

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes *amendments* to §§122.10, General Definitions; 122.120, Applicability; 122.130, Initial Application Due Dates; 122.131, Phased Permit Detail; 122.132, Application and Required Information for Initial Permit Issuance, Reopening, Renewal, or General Operating Permits; 122.134, Complete Application; 122.136, Application Deficiencies; 122.139, Application Review Schedule; 122.140, Representations in Application; 122.142, Permit Content Requirements; 122.143, General Terms and Conditions; 122.145, Reporting Terms and Conditions; 122.146, Compliance Certification Terms and Conditions; 122.210, General Requirements for Revisions; 122.211, Administrative Permit Revisions; 122.212, Applications for Administrative Permit Revisions; 122.213, Procedures for Administrative Permit Revisions; 122.216, Applications for Minor Permit Revisions; 122.217, Procedures for Minor Permit Revisions; 122.221, Procedures for Significant Permit Revisions; 122.231, Permit Reopenings; 122.320, Public Notice; 122.330, Affected State Review; 122.340, Notice and Comment Hearing; 122.350, EPA Review; 122.360, Public Petition; 122.608, Procedures for Incorporating Periodic Monitoring Requirements; 122.706, Applications for Compliance Assurance Monitoring; and 122.708, Procedures for Incorporating Compliance Assurance Monitoring Requirements. The commission proposes to *repeal* §122.215, Minor Permit Revisions; and §122.219, Significant Permit Revisions. The commission also proposes *new* §§122.215, Minor Permit Revisions; 122.218, Minor Permit Revision Procedures for Permit Revisions Involving the Use of Economic Incentives, Marketable Permits, and Emissions Trading; 122.219, Significant Permit Revisions; and 122.222, Operational Flexibility. Sections 122.215 - 122.218 will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the Texas state implementation plan (SIP).

## BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

On May 22, 2000, EPA set a deadline that any program revisions necessary for obtaining full federal operating permit program approval must be submitted to EPA not later than June 1, 2001, and granted a third extension, extending up to December 1, 2001, all operating permit program interim approvals (65 Federal Register (FR) 32035). The State of Texas federal operating permit program is an interim-approved program subject to EPA's notice. The commission proposes this rulemaking to resolve inconsistencies which exist between Chapter 122, Federal Operating Permits, and Title 40 Code of Federal Regulations (CFR) Part 70 (Part 70) so that EPA may grant full program approval to the commission's operating permit program. The commission plans to submit program revisions to EPA on or before June 1, 2001.

The 1990 Federal Clean Air Act Amendment (FCAA), Title V directed the EPA to establish the minimum requirements for a state operating permit program. On July 21, 1992, the EPA promulgated Part 70 to comply with this directive. States were required to submit operating permit programs to the EPA meeting the requirements of Part 70. On August 23, 1993, the commission adopted Chapter 122 to implement the federal operating permit program and submitted its proposed operating permit program (which included Chapter 122) to the EPA on September 17, 1993, and in two supplemental submittals on October 28, 1993 and November 12, 1993. On June 7, 1995, the EPA published notice of its proposal to grant source category-limited interim approval to the State of Texas (60 FR 30037). On June 25, 1996, the EPA promulgated interim approval of the State operating permit program for a period of two years, beginning on July 25, 1996 (61 FR 32693). Interim program approval provided the commission with the authority to implement the operating permit program in Texas for two years without the imposition of an EPA-promulgated, administered, and enforced program under 40 CFR Part 71. To obtain full program approval,

the commission must submit a program to the EPA that corrects inconsistencies between the interim program and Part 70.

Title V does not allow for extensions of interim programs; however, the EPA has extended interim programs three times. These extensions were intended to allow states to simultaneously develop a full program submittal that would correct any interim inconsistencies and meet the requirements of a revised Part 70. On August 29, 1997, the EPA automatically extended all operating permits program interim approvals until October 1, 1998 (62 FR 45732). On July 27, 1998, the EPA published a direct final rule that extended interim approval expiration dates until June 1, 2000. On February 14, 2000, the EPA published another direct final interim program extension which would have allowed all interim programs to expire on June 1, 2002 (65 FR 7290). However, on March 29, 2000, the EPA published a withdrawal of the February 14, 2000 extension based on an adverse comment that the extension was contrary to the express provisions of the FCAA (65 FR 16523). Subsequently, on May 22, 2000, the EPA published notice that all states with interim approval would have until June 1, 2001 to submit a program for full program approval and that the EPA would take action on those submittals by December 1, 2001 (65 FR 32035). If the EPA is unable to approve a state's program by December 1, 2001, Part 71 is automatically effective in that state and Part 71 sources that have not received a federal operating permit would have up to one year to submit permit applications under Part 71.

The EPA has proposed revisions, none of which have been promulgated, to Part 70. However, some provisions of Chapter 122 were amended in October 1997 to take advantage of flexibility offered by proposed revisions to Part 70. The October 1997 revisions to Chapter 122 were submitted to the EPA for

approval in June 1998. The EPA has not yet acted on the June 1998 submittal and the commission understands that the EPA will not act separately on that submittal from this current proposal.

In the June 25, 1996 notice, the EPA indicated that in an action on a State's submittal for full approval, it will use the criteria in the final Part 70 regulation (61 FR 32693). The existing July 21, 1992 regulation, as amended, is the final Part 70 regulation at this time. The commission proposes this rulemaking to make Chapter 122 consistent with this version of Part 70 and to address the inconsistencies identified in the June 25, 1996 notice.

#### RESOLUTION OF INCONSISTENCIES BETWEEN CHAPTER 122 AND PART 70

In the June 7, 1995 notice, the EPA identified various inconsistencies between Chapter 122 and Part 70 (60 FR 30037). The EPA's June 25, 1996 notice states that the inconsistencies specifically identified in the June 7, 1995 notice must be remedied before the EPA grants full approval to Texas' operating permit program (61 FR 32698). Also, the EPA provided the commission a draft document which summarizes the inconsistencies identified in the 1995 and 1996 notices. That document is available from the commission upon request.

The following numbered paragraphs are an enumeration of the inconsistencies identified by the EPA and a brief discussion of how the commission proposes to resolve each inconsistency, as well as the rationale for the commission's proposal. The June 1998 submittal to EPA addressed some inconsistencies identified in the June 7, 1995 notice. If these inconsistencies were resolved in a previous rulemaking, it is noted.

A thorough description of the proposed amendments to Chapter 122 is contained in the “section-by-section” discussion of the preamble.

*ITEM 1 - Minor New Source Review (NSR)/Part 70 Integration*

The EPA stated in the June 7, 1995 notice that the Chapter 122 definition of “applicable requirement” is inconsistent with the definition contained in Part 70 because it excludes certain minor NSR permitting activities (60 FR 30039). The EPA identified sections of the commission’s permit regulation addressing permit application, permit revisions, and permit content as part of the minor NSR/Part 70 integration issue (60 FR 30039). In the June 25, 1996 notice, the EPA commented that for full program approval, the commission must provide operating permits that include all minor NSR permits (61 FR 32694). Furthermore, in the draft document previously discussed, the EPA argued that since the definition of applicable requirement did not include Chapter 116, the definition failed to include the state implementation plan (SIP) requirements for prevention of significant deterioration (PSD) and nonattainment permitting.

In response to EPA’s comments, the commission proposes to amend the definition of “applicable requirement” contained in §122.10. Upon amendment, all requirements under Chapter 106, Subchapter A, Permits by Rule, or Chapter 116, Control of Air Pollution By Permits for New Construction or Modification, and any term or condition of any preconstruction permit will become an applicable requirement of the operating permit program. This amendment will make §122.10 consistent with the 40 CFR §70.2 definition of “applicable requirement” for inclusion of terms and conditions of PSD, nonattainment and minor NSR permits, in addition to correcting the inadvertent exclusion of the Chapter 116 regulations for PSD and nonattainment permitting. Also, the commission proposes amendments to

§122.132 and §122.142 to require permit applications and permits to contain minor NSR permitting activities. Finally, the commission proposes amendments to Subchapter C, Initial Permit Issuances, Revisions, Reopenings, and Renewals, which concern the permit revision process applicable to changes at a site which trigger minor NSR permitting activity.

To be consistent with 40 CFR §70.4(d)(ii)(D), the commission proposes that the executive director institute proceedings to reopen permits to incorporate minor NSR permitting activities. Under this proposal, the executive director, soon after adoption of these amendments, will begin notifying affected permit holders of the requirement to reopen their permits to include minor NSR authorizations. The commission anticipates that the reopening process will likely be completed before or in conjunction with renewal of a permit. However, a permit holder may reopen his permit at any time prior to renewal to incorporate minor NSR permitting activities.

#### *ITEM 2 - Permit Additions*

In the June 7, 1995 notice, the EPA stated that it did not consider the permit addition procedures in §§122.215 - 122.217 to be equivalent to the Part 70 minor permit modification procedures and that the sections must be modified to be consistent with Part 70 for Texas to gain full program approval (60 FR 30042). In the October, 1997 revisions to Chapter 122, the commission adopted the repeal of the permit addition revision process in §§122.215 - 122.217 and adopted provisions for a minor permit revision process, contained in new §§122.215 - 122.217. The concept of a minor permit revision process is consistent with Part 70; however, the current minor permit revision process is not consistent with Part 70.

For that reason, the commission is proposing further amendments concerning minor permit revision, as is explained further in Item 3.

*ITEM 3 - Minor Permit Revisions*

Chapter 122 must be consistent with 40 CFR §70.7(e)(2)(i), regarding the criteria for whether or not a change qualifies as a minor revision. The commission proposes the repeal of §122.215 and proposes new §122.215 and new §122.218. Proposed new §122.215 includes all criteria in 40 CFR §70.7(e)(2)(i)(A)(1) - (5). Proposed new §122.218 is consistent with 40 CFR §70.7(e)(2)(i)(B), which allows the use of minor permit revision procedures for permit revisions involving economic incentives, marketable permits, and emissions trading. Title 40 CFR §70.7(e)(2)(i)(B) provides that the minor permit revision process may be used for revisions involving these actions, as long as the SIP, or the particular applicable requirement, allows for the use of the minor permit revision process. In order to allow for this option in Chapter 122, §§122.215 - 122.218 will be submitted as a SIP revision. In addition, the commission proposes the repeal of §122.219, which identifies criteria for changes that must be processed as significant revisions and concurrently proposes new §122.219, which will clarify that any permit revision not meeting the criteria for an administrative permit revision or a minor permit revision will be a significant permit revision. This is consistent with 40 CFR §70.7(e)(4)(i), which states that significant revision procedures shall be used for applications requesting revisions that do not qualify as minor permit revisions.

Existing §122.215 states that a revision can be classified as a minor revision if it does not meet the criteria for an administrative revision or a significant revision, therefore most revisions historically defaulted to the minor permit revision process. In order to meet Part 70, the proposed rulemaking to §122.215 will require

significant revision procedures to be the default revision process. Therefore, more permit revisions will likely be significant revisions and would be required to satisfy the significant permit revision procedures, including public notice, EPA review, and affected state review.

The commission is proposing changes to §122.231, relating to permit reopenings. The proposed revisions require the executive director to reopen a permit for the promulgation or adoption of new applicable requirements affecting emission units in the permit if it has three or more years remaining until its expiration. This is consistent with 40 CFR §70.7(f)(1)(i). Permit reopenings are required by Part 70, and consequently, Chapter 122 to satisfy all initial permit issuance requirements, such as public notice, EPA review, public petition, and affected state review.

The EPA also identified other inconsistencies concerning the revision process. Items 4 - 7 further address these inconsistencies.

#### *ITEM 4 - Off-Permit Changes*

In the June 7, 1995 notice, the EPA stated that the permit addition procedures specified in §122.215 would allow companies to make changes that the EPA does not consider "off-permit" (60 FR 30044). The commission resolved this inconsistency in the October, 1997 Chapter 122 rulemaking by deleting the permit addition procedures in §§122.215 - 122.217, as previously discussed. The commission replaced the permit addition procedures in §§122.215 - 122.217 with minor revision procedures, thus no longer allowing companies to make "off-permit" changes. In this rulemaking, the commission proposes to make these minor revision procedures consistent with Part 70.

*ITEM 5 - Prohibition of Case-by-Case Reasonably Available Control Technology (RACT) Determinations*

In the June 7, 1995 notice, the EPA stated that §122.215 did not require case-by-case RACT changes to be processed as significant permit modifications. Instead, these types of changes are processed as minor permit revisions. The EPA further noted that it interprets 40 CFR §70.7(e)(2)(i)(A)(3) as prohibiting changes in “case-by-case” determinations to apply to RACT equivalency determinations. Therefore, the EPA did not consider §122.215 to be equivalent to Part 70 (60 FR 30042).

As mentioned in Item 3, the commission proposes to repeal §122.215 and concurrently propose new §122.215 incorporating all criteria in 40 CFR §70.7(e)(2)(i)(A)(1) - (5) for minor permit revisions. This includes 40 CFR §70.7(e)(2)(i)(A)(3), which specifies that minor revisions may be used for changes that do not require or change a case-by-case determination. This would include a case-by-case RACT determination. Therefore, case-by-case RACT determinations would be incorporated into a permit with a significant permit revision and must satisfy all procedural requirements for significant permit revisions, such as public notice, EPA review, public petition, and affected state review.

*ITEM 6 - Prohibition on Operating Changes Until Source has Submitted Minor Permit Modification Application*

In the June 7, 1995 notice, the EPA noted that §122.216 allowed applications for permit additions to be submitted no later than 90 days after the owner or operator had obtained or qualified for a preconstruction authorization. After the source received its preconstruction authorization, it could make the requested operating change before submitting the operating permit application within the 90-day time frame (60 FR 30042). Section 122.217 currently requires a notice to be submitted to the executive director before

operating the change. However, 40 CFR §70.7(e)(2)(v) specifies that a state may allow a permit holder to make minor revisions immediately after an application is filed.

To be consistent with 40 CFR §70.7(e)(2)(v), the commission proposes to amend §122.217(a)(2) to require a permit holder to submit an application for a minor permit revision to the executive director, as opposed to a notice. Under the proposed amendment, a permit holder will be required to submit the application prior to operating the change. The changes must meet §§122.215 - 122.218 requirements for minor permit revisions.

*ITEM 7 - The EPA and Affected State Notification and Review, EPA Objection, and Permitting Authority  
Deadline to Issue or Deny Permit Additions*

In the June 7, 1995 Notice, the EPA stated that it does not consider the permit addition procedures outlined in §122.217 to be equivalent to the procedures specified in 40 CFR §70.7(e)(2) because the EPA lacked the ability to review and comment on permit additions, and the commission had no deadline to issue or deny a permit addition. In October, 1997, as discussed previously, the commission replaced §§122.215 - 122.217 permit addition procedures with existing §§122.215 - 122.217 minor permit revision procedures. The EPA stated that Chapter 122 must be amended to allow timely EPA review and to require the commission to issue or deny a revision within 90 days of receipt of an application or 15 days after the end of EPA's 45-day review period, whichever is later (60 FR 30042).

To be consistent with 40 CFR §70.7(e)(2)(iii), the commission proposes §122.217(e), which requires the commission to notify the EPA and affected States of a requested minor permit revision within five working

days of receipt of a complete application. Also, the commission proposes to amend §122.217(g) to require the executive director to take final action on a permit revision application no later than 90 days after receipt of a complete application or 15 days after the end of the EPA review period. This is consistent with 40 CFR §70.7(e)(2)(iv). Furthermore, §122.217(g) would no longer allow the executive director to take final action on a permit revision application after the resolution of any EPA objection, since this option is not described in Part 70. This proposed amendment would require the executive director to resolve any issues resulting from an EPA objection and issue or deny the application for permit revision within 15 days.

