy for stationary reciprocating internal combustion engines, boilers, and process heaters located at minor industrial, commercial, and institutional sources of NO_x in the HGB area. The adopted rulemaking exempted engines used for specific purposes, such as those used in research and testing and those used for the purposes of performance verification and testing.

On May 23, 2007, as part of the DFW 1997 eight-hour ozone attainment demonstration SIP, the commission adopted new emission control requirements for stationary reciprocating internal combustion engines located at minor industrial, commercial, and institutional sources of NO_x in the DFW area. The NO_x emission reductions were necessary for the DFW area to attain the 1997 eight-hour ozone NAAQS. Similar to the HGB rulemaking, the DFW rulemaking also adopted exemptions for engines used for specific purposes, such as those used in research and testing and those used for the purposes of performance verification and testing.

The proposed partial exemption is narrowly tailored and will not adversely impact the DFW area's progress in attaining the 1997 eight-hour ozone NAAQS. During the 2000 and 2007 rulemakings, no stationary engines similar in function to the Halliburton Drawworks engine were identified in the emissions inventory in the counties impacted by the rulemakings, and no such engines were relied upon for creditable reductions for the SIP. Therefore, if the proposed rulemaking is adopted, it would not result in a loss of any SIP creditable reductions for the DFW 1997 eight-hour ozone nonattainment area. Additionally, based on February 2012 emissions test results and a limit of 1,000 hours of run time per year, the Drawworks Engine has maximum potential annual NO_x emissions of 0.87 tons per year and is well below the emission standards established in the Chapter 117 minor source NO_x rules. The proposed exemption criteria require compliance with the federal standards in 40 CFR Part 89 to ensure that the proposed exemption will not result in backsliding. Based on the test results, the Drawworks Engine at the Halliburton Carrollton Plant meets Tier 3 emission standards for non-road engines listed in 40 CFR §89.112(a), Table 1 (October 23, 1998). Therefore, the Drawworks Engine would be required to and does meet the applicable federal emission standards in 40 CFR §89.112(a), Table 1 (October 23, 1998) for the engine's size and installation date. The NO_x emission limits for stationary diesel engines in §117.2110 were derived from the Tier standards in 40 CFR Part 89. Therefore, the proposed exemption should not result in additional NO_x emissions in the DFW area.

Based on these factors, the commission has determined that the proposed rule change will not negatively impact the status of the state's attainment demonstration for the 1997 eight-hour ozone NAAQS, will not interfere with control measures, and will not prevent reasonable further progress toward attainment of the ozone NAAQS.

Section by Section Discussion

Section 117.2103, Exemptions

The commission proposes §117.2103(10) to exempt stationary diesel engines that are used exclusively for product testing and personnel training, operate less than 1,000 hours per year on a rolling 12-month basis, and meet applicable Tier emission standards for non-road engines listed in 40 CFR §89.112(a), Table 1 (October 23, 1998) in effect at the time of installation, modification, reconstruction, or relocation. The proposed exemption is only intended to apply to an engine that is in dedicated service for product testing and personnel training and is not intended to apply to an engine that is used for any additional purpose. The proposed amendment would exempt engines in this unique service from ongoing testing to demonstrate compliance with the Chapter 117 NO_x emission limits because the testing requirements are impractical and comparatively more expensive than the stationary engine testing envisioned at adoption of the rule. Requiring compliance with the federal standards in 40 CFR Part 89 ensures that the proposed exemption will not result in additional NO_x emissions in the DFW area because the Chapter 117 NO_x emission limits were derived from these federal standards. The petitioner requested the proposed exemption limit the engine's operating hours to less than 1,000 hours per year based on a rolling 12-month average. The commission is proposing to limit the engine's operating hours to less than 1,000 hours per year on a rolling 12-month basis to more accurately reflect how an affected source would demonstrate compliance with the operating restriction of a total of 1,000 hours per year.

Section 117.2130, Operating Requirements

The commission proposes to amend §117.2130(c) to distinguish between product testing as used in the proposed exemption in §117.2103(10) and engine testing as used in the existing rule language in §117.2130(c). Currently, the existing rule language in §117.2130(c) prohibits a person from starting or operating any stationary diesel or dual-fuel engine in the DFW 1997 eight-hour ozone nonattainment area for testing or maintenance between the hours of 6:00 a.m. and noon, except when a specific manufacturer's recommended test requires a run of over 18 consecutive hours, to verify the reliability of emergency equipment immediately after unforeseen repairs, and to use firewater pumps for emergency response training conducted in the months of April through October. The proposed revision clarifies that the prohibition is specific to testing or maintenance of the engine to avoid conflict with the proposed new exemption in §117.2103(10) for stationary engines that are used exclusively for product testing and personnel training and more accurately reflect the intent of the prohibition.

Section 117.2135, Monitoring, Notification, and Testing Requirements

The commission proposes to amend §117.2135(e) by including by reference the proposed exemption in §117.2103(10). The proposed revision would require sources claiming the proposed exemption in §117.2103(10) to monitor the operating time with a non-resettable elapsed run time meter in order to demonstrate compliance with the operating restrictions in §117.2103(10). To conform to *Texas Register* formatting standards, the commission also proposes to amend subsection (e) to add a reference to the title of §117.2103.

Section 117.2145, Recordkeeping and Reporting Requirements

The commission proposes to amend §117.2145(b) by reformatting the existing provision and adding new recordkeeping requirements associated with the proposed exemption in

§117.2103(10). The existing requirements in §117.2145(b) are only proposed for reformatting to accommodate the new recordkeeping requirements associated with the proposed exemption in §117.2103(10). The proposed amendment will not alter the intent of the existing recordkeeping requirements for sources currently complying with §117.2145(b) or impose any new requirements on engines claimed exempt under §117.2103(5), (8), or (9) or §117.2130(b)(3). The commission requests comment on any instance where the reformatting of §117.2145(b) inadvertently altered the existing recordkeeping requirements.

The proposed changes to §117.2145(b) modify the record retention requirement in existing §117.2145(b) to apply to the records specified in paragraphs (1) - (3). Consistent with the current requirements, records are required to be maintained for at least five years and must be made available upon request to representatives of the executive director, the EPA, or any local air pollution control agency having jurisdiction.

Proposed §117.2145(b)(1) requires written records of the number of hours of operation for each day's operation to be maintained for each engine claimed exempt under §117.2103(5), (8), (9), or (10) or §117.2130(b)(3). Proposed §117.2145(b)(1) includes the existing requirements in §117.2145(b) for engines claimed exempt under §117.2103(5), (8), or (9) or §117.2130(b)(3) and would apply the same requirements to engines claimed exempt under proposed §117.2103(10). The proposed revision would require sources claiming the proposed exemption in §117.2103(10) to maintain written records of the number of hours of operation for each day's operation in order to demonstrate compliance with the operating restrictions included in §117.2103(10).

