TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AGENDA ITEM REQUEST

for Proposed Rulemaking

AGENDA REQUESTED: August 24, 2016

DATE OF REQUEST: August 5, 2016

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Kris Hogan, (512) 239-6812

CAPTION: Docket No. 2015-1855-RUL. Consideration for publication of, and hearing on, proposed amendments to Sections 122.10, 122.12, 122.120, 122.122, 122.130, 122.132, 122.142, 122.145, and 122.148; and the proposed repeal of Sections 122.420, 122.422, 122.424, 122.426, and 122.428 of 30 TAC Chapter 122, Federal Operating Permits Program. If adopted, the amendment to Section 122.122 will be submitted to the United States Environmental Protection Agency as a revision to the state implementation plan.

The proposed rulemaking would update Chapter 122 to reflect current applicable requirements for the Federal Operating Permits Program; particularly the removal of outdated provisions relating to the Clean Air Interstate Rule, the removal of outdated provisions which required certain sources of greenhouse gases to obtain a federal operating permit, and the addition of the Cross-State Air Pollution Rule as an applicable requirement. (Michael Wilhoit, John Minter) (Rule Project No. 2016-012-122-AI)

Steve Hagle, P.E.
Deputy Director

Michael Wilhoit
Division Director

Kristina M. Hogan
Agenda Coordinator

Copy to CCC Secretary? NO YES X

Texas Commission on Environmental Quality
Interoffice Memorandum

To: Commissioners **Date:** August 5, 2016

Thru: Bridget C. Bohac, Chief Clerk
Richard A. Hyde, P.E., Executive Director

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

Docket No.: 2015-1855-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 122, Federal Operating Permits Program
Update to Applicable Requirements for Operating Permits
Rule Project No. 2016-012-122-AI

Background and reasons for the rulemaking:
In recent years there have been significant changes to several major federal regulatory initiatives as a result of court actions and rulemaking. Revisions to 30 Texas Administrative Code (TAC) Chapter 122 are necessary in order to reflect correct and up-to-date requirements associated with these federal regulations as they relate to the Federal Operating Permits (FOP) Program. The federal initiatives or regulations addressed as part of this rulemaking include the Clean Air Interstate Rule (CAIR), the Cross-State Air Pollution Rule (CSAPR), and the permitting of greenhouse gases (GHGs).

More specifically, the changes to Chapter 122 proposed in this rulemaking are intended to address the replacement of CAIR with CSAPR. CAIR was a regulation developed by the United States Environmental Protection Agency (EPA) to address interstate transport of power plant emissions. In December 2008, the United States Court of Appeals for the District of Columbia Circuit (DC Circuit) found that CAIR did not meet the requirements of the Federal Clean Air Act (FCAA). The DC Circuit struck down CAIR, and directed EPA to replace CAIR with a new rule consistent with the FCAA. In response, the EPA developed CSAPR, which effectively replaced CAIR. Because CSAPR is an applicable requirement under the FOP Program, it is necessary to revise Chapter 122 to add CSAPR to the definition of "applicable requirement."

With respect to the permitting of GHGs, in March, 2014, the TCEQ adopted revised rules in 30 TAC Chapters 116 and 122 to provide for the permitting of GHGs, as directed by House Bill 788 (83rd Texas Legislature, 2013). However, in June, 2014, the Supreme Court struck down portions of the EPA's regulations relating to permitting of GHGs. As a result, most of the 2014 revisions to Chapter 122 which established operating permit requirements for major sources of GHGs are no longer applicable. These GHG-based requirements need to be deleted from Chapter 122 to avoid unnecessary confusion and ensure that TCEQ permitting rules are consistent with current federal policies and guidance.

Re: Docket No. 2015-1855-RUL

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:
This rulemaking would eliminate references to CAIR throughout Chapter 122 to clarify that CAIR is no longer an applicable requirement under the FOP Program. This rulemaking would also amend the Chapter 122 definition of applicable requirement to clarify that CSAPR is an applicable requirement. In addition, this rulemaking would remove requirements and references to GHG emissions and GHG permitting in Chapter 122, in line with the Supreme Court ruling which determined that emissions of GHGs by themselves do not trigger federal operating permit requirements. Other minor changes are proposed to update rule cross-references and correct minor grammatical errors.

B.) Scope required by federal regulations or state statutes:
The proposed changes are necessary for Chapter 122 to maintain consistency with federal regulations and reflect current applicable requirements.

In addition, Texas Health and Safety Code (THSC), §382.05102(e) requires that the commission repeal rules for the permitting of GHG emissions, if such permitting is no longer required under federal law. The proposed revisions removing language relating to the permitting of GHGs are consistent with that statutory requirement.

C.) Additional staff recommendations that are not required by federal rule or state statute:
None.

Statutory authority:
The amendments are proposed under Texas Water Code (TWC), §5.102, General Powers; TWC, §5.103, Rules; TWC, §5.105, General Policy; THSC, Texas Clean Air Act, §382.017, Rules; THSC, §382.011, General Powers and Duties; THSC, §382.051, Permitting Authority of Commission; Rules; THSC, §382.0515, Application for Permit; THSC, §382.054, Federal Operating Permit; THSC, §382.0541, Administration and Enforcement of Federal Operating Permit; THSC, §382.0543, Review and Renewal of Federal Operating Permit; and THSC, §382.05102, which relates to the permitting authority of the commission for GHG emissions. The amendments are also proposed under FCAA, 42 United States Code, §§7661 – 7661e.

Effect on the:

A.) Regulated community:
This rulemaking would have a minimal effect on the regulated community. It will ensure that federal operating permits issued by TCEQ correctly address all current applicable requirements.

B.) Public:
The effect on the public would be minimal. This rulemaking would ensure that federal operating permits correctly address all current applicable requirements.

C.) Agency programs:
The effect on agency programs would be negligible.

Stakeholder meetings:
No stakeholder meetings are planned; however, a public hearing will be held during the comment period on October 4, 2016.

Potential controversial concerns and legislative interest:
Staff does not expect this rulemaking to be controversial. The proposed changes will update Chapter 122 to reflect changes in federal regulations and policies. These federal programs and regulations will apply regardless of whether they are specifically cited as applicable requirements of Chapter 122.

Will 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?
If this rulemaking does not go forward, Chapter 122 will not accurately reflect current federal operating permit requirements relating to or referencing CAIR, CSAPR, or GHG permitting. This could lead to errors or oversights in permit applications, or in operating permit conditions reflecting outdated or incomplete compliance requirements.

Key points in the proposal rulemaking schedule:
Anticipated proposal date: August 24, 2016
Anticipated *Texas Register* publication date: September 9, 2016
Anticipated public hearing date: October 4, 2016
Anticipated public comment period: September 9, 2016 – October 10, 2016
Anticipated adoption date: February 1, 2017

Agency contacts:
Michael Wilhoit, Rule Project Manager, Air Permits Division, (512) 239-1222
John Minter, Staff Attorney, (512) 239-0663
Kris Hogan, Texas Register Coordinator, (512) 239-6812

Attachments:
None.

cc: Chief Clerk, 2 copies
Executive Director's Office
Marshall Coover
Erin Chancellor
Stephen Tatum
Jim Rizk
Office of General Counsel

Re: Docket No. 2015-1855-RUL

Michael Wilhoit
Kris Hogan

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§122.10, 122.12, 122.120, 122.122, 122.130, 122.132, 122.142, 122.145, and 122.148. The commission also proposes the repeal of §§122.420, 122.422, 122.424, 122.426, and 122.428.

If adopted, the changes proposed in this rulemaking will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the Texas Federal Operating Permits (FOP) Program. In addition, the revisions to §122.122 will be submitted to the EPA as a revision to the State Implementation Plan.

Background and Summary of the Factual Basis for the Proposed Rules

TCEQ is the permitting authority responsible for implementing the FOP Program (also referred to as the Title V Permits Program) in Texas. Chapter 122 contains the framework and criteria that identify which sources are required to obtain a federal operating permit, identify the applicable requirements to be included in the permit, and establish other details about applying for and complying with a federal operating permit. In recent years there have been significant changes to several major federal regulatory initiatives as a result of court actions and new EPA rulemaking. Revisions to Chapter 122 are necessary in order to reflect up-to-date requirements associated with these federal regulations as they relate to the FOP Program.

The purpose of a federal operating permit is to improve compliance with air pollution laws

and regulations by recording in one document all the air pollution control requirements that apply to a source. This gives regulators, site owners or operators, and members of the public a clear picture of what the facility is required to do to meet regulatory standards. A federal operating permit also requires the source to make regular reports on how it is meeting its emission control requirements and maintaining compliance with applicable regulations.

The federal initiatives or regulations addressed in this rulemaking include the Clean Air Interstate Rule (CAIR), the Cross-State Air Pollution Rule (CSAPR), and the permitting of greenhouse gases (GHGs) under Prevention of Significant Deterioration (PSD) and under the FOP Program. More specifically, the changes in this rulemaking are intended to address the vacatur of CAIR; the replacement of CAIR with CSAPR; and the 2014 Supreme Court decision which partially struck down certain requirements for the permitting of GHGs.

CAIR and CSAPR

CAIR was a regulation developed by the EPA to address interstate transport of emissions by reducing power plant emissions that the EPA determined were contributing to ozone or fine particle pollution in downwind states. In December 2008, the United States Court of Appeals for the District of Columbia Circuit (DC Circuit) found that CAIR did not meet the requirements of the Federal Clean Air Act (FCAA). The DC Circuit struck down CAIR, but left existing CAIR programs in place temporarily while directing EPA to replace them with

a new rule consistent with the FCAA. In response, the EPA developed CSAPR, which effectively replaced CAIR when promulgated on August 8, 2011. However, in August 2012, the DC Circuit also vacated CSAPR. In April 2014, the Supreme Court overturned the DC Circuit's 2012 ruling and reinstated CSAPR. Because federal regulations specify that CSAPR is an applicable requirement under the FOP Program, it is necessary to revise Chapter 122 to add CSAPR to the definition of "Applicable requirement." This would ensure that TCEQ's FOP Program rules and operating permits issued by TCEQ are consistent with current federal requirements, and ensure that TCEQ maintains overall FOP Program approval.

