

The Texas Natural Resource Conservation Commission (commission) proposes new §106.8, Recordkeeping; and §106.263, Routine Maintenance, Start-up and Shutdown of Facilities, and Temporary Maintenance Facilities; amendments to §106.181, Small Boilers, Heaters, and Other Combustion Devices; §106.355, Pipeline Metering, Purging, and Maintenance; §106.454, Degreasing Units; and the repeal of §106.263, Repairs and Maintenance. The proposed new §106.8 would be placed in Chapter 106, Subchapter A, General Requirements. Subchapter A would be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The proposed new §106.8 would specify recordkeeping requirements for Chapter 106, Permits by Rule. While considering the implementation of Senate Bill 766 in 2000, the commission received comments from the EPA stating that Chapter 106 should include requirements that a source operating under a permit by rule (PBR) be able to continuously demonstrate compliance with the general requirements for use of a PBR and the specific conditions of the individual PBR under which the source is authorized. Because of these developments and in order to ensure enforceable limits on potential to emit for insignificant facilities, the commission examined its recordkeeping requirements under Chapter 106 and is proposing amendments.

There are two distinct types of PBRs. Many PBRs only list the type of facility and state that it is permitted by rule and have no restrictions other than the general restrictions applicable to all PBRs as contained in §106.4, Requirements for Permitting by Rule. These “one-liners” have no

recordkeeping requirements imposed by this proposal. Other PBRs have specific conditions and may or may not individually require recordkeeping.

Those who claim a PBR should be aware of their compliance status and should have records to demonstrate compliance with the emission limitations and conditions available at the time of an investigation. The commission believes that recordkeeping requirements should be kept to a minimum and avoid duplication. The proposed recordkeeping requirements will be described in detail in the SECTION BY SECTION DISCUSSION, but generally the recordkeeping requirements will be proposed as follows. Facilities authorized under the one-liners will not have new recordkeeping requirements imposed under this proposal. While these facilities are expected to comply with the general restrictions in §106.4, the commission expects that verification of compliance would be intuitively obvious on inspection or could be demonstrated by records otherwise kept for business purposes. Facilities currently required to keep records under a specific PBR would generally be affected only by the record retention requirements of this proposal. Other PBRs have specific construction or operational restrictions but do not contain recordkeeping requirements. It is expected that these facilities should be able to meet the proposed recordkeeping requirements with records kept for normal business purposes such as material use and purchase records.

The second major concept of this proposal concerns the authorization of routine maintenance, start-up, and shutdown emissions under a PBR. Under the current version of §106.263, Repairs and Maintenance, a significant amount of emissions (more than one occurrence of up to 25 tons) may be authorized. This is not consistent with the maintenance reporting and exemption requirements in

§101.7, Maintenance, Start-up and Shutdown Reporting, Recordkeeping, and Operational Requirements and §101.11, Exemptions from Rules and Regulations. Under Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.057, the commission may exempt from permitting certain changes at facilities that will not make a significant contribution of air contaminants to the atmosphere. This proposal would limit the emissions from multiple maintenance, start-up, and shutdown occurrences, as well as from facility operations associated with maintenance activities, by requiring cumulative accounting of emissions on an annual basis to ensure that the emissions are insignificant. This proposal would also limit the use of §106.263 to maintenance, start-up or shutdown activities that result in emissions below the reportable quantity (RQ) as defined in §101.1(82), Definitions. Maintenance, start-up, or shutdown emissions at or above the RQ must either be reported under §101.7 or incorporated into the facility's permit. Other amendments to this chapter are intended to clarify applicability for temporary maintenance facilities.

The proposed amendments to §106.181 would authorize the use of used oil for fuel in small boilers and heaters. The proposed amendments to §106.355 would clarify the authorization of air emissions for certain pipeline construction and operation and establish the relation of the section to the Chapter 101, general air quality rules on maintenance. The proposed amendment to §106.454 would clarify the intended requirements for remote reservoir degreasers.

SECTION BY SECTION DISCUSSION

Subchapter A: General Requirements

The proposed new §106.8 would specify requirements for recordkeeping and compliance demonstrations for all PBRs claimed. The creation and retention of appropriate records showing continuing compliance with PBR requirements has always been a responsibility of the facility owner or operator in order to operate under a PBR. The new section would specify the types of records that would be required to demonstrate compliance with the general conditions of §106.4 and the condition of the individual PBR claimed. This new section will affect all PBR claims, regardless of the date when the owner or operator began using the PBR.

Proposed new §106.8(a) would state that owners or operators of facilities operating under de minimis status as defined in §116.119, De Minimis Facilities or Sources, are not affected by this rule because no authorization is required. The commission does not require records for de minimis sources.

The proposed new section also outlines the requirements for two types of PBRs in §106.8(b) and (c), those referred to as “one-liners” (including all of Chapter 106, Subchapter C, Domestic and Comfort Heating and Cooling) and those which have specific conditions, respectively. One-liners are those PBRs which only name the type of facility, designate it as permitted by rule, and impose no other conditions in the PBR itself. Owners or operators of facilities authorized by one-liners would not be required to maintain ongoing compliance records but only collect and present information when individually requested by the executive director. Compliance with all historical PBRs which meet the one-liner criteria would be verified in the same way. The claimant would only need to provide

information, such as business records, to demonstrate compliance with §106.4. All historical PBRs can be found on the commission's website.

The commission has determined the following current sections of Chapter 106 meet the one-liner criteria and are referenced as Exhibit A: 1) Subchapter C, Domestic and Comfort Heating and Cooling; §106.101, Domestic Use Facilities; §106.102, Comfort Heating; and §106.103, Air Conditioning and Ventilation Systems; 2) Subchapter D, Analysis and Testing; §106.121, Hydraulic and Hydrostatic Testing Equipment; §106.122, Bench Scale Laboratory Equipment; §106.123, Vacuum-producing Devices for Laboratory Use; 3) Subchapter F, Animal Confinement; §106.163, Race Tracks, Zoos, and Animal Shelters; 4) Subchapter I, Manufacturing; §106.228, Platen Presses for Laminating; §106.229, Textile Dyeing and Stripping Equipment; 5) Subchapter J, Food Preparation and Processing; §106.242, Food Preparation; §106.244, Ovens, Barbecue Pits, and Cookers; 6) Subchapter K, General; §106.265, Hand-held and Manually Operated Machines; §106.266, Vacuum Cleaning Systems; 7) Subchapter L, Feed, Fiber, and Fertilizer; Division 1, Feed, §106.282, Feed Grinding Facilities; Division 2, Fiber, §106.291, Cotton Gin Stands; Division 3, Fertilizer, §106.301, Aqueous Fertilizer Storage; 8) Subchapter M, Metallurgy; §106.312, Wax Melting and Application; §106.314, Shell Core and Mold Machines; §106.316, Metal Inspection; §106.317, Miscellaneous Metal Equipment; §106.318, Die Casting Machines; 9) Subchapter N, Mixers, Blenders, and Packaging; §106.331, Cosmetics Packaging and Pharmaceutical Packaging and Coating; 10) Subchapter Q, Plastics and Rubber; §106.391, Rubber and Plastic Curing Presses; §106.394, Plastic Compression and Injection Molding; 11) Subchapter R, Service Industries; §106.411, Steam or Dry Cleaning Equipment; §106.412, Fuel Dispensing; §106.413, Bond Lining to Brake Shoes; §106.414, Packaging Lubes and

Greases; §106.415, Laundry Dryers; §106.419, Photographic Process Equipment; 12) Subchapter S, Surface Coating; §106.431, Milling and Grinding of Coatings and Molding Compounds; §106.434, Powder Coating Facility; 13) Subchapter T, Surface Preparation; §106.451, Wet Blast Cleaning; 14) Subchapter U, Tanks, Storage, and Loading; §106.471, Storage or Holding of Dry Natural Gas; and 15) Subchapter X, Waste Processing and Remediation; §106.531, Sewage Treatment Facility.

Owners or operators of all other facilities which are constructed, modified, or operated under a PBR would be required to maintain records to demonstrate that the facility meets the conditions of §106.4 and the applicable PBR conditions. The form and content of these records would be specified in proposed new §106.8(c)(1) - (5).