Proposed §117.2145(b)(2) includes the existing requirements in §117.2145(b) for the owner or operator of each engine claimed exempt under §117.2103(5) to maintain written records of the purpose of engine operation and, if operation was for an emergency situation, identification of the type of emergency situation and the start and end times and date(s) of the emergency situation.

Proposed §117.2145(b)(3) requires the owner or operator of each engine claimed exempt under §117.2103(10) to maintain records of manufacturer's specifications or test data sufficient to demonstrate compliance with the corresponding emission standard for non-road engines listed in 40 CFR §89.112(a), Table 1 (October 23, 1998) as specified in §117.2103(10)(C). This recordkeeping requirement was not specifically requested in the petition for rulemaking approved by the commission on May 30, 2012. However, the commission is proposing to include this recordkeeping requirement to clearly indicate the records required to demonstrate compliance with the proposed exemption criteria in §117.2103(10) and facilitate enforcement of the proposed exemption. Additionally, the proposed recordkeeping provision in subsection (b)(3) makes clear that either engine manufacturer's specifications or actual emission testing are acceptable for demonstrating that the engine meets the exemption criteria.

Fiscal Note: Costs to State and Local Government

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency as a result of administration or enforcement of the proposed rules since currently available resources would be used to implement them. Other units of state or local government would not experience fiscal impacts under the proposed rules since these entities do not typically own or operate the type of stationary diesel engines addressed by the proposed rules.

The proposed rules are narrow in scope and would apply only to the DFW 1997 eight-hour ozone nonattainment area. The proposed rules would expand the list of exempt stationary engines in Chapter 117 to include a certain type of stationary diesel engine. The proposed exemption would be similar to existing exemptions for stationary diesel engines located at minor sources in the DFW area. The proposed exemption would be for stationary diesel engines that are used exclusively for product testing and personnel training; that operate less than 1,000 hours per year; and that meet applicable Tier emission standards found in federal regulations for non-road engines. The proposed rules would also clarify monitoring and recordkeeping requirements for this type of engine.

No units of local government or other state agencies are known to own or use the type of stationary engine that is the subject of this rulemaking. Therefore, the proposed rules would have no fiscal impact on these governmental entities.

Public Benefits and Costs

Nina Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be continued protection of the environment and public health and safety combined with efficient and fair administration of NO_x emission standards for the DFW 1997 eight-hour ozone nonattainment area.

The proposed rules would not have a fiscal impact on individuals in the DFW 1997 eight-hour ozone nonattainment area.

The proposed rules would give a limited exemption from the emission limits, monitoring requirements, and testing requirements found in Chapter 117 for one large business in the DFW 1997 eight-hour ozone nonattainment area that owns and operates a stationary diesel engine that is used exclusively for product testing and personnel training; that operates less than 1,000 hours per year; and that meets applicable federal Tier emission standards for non-road engines. The narrow scope of the proposed rulemaking would not result in additional NO_x emissions in the DFW 1997 eight-hour ozone nonattainment area since the maximum potential NO_x emissions for this engine operating within this exemption would be 0.87 tons per year.

The proposed rulemaking would require the large business to install and operate a non-resettable run time meter and to maintain records of engine operating hours. However, the business would not be required to dismantle the transmission of the engine to install a dynamometer or incur the cost to rent or transport the dynamometer to comply with emission testing requirements under the current rules. An emissions test using a dynamometer could be as much as $26,000 per testing event, and testing could take up to four days. The one-time cost of a run time meter is estimated to be $2,000 to $3,000, and recordkeeping costs are expected to be minimal under the proposed rules.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. A small business does not typically own or operate an engine that would be used in the type of service addressed by the proposed rules.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect.

Local Employment Impact Statement

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

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the proposed rulemaking does not meet the definition of a major environmental rule. Texas Government Code, §2001.0225 states that a major environmental rule is a rule for which the specific intent is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Furthermore, while the proposed rulemaking does not constitute a major environmental rule, even if it did, a regulatory impact analysis would not be required because the proposed rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule. Texas Government Code, §2001.0225 applies only to a major environmental rule that: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds 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) adopts a rule solely under the general powers of the agency instead of under a specific state law. Specifically, it does not meet any of the four applicability criteria listed in Texas Government Code, §2001.0225 because: 1) the proposed rulemaking is part of the SIP, and as such is designed to meet, not exceed the relevant standard set by federal law; 2) parts of the proposed rulemaking are directly required by state law; 3) no contract or delegation agreement covers the topic that is the subject of this proposed rulemaking; and 4) the proposed rulemaking is authorized by specific sections of Texas Health and Safety Code (THSC), Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code, which are cited in the Statutory Authority section of this preamble.

The proposed rulemaking implements requirements of the Federal Clean Air Act (FCAA). Under 42 United States Code (USC), §7410, each state is required to adopt and implement a SIP containing adequate provisions to implement, attain, maintain, and enforce the NAAQS within the state. While 42 USC, §7410 generally does not require specific programs, methods, or reductions in order to meet the standard, SIPs must include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter (meaning 42 USC, Chapter 85, Air Pollution Prevention and Control, otherwise known as the FCAA). The provisions of the FCAA recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 USC, §7410. States are not free to ignore the requirements of 42 USC, §7410, and must develop programs and control measures to assure that their SIPs provide for implementation, attainment, maintenance, and enforcement of the NAAQS within the state. The specific intent of the proposed rulemaking is to implement changes within the Chapter 117, Subchapter D, Division 2 rules, which will expand the list of exempted sources operating in limited services in §117.2103 to include stationary diesel engines that are used exclusively for product testing and personnel training, and meet applicable Tier emission standards for non-road engines listed in the applicable CFR.

While the proposed rulemaking protects the environment or reduces risks to human health from environmental exposure, it does not constitute a major environmental rule under Texas Government Code, §2001.0225(g)(3) because it does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs, nor would the rulemaking adversely affect in a material way the environment, or the public health and safety of the state or a sector of the state. The rulemaking as a result is not subject to a regulatory impact analysis under Texas Government Code, §2001.0225 because it is not a major environmental rule.

The requirement to provide a fiscal analysis of regulations in the Texas Government Code was amended by Senate Bill (SB) 633, 75th Legislature, 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program; or are adopted solely under the general powers of the TCEQ. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded: based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application. The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted rules from the full analysis unless the rule was a major environmental rule that exceeded a federal law.