GHG Permitting under the FOP Program

In March 2014, the TCEQ adopted rules in 30 TAC Chapters 116 and 122 to provide for the permitting of GHGs, as directed by House Bill (HB) 788 (83rd Texas Legislature, 2013). However, in June 2014, the Supreme Court struck down portions of the EPA's regulations relating to permitting of GHGs. The Supreme Court ruled that the EPA could not require permitting of GHG emissions under the PSD or Title V (FOP) program based on emissions of GHGs alone. However, the court also ruled that if a project triggered PSD review as the result of emissions of non-GHG criteria pollutants, the permit review could include consideration and appropriate limitations on GHG emissions. A source which becomes subject to PSD review for a particular pollutant due to emissions of a different regulated new source review pollutant, is informally known as an "anyway source."

As a result of the Supreme Court ruling, the 2014 revisions to Chapter 122 which established the applicability of federal operating permit requirements for major sources of GHG are no longer applicable. These GHG-related requirements need to be deleted from Chapter 122 to avoid unnecessary confusion, maintain consistency with current federal requirements, and to ensure that TCEQ maintains FOP Program approval. In addition, HB 788 and corresponding Texas Health and Safety Code, §382.05102(e) require that the commission repeal rules requiring the permitting of GHG emissions, if emissions of GHGs are no longer required to be authorized under federal law. The proposed revisions are consistent with that statutory requirement.

Note that the proposed revisions to Chapter 122 relate to the relevance of GHG emissions at the site when determining the applicability of federal operating permit requirements. The proposed revisions are intended to ensure that emissions of GHGs alone do not cause a site to become subject to federal operating permit requirements. However, this does not necessarily mean that a federal operating permit will never contain terms and conditions which relate to emissions of GHGs. In situations where a project has triggered PSD review due to emissions of criteria pollutants, the permitting authority may still establish GHG-related requirements, and all terms and conditions of a PSD permit (including any limitations or conditions relating to emissions of GHGs) are still considered applicable requirements under the FOP Program.

Other Changes

The commission has also proposed other minor amendments to Chapter 122 to correct outdated or inaccurate references to other commission rules and federal statutes, and to correct various grammatical and style errors.

Section by Section Discussion

§122.10, General Definitions

The commission proposes to revise the definition of "Air pollutant" at §122.10(1). The proposed change would remove the portion of this definition at §122.10(1)(G) which covers GHGs. The effect of the proposed change would be that GHGs would no longer be considered an air pollutant for purposes of determining the applicability of Chapter 122 federal operating permit requirements.

The commission proposes to revise the definition of "Applicable requirement" at §122.10(2)(I)(iii). The proposed change to §122.10(2)(I)(iii) would remove the reference to the federal CAIR program as an applicable standard or requirement, and replace it with a reference to the federal CSAPR regulation.

The commission proposes to delete the definition of "Carbon dioxide equivalent (CO_2 e) emissions" under §122.10(3). This definition is no longer relevant to the applicability of Chapter 122 because the proposed rule changes would remove consideration of GHG emissions as a factor when determining applicability of federal operating permit requirements. The commission also proposes to renumber existing definitions §122.10(4) -

(30) to maintain correct sequencing after the deletion of existing §122.10(3).

The commission proposes to revise the definition of "Major source" under existing §122.10(14), to remove language in §122.10(14)(C) and (H) which specifies the threshold quantities of GHG emissions which trigger the requirement to obtain a federal operating permit. In addition, to maintain consistency with federal regulations pertaining to federal operating permit requirements, the commission proposes a revision to the list of source categories which are required to include fugitive emissions when determining if a facility is a major source. The revision to existing §122.10(14)(C)(xx) would clarify that certain ethanol production facilities which produce ethanol by natural fermentation are excluded from the source category of chemical process plants. The EPA adopted this change to the corresponding 40 Code of Federal Regulations (CFR) Parts 70 and 71 on May 1, 2007 (72 FR 24060). The definition of "Major source" is also proposed to be renumbered as §122.10(13).

§122.12, Acid Rain and Clean Air Interstate Rule Definitions

The commission proposes to delete the definition of "Clean Air Interstate Rule permit" at §122.12(3). This definition is no longer necessary, as TCEQ will no longer be issuing CAIR permits under this chapter. The commission proposes to renumber existing definition §122.12(4) to account for the deletion of §122.12(3).

§122.120, Applicability

The commission proposes to delete §122.120(a)(5) and (6), which contain language relating to the applicability of Chapter 122 to units covered by CAIR. This language is no longer necessary as CAIR is no longer effective. The commission has not proposed to add any references to CSAPR in this applicability language because the requirement to obtain a federal operating permit is not based directly or solely on the CSAPR status of the site.

§122.122, Potential to Emit

The commission proposes a minor grammatical correction to §122.122(a).The commission also proposes to delete language in §122.122(e)(3) which provides for the certified registration of GHG emissions. This language is no longer necessary because a site's GHG emissions would no longer be a sole determining factor for the applicability of federal operating permit requirements, so there would be no need for a site to use this method of limiting potential to emit for GHGs. The commission also proposes a minor grammatical correction to §122.122(a).

§122.130, Initial Application Due Dates

The commission proposes to delete language in §122.130(b)(3) relating to the deadline for the owner or operator of a site to submit a permit application as a result of rulemaking which adds GHG sources to the FOP Program. This language is no longer necessary because emissions of GHGs alone will no longer trigger the requirement for an owner or operator to apply for a federal operating permit.

§122.132, Application and Required Information for Initial Permit Issuance, Reopening, Renewal, or General Operating Permits

The commission proposes to delete §122.132(d) and (e)(7), which contain language relating to an outdated phased permitting option which was repealed in 2003. The commission also proposes to revise existing §122.132(e)(3) to remove a phrase referencing the repealed phased permitting option. The commission proposes to re-letter or renumber the remaining subsections and paragraphs in the section as needed to reflect the proposed deletions and maintain sequential order.

§122.142, Permit Content Requirements

The commission proposes to delete language from §122.142(b)(2)(B) and (d) that relates to the phased permitting option repealed in 2003. The commission also proposes to revise existing §122.142(e)(1) and (2) by updating cross-references to certain rules in §122.132(e) (which are proposed to be re-lettered as §122.132(d)). In addition, the commission proposes to re-letter current §122.142(e) - (i) as necessary to reflect the proposed deletion of §122.142(d).

§122.145, Reporting Terms and Conditions

The commission proposes to revise §122.145(2)(D) to replace outdated references to 30 TAC §101.6 and §101.7. The current corresponding references are 30 TAC §101.201, Emissions Event Reporting and Recordkeeping Requirements, and 30 TAC §101.211, Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping

Requirements, respectively.

§122.148, Permit Shield

The commission proposes to revise §122.148(b) by updating cross-references to rule subsections and paragraphs within proposed §122.132(d) which have been proposed to be re-lettered or renumbered as a result of proposed revisions to that section.

Subchapter E, Acid Rain Permits and Clean Air Interstate Rule

Division 2, Clean Air Interstate Rule

The commission proposes to repeal §§122.420, 122.422, 122.424, 122.426, and 122.428, which contain various requirements relating to applications for and contents of CAIR permits. As CAIR is no longer in effect, it is no longer necessary for Chapter 122 to maintain these requirements.

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Chief Financial Officer's Division, determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules.

The proposed rules would: 1) remove requirements associated with CAIR, an emission trading rule that has been vacated by federal courts and replaced with CSAPR; 2) add

CSAPR as a new applicable requirement to Chapter 122; and 3) remove references to GHG permitting as a 2014 Supreme Court case overturned the EPA's regulations requiring a federal operating permit solely for GHG emissions. Other minor changes would correct outdated cross-references and grammatical errors. The proposed changes are intended to ensure that the Texas FOP Program is consistent with current federal requirements.

Any local governmental entity owning or operating a power plant (electric generating unit or EGU) subject to CSAPR will be affected by the proposed rules. These power plant facilities will be required to revise their federal operating permits to include the monitoring, recordkeeping, reporting, and testing requirements associated with the federal CSAPR regulations. Affected sites will incur a cost to prepare permit applications to incorporate the applicable CSAPR requirements. This cost is expected to vary widely for different facilities and is difficult to estimate. The cost of the operating permit revision is not expected to be significant relative to the daily, routine operating cost of an affected power plant. It is roughly estimated that it may cost $5,000 for each affected facility to prepare a permit application to reflect the applicable requirements of CSAPR. Agency staff estimates that 20 to 30 facilities owned or operated by local governments may be affected. Total statewide costs for 20 to 30 affected sites may be $100,000 to $150,000.

The proposed rules are not expected to have significant fiscal implications for the agency. The proposed rules will not affect or change any fees collected by TCEQ. Applicants do not pay fees for permit applications or revisions under the FOP Program. Holders of federal

operating permits are already required to pay an annual emissions fee, but the proposed changes will not affect that fee. Federal operating permit revisions submitted to TCEQ as a result of CSAPR are not anticipated to significantly affect agency workload.

Public Benefits and Costs

Mr. Horvath also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with the current federal requirements for CSAPR, CAIR, and GHG permitting. The proposed rules are anticipated to result in greater consistency between Texas' FOP Program rules and the corresponding federal requirements as well as clarify federal operating permit requirements for permit applicants and the public. The proposed changes will also ensure that TCEQ will maintain EPA delegation for implementing the FOP Program in Texas.