*ITEM 8 - Definition of Regulated Air Pollutant*

In the June 7, 1995 notice, the EPA noted that Chapter 122 does not define regulated air pollutant, but rather air pollutant (60 FR 30040). The EPA states in the proposed interim approval notice that major sources should be determined on the potential to emit any air pollutant including those compounds listed in the FCAA, §112 (including §112(r)(3)), regardless of whether the compounds are subject to a standard or other requirement. Therefore, in order to be consistent with the definition of “regulated air pollutant” in Part 70, the commission proposes to revise the definition of air pollutant in §122.10(1) to include any pollutant subject to requirements under the FCAA, §112(r). The commission does not believe that this will affect many sites, since most air pollutants listed in the FCAA, §112(r) are also classified as hazardous air pollutants or volatile organic compounds and are, therefore, already identified as an air pollutant or subject to a standard promulgated under the FCAA, §112.

*ITEM 9 - Operational Flexibility*

In the June 7, 1995 notice, the EPA stated that Part 70 requires an operating permit program to allow for operational flexibility (60 FR 30044). Under 40 CFR §70.4(b)(12), “section 502(b)(10) changes” within a permitted site are allowed without requiring a permit revision if the changes are not modifications under any provision of the FCAA, Title I and the changes do not exceed the emissions allowable under the permit. The EPA further commented in the June 7, 1995 notice that Chapter 122 did not contain a definition of “section 502(b)(10) changes”, that it was not clear what types of changes could be processed under the operational flexibility provisions, and that Chapter 122 could be interpreted as allowing changes which violate what the EPA considers an applicable requirement (60 FR 30044). The commission subsequently deleted the operational flexibility changes contained in Chapter 122 in the October, 1997 rulemaking, in anticipation of revisions to Part 70 that have yet to be finalized. Since Part 70 has not been revised, in order to obtain full program approval as the EPA states in the June 25, 1996 notice, Chapter 122 must be consistent with Part 70 (61 FR 32696).

The deletion of the operational flexibility provisions from Chapter 122 is inconsistent with 40 CFR §70.4(b)(12). The commission, therefore, proposes to reintroduce the operational flexibility provisions in §122.222. The commission also proposes a definition for “FCAA, §502(b)(10) changes” in §122.10(11) that is consistent with the definition of “section 502(b)(10) changes” in 40 CFR §70.2. This definition will clarify the types of changes allowed under the operational flexibility provisions and will also ensure that changes that violate an applicable requirement will not be allowed under these provisions. These proposed amendments will allow changes to a site without requiring a permit revision if the changes meet the provisions for operational flexibility and meet the definition of “FCAA, §502(b)(10) changes.”

*ITEM 10 - Definition of Title I Modification*

In the June 7, 1995 notice, the EPA stated that the definition of Title I modification in Chapter 122 did not include changes reviewed under a minor source preconstruction review program or changes that trigger the application of National Emission Standards for Hazardous Air Pollutants established pursuant to the FCAA, §112 prior to the 1990 Amendments (60 FR 30041). In the same notice, the EPA further clarified that it was in the process of determining the appropriate interpretation of Title I modification. To date, no such clarification has been made and Part 70 does not contain a definition of Title 1 modification. The commission, in the October, 1997 rulemaking, deleted the definition of Title I modification from Chapter 122. Thus, the elimination of the definition is consistent with Part 70.

*ITEM 11 - Source Applicability of Part 70*

In the June 7, 1995, notice, the EPA states that §122.120(4)(A) - (C), regarding applicability of Part 70 and the Texas operating permit program, is inconsistent with the federal definition specified in 40 CFR §70.3(a) (60 FR 30039-30040).

With regard to §122.120(4)(A) and (B), the EPA believes that there could be some confusion over whether the rule exempts major sources subject to the FCAA, §111 or §112 from the requirement to obtain a federal operating permit. In an October 3, 1995 letter to Jole Luehrs, Chief, New Source Review Section, EPA Region 6 from Jeff Saitas, Deputy Director, Office of Air Quality, in response to EPA's June 7, 1995 notice, the commission committed to propose revisions to §122.120(4)(A) - (C) to address the inconsistencies. The commission revised §122.120(4) in the October, 1997 rulemaking to clarify that the rule does not exempt major sources from applicability to Chapter 122.

In the June 25, 1996 notice, the EPA noted that the commission did not adequately address revisions to §122.120(4)(C) (61 FR 32695). Specifically, the EPA disagreed with the commission proposal that included “any area source, in a source category designated by the Administrator.” The EPA maintained that the administrator may designate a number of different types of sources subject to the operating permit program, not just area sources. In order to minimize any confusion and to resolve these inconsistencies, the commission, in the October, 1997 Chapter 122 rulemaking, proposed revisions to §122.120(4)(C) to clarify that any non-major source in a source category designated by the EPA, not just FCAA, §111 and §112 sources, is subject to the operating permit program. This is consistent with 40 CFR §70.3(a)(5).

*ITEM 12 - Compliance Schedule Requirements*

In the June 7, 1995, notice, the EPA stated that §122.132(b)(3)(B) was not as stringent as 40 CFR §70.5(c)(8)(iii)(C) because it did not require the compliance schedules to be at least as stringent as any judicial consent decree or administrative order to which the source is subject (60 FR 30041). In the October, 1997 Chapter 122 rulemaking, the commission revised this section, now §122.132(e)(4)(C)(iii), to clarify that the compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the site is subject.

*ITEM 13 - Application Shield for Significant Modifications*

In both the June 7, 1995 notice and the June 25, 1996 notice, the EPA stated that §122.138 provisions incorrectly allow an application shield for significant permit modifications (60 FR 30041 and 61 FR 32695). The EPA stated that 40 CFR §70.7(b) does not allow significant permit modifications to be afforded an application shield for a timely and complete application, but rather only applies to a “timely and complete

application for permit issuance (including for renewal).” In response, the commission deleted reference to “significant permit modification” from the application shield provisions of §122.138 in the October, 1997 Chapter 122 rulemaking.

*ITEM 14 - Interpretation Shield*

In the June 7, 1995 notice, the EPA expressed concerns with the potential ambiguities surrounding the §122.145(e) interpretation shield and noted three specific items that had to be addressed through a written commitment by the commission prior to obtaining final interim approval (60 FR 30043). These items included: interpretations made under §122.145(e) must be limited to applicability issues only; the EPA shall have opportunity to review and veto every §122.145(e) action; and interpretations must be based on the most recent EPA guidance and any commission written guidance pre-approved by the EPA.

The commission satisfied these requirements for final interim approval. The EPA further clarified in the June 7, 1995 and June 25, 1996 notices that, for full program approval, the commission revise Chapter 122 to reflect the three requirements mentioned. The commission, in the October, 1997 Chapter 122 rulemaking, deleted the “interpretation shield” concept outlined in §122.145(e) and replaced it with a more traditional permit shield described in 40 CFR §70.6(f). The permit shield provisions are now contained in §122.148.

*ITEM 15 - Changes Allowed Under Administrative Permit Amendments*

In the June 7, 1995 notice, the EPA objected to the §122.211(5) procedure because it did not require EPA approval for similar administrative changes allowed in §122.211 (60 FR 30041). For full approval, the

EPA suggests that §122.211(5) specifically list those “similar” changes to be allowed under administrative amendment. In response, the commission, in the October, 1997 Chapter 122 rulemaking, revised §122.211(5), now §122.211(7), to require that similar changes be approved by the EPA.

*ITEM 16 - Renewal of General Permits*

In the June 7, 1995 notice, the EPA stated that 40 CFR §70.4 requires states to issue operating permits for a period not to exceed five years, and the commission should limit the general operating permit term to a maximum of five years (60 FR 30043). In response, the commission promulgated §122.502(d) in the October, 1997 Chapter 122 rulemaking, which limits authorizations to operate under general operating permits to terms not exceeding five years. In addition, §122.505(c) requires that a renewal application be submitted at least six months, but no earlier than 18 months before the date of expiration of the authorization to operate under a general operating permit.

*ITEM 17 - Public Notice to Include Emissions Change*

In the June 7, 1995 notice, the EPA states that 40 CFR §70.7(h) requires that the public notice include the emissions change involved in any permit modification. The EPA pointed out that §122.153 does not specify this requirement (60 FR 30042). The EPA reiterated this point in the June 25, 1996 notice by stating that 40 CFR §70.7(h)(2) specifies the information that public notice must include and that in order to obtain full program approval, the commission must include the emissions changes involved in any permit modification (61 FR 32696).

In response, the commission emphasizes that 40 CFR §70.7(h) seems to require that “emissions change” information be included in the public notice for significant permit modifications only, not all modifications. Title 40 CFR §70.7(h) begins by stating “Except for modifications qualifying for minor permit modification procedures....” Therefore, it follows that “emissions change” information need only be included in the public notice for significant permit modifications, not all modifications. As a result, the commission, in the October, 1997 Chapter 122 rulemaking, repealed §122.153 and promulgated §122.320(b)(5), requiring that the public notice for all significant permit revisions include “the air pollutants with emission changes.”

*ITEM 18 - Emergency Provisions*

In the June 7, 1995 notice, the EPA stated that the notification requirements for major upsets outlined in 30 TAC Chapter 101, General Air Quality Rules, are inconsistent with the 40 CFR §70.6(g)(3) emergency provisions (60 FR 30043-30044). In addition, in the June 25, 1996 notice, the EPA states that in order for Texas to receive full approval, Chapter 122 must be consistent with Part 70 (61 FR 32696). Furthermore, in a draft document which summarizes the inconsistencies between Chapter 122 and Part 70 identified in the 1995 and 1996 notices, the EPA identified three inconsistencies with 40 CFR §70.6(g): 1.) there is no definition of emergency; 2.) Chapter 101 improperly provides for exemptions from permit requirements and applicable requirements rather than an affirmative defense; and 3.) Chapter 101 provides for reporting of upsets no later than 24 hours, but a written report is not necessarily required.

Title 40 CFR §70.6(g)(1) defines an emergency as “any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-

based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency...” Texas’ rules regarding upsets are found in 30 TAC Chapter 101 (Chapter 101). Chapter 101 defines an upset as “an unscheduled occurrence or excursion of a process or operation that results in an unauthorized emission of air contaminants.” Chapter 101 also defines an unauthorized emission to be “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).” Under §122.145(3)(A), reports relating to unauthorized emissions, upset or maintenance, and start-up and shutdown must be submitted in accordance with §§101.6, Upset Reporting and Recordkeeping Requirements; 101.7, Maintenance, Start-up and Shutdown Reporting, Recordkeeping, and Operational Requirements; and 101.11, Exemptions from Rules and Regulations. It’s true that Chapter 122 does not define emergency and the commission does not believe that it is necessary for that chapter to include such a definition. This is because Chapter 101 defines upset and sources subject to Chapter 122 must comply with the upset rules in Chapter 101. It is the commission’s opinion that “emergency,” as defined in Part 70, is not inconsistent with the definition of upset in Chapter 101. Both are intended to cover unexpected incidents that may result in an exceedance of an emission limitation.

The emergency provisions of 40 CFR §70.6(g)(2) state that an emergency constitutes an affirmative defense to an action brought for noncompliance with technology-based emission limitations if the conditions of 40 CFR §70.6(g)(3) are met. Title 40 CFR §70.6(g)(3) states that the affirmative defense of an emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence. Title 40 CFR §70.6(g)(3) also states that the affirmative defense of emergency shall be demonstrated

through relevant evidence that an emergency occurred and that the permittee can identify the cause of the emergency, the facility was being properly operated at the time of emergency, the permittee took all reasonable steps during the emergency to minimize the levels of emissions that exceeded the emission standards, and that the permittee notify the permitting authority within two working days. Furthermore, 40 CFR §70.6(g)(4) states that the permittee seeking to establish the occurrence of an emergency has the burden of proof.

Section 122.145(3)(A) specifies that emissions resulting from an upset, start-up, shutdown, or maintenance activity be reported according to the requirements of §§101.6, 101.7, and 101.11. Chapter 101, amended June 29, 2000, specifies that upset emissions are exempt from compliance with air emission limitations if the owner or operator complies with the requirements of §101.6, the unauthorized emissions were caused by a sudden breakdown of equipment beyond the control of the operator, the unauthorized emissions did not stem from any activity that could have been foreseen and avoided and could not have been avoided by good design, operation and maintenance practices, the air pollution control equipment or processes were maintained and operated in a manner consistent with good practice for minimizing emissions, prompt action was taken once the operator knew that applicable emission limitations were being exceeded, the amount and duration of the unauthorized emissions were minimized, all emission monitoring systems were kept in operation if possible, the owner's or operator's actions in response to the unauthorized emissions were documented by contemporaneous operation logs, or other relevant evidence, the unauthorized emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance, and the unauthorized emissions do not cause or contribute to a condition of air pollution. Section §101.6(a)(1)(B) requires the owner or operator to notify the commission of reportable upsets as soon as practicable, but not

later than 24 hours after the discovery of an upset. Sections 101.6(a)(2) and (3) require owners or operators of sources to report the cause of the upset or the type of activity. Furthermore, revised §101.11(f) states that the owner or operator has the burden of proof to demonstrate that the criteria identified in §101.11(a) are satisfied for each occurrence of unauthorized emissions. The commission recently revised Chapter 101 in order to satisfy EPA concerns with the upset provisions. The commission believes that those revisions address EPA's concerns about Chapter 101 improperly providing for exemptions from permit requirements and applicable requirements. Further, the commission believes that Chapter 101 properly allows for an affirmative defense.

Lastly, EPA's draft document containing concerns with the Texas operating permit program pointed out that although §101.6 provides for reporting of upsets no later than 24 hours after discovery, no written report need be submitted and that §70.6(g)(3) contemplates a written notification. Title 40 CFR §70.6(g)(3)(iv) requires the permittee to submit notice of the emergency to the permitting authority within two working days of the time when the emission limitations were exceeded due to the emergency. Under §101.6, an owner or operator is required to notify the commission's regional office and all appropriate local air pollution control agencies of reportable upsets as soon as practicable, but not later than 24 hours after the discovery of the upset. Chapter 101 defines a reportable upset as "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". The commission believes that the requirement to notify the agency within 24 hours enables the agency to respond to the emergency and is more stringent than the requirement in Part 70 to submit notification within two working days. Also, Chapter 101 requires all upsets, reportable and nonreportable,

to be recorded and requires that these records be made available upon request. Thus, it is the commission's opinion that the notification requirements of Chapter 101 meet the requirements of Part 70.

*ITEM 19 - Compliance with the Interim Approval Criteria*

Part 70 specifies the requirements for permitting authorities that have been granted interim program approval. Specifically, 40 CFR §70.4(d)(ii)(D) requires reopening of permits for incorporation of minor NSR permit conditions upon or before granting of full approval. Furthermore, the EPA commented in a draft document containing concerns with the Texas operating permit program, that in order to receive full program approval, the TNRCC must revise Chapter 122 to incorporate minor NSR as an applicable requirement and institute proceedings to reopen operating permits to incorporate the excluded minor NSR requirements.

As previously discussed, the commission proposes to revise Chapter 122 to include minor NSR as an applicable requirement. The commission intends to incorporate minor NSR into existing operating permits by instituting proceedings to reopen those permits. This is discussed in more detail in the SECTION BY SECTION DISCUSSION of the proposed revisions to Subchapter C.

*ITEM 20 - Treatment of Research and Development Facilities*

In the June 7, 1995 notice, the EPA states that the treatment of research and development facilities through the Chapter 122 definition of site is inconsistent with Part 70 (60 FR 30040). Furthermore, the EPA states that the commission must treat research and development facilities consistent with Part 70 in order to obtain full program approval. Therefore, the commission proposes to amend the definition of site in §122.10(30)

to clarify that, for purposes of operating permit applicability, research and development operations and collocated manufacturing facilities would be considered a single site if they have the same two-digit Standard Industrial Classification (SIC) code. This is consistent with the definition of major source contained in 40 CFR §70.2.