Proposed new §106.8(c)(1) would require that the owner or operator of a facility permanently retain a copy of the PBR and general requirements that authorized the facility's construction or changes. The PBR and general requirements of Chapter 106 (previously §116.211, Standard Exemption List) in effect at the time of the original authorization have historically remained in effect as long as the facility is in existence and is not reconstructed or changed. By keeping a copy of the PBR and general requirements in effect, both the commission and the claimant understand any conditions and restrictions which may apply to the facility. The commission maintains historical and current copies of all PBRs and general requirements on its web site to assist the regulated community in finding the appropriate claim. Copies are available at http://tnrcc.state.tx.us/air/nsr_permits/exempt.htm or by contacting the executive director. These historical files also help the regulated community and commission staff in those cases where the actual construction or installation date cannot be determined. In those cases, the commission

would accept a demonstration of compliance with a PBR and general requirements in effect when a clear record of the existence of the facility has been established. The claimant could also choose to demonstrate compliance with any PBR and general requirements in effect after the date a facility was shown to be in existence.

Proposed new §106.8(c)(2) would require claimants to keep sufficient information to demonstrate that the facility meets the requirements of §106.4 or the general conditions in effect at the time of construction or change and meets all the conditions and requirements of the specific PBR claimed including, but not limited to, air contaminant emission type and quantities, equipment or operational specifications, and emission abatement limitations. The information and data would have to be sufficient to demonstrate compliance with all applicable requirements of §106.4. PBRs may contain conditions to ensure emissions from facilities are insignificant in accordance with TCAA, §382.057, Exemption, and §382.05196, Permits by Rule.

Detailed emission calculations are not necessary for demonstrating compliance with all PBRs; therefore, proposed new §106.8 would not require emission calculations for all PBR holders. Records of some operating parameters are sufficient to demonstrate compliance with most PBRs. All PBR holders are encouraged to use records they currently keep (production records, purchase records, etc.) to demonstrate compliance with the emission limitations. Recordkeeping frequency would vary depending upon the specific characteristics of a given facility. Records of applicable operating parameters or emission calculations, whichever is being used, would have to be summarized as often as needed (if at all) to ensure that the owner or operator is aware of and can demonstrate they are within the emission

limitations. The limits are expressed in terms of a rolling 12-month basis. PBR holders would have to factor the 12-month rolling basis into their recordkeeping procedures.

In some cases, the only required calculation would be a one-time calculation to demonstrate a facility is incapable of exceeding the limitations. In this case, the PBR holder would be aware of their compliance status at all times by virtue of the one-time calculation. No monthly or yearly summary would be needed. In other cases, the PBR holder may be able to determine operating limits, such as the total number of operating hours per month and/or production rates that will ensure the facility remains below the emission limits. The owners or operators of these facilities would only need to summarize the relevant operating parameter on a monthly basis. Owners or operators of facilities with more variable operations, such as a batch operation with varying emission rates and operating hours, might need to calculate their emissions on a regular basis.

A PI-7 Permit by Rule Registration Form, with required documentation, and a Permit by Rule General Requirements Checklist could be used by claimants to demonstrate initial compliance with this proposed section.

Other records that would be required under the proposed new §106.8(c)(2) may include information regarding public notice where a site or commission account has more than one facility authorized under a PBR and the combined emissions of these facilities exceed the limitations of §106.4(a)(4). In addition, a record of the date of construction or modification of the PBR facility would demonstrate compliance with §106.4(a)(5). Conditions which cannot change, such as distances from permanently

affixed facilities to any property line at the time of construction, or ambient operating temperatures with no external, reaction, or raw material heating source, would not need to be recorded. However, where equipment could be moved with relative ease, new offsite receptors could be built, or external heat sources are on site, pictorial records (construction drawings, photographs, temperature readings) might be appropriate.

Since mechanisms and documents to address limitations, conditions, and emission requirements vary widely based on the level of detail in each PBR, the commission intends to provide guidance by developing and expanding checklists for all current PBRs. These checklists are intended for use by the commission and facility operators. Operators may also receive compliance assistance from the commission's small business and local government assistance representatives. Checklists and guidance documents would be posted on the commission's web site. These checklists would assist the commission and claimants in identifying which types of records might be used for compliance with the proposed new §106.8(c)(2). To minimize duplication and unnecessary paperwork, the commission will focus on records which may already be maintained by claimants for other business reasons. The type of records generally envisioned include, but are not limited to, production records, operating hours, material purchase or usage notations, and/or emissions calculations. For example, compliance with the emission limits of sulfur dioxide from a boiler firing natural gas could be demonstrated by records of the sulfur content in the fuel gas (provided by the supplier) and the volume of gas fired in the boiler (purchase receipts). Another example would be a surface coating operation under §106.454 which currently requires extensive materials and usage records to be created and summarized over various periods of time.

The commission reviewed all PBRs to determine which claimants would most likely be affected by the requirements of the proposed new §106.8(c)(2). Three distinct categories of current PBRs have been identified by the commission: 1) PBRs which have neither specific conditions nor recordkeeping requirements (referred to as one-liners in Exhibit A); 2) PBRs which contain specific recordkeeping requirements (Exhibit B); and 3) PBRs which contain specific emission, operational, or abatement conditions but no recordkeeping requirements (Exhibit C). Numerous PBRs currently contain recordkeeping requirements, and these operators would be moderately affected by the requirement to demonstrate their compliance with §106.4. In many cases, claimants using these PBRs would only have to retain the records that the individual PBR requires. These PBRs include the following and are referenced as Exhibit B: 1) Subchapter G, Combustion; §106.183, Boilers, Heaters, and Other Combustion Devices; 2) Subchapter I, Manufacturing; §106.224, Aerospace Equipment and Parts Manufacturing; §106.225, Semiconductor Manufacturing; §106.226, Paints, Varnishes, Ink, and Other Coating Manufacturing; and §106.231, Manufacturing, Refinishing, and Restoring Wood Products; 3) Subchapter K, General; §106.261, Facilities (Emission Limitations); §106.263, Repairs and Maintenance; 4) Subchapter O, Oil and Gas; §106.355, Metering, Purging, and Maintenance of Pipelines; 5) Subchapter P, Plant Operations; §106.375, Aqueous Solutions for Electrolytic and Electroless Processes; 6) Subchapter Q, Plastics and Rubber; §106.392, Thermoset Resin Facilities; 7) Subchapter R, Service Industries; §106.417, Ethylene Oxide Sterilizers; §106.418, Printing Presses; 8) Subchapter S, Surface Coating; §106.433, Surface Coat Facility; §106.436, Auto Body Refinishing Facility; 9) Subchapter T, Surface Preparation; §106.452, Dry Abrasive Cleaning; §106.454, Degreasing Units; 10) Subchapter V, Thermal Control Devices; §106.493, Direct Flame Incinerators; §106.494, Pathological Waste Incinerators; and §106.496, Trench Burners; 11) Subchapter W,

Turbines and Engines; §106.512, Stationary Engines and Turbines; and 12) Subchapter X, Waste Processes and Remediation; §106.533, Water and Soil Remediation.

For owners or operators of facilities authorized by PBRs listed in Exhibit B, proposed new §106.8 would require them to retain records for five years and to be able to demonstrate compliance with the limits of §106.4 on a rolling 12-month basis. In most cases, the types of records that are already required by the PBR would satisfy the requirements of proposed new §106.8.

Other PBRs have specific construction or operational restrictions but do not contain recordkeeping requirements. Under proposed new §106.8(c)(2), owners or operators of these facilities would be required to create operational records to demonstrate compliance with individual PBR conditions, as well as the general limitations of §106.4. These PBRs include the following and are referenced as Exhibit C: 1) Subchapter D, Analysis and Testing; §106.124, Pilot Plants; 2) Subchapter E, Aggregate and Pavement; §106.141, Batch Mixers; §106.142, Rock Crushers; §106.143, Wet Sand and Gravel Production; §106.144, Bulk Mineral Handling; §106.145, Bulk Sand Handling; §106.146, Soil Stabilization Plants; §106.147, Asphalt Concrete Plants; §106.148, Material Unloading; §106.149, Sand and Gravel Processing; §106.150, Asphalt Silos; 3) Subchapter F, Animal Confinement; §106.161, Animal Feeding Operations; §106.162, Livestock Auction Facilities; 4) Subchapter G, Combustion; §106.181, Small Boilers, Heaters, and Other Combustion Devices; §106.182, Ceramic Kilns; 5) Subchapter I, Manufacturing; §106.221, Extrusion Presses; §106.223, Saw Mills; §106.227, Soldering, Brazing, Welding; 6) Subchapter J, Food Preparation and Processing; §106.241, Slaughterhouses; §106.243, Smokehouses; §106.245, Ethyl Alcohol Facilities; 7) Subchapter K,

