

The Texas Natural Resource Commission (agency or commission) proposes an amendment to §101.1 and the repeal of §§101.6, 101.7, 101.11, 101.12, and 101.15 - 101.17. The commission also proposes new §101.201 in new Division 1, *Emissions Events*; new §101.211 in new Division 2, *Maintenance, Startup, and Shutdown Activities*; §§101.221 - 101.224 in new Division 3, *Operational Requirements, Demonstrations, and Excessive Emissions Events*; and new §§101.231 - 101.233 in new Division 4, *Variances*. The amendment and repeals are being proposed in Subchapter A, *General Rules*, and the new sections are being proposed in new Subchapter F, *Emissions Events and Scheduled Maintenance, Startup, and Shutdown Activities*. The commission proposes the amendment, repeals, and new sections as revisions to the state implementation plan (SIP) which will be submitted to the United States Environmental Protection Agency (EPA). This rulemaking action is being proposed to incorporate the statutory requirements of House Bill (HB) 2912, §5.01 and §18.14, 77th Legislature, 2001, into the commission rules.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

During the 77th Legislative Session, the legislature adopted HB 2912. The bill became effective on September 1, 2001. One change resulting from HB 2912 was an amendment to Texas Health and Safety Code (THSC), Subchapter B, Chapter 382, which is the Texas Clean Air Act (TCAA), by adding new §382.0215 and §382.0216. Section 382.0215, Assessment of Emissions Due to Emissions Events, addresses the assessment of emissions due to emissions events. A new term, *emissions event*, was introduced and defined to mean an upset or unscheduled maintenance, startup, or shutdown activity resulting in the unauthorized emission of air contaminants from an emissions point. Section 382.0215 also establishes recordkeeping and reporting requirements for sources which had an emissions event that

resulted in emissions of a *reportable quantity* (RQ) or greater; establishes reporting requirements for certain boilers and combustion turbines which burn certain fuels and have continuous emission monitoring systems (CEMS); and mandated that the agency centrally track all emissions events. Section 382.0215 also requires the agency to develop the capacity for electronic reporting by January 1, 2003 and to place the information into a centralized database accessible to the public. Furthermore, §382.0215 requires the agency to annually assess the information received concerning emissions events, including the actions taken by the agency in response to the emissions events, and report this information to the legislature.

The THSC, §382.0216, *Regulation of Emissions Events*, requires the commission to establish criteria to determine when emissions events are considered excessive. Section 382.0216 also requires that the following six criteria be considered when determining if an emissions event was excessive: 1) the frequency of the facility's emissions events; 2) the causes of the emissions events; 3) the quantity and impact on human health or the environment of the emissions events; 4) the duration of the emissions events; 5) the percentage of the facility's total annual operating hours during which emissions events occur; and 6) the need for startup, shutdown, and maintenance activities. Under the requirements of §382.0216, once the agency determines that a facility has had excessive emissions events, the commission must require the owner or operator of a facility to take corrective action to reduce these types of emissions. The owner or operator of the facility must then either file a corrective action plan (CAP) or file a letter of intent to obtain an authorization for the emissions. The owner or operator of the facility may only file a letter of intent if the emissions are sufficiently frequent, quantifiable, and predictable. Furthermore, §382.0216 provides action dates for both the commission and affected

facilities for the submittal and approval of the CAPs and required authorizations. Finally, §382.0216 establishes that the burden of proof is on the owner or operator of the facility and that the commission must consider chronic excessive emissions events and emissions events for which the commission has initiated enforcement when reviewing an entity's compliance history.

Based on the legislative changes in HB 2912, concerning assessment and regulation of emissions events, the commission is proposing the revision of its current upset, maintenance, startup, and shutdown (U/M) rules (i.e., amending current rules and providing new rules) to reflect the requirements of HB 2912. The statutory notes of HB 2912, §18.14 state: "The purpose of Sections 382.0215 and 382.0216, Health and Safety Code, as added by this Act, is to add new or more stringent requirements regarding upsets, startups, shutdowns, and maintenance. Those sections may not be construed as limiting the existing authority of the Texas Natural Resource Conservation Commission under Chapter 382, Health and Safety Code, to require the reporting or the permitting of the emission of air contaminants or to bring enforcement action for a violation of Chapter 382." Therefore, the requirements provided in HB 2912 are being proposed as additions to, not the replacement of, current U/M rules.

SECTION BY SECTION DISCUSSION

The primary goal of this proposed rulemaking is to incorporate the statutory requirements of HB 2912. However, because some sections of Chapter 101 are being opened for revisions, the commission is taking the opportunity to revise the general format of Chapter 101. Currently, Chapter 101 is divided into Subchapter A, *General Rules*, and Subchapter H, *Emissions Banking and Trading*. Subchapter A

contains §§101.1 - 101.30 which pertain to a wide variety of topics, whereas the rules in Subchapter H pertain only to emissions banking and trading. The commission intends that as rules in Subchapter A are amended, the different sections (or rules) will be moved to more topically specific subchapters, except for the definitions in §101.1, which will remain in Subchapter A. In this rulemaking, the commission is proposing to repeal §§101.6, 101.7, 101.11, 101.12, and 101.15 - 101.17, and move the rule language contained within these sections into a new Subchapter F. The rule language contained in §101.6, *Upset Reporting and Recordkeeping Requirements*, will be moved to §101.201, with the title being changed to *Emissions Event Reporting and Recordkeeping Requirements*. Rule language found in §101.7, *Maintenance, Start-up and Shutdown Reporting, Recordkeeping, and Operational Requirements*, will be moved to §101.211, with the title being changed to *Scheduled Maintenance, Startup and Shutdown Reporting, and Recordkeeping Requirements*. Rule language found in §101.11, *Demonstrations*, will be moved to §101.221 and §101.222 with revised section titles of *Operational Requirements* and *Demonstrations* respectively. Revisions are being proposed to the current language in §§101.201, 101.211, 101.221, and 101.222 which will be discussed later in this section of the preamble. A new §101.223, *Excessive Emissions Events*, will also be discussed later in this section of the preamble. The rule language found in §101.12, *Temporary Exemptions During Drought Conditions*; §101.15, *Petition for Variance*; §101.16, *Effect of Acceptance of Variance or Permit*; and §101.17, *Transfers*, will be moved to §§101.224, 101.231, 101.232, and 101.233 respectively, and the new sections will retain the original titles. The changes being made to language of these sections are purely administrative, and will also be discussed later in this section of the preamble.

Section 101.1. Definitions. (Administrative changes)

Due to the addition of new terms, the numbering of the terms defined in this section will be revised. Furthermore, there are numerous administrative corrections being made to definitions which are not directly affected by HB 2912. These changes are being proposed so that the rule language will conform to commission and *Texas Register* formatting and style standards. Generally, no change in the meaning of these definitions is intended by this rulemaking, except where updates are based on changed facts. These definitions are: fuel oil; maintenance area; and nonattainment area (lead). The proposed administrative definition changes are as follows. The acronym VOC is proposed to be deleted from the definition for *carbon adsorber* because it is not used again in the definition. The phrase “(See incinerator)” is proposed to be deleted from the definition for *commercial incinerator* for formatting and style purposes. The acronym VOC is proposed to be expanded to volatile organic compound and the acronym deleted because it is only used once in the definition for *component*. The words in the definition for *criteria pollutant or standard* are proposed to be lowercased because they are not a proper noun, and the acronym CFR is proposed to be deleted because it is not used again in the definition. The definition for *de minimis* is proposed to be italicized because the term is a Latin term. The acronym ERC is proposed to be deleted from the definition for *emissions reduction credit* because it is not used again in the definition. In the definition for *federal motor vehicle regulation*, the acronym CFR is proposed to be expanded to Code of Federal Regulations and the acronym deleted because it is not used again in the definition. In the definition for *federally enforceable*, the acronym CFR is proposed to be expanded to Code of Federal Regulations and acronymed because it is used more than once in the definition. In addition, the words “pursuant to” are proposed to be changed to the word “under” to reduce the legalistic style of writing. The phrase “as defined in this section” is proposed to

be added to the definition for *flare* because the definition refers to the definition for *vapor combustor*.

The definition for *fuel oil* is proposed to be updated by changing the citation for the American Society for Testing and Materials (ASTM) to reflect the current ASTM specifications and to add two new grades of fuel (1 (low sulfur) and 2 (low sulfur)) as listed in the current specifications. In the definition for *gasoline* the words “vapor pressure” in the phrase “Reid Vapor Pressure” are proposed to be lowercased because they are not proper nouns, the acronym kPa is proposed to be expanded to kiloPascals, and the acronyms RVP and kPa are proposed to be deleted because they are only used once in the definition. In the definition for *high-volume low-pressure (HVLP) spray guns*, the acronym HVLP is proposed to be deleted because it is only used once in the definition. In the definition for *leak*, the acronym VOC is proposed to be expanded to volatile organic compound and the acronyms VOC and ppmv are proposed to be deleted because they are only used once in the definition. In the definition for *liquid fuel*, the acronym Btu is proposed to be expanded to British thermal unit and the acronym deleted because it is only used once in the definition. A new maintenance area is proposed to be added to the definition for *maintenance area* which is the Collin County lead maintenance area. In the definition for *maintenance plan*, the word “Plan” is lowercased because it is not a proper noun, the acronym SIP is proposed to be expanded to state implementation plan, and the acronym SIP deleted because it is only used once in the definition. In the definition for *Metropolitan Planning Organization (MPO)*, the acronym MPO is proposed to be deleted because it is only used once, and the acronym USC is expanded to United States Code. The acronym MERC is proposed to be deleted from the definition *mobile emissions reduction credit (MERC)* because it is only used once in the definition. The acronym CFR is proposed to be expanded to Code of Federal Regulations and the acronym deleted from the definition for *municipal solid waste landfill* because it is only used once in the definition. The

words in the definition for *national ambient air quality standard* are proposed to be lowercased because they are not proper nouns, and the acronyms NAAQS, CO, Pb, NO₂, O₃, PM₁₀, PM_{2.5}, and SO₂ are proposed to be deleted because they are only used once. In the definition for *nonattainment area*, the words “national ambient air quality standard” and the word “dioxide” in two places are proposed to be lowercased because they are not proper nouns. In addition, the acronym CFR is proposed to be expanded to Code of Federal Regulations and the acronym deleted; the acronym FR is proposed to be added to the term *Federal Register* because it is used more than once; and the acronyms ELP, NO₂, HGA, BPA, DFW, and SO₂ are proposed to be deleted because they are used only once. Finally, in the definition for *nonattainment area*, the Collin County lead nonattainment area text is proposed to be deleted and the text “No designated nonattainment areas” is proposed to be added to subparagraph (C) because Collin County has been officially redesignated as a lead maintenance area. In the definition for *particulate matter emissions*, the acronym CFR is proposed to be expanded to Code of Federal Regulations and acronymed because it is used more than one time; and the acronym SIP is proposed to be expanded to state implementation plan and the acronym deleted because it is only used once. In the definition for *PM₁₀*, the acronym CFR is proposed to be expanded to Code of Federal Regulations and acronymed because it is used more than once, and the number “10” is proposed to be changed to the word “ten” to conform with Texas Register style. In the definition for *PM₁₀ emissions*, the acronym CFR is proposed to be expanded to Code of Federal Regulations, the acronym SIP is proposed to be expanded to state implementation plan, and both acronyms are proposed to be deleted because they are only used once in the definition. In the definition for *polychlorinated biphenyl compound (PCB)*, the acronym CFR is proposed to be expanded to Code of Federal Regulations and the acronyms PCB and CFR are proposed to be deleted because they are only used once in the definition. In the definition for

reasonable further progress (RFP), the acronym SIP is proposed to be expanded to state implementation plan, and the acronyms RFP and SIP are proposed to be deleted because they are only used once in the definition. The acronym USC is proposed to be expanded to United States Code and the acronym deleted from the definition for *solid waste* because it is only used once. The acronym kPa is proposed to be expanded to kiloPascal and the acronym deleted from the definition for *standard conditions* because it is used only once in the definition. In the definition for *submerged fill pipe*, the acronym cm is proposed to be expanded to centimeters because it is only used once in the definition. In the definitions for *sulfuric acid mist/sulfuric acid* and *total suspended particulate*, the acronym CFR is proposed to be expanded to Code of Federal Regulations and the acronym deleted because it is used only once in each definition. In the definition for *true vapor pressure*, the acronyms psia and VOC are proposed to be expanded to pounds per square inch absolute and volatile organic compound respectively, and the acronyms deleted because they are only used once in the definition. In the definition for *vapor combustor*, the acronym VOC is proposed to be expanded to volatile organic compound and the acronym deleted because it is only used once in the definition. Finally, in the definition for *VOC water separator*, the acronym is proposed to be expanded to *volatile organic compound (VOC)* because it is used more than once in the definition.

Section 101.1. Definitions. (HB 2912 changes)

The commission is proposing to define a new term, *authorized emissions*, which are emissions of one or more air contaminants that the commission has granted either by a permit, rule, or commission order to be released into the atmosphere, or are emissions which meet the requirements of THSC, §382.0518(g). Section 382.0518(g) applies to a grandfathered source. The new definition would also state that for

purposes of Subchapter F of this chapter, emissions of carbon dioxide, water, nitrogen, methane, ethane, noble gases, hydrogen, and oxygen are authorized emissions. The commission proposes to move the exempted compounds that are currently listed in the definition of the term *unauthorized emissions* into the definition of the term *authorized emissions*. This move is necessary to add clarity to the rule, in that while emissions of the compounds in question are air contaminants, the commission has determined that emissions of these compounds should be authorized during an emissions event or a scheduled maintenance, startup, or shutdown activity. The addition of this definition helps to clarify that any emissions not meeting this definition are considered unauthorized emissions.

The commission is proposing to define a new term *emissions event* to incorporate the change in the statute. The THSC, §382.0215 adds the term *emissions event*, defined as “an upset, or unscheduled maintenance, startup, or shutdown activity, that results in the unauthorized emissions or air contaminants from an emissions point.” The commission reviewed its current definition of *upset*, and proposes to replace it with the new term *emissions event* in §101.201 and §101.222.

The commission proposes to revise the term *non-reportable upset* to the more correct term *non-reportable emissions event* to be consistent with the statutory language of HB 2912.

The commission proposes to revise the RQ for ethylene, butenes, and propylene from 5,000 pounds to 100 pounds. These three compounds are not listed in the EPA reportable quantity lists found in 40 CFR Part 302, Table 302.4, or 40 CFR Part 355, Appendix A. The commission also proposes to add to acetaldehyde and toluene, each with an RQ of 100 pounds, to the list of compounds in

§101.1(85)(A)(i)(III). The lower RQ recognizes the important role these compounds play in the formation of ozone, and the need for the commission to collect more detailed information on the periodic releases of these compounds in its efforts to attain the ozone standard. The proposal reflects the default RQ of 100 pounds found in proposed §101.1(85)(A)(ii) for any compounds not specifically listed. The commission invites comment on the appropriate levels for the ethylene, butenes, acetaldehyde, toluene, and propylene RQs and the geographical location of these RQs to allow the commission to collect sufficient and meaningful data related to periodic releases. The acronym CFR is proposed to be expanded to Code of Federal Regulations.

To be consistent with the statutory language of HB 2912, the commission is proposing to revise the term *reportable upset* to the more correct term *reportable emissions event*. In addition, because the definition of the term *unauthorized emission* already addresses the fact that the emissions of air contaminants are being released into the atmosphere, the commission proposes to delete the redundant language “of air contaminants” from this definition.

