

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §117.10 *with changes* to the proposed text as published in the November 2, 2012 issue of the *Texas Register* (37 TexReg 8722).

If adopted, the amended §117.10 will be submitted to the United States Environmental Protection Agency as a revision to the state implementation plan (SIP).

Background and Summary of the Factual Basis for the Adopted Rule

The Electric Reliability Council of Texas, Inc. (ERCOT) manages the electrical grid within the ERCOT region of Texas, with oversight by the Public Utility Commission of Texas (PUCT). On March 22, 2012, the PUCT repealed 16 TAC §25.507, to replace the Emergency Interruptible Load Service (EILS) program with the Emergency Response Service (ERS) program (16 TAC §25.507). Like the EILS program, the new ERS program is designed to help decrease the likelihood of requiring firm load shedding (i.e., rolling black-outs) during an ERCOT-declared energy emergency by decreasing the power demand on the electrical grid. Under the ERS program, participants commit to decrease their power consumption from the electrical grid during a declared energy emergency. ERS program participants might meet this commitment by decreasing overall power use, replacing power consumption from the grid with local generation by operating local emergency backup generators, or a combination of both. However, unlike the EILS program, the new ERS program allows qualified participants to provide power back into

the electrical grid for sale during an ERCOT-declared emergency under limited circumstances.

Operating an emergency generator as part of ERCOT's former EILS program meets the existing definition of an emergency situation in §117.10. The existing definition of an emergency situation in §117.10 includes the period of time that an emergency notice issued by ERCOT is applicable to the serving electric power generating system and references the specific ERCOT protocols that detail the emergency notice. However, the Chapter 117 definition of an emergency situation also specifically excludes operation for purposes of supplying power for distribution to the electrical grid. Therefore, operation of an emergency generator that also provides power back to the electrical grid would not be considered an emergency situation under the current Chapter 117 definition even if the operation were at the directive of ERCOT under the ERS program.

While Chapter 117 would not prohibit companies from participating in the new ERS program, the Chapter 117 rules that apply in the Dallas-Fort Worth (DFW) and Houston-Galveston-Brazoria (HGB) 1997 eight-hour ozone nonattainment areas have specific provisions that restrict the non-emergency operational hours of emergency generators. For these sources to qualify for an exemption from the rule control requirements, participants in the ERS program would have to count hours of operation during an ERCOT emergency as non-emergency use if power is sold to the grid and

might risk losing exemption status under Chapter 117 if the operational hours exceed the exemption criteria.

The adopted rulemaking updates the definition of emergency situation in §117.10 to ensure consistency with ERCOT's new ERS program. The adopted rulemaking references the version of the ERCOT protocols effective on June 1, 2012. The adopted rulemaking also revises the definition of emergency situation to reflect changes made by ERCOT to promote reliability during energy emergencies by allowing the operation of generators for purposes of selling power to the electric grid under limited circumstances.

The amendment to §117.10 is adopted concurrently with an amendment to 30 TAC §101.379 that will be published in a separate rulemaking in this issue of the *Texas Register*.

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

The commission provides the following information to demonstrate why the adopted change to the definition of emergency situation in Chapter 117 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.

As mentioned elsewhere in this preamble, the Chapter 117 rules exempt certain sources in the DFW and HGB 1997 eight-hour ozone nonattainment areas that operate exclusively during emergency situations or operate for a limited number of hours in non-emergency situations. Under the existing Chapter 117 rules, the period of time during an ERCOT-declared emergency is considered an emergency situation. The commission has interpreted this to mean that when demonstrating compliance with the Chapter 117 exemption criteria, participants in ERCOT's former EILS program were not required to include the hours of operation for generators operated during an ERCOT-declared emergency as non-emergency operation.

ERCOT's new ERS program promotes reliability during energy emergencies by allowing qualified participants to provide power for distribution to the electrical grid during an ERCOT-declared emergency. Under the existing Chapter 117 rules, participants in ERCOT's new ERS program are not required to include the hours of operation for generators operated during an ERCOT-declared emergency when demonstrating compliance with the Chapter 117 exemption criteria as long as these sources do not provide power for distribution to the electrical grid. Because the existing Chapter 117 definition of an emergency situation specifically excludes operation for purposes of supplying power for distribution to the electrical grid, ERS program participants would

have to count hours of operation during an ERCOT-declared emergency when demonstrating compliance with the Chapter 117 exemption criteria if power is provided back into the grid. This practice could result in ERS program participants losing exemption status under Chapter 117 if the non-emergency hours exceed the exemption criteria and potentially discourage ERS program participants from supplying excess generation back to the grid during an ERCOT-declared energy emergency. The adopted rulemaking prevents ERS program participants from potentially losing exemption status under Chapter 117 if they provide power to the electrical grid during an ERCOT-declared emergency. The adopted rulemaking ensures that the changes made to ERCOT's new ERS program do not narrow the scope of what the commission currently considers an emergency situation.

The period of time during an ERCOT-declared emergency is currently considered an emergency situation under the existing Chapter 117 rules. The adopted revisions to the definition of emergency situation limit the circumstances under which a generator could provide power for distribution to the electrical grid to only those operations that are part of ERCOT's ERS program and in direct response to an instruction by ERCOT during the period of an ERCOT energy emergency alert (EEA). Therefore, the adopted amendment does not increase the number of sources that could qualify for exemption under the Chapter 117 rules or increase the frequency or duration of the operation during an emergency situation. For these reasons, the commission determined that the adopted

rulemaking will not negatively impact the status of the state's attainment with the 1997 eight-hour ozone NAAQS and should not be considered as backsliding under the Federal Clean Air Act (FCAA).

