

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §116.111, General Application; §116.115, General and Special Conditions; §116.610, Applicability; §116.615, General Conditions; §116.711, Flexible Permit Application; and §116.715, General and Special Conditions. The commission also proposes new §116.176, Use of Mass Cap Allowances for Offsets. These amended and new sections will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

On August 9, 2000 the commission proposed rules, which were published in the August 25, 2000 issue of the *Texas Register* (25 TexReg 8137), that would establish a system of allocation and trading of emission allowances for nitrogen oxides (NO_x) in the Houston/Galveston (HGA) nonattainment area. An allowance would be equal to one ton of NO_x emissions and sources would be required to obtain a sufficient number of allowances to equal or exceed its emissions for a calendar year. The purpose of this system is to limit emissions of individual sources of NO_x in HGA so that a regional maximum, or cap, of emissions is not exceeded. The NO_x emission limitations would apply to existing and new sources. Individual sources may buy or sell allowances, but the total number of allowances in the HGA region may not exceed the predetermined cap.

This proposal would require that applicants for a flexible permit or standard permit in the HGA area acknowledge, in the permit application, the requirement to obtain allowances prior to operation. This proposal also requires that the applicant, prior to commencing operations, identify a source of allowances.

SECTION BY SECTION DISCUSSION

The proposed new §116.111(a)(2)(L) would require permit applicants under Chapter 116, Subchapter B, Division 1, Permit Application, to acknowledge they must obtain allowances to operate.

The proposed new §116.115(b)(2)(C)(iii) would add language to the general conditions of New Source Review (NSR) permits, specifying that facilities, groups of facilities, or accounts subject to the proposed Chapter 101, Subchapter H, Division 3, concerning Mass Emissions Cap and Trade Program (25 TexReg 8137), must identify the source of sources of allowances to be used for compliance.

The proposed new §116.176 would allow permit applicants for sources subject to the proposed Chapter 101, Subchapter H, Division 3, concerning Mass Emissions Cap and Trade Program (25 TexReg 8137), that are required to submit NO_x offsets in accordance with §116.150, New Major Source or Major Modification in Ozone Nonattainment Areas, to use allowances to meet the correlating portion of the emission offsets.

The proposed new §116.610(a)(6) would require permit applicants under Chapter 116, Subchapter F, Standard Permits, to acknowledge they must obtain allowances to operate.

The proposed new §116.615(5)(C) would add language to the general conditions of standard permits specifying that facilities, groups of facilities or accounts subject to the proposed Chapter 101, Subchapter H, Division 3, concerning Mass Emissions Cap and Trade Program (25 TexReg 8137) must identify the source or sources of allowances to be used for compliance.

The proposed new §116.711(12) would require permit applicants under Chapter 116, Subchapter G, Flexible Permits, to acknowledge that they must obtain allowances to operate.

The proposed new §116.715(c)(3)(C) would add language to the general conditions of flexible permits specifying that facilities, groups of facilities, or accounts subject to the proposed Chapter 101, Subchapter H, Division 3, concerning Mass Emissions Cap and Trade Program (25 TexReg 8137) must identify the source or sources of allowances to be utilized for compliance.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, determined that for each year of the first five-year period the proposed amendments are in effect beginning January 1, 2002, there may be positive fiscal implications which are not anticipated to be significant for units of state or local government which emit ten tons of NO_x or more per year as a result of administration or enforcement of the proposed amendments. There would be no fiscal implications to units of state and local government that do not emit more than ten tons of NO_x per year.

The proposed amendments are intended to achieve administrative consistency with concurrently proposed amendments by requiring a new or modified NO_x sources seeking flexible, standard, or general permits in the HGA ozone nonattainment area to acknowledge, in the permit application, the requirement to obtain emission allowances and to identify the source of the allowances, prior to commencing operations. Additionally, the proposed amendments would allow a new or modified NO_x

source that is required to submit NO_x offsets, to use allowances to meet the correlating portion of the emission offsets.