The commission is proposing to define the new term *scheduled maintenance, startup, or shutdown activity*. As previously stated, HB 2912 provided new terms when addressing emissions events. The THSC, §382.0215, refers to unscheduled maintenance, startup, or shutdown activity; therefore, to be consistent with the new statutory language, the commission proposes to define what is considered to be a scheduled maintenance, startup, or shutdown activity.

The commission is proposing to revise the definition of the term *unauthorized emission* to reflect the fact that unauthorized emissions are any emissions that have not been authorized by the commission. As discussed previously, the term *authorized emission* is being proposed to mean emissions of one or more air contaminants that the commission has granted either by a permit, rule, or order of the commission to be released into the atmosphere, or are emissions which meet the requirements of THSC, §382.0518(g).

The commission does not currently have a definition for the term *unscheduled maintenance, startup, or shutdown activity*. The language of HB 2912 defines *unscheduled maintenance, startup, or shutdown activity* by defining what it is not considered to be. The commission proposes two new definitions to incorporate the additional statutory language. As discussed previously, the commission proposes to define *scheduled maintenance, startup, shutdown activity*, and then also define *unscheduled maintenance, startup, or shutdown activity* as a maintenance, startup, or shutdown activity that does not meet the first definition. The commission is proposing to define the new term, *scheduled maintenance, startup, or shutdown activity*, using the language in the statute; and to define the term, *unscheduled maintenance, startup, or shutdown activity* as simply all other maintenance, startup, or shutdown activities which are not scheduled maintenance, startup, or shutdown activities. The phrase “shall not be considered unscheduled only if” in THSC, §382.0215(a), indicates an intent that all activities be considered unscheduled unless an owner or operator satisfies the requirements for an activity to be scheduled.

The commission is proposing to revise the definition of the term *upset* by adding the clarifying word *event* to the term. Furthermore, to minimize potential confusion with the *upset event* definition, the word “unscheduled” is being replaced with the phrase “unplanned or unanticipated.” This is being done because the word “unscheduled” is being used in the new definition *unscheduled maintenance, startup, or shutdown activity*. Finally the commission proposes to delete the redundant phrase “emission of air contaminants.”

Section 101.6. Upset Reporting and Recordkeeping Requirements.

The commission is proposing to repeal this section. The commission is proposing to amend the rule text from §101.6, as necessary, to conform with the requirements of HB 2912 and is proposing the amended text in new §101.201.

Section 101.7. Maintenance, Start-up and Shutdown Reporting, Recordkeeping, and Operational Requirements.

The commission is proposing to repeal this section. The commission is proposing to amend the rule text from §101.7, as necessary, to conform with the requirements of HB 2912 and is proposing the amended text in new §101.211.

Section 101.11. Demonstrations.

The commission is proposing to repeal this section. The commission is proposing to amend the rule text from §101.11, as necessary, to conform with the requirements of HB 2912 and is proposing the amended text in new §101.221 and §101.222.

Section 101.12. Temporary Exemptions During Drought Conditions.

The commission is proposing to repeal this section. The rule language, with minor administrative changes to conform to the format and style of the *Texas Register*, is proposed in new §101.224. The repeal and move to a new section is the result of a Chapter 101 formatting change.

Section 101.15. Petition for Variance.

The commission is proposing to repeal this section. The rule language, with minor administrative changes to conform to the format and style of the *Texas Register*, is proposed in new §101.231. The repeal and move to a new section is the result of a Chapter 101 formatting change.

Section 101.16. Effects of Acceptance of Variance or Permit.

The commission is proposing to repeal this section. The rule language, with minor administrative changes to conform to the format and style of the *Texas Register*, is proposed in new §101.232. The repeal and move to a new section is the result of a Chapter 101 formatting change.

Section 101.17. Transfers.

The commission is proposing to repeal this section. The rule language, with minor administrative changes to conform to the format and style of the *Texas Register*, is proposed in new §101.233. The repeal and move to a new section is the result of a Chapter 101 formatting change.

Section 101.201. Emissions Event Reporting and Recordkeeping Requirements.

In an effort to be consistent with HB 2912, codified in THSC, §382.0215, concerning emissions events, the commission is proposing to replace the term *upset* with the newly defined term *emissions event*.

Because of statutory changes in HB 2912, the notification requirements in proposed new §101.201(a)(2) and (3) (old §101.6(a)(2) and (3)), and the reporting requirements in proposed new §101.201(b) (old §101.6(b)), are being revised to require additional information and to provide more detailed information when it is necessary to report an emissions event. The name of the owner or operator of the facility experiencing an emissions event, along with the facility's air account number is now required. When the agency changes to a Central Registry, the air account number will become a secondary identifier and the "regulated entity" number will become the primary identifier. Therefore, a reference to an air account number includes both the regulated entity number as well as the air account number. The owner or operator of a facility experiencing an emissions event must also provide the location of the emissions event. When reporting the processes and equipment involved in the emissions event, the notification should include the authorization for the emissions (i.e., a permit number, permit by rule, rule citation, etc.) and some type of source identification. The source identification must include the common name for the equipment involved and the most precise agency recognized identifier. This identifier could include emission point numbers and facility identification numbers established for emissions inventories or preconstruction authorization requirements, or the identifier could be emission unit numbers for sources subject to the Federal Operating Permits Program. These same new recordkeeping and reporting requirements are being proposed for the rules concerning scheduled maintenance, startup, and shutdown activities, in §101.211(a)(1) and (2), and (b) (old §101.7(b)(1) and (2), and (c). When reporting and recording the date and time of the emissions event, the date and time

recorded should be when the emissions event was discovered, not when it is believed that the emissions event started.

In the notification requirements of §101.201(a)(2) and (3) (old §101.6(a)(2) and (3)), and the reporting requirements in §101.201(b) (old §101.6(b)), the commission is proposing a grammatical correction concerning the reporting of the compound descriptive type of the compounds release. The term *exceed* is proposed to be replaced with a more correct phrase *have equaled or exceeded*. The commission is also proposing to clarify the language that when reporting the estimated quantities of the compounds released, the reported numbers should be the total estimated quantities that include both the authorized emissions limit and the total amount of emissions emitted. The commission proposes to remove the exception for reporting opacity only in §101.201(a)(2)(I) and in §101.201(b)(9) for sources other than boilers or combustion turbines referenced in the definition of RQ. Because opacity is considered to be the degree to which emissions reduce the transmission of light and obscure the view of an object in the background, it is simply an indicator and is not the quantity of the air contaminant being emitted, as is required by HB 2912, codified in THSC, §382.0215(b)(3)(E). These same corrections and clarifications are being proposed in the new §101.211(a)(1) and (2), and (b). The agency notification forms for emissions events and scheduled maintenance, startup, and shutdown activities will also be updated to reflect these requirements. The commission is also proposing a new reporting requirement to provide the basis used to determine the quantity of emissions, including the method of calculation (e.g., the emission factors obtained from the EPA emissions factor document, AP-42). Finally, new §382.0216(b)(3)(H), added by HB 2912, requires that the owner or operator provide any additional information necessary to evaluate the emissions event against the criteria listed in the proposed new

§101.222(a). This final requirement is optional for the initial notification requirements of proposed §101.201(a)(2) and (3). However, for proposed §101.201(b), concerning final recordkeeping of all reportable and non-reportable emissions events, this requirement is not optional, and this information must also be submitted when complying with proposed §101.201(c) for the final record.

The commission is proposing a revision to the old §101.6(a)(4) language (new §101.201(a)(4)) by deleting the term *report* and replacing it with the term *provide*. This proposed change is for clarification only and does not impose any new requirements. The change in terminology is necessary to more clearly state that the source must provide additional information upon request of the executive director.

The commission is proposing to delete the exemption language that was contained in the old §101.6(a)(5) because HB 2912 does not allow this exemption. Therefore, proposed new §101.201 will not allow a facility to avoid reporting under these air rules even if the facility reported its spills and discharges as required under 30 TAC §§327.1 - 327.5 and 327.31. Furthermore, THSC, §382.0215, requires that all emissions events be recorded and reported as necessary. Because the statute no longer allows an exemption from double reporting, all unauthorized emissions of an air contaminant must be recorded and reported in accordance with the requirements of these sections.

The commission is proposing to clarify §101.201(b) (old §101.6(b)), to specify that an owner or operator of a facility must create a final record of all reportable and non-reportable emissions events.

This change reflects the commission's existing practice and is consistent with guidance that staff has provided to members of the regulated community.

Proposed new §101.201(c) and (e) incorporates the language in old §101.6(c) and (e), respectively, with minor changes to reflect the new terminology in HB 2912.

The commission is proposing two revisions to the language being proposed in §101.201(d) and §101.211(d) (old §101.6(d) and §101.7(e)). First, the language concerning data return is being revised to make it clear that a CEMS must have a data return such that the CEMS completes at least one operating cycle in each successive 15-minute interval. An operating cycle includes sampling, analyzing, and recording of the data. Second, to implement a provision in HB 2912, THSC, §382.0215(c), the commission proposes to require an owner or operator of a combustion turbine or boiler referenced in the definition of RQ that is equipped with a CEMS, and is required to submit an excess emissions report for other state or federal regulations, to include all of the recordkeeping requirements given under §101.201(b) in the excess emissions report.

The commission is proposing new §101.201(f) to implement the requirement of THSC, §382.0216(k) that on and after January 1, 2003, the notifications and final reports required under that section must be submitted electronically to the commission. The commission is currently developing a method by which this data will be received and will provide updates as the 2003 deadline approaches. Until January 1, 2003, businesses may provide notifications and reports by any viable means, which meet the time frames required in the rules. Consistent with the statutory language in THSC, §382.0215(f), the

proposed rule includes an exemption from electronic reporting for businesses which meet the small business definition in THSC, §382.0365(g)(2). While exempt from electronic reporting, a small business will still be required to provide notifications and final reports in accordance with the requirements of the rules. The commission invites comment and specific suggestions for an alternative reporting scheme to be used in times of technical difficulty of the electronic reporting system once it is established.

The commission proposes new §101.201(g) to implement THSC, §382.0216(i), which requires the commission to initiate enforcement actions against owners and operators who fail to report an emissions event, for such failure to report, and for the underlying emissions event itself. New §101.201(g) would also include the statutory language in new THSC, §382.0216(i), that this requirement to initiate enforcement does not apply where an owner or operator reports an emissions event and the report was incomplete, inaccurate, or untimely, unless the owner or operator knowingly or intentionally falsified the information in the report. Incomplete, inaccurate, or untimely reports are not sanctioned by this language and continue to be violations of §101.201(a)(2) and (3), and (b) (old §101.6(a)(2) and (3), and (b) respectively), and the commission may initiate enforcement for such violations. The commission expects to follow its enforcement initiation criteria for violations of §101.201(a)(2) and (3) where incomplete, inaccurate, or untimely reports are submitted.

Section 101.211. Scheduled Maintenance, Startup, and Shutdown Reporting, and Recordkeeping Requirements.

In an effort to improve readability and to be consistent with the statutory requirements of HB 2912, the commission proposes to replace the phrase “maintenance, startup, or shutdown” with the newly defined term *scheduled maintenance, startup, or shutdown activity*, found in THSC, §382.0215(a). The commission is proposing this change in several places in §101.211. The change reflects the intentional distinction between scheduled and unscheduled maintenance, startup, or shutdown activities.

In addition to the changes to §101.211 discussed earlier in this preamble, the commission proposes to change the language in new §101.211(a) (old §101.7(b)) to clarify that any event that meets the definition of an unscheduled maintenance, startup, or shutdown activity is considered to be an emissions event, and therefore, is subject to the reporting requirements of §101.201 and the exemption criteria specified in §101.222(a). This clarification is consistent with the requirements of HB 2912 and would clarify the commission’s existing practice since the rule was amended in 1997.

The commission proposes changes in the language of §101.211(b) to clarify that the date and time of the maintenance, startup, or shutdown in the notification of an activity, is considered to be the *expected* date and time. For the final reporting and recordkeeping purposes, the event date and time should be the *exact or actual* event date and time. Furthermore, the commission is proposing that the final records must be completed as soon as practicable, but not later than two weeks after the end of the activity, not the start of the activity. For shutdowns, the end of the activity would be the cessation of operation of a facility for any purpose.

The commission proposes new §101.211(c) to clarify that, if for any reason, the information provided in the initial notification is different than what is recorded as the final record, the owner or operator must submit this revised information within two weeks after the end of the activity. The owner or operator of a source must submit a final report for any scheduled maintenance, startup, or shutdown activity where an initial notification was provided even if the unauthorized emissions did not actually exceed an RQ. This final report is necessary to track information collected about maintenance, startup, and shutdown activities in the commission's centralized database, and to provide closure to initial reports of such activities.

Section 101.221. Operation Requirements.

The commission proposes a new §101.221(a), which states, "No person shall cause, suffer, allow, or permit unauthorized emissions." The THSC, §382.0215(a) provides a definition for the new term *emissions event* which includes the term *unauthorized emissions*. New §101.221(a) is necessary to complete the connection between the concepts in the statute and the commission's existing rules. Simply put, it is a violation to have unauthorized emissions unless an owner or operator can demonstrate that the emissions should be exempt. This change reflects existing practice and is consistent with guidance that agency staff has provided to members of the regulated community.

As previously stated, Chapter 101 is being reformatted, thus, the commission is moving the old §101.7(a) to §101.221(b). The proposed new §101.221 rule primarily concerns operational requirements of sources. Because the old §101.7(a) related to the operation of pollution emission

capture equipment and abatement equipment, the most logical place for this rule language is in proposed new §101.221.

The commission proposes to move, without any changes, the operational requirements found in old §101.11(c) concerning smoke generators and other devices used to train inspectors in the evaluation of visible emissions into §101.221(c) and to move the operational requirements currently in §101.11(d) concerning equipment, machines, devices, flues, and or contrivances to be used at a domestic residence into §101.221(d). Similarly, the commission proposes to move the existing rule text in §101.11(e) concerning sources which cannot be controlled or reduced due to a lack of technological knowledge into §101.221(e). The existing rule language in §101.11(f) relating to the burden of proof to demonstrate that the exemption criteria have been met is on the owner or operator of the source, is being proposed in §101.221(f), with minor changes. The minor changes concern revision of rule citations and replacement of the term *upsets* with the new term *emissions events*. The commission proposes to move the existing rule language found in §101.7(g), which relates to the commission's power to require corrective action as necessary to minimize emissions, into §101.221(g), without revisions.

Section 101.222. Demonstrations.

The commission proposes to move the existing rule language from §101.11(a) and (b) to new §101.222(a) and (b) respectively. As proposed in other sections of this proposal, the commission proposes in this section to replace the terms *upset* and *maintenance, startup, or shutdown* with the terms *emissions events* and *scheduled maintenance, startup, or shutdown activity*, respectively in order to be consistent with the statutory language of HB 2912.

The THSC, §382.0216(f), states that “The commission by rule may establish an affirmative defense to a commission enforcement action if the emissions event meets criteria defined by commission rule. In establishing rules under this subsection, the commission at a minimum must require consideration of the factors listed in Subsections (b)(1) - (6).” This affirmative defense largely parallels existing commission practice of evaluating factors listed in existing §101.11(a). In reviewing the criteria provided in HB 2912, codified in THSC, §382.0216(b)(1) - (6), the commission determined that most of those factors were already included in the rule and proposes in this rulemaking to add the new statutory factors to the existing rule language being proposed in §101.222.