The FCAA does not always require specific programs, methods, or reductions in order to meet the NAAQS; thus, states must develop programs for each nonattainment area to help ensure that those areas will meet the attainment deadlines. Because of the ongoing need to address nonattainment issues and to meet the requirements of 42 USC, §7410, the commission routinely proposes and adopts revisions to the SIP and rules. The legislature is presumed to understand this federal scheme. If each rule proposed for inclusion in the SIP was considered to be a major environmental rule that exceeds federal law, then every revision to the SIP would require the full regulatory impact analysis contemplated by SB 633. This conclusion is inconsistent with the con-

clusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes and that presumption is based on information provided by state agencies and the LBB, the commission believes that the intent of SB 633 was only to require the full regulatory impact analysis for rules that are extraordinary in nature. While the rules have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA. For these reasons, rules adopted for inclusion in the SIP fall under the exception in Texas Government Code, §2001.0225(a), because they are required by federal law.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code but left this provision substantially unamended. It is presumed that, when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation *(Central Power & Light Co. v. Sharp,* 919 S.W.2d 485, 489 (Tex. App. Austin 1995), *writ denied with per curiam opinion respecting another issue,* 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.,* 798 S.W.2d 353, 357 (Tex. App. Austin 1990, *no writ); superseded by statute on another point of law,* Tax Code §112.108, Other Actions Prohibited, *as recognized in, First State Bank of Dumas v. Sharp,* 863 S.W.2d 81, 83 (Tex. App. Austin 1993, *no writ); Cf. Humble Oil & Refining Co. v. Calvert,* 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.,* 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor,* 24 S.W.3d 581 (Tex. App. Austin 2000, *pet. denied);* and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.,* 563 S.W.2d 916 (Tex. 1978)).

The commission's interpretation of the regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of substantial compliance as required in Texas Government Code, §2001.035. The legislature specifically identified Texas Government Code, §2001.0225 as falling under this standard. The commission has complied with the requirements of Texas Government Code, §2001.0225.

Even if the proposed rulemaking constitutes a major environmental rule under Texas Government Code, §2001.0225(g)(3), a regulatory impact analysis is not required because this exemption is part of the commission's SIP for making progress toward the attainment and maintenance of the NAAQS. Therefore, the proposed rulemaking does not exceed a standard set by federal law or exceed an express requirement of state law, since they are part of an overall regulatory scheme designed to meet, not exceed the relevant standard set by federal law (NAAQS). The commission is charged with protecting air quality within the state and to design and submit a plan to achieve attainment and maintenance of the federally mandated NAAQS. The Third District Court of Appeals upheld this interpretation in *Brazoria County v. Texas Comm'n on Envtl. Quality,* 128 S.W. 3d 728 (Tex. App. - Austin 2004, *no writ).* The specific intent of the proposed rulemaking is to implement changes within the Chapter 117, Subchapter D, Division 2 rules expanding the list of exempted sources listed in §117.2103 to include stationary diesel engines used exclusively for product testing and personnel training, and meet applicable Tier emission standards for non-road engines listed in the applicable CFR. This proposal, therefore, does not exceed an express requirement of federal law. The amendment is needed to implement state law but does exceed those new requirements. Finally, this rulemaking was not developed solely under the general powers of the agency, but is authorized by specific sections of THSC, Chapter 382, which are cited in the Statutory Authority section of this preamble, including THSC, §382.012 and §382.019. Because this proposed rulemaking does not meet any of the four applicability requirements, Texas Government Code, §2001.0225(b) does not apply, and a regulatory impact analysis is not required.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an analysis of whether the proposed rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The commission's preliminary assessment indicates Texas Government Code, Chapter 2007 does not apply.

Under Texas Government Code, §2007.002(5), taking means: "(A) 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 Section 17 or 19, Article I, Texas Constitution; or (B) a governmental action that: (i) 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 (ii) is the producing cause of a reduction of at least 25 percent 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."

Promulgation and enforcement of the rulemaking would be neither a statutory nor a constitutional taking of private real property. The primary purpose of the rulemaking is an update to Chapter 117, Subchapter D, Division 2 expanding the list of exempted sources listed in §117.2103 to include stationary diesel engines used exclusively for product testing and personnel training, and meet applicable Tier emission standards for non-road engines. This rulemaking is not burdensome, restrictive, or limiting of rights to private real property because the rulemaking regulates the use of stationary engines in limited circumstances. Furthermore, the rulemaking benefits the public by providing oil and gas field operators an opportunity for safe simulation without incurring the significant safety hazards typically associated with the current testing requirements of stationary engines.

The rulemaking does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property, nor does it reduce the value of any private real property by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, this rulemaking does not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) relating to rules subject to the Coastal Management Program (CMP), and will, therefore, require that goals and policies of the CMP be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking will not affect any coastal natural resource areas because the rules only affect counties outside the CMP area and is, therefore, consistent with CMP goals and policies.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Effect on Sites Subject to the Federal Operating Permits Program

Chapter 117 is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program. If the amendments to Chapter 117 are adopted, owners or operators subject to the federal operating permit program must, consistent with the revision process in Chapter 122, upon the effective date of the rulemaking, revise their operating permit to include the new Chapter 117 requirements.

Announcement of Hearing

The commission will hold two public hearings on this proposal: one in Fort Worth on December 13, 2012 at 2:00 p.m. at the commission's Dallas-Fort Worth Regional Office located at 2309 Gravel Drive; and a second hearing in Austin on December 18, 2012 at 10:00 a.m. in Building E, Conference Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services, at (512) 239-1802. Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Michael Parrish, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2012-031-117-AI. The comment period closes December 19, 2012. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.texas.gov/nav/rules/propose_adopt.html.* For further information, please contact Javier Galván, Air Quality Planning Section, (512) 239-1492.

Statutory Authority

The amendments are proposed under the authority of the following: 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 Texas Water Code (TWC), §5.102, General Powers, §5.103, Rules, and §5.105, General Policy (these provisions authorize the commission to adopt rules necessary to carry out its powers and duties as well as all general policies under the TWC); Texas Health and Safety Code (THSC), §382.017, Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; 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; and 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. The sections are also proposed under THSC, §382.016, Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; THSC, §382.021, Sampling Methods and Procedures, which authorizes the commission to prescribe sampling methods and procedures; and THSC, §382.051(d), Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under THSC, Chapter 382. Finally, the amendment is also proposed under Federal Clean Air Act, 42 United States Code (USC), §§7401, *et seq.,* which requires states to submit state implementation plan revisions that specify the manner in which the National Ambient Air Quality Standard will be achieved and maintained within each air quality control region of the state.

