

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §101.1, Definitions; §101.2, Multiple Air Contaminant Sources or Properties; §101.10, Emissions Inventory Requirements; and §101.30, Conformity of General Federal and State Actions to State Implementation Plans. The commission also adopts a new §101.28, Stringency Determination for Federal Operating Permits. The amendments to §§101.1, 101.2, and 101.10 are adopted with changes to the proposed text as published in the July 16, 1999 issue of the *Texas Register* (24 TexReg 5390). Sections 101.28 and 101.30 are adopted without changes and will not be republished. The amendments to §§101.1, 101.10, 101.30, and new 101.28 are revisions to the State Implementation Plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

These amendments were proposed and are adopted as a result of the rules review of Chapter 101 as required by the General Appropriations Act, Article IX, §167, 75th Legislature, 1997. Notice of this review was published in the January 29, 1999 issue of the *Texas Register* (24 TexReg 608). In addition to the public comments received during the rule review, the commission also identified portions of Chapter 101 that could be amended to eliminate redundant definitions and clarify the application of regulations. The details of the amendments are described in the following analysis.

SECTION BY SECTION DISCUSSION

This adoption changes the title of Chapter 101 from “General Rules” to “General Air Quality Rules.” The adoption removes the following definitions from §101.1, because they are either duplicated in other chapters of Title 30 of the Texas Administrative Code (TAC) or used in rules that have been previously repealed: “act,” “alcohol substitutes (used in offset lithographic printing),” “alcohol (used in offset

lithographic printing),” “architectural coating,” “article (as in provision of law),” “automotive basecoat/clearcoat system (used in vehicle refinishing (body shops))” and the related equations, “automotive precoat (used in vehicle refinishing (body shops)),” “automotive pretreatment (used in vehicle refinishing (body shops)),” “automotive primer or primer surfacers (used in vehicle refinishing (body shops)),” “automotive sealers (used in vehicle refinishing (body shops)),” “automotive specialty coatings (used in vehicle refinishing (body shops)),” “automotive three stage system (used in vehicle refinishing (body shops))” and the related equations, “automotive wipe-down solutions (used in vehicle refinishing (body shops)),” “bakery oven,” “batch (used in offset lithographic printing),” “capture efficiency,” “cleaning solution (used in offset lithographic printing),” “clear coat (used in wood parts and products coating),” “clear sealers (used in wood parts and products coating),” “coating application system,” “coating line,” “consumer-solvent products,” “drum,” “extreme performance coating,” “final repair coat (used in wood parts and products coating),” “flexographic printing process,” “forage,” “fountain solution (used in offset lithographic printing),” “gasoline bulk plant,” “gasoline terminal,” “hand-held lawn and garden and utility equipment,” “inorganic fluoride compounds,” “lithography (used in offset lithographic printing),” “low-bake coatings,” “municipal solid waste landfill emissions,” “natural gas/gasoline processing,” “non-flat architectural coating,” “non-heatset (used in offset lithographic printing),” “offset lithography,” “opaque ground coats and enamels (used in wood parts and products coating),” “packaging rotogravure printing,” “pail (metal),” “polymer and resin manufacturing process,” “population equivalent,” “pounds of volatile organic compounds (VOC) per gallon of coating (minus water and exempt solvents)” and the related equation, “pounds of volatile organic compounds (VOC) per gallon of solids” and the related equation, “printing line,” “publication rotogravure printing,” “rotogravure printing,” “semitransparent spray stains and toners (used in wood

parts and products coating),” “semitransparent wiping and glazing stains (used in wood parts and products coating),” “shellacs (used in wood parts and products coating),” “surface coating processes,” Synthetic Organic Chemical Manufacturing Industry (SOCMI) batch distillation operation,” “Synthetic Organic Chemical Manufacturing Industry (SOCMI) batch process,” “Synthetic Organic Chemical Manufacturing Industry (SOCMI) distillation operation,” “Synthetic Organic Chemical Manufacturing Industry (SOCMI) distillation unit,” “Synthetic Organic Chemical Manufacturing Industry (SOCMI) reactor process,” “synthetic organic chemical manufacturing process” and the related Table II, “tank-truck tank,” “topcoat (used in wood parts and products coating),” “transport vessel,” “true partial pressure,” “vapor balance system,” “vapor recovery system,” “vapor-tight,” “varnishes (used in wood parts and products coating),” “vehicle refinishing (body shops),” and “wash coat (used in wood parts and products coating),” “waxy, high pour point crude oil.”

Because they are used in multiple Chapters of 30 TAC, the following definitions are moved from the existing §101.30, concerning Conformity of General Federal Actions to State Implementation Plans, to §101.1: “criteria pollutant or standard,” “maintenance plan,” “metropolitan planning organization,” and “National Ambient Air Quality Standards (NAAQS).” The definitions of “maintenance area” and “National Environmental Policy Act (NEPA), 42 United States Code §§4321-4370e (1969, as amended)” are deleted from §101.30 because they are duplicated in Chapter 101 and Chapter 3, respectively. Section 101.30 is also amended to correct obsolete acronyms and update references to Chapter 114, concerning Control of Air Pollution from Motor Vehicles.

The adoption amends the definition of “incinerator” to exclude combustion devices burning clean scrap wood as a primary fuel for heat recovery. Because waste wood is considered a solid waste, this amendment will allow operators of wood-fired boilers to operate exclusively under regulations applicable to boilers. The commission has examined this practice through permitting applications and determined that it is safe and produces low levels of nonhazardous emissions. The amendment also excludes devices that are permitted under this title as a combustion device other than an incinerator. This will allow boilers and other heat recovery devices permitted to use solid waste derived fuels to operate under one set of rules. This change is based on analysis of comments received during quadrennial review of commission rules as required by Texas Government Code, §2001.39.

The definition of “nonattainment” area is amended to reflect the federal reclassification of the Dallas/Fort Worth (DFW) area from a “moderate” to a “serious” nonattainment area for ozone.

The definition of “new source” is amended to state that a new source is one which commenced construction or was modified after March 5, 1972. This definition is consistent with the definition of “new source” in 30 TAC Chapter 116.

The amendments to §101.1 add certain compounds to the list of those excluded from the definition of “volatile organic compound” in response to an identical action by the United States Environmental Protection Agency (EPA). The excluded compounds are weak photochemical reactors and are not significant contributors to the formation of ozone, and it is, therefore, appropriate to exclude them from regulations limiting emissions of VOCs. The compounds include: difluoromethane (HFC-32);

ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1-chloro-1-fluoroethane (HCFC-151a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxybutane, 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane, 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane, 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane, and methyl acetate.

To simplify and reduce the number of definitions, the definition of “net ground level concentration” is amended to include the concepts of “upwind level” and “downwind level,” which were defined separately and are deleted from §101.1. The definition of “control system” is amended to include devices and combinations of devices used to control air contaminants. Subsequently, the separate definitions of “control device” and “system or device” are deleted.

The changes to §101.1, Definitions, add new definitions of “flare” and “vapor combustor” because these terms are used in multiple chapters of 30 TAC. These definitions are intended to explain the nature of these devices so that operational requirements are clearly understood by source operators. Finally, the definitions in §101.1 are numbered according to *Texas Register* requirements and corrected for obsolete or incorrect administrative references and use of acronyms.

In response to the quadrennial rule review of Chapter 101, the commission is adopting amendments to §101.2, Multiple Air Contaminant Sources or Properties. Section 101.2(b) allows two or more

property owners or operators to petition the commission to have their properties designated as a single property for purposes of demonstrating compliance with commission regulations and the control of air emissions.

The adopted amendments to §101.2(b) authorize the executive director to approve petitions for single property designation. However, consistent with commission policy regarding action which must be taken by the commission rather than the executive director, the rule prohibits the executive director from acting on the petition if issues develop that require interpretation of commission policy. Action by the executive director is subject to a motion for reconsideration under the commission's rules.

It has been the policy of the commission concerning single property designations to allow the combination of properties that are contiguous except for public right-of-ways provided all emission points are located within a single portion of the property that is not crossed by a public right-of-way. A single property designation does not exempt owners or operators from compliance with applicable standards and guidelines on public rights-of-way that cross the designated single property. The amendments to §101.2(b)(2)(A) clarify the rule language to allow the continued application of this policy.

The amendments require that all persons with ownership interests in real property, including leaseholders, within the property must consent to the agreement. A single property designation allows more than one property to be considered as one for purposes of determining compliance with commission rules, including impacts from emissions. Therefore, the commission needs to be informed

that all owners, including those who do not emit air contaminants, understand how the commission will evaluate emissions from the emission points within the single property boundary. This requirement is consistent with the commission's rules which allow an operator to act on behalf of owners in air permitting matters in 30 TAC Chapter 116. Petitioners are required to provide air account numbers to facilitate processing the petition and to allow the maintenance of records by the commission. The amendments to §101.1(b) require that the written agreement of parties to a single property designation be a sworn document. This is consistent with commission practice of applicants providing sworn applications for emergency orders, as well as affidavits required by law. Finally, §101.2(b) is reorganized so that all requirements concerning contents of a petition are more easily read.

The amendments add a new §101.2(c) stating that all references to property or properties include all interests in real property, including leasehold interests but excluding solely mineral interests, to clarify that this condition applies to subsection §101.2(a), as well as to subsection §101.2(b). This is consistent with the requirement that all property owners within the property must consent to the agreement.

The amendments to §101.10, concerning Emissions Inventory Requirements, specifically state the type of information the commission can collect to compile an emission inventory. The amendments, which represent current practice of the commission, codify existing statutory authority to develop an emissions inventory (EI) under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.014 and §382.016, to prescribe reasonable requirements to make and maintain records on the measuring and monitoring of emissions. The commission uses EIs primarily in areas of the state that fail to meet the

NAAQS and is a required element of a SIP. SIPs are regulatory tools used by the states at the direction of the federal government to control air emissions in areas that fail to meet the NAAQS. EI data is also collected under the mandate of 40 Code of Federal Regulations (CFR) §51.114, which states that each SIP must “contain a detailed inventory of emissions from point and area sources,” and “identify the sources of the data used in the projection of emissions.” The inventory is used to identify sources of emissions and their relative contribution to total emissions in the area. From this information, the commission develops a control strategy for the most effective application of controls. Because the NAAQS is a standard meant to protect public health, the commission views activities related to attaining or protecting the NAAQS as a public health issue. The amendments also restructure the section.

The adopted amendments include language in §101.10(a) that would allow EI staff to request data related to EI numbers. The staff requires this information periodically so that they may do quality assurance to EI reports. Examples of this type of data are the dimensions of storage tanks, fuel consumption, or other basic source operational characteristics used to verify emission calculations. The commission is currently requesting and receiving this information on individual sources as required.

The amendment to §101.10(a)(2) allows the commission to collect data to make a determination if a source would be classified as major under the federal definition. The adopted new §101.10(a)(3) allows the commission to collect data on potential to emit any air contaminant.

Emission inventory information is collected under Titles I and V of the Federal Clean Air Act (FCAA) to develop control strategies for SIP and rule development. The commission requires emission information on all types of sources-point, area, and mobile-to plan effective control strategies for achieving national air quality standards. Considered collectively, small businesses such as gasoline stations, dry cleaners, and other solvent users are significant sources of air emissions and are classified as area sources. Under TCAA, §382.014, the commission may require emission information from persons whose activities cause emissions of air contaminants and, under TCAA, §382.016, may require persons to reasonably make and maintain records on the measuring and monitoring of emissions. The amended §101.10(a)(4) specifically extends this data collection authority to area sources. The commission currently samples these sources through postal surveys which the business operator completes and returns. These samples are used as a representation of similar businesses, and the commission expands the results using population data for a specified geographic area to compile an inventory for the particular business type. The questions on the survey concern material use, operating hours, and other normal business records. The commission estimates that completing the form could require two to four hours and offers technical aid to business owners in completing the form and will complete the form upon request.

The amendments to §101.10(b)(1) contain requirements for sources in regions that are in violation of a NAAQS to report typical daily emissions of carbon monoxide and ozone precursor gases during the winter and summer months, respectively. This data is used to evaluate individual exceedances of the NAAQS in a limited geographic area and identify sources that have a stronger influence on air monitoring data. The commission is currently collecting this data and is adopting these amendments

primarily to include existing practice into the rules. Evaluation of this data will be used to develop a more effective and equitable control strategy. The amended §101.10(b)(1) allows the commission to collect data on any other contaminant subject to a NAAQS, hazardous air pollutant (HAPs) identified in FCAA, §112(b), or other contaminants as requested. Finally, this paragraph is amended to state that emissions shall be reported as they enter the atmosphere.

The requirement to report allowable emissions has been dropped from §101.10(b)(2), as the commission staff currently enters this data into the records of an account based on the permit. Section 101.10(b)(2)(A) was amended to limit reports on changes of operating conditions of a source to those changes that cause an increase or reduction of five tons per year or 5.0% of total emissions, whichever is greater. The commission has adopted this change to eliminate the need to report insignificant changes in emissions.

Section 101.10(c) states that actual measurement of emissions with a continuous emission monitoring system (CEMS) is the preferred method of submitting data. The commission has amended this subsection to require submission of calculations representative of emission producing processes where CEMS data is not available. This data would be used to perform quality assurance and verify the accuracy of the reported emissions. The adopted amendments remove obsolete language that referred to inventory requirements due in 1992 and 1993.