The first criterion from HB 2912 concerns the frequency of the facility’s emissions event. The commission proposes to revise old §101.11(a)(8) (new §101.222(a)(8)) to incorporate this factor. The rule would now read, “the unauthorized emissions were not part of a frequent or recurring pattern indicative of inadequate design, operation, or maintenance.” The second new factor relates to the cause of the emissions event, which is included in the old §101.11(a)(1), proposed new §101.222(a)(1). The third new factor relates to the quantity and impact on human health or the environment of the emissions event. The commission believes that this concept is covered under the old §101.11(a)(9), new §101.222(a)(10), in the requirement that the event does not cause or contribute to a condition of air pollution. The fourth new factor relates to duration of the emissions event, which is incorporated in existing §101.11(a)(5), new §101.222(a)(5). The fifth factor relates to the percentage of a facility’s total annual operating hours during which unauthorized emissions occurred. The commission proposes to add new §101.222(a)(9) to address this factor. In this regard, the commission will compare the number of hours when emissions events have occurred to the total number of operating hours to

determine if the percentage of unauthorized emissions is unreasonably high. As with the commission's review of each of the factors, this review will be performed on a case-by-case basis. The sixth new factor relates to the need for the startup, shutdown, and maintenance activities. The commission is proposing to revise the old §101.11(a)(3) language in new §101.222(a)(3) to incorporate this factor. The new language is proposed to read, "the air pollution control equipment or processes were maintained and operated in a manner consistent with good practice for minimizing emissions and reducing the number of emissions events."

The commission proposes to move the criterion for scheduled maintenance, startup, or shutdown activities in §101.11(b) to new §101.222(b), with only one minor change. In an effort to remove redundant rule language, the phrase "air emissions limitations established in permits, rules, and orders of the commission, or as authorized by TCAA, §382.0518(g)" is being replaced with "authorized emission limitation."

Section 101.223. Excessive Emissions Events.

The commission proposes to add new §101.223 to establish criteria to determine when a facility has had excessive emissions events and to identify requirements for source owners and operators when the executive director determines a facility has had excessive emissions events. One emissions event may constitute an excessive emission event. New §101.223 would also establish the framework in which the commission will determine that a site has had chronic excessive emissions events.

The THSC, §382.0216(b) requires the commission to establish criteria to determine when emissions events are considered excessive. The criteria must include: 1) the frequency of the facility's emissions events; 2) the cause of the emissions event; 3) the quantity and impact on human health or the environment of the emissions event; 4) the duration of the emissions event; 5) the percentage of a facility's total annual operating hours during which emissions events occur; and 6) the need for startup, shutdown, and maintenance activities.

The commission is proposing these criteria in §101.223(a) as the criteria the executive director will use to evaluate when emissions events are considered excessive. Just as the commission or executive director determines if a single emissions event meets the exemption criteria provided in §101.222 on a case-by-case basis, the commission or executive director will conduct evaluations to determine if a facility has excessive emissions events on a case-by-case basis. Case-by-case determinations are necessary because the rules in Chapter 101 apply statewide to all types of facilities. The commission does not have the resources to develop case-specific criteria limits for each of the different types of facilities in the state which have the potential to emit air contaminants. In addition, case-by-case reviews allow for a more thorough evaluation of all relevant information about an emissions event.

The commission proposes that when the executive director determines that a facility has excessive emissions events, the executive director will provide written notification to the owner or operator. The owner or operator must then take action to reduce emissions, either in the form of a CAP; or if the emissions are sufficiently frequent, quantifiable, and predictable, the owner or operator may file a letter of intent to obtain authorization from the commission for the emissions.

The commission is proposing in §101.223(b)(1) minimum requirements for a CAP. At a minimum the CAP must: identify the cause or causes of each emissions event in question, including all contributing factors that led to each emissions event; specify the control devices or other measures that are reasonably designed to prevent or minimize similar emissions events in the future; identify operational changes the owner or operator will take to prevent or minimize similar emissions events; and specify time frames within which the owner or operator will implement the components of the CAP. The time frame, or implementation schedule, of the CAP will be enforceable by the commission. To obtain closure of these actions, the commission is proposing a requirement in §101.223(b)(2) that the owner or operator must obtain commission approval within 120 days of initial filing of the CAP.

The THSC, §382.0216(d) requires specific dates concerning the review and approval of CAPs. If the commission does not disapprove a plan within 45 days, the plan is deemed approved. Within this 45-day period, if the executive director provides written notification of disapproval, the owner or operator will have 15 days to respond, unless another deadline is specified. The owner or operator may request a written approval of the CAP, in which case the commission must take a final written action within 120 days. Finally, if the commission determines that the CAP is inadequate to prevent or minimize emissions and emissions events, the commission may revise the approved CAP. Under THSC, §382.0216(d), the commission must approve all CAPS. An approved CAP under §101.223(b)(2) is not an authorization for unauthorized emissions.

The THSC, §382.0216(c) specifies timelines for the filing of a permit application or obtaining authorization if a permit by rule or standard permit is feasible. The owner or operator will have 15

days to file a letter of intent to obtain authorization for the emissions. If authorization is to be obtained by a permit application, the application must be filed within 120 days after filing the letter of intent. If the permitting option is chosen, the emissions must meet permitting criteria established in 30 TAC Chapter 116. If permitting criteria cannot be met, the owner or operator must file a CAP. For emissions authorizations through a permit by rule or a standard permit, the authorization must be obtained within 120 days after filing the letter of intent. If the commission denies any of these requests for authorization, the owner or operator must file for a CAP within 45 days after receiving notice of the commission denial.

Finally, the commission proposes new §101.223(c) to describe when a site may be considered to have chronic excessive emissions events. When a site has received two or more excessive emissions events determinations from the executive director within a five-year time frame, the executive director may forward those determinations to the commission for issuance of an order finding that the site has chronic excessive emissions events and requiring the owner or operator to take corrective action to reduce emissions events and to submit a CAP. This section would also establish the following criteria for the commission to consider in determining whether a site has chronic excessive emissions events: 1) the size, nature, and complexity of the site's operations; and 2) the frequency of the site's emissions events. The THSC, §382.0216(j) requires the commission to consider chronic excessive emissions events in its review of a person's compliance history.

In addressing the HB 2912 requirements concerning chronic excessive emissions events, the commission is proposing that the determination would be based on a review of the whole site, not just

each facility at a site. The rationale for this proposal is to use consistent terminology between the Chapter 101 rules and the compliance history rules in 30 TAC Chapter 60 that the commission has proposed in the April 12, 2002 issue of the *Texas Register*. Under §60.1(c)(4), chronic excessive emissions events at a site are components to be included in a person's compliance history specific to the site which is under review. Because the term *site* is not currently defined in Chapter 101, the commission is proposing to add the same definition of site as in proposed §60.2(a). This will also allow consistency between the two regulations.

The THSC, §382.0216(g), states: "A person may not claim an affirmative defense to a commission enforcement action if the person failed to take corrective action under a CAP approved by the commission within the time prescribed by the commission and an emissions event recurs because of that failure." The commission proposes to add §101.223(d) to incorporate this statutory language.

Section 101.224. Temporary Exemptions During Drought Conditions.

The commission is proposing to move the existing rule language in §101.12 into new §101.224, without changing the intent of the rule. The commission is proposing only two minor revisions to the language. First, the name of the commission's air permitting division is being revised from Office of Air Quality, New Source Review Division to Office of Permitting, Remediation, and Registration, Air Permits Division. Second, the word "utilize" is replaced with the more grammatically correct word "use."

Section 101.231. Petition for Variance.

The commission is proposing to move the rule language in §101.15 into new §101.231, without changing the intent of the rule. The only proposed revision to the section is to replace “Texas Natural Resource Conservation Commission (TNRCC or commission)” with “commission” to facilitate the commission name change required by HB 2912.

Section 101.232. Effect of Acceptance of Variance or Permit.

The commission is proposing to move the rule language in §101.16 into new §101.232, without changing the intent of the rule. The only revisions being proposed are grammatical and stylistic and include: changing “pursuant to” to “under;” changing “TNRCC” to “commission;” and “Act” to “TCAA.”

Section 101.233. Transfers.

The commission proposes to move the existing rule language in §101.17 into new §101.233, without changing the intent of the rule. The only proposed revision to the existing language is to replace the phrase “Texas Natural Resource Conservation Commission (TNRCC or commission)” with the term “commission,” to facilitate the commission name change required by HB 2912.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, determined that for each year of the first five-year period the proposed rulemaking is in effect, there will be no significant fiscal implications for the commission due to administration and enforcement of the proposed rules.

However, there may be significant fiscal implications to units of state and local government that

experience excessive emissions events. An emissions event is defined as any upset event or unscheduled maintenance, startup, or shutdown activity that results from unauthorized emissions from an emissions point. There would be no additional costs to units of state and local government that do not have excessive emissions events.

The proposed rulemaking is intended to make changes to the commission's general air quality rules in order to implement certain provisions of HB 2912. The bill requires the agency to establish criteria to determine when emissions events are considered excessive, and the corrective actions required to minimize these emissions. The criteria to be used, as required by HB 2912, will include the following: the frequency of the facility's emissions events; the cause of the emissions event; the quantity and impact on human health or the environment of the emissions event; the duration of the emissions event; the percentage of a facility's total annual operating hours during which emissions events occur; and the need for startup, shutdown, and maintenance activities. The bill also made changes to reporting requirements for facilities that experience emissions events; however, the commission does not anticipate significant additional costs to units of state and local government due to the updated reporting requirements.

The proposed rulemaking would affect all facilities with the potential to emit unauthorized air emissions, and would include any facility operating under one of the following authorizations: new source review (NSR) permit, permit by rule, standard permit, federal operating permit, orders of the commission, or grandfathered sources. Although the total number of affected facilities is unknown, the commission estimates there are more than 7,000 facilities operating under an air permit, and another

6,000 or more facilities operating via a permit by rule. The commission estimates that approximately 5%, or 350, of the permitted facilities are owned and operated by units of state and local government, and a comparatively small number of facilities operating under a permit by rule are owned and operated by units of state and local government.

The commission anticipates that very few, if any, facilities identified as having excessive emissions events will be units of state and local government. The commission currently records emissions events from approximately 550 air accounts per year, some of which may be units of state and local government. Using the proposed excessive emissions event criteria, the commission anticipates the emissions events from fewer than five facilities will be classified as excessive on an annual basis. For those units of government with facilities that are determined to have excessive emissions events, the overall costs resulting from implementation of the proposed amendments will depend on the provisions of the CAP.

If the commission determines that a facility's emissions events are excessive, the owner or operator of the facility would have to provide the commission with a CAP, or the owner or operator could opt to apply for a permit covering the excessive emissions if they are sufficiently frequent, predictable, and quantifiable. A CAP would be required to specify the additional pollution control devices, changes to operations, additional monitoring, or other measures that are reasonably designed to prevent or minimize excessive emissions events. Obtaining a permit would authorize certain emissions, provided the emissions achieve current permitting and emissions control requirements. Either option would

likely result in increased expenditures by the owner or operator of a facility to bring its operations into compliance with the commission's regulations.

Compliance costs are anticipated to vary greatly, depending on the CAP, the type and location of the facility affected, and the required capital and operation improvements. The following costs are examples of what an affected facility may incur to comply with the proposed rulemaking. If an owner or operator of a facility decides to upgrade pollution control devices, the cost is anticipated to range as much as \$6,000 to \$10,000 per ton of emission reduction. If the CAP includes increased monitoring, the commission estimates that the cost to install a monitoring system for a large combustion source could range from \$100,000 to \$150,000. If an owner or operator of a facility applies for a permit to authorize the excessive emissions, the owner or operator would likely incur additional capital costs and permit fees to comply with the permit requirements. The permit fee is expected to range between \$450 and \$75,000 per project application, depending on the overall cost of capital improvements. If the capital costs to meet the permit requirements are less than \$300,000, the fee is \$450. If the capital costs of the project are greater than \$300,000, the fee is 0.15% of the anticipated capital cost of the project, with a maximum limit of \$75,000.

PUBLIC BENEFITS AND COSTS

Mr. Davis has also determined that for each of the first five years the proposed rulemaking is in effect, the public benefit anticipated as a result of implementing the proposed rules will be potentially increased environmental protection through the reduction of unauthorized emissions by requiring additional reporting and corrective action measures.

The proposed rulemaking is intended to make changes to the commission's general air quality rules to implement certain provisions of HB 2912. The bill requires the agency to establish criteria for determining when emissions events are considered excessive, and the corrective actions required to minimize these emissions. The bill also made changes to reporting requirements for facilities that experience emissions events; however, the commission does not anticipate significant additional costs to individuals and businesses due to the updated reporting requirements.

The proposed rulemaking would affect all facilities with the potential to emit unauthorized air emissions, and would include any facility operating under one of the following authorizations: NSR permit, permit by rule, standard permit, federal operating permit, orders of the commission, or grandfathered sources. Although the total number of affected facilities is unknown, the commission estimates that there are more than 7,000 facilities operating under an air permit, and another 6,000 or more facilities operating via a permit by rule. The commission anticipates that very few facilities will be classified as having excessive emissions events. The commission currently records emissions events from approximately 550 air accounts per year. Using the proposed excessive emissions event criteria, the commission anticipates the emissions events from fewer than five facilities will be classified as excessive on an annual basis. For those facilities that are determined to have excessive emissions events, the overall costs resulting from implementation of the proposed rules will depend on the provisions of the CAP.

If the commission determines that a facility's emissions events are excessive, the owner or operator of the facility would have to provide the commission with a CAP, or the owner or operator could opt to

apply for a permit covering the excessive emissions if they are sufficiently frequent, predictable, and quantifiable. A CAP would be required to specify the additional pollution control devices, changes to operations, additional monitoring, or other measures that are reasonably designed to prevent or minimize excessive emissions events. Obtaining a permit would authorize certain emissions, provided the emissions achieve current permitting and emissions control requirements. Either option would likely result in increased expenditures by the owner or operator of a facility to bring its operations into compliance with the commission's regulations.

Compliance costs are anticipated to vary greatly, depending on the CAP, the type and location of the facility affected, and the required capital and operation improvements. The following costs are examples of what an affected facility may incur to comply with the proposed rulemaking. If an owner or operator of a facility decides to upgrade pollution control devices, the cost is anticipated to range as much as \$6,000 to \$10,000 per ton of emission reduction. If the CAP includes increased monitoring, the commission estimates that the cost to install a monitoring system for a large combustion source could range from \$100,000 to \$150,000. If an owner or operator of a facility applies for a permit to authorize the excessive emissions, the owner or operator would likely incur additional capital costs and permit fees to comply with the permit requirements. The permit fee is expected to range between \$450 and \$75,000 per project application, depending on the overall cost of capital improvements. If the capital costs to meet the permit requirements are less than \$300,000, the fee is \$450. If the capital costs of the project are greater than \$300,000, the fee is 0.15% of the anticipated capital cost of the project, with a maximum limit of \$75,000.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There may be adverse fiscal implications, which could be significant, for small or micro-businesses due to implementation of the proposed rulemaking, which is intended to make changes to the commission's general air quality rules in order to implement certain provisions of HB 2912. The bill requires the agency to establish criteria for determining when emissions events are considered excessive, and the corrective actions required to minimize these emissions. The bill also made changes to reporting requirements for facilities that experience emissions events; however, the commission does not anticipate significant additional costs to small and micro-businesses due to the updated reporting requirements.