Section Discussion

The commission adopts amendments to the definition of emergency situation in §117.10(15). The commission revises §117.10(15)(A)(ii) to reference the version of the ERCOT Protocols effective June 1, 2012. Additionally, in response to ERCOT's comments on this rulemaking, the commission is revising the definition of emergency situation in §117.10(15)(A)(ii) to also include operations in response to an ERCOT EEA. The commission is making this change to ensure the definition of emergency situation includes situations when system conditions deteriorate so rapidly that it is not possible for ERCOT to issue an emergency notice prior to declaring an EEA and subsequently deploying ERS.

The commission adopts §117.10(15)(A)(vii) to include operation of an emergency generator as part of ERCOT's ERS program when the operation is in direct response to an instruction by ERCOT during the period of an ERCOT EEA as specified in §117.10(15)(A)(ii). In response to ERCOT's comments on this rulemaking, the commission is revising the proposed language in §117.10(15)(A)(vii) to refer to only those operations that occur during the period of an ERCOT EEA instead of the period of

an ERCOT emergency notice. The intent of this rulemaking is to limit the circumstances under which an emergency generator can provide power for distribution to the electrical grid to only those operations that are part of ERCOT's ERS program and in direct response to ERCOT's dispatch instruction during the period of an ERCOT EEA. ERCOT only deploys ERS resources during an EEA, so it is unnecessary for the commission to refer to the period during an ERCOT emergency notice.

The commission also adopts the reformatting of the existing §117.10(15)(B) description of the situations that are not considered emergency situations. Adopted clause (i) incorporates the existing portion of the definition indicating that an emergency situation does not include operation for training purposes or other foreseeable events. Existing §117.10(15)(B) indicates that an emergency situation does not include operation for purposes of supplying power for distribution to the electric grid. Adopted clause (ii) indicates that an emergency situation does not include operation for purposes of supplying power for distribution to the electric grid except as specified under §117.10(15)(A)(vii). The intent of adopted §117.10(15)(B)(ii) is to limit the circumstances under which an emergency generator can provide power for distribution to the electrical grid to only those operations that are part of ERCOT's ERS program and in direct response to ERCOT's dispatch instruction during the period of an ERCOT EEA. Adopted clause (ii) is necessary to reflect changes made by ERCOT to promote reliability during energy emergencies by allowing the operation of generators for purposes of selling

power to the electric grid under limited circumstances.

Final Regulatory Impact Determination

The commission reviewed the adopted rule 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 rule implements requirements of the 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 merely an update to the definition of emergency situation in §117.10, ensuring consistency with ERCOT's new ERS program while also reflecting changes made by ERCOT to promote reliability during energy emergencies throughout the state under limited circumstances.

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 adopted for

inclusion in the SIP were 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 Env'tl. Quality*, 128 S.W. 3d 728 (Tex. App. - Austin 2004, no writ). The specific intent of the adopted rulemaking is merely an update to the definition of emergency situation in §117.10, ensuring consistency with ERCOT's new ERS program while also reflecting changes made by ERCOT to promote reliability during energy emergencies throughout the state under limited circumstances. This adoption, therefore, does not exceed an express requirement of federal law. The amendment is needed to implement state law but does not 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. No comments were received on the

regulatory impact analysis determination.

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 rule is an update to Chapter 117, Subchapter A to ensure consistency with ERCOT's new ERS program. This rule is not burdensome, restrictive, or limiting of rights to private real property because the rulemaking regulates the use of electric generators in certain limited emergency situations. Furthermore, the rulemaking benefits the public by potentially decreasing the likelihood of requiring firm load shedding (i.e., rolling black-outs) when additional control measures are needed to achieve or maintain attainment of the federal air quality standards through the use of electric generators. 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 rule 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 that it is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.*, and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted rule in accordance with Coastal Coordination

Act Implementation Rules, 31 TAC §505.22 and found the adopted rulemaking is consistent with the applicable CMP goals and policies.

The CMP goal applicable to the adopted rulemaking is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). The CMP policy applicable to the adopted rulemaking is the policy that commission rules comply with federal regulations in 40 Code of Federal Regulations to protect and enhance air quality in the coastal areas (31 TAC §501.32). The adopted rulemaking will not increase emissions of air pollutants and is therefore, consistent with the CMP goal in 31 TAC §501.12(1) and the CMP policy in 31 TAC §501.32.

Promulgation and enforcement of this rule will not violate or exceed any standards identified in the applicable CMP goals and policies because the adopted rule is consistent with these CMP goals and policies and because the rule does not create or have a direct or significant adverse effect on any coastal natural resource areas.

Therefore, in accordance with §505.22(e), the commission affirms that this rulemaking action is 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 concerning the

consistency of this rulemaking with the Texas CMP.

Effect on Sites Subject to the Federal Operating Permits Program

The adopted amendment will not require any changes to federal operating permits.

Public Comment

The commission scheduled a public hearing in Austin on November 28, 2012. However, the commission did not officially open the hearing because no one registered to provide comments. The public comment period closed on December 5, 2012. The commission received comments from the Association of Electric Companies of Texas (AECT), Blue Sky Environmental LLC (Blue Sky), Calpine Corporation (Calpine), EnerNOC, Inc. (EnerNOC), EPA, ERCOT, Exelon Corporation (Exelon), and NRG Texas Power LLC, (NRG). AECT submitted comments on behalf of AEP Texas, CenterPoint Energy, El Paso Electric, Entergy, GDF SUEZ, Nextera Energy, Lone Star Transmission, Oncor, TXU Energy, Luminant, NRG, Reliant, TNMP, and Xcel Energy.

Response to Comments

Comment

AECT, Blue Sky, EnerNOC, ERCOT, and NRG expressed support for the proposed revisions to the definition of emergency situation in §117.10. EPA expressed appreciation for efforts to update the references to ERCOT's protocols in §117.10.