The proposed rules are not anticipated to result in significant fiscal implications for businesses or individuals.

The proposed rulemaking would add a reference to CSAPR as an applicable requirement for sources covered by the Texas FOP Program. CSAPR is a federal regulation which requires substantial emission reductions from power plants (EGUs), and has considerable economic impacts. However, CSAPR applies independently of Chapter 122 federal operating permit requirements. Sources will have to comply with the federally-imposed

CSAPR regulations regardless of the proposed Chapter 122 rule changes. Therefore, this fiscal note assumes that costs for the federal CSAPR program are separate from and do not result from these proposed rules.

The proposed rules will ensure that Chapter 122 maintains consistency with federal regulations and that the regulated community is aware of current applicable requirements. Sources affected by CSAPR will be required to revise their federal operating permits to reflect the additional requirements.

Power plants subject to the federal CSAPR regulation will be required to incorporate the monitoring, recordkeeping, reporting, and testing requirements of CSAPR within their Texas federal operating permit. This will require owners or operators of those facilities to submit an application to revise their federal operating permit to provide the information associated with the CSAPR requirements applicable to their site. No fees are required for the permit revisions. The proposed changes to Chapter 122 are estimated to affect 120 to 140 power generating sites in Texas.

Because each facility is unique, actual permitting costs are highly variable and difficult to forecast with any precision. The cost of the operating permit revisions is not expected to be significant relative to the daily, routine operating cost of an affected power plant. It is roughly estimated that it may cost $5,000 for each affected facility to prepare a permit application to reflect the applicable requirements of CSAPR. Statewide costs for 120 to 140

affected sites may be $600,000 to $700,000.

The proposed removal of CAIR and GHG permitting requirements from the definition of "Applicable requirement" is also to ensure that Chapter 122 is consistent with current federal requirements and regulations. Since these regulations are already effectively neutralized by court actions and EPA guidance, and since the GHG permitting aspect of the TCEQ's FOP Program was never approved by the EPA, the removal of these regulations from the Chapter 122 definition of "Applicable requirement" will not have a fiscal impact on regulated facilities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect. The proposed rules apply to major industrial sources (power plants) and would not affect small or micro-businesses.

Small Business Regulatory Flexibility Analysis

The commission 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 the proposed rules are in effect and are intended to enhance the public health, safety, environmental and economic welfare of the state.

Local Employment Impact Statement

The commission 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 impact analysis requirements of the Texas Government Code, §2001.0225, and determined that the proposed rulemaking does not meet the definition of a "Major environmental rule" as defined in that statute, and in addition, if it did meet the definition, would not be subject to the requirements to prepare a Regulatory Impact Analysis.

A "Major environmental rule" means a rule, the specific intent of which 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. The specific intent of the proposed revisions to Chapter 122 is to reflect current applicable requirements associated with federal rulemakings and court decisions as they relate to the FOP Program.

Due to significant changes to several major federal regulations as a result of court actions and EPA rulemaking, revisions to Chapter 122 are necessary in order to reflect up-to-date permitting requirements associated with these new or revised federal regulations. The federal regulations addressed in this rulemaking are CAIR, CSAPR, and GHG permitting. All of these regulations, and the overall FOP Program, were developed by the EPA to implement or satisfy provisions of the FCAA.

The proposed rulemaking would revise Chapter 122 to: 1) remove requirements associated with CAIR; which was an emission trading rule that has been vacated by federal courts and replaced with CSAPR; 2) add CSAPR as a new applicable requirement to Chapter 122; and 3) remove references to GHG permitting under Chapter 122, as a 2014 Supreme Court case overturned EPA's regulations requiring a federal operating permit for GHG emissions. Other minor changes to Chapter 122 would correct outdated cross-references and grammatical errors. The proposed rule changes are intended to ensure that the Texas FOP Program is consistent with current federal requirements.

Because the rules place no involuntary requirements on the regulated community, the rules will not 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. Also, none of the amendments place additional financial burdens on the regulated community beyond what is already required by federal regulations relating to the implementation of CSAPR and the FOP Program.

In addition, a regulatory impact analysis is not required because the rules do not meet any of the four applicability criteria for requiring a regulatory analysis of a "Major environmental rule" as defined in the Texas Government Code. Texas Government Code, §2001.0225, applies only to a major environmental rule the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not exceed a standard set by federal law. In addition, this rulemaking does not exceed an express requirement of state law and is not adopted solely under the general powers of the agency but is specifically authorized by the provisions cited in the Statutory Authority section of this preamble. Finally, this rulemaking does not exceed a requirement of a delegation agreement or contract to implement a state or federal program.

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 rules and performed an analysis of whether the proposed rules constitute a taking under Texas Government Code, Chapter 2007. The commission's 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."

The specific purpose of the proposed rulemaking is to revise Chapter 122 in order to reflect up-to-date requirements associated with these federal regulations as they relate to the FOP Program. This would include removing requirements associated with CAIR; adding CSAPR as a new applicable requirement to Chapter 122; removing references to GHG permitting

under Chapter 122; and correcting outdated cross-references and grammatical errors. The proposed rule changes are intended to ensure that the Texas FOP Program is consistent with current federal requirements.

Promulgation and enforcement of the proposed rules would not be a statutory or a constitutional taking of private real property. These rules are not burdensome, restrictive, or limiting of rights to private real property because the proposed rules do not affect a landowner's rights in private real property. These rules do 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, the proposed rules would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the proposal 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 proposed rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and found the proposed rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to this 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(1)). The proposed rulemaking updates rules governing the TCEQ's FOP Program to reflect recent developments in federal regulations and programs such as CAIR, CSAPR, and GHG permitting. The CMP policy applicable to this rulemaking is the policy that commission rules comply with federal regulations in 40 CFR, to protect and enhance air quality in the coastal areas (31 TAC §501.32). This rulemaking complies with 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking is consistent with CMP goals and policies.

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed rules are consistent with these CMP goals and policies, and because these rules do not create or have a direct or significant adverse effect on any coastal natural resource areas.

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

The proposed rule changes will update the applicability provisions of Chapter 122 to clarify that owners or operators of sites subject to the FOP Program will not be required to obtain federal operating permits as a result of GHG emissions, and that CAIR is no longer an

applicable requirement for purposes of the FOP Program. Since the EPA has determined that CSAPR is an applicable requirement under the FOP Program, owners or operators of sites subject to CSAPR will need to revise their federal operating permits to incorporate the applicable CSAPR requirements.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on October 4, 2016, at 10:00 a.m., in Building E, 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 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Ms. Kris Hogan, 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://www1.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 2016-012-122-AI. The comment period closes on October 10, 2016. Copies of the proposed rulemaking can be obtained from the commission's website at *http://www.tceq.texas.gov/rules/propose_adopt.html*. For further information, please contact Michael Wilhoit, TCEQ Air Permits Division, Operational Support Section, (512) 239-1222.

SUBCHAPTER A: DEFINITIONS

§122.10, §122.12

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendments are also proposed under Texas Health and Safety Code (THSC), Texas Clean Air Act (TCAA), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the THSC; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits to operate a federal source and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the TCAA; THSC, §382.0515, concerning Application for Permit, which specifies permit application requirements; THSC, §382.054, concerning Federal Operating Permit, which requires sources to obtain a federal operating permit; THSC, §382.0541, concerning Administration and Enforcement of Federal Operating Permit, which authorizes the commission to administer and enforce federal operating permits;

THSC, §382.0543, concerning Review and Renewal of Federal Operating Permit, which authorizes the commission to review and renew federal operating permits; and THSC, §382.05102, which relates to the permitting authority of the commission for greenhouse gas emissions. Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; and Texas Government Code, §2001.142, which provides a time period for presumed notification by a state agency. The amendments are also proposed under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7661 – 7661e, which requires states to develop and submit permit programs to the United States Environmental Protection Agency that implement the requirements of the Title V Permits Program.

The proposed amendments implement TWC, §§5.102, 5.103, and 5.105; THSC, §§382.011, 382.017, 382.051, 382.05102, 382.0515, 382.0518, 382.054, 382.0541, and 382.0543; Texas Government Code, §2001.006 and §2001.142; and FCAA, 42 USC, §§7661 - 7661e.

§122.10. General Definitions.

The definitions in the Texas Clean Air Act, Chapter 101 of this title (relating to General Air Quality Rules), and Chapter 3 of this title (relating to Definitions) apply to this chapter. In addition, the following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Air pollutant--Any of the following regulated air pollutants:

(A) nitrogen oxides;

(B) volatile organic compounds;

(C) any pollutant for which a national ambient air quality standard has been promulgated;

(D) any pollutant that is subject to any standard promulgated under Federal Clean Air Act (FCAA), §111 (Standards of Performance for New Stationary Sources);

(E) unless otherwise specified by the United States Environmental Protection Agency (EPA) by rule, any Class I or II substance subject to a standard promulgated under or established by FCAA, Title VI (Stratospheric Ozone Protection); <u>or</u>

(F) any pollutant subject to a standard promulgated under FCAA, §112 (Hazardous Air Pollutants) or other requirements established under <u>FCAA,</u> §112, including §112(g), (j), and (r), including any of the following:

(i) any pollutant subject to requirements under FCAA, §112(j). If the EPA fails to promulgate a standard by the date established under FCAA, §112(e), any pollutant for which a subject site would be major shall be considered to be regulated on the date 18 months after the applicable date established under FCAA, §112(e); and

(ii) any pollutant for which the requirements of FCAA, §112(g)(2) have been met, but only with respect to the individual site subject to FCAA, §112(g)(2) requirement. [; or]

[(G) Greenhouse gases (GHGs)--as defined in §101.1 of this title (relating to Definitions).]