The commission is adopting a new §101.28 to allow compliance with a single set of requirements in federal operating permits where there are multiple, redundant, or contradicting applicable or state-only

requirements under 30 TAC Chapter 122, Federal Operating Permits. The commission believes that the authority required for streamlining multiple, duplicative, redundant, and/or contradictory applicable and state-only requirements already exists under §122.148(c)(1)(B) for federal operating permits.

However, the new §101.28 clarifies the commission's current authority to streamline requirements for those cases when the SIP may appear to prohibit the use of alternative monitoring and testing requirements to assure compliance with an applicable or state-only requirement.

Federal operating permit sites subject to the multiple, duplicative, redundant, and/or contradictory applicable or state-only requirements (emission limitations, monitoring, recordkeeping, reporting, and/or testing) may request that the commission establish a single set of streamlined and enforceable conditions in the permit. If approved, these streamlined conditions would be covered by a permit shield as allowed by §122.148 of this title (Permit Shield). The permit shield states that compliance with the streamlined requirements is deemed compliance with the subsumed applicable and state-only requirements.

For example, an applicant with an emission unit subject to two emission limitations for the same pollutant may be required to install separate monitoring instrumentation and submit separate monitoring reports for each, even though one monitor can effectively assure compliance with both emission limitations. Furthermore, the recordkeeping and reporting associated with the unnecessary instrumentation may create an administrative burden for both the facility and the commission without an associated gain in compliance assurance. In this example, the federal operating permit could be used to streamline these requirements into a single set of enforceable permit conditions that would assure

compliance with both emission limitations. This action does not make the rules less stringent, but assures that the final requirement is as stringent as or equivalent to those subsumed requirements.

EPA published guidance for streamlining these multiple requirements in EPA White Paper Number 2 (WP2) for Improved Implementation of the Part 70 Operating Permits Program (March 5, 1996). In this paper, EPA encouraged the permitting authorities to allow the use of the federal operating permits to streamline these multiple requirements. EPA stated that the legal basis for establishing a more stringent or equivalent requirement is FCAA, §504(a).

EPA notes that §504(a) does not require a permit to contain repetitious terms and conditions of applicable requirements when another applicable requirement could be used to assure compliance with the streamlined requirement. EPA has recently revised 40 CFR, Part 70.6(a)(3)(i)(A) (62 Federal Register 54900, 54946, October 22, 1997) to reflect this legal interpretation: "...If more than one monitoring or testing requirement applies, the permit may specify a streamlined set of monitoring or testing procedures provided the specified monitoring or testing is adequate to assure compliance at least to the same extent as the monitoring or testing applicable requirements that are not included in the permit as a result of such streamlining."

While the revised 40 CFR Part 70 and EPA's interpretation of §504(a) are helpful, EPA recognized that there may be SIP limitations that would prohibit streamlining of multiple requirements. In WP2, EPA notes that streamlining could be limited in instances where an applicable requirement requires specific

monitoring or testing requirements to be used as a means of determining compliance. EPA believes that §504(a) overrides such limitations.

In addition, EPA recognized that streamlining cannot result in any requirement relying on a state-only test method or an alternative to an EPA-approved test method unless EPA, or the permitting authority acting as EPA's delegated agency, approves the alternative as an appropriate method for purposes of complying with the streamlined standard. The more stringent, equivalent, or alternative requirement established by the executive director under this section is approved for the emission unit by EPA if it is a term or condition of a federal operating permit and EPA has not objected to the permit as required by §122.350 of this title (EPA Review). The executive director has been delegated authority to issue and reuse federal operating permits under 30 TAC Chapter 122 and stringency determinations will be part of this process.

The commission includes language in §101.28 to accommodate EPA's WP2 guidance and ensure that unnecessary or redundant regulations and processes are eliminated whenever possible.

FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that this rulemaking is not subject to §2001.0225 because the proposed amendments to this rule do not meet the definition of a "major environmental rule" as defined in the act. Specifically, none of the adopted amendments is anticipated

to affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health of the state or a sector of the state.

The amendment of the definition of “incinerator” will allow operators of wood-fired boilers to operate exclusively under regulations concerning boilers. The intent of the amendment is to clarify under which set of regulations a specific device will fall and eliminate the possibility of dual regulation. No new regulatory requirements are included in the amendment.

The exclusion of certain compounds from the definition of “volatile organic compound” removes those compounds from regulation as VOCs. The compounds removed from the definition are still regulated as air contaminants in other rules and are evaluated during the review of operating permits. The deletion of duplicate definitions and the clarification of others such as “new source” or “control device” do not have any regulatory effect. The new definitions of “flare” and “vapor combustor” do not add any new regulatory requirements.

The adopted amendments to §101.2 concern actions that are voluntary by property owners. The combination of sources and properties is not initiated by the commission but by the owners. The amendments would help clarify the legal responsibility of all parties to a request for single property designation. Because the request for such a designation is voluntary, there are no new expenses or requirements compelled by these amendments.

The adopted amendments to §101.10 codify the statutory authority of the commission to develop an EI found in the TCAA. This section is also promulgated under the authority of the TCAA, which authorizes the commission to prescribe reasonable requirements to make and maintain records on the measuring and monitoring of emissions. The section would require selected small businesses to submit the survey forms from which the commission prepares and quality assures an EI. This is current practice of the commission, and the amendments are primarily an expression and clarification of existing statutory authority, particularly regarding area sources of pollution. The practice of the commission is to survey a small sample of representative businesses on material use, hours of operation, and other factors affecting emissions and then scale the results upward according to area business employment statistics. The survey should take from two to four hours to compile the information and complete the form. The EI staff will complete the form, on request, using information supplied by the business. The scale of the effect is small because only 1.0% or less of small businesses are sampled in any year. Therefore, these amendments which are codification of existing authority and practice do not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health of the state or a sector of the state.

The new §101.28, Stringency Determination for Federal Operating Permits, allows sources subject to multiple regulatory requirements in their operating permits to request from the executive director a single set of equivalent or more stringent requirements that meet the conditions of the subsumed requirements. This simplification of regulatory requirements is not anticipated to impose a greater degree of stringency except at the permit holder's request.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The purpose of the deletion of terms defined elsewhere in the commission rules is to remove duplicate definitions. Additionally, certain definitions, such as “new source” and “control device,” are clarified without adding new regulatory requirements. These actions do not restrict an owner’s right to private real property and do not constitute a taking under Texas Government Code, Chapter 2007.

The purpose of the change in the definition of “incinerator” is to clarify under which set of regulations a specific fuel burning device will fall. The change excludes wood-fired boilers from regulation as incinerators and removes the chance of dual regulation as both boiler and incinerator. No new regulatory requirements are adopted. This action does not restrict an owner’s right to private real property and does not constitute a taking under Texas Government Code, Chapter 2007.

The purpose of changing the definition of “nonattainment area” in this amendment is to comply with the current federal definition and classifications of serious nonattainment areas. In this amendment, the definition change of “nonattainment” is an administrative change that has no effect on private real property. Reclassifications of areas as “nonattainment areas” will be addressed by rules and amendments which specifically address those areas. This definition change does not restrict an owner’s right to private real property, and does not constitute a taking under Texas Government Code, Chapter 2007.

The purpose of excluding certain compounds from the definition of “volatile organic compound” is to remove those compounds from redundant regulation as VOCs. The compounds removed from the definitions in this amendment are still regulated as air contaminants in other rules and are evaluated during the review of operating permits. This action does not restrict an owner’s right to private real property, does not restrict the owner’s right to the property, and does not constitute a taking under Texas Government Code, Chapter 2007.

The amendments to §101.2 concern actions that are voluntary by property owners. The combination of sources and properties is not initiated by the commission but by the owners. Therefore, the amendments do not burden private real property, do not restrict the owner’s right to the property, and do not constitute a taking under Texas Government Code, Chapter 2007.

The purpose of the amendments to §101.10 is to codify the existing statutory authority in the TCAA to develop an EI. The new section is also promulgated under the authority of the TCAA, which authorizes the commission to prescribe requirements to make and maintain records on the measuring and monitoring of emissions. The commission uses EIs primarily in areas of the state that fail to meet the NAAQS and is a required element of a SIP. SIPs are regulatory tools used by the states at the direction of the federal government to control air emissions in areas that fail to meet the NAAQS. EI data is also collected under the mandate of 40 CFR §51.114, which states that each SIP must “contain a detailed inventory of emissions from point and area sources,” and “identify the sources of the data used in the projection of emissions.” The inventory is used to identify sources of emissions and their relative contribution to total emissions in the area. From this information, the commission develops a control

strategy for the most effective application of controls. Because the NAAQS is a standard meant to protect public health, the commission views activities related to attaining or protecting the NAAQS as a public health issue. The EI amendments are codification of the commission's existing statutory authority under TCAA, §382.014. The actions specified in the amendments are the current practice of the commission, and the amendments do not add any new regulatory requirements. This action does not restrict a right to private, real property and does not meet the definition of a "taking" under Texas Government Code, §2007.002(5).

The purpose of the new §101.28 is to allow sources subject to multiple requirements in their operating permits to request from the executive director a single set of equivalent or more stringent requirements that meet the conditions of the subsumed requirements. This is a simplification of regulatory requirements and will not impose a greater degree of stringency except at the permit holder's request. Because a possible greater degree of stringency may be taken only at the initiative of the permit holder, this action does not restrict a right to private real property and does not constitute a taking under Texas Government Code, Chapter 2007.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed this rulemaking for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council. The commission has determined that this rulemaking relates to an action or actions subject to the CMP in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et seq.), and the commission's rules at 30 TAC Chapter 281, Subchapter B,

concerning Consistency with the Coastal Management Program. For the actions in the proposed amendments to 30 TAC Chapter 101, the commission has determined that the rules are consistent with the applicable CMP goal expressed in 31 TAC §501.12(1) by protecting and preserving the quality and values of coastal natural resource areas and the policy in 31 TAC §501.14(q) which requires the commission to protect air quality in coastal areas. The commission has determined that these amendments will not allow any new emissions to the atmosphere.

PUBLIC HEARING AND COMMENTERS

A public hearing on this proposal was held August 12, 1999. The commission received comments from TXU Business Services on behalf of TXU Electric & Gas, TXU SESCO, and TXU Mining (TXU), Baker & Botts, L.L.P. on behalf of Texas Industry Project (Baker), Vinson and Elkins on behalf of Donahue Industries, Inc. (Vinson), Texas Chemical Council (TCC), BP Amoco (Amoco), Mobil Oil Corporation (Mobil), Bracewell and Patterson, L.L.P. (Bracewell), and the United States Environmental Protection Agency (EPA) during the public comment period which closed August 16, 1999. None of the commenters completely supported the proposal, and they selected specific issues for comment.

TCC commented that the commission should not propose a definition for flare or modify the definition of vapor combustor without simultaneously updating requirements for these devices in Chapter 115 as it places facilities in an uncertain compliance status. Section 115.144(3)(G) states “.....the owner or operator of a vapor combustor may consider the unit to be a flare and meet the requirements of subparagraph (E) of this paragraph.” This option would not be available where vapor combustors are

used as control devices to comply with other sections of Chapter 115 until those sections are updated to include this language. TCC further commented that the definition of flare should be modified to state that a flare is "...used to reduce emissions" instead of "...used as a control device." Flares used only for process upsets are considered emergency equipment as opposed to those that receive continual emissions. TCC stated that the commission should also specify that the definition applies for certain unique cases, such as ground flares.

Chapter 115 already includes definitions of "flare" and "vapor combustor" in §115.10, Definitions. The definitions proposed for Chapter 101 are similar to the definitions in Chapter 115 and contain amendments that reflect public comment on this adoption. The addition of new definitions of "flare" and "vapor combustor" to §101.1 does not add new regulatory requirements, and the commission believes the definitions do not cause a regulatory inconsistency with the existing definitions in Chapter 115. The new definitions cover a wider variety of applications and circumstances where devices are properly considered flares or vapor combustors. The addition of the definitions to Chapter 101 is necessary to enable the deletion of the corresponding existing definitions in Chapter 115 in future rulemaking as part of the commissions ongoing effort to consolidate definitions used in multiple chapters into Chapter 101. Therefore, the commenter's concern that the addition of these definitions will put facilities "in an uncertain compliance status" is unfounded. In the future, the commission anticipates proposing rulemaking which specifically addresses the requirements for vapor combustors and flares used to meet the emission limitations and control requirements of §§115.112 (Storage Tanks), 115.122 (Vent Gas Control), 115.131 (Water Separation), 115.312 (Process Unit Turnaround and Vacuum-Producing Systems in

Petroleum Refineries), 115.532 (Pharmaceutical Manufacturing Facilities), and 115.541 (Degassing or Cleaning of Stationary, Marine, and Transport Vessels). In the meantime, however, there are no new regulatory requirements associated with the addition of the definitions of "flare" and "vapor combustor" to §101.1. The commission has made no changes in response to these comments.

The commission disagrees that the definition of flare should be revised to state that a flare is "...used to reduce emissions" instead of "...used as a control device," as suggested by TCC. The definition of "control system or control device" in §101.1 is "any part, chemical, machine, equipment, contrivance, or combination of same, used to destroy, eliminate, reduce, or control the emission of air contaminants to the atmosphere." Therefore, under the definition of flare that the commission proposed, a flare is clearly used to reduce emissions. The commission has made no changes in response to these comments.