The existing Chapter 122 definition of site also states that research and development operations that do not produce commercial products for sale may be treated as a separate site. The EPA, in a draft letter identifying concerns with the Texas operating permit program, further expressed concerns that this definition inappropriately exempts research and development operations acting as a support facility for a collocated manufacturing facility, since the research and development operation could produce raw materials that are used by the manufacturing facility. Therefore, the commission proposes to delete the language specifying that research and development operations that do not produce commercial products for sale may be treated as a separate site and further clarifies that a research and development operation and a collocated manufacturing operation would be considered a single site if the research and development operation is a support facility for the manufacturing operation.

The proposed amendment to the definition of site could impact existing operating permits and require a reopening to include applicable requirements for research and development activities, or cause revisions to pending applications. It is also possible that a site previously thought to be minor would now have to apply for an initial operating permit.

*ITEM 21 - Definition of Major Source*

In the June 7, 1995 and June 25, 1996 notices, the EPA stated that the Chapter 122 definition of major source as it relates to requiring the inclusion of fugitive emissions for source categories regulated under FCAA, §111 or §112 is not consistent with Part 70 (60 FR 30041, 61 FR 32695). For full program approval, the EPA indicated that the Chapter 122 definition of major source as it relates to requiring the inclusion of fugitive emissions must be consistent with Part 70.

Part 70 specifies that fugitive emissions should not be considered in determining major source status unless the source belongs to one of the source categories identified in 40 CFR §70.2, major source definition. The definition further enumerates source categories for which fugitive emissions must be included in the major source determination, including stationary source categories regulated by a standard promulgated under FCAA, §111 or §112, but only with respect to those air pollutants that have been regulated for that category.

The FCAA, §302(j) specifies that in determining whether a source is major, fugitive emissions are included when determined by rule by the administrator.

Title 40 CFR Part 71 (Part 71) sets forth the federal operating permit program that would be implemented by the EPA in a state without an approved operating permit program. The definition of major source in Part 71 specifies that fugitive emissions must be counted for stationary source categories regulated by a standard promulgated as of August 7, 1980, under FCAA, §111 or §112, but only with respect to those air

pollutants that have been regulated for that category. August 7, 1980 is also the last date for which FCAA, §302(j) rulemaking has been done.

The Chapter 122 definition of major source requires fugitive emissions to be considered in determining a major source for any stationary source category regulated under FCAA, §111 or §112 for which the EPA has made an affirmative determination under FCAA, §302(j). Thus, the definition of major source in Chapter 122 is consistent with the definition of major source in Part 71, as well as FCAA, §302(j). Since the afore mentioned source categories are the only sources that would be required to count fugitive emissions in the event that the EPA implements Part 71, it is the commission's opinion that only these sources should be required to count fugitive emissions in determining major source status for Chapter 122 and Part 70 applicability. Therefore, the commission does not propose to amend Chapter 122 in order to address this inconsistency with Part 70.

*ITEM 22 - Fugitive Emissions Not Included in Permit Application*

In the June 7, 1995 notice, the EPA stated that fugitive emissions must be included in operating permits in the same manner as stack emissions (60 FR 30043). In response, the commission proposes §122.132(e)(10), specifying that fugitive emissions would be included in permit applications and permits in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source. This is consistent with 40 CFR §70.3(d). This proposed amendment would make Chapter 122 consistent with Part 70, but would not impact the operating permit program because fugitive emissions are already included in permit applications and permits in the same manner as stack emissions.

The EPA also stated in the June 25, 1996 notice that fugitive emissions need to be quantified (61 FR 32696). The commission proposes to amend the definition of applicable requirement to include minor NSR. Minor NSR permits do, in fact, quantify fugitives. Once minor NSR is incorporated into an operating permit, the fugitives will be quantified and the requirements of Part 70 will be met.

*ITEM 23 - Permit Fee Demonstration*

Title 40 CFR §70.4(b)(8) requires states to provide a statement that adequate personnel and funding have been made available to develop, administer, and enforce the program. Furthermore, 40 CFR §70.4(b)(8)(v) specifies that the statement must include an estimate of the permit program costs for the first four years after approval, and a description of how the state plans to cover those costs. In the June 7, 1995 notice, the EPA states that the commission must provide a complete four-year projection to receive full program approval (60 FR 30044).

The commission is preparing a complete four-year projection. This projection will be included in the Chapter 122 submittal to the EPA, but since addressing the inconsistency with Part 70 does not require an amendment to Chapter 122, it is not included in this preamble.

*ITEM 24 - Senate Bill (SB) 766 Amnesty Provision*

Senate Bill 766 was enacted on July 24, 1999 and provides amnesty from enforcement for facilities eligible to participate in the voluntary emission reduction permit (VERP) program authorized by the Texas Clean Air Act (TCAA), §382.0519, as long as a permit application is received before the TCAA deadline of September 1, 2001. In a draft document which summarizes the inconsistencies between Chapter 122 and

Part 70, the EPA expressed concerns with the amnesty provision set forth in SB 766, §12 because it may surrender the commission's ability to assure compliance with applicable requirements for sites subject to Chapter 122. It is the commission's belief that this is not the case because the provision does not impact permits required by the PSD or nonattainment permit programs. Further, after the TCAA deadline for applications for a VERP, the amnesty period expires. Thus, any facilities that did not apply for a permit would be subject to enforcement for failure to have an NSR permit to address any modifications to a facility that occurred after September 1, 1971. The commission does not propose any revised rule language to address the issue and it is, therefore, not discussed in this preamble. The commission will, however, seek a State Attorney General Opinion and include it with the submittal package.

## SECTION BY SECTION DISCUSSION

### *Subchapter A - Definitions*

As previously discussed, the commission proposes to amend §122.10(1), the definition of air pollutant, to respond to the inconsistency with Part 70 identified by the EPA in the June 7, 1995 notice. The commission proposes to amend §122.10(1)(F) to specify that any pollutant subject to a requirement established under FCAA, §112(r) is an air pollutant under Chapter 122. The existing regulation does not identify these pollutants as "air pollutants." The commission also proposes §122.10(1)(F)(i) and (ii). Section 122.10(1)(F)(i) would specify that the definition of air pollutant includes any pollutant subject to requirements under FCAA, §112(j) and also would specify the date pollutants under FCAA, §112(j) shall be considered to be regulated if the EPA fails to promulgate a standard by the date established pursuant to FCAA, §112(e). Section 122.10(1)(F)(ii) would specify that the term air pollutant also includes any pollutant for which the requirements of FCAA, §112(g)(2) have been met, but only with respect to the

individual site subject to the FCAA, §112(g)(2) requirement. The proposed amendments are consistent with the definition of regulated air pollutant in 40 CFR §70.2.

The commission proposes to amend the definition of applicable requirement to include Chapter 101, Subchapter H, Emissions Banking and Trading. Because subchapter H provides an alternative means of compliance with applicable requirements, the commission believes Subchapter H is also an applicable requirement. The commission also proposes to delete the Chapter 119 reference in the definition of applicable requirement, since the regulation has been repealed. The proposed definition of applicable requirement would also include all of the requirements under Chapter 106, Subchapter A or Chapter 116 and any term or condition of any preconstruction permit, in response to the inconsistency with Part 70, identified by the EPA in the June 7, 1995 notice, as previously mentioned. The existing definition only includes the permits issued under Chapter 116 pursuant to FCAA, Title 1, Parts C or D. The EPA specified that Chapter 122 is inconsistent with Part 70 because the definition of applicable requirement excluded certain minor NSR authorizations as applicable requirements (60 FR 30039). In a draft document which summarizes the inconsistencies between Chapter 122 and Part 70 identified in the 1995 and 1996 notices, the EPA identified an inconsistency in the definition of applicable requirement that it overlooked in its original review of the source category-limited interim program. Since the definition of applicable requirement did not include Chapter 116, the EPA stated that the definition failed to include SIP requirements for PSD and nonattainment permitting. The revised definition addresses the issue. The commission also proposes to delete §122.10(K), since no concept of federal only enforceability exists in Part 70. The commission is also correcting capitalization errors and is making other formatting corrections in the definition.

The commission proposes to define “FCAA, §502(b)(10) changes.” As previously discussed, the EPA stated in the June 7, 1995 notice that “section 502(b)(10) changes” was not defined and it was unclear what types of changes could be processed through operational flexibility. This proposed definition would clarify the types of changes to a permit that qualify as operational flexibility and do not require a permit revision.

The commission proposes to expand the definition of preconstruction authorization. The existing preconstruction authorization definition includes any authorization to construct or modify an existing facility or facilities under Chapter 116. The proposed definition will be expanded to include any authorization to construct or modify an existing facility or facilities under Chapter 106 and Chapter 116. This amendment is proposed in response to the Part 70 inconsistency that the EPA identified in the June 7, 1995 notice concerning the identification of minor NSR as an applicable requirement, previously discussed. The commission also proposes to delete the language relating to the delegation of FCAA, §112(g) and (j) to the commission as part of the definition of preconstruction authorization. The commission proposes this deletion to address the issue that the EPA has raised on the validity of the federal only enforceability designation. In the existing Chapter 122, applicable requirements were designated as federally enforceable only when they were promulgated, but not yet adopted by and delegated to the commission. As discussed previously, the commission proposes to delete the federally enforceable only designation, making this clarification to the definition of preconstruction authorization necessary.

The commission proposes to amend the definition of site. As previously discussed, the commission proposes to amend the definition of site by clarifying that if research and development facilities have the

same two-digit SIC code, they will be included with the collocated facility for operating permit applicability and permitting purposes.

In addition to these substantive changes, the defined terms in Chapter 122, Subchapter A have been renumbered.

#### *Subchapter B - Permit Requirements*

The commission proposes changes to §122.120 to clarify which sites are required to obtain a permit. The commission proposes §122.120(b) to clarify the applicability of a site to Chapter 122 by further identifying what types of sites are not subject to Chapter 122. Section 122.120(b)(1) would clarify that a permit is not required for non-major sites that the EPA has exempted from the obligation to obtain a permit. Section 122.120(b)(2) would state that non-major sites that are eligible for an EPA deferral are not required to obtain a permit. By adding §122.120(b), it is necessary to create a specific subsection (a) in §122.120. Also, the commission proposes to amend §122.120(a) by adding the phrase “except as identified in subsection (b)” to further clarify that the sites in §122.120(a) are subject to Chapter 122 and those sites identified in §122.120(b) are not. The commission also proposes to amend §122.120(a)(4) to require that sites that are non-major which are no longer eligible for an EPA deferral are required to obtain a permit.

The commission proposes to amend §122.130 to delete reference to the interim and full operating permit programs. The interim program refers to the permitting of those sources for which the commission was granted source category-limited interim approval on June 25, 1996. All other sources permitted under Chapter 122 are considered as permitted under the full operating permit program. Since the commission

is seeking full program approval from the EPA, the references to the interim and full operating permit programs are unnecessary. The proposed amendments include the entire deletion of subsection (a), including the types of sources required to obtain a permit during the interim program and the dates by which to apply. The commission proposes to delete §122.130(b)(2), which enumerates the primary SIC groups that should have applied for a permit by July of 1998. The commission also proposes to delete §122.130(b) and §122.139(1) and proposes amendments to existing §§122.130(b)(1), 122.130(b)(3), and 122.130(c); 122.132(c); 122.134(c); and 122.139(2); to delete reference to the interim and full operating permit programs and application due dates, and the reference to the proposed deleted §122.130(a) and §122.130(b)(2). Furthermore, existing §122.130(c) specifies the requirements for sites that become subject to the program after the effective date of the interim or full program. Since the commission proposes to delete the references to the interim or full program, it also proposes to clarify this subsection by using the date February 1, 1998, which is the due date for abbreviated applications for sources subject to the full program. Lastly, because of the proposed deletions, §122.130 and §122.139 have been renumbered.

The commission proposes revisions to §122.131. Specifically, the commission proposes new subsection (g) to clarify that a site may not qualify for the phased permit detail process if the commission receives its application after July 22, 2000. The commission will, however, honor applications previously submitted in accordance with the phased permit detail process. The commission proposes to discontinue the option because the process is overly resource intensive and is not consistent with Part 70.

The commission proposes revisions to §122.132. These changes include the addition of §122.132(e)(10) and §122.132(e)(11). As previously discussed, the proposed addition of §122.132(e)(10) would require

that fugitive emissions be included in permit applications and permits in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source. The proposed addition of §122.132(e)(11) would require applications to include preconstruction authorizations that are applicable to emission units at the site. The commission proposes these amendments in response to Chapter 122 inconsistencies identified by the EPA. Also, the commission proposes new subsection (g), which clarifies that applicants are not required to submit information for facilities that are identified as de minimis under §116.119, De Minimis Facilities or Sources. As previously mentioned, the commission proposes to include minor NSR as an applicable requirement in response to an EPA inconsistency. The facilities or sources identified in §116.119 are not required to obtain an authorization before construction and do not require registration. Since they are not required to obtain a preconstruction authorization or registration, the commission would not require these facilities or sources to be identified in an operating permit. The concept of de minimis facilities or sources is also consistent with 40 CFR §70.5(c), which allows State programs to develop a list of insignificant activities which need not be included in permit applications.

The commission proposes to amend §122.136. If a site becomes subject to additional applicable requirements or state-only requirements after an application is submitted, existing §122.136(c) requires an applicant to submit information to address those requirements within 60 days after becoming subject to the new requirements. The proposed language would require an applicant to submit any necessary information to address applicable requirements or state-only requirements after a complete application is filed until the point that the draft permit is released. This is consistent with 40 CFR §70.5(b). This proposed amendment would require applicants to keep permit applications up to date with new requirements, but does not require

them to update the application once public notice is published. If a site were to become subject to new requirements after notice has been published, the executive director would make a determination to request additional information for the existing permitting action or require the permit holder to revise the permit after it is issued. The site would still, however, need to be in compliance with the new requirements.

The commission proposes revisions to §122.139. As previously discussed, the commission proposes to delete §122.139(1) and amend existing §122.139(2), to delete reference to the interim and full operating permit programs. The commission has also renumbered this section and updated existing §122.139(4), now §122.139(3) to reference paragraphs (1) - (2), instead of paragraphs (1) - (3). In addition, the commission proposes to update the grammar in existing §122.139(2), now §122.139(1).

The commission proposes changes to §122.140. The commission proposes to amend §122.140(3) by clarifying that information in §122.714(a), concerning Compliance Assurance Monitoring, or §122.612, concerning Periodic Monitoring, respectfully, become conditions under which a permit holder operates upon the granting of an authorization to operate under a compliance assurance monitoring general operating permit or periodic monitoring general operating permit. Existing §122.140(3) requires information from both §122.714(a) and §122.612 to become conditions of both compliance assurance monitoring general operating permit and periodic monitoring general operating permit authorizations to operate.

The commission proposes changes to §122.142. The commission proposes to add §122.142(b)(3), which requires issued permits or applications for authorizations to operate to contain preconstruction authorizations that are applicable to emission units at the site. The commission proposes this amendment

in response to the EPA June 7, 1995 notice, which specifically identified that the section on permit content did not properly identify minor NSR as an applicable requirement.

The commission proposes changes to §122.143. The commission proposes to delete §122.143(9). This existing paragraph describes the requirements for removing the federally enforceable only designation once an applicable requirement is adopted by the commission. As previously stated, the commission proposes to eliminate the federally enforceable only designation and, as such, proposes to delete this paragraph. Also, the remaining §122.143 paragraphs have been renumbered.

The commission proposes revisions to §122.145. The commission proposes to delete §122.145(2)(D), which explains a relationship between deviation reporting and the reporting required under §§101.6, 101.7, and 101.11. Permit holders commented that the language is confusing and redundant. The commission, therefore, proposes to delete the subparagraph.

