

The Texas Commission on Environmental Quality (commission) proposes amendments to §§116.10, 116.111, 116.116, 116.311, 116.614, 116.615, and 116.710.

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

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

Revisions to 30 TAC Chapter 101, General Air Quality Rules, federal New Source Review (NSR) rules, and ongoing implementation of the Federal Operating Permits Program have resulted in considerable interest and inquiries from the regulated community regarding what maintenance, startup, shutdown (MSS), and other episodic releases of emissions should and can be authorized by an NSR permit. In an effort to aid applicants and agency staff, the commission is proposing criteria to determine if, and when, emissions that are generated outside of production operations should be covered under a permit.

The commission proposes authorizing all types of normal operations (production, MSS, and certain quantifiable, anticipated (QUAN) emissions) under this chapter and 30 TAC Chapter 106, Permits by Rule. The commission is proposing a concurrent rulemaking to Chapter 106 in this issue of the *Texas Register*. These changes are proposed to assist in reducing excess emissions and improve overall air quality in Texas. In all cases, any authorized portion of normal operations must comply with national ambient air quality standards (NAAQS) and state emission standards, and be protective of public health and welfare. It is the commission's intention to allow predictable, preventative MSS operations to be

authorized, including periodic plant turnarounds, which occur every few years. It would also allow companies to group similar facility MSS activities into one authorization.

The commission is also concurrently proposing a non-rule standard permit titled “Air Quality Standard Permit for Maintenance Startup and Shutdown Emissions” to authorize certain MSS emissions from otherwise authorized facilities. The MSS standard permit could be used by facilities authorized by permit by rule (PBR), another standard permit, or any type of Chapter 116 permit to separately authorize MSS not already included in those authorizations. Notice of this standard permit is also published in the IN ADDITION section of this issue of the *Texas Register*.

The authorization of MSS emissions under the proposed changes to NSR permitting may be used in conjunction with proposed new §106.268, Maintenance, Startup, and Shutdown (MSS) Emission Releases, and the proposed MSS standard permit. Each facility or MSS activity at the site may use only one of these authorization mechanisms, but the site may utilize a combination of PBRs, standard permits, and NSR permits to authorize MSS. The commission proposes these mechanisms to provide flexibility, while ensuring protection of public health and welfare.

SECTION BY SECTION DISCUSSION

The commission proposes administrative changes throughout these sections to be consistent with Texas Register requirements and other agency rules and guidelines.

§116.10, General Definitions

The commission proposes to amend §116.10 by adding a definition of air contaminant as new paragraph (2) that would contain an exclusion from the requirement to obtain authorization under Chapter 116 or Chapter 106 for emissions of carbon dioxide, water vapor, nitrogen, methane, hydrogen, oxygen, argon, neon, helium, krypton, and xenon. These compounds are either inert gases or have minimal toxicity. In addition, this revision codifies the long-standing practice of excluding these compounds from the requirement for an authorization. Ethane was not included in this list because it is included in certain subparts of 40 Code of Federal Regulations (CFR) Part 60, Standards of Performance for New Stationary Sources, even though it is excluded from the federal definition of a volatile organic compound (VOC). The commission is specifically requesting comments on whether to include ethane in the list of compounds not requiring authorization under this chapter or Chapter 106.

The proposed definition of “normal operations” in new paragraph (16) would include emissions from production, MSS emissions, and QUAN emissions. The definition specifies discrete periods of time when activities occur to ensure the proper and continuing operation of a facility, group of facilities, or an emission control device. Startups and shutdowns can occur when associated with maintenance or because of batch-style production of the facilities. The proposed definition of normal operation excludes emissions resulting from acts of God, accidents, malfunctions, noncompliant operations, and other releases not consistent with good engineering practices. The existing definitions in the section would be renumbered accordingly to accommodate the proposed new definitions.

§116.111, General Application

The commission proposes to amend §116.111 by revising subsection (a)(2), which would provide an owner or operator the ability to authorize MSS emissions in a permit under this chapter. Generally, QUAN emissions would only be authorized by PBR, §106.269. However, in limited circumstances, authorization may be requested through a permit review provided that emissions are minimal, activities are part of routine operation, releases are inherent to the process, and only at the discretion of the division director of Air Permits Division. These MSS emissions may be authorized by a PBR, standard permit, NSR permit alteration, or as part of an amendment or renewal of an NSR permit, depending on individual facility and site circumstances. If there are any increases or changes in character or quantity of allowable emissions, these MSS emissions will be subject to BACT and off-property impacts review to ensure statutory compliance and protection of public health and welfare.

Proposed §116.111(a)(2)(M) prescribes how the emission increases should be represented and considered in these application reviews. The rule proposes that existing emissions from MSS may be added to the permit as allowable emissions under this subchapter without being subject to retroactive prevention of significant deterioration (PSD) or nonattainment new source review (NNSR) applicability review if these emissions were previously submitted as a part of an emissions inventory accepted by the executive director. Retroactive PSD or NNSR would not result in any additional control requirements or emission reductions beyond those achieved under Chapter 116 state requirements. In addition, if those emissions were included and accounted for in a submitted emissions inventory, as well as being observed from monitors located throughout the state, the commission's SIP for compliance with NAAQS and determination of background concentrations for PSD or NNSR area determinations have

already accounted for these emissions. If MSS emissions have not been considered as a part of a reported, accepted emissions inventory, the facility and site will be subject to PSD and NNSR retroactive applicability, netting requirements, and possibly a complete federal NSR review including increment analysis, lowest achievable emission rate (LAER) control technology, and offsets, as applicable.

Proposed new §116.111(a)(2)(N) provides that each facility or MSS activity at a site may be authorized by only one authorization mechanism, but that the site may be authorized by a combination of PBRs, a standard permit under Subchapter F of this chapter and NSR permits issued under this chapter to authorize MSS emissions. This is to help ensure that there are no adverse off-property impacts while providing maximum flexibility.

The commission is specifically soliciting comments on the usefulness and scope of the proposed authorization mechanisms and limitations for MSS.

§116.116, Changes to Facilities

The commission proposes to amend §116.116 by adding new §116.116(b)(5), which would prohibit the use of permit amendments or new permits solely to authorize emissions from MSS activities. The addition of MSS emissions can be requested only in conjunction with an amendment that would otherwise not meet the requirements of a PBR or a standard permit. This proposed addition to the existing rule is included to ensure that permitting actions associated with MSS activities occur using the most appropriate level of authorization. The proposed rule language provides that permit amendments

solely to authorize emissions from MSS activities are allowed if the amendments are concurrent with a renewal action as required by proposed §116.311(b). The proposed revision also provides that permit amendments solely to authorize emissions from MSS activities are allowed if the amendments are filed within six months of a designated deadline adopted by the commission in Chapter 101, Subchapter F, in order to be eligible for an affirmative defense to certain unauthorized emissions.

Section 116.116(d) and subsection (d)(1), which apply to the use of PBRs instead of permit amendment or alteration are proposed to add references to standard permits added to specify that any applicable standard permits can also be used instead of permit amendments or alterations. This proposed addition to the existing rule allows permitting flexibility and is included to ensure that permitting actions may occur using the most appropriate level of review.

Current rules allow permitted facilities and processes to be modified if the changes will meet a PBR or standard permit. The rules also require that these claims be incorporated into the permit when the permit is next amended or renewed. The commission proposes changes to §116.116(d) to provide when PBRs under Chapter 106 and standard permits under Subchapter F of this chapter are incorporated into an NSR permit. These changes apply to all PBRs and standard permits registered or claimed after the effective date of these proposed rules.

PBRs, previously known as standard exemptions, are claimed for a myriad of facilities, processes, and production changes at permitted sites. Some of these PBR claims authorize changes in the type and quantity of emissions from permitted facilities. Other PBR claims indirectly affect or are related to the

operation of permitted facilities. Finally, a number of PBR claims occur at a site with an air permit, but the PBR facilities are independent and unrelated in any way to permitted units. Each of these circumstances meet the requirements of §116.116(d) in different ways.