(2) Applicable requirement--All of the following requirements, including requirements that have been promulgated or approved by the United States Environmental Protection Agency (EPA) through rulemaking at the time of issuance but have future-effective compliance dates:

(A) all of the requirements of Chapter 111 of this title (relating to Control of Air Pollution from [From] Visible Emissions and Particulate Matter) as they apply to the emission units at a site;

(B) all of the requirements of Chapter 112 of this title (relating to Control of Air Pollution from Sulfur Compounds) as they apply to the emission units at a site;

(C) all of the requirements of Chapter 113 of this title (relating to Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants), as they apply to the emission units at a site;

(D) all of the requirements of Chapter 115 of this title (relating to Control of Air Pollution from Volatile Organic Compounds) as they apply to the emission units at a site;

(E) all of the requirements of Chapter 117 of this title (relating to Control of Air Pollution <u>from</u> [From] Nitrogen Compounds) as they apply to the emission units at a site;

(F) the following requirements of Chapter 101 of this title (relating to General Air Quality Rules):

(i) Chapter 101, Subchapter A [of this title (relating to General Rules)], §101.1 of this title (relating to Definitions), insofar as the terms defined in this section are used to define the terms used in other applicable requirements;

(ii) Chapter 101, Subchapter A, §101.3 and §101.10 of this title (relating to Circumvention; and Emissions Inventory Requirements);

(iii) Chapter 101, Subchapter A, §101.8 and §101.9 of this title (relating to Sampling; and Sampling Ports) if the commission or the executive director has requested such action;

(iv) Chapter 101, Subchapter F [of this title (relating to Emissions Events and Scheduled Maintenance, Startup, and Shutdown Activities)], §§101.201, 101.211, 101.221, 101.222, and 101.223 of this title (relating to Emissions Event Reporting and Recordkeeping Requirements; Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements; Operational Requirements; Demonstrations; and Actions to Reduce Excessive Emissions); and

(v) Chapter 101, Subchapter H of this title (relating to Emissions Banking and Trading) as it applies to the emission units at a site;

(G) any site-specific requirement of the state implementation plan;

(H) all of the requirements under Chapter 106, Subchapter A of this title (relating to General Requirements [Permits by Rule]), or Chapter 116 of this title

(relating to Control of Air Pollution by Permits for New Construction or Modification) and any term or condition of any preconstruction permit;

(I) all of the following federal requirements as they apply to the emission units at a site:

(i) any standard or other requirement under Federal Clean Air Act (FCAA), §111 (Standards of Performance for New Stationary Sources);

(ii) any standard or other requirement under FCAA, §112 (Hazardous Air Pollutants);

(iii) any standard or other requirement of the Acid Rain program or Cross-State Air Pollution Rule [Clean Air Interstate Rule Programs];

(iv) any requirements established under FCAA, §504(b) or §114(a)(3) (Monitoring and Analysis; or Inspections, Monitoring, and Entry);

(v) any standard or other requirement governing solid waste incineration under FCAA, §129 (Solid Waste Combustion);

(vi) any standard or other requirement for consumer and commercial products under FCAA, §183(e) (Control of Emissions from Certain Sources [Federal Ozone Measures]);

(vii) any standard or other requirement under FCAA, §183(f) (Tank Vessel Standards);

(viii) any standard or other requirement under FCAA, §328 (Air Pollution from Outer Continental Shelf Activities);

(ix) any standard or other requirement under FCAA, Title VI (Stratospheric Ozone Protection), unless EPA has determined that the requirement need not be contained in a permit;

(x) any increment or visibility requirement under FCAA, Title I, Part C (Prevention of Significant Deterioration of Air Quality) or any national ambient air quality standard, but only as it would apply to temporary sources permitted under FCAA, §504(e) (Temporary Sources); and

(xi) any FCAA, Title I, Part C ([relating to] Prevention of Significant Deterioration) permit issued by EPA; and

(J) the following are not applicable requirements under this chapter, except as noted in subparagraph (I)(x) of this paragraph:

(i) any state or federal ambient air quality standard;

(ii) any net ground level concentration limit;

(iii) any ambient atmospheric concentration limit;

(iv) any requirement for mobile sources;

(v) any asbestos demolition or renovation requirement under 40 Code of Federal Regulations (CFR) Part 61, Subpart M (National Emissions Standards for Asbestos);

(vi) any requirement under 40 CFR Part 60, Subpart AAA (Standards of Performance for New Residential Wood Heaters); and

(vii) any state only requirement (including §111.131 of this title (relating to Definitions), §111.133 of this title (relating to Testing Requirements), §111.135 of this title (relating to Control Requirements for Surfaces with Coatings Containing Lead),

§111.137 of this title (relating to Control Requirements for Surfaces with Coatings Containing Less Than 1.0% Lead), and §111.139 of this title (relating to Exemptions).

[(3) Carbon dioxide equivalent (CO_2 e) emissions--shall represent an amount of greenhouse gases (GHGs) emitted, and shall be computed by multiplying the mass amount of emissions in tons per year (tpy) for the GHGs, as defined in §101.1 of this title (relating to Definitions), by the gas's associated global warming potential as published in 40 Code of Federal Regulations Part 98, Subpart A, Table A-1 - Global Warming Potentials, and summing the resultant values.]

(3) [(4)] Continuous compliance determination method--For purposes of Subchapter G of this chapter (relating to Periodic Monitoring and Compliance Assurance Monitoring), a method, specified by an applicable requirement, which satisfies the following criteria:

(A) the method is used to determine compliance with an emission limitation or standard on a continuous basis consistent with the averaging period established for the emission limitation or standard; and

(B) the method provides data either in units of the emission limitation or standard or correlated directly with the emission limitation or standard.

(4) [(5)] Control device--For the purposes of compliance assurance monitoring applicability, specified in §122.604 of this title (relating to Compliance Assurance Monitoring Applicability), the control device definition specified in 40 Code of Federal Regulations Part 64 ([, concerning] Compliance Assurance Monitoring)[,] applies.

(5) [(6)] Deviation--Any indication of noncompliance with a term or condition of the permit as found using compliance method data from monitoring, recordkeeping, reporting, or testing required by the permit and any other credible evidence or information.

(6) [(7)] Deviation limit--A designated value(s) or condition(s) which establishes the boundary for an indicator of performance. Operation outside of the boundary of the indicator of performance shall be considered a deviation.

(7) [(8)] Draft permit--The version of a permit available for the 30-day comment period under public announcement or public notice and affected state review. The draft permit may be the same document as the proposed permit.

(8) [(9)] Emission unit--A discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a point of origin of air pollutants, including appurtenances.

(A) A point of origin of fugitive emissions from individual pieces of equipment, e.g., valves, flanges, pumps, and compressors, shall not be considered an individual emission unit. The fugitive emissions shall be collectively considered as an emission unit based on their relationship to the associated process.

(B) The term may also be used in this chapter to refer to a group of similar emission units.

(C) This term is not meant to alter or affect the definition of the term "unit" for purposes of the Acid Rain Program.

(9) [(10)] Federal Clean Air Act, §502(b)(10) changes--Changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

(10) [(11)] Final action--Issuance or denial of the permit by the executive director.

(11) [(12)] General operating permit--A permit issued under Subchapter F of this chapter (relating to General Operating Permits), under which multiple similar stationary sources may be authorized to operate.

(12) [(13)] Large pollutant-specific emission unit--An emission unit with the potential to emit, taking into account control devices, the applicable air pollutant in an amount equal to or greater than 100% of the amount, in tons per year, required for a source to be classified as a major source, as defined in this section.

(13) [(14)] Major source--

(A) For pollutants other than radionuclides, any site that emits or has the potential to emit, in the aggregate the following quantities:

(i) ten tons per year (tpy) or more of any single hazardous air pollutant listed under Federal Clean Air Act (FCAA), §112(b) (Hazardous Air Pollutants);

(ii) 25 tpy or more of any combination of hazardous air pollutant listed under FCAA, §112(b); or

(iii) any quantity less than those identified in clause (i) or (ii) of this subparagraph established by the United States Environmental Protection Agency (EPA) through rulemaking.

(B) For radionuclides regulated under FCAA, §112, the term "major source" has the meaning specified by the EPA by rule.

(C) Any site which directly emits or has the potential to emit, 100 tpy or more of any air pollutant [except for greenhouse gases (GHGs)]. The fugitive emissions of a stationary source shall not be considered in determining whether it is a major source, unless the stationary source belongs to one of the following categories of stationary sources:

(i) coal cleaning plants (with thermal dryers);

(ii) kraft pulp mills;

(iii) portland cement plants;

(iv) primary zinc smelters;

(v) iron and steel mills;

(vi) primary aluminum ore reduction plants;

(vii) primary copper smelters;

(viii) municipal incinerators capable of charging more than 250 tons of refuse per day;

(ix) hydrofluoric, sulfuric, or nitric acid plants;

(x) petroleum refineries;

(xi) lime plants;

(xii) phosphate rock processing plants;

(xiii) coke oven batteries;

(xiv) sulfur recovery plants;

(xv) carbon black plants (furnace process);

(xvi) primary lead smelters;

(xvii) fuel conversion plant;

(xviii) sintering plants;

(xix) secondary metal production plants;

(xx) chemical process plants (the term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in the North American Industry Classification System codes 312140 or 325193);

(xxi) fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units (Btu) per hour heat input;

(xxii) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(xxiii) taconite ore processing plants;

(xxiv) glass fiber processing plants;

(xxv) charcoal production plants;

(xxvi) fossil fuel-fired steam electric plants of more than 250 million Btu per hour heat input; or

(xxvii) any stationary source category regulated under FCAA, §111 (Standards of Performance for New Stationary Sources) or §112 for which the EPA has made an affirmative determination under FCAA, §302(j) (Definitions).