The commission proposes to amend §122.146. The proposed revision to §122.146(2) clarifies that permit holders must submit compliance certifications to the executive director. The proposed revision to §122.146(4) would require permit holders to identify any material information that must be included in the certification to comply with FCAA, §113(c)(2), which prohibits knowingly making a false certification or omitting material information. This requirement is consistent with 40 CFR §70.6(c)(5)(iii)(B). The proposed revision to §122.146(5)(A) would require certifications to contain information whether the method used for determining the compliance status of each emission unit provides continuous or intermittent data. This requirement is also consistent with 40 CFR §70.6(c)(5)(iii)(B). Also, the commission proposes to add

§122.146(5)(E), which clarifies that annual compliance certifications are not required to include any information for facilities that are identified as de minimis under §116.119, De Minimis Facilities or Sources. As previously mentioned, the commission is proposing to add §122.132(g), which specifies that operating permit applications are not required to include information for de minimis facilities. Since the information is not necessary in the application, the executive director would not require the information to be certified for compliance. Finally, the commission is proposing to add §122.146(6) which allows the executive director to request additional information if necessary to determine the compliance status of an emission unit. This requirement is consistent with 40 CFR §70.6(c)(5)(iii)(D).

*Subchapter C - Initial Permit Issuances, Revisions, Reopenings, and Renewals*

The commission proposes changes to §122.210. The commission proposes to delete §122.210(b) which identifies the situations warranting a permit revision. This information is redundant, since §§122.211, 122.215, 122.218 and 122.219 identify the types of changes that qualify as administrative, minor, or significant revisions, respectively. Furthermore, the information contained in §122.210(b) is not as inclusive as the criteria contained in §§122.211, 122.215, 122.218, and 122.219. Similarly, the commission proposes to amend §122.210(a) by deleting the language that a permit revision is required for activities that change, add or remove one or more permit terms or conditions. This language is also redundant. The commission, however, proposes to clarify §122.210(a) to state that revision applications are required for changes at a site which alter or change a permit's applicable requirements and that applications are required to be submitted as specified in Chapter 122, Subchapter C. Since the commission proposes to delete subsection b, the section has also been renumbered.

The commission proposes revisions to §122.211. This includes the proposed addition of §122.211(2), specifying that a change in name, address, contact phone number, or other similar change qualifies as an administrative permit revision. This is consistent with 40 CFR §70.7(d)(1)(ii). Also, the commission is proposing §122.211(5), which specifies that changes which incorporate preconstruction authorizations under an EPA-approved program that meets procedural requirements substantially equivalent to those of Subchapters C and D, and compliance and requirements substantially equivalent to §§122.143, 122.145, and 122.146 may qualify as administrative permit revisions. This is consistent with 40 CFR §70.7(d)(1)(v) and would provide additional flexibility offered by Part 70 that could be used in the future to incorporate requirements into operating permits. The commission also proposes to delete the existing §122.211(5), which specifies that removing a federally enforceable only designation is an administrative revision. As previously mentioned, the commission proposes to eliminate this designation of federally enforceable only, since it is inconsistent with 40 CFR Part 70. In addition, this section has been renumbered accordingly.

The commission proposes to amend §122.212(b), to clarify that the application information needed applies to applications for administrative permit revisions.

The commission proposes changes to §122.213. The commission proposes to clarify §122.213(a), by replacing the text referring to changes required as the result of the adoption of a state-only requirement with text describing changes listed in §122.211. This text is more accurate, since §122.213 describes procedures for administrative permit revisions and changes that affect or add state only requirements are only one type of administrative amendment identified in §122.211. The commission also proposes to delete §122.213(a)(1)(A). The existing §122.213(a)(1)(A) requires a permit holder to comply with Chapter 116.

Section 122.213(a)(1)(B) requires a permit holder to comply with applicable requirements. As previously discussed, the commission proposes to amend the definition of applicable requirement by including Chapter 106, Subchapter A, and Chapter 116. Thus, the commission proposes to delete §122.213(a)(1)(A) to eliminate redundancy. In addition, the commission proposes revisions to §122.213(d) by adding the word “administrative” to describe the permit revision type for clarity. The commission also renumbered this section.

The commission proposes to repeal existing §122.215 and concurrently propose new §122.215. As mentioned previously, the commission proposes this to make the criteria for minor permit revisions the same as the criteria in 40 CFR §70.7(e)(2)(i)(A)(1) - (5).

The commission proposes to amend §122.216. As previously discussed, 40 CFR §70.7(e)(2)(v) allows the site to operate a change once a minor permit application is submitted. Title 40 CFR Part 70 does not allow the permit to be revised after notices have been sent over a 12-month period, and hence, the commission proposes to delete subsection (a). Also, the commission proposes to amend §122.216(b), which specifies the minimum information in that subsection applies to minor permit revisions, for clarification. The word “also” has been deleted from §122.216(b), since it would be the only subsection in §122.212. Lastly, the deletion of subsection (a) will cause the section to contain only one subsection. Therefore, §122.212(b) would become the inferred §122.212(a) with the commission’s proposal.

The commission proposes revisions to §122.217. The commission proposes to delete §122.217(a)(1)(A) and §122.217(b)(1)(A). Similar to §§122.213(a)(1)(A), 122.217(a)(1)(A), and 122.217(b)(1)(A) were

redundant citations requiring that permit holders comply with Chapter 116. Also, the commission proposes to amend §122.217(a)(2) to require that permit holders submit an application to the executive director instead of a notice. As previously mentioned, the commission proposes this in response to an inconsistency with Part 70 identified by the EPA in the June 7, 1995 notice. The proposed change is consistent with 40 CFR §70.7(e)(2)(v). Likewise, the commission proposes to delete the existing §122.217(e), requiring applications to be submitted after the permit anniversary. In addition, the commission proposes to update the references in §§122.217(a)(2) and (a)(3) to §122.216, the reference in §122.217(b)(3) to §122.216(1) - (4), and the reference in §122.217(b)(2) to §122.216(1) - (5) since the existing paragraphs reference citations contained in §122.216(b), which the commission proposes to renumber to §122.216. The commission also proposes to amend §122.217(b)(2). The existing citation requires permit holders to record the information for minor permit revisions made as a result of the promulgation or adoption of an applicable requirement prior to the compliance date and to submit the information no later than 45 days after the compliance date of the new applicable requirement. This is not required by Part 70. The commission proposes to remove the requirement to record the information and also to require the information relating to the minor permit revision to be submitted no later than the compliance date of a new requirement or effective date of a repealed requirement, not 45 days after such date. Again, this is consistent with 40 CFR §70.7(e)(2)(v), which requires minor permit revision applications to be submitted before a change is operated. Further, §122.217(b)(2) specifies a compliance date or an effective date and, for clarification, the commission proposes to add the phrase “whichever is applicable”. Also, existing §122.217(b)(3) specifies that the information is to be maintained until the permit is revised. The commission proposes to amend this to reflect that the information would be maintained until the permit revision is final, for clarity and consistency with 40 CFR §70.7(e)(2)(v), which specifies requirements until the permitting authority

takes action on the revision. In addition, the commission proposes new subsection (e), requiring the executive director to notify the EPA and affected states of a minor permit applications. This is consistent with 40 CFR §70.7(e)(2)(iii). Also, the commission proposes to amend §122.217(f)(2) to specify that the executive director may issue a revision provided that a complete application is submitted. Lastly, in order to address Part 70 inconsistencies identified by the EPA in the June 7, 1995 notice, the commission proposes changes to §122.217(g). The proposed subsection, described previously, would require the executive director to take final action on a minor permit revision application no later than 90 days after the receipt of an application or 15 days after the end of the EPA review period. This is consistent with 40 CFR §70.7(e)(2)(iv).

The commission proposes new §122.218. This proposed section is consistent with 40 CFR §70.7(e)(2)(i)(B). This proposed section would allow permit holders using economic incentives, marketable permits, and emissions trading to incorporate the changes into operating permits using a minor permit revision. Title 40 CFR §70.7(e)(2)(i)(B) provides that the minor permit revision process may be used for revisions involving these actions, as long as the SIP, or the particular applicable requirement, allows for the use of the minor permit revision process. In order to allow for this option in Chapter 122, §§122.215 - 122.218 will be submitted as a SIP revision.

The commission proposes to repeal existing §122.219 and concurrently proposes new §122.219. The proposed new section specifies that changes shall be processed as significant permit revisions if they do not meet the criteria for administrative or minor revisions. This is consistent with 40 CFR §70.7(e)(4)(i).

The commission proposes revisions to §122.221. The commission proposes to delete §122.221(b)(1), which specifies that significant revisions may be issued if the change meets the criteria for a significant permit revision. Since the commission proposes to delete the criteria for significant permit revisions and make significant revisions the default revision type, this requirement is unnecessary. Subsection (b) has also been renumbered.

The commission proposes new §122.222. As previously mentioned, the commission proposes to reintroduce these provisions regarding operational flexibility in order to be consistent with 40 CFR §70.4(b)(12).

The commission proposes to amend §122.231. The commission proposes to add §122.231(a)(1)(C) to require the executive director to reopen permits to incorporate newly promulgated or adopted applicable requirements when the remaining permit term is less than three years. This is consistent with 40 CFR §70.7(f)(1)(i). Also, the commission proposes to amend §122.231(a)(4) to require the executive director to reopen a permit if he determines that the permit must be terminated to assure compliance with applicable requirements. This is consistent with 40 CFR §70.7(f)(1)(iv). The commission also proposes to amend §122.231(b)(1) by adding that the executive director is required to submit a proposed determination no later than 180 days after receipt of a notification of a reopening initiated by the EPA if EPA has extended the period for response. This is consistent with 40 CFR §70.7(g)(2). The commission proposes to amend §122.231(b)(3) to require the executive director to resolve and take action on a reopening 90 days after receipt of an EPA objection. The existing language required the executive director to take action on a reopening 90 days from the end of the EPA review period, or the resolution of any objection. Title 40 CFR

Part 70 does not allow the action on the reopening to be delayed in this manner and the proposed amendment is consistent with 40 CFR §70.7(f)(2). The commission proposes new subsection (c) to address the incorporation of minor NSR. The commission proposes that the executive director shall institute proceedings to reopen permits that do not contain the applicable requirements relating to minor NSR, as proposed in §122.10(2)(H). This is consistent with 40 CFR §70.4(d)(3)(ii)(D). To maximize the efficient use of the executive director's resources, the commission does not anticipate reopening all permits at the same time. Instead, the commission anticipates reopening permits over time, on a time frame that will somewhat correspond with the renewal date of a permit. For this same reason and to fulfill its obligation to initially issue permits, applications in-house before adoption of this rulemaking will not be required to incorporate minor NSR at initial issuance. The commission proposes to amend §122.231(d) by clarifying that, except as provided in §122.231(c), reopenings shall be made as soon as possible. This is consistent with 40 CFR §70.7(f)(2). The commission proposes grammatical changes to §122.231(e). This section was also renumbered.

*Subchapter D - Public Announcement, Public Notice, Affected State Review, Notice and Comment Hearing, Notice of Proposed Final Action, EPA Review, and Public Petition*

The commission proposes changes to §122.320 in order to make the sign posting requirements in Chapter 122 consistent with those of 30 TAC Chapter 39, Public Notice, which specifies public notice requirements for solid waste, water quality and air quality permit applications. As a part of the public notice requirements, new source review permits are required to post signs in accordance with the requirements of Chapter 39. The commission proposes to make Chapter 122 requirements consistent with Chapter 39 requirements in order to simplify the public notice process if the executive director should, at some point,

allow for concurrent NSR permitting and operating permit public notice. The commission proposes to amend §122.320(h)(1)(A) - (F) to require all lettering be no less than one and one-half inches in size in block printed capital lettering, which is consistent with Chapter 39. Also, for consistency with Chapter 39, the commission proposes to amend §122.320(h)(1) to clarify that the sign is provided by the applicant and substantially meets §122(h)(1)(A) - (G) and also proposes to add §122.320(h)(1)(G) to require that the company name applying for the permit be printed on the sign.

For consistency with the definition of affected state in 40 CFR §70.2, the commission proposes to amend §122.330. The commission proposes to amend §122.330(b)(1) to clarify that an affected state is one whose air quality may be affected by the issuance or denial of an operating permit and also that the state must be contiguous to Texas. The commission also proposes to amend §122.330(b)(2) by replacing the word “that” with “the” in the existing text, which states “that state is within 50 miles of the site or proposed site.” This language implies that the state mentioned in §122.330(b)(2) is that state which is described in §122.330(b)(1). This clarification reinforces the concept that §122.330(b)(1) and §122.330(b)(2) are two separate criteria defining an affected state.

The commission proposes to amend §122.340 to make it consistent with §122.320. Section 122.320(f) would require an applicant to submit a copy of the notice of hearing and date of publication to the executive director and all local air pollution control agencies with jurisdiction in the county in which the site is located. Section 122.340 is also renumbered accordingly.

The commission proposes to amend §122.350. The commission proposed to amend §122.350(b)(1) to enable the public notice period and the EPA review period to run concurrently with, rather than after the end of the public comment period. The amendment would give the executive director this option, should he want more efficient permitting procedures for initial issuances, significant revisions, reopenings, or renewals.

The commission proposes to amend §122.360. The commission proposes to amend §122.360(c) to clarify that the petition for general operating permits must be filed no later than 60 days after issuance of the general operating permit by the executive director. The existing subsection requires a petition must be filed with the EPA within 60 days after the expiration of the 45-day EPA review period. The commission proposes the amendment to address timing concerns with the general operating permit issuance process.

#### *Subchapter G - Periodic Monitoring*

The commission proposes to amend §122.608. The commission proposes to amend §122.608(e) to address inaccurate nomenclature. The existing citation incorrectly references CAM instead of periodic monitoring.

#### *Subchapter H - Compliance Assurance Monitoring*

The commission proposes to amend §122.706. The commission proposes to amend a typographical error in §122.706(a). The commission also proposes to correct references in §122.706(a)(1)(e).

Lastly, the commission proposes revisions to §122.708. The commission proposes to amend §122.708(b)(1)(A) and §122.708(b)(2)(B) to correct inaccurate identifying references.

FISCAL NOTE: COST TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, has determined that for each year of the first five-year period the proposals are in effect there will be fiscal implications which are not anticipated to be significant for units of state and local government as a result of administration or enforcement of the proposals.

This rulemaking proposes that permit revision for some changes that currently qualify as a minor permit revision be treated as a significant permit revision. The changes may result in additional public notification related costs to facilities operating under the federal operating permit program. Additional public notification requirements may cost up to \$6,600 depending on the method implemented by a permit holder to comply with public notice requirements and the location of the permitted site.

The proposed rulemaking is intended to make changes to the commission's federal operating permit program in order to receive full program approval from the EPA. The current program is operating under interim approval granted by the EPA in 1996. The changes to the commission's rules being proposed in this rulemaking include: inclusion of NSR permit activities into federal operating permits; changing the revision process such that any permit revision that does not meet the criteria for an administrative or minor permit revision will use the significant revision procedures; changing case-by-case RACT determinations from minor permit revisions to significant permit revisions; requiring permit holders to submit an application, instead of notice, prior to operating changes which require a minor permit revision; designation of deadlines for the executive director to take final action on minor permit revision applications; clarification of the air pollutant definition to include any pollutant subject to requirements under FCAA,

§112(r); and, reintroduction of operational flexibility, which provides details concerning the type of modifications at a site that don't require a permit revision. The commission anticipates these additional requirements will not result in significant additional costs to a permit holder. The major impact of the changes will be an increased number of significant revisions, which will result in additional public notification costs. The remaining changes are procedural in nature and should not result in additional costs to the permit holder.

The proposed rulemaking will affect all new or existing sites operating under a federal operating permit in Texas, which the commission estimates at approximately 1,750. Approximately 10% (175) of the affected sites are owned and operated by units of state and local government. Owners and operators of one or more of the following are required to obtain a federal operating permit: 1.) any site that is a major source; 2.) any site with an affected unit subject to the requirements of the Acid Rain Program; 3.) any solid waste incineration unit required to obtain a permit; or 4.) any site that is a non-major source which the EPA, through rulemaking, has designated as no longer exempt from the obligation to obtain a permit. Examples of state and local government sites that could be affected by the proposals include: electric generating facilities, landfills, boilers and power plants.