There are different scenarios that would determine whether and how a PBR or standard permit is incorporated into a permit. The content of certain PBRs and standard permits would be rolled into permits. These requirements are proposed in new §§116.116(d)(2)(A) and (3)(A). Other PBRs and standard permits would be allowed to be incorporated by reference into permits, which is proposed in new §§116.116(d)(2)(B) and (3)(B).

There are four instances where changes that occur under a PBR or standard permit need to be incorporated into a permit as a mandatory roll-in: 1) permitting a new facility that directly affects the emissions of the permitted facility; 2) changing the method of control of a permitted facility; 3) permitting a new character of emissions at a permitted facility; and 4) increasing emissions at a permitted facility. This includes, but is not limited to, §106.261, Facilities (Emission Limitations), or §106.262, Facilities (Emission and Distance Limitations). These must be rolled into the permit during any amendment or renewal with a concurrent amendment. Any PBR or standard permit rolled into a permit will be voided and the facilities will become authorized by the permit, including limitations in permit conditions and maximum allowable emission rates table (MAERT), as appropriate.

Voluntary incorporation by reference includes PBRs or standard permits that authorize stand-alone, independent facilities and processes or PBRs or standard permits that do not directly modify or increase

the emissions of a permitted facility. These PBRs or standard permits do not directly modify or in any way affect permitted facilities. In these cases, it is completely voluntary to reference these PBRs or standard permits in the permit during amendment or renewal. The commission is seeking comments on whether these changes (i.e., any claim of a PBR that affects a permitted facility) should be applicable from the effective date of these proposed rules.

PBRs or standard permits that are included by reference in permits will remain authorized by the PBR or standard permit; however, the permit will identify the facilities and reference the registration or claim in the permit conditions and the MAERT. The facilities will be listed by registration number (if assigned), hourly and annual emissions type and amount, effective date of a PBR or standard permit, and any other unique historical information. Registrations for these PBRs or standard permits will not be voided and no additional review is required. These PBR or standard permit registrations or claims will also be referenced in the Technical Review Summary and company final action letter.

Facilities that are subject to roll-in would require a review of BACT. Since facilities subject to the requirement for roll-in will be incorporated into the permit and PBR voided, they are subject to BACT review. Roll-ins and incorporations by reference would require an impacts review. Public notice and fee requirements do not apply, since the associated emissions were previously authorized. For the incorporations by reference the authorization shall remain under the PBR, however a roll-in will result in voidance of the PBR.

Section 116.116(d)(2) would also be amended to prohibit the incorporation of those emissions authorized under proposed §106.268, Maintenance, Startup, and Shutdown Emission Releases, and §106.269, Quantifiable, Anticipated (QUAN) Emissions Releases, into a permitted facility's permit when the permit is amended. Any MSS emissions that qualify under §106.268 and §106.269 will be in small quantities due to the emission limitations in these sections. The proposed change will ensure that permitting actions associated with MSS activities will be protective and will use the most appropriate level of review.

The commission proposes the addition of §116.116(e)(1)(C). This proposed change will specifically prohibit trading between those emissions represented and designated as production emissions with those represented and designated as MSS or QUAN emissions. This limitation is proposed to ensure that the integrity of the protectiveness and BACT reviews is maintained. In the case of production emissions, most evaluations are done on a continuous basis (8,760 hours/year), while MSS and QUAN emissions are likely to be reviewed on a periodic or infrequent basis, and would involve different control and off-property impact reviews. Therefore, it would be inappropriate to trade these emissions for each other without a comprehensive review.

The commission is specifically soliciting comments on the usefulness and scope of the proposed limitations for the incorporation of PBRs and standard permits in NSR permits.

§116.311, Permit Renewal Application

The commission proposes to amend §116.311 to address MSS emissions during permit renewals. Specifically, the commission proposes new subsections (b) - (d), which would be used to identify whether MSS emissions need to be included in a permit at renewal and to specify other authorization(s) that may be needed before MSS emissions can be incorporated into a permit during renewal. Existing subsections (b) and (c) are proposed to be relettered as subsections (e) and (f).

The commission proposes new §116.311(b), which would allow the inclusion of MSS emissions into a facility's permit at renewal if there will be no increase in allowable emissions, change in character of emissions, change in method of operation, or control of emissions. Otherwise, appropriate authorization of MSS emissions will be needed before these emissions can be incorporated into the permit during renewal. Authorization of MSS emissions may be obtained by meeting the conditions of an applicable PBR, standard permit, flexible permit, or concurrent permit amendment.

The commission proposes new §116.311(c) to specify which MSS emissions would not be allowed to be incorporated into a facility's permit at renewal. Specifically, MSS emissions authorized under the concurrently proposed §106.268, §106.269, and MSS standard permit would not be incorporated into the permit during renewal.

The commission proposes new §116.311(d). The new rule language specifies whether and how a PBR, standard exemption, or standard permit, except for those addressed in proposed §116.311(c), would be incorporated into a permit during renewal. Certain PBR, standard exemption, and standard permit incorporations would be referred as rolled into the permit. Some PBRs, standard exemptions,

and standard permits could be incorporated by reference. These revisions apply to all PBRs and standard permits registered or claimed after the effective date of this rule.

Proposed new §116.311(d)(1) provides which PBRs, standard exemptions, or standard permits must be rolled into a permit during renewal and will require a concurrent amendment. The roll-in is mandatory because these types of facilities authorized by a PBR, standard exemption, or standard permit will result in increase in permit allowable emissions, change in character of emissions, change in method of operation, or control of emissions.

Proposed new §116.311(d)(2) provides that facilities authorized by a PBR, standard exemption, or standard permit, where the facilities do not directly change the type or quantity of the permit allowable emissions or where the facilities are stand-alone, independent operations, could be incorporated into the NSR permit by reference at renewal. References in the NSR permit's Special Conditions and/or Maximum Allowable Emission Rates Table will be made for these facilities, but these facilities remain authorized under Chapter 106 or Subchapter F of this chapter. Proposed new §116.311(d)(2)(A) - (E) prescribe the review criteria.

The commission is specifically soliciting comments on the usefulness and scope of the proposed limitations for the incorporation of PBRs and standard permits in NSR permits.

§116.614, Standard Permit Fees

The commission proposes to amend §116.614 regarding fees for a standard permit. The regulated community frequently requests clarification as to when fees apply, and fee amounts for various standard permit actions. These changes are proposed to eliminate this confusion, provide flexibility, and ensure consistency with the registration mechanisms of the Air Permits Division. Section 116.614(1) is proposed to be added to provide a reduced fee category for small businesses, nonprofit organizations, and small local governments consistent with the rule requirements of PBR registrations. These groups have limited financial means and, therefore, a reduced fee of \$450 for new and renewed standard permits, and \$225 for amended and revised registrations is proposed. For all other entities, the commission retains, in new §116.614(2), the \$900 initial and renewal fee requirements, but is proposing to reduce the fee for amendments and revisions to \$450, since a full review is not required. Additionally, in new §116.614(3), the commission proposes language to address when fees are not applicable, including actions that are not reviewed (certifications and notifications), automatic renewal of registrations without review, and resubmittals within six months of a review. There is no need to collect fees if no, or minimal, review is performed. Finally, in new §116.614(4), the commission proposes to allow a refund of fees in certain cases, particularly where no resources are expended by the commission.

§116.615, General Conditions

The commission proposes to amend §116.615 by revising paragraph (2) to designate when registration updates are required to be submitted by standard permit holders. Specifically, existing references to “notifications” are replaced with “registrations” to state precisely that increases in emissions or construction of new facilities should be submitted to the executive director for review and confirmation

of compliance with general and specific standard permit requirements using the appropriate forms.