The proposed amendment implements TWC, §5.103 and §5.105, and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, 382.021, 382.051, and FCAA, 42 USC, §§7401 *et seq.*

§117.2103. Exemptions.

This division (relating to Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Minor Sources) does not apply to the following stationary engines, except as specified in §§117.2130(c), 117.2135(e), and 117.2145(b) and (c) of this title (relating to Operating Requirements; Monitoring, Notification, and Testing Requirements; and Recordkeeping and Reporting Requirements):

(1) engines with a horsepower (hp) rating of less than 50 hp;

(2) engines used in research and testing;

(3) engines used for purposes of performance verification and testing;

(4) engines used solely to power other engines or gas turbines during startups;

(5) engines operated exclusively in emergency situations, except that operation for testing or maintenance purposes is allowed for up to 100 hours per year, based on a rolling 12-month average. Any new, modified, reconstructed, or relocated stationary diesel engine placed into service on or after June 1, 2007, is ineligible for this exemption. For the purposes of this subparagraph, the terms "modification" and "reconstruction" have the meanings defined in §116.10 of this title (relating to General Definitions) and 40 Code of Federal Regulations (CFR) §60.15 (December 16, 1975), respectively, and the term "relocated" means to newly install at an account, as defined in §101.1 of this title (relating to Definitions), a used engine from anywhere outside that account;

(6) engines used in response to and during the existence of any officially declared disaster or state of emergency;

(7) engines used directly and exclusively by the owner or operator for agricultural operations necessary for the growing of crops or raising of fowl or animals;

(8) diesel engines placed into service before June 1, 2007, that:

(A) operate less than 100 hours per year, based on a rolling 12-month average; and

(B) have not been modified, reconstructed, or relocated on or after June 1, 2007. For the purposes of this clause, the terms "modification" and "reconstruction" have the meanings defined in §116.10 of this title and 40 CFR §60.15 (December 16, 1975), respectively, and the term "relocated" means to newly install at an account, as defined in §101.1 of this title, a used engine from anywhere outside that account; [~~and~~]

(9) new, modified, reconstructed, or relocated stationary diesel engines placed into service on or after June 1, 2007, that:

(A) operate less than 100 hours per year, based on a rolling 12-month average, in other than emergency situations; and

(B) meet the corresponding emission standard for nonroad engines listed in 40 CFR §89.112(a), Table 1 (October 23, 1998) and in effect at the time of installation, modification, reconstruction, or relocation. For the purposes of this subparagraph, the terms "modification" and "reconstruction" have the meanings defined in §116.10 of this title and 40 CFR §60.15 (December 16, 1975), respectively, and the term "relocated" means to newly install at an account, as defined in §101.1 of this title, a used engine from anywhere outside that account; and[~~.~~]

(10) new, modified, reconstructed, or relocated stationary diesel engines placed into service on or after June 1, 2007, that:

(A) are used solely for product testing and personnel training;

(B) operate less than 1,000 hours per year, on a rolling 12-month basis; and

(C) meet the corresponding emission standard for nonroad engines listed in 40 CFR §89.112(a), Table 1 (October 23, 1998) and in effect at the time of installation, modification, reconstruction, or relocation. For the purposes of this subparagraph, the terms "modification" and "reconstruction" have the meanings defined in §116.10 of this title and 40 CFR §60.15 (December 16, 1975), respectively, and the term "relocated" means to newly install at an account, as defined in §101.1 of this title, a used engine from anywhere outside that account.

§117.2130. Operating Requirements.

(a) The owner or operator shall operate any unit subject to the emission specifications of §117.2110 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration) in compliance with those specifications.

(b) All units subject to §117.2110 of this title must be operated so as to minimize nitrogen oxides (NO_x) emissions, consistent with the emission control techniques selected, over the unit's operating or load range during normal operations. Such operational requirements include the following.

(1) Each unit controlled with post-combustion control techniques must be operated such that the reducing agent injection rate is maintained to limit NO_x concentrations to less than or equal to the NO_x concentrations achieved at maximum rated capacity.

(2) Each stationary internal combustion engine controlled with nonselective catalytic reduction must be equipped with an automatic air-fuel ratio (AFR) controller that operates on exhaust O_2 or CO control and maintains AFR in the range required to meet the engine's applicable emission specifications.

(3) Each stationary internal combustion engine must be checked for proper operation according to §117.8140(b) of the title (relating to Emission Monitoring for Engines).

(c) No person shall start or operate any stationary diesel or dual-fuel engine for testing or maintenance of the engine between the hours of 6:00 a.m. and noon, except:

(1) for specific manufacturer's recommended testing requiring a run of over 18 consecutive hours;

(2) to verify reliability of emergency equipment (e.g., emergency generators or pumps) immediately after unforeseen repairs. Routine maintenance such as an oil change is not considered to be an unforeseen repair; or

(3) firewater pumps for emergency response training conducted in the months of April through October.

§117.2135. Monitoring, Notification, and Testing Requirements.

(a) Oxygen (O_2) monitors. If the owner or operator installs an O_2 monitor, the criteria in §117.8100(a) of this title (relating to Emission Monitoring System Requirements for Industrial, Commercial, and Institutional Sources) should be considered the appropriate guidance for the location and calibration of the monitor.

(b) Nitrogen oxides (NO_x) monitors. If the owner or operator installs a continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS), the CEMS or PEMS must meet the requirements of §117.8100(a) or (b) of this title. If a PEMS is used, the PEMS must predict the pollution emissions in the units of the applicable emission limitations of this division.

(c) Monitor installation schedule. Installation of monitors must be performed in accordance with the schedule specified in §117.9210 of this title (relating to Compliance Schedule for Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Minor Sources).

(d) Testing requirements. The owner or operator of any unit subject to §117.2110 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration) shall comply with the following testing requirements.

(1) Each unit must be tested for NO_x, carbon monoxide (CO), and O_2 emissions.

(2) One of the ammonia monitoring procedures specified in §117.8130 of this title (relating to Ammonia Monitoring) must be used to demonstrate compliance with the ammonia emission specification of §117.2110(h)(2) of this title for units that inject urea or ammonia into the exhaust stream for NO_x control.