The commission disagrees that flares used only for upsets should not be considered control devices. Flares are used for controlling waste gas streams during both routine process and emergency or upset conditions and clearly meet the definition of "control system or control device." Upset conditions and maintenance are specifically regulated by §101.6 and §101.7. The commission has made no changes in response to these comments.

Regarding TCC's comment that the commission should "clarify that for certain unique cases, such as ground flares, the definition of flare applies," the commission has revised the definition of flare

to clarify that a flare may be equipped with a radiant heat shield (with or without a refractory lining), but is not equipped with a flame air control damping system to control the air/fuel mixture. This will allow ground flares to continue to be classified as flares. The commission has also clarified that flares may use auxiliary fuel. In addition, the commission has revised the definition of vapor combustor to clarify that a vapor combustor uses a flame air control damping system to control the air/fuel mixture to the combustor's flame zone. This will ensure that ground flares are classified as flares, and not vapor combustors.

TCC and Amoco commented that the commission should specify that the proposed definition of vapor combustor does not apply to devices that essentially meet the definition by being a “partially enclosed combustion device used to destroy VOCs by smokeless combustion...” but vents hot exhaust gas to a separate heat recovery boiler. Specifically TCC suggested removing the language “without extracting energy in the form of process heat or steam” or by adding a statement that the definition does not apply to process heaters or boilers.

The wording "without extracting energy in the form of process heat or steam" is included in the definition of vapor combustor in order to exclude devices such as boilers and process heaters. Because boilers and process heaters clearly extract energy in the form of process heat or steam, there is no need to add a statement that boilers and process heaters are not included in the definition of vapor combustor. A vapor combustor which vents hot exhaust to a separate heat recovery boiler can still meet the definition of "vapor combustor," provided that the heat recovery boiler is in fact, separate. The commission has made no changes in response to these comments.

It has come to the commission's attention that the definition of "municipal solid waste landfill emissions" is not used in any commission rules. Therefore, the commission is deleting this definition from §101.1. Similarly, it has come to the commission's attention that the definitions of "true partial pressure" and "waxy high pour point crude oil" are only used in Chapter 115. Because these terms are already defined in §115.10, the commission is deleting these definitions from §101.1.

TCC and Amoco supported the commission's exclusion of certain compounds from the definition of VOC. They stated that because these compounds are weak photochemical reactors and are not a significant contributor to ozone formation, the commission should specify a reportable quantity (RQ) of 5,000 pounds rather than 100 pounds for those compounds excluded from the definition of VOC. They also stated that the commission should consider excluding these compounds from upset reporting requirements.

The commission disagrees that the compounds excluded in the definition of VOC as a group should have a RQ of 5,000 pounds or be excluded from upset reporting requirements completely. The excluded compounds are weak photochemical reactors and are not considered to be significant contributors to ozone formation. This supports their removal from the definition of VOCs. This is not a basis for increasing the RQ of the compounds to 5,000 pounds or exempting the compounds from the definition of an unauthorized emission. The compounds listed in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and Emergency Planning and Community Right-to-Know Act (EPCRA) tables are a listing of

hazardous and extremely hazardous substances respectively. While a compound may not be a significant contributor to ozone formation it can still be considered a hazardous substance, and the commission needs to have a timely report of an unauthorized emission. Furthermore, many of the compounds excluded from the definition of a VOC are already listed under the CERCLA and EPCRA tables concerning reportable quantities. Some of these listed compounds have RQ's ranging from 100 pounds to 1,000 pounds.

Baker urged the commission to raise or eliminate to 100-pound default reportable quantity found in the definition of "reportable quantity (RQ)." The RQs for upset and maintenance (UM) reporting were made identical to those under the CERCLA and extremely hazardous substances (EHS) under the EPCRA. The commission also added substances common to Texas industry into the definition at a 5,000 pound RQ. The 100 pound RQ applies to all other substances regardless of their potential for harm. The 100-pound default is a regulatory anomaly that requires reporting on the release of substances that are of relatively low concern subjecting them to more stringent reporting than substances of higher concern. The commission intended the default to be a contingency for potentially hazardous substances not on the CERCLA and EPCRA reportable quantity lists. These substances should be addressed through specific revisions to the definition of RQ and not by an overly-broad default. At the least, the default RQ should be raised to 5,000 pounds reflecting the limited concern presented by non-listed substances. Mobil supported these comments and added that the 100-pound default RQ is more stringent than federal standards.

The commission believes that it is not appropriate to raise the default RQ to 5,000 pounds from 100 pounds as certain unlisted compounds such as dimethyl sulfide are potentially hazardous when released to the air in much smaller amounts. Additionally, the 100-pound default RQ is needed to cover all potentially problematic compounds not listed in CERCLA or EPCRA. The commission will consider individual compounds for a higher RQ.

Baker recommended eliminating the 100-pound default RQ or raising it to 5,000 pounds. Baker recognized that adding Texas-specific compounds to the definition at an RQ of 5,000 pounds is also an available option. They recommended adding: butyl acetate, ethanol, heptenes, hexanes, hexenes, isopropyl alcohol, methyl acrylate, mineral spirits, octenes, pentanes, pentenes, unspciated VOC. TCC commented that the commission should modify its list of RQs to contain the following general compounds with an RQ of 5,000 pounds: butanes, pentanes, pentenes, heptenes, hexenes, octanes, decanes, and ethanol. It also suggested that the commission raise its default RQ from 100 pounds to 5,000 pounds. This is the highest RQ for hazardous substances on the RQ list under the CERCLA. The commission's default value of 100 pounds applies to air contaminants not found on the CERCLA hazardous substance list. In addition to the substances suggested by the TCC to be added to the list, Baker recommended adding the following substances with a 5,000-pound RQ: butyl acrylate, hexanes, isopropyl alcohol, methyl acrylate, mineral spirits, octenes, and unspciated VOC. Baker also suggested that the commission solicit input from industry for additional substances. Mobil supported the comments.

The commission amends the definition of “reportable quantity” to include the following air contaminants at an RQ of 5,000 pounds: butanes, pentanes, hexanes, octanes, decanes, ethanol, isopropyl alcohol, and mineral spirits. This group of compounds includes isobutylene which would be deleted as an individual compound from the RQ list. These air contaminants proposed for inclusion under a 5,000 pound RQ are not listed in CERCLA and EPCRA lists, but are air contaminants common to Texas industries.

The commission declines to add pentenes, hexenes, heptenes, octenes, butyl acrylate, and methyl acrylate at an RQ of 5,000 pounds based on their potential to emit strong odors at low concentrations. Unspecified VOCs were not included in the proposal to ensure that the agency will receive appropriate information on the chemical characteristics of the releases. Unspecified VOCs can include significantly hazardous constituents listed in CERCLA, EPCRA, and agency permits. The commission also believes that it is not appropriate to raise the default RQ to 5,000 pounds from 100 pounds as certain compounds such as dimethyl sulfide are potentially hazardous when released to the air in much smaller amounts. Additionally, the 100-pound default RQ is needed to cover all potentially problematic compounds not listed in CERCLA or EPCRA. The commission will consider individual compounds, as submitted, for a higher RQ.

Baker commented that the commission proposes to add language to the definition of “incinerator” to clarify that wood-fired boilers are not incinerators. The language states, “Devices burning clean, untreated wood scraps or waste wood as an exclusive fuel for heat recovery are not included under this definition.” Baker suggested that for further clarification the commission specify that waste wood

include bark, wood chips, sander dust, planer shavings, trim scraps, sewage sludge, and other wood materials incidental to a wood or paper manufacturing process. Additionally the term “clean, untreated wood scraps” appears redundant as “clean” is generally considered a euphemism for “untreated.”

Baker requested that the commission delete the word “clean” and that the word “exclusive” also be deleted and replaced with “primary” as many wood-fired boilers burn natural gas concurrently with wood. Baker stated that by leaving the word “exclusive” such boilers are pulled into the definition of “incinerator.”

Baker referenced one member who is concerned about the unintended applicability of the definition of “incinerator” because it burns wastewater sewage sludge generated by its pulp and paper manufacturing operations. Baker suggested adding language to the definition of that would define an incinerator as a device burning 10% or more of solid waste on a total British thermal units (Btu) input basis averaged over an hour for the primary purpose of reducing its volume and weight or, for devices without instruments or methods to determine hourly flow, burning 1.0% or more solid waste on a total Btu heat input basis averaged annually for the primary purpose of reducing its volume and weight.

Vinson expressed concerns that were essentially identical to those of Baker. They also requested that the definition of “incinerator” contain language that would apply that definition only to devices that burned solid waste above a threshold amount with the sole intent of reducing the volume and removing combustibles from the waste. Vinson’s comments expressed concern that one of its clients who has a wood-fired boiler that is also permitted to burn tire derived fuel (TDF) and regularly burns greater than 10% wastewater sludge by Btu heat input. The sludge comes from the client’s wastewater treatment

plant associated with a wood mill. Vinson requested modification to the definition of “incinerator” that would remove devices so fired from that definition. They also requested that “incinerator” include open-trench types with closed ends when approved by the executive director.

The commission recognizes the distinct design and application differences of combustion devices such as incinerators and boilers. The commission also recognizes that many boilers are cleanly and efficiently fired on combustibles that could be considered solid waste under different circumstances. The wood-fired boilers referenced by Baker and Vinson are good examples. The primary fuel for these boilers, located at wood processing plants, is scrap wood and wood processing waste generated from internal operations. This is material that would require disposal by other means, and burning for heat recovery is an environmentally sound method of disposal. The boiler referenced by Vinson has an operating permit allowing the unit to be fired primarily by waste wood, including wastewater sludge, supplemented by natural gas and TDF. The commission does not wish to restrict this practice nor subject it to redundant or confused applications of regulations. The commission agrees that the word “primary” should be substituted for “exclusive” in reference to the fuel used in a particular boiler. The commission also agrees that the word “clean” is redundant in the rule language “clean, untreated wood scraps” and has made the requested deletion.

The commission does not want to include issues of intent in its rule language. This introduces a factor that can complicate and hamper effective enforcement. The commission believes the language suggested by Baker could provide enough ambiguity to allow the burning of unlimited

amounts of waste material or mixtures of waste material, regardless of the purpose, in any combustion device without a review to determine the environmental effects of the operation or which regulation most properly applies. The commission therefore declines to include the language concerning purpose as suggested by Baker.

The commission has also determined that there is a potential redundancy and confusing application of regulations involves wood-fired boilers currently under operating permits. In order to draw as clear a distinction as possible between combustion devices, the commission has elected to add the following language to the definition: “Combustion devices permitted under this title as combustion devices other than incinerators will not be considered incinerators for application of regulations within this title provided they are installed and operated in compliance with the condition of all applicable permits.”

Open trench burners may be considered incinerators when approved by the executive director. This language was proposed and has been adopted.

Bracewell commented that the requirement to involve all property owners and lessees within the proposed single property designation should be limited to those with an interest in the surface estate.

Bracewell stated that under many circumstances it would be unduly complicated to identify and secure the approval of all holders of mineral interests, and to do so is unnecessary to carrying out the commission’s intent in requiring consensus of all those doing business on the property.

The commission agrees with this comment and has revised the rule language to exclude those who hold mineral interests only from participation in the single property designation. Under current permitting and enforcement practice of the commission, mineral interests are not considered when permitting facilities or enforcing the TCAA and the rules of the commission regarding emissions to the air.

Bracewell commented that the commission should revise §101.2(b)(2)(D) to require verification of the single property petition, not the agreement. Historical practice has been to verify the petition to provide the commission with a sworn record of facts to support the findings necessary for a single property order. They further stated that the agreement is a private contract, not a sworn document, and its submission with the petition is solely to evidence its existence and does not establish the “truth” of its contents. Bracewell stated that §101.2(b)(2)(C) should be amended accordingly to require attachment of verifications to the petition, not the agreement.

Because single property designations are voluntary among those with property interests, the commission needs a copy of the agreement that exists among those seeking the single property designation. This sworn agreement supports the voluntary nature of the petition to designate single properties for compliance with air pollution regulations. This requirement exists in the current rule, and the commission elects to retain the rule language in the adoption.

Bracewell requested that the proposed authorization of the executive director to condition a single property order based on compliance with federal regulations should be deleted. Bracewell stated that the language represents an inappropriate adoption by reference and delegation of state lawmaking

authority to the federal government. They stated that federal rules that are appropriate and adopted by the commission should certainly be considered but only because they are state rules by virtue of their adoption by the commission.

The commission or the executive director has the discretion to place whatever conditions on a single property designation that are necessary to prevent a condition of air pollution or ensure compliance with state and federal regulations. By placing a condition in a single property designation that addresses federal regulations, the commission is not seeking to enforce that law unless it has been adopted by reference. Rather, the commission is seeking to ensure that a single property designation is not approved which would result in a violation of federal regulations. The commission is placing the condition as an exercise of its discretion to ensure that it is not creating a condition that it knows is unlawful either under state or federal environmental rules. This is not a delegation of state lawmaking authority to the federal government because no federal government approval is necessary for decision on a single property designation petition. The commission therefore believes that it is appropriate that the rule language be adopted as proposed.

TCC commented that the language in §101.2(b)(2)(F)(iii) states that the executive director may approve a petition for single property designation if “the public interest counsel does not raise objections.”