The commission proposes new §116.615(2)(A) - (C). Proposed new paragraph (2)(A) requires compliance with §116.611(b) for new facilities or new groups of facilities. Proposed new paragraph (2)(B) provides the deadline for submitting registrations. Proposed new paragraph (2)(C) states when construction can begin or emissions released. For MSS emissions, the commission proposes a deadline of 180 days in new paragraph (2)(C) because these emissions may require extensive review for federal applicability issues and possibly evaluation of appropriate character and quantity of releases as well as good engineering practices. The commission also proposes rule language to recognize that some facilities that have no MSS emissions, or do not choose to authorize MSS under their standard permit, will not be required to submit additional paperwork to the executive director.

The commission also proposes revisions to §116.615(3), which refers to the use of a standard permit in lieu of a permit amendment. This paragraph requires that all changes authorized by a standard permit to a facility previously permitted under §116.110 will be administratively incorporated into that facility's permit at such time as the permit is amended or renewed. However, the commission proposes an exception, which provides that any claim of the new MSS standard permit will not be incorporated into a permit at the next amendment or renewal. This change is consistent with proposed changes in §116.116 and §116.311. This incorporation is unnecessary and no control or emission reduction benefits would be gained by this incorporation review.

The commission is specifically soliciting comments on the usefulness and scope of the proposed authorization mechanisms and limitations for MSS.

116.710, Applicability

The commission proposes to amend §116.710 by revising subsection (a) for authorization of a facility's MSS activities, as defined in the proposed new definition of normal operations in §116.10(16), by a new or amended flexible permit. The requirement in §116.710(a)(1), which limits flexible permits to one per regulated entity will remain in effect. The intent is, wherever practical, to allow flexibility by establishing separate emission caps for MSS activities. This is particularly applicable for larger regulated entities where the total number of MSS activities among large numbers of facilities in a given category (e.g., tanks, pumps, compressors) can be reliably predicted, rather than authorizing each activity for each specific piece of equipment.

The production caps in a flexible permit are determined by summing estimated cap contributions based upon facilities operating at represented capacities with controls meeting BACT, and the MSS cap would be similarly determined. Emissions from MSS activities at affected facilities would be estimated based upon being controlled to BACT levels, then summed to determine the MSS cap. The overall MSS cap would be comprised of categories of equipment. For example, the MSS cap for VOC could consist of estimated cap contributions from pumps, compressors, valves, vessels, exchangers, furnaces, boilers, and tanks. The actual emissions from these individual categories of facilities can be greater or less than the estimated cap contributions, as long as the total emissions from all categories are kept below the cap. Additionally the commission proposes other administrative changes to facilitate readability and update terminology.

The commission is specifically soliciting comments on the usefulness and scope of the proposed authorization mechanisms and limitations for MSS.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Grants Management Section, determined that for the first five-year period the proposed rules are in effect, fiscal implications may be anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed rules. The proposed rulemaking would establish a method to authorize MSS emissions under Chapter 116 air permits. State agencies and local governments owning or operating facilities generating MSS air emissions may be subject to the proposed rules if they elect to authorize those emissions in a Chapter 116 permit.

The proposed rulemaking would amend sections of Chapter 116 so that MSS emissions, considered a part of normal production activities, could be authorized by Chapter 116 permits. The decision to authorize MSS in a Chapter 116 permit is voluntary. To obtain a permit under Chapter 116, emissions would have to meet BACT and pass a health effect review. In some cases, a facility may become a major source of air emissions and possibly trigger Title V permitting requirements if MSS emissions are authorized by permit. Staff anticipates that some owners and operators will choose to get permits to authorize these emissions. The number of owners or operators that would choose to obtain permits authorizing MSS is not known since permitting under the proposed rules is voluntary, and MSS emissions data, in some cases under the current rules, was not required to be reported.

Impacts to Revenue

The proposed rulemaking may decrease fee revenue received by the agency in some cases and increase it in others. For example, the proposed rulemaking will allow local governments serving populations of 10,000 or fewer residents, small businesses, and nonprofit organizations to pay a reduced fee for a standard permit. If the proposed rules cause a site to be classified under Title V as a major site, revenue could increase due to the collection of additional emission or inspection fees. If a regulated entity elects to obtain or amend an NSR permit to authorize MSS emissions, revenue could also increase depending on the number of NSR permits issued. The amount of revenue increase or decrease cannot be determined until the number of facilities that would be affected and the manner in which they would be affected is known.

State agencies and local governments that are owners or operators of facilities that generate air emissions may see fiscal implications if they choose to permit MSS emissions under the proposed rules. If a local government with a population of 10,000 or fewer residents elects to permit MSS emissions through a standard permit under the proposed rules, the permit cost would decrease from \$900 to \$450 per permit. For amended standard permits or revised representations, permit costs would decrease from \$900 to \$225 per permit. Costs to comply with BACT and complete a health review as part of obtaining a permit may increase the costs to these local governments, but due to the widely variable nature of controls available and the uniqueness of each local government, the exact cost of complying with these requirements is not known.

If a local government chooses to permit MSS emissions and serves a population of more than 10,000, a standard permit would cost \$900 per permit. A new or amended NSR permit would cost from \$900 to \$75,000, depending on the capital costs of a project.

If a state agency or local government elects to obtain a permit for MSS emissions and the site becomes a major Title V emission site as a result, costs could increase significantly to comply with Federal Clean Air Act (FCAA), Title V requirements. Costs to prepare a Title V permit application are estimated to be \$10,000. There will also be ongoing costs associated with Title V monitoring, recordkeeping, and reporting. Major sites must pay the higher of an inspection fee or emission fees. Inspection fees range from \$1,000 to \$25,000 per facility depending on the industry group. Emission fees range from \$750 to \$120,000 per pollutant per facility.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be a framework for reviewing and authorizing MSS emissions through an air permit. This could lead to increased permitting of MSS emissions, which will ensure the utilization of BACT and greater protection of the public health and environment.

A nonprofit organization electing to obtain a standard permit under the proposed rules will experience a cost decrease from \$900 to \$450 per permit. For amended standard permits or revised representations, permit costs would decrease from \$900 to \$225 per permit. Costs to comply with BACT and complete

a health review as part of obtaining a permit may increase the costs to nonprofit organizations, but due to the widely variable nature of controls available and the uniqueness of each nonprofit organization, the exact cost of these requirements is not known.

If a large business chooses to permit MSS emissions, a standard permit would cost \$900 per permit. A new or amended NSR permit would cost from \$900 to \$75,000, depending on the capital costs of a project.

If a large business or nonprofit organization elects to obtain a permit for MSS emissions and the site becomes a major Title V emission site as a result, costs could increase significantly to comply with FCAA, Title V requirements. Costs to prepare a Title V permit application are estimated to be \$10,000. There will also be ongoing costs associated with Title V monitoring, recordkeeping, and reporting. Major sites must pay the higher of an inspection fee or emission fees. Inspection fees range from \$1,000 to \$25,000 per facility depending on the industry group. Emission fees range from \$750 to \$120,000 per pollutant per facility.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses under the proposed rules, if they elect to obtain a standard permit for MSS emissions. A small or micro-business electing to permit MSS emissions under a standard permit would see permit costs decrease from \$900 to \$450 per permit. For amended standard permits or revised representations, permit costs would decrease from \$900 to \$225 per permit. Costs to comply with BACT and complete a health review as part of

obtaining a permit may increase the costs to small or micro-businesses, but due to the widely variable nature of controls available and the unique character of each small or micro-business, the exact cost of these requirements is not known.