The purpose of this proposed rulemaking is to make changes to the commission's federal operating permit program in order to receive full program approval from the EPA. In addition, the proposed rulemaking are intended to facilitate the future creation of a single permit document that integrates minor NSR permit activities into the federal operating permit, which contains all of the applicable requirements for the emission units at a particular site. Integration of minor NSR permit activities and changing the revision

process such that significant revisions will be the default revision (instead of minor revisions) will have the most impact on units of state and local government that operate under a federal operating permit. This will result in more significant revisions being reported by affected sites since most minor NSR revisions will trigger significant revision of a federal operating permit under the proposals. Significant revisions, unlike administrative and minor permit revisions, require public notice prior to approval.

The primary fiscal impact to units of state and local government will be the cost of public notice associated with the significant revisions. The estimated range of cost for notice in a newspaper of general circulation is \$250 - \$2,500. If the permit holder is required to publish a notice in an alternative language newspaper, it will cost an additional \$200 - \$1,000. If a hearing is requested, publication of that notice will cost between \$250 - \$2,500. Additional costs would include sign posting at the site, which would cost approximately \$300 and an additional \$300 if alternative language signs are required. The total public notice cost per revision could be up to approximately \$6,600. The commission anticipates no significant additional fiscal implications for affected facilities from preparing and submitting significant permit revision applications. These public notice costs would only affect units of state and local government holding a federal operating permit who apply for a permit revision that is now considered significant.

Finally, the proposed rulemaking is anticipated to require the addition of six Environmental Permit Assistant II positions to the executive director's staff over the next five years to process the additional significant revisions. These positions have not been included in the commission's legislative budget request.

## PUBLIC BENEFITS AND COSTS

Mr. Davis has also determined for each of the first five years the proposals are in effect, the public benefit anticipated as a result of implementing the proposals will be increased opportunities for public participation in the permitting process.

The proposed rulemaking is intended to make changes to the commission's federal operating permit program in order to receive full program approval from the EPA. The current program is operating under interim approval granted by the EPA in 1996. The changes to the commission's rules being proposed in this rulemaking include: inclusion of minor NSR permit activities into federal operating permits; changing the revision process such that any permit revision that does not meet the criteria for an administrative or minor permit revision will use the significant revision procedures; changing case-by-case RACT determinations from minor permit revisions to significant permit revisions; requiring permit holders to submit an application, instead of notice, prior to operating changes which require a minor permit revision; designation of deadlines for the executive director to take final action on minor permit revision applications; clarification of the air pollutant definition to include any pollutant subject to requirements under FCAA, §112(r); and, reintroduction of operational flexibility, which provides details concerning the type of modifications at a site that don't require a permit revision. The commission estimates the proposed rulemaking will result in an increased number of significant revisions required to be submitted and processed. However, the commission estimates that there will be no other significant additional costs to permit holders other than for public notification.

The commission estimates there are 1,575 existing facilities, privately-owned and operated by individuals and businesses in Texas, that will be affected by the proposals. Examples of sites affected by the proposed amendments include: electric generating facilities, landfills, boilers and power plants, oil and gas operations, fiberglass and chemical manufacturers, cotton seed oil mills, furniture manufacturers, concrete and asphalt batch plant operators, and manufacturers with coating operations (metal parts, aircraft parts, auto parts).

The primary fiscal impact to individuals and businesses will be the cost of public notice associated with the significant revisions. The estimated range of cost for notice in a newspaper of general circulation is \$250 - \$2,500. If the permit holder is required to publish a notice in an alternative language newspaper, it will cost an additional \$200 - \$1,000. If a hearing is requested, publication of that notice will cost between \$250 - \$2,500. Additional costs would include sign posting at the site, which would cost approximately \$300 and an additional \$300 if alternative language signs are required. The total public notice cost per revision could be up to approximately \$6,600. The commission anticipates no significant additional fiscal implications for affected facilities from preparing and submitting significant permit revision applications. These public notice costs would only affect units of state and local government holding a federal operating permit who apply for a permit revision that is now considered significant.

#### SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There will be adverse economic effects, which are not anticipated to be significant, to small or micro-businesses as a result of the implementation of the proposed rulemaking. The proposed rulemaking is

intended to make changes to the state's federal operating permit program in order to receive full program approval from the EPA.

Changes to the commission's rules being proposed in this rulemaking include: inclusion of minor NSR permit activities into federal operating permits; changing the revision process such that any permit revision that does not meet the criteria for an administrative or minor permit revision will use the significant revision procedures; changing case-by-case RACT determinations from minor permit revisions to significant permit revisions; requiring permit holders to submit an application, instead of notice, prior to operating changes which require a minor permit revision; designation of deadlines for the executive director to take final action on minor permit revision applications; clarification of the air pollutant definition to include any pollutant subject to requirements under FCAA, §112(r); and, reintroduction of operational flexibility, which provides details concerning the type of modifications at a site that don't require a permit revision. The commission estimates the proposed rulemaking will result in an increase number of significant revisions required to be submitted and processed. However, the commission estimates that there will be no other significant additional costs to permit holders other than for public notification.

The commission estimates that approximately 1,575 existing privately owned facilities, some of which will be small and micro-businesses, will be affected by the proposed rulemaking. Examples of small and micro-businesses that could be affected by the proposals include small oil and gas operations, fiberglass manufacturers, cotton seed oil mills, landfills, furniture manufacturing, small chemical manufacturers, small concrete or asphalt batch plant operators, and small manufacturers with coatings operations (metal parts, aircraft parts, and auto parts).

The primary fiscal impact to small and micro-businesses will be the cost of public notice associated with the significant revisions. The estimated range of cost for notice in a newspaper of general circulation is \$250 - \$2,500. If the permit holder is required to publish a notice in an alternative language newspaper, it will cost an additional \$200 - \$1,000. If a hearing is requested, publication of that notice will cost between \$250 - \$2,500. Additional costs would include sign posting at the site, which would cost approximately \$300 and an additional \$300 if alternative language signs are required. The total public notice cost per revision could be up to approximately \$6,600. The commission anticipates no significant additional fiscal implications for affected facilities from preparing and submitting significant permit revision applications. These public notice costs would only affect units of state and local government holding a federal operating permit who apply for a permit revision that is now considered significant.

Mr. Davis has made the following comparison of the cost of the previously discussed public notice requirements between a micro-business, small business, and large business. This comparison is made on a per-person basis for a single significant permit revision and assumes a public notice cost of \$6,600. A micro-business with 20 employees may be required to incur public notice costs of approximately \$330-per-employee for a single significant permit revision. A small business with 100 employees may be required to incur public notice costs of approximately \$66-per-employee for a single significant permit revision. A large company with 5200 employees may be required to incur public notice costs of approximately \$1.27-per-employee for a single significant permit revision. The underlying public notice requirements are federally mandated and no provision is made under Part 70 to distinguish small and micro-businesses from larger businesses in its application.

#### DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking does not meet the definition of a “major environmental rule” as defined in that statute. “Major environmental rule” means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The commission does not believe that the proposed rules will have an adverse, material affect on the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. On May 22, 2000, the EPA set a deadline that any program revisions necessary for obtaining full federal operating permit program approval must be submitted to EPA not later than June 1, 2001, and granted a third extension, extending up to December 1, 2001, for all operating permits program interim approvals (65 FR 32035). The commission’s federal operating permit program is an interim-approved program subject to EPA’s notice. The commission proposes this rulemaking to resolve inconsistencies which exist between Chapter 122 and Part 70 so that the EPA may grant full program approval to the commission’s operating permit program. The commission must submit program revisions to EPA no later than June 1, 2001. The revisions that are necessary to obtain full program approval will have an impact on the major sources subject to the program. However, the commission does not believe that this impact will be adverse or material. All of the affected major sources in the state have either already obtained an operating permit or have applications pending. The requirements of this proposal to incorporate preconstruction authorizations into operating permits will begin no later than renewal of the

operating permits. Although this new requirement may be seen as a significant change to the program, the commission believes that most, if not all, of the facilities covered by the preconstruction authorizations are already addressed in operating permits. If the commission fails to submit a program that the EPA can approve by December 1, 2001, EPA must implement 40 CFR Part 71 in the state and the state could face sanctions including loss of highway funds and increased offsets in nonattainment areas.

The proposed rules do not meet any of the four applicability criteria for requiring a regulatory analysis of “major environmental rule” as defined in the Texas Government Code. Texas Government Code, §2001.0225 applies only to a major environmental rule, the result of which is to: 1.) exceed a standard set by federal law, unless the rule is specifically required by state law; 2.) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3.) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4.) adopt a rule solely under the general powers of the agency instead of under a specific state law.

During the 75th Legislative Session, SB 633 amended the Texas Government Code to require agencies to perform a regulatory impact analysis of certain rules. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis (RIA) of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded “based on an assessment of rules adopted

by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application.” The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted proposed rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law. If each rule proposed for implementation of federally required programs, such as Part 70, was considered to be a major environmental rule that exceeds federal law, then every such rule would require the full RIA contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the LBB, the commission believes that the intent of SB 633 was only to require the full RIA for rules that are extraordinary in nature. While the revisions to Chapter 122 may have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA and Part 70.

The TNRCC has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code but left this provision substantially unamended. It is presumed that “when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency’s interpretation.” *Central Power & Light Co. v. Sharp*, 919 S.W.2d 485, 489 (Tex. App.–Austin 1995), *writ denied with per curiam opinion respecting another issue*, 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.*, 798 S.W.2d 353, 357 (Tex. App.–Austin 1990, no writ). *Cf. Humble Oil & Refining Co. v. Calvert*, 414 S.W.2d 172 (Tex. 1967) ; *Sharp v. House of Lloyd, Inc.*, 815 S.W.2d

245 (Tex. 1991); *Southwestern Life Ins. Co. v. Montemayor*, 24 S.W.3d 581 (Tex. App.--Austin 2000, *pet. denied*); and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.*, 563 S.W.2d 916 (Tex. 1978).

These rules are proposed in order to meet the requirements of FCAA, Title V and Part 70. Therefore in addition to not exceeding an express standard set by federal law, this rule does not exceed state requirements, and is not adopted solely under the general powers of the agency because the provisions of the TCAA and Texas Water Code (TWC) provided in the STATUTORY AUTHORITY section of this preamble, provide the commission the authority necessary to implement the federal operating permit program. The rules will achieve their stated purpose by addressing EPA's comments from the interim program approval notice and by making necessary revisions to be consistent with Part 70. The remaining applicability criteria, pertaining to exceeding a delegation agreement or contract between the state and the federal government does not apply. Thus, the commission is not required to conduct a regulatory analysis as provided in Texas Government Code, §2001.0225.

#### TAKINGS IMPACT ASSESSMENT

The commission evaluated this rulemaking action and performed an analysis of whether the proposed rules are subject to Texas Government Code, Chapter 2007. The following is a summary of that analysis. On May 22, 2000, the EPA set a deadline that any program revisions necessary for obtaining full federal operating permit program approval must be submitted to the EPA not later than June 1, 2001, and granted a third extension, extending up to December 1, 2001, for all operating permits program interim approvals (65 FR 32035). The commission's federal operating permit program is an interim-approved program subject to EPA's notice. The commission proposes this rulemaking to resolve inconsistencies which exist

between Chapter 122 and Part 70 so that EPA may grant full program approval to the commission's operating permit program. The commission must submit program revisions to the EPA no later than June 1, 2001. If the commission fails to submit a program that the EPA can approve by December 1, 2001, EPA must implement Part 71 in the state and the state could face sanctions including loss of highway funds and offsets in nonattainment areas.

The purpose of this rulemaking is to address the inconsistencies which exist between Chapter 122 and Part 70 so that the EPA may grant full program approval for the State's operating permit program. The rules will achieve their stated purpose by addressing EPA's comments from the interim program approval notice and by making necessary revisions to be consistent with Part 70. Because the amendments are an action that is reasonably taken to fulfill an obligation mandated by federal law, the amendments meet the exception in Texas Government Code, §2007.003(b)(4). The commission has included elsewhere in this preamble the necessity for the proposed rules. For these reasons the rules do not constitute a takings under Chapter 2007 and do not require additional analysis.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

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

policies of the CMP. The commission has reviewed this rulemaking action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and has determined that this rulemaking action is consistent with the applicable CMP goals and policies. The CMP goal applicable to the proposed rules is 31 TAC §501.12(1). This goal requires the protection, preservation, restoration, and enhancement of the diversity, quality, quantity, functions and values of coastal natural resource areas. The CMP policy applicable to the proposed rules is 31 TAC §501.14(q), concerning policies for specific activities and coastal natural resource areas. Title 31 TAC §501.14(q) requires commission rules under the Texas Health and Safety Code (THSC), Chapter 382, governing emissions of air pollutants, to comply with the regulations in 40 CFR, adopted pursuant to 42 United States Code §§7401 *et seq.*, to protect and enhance air quality in the coastal areas so as to protect coastal natural resource areas and promote public health, safety, and welfare. The proposed rules are necessary in order to meet the provisions of Part 70 so that the commission's operating permit program can obtain full program approval. These amendments are consistent with the previously stated goals and policies of the CMP. The permits issued under Chapter 122 do not authorize the increase in air emissions nor do these permits authorize new air emissions.

Interested persons may submit comments during the public comment period on the consistency of the proposed rules with the CMP goals and policies.

#### EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

This proposal deals exclusively with major sources holding federal operating permits. Owners or operators of these sources should be prepared to amend their permits as discussed previously in this preamble.

#### ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal on February 20, 2001 at 2:00 p.m., Building F, Room 2210, Texas Natural Resource Conservation Commission Complex, located at 12100 Park 35 Circle, Austin, Texas. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

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

#### SUBMITTAL OF COMMENTS

Comments may be submitted to Ms. Patricia Duron, Office of Environmental Policy, Analysis, and Assessment, MC 206, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 2000-043-122-AI. Comments must be received by 5:00 p.m., February 26, 2001. For further information, please contact Rob Abarca at (512) 239-6378 or Beecher Cameron at (512) 239-1495.

#### STATUTORY AUTHORITY

The amendment is proposed under THSC, the TCAA, including §§382.015 - 382.017, which provide for power to enter property; monitoring requirements; examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.032, which provides for appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513 - 382.0515 and §382.0517, which provide the commission authority to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; and to determine administrative completeness of applications; §§382.054 - 382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561 - 382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.061, which provides for delegation of powers and duties under §§382.051 - 382.0563 and §382.059, appeals of executive director decisions and petitions under §382.0563 and appeals under §382.056; and under Texas Water Code (TWC), including §5.103, which provides the commission authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission authority to establish and approve commission policy; §5.122, which provides delegation of

uncontested matters to the executive director; §5.351, which provides for judicial review of commission acts; §5.355, which provides for appeal of district court judgment; and §§7.001 - 7.358, which provide for enforcement.

The proposed amendment implements TCAA, §§382.015 - 382.017, 382.021, 382.022, 382.032, 382.040, 382.041, 382.051, 382.0513 - 382.0515, 382.0517, 382.054 - 382.0543, 382.056, 382.0561 - 382.0564, 382.061, 382.051 - 382.0563, 382.059; and TWC, §§5.103, 5.105, 5.122, 5.351, 5.355, and 7.001 - 7.358.

## CHAPTER 122: FEDERAL OPERATING PERMITS

### SUBCHAPTER A: DEFINITIONS

#### §122.10

##### §122.10. General Definitions.

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

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

(A) - (E) (No change.)

(F) any pollutant subject to a standard promulgated under FCAA, §112 (Hazardous Air Pollutants) or other requirements established under §112, including §112(g), [and] (j) and (r) including any of the following: [However, a pollutant shall not be considered an air pollutant under this chapter solely because it is subject to standards or requirements under §112(r).]

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

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

**(2) Applicable requirement -**

(A) - (E) (No change.)

(F) All of the requirements under Chapter 101, Subchapter H of this title (relating to Emissions Banking and Trading) as they apply to the emission units at a site. [All of the requirements of Chapter 119 of this title (relating to Control of Air Pollution from Carbon Monoxide) as they apply to the emission units at a site.]

(G) (No change.)