TCC stated that this language is inappropriate since it gives the public interest counsel (PIC) control over decisions of the executive director, and without the language the PIC can raise objections to be weighed by the executive director.

The opinions and advice of the PIC are currently considered when the commission takes an action based on the recommendation of the executive director. It is therefore appropriate that any objections of the PIC be addressed in single property designations involving the discretion of the executive director. The rule language ensures that the opinion of the PIC is considered in the review process, but does not give the PIC control over the decisions of the executive director. The executive director may elect to present any petition to the commission for decision, including those to which the PIC objects, for approval in whole or in part. The commission believes that it is appropriate to adopt the rule language as proposed.

Baker supported the delegation to the executive director to make single property determinations but requested clarification as to whether this delegation includes the ability to make amendments or modifications to existing delegations.

The delegation of authority to the executive director to approve single property designations does include the authority to make amendments to existing designations provided that the conditions of that delegation are observed, unless otherwise prohibited by law. The commission has amended the rule language to clarify this authority.

Addressing the language in §101.2(c), Baker stated that the commission has taken the position that a leasehold agreement establishes a separate boundary line for purposes of making property line demonstrations and evaluating ambient air effects. Baker conceded that this is appropriate in some circumstances, but they are concerned this would require separate property boundary lines for interests

that should not be considered separate property boundary lines. They gave examples that included leasehold interests granted to those that provide site amenities, services, or supplies to the emission sources or permit holders. These services included cafeterias, photocopying, credit unions, and recreation facilities. Baker was also concerned that separate property boundaries could be granted to suppliers of process chemical and gases with on-site storage facilities and electric utility substations. Mobil's comments supported this concept and requested that the rule authorize the executive director to make these distinctions.

Baker continued this concept and stated that leasehold interest holders without emission sources should not be required to be a party to a single property designation. Instead, Baker suggested that petitioners be required to demonstrate that an affected leasehold interest holder consents to the agreement and that there should be discretion in determining what will constitute a demonstration of consent. Baker suggested that in some circumstances such a demonstration could be accomplished through evidence that a tenant has notice of the single property designation.

A single property designation can lead to an increase and/or change in the character of emissions from facilities participating in the designation. An increase in or change in character of emissions could affect those with interests within the single property boundary who do not emit air contaminants as well as those parties to the agreement who do emit air contaminants. Through their consent in the single property designation, these non-emitting interest holders recognize that no effects evaluation will be required for non-criteria pollutants or of the effects of increased or a change in emissions within the property boundary. The commission believes that participation in

the single property designation is the best way for all leaseholders, including non-emitting interest holders, to indicate their understanding of the conditions of the agreement. The rule has been clarified not to cover persons on the property who do not hold an interest in real property.

Baker cited language from the proposal preamble that states, “it has been the policy of the commission....to allow the combination of properties that are contiguous except for public rights-of-way provided all emission points are located within a single portion of the property that is not crossed by a public right-of-way.” Baker acknowledged that this interpretation maintains the benefit of having undeveloped buffer property and is preferable to an interpretation that would limit the single property designation boundary to portions of property not crossed by a right-of-way. In the case of a site proposed for designation as a single property and the site is crossed by a right-of-way, Baker urged the commission to treat the rights-of-way in the same manner that they would be treated if the property were under single ownership. Baker acknowledged that the commission has taken the position that a single property designation cannot combine emission points across a public right-of-way. They believe this interpretation is more restrictive than necessary and will create additional costs and complexities in business transactions that result in property divisions of integrated plants and will create unnecessary obstacles to plant’s expansion onto contiguous vacant land. The criteria for designation as a single property provides adequate protection that use of the rule will not result in combinations of unrelated properties to maximize property boundaries. Mobil had similar comments on this issue and added that the commission can extend the single property designation without threat to human health or the environment.

The single property designation allows owners of facilities to have their operations considered as one when the commission evaluates off-property effects. The existence of buffer land is necessary to allow the dispersal of pollutants and is therefore integral to the evaluation of off-property effects and to the continued viability of the single property concept. By not allowing the combination of emission points across public rights-of-way, the commission ensures that some buffer will be present. The commission disagrees that the single property designation can be extended without a land buffer without a threat to human health as this practice may not allow sufficient pollutant dispersal. The commission therefore declines to make the changes suggested by the commenters.

Baker commented that the single property rule provides that designations are binding on transferees and creates a duty on transferring parties to inform the transferee that the property is subject to, and the transferee is bound by, the single property order. To avoid any dispute, Baker recommended that petitioners be required to include a property description (metes and bounds or lot and block) with the petition and file a copy of the order in the appropriate real property offices of the county or counties in which the property is located.

The adopted rule requires that petitioners for a single property include a description of the property boundaries with the petition including identifying geographic landmarks and property designations. This is sufficient information for the commission's purposes, and the proposed rule language has not been modified. The commission has elected not to make the suggested changes

to the rule language and will leave to the petitioners' discretion any additional documents they wish to submit outside the commission.

TXU commented that the proposed amendment to §101.10(a)(2) affects sources that have potential to emit 100 tons per year (tpy) of a contaminant but has actual emissions under that threshold. These sources would be required to submit annual inventories and will increase the number of inventories submitted by TXU by as much as 60%. TXU recommended these sources be treated in a manner similar to other minor sources and be subject to periodic sampling to represent the entire population. TXU also recommended the use of staggered compliance dates for inventory submission to reduce administrative burdens for the commission and regulated sources.

The commission has not changed the rule in response to this comment because the amendments as proposed and adopted more closely reflect FCAA requirements. The amended §101.10, which now includes potential to emit (PTE) as a trigger, results in approximately 5% more accounts being required to report an emissions inventory. The commission wants to reduce the effect of these changes to the industrial sources and is considering several options for implementation of the rule to minimize the reporting demand for these new sources which would report based on potential to emit only. These options include a phase-in with only the potential emissions updated and the account summary reported for 1999. Most of these accounts are owned by companies already reporting at other plant sites. Another option is delaying the reporting for these sources to a later time in the year to allow the companies to complete their larger accounts first. The reporting for these sources could be delayed to a later time in the year or even a less than annual

reporting cycle. Many of these accounts triggering on PTE will also come under requirements for inventories in areas that will be potential non-attainment areas for the eight-hour ozone standard.

TCC suggested that the commission add “at an account” to the end of §101.10(b)(2)(A) to clarify that a 5.0% or five tpy difference applies to a site and not an individual emissions unit. EPA recommended that the significant change threshold for sources in non-attainment areas be restricted to 5.0% only to avoid any appearance of weakening the SIP.

The sentence in §101.10(b)(2)(A) is a subparagraph under §101.10(b)(2). Section 101.10(b)(2) states “Accounts meeting the applicability...”, which indicates that the requirement does apply to an account, not an individual emissions unit. The commission believes that it would be clearer for the word “account” be substituted for the word “source” in §101.10(b)(2)(A) and has made that change. The five ton minimum only applies to accounts with less than 100 tpy of a criteria pollutant. These accounts contribute to a very small portion of the total emissions in the emissions inventory. The previous year’s emissions inventory number will be used for SIP planning purposes even if the EI were not required under this paragraph.

TCC noted that the commission has added language in §101.10(b)(3) and (e) requiring the submission of “emissions related data” that will be used to compile an emission inventory. TCC acknowledged the commission’s need to develop a meaningful inventory but is concerned that the language unnecessarily broadens the commission’s authority for information requests. TCC stated that many variables such as equipment design, type of feedstock or catalyst, or operating conditions may influence emissions and

may be considered emission related. While this data cannot be considered confidential, TCC expressed concern that it will broaden the scope of confidential data that is submitted to the commission. TCC stated that at a minimum, industry should have the option of referencing confidential data already submitted as part of a permit application.

The commission recognizes the hesitancy that companies may have with submitting confidential material and will continue to work with companies to keep this to a minimum. The commission will request only data necessary to complete the quality assurance of a representative number of units and will continue to hold any submitted data marked as confidential by the companies as confidential in accordance with the Texas Public Information Act (PIA). A request under the PIA for any confidential information will be submitted to the Attorney General for determination of whether such information is protected from disclosure. Data requested for the actual emissions calculations is often different from the maximum potential calculation requested by the permit process and it may vary from year to year. In order to help protect the confidentiality of information, the commission is including rule language that will allow owners of facilities to make separate procedural arrangements for the submission of confidential data if they would prefer that such a submission would be separate from the typical emission inventory information.

TCC stated that the commission should also clarify the scope of the request for sample calculations in §101.10(c). TCC also stated that it is unlikely the commission would have the staff to review all data under such a proposal and that the proposal is also counter to the commission's direction to reduce

unnecessary reporting. TCC recommended that the commission opt for the current practice of requesting calculations when the staff is ready to review them.

The adopted rule states that only a representative sample of emission calculations must be submitted. Sample calculations should be submitted for each method used to compute emissions. The commission staff will review these calculations as the emission inventory submittal is reviewed. The staff will therefore need the calculations to accompany the submittal. Because these calculations are used by the source to produce inventory numbers, the commission does not believe that their submittal adds significantly to the reporting burden of individual sources.

Baker and Mobil strongly objected to proposed language in the rule that increases the amount of information the commission can collect under emission inventories. They specifically mentioned the proposed requirement that states that sample calculations must be submitted with the inventory and the commission's claim of the right to obtain emission-related information from sources that could be affected by the rule and that this removes any flexibility that might have existed for the regulated community to work with the emission inventory staff to protect confidential business information. They also stated that Texas Clean Air Act (TCAA), §382.014, provides that "The commission may require a person whose activities cause emissions of air contaminants to develop an inventory of emissions of air contaminants in this state." Baker stated that this section of the TCAA does not give the commission unlimited authority to obtain ever-increasing amounts of information about a company's operations. Baker also objected to the lack of opportunity to work with the commission staff to develop

rules allowing the staff to obtain needed information while protecting confidentiality and again requested the opportunity to work with the staff.

Sample calculations are currently routinely submitted by a significant number of companies completing an emissions inventory to allow the commission to quality assure the inventory. For many accounts, the submitted data adequately represents the operation and emissions of the plant and additional data is not requested. The language in the rule codifies the existing practice and allows submitting companies to know what is expected. Under Texas Health and Safety Code, TCAA, §382.014, the commission may require “information to enable the commission to develop an inventory of emissions of air contaminants in this state.” TCAA, §382.016, authorizes the commission to prescribe reasonable requirements to make and maintain records on the measuring and monitoring of emissions. Companies will still be able to work with the commission staff to determine which sample calculations should be submitted. The rule codifies current practice and continues to allow the companies to choose some of the representative units by submitting that data with their inventory. If a company believes that the chosen or requested units have confidential processes data, the data may be labeled as such and the commission will hold the data confidential under the PIA. The commission will work with facility owners or operators to determine the extent of the sample necessary to adequately represent the emissions on the site, minimize data requested, and to protect the confidentiality of any submitted data. However, a written request under the PIA for any confidential information will be submitted to the Attorney General for determination of whether such information is protected from disclosure. The commission will work with those submitting emission inventory data on a case-by-case basis to

make any special arrangements to protect confidentiality and has added the necessary rule language.

TCC supported the addition of language relative to stringency determination, and EPA supported the adopted revisions to §§101.1, 101.2, and 101.30.

STATUTORY AUTHORITY

The new section and amendments are adopted under the Texas Health and Safety Code, TCAA, §382.011, which establishes the ability of the commission to control the quality of the state's air; §382.012, which authorizes the commission to develop a plan for control of the state's air; §382.014, which authorizes the commission to require persons whose activities cause emissions of air contaminants to submit information to enable the commission to develop an inventory of air contaminants; §382.016, which authorizes the commission to prescribe reasonable monitoring requirements; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.054, Federal Operating Permits; §382.0541, Administration and Enforcement of Federal Operating Permit, which authorizes the commission to administer and enforce federal operating permits; §382.0542, Issuance of Federal Operating Permit; Appeal of Delay, which requires the commission to grant a federal operating permit within 18 months of application; §382.061, which authorizes the commission to delegate powers to the executive director; and Texas Water Code, §5.122, which authorizes the commission to delegate uncontested matters to the executive director.

CHAPTER 101

GENERAL AIR QUALITY RULES

§§101.1, 101.2, 101.10, 101.28, 101.30

§101.1. Definitions.

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

(1) **Account** - For those sources required to be permitted under Chapter 122 of this title (relating to Federal Operating Permits), all sources which are aggregated as a site. For all other sources, any combination of sources under common ownership or control and located on one or more contiguous properties, or properties contiguous except for intervening roads, railroads, rights-of-way, waterways, or similar divisions.

(2) **Acid gas flare** - A flare used exclusively for the incineration of hydrogen sulfide and other acidic gases derived from natural gas sweetening processes.

(3) **Ambient air** - That portion of the atmosphere, external to buildings, to which the general public has access.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(20) **Criteria Pollutant or Standard** - Any pollutant for which there is a National Ambient Air Quality Standard established under 40 Code of Federal Regulations (CFR) Part 50.

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

(22) **De minimis impact** - A change in ground level concentration of an air contaminant as a result of the operation of any new major stationary source or of the operation of any existing source which has undergone a major modification, which does not exceed the following specified amounts. Figure: 30 TAC §101.1(22)

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

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

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

(25) **Emissions reduction credit (ERC)** - Any stationary source emissions reduction which has been banked in accordance with §101.29 of this title (relating to Emission Credit Banking and Trading).