If a small or micro-business permits emissions through NSR, there may be adverse fiscal implications due to the increase in costs to obtain an NSR permit. Adverse fiscal implications can also be anticipated for a small or micro-business electing to permit MSS emissions, and as a result, becomes classified as a major air emissions site. These small or micro-businesses would see costs to comply with FCAA, Title V requirements increase significantly. A small or micro-business would experience the same cost increases for NSR and Title V compliance as those experienced by state agencies, local governments, and large businesses.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rules do not meet the definition of a “major environmental rule.” Under Texas Government Code, §2001.0225, 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 rules are intended to provide flexibility for authorizing facilities that have emissions that have not historically been authorized from MSS activities. Certain aspects of this rulemaking are intended to protect the environment or reduce risks to human health from environmental exposure. However, the proposed rules generally tend to improve regulatory flexibility and are therefore unlikely to adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs. Because this rulemaking 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, the rulemaking does not fit the Texas Government Code, §2001.0225 definition of “major environmental rule.”

Under Texas Government Code, §2001.0225, only a major environmental rule requires a regulatory impact analysis. Because this proposal does not constitute a major environmental rule, a regulatory impact analysis is not required. The commission invites public comment regarding this draft regulatory impact analysis determination.

TAKING IMPACT ASSESSMENT

Under Texas Government Code §2007.002(5), “taking” means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Article I, Texas

Constitution; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The commission completed a taking impact analysis for the proposed rules. Promulgation and enforcement of the rules will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposed rules also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rules will not cause a taking 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)). The proposed rules are intended provide flexibility for authorizing facilities that have emissions that have not historically been authorized from MSS activities. These changes are proposed to assist in reducing excess emissions, improve compliance with state and federal air pollution control requirements, and improve overall air quality in Texas. Certain aspects of this rulemaking are intended to protect the environment or reduce risks to human health from environmental exposure.

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 Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking 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

Potential to emit (PTE) calculations, used to determine applicability of the Federal Operating Permits Program, do not include emissions that are not authorized, such as those from MSS or emission events. As of the effective date of these proposed rules, owners and operators of sites that would have newly authorized emissions would be required to recalculate PTE to include authorized MSS emissions and re-evaluate applicability of their sites to the Federal Operating Permits Program. Further, the amended sections of this proposal are applicable requirements under 30 TAC §122.10(2). Operating permit holders would be required to revise their permits to incorporate any NSR changes, according to the appropriate operating permit revision process. 30 TAC Chapter 122 specifies that an owner or operator must submit an abbreviated operating permit application no later than 12 months after an action by the executive director that would subject the site to the requirements of Chapter 122.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin, Texas, on January 31, 2006, at 2:00 p.m. in Building F, Room 2210, at the Texas Commission on Environmental Quality complex, located at 12100 Park 35 Circle. 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, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Lola Brown at (512) 239-0348. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

The commission is specifically soliciting comments on the usefulness and scope of the proposed authorization mechanisms and limitations for MSS. The commission is also requesting comments on whether to include ethane in the list of compounds not requiring authorization under Chapter 116 or Chapter 106 in §116.10(2).

Comments may be submitted to Lola Brown, Texas Register Team, Office of Legal Services, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Project Number 2005-016-106-PR. Copies of the proposed rules can be obtained from the commission's Web site at http://www.tceq.state.tx.us/nav/rules/propose_adopt.html. Comments must be received by 5:00 p.m. on February 3, 2006. For further information, please contact Blake Stewart, Air Permits Division, at (512) 239-6931.

SUBCHAPTER A: DEFINITIONS

§116.10

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, §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 Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission 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; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits and adopt rules necessary for permits issued under Texas Health and Safety Code, Chapter 382; §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions consistent with Chapter 382; §382.0518, concerning Preconstruction Permit, which requires that a permit be obtained from the commission prior to new construction or modification of an existing facility; §382.055, concerning Review and Renewal of Preconstruction Permit, which provides the requirements for renewal of preconstruction permits; and §382.057,

concerning Exemption, which authorizes the commission to exempt certain changes from the requirements of Texas Health and Safety Code, §382.0518.

The proposed amendment implements Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.051, 382.0513, 382.0518, 382.055, and 382.057.

§116.10. General Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) [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 that [which] are defined by the TCAA, and in §101.1 of this title (relating to Definitions), the following words and terms, when used in this chapter, [shall] have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) **Air contaminant**--As defined in Texas Health and Safety Code, §382.003, particulate matter, radioactive material, dust, fumes, gas, mist, smoke, vapor, or odor, including any combination of those items, produced by processes other than natural. For the purpose of obtaining an authorization under this chapter and Chapter 106 of this title (relating to Permits by Rule), the following air contaminants are excluded: carbon dioxide, water vapor, nitrogen, methane, hydrogen, oxygen, argon, neon, helium, krypton, and xenon.

(3) [(2)] **Allowable emissions**--The authorized rate of emissions of an air contaminant from a facility as determined in accordance with this section. This rate cannot exceed any applicable state or federal emissions limitation. This definition applies only when determining whether there has been a net increase in allowable emissions under §116.116(e) of this title (relating to Changes to Facilities).

(A) **Permitted facility**--For a facility with a permit under this chapter, the allowable emissions shall be any emission limit established in the permit on a maximum allowable emissions rate table and any emission limit contained in representations in the permit application that [which] was relied upon in issuing the permit, plus any allowable emissions authorized under Chapter 106 of this title (relating to Permits by Rule).

(B) **Facility permitted by rule**--For a facility operating under Chapter 106 of this title (relating to Permits by Rule), the allowable emissions shall be the least of the emissions rate allowed in Chapter 106, Subchapter A of this title (relating to General Requirements), the emissions rate specified in the applicable permit by rule, or the federally enforceable emission rate established on a PI-8 form.

(C) **Qualified grandfathered facility**--For a qualified grandfathered facility, the allowable emissions shall be the maximum annual emissions rate after the implementation of any air pollution control methods to become a qualified facility, plus 10% of the maximum annual emissions rate prior to the implementation of such control methods, but in no case shall the allowable emissions

be greater than the maximum annual emissions rate prior to the implementation of such control methods. The maximum annual emissions rate is the emissions rate at the maximum annual capacity according to the physical or operational design of the facility, data from actual operations over a period of no more than 12 months that demonstrates the maximum annual capacity, or other information that demonstrates the maximum annual capacity. Except where a grandfathered facility has been modified, the allowable emissions for the modification shall be determined as a permitted facility.

(D) **Standard permit facility**--For a facility authorized by standard permit, other than §116.617(2) of this title (relating to Standard Permits for Pollution Control Projects), the allowable emissions shall be the maximum emissions rate represented in the registration to use the standard permit.

(E) **Special exemption facility**--For a facility operating under a special exemption, the allowable emissions shall be the emissions rate represented in the original special exemption request.

(F) The allowable emissions for a qualified facility shall not be adjusted by the voluntary installation of controls.

(4) [(3)] **Best available control technology (BACT)**--BACT with consideration given to the technical practicability and the economic reasonableness of reducing or eliminating emissions from the facility.

(5) [(4)] **Dockside vessel**--Any water-based transportation, platforms, or similar structures that [which] are connected or moored to the land.

(6) [(5)] **Dockside vessel emissions**--Those emissions originating from a dockside vessel that are the result of functions performed by onshore facilities or using onshore equipment.

These emissions include, but are not limited to:

- (A) loading and unloading of liquid bulk materials;
- (B) loading and unloading of liquified gaseous materials;
- (C) loading and unloading of solid bulk materials;
- (D) cleaning and degassing of liquid vessel compartments; and
- (E) abrasive blasting and painting.

(7) [(6)] **Facility**--A discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a stationary source, including appurtenances other than emission control equipment. A mine, quarry, well test, or road is not a facility.