Response

The commission appreciates the support.

Comment

ERCOT commented that if system conditions deteriorate too rapidly it might not be possible to issue an emergency notice prior to declaring an EEA and subsequently deploying ERS. ERCOT recommended the commission amend §117.10(15)(A)(ii) to refer to ERCOT's dispatch of ERS rather than the issuance of an emergency notice to provide affected generators assurance that operation for ERS is always permissible.

Blue Sky and EnerNOC recommended the commission not revise the definition of emergency situation to specify an ERCOT EEA level to account for emergency demand response programs initiated by Texas utilities that are experiencing voltage reductions.

Response

The intent of §117.10(15)(A)(ii) is to specify that emergency situations include operations during an ERCOT-declared emergency not operations during a utility-declared emergency. The commission agrees with ERCOT that operations in response to ERCOT's dispatch of ERS are always considered emergency situations. However, it is possible that the existing provision in §117.10(15)(A)(ii) could affect sources that are not participating

in ERCOT's ERS program but are operating as a result of an ERCOT-declared emergency. Therefore, the commission is retaining the reference to emergency notice in §117.10(15)(A)(ii) to avoid unintended consequences that could result from limiting this provision solely to ERS operations. In response to ERCOT's comments, the commission is revising the definition of emergency situation to also include operations in response to an ERCOT EEA. The commission is making this change to ensure the definition of emergency situation includes situations when system conditions deteriorate so rapidly that it is not possible for ERCOT to issue an emergency notice prior to declaring an EEA and subsequently deploying ERS. In response to ERCOT's comments the commission is revising the proposed language in §117.10(15)(A)(vii) to refer to only those operations that occur during the period of an ERCOT EEA instead of the period of an ERCOT emergency notice. The purpose of this rulemaking is to ensure that participants in the ERS program may still claim operational hours during such energy emergencies as an emergency situation under Chapter 117 rules. However, the adopted rule is also intended to limit the circumstances under which an emergency generator can provide power for distribution to the electrical grid to only those operations that are part of ERCOT's ERS program and in direct response to ERCOT's dispatch instruction during the period of an ERCOT EEA. Since ERCOT only deploys ERS resources during

an EEA, it is unnecessary for the commission to refer to the period during an ERCOT emergency notice.

Comment

To address concerns about the certainty of the circumstances under which ERCOT will deploy ERS resources, ERCOT recommended that the commission reference the PUCT's ERS rule in 16 TAC §25.507 rather than the ERCOT Nodal Protocols referenced in the proposed rules. ERCOT expressed concern that the frequent revisions to the Nodal Protocols could create confusion as to the applicability of §117.10(15)(A)(ii) and §101.379(c)(2)(D). ERCOT suggested the commission could more easily monitor the infrequent changes to the PUCT rules than the numerous ongoing proposals to revise the ERCOT Nodal Protocols referenced in the proposed rules.

NRG also recommended avoiding references to specific ERCOT protocols that are likely to change periodically. NRG recommended modifying §117.10(15)(A)(ii) to instead refer to the period of time that an engine is operating in response to an ERCOT-issued emergency notice of imminent emergency conditions, such as unusually low frequency, equipment overload, capacity or energy deficiency, or unacceptable voltage level.

Response

The commission is aware that the ERCOT Nodal Protocols references in

§117.10(15) are frequently revised and have been revised since the commission first proposed this rulemaking. However, §117.10(15) and the Chapter 117 rules that reference this term are a part of the SIP and the revised §117.10(15) is subject to EPA review and approval. Specificity is needed in the rule regarding the circumstances under which ERCOT will deploy ERS resources to help ensure EPA approval of the revised rule. While the PUCT's ERS rule in 16 TAC §25.507 speaks to the intent of deploying the ERS program during an EEA event and authorizes ERCOT to create the ERS program, 16 TAC §25.507 does not provide specific restrictions on the deployment of the ERS program to emergencies only. The level of detail in the current 16 TAC §25.507 is not sufficient to ensure that the definition in §117.10(15) does not include the dispatch of ERS outside of ERCOT's-declared energy emergencies. Likewise, the suggested description of an ERCOT-issued emergency notice of imminent emergency conditions does not sufficiently detail the specific circumstances under which ERCOT will deploy ERS resources. To ensure that the amendments to §117.10(15) can be approved by the EPA as part of the SIP, the commission respectfully declines to make the suggested changes.

Comment

AECT commented that because it has concerns about how the use of the term "demand

response" has been expanded to include non-emergency situations, AECT supports limiting the definition of emergency situation to those operations that are part of an ERCOT ERS program and are in direct response to an instruction by ERCOT during the period of an ERCOT emergency notice. NRG recommended that this rule only apply to units in emergency demand response programs that are limited to rare instances where grid stability is threatened after all other potential remedies have been exhausted.

To account for emergency demand response programs initiated by Texas utilities that are experiencing voltage reductions, Blue Sky and EnerNOC recommended the commission revise the definition of emergency situation to also include operation in response to a utility-declared emergency.

Response

The commission agrees that the definition of emergency situation should include operations in direct response to an instruction by ERCOT during the period of an ERCOT-declared emergency. As discussed elsewhere in the Response to Comments section of the preamble, the commission is also revising the proposed rule language to include operations that are in direct response to an instruction by ERCOT during the period of an ERCOT EEA.

The commission does not agree that the definition of emergency situation

should include operations that occur in response to a utility-declared emergency. The suggested change would decrease the stringency of the existing rule by expanding the scope of the current definition to include additional situations that would not currently be considered emergency situations. Because the EPA has approved the existing rule as part of the SIP, the suggested expansion of the definition could be considered backsliding and result in the EPA's disapproval of the rulemaking. The commission makes no change in response to these comments.