(H) All of the requirements under Chapter 106, Subchapter A of this title (relating to Permits by Rule), or Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) and any term or condition of any preconstruction permit. [Any term or

condition of any preconstruction permits issued under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) as necessary to implement the requirements of regulations approved or promulgated through rulemaking under FCAA, Title I, Parts C or D (relating to Prevention of Significant Deterioration of Air Quality or Plan Requirements for Nonattainment Areas).]

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

(i) any [Any] standard or other requirement under FCAA, §111 (Standards [standards] of Performance for New Stationary Sources);

(ii) - (vii) (No change.)

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

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

(x) any increment or visibility requirement under FCAA, Title I, Part [part] C or any NAAQS, but only as it would apply to temporary sources permitted under FCAA, §504(e) (Temporary Sources).

(J) (No change.)

[(K) Any requirements noted in this definition which have been promulgated by the EPA, but have not been adopted by and delegated to the commission are federally enforceable only. These applicable requirements will be designated as federally enforceable only in the permit.]

(3) - (10) (No change.)

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

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

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

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

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

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

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

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

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

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

- (i) coal cleaning plants (with thermal dryers);
- (ii) kraft pulp mills;
- (iii) portland cement plants;
- (iv) primary zinc smelters;
- (v) iron and steel mills;
- (vi) primary aluminum ore reduction plants;
- (vii) primary copper smelters;
- (viii) municipal incinerators capable of charging more than 250 tons of  
refuse per day;
- (ix) hydrofluoric, sulfuric, or nitric acid plants;
- (x) petroleum refineries;
- (xi) lime plants;

- (xii) phosphate rock processing plants;
- (xiii) coke oven batteries;
- (xiv) sulfur recovery plants;
- (xv) carbon black plants (furnace process);
- (xvi) primary lead smelters;
- (xvii) fuel conversion plant;
- (xviii) sintering plants;
- (xix) secondary metal production plants;
- (xx) chemical process plants;
- (xxi) fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units (Btu) per hour heat input;

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

(xxiii) taconite ore processing plants;

(xiv) glass fiber processing plants;

(xxv) charcoal production plants;

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

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

(D) Any site, except those exempted under FCAA, §182(f) (NO<sub>x</sub> Requirements), which, in whole or in part, is a major source under FCAA, Title I, Part D (Plan Requirements for Nonattainment Areas), including the following:

(i) any site with the potential to emit 100 tpy or more of volatile organic compounds (VOC) or oxides of nitrogen (NO<sub>x</sub>) in any ozone nonattainment area classified as "marginal or moderate";

(ii) any site with the potential to emit 50 tpy or more of VOC or NO<sub>x</sub> in any ozone nonattainment area classified as "serious";

(iii) any site with the potential to emit 25 tpy or more of VOC or NO<sub>x</sub> in any ozone nonattainment area classified as "severe";

(iv) any site with the potential to emit ten tpy or more of VOC or NO<sub>x</sub> in any ozone nonattainment area classified as "extreme";

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

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

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

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

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

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

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

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

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

(16) [(15)] **Periodic monitoring case-by-case determination** - A monitoring plan designed by the permit holder and approved by the executive director to satisfy §122.142(c) of this title (relating to Permit Content Requirements).

(17) [(16)] **Periodic monitoring GOP** - A GOP issued under Subchapter F of this chapter which provides monitoring options established by the executive director to satisfy Subchapter G of this chapter.

(18) [(17)] **Permit or federal operating permit** -

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

(B) any GOP, or group of GOPs, issued, renewed, or revised by the executive director under this chapter. The term “permit” refers to a CAM GOP or periodic monitoring GOP only when clearly indicated by the context.

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

(20) [(19)] **Permit application** - An application for an initial permit, permit revision, permit renewal, permit reopening, GOP, or any other similar application as may be required.

(21) [(20)] **Permit holder** - A person who has been issued a permit or granted the authority by the executive director to operate under a GOP.

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

(23) [(22)] **Potential to emit** - The maximum capacity of a stationary source to emit any air pollutant under its physical and operational design or configuration. Any certified registration or preconstruction authorization restricting emissions or any physical or operational limitation on the capacity of a stationary source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the EPA. This term does not alter or affect the use of this term for any other purposes under the FCAA, or the term "capacity factor" as used in acid rain provisions of the FCAA or the acid rain rules.

(24) [(23)] **Preconstruction authorization** - Any authorization to construct or modify an existing facility or facilities under Chapter 106 and Chapter 116 of this title. In this chapter, references to preconstruction authorization will also include the following:

(A) any requirement established under FCAA, §112(g) (Modifications) [after delegation of §112(g) to the commission];

(B) any requirement established under FCAA, §112(j) (Equivalent Emission Limitation by Permit) [after delegation of §112(j) to the commission]; and

(C) where appropriate, any preconstruction authorization under Chapter 120 of this title (relating to Control of Air Pollution from Hazardous Waste or Solid Waste Management Facilities) (as effective until December 1996) or Chapter 121 of this title (relating to Control of Air Pollution from Municipal Solid Waste Management Facilities).

(25) [(24)] **Predictive emission monitoring system (PEMS)** - For purposes of Subchapter H of this chapter, a system that uses process and other parameters as inputs to a computer program or other data reduction system to produce values in terms of the applicable emission limitation or standard.

(26) [(25)] **Proposed permit** - The version of a permit that the executive director forwards to the EPA for a 45-day review period.

(27) [(26)] **Provisional terms and conditions** - Temporary terms and conditions, established by the permit holder for an emission unit affected by a change at a site, or the promulgation or adoption of an applicable requirement or state-only requirement, under which the permit holder is authorized to operate prior to a revision or renewal of a permit or prior to the granting of a new authorization to operate.

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

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

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

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

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

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

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

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

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

(30) [(29)] **Site** - The total of all stationary sources located on one or more contiguous or adjacent properties, which are under common control of the same person (or persons under common control). A research and development (R&D) operation and a collocated manufacturing facility shall be considered a single site if they each have the same two-digit Major Group Standard Industrial Classification (SIC) code (as described in the Standard Industrial Classification Manual, 1987) or the R&D operation is a support facility for the manufacturing facility. [If a research and development operation does not produce products for commercial sale, it may be treated as a separate site from any manufacturing facility with which it is collocated.]

(31) [(30)] **State-only requirement** - Any requirement governing the emission of air pollutants from stationary sources that may be codified in the permit at the discretion of the executive director. State-only requirements shall not include any requirement required under the FCAA or under any applicable requirement.

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

**CHAPTER 122: FEDERAL OPERATING PERMITS**

**SUBCHAPTER B: PERMIT REQUIREMENTS**

**DIVISION 1: GENERAL REQUIREMENTS**

**§122.120**

**STATUTORY AUTHORITY**

The amendment is proposed under THSC, the TCAA, including §§382.015 - 382.017, which provide for power to enter property; monitoring requirements; examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.032, which provides for appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513 - §382.0515 and §382.0517, which provide the commission authority to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; and to determine administrative completeness of applications; §§382.054 - 382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561 - 382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.061, which provides for delegation of powers and duties under §§382.051 - 382.0563 and §382.059, appeals of

executive director decisions and petitions under §382.0563 and appeals under §382.056; and under Texas Water Code (TWC), including §5.103, which provides the commission authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission authority to establish and approve commission policy; §5.122, which provides delegation of uncontested matters to the executive director; §5.351, which provides for judicial review of commission acts; §5.355, which provides for appeal of district court judgment; and §§7.001 - 7.358, which provide for enforcement.

The proposed amendment implements TCAA, §§382.015 - 382.017, 382.021, 382.022, 382.032, 382.040, 382.041, 382.051, 382.0513 - 382.0515, 382.0517, 382.054 - 382.0543, 382.056, 382.0561 - 382.0564, 382.061, 382.051 - 382.0563, 382.059; and TWC, §§5.103, 5.105, 5.122, 5.351, 5.355, and 7.001 - 7.358.

**§122.120. Applicability.**

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

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

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

(A) - (C) (No change.)

(b) Owners and operators of one or more of the following are not subject to the requirements of this chapter:

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

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

**CHAPTER 122: FEDERAL OPERATING PERMITS**

**SUBCHAPTER B: PERMIT REQUIREMENTS**

**DIVISION 3: PERMIT APPLICATION**

**§§122.130 - 122.132, 122.134, 122.136, 122.139, 122.140**

**STATUTORY AUTHORITY**

The amendments are proposed under Texas Health and Safety Code, the TCAA, including §§382.015 - 382.017, which provide for power to enter property; monitoring requirements; examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.032, which provides for appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513 - §382.0515 and §382.0517, which provide the commission authority to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; and to determine administrative completeness of applications; §§382.054 - 382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561 - 382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.061, which provides for delegation of powers and duties under §§382.051 - 382.0563 and §382.059, appeals of

executive director decisions and petitions under §382.0563 and appeals under §382.056; and under Texas Water Code (TWC), including §5.103, which provides the commission authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission authority to establish and approve commission policy; §5.122, which provides delegation of uncontested matters to the executive director; §5.351, which provides for judicial review of commission acts; §5.355, which provides for appeal of district court judgment; and §§7.001 - 7.358, which provide for enforcement.

The proposed amendments implement TCAA, §§382.015 - 382.017, 382.021, 382.022, 382.032, 382.040, 382.041, 382.051, 382.0513 - 382.0515, 382.0517, 382.054 - 382.0543, 382.056, 382.0561 - 382.0564, 382.061, 382.051 - 382.0563, 382.059; and TWC, §§5.103, 5.105, 5.122, 5.351, 5.355, and 7.001 - 7.358.

**§122.130. Initial Application Due Dates.**

[a) Interim operating permit program.]

[(1) Owners or operators of the following sites shall submit initial applications under the interim operating permit program:]

[(A) any site with an affected unit subject to the requirements of the Acid Rain Program;]

[(B) any site with the following primary Standard Industrial Classification (SIC) code (as described in the Standard Industrial Classification Manual, 1987) (for purposes of this subparagraph, each site shall have only one primary SIC code):]

[(i) Petroleum and Natural Gas, 1311;]

[(ii) Natural Gas Liquids, 1321;]

[(iii) Electric Services, 4911;]

[(iv) Natural Gas Transmission, 4922;]

[(v) Natural Gas Transmission and Distribution, 4923; or]

[(vi) Petroleum Bulk Stations and Terminals, 5171.]

[(2) Except as provided in paragraph (3) of this subsection, applications for sites subject to the interim operating permit program shall be submitted by January 25, 1997.]

[(3) If an owner or operator has more than one site listed in paragraph (1)(B) of this subsection, the owner or operator shall submit initial permit applications for no less than 10% of those sites

by January 25, 1997. Applications for the remaining sites shall be submitted by July 25, 1997. This paragraph does not apply to any site with an affected source.]

(a) [(b) Full operating permit program.]

[(1)] Owners or operators of any site subject to the requirements of this chapter on February 1, 1998, [except those identified in subsection (a) of this section,] shall submit abbreviated initial applications by February 1, 1998.

[(2)] The remaining application information for sites with the following primary SIC major groups shall be submitted by July 25, 1998 (for purposes of this section, each site shall have only one primary SIC code):]

[(A) Mining and Quarrying of Nonmetallic Mineral, Except Fuels, 14;]

[(B) Food and Kindred Products, 20;]

[(C) Lumber and Wood Products, Except Furniture, 24;]

[(D) Rubber and Miscellaneous Plastics Products, 30;]

[(E) Stone, Clay, Glass, and Concrete Products, 32;]

[(F) Fabricated Metal Products, Except Machinery and Transportation Equipment,  
34;]

[(G) Motor Freight Transportation and Warehousing, 42; and]

[(H) Automotive Repair, Services, and Parking, 75.]

(3) Except as specified in paragraph (2) of this subsection, the The executive director shall inform the applicant in writing of the deadline for submitting the remaining application information.

(b) [(c) After the effective date of the interim or full operating permit program.] Owners and operators of sites identified in §122.120 of this title (relating to Applicability) that become subject to the requirements of this chapter after February 1, 1998 [interim or full program after the applicable application due dates identified in subsection (a) or (b) of this section], are subject to the following requirements.

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

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

(c) [(d)] Applications submitted under 40 CFR 71 (Federal Operating Permit Programs).

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

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

**§122.131. Phased Permit Detail.**

(a) - (f) (No change.)

(g) Except for those applications received on or before July 22, 2000, no site may qualify for the phased permit detail process.

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

(a) - (b) (No change.)

(c) An applicant may submit an abbreviated initial permit application, containing only the information in this section deemed necessary by the executive director. The abbreviated application shall include at a minimum, a general application form containing identifying information regarding the site and the applicant and a certification by a responsible official. The executive director shall inform the applicant in writing of the deadline for submitting the remaining information[, except where the deadline is specified in §122.130(b)(2) of this title (relating to Initial Application Due Dates)].

(d) (No change.)

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

(1) - (7) (No change.)

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

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

(10) fugitive emissions from an emission unit shall be included in the permit application and the permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source; and

(11) any preconstruction authorizations that are applicable to emission units at the site.

(f) (No change.)

(g) An application is not required to include any information regarding the sources or facilities identified as de minimis under §116.119 of this title (relating to De Minimis Facilities or Sources).

**§122.134. Complete Application.**

(a) - (b) (No change.)

(c) An applicant may submit an abbreviated initial permit application, containing only the information in §122.132 of this title deemed necessary by the executive director. The abbreviated application shall include at a minimum, a general application form containing identifying information regarding the site and the applicant and a certification by a responsible official. The executive director shall

inform the applicant in writing of the deadline for submitting the remaining information[, except where the deadline is specified in §122.130(b)(2) of this title (relating to Initial Application Due Dates)].

**§122.136. Application Deficiencies.**

(a) - (b) (No change.)

(c) An applicant shall provide additional information as necessary to address any applicable requirements or state-only requirements that become applicable to the site after the date it files a complete application but prior to release of the draft permit. [If the site becomes subject to additional applicable requirements or state-only requirements after the application is submitted, the applicant shall submit any information necessary to address those requirements no later than 60 days after becoming subject to the requirements. However, if only an abbreviated application has been submitted, information regarding the newly applicable requirement is not required to be submitted before the executive director requests the remaining application information.]

(d) (No change.)

**§122.139. Application Review Schedule.**

The executive director shall take final action to approve, void, or deny permit applications according to the following schedule.

[(1) Under the interim operating permit program, for those initial applications required to be submitted by January 25, 1997, or July 25, 1997, the executive director shall take final action on at least one-third of those applications annually through July 25, 1999.]

(1) [(2) Under the full operating permit program, for] For those initial applications required to be submitted[, ] by February 1, 1998, the executive director shall take final action on at least one-third of those applications annually.

(2) [(3)] For any permit application containing an early reduction demonstration under FCAA, §112(i)(5) (Early Reduction), the executive director shall take final action no later than nine months after receipt of the complete application.

(3) [(4)] Except as noted in paragraphs (1) and (2) [(1) - (3)] of this section, the executive director shall take final action on an application for an initial permit or permit renewal no later than 18 months after the date on which the executive director deems the application complete.

**§122.140. Representations in Application.**

The only representations in a permit application that become conditions under which a permit holder shall operate are the following:

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

(3) upon the granting of the authorization to operate under a CAM GOP or periodic monitoring GOP, the information specified in §122.714(a) or [and] §122.612 of this title, respectfully, excluding the justification for those requirements; and

(4) (No change.)

**CHAPTER 122: FEDERAL OPERATING PERMITS**

**SUBCHAPTER B: PERMIT REQUIREMENTS**

**DIVISION 4: PERMIT CONTENT**

**§§122.142, 122.143, 122.145, 122.146**

**STATUTORY AUTHORITY**

The amendments are proposed under Texas Health and Safety Code, the TCAA, including §§382.015 - 382.017, which provide for power to enter property; monitoring requirements; examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.032, which provides for appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513 - §382.0515 and §382.0517, which provide the commission authority to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; and to determine administrative completeness of applications; §§382.054 - 382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561 - 382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.061,

which provides for delegation of powers and duties under §§382.051 - 382.0563 and §382.059, appeals of executive director decisions and petitions under §382.0563 and appeals under §382.056; and under Texas Water Code (TWC), including §5.103, which provides the commission authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission authority to establish and approve commission policy; §5.122, which provides delegation of uncontested matters to the executive director; §5.351, which provides for judicial review of commission acts; §5.355, which provides for appeal of district court judgment; and §§7.001 - 7.358, which provide for enforcement.