(8) [(7)] Federally enforceable--All limitations and conditions that [which] are enforceable by the United States Environmental Protection Agency (EPA) [EPA], including:

(A) those requirements developed under [Title] 40 [of the] Code of Federal Regulations (CFR) Parts 60 and 61 [(40 CFR 60 and 61)];

(B) Chapter 113, Subchapter C of this title (relating to National Emission Standards for Hazardous Air Pollutants for Source Categories (FCAA, §112, 40 CFR Part 63));

(C) requirements within any applicable state implementation plan (SIP);

(D) any permit requirements established under 40 CFR §52.21;

(E) any permit requirements established under regulations approved under 40 CFR Part 51, Subpart I, including permits issued under the EPA-approved program that is incorporated into the SIP and that expressly requires adherence to any permit issued under such program; or

(F) any permit requirements established under Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)).

(9) [(8)] **Grandfathered facility**--Any facility that is not a new facility and has not been modified since August 30, 1971.

(10) [(9)] **Lead smelting plant**--Any facility that [which] produces purified lead by melting and separating lead from metal and nonmetallic contaminants and/or by reducing oxides into elemental lead. Raw materials consist of lead concentrates, lead-bearing ores or lead scrap, drosses, or other lead-bearing residues. Additional processing may include refining and alloying. A facility that [which] only remelts lead bars or ingots for casting into lead products is not a lead smelting plant.

(11) [(10)] **Maximum allowable emissions rate table (MAERT)**--A table included with a preconstruction permit issued under this chapter that contains the allowable emission rates established by the permit for a facility.

(12) [(11)] **Modification of existing facility**--Any physical change in, or change in the method of operation of, a facility in a manner that increases the amount of any air contaminant emitted by the facility into the atmosphere or that results in the emission of any air contaminant not previously emitted. The term does not include:

(A) insignificant increases in the amount of any air contaminant emitted that is authorized by one or more commission exemptions;

(B) insignificant increases at a permitted facility;

(C) maintenance or replacement of equipment components that do not increase or tend to increase the amount or change the characteristics of the air contaminants emitted into the atmosphere;

(D) an increase in the annual hours of operation unless the existing facility has received a preconstruction permit or has been exempted, under the Texas Clean Air Act (TCAA) [TCAA], §382.057, from preconstruction permit requirements;

(E) a physical change in, or change in the method of operation of, a facility that does not result in a net increase in allowable emission of any air contaminant and that does not result in the emission of any air contaminant not previously emitted, provided that the facility:

(i) has received a preconstruction permit or permit amendment or has been exempted under [the] TCAA, §382.057, from preconstruction permit requirements no earlier than 120 months before the change will occur; or

(ii) uses, regardless of whether the facility has received a preconstruction permit or permit amendment or has been exempted under the TCAA, §382.057, an air pollution control method that is at least as effective as the best available control technology [BACT] that the commission required or would have required for a facility of the same class or type as a condition of issuing a permit or permit amendment 120 months before the change will occur;

(F) a physical change in, or change in the method of operation of, a facility where the change is within the scope of a flexible permit or a multiple plant permit; or

(G) a change in the method of operation of a natural gas processing, treating, or compression facility connected to or part of a natural gas gathering or transmission pipeline that [which] does not result in an annual emission rate of any air contaminant in excess of the volume emitted at the maximum designed capacity, provided that the facility is one for which:

(i) construction or operation started on or before September 1, 1971, and at which either no modification has occurred after September 1, 1971, or at which modifications have occurred only under Chapter 106 of this title (relating to Permits by Rule); or

(ii) construction started after September 1, 1971, and before March 1, 1972, and that [which] registered in accordance with TCAA, §382.060, as that section existed prior to September 1, 1991.

(13) [(12)] **New facility**--A facility for which construction is commenced after August 30, 1971, and no contract for construction was executed on or before August 30, 1971, and that contract specified a beginning construction date on or before February 29, 1972.

(14) [(13)] **New source**--Any stationary source, the construction or modification of which is commenced after March 5, 1972.

(15) [(14)] Nonattainment area--A defined region within the state that [which] is designated by the United States Environmental Protection Agency (EPA) [EPA] as failing to meet the 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 Federal Clean Air Act [FCAA], §107(d).

(16) Normal operations--With the exception of emissions resulting from acts of God, accidents, malfunctions, noncompliant operations, or other releases that are not consistent with good engineering practice, includes emissions from:

(A) production (steady-state or batch);

(B) maintenance, startups, or shutdowns (MSS) that are predictable or planned;

(i) maintenance--a planned activity at or on a facility that is necessary to ensure the proper and continuing operation of a facility, group of facilities, or emission control device. This term does not include maintenance that is necessary because of an emission event as defined in §101.1 of this title (relating to Definitions);

(ii) startup--a planned activity at or on a facility that primes, prepares, and transitions a facility from zero production to normal production. This term does not include startups that are necessary following a shutdown due to an emission event;

(iii) shutdown--a planned activity at or on a facility that includes the period of time where the facility is brought from production to the cessation of production and includes emptying and degassing or depressurization of equipment. Shutdown ends at the point startup or maintenance begins. This term does not include shutdowns that are necessary because of an emission event; and

(C) certain unscheduled but quantifiable and anticipated emission releases that meet the conditions of §106.269 of this title (relating to Quantifiable, Anticipated (QUAN) Emission Releases). This does not include emissions from any activity or event that could have been reasonably avoided by technically feasible design, operation, and maintenance consistent with good engineering practice.

(17) [(15)] **Public notice**--The public notice of application for a permit as required in this chapter.

(18) [(16)] **Qualified facility**--An existing facility that satisfies the criteria of either paragraph (12)(E)(i) [(9)(E)(i) or (ii)] of this section.

(19) [(17)] **Source**--A point of origin of air contaminants, whether privately or publicly owned or operated.

SUBCHAPTER B: NEW SOURCE REVIEW PERMITS

DIVISION 1: PERMIT APPLICATION

§116.111, §116.116

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code, §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 Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendments are also proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission 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; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits and adopt rules necessary for permits issued under Texas Health and Safety Code, Chapter 382; §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions consistent with Chapter 382; §382.0518, concerning Preconstruction Permit, which requires that a permit be obtained from the commission prior to new construction or modification of an existing facility; §382.055, concerning Review and Renewal of Preconstruction Permit, which provides the requirements for renewal of preconstruction permits; and §382.057,

concerning Exemption, which authorizes the commission to exempt certain changes from the requirements of Texas Health and Safety Code, §382.0518.

The proposed amendments implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.051, 382.0513, 382.0518, 382.055, and 382.057.

§116.111. General Application.

(a) In order to be granted a permit, amendment, or special permit amendment, the application must include:

(1) a completed Form PI-1 General Application signed by an authorized representative of the applicant. All additional support information specified on the form must be provided before the application is complete; and

(2) information that [which] demonstrates that emissions from normal operations of the facility, including any associated dockside vessel emissions or represented maintenance, startup, and shutdown (MSS) as defined in the definition of normal operations in §116.10 of this title (relating to General Definitions), meet all of the following.

(A) Protection of public health and welfare.

(i) The emissions from the proposed facility will comply with all rules and regulations of the commission and with the intent of the Texas Clean Air Act [TCAA], including protection of the health and property of the public.

(ii) (No change.)

(B) - (C) (No change.)

(D) New Source Performance Standards (NSPS). The emissions from the proposed facility will meet the requirements of any applicable NSPS as listed under [Title] 40 Code of Federal Regulations (CFR) Part 60, promulgated by the United States Environmental Protection Agency (EPA) [EPA] under Federal Clean Air Act (FCAA) [FCAA], §111, as amended.

(E) (No change.)

(F) NESHAP for source categories. The emissions from the proposed facility will meet the requirements of any applicable maximum achievable control technology standard as listed under 40 CFR Part 63, promulgated by the EPA under FCAA, §112 or as listed under Chapter 113, Subchapter C of this title (relating to National Emission Standards for Hazardous Air Pollutants for Source Categories (FCAA, §112, 40 CFR 63)).

(G) - (L) (No change.)