(3) For units not equipped with CEMS or PEMS, all testing must be conducted according to §117.8000 of this title (relating to Stack Testing Requirements). In lieu of the test methods specified in §117.8000 of this title, the owner or operator may use American Society for Testing and Materials (ASTM) D6522-00 to perform the NO_x, CO, and O_2 testing required by this subsection on natural gas-fired reciprocating engines. If the owner or operator elects to use ASTM D6522-00 for the testing requirements, the report must contain the information specified in §117.8010 of this title (relating to Compliance Stack Test Reports).

(4) Test results must be reported in the units of the applicable emission specifications and averaging periods. If compliance test-

ing is based on 40 Code of Federal Regulations Part 60, Appendix A reference methods, the report must contain the information specified in §117.8010 of this title.

(5) For units equipped with CEMS or PEMS, the CEMS or PEMS must be installed and operational before testing under this subsection. Verification of operational status must, at a minimum, include completion of the initial monitor certification and the manufacturer's written requirements or recommendations for installation, operation, and calibration of the device.

(6) Initial compliance with the emission specifications of §117.2110 of this title for units operating with CEMS or PEMS must be demonstrated after monitor certification testing using the NO_x CEMS or PEMS.

(7) For units not operating with CEMS or PEMS, the following apply.

(A) Retesting as specified in paragraphs (1) - (4) of this subsection is required within 60 days after any modification that could reasonably be expected to increase the NO_x emission rate.

(B) Retesting as specified in paragraphs (1) - (4) of this subsection may be conducted at the discretion of the owner or operator after any modification that could reasonably be expected to decrease the NO_x emission rate, including, but not limited to, installation of post-combustion controls, low-NO_x burners, low excess air operation, staged combustion (for example, overfire air), flue gas recirculation, and fuel-lean and conventional (fuel-rich) reburn.

(C) Stationary, reciprocating internal combustion engines not equipped with CEMS or PEMS must be periodically tested for NO_x and CO emissions as specified in §117.8140(a) of this title (relating to Emission Monitoring for Engines).

(8) Testing must be performed in accordance with the schedule specified in §117.9210 of this title.

(9) All test reports must be submitted to the executive director for review and approval within 60 days after completion of the testing.

(10) The owner or operator of an affected unit in the Dallas-Fort Worth eight-hour ozone nonattainment area must submit written notification of any CEMS or PEMS relative accuracy test audit (RATA) or testing required under this section to the appropriate regional office and any local air pollution control agency having jurisdiction at least 15 days in advance of the date of RATA or testing.

(e) Run time meters. The owner or operator of any stationary diesel engine claimed exempt using the exemption of §117.2103(5), (8), [~~or~~] (9), or (10) of this title (relating to Exemptions) shall record the operating time with a non-resettable elapsed run time meter.

§117.2145. Recordkeeping and Reporting Requirements.

(a) Recordkeeping. The owner or operator of a unit subject to §117.2110 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration) shall maintain written or electronic records of the data specified in this subsection. Such records must be kept for a period of at least five years and must be made available upon request by authorized representatives of the executive director, the United States Environmental Protection Agency, or local air pollution control agencies having jurisdiction. The records must include:

(1) for each unit using a continuous emission monitoring system (CEMS) or predictive emission monitoring system (PEMS) in accordance with §117.2135(b) of this title (relating to Monitoring, Notification, and Testing Requirements) monitoring records of:

(A) hourly emissions for units complying with an emission specification enforced on a block one-hour average; and

(B) daily emissions for units complying with an emission specification enforced on a rolling 30-day average. Emissions must be recorded in units of:

(i) pounds per million British thermal units (MMBtu) heat input; and

(ii) pounds or tons per day;

(2) for each stationary internal combustion engine subject to §117.2110 of this title, records of:

(A) emissions measurements required by §117.2130(b)(3) of this title (relating to Operating Requirements); and

(B) catalytic converter, air-fuel ratio controller, or other emissions-related control system maintenance, including the date and nature of corrective actions taken;

(3) records of carbon monoxide (CO) measurements specified in §117.2130(b)(3) of this title;

(4) records of the results of initial certification testing, evaluations, calibrations, checks, adjustments, and maintenance of CEMS, PEMS, or steam-to-fuel or water-to-fuel ratio monitoring systems; and

(5) records of the results of performance testing, including the testing conducted in accordance with §117.2135(d) of this title.

(b) Records for exempt engines. [~~Written records of the number of hours of operation for each day's operation must be made for each engine claimed exempt under §117.2103(5), (8), or (9) of this title or §117.2130(b)(3) of this title. In addition, for each engine claimed exempt under §117.2103(5) of this title, written records must be maintained of the purpose of engine operation and, if operation was for an emergency situation, identification of the type of emergency situation and the start and end times and date(s) of the emergency situation.~~] The following records must be maintained for at least five years and must be made available upon request to representatives of the executive director, the United States Environmental Protection Agency, or any local air pollution control agency having jurisdiction.

(1) Written records of the number of hours of operation for each day's operation must be maintained for each engine claimed exempt under §117.2103(5), (8), (9), or (10) of this title (relating to Exemptions) or §117.2130(b)(3) of this title.

(2) For each engine claimed exempt under §117.2103(5) of this title, written records must be maintained of the purpose of engine operation and, if operation was for an emergency situation, identification of the type of emergency situation and the start and end times and date(s) of the emergency situation.

(3) For each engine claimed exempt under §117.2103(10) of this title, records must be maintained of manufacturer's specifications or test data sufficient to demonstrate compliance with the emission standard specified in §117.2103(10)(C) of this title.

(c) Records of operation for testing and maintenance. The owner or operator of each stationary diesel or dual-fuel engine shall maintain the following records for at least five years and make them available upon request by authorized representatives of the executive director, the United States Environmental Protection Agency, or local air pollution control agencies having jurisdiction:

(1) date(s) of operation;

(2) start and end times of operation;

(3) identification of the engine; and

(4) total hours of operation for each month and for the most recent 12 consecutive months.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 2, 2012.

TRD-201205663
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: December 16, 2012
For further information, please call: (512) 239-2548

TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER O. STATE SALES AND USE TAX

34 TAC §3.325

The Comptroller of Public Accounts proposes amendments to §3.325, concerning refunds and payments under protest.

Subsection (a)(2) is amended to add a new subparagraph (E) to expressly state longstanding policy with respect to third parties to whom permitted sellers may assign a right to a refund, such as creditors and successor entities, as provided for in Tax Code, §111.104(b). The proposed amendment does not concern the assignment of any right to refund by a permitted seller to a non-permitted purchaser, which is covered in subsection (a)(1) of this section. It is intended to make clear that third-party assignees and successors are subject to the same requirements to claim and receive a refund as the original permitted seller.