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

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

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

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

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

(31) **Federally enforceable** - All limitations and conditions which are enforceable by the EPA administrator, including those requirements developed under 40 CFR Parts 60 and 61, requirements within any applicable state implementation plan (SIP), any permit requirements established under 40 CFR §52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I,

including operating permits issued under the approved program that is incorporated into the SIP and that expressly requires adherence to any permit issued under such program.

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

(33) **Fuel oil** - Any oil meeting The American Society for Testing and Materials (ASTM) specifications for fuel oil in ASTM D 396-86, Standard Specifications for Fuel Oils. This includes fuel oil grades 1, 2, 4 (Light), 4, 5 (Light), 5 (Heavy), and 6.

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

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

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

(37) **Hazardous waste management facility** - All contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of hazardous waste. The term includes a publicly or privately owned hazardous waste management facility consisting of processing, storage, or disposal operational hazardous waste management units such as one or more landfills, surface impoundments, waste piles, incinerators, boilers, and industrial furnaces, including cement kilns, injection wells, salt dome waste containment caverns, land treatment facilities, or a combination of units.

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

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

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

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

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

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

incinerators for application of any regulations within this title provided they are installed and operated in compliance with the condition of all applicable permits.

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

(45) **Industrial furnace** - Cement kilns, lime kilns, aggregate kilns, phosphate kilns, coke ovens, blast furnaces, smelting, melting, or refining furnaces, including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, or foundry furnaces, titanium dioxide chloride process oxidation reactors, methane reforming furnaces, pulping recovery furnaces, combustion devices used in the recovery of sulfur values from spent sulfuric acid, and other devices the commission may list.

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

(A) Class 1 industrial solid waste or Class 1 waste is any industrial solid waste designated as Class 1 by the executive director as any industrial solid waste or mixture of industrial solid wastes that because of its concentration or physical or chemical characteristics is toxic, corrosive, flammable, a strong sensitizer or irritant, a generator of sudden pressure by decomposition, heat, or other means, and may pose a substantial present or potential danger to human health or the environment

when improperly processed, stored, transported, or otherwise managed, including hazardous industrial waste, as defined in §335.1 of this title (relating to Definitions) and §335.505 of this title (relating to Class 1 Waste Determination).

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

(C) Class 3 industrial solid waste is any inert and essentially insoluble industrial solid waste, including materials such as rock, brick, glass, dirt, and certain plastics and rubber, etc., that are not readily decomposable as defined in §335.507 of this title (relating to Class 3 Waste Determination).

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

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

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

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

(51) **Maintenance area** - A geographic region of the state previously designated nonattainment under the FCAA Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under FCAA, §175A, as amended. The following are the maintenance areas within the state: Victoria Ozone Maintenance Area (60 FR 12453) - Victoria County.

(52) **Maintenance Plan** - a revision to the applicable SIP, meeting the requirements of FCAA, §175A.

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

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

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

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

(57) **Mobile emissions reduction credit (MERC)** - The credit obtained from an enforceable, permanent, quantifiable, and surplus (to other federal and state regulations) emissions reduction generated by a mobile source as set forth in Chapter 114, Subchapter E of this title (relating to Low Emission Vehicle Fleet Requirements) or Chapter 114, Subchapter F of this title (relating to Vehicle Retirement and Mobile Emission Reduction Credits), and which has been banked in accordance with §101.29 of this title.

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

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

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

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

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

(63) **National Ambient Air Quality Standard (NAAQS)** - Those standards established under FCAA, §109, including standards for carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO₂), ozone (O₃), inhalable particulate matter (PM₁₀ and PM_{2.5}), and sulfur dioxide (SO₂).

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

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

(66) **Nonattainment area** - A defined region within the state which is designated by 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 FCAA, §107(d). For the official list and boundaries of nonattainment areas, see 40 CFR Part 81 and pertinent *Federal Register* notices. The following areas comprise the nonattainment areas within the state:

(A) Carbon monoxide (CO). El Paso (ELP) CO nonattainment area (56 FR 56694) - Classified as a Moderate CO nonattainment area with a design value less than or equal to 12.7 parts per million. Portion of El Paso County. Portion of the city limits of El Paso: That portion of the City of El Paso bounded on the north by Highway 10 from Porfirio Diaz Street to Raynolds Street, Raynolds Street from Highway 10 to the Southern Pacific Railroad lines, the Southern Pacific Railroad lines from Raynolds Street to Highway 62, Highway 62 from the Southern Pacific Railroad lines to Highway 20, and Highway 20 from Highway 62 to Polo Inn Road. Bounded on the east by Polo Inn

Road from Highway 20 to the Texas-Mexico border. Bounded on the south by the Texas-Mexico border from Polo Inn Road to Porfirio Diaz Street. Bounded on the west by Porfirio Diaz Street from the Texas-Mexico border to Highway 10.

(B) Inhalable particulate matter (PM_{10}). El Paso (ELP) PM_{10} nonattainment area (56 FR 56694) - Classified as a Moderate PM_{10} nonattainment area. Portion of El Paso County which comprises the El Paso city limit boundaries as they existed on November 15, 1990.

(C) Lead. Collin County lead nonattainment area (56 FR 56694) - Portion of Collin County. Eastside: Starting at the intersection of south Fifth Street and the fence line approximately 1,000 feet south of the Gould National Batteries (GNB) property line going north to the intersection of south Fifth Street and Eubanks Street; Northside: Proceeding west on Eubanks to the Burlington Railroad tracks; Westside: Along the Burlington Railroad tracks to the fence line approximately 1,000 feet south of the GNB property line; Southside: Fence line approximately 1,000 feet south of the GNB property line.

(D) Nitrogen Dioxide (NO_2). No designated nonattainment areas.

(E) Ozone.

(i) Houston/Galveston (HGA) ozone nonattainment area (56 FR 56694)

- Classified as a Severe-17 ozone nonattainment area. Consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties.

(ii) El Paso (ELP) ozone nonattainment area (56 FR 56694) -

Classified as a Serious ozone nonattainment area. Consists of El Paso County.

(iii) Beaumont/Port Arthur (BPA) ozone nonattainment area (61 FR

14496) - Classified as a Moderate ozone nonattainment area. Consists of Hardin, Jefferson, and Orange Counties.

(iv) Dallas/Fort Worth (DFW) ozone nonattainment area (63 FR 8128)

- Classified as a Serious ozone nonattainment area. Consists of Collin, Dallas, Denton, and Tarrant Counties.

(F) Sulfur Dioxide (SO₂). No designated nonattainment areas.

(67) **Non-reportable upset** - Any upset that is not a reportable upset as defined in this section.

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

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

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

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

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

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

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

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

(75) **PM₁₀ emissions** - Finely-divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method specified in 40 CFR Part 51, or by a test method specified in an approved SIP.

(76) **Polychlorinated biphenyl compound (PCB)** - A compound subject to 40 CFR Part 761.

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

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

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

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

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

(82) **Reportable quantity (RQ)** - Is as follows:

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

either:

(i) the lowest of the quantities:

(I) listed in 40 CFR §302, Table 302.4, the column “final

RQ;”

(II) listed in 40 CFR §355, Appendix A, the column

“Reportable Quantity;” or

(III) listed as follows:

(-a-) butane - 5,000 pounds;

(-b-) butenes (except 1,3-butadiene) - 5,000 pounds;

(-c-) ethylene - 5,000 pounds;

(-d-) carbon monoxide - 5,000 pounds;

(-e-) isobutylene - 5,000 pounds;

(-f-) pentane - 5,000 pounds;

(-g-) propane - 5,000 pounds;

(-h-) propylene - 5,000 pounds;

(-i-) isobutane - 5,000 pounds; or

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

(B) for mixtures of air contaminant compounds:

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

(ii) where the relative amount of individual air contaminant compounds in subparagraph (A)(i) of this definition is not known, any amount of the mixture which equals or

exceeds the amount for any single air contaminant compound that is present in the mixture and listed in subparagraph (A)(i) of this definition;

(iii) where each of the individual air contaminant compounds listed in subparagraph (A)(i) of this definition are known to be less than 0.02% by weight of the mixture, and each of the other individual air contaminant compounds covered by subparagraph (A)(ii) of this definition are known to be less than 2.0% by weight of the mixture, any total amount of the mixture of air contaminant compounds greater than or equal to 5,000 pounds; or

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

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

(D) for facilities where air contaminant compounds are measured directly by a continuous emission monitoring system providing updated readings at a minimum 15-minute interval an amount, approved by the executive director based on any relevant conditions and a screening model,

that would be reported prior to ground level concentrations reaching at any distance beyond the closest facility property line:

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

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

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

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

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

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

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

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

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

(C) waste materials that result from activities associated with the exploration, development, or production of oil or gas, or geothermal resources, and other substance or material regulated by the Railroad Commission of Texas under the Natural Resources Code, §91.101, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is hazardous waste as

defined by the administrator of the EPA under the federal Solid Waste Disposal Act, as amended by RCRA, as amended (42 USC, §§6901 et seq.).

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

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

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

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

(92) **Standard conditions** - A condition at a temperature of 68 degrees Fahrenheit (20 degrees Centigrade) and a pressure of 14.7 pounds per square inch absolute (101.3 kPa). Pollutant

concentrations from an incinerator will be corrected to a condition of 50% excess air if the incinerator is operating at greater than 50% excess air.

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

(94) **Submerged fill pipe** - A fill pipe that extends from the top of a tank to have a maximum clearance of six inches (15.2 cm) from the bottom or, when applied to a tank which is loaded from the side, that has a discharge opening entirely submerged when the pipe used to withdraw liquid from the tank can no longer withdraw liquid in normal operation.

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

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

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

(98) **Total suspended particulate** - Particulate matter as measured by the method described in 40 CFR Part 50, Appendix B.

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

(100) **True vapor pressure** - The absolute aggregate partial vapor pressure (psia) of all VOCs at the temperature of storage, handling, or processing.

(101) **Unauthorized emission** - An emission of any air contaminant except carbon dioxide, water, nitrogen, methane, ethane, noble gases, hydrogen, and oxygen which exceeds any air emission limitation in a permit, rule, or order of the commission or as authorized by TCAA, §382.0518(g).

(102) **Upset** - An unscheduled occurrence or excursion of a process or operation that results in an unauthorized emission of air contaminants.

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

(104) **Vapor combustor** - A partially enclosed combustion device used to destroy VOCs by smokeless combustion without extracting energy in the form of process heat or steam. The

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

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

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

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

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

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

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

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

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

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

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

§101.2. Multiple Air Contaminant Sources or Properties.

(a) In an area where an additive effect occurs from the accumulation of air contaminants from two or more sources on a single property or from two or more properties, such that the level of air contaminants exceeds the ambient air quality standards established by the commission, and each source or each property is emitting no more than the allowed limit for an air contaminant for a single source or from a single property, further reduction of emissions from each source or property shall be made as determined by the commission.

(b) Two or more property owners, or operators acting on behalf of a property owner, may petition the commission to have their properties designated a single property for purposes of demonstrating compliance with commission regulations and the control of air emissions.

(1) The use of this section is intended for:

(A) a property under the control of a single entity that has been or will be divided and placed under the control of separate entities, creating a new property line configuration; or

(B) properties operated or intended to be operated as an integrated plant or plants where individual facilities are owned by separate entities, but all facilities are under the control of a single entity.

(2) The petition shall be subject to the following criteria.

(A) The properties must be contiguous except for intervening roads, railroads, and/or rights-of-way, which are a part of the property. Emission points separated by a public right-of-way cannot be combined into a single property designation.

(B) All owners of real property, including but not limited to, fee interest owners and leaseholders, within the single property designation boundary must consent to the agreement. Owners of mineral interests only are not required to consent to the agreement.

(C) The petition shall include the following information:

(i) a general description of the manner in which the control of emissions and demonstration of compliance with commission regulations will be administered and controlled;

(ii) designation of the party or parties who accept responsibility for off-property impacts;

(iii) the existing account number(s) for each petitioner; and

(iv) a description of how the petitioners meet the requirements of this rule.

(D) The petition shall be accompanied by:

(i) a copy of a sworn written agreement between the property owners who consent to having their properties so designated which must detail the mechanisms of control exercised on both properties;

(ii) a United States Geological Survey map or equivalent indicating:

(I) geographical features such as roads, watercourses, and prominent landmarks;

(II) present land uses in the areas surrounding the area to be included;

(III) the boundaries of the petitioners' properties; and

(IV) the area to be included in the single property designation; and

(iii) any other information needed by the commission in its review of the petition.

(E) The executive director or commission may place such conditions on the approval of the petition as appropriate to avoid a condition of air pollution or ensure compliance with state and federal regulations.

(F) The executive director may approve a petition for single property designation or an amendment to an existing designation unless otherwise prohibited by law if:

(i) the petition meets all relevant statutory and administrative criteria;

(ii) the petition does not raise new issues that require the interpretation of commission policy; and

(iii) the public interest counsel does not raise objections.

(c) In this section, the terms “property” or “properties” includes leasehold and fee interests in real property, and it does not include mineral interests.

§101.10. Emissions Inventory Requirements.