In the rulemaking approved on August 9, 2000 (25 TexReg 8137), the commission proposed a mass emissions cap and trade program for the HGA area. The proposed mass emissions cap and trade program would implement and manage a mandatory annual NO_x emission cap, phased-in between January 1, 2002 to January 1, 2005, on all existing and new stationary sources located in the HGA area, which consists of: Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties. The NO_x emission cap affects sources or groups of sources in the HGA area that have the capacity to emit ten tons of NO_x or more per year and requires affected new or modified sources to obtain allowances (NO_x emissions in tons) which the source would be allowed to emit during the calendar year. The NO_x source would only be allowed to exceed the emission cap by obtaining surplus allowances from other sources. Additionally, the amendments also allow the use of allowances to satisfy the correlating portion of the emission offsets required for federal nonattainment NSR requirements. Offsets are emission reductions from other sources that counteract the increase releases from the new or modified projects.

Since the proposed amendments do not add additional regulatory requirements that have not already been proposed, the commission estimates there will be no additional costs to units of state and local government as a result of implementing the proposed amendments other than the cost to purchase and trade allowances, which was estimated to be approximately \$500 - \$5,000 per allowance (ton).

Although the total number of emission sources owned or operated by units of state and local

government is unknown, there are approximately 6,000 emission sources in the HGA that may be affected by the proposed rulemaking. The allowance trading provision of the mass emissions cap and trade program is intended to provide flexibility for regulated NO_x sources and potential cost savings in planning and determining the most economical mix of the application of emission control technology with the purchase of other NO_x source's surplus allowances to meet emission reduction requirements. Additionally, NO_x sources that remain within their allowances may receive additional revenue through the sale of surplus allowances to other emission sources.

PUBLIC BENEFIT AND COSTS

Mr. Davis also determined for each of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of implementing the proposed amendments will be that new or modified facilities subject to the emissions cap and trade program will be required to identify the source of allowances prior to commencing operations and operate within the established NO_x emissions cap, which is intended to reduce overall NO_x emissions for the HGA area.

The proposed amendments are intended to achieve administrative consistency with the proposed mass emissions cap and trade program by requiring new or modified NO_x sources seeking flexible, standard, or general permits, that meet the minimum emission capacity requirements of the mass emissions cap and trade program, to acknowledge the requirement to obtain sufficient allowances to offset their actual NO_x emissions and identify the source of the allowances, prior to commencing operations.

Additionally, the amendments also allow the use of allowances to satisfy the correlating portion of the emission offsets required for federal nonattainment NSR requirements.

Since the proposed amendments do not add additional regulatory requirements that have not already been proposed, the commission estimates there will be no additional costs to individuals and businesses as a result of implementing the proposed amendments other than the cost to purchase and trade allowances, which was estimated to be approximately \$500 - \$5,000 per allowance (ton). Although the total number of emission sources owned or operated by individuals and businesses is unknown, it is anticipated that the majority of the approximately 6,000 emission sources operating in the HGA will be owned and operated by individuals and businesses. The allowance trading provision of the mass emissions cap and trade program is intended to provide flexibility for regulated NO_x sources and potential cost savings in planning and determining the most economical mix of the application of emission control technology with the purchase of other NO_x source's surplus allowances to meet emission reduction requirements. Additionally, NO_x sources that remain within their allowances may receive additional revenue through the sale of surplus allowances to other emission sources.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse economic effects are anticipated to any small or micro-business as a result of the implementation of the proposed amendments. The proposed amendments would require new or modified NO_x sources to identify the source of the allowances, prior to commencing operations.

Additionally, the amendments also allow the use of allowances to satisfy the correlating portion of the emission offsets required for federal nonattainment NSR requirements.

The amendments proposed in this rulemaking are intended to achieve administrative consistency with the proposed mass emissions cap and trade program by requiring new or modified NO_x sources, seeking

flexible, standard, or general permits, that meet the minimum emission capacity requirements of the mass emissions cap and trade program, to acknowledge the requirement to obtain sufficient allowances to offset their actual NO_x emissions and identify the source of the allowances, prior to commencing operations. Additionally, the amendments also allow the use of allowances to satisfy the correlating portion of the emission offsets required for federal nonattainment NSR requirements.