Subsection (a)(4)(A) - (C) is reorganized to provide greater clarity as to the requirements for refund claims under Tax Code, §111.104. Subparagraph (E) of this paragraph is amended to better identify the types of documents that are needed by the comptroller to verify a claim and to also provide guidance if the documents are voluminous and cannot be easily submitted to the agency.

New subsection (b)(10), concerning the statute of limitations for refund claims, identifies the items that must be submitted with a refund claim in order to toll the statute of limitations. This subsection explains that a refund claim may not meet all the requirements for the comptroller to pay the requested amount, but may still toll the statute of limitations and allow a person to request an administrative hearing. The subsection also explains that if certain requirements are not met, the statute of limitations will not be tolled.

Subsection (e) is amended to add a new paragraph (3) to state expressly in this section the comptroller's right under Tax Code, §111.105(e) to issue a demand notice for documents that support the refund claim once a timely request for a hearing is made if a claim is denied in whole or in part. This right is also stated in §1.9 of this title concerning the issuance of position letters during the administrative hearing process. Subsection (e)(1) is amended to state that when the comptroller denies a refund claim in whole or in part, the comptroller will also identify the requirements of subsection (a)(4) that were not met.

Non-substantive changes have been made to add greater clarity in subsections (a)(1) and (b)(9).

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying the procedures and requirements for claiming and receiving a refund. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §111.104(b) (Refunds) and §111.105(e) (Tax Refund: Hearing).

§3.325. Refunds and Payments Under Protest.

(a) Requirements for refund claims.

(1) Refund claims by non-permitted purchasers. A person who does not have a sales and use tax permit and who has paid tax in error to a permitted seller may request a refund only from [~~only~~] the permitted seller to whom the tax was paid. The permitted seller who refunds tax to a purchaser may claim a refund as provided by paragraph (2) of this subsection. A permitted seller may assign its right to refund to the purchaser, who may then request a refund directly from the comptroller as provided by paragraph (4) of this subsection.

(2) Refund claims by permitted sellers and third party assignees and successors.

(A) With one exception relating to the return transactions, no taxes, penalties, or interest will be refunded by the comptroller to a permitted seller who has collected tax in error from a purchaser until all such taxes are first refunded or credited with the purchaser's written consent to the person from whom they were collected. If the refund claim relates to a return of tangible personal property, a permitted seller is entitled to claim a credit or request a refund of sales tax equal to the amount of sales tax refunded to a purchaser when the purchaser receives a full or partial refund of the sales price of a taxable item that is returned to the seller.

(B) Before a permitted seller refunds to a purchaser tax collected in error on the sale of a taxable item, the permitted seller must obtain from the purchaser a properly completed exemption or resale certificate that meets all the requirements of §3.285 of this title (relating to Resale Certificate; Sales for Resale) and §3.287 of this title

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No. 7160 3901 9849 1435 9496

Mr. Mark Vickery, P.G.
Executive Director (MC 109)
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Re: Petition for Adoption of Rules; 30 TEXAS ADMINISTRATIVE CODE Chapter 117; Exemptions from DFW Minor Source NOx Rules

Dear Mr. Vickery:

Halliburton Energy Services, Inc. ("Halliburton") submits the enclosed petition for adoption of rules seeking revisions to 30 T.A.C. Chapter 117, *Control of Air Pollution from Nitrogen Compounds*.

Halliburton seeks revisions to the 30 T.A.C. Chapter 117, Subchapter D, Division 2 emission control requirements for stationary diesel engines at minor sources in the Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area (the "DFW Minor Source NOx Rules"). The requested rule revisions would partially exempt engines that meet the applicable federal emissions standards established in 40 C.F.R. Part 89, operate in limited service, and are used solely for product testing and personnel training. The revisions would establish a new category of partially exempt engines that is consistent with the categories of engines that the Commission has previously exempted from the DFW Minor Source NOx Rules, and would not adversely affect attainment of the ozone National Ambient Air Quality Standards ("NAAQS") while eliminating unreasonably burdensome compliance demonstration requirements for low-emitting engines.

If you or your staff have any questions regarding this petition, please contact me at 512.322.2672.

Sincerely,

Whitney L. Swift

cc: Vince Meiller *(via electronic mail)*
Lindley Anderson *(via electronic mail)*

Enclosure

April 5, 2012

PETITION FOR RULEMAKING

Halliburton Energy Services, Inc. ("Halliburton") hereby petitions the agency for rulemaking to amend 30 Texas Administrative Code ("T.A.C.") Chapter 117, Subchapter D, Division 2, *Combustion Control at Minor Sources in Ozone Nonattainment Areas; Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Minor Sources.* Specifically, Halliburton petitions the agency to amend 30 T.A.C. § 117.2103, *Exemptions.*

I. Name and Address of the Petitioner

Halliburton Energy Services, Inc.
2601 E Beltline Road
Carrollton, Texas 75006

II. Explanation for Petition

A. The DFW Minor Source NOx Rules

Texas Commission on Environmental Quality ("TCEQ") rules in 30 T.A.C. Chapter 117, Subchapter D, Division 2 establish emission control requirements for oxides of nitrogen ("NOx") from minor sources in the Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area (the "DFW Minor Source NOx Rules"). The DFW Minor Source NOx rules, adopted in 2007, establish emission specifications for stationary engines, including diesel reciprocating internal combustion engines. *See* 30 T.A.C. § 117.2110(a)(3).

The DFW Minor Source NOx rules partially exempt several categories of engines from the emissions specifications. The exemptions are enumerated in Section 117.2103 and include:

(1) engines with a horsepower (hp) rating of less than 50 hp;

(2) engines used in research and testing;

(3) engines used for purposes of performance verification and testing;

(4) engines used solely to power other engines or gas turbines during startups;

(5) engines operated exclusively in emergency situations, except that operation for testing or maintenance purposes is allowed for up to 100 hours per year, based on a rolling 12-month average. . . .

(6) engines used in response to and during the existence of any officially declared disaster or state of emergency;

(7) engines used directly and exclusively by the owner or operator for agricultural operations necessary for the growing of crops or raising of fowl or animals;

(8) diesel engines placed into service before June 1, 2007, that:

> (A) operate less than 100 hours per year, based on a rolling 12-month average; and
>
> (B) have not been modified, reconstructed, or relocated on or after June 1, 2007. . . .; and
>
> (9) new, modified, reconstructed, or relocated stationary diesel engines placed into service on or after June 1, 2007, that:
>
> (A) operate less than 100 hours per year, based on a rolling 12-month average, in other than emergency situations; and
>
> (B) meet the corresponding emission standard for non-road engines listed in 40 CFR §89.112(a), Table 1 (October 23, 1998) and in effect at the time of installation, modification, reconstruction, or relocation. . . .