Comment

Blue Sky and EnerNOC recommended the commission provide guidance regarding the SIP process. The commenters also requested the commission confirm that the following assumptions are correct: 1) the revisions to §117.10 will not be fully implemented until the EPA approves the SIP revision; 2) engines participating in the ERS and other utility-sponsored emergency demand response programs without sending power to the electric grid can continue to operate under the definition of emergency situation until the references to the appropriate protocols are changed; and 3) emergency engines could not send power to the electric grid under an emergency situation until the SIP revision is approved.

Response

The Texas Water Code authorizes the commission to propose and adopt rules necessary to carry out its powers and duties. Once adopted, the commission files the rule with the Secretary of State for publication in the *Texas Register*. This action usually occurs the first Friday after adoption. The rule becomes effective 20 calendar days after filing and is fully enforceable by the commission from that time on irrespective of EPA approval of the rule revision as part of the SIP. Therefore, beginning on the effective date of the rule, the definition of emergency situation will include operations in direct response to an instruction by ERCOT during the period of an ERCOT-declared emergency that supply power to the electric grid. As discussed elsewhere in the Response to Comments section of the preamble, the definition of emergency situation in §117.10 includes operations during an ERCOT-declared emergency but does not include other utility-sponsored emergency demand response programs.

Comment

Calpine recommended the commission remove the exemption afforded to ERS participants and require that all commercial generation to meet best available control technology and reasonably available control technology requirements. Exelon requested the commission abandon its efforts to exempt from pollution controls units that sell power back to the electrical grid and require all commercial generation to satisfy the

commission's pollution control requirements.

Calpine and Exelon commented that exempting commercial backup generation from air quality regulations would negatively affect air quality by expanding the number of high-emitting diesel engines; discouraging investment in new, low-emitting generation; and providing an unnecessary subsidy to high-emitting sources. Calpine also commented that the proposed rule might not benefit electric reliability.

Response

The commenters' suggested changes to revoke exemptions for emergency backup generators are outside the scope of this rulemaking. The Chapter 117 rules exempt certain sources in the DFW and HGB 1997 eight-hour ozone nonattainment areas that operate exclusively during emergency situations or operate for a limited number of hours in non-emergency situations. The exemptions that reference the definition of emergency situation for this purpose were not proposed for revision with this rulemaking.

The intent of the existing Chapter 117 rules is to ensure that operation during an ERCOT-declared emergency is not considered non-emergency operation when demonstrating compliance with the Chapter 117 exemption

criteria. Under ERCOT's former EILS program, affected resources reduced electric consumption by using on-site backup generation but did not supply power to the electric grid. Therefore, the restriction on supplying power for distribution to the electric grid in §117.10(15)(B) did not affect EILS program participants. The amendments to §117.10(15) ensure that the changes made to ERCOT's new ERS program, which allow participants to provide power for distribution to the electrical grid, do not narrow the scope of what the commission currently considers an emergency situation. The adopted rulemaking does not relieve affected sources from the obligation to meet any air quality regulation that currently applies.

The commission does not agree that the revisions to §117.10(15) will negatively affect air quality by expanding the number of high-emitting diesel engines, discouraging investment in low-emitting generation, or subsidizing high-emitting sources. The dispatch of ERS resources is limited to rare instances where the reliability of the ERCOT system is threatened and all other potential solutions have been exhausted. ERCOT has dispatched emergency response resources for a total of 30 hours since 2006. Operation of emergency generators during an ERCOT-declared emergency under the previous EILS program was considered an emergency situation under the existing Chapter 117 rules. The adopted revisions to

§117.10(15) are intended to clarify the definition with regard to such emergencies and account for the revisions that ERCOT has made in the new ERS program. Adopted §117.10(15)(B)(ii) only allows operation of an emergency generator for supplying power to the electrical grid to be considered an emergency situation if the operation is part of ERCOT's ERS program and in direct response to instruction by ERCOT during an EEA. The purpose of this rulemaking is to ensure that participants in the ERS program may still claim operational hours during such energy emergencies as an emergency situation under Chapter 117 rules. Therefore, the commission does not consider the rulemaking as expanding the number of stationary diesel engines in operation or as providing a subsidy for diesel engines. Additionally, owners and operators of emergency generators that seek exemption from Chapter 117 rules must still meet all applicable criteria before qualifying for an exemption. The commission has previously incorporated provisions in the exemption criteria for emergency stationary diesel engines to help ensure that emissions from exempt diesel engines are minimized. For example, as part of the exemption criteria, stationary diesel engines in the DFW and HGB areas that are installed, modified, reconstructed, or relocated after specific dates in the Chapter 117 rules are required to meet the corresponding emission standards for non-road engines in 40 Code of Federal Regulations §89.112(a), Table 1, that are in

effect at the time the engine was installed, modified, reconstructed, or relocated.

While the commission cannot quantify the effects of this revision on electric reliability, the commission does not agree with the commenters' assertion that there is no reliability-related rationale for this rulemaking. ERCOT's new ERS program promotes reliability during energy emergencies by allowing qualified participants to provide power for distribution to the electrical grid during an ERCOT-declared emergency. As discussed elsewhere in the Response to Comments Section of this preamble, the purpose of this rulemaking is to ensure that participants in the ERS program continue to be allowed to count operation in response to an ERCOT-declared emergency as an emergency situation. While the adopted revisions to §117.10(15) do not directly promote reliability, the rulemaking helps ensure that Chapter 117 rules will not be a disincentive to the ERS program by forcing participants to count emergency operation as non-emergency hours. The commission makes no changes in response to these comments.