General; §106.262, Facilities (Emission and Distance Limitations) (Previously SE 118); §106.264, Replacements of Facilities; 8) Subchapter L, Feed, Fiber, and Fertilizer; Division 1, Feed, §106.281, Feed Milling; §106.283, Grain Handling, Storage, and Drying; Division 3, Fertilizer, §106.302, Portable Pipe Reactor; 9) Subchapter M, Metallurgy; §106.311, Crucible or Pot Furnace; §106.313, Tumblers for Cleaning or Deburring Metal; §106.315, Sand or Investment Molds; §106.317, Miscellaneous Metal Equipment; §106.319, Foundry Sand Mold Forming Equipment; §106.320, Miscellaneous Metallic Treatment; §106.321, Metal Melting and Holding Furnaces; §106.322, Furnaces To Reclaim Aluminum or Copper; 10) Subchapter N, Mixers, Blenders, and Packaging; §106.332, Chlorine Repackaging; §106.333, Water-based Adhesive Mixers; 11) Subchapter O, Oil and Gas; §106.351, Salt Water Disposal (Petroleum); §106.352, Oil and Gas Production Facilities; §106.353, Temporary Oil and Gas Facilities; §106.354, Iron Sponge Gas Treating Unit; 12) Subchapter P, Plant Operations; §106.371, Cooling Water Units; §106.372, Industrial Gases; §106.373, Refrigeration Systems; §106.374, Lime Slaking Facilities; §106.376, Decorative Chrome Plating; 13) Subchapter Q, Plastics and Rubber; §106.393, Conveyance and Storage of Plastic and Rubber Material; §106.395, Equipment for Mixing Plastic and Rubber (No Solvent); §106.396, Equipment for Mixing Plastic and Rubber (With Solvent); 14) Subchapter R, Service Industries; §106.416, Uranium Recovery Facilities; 15) Subchapter S, Surface Coating; §106.432, Dipping Tanks and Containers; 16) Subchapter T, Surface Preparation; §106.453, Washing and Drying of Glass and Metal (Previously SE 42); 17) Subchapter U, Tanks, Storage, and Loading; §106.472, Organic and Inorganic Liquid Loading and Unloading; §106.473, Organic Liquid Loading and Unloading; §106.474, Hydrochloric Acid Storage; §106.475, Pressurized Tanks or Tanks Vented to a Firebox; §106.476, Pressurized Tanks or Tanks Vented to Control; §106.477, Anhydrous Ammonia Storage; §106.478, Storage Tank and

Change of Service; 18) Subchapter V, Thermal Control Devices; §106.491, Dual Chamber Incinerators; §106.492, Flares; §106.495, Heat Cleaning Devices; 19) Subchapter W, Turbines and Engines; §106.511, Portable and Emergency Engines and Turbines; and 20) Subchapter X, Waste Processing and Remediation; §106.532, Water and Wastewater Treatment; §106.534, Municipal Solid Waste Landfills and Transfer Stations.

For owners or operators of facilities authorized by PBRs listed in Exhibit C, proposed new §106.8 would require them to keep records related to emissions, to retain records for five years, and to be able to demonstrate compliance with the limits of §106.4 on a rolling 12-month basis.

Proposed new §106.8(c)(3) would require that owners or operators maintain records at the facility site unless the facility normally operates unattended, in which case the records must be maintained at the location within the state which controls operations of the facility.

Proposed new §106.8(c)(4) would require that records be made available in a reviewable format at the request of personnel from the commission or any air pollution control program having jurisdiction. This implies no requirement as to the type of media on which the records are retained, and the commission expects that a combination of computer files, strip charts, graphs, drawings, pictures, operator logs, and other paper files (calculations, raw data, assumptions, and summaries) would be used. The commission may require that these records be duplicated when necessary at the facility owner or operator's expense and submitted to the commission upon request. In cases where records are

maintained at a location other than the facility, the commission may require that the records be delivered or mailed at operator's expense to a designated location.

Proposed new §106.8(c)(5) would require that owners or operators of facilities authorized by PBR begin keeping records as required under proposed new §106.8(c)(2) on January 1, 2002. As with all air permits and authorizations issued by the commission, annual emission limits would have to be met on a rolling 12-month basis. Owners or operators would be required to keep records to demonstrate ongoing compliance with this section. A rolling 12-month period means that records must be available to demonstrate compliance with conditions of the individual PBR and §106.4 for any 12-month period within the five-year retention period. Additionally, any data for the partial month of an inspection should be available.

The five-year retention requirement is consistent with federal operating permit requirements and other commission general rules and supercedes any shorter periods noted in specific PBRs. Since new source review actions are applicable requirements for Title V operating permits, the more stringent five-year retention will apply to all major sources, regardless of the two-year retention requirement in §116.115. The five-year retention period will begin on January 1, 2002. The commission is soliciting comments on the five-year retention requirement, especially as it affects small businesses and minor sources, as a part of this notice.

The proposed amendments to §106.181 would revise the title of the section and revise and restructure the text of the rule to clearly state that this PBR applies only to small combustion units burning used oil.

Subchapter K: General

The current §106.263 has historically been used to authorize temporary facilities and a wide variety of maintenance activities. The commission proposes its repeal in order to replace it with a proposed new §106.263 which would establish conditions for routine maintenance, routine start-up and shutdowns, and temporary facilities associated with maintenance to ensure air emissions from these activities and facilities meet the intent of TCAA, §382.057, Exemptions. Many maintenance activities have the potential to emit significant quantities of air contaminants which otherwise should be controlled or eliminated.

Under TCAA, §382.057, the commission may establish rules for “changes within facilities if it is found upon investigation that such changes will not make a significant contribution of air contaminants to the atmosphere.” Proposed new §106.263 could be claimed for insignificant air emissions associated with the types of activities identified in the section. If a facility could not meet the conditions of proposed new §106.263, the owner or operator would be required to either obtain authorization under an air permit or meet the requirements for exemption of unauthorized emissions under §101.11. These mechanisms are used for different circumstances of maintenance, start-up, and shutdown emissions. Emissions which are routine but insignificant (as defined by §106.4 and specific PBR limits) and are not otherwise covered by an air quality permit limit could be authorized under the new §106.263. Significant emissions which are predictable and routine should be included in the appropriate air quality

permit. If total emissions from maintenance, start-up, or shutdown activities could not meet the requirements of the proposed §106.263 and §106.4 and they are not otherwise authorized by a permit, the owner or operator would need to report the emissions under §101.7 and meet the requirements for an exemption under §101.11.

Proposed new §106.263(b) would establish the types of maintenance, start-up and shutdown activities, and temporary maintenance facilities which are excluded from authorization under this PBR. This PBR is not intended to authorize permanent facilities. In addition, the proposed section would not be applicable to facilities which do not have to obtain authorization under Chapter 106, but instead meet the requirements of §116.119 for de minimis facilities. Finally, some activities and temporary maintenance facilities are authorized under other PBRs in Chapter 106. Specifically listed in the rule are several PBRs which the commission has historically viewed as including or addressing maintenance, start-up, or shutdown activity emissions. These PBRs include: §106.231, Manufacturing, Refinishing, and Restoring Wood Products; §106.351, Salt Water Disposal (Petroleum); §106.352, Oil and Gas Production Facilities; §106.355, Metering, Purging, and Maintenance of Pipelines; §106.392, Thermoset Resin Facilities; §106.418, Printing Presses; §106.433, Surface Coat Facilities; §106.435, Classic or Antique Automobile Restoration Facilities; §106.436, Auto Body Refinishing Facility; §106.353, Temporary Oil and Gas Facilities; and §106.512, Stationary Engines and Turbines. If facilities are operating under these designated PBRs, use of the proposed new §106.263 would not be allowed in order to prevent multiple uses of PBRs authorizing maintenance emissions.

Proposed new §106.263(c) would establish the types of maintenance, start-up and shutdown activities, and temporary maintenance facilities which can be authorized under this PBR. This subsection defines routine activities as those which occur at a frequency of at least once per year so as to describe what types of activities are reasonably expected to be part of normal operations. Activities occurring less frequently than this would not be considered by the commission to be part of normal facility operations. If not authorized under either Chapter 106 or Chapter 116, Control of Air Pollution by Permits for New Construction or Modification, these infrequent events should be reported under §101.7. The commission is soliciting comments regarding the definition of “routine” in this section.