The proposed rulemaking would affect all facilities with the potential to emit unauthorized air emissions, and would include any facility operating under one of the following authorizations: NSR permit, permit by rule, standard permit, federal operating permit, orders of the commission, or grandfathered sources. Although the total number of affected facilities is unknown, the commission estimates there are more than 7,000 facilities operating under an air permit, and another 6,000 or more facilities operating via a permit by rule. Many of these facilities are anticipated to be small and micro-businesses.

The commission anticipates that very few, if any, facilities will be classified as having excessive emissions events. The commission currently records emissions events from approximately 550 air accounts per year. Using the proposed excessive emissions events criteria, the commission anticipates the emissions events from fewer than five facilities will be classified as excessive on an annual basis.

For those facilities that are determined to have excessive emissions events, the overall costs resulting from implementation of the proposed rules will depend on the provisions of the CAP.

If the commission determines that a facility's emissions events are excessive, the owner or operator of the facility would have to provide the commission with a CAP, or the owner or operator could opt to apply for a permit covering the excessive emissions if they are sufficiently frequent, predictable, and quantifiable. A CAP would be required to specify the additional pollution control devices, changes to operations, additional monitoring, or other measures that are reasonably designed to prevent or minimize excessive emissions events. Obtaining a permit would authorize certain emissions, provided the emissions achieve current permitting and emissions control requirements. Either option would likely result in increased expenditures by the owner or operator of a facility to bring its operations into compliance with the commission's regulations.

Compliance costs are anticipated to vary greatly, depending on the CAP, the type and location of the facility affected, and the required capital and operation improvements. The following costs are examples of what an affected facility may incur to comply with the proposed rulemaking. If an owner or operator of a facility decides to upgrade pollution control devices, the cost is anticipated to range as much as \$6,000 to \$10,000 per ton of emissions reduction. If the CAP includes increased monitoring, the commission estimates that the cost to install a monitoring system for a large combustion source could range from \$100,000 to \$150,000. If an owner or operator of a facility applies for a permit to authorize the excessive emissions, the owner or operator would likely incur additional capital costs and permit fees to comply with the permit requirements. The permit fee is expected to range between \$450

and \$75,000 per project application, depending on the overall cost of capital improvements. If the capital costs to meet the permit requirements are less than \$300,000, the fee is \$450. If the capital costs of the project are greater than \$300,000, the fee is 0.15% of the anticipated capital cost of the project, with a maximum limit of \$75,000.

The following is an analysis of the costs per employee for small and micro-businesses that are required to install additional monitoring systems at a large combustion source to comply with the proposed rules. Small and micro-businesses are defined as having fewer than 100 or 20 employees respectively. A small business that is required by the commission to install additional monitoring systems would have to pay up to an additional \$1,500 per employee to comply with the proposed rules. A micro-business that is required by the commission to install additional monitoring systems would have to pay up to an additional \$7,500 per employee to comply with the proposed rules. Because the proposed rulemaking could result in a number of different potential costs for affected small and micro-businesses, this example was chosen because it is one of the most costly likely to affect a small or micro-business.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rulemaking does 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 (RIA) requirements of Texas Government Code, §2001.0225 and has determined that the proposed rulemaking does not meet the definition of a “major environmental rule.” Furthermore, it does not meet any of the four applicability requirements listed in §2001.0225(a). 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 proposed amendments would implement certain requirements of HB 2912. Specifically, the amendments require additional reporting for each emissions event; require excess emission reports from certain boilers and combustion turbines to have all required reporting information to satisfy as final reports; establish an affirmative defense to an emissions event, including statutory limitations as to when that defense is unavailable, and clarify that the burden of proof for an affirmative defense is on the person claiming the defense; incorporate statutory requirements for filing a CAP or intent to obtain authorization for emissions, and associated required deadlines; create provisions for required contents of CAPs and commission approval and enforcement of CAPs; establish criteria for determining when emissions events are excessive; and define a process for the executive director to determine when excessive emissions events have occurred and criteria for the commission to consider in determining when an owner or operator has chronic excessive emissions events. In addition, the amendments would revise the definition section, including a change to the RQ for ethylene, butenes, acetaldehyde, toluene, and propylene, and revise the general format of Chapter 101. The amendments, which implement HB 2912, §5.01 and §18.14, add new or more stringent requirements, and do not limit the commission’s existing authority requiring reporting or permitting of emissions and authority to

bring enforcement action under the THSC and Texas Water Code (TWC). The amendments 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.

In addition, Texas Government Code, §2001.0225, only applies 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. The amendments do not exceed a standard set by federal law or exceed an express requirement of state law. Further, there is no contract or delegation agreement that covers the topic that is the subject of this rulemaking. As discussed in the STATUTORY AUTHORITY section of this preamble, this rulemaking was not developed solely under the general powers of the agency, but is authorized by the provisions cited in that section to implement certain requirements of HB 2912 and modify the reporting requirements for specific air contaminants. Therefore, this rulemaking is not subject to the regulatory analysis provisions of §2001.0225(b), because the proposed rules do not meet any of the four applicability requirements.

The commission invites public comment regarding the draft RIA determination during the public comment period.

TAKINGS IMPACT ASSESSMENT

The commission completed a takings impact analysis for the proposed rules. The specific purpose of this rulemaking is to implement certain sections of HB 2912, modify the reportable quantities of ethylene and propylene, and revise the format of Chapter 101, as discussed elsewhere in this preamble. The amendments specifically propose to implement the requirements of TCAA, §382.0215 and §382.0216, regarding the reporting of upset and maintenance emissions. Promulgation and enforcement of the proposed rules would be neither a statutory nor a constitutional taking because they do not affect private real property. Specifically, the amendments do not affect private property in a manner which restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Therefore, the proposed rules do not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq.*), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the CMP. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this

rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). No new sources of air contaminants will be authorized and the proposed revisions will maintain the same level of emissions control as the existing rules. The CMP policy applicable to this rulemaking action 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 §501.14(q)). This rulemaking action complies with 40 CFR 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 action is consistent with CMP goals and policies.

The commission solicits comments on the consistency of the proposed rulemaking with the CMP during the public comment period.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Chapter 101 contains applicable requirements under 30 TAC Chapter 122, *Federal Operating Permits*; therefore, owners or operators subject to the Federal Operating Permit Program must, consistent with the permit revision process in Chapter 122, revise their operating permits to include the revised Chapter 101 requirements for each emissions unit at their sites affected by these revisions.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin, Texas, on May 21, 2002, at 10:00 a.m., at the Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Building F, Room 2210.

The hearing will be structured for the receipt of oral or written comments by interested persons.

Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, a commission staff member will be available to discuss the proposal 30 minutes prior to each hearing and will answer questions before and after each hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend a hearing should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Ms. Lola Brown, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 2001-075-101-AI. Comments must be received by 5:00 p.m., May 28, 2002. For further information, please contact Troy Dalton of the Enforcement Division at (512) 239-1541 or Alan Henderson of the Policy and Regulations Division at (512) 239-1510.

SUBCHAPTER A: GENERAL RULES

§101.1

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state air; §382.014, concerning Emission Inventory, which authorizes the commission to require a person whose activities cause emissions of air contaminants to submit information to enable the commission to develop an emissions inventory; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of emissions of air contaminants; §382.085, concerning Unauthorized Emissions Prohibited, which prohibits emissions except as authorized by commission rule or order; §382.215, concerning Assessment of Emissions Due to Emissions Events, which authorizes the commission to collect and assess unauthorized emissions data due to emissions events; and §382.216, concerning Regulation of Emissions Events, which authorizes the commission to establish criteria for determining when

emissions events are excessive and to require facilities to take action to reduce emissions from excessive emissions events. The amendment is also proposed under Title 42 United States Code (42 USC), §7410(a)(F)(iii), which requires correlation of emissions reports and emission-related data by the state agency with any emission limitations or standards established under the FCAA, 42 USC, §§7401 *et seq.*

The proposed amendment implements THSC, §§382.002, 382.011, 382.012, 382.014, 382.016, 382.085, 382.215, and 382.216; and HB 2912, §5.01 and §18.14.

§101.1. Definitions.

Unless specifically defined in the TCAA or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, the following terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (3) (No change.)

(4) **Authorized emissions** - Emissions of one or more air contaminants that are authorized by a permit, rule, or order of the commission or TCAA, §382.0518(g). For purposes of Subchapter F of this chapter, emissions of carbon dioxide, water, nitrogen, methane, ethane, noble gases, hydrogen, and oxygen are authorized emissions.

(5) [(4)] **Background** - Background concentration, the level of air contaminants that cannot be reduced by controlling emissions from man-made sources. It is determined by measuring levels in non-urban areas.

(6) [(5)] **Capture system** - All equipment (including, but not limited to, hoods, ducts, fans, booths, ovens, dryers, etc.) that contains, collects, and transports an air pollutant to a control device.

(7) [(6)] **Captured facility** - A manufacturing or production facility that generates an industrial solid waste or hazardous waste that is routinely stored, processed, or disposed of on a shared basis in an integrated waste management unit owned, operated by, and located within a contiguous manufacturing complex.

(8) [(7)] **Carbon adsorber** - An add-on control device which uses activated carbon to adsorb volatile organic compounds [(VOC)] from a gas stream.

(9) [(8)] **Carbon adsorption system** - A carbon adsorber with an inlet and outlet for exhaust gases and a system to regenerate the saturated adsorbent.

(10) [(9)] **Coating** - A material applied onto or impregnated into a substrate for protective, decorative, or functional purposes. Such materials include, but are not limited to, paints, varnishes, sealants, adhesives, thinners, diluents, inks, maskants, and temporary protective coatings.

(11) [(10)] **Cold solvent cleaning** - A batch process that uses liquid solvent to remove soils from the surfaces of metal parts or to dry the parts by spraying, brushing, flushing, and/or immersion while maintaining the solvent below its boiling point. Wipe cleaning (hand cleaning) is not included in this definition.

(12) [(11)] **Combustion unit** - Any boiler plant, furnace, incinerator, flare, engine, or other device or system used to oxidize solid, liquid, or gaseous fuels, but excluding motors and engines used in propelling land, water, and air vehicles.

(13) [(12)] **Commercial hazardous waste management facility** - Any hazardous waste management facility that accepts hazardous waste or polychlorinated biphenyl compounds for a charge, except a captured facility which disposes only waste generated on-site or a facility that accepts waste only from other facilities owned or effectively controlled by the same person.

(14) [(13)] **Commercial incinerator** - An incinerator used to dispose of waste material from retail and wholesale trade establishments. [(See incinerator.)]

(15) [(14)] **Commercial medical waste incinerator** - A facility that accepts for incineration medical waste generated outside the property boundaries of the facility.

(16) [(15)] **Component** - A piece of equipment, including, but not limited to, pumps, valves, compressors, and pressure relief valves, which has the potential to leak volatile organic compounds [VOCs].

(17) [(16)] **Condensate** - Liquids that result from the cooling and/or pressure changes of produced natural gas. Once these liquids are processed at gas plants or refineries or in any other manner, they are no longer considered condensates.

(18) [(17)] **Construction-demolition waste** - Waste resulting from construction or demolition projects.

(19) [(18)] **Control system or control device** - Any part, chemical, machine, equipment, contrivance, or combination of same, used to destroy, eliminate, reduce, or control the emission of air contaminants to the atmosphere.

(20) [(19)] **Conveyorized degreasing** - A solvent cleaning process that uses an automated parts handling system, typically a conveyor, to automatically provide a continuous supply of metal parts to be cleaned or dried using either cold solvent or vaporized solvent. A conveyorized degreasing process is fully enclosed except for the conveyor inlet and exit portals.

(21) [(20)] **Criteria pollutant [Pollutant] or standard [Standard]** - Any pollutant for which there is a national ambient air quality standard [National Ambient Air Quality Standard] established under 40 Code of Federal Regulations [(CFR)] Part 50.

(22) [(21)] **Custody transfer** - The transfer of produced crude oil and/or condensate, after processing and/or treating in the producing operations, from storage tanks or automatic transfer facilities to pipelines or any other forms of transportation.

(23) [(22)] ***De minimis* [De minimis] impact** - A change in ground level concentration of an air contaminant as a result of the operation of any new major stationary source or of the operation of any existing source which has undergone a major modification, which does not exceed the following specified amounts.

Figure: 30 TAC §101.1(23)

[Figure: 30 TAC §101.1(22)]

AIR CONTAMINANT	ANNUAL	24-HOUR	8-HOUR	3-HOUR	1-HOUR
Inhalable Particulate Matter (PM ₁₀)	1.0 µg/m ³	5 µg/m ³			
Sulfur Dioxide	1.0 µg/m ³	5 µg/m ³		25 µg/m ³	
Nitrogen Dioxide	1.0 µg/m ³				
Carbon Monoxide			0.5 mg/m ³		2 mg/m ³

(24) [(23)] **Domestic wastes** - The garbage and rubbish normally resulting from the functions of life within a residence.

(25) [(24)] **Emissions banking** - A system for recording emissions reduction credits so they may be used or transferred for future use.

(26) **Emissions event** - Any upset event or unscheduled maintenance, startup, or shutdown activity that results in unauthorized emissions from an emissions point.

(27) [(25)] **Emissions reduction credit [(ERC)]** - Any stationary source emissions reduction which has been banked in accordance with Chapter 101, Subchapter H, Division 1 of this title (relating to Emission Credit Banking and Trading).

(28) [(26)] **Emissions reduction credit certificate** - The certificate issued by the executive director which indicates the amount of qualified reduction available for use as offsets and the length of time the reduction is eligible for use.

(29) [(27)] **Emissions unit** - Any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the FCAA.

(30) [(28)] **Exempt solvent** - Those carbon compounds or mixtures of carbon compounds used as solvents which have been excluded from the definition of volatile organic compound.

(31) [(29)] **External floating roof** - A cover or roof in an open top tank which rests upon or is floated upon the liquid being contained and is equipped with a single or double seal to close the space between the roof edge and tank shell. A double seal consists of two complete and separate closure seals, one above the other, containing an enclosed space between them.

(32) [(30)] **Federal motor vehicle regulation** - Control of Air Pollution from Motor Vehicles and Motor Vehicle Engines, 40 Code of Federal Regulations [CFR] Part 85.

(33) [(31)] **Federally enforceable** - All limitations and conditions which are enforceable by the EPA administrator, including those requirements developed under 40 Code of Federal Regulations (CFR) [CFR] Parts 60 and 61, requirements within any applicable state implementation plan (SIP), any permit requirements established under 40 CFR §52.21 or under regulations approved under [pursuant to] 40 CFR Part 51, Subpart I, including operating permits issued under the approved program that is incorporated into the SIP and that expressly requires adherence to any permit issued under such program.

(34) [(32)] **Flare** - An open combustion unit (i.e., lacking an enclosed combustion chamber) whose combustion air is provided by uncontrolled ambient air around the flame, and which is used as a control device. A flare may be equipped with a radiant heat shield (with or without a refractory lining), but is not equipped with a flame air control damping system to control the air/fuel mixture. In addition, a flare may also use auxiliary fuel. The combustion flame may be elevated or at ground level. A vapor combustor, as defined in this section, is not considered a flare.