Since the proposed amendments do not add additional regulatory requirements that have not already been proposed, the commission estimates there will be no additional costs to small or micro-businesses as a result of implementing the proposed amendments other than the cost to purchase and trade allowances, which was estimated to be approximately \$500 - \$5,000 per allowance (ton). Although the total number of emission sources owned or operated by small or micro-businesses is unknown, there are approximately 6,000 emission sources in the HGA that may be affected by the proposed rulemaking. The allowance trading provision of the mass emissions cap and trade program is intended to provide flexibility for regulated NO_x sources and potential cost savings in planning and determining the most economical mix of the application of emission control technology with the purchase of other NO_x source's surplus allowances to meet emission reduction requirements. Additionally, NO_x sources that remain within their allowances may receive additional revenue through the sale of surplus allowances to other emission sources.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225. The commission determined that these proposed amendments to Chapter 116 do not meet the definition of a "major environmental rule" as defined in Texas

Government Code, §2001.0225. "Major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The commission is proposing these amendments to achieve administrative consistency with proposed amendments to Chapter 101, (25 TexReg 8137). The proposed Chapter 101 amendments (25 TexReg 8137) would require sources or groups of sources in the HGA area, which have the capacity to emit NO_x in amounts greater than or equal to ten tons per year, to hold sufficient allowances to offset their actual NO_x emissions under a cap and trade program. These proposed amendments would require an applicant subject to Chapter 101, Subchapter H, Division 3 to acknowledge that they are required to obtain allowances to comply with the cap and trade program to operate and that they must identify a source or sources of allowances prior to operation. In addition, the proposed amendments to Chapter 116 would allow applicants of new major sources and major modifications to use allowances for the correlating portion of any offsets required under §116.150, New Major Source or Major Modification in Ozone Nonattainment Areas. These amended sections would state that applicants of new or modified sources in HGA are to comply with Chapter 101, Subchapter H, Division 3. These proposed sections do not expand the currently proposed cap and trade program for the HGA area. The proposed amendments to Chapter 116 do not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state; therefore, these amended sections do not constitute a major environmental rule. In addition, Texas Government Code, §2001.0225, only applies to a major environmental rule, the result of which is to: 1.) exceed a standard set by federal law, unless the rule is specifically required by

state law; 2.) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3.) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4.) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking is not subject to the regulatory analysis provisions of §2001.0225(b), because the proposed rules do not meet any of the four applicability requirements. Specifically, the emission banking and trading requirements within this proposal were developed in order to meet the ozone national ambient air quality standard (NAAQS) set by the EPA under the Federal Clean Air Act (FCAA), §109 (42 United States Code (USC), §7409), and therefore meet a federal requirement. Provisions of 42 USC, §7410, require states to adopt a SIP which provides for “implementation, maintenance, and enforcement” of the primary NAAQS in each air quality control region of the state. While §7410 does not require specific programs, methods, or reductions in order to meet the standard, state SIPs must include “enforceable emission limitations and other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter,” (meaning Chapter 85, Air Pollution Prevention and Control). It is true that 42 USC does require some specific measures for SIP purposes, like the inspection and maintenance program, but those programs are the exception, not the rule, in the SIP structure of 42 USC. The provisions of 42 USC recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public, to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though 42 USC allows states to develop their own programs, this

flexibility does not relieve a state from developing a program that meets the requirements of §7410.

Thus, while specific measures are not generally required, the emission reductions are required. States are not free to ignore the requirements of §7410 and must develop programs to assure that the nonattainment areas of the state will be brought into attainment on schedule.