30 T.A.C. § 117.2103. The exemptions evidence the TCEQ's intent in limiting engines that are either very small, or operate in limited use. In particular, the exemptions for "research and testing" and "product verification and testing" appear to cover engines that operate intermittently and at highly variable loads.

B. <u>The Carrollton Drawworks Engine</u>

In 2010, Halliburton installed a stationary, reciprocating internal combustion engine that it uses for purposes of employee training and product testing at the North Test Well at its Carrollton Plant. At the time it was installed, the engine (known as the Drawworks Engine) was the lowest-emitting unit available in the market and met the Tier 3 emission standards for non-road engines listed in 40 Code of Federal Regulations ("C.F.R.") § 89.112(a), Table 1.

Halliburton uses the Drawworks Engine for purposes of lifting and lowering casing into the test well at the Carrollton Plant. The North Test Well is used solely for purposes of (1) employee training and (2) down-hole product testing, and is not associated with oil or gas production. The training performed using the Drawworks Engine involves configuring the well with a casing design by lifting and lowering casing in the well. The testing performed using the Drawworks Engine involves the use of the test well for purposes of testing down-hole equipment or products that may be used in actual oil and gas well completion operations. Approximately 80-85% of the engine's recent service has been for training, while 15-20% has been for product testing.

The Drawworks Engine is in limited service, and over the past six months has operated an average of 1.58 hours per day, equivalent to 576 hours per year. In addition, due to the nature of its use, the Drawworks Engine is in an idle state for more than 85% of its operating hours. The Drawworks Engine operates under load for such limited periods due to the operating conditions (constraints) associated with configuring and de-configuring the test well. The Drawworks Engine typically raises or lowers casing or other equipment no more than 90 feet at a time in the test well, which results in the Drawworks Engine being under load for short periods of intermittent operation -- approximately 30-40 seconds each time the Drawworks Engine is engaged to raise or lower equipment.

C. Applicability of the DFW Minor Source NOx Rules to the Drawworks Engine

Halliburton believes that the Drawworks Engine qualifies for one of the existing exemptions from the DFW Minor Source NOx Rules, given the engine's limited service and that Halliburton uses the engine for product testing purposes. In 2011, Halliburton sought a determination from the TCEQ Executive Director that the Drawworks Engine meets the exemptions for "research and testing" or "product verification and testing," but the Executive Director took the position that these exemptions do not clearly cover the full range of the Drawworks Engine's operations. The Drawworks Engine is used for testing purposes, but it is not used exclusively for testing purposes. The Drawworks Engine also operates on an intermittent basis and for relatively few hours per year, but the amount of testing and training that Halliburton conducts using the Drawworks Engine is too great for the engine to qualify for the 100-hour exemption. As a result, while both the limited service and the intermittent operation of the Drawworks Engine are consistent with the current list of partial exemptions from the DFW Minor Source NOx Rules, the Executive Director denied Halliburton's rule non-applicability determination request, on the basis that the Drawworks Engine does not fall squarely within any of the categories of exempt engines.

D. Proposed Change to the DFW Minor Source NOx Rules

Halliburton requests that the TCEQ adopt changes to the DFW Minor Source NOx Rules to establish an additional category of exempt engines that will more clearly cover the Drawworks Engine. The requested rule change has been narrowly tailored and is limited to engines that are used for limited purposes, have low annual hours of operation, and are high-performing engines from an emissions perspective. As stated below, the exemption will relieve Halliburton of expensive and impractical compliance demonstration requirements, while not adversely impacting the DFW area's strategy for attaining the National Ambient Air Quality Standard for ozone.

III. Proposed Rule Language

§ 117.2103. Exemptions.

This division (relating to Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Minor Sources) does not apply to the following stationary engines, except as specified in §§117.2130(c), 117.2135(e), and 117.2145(b) and (c) of this title (relating to Operating Requirements; Monitoring, Notification, and Testing Requirements; and Recordkeeping and Reporting Requirements):

* * *

(10) new, modified, reconstructed or relocated stationary diesel engines placed into service on or after June 1, 2007, that:

(A) are used solely for product testing and personnel training;

(B) operate less than 1000 hours per year, based on a rolling 12-month average; and

(C) meet the corresponding emission standard for non-road engines listed in 40 CFR §89.112(a), Table 1 (October 23, 1998) and in effect at the time of installation, modification, reconstruction, or relocation. For the purposes of this subparagraph, the terms "modification" and "reconstruction" have the meanings defined in §116.10 of this title and 40 CFR §60.15 (December 16, 1975), respectively, and the term "relocated" means to newly install at an account, as defined in §101.1 of this title, a used engine from anywhere outside that account.

§ 117.2135. Monitoring, Notification, and Testing Requirements.

* * *

(e) Run time meters. The owner or operator of any stationary diesel engine claimed exempt using the exemption of §117.2103(5), (8), ~~or~~ (9), or (10) of this title shall record the operating time with a non-resettable elapsed run time meter.

§ 117.2145. Recordkeeping and Reporting Requirements.

* * *

(b) Records for exempt engines. Written records of the number of hours of operation for each day's operation must be made for each engine claimed exempt under §117.2103(5), (8), ~~or~~ (9), or (10) of this title or §117.2130(b)(3) of this title.

IV. Statement of the Authority for the Proposed Rule

Section 382.017 of the Texas Clean Air Act authorizes the TCEQ to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. That authority extends to the amendment and/or revocation of rules adopted by the Commission.

V. Injury or Inequity that Could Result from the Failure to Add the Proposed Exemption

A. The Drawworks Engine is High-Performing

The Drawworks Engine is a high-performing engine with respect to NOx emissions. Halliburton has conducted the performance testing necessary to demonstrate compliance with the emissions standards set forth in Section 117.2110, and the test results demonstrated that emissions from the Drawworks Engine fall well below the 2.8 g/hp-hr NOx standard and the 3.0 g/hp-hr CO standard established by the DFW Minor Source NOx Rules.

However, given the nature of the engine and its service, it would be unreasonable to subject the Drawworks Engine to ongoing testing that is both impractical and unreasonably expensive.

The Drawworks Engine is used to raise and lower equipment in the shallow North Test Well at the Carrollton Plant. As stated above, in this operation, the engine operates under load for brief periods of approximately 30-40 seconds. It cannot operate under load for longer periods due to design constraints of the rig. The nature of the engine's operation means that substantial additional equipment must be brought in to the Carrollton Plant in order to conduct performance testing on the Drawworks Engine, and that the test conditions required to run a performance test that complies with Chapter 117 requirements are not representative of the engine's actual operation.