(35) [(33)] **Fuel oil** - Any oil meeting the [The] American Society for Testing and Materials (ASTM) specifications for fuel oil in ASTM D396-01 [D 396-86], Standard Specifications for Fuel Oils, revised 2001. This includes fuel oil grades 1, 1 (Low Sulfur), 2 (Low Sulfur), 4 (Light), 4, 5 (Light), 5 (Heavy), and 6.

(36) [(34)] **Fugitive emission** - Any gaseous or particulate contaminant entering the atmosphere which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening designed to direct or control its flow.

(37) [(35)] **Garbage** - Solid waste consisting of putrescible animal and vegetable waste materials resulting from the handling, preparation, cooking, and consumption of food, including waste materials from markets, storage facilities, and handling and sale of produce and other food products.

(38) [(36)] **Gasoline** - Any petroleum distillate having a Reid vapor pressure [Vapor Pressure (RVP)] of four pounds per square inch (27.6 kilopascals [kPa]) or greater, which is produced for use as a motor fuel, and is commonly called gasoline.

(39) [(37)] **Hazardous waste management facility** - All contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of hazardous waste. The term includes a publicly or privately owned hazardous waste management facility consisting of processing, storage, or disposal operational hazardous waste management units such as one or more landfills, surface impoundments, waste piles, incinerators,

boilers, and industrial furnaces, including cement kilns, injection wells, salt dome waste containment caverns, land treatment facilities, or a combination of units.

(40) [(38)] **Hazardous waste management unit** - A landfill, surface impoundment, waste pile, boiler, industrial furnace, incinerator, cement kiln, injection well, container, drum, salt dome waste containment cavern, or land treatment unit, or any other structure, vessel, appurtenance, or other improvement on land used to manage hazardous waste.

(41) [(39)] **Hazardous wastes** - Any solid waste identified or listed as a hazardous waste by the administrator of the EPA under the federal Solid Waste Disposal Act, as amended by RCRA, 42 United States Code (USC), §§6901 et seq., as amended.

(42) [(40)] **Heatset (used in offset lithographic printing)** - Any operation where heat is required to evaporate ink oil from the printing ink. Hot air dryers are used to deliver the heat.

(43) [(41)] **High-bake coatings** - Coatings designed to cure at temperatures above 194 degrees Fahrenheit.

(44) [(42)] **High-volume low-pressure [(HVLP)] spray guns** - Equipment used to apply coatings by means of a spray gun which operates between 0.1 and 10.0 pounds per square inch gauge air pressure.

(45) [(43)] **Incinerator** - An enclosed combustion apparatus and attachments which is used in the process of burning wastes for the primary purpose of reducing its volume and weight by removing the combustibles of the waste and which is equipped with a flue for conducting products of combustion to the atmosphere. Any combustion device which burns 10% or more of solid waste on a total British thermal unit (Btu) heat input basis averaged over any one-hour period shall be considered an incinerator. A combustion device without instrumentation or methodology to determine hourly flow rates of solid waste and burning 1.0% or more of solid waste on a total Btu heat input basis averaged annually shall also be considered an incinerator. An open-trench type (with closed ends) combustion unit may be considered an incinerator when approved by the executive director. Devices burning untreated wood scraps, waste wood, or sludge from the treatment of wastewater from the process mills as a primary fuel for heat recovery are not included under this definition. Combustion devices permitted under this title as combustion devices other than incinerators will not be considered incinerators for application of any regulations within this title provided they are installed and operated in compliance with the condition of all applicable permits.

(46) [(44)] **Industrial boiler** - A boiler located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes.

(47) [(45)] **Industrial furnace** - Cement kilns, lime kilns, aggregate kilns, phosphate kilns, coke ovens, blast furnaces, smelting, melting, or refining furnaces, including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, or foundry furnaces,

titanium dioxide chloride process oxidation reactors, methane reforming furnaces, pulping recovery furnaces, combustion devices used in the recovery of sulfur values from spent sulfuric acid, and other devices the commission may list.

(48) [(46)] **Industrial solid waste** - Solid waste resulting from, or incidental to, any process of industry or manufacturing, or mining or agricultural operations, classified as follows.

(A) Class 1 industrial solid waste or Class 1 waste is any industrial solid waste designated as Class 1 by the executive director as any industrial solid waste or mixture of industrial solid wastes that because of its concentration or physical or chemical characteristics is toxic, corrosive, flammable, a strong sensitizer or irritant, a generator of sudden pressure by decomposition, heat, or other means, and may pose a substantial present or potential danger to human health or the environment when improperly processed, stored, transported, or otherwise managed, including hazardous industrial waste, as defined in §335.1 of this title (relating to Definitions) and §335.505 of this title (relating to Class 1 Waste Determination).

(B) Class 2 industrial solid waste is any individual solid waste or combination of industrial solid wastes that cannot be described as Class 1 or Class 3, as defined in §335.506 of this title (relating to Class 2 Waste Determination).

(C) Class 3 industrial solid waste is any inert and essentially insoluble industrial solid waste, including materials such as rock, brick, glass, dirt, and certain plastics and

rubber, etc., that are not readily decomposable as defined in §335.507 of this title (relating to Class 3 Waste Determination).

(49) [(47)] **Internal floating cover** - A cover or floating roof in a fixed roof tank which rests upon or is floated upon the liquid being contained, and is equipped with a closure seal or seals to close the space between the cover edge and tank shell.

(50) [(48)] **Leak** - A volatile organic compound [VOC] concentration greater than 10,000 parts per million by volume [(ppmv)] or the amount specified by applicable rule, whichever is lower; or the dripping or exuding of process fluid based on sight, smell, or sound.

(51) [(49)] **Liquid fuel** - A liquid combustible mixture, not derived from hazardous waste, with a heating value of at least 5,000 British thermal units [Btu] per pound.

(52) [(50)] **Liquid-mounted seal** - A primary seal mounted in continuous contact with the liquid between the tank wall and the floating roof around the circumference of the tank.

(53) [(51)] **Maintenance area** - A geographic region of the state previously designated nonattainment under the FCAA Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under FCAA, §175A, as amended. The following are the maintenance areas within the state:

(A) Victoria Ozone Maintenance Area (60 FR 12453) - Victoria County; and

(B) Collin County Lead Maintenance Area (64 FR 55421 - 55425) - Portion of Collin County. Eastside: Starting at the intersection of South Fifth Street and the fence line approximately 1,000 feet south of the Exide property line going north to the intersection of South Fifth Street and Eubanks Street; Northside: Proceeding west on Eubanks to the Burlington Railroad tracks; Westside: Along the Burlington Railroad tracks to the fence line approximately 1,000 feet south of the Exide property line; Southside: Fence line approximately 1,000 feet south of the Exide property line.

(54) [(52)] Maintenance plan [Plan] - A revision to the applicable state implementation plan [SIP], meeting the requirements of FCAA, §175A.

(55) [(53)] Marine vessel - Any watercraft used, or capable of being used, as a means of transportation on water, and that is constructed or adapted to carry, or that carries, oil, gasoline, or other volatile organic liquid in bulk as a cargo or cargo residue.

(56) [(54)] Mechanical shoe seal - A metal sheet which is held vertically against the storage tank wall by springs or weighted levers and is connected by braces to the floating roof. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof.

(57) [(55)] **Medical waste** - Waste materials identified by the Texas Department of Health as "special waste from health care-related facilities" and those waste materials commingled and discarded with special waste from health care related facilities.

(58) [(56)] **Metropolitan Planning Organization [(MPO)]** - That organization designated as being responsible, together with the state, for conducting the continuing, cooperative, and comprehensive planning process under 23 United States Code (USC) [USC], §134 and 49 USC, §1607.

(59) [(57)] **Mobile emissions reduction credit [(MERC)]** - The credit obtained from an enforceable, permanent, quantifiable, and surplus (to other federal and state regulations) emissions reduction generated by a mobile source as set forth in Chapter 114, Subchapter E of this title (relating to Low Emission Vehicle Fleet Requirements) or Chapter 114, Subchapter F of this title (relating to Vehicle Retirement and Mobile Emission Reduction Credits), and which has been banked in accordance with Chapter 101, Subchapter H, Division 1 of this title.

(60) [(58)] **Motor vehicle** - A self-propelled [self propelled] vehicle designed for transporting persons or property on a street or highway.

(61) [(59)] **Motor vehicle fuel dispensing facility** - Any site where gasoline is dispensed to motor vehicle fuel tanks from stationary storage tanks.

(62) [(60)] **Municipal solid waste** - Solid waste resulting from, or incidental to, municipal, community, commercial, institutional, and recreational activities, including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste except industrial solid waste.

(63) [(61)] **Municipal solid waste facility** - All contiguous land, structures, other appurtenances, and improvements on the land used for processing, storing, or disposing of solid waste. A facility may be publicly or privately owned and may consist of several processing, storage, or disposal operational units, e.g., one or more landfills, surface impoundments, or combinations of them.

(64) [(62)] **Municipal solid waste landfill** - A discrete area of land or an excavation that receives household waste and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under 40 Code of Federal Regulations [CFR] §257.2. A municipal solid waste landfill (MSWLF) unit also may receive other types of RCRA Subtitle D wastes, such as commercial solid waste, nonhazardous [non-hazardous] sludge, conditionally exempt small-quantity generator waste, and industrial solid waste. Such a landfill may be publicly or privately owned. An MSWLF unit may be a new MSWLF unit, an existing MSWLF unit, or a lateral expansion.

(65) [(63)] **National ambient air quality standard** [**Ambient Air Quality Standard (NAAQS)**] - Those standards established under FCAA, §109, including standards for carbon monoxide

[(CO)], lead [(Pb)], nitrogen dioxide [(NO₂)], ozone [(O₃)], inhalable particulate matter [(PM₁₀ and PM_{2.5})], and sulfur dioxide [(SO₂)].

(66) [(64)] **Net ground-level concentration** - The concentration of an air contaminant as measured at or beyond the property boundary minus the representative concentration flowing onto a property as measured at any point. Where there is no expected influence of the air contaminant flowing onto a property from other sources, the net ground level concentration may be determined by a measurement at or beyond the property boundary.

(67) [(65)] **New source** - Any stationary source, the construction or modification of which was commenced after March 5, 1972.

(68) [(66)] **Nonattainment area** - A defined region within the state which is designated by EPA as failing to meet the national ambient air quality standard [National Ambient Air Quality Standard] for a pollutant for which a standard exists. The EPA will designate the area as nonattainment under the provisions of FCAA, §107(d). For the official list and boundaries of nonattainment areas, see 40 Code of Federal Regulations [CFR] Part 81 and pertinent *Federal Register* (FR) notices. The following areas comprise the nonattainment areas within the state_ [:]

(A) Carbon monoxide (CO). El Paso [(ELP)] CO nonattainment area (56 FR 56694)--Classified as a Moderate CO nonattainment area with a design value less than or equal to 12.7 parts per million. Portion of El Paso County. Portion of the city limits of El Paso: That portion of the

City of El Paso bounded on the north by Highway 10 from Porfirio Diaz Street to Reynolds Street, Reynolds Street from Highway 10 to the Southern Pacific Railroad lines, the Southern Pacific Railroad lines from Reynolds Street to Highway 62, Highway 62 from the Southern Pacific Railroad lines to Highway 20, and Highway 20 from Highway 62 to Polo Inn Road. Bounded on the east by Polo Inn Road from Highway 20 to the Texas-Mexico border. Bounded on the south by the Texas-Mexico border from Polo Inn Road to Porfirio Diaz Street. Bounded on the west by Porfirio Diaz Street from the Texas-Mexico border to Highway 10.

(B) Inhalable particulate matter (PM₁₀). El Paso [(ELP)] PM₁₀ nonattainment area (56 FR 56694)--Classified as a Moderate PM₁₀ nonattainment area. Portion of El Paso County which comprises the El Paso city limit boundaries as they existed on November 15, 1990.

(C) Lead. No designated nonattainment areas. [Collin County lead nonattainment area (56 FR 56694)--Portion of Collin County. Eastside: Starting at the intersection of south Fifth Street and the fence line approximately 1,000 feet south of the Gould National Batteries (GNB) property line going north to the intersection of south Fifth Street and Eubanks Street; Northside: Proceeding west on Eubanks to the Burlington Railroad tracks; Westside: Along the Burlington Railroad tracks to the fence line approximately 1,000 feet south of the GNB property line; Southside: Fence line approximately 1,000 feet south of the GNB property line.]

(D) Nitrogen dioxide [Dioxide (NO₂)]. No designated nonattainment areas.

(E) Ozone.

(i) Houston/Galveston [(HGA)] ozone nonattainment area (56 FR 56694)--Classified as a Severe-17 ozone nonattainment area. Consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties.

(ii) El Paso [(ELP)] ozone nonattainment area (56 FR 56694)--Classified as a Serious ozone nonattainment area. Consists of El Paso County.

(iii) Beaumont/Port Arthur [(BPA)] ozone nonattainment area (61 FR 14496)--Classified as a Moderate ozone nonattainment area. Consists of Hardin, Jefferson, and Orange Counties.

(iv) Dallas/Fort Worth [(DFW)] ozone nonattainment area (63 FR 8128)--Classified as a Serious ozone nonattainment area. Consists of Collin, Dallas, Denton, and Tarrant Counties.

(F) Sulfur dioxide [Dioxide (SO₂)]. No designated nonattainment areas.

(69) [(67)] Non-reportable emissions event [Nonreportable upset] - Any emissions event [upset] that is not a reportable emissions event [upset] as defined in this section.

(70) [(68)] **Opacity** - The degree to which an emission of air contaminants obstructs the transmission of light expressed as the percentage of light obstructed as measured by an optical instrument or trained observer.

(71) [(69)] **Open-top vapor degreasing** - A batch solvent cleaning process that is open to the air and which uses boiling solvent to create solvent vapor used to clean or dry metal parts through condensation of the hot solvent vapors on the colder metal parts.

(72) [(70)] **Outdoor burning** - Any fire or smoke-producing process which is not conducted in a combustion unit.

(73) [(71)] **Particulate matter** - Any material, except uncombined water, that exists as a solid or liquid in the atmosphere or in a gas stream at standard conditions.

(74) [(72)] **Particulate matter emissions** - All finely-divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by EPA Reference Method 5, as specified at 40 Code of Federal Regulations (CFR) [CFR] Part 60, Appendix A, modified to include particulate caught by an impinger train; by an equivalent or alternative method, as specified at 40 CFR Part 51; or by a test method specified in an approved state implementation plan [SIP].

(75) [(73)] **Petroleum refinery** - Any facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through distillation of crude oil, or

through the redistillation, cracking, extraction, reforming, or other processing of unfinished petroleum derivatives.

(76) [(74)] **PM₁₀** - Particulate matter with an aerodynamic diameter less than or equal to a nominal ten [10] micrometers as measured by a reference method based on 40 Code of Federal Regulations (CFR) [CFR] Part 50, Appendix J and designated in accordance with 40 CFR Part 53, or by an equivalent method designated with that Part 53.

(77) [(75)] **PM₁₀ emissions** - Finely-divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method specified in 40 Code of Federal Regulations [CFR] Part 51, or by a test method specified in an approved state implementation plan [SIP].

(78) [(76)] **Polychlorinated biphenyl compound [(PCB)]** - A compound subject to 40 Code of Federal Regulations [CFR] Part 761.