Proposed new §106.263(c)(2) would cover maintenance which has the potential to emit air contaminants at existing, permanent facilities. Maintenance and associated start-up and shutdown activities are routine or planned activities which keep a facility at normal operating parameters and are usually preventative in nature. Since maintenance is part of normal operations and, in many cases, facilities and processes usually require shutdown for these activities, additional emissions associated with start-up and shutdown are included in this definition. The proposed definition addresses all aspects of maintaining a facility and includes: 1) cleaning where materials (water, steam, high pressure air, solvent, detergent) are added to begin to clean or restore internal or external surfaces; 2) facility operation in a unique mode to clean (such as firing in a combustion chamber to burn off deposits or pumps which are directed to circulate solvent for restoration); or 3) the addition of lubrication and corrosion protection. The proposed rule also specifies that maintenance does not include enhancements nor construction, installation, or operation of permanent facilities. Enhancements are any physical changes or changes in method of operation with insignificant emissions increases, including changes at

an existing facility that result in improvements in unit capacity/capability beyond previously existing performance levels. These enhancements would be specifically excluded from authorization under this PBR. Potential emissions associated with enhancements and other changes would have to be authorized under a permit or another PBR.

Proposed new §106.263(c)(3) would establish an authorization mechanism for recurring start-ups and shutdowns. Consistent with Chapter 116 policies and guidance, routine start-ups and shutdowns would be authorized under this PBR and are expected to have emissions similar in nature to those during start-up and shutdown for maintenance activities. The commission believes facilities exist in at least one of three states or modes: start-up, normal operation, or shutdown. Start-up is the set of activities and associated emissions that prime and prepare a facility to transition from no production to production at the normal operating range. Normal operation includes the common activities of the facility, including maintenance. Shutdown is the period beginning where the facility is brought below the normal operating range to ceasing operation, and includes the emptying and degassing/depressurization of the equipment. Shutdown ends at the point start-up begins. An upset can occur during any of these states or modes, and emissions resulting from the upset are not intended to be covered in this rule or by a permit and would need to be reported under §101.6, Upset Reporting and Recordkeeping Requirements. The commission is soliciting comments regarding the proposal to authorize routine start-up and shutdown emission in this PBR.

Proposed new §106.263(c)(4) would include the construction and operation of temporary facilities used to perform maintenance work. Several types of temporary maintenance facilities have historically been

registered and authorized under the PBR in the current §106.263. In many cases, emissions from temporary maintenance facilities occur at the same time as other maintenance activities; therefore, keeping these requirements in a single PBR would reduce duplication of records. The proposed new §106.263(c)(4)(A) - (E) would specifically define five types of temporary facilities which would be covered under this rule. These temporary maintenance facilities are included in this proposal because they have been historically authorized by the commission and have a record of insignificant emissions. No other temporary maintenance facilities have been included in this rule, but the commission is soliciting comment on further inclusions.

Proposed new §106.263(c)(4)(A) would include abrasive blasting, surface preparation, and surface coating operations on immovable, fixed structures. Historically, the commission has authorized these maintenance activities under the current §106.263 if the blasting, surface preparation, and coating supplies and equipment are taken to the object fixed in place and there is no practical means of moving the object to a designated area for surface preparation. These fixed objects include, but are not limited to, highway bridges, water towers, and buildings. If an object can be taken to a designated area, then other PBRs such as §106.433, Surface Coat Facility, and §106.452, Dry Abrasive Cleaning, would apply. Proposed new §106.263(c)(4)(B) would cover engines and turbines during testing and repair. Since 1995, the commission has allowed testing of an engine or turbine to be considered part of the maintenance on that unit and authorized emissions associated with testing under the current §106.263. The stationary engines and turbines historically authorized under §106.512, along with their routine maintenance, start-up, and shutdown, would not be covered under the proposed new §106.263. During the next fiscal year, the commission plans to develop a standard permit to cover these facilities. Until a

new PBR or standard permit is adopted which specifically addresses engine and turbine testing, the proposed authorization as a temporary facility in §106.263 is necessary.

Proposed new §106.263(c)(4)(C) would include engines, compressors, and pumps which are associated with maintenance activities. These additional units are frequently seen in the field when maintenance activities occur and have historically been authorized under the PBR in the current §106.263. The use of this PBR is not intended for replacement units, but only additional facilities which are needed during maintenance. Proposed new §106.263(c)(4)(D) would define several abatement units associated with controlled degassing and cleaning of vessels. While abatement would not specifically be required by this PBR, the proposed subparagraph would clarify under what conditions control equipment, when used, would be authorized by this PBR. Finally, §106.263(c)(4)(E) would define temporary piping and associated facilities which are needed to bypass a unit or section of pipeline during maintenance situations. Such bypass lines reduce or eliminate emissions during maintenance.

Proposed new §106.263(d) would address several limits associated with the activities and facilities covered under this PBR. Proposed new §106.263(d)(1)(A) - (E) would require the control systems identified in the proposed new §106.263(c)(4)(D) to meet collection and destruction or removal efficiencies specified in other current commission regulations when the systems are used. The limits of §106.263(d)(2) - (5) are intended to ensure compliance with the TCAA. Proposed new §106.263(d)(2) and (3) outline limitations on activity emissions in accordance with TCAA, §382.002. Emission releases for any maintenance, start-up, or shutdown event are limited to less than those values defined in §101.1(82), Reportable Quantities. If activity emissions are greater than these values, by not

authorizing them in this PBR, the commission would be able to evaluate the event prior to occurrence to ensure emissions are adequately controlled or minimized to the greatest extent possible. Maintenance, start-up, or shutdown emissions above the reportable quantities must be reported and qualify for exemption under §101.7 and §101.11. The commission is soliciting comments on the RQ limitations proposed as discussed earlier in this paragraph, particularly for oxides of nitrogen.

Additionally, proposed new §106.263(d)(3) would address the accumulation of emissions over an annual period of time to ensure compliance with the intent of Chapter 106 to authorize insignificant emissions. This paragraph would limit the accumulation (stacking) of emissions over an annual period by specifying that the emissions resulting from maintenance, start-up, and shutdown, as well as associated temporary facilities at a site, must collectively be less than any applicable emission limit in §106.4. By definition, individual uses of PBRs authorize insignificant emissions. To date, there has been no general mechanism by which the commission limits multiple uses of PBRs. This is problematic because multiple uses of insignificant authorizations may result in significant emissions, based on quantity or toxicity. The requirement that emissions for maintenance and repair at a site do not collectively and cumulatively exceed the emission requirements in §106.4 for any 12-month period is intended to reduce unaccounted for emissions associated with maintenance and repair.

To ensure that construction of all facilities and associated emissions are properly authorized under either Chapter 116 or Chapter 106 in accordance with TCAA, §382.051, proposed new §106.263(d)(4) and (5) contain certain limitations. These paragraphs would require maintenance, start-up, or shutdown activities that cannot meet the emission limitations in proposed §106.263(d)(2) and (3) to either obtain a

permit under Chapter 116 or report and meet the requirements for exemption under §101.7 and §101.11. In addition, proposed new §106.263(d)(5) would require an owner or operator of a temporary facility that cannot meet the emissions limitations of proposed new §106.263(d)(3) to obtain a preconstruction permit authorization under Chapter 116.

Proposed new §106.263(d)(6) would also outline requirements and restrictions for activities and facilities to meet the requirements of the TCAA. This proposed paragraph would establish the length of time temporary facilities are expected to operate at a given location when being used to support maintenance activities. In most cases, it is not expected that these facilities would operate for more than 180 days. The proposed rule addresses maintenance activities requiring the operation of temporary facilities for more than 180 days by requiring registration of that facility with a PI-7 Registration Form. The commission is expecting to use these registrations as one of the bases for possible future rule changes after evaluation of short-term emission rates and associated potential impacts to ensure protection of the public health and welfare.

Proposed new §106.263(e) would require specific records that demonstrate compliance with all conditions of the section. These records would have to be maintained in a format consistent with the format required by §101.7.

Review of quantifications of air emissions resulting from maintenance and repair activities or temporary facilities associated with maintenance will be used to determine whether short-term emission rates and the scope of the PBR should be addressed in future regulations.

Subchapter O: Oil and Gas

The proposed amendments to §106.355 would slightly modify the section title to become “Pipeline Metering, Purging, and Maintenance” and clarify language and add conditions limiting certain emissions, defining the relationship of this rule to others that are possibly applicable, and requiring recordkeeping. The wording of the current section is not clear with respect to what pipelines the commission intends to cover with this rule. The phrase “between separate sites, as defined in §122.10(29) of this title (relating to Definitions)” would be added to clarify that the section has historically covered pipeline operations which are separate from process piping at a single site. Process piping is covered by other sections of Chapter 106 or under an air quality permit. Section 106.352, Oil and Gas Production Facilities, covers oil and gas exploration and production pipelines. The commission determined §106.352 covers gas pipelines up to, but not beyond, the natural gas liquids plant serving the line, as well as crude oil pipelines all the way to the initial refining operation.