(a) Applicability. The owner or operator of an account or source in the State of Texas or on waters that extend 25 miles from the shoreline meeting one or more of the following conditions shall submit emissions inventories and/or related data as required in subsection (b) of this section to the commission on forms or other media approved by the commission:

(1) an account which meets the definition of a major facility/stationary source, as defined in §116.12 of this title (relating to Nonattainment Review Definitions), or any account in an ozone nonattainment area emitting a minimum of ten tons per year (tpy) volatile organic compounds (VOC), 25 tpy nitrogen oxides (NO_x), or 100 tpy or more of any other contaminant subject to national ambient air quality standards (NAAQS);

(2) any account that emits or has the potential to emit 100 tpy or more of any contaminant;

(3) any account which emits or has the potential to emit 10 tons of any single or 25 tons of aggregate hazardous air pollutants as defined in FCAA, §112(a)(1); and

(4) any minor industrial source, area source, non-road mobile source, or mobile source of emissions subject to special inventories under subsection (b)(3) of this section. For purposes of this section, the term “area source” means a group of similar activities that, taken collectively, produce a significant amount of air pollution.

(b) Types of inventories.

(1) Initial emissions inventory. Accounts, as identified in subsection (a)(1), (2), or (3) of this section, shall submit an initial emissions inventory (IEI) for any criteria pollutant or hazardous air pollutant (HAP) that has not been identified in a previous inventory. The IEI shall consist of actual emissions of VOC, NO_x, carbon monoxide (CO), sulfur dioxide (SO₂), lead (Pb), particulate matter of less than 10 microns in diameter (PM₁₀), any other contaminant subject to NAAQS, emissions of all HAPs identified in FCAA §112(b), or any other contaminant requested by the commission from individual emission units within an account. For purposes of this section, the term “actual emission” is the actual rate of emissions of a pollutant from an emissions unit as it enters the atmosphere. The reporting year will be the calendar year or seasonal period as designated by the commission. Reported

emission activities must include annual routine emissions; excess emissions occurring during maintenance activities, including start-ups and shutdowns; and emissions resulting from upset conditions. For the ozone nonattainment areas, the inventory shall also include typical weekday emissions that occur during the summer months. For CO nonattainment areas, the inventory shall also include typical weekday emissions that occur during the winter months. Emission calculations must follow methodologies as identified in subsection (c) of this section.

(2) Statewide annual emissions inventory update (AEIU). Accounts meeting the applicability requirements during an inventory reporting period as identified in subsection (a)(1), (2), or (3) of this section shall submit an AEIU which consists of actual emissions as identified in subsection (b)(1) of this section if any of the following criteria are met. If none of the following criteria are met, a letter certifying such shall be submitted instead:

(A) any change in operating conditions, including start-ups, permanent shutdowns of individual units, or process changes at the account, that results in at least a 5.0% or 5 tpy, whichever is greater, increase or reduction in total annual emissions of VOC, NO_x, CO, SO₂, Pb, or PM₁₀ from the most recently submitted emissions data of the account; or

(B) a cessation of all production processes and termination of operations at the account.

(3) Special inventories. Upon request by the executive director or a designated representative of the commission, any person owning or operating a source of air emissions which is or could be affected by any rule or regulation of the commission shall file emissions-related data with the commission as necessary to develop an inventory of emissions. Owners or operators submitting the requested data may make special procedural arrangements with the Industrial Emissions Assessment Section to submit data separate from routine emission inventory submissions or other arrangements as necessary to support claims of confidentiality.

(c) Calculations. Actual measurement with continuous emissions monitoring systems (CEMS) is the preferred method of calculating emissions from a source. If CEMS data is not available, other means for determining actual emissions may be utilized in accordance with detailed instructions of the commission. Sample calculations representative of the processes in the account must be submitted with the inventory.

(d) Certifying statement. A certifying statement, required by the FCAA, §182(a)(3)(B), is to be signed by the owner(s) or operator(s) and shall accompany each emissions inventory to attest that the information contained in the inventory is true and accurate to the best knowledge of the certifying official.

(e) Reporting requirements. The IEI or subsequent AEIUs shall contain emissions data from the previous calendar year and shall be due on March 31 of each year or as directed by the commission. Owners or operators submitting emissions data may make special procedural arrangements with the

Industrial Emissions Assessment Section to submit data separate from routine emission inventory submissions or other arrangements as necessary to support claims of confidentiality. Emissions-related data submitted under a special inventory request made under subsection (b)(3) of this section are due as detailed in the letter of request.

(f) Enforcement. Failure to submit emissions inventory data as required in this section shall result in formal enforcement action under the TCAA, §382.082 and §382.088. In addition, the TCAA, §361.2225, provides for criminal penalties for failure to comply with this section.

§101.28. Stringency Determination for Federal Operating Permits.

(a) Instead of the requirements imposed by an applicable requirement or a state only requirement as defined in §122.10 of this title (relating to General Definitions), a permit holder of a federal operating permit may comply with more stringent or equivalent requirements, provided the requirements:

(1) are established by §122.148(c)(1)(B) of this title (relating to Permit Shield) for streamlining multiple, duplicative, redundant, and/or contradicting applicable requirements or state only requirements; and

(2) are adequate to assure compliance to the same extent as the applicable requirements or state-only requirements being superseded by a more stringent or equivalent requirement.

(b) A determination under subsection (a) of this section may include a method change (i.e., either a change to a commission monitoring or testing procedure which was previously approved by EPA or an alternative to an EPA-approved monitoring or test method) if approved by EPA.

(c) The more stringent, equivalent, or alternative requirement established by the executive director under this section is approved for the emission unit by EPA if:

(1) it is a term or condition of a federal operating permit; and

(2) EPA has not objected to the permit as required by §122.350 of this title (relating to EPA Review).

§101.30. Conformity of General Federal Actions to State Implementation Plans.

(a) Purpose.

(1) The purpose of this rule is to implement FCAA, §176(c), as amended (42 United States Code (USC) §§7401 et seq.) and regulations under 40 Code of Federal Regulations (CFR) Part 51, Subpart W, with respect to the conformity of general federal actions with the applicable state implementation plan (SIP). Under those authorities, no department, agency, or instrumentality of the federal government shall engage in; support in any way or provide financial assistance for; license or permit; or approve any activity which does not conform to an applicable SIP. This rule sets forth

policy, criteria, and procedures for demonstrating and assuring conformity of such action to the applicable SIP.

(2) Under FCAA, §176(c) and 40 CFR Part 51, Subpart W, a federal agency must make a determination that a federal action conforms to the applicable SIP in accordance with the requirements of this rule before the action is taken, with the exception of federal actions where either:

(A) a NEPA analysis was completed as evidenced by a final environmental assessment (EA), environmental impact statement (EIS), or finding of no significant impact (FONSI) that was prepared prior to January 31, 1994; or

(B) prior to January 31, 1994, an EA was commenced or a contract was awarded to develop the specific environmental analysis; and sufficient environmental analysis is completed by March 15, 1994, so that the federal agency may determine that the federal action is in conformity with the specific requirements and the purposes of the applicable SIP pursuant to the agency's affirmative obligation under the FCAA, §176(c); and a written determination of conformity under the FCAA, §176(c) has been made by the federal agency responsible for the federal action by March 15, 1994.

(3) Notwithstanding any provision of this rule, a determination that an action is in conformity with the applicable SIP does not exempt the action from any other requirements of the applicable SIP, the NEPA, or the FCAA.

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

(1) **Affected federal land manager** - The federal agency or the federal official charged with direct responsibility for management of an area designated as Class I under the FCAA (42 USC §7472) that is located within 100 kilometers of the proposed federal action.

(2) **Applicable state implementation plan (SIP)** - The portion (or portions) of the SIP, or most recent revision thereof, which has been approved under the FCAA, §110 or promulgated under the FCAA, §110(c) (Federal Implementation Plan or FIP), or promulgated or approved pursuant to regulations promulgated under the FCAA, §301(d) and which implements the relevant requirements of the FCAA.

(3) **Areawide air quality modeling analysis** - An assessment on a scale that includes the entire nonattainment or maintenance area which uses an air quality dispersion model to determine the effects of emissions on air quality.

(4) **Cause or contribute to a new violation** - A federal action that:

(A) causes a new violation of a national ambient air quality standard (NAAQS) at a location in a nonattainment or maintenance area which would otherwise not be in violation of the standard during the future period in question if the federal action were not taken; or

(B) contributes, in conjunction with other reasonably foreseeable actions, to a new violation of a NAAQS at a location in a nonattainment or maintenance area in a manner that would increase the frequency or severity of the new violation.

(5) **Cause by, as used in the terms "direct emissions" and "indirect emissions"** - Emissions that would not otherwise occur in the absence of the federal action.

(6) **Direct emissions** - Those emissions of a criteria pollutant or its precursors that are caused or initiated by the federal action and occur at the same time and place as the action.

(7) **Emergency** - A situation where extremely quick action on the part of the federal agencies involved is needed, and where the timing of such federal activities makes it impractical to meet the requirements of this rule, such as natural disasters like hurricanes or earthquakes, and civil disturbances such as terrorist acts and military mobilizations.

(8) **Emissions budgets** - Those portions of the total allowable emissions defined for a certain date in a revision to the applicable SIP for the purpose of meeting reasonable further progress milestones, attainment demonstrations, or maintenance demonstrations; for any criteria pollutant or its

precursors allocated by the applicable implementation to mobile sources, to any stationary source or class of stationary sources, to any federal action or class of actions, to any class of area sources, or to any subcategory of the emissions inventory. An emissions budget may be expressed in terms of an annual period, a daily period, or other period established in the applicable SIP.

(9) **Emissions offsets, for purposes of subsection (h) of this section** - Emissions reductions which are quantifiable; consistent with the applicable SIP attainment and reasonable further progress demonstrations; surplus to reductions required by and credited to other applicable SIP provisions; enforceable under both state and federal law; and permanent within the time frame specified by the program. Emissions reductions intended to be achieved as emissions offsets under this rule must be monitored and enforced in a manner equivalent to that under EPA's new source review requirements.

(10) **Emissions that a federal agency has a continuing program responsibility for** - Emissions that are specifically caused by an agency carrying out its authorities, but does not include emissions that occur due to subsequent activities, unless such activities are required by the federal agency. Where an agency, in performing its normal program responsibilities, takes actions itself or imposes conditions that result in air pollutant emissions by a nonfederal entity taking subsequent actions, such emissions are covered by the meaning of a continuing program responsibility.

(11) **Federal action** - Any activity engaged in by a department, agency, or instrumentality of the federal government, or any activity that a department, agency, or instrumentality

of the federal government supports in any way; provides financial assistance for; licenses, permits, or approves. Activities related to transportation plans, programs, and projects developed, funded, or approved under Title 23 USC or the Federal Transit Act (49 USC §§1601 et seq.) are not considered to be federal actions under general conformity. Where the federal action is a permit, license, or other approval for some aspect of a nonfederal undertaking, the relevant activity is the part, portion, or phase of the nonfederal undertaking that required the federal permit, license, or approval.

(12) **Federal agency** - A federal department, agency, or instrumentality of the federal government.

(13) **Increase the frequency or severity of any existing violation of any standard in any area** - To cause a nonattainment area to exceed a standard more often or to cause a violation at a greater concentration than previously existed or would otherwise exist during the future period in question, if the project were not implemented.

(14) **Indirect emissions** - This term does not have the same meaning as given to an indirect source of emissions under FCAA, §110(a)(5), but for general conformity are those emissions of a criteria pollutant or its precursors that:

(A) are caused by the federal action, but may occur later in time and/or may be farther removed in distance from the action itself but are still reasonably foreseeable; and

(B) the federal agency can practicably control and will maintain control over due to a continuing program responsibility of the federal agency, including, but not limited to:

(i) traffic on or to, or stimulated or accommodated by, a proposed facility which is related to increases or other changes in the scale or timing of operations of such facility;

(ii) emissions related to the activities of employees of contractors or federal employees;

(iii) emissions related to employee commutation and similar programs to increase average vehicle occupancy imposed on all employers of a certain size in the locality;

(iv) emissions related to the use of federal facilities under lease or temporary permit; or

(v) emissions related to the activities of contractors or leaseholders that may be addressed by provisions that are usual and customary for contracts or leases or within the scope of contractual protection of the interests of the United States.

(15) **Local air quality modeling analysis** - An assessment of localized impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested

roadway intersections and highways or transit terminals, which uses an air quality dispersion model to determine the effects of emissions on air quality.

(16) **Milestone** - Has the meaning given in FCAA, §182(g)(1) and §189(c)(1): an emissions level and the date on which it is required to be achieved.

(17) **Presursors of a criteria pollutant** are:

(A) for ozone, nitrogen oxides (NO_x) (unless an area is exempted from NO_x requirements under FCAA, §182(f) and volatile organic compounds (VOC); and

(B) for particulate matter (PM_{10}), those pollutants described in the PM_{10} nonattainment area applicable SIP as significant contributors to the PM_{10} levels.

(18) **Reasonably foreseeable emissions** - Projected future indirect emissions that are identified at the time the conformity determination is made; the location of such emissions is known to the extent adequate to determine the impact of such emissions; and the emissions are quantifiable, as described and documented by the federal agency based on its own information and after reviewing any information presented to the federal agency.

(19) **Regionally significant action** - A federal action for which the direct and indirect emissions of any pollutant represent 10% or more of a nonattainment or maintenance area's emissions inventory for that pollutant.