(79) [(77)] **Process or processes** - Any action, operation, or treatment embracing chemical, commercial, industrial, or manufacturing factors such as combustion units, kilns, stills, dryers, roasters, and equipment used in connection therewith, and all other methods or forms of manufacturing or processing that may emit smoke, particulate matter, gaseous matter, or visible emissions.

(80) [(78)] **Process weight per hour** - "Process weight" is the total weight of all materials introduced or recirculated into any specific process which may cause any discharge of air contaminants into the atmosphere. Solid fuels charged into the process will be considered as part of the process weight, but liquid and gaseous fuels and combustion air will not. The "process weight per hour" will be derived by dividing the total process weight by the number of hours in one complete operation from the beginning of any given process to the completion thereof, excluding any time during which the equipment used to conduct the process is idle. For continuous operation, the "process weight per hour" will be derived by dividing the total process weight for a 24-hour period by 24.

(81) [(79)] **Property** - All land under common control or ownership coupled with all improvements on such land, and all fixed or movable objects on such land, or any vessel on the waters of this state.

(82) [(80)] **Reasonable further progress [(RFP)]** - Annual incremental reductions in emissions of the applicable air contaminant which are sufficient to provide for attainment of the applicable national ambient air quality standard in the designated nonattainment areas by the date required in the state implementation plan [SIP].

(83) [(81)] **Remote reservoir cold solvent cleaning** - Any cold solvent cleaning operation in which liquid solvent is pumped to a sink-like work area that drains solvent back into an enclosed container while parts are being cleaned, allowing no solvent to pool in the work area.

(84) Reportable emissions event - Any emissions event which, in any 24-hour period, results in an unauthorized emission equal to or in excess of the reportable quantity as defined in this section.

(85) [(82)] Reportable quantity (RQ) - Is as follows:

(A) for individual air contaminant compounds and specifically listed mixtures,
either:

(i) the lowest of the quantities:

(I) listed in 40 Code of Federal Regulations (CFR) [CFR] §302, Table 302.4, the column “final RQ”;

(II) listed in 40 CFR §355, Appendix A, the column “Reportable Quantity”; or

(III) listed as follows:

(-a-) butanes (any isomer) - 5,000 pounds;

- (-b-) butenes (any isomer, except 1,3-butadiene) - 100
[5,000] pounds;
- (-c-) ethylene - 100 [5,000] pounds;
- (-d-) carbon monoxide - 5,000 pounds;
- (-e-) pentanes (any isomer) - 5,000 pounds;
- (-f-) propane - 5,000 pounds;
- (-g-) propylene - 100 [5,000] pounds;
- (-h-) ethanol - 5,000 pounds;
- (-i-) isopropyl alcohol - 5,000 pounds;
- (-j-) mineral spirits - 5,000 pounds;
- (-k-) hexanes (any isomer) - 5,000 pounds;
- (-l-) octanes (any isomer) - 5,000 pounds;

(-m-) decanes (any isomer) - 5,000 pounds; [or]

(-n-) acetaldehyde - 100 pounds;

(-o-) toluene - 100 pounds; or

(ii) if not listed in clause (i) of this subparagraph, 100 pounds;

(B) for mixtures of air contaminant compounds:

(i) where the relative amount of individual air contaminant compounds is known through common process knowledge or prior engineering analysis or testing, any amount of an individual air contaminant compound which equals or exceeds the amount specified in subparagraph (A) of this paragraph;

(ii) where the relative amount of individual air contaminant compounds in subparagraph (A)(i) of this paragraph is not known, any amount of the mixture which equals or exceeds the amount for any single air contaminant compound that is present in the mixture and listed in subparagraph (A)(i) of this paragraph;

(iii) where each of the individual air contaminant compounds listed in subparagraph (A)(i) of this paragraph are known to be less than 0.02% by weight of the mixture, and

each of the other individual air contaminant compounds covered by subparagraph (A)(ii) of this paragraph are known to be less than 2.0% by weight of the mixture, any total amount of the mixture of air contaminant compounds greater than or equal to 5,000 pounds; or

(iv) where natural gas excluding methane and ethane, or air emissions from crude oil are known to be in an amount greater than or equal to 5,000 pounds or associated hydrogen sulfide and mercaptans in a total amount greater than 100 pounds, whichever occurs first;

(C) for opacity, an opacity which is equal to or exceeds 15 additional percentage points above the applicable limit, averaged over a six-minute period. Opacity is the only reportable quantity applicable to boilers or combustion turbines fueled by natural gas, coal, lignite, wood, or fuel oil containing hazardous air pollutants at a concentration of less than 0.02% by weight;

(D) for facilities where air contaminant compounds are measured directly by a continuous emission monitoring system providing updated readings at a minimum 15-minute interval an amount, approved by the executive director based on any relevant conditions and a screening model, that would be reported prior to ground level concentrations reaching at any distance beyond the closest facility property line:

(i) less than one half of any applicable ambient air standards; and

(ii) less than two times the concentration of applicable air emission limitations.

[(83) **Reportable upset** - Any upset which, in any 24-hour period, results in an unauthorized emission of air contaminants equal to or in excess of the reportable quantity as defined in this section.]

~~(86)~~ [(84)] **Rubbish** - Nonputrescible solid waste, consisting of both combustible and noncombustible waste materials. Combustible rubbish includes paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials. Noncombustible rubbish includes glass, crockery, tin cans, aluminum cans, metal furniture, and like materials which will not burn at ordinary incinerator temperatures (1,600 degrees Fahrenheit to 1,800 degrees Fahrenheit).

(87) **Scheduled maintenance, startup, or shutdown activity** - A maintenance, startup, or shutdown activity that will not and does not result in the emission of at least a reportable quantity of unauthorized emissions and the activity is recorded as required by §101.211 of this title (relating to Scheduled Maintenance, Startup and Shutdown Reporting, and Recordkeeping Requirements), or if the maintenance, startup, or shutdown activity results in the emission of at least a reportable quantity of unauthorized emissions and:

(A) the owner or operator of the facility provides prior notice and a final report as required in §101.211 of this title;

(B) the notice or final report includes the information required in §101.211 of this title; or

(C) the actual emissions do not exceed the estimates submitted in the notice.

(88) **Site** - For the purposes of Subchapter F of this chapter, shall mean all units, facilities, equipment, structures, or regulated sources at one street address or location that are owned or operated by the same person. Site includes any property used in connection with the regulated activity.

(89) [(85)] **Sludge** - Any solid or semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant; water supply treatment plant, exclusive of the treated effluent from a wastewater treatment plant; or air pollution control equipment.

(90) [(86)] **Smoke** - Small gas-born particles resulting from incomplete combustion consisting predominately of carbon and other combustible material and present in sufficient quantity to be visible.

(91) [(87)] **Solid waste** - Garbage, rubbish, refuse, sludge from a waste water treatment plant, water supply treatment plant, or air pollution control equipment, and other discarded material, including solid, liquid, semisolid, or containerized gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term does not include:

(A) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under the Texas Water Code, Chapter 26;

(B) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land, if the object of the fill is to make the land suitable for the construction of surface improvements; or

(C) waste materials that result from activities associated with the exploration, development, or production of oil or gas, or geothermal resources, and other substance or material regulated by the Railroad Commission of Texas under the Natural Resources Code, §91.101, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is hazardous waste as defined by the administrator of the EPA under the federal Solid Waste Disposal Act, as amended by RCRA, as amended (42 United States Code [USC], §§6901 et seq.).

(92) [(88)] **Sour crude** - A crude oil which will emit a sour gas when in equilibrium at atmospheric pressure.

(93) [(89)] **Sour gas** -Any natural gas containing more than 1.5 grains of hydrogen sulfide per 100 cubic feet, or more than 30 grains of total sulfur per 100 cubic feet.

(94) [(90)] **Source** - A point of origin of air contaminants, whether privately or publicly owned or operated. Upon request of a source owner, the executive director shall determine whether multiple processes emitting air contaminants from a single point of emission will be treated as a single source or as multiple sources.

(95) [(91)] **Special waste from health care related facilities** - A solid waste which if improperly treated or handled may serve to transmit infectious disease(s) and which is comprised of the following: animal waste, bulk blood and blood products, microbiological waste, pathological waste, and sharps.

(96) [(92)] **Standard conditions** - A condition at a temperature of 68 degrees Fahrenheit (20 degrees Centigrade) and a pressure of 14.7 pounds per square inch absolute (101.3 kiloPascals [kPa]). Pollutant concentrations from an incinerator will be corrected to a condition of 50% excess air if the incinerator is operating at greater than 50% excess air.

(97) [(93)] **Standard metropolitan statistical area** - An area consisting of a county or one or more contiguous counties which is officially so designated by the United States Bureau of the Budget.

(98) [(94)] **Submerged fill pipe** - A fill pipe that extends from the top of a tank to have a maximum clearance of six inches (15.2 centimeters [cm]) from the bottom or, when applied to a tank

which is loaded from the side, that has a discharge opening entirely submerged when the pipe used to withdraw liquid from the tank can no longer withdraw liquid in normal operation.

(99) [(95)] **Sulfur compounds** - All inorganic or organic chemicals having an atom or atoms of sulfur in their chemical structure.

(100) [(96)] **Sulfuric acid mist/sulfuric acid** - Emissions of sulfuric acid mist and sulfuric acid are considered to be the same air contaminant calculated as H_2SO_4 and shall include sulfuric acid liquid mist, sulfur trioxide, and sulfuric acid vapor as measured by Test Method 8 in 40 Code of Federal Regulations [CFR] Part 60, Appendix A.

(101) [(97)] **Sweet crude oil and gas** - Those crude petroleum hydrocarbons that are not "sour" as defined in this section.

(102) [(98)] **Total suspended particulate** - Particulate matter as measured by the method described in 40 Code of Federal Regulations [CFR] Part 50, Appendix B.

(103) [(99)] **Transfer efficiency** - The amount of coating solids deposited onto the surface or a part of product divided by the total amount of coating solids delivered to the coating application system.

(104) [(100)] **True vapor pressure** - The absolute aggregate partial vapor pressure, measured in pounds per square inch absolute, [(psia)] of all volatile organic compounds [VOCs] at the temperature of storage, handling, or processing.

(105) [(101)] **Unauthorized emission** - An emission of any air contaminant [except carbon dioxide, water, nitrogen, methane, ethane, noble gases, hydrogen, and oxygen] which is not an authorized emission as defined in this section [exceeds any air emission limitation in a permit, rule, or order of the commission or as authorized by TCAA, §382.0518(g)].

(106) **Unscheduled maintenance, startup, or shutdown activity** - Any maintenance, startup, or shutdown activity that is not a scheduled maintenance, startup, or shutdown activity as defined in this section.

(107) [(102)] **Upset event** - An unplanned or unanticipated [unscheduled] occurrence or excursion of a process or operation that results in [an] unauthorized emissions [emission of air contaminants].

(108) [(103)] **Utility boiler** - A boiler used to produce electric power, steam, or heated or cooled air, or other gases or fluids for sale.

(109) [(104)] **Vapor combustor** - A partially enclosed combustion device used to destroy volatile organic compounds [VOCs] by smokeless combustion without extracting energy in the

form of process heat or steam. The combustion flame may be partially visible, but at no time does the device operate with an uncontrolled flame. Auxiliary fuel and/or a flame air control damping system, which can operate at all times to control the air/fuel mixture to the combustor's flame zone, may be required to ensure smokeless combustion during operation.

(110) [(105)] **Vapor-mounted seal** - A primary seal mounted so there is an annular space underneath the seal. The annular vapor space is bounded by the bottom of the primary seal, the tank wall, the liquid surface, and the floating roof or cover.

(111) [(106)] **Vent** - Any duct, stack, chimney, flue, conduit, or other device used to conduct air contaminants into the atmosphere.

(112) [(107)] **Visible emissions** - Particulate or gaseous matter which can be detected by the human eye. The radiant energy from an open flame shall not be considered a visible emission under this definition.

(113) [(108)] **Volatile organic compound [(VOC)]** - Any compound of carbon or mixture of carbon compounds excluding methane; ethane; 1,1,1-trichloroethane (methyl chloroform); methylene chloride (dichloromethane); perchloroethylene (tetrachloroethylene); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113); 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro-2,2-dichloroethane (HCFC-123);

2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125);
1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1,2-tetrafluoroethane (HFC-134a);
1,1-dichloro-1-fluoroethane (HCFC-141b); 1-chloro-1,1-difluoroethane (HCFC-142b);
1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride
(PCBTF); cyclic, branched, or linear completely methylated siloxanes; acetone;
3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane
(HCFC-225cb); 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee); difluoromethane (HFC-32);
ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane
(HFC-245ca); 1,1,2,3,3-pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb);
1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea);
1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31);
1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1-chloro-1-fluoroethane (HCFC-151a);
1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxybutane;
2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane;
1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane;
2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane; methyl acetate; carbon monoxide; carbon
dioxide; carbonic acid; metallic carbides or carbonates; ammonium carbonate; and perfluorocarbon
compounds which fall into these classes:

(A) cyclic, branched, or linear, completely fluorinated alkanes;

(B) cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(C) cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(D) sulfur-containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

(114) [(109)] Volatile organic compound (VOC) [VOC] water separator - Any tank, box, sump, or other container in which any VOC, floating on or contained in water entering such tank, box, sump, or other container, is physically separated and removed from such water prior to outfall, drainage, or recovery of such water.

SUBCHAPTER A: GENERAL RULES

§§101.6, 101.7, 101.11, 101.12, 101.15 - 101.17

STATUTORY AUTHORITY

The repeals are proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The repeals are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state air; §382.014, concerning Emission Inventory, which authorizes the commission to require a person whose activities cause emissions of air contaminants to submit information to enable the commission to develop an emissions inventory; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of emissions of air contaminants; §382.023, concerning Orders, which authorizes the commission to issue orders to carry out the purposes of TCAA; §382.025, concerning Orders Relating to Controlling Air Pollution, which authorizes the commission to order actions indicated by the circumstances to control a condition of air pollution; §382.028, concerning Variances, which authorizes the commission to grant variances; §382.0518(g), concerning Preconstruction Permits, which

authorizes the commission to authorize emissions under preconstruction permits; §382.085, concerning Unauthorized Emissions Prohibited, which prohibits emissions except as authorized by commission rule or order; §382.215, concerning Assessment of Emissions Due to Emissions Events, which authorizes the commission to collect and assess unauthorized emissions data due to emissions events; and §382.216, concerning Regulation of Emissions Events, which authorizes the commission to establish criteria for determining when emissions events are excessive and to require facilities to take action to reduce emissions from excessive emissions events. The repeals are also proposed under 42 USC, §7410(a)(F)(iii), which requires correlation of emissions reports and emission-related data by the state agency with any emission limitations or standards established under the FCAA, 42 USC, §§7401 *et seq.*

The proposed repeals implement THSC, §§382.002, 382.011, 382.012, 382.014, 382.016, 382.023, 382.025, 382.028, 382.085, 382.215, and 382.216; and HB 2912, §5.01 and §18.14.

§101.6. Upset Reporting and Recordkeeping Requirements.

§101.7. Maintenance, Start-up and Shutdown Reporting, Recordkeeping, and Operational Requirements.

§101.11. Demonstrations.

§101.12. Temporary Exemptions During Drought Conditions.

§101.15. Petition for Variance.

§101.16. Effect of Acceptance of Variance or Permit.

§101.17. Transfers.