Proposed §106.355(2) would exclude uncontrolled releases of butadiene to the atmosphere. Butadiene is highly toxic compound currently being reviewed by the commission. Under the current version of this rule, up to one ton of butadiene can be released to the atmosphere during any metering, purging, or maintenance operation. By continuing to authorize controlled emissions of butadiene through combustion in a smokeless flare, the proposed amendment would continue to allow necessary

maintenance and purging while being more protective of the public's health and safety. A negligible amount of butadiene is specified for those cases where it may apply.

Proposed §106.355(3) would exempt certain pipeline maintenance activities involving sweet natural gas from recordkeeping requirements because generally sweet natural gas is not a threat to the general public or their property. This paragraph would also specifically prohibit venting of sweet natural gas near a known or suspected ignition source to ensure public health and safety.

Proposed §106.355(4) would require the regulated community to meet the requirements of this section in its entirety or to obtain authorization under Chapter 116. It would also specify that complying with §101.7 and meeting the requirements in §101.11 would be necessary in those cases where authorization under this section or Chapter 116 is not possible. This wording is necessary to ensure the regulated community is aware of its obligations and choices under the TCAA and the rules of the commission.

Proposed §106.355(5) would require recordkeeping to demonstrate compliance with the section.

Operations authorized by proposed §106.355 would likely include many different points on one or more pipelines belonging to a single operator. This paragraph would allow the owner or operator to maintain all records demonstrating compliance in a single set of files at an appropriate site in Texas. The records would consist of the information required to describe the maintenance activities and their associated emissions. To ensure clarity, this paragraph would also state that the resetting of flow meters and their calibration are considered routine operations, separate from maintenance and purging.

Subchapter T: Surface Preparation

Proposed §106.454(3) would exclude remote reservoirs since they are more specifically covered under §106.454(2). Even though remote reservoirs may be a subset of cold solvent cleaners, the two types of equipment do not operate in the same way and have different designs. In a remote reservoir unit, the liquid solvent is pumped to a sink-like work area that drains solvent back into an enclosed container while parts are being cleaned, allowing no solvent to pool in the work area. Thus, a freeboard ratio requirement is not applicable to remote reservoirs because the solvent does not pool around the parts. For a cold solvent cleaner, the solvent does pool around the parts and a freeboard is necessary. The purpose of the freeboard is to ensure that when parts are placed into the solvent pool there is enough empty air space between the solvent level and the top of the tank to minimize solvent drag out when an air stream passes over the open reservoir. The design also prevents solvent overflow when parts are placed in the pool, thus decreasing air emissions.

In summary, the commission is soliciting comments on the entire proposal and specifically on several areas within this proposal, including: 1) the five-year retention requirement in proposed new §106.8, especially as it affects small businesses and minor sources; 2) the limitation of the proposed new §106.263 for “routine” activities; 3) the inclusion in proposed new §106.263(c)(4) of any additional temporary facilities historically used and reviewed by the commission under the current §106.263; 4) the inclusion of routine start-up and shutdown emissions in proposed new §106.263(c)(3); and 5) the limitation of maintenance, start-up, and shutdown emissions to less than the reportable quantities of §101.1, particularly oxides of nitrogen, in proposed new §106.263(d)(2).

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, determined that for the first five-year period the proposed rules are in effect, there will be no significant fiscal implications to units of state or local government as a result of implementation of the proposed rules. The proposed rules are estimated to cost units of state and local government up to \$500 per year to comply with expanded recordkeeping requirements for facilities that are small air emission sources authorized to operate by an air quality PBR.

The proposed rules are intended to specify recordkeeping requirements and compliance demonstrations; clarify applicability for used-oil combustion activities; update and clarify the proper use of PBRs for routine start-up, shut down, and maintenance activities and associated temporary maintenance facilities which may emit air contaminants; and clarify applicable requirements for remote reservoir cleaning facilities. The commission estimates that there will be fiscal implications, which are not anticipated to be significant, to units of state and local government due to implementation of the recordkeeping requirements of this proposal. The remaining provisions are procedural in nature and are not expected to result in additional fiscal implications for units of state and local government.

The proposed recordkeeping requirements will affect all past, present, and future facilities permitted by rule by the commission since 1972. Owners and operators of businesses, local governments, school and water districts, and small governmental organizations which have used PBRs to authorize construction, changes to, or operation of insignificant emission sources would be required to retain records beginning January 1, 2002. The specific types of records to be retained will depend on the

requirements of the PBR, but could include a copy of the PBR and general requirements claimed, production records, operating hours, material purchase or usage records, or emission calculations. All records would have to be kept at the facility site or nearest support office and made available upon request. Additionally, the proposal would require that records be retained for five years and that records be maintained that demonstrate compliance with annual emission limits on a rolling 12-month basis.

There are numerous PBRs that already require recordkeeping. Examples of facilities and operations include: boilers, heaters, and other combustion devices; aerospace equipment and parts manufacturing; semiconductor manufacturing; paint, varnishes, ink, and other coating manufacturing; surface coating facilities; and stationary engines and turbines. The primary impact to these facilities would be the extension of records retention from a few months to five years. Additionally, there are PBRs that have specific construction or operational restrictions but do not contain recordkeeping requirements. The proposal would require these facilities to create operational records to demonstrate compliance beginning on January 1, 2002. These facilities would also have to adhere to the five-year records retention requirement. Examples of these facilities and operations include: pilot plants, batch mixers, rock crushers, wet sand and gravel productions, asphalt concrete plants, animal feeding operations, small boilers and heaters, temporary oil and gas facilities, and municipal solid waste landfills and transfer stations. Owners and operators which claim emissions for maintenance activities under a PBR instead of an air permit would also have to keep records to ensure emissions are insignificant and the facility meets conditions of the rules.

The final grouping of facilities affected by the proposed rules are those sources that would not be required to retain ongoing compliance records but would only have to collect and present information when individually requested. The level of detail in the records these facilities would have to retain would depend on the specific requirements in the facility's PBR. Examples of these facilities and operations include: hydraulic and hydrostatic testing equipment; bench scale laboratory equipment; race tracks, zoos, and animal shelters; vacuum cleaning systems; aqueous fertilizer storage; wet blast cleaning; powder coating facilities; photographic process equipment; and sewage treatment facilities.

The total number of units of state and local government affected by the proposed rules cannot be determined at this time. The majority of facilities seeking PBRs since 1972 have not been required to register with the commission. Of those that do require registration, the commission processes approximately 4,000 PBR applications per year. The commission estimates that a comparatively small number of affected facilities are owned and operated by units of state and local government and many already maintain records to show compliance. However, there may be a small number that have not kept information that would now be required to do so by the proposed rules. The overall cost to comply with the recordkeeping requirements is estimated not to exceed \$500 a year, depending on the current level of recordkeeping at a facility and the complexity of the records required to be maintained based on the applicable PBR. Included in the compliance cost is the purchase of filing space and administrative supplies, printing of records, and the initial training of persons responsible for maintaining the records. No fiscal implications are anticipated to units of state and local government with facilities that are not required to retain ongoing compliance records.

PUBLIC BENEFITS AND COSTS

Mr. Davis also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from enforcement of and compliance with the proposed rules would be increased compliance with air emission standards due to more extensive record retention requirements.

The proposed rules are intended to specify recordkeeping requirements and compliance demonstrations for past, present, and future air quality PBRs issued by the commission; clarify applicability for used-oil combustion activities; update and clarify the proper use of PBRs for routine maintenance activities and associated facilities which may emit air contaminants; and clarify applicable requirements for remote reservoir cleaning facilities. The commission estimates that there will be fiscal implications, which are not anticipated to be significant, to private businesses due to implementation of the recordkeeping requirements of this proposal. The remaining provisions are procedural in nature and are not expected to result in additional fiscal implications to individuals or private businesses.

The proposed recordkeeping requirements will affect past, present, and future facilities permitted by rule by the commission since 1972. Owners and operators of businesses which have used PBRs to authorize construction, changes to, or operation of insignificant emission sources would be required to retain records beginning January 1, 2002. The specific types of records to be retained will depend on the requirements of the PBR, but could include a copy of the current PBR, production records, operating hours, material purchase or usage records, or emission calculations. All records would have to be kept at the facility site or nearest support office and made available upon request. Additionally,

the proposal would require that records be retained for five years and that records be retained that demonstrate compliance with annual emission limits on a rolling 12-month basis.