(20) **Regional water or wastewater projects** - Projects which include construction, operation, and maintenance of water or wastewater conveyances, water or wastewater treatment facilities, and water storage reservoirs which affect a large portion of a nonattainment or maintenance area.

(21) **Total of direct and indirect emissions** - The sum of direct and indirect emissions increases and decreases caused by the federal action; i.e., the “net” emissions considering all direct and indirect emissions. Any emissions decreases used to reduce such total shall have already occurred or shall be enforceable under state and federal law. The portion of emissions which are exempt or presumed to conform under subsection (c)(3), (4), (5), or (6) of this section are not included in the “total of direct and indirect emissions,” except as provided in subsection (c)(10) of this section. The “total of direct and indirect emissions” includes emissions of criteria pollutants and emissions of precursors of criteria pollutants. The segmentation of projects for conformity analyses, when emissions are reasonably foreseeable, is not permitted by this rule.

(c) Applicability.

(1) Conformity determinations for federal actions related to transportation plans, programs, and projects developed, funded, or approved under Title 23 USC or the Federal Transit Act (49 USC §§1601 et seq.) shall meet the procedures and criteria of §114.260 of this title (relating to Transportation Conformity), and the Transportation Conformity SIP, in lieu of the procedures set forth in this rule.

(2) For federal actions not covered by paragraph (1) of this subsection, a conformity determination is required for each pollutant where the total of direct and indirect emissions in a nonattainment or maintenance area caused by a federal action would equal or exceed any of the rates in subparagraphs (A) or (B) of this paragraph.

(A) For purposes of paragraph (2) of this subsection, the following rates apply in nonattainment areas: Figure: 30 TAC §101.30(c)(2)(A)

Nonattainment Area	Rate (tons/year)
Ozone (VOC or NO _x)	
Marginal or moderate nonattainment areas inside an ozone transport region	
VOC	50
NO _x	100
Other ozone nonattainment areas outside an ozone transport region	100
Serious nonattainment areas	50
Severe nonattainment areas	25
Extreme nonattainment areas	10
Carbon Monoxide	
All nonattainment areas	100
SO ₂ or NO ₂	
All nonattainment areas	100
PM ₁₀	
Moderate nonattainment areas	100
Serious nonattainment areas	70
Pb	
All nonattainment areas	25

(B) For purposes of paragraph (2) of this subsection, the following rates apply

in maintenance areas:

	Tons/Year
Ozone (NO _x), SO ₂ , or NO ₂	
All maintenance areas	100
Ozone (VOC)	
Maintenance areas inside an ozone	
transport region	50
Maintenance areas outside an ozone	
transport region	100
Carbon Monoxide	
All maintenance areas	100
PM ₁₀	
All maintenance areas	100
Pb	
All maintenance areas	25

(3) The requirements of this rule shall not apply to:

(A) actions where the total of direct and indirect emissions are below the emissions levels specified in paragraph (2) of this subsection;

(B) the following actions which would result in no emissions increase or an increase in emissions that is clearly *de minimis*:

- (i) judicial and legislative proceedings;
- (ii) continuing and recurring activities, such as permit renewals, where activities conducted will be similar in scope and operation to activities currently being conducted;
- (iii) rulemaking and policy development and issuance;
- (iv) routine maintenance and repair activities, including repair and maintenance of administrative sites, roads, trails, and facilities;
- (v) civil and criminal enforcement activities, such as investigations, audits, inspections, examinations, prosecutions, and the training of law enforcement personnel;
- (vi) administrative actions such as personnel actions, organizational changes, debt management or collection, cash management, internal agency audits, program budget proposals, and matters relating to the administration and collection of taxes, duties, and fees;
- (vii) the routine, recurring transportation of material and personnel;
- (viii) routine movement of mobile assets, such as ships and aircraft, in home port reassignments and stations (when no new support facilities or personnel are required) to perform as operational groups, or for repair or overhaul;

(ix) maintenance dredging and debris disposal where no new depths are required, applicable permits are secured, and disposal will be at an approved disposal site;

(x) with respect to existing structures, properties, facilities, and lands where future activities conducted will be similar in scope and operation to activities currently being conducted at the existing structures, properties, facilities, and lands, actions such as relocation of personnel, disposition of federally-owned existing structures, properties, facilities, and lands, rent subsidies, operation and maintenance cost subsidies, the exercise of receivership or conservatorship authority, assistance in purchasing structures, and the production of coins and currency;

(xi) the granting of leases, licenses such as for exports and trade, permits, and easements where activities conducted will be similar in scope and operation to activities currently being conducted;

(xii) planning, studies, and provision of technical assistance;

(xiii) routine operation of facilities, mobile assets, and equipment;

(xiv) transfers of ownership, interests, and titles in land, facilities, and real and personal properties, regardless of the form or method of the transfer;

(xv) the designation of empowerment zones, enterprise communities, or viticultural areas;

(xvi) actions by any of the federal banking agencies or the Federal Reserve Banks, including actions regarding charters, applications, notices, licenses, the supervision or examination of depository institutions or depository institution holding companies, access to the discount window, or the provision of financial services to banking organizations or to any department, agency, or instrumentality of the United States;

(xvii) actions by the Board of Governors of the Federal Reserve System or any Federal Reserve Bank to effect monetary or exchange rate policy;

(xviii) actions that implement a foreign affairs function of the United States;

(xix) actions (or portions thereof) associated with transfers of land, facilities, title, and real properties through an enforceable contract or lease agreement where the delivery of the deed is required to occur promptly after a specific, reasonable condition is met, such as promptly after the land is certified as meeting the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and where the federal agency does not retain continuing authority to control emissions associated with the lands, facilities, titles, or real properties;

(xx) transfers of real property, including land, facilities, and related personal property from a federal entity to another federal entity and assignments of real property, including land, facilities, and related personal property from a federal entity to another federal entity for subsequent deeding to eligible applicants; or

(xxi) actions by the Department of the Treasury to effect fiscal policy and to exercise the borrowing authority of the United States;

(C) actions where the emissions are not reasonably foreseeable, such as the following actions:

(i) initial outer continental shelf lease sales which are made on a broad scale and are followed by exploration and development plans on a project level;

(ii) electric power marketing activities that involve the acquisition, sale, and transmission of electric energy;

(D) individual actions which implement a decision to conduct or carry out a program that has been found to conform to the applicable SIP, such as prescribed burning actions which are consistent with a land management plan that has been found to conform to the applicable SIP.

(4) Notwithstanding the other requirements of this rule, a conformity determination is not required for the following federal actions (or portion thereof).

(A) the portion of an action that includes major new or modified stationary sources that require a permit under the new source review (NSR) program (FCAA, §173) or the prevention of significant deterioration (PSD) program (Title I, Part C of the FCAA);

(B) actions in response to emergencies or natural disasters such as hurricanes, earthquakes, etc., which are commenced on the order of hours or days after the emergency or disaster and, if applicable, which meet the requirements of paragraph (5) of this section;

(C) research, investigations, studies, demonstrations, or training other than those exempted under paragraph (3)(B) of this subsection, where no environmental detriment is incurred or the particular action furthers air quality research, as determined by the state agency primarily responsible for the SIP.

(D) alteration and additions of existing structures as specifically required by new or existing applicable environmental legislation or environmental regulations, e.g., hush houses for aircraft engines and scrubbers for air emissions.

(E) direct emissions from remedial and removal actions carried out under the CERCLA and associated regulations to the extent such emissions either comply with the substantive

requirements of the NSR/PSD permitting program or are exempted from other environmental regulation under the provisions of CERCLA and applicable regulations issued under CERCLA.

(5) Federal actions which are part of a continuing response to an emergency or disaster under paragraph (4)(B) of this subsection and which are to be taken more than six months after the commencement of the response to the emergency or disaster under paragraph (4)(B) of this subsection are exempt from the requirements of this section only if:

(A) the federal agency taking the actions makes a written determination that, for a specified period not to exceed an additional six months, it is impractical to prepare the conformity analyses which would otherwise be required and the actions cannot be delayed due to overriding concerns for public health and welfare, national security interests, and foreign policy commitments; or

(B) for actions which are to be taken after those actions covered by paragraph (5)(A) of this subsection, the federal agency makes a new determination as provided in paragraph (5)(A) of this subsection.

(6) Notwithstanding other requirements of this rule, individual actions or classes of actions specified by individual federal agencies that have met the criteria set forth in either paragraph (7)(A) or (B) of this subsection and the procedures set forth in paragraph (8) of this subsection are presumed to conform, except as provided in paragraph (10) of this subsection.

(7) The federal agency must meet the criteria for establishing activities that are presumed to conform by fulfilling the requirements set forth in either subparagraph (A) or (B) of this paragraph:

(A) the federal agency must clearly demonstrate using methods consistent with this rule that the total of direct and indirect emissions from the type of activities which would be presumed to conform would not:

(i) cause or contribute to any new violation of any standard in any area;

(ii) interfere with provisions in the applicable SIP for maintenance of any standard;

(iii) increase the frequency or severity of any existing violation of any standard in any area; or

(iv) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area including, where applicable, emission levels specified in the applicable SIP or purposes of:

(I) a demonstration of reasonable further progress;

(II) a demonstration of attainment; or

(III) a maintenance plan; or

(B) the federal agency shall provide documentation that the total of direct and indirect emissions from such future actions would be below the emission rates for a conformity determination that are established in paragraph (2) of this subsection, based, for example, on similar actions taken over recent years.

(8) In addition to meeting the criteria for establishing exemptions set forth in paragraph (7)(A) or (B) of this subsection, the following procedures must also be complied with to presume that activities will conform:

(A) the federal agency shall identify through publication in the *Federal Register* its list of proposed activities that are presumed to conform and the analysis, assumptions, emissions factors, and criteria used as the basis for the presumptions;

(B) the federal agency shall notify the appropriate EPA Regional Office, the commission, local air quality agencies and, where applicable, the Texas Department of Transportation

(TxDOT) and the MPO, and provide at least 30 days for the public to comment on the list of proposed activities presumed to conform;

(C) the federal agency shall document its response to all the comments received and make the comments, response, and final list of activities available to the public upon request; and

(D) the federal agency shall publish the final list of such activities in the *Federal Register*.

(9) Notwithstanding the other requirements of this rule, when the total of direct and indirect emissions of any pollutant from a federal action does not equal or exceed the rates specified in paragraph (2) of this subsection, but represents 10% or more of a nonattainment or maintenance area's total emissions of that pollutant, then the action is defined as a regionally significant action and the requirements of subsections (a) and (e)-(j) of this section shall apply for the federal action.

(10) Where an action otherwise presumed to conform under paragraph (6) of this subsection is a regionally significant action or does not in fact meet one of the criteria in paragraph (7)(A) of this subsection, that action shall not be considered *de minimis* or presumed to conform and the requirements of subsections (a) and (e)-(j) of this section shall apply for the federal action.

(11) The provisions of this section shall apply in all nonattainment and maintenance areas.

(12) Any measures used to affect or determine applicability of this rule, as determined under this subsection, must result in projects that are in fact *de minimis*, must result in such *de minimis* levels prior to the time the applicability determination is made, and must be state and federally enforceable. Any measures that are intended to reduce air quality impacts for this purpose must be identified (including the identification and quantification of all emission reductions claimed); and the process for implementation (including any necessary funding of such measures and tracking of such emission reductions) and enforcement of such measures must be described, including an implementation schedule containing explicit timelines for implementation. Prior to a determination of applicability, the federal agency making the determination must obtain written commitments from the appropriate persons or agencies to implement any measures which are identified as conditions for making such determinations. Such written commitment shall describe such mitigation measures and the nature of the commitment, in a manner consistent with the previous sentence. After this implementation plan revision is approved by EPA, enforceability through the applicable SIP of any measures necessary for a determination of applicability will apply to all persons who agree to reduce direct and indirect emissions associated with a federal action for a conformity applicability determination.

(d) Conformity Analysis. Any federal department, agency, or instrumentality of the federal government taking an action subject to 40 CFR, Part 51, Subpart W and this section shall make its own conformity determination consistent with the requirements of this rule. In making its conformity

determination, a federal agency must consider comments from any interested parties. Where multiple federal agencies have jurisdiction for various aspects of a project, a federal agency may choose to adopt the analysis of another federal agency (to the extent the proposed action and impacts analyzed are the same as the project for which a conformity determination is required) or develop its own analysis in order to make its conformity determination.

(e) Reporting Requirements.

(1) A federal agency making a conformity determination under subsection (h) of this section shall provide to the appropriate EPA Regional Office, the commission, local air quality agencies and, where applicable, affected federal land managers, TxDOT and the MPO, a 30-day notice which describes the proposed action and the federal agency's draft conformity determination on the action.

(2) A federal agency shall notify the appropriate EPA Regional Office, the commission, local air quality agencies and, where applicable, affected federal land managers, TxDOT and the MPO within 30 days after making a final conformity determination under subsection (h) of this section.

(3) As a matter of policy, the state will not make any determination under subsection (h)(1)(E)(i)(I) of this section or any commitment under subsection (h)(1)(E)(i)(II) of this section, unless the federal agency provides to the commission information on all projects or other

actions which may affect air quality or emissions in any area to which this rule is applicable, whether such project or action is determined to be subject to this rule under subsection (c) of this section. As a matter of policy, the emissions budget that would otherwise be available for projects of any federal agency under subsection (h) of this section shall be reduced by 50% (or other percentage as the state determines) in the case of any federal agency that does not provide to the commission information on all projects or other actions which may affect air quality or emissions in any area to which this rule is applicable, regardless of whether such project or action is determined to be subject to this rule under subsection (c) of this section.