(D) Any site, except those exempted under FCAA, §182(f) (NO_X Requirements), which, in whole or in part, is a major source under FCAA, Title I, Part D (Plan Requirements for Nonattainment Areas), including the following:

(i) any site with the potential to emit 100 tpy or more of volatile organic compounds (VOC) or nitrogen oxides (NO_X) in any ozone nonattainment area classified as "marginal or moderate";

(ii) any site with the potential to emit 50 tpy or more of VOC or NO_X in any ozone nonattainment area classified as "serious";

(iii) any site with the potential to emit 25 tpy or more of VOC or NO_X in any ozone nonattainment area classified as "severe";

(iv) any site with the potential to emit ten tpy or more of VOC or NO_X in any ozone nonattainment area classified as "extreme";

(v) any site with the potential to emit 100 tpy or more of carbon monoxide (CO) in any CO nonattainment area classified as "moderate";

(vi) any site with the potential to emit 50 tpy or more of CO in any CO nonattainment area classified as "serious";

(vii) any site with the potential to emit 100 tpy or more of inhalable particulate matter (PM-10) in any PM-10 nonattainment area classified as "moderate";

(viii) any site with the potential to emit 70 tpy or more of PM-10 in any PM-10 nonattainment area classified as "serious"; and

(ix) any site with the potential to emit 100 tpy or more of lead in any lead nonattainment area.

(E) The fugitive emissions of a stationary source shall not be considered in determining whether it is a major source under subparagraph (D) of this paragraph, unless the stationary source belongs to one of the categories of stationary sources listed in subparagraph (C) of this paragraph.

(F) Any temporary source which is located at a site for less than six months shall not affect the determination of a major source for other stationary sources at a site under this chapter or require a revision to the existing permit at the site.

(G) Emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not the units are in a contiguous area or under common control, to determine whether the units or stations are major sources under subparagraph (A) of this paragraph.

[(H) For GHGs, any site that emits or has the potential to emit 100 tpy or more of GHGs on a mass basis and 100,000 tpy carbon dioxide equivalent (CO_2 e) emissions or more. The fugitive emissions of a stationary source shall not be considered in determining whether it is a major source, unless the stationary source belongs to one of the categories of stationary sources listed in subparagraph (C) of this paragraph.]

(14) [(15)] Notice and comment hearing--Any hearing held under this chapter. Hearings held under this chapter are for the purpose of receiving oral and written comments regarding draft permits.

(15) [(16)] Permit or federal operating permit--

(A) any permit, or group of permits covering a site, that is issued, renewed, or revised under this chapter; or

(B) any general operating permit issued, renewed, or revised by the executive director under this chapter.

(16) [(17)] Permit anniversary--The date that occurs every 12 months after the initial permit issuance, the initial granting of the authorization to operate, or renewal.

(17) [(18)] Permit application--An application for an initial permit, permit revision, permit renewal, permit reopening, general operating permit, or any other similar application as may be required.

(18) [(19)] Permit holder--A person who has been issued a permit or granted the authority by the executive director to operate under a general operating permit.

(19) [(20)] Permit revision--Any administrative permit revision, minor permit revision, or significant permit revision that meets the related requirements of this chapter.

(20) [(21)] Potential to emit--The maximum capacity of a stationary source to emit any air pollutant under its physical and operational design or configuration. Any certified registration established under §106.6 of this title (relating to Registration of Emissions), §116.611 of this title (relating to Registration to Use a Standard Permit), or §122.122 of this title (relating to Potential to Emit), or a permit by rule under Chapter 106 of this title (relating to Permits by Rule) or other new source review permit under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) restricting emissions or any physical or operational limitation on the capacity of a stationary source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the United States Environmental Protection Agency. This term does not alter or affect the use of this term for any other purposes under the Federal Clean Air Act (FCAA), or the term "capacity factor" as used in Acid Rain provisions of the FCAA or the Acid Rain rules.

(21) [(22)] Preconstruction authorization--Any authorization to construct or modify an existing facility or facilities under Chapter 106 and Chapter 116 of this title

(relating to Permits by Rule; and Control of Air Pollution by Permits for New Construction or Modification). In this chapter, references to preconstruction authorization will also include the following:

(A) any requirement established under Federal Clean Air Act (FCAA), §112(g) (Modifications); and

(B) any requirement established under FCAA, §112(j) (Equivalent Emission Limitation by Permit).

(22) [(23)] Predictive emission monitoring system--A system that uses process and other parameters as inputs to a computer program or other data reduction system to produce values in terms of the applicable emission limitation or standard.

(23) [(24)] Proposed permit--The version of a permit that the executive director forwards to the United States Environmental Protection Agency for a 45-day review period. The proposed permit may be the same document as the draft permit.

(24) [(25)] Provisional terms and conditions--Temporary terms and conditions, established by the permit holder for an emission unit affected by a change at a site, or the promulgation or adoption of an applicable requirement or state-only

requirement, under which the permit holder is authorized to operate prior to a revision or renewal of a permit or prior to the granting of a new authorization to operate.

(A) Provisional terms and conditions will only apply to changes not requiring prior approval by the executive director.

(B) Provisional terms and conditions shall not authorize the violation of any applicable requirement or state-only requirement.

(C) Provisional terms and conditions shall be consistent with and accurately incorporate the applicable requirements and state-only requirements.

(D) Provisional terms and conditions for applicable requirements and state-only requirements shall include the following:

(i) the specific regulatory citations in each applicable requirement or state-only requirement identifying the emission limitations and standards;

(ii) the monitoring, recordkeeping, reporting, and testing requirements associated with the emission limitations and standards identified under clause (i) of this subparagraph; and

(iii) where applicable, the specific regulatory citations identifying any requirements that no longer apply.

(25) [(26)] Renewal--The process by which a permit or an authorization to operate under a general operating permit is renewed at the end of its term under §§122.241, 122.501, or 122.505 of this title (relating to Permit Renewals; General Operating Permits; or Renewal of the Authorization to Operate Under a General Operating Permit).

(26) [(27)] Reopening--The process by which a permit is reopened for cause and terminated or revised under §122.231 of this title (relating to Permit Reopenings).

(27) [(28)] Site--The total of all stationary sources located on one or more contiguous or adjacent properties, which are under common control of the same person (or persons under common control). A research and development operation and a collocated manufacturing facility shall be considered a single site if they each have the same two-digit Major Group Standard Industrial Classification [(SIC)] code (as described in the Standard Industrial Classification Manual, 1987) or the research and development operation is a support facility for the manufacturing facility.

(28) [(29)] State-only requirement--Any requirement governing the emission of air pollutants from stationary sources that may be codified in the permit at the discretion of the executive director. State-only requirements shall not include any

requirement required under the Federal Clean Air Act or under any applicable requirement.

(29) [(30)] Stationary source--Any building, structure, facility, or installation that emits or may emit any air pollutant. Nonroad engines, as defined in 40 Code of Federal Regulations Part 89 (Control of Emissions from New and In-use Nonroad Engines), shall not be considered stationary sources for the purposes of this chapter.

§122.12. Acid Rain [and Clean Air Interstate Rule] Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Acid Rain permit--The legally binding and segregable portion of the federal operating permit issued under this chapter, including any permit revisions, specifying the Acid Rain Program requirements applicable to an affected source, to each affected unit at an affected source, and to the owners and operators and the designated representative of the affected source or the affected unit.

(2) Acid Rain Program--The national sulfur dioxide and nitrogen oxides air pollution control and emissions reduction program established in accordance with Federal Clean Air Act, Title IV, contained in 40 Code of Federal Regulations Parts 72 - 78.

[(3) Clean Air Interstate Rule permit--The legally binding and federally enforceable written document, or portion of such document, issued by the permitting authority under 40 Code of Federal Regulations Part 96, Subpart CC or Subpart CCC, including any permit revisions, specifying the Clean Air Interstate Rule (CAIR) Nitrogen Oxides (NO_X) Annual Trading Program and CAIR Sulfur Dioxide (SO_2) Trading Program requirements applicable to a CAIR NO_X source and CAIR SO_2 source, to each CAIR NO_X unit and CAIR SO_2 unit at the source, and to the owners and operators and the CAIR designated representative of the source and each such unit.]

(3) [(4)] Designated representative--The responsible individual authorized by the owners and operators of an affected source and of all affected units at the site, as evidenced by a certificate of representation submitted in accordance with the Acid Rain Program, to represent and legally bind each owner and operator, as a matter of federal law, in matters pertaining to the Acid Rain Program. Such matters include, but are not limited to: the holdings, transfers, or dispositions of allowances allocated to a unit; and the submission of or compliance with Acid Rain permits, permit applications, compliance plans, emission monitoring plans, continuous emissions monitor (CEM), and continuous opacity monitor (COM) certification notifications, CEM and COM certification and applications, quarterly monitoring and emission reports, and annual compliance certifications. Whenever the term "responsible official" is used in this chapter, it shall refer to the "designated representative" with regard to all matters under the Acid Rain Program.

SUBCHAPTER B: PERMIT REQUIREMENTS

DIVISION 1: GENERAL REQUIREMENTS

§122.120

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendment is also proposed under Texas Health and Safety Code (THSC), Texas Clean Air Act (TCAA), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the THSC; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits to operate a federal source and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the TCAA; THSC, §382.0515, concerning Application for Permit, which specifies permit application requirements; THSC, §382.054, concerning Federal Operating Permit, which requires sources to obtain a federal operating permit; THSC, §382.0541, concerning Administration and Enforcement of Federal Operating Permit,

which authorizes the commission to administer and enforce federal operating permits; THSC, §382.0543, concerning Review and Renewal of Federal Operating Permit, which authorizes the commission to review and renew federal operating permits; and THSC, §382.05102, which relates to the permitting authority of the commission for greenhouse gas emissions. Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; and Texas Government Code, §2001.142, which provides a time period for presumed notification by a state agency. The amendment is also proposed under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7661 - 7661e, which requires states to develop and submit permit programs to United States Environmental Protection Agency that implement the requirements of the Title V Permits Program.