The total number of businesses throughout the state affected by the proposed rules could exceed 100,000, with 70,000 being small or micro-businesses. The majority of facilities seeking PBRs since 1972 have not been required to register with the commission. Of those that do require registration, the commission processes approximately 4,000 PBR applications per year, the majority of which are submitted by private businesses. The registrations are broken down by the following: 1,200 registrations per year for stationary engines and turbines and oil and gas production facilities; 800 registrations per year for miscellaneous facilities and emission releases; 400 registrations per year for surface coating and auto body refinishing facilities; 400 registrations per year for water and soil remediation operations; 400 registrations per year for aggregate, sand, and material handling operations; 400 registrations per year for materials loading, unloading, and storage in tanks and vessels; and 400 registrations per year for trench burning operations. The overall cost to comply with the recordkeeping requirements is estimated not to exceed \$500 a year, depending on the current level of recordkeeping at a facility and the complexity of the records required to be retained based on the applicable PBR. Included in the compliance cost is the purchase of filing space and administrative supplies, printing of records, and the initial training of persons responsible for maintaining the records. No fiscal implications are anticipated to companies with facilities that are not required to retain ongoing compliance records.

The total state-wide costs to comply with this proposal is estimated not to exceed approximately \$50 million a year.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There will be adverse fiscal implications, which are not anticipated to be significant, for small or micro-businesses as a result of implementation of the proposed rules. These proposed rules are intended to specify recordkeeping requirements and compliance demonstrations for past, present, and future air quality PBRs issued by the commission; clarify applicability for used-oil combustion activities; update and clarify the proper use of PBRs for routine start-up, shut down, and maintenance activities and associated temporary maintenance facilities which may emit air contaminants; and clarify applicable requirements for remote reservoir cleaning facilities.

The proposed rules will affect a wide range of small and micro-businesses that utilize PBRs to authorize construction, changes to, or operation of insignificant emission sources by requiring the retention of compliance records beginning January 1, 2002. The specific types of records to be maintained will depend on the requirements of the PBR and the general requirements of the chapter, but could include a copy of the current PBR, production records, operating hours, material purchase or usage records, or emission calculations. All records would have to be kept at the facility site or nearest support office and made available upon request from commission staff or any air pollution control program having jurisdiction.

Small and micro-businesses apply for PBRs in a wide variety of categories, including the following: manufacturing, refinishing, and restoring of wood products; foundry sand mold forming equipment; aqueous solutions for electrolytic and electroless processes; thermostat resin facilities; printing presses; dry abrasive cleaning; organic and inorganic liquid loading and unloading; and hydrochloric acid storage.

The commission has researched the number of facilities that are considered to be small or micro-businesses that may be subject to PBRs and has determined that at least 70,000 small and micro-businesses may be affected by the proposed rules. It is estimated that the majority of small and micro-businesses affected by the proposed rules are already required to retain compliance records and would have to implement the five-year retention requirement to comply with the new standards. The overall cost to comply with the recordkeeping requirements is estimated not to exceed \$500 a year, depending on the current level of recordkeeping at a facility and the complexity of the records required to be maintained based on the applicable PBR. Included in the compliance cost is the purchase of filing space and administrative supplies, printing of records, and the initial training of persons responsible for maintaining the records. No fiscal implications are anticipated to small or micro-businesses with facilities that are not required to retain ongoing compliance records.

The following is an analysis of the cost per employee for small or micro-businesses affected by the proposed rules. It is estimated that it will cost affected small or micro-businesses up to approximately \$500 per year to comply with the proposed rules. A small business with 100 employees would incur costs of approximately \$5.00 per employee while a micro-businesses with 20 employees would incur

costs of approximately \$25 per employee. The overall cost associated with these rules is not expected to change with the number of employees employed, but the cost per employee would vary depending on the number of persons employed by an affected business.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rules in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that this proposal is not subject to §2001.0225 because it 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.

This proposal is not a major environmental rule because its primary purpose is not to protect the environment or reduce risks to human health from environmental exposure, but rather to specify the types of records required to ensure compliance with the individual and general conditions of PBRs and to specify the activities which may be authorized under particular PBRs. Specifically, the new and amended sections relate to recordkeeping requirements for all PBRs; emissions related to maintenance on facilities and emissions related to temporary maintenance facilities; pipeline metering, purging, and maintenance; specifications for cold solvent remote reservoir cleaners; and the applicability of the PBR for used oil combustion units.

In addition, a draft regulatory impact analysis is not required because the rules do not meet any of the four applicability criteria for requiring a regulatory analysis of a “major environmental rule” as defined in the Texas Government Code. Section 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. First, this proposal does not exceed a standard set by federal law, but it is consistent with federal standards relating to emissions monitoring and recordkeeping requirements. Second, this proposal does not exceed an express requirement of state law because it is authorized by the following state statutes: Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice; TCAA, §382.016, which authorizes the commission to require the measuring and monitoring of air contaminant emissions from a source or activity and to require that associated records of the emissions be made and maintained; §382.051, which authorizes the commission’s permitting activities; §382.05196, which authorizes the commission to adopt PBRs; §382.057, which establishes the commission’s authority concerning exemptions; as well as the other sections cited in the STATUTORY AUTHORITY section of this preamble. Third, this proposal does not 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. The state is required to have a minor stationary source program under 42 United States Code, §7410(a)(2)(C), and PBRs are part of the minor stationary source program. Fourth, this proposal was not developed solely under the general powers of the agency, but was

specifically developed under the specific state laws and authorizations noted in the STATUTORY AUTHORITY section of this preamble. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for these proposed rules pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific primary purpose of the proposed rules is to revise the rules to establish and clarify the requirements for compliance demonstrations and the activities which may be authorized under particular PBRs. The proposed rules will substantially advance these stated purposes by providing specific rule provisions that address these matters.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking because they do not affect private real property. Specifically, the subject proposed rules do not affect a landowner's rights in private real property because this proposal does not burden (constitutionally), nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the rules.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that the proposed rulemaking 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 commissions rules in 30 TAC

Chapter 281, Subchapter B, concerning Consistency with the CMP. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to actions and rules subject to the 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 rules of the Coastal Coordination Council, and determined that the action is consistent with the applicable CMP goals and policies.

The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity and quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(1)). In carrying out its duty to maintain and control the state's air quality, the commission is proposing to clarify the regulatory requirements in Chapter 106, which authorizes facilities and associated activities that will not make a significant contribution of air contaminants to the atmosphere. Specifically, the proposal clarifies the application and use of the specific PBRs addressed in this proposal and clarifies the general recordkeeping requirements for all PBRs. In addition, the CMP policy applicable to this action is the policy that commission rules comply with regulations in 40 Code of Federal Regulations (CFR), to protect and enhance air quality in the coastal area (31 TAC §501.14(q)). This action complies with 40 CFR 50, National Primary and Secondary Ambient Air Quality Standards. Therefore, in compliance with 31 TAC §505.22(e), this rulemaking action is consistent with CMP goals and policies. 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

Because Chapter 106 contains applicable requirements under 30 TAC Chapter 122 (Federal Operating Permits), owners or operators subject to the Federal Operating Permit Program must, consistent with the revision process in Chapter 122, revise their operating permit to include the revised Chapter 106 requirements for each emission unit affected by the revisions to Chapter 106 at their site.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held May 29, 2001, at 10:00 a.m. in Room 2210, Building F, located at 12100 Park 35 Circle, Austin. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, a commission staff member will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS

Comments may be submitted to Angela Slupe, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087; or by fax at (512) 239-4808. All comments must be received on June 4, 2001, and should reference Rule Log No. 2000-051-106-AI. Comments received by 5:00 p.m. on that date will be considered by the commission before any final action on the proposal. For further information, please contact Jill Burditt at (512) 239-0560.