**SUBCHAPTER F: EMISSIONS EVENTS AND SCHEDULED MAINTENANCE,
STARTUP, AND SHUTDOWN ACTIVITIES**

DIVISION 1: EMISSIONS EVENTS

§101.201

STATUTORY AUTHORITY

The new section is proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The new section is also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.014, concerning Emission Inventory, which authorizes the commission to require a person whose activities cause emissions of air contaminants to submit information to enable the commission to develop an emissions inventory; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of emissions of air contaminants; §382.025, concerning Orders Relating to Controlling Air Pollution, which authorizes the commission to order actions indicated by the circumstances to control a condition of air pollution; §382.085, concerning Unauthorized Emissions Prohibited, which prohibits emissions except as authorized by commission rule or order; §382.215, concerning Assessment of

Emissions Due to Emissions Events, which authorizes the commission to collect and assess unauthorized emissions data due to emissions events; and §382.216, concerning Regulation of Emissions Events, which authorizes the commission to establish criteria for determining when emissions events are excessive and to require facilities to take action to reduce emissions from excessive emissions events. The new section is also proposed under 42 USC, §7410(a)(F)(iii), which requires correlation of emissions reports and emission-related data by the state agency with any emission limitations or standards established under the FCAA, 42 USC, §§7401 *et seq.*

The proposed new section implements THSC, §§382.002, 382.011, 382.012, 382.014, 382.016, 382.025, 382.085, 382.215, and 382.216; and HB 2912, §5.01 and §18.14.

§101.201. Emissions Event Reporting and Recordkeeping Requirements.

(a) The following requirements for reportable emissions events shall apply.

(1) As soon as practicable, but not later than 24 hours after the discovery of an emissions event, the owner or operator of a facility shall:

(A) determine if the event is a reportable emissions event; and

(B) notify the commission office for the region in which the facility is located, and all appropriate local air pollution control agencies, if the emissions event is reportable.

(2) The notification for reportable emissions events, except for boilers or combustion turbines referenced in the definition of reportable quantity (RQ) in §101.1 of this title (relating to Definitions), shall identify:

(A) the name of the owner or operator of the facility experiencing an emissions event;

(B) the commission air account number of the facility experiencing an emissions event, if an account number exists;

(C) the location of the emissions event;

(D) the cause of the emissions event, if known;

(E) the processes and equipment involved, including the emissions authorization (i.e., permit number or rule citation) and source identification. The source identification must include the common name for the equipment involved and the most precise commission-recognized identifier for those same sources where such identifiers exist. Commission identifiers include, but are not limited to, the emission point number, the facility identification number established for emissions inventory or preconstruction authorization requirements, and the emission unit number for those sources subject to the Federal Operating Permits Program;

(F) the date and time of the discovery of the emissions event;

(G) the duration or expected duration of the emissions event;

(H) the compound descriptive type of the individually listed compounds or mixtures of air contaminants, in the definition of RQ in §101.1 of this title, which are known through common process knowledge, past engineering analysis, or testing to have equaled or exceeded the reportable quantity;

(I) the estimated total quantities and the authorized emissions limits for those compounds or mixtures described in subparagraph (H) of this paragraph;

(J) the basis used for determining the quantity of air contaminants emitted;

(K) the actions taken, or being taken, to correct the emissions event and minimize the emissions; and

(L) any additional information necessary to evaluate the emissions event against the criteria listed in §101.222(a) of this title (relating to Demonstrations). For initial notifications this requirement is optional. However, if the initial notification is used to satisfy the requirements of subsection (c) of this section, the information in this subparagraph is required.

(3) The notification for reportable emissions events for boilers or combustion turbines referenced in the definition of RQ in §101.1 of this title shall identify:

(A) the name of the owner or operator of the facility experiencing an emissions event;

(B) the commission air account number of the facility experiencing an emissions event, if an account number exists;

(C) the location of the emissions event;

(D) the cause of the emissions event, if known;

(E) the processes and equipment involved, including emissions authorization (i.e., permit number or rule citation) and source identification. The source identification must include the common name for the equipment involved and the most precise commission-recognized identifier for those same sources where such identifiers exist. Commission identifiers include, but are not limited to, the emission point number, the facility identification number established for emissions inventory or preconstruction authorization requirements, and the emission unit number for those sources subject to the Federal Operating Permits Program;

(F) the date and time of the discovery of the emissions event;

(G) the duration or expected duration of the emissions event;

(H) the estimated opacity;

(I) the authorized opacity limit for the source having the emissions event;

(J) the actions taken, or being taken, to correct the emissions event and minimize the emissions; and

(K) any additional information necessary to evaluate the emissions event against the criteria listed in §101.222(a) of this title. For initial notifications this requirement is optional. However, if the initial notification is used to satisfy the requirements of subsection (c) of this section, the information in this subparagraph is required.

(4) The owner or operator of a facility experiencing an emissions event must provide additional or more detailed information on the emissions event when requested by the executive director or any air pollution control agency with jurisdiction.

(b) The owner or operator of a facility experiencing an emissions event shall create a final record of all reportable and non-reportable emissions events as soon as practicable, but no later than two weeks after the end of an emissions event. Final records shall be maintained on-site for a minimum of five years and be made readily available upon request to commission staff or personnel of any air

pollution program with jurisdiction. If a site is not normally staffed, records of emissions events may be maintained at the staffed location within Texas that is responsible for the day-to-day operations of the site. Such records shall identify:

(1) the name of the owner or operator of the facility experiencing an emissions event;

(2) the commission air account number of the facility experiencing an emissions event,

if the account number exists;

(3) the location of the emissions event;

(4) the cause of the emissions event;

(5) the processes and equipment involved, including emissions authorization (i.e., permit number or rule citation) and source identification. The source identification must include the common name for the equipment involved and the most precise commission-recognized identifier for those same sources where such identifiers exist. Commission identifiers include, but are not limited to, the emission point number, the facility identification number established for emissions inventory or preconstruction authorization requirements, and the emission unit number for those sources subject to the Federal Operating Permits Program;

(6) the date and time of the discovery of the emissions event;

(7) the duration of the emissions event;

(8) the compound descriptive type of all individually listed compounds or mixtures of air contaminants, in the definition of RQ in §101.1 of this title, which are known through common process knowledge or past engineering analysis or testing to have been released during the emissions event, except for boilers or combustion turbines referenced in the definition of reportable quantity;

(9) the estimated total quantities for those compounds or mixtures described in paragraph (8) of this subsection and the authorized emissions limits for the source experiencing the emissions event, except for boilers or combustion turbines referenced in the definition of RQ, which record only the authorized opacity limit and the estimated opacity during the emissions event;

(10) the basis used for determining the quantity of air contaminants emitted;

(11) the actions taken, or being taken, to correct the emissions event and minimize the emissions; and

(12) any additional information necessary to evaluate the emissions event against the criteria listed in §101.222(a) of this title.

(c) For all reportable emissions events, if the information required in subsection (b) of this section differs from the information provided in the 24-hour notification under subsection (a) of this

section, the owner or operator of the facility shall submit a copy of the final record to the commission office for the region in which the facility is located no later than two weeks after the end of the emissions event. If the owner or operator does not submit a record under this subsection, the information provided in the 24-hour notification under subsection (a) of this section will be the final record of the emissions event.

(d) The owner or operator of a boiler or combustion turbine referenced in the definition of RQ in §101.1 of this title that is equipped with a continuous emission monitoring system that completes a minimum of one operating cycle (sampling, analyzing, and data recording) for each successive 15-minute interval, and is required to submit excess emission reports by other state or federal requirements, is exempt from creating, maintaining, and submitting records of reportable and non-reportable emissions events of the boiler or combustion turbine under subsections (b) and (c) of this section. Excess emission reports that may satisfy other state or federal requirements, and which are used to satisfy this subsection must, at a minimum, contain the information required in subsection (b) of this section.

(e) The owner or operator of any facility subject to the provisions of this section shall perform, upon request by the executive director or any air pollution control agency with jurisdiction, a technical evaluation of each emissions event. The evaluation shall include at least an analysis of the probable causes of each emissions event and any necessary actions to prevent or minimize recurrence. The evaluation shall be submitted in writing to the executive director within 60 days from the date of request. The 60-day period may be extended by the executive director.

(f) On and after January 1, 2003, notifications required in subsection (a) of this section and final reports required in subsection (c) of this section, shall be submitted electronically to the commission using the electronic forms provided by the commission. Electronic notification and reporting is not required for small businesses which meet the small business definition in TCAA, §382.0365(g)(2). Small businesses shall provide notifications and reporting by any viable means which meet the time frames set out in this section.

(g) In the event the owner or operator of a facility fails to report an emissions event, the commission will initiate enforcement for such failure to report and for the underlying emissions event itself. This subsection does not apply where an owner or operator reports an emissions event and the report was incomplete, inaccurate, or untimely, unless the owner or operator knowingly or intentionally falsified the information in the report.

**SUBCHAPTER F: EMISSIONS EVENTS AND SCHEDULED MAINTENANCE, STARTUP,
AND SHUTDOWN ACTIVITIES**

DIVISION 2: MAINTENANCE, STARTUP, AND SHUTDOWN ACTIVITIES

§101.211

STATUTORY AUTHORITY

The new section is proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The new section is also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.014, concerning Emission Inventory, which authorizes the commission to require a person whose activities cause emissions of air contaminants to submit information to enable the commission to develop an emissions inventory; §382.016, concerning Monitoring Requirements: Examination of Records, which authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of emissions of air contaminants; §382.025, concerning Orders Relating to Controlling Air Pollution, which authorizes the commission to order actions indicated by the circumstances to control a condition of air pollution; §382.085, concerning Unauthorized Emissions Prohibited, which prohibits emissions except as authorized by commission rule or order; §382.215, concerning Assessment of

Emissions Due to Emissions Events, which authorizes the commission to collect and assess unauthorized emissions data due to emissions events; and §382.216, concerning Regulation of Emissions Events, which authorizes the commission to establish criteria for determining when emissions events are excessive and to require facilities to take action to reduce emissions from excessive emissions events. The new section is also proposed under 42 USC, §7410(a)(F)(iii), which requires correlation of emissions reports and emission-related data by the state agency with any emission limitations or standards established under the FCAA, 42 USC, §§7401 *et seq.*

The proposed new section implements THSC, §§382.002, 382.011, 382.012, 382.014, 382.016, 382.025, 382.085, 382.215, and 382.216; and HB 2912, §5.01 and §18.14.

§101.211. Scheduled Maintenance, Startup and Shutdown Reporting, and Recordkeeping Requirements.

(a) The owner or operator of a facility conducting a scheduled maintenance, startup, or shutdown activity shall notify the commission office for the region in which the facility is located and all appropriate local air pollution control agencies at least ten days prior to any scheduled maintenance, startup, or shutdown activity which is expected to cause an unauthorized emission which equals or exceeds the reportable quantity as defined in §101.1 of this title (relating to Definitions) in any 24-hour period. If notice cannot be given ten days prior to a scheduled maintenance, startup, or shutdown activity, notification shall be given as soon as practicable prior to the scheduled activity. Any unscheduled maintenance, startup, or shutdown activity is an emissions event and is subject to the

requirements in §101.201 of this title (relating to Emissions Event Reporting and Recordkeeping Requirements) and §101.222(a) of this title (relating to Demonstrations).

(1) The notification, except for boilers and combustion turbines referenced in the definition of reportable quantity in §101.1 of this title, shall identify:

(A) the name of the owner or operator;

(B) the commission air account number;

(C) the location of the scheduled maintenance, startup, or shutdown activity;

(D) the type of scheduled maintenance, startup, or shutdown activity and the reason for the scheduled activity;

(E) the expected date and time of the scheduled maintenance, startup, or shutdown activity;

(F) the processes and equipment involved, including the emissions authorization (i.e., permit number or rule citation) and source identification. The source identification must include the common name for the equipment involved and the most precise commission-recognized identifier for those same sources where such identifiers exist. Commission identifiers

include, but are not limited to, the emission point number, the facility identification number (established for emissions inventory or preconstruction authorization requirements), and the emission unit number for those sources subject to the Federal Operating Permits Program;

(G) the expected duration of the scheduled maintenance, startup, or shutdown activity;

(H) the compound descriptive type of the individually listed compounds or mixtures of air contaminants, in the definition of reportable quantity in §101.1 of this title, which through common process knowledge or past engineering analysis or testing are expected to equal or exceed the reportable quantity;

(I) the estimated total quantities for those compounds or mixtures described in subparagraph (H) of this paragraph and the authorized emissions limits;

(J) the basis used for determining the quantity of air contaminants to be emitted; and

(K) the actions taken to minimize the emissions from the scheduled maintenance, startup, or shutdown activity.

(2) The notification for boilers or combustion turbines referenced in the definition of reportable quantity in §101.1 of this title shall identify:

(A) the name of the owner or operator;

(B) the commission air account number;

(C) the location of the scheduled maintenance, startup, or shutdown activity;

(D) the type of scheduled maintenance, startup, or shutdown activity and the reason for the scheduled activity;

(E) the processes and equipment involved, including the emissions authorization (i.e., permit number or rule citation) and source identification. The source identification must include the common name for the equipment involved and the most precise commission-recognized identifier for those same sources where such identifiers exist. Commission identifiers include, but are not limited to, the emission point number, the facility identification number (established for emissions Inventory or preconstruction authorization requirements), and the emission unit number for those sources subject to the Federal Operating Permits Program;

(F) the expected date and time of the scheduled maintenance, startup, or shutdown activity;

(G) the duration or expected duration of the scheduled maintenance, startup, or shutdown activity;

(H) the estimated opacity and the authorized opacity limit; and

(I) the actions taken, or being taken, to minimize the emissions from the scheduled maintenance, startup, or shutdown activity.

(b) The owner or operator of a facility conducting a scheduled maintenance, startup, or shutdown activity shall create a final record of all scheduled maintenance, startup, and shutdown activities with unauthorized emissions as soon as practicable, but no later than two weeks after the end of each scheduled activity. Final records shall be maintained on-site for a minimum of five years and be made readily available upon request to commission staff or personnel of any air pollution program with jurisdiction. If a site is not normally staffed, records of scheduled maintenance, startup, and shutdown activities may be maintained at the staffed location within Texas that is responsible for day-to-day operations of the site. Such scheduled activity records shall identify:

(1) the name of the owner or operator;

(2) the commission air account number;

(3) the location of the scheduled maintenance, startup, or shutdown activity;

(4) the type of scheduled maintenance, startup, or shutdown activity and the reason for the scheduled activity;

(5) the processes and equipment involved, including the emissions authorization (i.e., permit number or rule citation) and source identification. The source identification must include the common name for the equipment involved and the most precise commission-recognized identifier for those same sources where such identifiers exist. Commission identifiers include, but are not limited to, the emission point number, the facility identification number (established for emissions inventory or preconstruction authorization requirements), and the emission unit number for those sources subject to the Federal Operating Permits Program;

(6) the date and time of the scheduled maintenance, startup, or shutdown activity;

(7) the duration of the scheduled maintenance, startup, or shutdown activity;

(8) the compound descriptive type of all individually listed compounds or mixtures of air contaminants, in the definition of reportable quantity in §101.1 of this title, which are known through common process knowledge or past engineering analysis or testing to have been released during the scheduled maintenance, startup, or shutdown activity, except for boilers or combustion turbines referenced in the definition of reportable quantity;

(9) the estimated total quantities and the authorized emissions limits for those compounds or mixtures described in paragraph (8) of this subsection, except for boilers or combustion turbines referenced in the definition of reportable quantity in §101.1 of this title, which records only the authorized opacity limit during the emissions limit;

(10) the basis used for determining the quantity of air contaminants to be emitted; and

(11) the actions taken to minimize the emissions from the scheduled maintenance, startup, or shutdown activity.