(M) MSS emissions. If the proposed facility will have any increase or change in character of air contaminant emissions, change in method of operation, or change in method of control of emissions resulting from MSS activities as defined in the definition of normal operations in §116.10 of this title, the owner or operator may obtain authorization by a permit by rule, standard permit, flexible permit, or permit amendment. Existing emissions from MSS activities may be added to the permit as allowable emissions under this subchapter without being subject to subparagraphs (H) or (I) of this paragraph if previously submitted as a part of an emissions inventory accepted by the executive director.

(N) MSS emission authorizations. The owner or operator of the site may use only one authorization mechanism for each facility or MSS activity, but may use a combination of authorization mechanisms for the site, including a permit by rule under Chapter 106 of this title (relating to Permits by Rule), standard permit under Subchapter F of this chapter (relating to Standard Permits) and new source review permits issued under this section to authorize MSS emissions.

(b) In order to be granted a permit, amendment, or special permit amendment, the owner or operator must comply with the following notice requirements.

(1) Applications declared administratively complete before September 1, 1999, are subject to the requirements of Chapter 116, Subchapter B, Division 3 of this title (relating to Public Notification and Comment Procedures).

(2) Applications declared administratively complete on or after September 1, 1999, are subject to the requirements of Chapter 39 of this title (relating to Public Notice) and Chapter 55 of this title (relating to Requests [Request] for Reconsideration and Contested Case Hearings; Public Comment). Upon request by the owner or operator of a facility that [which] previously has received a permit or special permit from the commission, the executive director or designated representative may exempt the relocation of such facility from the provisions in Chapter 39 of this title if there is no indication that the operation of the facility at the proposed new location will significantly affect ambient air quality and no indication that operation of the facility at the proposed new location will cause a condition of air pollution.

§116.116. Changes to Facilities.

(a) (No change.)

(b) Permit amendments.

(1) - (2) (No change.)

(3) Any person who applies for an amendment to a permit to construct or reconstruct an affected source (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)) under Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing

Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)) shall comply with the [provisions] requirements in Chapter 39 of this title (relating to Public Notice).

(4) Any person who applies for an amendment to a permit to construct a new facility or modify an existing facility shall comply with the [provisions] requirements in Chapter 39 of this title.

(5) Authorization of any maintenance, startup, and shutdown (MSS) emissions shall only be requested in conjunction with an amendment that would otherwise not meet the requirements of a permit by rule or standard permit. Any person who applies for an amendment to a permit shall not request an amendment solely for emissions from MSS activities except for:

(A) those concurrent amendments as required by §116.311(b) of this title (relating to Permit Renewal Application); or

(B) amendments filed within six months of a designated deadline for authorization of planned MSS emissions in Chapter 101, Subchapter F of this title (relating to Emissions Events and Scheduled Maintenance, Startup, and Shutdown Activities).

(c) (No change.)

(d) Permits by rule under Chapter 106 of this title (relating to Permits by Rule) or standard permits under Subchapter F of this chapter (relating to Standard Permits) in lieu of permit amendment or alteration.

(1) A permit amendment or alteration is not required if the changes to the permitted facility qualify for an exemption from permitting or permit by rule under Chapter 106 of this title or by meeting the conditions of a standard permit under Subchapter F of this chapter unless prohibited by permit condition as provided in §116.115 of this title (relating to General and Special Conditions).

(2) All changes authorized under Chapter 106 of this title to a permitted facility after the effective date of this rule, with the exception of those emissions authorized under §106.268 and §106.269 of this title (relating to Maintenance, Startup, and Shutdown (MSS) Emission Releases; and Quantifiable, Anticipated (QUAN) Emission Releases), shall be incorporated into that facility's permit when the permit is amended in accordance with the following. [or renewed:]

(A) New facilities added to a process or production line that result in increases in production, changes to method of control, or changes to method of operation or that change the type or increase the quantity of emissions from permitted facilities, are considered directly related to the permitted facilities, and the permit by rule or standard exemption (SE) shall be incorporated into the permit and the changes reauthorized under the amendment. Applicants may also request facilities or changes to be rolled into a permit.

(i) This review must include an evaluation of current best available control technology (BACT) standards.

(ii) This review must include an off-property impacts review based on the agency's Effects Evaluation Flowchart and Air Quality Modeling Guidelines.

(iii) Emissions that meet the conditions of a permit by rule (PBR) or SE will not be required to meet the public notice requirements listed in §39.402 of this title (relating to Applicability to Air Quality Permit Amendments).

(iv) No additional fees will be charged for these facilities.

(v) Upon issuance of the amended permit (including references in Special Conditions and Maximum Allowable Emission Rates Table), any PBR or SE registrations or claims shall be voided.

(B) New facilities added to a process or changes in the method of operation that do not directly change the type or quantity of emissions from permitted facilities are considered indirectly related to the permitted facilities. New facilities added to a site that do not in any way change the type or quantity of emissions from permitted facilities are considered stand-alone, independent operations and unrelated to the permitted facilities. The PBR or SE may be incorporated by reference into the permit.

(i) This review does not include an evaluation of current BACT standards.

(ii) This review must include an off-property impacts review based on the agency's Effects Evaluation Flowchart and Air Quality Modeling Guidelines.

(iii) Emissions that meet the conditions of a PBR or SE will not be required to meet the public notice requirements listed in §39.402 of this title.

(iv) No additional fees will be charged for these facilities.

(v) Upon issuance of the amended permit (including references in Special Conditions and Maximum Allowable Emission Rates Table), any PBR or SE registrations or claims shall remain authorized under Chapter 106 of this title.

(3) All changes authorized by standard permit after the effective date of this rule, to a facility previously permitted under §116.110 of this title (relating to Applicability), except for authorization of MSS emissions under the "Maintenance, Startup, and Shutdown (MSS) Emission Releases Standard Permit," shall be incorporated into that facility's permit at such time as the permit is amended in accordance with the following.

(A) New facilities added to a process or production line, increases in production, changes to method of control or replacement of control technologies, or changes to method of operation that change the type or increase the quantity of emissions from permitted facilities are considered directly related to the permitted facilities, and the standard permit shall be incorporated into the permit and the changes reauthorized under the amendment. Applicants may also request facilities or changes to be rolled into a permit.

(i) This review must include an evaluation of current BACT standards.

(ii) This review must include an off-property impacts review based on the agency's Effects Evaluation Flowchart and Air Quality Modeling Guidelines.

(iii) Emissions that meet the conditions of a standard permit will not be required to meet the public notice requirements listed in §39.402 of this title.

(iv) No additional fees will be charged for these facilities.

(v) Upon issuance of the amended permit (including Special Conditions and Maximum Allowable Emission Rates Table), any standard permit registrations or claims shall be voided.

(B) New facilities added to a process or changes in method of operation that do not directly change the type or quantity of emissions from permitted facilities are considered indirectly related to the permitted facilities. New facilities added to a site that do not in any way change the type or quantity of emissions from permitted facilities are considered stand-alone, independent operations and unrelated to the permitted facilities. The standard permit may be incorporated by reference into the permit.

(i) This review does not include an evaluation of current BACT standards.

(ii) Emissions that meet the conditions of an standard permit will not be required to meet the public notice requirements listed in §39.402 of this title.

(iii) This review must include an off-property impacts review based on the agency's Effects Evaluation Flowchart and Air Quality Modeling Guidelines.

(iv) No additional fees will be charged for these facilities.

(v) Upon issuance of the amended permit (including references in Special Conditions and Maximum Allowable Emission Rates Table) any standard permit registrations or claims shall remain authorized under Subchapter F of this chapter.

(e) Changes to qualified facilities.

(1) With the exception of [Notwithstanding] any other subsection of this section, a physical or operational change may be made to a qualified facility if it can be determined that the change does not result in:

(A) a net increase in allowable emissions of any air contaminant; [and]

(B) the emission of any air contaminant not previously emitted; and [.]