STATUTORY AUTHORITY

The new section is proposed under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC, and under the Texas Health and Safety Code, TCAA, §382.017, which provides the commission authority to adopt rules consistent with the policy and purposes of the TCAA. The new section is also proposed under TCAA, §382.002, which establishes the commission's purpose to safeguard the state's air resources consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to control the quality of the state's air; §382.016, which authorizes the commission to require the measuring and monitoring of emissions of air contaminants from a source or activity and to require that associated records of the emissions be made and maintained; §382.051, which authorizes the commission's permitting activities; §382.05196, which authorizes the commission to adopt PBRs for certain facilities that will not make a significant contribution of air contaminants to the atmosphere; §382.057, which establishes the commission's authority concerning facilities and changes to facilities that will not make a significant contribution of air contaminants to the atmosphere; and Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The proposed new section implements TCAA, §382.011, relating to General Powers and Duties; §382.016, relating to Monitoring Requirements; Examination of Records; §382.05196, relating to Permits by Rule; and §382.057, relating to Exemption. The proposed new section also implements TWC, §5.103, relating to Rules; and Texas Government Code, §2001.004, relating to Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions.

SUBCHAPTER A: GENERAL REQUIREMENTS

§106.8

§106.8. Recordkeeping.

(a) Owners or operators of facilities and sources that are de minimis as designated in §116.119 of this title (relating to De Minimis Facilities or Sources) are not subject to this section.

(b) Owners or operators of facilities operating under a permit by rule (PBR) in Subchapter C of this chapter (relating to Domestic and Comfort Heating and Cooling) or under those PBRs that only name the type of facility and impose no other conditions in the PBR itself do not need to comply with specific recordkeeping requirements of subsection (c) of this section. A list of these PBRs will be available through the commission. Upon request from the commission or any air pollution control program having jurisdiction, claimants must provide information that would demonstrate compliance with §106.4 of this title (relating to Requirements for Permitting by Rule) and the PBR under which the facility is authorized.

(c) Owners or operators of all other facilities authorized to be constructed and operate under a PBR must retain records as follows:

(1) permanently maintain a copy of each PBR and the applicable general conditions under which the facility is operating. The PBR and general requirements claimed should be the version

in effect at the time of construction or changes to an existing facility whichever is most recent. The PBR holder may elect to comply with a more recent version of the applicable PBR and general requirements;

(2) maintain records containing sufficient information to demonstrate compliance with the following:

(A) all applicable requirements of §106.4 of this title or the general requirements, if any, in effect at the time of the claim; and

(B) all applicable PBR conditions;

(3) keep all required records at the facility site. If however, the facility normally operates unattended, records must be maintained at an office within Texas having day-to-day operational control of the plant site;

(4) make the records available in a reviewable format at the request of personnel from the commission or any air pollution control program having jurisdiction; and

(5) beginning January 1, 2002, keep records to support a compliance demonstration for any consecutive 12-month period. All records must be retained for at least five years.

SUBCHAPTER G: COMBUSTION

§106.181

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC, and under the Texas Health and Safety Code, TCAA, §382.017, which provides the commission authority to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also proposed under TCAA, §382.002, which establishes the commission's purpose to safeguard the state's air resources consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to control the quality of the state's air; §382.016, which authorizes the commission to require the measuring and monitoring of emissions of air contaminants from a source or activity and to require that associated records of the emissions be made and maintained; §382.051, which authorizes the commission's permitting activities; §382.05196, which authorizes the commission to adopt permits by rule for certain facilities that will not make a significant contribution of air contaminants to the atmosphere; §382.057, which establishes the commission's authority concerning facilities and changes to facilities that will not make a significant contribution of air contaminants to the atmosphere; and Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The proposed amendment implements TCAA, §382.011, relating to General Powers and Duties; §382.016, relating to Monitoring Requirements; Examination of Records; §382.05196, relating to

Permits by Rule; and §382.057, relating to Exemption. The proposed amendment also implements TWC, §5.103, relating to Rules; and Texas Government Code, §2001.004, relating to Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions.

§106.181. Used-Oil Combustion Units [Small Boilers, Heaters, and Other Combustion Devices].

[(a)] Small boilers and [,] heaters burning used oil that has not been mixed with hazardous waste [, drying or curing ovens, furnaces, or other combustion units, but not including stationary internal combustion engines or turbines,] are permitted by rule provided that all of the following conditions [of this section] are met:[:.]

[(b)] Combustion units may burn used oil as a fuel as long as the used oil has not been mixed with hazardous waste and the combustion unit meets the following conditions:]

(1) the combustion unit or combination of combustion units at the same account have a maximum capacity of 1.0 million Btu per hour (MMBtu/hr) and each individual combustion unit is not greater than 0.5 MMBtu/hr;

(2) the combustion gases from the combustion unit(s) are vented to the ambient air in accordance with the following requirements:

(A) through an unobstructed vent; or

(B) through a vertical vent with a cap; and

(i) a flat roof, through a minimum of a three-foot stack; or

(ii) a sloped roof, through a stack that is at least three feet higher than the highest point on the roof or three feet higher than a point extending ten feet horizontally from the roof; and

(3) the combustion unit(s) burns only used oil the owner or operator generates on-site or used oil received from household do-it-yourself used oil generators.

SUBCHAPTER K: GENERAL

§106.263

STATUTORY AUTHORITY

The repeal is proposed under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC, and under the Texas Health and Safety Code, TCAA, §382.017, which provides the commission authority to adopt rules consistent with the policy and purposes of the TCAA. The repeal is also proposed under TCAA, §382.002, which establishes the commission's purpose to safeguard the state's air resources consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to control the quality of the state's air; §382.016, which authorizes the commission to require the measuring and monitoring of emissions of air contaminants from a source or activity and to require that associated records of the emissions be made and maintained; §382.051, which authorizes the commission's permitting activities; §382.05196, which authorizes the commission to adopt permits by rule for certain facilities that will not make a significant contribution of air contaminants to the atmosphere; §382.057, which establishes the commission's authority concerning facilities and changes to facilities that will not make a significant contribution of air contaminants to the atmosphere; and Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The proposed repeal implements TCAA, §382.011, relating to General Powers and Duties; §382.016, relating to Monitoring Requirements; Examination of Records; §382.017, relating to Rules; §382.05196, relating to Permits by Rule; and §382.057, relating to Exemption. The proposed repeal

also implements TWC, §5.103, relating to Rules; and Texas Government Code, §2001.004, relating to Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions.

§106.263. Repairs and Maintenance.

SUBCHAPTER K: GENERAL

§106.263

STATUTORY AUTHORITY

The new section is proposed under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC, and under the Texas Health and Safety Code, TCAA, §382.017, which provides the commission authority to adopt rules consistent with the policy and purposes of the TCAA. The new section is also proposed under TCAA, §382.002, which establishes the commission's purpose to safeguard the state's air resources consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to control the quality of the state's air; §382.016, which authorizes the commission to require the measuring and monitoring of emissions of air contaminants from a source or activity and to require that associated records of the emissions be made and maintained; §382.051, which authorizes the commission's permitting activities; §382.05196, which authorizes the commission to adopt permits by rule for certain facilities that will not make a significant contribution of air contaminants to the atmosphere; §382.057, which establishes the commission's authority concerning facilities and changes to facilities that will not make a significant contribution of air contaminants to the atmosphere; and Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The proposed new section implements TCAA, §382.011, relating to General Powers and Duties; §382.016, relating to Monitoring Requirements; Examination of Records; §382.017, relating to Rules;

§382.05196, relating to Permits by Rule; and §382.057, relating to Exemption. The proposed new section also implements TWC, §5.103, relating to Rules; and Texas Government Code, §2001.004, relating to Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions.

§106.263. Routine Maintenance, Start-up and Shutdown of Facilities, and Temporary Maintenance Facilities.

(a) This section authorizes routine maintenance, start-up and shutdown of facilities, and specific temporary maintenance facilities except as specified in subsection (b) of this section.

(b) The following maintenance, start-up and shutdown of facilities, and new facilities are not authorized under this section:

(1) construction of any new or modified permanent facility;

(2) facilities and sources that are de minimis as allowed in §116.119 of this title (relating to De Minimis Facilities or Sources); and

(3) any emissions associated with operations claimed under the following sections of this chapter:

(A) §106.231 of this title (relating to Manufacturing, Refinishing, and Restoring Wood Products);

(B) §106.351 of this title (relating to Salt Water Disposal (Petroleum));

(C) §106.352 of this title (relating to Oil and Gas Production Facilities);

(D) §106.353 of this title (relating to Temporary Oil and Gas Facilities);

(E) §106.355 of this title (relating to Pipeline Metering, Purging, and Maintenance);

(F) §106.392 of this title (relating to Thermoset Resin Facilities);

(G) §106.418 of this title (relating to Printing Presses);

(H) §106.433 of this title (relating to Surface Coat Facility);

(I) §106.435 of this title (relating to Classic or Antique Automobile Restoration Facility);

(J) §106.436 of this title (relating to Auto Body Refinishing Facility); and

(K) §106.512 of this title (relating to Stationary Engines and Turbines).