Comment

ERCOT commented that since the operation of a generator for ERS purposes would

always fall within the coverage of §117.10(15)(A)(ii), creating an additional exemption for the operation of ERS generators in §117.10(15)(A)(vii) is unnecessary. ERCOT suggested deleting §117.10(15)(A)(vii) and revising §117.10(15)(B)(ii) to reference §117.10(15)(A)(ii) instead of §117.10(15)(A)(vii).

NRG supported explicitly including emergency demand response events under the definition of emergency situation. However, instead of adding this language as a new provision under §117.10(15)(A)(vii), NRG recommended modifying §117.10(15)(A)(ii) to the period of time that an engine is operating in response to an ERCOT-issued emergency notice of imminent emergency conditions, such as unusually low frequency, equipment overload, capacity or energy deficiency, or unacceptable voltage level.

Response

The intent of this rulemaking is to limit the circumstances under which an emergency generator can provide power for distribution to the electrical grid to only those operations that are both part of ERCOT's ERS program and in direct response to ERCOT's dispatch instruction during the period of an ERCOT EEA. It is possible that the existing provision in §117.10(15)(A)(ii) could affect sources that are not participating in ERCOT's ERS program but are operating as a result of an ERCOT-declared emergency. The commission is adding the additional detail in §117.10(15)(A)(vii) and (B)(ii) to explicitly

limit the circumstances under which an emergency generator could provide power for distribution to the electrical grid to only those operations that are part of ERCOT's ERS program. The commission makes no change in response to these comments.

As discussed elsewhere in the Response to Comments section of this preamble, in response to ERCOT's comments the commission is revising the proposed language in §117.10(15)(A)(vii) to refer to only those operations that occur during the period of an ERCOT EEA instead of the period of an ERCOT emergency notice. The intent of this rulemaking is to limit the circumstances under which an emergency generator can provide power for distribution to the electrical grid to only those operations that are part of ERCOT's ERS program and in direct response to ERCOT's dispatch instruction during the period of an ERCOT EEA. ERCOT only deploys ERS resources during an EEA, so it is unnecessary for the commission to refer to the period during an ERCOT emergency notice.

Comment

NRG stated its belief that the current Chapter 117 definition of emergency situation does not preclude an engine from operating as part of an emergency demand response program and the intent of §117.10(15)(B) was to prevent those engines that supply power

for distribution to the grid for economic gain unrelated to imminent emergency conditions from being classified as emergency engines, thus avoiding environmental controls. As such, NRG supported TCEQ's proposal to explicitly differentiate between these two operating scenarios and recommended §117.10(15)(B) be amended as proposed by the commission.

Response

The commission appreciates the support and made no changes to the rulemaking in response to this comment.

Comment

NRG supported aligning the Chapter 117 definition of emergency situation with ERCOT's emergency demand response program in lieu of establishing an annual limit on emergency demand response operation to allow ERCOT to manage and optimize emergency demand response operations.

Response

The commission appreciates the support.

SUBCHAPTER A: DEFINITIONS

§117.10

Statutory Authority

The amendment is adopted under the authority of the following: Texas Water Code (TWC), §5.102, General Powers, TWC, §5.103, Rules, and TWC, §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), 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; 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 adopted under Federal Clean Air Act (FCAA), 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 Standards will be achieved and maintained within each air quality control region of the state.

The adopted amendment implements TWC, §§5.102, 5.103, and 5.105; THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021; and FCAA, 42 USC, §§7401 *et seq.*

§117.10. Definitions.

Unless specifically defined in the Texas Clean Air Act or Chapter 101 of this title (relating to General Air Quality Rules), the terms in this chapter have the meanings commonly used in the field of air pollution control. Additionally, the following meanings apply, unless the context clearly indicates otherwise. Additional definitions for terms used in this chapter are found in §3.2 and §101.1 of this title (relating to Definitions).

(1) Annual capacity factor--The total annual fuel consumed by a unit divided by the fuel that could be consumed by the unit if operated at its maximum rated capacity for 8,760 hours per year.

(2) Applicable ozone nonattainment area--The following areas, as designated under the 1990 Federal Clean Air Act Amendments.

(A) Beaumont-Port Arthur ozone nonattainment area--An area consisting of Hardin, Jefferson, and Orange Counties.

(B) Dallas-Fort Worth ozone nonattainment area--An area consisting of Collin, Dallas, Denton, and Tarrant Counties.

(C) Dallas-Fort Worth eight-hour ozone nonattainment area--An area consisting of Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties.

(D) Houston-Galveston-Brazoria ozone nonattainment area--An area consisting of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties.

(3) Auxiliary steam boiler--Any combustion equipment within an electric power generating system, as defined in this section, that is used to produce steam for purposes other than generating electricity. An auxiliary steam boiler produces steam as a replacement for steam produced by another piece of equipment that is not operating due to planned or unplanned maintenance.

(4) Average activity level for fuel oil firing--The product of an electric utility unit's maximum rated capacity for fuel oil firing and the average annual capacity factor for fuel oil firing for the period from January 1, 1990, to December 31, 1993.

(5) Block one-hour average--An hourly average of data, collected starting at the beginning of each clock hour of the day and continuing until the start of the next clock hour.

(6) Boiler--Any combustion equipment fired with solid, liquid, and/or gaseous fuel used to produce steam or to heat water.

(7) Btu--British thermal unit.

(8) Chemical processing gas turbine--A gas turbine that vents its exhaust gases into the operating stream of a chemical process.

(9) Continuous emissions monitoring system (CEMS)--The total equipment necessary for the continuous determination and recordkeeping of process gas concentrations and emission rates in units of the applicable emission limitation.

(10) Daily--A calendar day starting at midnight and continuing until midnight the following day.

(11) Diesel engine--A compression-ignited two- or four-stroke engine that liquid fuel injected into the combustion chamber ignites when the air charge has been compressed to a temperature sufficiently high for auto-ignition.