The proposed amendment implements TWC, §§5.102, 5.103, and 5.105; THSC, §§382.011, 382.017, 382.051, 382.05102, 382.0515, 382.0518, 382.054, 382.0541, and 382.0543; Texas Government Code, §2001.006 and §2001.142; and FCAA, 42 USC, §§7661 - 7661e.

§122.120. Applicability.

(a) Except as identified in subsection (b) of this section, owners and operators of one or more of the following are subject to the requirements of this chapter:

(1) any site that is a major source as defined in §122.10 of this title (relating to General Definitions);

(2) any site with an affected unit as defined in 40 Code of Federal Regulations Part 72 subject to the requirements of the Acid Rain Program;

(3) any solid waste incineration unit required to obtain a permit under Federal Clean Air Act (FCAA), §129(e) (Permits [relating to Solid Waste Combustion]); or

(4) any site that is a non-major source which the United States Environmental Protection Agency (EPA), through rulemaking, has designated as no longer exempt or no longer eligible for a deferral from the obligation to obtain a permit. For the purposes of this chapter, those sources may be any of the following:

(A) any non-major source so designated by the EPA, and subject to a standard, limitation, or other requirement under FCAA, §111 ([relating to] Standards of Performance for New Stationary Sources);

(B) any non-major source so designated by the EPA, and subject to a standard or other requirement under FCAA, §112 ([relating to] Hazardous Air Pollutants), except for FCAA, §112(r) ([relating to] Prevention of Accidental Releases); or

(C) any non-major source in a source category designated by the EPA.

[;]

[(5) any Clean Air Interstate Rule (CAIR) nitrogen oxides unit, as defined in 40 CFR §96.102, Definitions, if the CAIR nitrogen oxides unit is otherwise required to have a federal operating permit; or]

[(6) any CAIR sulfur dioxide unit, as defined in 40 CFR §96.202, Definitions, if the CAIR sulfur dioxide unit is otherwise required to have a federal operating permit.]

(b) The following are not subject to the requirements of this chapter:

(1) any site that is a non-major source which the EPA, through rulemaking, has designated as exempt from the obligation to obtain a permit; or

(2) any site that is a non-major source which the EPA has allowed permitting authorities to defer from the obligation to obtain a permit.

SUBCHAPTER B: PERMIT REQUIREMENTS

DIVISION 2: APPLICABILITY

§122.122

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendment is also proposed under Texas Health and Safety Code (THSC), Texas Clean Air Act (TCAA), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the THSC; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits to operate a federal source and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the TCAA; THSC, §382.0515, concerning Application for Permit, which specifies permit application requirements; THSC, §382.054, concerning Federal Operating Permit, which requires sources to obtain a federal operating permit; THSC, §382.0541, concerning Administration and Enforcement of Federal Operating Permit,

which authorizes the commission to administer and enforce federal operating permits; THSC, §382.0543, concerning Review and Renewal of Federal Operating Permit, which authorizes the commission to review and renew federal operating permits; and THSC, §382.05102, which relates to the permitting authority of the commission for greenhouse gas emissions. Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; and Texas Government Code, §2001.142, which provides a time period for presumed notification by a state agency. The amendment is also proposed under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7661 - 7661e, which requires states to develop and submit permit programs to the United States Environmental Protection Agency that implement the requirements of the Title V Permits Program.

The proposed amendment implements TWC, §§5.102, 5.103, and 5.105; THSC, §§382.011, 382.017, 382.051, 382.05102, 382.0515, 382.0518, 382.054, 382.0541, and 382.0543; Texas Government Code, §2001.006 and §2001.142; and FCAA, 42 USC, §§7661 - 7661e.

§122.122. Potential to Emit.

(a) For purposes of determining applicability of the Federal Operating Permit Program under this chapter, the owner or operator of stationary sources without any other federally-enforceable emission rate may limit their sources' potential to emit by

maintaining a certified registration of emissions, which shall be federally enforceable [federally-enforceable]. Emission rates in new source review permits under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) and certified registrations provided for under Chapter 106 of this title (relating to Permits by Rule) or Chapter 116 of this title are also federally-enforceable emission rates.

(b) All representations in any registration of emissions under this section with regard to emissions, production or operational limits, monitoring, and reporting shall become conditions upon which the stationary source shall operate. It shall be unlawful for any person to vary from such representation unless the registration is first revised.

(c) The registration of emissions shall include documentation of the basis of emission rates and a certification, in accordance with §122.165 of this title (relating to Certification by a Responsible Official), that the maximum emission rates listed on the registration reflect the reasonably anticipated maximums for operation of the stationary source.

(d) In order to qualify for registrations of emissions under this section, the maximum emission rates listed in the registration must be less than those rates defined for a major source in §122.10 of this title (relating to General Definitions).

(e) The certified registrations of emissions shall be submitted to the executive director; to the appropriate commission regional office; and to all local air pollution control agencies having jurisdiction over the site.

(1) Certified registrations established prior to December 11, 2002, shall be submitted on or before February 3, 2003.

(2) Certified registrations established on or after December 11, 2002, shall be submitted no later than the date of operation.

[(3) Certified registrations established for greenhouse gases (GHGs) (as defined in §101.1 of this title (relating to Definitions)) on or after the effective date of the United States Environmental Protection Agency's final action approving amendments to this section into the State Implementation Plan (SIP) shall be submitted:]

[(A) for existing sites that emit or have the potential to emit GHGs, no later than 12 months after the effective date of EPA's final action approving amendments to this section as a revision to the Federal Operating Permits Program; or]

[(B) for new sites that emit or have the potential to emit GHGs, no later than the date of operation.]

(f) All certified registrations and records demonstrating compliance with a certified registration shall be maintained on-site and shall be provided, upon request, during regular business hours to representatives of the appropriate commission regional office and any local air pollution control agency having jurisdiction over the site. If however, the site normally operates unattended, certified registrations and records demonstrating compliance with the certified registration must be maintained at an office within Texas having day-to-day operational control of the site. Upon request, the commission shall make any such records of compliance available to the public in a timely manner.

SUBCHAPTER B: PERMIT REQUIREMENTS

DIVISION 3: PERMIT APPLICATION

§122.130, §122.132

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendments are also proposed under Texas Health and Safety Code (THSC), Texas Clean Air Act (TCAA), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the THSC; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits to operate a federal source and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the TCAA; THSC, §382.0515, concerning Application for Permit, which specifies permit application requirements; THSC, §382.054, concerning Federal Operating Permit, which requires sources to obtain a federal operating permit; THSC, §382.0541, concerning Administration and Enforcement of Federal Operating Permit,

which authorizes the commission to administer and enforce federal operating permits; THSC, §382.0543, concerning Review and Renewal of Federal Operating Permit, which authorizes the commission to review and renew federal operating permits; and THSC, §382.05102, which relates to the permitting authority of the commission for greenhouse gas emissions. Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; and Texas Government Code, §2001.142, which provides a time period for presumed notification by a state agency. The amendments are also proposed under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7661 - 7661e, which requires states to develop and submit permit programs to the United States Environmental Protection Agency that implement the requirements of the Title V Permits Program.

The proposed amendments implement TWC, §§5.102, 5.103, and 5.105; THSC, §§382.011, 382.017, 382.051, 382.05102, 382.0515, 382.0518, 382.054, 382.0541, and 382.0543; Texas Government Code, §2001.006 and §2001.142; and FCAA, 42 USC, §§7661 - 7661e.

§122.130. Initial Application Due Dates.

(a) Owners or operators of any site subject to the requirements of this chapter on February 1, 1998, shall submit abbreviated initial applications by February 1, 1998. The

executive director shall inform the applicant in writing of the deadline for submitting the remaining application information.

(b) Owners and operators of sites identified in §122.120 of this title (relating to Applicability) that become subject to the requirements of this chapter after February 1, 1998 are subject to the following requirements.

(1) If the site is a new site or a site that will become subject to the program as the result of a change at the site, the owner or operator shall not operate the change, or the new emission units, before an abbreviated application is submitted under this chapter. The executive director shall inform the applicant in writing of the deadline for submitting the remaining information.

(2) If the site becomes subject to the program as the result of an action by the executive director or the United States Environmental Protection Agency (EPA), the owner or operator will submit an abbreviated application no later than 12 months after the action that subjects the site to the requirements of this chapter.

[(3) If the site becomes subject to the program as a result of rulemaking revision that adds greenhouse gas sources to the Federal Operating Permits Program, the owner or operator will submit an abbreviated application no later than 12 months after EPA's final action approving the Federal Operating Permits Program revision.]

(c) Applications submitted under 40 Code of Federal Regulations (CFR) Part 71 (Federal Operating Permit Programs).

(1) If 40 CFR Part 71 is implemented in Texas by the EPA, applications will only be required to be submitted to the EPA.

(2) If all or part of 40 CFR Part 71 is delegated to the commission, information required by this chapter and consistent with the delegation will be required to be submitted to the commission.

§122.132. Application and Required Information for Initial Permit Issuance, Reopening, Renewal, or General Operating Permits.

(a) A permit application shall provide any information, including confidential information as addressed in Chapter 1 of this title (relating to Purpose of Rules, General Provisions), required by the executive director to determine the applicability of, or to codify, any applicable requirement or state-only requirement.

(b) An application for a general operating permit shall only be required to provide the information necessary to determine qualification for, and to assure compliance with, the general operating permit.