(f) Public Participation and Consultation.

(1) Upon request by any person regarding a specific federal action, a federal agency shall make available for review its draft conformity determination under subsection (h) of this section with supporting materials which describe the analytical methods, assumptions, and conclusions relied upon in making the applicability analysis and draft conformity determination.

(2) A federal agency shall make public its draft conformity determination under subsection (h) of this section by placing a notice by prominent advertisement in a daily newspaper of general circulation in the areas affected by the action and by providing 30 days for written public comment prior to taking any formal action on the draft determination. This comment period may be concurrent with any other public involvement, such as occurs in the NEPA process.

(3) A federal agency shall document its response to all the comments received on its draft conformity determination under subsection (h) of this section and make the comments and responses available, upon request by any person regarding a specific federal action, within 30 days of the final conformity determination.

(4) A federal agency shall make public its final conformity determination under subsection (h) of this section for a federal action by placing a notice by prominent advertisement in a daily newspaper of general circulation in the areas affected by the action within 30 days of the final conformity determination.

(g) Frequency of Conformity Determinations.

(1) The conformity status of a federal action automatically lapses five years from the date a final conformity determination is reported under subsection (e) of this section, unless the federal action has been completed or a continuous program has been commenced to implement that federal action within a reasonable time.

(2) Ongoing federal activities at a given site showing continuous progress are not new actions and do not require periodic redetermination so long as the emissions associated with such activities are within the scope of the final conformity determination reported under subsection (e) of this section.

(3) If, after the conformity determination is made, the federal action is changed so that there is an increase in the total of direct and indirect emissions above the levels in subsection (c)(1) of this section, a new conformity determination is required.

(h) Criteria for Conformity Determination of General Federal Actions.

(1) An action required under subsection (c) of this section to have a conformity determination for a specific pollutant will be determined to conform to the applicable plan if, for each pollutant that exceeds the rates of subsection (c)(2) of this section, or otherwise requires a conformity determination due to the total of direct and indirect emissions from the action, the action meets the requirements of paragraph (3) of this subsection, and meets any of the following requirements:

(A) for any criteria pollutant, the total of direct and indirect emissions from the action are specifically identified and accounted for in the applicable SIP attainment or maintenance demonstration;

(B) for ozone or NO₂, the total of direct and indirect emissions from the action are fully offset within the same nonattainment or maintenance area through a revision to the applicable SIP or a measure similarly enforceable under state and federal law that effects emission reductions so that there is no increase in emissions of that pollutant;

(C) for any criteria pollutant, except ozone and NO₂, the total of direct and indirect emissions from the action shall meet the requirements:

(i) specified in paragraph (2) of this subsection, based on areawide air quality modeling analysis and local air quality modeling analysis; or

(ii) specified in paragraph (1)(E) of this subsection and, for local air quality modeling analysis, the requirement of paragraph (2) of this subsection;

(D) for CO or PM₁₀:

(i) where the commission determines, in accordance with subsections (e) and (f) of this section and consistent with the applicable SIP, that an areawide air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in paragraph (2) of this subsection, based on local air quality modeling analysis; or

(ii) where the commission determines, in accordance with subsections (e) and (f) of this section and consistent with the applicable SIP, that an areawide air quality modeling analysis is appropriate, and that a local air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in paragraph (2) of this subsection, based on areawide modeling, or meet the requirements of paragraph (1)(E) of this subsection;

(E) for ozone or nitrogen dioxide, and for purposes of paragraphs (1)(C)(ii) and (1)(D)(ii) of this subsection, each portion of the action or the action as a whole meets any of the following requirements:

(i) where EPA has approved a revision to an area's attainment or maintenance demonstration after 1990, and the state makes a determination as provided in subclause (I) of this clause, or where the state makes a commitment as provided in subclause (II) of this clause. Any such determination or commitment shall be made in compliance with subsections (e) and (f) of this section.

(I) The total of direct and indirect emissions from the action, or portion thereof, is determined and documented by the commission to result in a level of emissions which, together with all other emissions in the nonattainment or maintenance area, would not exceed the emissions budgets specified in the applicable SIP.

(II) The total of direct and indirect emissions from the action, or portion thereof, is determined by the commission to result in a level of emissions which, together with all other emissions in the nonattainment or maintenance area, would exceed an emissions budget specified in the applicable SIP and the commission makes a written commitment to EPA which includes the following:

(-a-) a specific schedule for adoption and submittal of a revision to the applicable SIP which would achieve the needed emission reductions prior to the time emissions from the federal action would occur;

(-b-) identification of specific measures for incorporation into the applicable SIP which would result in a level of emissions which, together with all other emissions in the nonattainment or maintenance area, would not exceed any emissions budget specified in the applicable SIP;

(-c-) a demonstration that all existing applicable SIP requirements are being implemented in the area for the pollutants affected by the federal action, and that local authority to implement additional requirements has been fully pursued;

(-d-) a determination that the responsible federal agencies have required all reasonable mitigation measures associated with their action. As a matter of commission policy, a commitment will be made only if the commission determines that the project sponsors and responsible federal agencies have sought all available emissions offsets and made all reasonably available modifications of the action to reduce emissions; and

(-e-) written documentation including all air quality analyses supporting the conformity determination.

(III) Where a federal agency made a conformity determination based on a state commitment under subclause (II) of this clause, such a state commitment is automatically deemed to call for a SIP revision by EPA under the FCAA, §110(k)(5), effective on the date of the federal conformity determination and requiring response within 18 months or any shorter time within which the state commits to revise the applicable SIP;

(ii) the action or portion thereof, as determined by the MPO, is specifically included in a current transportation plan and transportation improvement program which have been found to conform to the applicable SIP under §114.260 of this title (relating to Transportation Conformity), or the Transportation Conformity SIP, or 40 CFR Part 93, Subpart A;

(iii) the action, or portion thereof, fully offsets its emissions within the same nonattainment or maintenance area through a revision to the applicable SIP, or an equally enforceable measure that effects emission reductions equal to or greater than the total of direct and indirect emissions from the action so that there is no net increase in emissions of that pollutant;

(iv) where EPA has not approved a revision to the relevant SIP, attainment demonstration, or maintenance demonstration since 1990, the total of direct and indirect emissions from the action for the future years as described in subsection (i)(4) of this section do not increase emissions with respect to the baseline emissions, and:

(I) the baseline emissions reflect the historical activity levels that occurred in the geographic area affected by the proposed federal action during:

(-a-) calendar year 1990;

(-b-) the calendar year that is the basis for the classification (or, where the classification is based on multiple years, the year that is most representative in terms of the level of activity), if a classification is promulgated in 40 CFR Part 81; or

(-c-) the year of the baseline inventory in the applicable PM_{10} SIP;

(II) the baseline emissions are the total of direct and indirect emissions calculated for the future years, described in subsection (i)(4) of this section using the historic activity levels described in subclause (I) of this clause and appropriate emission factors for the future years; or

(v) where the action involves regional water or wastewater projects, such projects are sized to meet only the needs of population projects that are in the applicable SIP, based on assumptions regarding per capita use that are developed or approved in accordance with subsection (i)(1) of this section.

(2) The areawide and/or local air quality modeling analyses must:

(A) meet the requirements in subsection (i) of this section; and

(B) show that the action does not:

(i) cause or contribute to any new violation of any standard in any area; or

(ii) increase the frequency or severity of any existing violation of any standard in any area.

(3) Notwithstanding any other requirements of this section, an action subject to this rule may not be determined to conform to the applicable SIP, unless the total of direct and indirect emissions from the action is in compliance or consistent with all relevant requirements and milestones contained in the applicable SIP, such as elements identified as part of the reasonable further progress schedules, assumptions specified in the attainment or maintenance demonstration, prohibitions, numerical emission limits, and work practice requirements; and such action is otherwise in compliance with all relevant requirements of the applicable SIP.

(4) Any analyses required under this section shall be completed, and any mitigation requirements necessary for a finding of conformity shall be identified in compliance with subsection (j) of this section, before the determination of conformity is made.

(i) Procedures for Conformity Determination of General Federal Actions.

(1) The analyses required under this rule shall be based on the latest planning assumptions.

(A) All planning assumptions (including, but not limited to, per capita water and sewer use, vehicle miles traveled per capita or per household, trip generation per household, vehicle occupancy, household size, vehicle fleet mix, vehicle ownership, wood stoves per household, and the geographic distribution of population growth) shall be derived from the estimates of current and future population, employment, travel, and congestion most recently developed by the MPO or the state agency authorized under state law to make such estimates.

(B) Any revisions to these estimates used as part of the conformity determination, including projected shifts in geographic location or level of population, employment, travel, and congestion, shall be approved by the MPO or other agency authorized to make such estimates for the area.

(2) The analyses required under this rule must be based on the latest and most accurate emission estimation techniques available as described below, unless such techniques are inappropriate. If such techniques are inappropriate and written approval of the EPA Regional Administrator is obtained for any modification or substitution, they may be modified or another technique substituted on a case-by-case basis or, where appropriate, on a generic basis for a specific federal agency program.

(A) For motor vehicle emissions, the most current version of the motor vehicle emissions model specified by EPA for use in the preparation or revision of implementation plans in the state or area shall be used for the conformity analysis as specified below:

(i) the EPA must have published in the *Federal Register* a notice of availability of any new motor vehicle emissions model; and

(ii) a grace period of three months shall apply during which the motor vehicle emissions model previously specified by EPA as the most current version may be used. Conformity analyses for which the analysis was begun during the grace period, or no more than three years before the *Federal Register* notice of availability of the latest emission model, may continue to use the previous version of the model specified by EPA.

(B) For nonmotor vehicle sources, including stationary and area source emissions, the latest emission factors specified by EPA in the "Compilation of Air Pollutant Emission

Factors (AP-42)" shall be used for the conformity analysis unless more accurate emissions data are available, such as actual stack test data for stationary sources which are part of the conformity analysis.

(3) The air quality modeling analyses required under this rule must be based on the applicable air quality models, data bases, and other requirements specified in the most recent version of the "Guideline on Air Quality Models (Revised)" (1986), including supplements (EPA publication number 450/2-78-027R), unless:

(A) the guideline techniques are inappropriate, in which case the model may be modified or another model substituted on a case-by-case basis or, where appropriate, on a generic basis for a specific federal agency program; and

(B) written approval of the EPA Regional Administrator is obtained for any modification or substitution.

(4) The analyses required under this rule shall be based on the total of direct and indirect emissions from the action and shall reflect emission scenarios that are expected to occur under each of the following cases:

(A) the FCAA mandated attainment year or, if applicable, the farthest year for which emissions are projected in the maintenance plan;

(B) the year during which the total of direct and indirect emissions from the action for each pollutant analyzed is expected to be the greatest on an annual basis; and

(C) any year for which the applicable implementation plan specifies an emissions budget.

(j) Mitigation of air quality impacts.

(1) Any measures that are intended to mitigate air quality impacts shall be identified (including the identification and quantification of all emissions reductions claimed); and the process for implementation (including any necessary funding of such measures and tracking of such emissions reductions), and enforcement of such measures shall be described, including an implementation schedule containing explicit timelines for implementation.

(2) Prior to determining that a federal action is in conformity, the federal agency making the conformity determination shall obtain written commitments from the appropriate persons or agencies to implement any mitigation measures which are identified as conditions for making conformity determinations. Such written commitment shall describe such mitigation measures and the nature of the commitment, in a manner consistent with paragraph (1) of this subsection.

(3) Persons or agencies voluntarily committing to mitigation measures to facilitate positive conformity determinations shall comply with the obligations of such commitments.

(4) In instances where the federal agency is licensing, permitting, or otherwise approving the action of another governmental or private entity, approval by the federal agency shall be conditioned on the other entity meeting the mitigation measures set forth in the conformity determination, as provided in paragraph (1) of this subsection.

(5) When necessary because of changed circumstances, mitigation measures may be modified so long as the new mitigation measures continue to support the conformity determination in accordance with subsections (h) and (i) of this section and this paragraph. Any proposed change in the mitigation measures is subject to the reporting requirements of subsection (e) of this section and the public participation requirements of subsection (f) of this section.

(6) Written commitments to mitigation measures shall be obtained prior to positive conformity determination and such commitments must be fulfilled.

(7) After this implementation plan revision is approved by EPA, any agreements, including mitigation measures, necessary for a conformity determination will be both state and federally enforceable. Enforceability through the applicable SIP will apply to all persons who agree to mitigate direct and indirect emissions associated with a federal action for a conformity determination.

(k) Savings Provisions. The federal conformity rules under 40 CFR, Part 51, Subpart W establish the conformity criteria and procedures necessary to meet the requirements of the FCAA §176(c) until such time as this conformity SIP revision is approved by EPA. Following EPA approval

of this SIP revision (or a portion thereof), the approved (or approved portion of the) state criteria and procedures would govern conformity determinations, and the federal conformity regulations contained in 40 CFR, Part 93 would apply only for the portion, if any, of the state's conformity provisions that is not approved by EPA.