(12) Duct burner--A unit that combusts fuel and that is placed in the exhaust duct from another unit (such as a stationary gas turbine, stationary internal combustion engine, kiln, etc.) to allow the firing of additional fuel to heat the exhaust gases.

(13) Electric generating facility (EGF)--A unit that generates electric energy for compensation and is owned or operated by a person doing business in this state, including a municipal corporation, electric cooperative, or river authority.

(14) Electric power generating system--One electric power generating system consists of either:

(A) for the purposes of Subchapter C of this chapter (relating to Combustion Control at Major Utility Electric Generation Sources in Ozone

Nonattainment Areas), all boilers, auxiliary steam boilers, and stationary gas turbines (including duct burners used in turbine exhaust ducts) at electric generating facility (EGF) accounts that generate electric energy for compensation; are owned or operated by an electric cooperative, municipality, river authority, public utility, or a Public Utility Commission of Texas regulated utility, or any of its successors; and are entirely located in one of the following ozone nonattainment areas:

(i) Beaumont-Port Arthur;

(ii) Dallas-Fort Worth;

(iii) Dallas-Fort Worth eight-hour; or

(iv) Houston-Galveston-Brazoria;

(B) for the purposes of Subchapter E, Division 1 of this chapter (relating to Utility Electric Generation in East and Central Texas), all boilers, auxiliary steam boilers, and stationary gas turbines at EGF accounts that generate electric energy for compensation; are owned or operated by an electric cooperative, independent power producer, municipality, river authority, or public utility, or any of its successors; and are located in Atascosa, Bastrop, Bexar, Brazos, Calhoun, Cherokee, Fannin, Fayette,

Freestone, Goliad, Gregg, Grimes, Harrison, Henderson, Hood, Hunt, Lamar,
Limestone, Marion, McLennan, Milam, Morris, Nueces, Parker, Red River, Robertson,
Rusk, Titus, Travis, Victoria, or Wharton County; or

(C) for the purposes of Subchapter B of this chapter (relating to Combustion Control at Major Industrial, Commercial, and Institutional Sources in Ozone Nonattainment Areas), all units in the Houston-Galveston-Brazoria ozone nonattainment area that generate electricity but do not meet the conditions specified in subparagraph (A) of this paragraph, including, but not limited to, cogeneration units and units owned by independent power producers.

(15) Emergency situation--As follows.

(A) An emergency situation is any of the following:

(i) an unforeseen electrical power failure from the serving electric power generating system;

(ii) the period of time that an Electric Reliability Council of Texas, Inc. (ERCOT)-issued emergency notice or energy emergency alert (EEA) (as defined in *ERCOT Nodal Protocols, Section 2: Definitions and Acronyms* (June 1, 2012))

and issued as specified in *ERCOT Nodal Protocols, Section 6: Adjustment Period and Real-Time Operations* (June 1, 2012)) is applicable to the serving electric power generating system. The emergency situation is considered to end upon expiration of the emergency notice or EEA issued by ERCOT;

(iii) an unforeseen failure of on-site electrical transmission equipment (e.g., a transformer);

(iv) an unforeseen failure of natural gas service;

(v) an unforeseen flood or fire, or a life-threatening situation;

(vi) operation of emergency generators for Federal Aviation Administration licensed airports, military airports, or manned space flight control centers for the purposes of providing power in anticipation of a power failure due to severe storm activity; or

(vii) operation of an emergency generator as part of ERCOT's emergency response service (as defined in *ERCOT Nodal Protocols, Section 2: Definitions and Acronyms* (June 1, 2012)) if the operation is in direct response to an

instruction by ERCOT during the period of an ERCOT EEA as specified in clause (ii) of this subparagraph.

(B) An emergency situation does not include:

(i) operation for training purposes or other foreseeable events; or

(ii) operation for purposes of supplying power for distribution to the electric grid, except as specified in subparagraph (A)(vii) of this paragraph.

(16) Functionally identical replacement--A unit that performs the same function as the existing unit that it replaces, with the condition that the unit replaced must be physically removed or rendered permanently inoperable before the unit replacing it is placed into service.

(17) Heat input--The chemical heat released due to fuel combustion in a unit, using the higher heating value of the fuel. This does not include the sensible heat of the incoming combustion air. In the case of carbon monoxide (CO) boilers, the heat input includes the enthalpy of all regenerator off-gases and the heat of combustion of the incoming CO and of the auxiliary fuel. The enthalpy change of the fluid catalytic

cracking unit regenerator off-gases refers to the total heat content of the gas at the temperature it enters the CO boiler, referring to the heat content at 60 degrees Fahrenheit, as being zero.

(18) Heat treat furnace--A furnace that is used in the manufacturing, casting, or forging of metal to heat the metal so as to produce specific physical properties in that metal.

(19) High heat release rate--A ratio of boiler design heat input to firebox volume (as bounded by the front firebox wall where the burner is located, the firebox side waterwall, and extending to the level just below or in front of the first row of convection pass tubes) greater than or equal to 70,000 British thermal units per hour per cubic foot.

(20) Horsepower rating--The engine manufacturer's maximum continuous load rating at the lesser of the engine or driven equipment's maximum published continuous speed.

(21) Incinerator--As follows.

(A) For the purposes of this chapter, the term "incinerator" includes both of the following:

(i) a control device that combusts or oxidizes gases or vapors (e.g., thermal oxidizer, catalytic oxidizer, vapor combustor); and

(ii) an incinerator as defined in §101.1 of this title (relating to Definitions).

(B) The term "incinerator" does not apply to boilers or process heaters as defined in this section, or to flares as defined in §101.1 of this title.