B. The Required Test Conditions are Impractical

Under Section 117.8000, for purposes of stack testing to demonstrate compliance with the DFW Minor Source NOx Rules, "[t]he unit must be operating at the maximum rated capacity, or as near as practicable. Compliance must be determined by the average of three one-hour emission test runs. Shorter test times may be used if approved by the executive director." 30 T.A.C. § 117.8000(b). It is not possible for Halliburton to conduct compliant performance testing of the Drawworks Engine during its normal operations. Testing performed while the engine is in idle does not meet Chapter 117 requirements. And Halliburton cannot construct a compliant set of three one-hour test runs out of hundreds of 30-second periods of intermittent operation.

Conducting an emissions test of the Drawworks Engine that satisfies Chapter 117 requirements requires that Halliburton arrange for both emissions testing equipment (a normal and expected expense) and for the rental, transport and use of a device known as a dynamometer. Halliburton recently went through a time-consuming process to secure approval from the TCEQ Executive Director of its use of a dynamometer for purposes of testing emissions from the Drawworks Engine. The dynamometer used for testing is the same equipment that is used by engine manufacturers for testing purposes. To perform the testing with a dynamometer, Halliburton must disconnect the engine's existing torque converter and connect the dynamometer directly to the flywheel of the Drawworks Engine with a bolt-on adapter. Once connected to the dynamometer, Halliburton can run the engine near enough to maximum rated capacity for the time periods necessary to demonstrate compliance under Chapter 117.

Performing a compliant emissions test of the Drawworks Engine results in 3-4 days of lost productivity, as the engine is unavailable for its normal, intended use during the time that it is taken out of its normal service and attached to the dynamometer. Additionally, preparing the engine for installation of the dynamometer and returning the engine to operational status subsequent to the emissions testing presents significant safety hazards associated with the removal of the drive train and transmission, removal of the torque converter, and the placement and use of non-dedicated hoisting equipment on the rig floor.

Engines in similar service to the Drawworks Engine are not typically subject to similar Chapter 117 testing requirements, because the engines used to raise and lower down-hole

equipment in oil or gas operations are typically not stationary sources like the Drawworks Engine. The Drawworks Engine is unique due to its fixed location, and thus different from engines in similar service with respect to the current applicability of the emissions standards in Chapter 117.

Halliburton requests that the TCEQ add an exemption to Section 117.2103 to relieve it of the ongoing burden and expense of performing emissions testing to demonstrate that the Drawworks Engine is in compliance with the emissions standards of Chapter 117. The engine operates in unique service, for limited hours of operation, and was installed as a high-performing engine from an emissions perspective. Adding an exemption to Section 117.2103 that would capture the Drawworks Engine would be consistent with the other, existing exemptions to the DFW Minor Source NOx Rules and would relieve Halliburton of the unnecessary burden and expense of conducting future emissions testing of the Drawworks Engine.

C. <u>There is No Emissions Impact of the Requested Exemption</u>

The requested partial exemption will not adversely impact the DFW area's progress in attaining the ozone National Ambient Air Quality Standard ("NAAQS"). Based on February 2012 emissions test results and a limit of 1,000 hours of run time per year, the Drawworks Engine has a maximum potential annual NOx emissions of 0.87 tons per year. The requested exemption will capture only high-performing engines that operate in limited service. By making compliance with the federal Part 89 standards part of the exemption criteria, the TCEQ will ensure that the requested exemption does not result in backsliding. Nothing in the requested rule change would exempt or in any way affect Halliburton's obligation to ensure that the Drawworks Engine complies with Part 89 emissions standards.

D. <u>Distinction Between "Product Testing and Personnel Training" and Operation "for Testing and Maintenance"</u>

This petition requests a partial exemption from the DFW Minor Source NOx Rules. Like the other categories of exempt engines identified in Section 117.2103, an engine that qualifies for the proposed new exemption remains subject to (1) a requirement to record operating time with a run-time meter under Section 117.2135(e), (2) a requirement to maintain written records of operating hours under Section 117.2145(b), and (3) a prohibition on operation "for testing or maintenance" between the hours of 6:00 a.m. and noon, with limited exception, under Section 117.2130(c).

Halliburton requests that, in any rulemaking initiated by TCEQ in response to this petition, the TCEQ recognize that there is a difference between (A) operation for "product testing and personnel training" as used in the proposed new exemption, and (B) operation for "testing or maintenance" as used in Section 117.2130(c). Absent that distinction, the restriction in Section 117.2130(c) could be misinterpreted to prevent Halliburton from operating the Drawworks Engine between 6:00 a.m. and noon, because the product testing service of the engine is one form of "testing." Explicit confirmation in the preamble to the proposed rule, or in the rule itself, that "product testing" as used in the new exemption is distinct from engine "testing" as used in Section 117.2130(c) will ensure that Halliburton only operates the

Drawworks Engine for purposes of testing or maintenance of the engine in accordance with Section 117.2130(c), while preventing Section 117.2130(c) from making the proposed new exemption worthless by unnecessarily restricting the use of qualifying engines engaged in product testing or personnel training.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

DECISION OF THE COMMISSION REGARDING THE PETITION FOR RULEMAKING FILED ON BEHALF OF HALLIBURTON ENERGY SERVICES, INC.

Docket No. 2012-0751-RUL

On May 30, 2012, the Texas Commission on Environmental Quality (Commission) considered the petition for rulemaking filed by Halliburton Energy Services, Inc. The petition, filed on April 5, 2012, requests that the agency initiate rulemaking for a partial exemption for new, modified, reconstructed, or relocated stationary diesel engines placed into service on or after June 1, 2007 that: are used solely for product testing and personnel training; operate less than 1,000 hours per year, based on a rolling 12-month average; and meet the corresponding federal emission standard for non-road engines in 40 Code of Federal Regulations Part 89 in effect at the time of installation, modification, reconstruction, or relocation.

IT IS THE DECISION OF THE COMMISSION pursuant to Administrative Procedure Act, Texas Government Code, § 2001.021 and Texas Water Code, § 5.102 to instruct the Executive Director to examine the issues in the petition and to initiate rulemaking.

This Decision constitutes the decision of the Commission required by the Texas Government Code, § 2001.021(c).

Issued date: JUN 01 2012

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Bryan W. Shaw

Bryan W. Shaw, Ph.D., Chairman