The proposed amendments implement TCAA, §§382.015 - 382.017, 382.021, 382.022, 382.032, 382.040, 382.041, 382.051, 382.0513 - 382.0515, 382.0517, 382.054 - 382.0543, 382.056, 382.0561 - 382.0564, 382.061, 382.051 - 382.0563, 382.059; and TWC, §§5.103, 5.105, 5.122, 5.351, 5.355, and 7.001 - 7.358.

**§122.142. Permit Content Requirements.**

(a) (No change.)

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

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

(3) Each permit or application for an authorization to operate shall contain any preconstruction authorization that is applicable to emission units at the site.

(c) - (g) (No change.)

**§122.143. General Terms and Conditions.**

Unless otherwise specified in the permit, the following general terms and conditions shall become terms and conditions of each permit.

(1) - (8) (No change.)

[~~(9)~~ If a federally enforceable only applicable requirement is adopted by the commission, the permit holder shall submit an application for an administrative permit revision for the removal of the federally enforceable only designation. The application shall be submitted no later than 12 months after the adoption of the requirement by the commission.]

(9) [(10)] If a state-only requirement is determined by the commission to be an applicable requirement, the permit holder shall submit an application for a significant permit revision for the incorporation of the requirement into the permit as an applicable requirement. The application shall be submitted no later than 12 months after the determination by the commission that the requirement is an applicable requirement.

(10) [(11)] The permit holder shall pay fees to the commission consistent with the fee schedule in §101.27 of this title (relating to Emissions Fees).

(11) [(12)] Each portion of the permit is severable. Permit requirements in unchallenged portions of the permit shall remain valid in the event of a challenge to other portions of the permit.

(12) [(13)] The permit does not convey any property rights of any sort, or any exclusive privilege.

(13) [(14)] A copy of the permit shall be maintained at the location specified in the permit.

(14) [(15)] For general operating permits, a copy of the permit, the enforceable general operating permit application, and the authorization to operate shall be maintained at the location specified in the authorization to operate.

(15) [(16)] Any report or annual compliance certification required by a permit to be submitted to the executive director shall contain a certification in accordance with §122.165 of this title (relating to Certification by a Responsible Official).

(16) [(17)] Representations in acid rain applications and applicability determinations, and the bases for the determinations in general operating permit applications are conditions under which the permit holder shall operate. Representations in general operating permit applications for CAM and periodic

monitoring, as specified in §122.140(3) of this title, are conditions under which the permit holder shall operate.

~~(17)~~ [(18)] No emissions from emission units addressed in the permit shall exceed allowances lawfully held under the acid rain program.

~~(18)~~ [(19)] State-only requirements will not be subject to any of the following requirements of this chapter: public notice, affected state review, notice and comment hearings, EPA review, public petition, recordkeeping, six-month monitoring reporting, six-month deviation reporting, compliance certification, or periodic monitoring.

**§122.145. Reporting Terms and Conditions.**

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

(1) (No change.)

(2) Deviation reports.

(A) - (C) (No change.)

[(D) If a deviation is reported, in writing, under paragraph (3) of this section, the deviation report need only include a reference to the unauthorized emissions, upset or maintenance, and start-up and shutdown report containing details related to the deviation.]

(3) (No change.)

**§122.146. Compliance Certification Terms and Conditions.**

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

(1) (No change.)

(2) The certification shall be submitted to the executive director no later than 30 days after the end of the certification period.

(3) (No change.)

(4) The certification shall be based on at a minimum, the monitoring method (or recordkeeping method, if appropriate) required by the permit to be used to assess compliance. If necessary, the permit holder shall identify any other material information that must be included in the certification to

comply with FCAA, §113(c)(2), which prohibits knowingly making a false certification or omitting material information.

(5) The annual compliance certification shall include or reference the following information:

(A) the identification of each term[,] or condition[,] of the permit for which the permit holder is certifying compliance, [and] the method used for determining the compliance status of each emission unit, and whether such method provides continuous or intermittent data;

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

(D) the identification of all other terms and conditions of the permit for which compliance was not achieved; [.]

(E) the annual compliance certification does not need to include any information regarding the sources or facilities identified as de minimis under §116.119 of this title.

(6) The executive director may request additional information if necessary to determine the compliance status of an emission unit.

**CHAPTER 122: FEDERAL OPERATING PERMITS**

**SUBCHAPTER C: INITIAL PERMIT ISSUANCES, REVISIONS, REOPENINGS, AND  
RENEWALS**

**DIVISION 2: PERMIT REVISIONS**

**§§122.210 - 122.213, 122.215 - 122.219, 122.221, 122.222**

**STATUTORY AUTHORITY**

The amendments and new sections are proposed under Texas Health and Safety Code, the TCAA, including §§382.015 - 382.017, which provide for power to enter property; monitoring requirements; examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.032, which provides for appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513 - §382.0515 and §382.0517, which provide the commission authority to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; and to determine administrative completeness of applications; §§382.054 - 382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561 - 382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating

permits; §382.061, which provides for delegation of powers and duties under §§382.051 - 382.0563 and §382.059, appeals of executive director decisions and petitions under §382.0563 and appeals under §382.056; and under Texas Water Code (TWC), including §5.103, which provides the commission authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission authority to establish and approve commission policy; §5.122, which provides delegation of uncontested matters to the executive director; §5.351, which provides for judicial review of commission acts; §5.355, which provides for appeal of district court judgment; and §§7.001 - 7.358, which provide for enforcement.

The proposed amendments and new sections implements TCAA, §§382.015 - 382.017, 382.021, 382.022, 382.032, 382.040, 382.041, 382.051, 382.0513 - 382.0515, 382.0517, 382.054 - 382.0543, 382.056, 382.0561 - 382.0564, 382.061, 382.051 - 382.0563, 382.059; and TWC, §§5.103, 5.105, 5.122, 5.351, 5.355, and 7.001 - 7.358.

**§122.210. General Requirements for Revisions.**

(a) The permit holder shall submit an application to the executive director for a revision to a permit for those changes at a site which alter or change the applicable requirements contained in the permit. Revision applications shall be submitted as specified in this subchapter [activities at a site which change, add, or remove one or more permit terms or conditions].

[(b) If applicable, the permit holder shall submit an application to the executive director for a revision to a permit to address the following:]

[(1) the adoption of an applicable requirement previously designated as federally enforceable only;]

[(2) the promulgation or adoption of a new applicable requirement;]

[(3) the adoption of a new state-only requirement;]

[(4) a change in a state-only designation; or]

[(5) the revision of a compliance assurance monitoring or periodic monitoring general operating permit.]

(b) [(c)] The executive director shall make a copy of the permit application, the permit, and any required notices accessible to the EPA.

(c) [(d)] Provisional terms and conditions are not eligible for a permit shield.

(d) [(e)] The permit holder may be subject to enforcement action if the change to the permit is later determined not to qualify for the type of permit revision submitted.

(e) [(f)] Changes qualifying as administrative permit revisions may be processed as minor or significant permit revisions at the permit holder's discretion.

(f) [(g)] Changes qualifying as minor permit revisions may be processed as significant permit revisions at the permit holder's discretion.

(g) [(h)] General operating permits and authorizations to operate under general operating permits are not subject to the permit revision requirements of this subchapter, but instead are subject to the requirements of Subchapter F of this chapter (relating to General Operating Permits).

#### **§122.211. Administrative Permit Revisions.**

A change to a permit may qualify as an administrative permit revision if the change satisfies one or more of the following:

(1) (No change.)

(2) identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar administrative change at the site;

(3) [(2)] increases the frequency of monitoring or reporting requirements without changing any existing emission limitations or standards;

(4) [(3)] changes the permit identification of ownership or operational control of a site where the executive director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the old and new permit holder is maintained with the permit;

(5) [(4)] incorporates the requirements from preconstruction authorizations under an EPA-approved program, provided that such a program meets procedural requirements substantially equivalent to those of Subchapters C and D of this chapter that would be applicable to the change if it were subject to review as a permit revision, and compliance requirements substantially equivalent to those contained in §§122.143, 122.145, and 122.146 of this title; [removes a federally enforceable only designation and does not otherwise affect the permit; or]

(6) [(5)] affects or adds a state-only requirement; or

(7) [(6)] is similar to those in paragraphs (1) - (6) [(1) - (5)] of this section and approved by EPA.

**§122.212. Applications for Administrative Permit Revisions.**

(a) An application must include a record of any changes that took place over the previous 12 months that have not already been incorporated into the permit.

[(b)] An application for administrative permit revision must [also] include, at a minimum, the following:

- (1) a description of each change;
- (2) a description of the emission units affected;
- (3) the provisional terms and conditions as defined in §122.10 of this title (relating to General Definitions) that codify the new applicable requirements or state-only requirements;
- (4) a statement that each change qualifies for an administrative permit revision; and
- (5) a certification in accordance with §122.165 of this title (relating to Certification by a Responsible Official).

**§122.213. Procedures for Administrative Permit Revisions.**

(a) If the following requirements are met, changes at a site listed in §122.211 of this title [or required as the result of the adoption of a state-only requirement,] requiring an administrative permit revision may be operated before issuance of the revision:

- (1) the permit holder complies with the following:

[(A) Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);]

(A) [(B)] all applicable requirements;

(B) [(C)] all state-only requirements; and

(C) [(D)] the provisional terms and conditions as defined in §122.10 of this title (relating to General Definitions);

(2) the permit holder records the information required in §122.212(b) of this title (relating to Applications for Administrative Permit Revisions) before the change is operated; and

(3) the permit holder maintains the information required by §122.212(b) of this title with the permit until the permit is revised.

(b) - (c) (No change.)

(d) The permit holder shall submit an application for an administrative [a] permit revision to the executive director no later than 30 days after each permit anniversary.

(e) - (f) (No change.)

**§122.215. Minor Permit Revisions.**

Minor permit revisions include any change that satisfies the following:

- (1) does not violate any applicable requirement;
- (2) does not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;
- (3) does not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;
- (4) does not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include:
  - (A) a federally enforceable emissions cap assumed to avoid classification as a modification under an provision of the FCAA, Title I; and
  - (B) an alternative emissions limit approved pursuant to regulations promulgated under the FCAA, §112(i)(5); and

(5) is not a modification under any provision of FCAA, Title I.

**§122.216. Applications for Minor Permit Revisions.**

[(a) An application must include a record of any changes that took place over the previous 12 months that have not already been incorporated into the permit.]

[(b)] An application for a minor permit revision must [also] include, at a minimum, the following:

- (1) a description of each change;
- (2) a description of the emission units affected;
- (3) the provisional terms and conditions as defined in §122.10 of this title (relating to General Definitions) that codify the new applicable requirements;
- (4) a statement that the change qualifies for a minor permit revision; and
- (5) a certification in accordance with §122.165 of this title (relating to Certification by a Responsible Official).

**§122.217. Procedures for Minor Permit Revisions.**

(a) If the following requirements are met, changes at a site requiring a minor permit revision may be operated before issuance of the revision:

(1) the permit holder complies with the following:

[~~(A)~~ Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);]

~~(A)~~ [~~(B)~~] all applicable requirements;

~~(B)~~ [~~(C)~~] all state-only requirements; and

~~(C)~~ [~~(D)~~] the provisional terms and conditions as defined in §122.10 of this title (relating to General Definitions);

(2) the permit holder submits to the executive director an application [a notice] containing the information required in §122.216 [§122.216(b)] of this title (relating to Applications for Minor Permit Revisions) before the change is operated;

(3) the permit holder maintains the information required by §122.216 [§122.216(b)] of this title with the permit until the permit is revised.

(b) For changes to a permit required as the result of the promulgation or adoption of an applicable requirement or, as appropriate, the revision of a compliance assurance monitoring general operating permit or periodic monitoring general operating permit, the following requirements apply.

(1) The permit holder shall comply with the following:

[(A) Chapter 116 of this title;]

[(A) [(B)] all applicable requirements;

[(B) [(C)] all state-only requirements; and

[(C) [(D)] the provisional terms and conditions as defined in §122.10 of this title.

(2) [The permit holder shall record the information required in §122.216(b)(1) - (4) of this title before the compliance date of the new requirement or effective date of the repealed requirement.] The information in §122.216(1) - (5) [§122.216(b)(1) - (5)] of this title shall be submitted no later than [45 days after] the compliance date of the new requirement or effective date of the repealed requirement, whichever is applicable.

(3) The permit holder shall maintain the information required in §122.216(1) - (4) [§122.216(b)(1) - (4)] of this title with the permit until the permit revision is final [is revised].

(c) - (d) (No change.)

(e) The executive director shall notify the EPA administrator and affected state(s) of the requested permit modification within five working days of receipt of a complete minor revision permit application.

[The permit holder shall submit an application for a permit revision to the executive director no later than 30 days after each permit anniversary.]

(f) A minor permit revision may be issued by the executive director provided the following:

(1) (No change.)

(2) the executive director has received a complete [an] application;

(3) - (4) (No change.)

(g) The executive director shall take final action on the permit revision application no later than 90 days after receipt of an application, or 15 days after the end of the EPA review period, [or no later than 15 days after the resolution of any EPA objection,] whichever is later.

**§122.218. Minor Permit Revision Procedures for Permit Revisions Involving the Use of Economic Incentives, Marketable Permits, and Emissions Trading.**

Notwithstanding §122.215 of this title, minor permit revision procedures may be used for permit revisions involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit revision procedures are explicitly provided for in the Texas state implementation plan or in applicable requirements promulgated by the EPA.

**§122.219. Significant Permit Revisions.**

Significant revision procedures shall be used for changes to the permit at a site that do not qualify as administrative or minor revisions.

**§122.221. Procedures for Significant Permit Revisions.**

(a) (No change.)

(b) A significant permit revision may be issued by the executive director only if all of the following conditions have been satisfied:

[ (1) the change meets the criteria for a significant permit revision; ]

(1) [(2)] the permit holder has submitted a complete [an] application;

(2) [(3)] the conditions of the permit provide for compliance with the requirements of this chapter; and

(3) [(4)] the requirements of this chapter for public notice, affected state review, notice and comment hearing, and EPA review have been satisfied.

(c) (No change.)

**§122.222. Operational Flexibility.**

(a) An owner or operator may make changes at a permitted site without applying for or obtaining a permit revision provided that the following conditions are met:

(1) the changes are not modifications under FCAA, Title I;

(2) the changes are allowed under FCAA, §502(b)(10);

(3) the changes do not exceed the emissions limitation under the permit; and

(4) the owner or operator has obtained any applicable preconstruction authorization.

(b) For changes to the permit which qualify under this section, the owner or operator shall provide the EPA and the executive director written notification. The written notification shall be received by the executive director at least 30 days in advance of the proposed changes unless the executive director approves a shorter period but in no case shall that period be less than seven days.

(c) Written notification shall include the following information:

(1) a description of the change, the date on which the change is proposed to occur, the emissions resulting from the change, and any permit term or condition that is no longer applicable as a result of the change;

(2) certification by a responsible official, consistent with §122.165 of this title, that the proposed change meets the criteria for the use of operational flexibility under this section and a request that such procedures be used.

(d) The owner or operator, the executive director and the EPA shall attach each such notice to their copy of the relevant permit.

(e) Changes that qualify under this section are not subject to the public notice, affected state review, notice and comment hearing, EPA review, and public petition requirements for permit revisions.

(f) Upon satisfying the requirements of this section, the owner or operator may begin operating the change at the expiration of the time period provided for in subsection (b) of this section.

(g) The permit shield described in §122.148 of this title shall not apply to any change made pursuant to this section.