(22) Industrial boiler--Any combustion equipment, not including utility or auxiliary steam boilers as defined in this section, fired with liquid, solid, or gaseous fuel, that is used to produce steam or to heat water.

(23) International Standards Organization (ISO) conditions--ISO standard conditions of 59 degrees Fahrenheit, 1.0 atmosphere, and 60% relative humidity.

(24) Large utility system--All boilers, auxiliary steam boilers, and stationary gas turbines that are located in the Dallas-Fort Worth or the Dallas-Fort Worth eight-hour ozone nonattainment area, and were part of one electric power

generating system on January 1, 2000, that had a combined electric generating capacity equal to or greater than 500 megawatts.

(25) Lean-burn engine--A spark-ignited or compression-ignited, Otto cycle, diesel cycle, or two-stroke engine that is not capable of being operated with an exhaust stream oxygen concentration equal to or less than 0.5% by volume, as originally designed by the manufacturer.

(26) Low annual capacity factor boiler, process heater, or gas turbine supplemental waste heat recovery unit--An industrial, commercial, or institutional boiler; process heater; or gas turbine supplemental waste heat recovery unit with maximum rated capacity:

(A) greater than or equal to 40 million British thermal units per hour (MMBtu/hr), but less than 100 MMBtu/hr and an annual heat input less than or equal to $2.8 (10^{11})$ British thermal units per year (Btu/yr), based on a rolling 12-month average; or

(B) greater than or equal to 100 MMBtu/hr and an annual heat input less than or equal to $2.2 (10^{11})$ Btu/yr, based on a rolling 12-month average.

(27) Low annual capacity factor stationary gas turbine or stationary internal combustion engine--A stationary gas turbine or stationary internal combustion engine that is demonstrated to operate less than 850 hours per year, based on a rolling 12-month average.

(28) Low heat release rate--A ratio of boiler design heat input to firebox volume less than 70,000 British thermal units per hour per cubic foot.

(29) Major source--Any stationary source or group of sources located within a contiguous area and under common control that emits or has the potential to emit:

(A) at least 50 tons per year (tpy) of nitrogen oxides (NO_x) and is located in the Beaumont-Port Arthur ozone nonattainment area;

(B) at least 50 tpy of NO_x and is located in the Dallas-Fort Worth or Dallas-Fort Worth eight-hour ozone nonattainment area;

(C) at least 25 tpy of NO_x and is located in the Houston-Galveston-Brazoria ozone nonattainment area; or

(D) the amount specified in the major source definition contained in the Prevention of Significant Deterioration of Air Quality regulations promulgated by the United States Environmental Protection Agency in 40 Code of Federal Regulations §52.21 as amended June 3, 1993 (effective June 3, 1994), and is located in Atascosa, Bastrop, Bexar, Brazos, Calhoun, Cherokee, Comal, Fannin, Fayette, Freestone, Goliad, Gregg, Grimes, Harrison, Hays, Henderson, Hood, Hunt, Lamar, Limestone, Marion, McLennan, Milam, Morris, Nueces, Red River, Robertson, Rusk, Titus, Travis, Victoria, or Wharton County.

(30) Maximum rated capacity--The maximum design heat input, expressed in million British thermal units per hour, unless:

(A) the unit is a boiler, utility boiler, or process heater operated above the maximum design heat input (as averaged over any one-hour period), in which case the maximum operated hourly rate must be used as the maximum rated capacity;

or

(B) the unit is limited by operating restriction or permit condition to a lesser heat input, in which case the limiting condition must be used as the maximum rated capacity; or

(C) the unit is a stationary gas turbine, in which case the manufacturer's rated heat consumption at the International Standards Organization (ISO) conditions must be used as the maximum rated capacity, unless limited by permit condition to a lesser heat input, in which case the limiting condition must be used as the maximum rated capacity; or

(D) the unit is a stationary, internal combustion engine, in which case the manufacturer's rated heat consumption at Diesel Equipment Manufacturer's Association or ISO conditions must be used as the maximum rated capacity, unless limited by permit condition to a lesser heat input, in which case the limiting condition must be used as the maximum rated capacity.

(31) Megawatt (MW) rating--The continuous MW output rating or mechanical equivalent by a gas turbine manufacturer at International Standards Organization conditions, without consideration to the increase in gas turbine shaft output and/or the decrease in gas turbine fuel consumption by the addition of energy recovered from exhaust heat.

(32) Nitric acid--Nitric acid that is 30% to 100% in strength.

(33) Nitric acid production unit--Any source producing nitric acid by either the pressure or atmospheric pressure process.

(34) Nitrogen oxides (NO_x)--The sum of the nitric oxide and nitrogen dioxide in the flue gas or emission point, collectively expressed as nitrogen dioxide.

(35) Parts per million by volume (ppmv)--All ppmv emission specifications specified in this chapter are referenced on a dry basis. When required to adjust pollutant concentrations to a specified oxygen (O₂) correction basis, the following equation must be used.

Figure: 30 TAC §117.10(35) (No Change to the figure as it currently exists in TAC)

(36) Peaking gas turbine or engine--A stationary gas turbine or engine used intermittently to produce energy on a demand basis.

(37) Plant-wide emission rate--The ratio of the total actual nitrogen oxides mass emissions rate discharged into the atmosphere from affected units at a major source when firing at their maximum rated capacity to the total maximum rated capacities for those units.

(38) Plant-wide emission specification--The ratio of the total allowable nitrogen oxides mass emissions rate dischargeable into the atmosphere from affected units at a major source when firing at their maximum rated capacity to the total maximum rated capacities for those units.

(39) Predictive emissions monitoring system (PEMS)--The total equipment necessary for the continuous determination and recordkeeping of process gas concentrations and emission rates using process or control device operating parameter measurements and a conversion equation or computer program to produce results in units of the applicable emission limitation.