(C) the change of status from emissions reviewed and designated as MSS or certain quantifiable and anticipated (QUAN) to emissions designated and reviewed as production.

(2) (No change.)

(3) The determination in paragraph (1) of this subsection shall be based on the allowable emissions for air contaminant categories and any allowable emissions for individual compounds. If a physical or operational change would result in emissions of an [a] air contaminant category or compound above the allowable emissions for that air contaminant category or compound, the amount above the allowable emissions must be offset by an equivalent decrease in emissions at the same facility or a different facility. In making this offset, the following applies.

(A) - (F) (No change.)

(4) - (5) (No change.)

(6) Additional air pollution control methods may be implemented for the purpose of making a facility a qualified facility. The implementation of any additional control methods to qualify a facility shall be subject to the requirements of this chapter. The owner or operator shall:

(A) utilize additional control methods that are as effective as BACT [best available control technology (BACT)] required at the time the additional control methods are implemented; or

(B) (No change.)

(7) - (8) (No change.)

(f) Use of credits. With the exception of [Notwithstanding] any other subsection of this section, discrete emission reduction credits may be used to exceed permit allowables as described in §101.376(b)(1) [§101.29(d)(4)(v)] of this title (relating to Discrete Emission Credit Use [Banking and Trading]) if all applicable conditions of Chapter 101, Subchapter H, Division 4 [§101.29] of this title (relating to Discrete Emission Credit Banking and Trading) are met. This subsection does not authorize any physical changes to a facility.

SUBCHAPTER D: PERMIT RENEWALS

§116.311

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, §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 Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission 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; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits and adopt rules necessary for permits issued under Texas Health and Safety Code, Chapter 382; §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions consistent with Chapter 382; §382.0518, concerning Preconstruction Permit, which requires that a permit be obtained from the commission prior to new construction or modification of an existing facility; §382.055, concerning Review and Renewal of Preconstruction Permit, which provides the requirements for renewal of preconstruction permits; and §382.057,

concerning Exemption, which authorizes the commission to exempt certain changes from the requirements of Texas Health and Safety Code, §382.0518.

The proposed amendment implements Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.051, 382.0513, 382.0518, 382.055, and 382.057.

§116.311. Permit Renewal Application.

(a) In order to be granted a permit renewal, the permit holder shall submit information in support of the application, which demonstrates that:

(1) dockside vessel emissions associated with the facility will comply with all rules and regulations of the commission and with the intent of the Texas Clean Air Act [TCAA], including protection of the health and property of the public and minimization of emissions to the extent possible, consistent with good air pollution practices.

(2) (No change.)

(3) the facility meets the requirements of any applicable New Source Performance Standards as listed under [Title] 40 Code of Federal Regulations (CFR) Part 60, promulgated by the United States Environmental Protection Agency (EPA) [EPA] under the authority of the Federal Clean Air Act (FCAA) [FCAA], §111, as amended;

(4) the facility meets the requirements of any applicable emission standard for hazardous air pollutants as listed under [Title] 40 CFR Part 61, promulgated by EPA under the authority of the FCAA, §112, as amended; and

(5) the facility meets the requirements of any applicable maximum achievable control technology standard as listed under 40 CFR Part 63, promulgated by the EPA under FCAA, §112 or as listed under Chapter 113, Subchapter C of this title (relating to National Emission Standards for Hazardous Air Pollutants for Source Categories (FCAA, §112, 40 CFR 63)).

(6) (No change.)

(b) Emissions from maintenance, startup, or shutdown (MSS) as defined in the definition of normal operations in §116.10 of this title (relating to General Definitions) may be included during the renewal review if there are no increases over the current allowables or change in character of air contaminant emissions from the current allowables, change in method of operation, or change in method of control of emissions. Authorization of MSS emissions may also be obtained by meeting the conditions of an applicable permit by rule (PBR), standard permit, flexible permit, or concurrent permit amendment.

(c) Emissions from MSS authorized under §106.268 and §106.296 of this title (relating to Maintenance, Startup, and Shutdown (MSS) Emission Releases; and Quantifiable, Anticipated (QUAN) Emission Releases), or the “Maintenance, Startup, and Shutdown (MSS) Emission Releases Standard

Permit” will not be incorporated into a facility’s permit at renewal. Each facility or MSS activity at the site may only use one of these authorization mechanisms, but the site may utilize a combination of PBRs, standard permits, and permits to authorize MSS.

(d) All changes authorized by a PBR or standard exemption (SE) under Chapter 106 of this title (relating to Permits by Rule) or a standard permit under Subchapter F of this chapter (relating to Standard Permits) after the effective date of this rule, to a facility previously permitted under §116.110 of this title (relating to Applicability), except those in subsection (c) of this section, shall be incorporated into that facility's permit at such time as the permit is renewed in accordance with the following.

(1) If there are new facilities added to a process or production line, increases in production, changes to method of control or replacement of control technologies, or changes to the method of operation that change the type or increase the quantity of emissions from permitting facilities, these changes are considered directly related to the permitted facilities, and the PBR, SE, or standard permit shall be rolled into the permit and the changes authorized under a concurrent permit amendment, following the requirements in §116.116(b)(2) of this title (relating to Changes to Facilities).

(2) If there are new facilities added to a process or changes in the method of operation that do not directly change the type or quantity of emissions from permitted facilities, these changes are considered indirectly related to the permitted facilities. If there are new facilities added to a site that do

not in any way change the type or quantity of emissions from permitted facilities or change the method of control, these changes are considered stand-alone, independent operations and unrelated to the permitted facilities. These changes may be voluntarily incorporated by reference into a permit upon request of an applicant.

(A) This review does not include an evaluation of current BACT standards.

(B) This review must include an off-property impacts review based on the agency's Effects Evaluation Flowchart and Air Quality Modeling Guidelines.

(C) Emissions are not required to meet the public notice requirements listed in §39.402 of this title (relating to Applicability to Air Quality Permit Amendments).

(D) No additional fees will be charged for these facilities.

(E) Upon issuance of the new permit (including references in Special Conditions and Maximum Allowable Emission Rates Table), any PBR, SE, or standard permit registrations or claims shall remain in effect.

(e) [(b)] In addition to the requirements in subsection (a) of this section, if the commission determines it necessary to avoid a condition of air pollution or to ensure compliance with otherwise applicable federal or state air quality control requirements, then:

(1) the applicant may be required to submit additional information regarding the emissions from the facility and their off-property impacts on the surrounding area; and

(2) the commission shall impose as a condition for renewal only those requirements the executive director determines to be economically reasonable and technically practicable considering the age of the facility and the impact of its emissions on the surrounding area.

(f) [(c)] A compliance history review must be conducted in accordance with Chapter 60 of this title (relating to Compliance History).

SUBCHAPTER F: STANDARD PERMITS

§116.614, §116.615

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code, §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 Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendments are also proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission 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; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits and adopt rules necessary for permits issued under Texas Health and Safety Code, Chapter 382; §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions consistent with Chapter 382; §382.0518, concerning Preconstruction Permit, which requires that a permit be obtained from the commission prior to new construction or modification of an existing facility; §382.055, concerning Review and Renewal of Preconstruction Permit, which provides the requirements for renewal of preconstruction permits; and §382.057,

concerning Exemption, which authorizes the commission to exempt certain changes from the requirements of Texas Health and Safety Code, §382.0518.

The proposed amendments implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.051, 382.0513, 382.0518, 382.055, and 382.057.

§116.614. Standard Permit Fees.