**CHAPTER 122: FEDERAL OPERATING PERMITS**

**SUBCHAPTER C: INITIAL PERMIT ISSUANCES, REVISIONS, REOPENINGS, AND  
RENEWALS**

**DIVISION 2: PERMIT REVISIONS**

**§122.215, §122.219**

**STATUTORY AUTHORITY**

The repeals are proposed under Texas Health and Safety Code, the TCAA, including §§382.015 - 382.017, which provide for power to enter property; monitoring requirements; examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.032, which provides for appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513 - §382.0515 and §382.0517, which provide the commission authority to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; and to determine administrative completeness of applications; §§382.054 - 382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561 - 382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.061,

which provides for delegation of powers and duties under §§382.051 - 382.0563 and §382.059, appeals of executive director decisions and petitions under §382.0563 and appeals under §382.056; and under Texas Water Code (TWC), including §5.103, which provides the commission authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission authority to establish and approve commission policy; §5.122, which provides delegation of uncontested matters to the executive director; §5.351, which provides for judicial review of commission acts; §5.355, which provides for appeal of district court judgment; and §§7.001 - 7.358, which provide for enforcement.

The proposed repeals implement TCAA, §§382.015 - 382.017, 382.021, 382.022, 382.032, 382.040, 382.041, 382.051, 382.0513 - 382.0515, 382.0517, 382.054 - 382.0543, 382.056, 382.0561 - 382.0564, 382.061, 382.051 - 382.0563, 382.059; and TWC, §§5.103, 5.105, 5.122, 5.351, 5.355, and 7.001 - 7.358.

**§122.215. Minor Permit Revisions.**

**§122.219. Significant Permit Revisions.**

**CHAPTER 122: FEDERAL OPERATING PERMITS**

**SUBCHAPTER C: INITIAL PERMIT ISSUANCES, REVISIONS, REOPENINGS, AND RENEWALS**

**DIVISION 3: PERMIT REOPENINGS**

**§122.231**

**STATUTORY AUTHORITY**

The amendment is proposed under Texas Health and Safety Code, the TCAA, including §§382.015 - 382.017, which provide for power to enter property; monitoring requirements; examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.032, which provides for appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513 - §382.0515 and §382.0517, which provide the commission authority to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; and to determine administrative completeness of applications; §§382.054 - 382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561 - 382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.061,

which provides for delegation of powers and duties under §§382.051 - 382.0563 and §382.059, appeals of executive director decisions and petitions under §382.0563 and appeals under §382.056; and under Texas Water Code (TWC), including §5.103, which provides the commission authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission authority to establish and approve commission policy; §5.122, which provides delegation of uncontested matters to the executive director; §5.351, which provides for judicial review of commission acts; §5.355, which provides for appeal of district court judgment; and §§7.001 - 7.358, which provide for enforcement.

The proposed amendment implements TCAA, §§382.015 - 382.017, 382.021, 382.022, 382.032, 382.040, 382.041, 382.051, 382.0513 - 382.0515, 382.0517, 382.054 - 382.0543, 382.056, 382.0561 - 382.0564, 382.061, 382.051 - 382.0563, 382.059; and TWC, §§5.103, 5.105, 5.122, 5.351, 5.355, and 7.001 - 7.358.

**§122.231. Permit Reopenings.**

(a) The executive director shall reopen a permit for cause. Cause shall be limited to one or more of the following:

(1) the promulgation or adoption of a new applicable requirement affecting emission units at the site, unless one of the following applies:

(A) the new requirement is incorporated into a permit which addresses the emission unit subject to the new requirement; [or]

(B) the effective date of the requirement is later than the permit expiration date;

or

(C) the remaining permit term is less than three years.

(2) - (3) (No change.)

(4) the executive director determines that the permit must be revised or terminated to assure compliance with the applicable requirements; or

(5) (No change.)

(b) The following procedures shall apply if EPA initiates a reopening by notifying the executive director in writing that cause, as defined in this section, exists to terminate or revise a permit.

(1) The executive director shall submit a proposed determination regarding the reopening to the EPA no later than 90 days after receipt of the notification. If the EPA extends the period for response by the executive director, the executive director shall submit the proposed determination no later than 180 days after receipt of the notification.

(2) (No change.)

(3) The executive director shall have 90 days from receipt of an EPA objection to resolve the [the end of the EPA review period, or the resolution of any] objection and [, to] take action on the reopening.

(c) Before December 1, 2001, the executive director shall institute proceedings to reopen permits, for which applications were submitted to the executive director prior to the effective date of this section, to incorporate requirements under Chapter 106, Subchapter A, or Chapter 116 of this title or any term or condition of any preconstruction permit. The executive director will reopen these permits no later than renewal of the permit. Such reopenings need not follow full permit issuance procedures nor the notice requirement of §122.231(e) of this title but may instead follow the permit revision procedure in effect under the State's approved Part 70 program for incorporation of minor NSR permits.

(d) [(c)] Except as provided in subsection (c) of this section, reopenings shall be made as soon as possible. Reopenings shall be completed and the permit issued by the executive director not later than 18 months after promulgation or adoption of the applicable requirement.

(e) [(d)] The executive director shall provide a 30-day [30 day's] notice of intent to reopen, unless a shorter notice is authorized by the executive director due to an emergency.

(f) [(e)] Reopenings shall be subject to the requirements of §122.201 of this title (relating to Initial Permit Issuance). These procedures shall affect only those parts of the permit for which cause to reopen exists.

(g) [(f)] The permit holder shall provide any information requested by the executive director to complete the reopening.

**CHAPTER 122: FEDERAL OPERATING PERMITS**

**SUBCHAPTER D: PUBLIC ANNOUNCEMENT, PUBLIC NOTICE, AFFECTED STATE  
REVIEW, NOTICE AND COMMENT HEARING, NOTICE OF PROPOSED FINAL ACTION,  
EPA REVIEW, AND PUBLIC PETITION**

**§§122.320, 122.330, 122.340, 122.350, 122.360**

**STATUTORY AUTHORITY**

The amendments are adopted under Texas Health and Safety Code, the TCAA, including §§382.015 - 382.017, which provide for power to enter property; monitoring requirements; examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.032, which provides for appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513 - §382.0515 and §382.0517, which provide the commission authority to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; and to determine administrative completeness of applications; §§382.054 - 382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561 - 382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.061,

which provides for delegation of powers and duties under §§382.051 - 382.0563 and §382.059, appeals of executive director decisions and petitions under §382.0563 and appeals under §382.056; and under Texas Water Code (TWC), including §5.103, which provides the commission authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission authority to establish and approve commission policy; §5.122, which provides delegation of uncontested matters to the executive director; §5.351, which provides for judicial review of commission acts; §5.355, which provides for appeal of district court judgment; and §§7.001 - 7.358, which provide for enforcement.

The proposed amendments implement TCAA, §§382.015 - 382.017, 382.021, 382.022, 382.032, 382.040, 382.041, 382.051, 382.0513 - 382.0515, 382.0517, 382.054 - 382.0543, 382.056, 382.0561 - 382.0564, 382.061, 382.051 - 382.0563, 382.059; and TWC, §§5.103, 5.105, 5.122, 5.351, 5.355, and 7.001 - 7.358.

**§122.320. Public Notice.**

(a) - (g) (No change.)

(h) At the applicant's expense, a sign shall be placed at the site declaring the filing of an application for a permit and stating the manner in which the executive director may be contacted for further information.

(1) The sign shall be provided by the applicant and shall substantially meet the following requirements.

(A) The sign shall consist of dark lettering on a white background and shall be not smaller than 18 inches by 28 inches and all lettering shall be no less than one and one-half inches in size and block printed capital lettering.

(B) The sign shall be headed by the words "APPLICATION FOR FEDERAL OPERATING PERMIT" [in no less than two-inch boldface block printed capital lettering].

(C) The sign shall include the words "APPLICATION NO." and the number of the permit application [in no less than one-inch boldface block printed capital lettering].

(D) The sign shall include the words "for further information contact" [in no less than 1/2-inch lettering].

(E) The sign shall include the words "TEXAS NATURAL RESOURCE CONSERVATION COMMISSION," and the address of the appropriate commission regional office [in no less than one-inch boldface capital lettering and 3/4-inch boldface lower case lettering].

(F) The sign shall include the phone number of the appropriate commission office [in no less than two-inch boldface numbers].

(G) The sign shall include the name of the company applying for the permit.

(2) - (4) (No change.)

(i) - (m) (No change.)

**§122.330. Affected State Review.**

(a) (No change.)

(b) An affected state may be New Mexico, Oklahoma, Kansas, Colorado, Arkansas, or Louisiana if either of the following criteria are satisfied:

(1) The [the] state is contiguous to Texas and the state's air quality may be affected by the issuance or denial of a federal operating permit, revision, or renewal; or

(2) The [that] state is within 50 miles of the site or proposed site.

(c) - (g) (No change.)

**§122.340. Notice And Comment Hearing.**

(a) - (e) (No change.)

(f) The applicant shall submit a copy of the notice of hearing and date of publication to the executive director and all local air pollution control agencies with jurisdiction in the county in which the site is located.

(g) [(f)] At the executive director's discretion, the hearing notice may be combined with the notice of the draft permit required by this chapter.

(h) [(g)] Any person, including the applicant, may submit oral or written statements and data concerning the draft permit.

(1) Reasonable time limits may be set for oral statements, and the submission of statements in writing may be required.

(2) The period for submitting written comments is automatically extended to the close of any hearing.

(3) At the hearing, the period for submitting written comments may be extended beyond the close of the hearing.

(i) [(h)] A tape recording or written transcript of the hearing must be made available to the public.

(j) [(i)] Any person, including the applicant, who believes that any condition of the draft permit is inappropriate or that the preliminary decision to issue or deny the permit is inappropriate, shall raise all reasonably ascertainable issues and submit all reasonably available arguments supporting that position by the end of the public comment period.

(k) [(j)] Any supporting materials for comments submitted under subsection (j) [(i)] of this section must be included in full and may not be incorporated by reference, unless the materials are one of the following:

- (1) already part of the administrative record in the same proceedings;
- (2) state or federal statutes and regulations;
- (3) EPA documents of general applicability; or
- (4) other generally available reference materials.

(l) [(k)] The executive director shall keep a record of all comments received and issues raised in the hearing. This record is available to the public.

(m) [(l)] The draft permit may be changed based on comments pertaining to whether the permit provides for compliance with the requirements of this chapter.

(n) [(m)] The executive director shall respond to comments consistent with §122.345 of this title (relating to Notice of Proposed Final Action).

**§122.350. EPA Review.**

(a) (No change.)

(b) The executive director shall submit the proposed permit to the EPA.

(1) For initial issuances, significant permit revisions, reopenings, and renewals the proposed permit shall be submitted to the EPA. At the discretion of the executive director, the procedural requirements of §122.320 of this title (relating to Public Notice), §122.322 of this title (relating to Bilingual Notice), and the requirements for EPA Review under this section may run concurrently [after the end of the public comment period].

(2) - (3) (No change.)

(c) - (e) (No change.)

**§122.360. Public Petition.**

(a) - (b) (No change.)

(c) The petition must be filed with the EPA within 60 days after the expiration of EPA's 45-day review period. For general operating permits, the petition must be filed no later than 60 days after issuance of the general operating permit by the executive director.

(d) - (h) (No change.)

## **CHAPTER 122: FEDERAL OPERATING PERMITS**

### **SUBCHAPTER G: PERIODIC MONITORING**

#### **§122.608**

#### **STATUTORY AUTHORITY**

The amendment is proposed under Texas Health and Safety Code, the TCAA, including §§382.015 - 382.017, which provide for power to enter property; monitoring requirements; examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.032, which provides for appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513 - 382.0515 and §382.0517, which provide the commission authority to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; and to determine administrative completeness of applications; §§382.054 - 382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561 - 382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.061, which provides for delegation of powers and duties under §§382.051 - 382.0563 and §382.059, appeals of

executive director decisions and petitions under §382.0563 and appeals under §382.056; and under Texas Water Code (TWC), including §5.103, which provides the commission authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission authority to establish and approve commission policy; §5.122, which provides delegation of uncontested matters to the executive director; §5.351, which provides for judicial review of commission acts; §5.355, which provides for appeal of district court judgment; and §§7.001 - 7.358, which provide for enforcement.

The proposed amendment implements TCAA, §§382.015 - 382.017, 382.021, 382.022, 382.032, 382.040, 382.041, 382.051, 382.0513 - 382.0515, 382.0517, 382.054 - 382.0543, 382.056, 382.0561 - 382.0564, 382.061, 382.051 - 382.0563, 382.059; and TWC, §§5.103, 5.105, 5.122, 5.351, 5.355, and 7.001 - 7.358.

**§122.608. Procedures for Incorporating Periodic Monitoring Requirements.**

(a) - (d) (No change.)

(e) After periodic monitoring [CAM] requirements are incorporated into a permit or a new authorization to operate under a periodic monitoring [CAM] GOP is granted, subsequent revisions to periodic monitoring requirements shall be governed by the requirements of Subchapter C of this chapter (relating to Initial Permit Issuances, Revisions, Reopenings, and Renewals) or Subchapter F of this chapter, as appropriate. However, changes in deviation limits, other than changes required as the result of the

promulgation or adoption of applicable requirement, shall not be operated before the permit or authorization to operate under a general operating permit is revised.

**CHAPTER 122: FEDERAL OPERATING PERMITS**

**SUBCHAPTER H: COMPLIANCE ASSURANCE MONITORING**

**§122.706, TAC § 122.708**

**STATUTORY AUTHORITY**

The amendments are proposed under Texas Health and Safety Code, the TCAA, including §§382.015 - 382.017, which provide for power to enter property; monitoring requirements; examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §382.032, which provides for appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513 - §382.0515 and §382.0517, which provide the commission authority to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; and to determine administrative completeness of applications; §§382.054 - 382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561 - 382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.061,

which provides for delegation of powers and duties under §§382.051 - 382.0563 and §382.059, appeals of executive director decisions and petitions under §382.0563 and appeals under §382.056; and under Texas Water Code (TWC), including §5.103, which provides the commission authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission authority to establish and approve commission policy; §5.122, which provides delegation of uncontested matters to the executive director; §5.351, which provides for judicial review of commission acts; §5.355, which provides for appeal of district court judgment; and §§7.001 - 7.358, which provide for enforcement.

The proposed amendments implement TCAA, §§382.015 - 382.017, 382.021, 382.022, 382.032, 382.040, 382.041, 382.051, 382.0513 - 382.0515, 382.0517, 382.054 - 382.0543, 382.056, 382.0561 - 382.0564, 382.061, 382.051 - 382.0563, 382.059; and TWC, §§5.103, 5.105, 5.122, 5.351, 5.355, and 7.001 - 7.358.

**§122.706. Applications for Compliance Assurance Monitoring.**

(a) For [or] permit holders applying for a CAM GOP, the following requirements apply:

(1) The application shall include at a minimum the following:

(A) - (D) (No change.)

(E) a justification for any deviation limit proposed under subparagraph (D) [paragraph (4)] of this paragraph [subsection] in accordance with paragraph (3) [subsection (c)] of this subsection [section]; and

(F) (No change.)

(2) - (4) (No change.)

(b) (No change.)

**§122.708. Procedures for Incorporating Compliance Assurance Monitoring Requirements.**

(a) (No change.)

(b) For permit holders applying for a CAM GOP, CAM requirements shall be initially incorporated into a permit or GOP application in accordance with paragraph (1) or (2) of this subsection, except as in subsection (c) of this section.

(1) If the permit holder is authorized to operate under a GOP, the following apply:

(A) the permit holder shall submit an application including the information in §122.706 of this title (relating to Applications for Compliance Assurance Monitoring [CAM General Operating Permits]);

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

(2) If the permit holder is authorized under a permit other than a GOP, the following requirements for minor permit revision apply:

(A) (No change.)

(B) the requirements of §122.217(f) and (g) of this title (relating to Procedures for Minor Permit Revisions [Revision]) shall be satisfied.

(c) - (d) (No change.)