(40) Process heater--Any combustion equipment fired with liquid and/or gaseous fuel that is used to transfer heat from combustion gases to a process fluid, superheated steam, or water for the purpose of heating the process fluid or causing a chemical reaction. The term "process heater" does not apply to any unfired waste heat recovery heater that is used to recover sensible heat from the exhaust of any combustion equipment, or to boilers as defined in this section.

(41) Pyrolysis reactor--A unit that produces hydrocarbon products from the endothermic cracking of feedstocks such as ethane, propane, butane, and naphtha using combustion to provide indirect heating for the cracking process.

(42) Reheat furnace--A furnace that is used in the manufacturing, casting, or forging of metal to raise the temperature of that metal in the course of processing to a temperature suitable for hot working or shaping.

(43) Rich-burn engine--A spark-ignited, Otto cycle, four-stroke, naturally aspirated or turbocharged engine that is capable of being operated with an exhaust stream oxygen concentration equal to or less than 0.5% by volume, as originally designed by the manufacturer.

(44) Small utility system--All boilers, auxiliary steam boilers, and stationary gas turbines that are located in the Dallas-Fort Worth or the Dallas-Fort Worth eight-hour ozone nonattainment area, and were part of one electric power generating system on January 1, 2000, that had a combined electric generating capacity less than 500 megawatts.

(45) Stationary gas turbine--Any gas turbine system that is gas and/or liquid fuel fired with or without power augmentation. This unit is either attached to a foundation or is portable equipment operated at a specific minor or major source for more than 90 days in any 12-month period. Two or more gas turbines powering one shaft must be treated as one unit.

(46) Stationary internal combustion engine--A reciprocating engine that remains or will remain at a location (a single site at a building, structure, facility, or installation) for more than 12 consecutive months. Included in this definition is any engine that, by itself or in or on a piece of equipment, is portable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of portability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine being replaced is included in calculating the consecutive residence time period. An engine is considered stationary if it is removed from one location for a period and then returned to the same location in an attempt to circumvent the consecutive residence time requirement. Nonroad engines, as defined in 40 Code of Federal Regulations §89.2, are not considered stationary for the purposes of this chapter.

(47) System-wide emission rate--The ratio of the total actual nitrogen oxides mass emissions rate discharged into the atmosphere from affected units in an electric power generating system or portion thereof located within a single ozone nonattainment area when firing at their maximum rated capacity to the total maximum rated capacities for those units. For fuel oil firing, average activity levels must be used in

lieu of maximum rated capacities for the purpose of calculating the system-wide emission rate.

(48) System-wide emission specification--The ratio of the total allowable nitrogen oxides mass emissions rate dischargeable into the atmosphere from affected units in an electric power generating system or portion thereof located within a single ozone nonattainment area when firing at their maximum rated capacity to the total maximum rated capacities for those units. For fuel oil firing, average activity levels must be used in lieu of maximum rated capacities for the purpose of calculating the system-wide emission specification.

(49) Thirty-day rolling average--An average, calculated for each day that fuel is combusted in a unit, of all the hourly emissions data for the preceding 30 days that fuel was combusted in the unit.

(50) Twenty-four hour rolling average--An average, calculated for each hour that fuel is combusted (or acid is produced, for a nitric or adipic acid production unit), of all the hourly emissions data for the preceding 24 hours that fuel was combusted in the unit.

(51) Unit--A unit consists of either:

(A) for the purposes of §§117.105, 117.205, 117.305, 117.1005, 117.1105, and 117.1205 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)) and each requirement of this chapter associated with §§117.105, 117.205, 117.305, 117.1005, 117.1105, and 117.1205 of this title, any boiler, process heater, stationary gas turbine, or stationary internal combustion engine, as defined in this section;

(B) for the purposes of §§117.110, 117.210, 117.310, 117.1010, 117.1110, and 117.1210 of this title (relating to Emission Specifications for Attainment Demonstration) and each requirement of this chapter associated with §§117.110, 117.210, 117.310, 117.1010, 117.1110, and 117.1210 of this title, any boiler, process heater, stationary gas turbine, or stationary internal combustion engine, as defined in this section, or any other stationary source of nitrogen oxides (NO_x) at a major source, as defined in this section;

(C) for the purposes of §117.2010 of this title (relating to Emission Specifications) and each requirement of this chapter associated with §117.2010 of this title, any boiler, process heater, stationary gas turbine (including any duct burner in the turbine exhaust duct), or stationary internal combustion engine, as defined in this section;

(D) for the purposes of §117.2110 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration) and each requirement of this chapter associated with §117.2110 of this title, any stationary internal combustion engine, as defined in this section;

(E) for the purposes of §117.3310 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration) and each requirement of this chapter associated with §117.3310 of this title, any stationary internal combustion engine, as defined in this section; or

(F) for the purposes of §117.410 and §117.1310 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration) and each requirement of this chapter associated with §117.410 and §117.1310 of this title, any boiler, process heater, stationary gas turbine, or stationary internal combustion engine, as defined in this section, or any other stationary source of NO_x at a major source, as defined in this section.

(52) Utility boiler--Any combustion equipment owned or operated by an electric cooperative, municipality, river authority, public utility, or Public Utility Commission of Texas regulated utility, fired with solid, liquid, and/or gaseous fuel, used

to produce steam for the purpose of generating electricity. Stationary gas turbines, including any associated duct burners and unfired waste heat boilers, are not considered to be utility boilers.

(53) Wood--Wood, wood residue, bark, or any derivative fuel or residue thereof in any form, including, but not limited to, sawdust, sander dust, wood chips, scraps, slabs, millings, shavings, and processed pellets made from wood or other forest residues.