(c) An applicant may submit an abbreviated initial permit application, containing only the information in this section deemed necessary by the executive director. The abbreviated application shall include at a minimum, a general application form containing identifying information regarding the site and the applicant and a certification by a responsible official. The executive director shall inform the applicant in writing of the deadline for submitting the remaining information.

[(d) An application for a site qualifying under §122.131 of this title (relating to Phased Permit Detail) may be submitted under the phased permit detail process.]

(d) [(e)] An application shall include, but is not limited to, the following information:

(1) a general application form and all information requested by that form;

(2) for each emission unit, information regarding the general applicability determinations, which includes the following:

(A) the general identification of each potentially applicable requirement and potentially applicable state-only requirement (e.g., New Source Performance Standards Subpart Kb [NSPS Kb]);

(B) the applicability determination for each requirement identified under subparagraph (A) of this paragraph; and

(C) the basis for each determination made under subparagraph (B) of this paragraph;

(3) for each emission unit, [except as provided in §122.131 of this title,] information regarding the detailed applicability determinations, which includes the following:

(A) the specific regulatory citations in each applicable requirement or state-only requirement identifying the following:

(i) the emission limitations and standards; and

(ii) the monitoring, recordkeeping, reporting, and testing requirements associated with the emission limitations and standards identified under clause (i) of this subparagraph;

(B) the basis for each applicability determination identified under subparagraph (A) of this paragraph;

(4) a compliance plan including the following information:

(A) the following statement: "As the responsible official it is my intent that all emission units shall continue to be in compliance with all applicable requirements they are currently in compliance with, and all emission units shall be in compliance by the compliance dates with any applicable requirements that become effective during the permit term.";

(B) for all emission units addressed in the application, an indication of the compliance status with respect to all applicable requirements, based on any compliance method specified in the applicable requirements and any other credible evidence or information;

(C) for any emission unit not in compliance with the applicable requirements identified in the application, the following information:

(i) the method used for assessing the compliance status of the emission unit;

(ii) a narrative description of how the emission unit will come into compliance with all applicable requirements;

(iii) a compliance schedule (resembling and at least as stringent as any compliance schedule contained in any judicial consent decree or administrative order to which the site is subject), including remedial measures to bring the emission unit into compliance with the applicable requirements; which shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based; and

(iv) a schedule for the submission, at least every six months after issuance of the permit, of certified progress reports;

(D) for any emission unit requiring installation, testing, or final verification of operational status of monitoring equipment to satisfy the requirements of compliance assurance monitoring or periodic monitoring, the following information:

(i) an implementation plan and schedule for installing, testing, and performing any other appropriate activities prior to use of the monitoring; and

(ii) milestones for completing such installation, testing, or final verification;

(5) if applicable, information requested by the nationally-standardized forms for the acid rain portions of permit applications, and compliance plans required by the acid rain program;

(6) if applicable, a statement certifying that a risk management plan, or a schedule to submit a risk management plan has been submitted to the appropriate agency in accordance with Federal Clean Air Act [FCAA], §112(r)(7) (Prevention of Accidental Releases);

[(7) for applicants electing the phased permit detail process under §122.131 of this title, a proposed schedule for the incorporation of the remaining detailed applicability determinations into the permit;]

(7) [(8)] for applicants requesting a permit shield, any information requested by the executive director in order to determine whether to grant the shield;

(8) [(9)] a certification in accordance with §122.165 of this title (relating to Certification by a Responsible Official);

(9) [(10)] fugitive emissions from an emission unit shall be included in the permit application and the permit in the same manner as stack emissions, regardless of

whether the source category in question is included in the list of sources contained in the definition of "Major Source" [major source]; [and]

(10) [(11)] for any application for which the executive director has not authorized initiation of public notice by June 3, 2001, any preconstruction authorizations that are applicable to emission units at the site;

(11) [(12)] for emission units subject to compliance assurance monitoring, as specified in §122.604 of this title (relating to Compliance Assurance Monitoring Applicability), information specified in 40 Code of Federal Regulations (CFR) §64.3 ([concerning] Monitoring Design Criteria); and 40 CFR §64.4 ([concerning] Submittal Requirements), according to the schedule specified in 40 CFR §64.5 ([concerning] Deadlines for Submittals); and[.]

(12) [(13)] for emission units subject to periodic monitoring, as specified in §122.602 of this title (relating to Periodic Monitoring Applicability), proposed periodic monitoring requirements sufficient to yield reliable data from the relevant time period that are representative of the emission unit's compliance with the applicable requirement, and testing, monitoring, reporting, or recordkeeping sufficient to assure compliance with the applicable requirement, shall be submitted for the following permitting actions:

(A) permits issued under §122.201 of this title (relating to Initial Permit Issuance);

(B) permit renewals issued under §122.243 of this title (relating to Permit Renewal Procedures);

(C) permit reopenings issued under §122.231(a) and (b) of this title (relating to Permit Reopenings);

(D) significant permit revisions issued under §122.221 of this title (relating to Procedures for Significant Permit Revisions); and

(E) minor permit revisions issued under §122.217 of this title (relating to Procedures for Minor Permit Revisions).

(e) [(f)] The executive director shall make a copy of the permit application accessible to the United States Environmental Protection Agency [EPA].

(f) [(g)] An application may not omit information needed to determine the applicability of, or to impose, any applicable requirement; however, any facilities that meet the requirements of §116.119 of this title (relating to De Minimis Facilities or Sources) are

not required to be included in applications unless the facilities or sources are subject to an applicable requirement.

SUBCHAPTER B: PERMIT REQUIREMENTS

DIVISION 4: PERMIT CONTENT

§§122.142, 122.145, 122.148

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendments are also proposed under Texas Health and Safety Code (THSC), Texas Clean Air Act (TCAA), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the THSC; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits to operate a federal source and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the TCAA; THSC, §382.0515, concerning Application for Permit, which specifies permit application requirements; THSC, §382.054, concerning Federal Operating Permit, which requires sources to obtain a federal operating permit; THSC,

§382.0541, concerning Administration and Enforcement of Federal Operating Permit, which authorizes the commission to administer and enforce federal operating permits; THSC, §382.0543, concerning Review and Renewal of Federal Operating Permit, which authorizes the commission to review and renew federal operating permits; and THSC, §382.05102, which relates to the permitting authority of the commission for greenhouse gas emissions. Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; and Texas Government Code, §2001.142, which provides a time period for presumed notification by a state agency. The amendments are also proposed under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7661 - 7661e, which requires states to develop and submit permit programs to the United States Environmental Protection Agency that implement the requirements of the Title V Permits Program.

The proposed amendments implement TWC, §§5.102, 5.103, and 5.105; THSC, §§382.011, 382.017, 382.051, 382.05102, 382.0515, 382.0518, 382.054, 382.0541, and 382.0543; Texas Government Code, §2001.006 and §2001.142; and FCAA, 42 USC, §§7661 - 7661e.

§122.142. Permit Content Requirements.

(a) The conditions of the permit shall provide for compliance with the requirements of this chapter.

(b) Each permit issued under this chapter shall contain the information required by this subsection.

(1) Unless otherwise specified in the permit, each permit shall include the terms and conditions in §§122.143 - 122.146 of this title (relating to General Terms and Conditions; Recordkeeping Terms and Conditions; Reporting Terms and Conditions; and Compliance Certification Terms and Conditions).

(2) Each permit shall also contain specific terms and conditions for each emission unit regarding the following:

(A) the generally identified applicable requirements and state-only requirements (e.g., New Source Performance Standards, Subpart Kb [NSPS Kb]);

(B) [except as provided by the phased permit detail process,] the detailed applicability determinations, which include the following:

(i) the specific regulatory citations in each applicable requirement or state-only requirement identifying the emission limitations and standards; and

(ii) the monitoring, recordkeeping, reporting, and testing requirements associated with the emission limitations and standards identified under clause (i) of this subparagraph sufficient to ensure compliance with the permit.

(3) Each permit for which the executive director has not authorized initiation of public notice by June 3, 2001 shall contain any preconstruction authorization that is applicable to emission units at the site.

(c) Each permit shall contain periodic monitoring requirements that are sufficient to yield reliable data from the relevant time period that are representative of the emission unit's compliance with the applicable requirement, and testing, monitoring, reporting, or recordkeeping sufficient to assure compliance with the applicable requirement.

[(d) For permits undergoing the phased permit detail process, the permit shall contain a schedule for phasing in the detailed applicability determinations consistent with §122.131 of this title (relating to Phased Permit Detail).]

(d) [(e)] For emission units not in compliance with the applicable requirements at the time of initial permit issuance or renewal, the permit shall contain the following:

(1) a compliance schedule or a reference to a compliance schedule consistent with §122.132(d)(4)(C) [§122.132(e)(4)(C)] of this title (relating to Application and

Required Information for Initial Permit Issuance, Reopening, Renewal, or General Operating Permits); and

(2) a requirement to submit progress reports consistent with §122.132(d)(4)(C) [§122.132(e)(4)(C)] of this title. The progress reports shall include the following information:

(A) the dates for achieving the activities, milestones, or compliance required in the compliance schedule;

(B) dates when the activities, milestones, or compliance required in the compliance schedule were achieved; and

(C) an explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

(e) [(f)] At the executive director's discretion, and upon request by the applicant, the permit may contain a permit shield for specific emission units.

(f) [(g)] Where an applicable requirement is more stringent than a requirement under the acid rain program, both requirements shall be incorporated into the permit and shall be enforceable requirements of the permit.

(g) [(h)] Permits shall contain compliance assurance monitoring in accordance with the schedule specified in 40 Code of Federal Regulations §64.5 ([concerning] Deadlines for Submittals).

(h) [(i)] Any compliance assurance monitoring requirements for an emission unit shall satisfy the requirements for periodic monitoring.

§122.145. Reporting Terms and Conditions.