Any person who registers to use a standard permit or an amended standard permit, or to renew a registration to use a standard permit shall remit, at the time of registration, a flat fee [of \$900 for each standard permit being registered, unless otherwise specified in a particular standard permit. No fee is required if a registration is automatically renewed by the commission]. All standard permit fees will be remitted in the form of a check, certified check, electronic funds transfer, or money order made payable to the Texas Commission on Environmental Quality (TCEQ) and delivered with the permit registration to the TCEQ, P.O. Box 13088, MC 214, Austin, Texas 78711-3087. [No fees will be refunded.] A registrant who submits a standard permit registration or update for review by the commission shall remit one of the following fees with the PI-1S registration form, unless otherwise specified in a particular standard permit.

(1) Any small business (as defined in Texas Government Code, §2006.001), nonprofit organizations, and municipalities, counties, and independent school districts with populations of 10,000 or fewer residents shall remit:

(A) \$450 for each new standard permit being registered or renewed; or

(B) \$225 for any amended standard permit as required by the executive director or for any revised representations of a standard permit registration.

(2) All other entities shall remit:

(A) \$900 for each new standard permit being registered or renewed; or

(B) \$450 for any amended standard permit as required by the executive director or for any revised representations of a standard permit registration.

(3) This fee does not apply to:

(A) certifications or notifications that do not require review by the executive director;

(B) resubmittal of a previously reviewed registration if received within six months of a written response on the original action; or

(C) a registration that is automatically renewed by the commission.

(4) Fees will be refunded when determined that no review is needed or performed at the discretion of the executive director.

§116.615. General Conditions.

The following general conditions are applicable to holders of standard permits, but will not necessarily be specifically stated within the standard permit document.

(1) Protection of public health and welfare. The emissions from the facility, including dockside vessel emissions, must comply with all applicable rules and regulations of the commission adopted under Texas Health and Safety Code, Chapter 382, and with intent of the Texas Clean Air Act [TCAA], including protection of health and property of the public.

(2) Standard permit representations. All representations with regard to construction plans, operating procedures, and maximum emission rates in any registration for a standard permit become conditions upon which the facility or changes to the facility [thereto], must be constructed and operated. It is unlawful for any person to vary from such representations if the change will affect that person's right to claim a standard permit under this section. Any change in condition such that a person is no longer eligible to claim a standard permit under this section requires proper authorization under §116.110 of this title (relating to Applicability). If the facility remains eligible for a standard permit, the owner or operator of the facility shall register with [notify] the executive director [of] any change in conditions that [which] will result in construction of a new facility or group of related

facilities, a change in the method of control of emissions, a change in the character of the emissions, or an increase in the discharge of the various emissions as compared to the representations in the original registration or any previous registration [notification] of a change in representations. Registration [Notice] of changes in representations must be received by the executive director in accordance with the requirements of §116.611 and §116.614 of this title (relating to Registration to Use a Standard Permit; and Standard Permit Fees) [no later than 30 days after the change].

(A) Registrations for the construction of new facilities or a group of related facilities must comply with §116.611(b) of this title.

(B) Registrations for all changes other than maintenance, startup, and shutdown (MSS) activities must be received by the executive director no later than 30 days after the change.

(C) Registrations for the authorization of MSS activities are not subject to the review deadlines in §116.611(b) of this title, but instead, construction or emission releases may begin after receipt of written notification from the executive director that there are no objections or 180 days after receipt of the registration, whichever occurs first. Those facilities that have no MSS emissions, or do not choose to authorize MSS under their standard permit, are not required to submit registration or notification to the executive director.

(3) Standard permit in lieu of permit amendment. All changes authorized by standard permit to a facility previously permitted under §116.110 of this title [(relating to Applicability)] shall be administratively incorporated into that facility's permit at such time as the permit is amended or renewed, except for authorization of MSS emissions under the Maintenance, Startup, and Shutdown (MSS) Emission Releases Standard Permit.

(4) (No change.)

(5) Startup [Start-up] notification.

(A) - (B) (No change.)

(C) Prior to beginning operations of the facilities authorized by the permit, the permit holder shall identify to the Office of Permitting, Remediation, and Registration, the source or sources of allowances to be utilized for compliance with Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program).

(D) A particular standard permit may modify startup [start-up] notification requirements.

(6) Sampling requirements. If sampling of stacks or process vents is required, the standard permit holder shall contact the commission's appropriate regional office [Office of Air

Quality] and any other air pollution control program having jurisdiction prior to sampling to obtain the proper data forms and procedures. All sampling and testing procedures must be approved by the executive director and coordinated with the regional representatives of the commission. The standard permit holder is also responsible for providing sampling facilities and conducting the sampling operations or contracting with an independent sampling consultant.

(7) (No change.)

(8) Recordkeeping. A copy of the standard permit along with information and data sufficient to demonstrate applicability of and compliance with the standard permit shall be maintained in a file at the plant site and made available at the request of representatives of the executive director, the United States Environmental Protection Agency [EPA], or any air pollution control program having jurisdiction. For facilities that normally operate unattended, this information shall be maintained at the nearest staffed location within Texas specified by the standard permit holder in the standard permit registration. This information must include, but is not limited to, production records and operating hours. Additional recordkeeping requirements may be specified in the conditions of the standard permit. Information and data sufficient to demonstrate applicability of and compliance with the standard permit must be retained for at least two years following the date that the information or data is obtained. The copy of the standard permit must be maintained as a permanent record.

(9) Maintenance of emission control. The facilities covered by the standard permit may not be operated unless all air pollution emission capture and abatement equipment is maintained in

good working order and operating properly during normal facility operations. Notification for emissions events and scheduled maintenance shall be made in accordance with §101.201 and §101.211 of this title (relating to Emissions Event Reporting and Recordkeeping Requirements; and Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements).

(10) Compliance with rules. Registration of a standard permit by a standard permit applicant constitutes an acknowledgment and agreement that the holder will comply with all rules, regulations, and orders of the commission issued in conformity with the Texas Clean Air Act [TCAA] and the conditions precedent to the claiming of the standard permit. If more than one state or federal rule or regulation or permit condition are applicable, the most stringent limit or condition shall govern. Acceptance includes consent to the entrance of commission employees and designated representatives of any air pollution control program having jurisdiction into the permitted premises at reasonable times to investigate conditions relating to the emission or concentration of air contaminants, including compliance with the standard permit.

SUBCHAPTER G: FLEXIBLE PERMITS

§116.710

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, §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 Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission 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; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits and adopt rules necessary for permits issued under Texas Health and Safety Code, Chapter 382; §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions consistent with Chapter 382; §382.0518, concerning Preconstruction Permit, which requires that a permit be obtained from the commission prior to new construction or modification of an existing facility; §382.055, concerning Review and Renewal of Preconstruction Permit, which provides the requirements for renewal of preconstruction permits; and §382.057,

concerning Exemption, which authorizes the commission to exempt certain changes from the requirements of Texas Health and Safety Code, §382.0518.

The proposed amendment implements Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.051, 382.0513, 382.0518, 382.055, and 382.057.

§116.710. Applicability.

(a) Flexible permit. A person may obtain a flexible permit that [which] allows for physical or operational changes as provided by this subchapter as an alternative to obtaining a new source review permit under §116.110 of this title (relating to Applicability), or in lieu of amending an existing permit under §116.116 of this title (relating to Changes to Facilities [Amendments and Alterations]). A person may obtain a flexible permit that authorizes a facility's predictable or planned maintenance, startup, or shutdown (MSS) activities as defined in the definition of normal operations in §116.10 of this title (relating to General Definitions). A person may obtain a flexible permit under §116.711 of this title (relating to Flexible Permit Application) for a facility, group of facilities, or account before any actual work is begun, provided however:

(1) only one flexible permit may be issued at a regulated entity [an account site];

(2) modifications to existing facilities covered by a flexible permit may be authorized [handled] through the amendment of an existing flexible permit;

(3) permitting of a new facility may be authorized [handled] through the amendment of a flexible permit; and

(4) a flexible permit may not cover sources at more than one regulated entity [account site].

(b) - (d) (No change.)