The requirement to provide a fiscal analysis of proposed regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th Legislative Session, 1999. 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. As previously discussed, 42 USC does not require specific programs, methods, or reductions in order to meet the NAAQS; thus, states must develop programs for each nonattainment area to ensure that area will meet the attainment deadlines. Because of the ongoing need to address nonattainment issues, the commission routinely proposes and adopts SIP rules. The commission bases these actions on the presumption that the legislature understands this federal scheme. If each rule proposed for inclusion in

the SIP was considered to be a major environmental rule that exceeds federal law, then every SIP 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. It is a rule of statutory interpretation that 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 SIP rules will have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA. For these reasons, rules proposed for inclusion in the SIP fall under the exception in Texas Government Code, §2001.0225(a), because they are required by federal law. The commission performed photochemical grid modeling which predicts that NO_x emission reductions, such as those required by these rules, will result in reductions in ozone formation in the HGA ozone nonattainment area. This rulemaking does not exceed an express requirement of state law. This rulemaking is intended to obtain NO_x emission reductions which will result in reductions in ozone formation in the HGA ozone nonattainment area and help bring HGA into compliance with the air quality standards established under federal law as NAAQS for ozone. The rulemaking does not exceed a standard set by federal law, exceed an express requirement of state law (unless specifically required by federal law), or exceed a requirement of a delegation agreement. The rulemaking was not developed solely under the general powers of the agency, but was specifically developed to meet the NAAQS established under federal law and authorized under Texas Clean Air Act (TCAA), §§382.011, 382.012, and 382.017 as well as under 42 USC, §7410(a)(2)(A).

The commission invites public comment on the draft RIA.

TAKINGS IMPACT ASSESSMENT

The commission completed a takings impact assessment for the proposed rules. The following is a summary of that assessment. These amendments are proposed as part of a strategy to reduce and permanently cap emissions of NO_x to a level which would allow the HGA nonattainment area to attain the NAAQS for ozone. Promulgation and enforcement of the rules will not burden private real property. The proposed amendments do not affect private property in a manner which restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Additionally, the allowances that are the subject of these rules are not property rights. Consequently, these proposed amendments do not meet the definition of a takings under Texas Government Code, §2007.002(5). Although the proposed rule revisions do not directly prevent a nuisance or prevent an immediate threat to life or property, they do prevent a real and substantial threat to public health and safety, and partially fulfill a federal mandate under the USC, §7410. Specifically, the emission limitations and control requirements within this proposal were developed in order to meet the ozone NAAQS set by the EPA under the USC, §7409. States are primarily responsible for ensuring attainment and maintenance of the NAAQS once the EPA has established them. Under the USC, §7410 and related provisions, states must submit, for approval by the EPA, SIPs that provide for the attainment and maintenance of NAAQS through control programs directed to sources of the pollutants involved. Therefore, the purpose of the rule proposal is to implement a NO_x strategy which is necessary for the HGA area to meet the air quality standards established under federal law as NAAQS. Consequently, the exemption which applies to these proposed rules is that of an action reasonably taken

to fulfill an obligation mandated by federal law. Therefore, these proposed revisions will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined the proposed rulemaking relates to an action or actions subject to the Texas Coastal Management Plan (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resource 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 §505.11(b)(2) and 30 TAC §281.45(a)(3), 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 reviewed this action for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined the proposed rules are consistent with the applicable CMP goal expressed in 31 TAC §501.12(1) of protecting and preserving the quality and values of coastal natural resource areas, and the policy in 31 TAC §501.14(q), which requires the commission protect air quality in coastal areas. The proposed amendments would state that applicants for permits of new or modified sources in HGA must comply with Chapter 101, Subchapter H, Division 3. These proposed amendments do not authorize any new NO_x air emissions. Interested persons may submit comments on the consistency of the proposed rules with the CMP during the public comment period.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