Unless otherwise specified in the permit, the following reporting requirements shall become terms and conditions of the permit.

(1) Monitoring reports.

(A) Reports of monitoring data required to be submitted by an applicable requirement, or by the permit, shall be submitted to the executive director.

(B) Reports shall be submitted for at least each six-month period after permit issuance or at the frequency required by an applicable requirement which requires more frequent reporting.

(C) The monitoring reports shall be submitted no later than 30 days after the end of each reporting period.

(D) The reporting of monitoring data does not change the data collection requirements specified in an applicable requirement.

(2) Deviation reports.

(A) The permit holder shall report, in writing, to the executive director all instances of deviations, the probable cause of the deviations, and any corrective actions or preventative measures taken for each emission unit addressed in the permit.

(B) A deviation report shall be submitted for at least each six-month period after permit issuance or at the frequency required by an applicable requirement which requires more frequent reporting. However, no report is required if no deviations occurred over the six-month reporting period.

(C) The deviation reports shall be submitted no later than 30 days after the end of each reporting period.

(D) Reporting in accordance with §101.201 [§101.6] and §101.211 [§101.7] of this title (relating to Emissions Event Reporting and Recordkeeping

Requirements; and Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements [Upset Reporting and Recordkeeping Requirements and Maintenance, Start-up and Shutdown Reporting, Recordkeeping, and Operational Requirements]) does not substitute for reporting deviations under this paragraph.

§122.148. Permit Shield.

(a) At the discretion of the executive director, and upon request by the applicant, the permit may contain a permit shield for specific emission units. The permit shield is a special condition stating that compliance with the conditions of the permit shall be deemed compliance with the specified potentially applicable requirements or specified potentially applicable state-only requirements.

(b) In order for the executive director to determine that an emission unit qualifies for a permit shield, all information required by §122.132(d)(2), (3), and (7) [§122.132(e)(2), (3) and (8)] of this title (relating to Application and Required Information for Initial Permit Issuance, Reopening, Renewal, or General Operating Permits) must be submitted with the permit application.

(c) The permit shall contain the following information for the emission units addressed by the permit shield:

(1) determinations by the executive director establishing one of the following:

(A) potentially applicable requirements or potentially applicable state-only requirements specifically identified during the application review process are not applicable to the source; or

(B) duplicative, redundant, and/or contradicting applicable requirements or state-only applicable requirements specifically identified during the application review process are superseded by a more stringent or equivalent requirement; and

(2) a statement that compliance with the conditions of the permit shall be deemed compliance with the specified potentially applicable requirements or specified potentially applicable state-only requirements.

(d) Any permit that does not expressly state that a permit shield exists shall not provide a permit shield.

(e) Permit shield provisions shall not be modified by the executive director until notification is provided to the permit holder. No later than 90 days after notification of a change in a determination made by the executive director, the permit holder shall apply for the appropriate permit revision to reflect the new determination.

(f) Provisional terms and conditions are not eligible for a permit shield. Any permit term or condition, under a permit shield, shall not be protected by the permit shield if it is replaced by a provisional term or condition or the basis of the term or condition changes.

(g) Nothing in this section shall alter or affect the following:

(1) the provisions of Federal Clean Air Act (FCAA) [FCAA], §303 (Emergency Orders);

(2) the liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance;

(3) the applicable requirements of the acid rain program; or

(4) the ability of the United States Environmental Protection Agency [EPA] to obtain information from a source under FCAA, §114 (Inspections, Monitoring, and Entry).

SUBCHAPTER E: ACID RAIN PERMITS [AND CLEAN AIR INTERSTATE RULE]

[DIVISION 2: CLEAN AIR INTERSTATE RULE]

[§§122.420, 122.422, 122.424, 122.426, 122.428]

Statutory Authority

The repeal of the sections is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The repeal of the sections is also proposed under Texas Health and Safety Code (THSC), Texas Clean Air Act (TCAA), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the THSC; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits to operate a federal source and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the TCAA; THSC, §382.0515, concerning Application for Permit, which specifies permit application requirements; THSC, §382.054, concerning Federal

Operating Permit, which requires sources to obtain a federal operating permit; THSC, §382.0541, concerning Administration and Enforcement of Federal Operating Permit, which authorizes the commission to administer and enforce federal operating permits; THSC, §382.0543, concerning Review and Renewal of Federal Operating Permit, which authorizes the commission to review and renew federal operating permits; and THSC, §382.05102, which relates to the permitting authority of the commission for greenhouse gas emissions. Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; and Texas Government Code, §2001.142, which provides a time period for presumed notification by a state agency. The repeal of the sections is also proposed under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7661 - 7661e, which requires states to develop and submit permit programs to the United States Environmental Protection Agency that implement the requirements of the Title V Permits Program.

The proposed repeal of the sections implements TWC, §§5.102, 5.103, and 5.105; THSC, §§382.011, 382.017, 382.051, 382.05102, 382.0515, 382.0518, 382.054, 382.0541, and 382.0543; Texas Government Code, §2001.006 and §2001.142; and FCAA, 42 USC, §§7661 - 7661e.

[§122.420. General Clean Air Interstate Rule Annual Trading Program Permit Requirements.]

[(a) For each Clean Air Interstate Rule (CAIR) nitrogen oxides (NOx) source and CAIR sulfur dioxide (SO_2) source required to have a federal operating permit, such permit must include a CAIR permit. The CAIR portion of the federal permit must be administered in accordance with this chapter as applicable, except as provided otherwise by 40 Code of Federal Regulations (CFR) Part 96, Subpart CC and Subpart CCC.]

[(b) Each CAIR permit must contain, with regard to the CAIR NOx source and CAIR SO_2 source and the CAIR NO_X units and CAIR SO_2 units at the source covered by the CAIR permit, all applicable CAIR NO_X Annual Trading Program, and CAIR SO_2 Trading Program requirements and must be a complete and separable portion of the federal operating permit or other federally enforceable permit under subsection (c) of this section.]

[(c) For each CAIR NO_X opt-in unit and CAIR SO_2 opt-in unit that is required to have a federally enforceable permit, such permit must include a CAIR permit. The CAIR portion of the federally enforceable permit must be administered in accordance with the commission's regulations for such permit as applicable, except as otherwise provided under 40 CFR Part 96, Subparts II and III.]

[(d) No CAIR permit may be issued, amended, reopened, or renewed until the United States Environmental Protection Agency has received a complete certificate of

representation under 40 CFR §96.113 or §96.213 for a CAIR designated representative of the CAIR NO_X and CAIR SO_2 source and the CAIR NO_X and CAIR SO_2 units at the source.]

[§122.422. Submission of Clean Air Interstate Rule Permit Applications.]

[(a) The Clean Air Interstate Rule (CAIR) designated representative of any CAIR nitrogen oxides (NO_X) source and CAIR sulfur dioxide (SO_2) source required to have a federal operating permit shall submit to the executive director a complete CAIR permit application under §122.424 of this title (relating to Information Requirements for Clean Air Interstate Rule Permit Applications) for the source covering each CAIR NO_X unit and CAIR SO_2 unit at the source by June 1, 2007, or at least 18 months prior to the date that the CAIR NO_X unit and CAIR SO_2 unit commences operation.]

[(b) For a CAIR NO_X source and CAIR SO_2 source required to have a federal operating permit, the CAIR designated representative shall submit a complete CAIR permit application to the executive director under §122.424 of this title for the source covering each CAIR NO_X unit and CAIR SO_2 unit at the source to renew the CAIR permit in accordance with this chapter.]

[§122.424. Information Requirements for Clean Air Interstate Rule Permit Applications.]

[A complete Clean Air Interstate Rule (CAIR) permit application must include the following elements concerning the CAIR nitrogen oxides (NO_X) source and CAIR sulfur dioxide (SO_2) source for which the application is submitted, in a format prescribed by the executive director:]

[(1) identification of the CAIR NO_X source and CAIR SO_2 source;]

[(2) identification of each CAIR NO_X unit and CAIR SO_2 unit at the CAIR NO_X source and CAIR SO_2 source;]

[(3) the standard requirements under 40 Code of Federal Regulations §96.106 and §96.206;]

[(4) a copy of the complete certificate of representation submitted to the United States Environmental Protection Agency as required under §122.420(d) of this title (relating to General Clean Air Interstate Rule Annual Trading Program Permit Requirements); and]

[(5) any other information requested by the executive director.]

[§122.426. Clean Air Interstate Rule Permit Contents and Term.]

[(a) Each Clean Air Interstate Rule (CAIR) permit must contain, in a format prescribed by the executive director, all elements required for a complete CAIR permit application under §122.424 of this title (relating to Information Requirements for Clean Air Interstate Rule Permit Applications).]

[(b) Each CAIR permit must incorporate the definitions of terms under 40 Code of Federal Regulations §96.102 and §96.202 and, upon recordation by the United States Environmental Protection Agency administrator under 40 Code of Federal Regulations Part 96, Subparts FF, GG, II, FFF, GGG, and III every allocation, transfer, and deduction of a CAIR nitrogen oxides (NO_X) allowance and CAIR sulfur dioxide (SO_2) allowance to or from the compliance account of the CAIR NO_X source and CAIR SO_2 source covered by the permit.]

[(c) The executive director shall set the term of the CAIR permit as necessary to facilitate coordination of the renewal of the CAIR permit with issuance, revision, reopening, or renewal of the CAIR NO_X source's and CAIR SO_2 source's federal operating permit.]

[§122.428. Clean Air Interstate Rule Permit Revisions.]

[Except as provided in §122.426(b) of this title (relating to Clean Air Interstate Rule Permit Contents and Term), the executive director shall revise the Clean Air Interstate

Rule permit, as necessary, in accordance with this chapter or the regulations for other federally enforceable permits regarding permit revisions as applicable addressing permit revisions.]