(c) The following activities and facilities are authorized under this section:

(1) routine activities which are those that are planned or can be projected to occur at least once in any 12-month period;

(2) maintenance, including associated start-up and shutdown, which includes recurring or planned activities which keep a facility at normal operating parameters or repairs which return a facility to normal operating parameters and are not considered “reconstruction” under 40 Code of Federal Regulations 60, New Source Performance Standards, Subpart A, §60.15 (relating to Reconstruction) and which does not include enhancement of facilities nor construction, installation, or operation of permanent facilities;

(3) start-up and shutdown activities which are part of normal facility operation; and

(4) temporary maintenance facilities which are constructed in conjunction with maintenance activities. Temporary maintenance facilities include only the following:

(A) facilities used for abrasive blasting, surface preparation, and surface coating on immovable fixed structures;

(B) facilities used for testing and repair of engines and turbines;

(C) compressors, pumps, or engines and associated pipes, valves, flanges, and connections, not operating as a replacement for an existing authorized unit;

(D) flares, vapor combustors, catalytic oxidizers, thermal oxidizers, carbon adsorption units, and other control devices used to control vent gases released during the degassing of immovable, fixed process vessels, storage vessels, and associated piping to atmospheric pressure, plus cleaning apparatus that will have or cause emissions; and

(E) temporary piping required to bypass a unit or pipeline section undergoing maintenance.

(d) Emission and operational limits for maintenance, start-up and shutdown of facilities, and specific temporary maintenance facilities are as follows.

(1) Temporary facilities defined in subsection (c)(4)(D) of this section are limited to the following:

(A) flares or vapor combustors must meet the requirements of §106.492(1) and (2)(C) of this title (relating to Flares);

(B) catalytic oxidizers must meet the requirements of §106.533(5)(C) of this title (relating to Water and Soil Remediation);

(C) thermal oxidizers must meet the requirements of §106.493(2) and (3) of this title (relating to Direct Flame Incinerators);

(D) carbon adsorption systems must meet the requirements of §106.533(5)(D) of this title; and

(E) other control devices used to control vents caused by the degassing of process vessels, storage vessels, and associated piping have an overall vapor collection and destruction or removal efficiency of at least 90%.

(2) Emissions from each maintenance, start-up, and shutdown event, not including temporary maintenance facilities, are limited to 24-hour emission totals which are less than the reportable quantities defined in §101.1(82) of this title (relating to Definitions).

(3) Emissions from all activities and temporary maintenance facilities covered by this section for a site must collectively and cumulatively be less than any applicable emission limit under all subsections of §106.4 of this title (relating to Requirements for Permitting by Rule) in any rolling 12-month period.

(4) Any maintenance, start-up, or shutdown activity that cannot meet the limitations of paragraphs (2) and (3) of this subsection must be authorized under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) or comply with §101.7 and §101.11 of this title (relating to Maintenance, Start-up and Shutdown Reporting, Recordkeeping, and Operational Requirements, and Demonstrations).

(5) Any temporary maintenance facility that cannot meet the limitations of paragraph (3) of this subsection must obtain authorization under Chapter 116 of this title.

(6) Temporary maintenance facilities may not operate at a given location for longer than 180 consecutive days or the completion of a single project unless the facility is registered. If a single project requires more than 180 consecutive days to complete, the facilities must be registered using a PI-7 Form, along with documentation on the project. Registration and supporting documentation shall be submitted upon determining the length of the project will exceed 180 days, but no later than 180 days after the project begins.

(e) Facility owners or operators must retain records containing sufficient information to demonstrate compliance with this section and must include information listed in paragraphs (1) - (5) of this subsection. Documentation must be separate and distinct from records maintained for any other air authorization. Records must identify the following for all maintenance, start-up, or shutdown activities and temporary maintenance facilities:

(1) the type and reason for the activity or facility construction;

(2) the processes and equipment involved;

(3) the date, time, and duration of the activity or facility operation;

(4) the air contaminants and amounts which are emitted as a result of the activity or facility operation; and

(5) any actions taken to minimize the emissions.

SUBCHAPTER O: OIL AND GAS

§106.355

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC, and under the Texas Health and Safety Code, TCAA, §382.017, which provides the commission authority to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also proposed under TCAA, §382.002, which establishes the commission's purpose to safeguard the state's air resources consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to control the quality of the state's air; §382.016, which authorizes the commission to require the measuring and monitoring of emissions of air contaminants from a source or activity and to require that associated records of the emissions be made and maintained; §382.051, which authorizes the commission's permitting activities; §382.05196, which authorizes the commission to adopt permits by rule for certain facilities that will not make a significant contribution of air contaminants to the atmosphere; §382.057, which establishes the commission's authority concerning facilities and changes to facilities that will not make a significant contribution of air contaminants to the atmosphere; and Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The proposed amendment implements TCAA, §382.011, relating to General Powers and Duties; §382.016, relating to Monitoring Requirements; Examination of Records; §382.017, relating to Rules;

§382.05196, relating to Permits by Rule; and §382.057, relating to Exemption. The proposed new section also implements TWC, §5.103, relating to Rules; and Texas Government Code, §2001.004, relating to Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions

§106.355. Pipeline Metering, Purging, and Maintenance [of Pipelines].

Metering, purging, and maintenance operations for gaseous and liquid petroleum pipelines (including ethylene, propylene, butylene, and butadiene pipelines) between separate sites, as defined in §122.10(29) of this title (relating to General Definitions), are permitted by rule provided that operations are conducted according to the following conditions of this section:

(1) emissions of volatile organic compounds except equipment leak fugitive emissions, are burned in a smokeless flare; or

(2) total uncontrolled emissions of any air contaminant may [will] not exceed one ton during any metering, purging, or maintenance operation. [;] Uncontrolled butadiene emissions may not exceed 0.04 lb/hr.

(3) venting of sweet, commercial grade natural gas from pipelines is exempt from paragraphs (1), [and] (2), and (5) of this section. Operators may not vent gas in areas of known or suspected ignition sources. [Care must be taken not to vent the gas in an area where an ignition

source may exist or where accidental ignition of the gas may increase risk of fire at nearby tanks or other facilities.]

(4) if any maintenance activity cannot meet all of the requirements of this section, or the emissions are not authorized under Chapter 116 (relating to Control of Air Pollution by Permits for New Construction or Modification), then activities must comply with §101.7 and §101.11 of this title (relating to Maintenance, Start-up and Shutdown Reporting, Recordkeeping, and Operational Requirements; and Demonstrations).

(5) records of all maintenance and purging emissions must be kept by the owner or operator of the facility or group of facilities at the nearest office within Texas having day-to-day operational control. These records must include all information required in this paragraph and in paragraphs (1) - (4) of this section. Resetting flow meters (changing orifice plates, etc.) and calibration of meters are considered routine operations under this rule, not maintenance or purging. Records must identify the following for all maintenance and purging activities covered by this section:

(A) the type and reason for the activity;

(B) the processes and equipment involved;

(C) the date, time, and duration of the activity;

(D) the air contaminants and amounts which are emitted as a result of
the activity; and

(E) the actions taken, if any, to minimize the emissions.

SUBCHAPTER T: SURFACE PREPARATION

§106.454

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC, and under the Texas Health and Safety Code, TCAA, §382.017, which provides the commission authority to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also proposed under TCAA, §382.002, which establishes the commission's purpose to safeguard the state's air resources consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to control the quality of the state's air; §382.016, which authorizes the commission to require the measuring and monitoring of emissions of air contaminants from a source or activity and to require that associated records of the emissions be made and maintained; §382.051, which authorizes the commission's permitting activities; §382.05196, which authorizes the commission to adopt permits by rule for certain facilities that will not make a significant contribution of air contaminants to the atmosphere; §382.057, which establishes the commission's authority concerning facilities and changes to facilities that will not make a significant contribution of air contaminants to the atmosphere; and Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The proposed amendment implements TCAA, §382.011, relating to General Powers and Duties; §382.016, relating to Monitoring Requirements; Examination of Records; §382.017, relating to Rules;

§382.05196, relating to Permits by Rule; and §382.057, relating to Exemption. The proposed amendment section also implements TWC, §5.103, relating to Rules; and Texas Government Code, §2001.004, relating to Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions.

§106.454. Degreasing Units.

Any degreasing unit that satisfies the following conditions of this section is permitted by rule.

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

(3) The following conditions apply only to cold solvent cleaners, not including remote reservoirs.

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

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