The proposed amendments to §§116.111, 116.115, 116.610, 116.615, 116.711, and 116.715 are not considered applicable requirements under 30 TAC Chapter 122, thus these changes would not require revisions to the affected sources operating permit. The proposed new §116.176 is considered an applicable requirement under 30 TAC Chapter 122, thus owners or operators subject to the Federal Operating Permits Program must, consistent with the revision process in Chapter 122, revise their operating permit to include the proposed new §116.176 requirements for each emission unit affected by the revisions to §116.176 at their site.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Houston on November 16, 2000 at 2:00 p.m. at the City of Houston Pollution Control Building Auditorium, located at 7411 Park Place Boulevard. 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. Lola Brown, 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 2000-047-116-AI. Comments must be received by 5:00 p.m., November 20, 2000. For further information, please contact Matthew R. Baker at (512) 239-1091 or Beecher Cameron at (512) 239-1495.

STATUTORY AUTHORITY

The amendments are proposed under the Texas Health and Safety Code, TCAA, §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to develop a plan for control of the state's air; §382.017, which provides the commission the authority to adopt rules consistent with the policy and purposes of the TCAA; and USC, §7410(a)(2)(A), which requires SIPs to include enforceable emission limitations and other control measures or techniques, including economic incentives such as fees, marketable permits, and auction of emission rights.

The proposed amendments implement TCAA, §382.011, General Powers and Duties; §382.012, State Air Control Plan; and §382.017, Rules.

**CHAPTER 116: CONTROL OF AIR POLLUTION BY PERMITS FOR NEW
CONSTRUCTION OR MODIFICATION**

SUBCHAPTER B: NEW SOURCE REVIEW PERMITS

DIVISION 1: PERMIT APPLICATION

§116.111, §116.115

§116.111. General Application.

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

(1) (No change.)

(2) information which demonstrates that all of the following are met.

(A) - (K) (No change.)

(L) Mass cap and trade allowances. If subject to Chapter 101, Subchapter H, Division 3, of this title (relating to Mass Emissions Cap and Trade Program), the proposed facility, group of facilities, or account must obtain allowances to operate.

(b) (No change.)

§116.115. General and Special Conditions.

(a) (No change.)

(b) General conditions. Holders of permits, special permits, standard permits, and special exemptions shall comply with the following;

(1) (No change.)

(2) the following general conditions if the permit or amendment is issued or amended on or after August 16, 1994, regardless of whether they are specifically stated within the permit document.

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

(C) Start-up notification.

(i) - (ii) (No change.)

(iii) Prior to operation of the facilities authorized by the permit, the permit holder shall identify to the Office of Permitting, Remediation, and Registration the source or

sources of allowances to be utilized for compliance with Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program).

(D) - (I) (No change.)

(c) (No change.)

SUBCHAPTER B: NEW SOURCE REVIEW PERMITS

DIVISION 7: EMISSION REDUCTIONS: OFFSETS

§116.176

STATUTORY AUTHORITY

The new section is proposed under the Texas Health and Safety Code, TCAA, §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to develop a plan for control of the state's air; §382.017, which provides the commission the authority to adopt rules consistent with the policy and purposes of the TCAA; and USC, §7410(a)(2)(A), which requires SIPs to include enforceable emission limitations and other control measures or techniques, including economic incentives such as fees, marketable permits, and auction of emission rights.

The new section implements TCAA, §382.011, General Powers and Duties; §382.012, State Air Control Plan; and §382.017, Rules.

§116.176. Use of Mass Cap Allowances for Offsets.

Any allowances required to comply with the mass emission cap under Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program) may be used to meet the correlating portion of the emission offset requirements needed to comply with §116.150 of this title (relating to New Major Source or Major Modification in Ozone Nonattainment Areas).

SUBCHAPTER F: STANDARD PERMITS

§116.610, §116.615

STATUTORY AUTHORITY

The amendments are proposed under the Texas Health and Safety Code, TCAA, §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to develop a plan for control of the state's air; §382.017, which provides the commission the authority to adopt rules consistent with the policy and purposes of the TCAA; and USC, §7410(a)(2)(A), which requires SIPs to include enforceable emission limitations and other control measures or techniques, including economic incentives such as fees, marketable permits, and auction of emission rights.