(c) For any scheduled maintenance, startup, or shutdown activity for which an initial notification was submitted under subsection (a) of this section, if the information required in subsection (b) of this section differs from the information provided under subsection (a) of this section, the owner or operator of the facility shall submit a copy of the final record to the commission office for the region in which the facility is located no later than two weeks after the end of the scheduled activity. If the owner or operator does not submit a record under this subsection, the information provided under subsection (a) of this section will be the final record of the scheduled activity.

(d) The owner or operator of a boiler or combustion turbine referenced in the definition of reportable quantity in §101.1 of this title that is equipped with a continuous emission monitoring system that completes a minimum of one operating cycle (sampling, analyzing, and data recording) for each successive 15-minute interval, and is required to submit excess emissions reports by other state or

federal regulations, is exempt from creating, maintaining, and submitting records of scheduled maintenance, startup, and shutdown activities with unauthorized emissions under subsections (b) and (c) of this section. Excess emission reports that may satisfy other state or federal requirements, and which are used to satisfy this subsection must, at a minimum, contain the information required in subsection (b) of this section.

(e) The executive director may specify the amount, time, and duration of emissions that will be allowed during the scheduled maintenance, startup, or shutdown activity. The owner or operator of any source subject to the provisions of this section shall submit a technical plan for any scheduled maintenance, startup, or shutdown activity when requested by the executive director. The plan shall contain a detailed explanation of the means by which emissions will be minimized during the scheduled maintenance, startup, or shutdown activity. For those emissions which must be released into the atmosphere, the plan shall include the reasons such emissions cannot be reduced further.

**SUBCHAPTER F: EMISSIONS EVENTS AND SCHEDULED MAINTENANCE, STARTUP,
AND SHUTDOWN ACTIVITIES**

**DIVISION 3: OPERATIONAL REQUIREMENTS, DEMONSTRATIONS, AND
EXCESSIVE EMISSIONS EVENTS**

§§101.221 - 101.224

STATUTORY AUTHORITY

The new sections are proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The new sections are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.014, concerning Emission Inventory, which authorizes the commission to require a person whose activities cause emissions of air contaminants to submit information to enable the commission to develop an emissions inventory; §382.016, concerning Monitoring Requirements: Examination of Records, which authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of emissions of air contaminants; §382.023, concerning Orders, which authorizes the commission to issue orders to carry out the purposes of the TCAA; §382.025, concerning Orders Relating to Controlling Air Pollution, which authorizes the commission to order actions indicated by the

circumstances to control a condition of air pollution; §382.0518(g), concerning Preconstruction Permits, which authorizes the commission to authorize emissions under preconstruction permits; §382.085, concerning Unauthorized Emissions Prohibited, which prohibits emissions except as authorized by commission rule or order; §382.215, concerning Assessment of Emissions Due to Emissions Events, which authorizes the commission to collect and assess unauthorized emissions data due to emissions events; and §382.216, concerning Regulation of Emissions Events, which authorizes the commission to establish criteria for determining when emissions events are excessive and to require facilities to take action to reduce emissions from excessive emissions events. The new sections are also proposed under 42 USC, §7410(a)(F)(iii), which requires correlation of emissions reports and emission-related data by the state agency with any emission limitations or standards established under the FCAA, 42 USC, §§7401 *et seq.*

The proposed new sections implement THSC, §§382.002, 382.011, 382.012, 382.014, 382.016, 382.023, 382.025, 382.085, 382.215, and 382.216; and HB 2912, §5.01 and §18.14.

§101.221. Operational Requirements.

(a) No person shall cause, suffer, allow, or permit unauthorized emissions.

(b) All pollution emission capture equipment and abatement equipment shall be maintained in good working order and operated properly during normal facility operations. Emission capture and

abatement equipment shall be considered to be in good working order and operated properly when operated in a manner such that each facility is operating within authorized emission limitations.

(c) Smoke generators and other devices used for training inspectors in the evaluation of visible emissions at a training school approved by the commission are not required to meet the allowable emission levels set by the rules and regulations, but must be located and operated such that a nuisance is not created at any time.

(d) Equipment, machines, devices, flues, and/or contrivances built or installed to be used at a domestic residence for domestic use are not required to meet the allowable emission levels set by the rules and regulations unless specifically required by a particular regulation.

(e) Sources emitting air contaminants which cannot be controlled or reduced due to a lack of technological knowledge may be exempt from the applicable rules and regulations when so determined and ordered by the commission. The commission may specify limitations and conditions as to the operation of such exempt sources. The commission will not exempt sources from complying with any federal requirements.

(f) The owner or operator has the burden of proof to demonstrate that the criteria identified in §101.222(a) of this title (relating to Demonstrations) for emissions events, or in §101.222(b) of this title for scheduled maintenance, startup, or shutdown activities are satisfied for each occurrence of unauthorized emissions. The executive director or any air pollution program with jurisdiction may

request documentation of the criteria in §101.222(a) and (b) of this title at their discretion. Satisfying the burden of proof is a condition to unauthorized emissions being exempt under this section.

(g) This section does not limit the commission's power to require corrective action as necessary to minimize emissions, or to order any action indicated by the circumstances to control a condition of air pollution.

§101.222. Demonstrations.

(a) Emissions events are exempt from compliance with authorized emission limitations, if the owner or operator complies with the requirements of §101.201 of this title (relating to Emissions Event Reporting and Recordkeeping Requirements) and satisfies all of the following:

(1) the unauthorized emissions were caused by a sudden breakdown of equipment or process, beyond the control of the owner or operator;

(2) the unauthorized emissions did not stem from any activity or event that could have been foreseen and avoided, and could not have been avoided by good design, operation, and maintenance practices;

(3) the air pollution control equipment or processes were maintained and operated in a manner consistent with good practice for minimizing emissions and reducing the number of emissions events;

(4) prompt action was taken to achieve compliance once the operator knew or should have known that applicable emission limitations were being exceeded;

(5) the amount and duration of the unauthorized emissions and any bypass of pollution control equipment were minimized;

(6) all emission monitoring systems were kept in operation if possible;

(7) the owner or operator actions in response to the unauthorized emissions were documented by contemporaneous operation logs or other relevant evidence;

(8) the unauthorized emissions were not part of a frequent or recurring pattern indicative of inadequate design, operation, or maintenance;

(9) the percentage of a facility's total annual operating hours during which unauthorized emissions occurred was not unreasonably high; and

(10) unauthorized emissions did not cause or contribute to a condition of air pollution.

(b) Emissions from any scheduled maintenance, startup, or shutdown activity are exempt from compliance with authorized emission limitations, if the owner or operator complies with the requirements of §101.211 of this title (relating to Scheduled Maintenance, Startup and Shutdown Reporting, and Recordkeeping Requirements) and satisfies all of the following:

(1) the periods of unauthorized emissions from any scheduled maintenance, startup, or shutdown activity could not have been prevented through planning and design;

(2) the unauthorized emissions from any scheduled maintenance, startup, or shutdown activity were not part of a recurring pattern indicative of inadequate design, operation, or maintenance;

(3) if the unauthorized emissions from any scheduled maintenance, startup, or shutdown activity were caused by a bypass of control equipment, the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(4) the facility and air pollution control equipment were operated in a manner consistent with good practices for minimizing emissions;

(5) the frequency and duration of operation in a scheduled maintenance, startup, or shutdown mode resulting in unauthorized emissions were minimized;

(6) all emissions monitoring systems were kept in operation if possible;

(7) the owner or operator actions during the period of unauthorized emissions from any scheduled maintenance, startup, or shutdown activity were documented by contemporaneous operating logs or other relevant evidence; and

(8) unauthorized emissions did not cause or contribute to a condition of air pollution.

§101.223. Excessive Emissions Events.

(a) The executive director shall determine when emissions events are excessive by evaluating the following criteria:

(1) the frequency of a facility's emissions events;

(2) the cause of the emissions event;

(3) the quantity and impact on human health or the environment of the emissions event;

(4) the duration of the emissions event;

(5) the percentage of a facility's total annual operating hours during which emissions events occur; and

(6) the need for startup, shutdown, and maintenance activities.

(b) The executive director will provide written notification to an owner or operator of a facility upon determination that a facility has had excessive emissions events. Upon receipt of this notice, the owner or operator of the facility must take action to reduce emissions and shall either file a corrective action plan (CAP) or, when the emissions are sufficiently frequent, quantifiable, and predictable, and the emissions meet permitting criteria established in Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification), file a letter of intent to obtain authorization from the commission for emissions from the excessive emissions events.

(1) CAPs shall be submitted to the executive director within 60 days after receiving notification that a CAP plan is required. The 60-day period may be extended once for up to 15 days by the executive director. The CAP shall, at a minimum:

(A) identify the cause or causes of each emissions event in question, including all contributing factors that led to each emissions event;

(B) specify the control devices or other measures that are reasonably designed to prevent or minimize similar emissions events in the future;

(C) identify operational changes the owner or operator will take to prevent or minimize similar emissions events in the future; and

(D) specify time frames within which the owner or operator will implement the components of the CAP.

(2) An owner or operator must obtain commission approval of a CAP no later than 120 days after initial filing of the CAP. If not disapproved within 45 days after initial filing, the CAP shall be deemed approved. The owner or operator of a facility must respond completely and adequately as determined by the executive director to all written requests for information concerning its CAP within 15 days after the date of such requests, or by any other deadline specified in writing. An owner or operator of a facility may request a written approval of a CAP, in which case the commission shall take final written action to approve or disapprove the plan within 120 days from the receipt of such request. Once approved, the owner or operator must implement the CAP in accordance with the approved schedule. The implementation schedule is enforceable by the commission. The commission may revise a CAP if the commission finds the plan, after implementation begins, to be inadequate to prevent or minimize emissions or emissions events.

(3) If the emissions are sufficiently frequent, quantifiable, and predictable, and the emissions meet permitting criteria established in Chapter 116 of this title, and an owner or operator of a facility elects to file a letter of intent to obtain authorization from the commission for the emissions from excessive emissions events, the owner or operator must file such letter within 15 days after receiving notification that action must be taken. If the commission denies the requested authorization, the owner or operator of a facility shall file a CAP in accordance with paragraph (1) of this subsection within 45 days after receiving notice of the commission denial.

(A) If the intended authorization is a permit, the owner or operator must file a permit application with the executive director within 120 days after the filing of the letter of intent. The owner or operator of a facility must respond completely and adequately, as determined by the executive director, to all written requests for information concerning its permit application within 15 days after the date of such requests, or by any other deadline specified in writing.

(B) If the intended authorization is a permit by rule or standard permit, the owner or operator must obtain authorization within 120 days after filing of the letter of intent.

(c) If an owner or operator of a site, as defined in §101.1 of this title (relating to Definitions), receives more than one excessive emissions events determination under subsection (b) of this section within a five-year period, the executive director may forward these determinations to the commission requesting that it issue an order finding that the site has chronic excessive emissions events. The owner or operator of the site would then be required to take action to reduce emissions and file either a CAP, or when the emissions are sufficiently frequent, quantifiable, and predictable, and the emissions meet permitting criteria established in Chapter 116 of this title, a letter of intent to obtain authorization for emissions from the excessive emissions events. Orders issued by the commission under this section shall be part of the site's compliance history as provided in Chapter 60 of this title (relating to Compliance History). The commission may issue an order finding that a site has chronic excessive emissions events after considering the following factors:

(1) the size, nature, and complexity of the site operations; and

(2) the frequency of emissions events at the site.

(d) Exemptions from compliance with authorized emission limitations are not available to a person if the person failed to take corrective action under a CAP approved by the commission within the time prescribed by the commission and an emissions event recurs because of that failure.

§101.224. Temporary Exemptions During Drought Conditions.

Owners and operators of sources located in an area or region which has been classified by the National Weather Service as being in a severe or extreme drought condition under the Palmer Drought Severity Index for at least 30 days that are required to control emissions through the application or use of water may request a temporary exemption from any commission air quality rule, permit condition, permit representation, standard exemption condition, or commission order. This section does not allow for an exemption from any federal requirement.

(1) The request must be submitted in writing to the Office of Permitting, Remediation, and Registration, Air Permits Division, and include at a minimum the following information:

(A) the site-specific circumstances that prevent the continued or limited use of water;

(B) the specific rule, permit condition, permit representation, standard exemption condition, or commission order from which an exemption is being requested; and

(C) the reasonably available alternative control measures which will be undertaken to minimize emissions.

(2) The executive director may authorize, by written permission, a temporary exemption of up to 120 days upon finding that:

(A) the source or facility is located in an area or region which has been classified as severe or extreme for at least 30 days under the Palmer Drought Severity Index;

(B) such an exemption is necessary to aid in the conservation of the area's water resources;

(C) any additional emissions which may result from the exemption will not cause a significant health concern in the opinion of the executive director; and

(D) the requesting owner and operator of the source will use reasonably available alternative control measures to minimize emissions during this time.

(3) The executive director may specify alternative procedures or methods for controlling emissions when an exemption is granted under this section.

(4) The executive director may issue one 60-day extension of an exemption authorized under this section. A commission order is required for any exemption which would extend beyond a total of 180 days and approval shall be based on the criteria contained in this section. The executive director shall notify the EPA of exemptions which will be considered for extension beyond 180 days. The executive director shall notify the EPA at least 30 days prior to commission consideration of such an extension.

**SUBCHAPTER F: EMISSIONS EVENTS AND SCHEDULED MAINTENANCE, STARTUP,
AND SHUTDOWN ACTIVITIES**

DIVISION 4: VARIANCES

§§101.231 - 101.233

STATUTORY AUTHORITY

The new sections are proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The new sections are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.025, concerning Orders Relating to Controlling Air Pollution, which authorizes the commission to order actions indicated by the circumstances to control a condition of air pollution; §382.028, concerning Variances, which authorizes the commission to grant variances; and §382.085, concerning Unauthorized Emissions Prohibited, which prohibits emissions except as authorized by commission rule or order.

The proposed new sections implement THSC, §§382.002, 382.011, 382.012, 382.028, and 382.085.

§101.231. Petition for Variance.

Any person seeking a variance, amendment of a variance, or extension of a variance issued to that person shall file a petition on a form prepared by the commission. The form shall be furnished by the commission without charge upon request. In order to obtain a variance past the date by which compliance is to be achieved, a person must have demonstrated continuous and substantial progress toward compliance before the date of petition.

§101.232. Effect of Acceptance of Variance or Permit.

Acceptance of a variance or a permit constitutes an acknowledgment and agreement that the holder will comply with its terms, and with the rules, regulations, and orders of the commission adopted under the TCAA.

§101.233. Transfers.

A variance or a permit is granted in person, and does not attach to the realty to which it relates. A variance cannot be transferred without prior notification to the commission. If a transfer of ownership of a source covered by a variance is contemplated by the holder of the variance, and the source and characteristics of the emissions will remain unchanged, upon notification, the executive director shall issue an endorsement to the variance reflecting the name of the new owner. Continuation

of emissions by the new owner without prior notification to the commission makes the variance subject to forfeiture.