The proposed amendments implement TCAA, §382.011, General Powers and Duties; §382.012, State Air Control Plan; and §382.017, Rules.

§116.610. Applicability.

(a) Under the TCAA, §382.051, a project which meets the requirements for a standard permit listed in this subchapter or issued by the commission is hereby entitled to the standard permit, provided the following conditions listed in this section are met. For the purposes of this subchapter, project means the construction or modification of a facility or a group of facilities submitted under the same registration:

(1) - (4) (No change.)

(5) the proposed project must comply with the applicable maximum achievable control technology standards as listed under 40 CFR Part 63, promulgated by the EPA under FCAA, §112 or as listed under Chapter 113, Subchapter C of this title (relating to National Emissions Standards for Hazardous Air Pollutants for Source Categories (FCAA, §112, 40 CFR 63)); and [.]

(6) If subject to Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program) the proposed facility, group of facilities, or account must obtain allocations to operate.

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

§116.615. General Conditions.

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

(1) - (4) (No change.)

(5) Start-up notification.

(A) The appropriate air program regional office of the commission and any other air pollution control program having jurisdiction shall be notified prior to the commencement of operations of the facilities authorized by a standard permit in such a manner that a representative of the executive director may be present.

(B) For phased construction, which may involve a series of units commencing operations at different times, the owner or operator of the facility shall provide separate notification for the commencement of operations for each unit.

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

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

(6) - (10) (No change.)

SUBCHAPTER G: FLEXIBLE PERMITS

§116.711, §116.715

STATUTORY AUTHORITY

The amendments are proposed under the Texas Health and Safety Code, TCAA, §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to develop a plan for control of the state's air; §382.017, which provides the commission the authority to adopt rules consistent with the policy and purposes of the TCAA; and USC, §7410(a)(2)(A), which requires SIPs to include enforceable emission limitations and other control measures or techniques, including economic incentives such as fees, marketable permits, and auction of emission rights.

The proposed amendments implement TCAA, §382.011, General Powers and Duties; §382.012, State Air Control Plan; and §382.017, Rules.

§116.711. Flexible Permit Application.

Any application for a new flexible permit or flexible permit amendment must include a completed Form PI-1 General Application. The Form PI-1 must be signed by an authorized representative of the applicant. The Form PI-1 specifies additional support information which must be provided before the application is deemed complete. In order to be granted a flexible permit or flexible

permit amendment, the owner or operator of the proposed facility shall submit information to the commission which demonstrates that all of the following are met.

(1) - (11) (No change.)

(12) Mass cap and trade allocations. If subject to Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program) the proposed facility, group of facilities, or account must obtain allocations to operate.

(13) [(12)] Application content. In addition to any other requirements of this chapter, the applicant shall:

- (A) identify each air contaminant for which an emission cap is desired;
- (B) identify each facility to be included in the flexible permit;
- (C) identify each source of emissions to be included in the flexible permit and for each source of emissions identify the Emission Point Number (EPN) and the air contaminants emitted;
- (D) for each emission cap, identify all associated EPNs and provide emission rate calculations based on the expected maximum capacity and the proposed control technology;

(E) for each individual emission limitation, identify the EPN and provide emission rate calculations based on the expected maximum capacity and the proposed control technology.

(14) [(13)] Proposed control technology and compliance demonstration. The applicant shall specify the control technology proposed for each unit to meet the emission cap and demonstrate compliance with all emission caps at expected maximum production capacity.

§116.715. General and Special Conditions.

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

(c) The following general conditions shall be applicable to every flexible permit.

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

(3) Start-up notification.

(A) The appropriate regional office of the commission and any local program having jurisdiction shall be notified prior to the commencement of operations of the facilities authorized by the permit in such a manner that a representative of the commission may be present.

(B) Phased construction, which may involve a series of facilities commencing operations at different times, shall provide separate notification for the commencement of operations for each facility.

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

(4) - (10) (No change.)

(d) (No change.)